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## *Governmental Policy Toward Joint-Stock Business Organizations in Mid-Nineteenth Century France*

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Economic modernization during the mid-nineteenth century greatly intensified a need to mobilize capital for use in commerce and industry. This was particularly so in France. A shortage of capital there significantly limited the pace and development of an economic transformation that she was ready for in most other economic respects. One possible remedy for this was by recourse to a willing and flexible banking system, but at least through the first half of the nineteenth century, France's banking system was characterized by « an inadequate number and distribution of bank offices, an insufficient variety of specialized financial institutions, artificial and unnecessary restrictions on the total volume of credit, and an inelastic and unnecessarily expensive stock of money ».<sup>1</sup> Moreover, mechanization and the new factory system of production required more than increased availability of capital to mobilize necessary entrepreneurial and technical talent. With the optimum scale of enterprise growing and the advantages of rationalizing management by freeing firms from control by a small familial group increasing, new legal forms were needed.<sup>2</sup> The creation of joint-stock business organizations was one of the most effective ways to overcome these problems and clear the way for the modernization of France's economy.

The extent to which French entrepreneurs and capitalists were able to use these business forms was largely dependent upon two factors: first, how

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<sup>1</sup> RONDO CAMERON, *Banking in the Early Stages of Industrialization* (New York, 1967), p. 127.

<sup>2</sup> DAVID LANDES, *The Structure of Enterprise in the Nineteenth Century*, «Comité International des Sciences Historiques», Stockholm, 21-28 août 1960, Rapports, V, p. 107.

easy it was legally to form them, and second, how supportive governmental officials were toward their formation and activities. The first was not a major problem in France. Her legal codes allowed for a variety of joint-stock business forms. Indeed, during the first half of the nineteenth century the French Commercial Code of 1807 was the most liberal in Europe and formed the model for corporation laws on the Continent. Until 1855 it was even more difficult to form a limited liability joint-stock business organization in England than in France.

The second factor, however, was crucial and constitutes the main focus of our analysis. France's governmental policy often contradicted the apparent liberalism of her codes in this area. This created a tension between the theoretical acceptance of joint-stock business organizations and the practice of actually discouraging their use. It was not until the last third of the century that the government allowed Frenchmen easily to create limited liability joint-stock business organizations.

Governmental reluctance to facilitate the formation of these institutions was rarely because officials failed to perceive their potential economic importance. Most felt that France was trailing England economically, in large part, because of France's difficulty in mobilizing capital for commercial and industrial investments. French officials often pointed to « association » as the great force that could compensate for this problem. But at the same time, the government prevented investors from easily associating their money in joint-stock business organizations. Why?

The reasons for their actions are complex. In part, officials feared the newness of these institutions and the unpredictable effect they could have on finance and commerce. There were also politically strong interests, such as landowners and the Bank of France, who felt they had more to lose than gain from the spread of these business forms. But there was one set of attitudes toward joint-stock business organizations which was particularly persistent among officials. As France's political leaders, they increasingly sensed that industrialization was not simply an economic process. It also entailed unwanted social and ethical consequences. Most French officials felt that mobilizing capital through the formation of various joint-stock business organizations was particularly responsible for creating some of these noneconomic problems. Above all, these business forms seemed to warp men's morals in the pursuit of profit, encourage a variety of fraudulent practices, and help cause the economic crises which resulted in social misery.

To most officials, these effects were serious. They were not merely unfortunate costs of industrialization which nevertheless could be lived with. They represented unacceptable changes in France's historical character. These officials were neither strong nor numerous enough to enact legislation outlawing these business forms, for there were other officials who favored liberalizing restrictions on them. But they were strong enough to hinder

the easy formation of joint-stock business organizations for many years. By doing this, they significantly altered the course of France's economic development during the nineteenth century.

## I.

France's basic legislation relative to the creation of joint-stock business organizations during the first two-thirds of the nineteenth century was completed in 1807.<sup>3</sup> For the next twenty years or so thereafter, however, few such organizations were established and officials were relatively unaware of their significance.<sup>4</sup> For the most part, this reflected the government's primary concern with political and military affairs, the conservative nature and aristocratic background of officials between 1815 and 1830, and the still unindustrial state of France's economy.

After the Revolution of 1830, which brought Louis Phillippe's more bourgeois and liberal July Monarchy to power, governmental officials became much more interested in joint-stock business organizations. The reasons for this are crucial for understanding the attitudes and policies that French officials developed toward them over the next three decades.

Officials of the July Monarchy were increasingly anxious to see to it that France modernized her economy.<sup>5</sup> This was a period of growing nationalism, something governmental officials were particularly attuned to. National prestige was increasingly being measured in economic terms. It was

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<sup>3</sup> For some useful related studies, see CHARLES FREEDMAN, *Joint-Stock Business Organization in France, 1807-1867*, « Business History Review », XXXIX (1965), pp. 184-204; *Ibid.*, *The Coming of Free Incorporation in France, 1850-1867*, « Explorations in Entrepreneurial History », IV (1967), pp. 211-231; CLAUDE FOHLEN, *Sociétés anonymes et développement capitaliste sous la monarchie censitaire*, « Histoire des entreprises », No. 6 (novembre, 1960), pp. 65-77; *Ibid.*, *Sociétés anonymes et développement capitaliste sous le Second Empire*, « Histoire des entreprises », No. 8 (novembre, 1961), pp. 65-79; PETER STEARNS, *Individualism and Association in French Industry, 1820-1848*, « Business History Review », XL, No. 3 (Autumn, 1966), pp. 297-320; JUDAH ADELSON, *The Early Evolution of Business Organization in France*, « Business History Review », XXXI (Summer, 1957), pp. 226-243; C. LESCOEUR, *Essai historique et critique sur la législation des sociétés commerciales en France et à l'étranger* (Paris, 1877).

<sup>4</sup> Formation of joint-stock business organizations did increase during the 1820s, but there were only a few officials or businessmen who were aware of their significance. Still, there is very incomplete evidence that at least some large projects were proposed, such as those by Jacques Laffitte for the construction of canals, which were rejected by the government. See CHARLES FREEDMAN, *Joint-Stock Business Organizations in France, 1807-1867*, « Business History Review », XXXIX (1965), pp. 198-204.

