ACCOUNTING, ENGINEERING, OR ADVERTISING? LIMITED LIABILITY, THE COMPANY PROSPECTUS, AND THE LANGUAGE OF UNCERTAINTY IN VICTORIAN BRITAIN[1]

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ABSTRACT

This paper looks at a particularly puzzling historical example of delay in the use of the law, the under-use by Victorian Britain of the general incorporation statutes passed between 1844 and 1862. Comparison of the rhetoric of company prospectuses of 1824-1862 and 1898 suggests that uncertainty about the meaning of "incorporation with limited liability" among those who might have benefited from it may have persisted for decades following the statute's passage. Continuing uncertainty meant continuing interpretation costs, and continuing interpretation costs meant insufficient interpretation: until each law user involved with an enterprise interpreted and came to understand the rule's meaning, less than fully realized.

With several mid-century statutes passed, most notably the Joint Stock Companies Act of 1856 (19 & 20 Vict., c. 47), British company law assumed its modern form. No longer was incorporation contingent upon having thousands of pounds. By paying a nominal fee (£7 5s for an enterprise with capital of £10,000; £29 15s for one with capital of £100,000[2]), any enterprise could exist separate from its owners, and its owners could transfer their interest without ending that existence. Most importantly, owners of the enterprise would enjoy the protections of "limited liability": they might lose amounts invested in the enterprise, but not their entire wealth.

Yet, surprisingly, the new statutes went underused. Yes, as Shannon and others noted, thousands of enterprises did incorporate.[3] But even more did not: total paid-up capital for the 2488 limited liability companies formed between July 1856 and November 1862 was only £34 million, but a fifth of the £170 million addition to the nation's capital stock over that period.[4]

The delay is especially puzzling as one considers what limited liability implied for capital formation beyond the £170 million, the potential benefits foregone because investors had too few limited companies in which to invest, benefits such as the reduction in risk afforded by portfolio diversification. Until the portfolio is diversified, most economic risk faced by an investor will be risk specific to the enterprise invested in. Limited liability, however, makes it possible to diversify away the supply and demand risks of buying and selling iron ore or land or financial services; unlike a rule of unlimited liability, where the investor would put all his wealth at risk *each time* he added a new asset to his portfolio, the addition of a new asset becomes insurance against and the reduction of risk. And for the Victorians, the gain to be had would have been substantial: combin-

ing share price data from *The Times* with shareholding data from the 1864 return of the Registrar of Companies suggests a reduction of portfolio risk on the order of 40 percent.[5]

Yet the gain went unrealized, and went unrealized despite "plain English" statutes, statutes that by both contemporary and present-day standards would appear to have established predictable rules for the enterprising game:

> Seven or More Persons, associated for any lawful Purpose, may, by subscribing their Names to a Memorandum of Association, and otherwise complying with the Requisitions of this Act in respect of Registration, form themselves into an Incorporated Company, with or without Limited Liability.[6]

Could it have been more clear? File the forms, pay the fee, and benefit from limited liability.

Where Is the Interpretation?

Delay in the use of the law is confusing because it violates a tenet of utilitarian faith shared across scholarly division and ideological divide, the belief in legislation as a deterministic agent of behavioral change. People disagree greatly about the proper criteria for "the greatest good for the greatest number" (or, to put it today's idiom, the criteria for "There oughta be a law!"), but most share Bentham's belief about how, once the substantive criteria has been chosen, carefully drafted legislation will work: if rules are drafted in plain English to provide the appropriate rewards and punishments, potential law users will behave accordingly.[7]

And if any legislation met the requirements of plain meaning and careful drafting, the Joint Stock Companies Act of 1856 did so. It incorporated the ideas from thirty years of political and ideological debate. Its rules were organized systematically into "parts" and "sections," with a "Schedule" at the end. It separated rules for formation ("registration") of the company, for ongoing management of the company, and for when the company stopped operations ("winding up"). It clearly provided what appear to have been certain and determinable rules of liability for all who might be involved with a corporate enterprise, be they owner, manager, or creditor.

Moreover, by comparison to the American and Continental experience, Britain's legislative history was one of steady removal of the barriers to incorporating. Prussia in 1870 allowed easy incorporation, but then in 1884 introduced substantial minimum capital subscription requirements. France regularly varied both paid-in capital requirements and the size of firms that could obtain the benefits of incorporation. America's path, which exhibited the same back-and-forward movement as France, was complicated further by variation across states. In Britain, however, prospective users of company law should have had an easier time seeing the legislative trend: the Act Repealing the Bubble Act in 1825, the Trading Companies Act of 1834, and the Chartered Companies Act of 1837 first increased the Board of Trade's discretionary powers in granting corporate privileges; the Registration Act of 1844 and the Limited Liability Act of 1855 then provided

a system of registration whereby incorporation could be obtained without special petition to Parliament or Board of Trade; and then the still-expensive 1844/1855 registration process was replaced with a simple administrative filing for most companies in 1856, for banks in 1857 and 1858, and for insurance companies in 1862.[8]

The organizational choices of Victorians show, however, that no amount of care in legislative drafting can reduce to zero the user's cost of figuring out the law's meaning. No matter how benevolent or wise the legislator is, and no matter how "plain" he makes the law's language, each law user will still need to be persuaded to behave correctly; and each user's decision to be persuaded must be made at a moment when his understanding is imperfect. Limited liability may have offered a substantial gain via portfolio diversification, but realization of that gain depended on multiple enterprise participants – not only the incorporating entrepreneur, but also investors, promoters, solicitors, trade creditors, and bankers – connecting the economics of diversification to the new legal rules of limited liability; because only after *the individual user decided to interpret* will he have figured out that limited liability offered benefits to him.

The historiography on the various choices made by Victorian legislators may be voluminous, but it is beside the point. The problem of the law's delay was not that the Victorian Parliament miscounted costs and benefits and chose the wrong legal rules (though they could and probably often did). The problem of delay was that Parliament could not do all the counting. Figuring-out costs were non-transferable. Each person involved has to incur them. Each user had to be persuaded, and becoming persuaded meant incurring costs. Were a transaction ultimately consummated between two participants in an enterprise, the price of that transaction might distribute the final burden of the interpretive cost any number of ways; but many costs would have had to be incurred ahead of time, before those who were to interpret became persuaded to interpret.[9] While the legislature played an important and necessary role in the move to general limited liability, understanding the economics of law *use* requires stepping past the legislature.

