Working Papers on The Nature of Evidence:
How Well Do ‘Facts’ Travel?
No. 06/05

Market Disciplines in Victorian Britain

Paul Johnson

Department of Economic History
London School of Economics

September 2005

“The Nature of Evidence: How Well Do ‘Facts’ Travel?” is funded by The Leverhulme Trust and the ESRC at the Department of Economic History, London School of Economics.

For further details about this project and additional copies of this, and other papers in the series, go to:

http://www.lse.ac.uk/collection/economichistory/

Series Editor:

Dr. Jonathan Adams
Department of Economic History
London School of Economics
Houghton Street
London, WC2A 2AE

Tel: +44 (0) 20 7955 6727
Fax: +44 (0) 20 7955 7730

Market Disciplines in Victorian Britain

Paul Johnson

Abstract

One of the many miracles of Victorian Britain's market economy was that it worked most efficiently when it was left to regulate itself – or at least, this is what the great majority of Victorians believed. The prevailing economic orthodoxy throughout the nineteenth century assumed, following Adam Smith, that the market was naturally self-governing, and that economic intervention was generally unnecessary and usually unproductive. This was a policy regime under which the Victorian economy thrived.

Yet even as this orthodoxy seemed to become embedded in a public policy of free trade and minimal government in the 1840s, there emerged a recognition that in some circumstances the discipline of the market could not be relied on to produce optimal outcomes. J. S. Mill identified a number of economic 'problems' - natural monopolies, public goods, externalities - for which the unregulated market could produce sub-optimal outcomes, and this analysis provided an intellectual rationale for limited government intervention. However, belief in the autonomy of the market was such that, even as economic policy became increasingly interventionist, most refused to acknowledge that the market in Victorian Britain was a constructed, not a natural phenomenon.

The idea that the market was a legal and ideological construct, value laden and structured to promote certain interests, was inconceivable to most Victorians, and remains so today. This paper explores how the ideological environment into which facts arrive can be the most important criterion upon which their acceptance or rejection depends. This paper looks at a number of the dilemmas regarding the market system that exercised the thoughts of Victorians. In three separate sections the paper looks in turn at cases of market discipline, of market indiscipline, and at ways in which the market itself was disciplined from outside.

Introduction

The Victorian economy was a market economy like no other – bigger, faster, richer and more encompassing than man had previously seen. The tentacles of the market spread to every town and village, to every shop, to every place of work, binding buyers and sellers in a relationship of mutual exchange. This market offered opportunity for all-round benefit – as Adam Smith had remarked, it was not benevolence, but self-interest, that drove the buyer to buy and the seller to sell.[1] And self-interest required no prompting or guidance: for Smith and his Classical Economics successors, this individual quest for betterment was the driving force of the economy. The buyer would seek the lowest price, the seller would seek the highest, and they would each weigh up the other's propensity to honour the contract. Although these buyers and sellers, in their totality, constituted the market and so were economically sovereign (for without them there could be no trade), individually they were subject to the authority of the market. Deviation from the righteous path of the market price would lead to exclusion from trade, and a loss of well-being.

This Smithian view of the market as a kind of natural wonder was an axiom of political economy at the start of Victoria's reign, and it survived in some form throughout the nineteenth century. In the 1880s Herbert Spencer continued to marvel at the dynamism and natural equilibrium of the market:

> The world-wide transactions conducted in merchants" offices, the rush of traffic filling our streets, the retail distributing system which brings everything in easy reach and delivers the necessaries of daily life to our doors, are not of government origin. All these are

[1] Adam Smith, *The Wealth of Nations*. Book I, ch. 2. (Oxford, 1976 [1776]), p. 27.

> the results of the spontaneous activities of citizens, separate or grouped.[2]

But by this date the centre ground had moved, and Spencer's individualistic belief in the natural perfection of unguided market interactions seemed at odds with both mainstream economic thought and political reality. From the publication in 1848 of Mill's *Principles of Political Economy*, the last book of which itemised the circumstances in which the free market might fail to produce optimal outcomes, political economists had been struggling with the tension between the welfare implications of market freedom and market control. And simultaneously, governments had been doing likewise, giving consideration not so much as to whether intervention in the market could be legitimate, but rather to the circumstances under which it *was* legitimate.

In this brief paper I can do no more than touch on some of these shifting attitudes towards market efficiency and effectiveness, and, of course, my selection of a small number of examples will produce a reading that is necessarily partial. My approach is to look at a number of the dilemmas about the working of their market system that exercised the thoughts of Victorians. What did they say, and what did they do, when the discipline of the market appeared too harsh or too lax, and how, and in whose interests, did they attempt to restrain or redirect this discipline? In three separate sections I will look in turn at cases of market discipline, of market indiscipline, and at ways in which the market itself was disciplined from outside.

[2] Herbert Spencer, *The Man versus The State* (London, 1884). Quote from 1964 Penguin edition, p. 134.

Market Discipline

There were two incidents in the 1840s which almost simultaneously challenged and tested the market's ability appropriately to reward and discipline the behaviour of economic actors – the "railway mania" of 1844-45 and the Irish Famine. In each case extreme circumstances led to fears that the automatic balancing mechanism of the market might fail; in each case market responses eventually resolved the problem, though at considerable cost to many people involved.

There had been investment booms and bubbles before, and the requirement for company registration introduced by Gladstone's Joint Stock Act of 1844 was designed to prevent fraudulent company promotion in the future, and thereby improve the working of the free market.[3] Registration in advance of flotation was supposed to give investors the information they needed to distinguish sound companies from speculative ventures, and thereafter they would be free to make rational investment decisions on the basis of their individual reading of market prospects. So much for the intention: the practice was very different. A minor investment boom in the first half of 1844 – driven in part by the high returns from a string of good harvests – created rising demand for shares in established railway companies. As these share prices rose, new companies and railway lines were floated. In the first 10 months of 1845, 1400 companies were proposed, over 800 of which were registered in September and October. Demand was so intense that an active market developed in letters of allotment and scrip certificates, which required deposits of only a small fraction of the value of the (putative) paid-up share. As long as the market stayed buoyant a premium could be earned on these various types of railway paper, but

[3] Ron Harris, *Industrializing English Law: Entrepreneurship and Business Organization, 1720-1844* (Cambridge, 2000), ch 10.

when the bubble burst, with a rise of Bank Rate in the middle of October 1845, railway share prices plummeted.