<sup>5</sup> The term « officials » applies primarily to Ministers and Deputies of the national government in Paris, and more loosely to Peers, Bureaucrats, Prefects, and foreign consuls.

by demonstrating success in certain economic areas that a country such as France « assured its grandeur and power. ... its dignity and independence ».<sup>6</sup> This is exactly what England had been doing for a number of years, and French officials were all too aware of it. For them, unless France possessed what were seen as the attributes of the economically modern country, she had failed to uphold her position among the leading nations of the world, and « the honor of France... does not allow her to remain behind her neighboring powers ».<sup>7</sup>

French officials considered the mobilization of capital to be one of the most important activities that signified how modern a nation's economy was. It was « a new element of power which the progress of civilization has introduced into modern societies ».<sup>8</sup> They saw it as greatly responsible for England's fantastic economic development, arguing that it « permits her to mount commercial and industrial enterprises which are beyond the means of less rich nations ».<sup>9</sup> In their minds, France had to develop its capital-mobilizing institutions and techniques if she were to remain a leading nation.

French officials looked to two particularly modern financial methods to mobilize capital for commercial and industrial uses. The first was the regular extension of credit by various financial institutions. Most officials hoped that this could be handled by the Bank of France, founded in 1800, provincial banks in major cities, established during the Restoration and July Monarchy, and the Parisian *Haute Banque*, made up of established families of private financiers.<sup>10</sup> The second was the association by individuals of smaller amounts of capital into larger sums such as in the formation of joint-stock business organizations.

French officials placed particular emphasis on the association of capital because it seemed to be the only way France could get sufficient funds for industrial investments. Officials pointed to a number of special disadvantages France had in mobilizing capital. Potential investors had developed a tradition of timidity from the experiences of the eighteenth century — especially the System of John Law, the financial crises before the Revolution, and the

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<sup>6</sup> Duchâtel, speaking on an extraordinary budget for public works, 8 March 1837, Archives Parlementaires (Chambre des Députés), t. 108, p. 234.

<sup>7</sup> Portalis, reporter of a commission on the address of the King, 3 January 1838, AP (Chambre des Pairs), t. 114, p. 466.

<sup>8</sup> Humann, reporter of a commission on amortissement, 24 December 1830, AP (CD), t. 65, p. 605.

<sup>9</sup> Les Archives du Ministère des Affaires Étrangères; Correspondance Commerciale, London, t. 27, letter, Durant St. André to Minister of Foreign Affairs, 22 February 1836.

<sup>10</sup> There are a number of useful studies on this. See, e.g., BERTRAND GILLE, *La banque et le crédit en France de 1815 à 1848* (Paris, 1959); MAURICE LÉVY-LEBOYER, *Les banques européennes et l'industrialisation dans la première moitié du XIX<sup>e</sup> siècle* (Paris, 1964); RONDO CAMERON, *Banking in the Early Stages of Industrialization* (New York, 1967).

depreciation of the *assignats* during the revolutionary period.<sup>11</sup> Commercially and industrially oriented banks found it difficult to establish themselves in France because wealth was not a sufficiently accepted way to gain social status and agriculture was the only honorable economic endeavour.<sup>12</sup> France's « extreme division of capital and love of rural property » meant that while in England « the large fortunes created and accumulated by industry stay with industry », in France fortunes acquired from industry « desert it very quickly to become immobilized » into landed wealth.<sup>13</sup>

To compensate for these problems, officials pointed to association of capital through the formation of joint-stock business organizations. Here was a new device that could amalgamate small savings into large sums of capital for commerce and industry.<sup>14</sup> Some argued that « that which our neighbours can execute with the capital of individuals can only be undertaken with collective capital by us ». <sup>15</sup> The most optimistic felt that the spirit of association could « soon produce miracles ». <sup>16</sup> More level-headed officials contended that « share issuing companies are evidently necessary to the development of our industry, because in a country where fortunes constantly tend to become divided, they present the only efficacious means to sufficiently conglomerate capital ». <sup>17</sup> In short, « the spirit of association must be supported because association has become each day more indispensable to the development of industry ». <sup>18</sup>

## II.

Despite this reasoning, French officials failed to support consistently the spirit of association, and often they actually restricted it. This was not because France lacked institutional options for associating capital. Theoretically, the options were as good and often better than anywhere else. Since

<sup>11</sup> GAUTIER, *Des Banques et des institutions de crédit en Amérique et en Europe* (Paris, 1839), pp. 40, 86; VINCENS, *Des sociétés par actions, des banques en France* (Paris, 1837), pp. 27-28.

<sup>12</sup> GAUTIER, *Des banques*, p. 40.

<sup>13</sup> LEGENTIL, reporter of a commission on the *société en commandite*, 25 April 1838, « *Moniteur Universel* » (Chambre des Députés), p. 1010.

<sup>14</sup> GAUTIER, *Des banques*, p. 14.

<sup>15</sup> LEGENTIL, reporter of a commission on the *société en commandite*, referring to the *société anonyme*, 25 April 1838, « *Moniteur* » (CD), p. 1010.

<sup>16</sup> C. DUPIN, speaking on an extraordinary budget for public works, 8 March 1837, AP (CD), t. 108, pp. 131-134.

<sup>17</sup> AN, BB<sup>30</sup> 278, « *Procès verbaux de la commission chargée de préparer les bases d'un projet sur les sociétés en commandite par actions* », minutes of the session of 25 January 1838. This was a blue ribbon governmental commission that included the Minister of Finance, the Minister of Justice, Teste, Freville, Gautier, Vivien, Vincens, Legentil, Vandermarcq, and Argout.

<sup>18</sup> *Ibid.*, session of 1 November 1839.