Unfortunately, however, the paths by which information about limited liability might make its way from Parliament to law user were complex and, unavoidably, nonlinear. The exact path followed depended on how each particular user perceived the benefits and risks of interpretation along several paths A user who grew up with his M.P. might have found credible that M.P.'s speech in the *Times*. If he did not know the M.P. or trust the *Times*, he might have gone to the *Economist* or a brother at Lincoln's Inn. If he knew no one at Lincoln's Inn, he might have asked a solicitor who had it via a lecture at Lincoln's Inn by a barrister who read *Lindley on Companies* as revised following the Lords' 1897 reversal of Lord Justice Lindley's Court of Appeal decision in *Broderip v. Salomon.* If he believed solicitors unreliable, as many continued to do despite the profession's attempts to improve its reputation, he might have paid attention only to his family and the promoter's prospectus.[10] He might simply have asked the merchant next door.

Which paths should be examined? Look to where the user would have looked for the facts. Whatever else they might consider necessary, law users would have cared about how the law fits the facts of their particular situation, and so each statutory abstraction –

each of the "rules" that "limited liability" implicated – somehow had to become fact-tempered. The rules for formation ("registration") of a company had to be fit to facts; the rules for ongoing management of a company had to be fit to facts; and the rules for when a company went out of operation had to be fit to facts.

Paradoxically, much of the fact-tempering likely took place on interpretive paths which were among the most costly, the paths which led through appellate courtrooms. As the hundreds of annotations to the new statutes in contemporary treatises like the 1889 edition of *Law and Practice of Joint Stock and Other Companies*, by Henry Thring, a prominent barrister and first holder of the office of Parliamentary Counsel, judicial rhetoric would end up doing much of the fact-tempering. The institutional and rhetorical structure of litigation required courts to be grounded in the facts of the case; whatever his ideological leaning, a Victorian judge had to speak at least partly on the ground of the disputing law users. For some law users, like the bootmaker Aron Salomon (the 1897 case of *Salomon v. Salomon & Co.*) or the investors who lost money in the collapse of Overend Gurney and Company (e.g., the 1873 case of *Peek v. Gurney*), litigation would settle directly disputes about the meaning of the new general incorporation statutes as applied to particular cases; for the more typical investor, creditor, competitor, and promoter, litigation *by others* would be necessary before their own inquiry into the meaning of "limited liability" through non-litigating paths could be simple and (relatively) inexpensive.

No case better illustrates the role of judicial interpretation than one which began under the title of *Broderip v. Salomon* and finished as *Salomon v. Salomon and Co.* First the facts:

> Aron Salomon made boots and shoes for over three decades. Living in the same neighborhood and occupying the same premises, he gradually builds a business and, though the exact value is impossible to give, one with a substantial excess of assets over liabilities. His sons, working with their father, one as manager, keep pressing him for a share of the business. To extend the business and to provide for his family, Salomon decides to incorporate as a limited company. Selling the business to the company, he receives about £1000 in cash, half the capital of the company in fully paid shares, and £10,000 in debentures.
>
> Unfortunately, the boot and shoe trade enters a great depression. Workmen go on strike. Public contracts are lost. Inventories accumulate. Salomon and his wife lend the company money. He gets his original debentures canceled and reissued to an outsider, Edmund Broderip, in return for an advance of £5000, which is then loaned to the company. When interest due is not paid, Broderip sues, with the suit leading to a forced sale of company assets. The proceeds are sufficient to pay Broderip but not to pay unsecured creditors. (Debenture holders had priority in payment over other creditors).

On these facts, *Salomon* only highlights the puzzle of delay. By the time of Salomon's incorporation statutes had for over a generation given company owners limited liability when "Seven or more Persons" (Salomon, his wife, and five adult children) "associated

for a lawful Purpose" (boot manufacturing) and complied with the statute's registration requirements (which they did). The ruling statutorily required in *Salomon* would appear clear: limit the liability of Aron Salomon to the loss of his investment, and tough luck for unsecured creditors.[11] Yet both the Chancery Division and Court of Appeal held him fully liable. It would be 1897, Salomon a pauper, and his solicitors suing separately to ensure they would obtain favorable priority in liquidation, before the House of Lords would reverse the lower courts and find Salomon's liability limited by the "clear" language of the company statutes.[12]

Yet, despite its chronological distance from the 1856 Act—or, rather, *because* of that distance—*Salomon* suggests the interpretation necessary. *Salomon* may have involved competing visions of the greatest good for the greatest number, but it was primarily an instance of applying the facts to the law of the case. For every sentence in its opinions which is couched in an abstract debate over "what the law means," several had to emphasize actions specific to Aron Salomon. The "facts of the case" given above were a summary drawn from the opinion of Lord Macnaughten.[13] Compare Macnaughten's version with the description given by Kay, Lord Justice of the Court of Appeal, as he argued that Salomon should be held liable:

> Mr. Aron Salomon was carrying on in 1892 a business as a leather merchant and boot maker. He was desirous, as his counsel tells us, and as indeed is apparent from the circumstances, to extend his business and to trade in future with limited liability. He owed 7679 *l.* 12 *s.* 6 *d.*, but his business was solvent. He employed an accountant to make out a balance-sheet. ... Most of these items were taken from his books, and of course all the information obtained by the accountant came from Mr. Salomon or his books. He says that no valuations were made. ... Then Mr. Salomon went to work. He must have had most careful advice. Nothing could be more formal and regular than his proceedings. ... [H]e did not intend to sell to any one except himself.... [though] all proper provisions were made as though the transaction had been a bona fide sale to a third person.

"So that he secured to himself all the assets, and proposed to go on trading with no liability whatever," Kay continues, "[h]e seems to have estimated rightly the trustfulness of his customers, and must have relied largely on their actual ignorance of the facts."[14] And on and on: though he speaks last, Kay spends over half of a six-page opinion setting forth "the facts." Only with the particularity of Salomon's dealings Kay does interpret the law; only then – and this, not that he and other judges may have disagreed about the meaning of the law, is what matters most, can he argue in rhetoric familiar to an everyday user of the law.