Three aspects of this railway mania raised questions about the capacity of the market to discipline wayward behaviour. First, the automatic balancing effect of the price mechanism appeared to have failed: as share prices rose, the buyers demanded more, not less. The precarious nature of railway investment had been fully appreciated by many experienced City financiers well before the crash. In June 1845 the management committee of the private bank of Prescott, Grote and Co. noted that: “the gambling taking place at present in Railway Shares in every part of the Country, and amongst every class of Society, is quite alarming, and … it fills us with apprehension of an impending crisis.”[4] The following month the *The Times* publicly warned against “rash speculation, against the folly and sin of railway gambling’, but to no great effect.[5]

Secondly, the ability of the market to sift and sort the good investments from the bad went into abeyance. Proposals to extend railway connections to major towns in Britain had real merit; others, such as to build a railway network on the 4-mile wide Caribbean island of St Kitts, were preposterous, but they all received market support.[6] The satirical journal *Punch* lampooned such fanciful projects with a spoof prospectus for a “Great North Pole Railway, forming a junction with the Equinoctial line, with a branch to the horizon.” The claim that a profit of 65 per cent on capital would be earned merely on “luggage traffic bringing up ice from the North Pole to the London market” was not so different from the wildly optimistic business plans contained in many of the genuine prospectuses issued in 1845, even though the rate of return on the most

[4] Quoted in David Kynaston, *The City of London. Vol 1: A World of Its Own, 1815-1890* (London, 1994), p. 151.
[5] D.M. Evans, *The Commercial Crisis of 1847-1848* (London, 1848), p. 23.
[6] H.R.Fox Bourne, *The Romance of Trade* (London, 1871), p. 329.

prosperous working railway at the time, the Stockton and Darlington, was no more than 15 per cent, while the largest company in terms of length of track, the Great Western Railway, produced a modest 6 per cent dividend.[7]

Thirdly, the capacity of the market to reward prudence and punish excess was muted. When, at the end of 1845, it became clear that many railway promoters had projected lines that they knew would never be established, there began a "hurricane of litigation" as conflicting liabilities for losses were argued through the courts. These were not the losses of shareholders who had bought at the top of the market and seen their "investments" dwindle, since they could do nothing other than wring their hands, but of the creditors who had supplied millions of pounds of goods and services to provisional railway companies which subsequently went into liquidation and defaulted on their debts. Kostal has shown that after some legal prevarication, the courts privileged the position of the promoters and directors of provisional railway companies over that of their suppliers; it became virtually impossible to extract payment from those involved in even the most over-inflated of bubble companies.[8]

The experience of the 1844-45 "railway mania" could have devastated both the railway industry and the stock market in Britain. In fact, it did neither. The collapse of railway share prices did lead to a short-term capital shortage in the later 1840s as many of the new railway projects turned to their shareholders for additional funds to complete their construction projects. Even a consistently profitable company such as the Great Western Railway experienced a massive fall in share price – by the time the market had reached its low point in 1851 GWR shares were

[7] Michael Freeman and Derek Aldcroft, *The Atlas of British Railway History* (London, 1985), pp. 17, 19.

[8] R.W. Kostal, *Law and English Railway Capitalism, 1825-1875* (Oxford, 1994), ch. 2. See also T.L. Alborn, *Conceiving Companies: Joint-stock politics in Victorian England* (London, 1998), ch. 7.

worth only one third of their value at the height of the boom in September 1845. Yet the railway system itself prospered. In 1844 the network consisted of around 2000 miles of track; by the end of the "railway mania" construction boom in the early 1850s, the network extended to over 7000 miles, and virtually all the country's main line routes had been built. Over these same few years railway revenue tripled from £5 million to £15 million per annum.[9]

The stock market also prospered. In the immediate aftermath of the mania, many commentators lamented the way in which people from all walks of life had been drawn into the frenzy. In January 1846 one of the leading railway newspapers reflected that:

> The whole population of the empire was infected by the railway mania. No class, from the highest to the lowest, was exempt. Like a fever it spread through every rank. The statesman, the nobleman, the manufacturer, the man of independent property, the literary, the commercial man, peer, printer, clergyman, naval men, MPs, special pleaders, professors, cotton spinners, gentlemen's cooks and attorneys, with their clerks …. Bankers, beersellers, and butlers, domestic servants, footmen and mail guards – all have joined in the excitement.[10]

The financial journalist D. Morier Evans noted that several hundred clergymen, and 157 MPs had signed deeds of subscription for shares in newly projected railway schemes.[11] At the time this was seen as somehow shameful – an indicator of the triumph of greed over reason. But in the longer run, it can be seen as a crucial episode in the enormous expansion of the British capital market in the Victorian period. Prior to the 1840s, the principal destination for domestic investment was government stock. Although many investors had their fingers burned during the mania,

---

[9] H.G. Lewin, *The Railway Mania and its Aftermath, 1845-1852* (London, 1936).
[10] *Railway Director*, 9 Jan 1846, quoted in Kostal, *Law*, p. 30.
[11] Evans, *Crisis*, p.19.

many others made handsome profits, and the episode gave a massive stimulus to the development of the regional stock markets which were later to serve as a key source of capital for local joint stock firms.[12]

Just as the railway boom was reaching manic proportions in September 1845, news arrived that the Irish potato crop was affected by "blight", and that yields were down by one third. The following year three quarters of the crop was lost. Not until 1850 did the potato harvest return to something like normal, by which time excess mortality (mainly caused by fever and disease, rather than absolute starvation) had despatched perhaps one million Irish souls, whilst emigration had removed another half million or more.[13] There was widespread agreement that this was a disaster of epic proportions, and it prompted considerable public intervention in terms of food subsidies, public works for the poor, and ultimately soup kitchens, first from Peel's Conservative administration, and after June 1846 from the Whig government of Lord John Russell. But there was less agreement about the underlying cause. Crop failure had occurred in Ireland before – in 1800-1, in 1816-18, and in 1822 – without causing death and distress on such a scale, and the move towards more modest tariffs on grain by the 1840s should have created greater scope for effective market reactions to supply problems in any part of the United Kingdom. Was the famine a sign that the market mechanism had lost its ability to maintain balance and equilibrium?

