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"A SACRED TRUST FOR THE FUTURE": REGULATING INSURANCE, 1800–70

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ABSTRACT. *The history of commercial law has often been written as if it were merely a product of the common law, disregarding the role played by legislation. The principal exception to this has been work on company law. Until recently, the prevailing view has been that the Companies Acts 1844–62 represented the triumph of the free market and the expulsion of the state from business. But, although these laws did make incorporation easier and granted companies privileges, what this view ignores is that they also imposed regulation, such as obligations to register the company and charges on its assets and to hold shareholder meetings. At the forefront of these legal changes were insurance companies. Yet, in spite of the proliferation of these companies and their role in, for example, the inquiry that led to the 1844 Act, they have been neglected. This may be because, while the successful campaign in 1824 to remove restrictions on access to the marine-insurance market would seem to support the view of legislation driven by free-market ideas, that explanation seems contradicted by the closing of access to the life-assurance market and the imposition of various obligations on life offices in 1870, a time when the liberalisation of company laws seemed at their peak. Neither development can, however, be so easily explained, and both show the effect of fierce divisions within the insurance industry.*

KEYWORDS: *legal history, insurance regulation, Life Assurance Companies Act 1870, Companies Acts 1844–62.*

I. INTRODUCTION

Historians of the joint-stock company have largely ignored the Life Assurance Companies Act 1870. In part, this reflects a general neglect of the history of insurance law, which, on those rare occasions when discussed, has usually been seen as a creature of the common law to the virtual

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exclusion of legislation.[1] Moreover, the 1870 Act seems out of place when compared with the Companies Acts 1844–62, which are regarded as making British company law "the most permissive in Europe"[2] by shifting from incorporation as a privilege in the gift of the state to a private right available through mere registration and by conferring benefits, such as limited liability, not available to other business organisations. The 1870 Act, on the other hand, restricted access to the market in life assurance and regulated life offices. Yet, such interventions should not be a surprise. Leading contemporary economists did not regard joint-stock companies as essential for a free market. Indeed, the ability of companies to raise capital was thought likely to squeeze out smaller businesses and create monopolies. In 1776, Adam Smith wrote that he could not see why they should be exempted from laws that applied to other business structures, and 80 years later John Ramsay McCulloch warned, "cautious *surveillance* is less manifested in great associations, where ordinary individuals feel their efforts are apt to be of little avail".[3] On the other side was Robert Lowe, President of the Board of Trade, who summed up his views on company law in 1856: "I am arguing in favour of human liberty – that people may be permitted to deal how and with whom they choose, without the officious interference of the State".[4] The freedom supposedly afforded companies was never absolute. The Companies Acts imposed obligations, such as registration and information disclosure. Furthermore, the characterisation of the nineteenth century as a period when the state was expelled from the market hardly fits with the emergence of core elements of modern welfare that involved business regulation, such as laws on slavery, child labour and working conditions.

The 1870 Act was passed after the collapse of a large life office, Albert Life, but the idea that this reform can be explained simply in terms of that event is unsatisfactory, first, because in restricting access to the market for new life offices, the act was clearly driven by a broader agenda, and, second, because previous crises in insurance had brought calls for regulation without any effect, so what was different about 1870? Shining an

[1] But P. Hellwege, "A Comparative History of Insurance Law in Europe" (2016) 56 Am. J. Leg. Hist. 66; P.J. Rawlings, "What Can History Tell Us About Insurance Regulation?" in A. Georgosouli and M. Goldby (eds), *Systemic Risk and the Future of Insurance Regulation* (London 2015). This paper will not discuss industrial assurance – low premium, low benefit sickness and life policies aimed at working people and offered by friendly societies. The societies, which had been regulated since legislation in 1793, enjoyed statutory privileges, giving them competitive advantages, so life offices were vigilant to limit their field of operations (although this did not prevent commercial insurers aggressively expanding into industrial assurance from the mid-nineteenth century): *Report from the Select Committee on Friendly Societies*, P.P., V.295 (1852).

[2] P.L. Cottrell, *Industrial Finance, 1830–1914: The Finance and Organization of the English Manufacturing Industry* (London 1980), 52.

[3] A. Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (2005), 619–20, available at <http://eet.pixel-online.org/files/etranslation/original/The%20Wealth%20of%20Nations.pdf>; J.R. McCulloch, *Considerations on Partnerships with Limited Liability* (London 1856), 6.

[4] HC Deb. vol. 140 col. 131 (1 February 1856).

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intense light on a crisis that triggers reform tends to throw a shadow over earlier events: they are ignored because they failed. But history that merely lists the winners gives no sense of the race which brought and shaped this result. To understand why reform occurs it is important to understand why it does not occur.

II. Opening the Marine-Insurance Market

While the oldest form of insurance – marine – continued to dominate the insurance market in the nineteenth century, other sectors flourished. Fire expanded rapidly, as did accident with the development of rail travel, but the most spectacular growth came in life assurance. In 1800, there were only nine life offices, but over the next 70 years some 463 new offices were projected. The sector was attractive because it produced a flow of high-value premiums, while postponing payments, often for years. However, the speculative nature of the business meant that not all these proposed life offices became active, and others were lost through insolvency and amalgamation or takeover, so that only 92 remained by 1900.[5]

Insurance businesses took a number of forms in the nineteenth century. Individual underwriters in the subscription market (mainly at Lloyd's) wrote the bulk of marine policies with each typically taking part of the risk so that the whole was shared among several underwriters. Other types of business structure were used in fire and life assurance. Mutual societies were owned by subscriber-policyholders, who contributed to the losses of other subscribers, or, in the life sector, paid premiums and shared any surplus after claims. Corporations were established by royal charter and statute.[6] In contrast to mutual societies, they were owned by shareholders, who received the profits, and policyholders were merely customers, although by the mid-nineteenth-century competition had led most life offices to entice policyholders by the promise of bonuses paid out of profits.[7]

The cost and delay involved in obtaining a charter meant most companies did not bother, and, instead, based themselves on a deed of settlement. These unincorporated companies were illegal under the Bubble Act 1720, but those provisions were assumed to be obsolete. Indeed, when a charter was refused to Phoenix Fire Office in 1783, the Attorney General advised the formation of an unincorporated company.[8] It was a surprise, therefore,

[5] C. O'Brien and P. Fenn, "Mutual Life Insurers: Origins and Performance in Pre-1900 Britain" (2012) 54 (3) Business History 325, at 326; *The Insurance Register* (London 1899).

[6] E.g. London Assurance and Royal Exchange Assurance under the Bubble Act (6 Geo. I c.18). For other types of insurance business, see G. Clark, *Betting on Lives: The Culture of Life Insurance in England 1695–1775* (Manchester 1999).

[7] Smith, *Wealth of Nations*, pp. 619–20.

[8] M. Freeman, R. Pearson and J. Taylor, "Law, Politics and the Governance of English and Scottish Joint-Stock Companies, 1600–1850" (2013) 55(4) Business History 636, at 640. See R. Harris,

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when an attempt was made in 1808 to prosecute Ralph Dodd for seeking to establish distillery and paper manufacturing companies. This came during a surge in the economy which had brought the formation of a large number of unincorporated companies and raised fears of a speculative bubble, although critics thought the prosecution an attempt by brewers to eliminate competition.[9] The prosecution was dismissed because of the interval since the last case, but Lord Ellenborough C.J. declared the act "could not be considered as obsolete", and warned against these "mischievous and illegal projects".[10] A few cases followed, but the act's revival had a limited impact. For example, while Ellenborough denounced as "a mischievous delusion" statements by companies that shareholder liability was limited and ceased on sale of the shares, life offices continued to make such statements in advertisements, and the act did not prevent insurance policies that restricted the liability of shareholders to policyholders, who were the principal creditors.[11] Nevertheless, unincorporated companies faced practical difficulties because they were characterised as partnerships which meant all shareholders had to join in any litigation. This led many to obtain statutes allowing them to sue and be sued through a single officer, which was not only easier than incorporation but also brought the unexpected benefit that, since Parliament had acknowledged the company's existence, it could not be unlawful.[12]

Chartered companies do, however, play a significant role in this history, since, although the Bubble Act is chiefly remembered for the prohibition of joint-stock companies, most of its provisions were concerned with the recently chartered Royal Exchange Assurance and London Assurance companies.[13] The act banned other partnerships and companies from writing marine insurance, but did not restrict individual underwriters in the subscription market because of concerns about the effect on trade and on the naval intelligence that the market provided to the Admiralty. As trade

Industrializing English Law: Entrepreneurship and Business Organization, 1720–1844 (Cambridge 2000).

9 F. Baily, *An Account of the Several Insurance Companies Established in London* (London 1811), 19–20; H. Day, *A Defence of Joint Stock Companies; Being An Attempt to Shew Their Legality, Expediency, and Public Benefit* (London 1808), 3; *Morning Chronicle*, 9 January 1808.

10 *The King v Dodd* (1808) 9 East 516, 526, 528. Dodd's colourful life involved various unrealised engineering projects, assaulting the clerk to Colchester Water-work and bankruptcy. He died poor in 1822 after a steam engine accident.

11 Ibid., at p. 526; *Kinder v Taylor*, *The Times*, 30 March 1825; G. Farren, *A Treatise on Life Assurance* (London 1823), 36; *First Report of the Select Committee on Joint Stock Companies*, 180 (119) (1844).

12 *The King v Webb* (1811) 14 East 405; F. Blayney, *A Practical Treatise on Life-Assurance* (London 1826), 24; *Van Sandau v Moore* (1826) 1 Russ. 441. Also, *Josephs v Pebrer* (1825) 3 B. & C. 639; HL Deb., 2nd ser, vol. 13 col. 901 (27 May 1825). The House of Lords insisted companies had substantial means and struck out liability limitations in trust deeds: C. Wordsworth, *The Law Relating to Railway, Bank, Insurance, Mining and Other Joint Stock Companies* (London 1837), 102. For a partial list of private statutes obtained by insurance offices, see C. Bunyan, *A Treatise upon the Law of Life Assurance* (London 1854), 355–60.