If judicial interpretation was necessary to translate rules into user language, however, it could not have been sufficient. For one thing, justices could, and often would, worry primarily about the precedential value of their ruling or about other "needs of society"; and in so doing, they—and their ideology—could have actually delayed user interpretation. Following a historiographic lead going back at least to Dicey, many have

noted how the ideology of judges complicated matters. Robb, for example, has noted how the "liberal outlook was taken up by the law courts which neglected business frauds and treated white-collar criminals with comparative leniency" even as the legislative movement for reform "gained new momentum with each new revelation of fraud." Using cases like the 1889 *Mogul Steamship Co. v. MacGregor, Gow & Co.* (23 Q. B. 598), Freyer has shown a passive English judiciary preserving the "greater control of family enterprise so characteristic of the British economy." Cornish and Clark have woven case law together with Hunt's and Cooke's stories of legislative change s to tell of judicial acquiescence in a "liberal company regime," and have argued that no issue "more plainly evidenced the ideological thrust" of judicial interpretation than *Salomon* and its view of the one-man company.[15]

Economic ideology in the reports is hard to miss. Consider, for example, *Peek v. Gurney*, one of many cases arising from the collapse of Overend Gurney and Company. Falling on hard times, Overend Gurney floated itself as a limited company in 1865 in an attempt to save itself. Trading on the company's reputation in the City, however, their prospectus failed to disclose the firm's insolvency. When the limited company was ordered liquidated, Peek, a purchaser in the secondary market months after the prospectus was issued, was held liable as a shareholder for nearly £100,000. He sued the directors issuing the misleading prospectus, but the court, emphasizing the lack of any specific contractual relationship between Peek and the directors, denied liability. Yet despite a plethora of precedents under company law (Thring's *Law and Practice* shows 109 annotations to section 165 of the Companies Act of 1862 alone, a section which explicitly granted courts power to assess damages against delinquent directors), the judges in *Peek* saw no statutory question involved.[16]

When Is Interpretation Cheap Enough?

The real reason judicial interpretation was insufficient, however, goes far beyond the complications of ideology. The real reason is the fact that most use of the law of companies did not take place via litigation. The law use that matters most is everyday use, and suing was not an everyday activity. Lawyers would have been expensive and rarely resorted to. Everyday use is comprised of contracts made with investors, suppliers and customers expecting them to be enforceable. In daily activities of borrowing, lending, and investing, most would have listened to fellow users, and then relied on their own judgment. Thus, looking for interpretation means looking to the rhetoric users used with each other.

The remainder of this paper, therefore, considers one document whereby interpretation of company law often was transmitted from user to user—the company prospectus. Careful examination of the rhetoric used in 1068 prospectuses contained in nine bound volumes at the British Library, prospectuses circulated in England between 1824 and 1898, suggests significant uncertainty (and therefore high interpretation costs) remaining among law users about the meaning of "incorporation with limited liability" at mid-century.

Before getting to further details of that prospectus rhetoric, however, it is important note the significant limitations of the data set. While over a thousand prospectuses are in the sample, the chronological coverage is uneven. There are 295 prospectuses from the 1820s, 305 from the 1830s, 288 from the 1840s, 101 from between 1852 and 1855, and 78 from 1898. Almost all 1820s and 1840s prospectuses, however, are from the "mania" periods of 1825-26 and 1844-46. Worst of all, one finds only a single prospectus from between 1856 and 1898, the 1862 prospectus of the Absolute and Contingent Reversionary Interest and Investment Company, Ltd.[17] To fully "estimate" the evolution of the costs of user interpretation, one needs a time series of prospectuses circulated over those four decades; because of the gaps in its coverage, use of this data set is limited to discussion of comparative statics results. These results are valuable because they provide a new set of questions to ask, not because they provide conclusive answers to those questions.

Comparison of the 990 pre-1856 prospectuses with the 78 from 1898 clearly reveal important user interpretation yet to occur at mid-century. The differences between the 1898 prospectus and the pre-1856 prospectus are even more stark. Not only does the mid-century prospectus fail to add "with Limited Liability, per the act of ...." to its heading, but there is little indication in the body of this document—designed presumably by its promoter to put investor and entrepreneur together—of any consensus among those using it just what liability issues matter and to whom. The mid-century prospectus is sometimes an accounting-like forecast of a company's financial possibilities, sometimes an engineering report, and sometimes pure advertising puffery. There is no predictable pattern to the denomination and kind of shares offered, or to the total capital involved. No clear correlation appears between the size of the enterprise and the type of information provided in the prospectus—"public" issues for large enterprises of a million pounds demonstrate the same range of rhetorical choices as prospectuses "for private circulation only" or for enterprises with projected capital needs of £10,000.[18]

Unlike their counterparts from 1898, pre-1856 prospectuses vary significantly first in the way they open. An 1825 prospectus may have been headed only by the company's name, and most typically was headed only by the name and the total capital of the firm. Not only will one not find "Limited" in that name (which by law may have been illegal for at least part of the period), one may need to read the body of the prospectus to find *any* information about the company and what it is offers to investors. A potential investor would have had to read a substantial distance into the text even to find out whether he was being solicited to buy shares in a company or being notified that shares had already been allocated, to discover whether he was being asked to buy shares, to make a loan to the enterprise, or to buy an insurance policy.[19] In 1898, however, the heading had its modern form: set apart by boldface and other variation in font, was the full company name including "Limited," the particular Company Act(s) under which the enterprise was incorporated, its size, *and* the size and terms of the offering made. Immediately following the heading, and also apart from the main text, appeared a list of the main agents of the enterprise (directors, solicitors, auditors, surveyors, etc.).[20]

Regular use of less-than-fully-paid shares, and not only in fraudulent cases like the incorporation of Overend Gurney, also shows the unsettled meaning of limited liability.[21] While (unlike 1825) the opening of almost every prospectus seen in 1838, 1844, or 1852 included the denomination and calls to be made, the actual amounts still varied a good deal. And they likely would have continued to do so in the early decades of general limited liability: of the companies formed after 1856 and still in existence in 1865, 84% of the shares ranged from £5 to £5000, with 52% between £10 and £100. While larger denomination shares declined in popularity after the crisis of 1866-67, the practice of trading less-than-fully-paid shares continued. Over the period 1856-1882, average paid-in capital as a fraction of the company's stated of "nominal" capital varied from a low of 13.3% in 1869 to a high of 57.8% in 1859. Only in the eighties and nineties would prospectuses have taken the form of those seen in 1898, with shares typically between £1 and £5 and fully paid-up.[22]