After a visit to Ireland in 1817, Thomas Malthus had commented that "a population greatly in excess of the demand for labour … is the

---

[12] P.L. Cottrell, *Industrial Finance 1830-1914* (London, 1980); J.R. Killick and W.A. Thomas, "The provincial stock exchanges, 1830-1870', *Economic History Review*, 23 (1970), pp. 96-111; M.C.Reed, "Railways and the growth of the capital market' in M.C. Reed (ed.), *Railways in the Victorian Economy* (Newton Abbot, 1969), pp. 162-83.

[13] Cormac Ó Gráda, *Ireland: a New Economic History, 1780-1939* (Oxford, 1994), pp. 178-87.

predominant evil of Ireland."[14] For committed Malthusians, therefore, the famine was simply the inevitable physical check to population which resulted from the people's failure to adopt greater moral restraint over time. From this standpoint, any form of public relief was wrong, because it would only deepen and prolong the agony. The staunchly non-interventionist *Economist* was forthright in response to an appeal from the people of Cork for a living wage on the public works: to pay people "not what their labour is worth, not what their labour can be purchased for, but what is sufficient for a comfortable subsistence for themselves and their family … would stimulate every man to marry and populate as fast as he could, like a rabbit in a warren."[15] For others, such as Thomas Chalmers, it was the backward nature of the Irish economy as much as the backward nature of the people that was to blame. In his view, many parts of Ireland lacked a private retailing sector, so even people with sufficient money to buy food could not obtain it once the local supply had failed. In such primitive conditions, there was no effective competition and no free market.[16] And a more fundamental economic problem in Ireland, in the eyes of many political economists, was the semi-feudal nature of landholding which prevented land being treated as a commodity that could be freely exchanged in the market. Thus smallholdings could not be readily consolidated to create larger, more efficient, more capitalistic, farms, and indebted or bankrupt estates could not be freely sold, but

---

[14] Cormac Ó Gráda, "Malthus and the pre-famine economy' in A.E. Murphy (ed.), *Economists and the Irish economy from the Eighteenth Century to the Present Day* (Dublin, 1984) pp. 75-95.

[15] *Economist*, Oct. 1846.

[16] Boyd Hilton, *The Age of Atonement* (Oxford, 1988), p. 109. In fact pre-famine Ireland did not lack markets and traders. See Ó Gráda, *Ireland*, p. 265.

instead had to be transferred through slow, expensive and complex legal processes administered by the Court of Chancery.[17]

Overall, public policy intervention was grudging, and occurred when political expediency or humanitarianism temporarily broke through the binding constraint of official economic thinking which held that free markets could achieve more than any government agency. The Whig Chancellor of the Exchequer, Sir Charles Wood, and senior Treasury civil servant, Charles Trevelyan, both held to the view that government interference in the market for food would necessarily worsen rather than improve conditions for the poor in Ireland, and resisted pressure for price controls or regulation of corn merchants. For Trevelyan it was self-evident that “in the great institution of the business of society, it falls to the share of government to protect the merchant and the agriculturist in the free exercise of their respective employments, but not itself to carry on those employments.”[18] The judgement of historians on the way in which Peel, Russell and their ministers responded to the famine has generally been unfavourable, though the scale of the official response, however inadequate, should not be underestimated. At the height of the famine in the spring of 1847 the 700,000 people (mainly adult males) directly employed by the Irish Board of Works exceeded the paid workforce of Irish farmers.[19]

Did the extent of public works employment, and subsequent use of soup kitchens to provide subsidised or free food to the needy,

---

[17] The standard work on political economists’ views about Ireland is R.D. Collison Black, *Economic Thought and the Irish Question, 1817-1870* (Cambridge, 1960). Mill, for example, devoted two chapters of his *Principles* to the problem of peasant agriculture in Ireland. For details of attitudes and policy towards land in Ireland see Peter Gray, *Famine, Land and Politics: British Government and Irish Society, 1843-1850* (Dublin, 1999).

[18] Letter of Trevelyan to Lord Monteagle, 9 October 1846. Quoted in Noel Kissane, *The Irish Famine: A documentary history* (Dublin, 1995), p. 51.

[19] Ó Gráda, *Ireland*, p. 195.

demonstrate the incapacity of the free market to respond in a period of crisis? There was never one view on this among political economists, let alone more broadly, but a strong current of opinion held that the primary responsibility for the crisis lay with Irish landlords who, over many years, had neglected the improvement of their estates, failed to reform a tenancy system which encouraged the exhaustion of the soil, and extracted excessive rent from their tenants in order to pay for extravagant, and unsustainable, lifestyles.[20] Once the short-term crisis was over, this free market view appeared to be vindicated. From 1850, living standards in Ireland rose and poor law expenditure fell. Emigration proved to be a powerful balancing mechanism, permitting millions of under-employed Irish men and women to seek work in the more dynamic labour markets of Britain and North America. Structural reforms – notably the 1849 Encumbered Estates Act which permitted the sale of bankrupt properties and instituted free trade in Irish land – moved the domestic economy towards a model of Smithian competition. And cultural changes such as the replacement of partible by impartible inheritance served to raise agricultural productivity and reduce the birth rate through a rise in rural celibacy.[21] Ultimately the market proved to be resilient to the potato blight, and provided the discipline required to re-establish labour market equilibrium, even if a million Irish men, women and children died in the process.