1807, French law had allowed for three principal forms of business organizations involving concentration of mobile capital: the *société en nom collectif*, the *société en commandite*, and the *société anonyme*. The *société en nom collectif* was a simple partnership, with each partner unlimitedly liable for the debts incurred in behalf of the partnership. In this type of business organization each investor's whole personal fortune was in danger of being lost upon serious business reversals, thus deterring large investments which involved an appreciable degree of risk. The *société en commandite* was also a partnership form of business organization, but with a split between those partners classified as active, or *gérants*, and those classified as inactive, or sleeping partners. The inactive partners enjoyed limited liability, risking only the capital invested for the debts of the firm. The active partners were unlimitedly liable for the debts of the firm.<sup>19</sup> By slightly modifying its constitution, the *société en commandite* could become a *société en commandite par actions* in which the shareholders also enjoyed the right to transfer shares « to bearer » rather than a specific individual.<sup>20</sup> The third form, the *société anonyme*, was a corporation in the modern sense, all investors possessing limited liability and the firm having a legal existence apart from any individuals.

Throughout the July Monarchy, the government acted to discourage investors from fully employing these options. While most officials shared certain values and goals which go a long way towards explaining why they pursued these policies, there were important differences among them on this issue. Most broadly, officials can be divided into those more open to facilitating capital mobilization and those more closed to this. Generally, those most open tended to be more closely connected to finance, commerce, and industry such as Humann, progressive members of *La Haute Banque* in Paris such as Ganneron and Laffitte, and those most committed to economically modernizing the country such as Duchâtel and H. Passy. Those most opposed to facilitating capital mobilization tended to be the powerful and conservative *Conseil d'Etat* and Bank of France, officials closely connected to these institutions such as Thiers and Argout, officials strongly involved with agriculture and rural regions such as Aubernon, and more radical officials who opposed the formation of powerful financial and industrial organizations on political and ideological grounds such as Lamartine. The first group was more likely

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<sup>19</sup> Active partners were often « straw-men » for the inactive partners, *i. e.*, the inactive partners would employ one or more individuals who personally had no financial resources to take the role of *gérants*. Under this strawman arrangement the *gérant* who appeared to the outside world to be assuming the real risks of the business was in reality no form of security at all.

<sup>20</sup> This was declared legal by the *Cour Royale* of Paris in 1832. Shares could be *nominatif* (recorded and transferred on the books of the company) as well as *au porteur* (bearer). FREEDEMAN, *Joint-Stock Business Organization in France, 1807-1867*, p. 193.

to represent those traditionally held to be the beneficiaries of the 1830 July Revolution — the *grande bourgeoisie*. Marx's « stock exchange kings, railway kings, owners of coal and iron works » — and the innovative capitalist-entrepreneurs who would struggle during the July Monarchy and finally gain favour during the Second Empire where Louis Napoleon and his top advisors were more sympathetic to their ideas. The second group was more representative of the majority of officials who were primarily landowners and the still considerable number of aristocrats who held office and influence despite the July Revolution.

The first group, while not the majority, succeeded at times because they were able to appeal to broader goals held by their more ambivalent or opposing colleagues. By taking a variety of actions such as turning to stock issuing companies to associate the large amounts of capital in order to help construct France's canals and railroads, opening up the *Bourse* to speculation in industrial and commercial ventures, facilitating the amalgamation of small coal mines into the capital-rich *Compagnie Général des Mines de la Loire*, and unlocking the reserves in savings banks for financing construction of transportation facilities, officials of the July Monarchy demonstrated their feeling that the spirit of association had to be encouraged to help compensate for difficulties France had in mobilizing capital for the modernization of her economy.

Most of the time, however, the second group of officials dominated. From their positions in key ministerial posts, the *Conseil d'Etat*, which had to approve all applications for formation of *sociétés anonymes*, and the Bank of France, which dominated in banking and credit, they effectively opposed various efforts to ease restrictions on joint-stock business organizations and undertook policies to increase impediments to their formation and activities. Although there are numerous explanations for this, including self-interest and political manipulation, one theme was most persistent in their minds. They felt that mobilizing capital had undesirable ethical and social consequences. Some of these consequences were indirect, such as the social misery accompanying commercial-industrial crises — something officials increasingly blamed on problems inherent in mobilizing capital for industrial purposes. Others were more direct: officials believed that certain legitimate activities such as speculation, stock-trading, and association were extremely susceptible to fraudulent and immoral abuse. There were some officials who doubted the legitimacy of these kinds of capitalistic activities under any circumstances. Moreover, this sort of reasoning touched a sympathetic spot even among those officials most committed to developing new means of mobilizing capital for commerce and industry, for they too questioned the social and ethical consequences of capital mobilizing activities. Officials revealed these attitudes most clearly when they dealt with joint-stock business organizations — the *société en commandite* and the *société anonyme*.

Until 1867, the *société en commandite* was by far the most popular form of business organization involving the mobilization of capital through sale of shares.<sup>21</sup> Although it could be found in almost all kinds of enterprises, its average size — much smaller than that of a typical *société anonyme* — made it particularly appropriate for light industry.<sup>22</sup> Early during the July Monarchy, governmental officials began complaining that the *société en commandite* was becoming subject to fraud, overspeculation, and immoral get-rich-quick plans.<sup>23</sup> In response to these complaints, the government passed legislation in 1833 requiring organizers of these companies to more fully publish their purposes and activities.<sup>24</sup>

The complaints continued, however, and even increased, especially after the speculative boom of 1836-1837. In 1838, the Chambers responded favorably to the call of the King for new legislation on the *société en commandite*, citing « the multiplicity of speculations » and « the abuse in commerce of shares of stock » as warranting immediate legislative action.<sup>25</sup> A blue-ribbon governmental commission was created to draft legislation on the *société en commandite*.<sup>26</sup> The minutes of their meetings reveal that most members clearly recognized the economic benefits of the *société en commandite* for mobilizing capital into industrial ventures. Yet the commission recommended legal changes which would have the practical effect of abolishing this kind of organization. They reasoned that these companies « have fallen today into such complete discredit that they can only be restored by a law which will guarantee their morality... ».<sup>27</sup> Moreover, officials feared that such association of capital could lead to the formation of powerful monopolies, unethical because they lacked any restraints upon the pursuit of profit.