The variation in openings is important. Shared practices with respect to openings are places where the costs of user interpretation have become "small." The more repetition, the more probable that shared interpretation has taken place; the more variation, the more probable that significant interpretation has yet to occur. Addition of "Limited" and "incorporated under the Companies Acts of ..." means that, unlike their predecessors seventy years before, both entrepreneur and investor would have been immediately put on notice of the legal rules that would govern shareholding. Listing agent names provided information to a prospective investor about the quality both of daily management and of its supervision. Heading and list of names together made it easier to estimate the risk of investment. When one sees prospectus after prospectus in 1898 including in boldface the total shares offered, the share denomination, and the amount of calls to be made, one knows that even though Victorians may have disagreed on "How does the size of an enterprise change investment risk?" they agreed about the preliminary question, "Does the size of enterprise make a difference?" Though in 1898 they may have disagreed about the answer to "What does 'Limited' mean under the "Companies Acts 1862 to 1893?" they agreed on "Do the Companies Acts 1862 to 1893 provide the meaning of 'Limited'?" In 1856 they agreed on "Does the fraction to be called matter?" but not "What is the risk involved when only calls of ten pounds on a fifty-pound share are contemplated?" In 1898, they agreed on both.[23]

Also important is the variation in rhetorical strategy for the body of the prospectus. Voice varies a great deal, and there is almost a complete absence of the contractual boilerplate that, together with pages of balance sheet and income statement analysis, allows one to recognize the modern prospectus by simply fanning its pages.

Clearly, users in 1856 were far from sure about the functions a prospectus was to serve. Modern prospectuses speak in one voice, the voice of the lawyer or chartered accountant, the voice of 8-point font and the balance sheet. Even the paper used varies little. Not so for the prospectuses of the mid-nineteenth century. Some look like they were written by a City lawyer, others by a mining engineer. Still others are nothing but puffery. Some are filled with statements of projected profit; many others rely on elegant engravings or multiple-color maps. Some feature testimonials by prominent members of

Parliament; some prominently list director M.P.s; some seem almost defiant about their lack of M.P participation. Some are on fine vellum.[24]

Was the prospectus to be an advertising circular, or was it to provide objective information about the enterprise? Was it to inform its intended audience about engineering details of a mine, about the amount of ore that could be mined, or about the return on investment? Did investors care about the risk of the investment or about the respectability of the entrepreneur? Finding examples of each among prospectuses circulated during the manias of the period is unsurprising: one can imagine speculative fever leading potential promoters to try a various strategies in hopes that their prospectus would be the one read; as one late Victorian put it, "all householders and shareholders, as well as postmen, know the influx of prospectuses when a floating mania is on."[25] What is surprising is that the same variation is found not only in 1825 and 1844, but also in 1838 and 1852.

Conspicuous by its absence, too, is boilerplate, that "legalese" of "small print" that laymen find so annoying about legal documents. The presence of more boilerplate is, however, evidence of more meaning having made its way to shared understanding rather than less. Boilerplate tends to be ignored by the everyday investor, who considers it to be something that lawyers and accountants have added to ensure compliance with the law. Unlike today's prospectus, and unlike the prospectus of 1898, however, mid-nineteenth-century prospectus was almost completely without boilerplate. Only sometime after 1856, for example, would a company's memorandum of association become a regular addition (typically on the back cover) and reveal, for example the interpretative power of broad "objects" clauses.[26]

Especially noteworthy in highlighting what mid-century prospectuses did not do, are eight prospectuses from 1898 for small and medium companies (authorized capital up to £450,000) that, but for differences in the industry of the enterprise, could have been the Salomon company envisioned by Lord Macnaughten. The prospectuses of these eight companies, listed in Table 1, do not reveal as much as Cottrell has told us about the nineteen promotions carried out by the well-known promoter, David Chadwick, in the 1860s and 1870s, but comparison with the Chadwick flotations is intriguing. As with Chadwick's, the companies were all either conversions of unincorporated firms or supplementary issues by firms who had converted one or two years earlier. All were businesses built by a single proprietor, a family, or two partners, and long-established (between 24 and 70 years). Several seek to raise funds via debentures as well as equity shares. The vendors in the 1898 companies retained a voting interest in the company of between 20 and 50% (and in one case 85%), control greater than that retained under Chadwick's flotations and approaching that of Aron Salomon.[27]

Where Chadwick's promotions had been of large denomination shares with only a fraction paid-up, however, all nine 1898 companies were small denominations to be fully paid within two months or less of the subscription. None of the 1898 group involved shares greater than £10. By comparison only one of Chadwick's promotions was of £10 shares, five were of £20 shares, eleven of £50, and twelve (including his first conversion, the Ashbury Railway Carriage and Iron Company, in 1862) of £100.[28]

TABLE 1
Prospectuses for *Salomon*-like companies, 1898

Company:	B. Smyth & Co.	Ebenezer Roberts & Sons	George Ingham & Co.	Hardebeck and Bornhardt	Reffells Bexley Brewery	Short's	Spear Brothers & Clark	W.H. Hutchinson & Sons
Line of business?	wine and tea - -government contracts	candy manufacturing & wholesale	worsted spinning	jewelry manufacturing & wholesale	brewing	wine and spirits merchant	bacon curing	brewing
Place(s) of business?	India London Glasgow	London	Halifax	London	Bexley (Kent)	London	Bath Bristol Birmingham Liverpool	Nottingham
Age at time of prospectus? (yrs)	70	46	24	30	24	63	not given	25
Total capital (£)	100,000	90,000	100,000	120,000	120,000	450,000	160,000	175,000
Share denomination (£)	10	1	10	1	5	10	5	10
Shares to be fully paid-up?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Vendors share of capital	31%	44%	26%	not shown	20%	44%	50%	85%
Debentures as part of issue? (£)	No	No	No	No	80,000	No	50,000	140,000
Boilerplate?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Accounting information:								
Goodwill?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Assets – total?	Yes	Yes	Yes		Yes			
Assets – detailed info?	Yes			Yes	Yes		Yes	Yes
Detail info on profits?	Yes		Yes		Yes	Yes	Yes	Yes

The nine "*Salomon*"-type companies also demonstrate a depth of common understanding reduced to boilerplate. Each prospectus includes a copy of the memorandum of association with the same structure. Clauses describe the company's name, registered office, objects, capital and dividends, and, in exactly the same words in all nine, note that "[t]he liability of the members is limited." With the exception of name and office, memorandum language is virtually identical. Only the first subclause of the "objects" clause speaks to the specific enterprise; the last clause grants the power "to all such other things"; and the part in between lists general powers to build, borrow, lend, combine, buy, sell, and otherwise contract. The capital and dividends clause varies some, but five of seven have a variation on the broad "power from time to time to issue any Shares in the original or new capital, with any preference or priority as to dividend or capital, or both, . . . and to vary the regulations of the Company as far as necessary . . . ."[29] Each prospectus has a section describing existing contracts that explicitly mentions section 38 of the Companies Act of 1867 (30&31 Vict., c. 131), showing the writer responding to section 38's requirement to disclose material contracts as interpreted by highly contested cases like the 1877 *Twycross v. Grant* (2 C.P.D. 469) and the 1880 *Sullivan v. Mitcalfe* (5 C.P.D. 455); and each provides for inspection at a solicitor's office of memorandum, articles, and vendor contracts.[30]