13 P.J. Rawlings, "Bubbles, Taxes, and Interests: Another History of Insurance Law 1720–1825" (2016) 36(4) O.J.L.S. 799.

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expanded through the eighteenth century criticism of these restrictions on access to the market grew, particularly among merchants outside London and particularly with the rise in premiums during the wars with France (1793–1815).[14] Attempts were made to break the triopoly. In 1799, Globe Insurance was incorporated for fire insurance and permitted, among other things, to insure ships in ports or on inland waters.[15] London Assurance and Royal Exchange countered by petitioning for the extension to inland waters of the privileges granted by the Bubble Act. When this was refused, the Globe sought to break the restrictions on marine insurance generally, arguing that they raised premiums, and, therefore, the cost of goods, and drove insurance business abroad.[16] The petition was rejected following objections from London Assurance and Royal Exchange that it would infringe privileges granted by the Bubble Act in exchange for payments to the Crown, although the companies failed to mention that these privileges had not been granted for an indefinite period and that the payments had never been completed.[17]

The Globe renewed its petition in 1810, but this time a rival group of London merchants also petitioned to establish a new marine insurer.[18] William Manning, M.P., proposed a parliamentary inquiry. He suggested that the failure of the chartered companies to carve out a significant presence in marine insurance meant Lloyd's had, in effect, a monopoly, and this forced merchants to deal with underwriters whose solvency was unknowable.[19] Opponents countered that a new company would destroy Lloyd's and create "a gross monopoly"[20]: "The exclusive privileges of the chartered companies, and the restrictions against underwriting in partnership, are the great fences against the inroads of mercantile speculations".[21] In a speech to Parliament full of contradictions, Joseph Marryat, M.P., himself an underwriter, said that the large number of underwriters at Lloyd's provided adequate competition. The limited impact on the marine market of London Assurance and Royal Exchange showed companies did not increase capacity, in part, because the priority given to the interests of shareholders led them to refuse risks and claims that Lloyd's accepted.

[14] E.g. *The Cambrian*, 6 July 1805. In many ports merchants and shipowners formed mutual assurance clubs: *The Cambrian*, 17 August 1816.

[15] 39 Geo. III c. 83 (Public Local & Personal); *Aberdeen Journal*, 3 April 1805; HC Deb. vol. 7 cols. 812–13 (24 June 1806); J. Francis, *Annals, Anecdotes and Legends: A Chronicle of Life Assurance* (London 1853), 180.

[16] 41 Geo. III c. 57–58 (Public Local & Personal Acts); [Sir Frederick M. Eden], *On the Policy and Expediency of Granting Insurance Charters* (London 1806), 23, 96.

[17] Ibid., Appendix I.

[18] *Commons Journal*, vol. 65, 54, 56 (8 February 1810).

[19] HC Deb. vol. 15 cols. 399–401 (14 February 1810). Manning spoke too quietly to be heard, so the reporter assumed he had repeated the arguments in the petitions.

[20] *Caledonian Mercury*, 30 June 1810.

[21] J. Marryat, *Observations upon the Report of the Committee on Marine Insurance* (London 1810), 61.

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Finally, he said Lloyd's would be destroyed because those merchants who financed the new company would transfer their business.[22]

Manning's inquiry went ahead. It concluded there was insufficient competition and that Lloyd's did not offer security to policyholders. But the report contained few proposals, and its suggestion that a decision over the new companies should be left to Parliament proved sufficiently discouraging for the petitions, which had led to the committee, to be abandoned. Further Bills to repeal the privileges of the chartered companies were presented in 1810–13, but all failed.[23] It did not seem a good idea to disturb the market during war when trade was being strangled by blockades. More importantly, there was the Admiralty's dependence on Lloyd's for shipping information, and underwriters undoubtedly boosted their position by festooning naval commanders with honours and subscribing lavishly to the Patriotic Defence Fund.[24]

III. Repeal of the Bubble Act 1824–25

A decline in the economy quietened litigation arising out of the Bubble Act and interest in its reform, but both returned with the boom of 1824–25, and this time produced major reforms. The first was the abolition of restrictions on marine insurance in 1824. The Bill was introduced by Thomas Fowell Buxton, a Spitalfields brewer. Although now remembered for campaigning against slavery, Buxton also worked for Alliance British and Foreign Life Assurance, which, following the 1824 Act, established Alliance Marine Assurance and appointed him auditor.[25] In introducing the Bill, he attacked the Bubble Act as anti-competitive, pointing to the benefits of an open market in fire and life assurance and the difficulties that concentration of marine insurance in London caused provincial merchants. Moreover, the shortage of capital at Lloyd's meant several underwriters subscribed to each risk, so that someone making a claim "found one underwriter probably dead, and his executors (troublesome people generally) were to be dealt with; a second was insolvent; a third litigious, and ready to defend an action".[26] In contrast, companies could raise sufficient capital to cover the entire

[22] HC Deb. vol. 15 cols. 401–22 (14 February 1810). Only 4% of duty paid on marine policies came from the chartered companies: *Select Committee on Marine Insurance: Report*, P.P., IV, 226 (1810), 4–6, 119.

[23] *Commons Journal*, vol. 65, 395 (23 May 1810), 407 (24 May 1810), 410 (31 May 1810), 446 (1 June 1810), vol. 66, 129 (28 February 1811); HC Deb. vol. 11 col. 773 (24 May 1824).

[24] *Select Committee on Marine Insurance: Report*, 110; L. Lobo-Guerrero, *Insuring War: Sovereignty, Security and Risk* (London 2012), 41–54; J. Uglow, *In These Times: Living in Britain through Napoleon's Wars, 1793–1815* (London 2015), 356–57.

[25] 5 Geo. IV c. 114; *The Times*, 11 September 1824; *Morning Post*, 17 December 1824; HC Deb. vol. 11 cols. 920–33 (28 May 1824), cols. 1086–88 (3 June 1824); Francis, *Annals*, pp. 188–89. Buxton is commemorated by a plaque in Brick Lane, London, and a ceramic and stone confection in Victoria Tower Gardens.

[26] HC Deb. vol. 11 cols. 922–23 (28 May 1824).

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risk and in the event of litigation only one action was needed. He optimistically added, "insolvency was in the highest degree improbable".[27]

Opponents advanced familiar arguments, asserting that there was sufficient capacity in the existing market, highlighting the strategic importance of Lloyd's, which, "had, by their enlarged intelligence and active agency, become the centre of all information respecting maritime affairs",[28] and even invoking the spirit of Adam Smith by warning that "the formation of joint stock companies for the purpose of effecting that which can and has been done advantageously by individuals, would be to create so many monopolies".[29] There were personal attacks on Buxton. He did not understand the industry and (contradicting this) had a conflict of interest because of his involvement with Alliance. His championing of free trade in insurance was contrasted with brewers tying public houses and his opposition to repeal of the Spitalfields Act, which regulated wages and prices in silk weaving.

The ground had, however, been prepared. Republication of the 1810 report precluded the possibility of delay for another inquiry,[30] and, crucially, the Government favoured a more open market. Frederick Robinson, Chancellor of the Exchequer, had spoken against the privileges enjoyed by London Assurance and Royal Exchange as early as 1813, and when a deputation from Lloyd's lobbied William Huskisson, President of the Board of Trade, they were treated to a lecture on the benefits of free trade.[31] In Parliament, Huskisson argued that the aim of granting privileges to the chartered companies must have been to improve the security of policyholders, but the continued dominance of Lloyd's meant this had not been achieved. More importantly, Huskisson was applying new criteria to these issues, as revealed in his response to the objection that Lloyd's would be destroyed by allowing people to choose cheaper providers: "And why … ought they not to be permitted to do so?"[32]

The 1824 Act only removed restrictions on marine insurance; it did not affect the law on company formation. Reform of that part of the Bubble Act came in 1825.[33] The economic boom had led to the promotion of 624 new companies in London alone,[34] triggering litigation which brought further confusion over their legality and a surge in petitions for incorporation,

[27] Ibid., at col. 923.
[28] Ibid., at col. 1087 (3 June 1824), A. Robertson. "It was alleged Manning now opposed reform", *Morning Post*, 23 July 1824.
[29] *Morning Post*, 19 May 1824. Smith did think insurance might properly be provided by joint-stock companies because of the capital required: Smith, *Wealth of Nations*, p. 618.
[30] *Report from the Select Committee on Marine Insurance (Sess. 1810)*, HC 298 (11 May 1824).
[31] HC Deb. vol. 11 cols. 920–33 (28 May 1824); *Morning Chronicle*, 19 May 1824; *The Times*, 17 May 1824, 19 May 1824, 21 May 1824.
[32] HC Deb. vol. 11 col. 772 (17 May 1824).
[33] 6 Geo. IV c. 91 (1825).
[34] H. English, *A Complete View of the Joint Stock Companies* (London 1827). Of course, this number did not include mutual societies.