If the market could be seen ultimately to be responsive and resilient in periods of exceptional crisis and distress, then there could be little doubt that it would maintain rational order during less anxious times. The signs of this market order were everywhere apparent to mid-Victorians.

---

[20] Thomas A. Boylan and Timothy P. Foley, '"A nation perishing of political economy"?'. In Chris Morash and Richard Hayes, '*Fearful Realities'. New Perspectives on the Famine* (Dublin, 1996), pp. 138-150.

[21] K. Theodore Hoppen, *The Mid-Victorian Generation, 1846-1886* (Oxford University Press, 1998), p. 573.

Prices floated freely with supply and demand: not just corn prices after 1846, but prices for all goods and services throughout the economy. This was true equally for labour and capital. Wages were highest in the booming manufacturing districts of Lancashire and Yorkshire, and some 30 per cent lower in stagnant Cornwall.[22] Interest rates were lowest for government debt, and rose with the riskiness of the borrower. Effort and enterprise were rewarded with high wages and profit; idleness and inattention punished with poverty and the bankruptcy court. The invisible hand could pat on the back or slap in the face according to the objective conditions of a competitive market. As government withdrew from interference with this market, the closer reality appeared to resemble the Smithian model, and the less scope there was for the exercise of aristocratic or elite privilege. Even the politically powerful could be bent by the retributive wind of market forces. Lord Palmerston was taken to court 20 times between 1811 and 1841 to enforce repayment of his debts; Disraeli was dealt with in a similar manner by his creditors, to whom he owed over £22,000 in 1841, and Gladstone was embroiled in a bankruptcy case in 1848.[23] As Eugenio Biagini has noted, free trade "implied a relationship between the State and society based on "fair play", impartiality, and the withdrawal of the State from the market", and popular perceptions of this neutrality of governance played an important role in encouraging a formal alliance between the working classes and the Liberal party.[24]

---

[22] Paul Johnson, "Age, gender, and the wage in Britain, 1830-1930', in P. Scholliers and L. Schwarz, *Experiencing Wages* (Berghan, Oxford, 2003), pp. 229-49.

[23] Dennis Judd, *Palmerston*. London: Weidenfeld and Nicolson, 1975, p. 27; Kenneth Bourne, *Palmerston: The Early Years 1784-1841*. London: Allen Lane, 1982, p. 256; Stanley Weintraub, *Disraeli: A Biography*. London: Hamish Hamilton, 1993, pp. 195-7, 304; Jane Ridely, *The Young Disraeli*. London: Sinclair-Stevenson, 1995, pp. 251, 262; H.C.G. Matthew, *Gladstone, 1809-1874* (Oxford, 1988), pp. 88-9.

[24] Eugenio Biagini, *Liberty, retrenchment and reform: Popular Liberalism in the Age of Galdstone, 1860-1880*. (Cambridge, 1992) p. 101.

Market Indiscipline

Yet the market did not work perfectly and naturally in all circumstances. In the first half of the nineteenth century a robust critique of market relations developed among High Tories. They used organicist metaphors of the economy as a palsied body to counter classical economic ideas of a natural, self-regulating market system.[25] And they argued that the manifest ailments and weaknesses of the economic system could be ameliorated only through positive action by the government to secure an unreformed, propertied constitution that would provide the foundation for a stable economic system.[26] This challenge to classical political economy, which found its most significant and contentious manifestation in the debate over agricultural protection and free trade in the 1840s, finally lost out within the Tory party to a liberal Peelite approach to tariff reform. This did not mean that conceptual and practical alternatives to free market capitalism disappeared. Christian political economists, romantic conservatives, working-class radicals, co-operators and socialists continued to develop their own distinct critiques of *laisser-faire* ideas and policies.[27]

Despite these several oppositional strands of economic ideology, the idea of a generally beneficent free market continued to dominate public discourse in the mid-Victorian period. One reason for this was the self-evident (if somewhat casual) association between the withdrawal of government from explicit manipulation of the market by means of tariffs, monopolies, apprenticeships and the like, and the global economic and political dominance of Britain. In the 75 years between the publication of Adam Smith's *The Wealth of Nations* and the Great Exhibition of 1851,

---

[25] David Eastwood, "Tories and Markets, 1800-1850', in Mark Bevir and Frank Trentmann, *Markets in Historical Contexts* (Cambridge, 2004), pp. 70-89.

[26] For a detailed discussion of Tory economic ideas see Anna Gambles, *Protection and Politics: Conservative Economic Discourse, 1815-1852* (Woodbridge, 1999).

[27] G.R. Searle, *Morality and the Market in Victorian Britain* (Oxford, 1998).

Britain had shed almost all the legacy of mercantilist economic interventionism, and had simultaneously become the undisputed "workshop of the world." But equally important was an intellectual shift in economic thought which, from the late 1840s, came explicitly to acknowledge that there were clearly defined circumstances in which the discipline of the market could not be relied on to produce optimal outcomes

John Stuart Mill is the key figure in this re-casting of market ideology. He was far and away the most influential mid-Victorian political economist, and his *Principles of Political Economy*, first published in 1848, dominated the professional study of economic affairs for over forty years, and continued to have a profound influence on popular economic discourse to the century's end.[28] The success and popularity of his *Principles* stemmed from the way it combined a clear re-statement of classical economic theory with a practical acknowledgement that this theory could not fully represent the complexity of actual economic behaviour:

> So far as rents, profits, wages, prices are determined by competition, laws may be assigned for them. Assume competition to be their exclusive regulator, and principles of broad generality and scientific precision may be laid down, according to which they will be regulated. The political economist justly deems that his proper business: and as an abstract or hypothetical science political economy cannot be required to do, and indeed cannot do, anything more. But it would be a great misconception of the actual course of human affairs, to suppose that competition exercises in fact this unlimited sway.[29]

---

[28] Neil De Marchi, "The success of Mill's *Principles*', *History of Political Economy* 6 (1974), pp. 119-57.