Only the issue for Ebenezer Roberts & Sons emphasizes advertising instead of accounting. The other seven all focus on what we would call balance sheet and income statement analysis of the enterprise to tell a story of a high return on investment with little risk. All eight copy the certificates from auditor and valuation agent; each notes that the originals can be inspected at the solicitor's office. No asset and return ratios are provided, but the sufficiency of detail on assets, liabilities, expenses, and revenues meant a reader could have calculated them. All mention whether the purchase price included payment for goodwill. Where a prospectus for larger ventures might still supplement accounting information with testimonials or eye-catching graphics, puffery in these small-

company conversions was highly muted, limited to statements that an "old established business ... [that] has always had the highest reputation" (Hardebeck and Bornhardt), is "increasingly prosperous" (Reffells Bexley Brewery) or "well-known" (Hutchinson & Sons), or that its product has "gained a very high position" (Spear Brothers & Clark).[31]

The prominence of accounting information in the 1898 prospectus cannot be explained by the statutory evolution of disclosure requirements. Disclosure requirements were imposed after, not before, the prospectuses in question were circulated. While an annual audit was made compulsory for limited liability banks by the Companies Act of 1879 (42 & 43 Vict., c.76), only with the Companies Act of 1900 (63 & 64 Vict., c. 48) would other companies be required to do so, and then only "public" companies. (The Joint Stock Companies Act of 1856 had made optional what had previously been required under private bills, general railway bills, and even the Limited Liability Act.) Long before 1900, however, the use of professional auditors had become commonplace, and 1898 prospectuses make clear that they were commonplace regardless of the size of the enterprise. Even the prospectus for an enterprise as small as the Bridlington Hydropathic Limited, a company with capital of only £11,000, has a chartered accountant listed as its auditor on the first page, *and* the interior of the prospectus contains a verbatim reproduction of the two-paragraph "Auditor's Certificate" of expected profits.[32] If a cause-and-effect relationship existed between audit practice and legislation, it went from practice to statute, not the other way around.

Lawmaking and the Enterprise—A Conclusion.

Deirdre McCloskey and others have been reminding us for twenty years what the Master never forgot: The "propensity to truck, barter, and exchange" is founded upon

> the naturall inclination every one has to persuade. The offering of a shilling, which to us appears to have so plain and simple a meaning, is in reality offering an argument to persuade one to do so and so as it is for his own interest. Men always endeavour to persuade others to be of their opinion even when the matter is of no consequence to them.[33]

Economics, both the discipline and the history it studies, is rhetorical. Economic decision-making itself takes place via processes of persuasion. Economic choice *is* rhetoric.[34] This essay attempts to provide a roadmap for putting empirical bite into the rhetorical dimension of economic choice.

The costs of user interpretation have an irreducible complexity which precludes their estimation through the regular tools of the econometric toolbox. One cannot calculate and compare correlation coefficients for the various paths of interpretation. One cannot simply count the number of company flotations or put together a time series of incorporated capital formation. One is limited, alas, to piling together instances of what Northrop Frye in another context called, disparagingly, "naive induction" and the "psychology of rumor."[35]

In terms of estimating the evolution of the costs of user interpretation, the prospectuses described here can detail only the beginning and the end of the story. Combination of prospectus rhetoric with the judicial rhetoric in cases like *Salomon* is valuable, but as with any exercise in comparative statics, it can only suggest the path of evolution between two end-points. Its real benefit comes not from its definitive conclusion, but its ability to provide a series of new questions to be answered. And it is that series of new questions that the prospectuses of Ebenezer Roberts, Reffells Bexley, and the other 1066 prospectuses in this sample start to provide.

The transformation of the company prospectus that had to occur between 1856 and 1898 shows the reduction of interpretation costs that had to happen before more of the benefits of "limited liability" could be realized. Considered together with cases like *Salomon*, these prospectuses how to look for evidence of low-cost interpretation. They show how to look for places where a promoter no longer had to interpret, where an entrepreneur no longer had to figure out an investor's interpretation, where an investor no longer had to figure out an entrepreneur's interpretation. They show how to find possible places of convergence in understanding across law users.

What mattered in reducing interpretation costs was not winning legal contests over limited liability; what mattered were the agreements about legal meaning lying underneath, the agreements about rhetorical rules of the game by which Victorian entrepreneurs, investors, and creditors agreed to play. "Limited liability" had to enter a rhetorical place where its meaning had become figured out and agreed upon. The high costs to users of figuring out and reaching agreement meant lawmakers, like the Lords Macnaughten and Kay in *Salomon*, had to move to ground occupied by David Chadwick and Aron Salomon, not the other way around. Drafters of the mid-century general incorporation statutes may have "known" what we now know about the meaning of "limited liability," but until the real users of the law (entrepreneurs, investors, company creditors) also shared that meaning, interpretation—and therefore use—of the law would remain too expensive.

Notes

1. The people who have helped on this project so many that I know I omit some. I am especially grateful for the continuing help from my thesis supervisor, Deirdre McCloskey, and the members of the Franklin Seminar: Charles Abbott, Mary Beth Combs, Paul Custer, Santhi Hejeebu, John Levendis, Jeff Owen, Mel Prewitt, Amy Ruggles, and Troy Tassier. In addition, I would like to thank two anonymous referees for this journal, as well as Allen Bures, Carsten Burhop, Charles Christianson, Jeff Cox, Robin Craig, David Depew, Lynne Pierson Doti, Steve Hoch, Henry Horwitz, Herb Hovenkamp, Ed Kaschins, David Levenstam, Roberto Mazzoleni, Carrie Melcher, Ranald Michie, David Mitch, Avner Offer, John Paul Rossi, Winnie Rothenberg, and Magnus Sveinn. The staff at both the Public Record Office and the British Library have been very helpful, and the staff of the Law Society under the direction of librarians Lynn Quiney and Chris Holland have been extraordinary. Thanks, finally, to the Earhart Foundation, the Doris and Ragnald Ylvisaker Endowment, the Luther College Dean's Office, and the Luther Department of Economics and Business for financial support.