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with 297 in 1824–25.[35] Abbott C.J. warned "the sale and transfer of shares at enormous premiums is carried on to a greater extent than was ever known, except at the period when the statute referred to was passed".[36] But the Government did not think the Bubble Act provided the solution. The Attorney General, John Copley, declared it "unintelligible", and praised joint-stock companies – in particular insurers – as "advantageous to the public". He rejected fresh regulation because the lack of prosecutions under the old act showed it to be unnecessary.[37] Yet, while repealing offences in the Bubble Act, the 1825 Act did not alter the method of incorporation, which remained in the gift of the state, or clarify the status of unincorporated companies, or affect the legal position of shareholders or policyholders.[38] Huskisson thought that "to authorize an unlimited number of trading companies ... would be to do a most material mischief to the country", so, although convinced that "the interests of commerce required the proper encouragement and protection of joint-stock companies", he continued to favour incorporation by charter.[39] The new act's impact was further diminished by Lord Eldon's opinion – subsequently endorsed by the courts – that there was "hardly any thing in [the Bubble Act] which was not punishable by the common law".[40]

IV. Fraud and Life Assurance

The confused state of the law on unincorporated companies did not reduce demand for insurance or stem the promotion of new life offices which ebbed and flowed with the economy. Many puffed their prosperity and stability in advertisements, and a few even built lavish London headquarters that "changed the face of the early-Victorian City".[41] But there were concerns. In 1839, the London Saturday Review noted that, while greater enthusiasm for life assurance had encouraged new offices and brought fierce competition, the public remained poorly informed.[42] Writing in the *London Quarterly Review* that year, Sir John Barrow, a senior government official, agreed that life offices were "great public benefits", but, like "all other human institutions, they are liable to be misconducted and abused".[43]

35 J. Taylor, *Creating Capitalism: Joint-Stock Enterprises in British Politics and Culture, 1800–1870* (Woodbridge 2006), 109–21.
36 *Josephs* (1825) 3 B. & C. 639, 644. For Eldon's criticism of the judicial interpretation of the act: *The Times*, 30 March 1825; HL Deb. vol. 13 col. 901 (27 May 1825).
37 HC Deb. vol. 13 col. 1019 (2 June 1825). But see HC Deb. vol. 14 col. 646 (21 February 1826).
38 Large parts of the act dealing with Royal Exchange and London Assurance were unaffected.
39 *The Speeches of the Right Honourable William Huskisson* (London 1831), vol. II, 261; HC Deb. vol. 13 col. 1021 (2 June 1825).
40 HL Deb. vol. 13 col.1350 (24 June 1825). Eldon's proposed clause declaring the common law unaltered was rejected as unnecessary: Blayney, *Practical Treatise*, p. 33. See *Kinder v Taylor*, John Bull, 4 April 1825; *Duvergier v Fellows* (1828) 5 Bing. 248, 266.
41 D. Kynaston, *The City of London: Volume I: A World of Its Own 1815–1890* (London 1994), 139.
42 "Assurance and Insurance", *London Saturday Review*, 31 August 1839.
43 (1839) 64 London Quarterly Review 284, 303.

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Oversupply meant new offices struggled, became vehicles for speculation or fraud, or were closed as soon as mortality rates of insured lives rose. He was surprised "no warning has been taken by their downfall", so that even a sound office "thinks it may take any liberties with the gaping mass".[44]

Barrow particularly advised against offices that offered lower premiums and higher benefits than their rivals, and highlighted Independent West Middlesex Assurance as advertising rates that were "too low to be safe".[45] Formed in 1836, this fire and life office boasted that it was, "Established and empowered under the several Acts of Parliament", although had anyone troubled to check they would have discovered that the statutes listed did neither of these things.[46] In 1839, the Reformers' Gazette, a Scottish newspaper, denounced this "false and fictitious company",[47] but, beyond Barrow's essay, such criticism barely surfaced in the more widely read London newspapers, perhaps because the office focused operations outside the capital, made threats of legal action against critics and spent heavily on newspaper advertisements.[48] Then in 1841 its principals suddenly vanished with, according to some reports, £250,000 of shareholders' and policyholders' funds. Sir Peter Laurie, a London magistrate, launched an inquiry, not because he thought prosecution likely but to publicise the dangers.[49] The failure coincided with the collapse of other companies as the economy dipped, and belief that another speculative bubble had burst was strengthened by the success of Charles MacKay's book on popular delusions, which was published a few months later and revived interest in the South Sea Bubble of 1720. More damaging in the long term was the way novelists such as Thackeray and Dickens quickly adopted the life office as a symbol of greed, financial naivety and fraud.[50] *The Times* knew who – aside from the fraudsters – to blame: "Incautious investors, whose lamentations upon this point are always loudest, are themselves

[44] Ibid., at pp. 303, 307.

[45] Ibid., at p. 290. See J. Taylor, "Numbers, Character and Trust in Early Victorian Britain: The Independent West Middlesex Fire and Life Assurance Company Fraud" in J. Taylor (ed.), *Statistics and The Public Sphere* (London 2011); J. Taylor, *Boardroom Scandal: The Criminalization of Company Fraud in Nineteenth-Century Britain* (Oxford 2013), 70–78.

[46] *Morning Chronicle*, 6 October 1838: the statutes concerned insurable interest, annuities, stamp duty and banking.

[47] Francis, *Annals*, p. 236n.

[48] Eight libel actions were begun: *Report from the Select Committee of the House of Lords Appointed to Consider the Law of Defamation and Libel*, P.P., V, 513 (1843), 150.

[49] *Bell's Life in London and Sporting Chronicle*, 24 January 1841; *The Times*, 21 January 1841, 28 January 1841, 19 February 1841, 18 March 1841, 8 March 1845; J. Taylor, "Criminalising Fraud: Victorian Responses to Company Scandals" (2011) 32 Company Lawyer 291, 292. For civil actions, see *The Times*, 8 March 1845.

[50] C. MacKay, *Memoirs of Extraordinary Popular Delusions and the Madness of Crowds* (London 1841); W.M. Thackeray, *The History of Samuel Titmarsh and The Great Hoggarty Diamond* (London 1841) (see *The Times*, 9 December 1853, letter from P. Laurie); C. Dickens, *The Life and Adventures of Martin Chuzzlewit* (London 1843–44). See D. Pugsley, "Sham Insurance Companies: Dickens, Thackeray, and the West Middlesex Company in Devon, 1837–1841" (1993) 23 B.L.J. 43.

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the chief cause of the evil they deplore. Let them learn wisdom by experience; and then the existing facilities for swindling, so injurious to sound commerce, will be soon superseded by a more healthful state of things."[51]

Similarly, Trewman's *Exeter Flying Post* bemoaned "the gullibility of mankind".[52] Yet, both newspapers had regularly published advertisements for the Independent.[53] Indeed, *The Times* only discovered the collapse when a clerk went to collect outstanding fees and found the office deserted.[54] Sir Peter Laurie did not think newspapers could be expected to check the accuracy of advertisements,[55] but *The Satirist* was less forgiving: "it behoves all journalists, as a public duty, to draw attention to any circumstance of singularity which attends any of these establishments, and large-promising of beneficial results, yet so capable of yielding bitter and heart-breaking disappointments to long-cherished hopes."[56] This is rather curious given that this newspaper had not merely published advertisements for the Independent but had puffed its policies, ascribing their "superior advantages" to "rigid economy".[57]

Concern about the impact of this collapse on confidence in life assurance did, however, bring some recognition of the difficulties policyholders faced in determining an office's viability and, therefore, calls for regulation. At the extreme end was the suggestion that the financial stability and probity of new entrants to the market should be scrutinised, that each should provide security in the form of a deposit held by public authorities, that life offices should be obliged to provide regular statements of financial dealings, and that directors and senior officers should be made accountable.[58] Life offices accepted and even advocated reform but, unsurprisingly, wanted something less radical: Swinton Boult of Liverpool Fire and Life opposed government intervention but favoured compulsory registration, and John Beaumont of County Fire suggested mandatory information disclosure.[59]

The Independent was the most notorious of the company failures that accompanied the dip in the economy and that together led Henry Labouchère, President of the Board of Trade, to institute an inquiry in 1841 into company law "with a view to the prevention of fraud".[60] It

[51] *The Times*, 16 December 1841.
[52] *Trewman's Exeter Flying Post*, 4 February 1841.
[53] E.g. *The Times*, 3 August 1840; *Trewman's Exeter Flying Post*, 16 July 1840. See I. Asquith, "Advertising and the Press in the Late Eighteenth and Early Nineteenth Centuries" (1975) 18 Historical Journal 703.
[54] J. Taylor, "Watchdogs or Apologists? Financial Journalism and Company Fraud in Early Victorian Britain" (2012) 85 Historical Research 632, 643.
[55] Ibid.
[56] *The Satirist*, 7 June 1846. See its criticism of supporters of new offices: 17 February 1849.
[57] Ibid., 3 May 1840.
[58] Anon., *Observations, Cautionary and Recommendatory, on Life-Assurance* (London 1841), 15.
[59] Taylor, *Boardroom Scandal*, p. 76.
[60] HC Deb. vol. 57 col. 842 (2 April 1841); Taylor, *Creating Capitalism*, pp. 135–43.

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was suspended shortly after because of an election, and only revived in 1843. This time it was chaired by the new President of the Board, William Gladstone. His recent conversion to the role of free trade in the economy led him to refocus the inquiry, adopting as its basic premise that "the advantages which had arisen from [companies] more than preponderated".[61] This – rather than fraud prevention – became the key theme of the inquiry and of subsequent company law reform. The committee did note the problem of fraud and mismanagement among bubble companies, but never adequately distinguished between them or acknowledged that some practices might merely be innovative ways of conducting business, and it placed responsibility on investors, with one witness saying of life offices, "each person … is left to select out of a vast number of joint stock companies which he pleases, and that is protection enough".[62] It was thought that little could be done about fraudsters, who "are practically unamenable to any judicature, civil or criminal".[63] This reflected the limited interest of the state in the detection and prosecution of criminals. In spite of the spread public police forces after 1829, criminal justice still revolved around the idea of the active victim, and victims of fraud might hesitate to prosecute because the process was expensive, difficult and time-consuming, or because they were seen as blameworthy and, therefore, were too ashamed, or because they were more interested in recovering funds, which would not be achieved by prosecution. In any event, the committee thought fraudulent companies did little real damage since they were short-lived, which ignored the history of the Independent. Instead, the focus was on mismanaged companies where the solution was to improve disclosure requirements so that investors could scrutinise the actions of directors. The problem was that, while corporations were obliged to make disclosures under the terms of their charters, unincorporated companies had no such obligation. The solution, put forward by the committee and adopted in the Companies Act 1844, was to make incorporation a matter of simple registration and require all registered companies to make disclosures.[64] The committee recognised that this did nothing to protect existing life policyholders, but Gladstone left office and the inquiry, therefore, ceased before further work could be undertaken.