[29] J.S. Mill, *Principles of Political Economy* (London, 1848), Book II, ch. 4, s. 1. There have been many editions, and there is no consistent pagination, so references will be given to the specific book, chapter and section.

Mill's pragmatism came to the fore in his discussion of market activity. In a manner familiar since Adam Smith he first set out a litany of the many erroneous arguments that had been advanced in support of government intervention in the market, and demonstrated why they were mistaken, and often counter-productive. He portrayed market competition as a mechanism for the attainment of harmonious stability, and famously stated that "*Laisser-faire*, in short, should be the general practice: every departure from it, unless required by some great good, is a certain evil."[30] But he then went on to identify a number of circumstances in which the market *systematically* failed to achieve efficiency and harmony. Mill identified three aspects of what today's economists call "market failure" – the cases of natural monopoly, public goods, and externalities. These all related to issues of contemporary policy debate, and Mill quite consciously attempted to provide a coherent set of principles for analysing and correcting what he saw as inherent problems with unregulated competition.

The issue of natural monopoly was already widely (if usually informally) recognised, and had received explicit attention from government.[31] Mill noted that in most circumstances gas and water companies, and owners of roads, canals and railways, were monopolists, because it was not economically feasible for multiple suppliers to construct exactly parallel networks. Water and gas were essential commodities and "the charge made for services which cannot be dispensed with, is, in substance, quite as much compulsory taxation as if imposed by law." In these circumstances, he thought, provision could best be undertaken by municipal authorities, with expenses covered by a local rate (property tax). Transport services, particularly those provided for by

[30] Mill, *Principles*, Book V, ch. 11, s. 7.
[31] James Foreman-Peck and Robert Millward, *Public and Private Ownership of British Industry, 1820-1990* (Oxford, 1994), ch. 2.

canal and railway companies which had been granted a monopoly over a particular route by act of parliament, should have their charges regulated by government, or should be granted their operating right for a fixed term only, after which the business should revert to the state.[32]

Here Mill was both drawing on, and systematising, contemporary activity. As early as 1843 Mancunians were receiving their gas from a sole municipal supplier, and from 1847 Liverpudlians received their water from a similar source.[33] And in 1844 Gladstone, who is generally (and correctly) thought of as an advocate of free trade and minimal state involvement in the economy introduced, in the Railway Act, one of the most interventionist pieces of economic legislation of Victoria's reign. He argued that the normally beneficent affects of competition did not apply to railways; rather than reduce prices, competition would produce "a mere multiplication of monopoly."[34] To remedy this wrong, his Railway Act introduced compulsory price reductions on lines that consistently returned a profit of over 10 per cent, compulsory workmen's trains at low fares, and, most radical of all, the option for the government to purchase any new railway line after 21 years of operation. Mill provided a consistent rationale for these market interventions by local and national government, thereby setting clear and logical limits to these deviations from the competitive ideal.

The same was true in the second area of market failure – the provision of public goods. These were cases "in which important public services are to be performed, while yet there is no individual specially interested in performing them, nor would any adequate remuneration naturally or spontaneously attend their performance." Scientific exploration and research, and the provision of lighthouses and

---

[32] Mill, *Principles*, Book V, ch. 11, s. 11.
[33] John Sheldrake, *Municipal Socialism* (Aldershot, 1989), ch. 3.
[34] *House of Commons Debates*. 5 February 1844, col. 237.

navigational aids were two examples he gave in which government already intervened by means of subsidy and direct provision, but he was clear that such instances were strictly circumscribed, and that, "before making the work their own, governments ought always to consider if there be any rational probability of its being done on what is called the voluntary principle.[35]

Mill's third case of market failure related to what modern economists call externalities, when "acts done by individuals, though intended solely for their own benefit, involve consequences extending indefinitely beyond them, to interests of the nation or of posterity, for which society in its collective capacity is alone able, and alone bound, to provide."[36] Mill had in mind the positive benefits for "the future and permanent interests of civilisation itself" that could emerge from a process of colonisation, but equally important, and equally deserving of public intervention, were the negative effects of individual action where one person, through infection or pollution, might adversely affect the health of a multitude.

Mill's analysis of market failures provided powerful intellectual support for the idea that harmonious equilibrium was the natural state of any market. He constructed a clear set of principles which identified deviation from this equilibrium, and which justified limited national or local government intervention – as facilitator, regulator or provider.[37] In all other cases, he argued, the market provided, regulated and facilitated far more

---

[35] Mill, *Principles*, Book V, ch. 11, s. 15. On lighthouses see James Taylor, "Private property, public interest and the role of the state in nineteenth-century Britain: the case of lighthouses', *Historical Journal*, 44 (2001), pp. 749-71.

[36] Mill, *Principles*, Book V, ch. 11, s. 14.

[37] Similar ideas about the merits of regulation were presented, using very different terminology, by Edwin Chadwick, who suggested that regulated monopolies should be sold to the highest bidder. See his "Results of different principles of legislation and administration in Europe, of competition for the field, as compared with competition within the field, of service', *Journal of the Statistical Society of London*, 22 (1859), pp. 381-420.

effectively than could the government. These principles for identifying the circumstances in which markets would be *indisciplined*, and therefore in need of organisation and control by government, proved to be sufficiently flexible to accommodate significant extension of public intervention in the second half of the nineteenth century. In housing, for example, the negative social and health externalities of the slum led to public action to facilitate improvement (the rebuilding clauses of the Torrens and Cross Acts), to regulate conditions (the development of sanitary by-laws setting minimum building standards), and ultimately to provide accommodation – in London through the building programme of the London County Council. However, it was the free market which continued to provide the great majority of accommodation, just as the forces of supply and demand set prices and the volume of trade in all other sectors of the economy.