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<sup>21</sup> There were about 616 share-issuing, profit-seeking commercial *sociétés anonymes* formed between 1817 and 1867, while during the same period there were over 6,500 *sociétés en commandite par actions* created. « *Annuaire Statistique de la France* », 1946, p. 70; CLAUDE FOHLEN, *Sociétés anonymes et développement capitaliste sous la monarchie censitaire*, p. 66; CHARLES FREEDEMAN, *Joint-Stock Business Organization in France, 1807-1867*, p. 200.

<sup>22</sup> FREEDEMAN, *Joint-Stock Business Organization*, pp. 202-203.

<sup>23</sup> JACQUES LEFEBVRE, reporter of a commission on a proposition by Dupin (l'ainé) on publicity of stock companies, 10 April 1832 AP (CD), t. 77; ISAMBERT, reporter of a commission on a proposition of J. Lefebvre on publicity of stock companies, 2 March 1833, AP (CD), t. 80, p. 537.

<sup>24</sup> AP (CD), t. 81, 9 March 1833, pp. 12-16.

<sup>25</sup> PORTALIS, reading the report of the commission on the address of the King, 3 January 1838, AP (CP), t. 114, p. 466.

<sup>26</sup> AN, BB<sup>30</sup>278, *Procès verbaux de la commission chargée de préparer les bases d'une projet sur les sociétés en commandite par actions*. This included the Minister of Finance, Minister of Justice, Teste, Freville, Gautier, Vivien, Vincens, Legentil, Vandermarcq, and Argout.

<sup>27</sup> *Ibid.*

In his official report to the Chamber of Deputies, the Minister of Justice followed the recommendations of the commission and proposed to outlaw the sale of shares by the *société en commandite*.<sup>28</sup> He contended that those *sociétés en commandite* which gathered capital through the sale of shares were involved with limitless speculative practices and fraudulent use of money, thereby corrupting the proper employment of capital. The only way to halt this was the complete abolition of their ability to sell shares.<sup>29</sup> But in most governmental minds, there was considerable uncertainty over what was the best balance between the economic benefits and the ethical burdens of these share-selling companies. At this time, most were sure that the burdens outweighed the benefits, and hence they favored some sort of restrictive legislation on the *société en commandite*. But those who felt that to abolish completely the right of these companies to raise capital by the sale of shares was too drastic a cure mustered the strength to prevent the enactment of this strong proposal.<sup>30</sup> With the decline in the formation of new *sociétés en commandite* over the next few years, efforts to pass similar legislation declined.<sup>31</sup> But the actual failure to pass this legislation should not greatly detract from the fact that most officials reacted hostilely to what they considered unethical practices almost inherent in these companies, and throughout the reign, the *société en commandite* continued to labour under the stigma of official condemnation.

Similar governmental attitudes plagued those attempting to use the *société anonyme* form to mobilize capital for large ventures. Though less widespread, these organizations potentially involved an exaggeration of the evils associated with the *société en commandite* because of their impersonality and size. Indeed, most of the largest financial institutions and almost all canals and railroad companies during the period were *anonymes*.<sup>32</sup>

The government had to authorize specifically each *société anonyme*, and officials seem to have taken this requirement to heart. What was commonly felt to be the government's basic obligation was stated by the Minister of Justice in 1838:

The duty of the administration... is to verify that a company is not a trap held out to credulity; that the object of the speculation is licit and real; that there exists not a vain prospectus on an idea without substance, ...that true share-

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<sup>28</sup> BARTHE, 15 February 1838, AP (CD), t. 115, pp. 471-477.

<sup>29</sup> *Ibid.*

<sup>30</sup> LEGENTIL, reporter of a commission on the *société en commandite*, 25 April 1838, AP (CD), t. 118, pp. 1009-1010.

<sup>31</sup> CHARLES LESCOEUR, *Essai historique et critique sur la législation des sociétés commerciales en France et à l'étranger* (Paris, 1877), pp. 59-61.

<sup>32</sup> This form was also quite important in mining, steamship and gas companies, and to a lesser extent, in water, paper, glass, and sugar-refining companies. FREEDEMAN, *Joint-Stock Business Organization*, pp. 198-201.

holders exist, and not simply fictitious associates that would only figure in appearances to provoke real engagements; that the announced capital effectively exists...; that the statutes that establish the administration offer to the associated a moral guarantee...<sup>33</sup>

As implied here, officials generally felt that authorization meant that the government stood behind the economic activities of the firm as well as the moral character of its founders.<sup>34</sup> Furthermore, they felt that the *société anonyme*, as with the *société en commandite*, commonly involved men of dubious character « subject to abandon suddenly all to give preference to their own private affairs ».<sup>35</sup> It was thus the government's responsibility « as much as possible, to render local authorities morally responsible for the presumed financial strength of the subscribers and the sincerity of the subscription in the companies, which are authorized upon their advice ».<sup>36</sup>

These attitudes were acted out in the authorization procedures undertaken by the government. Opinions and approvals of various Ministers, Prefects, Prefects of Police, and Councils were held necessary, despite recognition of the deterring effect these requirements and delays had on formation of even those *sociétés anonymes* identified by many officials as desirable.<sup>37</sup> When occasionally a Minister would get behind a particular request for authorization, he was still faced with delays that even he found difficult to avoid.<sup>38</sup> Prospects for authorization were, in short, usually doubtful. Many proposals which passed authorization procedures at lower levels were eventually rejected by the generally hostile *Conseil d'État*.<sup>39</sup> Indeed, most important *sociétés anonymes* formed during the July Monarchy received authorization only if they included members from elite social, financial and governmental circles.<sup>40</sup>

These governmental attitudes toward the morality of capitalistic and entrepreneurial practices commonly involved with capital-mobilizing activities

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<sup>33</sup> 15 February 1838, AP (CD), t. 115, p. 469.

<sup>34</sup> VINCENS, *Des sociétés*.

<sup>35</sup> *Ibid.*, p. 31.

<sup>36</sup> *Ibid.*, pp. 37-38.

<sup>37</sup> See AN, F148229, 8230, 8232, 8233, 8234, 8235.