The 1844 Act seemed to signal a shift from incorporation as a privilege in the gift of the state to a private right with which the state should not interfere, so that in 1851 when someone fraudulently represented himself as authorised by the Registrar of Companies to view an insurer's books, the Registrar felt compelled to write to *The Times*: "The right to inspect the

[61] HC Deb. vol. 76 col. 278 (3 July 1844), J. Parker.
[62] *First Report of the Select Committee on Joint Stock Companies*, P.P., XI, 119 (1844), q.2133, John Duncan.
[63] Ibid., p. xi.
[64] These provisions did not affect pre-1844 companies.

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account of companies ... is one which I have never considered myself authorized to claim for myself."[65] The courts fell in with this shift by ruling that the offence of issuing transferable shares had been created not by the common law, as Lord Eldon argued, but by the Bubble Act and had been, therefore, abolished in 1825.[66]

V. The Life-Assurance Controversy, 1849–53

After the slump of the late 1830s came a surge in the economy, generated in part by railway building, but that brought another speculative bubble, which burst in the late 1840s. This time some blame was attached to the 1844 Act. A Board of Trade report on life offices, published in 1849, revealed that many were not complying with statutory disclosure obligations and information supplied by those that were complying was often defective, with expenditure unexplained, calculation errors and comparisons between offices made difficult by the lack of standardisation in accounts.[67] The data did, however, suggest there were serious problems with the way some life offices were run. Many offered fire and some marine cover alongside life assurance, which rendered their financial position somewhat obscure (although this practice was not confined to the new offices established under the 1844 Act). Many new offices had enormous amounts of unpaid share capital: Agricultural Cattle Insurance had nominal capital of £500,000, but only £28,628 was paid up. Assets often seemed low: British Empire Mutual Life, which issued policies for £140,886, had assets of £4,538 in mortgages and £668 at the bank. Resources were not always sufficient for initial expenses and those expenses seemed excessive: Medical, Legal, and General Mutual Life received premiums of £3511 but spent £5451. Finally, some offices had invested heavily in railways which suffered in the recent crash.

The year after this report another scandal broke. It centred on Augustus Collingridge, a ship's captain and author. In 1845, he established Merchant Traders' Ship Loan, and Insurance Association, leaving the following year, shortly before it failed, to found General Commission, Ship Loan, Insurance Company. Quitting in 1847, he established General Commission, Ship Loan, and Insurance Company, but again left before it failed to form Port of London and Shipowners' Loan and Assurance, which was later alleged to have met registration requirements under the 1844 Act by giving people "a shilling and a pot of beer to sign the deed". When that office got into difficulties, Collingridge expanded his interests into life assurance, with a new company, Sea, Fire, and Life

[65] *The Times*, 10 January 1851.
[66] *Harrison v Heathorn* (1843) 6 M. & G. 81; *Garrard v Hardey*, (1843) 5 M. & G. 471.
[67] *Assurance Companies. Abstract of Return to an Order of the Honourable The House of Commons*, P.P., L, 272 (1849); *The Times*, 26 October 1849.

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Assurance. It, too, failed in 1850. This time Collingridge fled, only to return for the insolvency proceedings. He seems never to have been prosecuted.[68]

This scandal added fuel to a vigorous debate on life assurance, which was already well established but which grew in intensity in the early 1850s. This pitched old (pre-1844) offices, which were not required to register under the 1844 Act, against new (post-1844) offices. The importance of life assurance was assumed: "If life assurance were properly developed and carried out, it was capable of driving destitution from the land, and of conferring even upon those in the lowest state a degree of happiness they had never experienced before."[69] But, according to supporters of the old offices, "The facility with which new assurance offices are set on foot, the tempting promises with which each new scheme is baited ... have ... converted a scheme of infinite utility and philanthropy into one of the greatest speculative projects of the present day."[70] Failures among life offices would "bring all alike into general suspicion and discredit".[71] The concerns expressed by Barrow a decade before resurfaced, and, in particular, saturation of the life market was allegedly forcing new offices to reduce premiums to levels that threatened their solvency.[72] Again, the solution proposed was regulation, but there was no agreement on what this should involve. Robert Christie of Scottish Equitable Life Assurance thought new companies were "founded and conducted, in many instances, by persons possessing neither capital, nor character", and that the lack of knowledge among policyholders made regulation necessary to ensure proper disclosure of information.[73] William Thomson of Standard Life and Colonial Life offices wanted an actuary to advise the Registrar of Companies and for the Board of Trade to be able to suspend registration: "These suggestions, it may be urged, involve to some extent a new principle of interference, but I affirm that the circumstances call for it. The vast interests at stake require it."[74] Others proposed minimum capital

[68] *Report from the Select Committee on Assurance Associations*, P.P., XXI, 965 (1852–53), 262–69; *R. v Whitmarsh*, *The Times* 18 February 1850; *In Re Sea, Fire, and Life Insurance Company, ex parte Greenwood*, ibid., 26 January 1854; *Report by the Registrar of Joint Stock Companies*, P.P., LII, 224 (1850), 1; National Archives, BT 41/623/3398. See also *The Times*, 28 November 1849, 30 November 1849, 1 December 1849.

[69] *Manchester Times*, 12 May 1852.

[70] Quoted in M.E. Ogborn, *The Story of Life Assurance in the Experience of the Equitable Life Assurance Society 1762–1962* (London 1962), 236.

[71] A.M., "The Life Assurance Controversy" (1853) 3(3) Assurance Magazine 216.

[72] Ibid., at pp. 216–19; "Life Assurance in England" (1852) 2(2) Assurance Magazine 171; S. Brown, "On the Sufficiency of the Existing Companies for the Business of Life Assurance" (1854) 4(1) Assurance Magazine 10.

[73] I. Klaus, *Forging Capitalism: Rouges, Swindlers, Frauds, and the Rise of Modern Finance* (New Haven and London 2014), 135; R. Christie, *Letter to The Right Hon. Joseph W. Henley, M.P., Regarding Life Assurance Institutions* (London 1852). Also, J.H. Hartnill, *Letter of J. Hooper Hartnill, Editor of the Post Magazine, to the Rt. Hon. E. Cardwell, M.P., President of the Board of Trade* (London 1852).

[74] W.T. Thomson, *On the Present Position of the Life Assurance Interests of Great Britain* (London 1852).

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requirements, or good faith deposits, or even closing the market to new offices.[75]

The new offices hit back. In 1853, a meeting of Deposit and General Life, which had only completed its registration the year before, was told by its chair, Lord Viscount Drumlanrig, "those that were long established did not like to see their interests trenched upon".[76] The *Sunday Times* agreed: "It is, however, but little surprising that those companies which had long enjoyed a most remunerative monopoly should have gradually become alarmed at the growing prosperity of the newly-founded institutions, or that they should have sought by illegitimate means, and by casting imputations upon their plans, to crush them in their infancy."[77]

Low premiums were evidence of efficiency and innovation, not fraud. The old offices were established before life assurance was properly understood and so were based on wrong principles, which led to high premiums.[78] New offices "come into the field with new energy and improved tactics for the employment of smaller capital".[79] Such innovation would be stifled by further regulation. Unlike the old offices, new offices already had to disclose information under the 1844 Act, which – ignoring criticism of that Act – meant, "in the companies lately founded clear and accurate statements are periodically made of the doings of the association".[80] More disclosure would disadvantage new offices because they necessarily incurred higher costs during their early years and so would look weaker than older offices.[81] But, at root, the argument was based on competition, as Bethel Strousberg remarked: "it is wholesome in principle, and for the benefit of the country, that new elements of supply should be introduced, in order to prevent that stagnation, which, has always been found the inevitable attendant of monopoly in any shape."[82]

The case for the new offices was, however, weakened because they did seem to fail more frequently and some of their advocates were suspect: *The Sunday Times* had carried an enthusiastic report of the shareholder

[75] A.M., "Life Assurance Controversy", pp. 216–19; "Life Assurance in England", p. 172; Brown, "On the Sufficiency of the Existing Companies", p. 14. Chartered companies were typically obliged by the foundation statutes to maintain "a stock of ready money" to meet claims, but there were no enforcement mechanisms: Bubble Act 1720, s. 3, and Globe Act 1799 (39 Geo. III, c. 83 (Public Local & Personal)), s. 5.

[76] *The Sunday Times*, 10 April 1853.

[77] Ibid.

[78] Ibid., 5 December 1852: B.H. Strousberg, *Conspiracy Detected, in a Letter to the Right Hon. J.W. Henley, Esq. M.P.* (London 1852).

[79] *The Sunday Times*, 17 October 1852.

[80] Ibid., 5 December 1852. This newspaper acknowledged the difficulty of discovering information about the offices: 28 December 1851.

[81] Ibid., 5 December 1852.

[82] Strousberg, *Conspiracy Detected*, p. 24.