2. Joint Stock Companies Act of 1856, 19 & 20 Vict. c. 47, Schedule, Table D. Administrative costs were reduced again by the Companies Act of 1862, to £6 5s for the £10,000 enterprise and £28 15s for the £100,000. Compare the cost of incorporating the London and Westminster Oil and Gas Company Bill, which was estimated at £30,000. *Hansard Parliamentary Debates*, 2d series, 13 (1825), col. 1013.

3. H. A. Shannon, "The Coming of General Limited Liability," *Economic History* 2 (1931), 267-291; "The First 5000 Limited Companies and Their Duration," *Economic History* 3 (1932), 396-402, and "The Limited Companies of 1866-1883," *Economic History Review* 4 (1933), 290-307; Hunt, *The Development of the Business Corporation in England, 1800-1867* (Cambridge, MA: Harvard University Press, 1936); Jefferys, *Business Organisation in Great Britain, 1856-1914* (London: Arno Press, 1977; reprint of 1938 Ph.D thesis, University of London).

4. Registrar of Joint Stock Companies, *Return of Names, Objects, Places of Business, Date of Registration, Nominal Capital and Number of Shares of Joint Stock Companies; Number of Shareholders and Number of Companies registered in the City of London, to May 1864,* 1864 LVIII (452) 291. Registrar's Return, 1864; Charles H. Feinstein, "National Statistics, 1760-1920," in Feinstein and Pollard, eds., *Studies in Capital Formation in the United Kingdom, 1750-1920* (Oxford: Oxford University Press, 1988), 443.

5. Fortunately, simulating "how much gain went unrealized?" can be done without a large sample of share prices for limited liability companies in the early years of their existence. Sufficient asset prices are needed to show the potential gain, but they need not be shares in "new" companies or even companies with "limited liability." As long as the shares chosen are sufficiently "like" the equity interests in the limited liability companies that might have been formed but weren't, measuring their returns and covariances shows the gain to be had from moving from a one-asset to a two-asset to an n-asset portfolio. Prices for 121 securities listed in the *Times* on April 9, 1845 were traced from April 9, 1845 through June 30, 1847; prices for the 371 securities listed on July 5, 1853 were traced from July 5, 1853 through July 2, 1856; and prices for the 388 securities listed on July 30, 1856 were traced from July 30, 1856 through December 15, 1858. Ideal data would be weekly or daily, but the exigencies of entering data from microfilm limited each sample to prices published each fourth Wednesday. As a result, the 1845 cohort shows a series of 30 observations, the 1853 cohort a series of 40 observations, and the 1856 a series of 32 observations. Any share whose price disappeared from the sample for more than twelve weeks was treated as a share in a company no longer in operation and removed. The 1845 cohort having the largest proportion of nondisappearing securities (57 out of 121), it was used to generate 50 random sample portfolios of size n, for n=2, 3,...,15. Each three-asset portfolio was formed by randomly adding another security to the respective two-asset portfolio, each four-asset portfolio formed by adding another security to the three-asset portfolio, and so forth. (Though each security selected was held in the same proportion, generating the portfolios by sampling with replacement meant unequal holdings were simulated as well; sampling from the other cohorts shows somewhat smaller covariances between assets, suggesting a need to diversify to even more assets in the fifties.)

The Registrar's return allows estimation of the distribution of shareholding size. Since any person who wished to invest would have been constrained by his or her wealth, there would have been an inverse relationship between the size of average holdings and the number of assets in the average investor's portfolio. The probability distribution of the number of assets in a portfolio would have been roughly the same as the probability distribution of average company holdings across portfolio size and the number of companies. Thus the potential gain can be estimated as a weighted sum of the gains from moving from an i-asset portfolio to one with i+1 assets, for i=1, 2, ..., n, where weights are given by the probabilities, p_i, where p_1 = probability that the average holding will be greater than or equal to *W*, the wealth of the average investor, and , for *i*>1. Feinstein's figures for population (Charles H. Feinstein, *National Income, Expenditure, and Output of the United Kingdom, 1855-1965* (Cambridge, UK: Cambridge University Press, 1972), table 55) and gross national wealth ("National Statistics," table 18) provide the estimate of *W*.

The approximation is very rough. If an investor's wealth exceeded the national average, the gain will be understated: sometimes because of the denomination of shares, sometimes because of the demographic of the people who were interested in particular companies, investment in one enterprise would be sufficient to preclude diversification, but such was unlikely to be the case for 953 of the 2264 companies reported in the Registrar's Return. On the other hand, if the investor already had multiple assets in his portfolio, the gain is overstated: most of the simulated gain comes from moving from one asset in the portfolio to two or three.

The diversification point was first made by Harry Markowitz in his *Portfolio Selection: Efficient Diversification of Investments* (New Haven: Yale University Press, 1959). For helping make the point clear to me, I am particularly indebted to Elyce Rotella, Stefano Fenoaltea, and my dissertation supervisor, Deirdre McCloskey (several times). (Clearly, I am a slow learner: Rotella and Fenoaltea made the point in conversation at the *1992* conference of the Cliometric Society.)

6. 19 & 20 Vict., c. 47, section 3.

7. The origins of our shared epistemology of legislation can be found in Jeremy Bentham, *Of Laws in General*, ed. H.L.A. Hart (London: University of London, 1970); and *An Introduction to the Principles of Morals and Legislation* (Birmingham, AL: Gryphon Editions, 1986; photographic reprint of first edition [1789]). For one prominent example of a non-utilitarian sharing utilitarian epistemology in this respect, see Oliver Wendell Holmes, Jr., "The Path of the Law," *Harvard Law Review* 10 (1897), 457-475, where Holmes argues that the key determinant of how the law works will be how the "bad man" predicts the consequences of breaching the law's rules.