<sup>38</sup> AN, F148234, letter, Minister of Commerce to Minister of Public Works, 26 January 1847; see also AN, F148230.

<sup>39</sup> CHARLES FREEDEMAN notes that in the boom period of 1840-1844, the *Conseil d'État* authorized only 114 anonymes out of 206 requests for authorization; moreover these requests probably represented only a fraction of those that failed to receive approval at an earlier stage of procedures. *Joint-Stock Business Organization in France*, pp. 189-200. According to Rondo Cameron, at least 150 requests for banks, credit companies, and other financial institutions failed to receive authorization between 1838 and 1872, and this in no way limits the number of potential *sociétés anonymes* of this type that were deterred by governmental hostility. Here, the *Conseil d'État* may have been partially motivated by an interest in protecting the position of the Bank of France. *France and the Economic Development of Europe*, p. 133, note 63.

<sup>40</sup> FREEDEMAN, *ibid.*

spilled over into other areas of economic modernization, also taking on new dimensions. This was the case with the development of France's transportation system. In railroad policy, these attitudes played an important role in deterring the more rapid granting of concessions. Officials expressed great concern that « the public's good faith be not deceived by approval given too lightly to projects concluded by the spirit of enterprise and speculation ».<sup>41</sup> Officials tended to assume that railroad companies were subject to dubious practices, and hence « when the government authorizes a company to form, it assumes, up to a certain point, the moral responsibility for the realization of the promises that are made to glitter under the eyes of the shareholders... ».<sup>42</sup>

Such concerns were evident in negative responses given by the Chamber of Deputies in 1837 when the administration was making great efforts to enact a basic railroad policy. In reporting on a project for a line from Paris to Belgium, Remusat warned that too often the public was willing « to accept promises as facts, exhibiting an impatience for gain that encourages the transformation of useful enterprises into usurious speculations »; the government should be careful to not allow public works projects to become ridden with the unethical practices that so commonly plague the *société par actions* and other manifestations of the spirit of association.<sup>43</sup>

Less than a month later, Dufaure expanded upon the warning of Remusat while reporting on a proposed line from Lyons to Marseilles.<sup>44</sup> He argued that the *sociétés anonymes* were absolutely necessary for the exploitation of these projects because they required so much capital. Yet the sale of their shares was often analogous to a lottery, « becoming an instrument of game and stock-jobbing more than a means to unite real capital ».<sup>45</sup> Moreover, the *sociétés anonymes* that gain the concessions would obviously have a tendency to become monopolies and hence engage in typically unethical practices. Here and elsewhere, there was much more behind officials' stands than their attitudes toward joint-stock business organizations. Railroad legislation in the late 1830s, for example, was an issue in which political factors were particularly strong. How officials, including Dufaure and Remusat, voted was often more closely connected to how they stood in support of a ministry or a political group than how they felt about railroads or joint-stock business organizations. Still, this does not obviate the significance of their use of arguments against joint-stock business organizations. They chose to argue that « stock-jobbing and monopoly, these are the two dangers that discourage us from abandoning major railroad lines to private enterprises », because

<sup>41</sup> AROUX, 12 April 1836, AP (CD), t. 101, p. 679.

<sup>42</sup> *Ibid.*

<sup>43</sup> 26 May 1837, AP (CD), t. 111, p. 749.

<sup>44</sup> 5 June 1837, AP (CD), t. 112, p. 301.

<sup>45</sup> *Ibid.*

they considered it a legitimate argument that would not fall on deaf ears.<sup>46</sup> It appealed to doubts about joint-stock business organizations held by a large number of governmental officials.

Similar distrust of capitalistic and entrepreneurial practices made officials more willing to intervene in coal mining activities. In reporting on proposed legislation to enforce joint action by coal mining companies against flooding, a parliamentary commission held that while normally the government should not interfere with private property, private speculation, or private industry, even when some problems result, here it was unfair to allow a « vast system of cupidity and stock-jobbing » to threaten the future of an industry so central to French industrial development and progress.<sup>47</sup> A few years later, when the Loire coal industry had drifted toward a monopolistic situation, officials began attacking it, holding that even the most honorable and well-intentioned owners are seduced by a monopolistic situation into determining salaries, prices, and production solely according to their own desires for profit rather than taking any account of French national interests.<sup>48</sup> A company in such a monopolistic situation could not be granted legitimacy by the government by allowing it to become an approved *société anonyme*.<sup>49</sup>

During the same period, many French officials began to feel that there was a connection between industrialization and increasingly frequent commercial-industrial crises. This provided added reasons for restricting the easy formation of capital-mobilizing institutions such as the *société anonyme*. In their minds, crises were a traumatic economic blow to a country, but more important, they magnified immoral practices, social evils, and political threats which seemed to accompany rapid industrialization. More than any other single activity, officials blamed the overinvestment of capital for causing these crises.<sup>50</sup>

The effect of this perception is most dramatically illustrated by the reactions of the French Consul in London to the crisis of 1837. On March 7,

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<sup>46</sup> Yet the experience of various lines such as the *Cie du Chemin de Fer du Nord* indicates that the *société anonyme* worked well: this *société anonyme* was organized by Rothschild in 1845 with a capital of 200 million francs, divided into 400,000 shares. Of all the railroads, this was the most successful.

<sup>47</sup> SAUZET, reporter, 29 June 1837, AP (CD), t. 113, p. 601.

<sup>48</sup> Minister of Public Works, speaking on coal mining, 25 March 1846, « Moniteur » (CD), p. 755; *Ibid.*, F. DELESSERT. See also debates of 26 March 1846 and 4 April 1846 in « Moniteur » (CD), pp. 766-771, 850-852; AN, BB<sup>18</sup>1437.

<sup>49</sup> Report of a commission to study the application of the *Compagnie Général des Mines de la Loire*, cited in L. J. GRAS, *Histoire économique général des mines de la Loire* (Saint-Etienne, 1922), p. 314.

<sup>50</sup> See especially GAUTIER, *Des banques*. This kind of analysis applied to liberal banking policies as well as stock trading and creation of joint-stock business organizations, all involving what officials considered to be speculative mobilization of capital for commercial and industrial uses.