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meeting held by Sea, Fire shortly before it collapsed,[83] and Strousberg had been imprisoned for embezzlement.[84]

There remained more fundamental objections to regulation. The *Sunday Times* condemned "an ardent but unEnglish desire for government control in the affairs of private individuals",[85] and even some critics of the new offices shared this view, such as John Young Caw, who wrote: "No legislative enactment can interfere in this matter with success. Any such enactment would be an opposition to free trade."[86] Others simply doubted the efficacy of regulation: "it is impossible to legislate effectually against some men; they creep through Acts of Parliament as cats walk over a dresser at night, without touching an article. They are controlled by one power only, and that is public opinion."[87]

VI. WILSON COMMITTEE, 1853

This debate over life assurance roused James Wilson, M.P., to propose a parliamentary inquiry with a view to regulating the market. His involvement was significant, since he was Financial Secretary to the Treasury and an enthusiastic supporter of free trade who opposed other proposals for regulating business and had established *The Economist: The Political, Commercial, Agricultural and Free-Trade Journal*. He saw life assurance as a special case:

> he looked upon these institutions much more as a sacred trust for the future, than as the means of mercantile operations for the present … because present payment was to secure future benefit, and because individuals, actuated by the best feelings of human nature, were induced to make great sacrifices and to exercise great self-denial, in order to provide for those who followed them. He thought this was a reason, therefore, why these companies should be taken out of the strict category of commercial institutions; and, if the House was justified in interfering by Act of Parliament to regulate joint-stock companies in general [namely the 1844 Act], it was doubly justified in interfering with respect to institutions where the operations were so great and the effects so distant.[88]

[83] *The Sunday Times*, 10 March 1850.
[84] Strousberg was involved in various doubtful life offices. In relation to one, the magistrate, Sir Peter Laurie, warned: "There were a great many of those companies that required looking after" (*The Times*, 28 March 1854, 10 May 1854). Strousberg later became a railway entrepreneur, whose bankruptcy almost crashed Russian and German money markets: R. Hunt, *The Amazing Dr Strousberg: The European Railway King* (Tadcaster 2010). See also, the defence of Sea, Fire by its actuary, A. Burt, *Life Assurance. Validity and Non-Validity of Life Polices* (London [1849]). Burt became manager of Householders' Life Assurance, and National Credit and Exchange: *The Times*, 9 April 1852, 31 October 1861.
[85] *The Sunday Times*, 17 October 1852.
[86] *Manchester Times*, 18 December 1852.
[87] *The Era*, 1 October 1848
[88] HC Deb. vol. 124 cols. 1323–24 (8 March 1853).

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The purchase of life policies was to be encouraged because they supported dependent families and reduced the burden on poor relief funds. He was also aware that, unlike banks, which needed high levels of liquidity, life offices could invest in long-term assets, including infrastructure, mortgages for the improvement of landed estates and government securities. Estimating such investments at £150 million, Wilson said, "those funds which were accumulated for the benefit of private individuals became in the meantime useful instruments of public utility".[89] He remarked that, unlike bank depositors and non-life policyholders, life policyholders often could not switch when an office got into difficulty and had either to continue paying premiums in the hope of recovery or abandon their policies.[90] But he characterised the key problem in familiar terms: "hundreds of associations were springing into existence one day, and falling like an autumn leaf the next".[91] Wilson's proposal for an inquiry was unsuccessfully opposed by those who argued it unnecessary because the high failure rate of life offices demonstrated the market's effectiveness and that any intervention would undermine the principle that, "every man must look after his own affairs, for they could not be safely left to any one else".[92] In particular, the new offices believed any inquiry would be prejudiced in favour of the old offices.[93]

The committee produced its 400-page report in only five months. The tone was set by the choice of witnesses, who were largely critical of new offices. William Pateman of *Post Magazine*, a leading insurance journal that campaigned against what he regarded as the generally fraudulent new offices, told the committee, "the Act of 1844 gives them an appearance of greater respectability and consequently a greater chance of imposing on the public".[94] Witnesses from the old offices mostly supported him. William Thomson thought life offices should be regulated because "the public do not know the risk they are running".[95] He suggested a good faith deposit from new offices, standard form balance sheets with a detailed version for the Board of Trade and a simplified one for publication, and an actuary to advise the Board on the accounts of each office. There were, however, dissenting voices among the old offices. James Downes of Economic Assurance thought regulation unnecessary and, instead, emphasised the role of policyholders and the market: "people are very acute when their own pecuniary interests are involved in the matter, and there are very

[89] Ibid., at col. 1322. Sotherton estimated funds at £350 million: ibid., at col. 1332.
[90] This was not always the case since life policies might be annually renewable.
[91] Ibid., at col. 1321.
[92] Ibid., at col. 1331, J. Hume.
[93] *Sunday Times*, 10 April 1853, 16 October 1853, 18 March 1855.
[94] *Select Committee on Assurance Associations*, at p. 270.
[95] Ibid., at p. 100.

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few societies where you will not find a sufficient amount of intelligence to detect anything that is egregiously wrong."[96]

The committee's recommendations were not directed at the old offices. It was assumed they were not fraudulent and that policyholders and shareholders could guard against such abuses as might arise. The targets were offices "brought into existence with no reasonable prospect of, or guarantee for success, and not unfrequently without any *bona fide* intention of transacting business".[97]

> [The 1844 Act: does] too much, inasmuch as any legislative enactments professing to protect the public in such matters, have a certain tendency to weaken and impair that individual vigilance which would be more surely exercised, if no such attempt was made; and too little, inasmuch as the securities which the law provides are ill calculated to effect the object at which they aim.[98]

Prospectuses "often vary materially from the objects for which they have been provisionally registered; and there appears to be no means at present to prevent deception and misrepresentation being practised on the public in this way".[99] The requirement in the 1844 Act that shareholders sign the deed of settlement was abused by false signatures, rules on balance sheets were inadequate and the powers of the Registrar of Joint Stock companies were too limited. The committee recommended separate legislation on life offices from that applicable to other companies. New offices should be obliged to deposit £10,000 in public funds, and more detail should be provided in annual returns, with "a complete investigation" of an office's finances at least every five years to enable the public "to come to a correct judgment as to the condition of an office".[100]

The *Sunday Times*, which championed the new offices, attacked much of the report, believing Wilson had largely swallowed the evidence of the old offices, and that he had only been restrained from completely closing access to the market by his free-trade principles.[101] Yet, the appointment of the committee (together with separate legislation that allowed the deduction of life premiums for income tax and exempted benefits from succession duty) seemed to demonstrate the Government's commitment to the sector and to reform.[102] However, the report was not implemented. Aside from uncertainty over regulating the market, Wilson later admitted: "It was a most difficult subject to determine how to establish restrictions which, while apparently offering security to the public, would not be easily

[96] Ibid., at p. 112.
[97] Ibid., at p. iv.
[98] Ibid.
[99] Ibid., at p. iii.
[100] Ibid., at p. vii.
[101] *Sunday Times*, 18 March 1855.
[102] Income Tax Acts 1853 (16 & 17 Vict. c. 34, c. 91); Succession Duty Act 1853 (16 & 17 Vict. c. 51); *Sunday Times*, 16 October 1853. There was also relief under the Stamp Act 1853.

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evaded."[103] In any event, the Government had become mired in recriminations over the conduct of the Crimean War, which eventually brought its downfall in February 1855.

Although Wilson remained in office, the new administration prioritised reform of general company law. The Companies Acts 1855–56 made limited liability more widely available but excluded insurance companies because of the Wilson report's recommendation that they should be treated separately. Robert Lowe, Vice-President of the Board of Trade, regretted this, although he doubtless expected progress on new legislation.[104] Indeed, the exclusion made little sense, since, as mentioned earlier, insurance companies were already limiting liability of shareholders to policyholders through policy terms.[105] Wilson did bring forward Bills in 1857–58, with support from Lowe and Benjamin Disraeli, Chancellor of the Exchequer. These would have obliged life offices to register and provide accounts, permitted the Board to appoint inspectors to conduct inquiries and established a special insolvency regime.[106] But neither passed, and it was not until the Companies Act 1862 that limited liability was extended to insurance offices.[107] This did not placate supporters of the Wilson reforms, which by 1859 included The *Sunday Times*. Abandoning its earlier opposition to regulation, it attacked the failure to implement the Wilson report: "assurance companies should be placed upon such a footing that swindling would be more difficult to concoct, and that … policy-holders would be less easily plundered."[108]

VII. The Failures of the Albert and the European, 1869–70

The battle between pre- and post-1844 offices continued into the 1860s, fuelled by the Wilson report and by the fact that, while 44 of 153 life offices established before 1844 had been acquired by other offices or ceased, among offices formed since the act the figure rose to 250 out of 260.[109] Nevertheless, the new offices fought back against critics. They continued to offer premiums at a rate that undercut rivals and accused old offices of either unfairly resisting claims on obscure points of law or making low offers in the knowledge that most claimants would be unwilling to litigate: "the only fair pleas which an Insurance Company can oppose to a claim for the sum against which they have been paid their premiums is

[103] HC Deb. vol. 140 col. 1951 (6 March 1856).
[104] Ibid., at cols. 132–33 (1 February 1856).
[105] Ibid., at col. 339 (29 June 1855).
[106] Legislation in 1857 (20 & 21 Vict. c. 80) revived the 1844 Act (which had been repealed by the Companies Act 1856) for insurance companies: C. Wordsworth, *The New Joint Stock Company Law* (London 1858), 98.
[107] There were other insurance provisions in this act: e.g. s.44, Sch. D.
[108] *Sunday Times*, 8 May 1859.
[109] O'Brien and Fenn, "Mutual Life Insurers", p. 327.

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arson in the case of fire, and suicide in the case of death."[110] Many new offices promised to pay all claims: the London Indisputable Life Policy Company (founded 1847) declared it was "prohibited by their Deed of Constitution from disputing a Policy upon any ground whatsoever", although it soon relinquished this stance to defend a claim by a policyholder.[111]

The old offices were, however, to suffer a damaging blow when Albert Life failed in 1869. Formed in 1838 as Freemasons' & General Life Assurance, a name change in 1850 signalled a period of rapid growth that made it one of the largest life offices, with branches across the UK and in India, Ceylon, China and Japan. As late as May 1869, in an advertisement for new agents the office boasted of its good health, with fully paid capital of £500,000, annual premium revenue above £500,000, and new policies to the value of £640,000 in the previous year. The following month it announced a proposal to extend into fire and marine insurance involving the issue of £1 million in shares.[112] Yet, rather than signs of strength, these were the office's last blustering attempts to rescue what was beyond saving. Indeed, signs of the difficulties had been evident for some time: it had ceased paying bonuses to policyholders several years before, and new business had declined by a third over the previous five years.[113] The failure of the Albert was made worse because an even bigger office, European Life Assurance Society was also tottering towards insolvency, although it did not finally collapse until 1872. The European had written twice as many new life policies in 1868 as the Albert and more in terms of total sum assured than any other office.[114]

Both offices had expanded principally by acquiring rivals, with the Albert, "a noisy bustling company", swallowing 22 and the European 33.[115] This practice was defended because the creation of large companies seemed to provide protection to policyholders at a time when the market had become overcrowded and many offices were struggling.[116] The

[110] *The Times*, 31 August 1863 (see *Wolley v Pole*, *The Times*, 21 August 1863, 26 August 1863, 31 August 1863). Also *The Times*, 10 March 1846; Burt, *Life Assurance*, p. 4.