Disciplining the Market

Mill's idea of market discipline as a natural consequence of the interaction of supply and demand was re-iterated by the "neo-classical" economists who revolutionised the discipline from the 1880s. Marshall, Pigou and others rejected Benthamite utilitarianism, and developed a much more sophisticated view of distribution and welfare which acknowledged that the market might not deliver socially optimal outcomes. Nevertheless, they continued to accept that in most circumstances competitive market pressures eradicated inefficiency and rewarded effort and enterprise (a belief which continues to underpin modern economic analysis). Throughout Victoria's reign, therefore, economic philosophy presented an image of the market as efficient, effective, fair and natural – an image that was incorporated within the dominant political discourse of the period. Yet economists" conception of the market were very different from the market in practice. Whereas economists saw a multitude of buyers and sellers all freely and frenetically competing, lawyers saw interactions between principals and agents, complex forms of contract, and overlapping and conflicting duties and liabilities. It was the economists" perception that dominated contemporary thought, but the lawyers" outlook was at least equally valid and relevant. The market in Victorian England was a constructed, not a natural phenomenon, and it was repeatedly re-shaped over the course of the nineteenth century. Legal historians have noted that the Victorian market was a contested site, but, following Dicey, they have largely seen the reshaping in terms of a struggle between free market ideals (which promoted the rise of freedom of contract) and a developing New Liberal interventionism which curtailed market freedom in order to enhance the welfare of the majority.[38] I see the reshaping somewhat differently. It was not a neutral process – construction and reconstruction of market relationships involved bargaining and compromise between different vested interests, and the end result frequently reflected the relative power base of these groups.

Perhaps the most politically self-conscious disciplining of market actors occurred in the area of consumption, where the law directly constrained the rights of some individuals to engage fully in market activity. Minors under the age of 21 were fully entitled to buy whatever goods they wished with cash, but they could not be held personally liable for debts incurred through the purchase of goods on credit. Furthermore, their fathers could be held liable only if it could be demonstrated that the goods were "necessaries" and appropriate to the family's station and condition of life.[39] But it was married women who were most directly affected by this legal structuring of market agency; the law of coverture

---

[38] A.V. Dicey, *Lectures on the relation between law and public opinion in England* (London, 1905); P.S. Atiyah, *The Rise and Fall of Freedom of Contract* (Oxford, 1979).
[39] Margot Finn, *The Character of Credit* (Cambridge, 2003), pp. 273-6.

subsumed a married woman's legal and economic identity under that of her husband, and thus wives were unable legally to enter into credit contracts on their own behalf, other than for the purchase of necessaries.[40] This inferior position of married women as subservient economic agents in the market economy was not substantially changed until the Married Women's Property Act of 1882, and full equality at law with their husbands was not achieved until 1935. Even such apparently progressive legislative developments as this were, according to Ben Griffin, "part of an alternative strand of liberal discourse which was instrumental in legitimating a project to privilege the wealthy over the poor and men above women."[41]

In circumstances where no clear interest group had a dominant political or economic position - for instance in the case of creditors and debtors involved in bankruptcy proceedings, the process by which market relationships were reconstructed could be both tortuous and unpredictable. Markham Lester has shown that the twists and turns of bankruptcy law and practice across the nineteenth century follow no simple linear path with respect either to legal formalism or to economic ideology. Instead they owe more to the effectiveness with which different interest groups forged alliances and solicited parliamentary support.[42] In other words, rather than the market disciplining the economic actors, it was the actors who, to a significant degree, structured and disciplined the market.

Nowhere was the disciplining of the market more important than in the two key areas of labour and capital, and here the vested interests were very clear. Established historical views of the nineteenth-century

---

[40] Margot Finn, "Women, consumption and coverture in England, c. 1760-1860', *Historical Journal* 39 (1996), pp. 703-22.

[41] Ben Griffin, Class, gender and liberalism in Parliament, 1868-1882: the case of the Married Women's Property Acts', *Historical Journal*, 46 (2003), p.62.

[42] V.Markham Lester, *Victorian Insolvency* (Oxford, 1995).

English labour market characterise it as a market based on free labour – that is, one in which individual workers were not subject to non-pecuniary coercion. Combinations of workers were, of course, discriminated against throughout the century, but individual workers were free to change jobs and move to new locations in response to wage incentives, and data on wage variation and migration have been cited in support of the idea of a fully flexible labour market.[43] Yet in fact the labour market was significantly structured by legal impediments, particularly by the law of Master and Servant. In their *History of Trade Unionism* the Webbs dismissed Master and Servant legislation as an archaic relic of feudalism, but recent research by Douglas Hay and others has begun to reveal just how extensive was the use of criminal sanctions against workers for breach of contract. The laws against combination have received the lion's share of historical attention, but Hay and Craven have found that "in one English county, 130 men and women were imprisoned under master and servant for every one imprisoned under combination."[44] English law gave employers the right to have workers imprisoned at hard labour for up to three months for the crime of failing or refusing to perform their labour agreements. By contrast, employers who were found to be in breach of contract with their workforce were subject only to the civil law sanction of paying compensation. This ability of employers to criminalise individual workers was not a right that was used casually and occasionally.