8. Act Repealing the Bubble Act (1825), 6 Geo. IV, c. 91; Trading Companies Act (1834),4 & 5 Will. IV, c. 94; Chartered Companies Act (1837; also known as the Letters Patent Act), 1 Vict., c. 73; Registration Act (1844), 7 & 8 Vict., c. 110; Limited Liability Act (1855), 18 & 19 Vict., c. 133; Joint Stock Companies Act (1856), 19 & 20 Vict., c. 47; Act to Amend the Joint Stock Companies Act (1857), 20 & 21 Vict., c. 49; Act to Amend the Joint Stock Companies Act (1858), 21 & 22 Vict., c. 91; Companies Act of 1862, 25 & 26 Vict., c. 89. For a brief yet excellent overview of the Continental experience, see Philip L. Cottrell, *Industrial Finance, 1830-1914: The Finance and Organization of English Manufacturing Industry* (New York: Methuen, 1980), 54-56. On France, see Charles E. Freedeman, *Joint-Stock Enterprise in France, 1807-1867: From Privileged Company to Modern Corporation* (Chapel Hill: University of North Carolina Press, 1979). On the United States, see Morton J. Horwitz, *The Transformation of American Law, 1780-1860* (Cambridge, MA: Harvard University Press, 1977), 109-139; Hovenkamp, *Enterprise and American Law, 1836-1937* (Cambridge, MA: Harvard University Press, 1991), 11-55.

9. Even when the figuring-out costs can be figured out and reduced sufficiently so that persuasion occurs, there is no guarantee that matters will stay figured-out. Persuasion is temporary. Even when the meaning of a law can be made "plain," it may not remain plain when a new situation arises for the law to be applied to. Too, the flow of information between legislator and legislated-upon moves in both directions simultaneously. Interpretation is an iterative and reiterative process, and one which has no *ex ante* guarantee of *ever* stabilizing. Stanley Fish, *There's No Such Thing as Free Speech and It's a Good Thing, Too* (Oxford: Oxford University Press, 1994), especially chapter 11. Even the most close-minded person can die or change his opinion. The meaning of words is, to use Bruggeman's phrase, almost always "under negotiation." Walter Bruggeman, *Texts Under Negotiation: The Bible and Postmodern Imagination* (Minneapolis: Fortress Press, 1993).

10. Nathaniel Lindley, *A Treatise on the Law of Companies, Considered as a Branch of the Law of Partnership*, sixth edition (London, Sweet and Maxwell, 1902); *Broderip v. Salomon* [1895] 2 Ch. 323, *rev'd*, *Salomon v. Salomon and Co.* [1897] A.C. 22. On the nineteenth century transformation of the economic, political, and professional place of the solicitor, see, *inter alia*, Brian Abel-Smith and Robert Stevens, *Lawyers and the Courts* (London: Heinemann, 1967; J. Stuart Anderson, *Lawyers and the Making of English Land Law, 1832-1940* (Oxford: Oxford University Press, 1992); Harry Kirk, *Portrait of a Profession* (London: Oyez, 1976); R.W. Kostal, *Law and English Railway Capitalism, 1825-1875* (Oxford: Clarendon Press, 1994); Avner Offer, *Property and Politics: Landownership, Law, Ideology and Urban Development in England, 1870-1914* (Cambridge University Press, 1981); and Patrick Polden, *History of the County Court* (Cambridge, UK: Cambridge University Press, 1999). For a flavor of how Victorian solicitors viewed themselves, see Edwin. W. Field, *Observations of a Solicitor on Defects in the Offices, Practice, and System of Costs of the Equity Courts* (London: Wildy, 1856); and *On the Roots of the Evils of the Law: Economical Considerations on the Autocracy of the Bar and on the System of Prescribed Tariffs for Legal Wages and on the Connection of These Two Subjects* (London: Pickering, 1840), and J. Orton Smith, *The Lawyer and His Profession: A Series of Letters to a Solicitor Commencing Business* (London: Stevens,1860).

11. Technically the decision in *Salomon* was made under section 6 of the Companies Act of 1862. Section 6 of the 1862 Act (25 & 26 Vict., c. 89), however, was an all-but-verbatim repetition of section 3 of the 1856 statute.

12. Public Record Office, files relating to *Salomon v. Salomon and Company*: J14/35 (debenture action file); J14/307 (winding-up file); J15/2134 (order of Court of Appeal); BT31/5373/36911 Ref. 3044 (Board of Trade's company file); and BT34/866/36911 (official liquidator's file).

13. *Salomon v. Salomon & Co.*, 47-50.

14. *Broderip v. Salomon*, 341-343.

15. George Robb, *White-Collar Crime in Modern England: Financial Fraud and Business Morality, 1845-1929* (Cambridge, UK: Cambridge University Press, 1992), 147; Tony Freyer, *Regulating Big Business: Antitrust in Great Britain and America, 1880-1990* (Cambridge, UK: Cambridge University Press, 1992), 132; W. R. Cornish and G. de N. Clark, *Law and Society in England, 1750-1950* (London: Sweet and Maxwell, 1989), 254-262, 264-5. See also Hunt, *Development of the Business Corporation*, chapters 4-7, and C.A. Cooke, *Corporation, Trust and Company: An Essay in Legal History* (Cambridge, MA: Harvard University Press, 1951), chapters 8-11.

16. *Peek v. Gurney* (1873), L.R. 6 H.L. 377, 410. Technically, Peek was held liable because his shares had not been fully paid up. (English company statutes allowed issuance of shares with a nominal or "par" value far in excess of the amount subscribers paid in. As a result many trades in early- and mid-Victorian share markets would be of shares whose nominal or "par" value was ten times the value paid in by original subscribers.) Because Overend Gurney books showed only £15 of each share's £50 nominal value paid, Peek was held liable for £35 per share even though he had acquired his shares on the secondary market at prices between £21 and £22 per share.

17. British Library, BL 8227.a.47, folio 3.

18. BL 717.m.19 (1845-1852); 1255.c.21 (1825);1881.b.23 (5 volumes, 1800-1856); 1887.c.19 (1898); 8223.e.10 (1824-1826). Also containing prospectuses, as yet unexamined, are volumes located at the following shelf-marks: 1890.c.6 (1810-1835); 1890.e.6 (1830-1845).

19. Compare, for example, the prospectuses of London Flour Company, Provincial Portable Gas Company, and South London Milk Company (name only in heading), New Corn Exchange and Peruvian Mining Company (name and capital), Peruvian Trading & Mining Company (name, capital, denomination, directors, auditors, bankers, and solicitors); Imperial Brazilian Mining Association (name, capital, directors, auditors, bankers, solicitors, secretary, and agents in Rio Janeiro), Promoter Benefit Company, Welch Iron and Coal Mining Company and London Brick Company (name, total capital, and denomination in one version; name, capital, and various agents in another), BL 8223.e.10, folios 61, 83, 86, 100, 121-123, 125, 128, 144, 161-163. Compare also the Great Westminster Dairy announcing the allocation of shares (name, capital, denomination), and the Alliance British and Foreign Life and Fire Assurance Company of London's offer of insurance (name, capital, presidents, directors, auditors, bankers, actuary, secretary, physician, counsel, solicitor, and surveyor), *ibid.*, folios 1 and 5, and the prospectuses for Columbian, Neopolitan, Cyprus, and Chile loans, BL 1881.b.23, vol. 2, folios 41-44.