[111] *Manchester Times*, 28 July 1852; A. Robertson, *Defects in the Practice of Life Assurance, and Suggestions for Their Remedy* (London 1848); note in (1850) 14 The Jurist 324; *Law v The London Indisputable Life Policy Co.* (1855) 1 K. & J. 223. The office lost the action and was later acquired by Eagle. Also *The Examiner*, 11 January 1845 (London, Edinburgh, and Dublin Life Assurance) and for an attempt to legislate to this effect, see C. Walford, "History of Life Assurance in the United Kingdom" (1886–87) 26 Journal of the Institute of Actuaries and Assurance Magazine 436, 440.

[112] *John Bull*, 30 April 1869; *The Times*, 12 May 1869; *The Sunday Times*, 15 August 1869.

[113] T.L. Alborn, "The First Fund Managers: Life Insurance Bonuses in Victorian Britain" (2002) 45 Victorian Studies 67, 82–83; *Insurance Register 1869*, pp. 25, 28.

[114] *Insurance Register 1869*, p. 28. Although the European was founded in 1819, a new office emerged after amalgamation with The People's Provident in 1858 and rapid expansion followed: *Pall Mall Gazette*, 25 August 1869; *Liverpool Mercury*, 19 November 1869; T.L. Alborn, *Regulated Lives: Life Insurance and British Society, 1800–1914* (Toronto 2009), 60–63; *The Times*, 20 January 1872.

[115] *The Sunday Times*, 29 August 1869; *Insurance Register* (1869), pp. 11, 13. For higher estimates, see HC Deb. vol. 199 col. 724 (23 February 1870).

[116] *Sunday Times*, 10 April 1853.

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problem was that the acquisitions were driven less by the prospect of acquiring good businesses and more by the practice of paying senior employees commission based on premium revenue – G.G. Kirby, managing director of the Albert, received £15,000 p.a.[117] These senior employees also controlled company funds and so could use them to persuade directors and managers in targeted offices. When Medical, Invalid, and General Life Assurance was acquired by the Albert in 1860, more than £43,000 of the purchase price of £77,735 went to 11 people, including £15,750 to the agent who arranged the deal and £15,000 to the company secretary. According to one estimate the Albert spent £274,152 on acquisitions.[118]

Worryingly for other policyholders, this strategy was common throughout the sector: Eagle (formed in 1807) acquired 20 offices, Standard (1825) nine, and Liverpool and London, and Globe (1836) eight. Prudential Assurance (1848) rushed to reassure investors that its growth came only from increased business, conveniently forgetting its own acquisition of four offices.[119] Many of the offices that were acquired had themselves previously acquired offices: before its takeover by the European, British Nation Life acquired nine offices, and those offices (or the offices they had acquired) had previously acquired another 13. By 1869, 175 life offices had been absorbed into 32 offices, with more than half going to pre-1844 offices.[120] Policyholders may have been convinced that this would provide them greater security, but in any event they were powerless to object. Some experienced repeated transfers. A policyholder with Tontine would have been transferred to Engineers and Masonic in 1849, English and Irish Church and University Assurance in 1858, British Nation in 1861, and, finally, European in 1865.

There had been criticism of this practice before the Albert fell.[121] When Sir Thomas Phillips, chair of Medical, Invalid, and General Life, declared in 1860 that amalgamation with the Albert would have "the effect of diminishing expenses, increasing the business, and reducing the necessity of competition",[122] the *Sunday Times* scoffed: "we question whether policyholders will feel secure when such rapid changes are passing under their eyes, and their interests transferred to new hands, and frequently, it is to be apprehended, placed in jeopardy."[123]

[117] *The Times*, 31 August 1869.
[118] S. Smiles, "Life Assurance Companies", Quarterly Review 18, 27, 29 (January 1870); *The Times*, 14 August 1873.
[119] *Morning Post*, 3 April 1869; *Insurance Register* (1869), p.15.
[120] *Insurance Register* (1869); *The Times*, 18 September 1879. Some offices were traded on: e.g. Beacon was acquired by Times Fire and then sold to Albert Life: *Sunday Times*, 28 December 1856.
[121] *Liverpool Mercury*, 16 April 1858; *The Times*, 5 October 1859, 11 October 1859.
[122] *The Sunday Times*, 7 October 1860.
[123] Ibid., 7 October 1860. But, for an advertisement celebrating this amalgamation, see ibid., 3 February 1861.

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In 1864, Gladstone, now Chancellor of the Exchequer, denounced one of the European's takeovers as "no better than wholesale robbery",[124] although he offered no solution and was attacked by a member of his own party for "improper statements involving very grave imputations upon existing institutions".[125] The edition of the *Insurance Register* published just before the failure of the Albert warned that frequent transfer of policies created "a feeling of insecurity in regard to Life Offices generally".[126]

These fears seemed to be confirmed by the Albert. Its collapse threatened the idea, carefully built up in the debates of the previous 20 years, that old, large life offices provided greater security. It was also harder to blame policyholders for lack of prudence, both because the simple argument that buying from an old office provided security had been undermined, and because, even if they did exercise care in their choice of policy, it might be transferred without consent, or, if consent were required, this might be easily engineered because the office controlled information.[127]

VIII. The Life Assurance Companies Act 1870

A. Insolvency

The most immediate problem was to unravel the Albert and the European. Insolvency law was unsuited to life offices. Under the Companies Act 1862, s. 79, a company could be wound up if unable to meet existing debts or it was "just and equitable", but neither of these tests considered whether a life office could meet claims under its policies in the future. In a decision on the European, Sir William James, V.-C., said:

> I take it that the Court has nothing whatever to do with any question of future liabilities, that it has nothing whatever to do with the question of the probability whether any business which the company may carry on to-morrow or hereafter will be profitable or unprofitable. That is a matter for those who may choose to be the customers of the company and for the shareholders to consider.[128]

This allowed the European to stagger on, and ignored the position of policyholders, who had no real choice, except to abandon their policies. There were other problems with the Albert and the European. It emerged that

[124] HC Deb. vol. 173 col. 1570 (7 March 1864).

[125] HC Deb. vol. 174 col. 789 (11 April 1864), Ayrton. Gladstone introduced the Government Annuities Act 1865 to compete with industrial assurance companies and friendly societies, but it failed, mainly because it did not employ door-to-door agents, which the companies used to persuade people to take out policies and maintain premium payments.

[126] *Insurance Register* (1869), p. 20.

[127] The deed of settlement might require consent: *Kearns v Leaf* (1862) 1 H. & M. 681. Also (1872) 16 Solic. J. & Rep. 342

[128] *In re European Life Assurance Society (No. 1)* (1869) L.R. 9 Eq. 122, 128. Also Francis, *Annals*, p. 258. C.J. Bunyon, *On Liquidation of an Insolvent Life Office* (London 1870).

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promises to ring-fence funds of some of the offices acquired had not been kept.[129] There was also the question of whether someone who bought a policy from an office that was later taken over could sue the original office and its shareholders, or only the acquiring office. The Court of Appeal decided the original company remained liable, unless it had been wound up, and, since this additional step had rarely been taken, that ruling led to a torrent of winding-up petitions.[130]

It was clear that unravelling the Albert and the European through the courts would be difficult and might dissipate such assets as remained. This led to the adoption of a mechanism used after the failure of London, Chatham and Dover Railway in 1866. Special legislation was passed appointing arbitrators with unlimited discretion to resolve claims. This did not remove all difficulties, not least because different arbitrators were appointed for the Albert and the European and they took different approaches, in particular, over whether policyholders retained rights against the office that issued the original policy.[131]

The need for changes to insolvency law was obvious, both to take account of the different issues in life assurance and to avoid the need for ad hoc solutions which created uncertainty about how any future insolvency might be resolved.[132] The Life Assurance Companies Act 1870 amended the test for insolvency to include contingent or prospective liability under policies or annuities (s. 21), and another statute in 1872 provided that transferred policyholders only lost rights against the original company if they signified abandonment in writing.[133]

B. Regulation

The bulk of the 1870 Act was concerned with the more controversial subject of the regulation of life offices. The failures of the Albert and the European were quite different from the Independent West Middlesex and Sea, Fire and Life affairs, since they involved more substantial companies and business methods that were regarded as normal market practice: "It is not surprising that the collapse of the Albert Company should produce a panic among life policy-holders. People have not been in the habit of supposing that to insure their lives was only a particular kind of speculation."[134]

[129] *The Times*, 21 August 1869.
[130] *In re Family Endowment Society* (1869) 5 Ch. App. 118; HC Deb. vol. 199 col. 722 (23 February 1870).
[131] These arbitrations did not entirely stop litigation: *The Times*, 18 September 1879; M. Lobban, "Cutting the Gordian Knot? Arbitration and Company Insolvency in the 1870s" in M. Dyson and D. Ibbetson (eds.), *Law and Legal Process: Substantive Law and Procedure in English Legal History* (Cambridge 2013).
[132] *The Times*, 14 August 1873.
[133] 35 & 36 Vict. c. 41, s. 7.
[134] *The Times*, 28 August 1869.