Between 1857 and 1875 there were, on average, over 10,000 prosecutions per annum in England under the Master and Servant acts. For example, in 1860 there were 11938 prosecutions and 7059 convictions: 1699 of the convicted served a sentence in a house of correction, 1971 were fined, 3380 received other punishments (typically

---

[43] J.G. Williamson, *Did British Capitalism Breed Inequality?* (London, 1985).
[44] D. Hay and P. Craven, "Master and Servant in England and the Empire: A Comparative Study', *Labour/Le Travail* 31 (1993), p. 176.

abatement of wages), and one person was ordered to be whipped. Furthermore, as Steinfeld has shown, these prosecutions varied inversely with the unemployment rate, which indicates that employers made greater use of the criminal law to enforce contracts against workers when the labour market was tight. And prosecutions were concentrated in the industrial districts of the country: Staffordshire, Shropshire, Cheshire, Derbyshire, Lancashire, Yorkshire and Durham all had prosecution rates at or above 1 per 1000 of the population. Since almost all of those prosecuted were adult male manual workers, this suggests that perhaps 1 in every 200 working-class households in these counties experienced a prosecution each year for breach of contract – a sufficiently large number for this criminal sanction against workers to be well known and well understood in working-class communities.[45] This survival of coercive elements of the Statute of Artificers into the nineteenth century was not the accidental outcome of legislative inertia. In 1823 parliament added new restrictions to the Master and Servant laws, and in 1843 the Worsted Embezzlement Act explicitly applied criminal sanction to breach of contract by domestic out-workers in seven specified trades. The following year a Bill was introduced which would have extended this criminal sanction to "all labourers and persons", regardless of whether their trade had been specifically enumerated in any of the preceding Master and Servant Acts, and even when "the relations of Master and Servant may not actually subsist between such Labourers, or other persons, and their Employers." The rationale for this extension of the Master and Servant provision to all forms of wage labour was uncertainty created by earlier legal judgements about what activities, in which contexts, were covered by the existing laws. Once the Bill was introduced to Parliament, the Chartist solicitor W.P. Roberts alerted the labour movement to the threat

[45] Robert J. Steinfeld, *Coercion, Contract, and Free Labor in the Nineteenth Century* (Cambridge, 2001), pp. 72-84.

posed by the Bill, and the Potters" Union was particularly active in organising opposition throughout the Midlands. Over 200 petitions, said to represent over two million workmen, were received by the House of Commons. With forceful opposition from radical reformers, the Bill was defeated.[46] This did not mean, however, that the provisions of the Master and Servant acts remained confined to narrowly specified trades. Over the next twenty years a series of court judgements developed an expansive reading of the 1823 Act to cover an extremely broad range of waged work, regardless of whether the engagement was for a specified term or for a specified task. Thus, by mid-century, time-work and piece-work were held equally to fall under the remit of the Master and Servant acts.[47]

The mid-Victorian labour market came to be regulated by an increasingly anachronistic reading of a sixteenth-century statue. The section of the 1563 Statute of Artificers which related to leaving work unfinished was framed in terms of the specific tasks undertaken and duties discharged by artificers and servants. This made sense in an economy in which virtually all production was "bespoke", in the sense of individual workers manufacturing unique products. The nineteenth century legislation preserved this language, yet the organisation of production was by then very different. By the 1840s many working men and women in the textile, metal and engineering trades literally never finished their work, because for them, as for the stylised worker in Adam Smith's pin factory, their daily labour involved not the complete making and finishing of a good or object, but the performance of an intermediate process. Here we see very clearly the way in which the labour market

[46] Sidney and Beatrice Webb, *History of Trade Unionism*, London, 1896, p. 167; Daphne Simon, "Master and servant." In J. Saville (ed.), *Democracy and the Labour Movement: Essays in Honour of Dona Torr* (London, 1954), pp. 160-200.
[47] Steinfeld, *Coercion*, pp. 142-53.

was, until the repeal of the Master and Servant acts in 1875, disciplined by the law, and by law that was extremely and deliberately partisan.

The same holds for the capital market. The second half of the nineteenth century witnessed a transformation in the structure of commercial capital in the British economy. In 1844 there existed just 947 joint-stock companies in England; with the exception of a small number of mutual insurance societies, virtually all other businesses were organised as partnerships. After the passing of the 1844 Joint Stock Act, the number of joint-stock registrations rose slowly, and by 1885 they accounted for between 5 and 10 per cent of all business organisations in England.[48] The partnership form remained numerically dominant, but from the mid 1880s the limited liability joint stock company became increasingly popular and economically significant, with more than 62,000 registered by 1914. According to Jefferys, the period 1885-1914 witnessed "the triumph of the company in almost all spheres of economic life."[49] Yet the triumph of the company had little effect on the operation of business. In 1914 over 48,000 of these limited companies – more than 75 per cent – were private companies – that is, they had not sought to raise capital from the public, and did not freely trade their shares. The majority of registered companies by 1914 were, essentially, partnerships which had converted their legal status, but which had not altered at all what they did or how they did it. Although the great majority of these private companies were small, by no means all of them were. Huntley and Palmer, Crosse and Blackwell, J&J Coleman, Harland and Wolff, Alfred Booth and Co., John

---

[48] H.A.Shannon, "The limited companies of 1866-83', *Economic History Review*, 4, reprinted in E.M. Carus-Wilson (ed.), *Essays in Economic History* (London, 1954), pp. 380-405; Ron Harris, *Industrializing English Law* (Cambridge, 2000).

[49] J.B. Jefferys, Trends in Business Organisation in Great Britain since 1856. University of London Ph.D. thesis, 1938, p. 142.

Bibby and Sons, all converted from partnership to company form, but made no public issue of shares.[50]

Why did so many proprietors choose to jump through legal hoops just to change the form, but not the function, of their businesses. The answer, I believe, is that it allowed them to shed significant market liabilities, and shelter behind capital-friendly laws. When a partnership converts into a company the outright owners split ownership rights between themselves as shareholders and themselves as directors. The legal constitution of the share as an entirely autonomous form of property – a wholly nineteenth-century conceptual development[51] – externalised the shareholder from the company, and provided the foundations of the modern legal doctrine of separate personality, whereby there is complete separation of company and members. The shareholder owns outright and can dispose of his shares, but it is the directors who own the company in terms of management. Yet in law these directors are mere agents of the company, just well-paid employees who can be hired and fired like any other contractual party. By definition they cannot be principals, since it is the legal personality of the company to which they are contracted and which commands them, yet in practice the directors command a significant number of the characteristics of ownership. On the other hand, the shareholders, who hold residual perpetual control over the company, have few powers to determine what the company actually does.

Incorporation blurred the lines of responsibility for harmful actions – both legal harms (torts) and social harms such as cutting wages or laying off workers. In a wholly owned business or partnership, it is clear that the owners are directly responsible for decisions and actions of the business.