1836, just before the crisis, Durant St. André sent a letter to the Minister of Foreign Affairs praising the economic benefits of capital mobilization in England, attributing the successful establishment of such enterprises as railroads, in great part, to the « spirit of speculation and the extreme abundance of accumulated capital that searches for investment » in England.<sup>51</sup> At this time, he did not see overspeculation or overinvestment as a real problem. « Even when the hopes of the capitalists that invest in these large enterprises are not entirely realized, the almost assured success of some others will suffice to indemnify the body of the nation for the partial losses that would be occasioned by some mistaken combinations ».<sup>52</sup>

Just over a year later, when the crisis was at hand, the same man wrote a very different letter.<sup>53</sup> He analyzed the causes of the crisis in explicit terms:

I believe it my duty to indicate that the most important cause is the overly rapid progress in production which exceeds the demands of consumption. This spirit in industry would have produced an unmitigated good if the abuse of credit in the United States, the excess of speculation, the imperfections of the monetary system in England, the blind multiplication of banks in the two countries, and the creation of too large a mass of artificial capital had not carried things far beyond natural limits...

In making this analysis, Durant St. André did not hesitate to apply his views to France:

...there are lessons to be learned by the study of this crisis, for us above all who are beginning to develop the fundamentals of a credit system, for credit is without doubt useful to the development of industry and commerce, but it must be contained in proper limits, by legislation and by the prudence of capitalists themselves.

For years after the 1837 crisis, the same kind of analysis was made by French officials, ranging from other foreign Consuls to Ministers and Deputies, providing support for the more restrictive policies toward capital-mobilizing institutions followed by the government.

By the end of the July Monarchy, most officials saw some of these noneconomic problems as not particular to certain individuals or countries, but as pan-European problems inherent in the growth of economic modernization. Worse, these problems seemed almost beyond the control of governmental action. Recent scandals had indicated that governmental officials themselves were not immune to speculation under dubious circumstances. M. de Peyramont, reporting in the name of a commission on a proposal to forbid the involvement of government officials in joint-stock companies engaged in railroad construction and other public works, stated that, though it was

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<sup>51</sup> AMAE, London, t. 27.

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*, 12 June 1837.

true that these large companies could be carriers of corruption, there were too many valuable governmental figures involved to allow such legislation.<sup>54</sup> Yet the economic, social, and moral evils of the thirst for easy gain were real: « This fever of stock-jobbing, which has not been particular to our country and has developed in all other states of Europe, results from the same causes—the perhaps inevitable consequence of the rapid creation of these new instruments of wealth and power ».<sup>55</sup>

Thus, French officials were seriously questioning the desirability of some of the consequences of mobilizing capital for new commercial and industrial ventures during this period of transition from a traditional agricultural economy to a modern industrialized economy. The depth and effectiveness of most officials's doubts are well illustrated by the different kind of response to industrialization made by Belgian officials during the same period.

The Belgian government took a much more committed and effectively supportive attitude toward capital mobilizing activities during the 1830s and 1840s. The *Société Générale pour Favoriser l'Industrie Nationale des Pays-Bas*, originally formed in 1822 under heavy patronage of the government, greatly stimulated industrialization of the country during the 1830s. In 1833-1834, the *Société Générale* helped finance the canalization of the Sambre, the principle route for transportation of Belgian coal to Paris. In 1835, it financially reorganized the coal industry of the country, transforming the companies into *sociétés anonymes*. This same method of creating *sociétés anonymes* out of partnership or single-owner enterprises and supporting the purchase and sale of their stocks was used by the *Société Générale* to aid many other industries in the 1830s.<sup>56</sup>

In these ventures, French capital played a major role, with Rothschild in particular often joining with the *Société Générale* in its financial adventures. In 1835, those two organized the *Société de Commerce de Bruxelles* with a capital of ten million francs, the *Société Nationale pour Entreprises Industrielles et Commerciales* with fifteen million francs, and the *Banque Foncière* with twenty-five million francs. Again in 1836, the same two organized the *Société des Capitalistes Réunies dans un But de Mutualité Industrielle*, an investment trust, with an authorized capital of fifty million francs.<sup>57</sup>

The differences between Belgian and French policy are significant. In financial and industrial activities, the Belgian government consistently allowed and encouraged direct investment in bold commercial and industrial ventures by the *Société Générale*, joint-stock business organizations and other financial institutions. Moreover, Belgian officials favoured making the process as

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<sup>54</sup> 18 June 1847, « Moniteur » (CD), p. 1633.

<sup>55</sup> *Ibid.*

<sup>56</sup> RONDO CAMERON, *France and the Economic Development of Europe*, p. 122.

<sup>57</sup> *Ibid.*

cumulative as possible, encouraging successful businesses to found new organizations which in turn would invest in commerce and industry. At the same time in France, institutions similar to the *Société Générale* were striving for formation under the leadership of men such as Laffitte or Perière, but were being deterred by governmental hostility.<sup>58</sup> Like attempts to open existing banks and corporate business forms to new industrial and commercial investments were repeatedly rejected by the majority of French officials. The fact that French financiers supplied large quantities of capital in the Belgian ventures implies that France had the capital resources but not the supportive governmental policy to encourage or allow the use of that capital in French industry.

### III.

With the establishment of the Second Empire in 1851, there did come some changes in France's governmental attitudes and policies toward economic development. Louis Napoleon and his top officials were more committed to modernizing France's economy and were more willing and able to use authoritarian means to enact policies to this end. This was particularly so with capital-mobilizing activities.<sup>59</sup> A bolder brand of financier, often coming from the Saint-Simonian school of thought, found Napoleon III more sympathetic than Louis Philippe to their views. With the blessings of the government, they were soon able to effect changes in France's capital-mobilizing institutions and policies. Institutions such as the *Crédit Foncier de France* were organized, pumping large amounts of capital into urban reconstruction. The *Crédit Mobilier* was the most important of a number of institutions formed to provide capital for industrial ventures; through the daring use of liberalized governmental attitudes toward investment financing, this institution operated as an investment bank that dealt boldly in industrial ventures and the creation of other companies. The government acted numerous times in the 1850s and 1860s to force banks to liberalize their credit policies, going so far as to authorize the conservative Bank of

<sup>58</sup> In 1830, Emile and Issac Pereire attempted to found a joint-stock banking institution designed to provide credit for large industrial enterprises, similar in function to the *Société Générale*, but a government commission refused to authorize the proposal. See ISSAC PEREIRE, *La Banque de France et l'organisation du crédit en France* (Paris, 1864), pp. 145-146. For a similar experience of JACQUES LAFFITTE, see his *Mémoires*, pp. 337-338.