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The idea of state supervision was rejected because it would require periodic returns and there was no way of ensuring their accuracy, unless the sector were taken over by government, and there seemed no more justification for state ownership of this industry than any other.[135] Rather less drastic reforms were proposed in a Bill introduced in 1869 by Stephen Cave, M. P., who, although in opposition, had been Vice-President of the Board of Trade. This first Bill merely tested the water, and the following year he introduced a new version, which was four times as long and had the benefit of advice from actuaries, the principal life offices and the Board of Trade.[136] Cave declared the life office in *Martin Chuzzlewit* to be "by no means an overdrawn picture", and pointed out the danger that, "nothing like the number of people avail themselves of this mode of providing for the future than would otherwise do so".[137] He noted the higher take-up of life assurance in countries with regulation, such as the US, and sought to increase the sense of urgency by observing that 59 life offices were currently being wound up, although he failed to acknowledge that this was a tidying-up operation, since most had ceased trading after a takeover.

While recognising the impotence of policyholders, Cave opposed government regulation or controls on premiums, believing, "such matters are best left to competition".[138] Instead, "perfect freedom and perfect publicity ought to be the motto of a legislator in such matters".[139] His Act resembled earlier proposals, including those made by the Wilson report, in its combination of restrictions on access to the market for new life offices and financial disclosure by all offices. A new life company did not need permission but could not be registered by the Registrar of Joint-Stock Companies unless £20,000 was deposited in the Court of Chancery as evidence of good faith, recoverable when the life premium fund exceeded £40,000.[140] On insolvency, policyholders would not have priority over this deposit because that would unfairly privilege them.[141] Deposits were not required from pre-1870 life offices. An unintended effect of this was to restrict the formation of mutual life offices. They were owned by policyholders, and, therefore, not regarded as a problem, but their structure made it difficult to raise the deposit, which a joint-stock office might obtain from shareholders or by

[135] Ibid., 19 August 1869.
[136] HC Deb. vol. 198 col. 324 (20 July 1869), vol. 199 cols. 728–29 (23 February 1870). Illness allegedly prevented Cave carrying the first Bill forward: *The Times*, 2 September 1869. Since this was not a government measure, the recently formed Office of the Parliamentary Counsel was not involved in the drafting: National Archives, BT AM 3/13.
[137] HC Deb. vol. 199 col. 726 (23 February 1870).
[138] Ibid., at col. 721 (23 February 1870)
[139] Ibid., at col. 727. See also *Life Assurance Companies: Their Financial Condition Discussed, with Reference to Impending Legislation* (London 1869), 12.
[140] Life Assurance Companies Act 1870, s. 3. Also Life Assurance Companies Act 1872, s. 1. Large foreign offices, which already had premiums above £40,000, were required to pay the deposit and immediately reclaim it.
[141] HC Deb. vol. 202 col. 1171 (29 June 1870).

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a loan secured on future profits. Nevertheless, an exemption was rejected because of the overriding concern about the stability of life offices and the view, based on the examples of the Albert and the European, that reconstruction was impossible.[142]

Policyholders acquired some protections and extra-contractual rights. The act obliged offices to keep the life fund separate, and this fund was not liable for any other policies written by the office.[143] Most importantly, judicial consent was required for the transfer of policies and could only be granted if the court were "satisfied that no sufficient objection … has been established" and if not opposed by policyholders with 10% of the value of outstanding policies.[144] Offices had to provide information annually to the Board of Trade for publication and to undergo an actuarial valuation every five years: "the whole scope and object of these sections is to give to the policy holders and the public the means of judging from time to time whether a Life Assurance Company is in a position to meet its engagements."[145]

IX. The 1870 Act: "A Happy Mean"?

Thomas Sprague, the leading actuary of his day and later uniquely president of both the Institute of Actuaries in London (founded in 1847), and the Faculty of Actuaries in Edinburgh (1856), expressed what seems to have been the general view of the industry that the act struck "a happy mean between the old system of leaving the public to make unaided their own enquiries … and the American system of State supervision".[146] It was expected to bring stability because "the light now let in upon life assurance by the reports of the Board of Trade will, in due time … [show] clearly to the public that their true interest lies in solid security rather than in showy income".[147] The *Journal of the Institute of Actuaries* thought that, in spite of complaints about the detail required by disclosure rules, "Companies will cheerfully comply with the Act satisfied that whatever increases public confidence must result advantageously for the Companies themselves",[148]

142 National Archives, BT 15/24 (F3170/1885).
143 Also Life Assurance Companies Act 1872, s. 2.
144 For an alternative but apparently unused route, see Joint-Stock Companies Arrangement Act 1870, s. 2; *Sovereign Life v Dodd* [1892] Q.B. 405; [1892] 2 Q.B. 573; E.J. MacGillivray, *Insurance Law Relating to All Risks Other than Marine* (London 1912), ch. 1.
145 Opinion of the Attorney General (1874), National Archives, BT 15/10 (F12976/1874).
146 Alborn, *Regulated Lives*, p. 65. Sprague wrote a key study on mortality rates, *Select Life Tables Deduced from the Institute of Actuaries' Experience* (London 1869) (known as the "Twenty Offices Table"), and another on life office accounts, *A Treatis on Life Insurance Accounts* [*sic*] (London 1874) (he also promoted an alternative spelling method).
147 Alborn, "First Fund Managers", p. 85.
148 "The Life Assurance Companies Act, 1870" (1870) 16(1) Journal of the Institute of Actuaries and Assurance Magazine 1.

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and, indeed, even before it was passed, offices rushed to advertise their compliance.[149]

Criticism did emerge from outside the industry at the failure to address the behaviour of directors, and offices were later accused of failing to comply with the provisions on information disclosure.[150] A report from the Board of Trade in 1874 observed that the lack of a precise statutory methodology for the calculation of future liabilities meant the act had not stopped offices producing flattering balance sheets and paying unsustainable bonuses to attract policyholders.[151] The problem of fraud also remained. This was deliberately not addressed by the act, since Cave took the Wilson view: "there is a considerable difference between deception produced by fraud, and that resulting from the mystification which seems to be a virtue in the eyes of some framers of accounts. The first cannot be prevented, though it may be punished; the second will, I trust, be rendered more difficult by this measure."[152]

The disclosures required by the act, the involvement of actuaries and accountants, and the caution engendered by the Albert and the European made fraud more difficult. So, while the problem did not vanish, characters like Edward Yelland began to seem something of a throwback. He was fined in 1871 under the Companies Act for not registering Minerva Banking Assurance, which had been established just before the 1870 Act and had failed. He was also involved in British Guardian, another office formed shortly before the act that failed soon after. Like Collingridge, neither these setbacks nor subsequent bankruptcy seem to have prevented his involvement in other life offices or led him to conceal his identity.[153] Prosecutions remained rare. When directors of Albion Life were imprisoned in 1877 over the fraudulent sale of life policies as security for loans that never materialised,[154] *The Times* applauded because this behaviour was "calculated to shake the confidence of large classes of people in the insurance system, without which English thrift would often find itself at a loss".[155] Such cases attracted attention because they were unusual. Some

[149] *The Times*, 2 April 1869 (British Imperial), 14 June 1869 (Northern Assurance).

[150] *The Times*, 20 January 1872, 14 March 1872; HC Deb. vol. 217 col. 657 (21 July 1873).

[151] *Life Assurance Companies. Report by Mr. Malcolm and Mr. Hamilton*, *Assistant Secretaries to the Board of Trade*, P.P., LV, 275 (1874), 8.

[152] HC Deb. vol. 199 col. 729 (23 February 1870). Fraudulent Trustees Act 1857, passed after bank failures, criminalised breaches of trust by directors and managers, but prosecutions were rare.

[153] *Pall Mall Gazette*, 2 November 1871; *Morning Post*, 3 November 1871, 27 November 1871, 8 March 1872, 25 August 1875; *Lloyd's Weekly*, 14 May 1876. For someone launching a life office under a changed name to conceal a conviction, see *Report from the Select Committee on Assurance Associations*, p. 270.

[154] Unusually, the Treasury solicitor conducted the prosecution: *The Times*, March–June 1878; *Old Bailey Proceedings Online* (www.oldbaileyonline.org), trial of Wood (May 1878); Taylor, *Boardroom Scandal*, pp. 170–73, 175–76. For a similar fraud at Manchester Provident, see *Lloyd's Weekly*, 1 August 1875. For the imprisonment of William White for insurance fraud, see *Manchester Guardian*, 5 December 1868, 23 June 1870.

[155] *The Times*, 10 June 1878.

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policyholders did use the threat of prosecution to extract a settlement, although this prompted differing judicial reactions. Yelland had escaped prosecution in 1868 over a life office failure by settling with the aggrieved parties to the evident dissatisfaction of the magistrate who was obliged to dismiss the case; but in the following year another magistrate congratulated prosecutors for withdrawing the case against directors of Hercules Insurance in order to pursue a civil action.[156]

The 1870 Act represented a triumph for the old offices. They had so effectively shaped the debate over the previous 20 years around the dangers posed by new offices that, even though the legislation resulted from the failure of a major life office and an acquisition strategy many old offices employed, at its core the act aimed to restrict access to the market. Like the Lloyd's members who had opposed opening the marine market fifty years before, the old life offices sought to curb competition by arguing that the new offices damaged the confidence that was so vital to the industry. Since the removal of post-1844 offices was never a possibility, they settled for a proposal to restrict access in the future.