---

[50] Jefferys, Trends, p. 139.

[51] P. Ireland, "Capitalism without the capitalist: the joint stock company share and the emergence of the modern doctrine of separate corporate personality', *Journal of Legal History*, 17 (1996), pp. 41-73.

In a corporation, it is neither the directors nor the shareholders who are responsible for actions – it is the corporation itself. Although directors may take the key decisions, they cannot be personally responsible for the action of the company. Indeed, nineteenth-century company law was so lax that it was difficult to make directors responsible for anything: they were almost fully "teflon-coated."

By converting from partnership to corporate status, owners could retain all the power of control, without carrying the full responsibility of ownership. They could shirk the both legal liabilities of ownership and the moral responsibilities of control and authority that rested directly on partners and sole proprietors. The law of incorporation and limited liability allowed business owners to avoid (or minimise) liability for debts, torts, and actions deemed by society to be unfair or unjust, without requiring them to forego any element of control. The law gave business proprietors a one-way bet, and not surprisingly they took it in their thousands. In historical terms, this can be thought of as the final removal of the vestiges of a "moral economy" in which capital-owners were expected to take some responsibility for the welfare consequences of their actions. The legal foundations of the corporation that emerged during Victoria's reign reflected a new form of "non-responsible" capitalism; the "natural" discipline of market competition that could reward or penalise individual economic actors was crimped and curtailed by company law in order to privilege capital-owning directors.

Conclusion

In his exemplary study of the decline of "old corruption" in Britain, Philip Harling has noted that mid-Victorian radicals "continued to argue for more extensive parliamentary reform …. because they still believed that aristocrats and other insiders sought to use their disproportionate political power as a means of obtaining unjust and expensive privileges for themselves."[52] Yet they were hamstrung by their belief in the key tenet of political economy – that the free market generated natural, fair and efficient outcomes. In fact, no market is natural or free, and the market in Victorian England incorporated legal biases that operated in favour of different interest groups, particularly those owning capital. These biases did not emerge by chance: the detailed reform of multiple aspects of commercial and contract law between the 1830s and 1880s created a specifically Victorian form of market discipline which privileged the interests of "insiders". This privilege was concealed, both by the technical apparatus of the law and legal system, and by the ideological apparatus of political economy. Legal theorists such as Charles Addison purveyed the view that "the law of contracts may justly indeed be said to be a universal law adapted to all times and races, and all places and circumstances, being founded upon those great and fundamental principles of right and wrong deduced from natural reason which are immutable and eternal."[53] Such equanimous readings of the legal system could scarcely be challenged in the early years of Victoria's reign by a popular radicalism which was, according to Biagini and Reid, "predominantly legalistic and constitutional" in outlook, or in the later years by a labour movement that was intently concerned with safeguarding and strengthening its own legal standing.[54] And political economists had been extremely successful in constructing a popular image of competitive exchange as a morally and politically neutral activity; as the *Economist* put it, "Mutual higgling, then, in perfect freedom seems

[52] P. Harling, *The Waning of Old Corruption* (Oxford, 1996), p. 256.
[53] C.G. Addison, *A Treatise on the Law of Contacts and Parties to Actions ex contractu* (London, 1845), p. v.
[54] Eugenio F. Biagini and Alastair J. Reid, "Currents of radicalism, 1850-1914', in *idem*, *Currents of Radicalism* (Cambridge, 1991), p. 11.

the proper means of determining the rights and duties of all."[55] Organised labour was again ill-placed to counter this view, given the struggle to secure the legal right of unions to bargain on behalf of their members.[56]

Although governments, both central and local, became increasingly interventionist in the later nineteenth century with respect to perceived market failures, and some of the activities of municipal socialism extended well beyond the limits conceived of by Mill, most economic transactions continued to occur solely within the marketplace, and were disciplined by what appeared to be the unregulated forces of supply and demand. The idea that the locus of these transactions – the market - was a legal and ideological construct, laden with value judgements and structured to promote or protect certain interests, was inconceivable to most Victorians, and remains so today. The market is still viewed as a largely neutral arena for competitive exchange; the ringmasters still sit on their gilded thrones and smile.

[55] *Economist*, 9 August 1856, p. 868.
[56] Eugenio F. Biagini, "British trade unions and popular political economy, 1860-1880', *Historical Journal* 30 (1987), pp. 811-40.

Further reading:

Margot Finn, *The Character of Credit* (Cambirdge, 2003)

Ron Harris, *Industrializing English Law* (Cambridge, 2000)

Boyd Hilton, *The Age of Atonement* (Oxford, 1988)

R.W. Kostal, *Law and English Railway Capitalism* (Oxford, 1994)

G.R. Searle, *Morality and the Market in Victorian Britain* (Oxford, 1998)

Robert J. Steinfeld, *Coercion, Contract and Free Labor in the Nineteenth Century* (Cambridge, 2001)

LONDON SCHOOL OF ECONOMICS
DEPARTMENT OF ECONOMIC HISTORY

WORKING PAPERS IN: 'THE NATURE OF EVIDENCE: HOW WELL DO "FACTS" TRAVEL?'

For further copies of this, and to see other titles in the department's group of working paper series, visit our website at:
http://www.lse.ac.uk/collections/economichistory/

01/05: Transferring Technical Knowledge and innovating in Europe, c.1200-c.1800
Stephan R. Epstein

02/05: A Dreadful Heritage: Interpreting Epidemic Disease at Eyam, 1666-2000
Patrick Wallis

03/05: Experimental Farming and Ricardo's Political Arithmetic of Distribution
Mary S. Morgan

04/05: Moral Facts and Scientific Fiction: 19th Century Theological Reactions to Darwinism in Germany
Bernhard Kleeberg

05/05: Interdisciplinarity "In the Making": Modelling Infectious Diseases
Erika Mattila

06/05: Market Disciplines in Victorian Britain
Paul Johnson