<sup>59</sup> See PIERRE DUPONT-FERRIER, *Le marché financier de Paris sous le second empire* (Paris, 1925); RONDO CAMERON, *Banking in the Early Stages of Industrialization* (New York, 1967); MAURICE LÉVY-LEBOYER, *Les banques européennes et l'industrialization internationale dans la première moitié du XIX<sup>e</sup> siècle* (Paris, 1964); DAVID KULSTEIN, *Louis Napoleon and the Social and Economic Policy of the Second Empire* (Unpublished Ph. D. dissertation, Harvard University, 1954); HENDRIK BOON, *Rêve et réalité dans l'oeuvre économique et sociale de Napoléon III* (La Haye, 1936).

France to accept large quantities of stocks and bonds in railroad companies as collateral for loans.<sup>60</sup>

Still, the attitudes toward joint-stock business organizations revealed during the July Monarchy did not immediately and completely disappear once Louis Napoleon took power. Many officials of the Second Empire also held office during the July Monarchy, and with their help a restrictive law on the *société en commandite* was passed in 1856.<sup>61</sup> This, however, was only a temporary reversal of the trend toward easing creation of various business forms.

In the 1860s, the economic need for liberalizing policy toward joint-stock business organizations began to outweigh its noneconomic drawbacks. The law of May 23, 1863, removed many of the barriers to the development of the modern corporation. This law created a new business form, the *société à responsabilité limitée*, which was tantamount to the *société anonyme* but with the advantage of not needing authorization of the Government for its creation and with the disadvantage of being limited to a maximum capital of 20,000,000 francs.

The demand for this law came from both the private sector of the nation and the government itself. In the words of the commentator, « rarely has a law been the object of such a profound study... ».<sup>62</sup> The Report of the *Commission du Corps Législatif* made it apparent that the government was self-consciously attempting to attract capital into industrial investment: « The advantages and easy terms present in this organization immediately strike the eye... it would be difficult to propose a better combination for members of a firm and anything more seductive to capital ».<sup>63</sup>

The Commission also noted that English law on this type of business form had been recently modified, and that the treaty of May 15, 1862 had in effect allowed British limited liability companies to operate in France (as had a similar law in 1857 applying to Belgium) while French companies still did not have the same advantage.<sup>64</sup> It pointed out that the French industrialists had a legitimate complaint in that they should be allowed the advantages allowed to the English in mobilizing capital in France, and this proposed law would give to industry and commerce a means to stimulate efficiently and powerfully the economy.<sup>65</sup>

<sup>60</sup> The laws of 3 March 1852, 28 March 1852, 17 July 1857, and 9 June 1857.

<sup>61</sup> This law of July 17, 1856, essentially set restrictions on the transferability of shares in the *commandite* and required its promoters to be more responsible for the actions of the firm. Clearly, the main motivation for this law was officials' associations of fraudulent and irresponsible actions with joint-stock business organizations.

<sup>62</sup> J. B. DUVERGIER (ed.), *Collection Complète des Lois, Décrets, Ordonnances, Règlements, et Avis du Conseil d'Etat*, 1863, note 1, p. 350.

<sup>63</sup> *Ibid.*, pp. 352-353.

<sup>64</sup> *Ibid.*, p. 355.

<sup>65</sup> *Ibid.*, p. 356.

In meeting arguments that the *société en commandite* was an adequate business form, the commission stated that ordinary stockholders in the *société à responsabilité limitée* have the advantages of being able to engage in management without having to fear, as in the *société en commandite*, the dangers of interference, and that this new form would be a means of deemphasizing the person as the motive for capital investment and emphasizing the institution with capable management.<sup>66</sup> Moreover, this limited liability form would encourage entrepreneurs, and soon the public would become accustomed to that form of organization and trust their funds to third parties, as was the case in England.<sup>67</sup>

Although there was widespread debate in France concerning the merits of the law between the time it was proposed and passed, « on the whole a majority came out in favour of it ».<sup>68</sup> Reports from the Chambers of Commerce revealed that almost two-thirds were in favour of the proposed law, while similar reports from Courts of Commerce throughout France were almost unanimous in their support of the proposed legislation.<sup>69</sup>

The law of July 24, 1867, completed the liberation of the modern corporate form of business organization in France. What this law did was to abolish the *société à responsabilité limitée* and free the *société anonyme* from the necessity of governmental authorization. In effect, this enabled the free formation of a joint-stock business organization, which has a legal entity with a life of its own, offered limited liability to investors, and demanded relatively few organizational requirements for legal existence. The *société anonyme*, in terms of capital per company and sheer numbers, quickly replaced the *société en commandite* as France's most important business form involving the combination of capital through sale of shares.<sup>70</sup> In addition, this same law created another business form, the *société à capital variable*. This was designed to allow workers to pool their capital into economically effective units, while still allowing the individual worker to freely withdraw his capital at any time. The legislative history of this law indicated that most officials felt that France could no longer afford to be hampered by difficulties in mobilizing capital for commerce and industry: « only by association can all the weak elements of the economy be grouped to result in a strong force ».<sup>71</sup>

<sup>66</sup> *Ibid.*, pp. 358-359.

<sup>67</sup> *Ibid.*, p. 366.

<sup>68</sup> *Ibid.*, p. 306.

<sup>69</sup> *Ibid.*, p. 366.

<sup>70</sup> « *Annuaire Statistique de la France* », 1946, p. 70; FOULEN, *Sociétés anonymes et développement capitaliste sous le Second Empire*, pp. 65-79; FREEDEMAN, *Joint-Stock Business Organization*, p. 198.