Judged by statistics, the act was a success. Five life offices failed in 1870–76, but four of these had been rushed into existence before the new Act. After the Briton collapsed in 1886, there were no other life office failures for almost 90 years.[157] The market narrowed, as the act discouraged the formation of new offices and mergers and acquisitions revived, but the number of new policies issued each year continued to rise, from 70,000 in 1868 to 194,000 in 1899, with the total value of policies almost doubling to £640 million.[158]

Concerns over the viability of some offices remained, but this was generally seen as a matter for policyholders and shareholders: the act was only intended "to give parties every facility for investigation, but that investigation they should conduct for themselves".[159] The problem was that, even leaving aside the issues over the information provided, the complexity of life offices and life policies made it unrealistic to expect ordinary policyholders to undertake such inquiries. It was, therefore, important for the industry that policyholders had confidence in the conduct of the offices. This might come from better standards within the industry. The formation of regional insurance institutes and the publication of more than 30 periodicals specialising in insurance news gave the industry more coherence, professionalism and an element of peer-regulation.[160] There was also a greater role for actuaries. They had long been regarded as a means of establishing

[156] *Morning Post*, 1 August 1868, 19 August 1868, 25 August 1868; *The Times*, 15 May 1869.
[157] Industrial assurance offices did fail in the interim.
[158] Six new offices were established in the first 13 years of the act: Walford, "History of Life Assurance", p. 460. Also *Insurance Register* (1869), *The Insurance Register* (London 1899).
[159] HC Deb. vol, 202 col. 741 (29 June 1870), G.B. Gregory.
[160] *Insurance Register* (London 1893).

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the credibility of any life office, but their authority had grown after the middle of the century through the professionalism and scientification brought by the formation of learned societies and the publication of authoritative texts and specialist journals. The events of 1869 strengthened their role, as life offices sought to reassure policyholders through the endorsement of independent professionals.[161]

Finally, there was the question of the Board of Trade's role. During the Bill's passage through Parliament, Robert Lowe, now Chancellor of the Exchequer, had expressed reservations about government's role:

> The difficulty really amounts to this – the returns of the affairs of companies are wanted; but if you trust to the companies to make their own returns, you may be quite sure they will strain every nerve to keep back all that they wish you not to know. If, on the other hand, you trust to a Government audit or inspection, then you mix the Government up in the concern; and, although a man may be given only a limited function, yet the inevitable result will be that he will give the company a spurious, false, and unfair credit, as having the weight, and probably the guarantee of the Government behind. You cannot escape from this dilemma . . . I do not think you can call upon the Government to make this audit . . . I do not think it is the function of the Government, and I do not believe the Government would do it well. They would go to sleep over it; they would give to companies undue and unfair credit; and thus the Government would be parties to leading persons to trust many unworthy concerns.[162]

He suggested that companies might be required to publish information in newspapers, but did not force an amendment. However, he remained concerned that the Bill gave no certainty to a policyholder that the benefit promised in the policy would be paid. The only solution he had for this was that government might have to enter the marketplace; but this suggestion seems hastily made and undeveloped, and, in the long term, aside from objections to government engaging in business, the apparent success of the act, measured by the number of failed offices, made it unnecessary to pursue such alternatives.[163]

Since the act did not give the Board direct powers to intervene in the sector, its role remained uncertain. In 1874, Mr. Clarke, a shareholder in Briton Life, wrote to the Board complaining of the company's failure to produce the returns stipulated by the act, and insisting the Board, "take some steps to compel the Company to comply with the law".[164] The letter caused annoyance: "The less correspondence we have with Mr Clarke the better", noted an exasperated official.[165] The formal response was less blunt, stating that,

[161] C. Turnbull, *A History of British Actuarial Thought* (London 2007).
[162] HC Deb. vol. 199 col. 752 (23 February 1870).
[163] He may also have considered the failure of Gladstone's scheme for low benefit, low premium policies to rival those offered by friendly societies and industrial assurance companies: Government Annuities Act 1865.
[164] Letter from W. Clarke, 14 September 1874, National Archive, BT 15/10 (F10563/74).

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while the Board would continue to request the returns, the issue was something Clarke should take up with the company, and he was advised to seek legal opinion as to whether the act entitled him to demand this information.[166] This all highlighted a difficulty with the act. The information was for the benefit of investors (shareholders and more particularly existing and future policyholders), but did the Board have a role in insisting on its production? Under s.24, the Board had to lay before Parliament the information that the companies were required to produce. This would suggest it had a duty to compel the production of that information, but the act gave no enforcement powers to the Board and no remedy to investors like Mr. Clarke. Yet, the Board was not as disinterested as its reply over Briton Life suggested, privately seeking advice from the Attorney General, who, noting that the Board had no statutory power to insist, responded in terms that recalled Lowe's reservations:

> Under these circumstances … the Board of Trade are placed in considerable difficulty. If they publish the accounts as received without observation, they are publishing under the stamp of official authority accounts which they cannot help knowing are so framed as to mislead the public and the policy-holder. If they refuse to publish them altogether it may be alleged, especially having regard to sect. 3 of the Act of 1872,[167] that they are disobeying the Act. If they publish them with observations they may possibly (not to mention other difficulties) expose themselves to actions by the Companies. A fourth course would be to lay before Parliament the statements as received from the Company and to print with them the correspondence between the Board of Trade and the Company showing the criticisms and requirements of the Board of Trade on the one hand and the replies of the Company on the other.[168]

This last was the solution adopted by the Board,[169] and it conferred substantial influence, since life offices depended on reputation to give people the confidence to buy policies, and that reputation might be affected by any adverse publicity.

All of this raised some fundamental issues that continue to challenge financial regulation. The act was an acknowledgment that the life market was sufficiently important to justify intervention, that its problems could not be left to the market, and that these problems could be prevented, resolved or mitigated by state intervention. Furthermore, this implied that the state bore some responsibility if problems arose, and, if the state had responsibility, less might be expected from policyholders, or even from

[165] Ibid.
[166] Ibid.
[167] This (like s. 3 of the 1870 Act) required the Board lay before Parliament statements received even if, "the Board are of opinion that that it is not such a statement or abstract as is required to be prepared by that Act".
[168] Opinion of the Attorney General (1874), National Archives, BT 15/10 (F12976/1874).
[169] E.g. *Statements and Abstracts Deposited with the Board of Trade, under the Life Assurance Companies Act, 1870*, P.P., LV.15 (1874), 349–53.

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insurers, whose integrity and security might be assumed from mere compliance with the regulations. The 1870 Act had intended to place responsibility on the policyholders by requiring insurers to supply information, but the complex nature of life assurance made this unrealistic, and the intervention by statute created an expectation among investors like Mr. Clarke that the state would define and, therefore, monitor this information. All of this dragged the Board of Trade into a more active role and led to the extension of the 1870 model to other areas of insurance.[170]

X. Conclusion

The temptation in studying the history of law is to focus on reform and ignore opposition and defeated proposals. Yet, even where there is powerful support and a sense of urgency generated by crises, such as the collapse of Albert Life, change rarely involves the simple resolution of a problem. Reform depends on the existence of a solution, and the range of solutions is restricted by what it is possible and acceptable to think and do about the problem, which, in turn, may constrain the way in which the problem is identified. These limitations may be conceptual (what can be conceived as a solution, which may be constrained by those ways of looking at the world that gave rise to the problem in the first place), ideological (solutions that are acceptable to the dominant ideology), technological, physical and financial (solutions for which knowledge, skills and funding exist), and temporal (such as the availability of sufficient parliamentary time needed to enact new law). There is likely to be disagreement on all of these issues, and perceptions and priorities may alter over time, as, for example, government changes or new crises emerge.

Developments in insurance law – and, more generally, in company law, which was influenced by problems with insurance companies – illustrate this argument. In the nineteenth century, there was much support for a free market and opposition to state intervention in business, but even Adam Smith doubted the benefits of dismantling restrictions on joint-stock companies because of a fear that the market would be distorted if they were allowed to proliferate. The contrast between the events that bookend this paper – the opening of the marine-insurance market in 1824 and the restrictions on life assurance in 1870 – illustrates this controversy and shows the difficulties with a view of commercial and company law that overemphasises the impact of free-market ideas. Regulation played a significant part in the emergence and shaping of the economy and social policy in the nineteenth century. Some of this regulation was general in application, such as obligations under the Companies Acts to disclose information, register the company and charges on its assets and hold meetings, restrictions in

[170] Rawlings, "What Can History Tell Us About Insurance Regulation?".

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the Factories Acts on working conditions, and the anti-slavery laws; others addressed particular industries, including the legislation on railways, mines, utilities, banks, friendly societies and, of course, insurance.[171] While a good deal has been written on the campaigns around those regulations that affected the conditions of working people, this list indicates that much of the legislation involved issues that concerned the middling ranks in society.

It is not surprising to find businesses seeking to influence regulation. Life offices scattered directorships among members of both Houses of Parliament, and, although the main objective was to reassure investors about the security of the offices, this practice also helped structure the debate on life assurance.[172] Offices also drew together and fought campaigns against rivals (such as the struggle between pre- and post-1844 offices) through national and regional associations, and the publication of newspaper articles and pamphlets. Powerful lobbyists did not always get their way. The victory in 1810 won by Lloyd's against those seeking to open the marine market proved short-lived; but, while the 1824 Act might be viewed as a triumph of free-market thinking, it was primarily a triumph for the wealthy investors who were keen to climb into this profitable business, such as the Alliance which employed Buxton, the Bill's promoter. The 1870 Act was a response to the failure of the Albert, but its provisions reflected the efforts of large life offices to close the market by depicting the greatest threat as coming from new offices. In addition, while this Act conceded the need for greater disclosure by all life offices, it did so as part of an attempt to reinforce the notion that policyholders were responsible for their own protection. Yet, in passing this Act and leaving unclear how the obligations it created were to be enforced, there arose (as Lowe feared but did not fully recognise) an expectation of government intervention and, as a consequence, the idea that government bore some responsibility. And this – for good and ill – fed the growth of regulation.

[171] The state also intervened through stamp duty which influenced transactions as insurers sought to minimise tax burdens: Rawlings, "Bubbles, Taxes, and Interests".

[172] See Gladstone's criticism of this practice: HC Deb. vol. 76 col. 273 (3 July 1844).

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