

Mill on Limited Liability Partnerships

Not only a notable philosopher, John Stuart Mill was also active on many political issues of the day. *Robert Ingham* looks at one, topical once again.

The House of Commons Trade & Industry Select Committee published a report in February 1999 scrutinising the draft Limited Liability Partnership Bill published by the government (HC59, 1998–99). The draft Bill, if enacted, would introduce to the UK a new means of carrying on a business, combining the internal arrangements of a partnership with the external obligations of a company. The measure might prove popular with some accountancy firms and other professional concerns and the government hope to bring forward a Bill soon.

During the course of their inquiry, the MPs discovered that the concept of a limited liability partnership had been investigated in the nineteenth century. They reported that:

In 1851 a Select Committee was established to consider the expediency of facilitating the limitation of liability in relation to the law of partnership, at a time when incorporation of companies with limited liability was a laborious and expensive process. After hearing evidence from more than a dozen expert witnesses, including the secretary of legation at the American Embassy, on experience in the United States, and written submissions from, among others, John Stuart Mill and Charles Babbage, this Committee concluded that: 'the best authorities are divided on the subject, and that it would require great care to devise the checks and safeguards against fraud, necessary to accompany such a general relaxation or change in the law'.

Mill's evidence to the 1851 Committee is reprinted below. In it, he discusses many of the same points raised by the Trade & Industry Committee this year, including whether or not limited liability partnerships should be available only to certain professions; rules re-

garding the registration of partners' details; and arrangements necessary for the protection of clients.

In his last paragraph, Mill applies his Liberal tenets to come down in favour of limited liability partnerships. To those familiar only with *On Liberty*, and his other scholarly works, this piece illustrates the extent to which Mill was engaged with day-to-day issues of practical politics, even before he became a MP himself, in 1865.

Appendix to Report: Reply to queries by *J. Stuart Mill, Esq.*

The liberty of entering into partnerships of limited liability, similar to the *commandite* partnerships of France and other countries, appears to me an important element in the general freedom of commercial transactions, and in many cases a valuable aid to undertakings of general usefulness.

I do not see any weight in the reasons which have been give for confining the principle to certain kinds of business, or for making certain employments an exception from it. The prohibition of *commandite* is, I conceive, only tenable on the principles of the usury laws, and may reasonably be abandoned since those principles have been given up. *Commandite* partnership is merely one of the modes of lending money, viz., at an interest dependent on, and varying with, the profits of the concern; and subject to the condition, in case of failure, of receiving nothing until other creditors have been paid in full. This mode of lending capital is evidently more advantageous than any other mode to all persons with whom the concern may have dealings; and to retain restrictions on this mode after having abandoned them on all others, appears to me inconsistent and inexpedient.

concluded on page 28

fairs. The chapter is littered with examples of occasions where high-minded Liberal principles conflicted with the everyday reality of world affairs. In many ways, Grey was the epitome of this contradiction. The fundamental objective of liberalism in foreign affairs was the negation of a balance of power, for this implied that nations were inherently hostile to one another and it limited freedom of manoeuvrability. Yet the threat of Germany forced Grey to make overtures to France and Russia, thereby accepting the notion of a balance of power. The outbreak of war in 1914 seemed to be yet another nail in the coffin for liberalism.

There is little ambiguity in the impression that Bernstein wants his readers to go away with. The final sentence could not be clearer: 'If class-based politics were coming, so was the decline of the Liberal Party – not imminently, perhaps, but eventually and inevitably.' The question was, how much longer would traditional liberal issues continue to appeal to the electorate? There were already signs by 1914 that the working classes no longer placed their faith in that Gladstonian relic known as the Liberal Party.

A Liberal Democrat History Group Fringe Meeting

1974 Remembered

The two elections of 1974 formed the peak of the second post-war Liberal revival, giving the party six million votes but no more than fourteen MPs. A wide range of participants in the campaigns – including Tim Beaumont, Viv Bingham, Adrian Slade, Sir Cyril Smith, Paul Tyler MP and Richard Wainwright – share their recollections of the elections of twenty-five years ago.

8.00pm, Sunday 19 September

Committee Room, Majestic Hotel, Harrogate

Notes:

- 1 P.F. Clarke, *Lancashire and the New Liberalism* (Cambridge: Cambridge University Press, 1971).
- 2 M. Pugh, 'Yorkshire and the New Liberalism', *Journal of Modern History* 1978, D1146.

Mill on Limited Liability Partnerships

continued from page 16

The only regulations on the subject of limited partnerships which

seem to me desirable, are such as may secure the public from falling into error, by being led to believe that partners who have only a limited responsibility, are liable to the whole extent of their property. For this purpose, it would probably be expedient, that, the names of the limited partners, with the amount for which each was responsible, should be recorded in a register, accessible to all persons; and it might also be recorded, whether the whole, or if not, what portion of the amount, had been paid up.

If these particulars were made generally accessible, concerns in which there were limited partners would present in some respects a greater security to the public than private firms now afford; since there are at present no means of ascertaining what portion of the funds with which a firm carries on business may consist of borrowed capital.

No one, I think, can consistently condemn these partnerships without being prepared to maintain that it is desirable that no one should carry on business with borrowed capital; in other words, that the profit of business should be wholly monopolised by those who had had time to accumulate, or the good fortune to inherit capital; a proposition, in the present state of commerce and industry, evidently absurd.

(signed) J. S. Mill

History Group Publications

Following the success of the *Dictionary of Liberal Biography*, the History Group will be publishing more books in association with Politico's – and readers of the *Journal of Liberal Democrat History* are invited to help.

The *Dictionary of Liberal Quotations* is scheduled for September 1999, part of a set of three political quotations books.

Great Liberal Speeches, intended for publication during 2000. This book will include the full texts of around thirty famous speeches by Liberal politicians, with commentaries.

An Oral History of Twentieth-Century Liberalism. A thematic study of the Liberal Party and liberalism, drawing upon interviews with Liberal activists and politicians, as well as autobiographical sources.

Dictionary of Liberal Biography, 2nd edition, provisionally scheduled for 2002 or 2003 – but we would like to hear ideas now for the inclusion of major figures omitted from the first edition.

Please write with ideas, on these and on any other potential books, to Duncan Brack, Flat 9, 6 Hopton Road, London SW16 2EQ; ldhg@dbrack.dircon.co.uk.