<sup>71</sup> *Ibid.*, 1867, p. 283.

#### IV.

It is clear, then, that restrictions on joint-stock business organizations favoured by French governments before the 1860s were not simply the result of ignorance or inability to formulate appropriate legislation. At least by the 1830s, officials were aware that formation of these organizations was one of the few ways that France could associate sufficient capital for rapid economic modernization—something that to them was economically and politically imperative for France.

The restrictive policies adhered to throughout the middle third of the nineteenth century stemmed from a set of attitudes, in particular about mobilizing capital through the formation of joint-stock business organizations, and more broadly about certain capitalistic and entrepreneurial activities that officials perceived as part of the process of economic modernization. There seemed to be something ethically wrong about industry and commerce. Most officials found it difficult to accept what they perceived to be the unscrupulous pursuit of profit and associated evils that was exhibited by far too many men of finance and industry. Pragmatically, these sorts of practices had to be controlled because most officials felt they led to commercial-industrial crises. But their outrage came from a sense that instead of being motivated and guided by principles of morality, « we are motivated by expanded self-interest and by the feeling of well-being », that religious faith, political principles, and the prestige of power were easily becoming dominated by material interests.<sup>72</sup> The depth of these feelings made Lamartine's condemnation of the times very popular in the Chamber of Deputies. By characterizing the times as « the century of the stock exchange, the century of stock speculation, the century where the stockbroker would have been the supreme magistrate », he was touching on an underlying current of anti-capitalism among officials which ran concurrently with the growth of industry and commerce in France.<sup>73</sup>

French officials felt that more than in any other activity, the creation of joint-stock business organizations encouraged men to act according to these dubious standards. In their minds, not to act against this implied acceptance of much that was ethically wrong about the changes being brought about by economic modernization.

It was not until the last half of the Second Empire that the majority of France's officials concluded that the economic and political benefits of economic modernization made this a risk worth taking. By this time, however, France was no longer so much in advance of other countries in providing liberal alternatives for business forms as she was fifty years earlier. By a

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<sup>72</sup> JAUBERT, speaking on tariffs, 13 April 1836, AP (CD), t. 102, p. 722.

<sup>73</sup> LAMARTINE, speaking on mines, 26 March 1846, « Moniteur » (CD), p. 768.

series of acts in 1844, 1855 and 1856, England had revised her laws to provide for easy incorporation with limited liability. By mid-century, the same generally held true in most sections of the United States, especially in the Northeast. In Belgium, a supportive governmental policy toward joint-stock business organizations in the 1830s and 1840s compensated in practice for the lack of earlier liberalization of legislation in this area. When France finally changed her laws in 1867, other European countries quickly followed with similar legislation—Spain in 1869, the North German Confederation in 1870, Belgium in 1873, Italy in 1883, Portugal in 1888, Sweden in 1895, and Austria in 1899. By the end of the nineteenth century, joint-stock business organizations had become widely accepted in Europe and the United States: legally, by general incorporation laws recognizing formation by registration, corporate autonomy, freely negotiable shares, and limited liability, and pragmatically by their replacement of single-owner enterprises and partnership as the most important business forms in industrializing areas.

hindsight tells us that officials were probably correct in identifying easy use of joint-stock business organizations as very significant for the course of France's economic development during the nineteenth century. Without the corporate form, it was difficult for French firms to meet the growing demands for increased capital investment, professionalization of management, and internal reinvestment for long-term profit during the mid-nineteenth century—a period when the newest competitive machines and techniques were no longer rudimentary.<sup>74</sup> Moreover, France, probably more than other countries, needed the corporate form to help free her from the prevalent family-controlled enterprise.<sup>75</sup> Experience in France, England, Germany, and

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<sup>74</sup> See RONDO CAMERON, *France and the Economic Development of Europe* (Princeton, 1961), p. 35; ALEXANDER GERSCHENKRON, *Economic Backwardness in Historical Perspective* (Cambridge, 1962); DAVID LANDES, *The Structure of Enterprise in the Nineteenth Century*, «Comité International des Sciences Historiques», Stockholm, 21-28 août 1960, Rapports V, pp. 107-128.

<sup>75</sup> It has been argued that family control of commercial and industrial enterprises has played a great role in keeping France, to this day, from the leading role she potentially could play among industrialized countries. It is the corporate form which tends to negate the very characteristics of the family enterprise which has kept the scale of French industry small: It makes the life of the business not dependent on one or two leaders, fosters professionalization of management, encourages reinvestment of profits rather than their enjoyment, and points toward a goal of absolute long-range profit rather than profit per item. See e.g., CHARLES KINDLEBERGER, *Economic Growth in France and Britain, 1851-1950* (New York, 1969), pp. 88-134; ALEXANDER GERSCHENKRON, *Social Attitudes, Entrepreneurship and Economic Development*, «Explorations in Entrepreneurial History», VI (October, 1953), pp. 1-9; DAVID LANDES, *French Entrepreneurship and Industrial Growth in the Nineteenth Century*, «The Journal of Economic History», IX (May, 1949), pp. 45-61; JOHN SAWYER, *The Entrepreneur and the Social Order: France and the United States*, in WILLIAM MILLER (ed.), «Men in Business» (Cambridge, 1952); F. POSTEL, *L'opinion publique et le problème social sous la monarchie parlementaire*, «L'opinion publique» (Paris, 1957), pp. 45-53.

elsewhere indicates that once the corporate form is made available in an industrializing area, it proliferates rapidly, quickly replaces other business forms in size and number, and fosters integration, concentration, larger units, and rationalization within the firm and the industry.<sup>76</sup> By casting a shadow on the legitimacy of operations involved in the formation of joint-stock business organizations and effectively deterring the use of France's corporate form—the *société anonyme*—officials made it more difficult for France to mobilize capital into the kind of firms best suited for economically modernizing France at a sustained pace.

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<sup>76</sup> DAVID LANDES, *The Structure of Enterprise in the Nineteenth Century*, pp. 107-123.