20. BL 1887.c.19.

21. Indeed, uncertainty remained about the likely judicial interpretation of paid-in capital long after the decision in *Peek*. Only with *Ooregum Gold Mining Company of India v. Roper* ([1892] A.C. 125) did it become fully clear that a company limited by shares could not issue shares as "fully paid up" unless the money consideration received was their full nominal value.

22. Compare, for example, the 1838-1839 prospectuses of the British and Colonial Export Company (£100,000 capital in £20 shares, £2 deposit), Fleetwood Company (land development, £300,000 in £100 shares, £5 deposit), and Newcastle Iron Company (£100,000 in £50 shares, £5 deposit), with the following brewing companies from 1898, all fully paid, of, Barnsley Brewery Company, Limited (£210,000 capital in £10 shares), Reffells Bexley Brewery, Limited (£120,000 in £5 shares), Wolverhampton District Brewery, Limited (£50,000 in £5 shares), United Breweries of Western Australia, Limited (£150,000 in £1 shares), and Yates' Castle Brewery, Limited (£250,000 in £10 shares). BL 1881.b.23, volume 2, folio 47; volume 3, folio 1B; volume 5, folio 62; 1887.c.19, folios 21, 22, 52, 72, 77. See also, Cottrell, *Industrial Finance*, 84-86, and J.B.Jefferys, "The Denomination and Character of Shares, 1855-1885," *Economic History Review* 16: 45-46, 50-52.

23. Jefferys, "Denomination and Character of Shares," 47-50, notes a number of reasons for continuing uncertainty, all of which highlight the incomplete interpretation: the absence of experience with general limited liability, beliefs about what gave a company "stability and high financial standing," the bargaining power of creditors, and the developing nature of the investment market. See also, Cottrell, *Industrial Finance*, chs. 5 and 8.

24. For the 1820s, see BL 1255.c.21, 1881.b.23, and 8223.e.10; for the 1830s, 1881.b.23; for the 1840s and 1850s, 717.m.19 and 1881.b.23; and for the 1890s, 1887.c.19.

25. Cottrell, *Industrial Finance*, 146 (quoting Jaycee, *Public Companies from the Cradle to the Grave* (London, 1883, 19).

26. *Ashbury Railway Carriage and Iron Co. v. Riche* ((1875) L.R. 7 H.L 653) Every objects clause in every memorandum of association appearing in 1898 prospectuses combines a list of every activity the drafter might imagine the enterprise being involved in, together with all-inclusive power "to execute and do generally all such other things as the Company may at any time consider incidental or conducive to the carrying out or attainment of the above objects or any of them." Kalantaroff (Baku) Oil Company, Limited, BL 1887.c.19, folio 41. In case the objects listed still might be read too narrowly, the objects clause typically also contained a sub-clause noting that each object listed should be considered as existing independently of the others, a clause that would not be approved by the Lords until *Cotman v. Brougham* [1918] A.C. 514.

27. BL 1887.c.19, folios 31,37, 38, 42, 55, 62, 65, 72; Cottrell, *Industrial Finance*, 113-141.

28. Ibid.

29. BL 1887.c.19

30. In both *Twycross* and *Sullivan* the Court of Appeal was divided between those who would read the statute broadly and those who would read it narrowly, each Justice speaking ideologically of "rules" and "principles" of statutory interpretation.

31. BL 1887.c.19, folios 37 [Spear Brothers & Clark], 38 [Ebenezer Roberts & Sons];42 [W. H. Hutchinson & Sons], 62 [Hardebeck and Bornhardt], and 65 [Short's]. Only Hardebeck and Bornhardt, an upscale jeweler, provides engravings of its stock-in-trade, and only Ebenezer Roberts & Sons, a second-generation confectionary business, provides testimonials.

32. H.C. Edey and P. Panitpakdi, "British Company Accounting and the Law, 1844-1900," in A. C. Littleton and B. S. Yamey, eds., *Studies in the History of Accounting* (London: Arno Press, 1978), 370; BL 1887.c.19, folio 67. Within the larger sample every existing enterprise with capital of £100,000 or less from 1898 has an auditor's certificate; and of the prospectuses representing small new ventures, only one (The Phoenix Process (Parent Co.), Ltd., which document is but an incomplete draft of a "Proposed" prospectus) fails to list an auditor on the first page.

33. Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, eds. R. H. Campbell, A. S. Skinner, and W. B. Todd (Indianapolis: Liberty Classics, 1981 [1776]), I.ii.1-2; and *Lectures on Jurisprudence*, eds. R. L. Meek, D. D. Raphael, and P. G. Stein (Indianapolis: Liberty Classics, 1982 [1762-63, 1766], Report of 1762-3, vi.56. See also, *Lectures on Jurisprudence*, Report dated 1766, 221.

34. On the rhetoric of economics the place to start is the work of Deirdre McCloskey, most particularly *The Rhetoric of Economics*, second ed. (Madison: University of Wisconsin Press, 1998), and *Knowledge and Persuasion in Economics* (Cambridge, UK: Cambridge University Press, 1994). See also her *If You're So Smart: The Narrative of Economic Expertise* (Chicago: University of Chicago Press, 1990), and the volume of essays she co-edited with Arjo Klamer and Robert M. Solow, *The Consequences of Economic Rhetoric* (Cambridge, UK: Cambridge University Press). Also important are Arjo Klamer, ed., *The Value of Culture: On the Relationship between Economics and Arts* (Amsterdam: Amsterdam University Press, 1996) and Roger Backhouse, Tony Dudley-Evans, and Willie Henderson, eds., *Economics and Language* (London: Routledge, 1993). With respect to Adam Smith the rhetorician, compare McCloskey, *Knowledge and Persuasion*, 77-83 and 241, with Charles Bazerman, "Money Talks: The Rhetorical Project of the *Wealth of Nations*," in Backhouse, Dudley-Evans, and Henderson, eds., *Economics and Language*, 173-199.

35. "Most critical efforts to handle such generic terms as 'epic' and 'novel' are chiefly interesting as examples of the psychology of rumor. . . . [L]iterary criticism is now in such a state of naive induction as we find in a primitive science." Northrop Frye, *Anatomy of Criticism* (New York: Atheneum, 1967), 13 and 15.