Death of the deodand

Accursed objects and the money value of human life

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"Whereas the Law respecting the Forfeiture of Chattels which have moved or caused the Death of Man, and respecting Deodands, is unreasonable and inconvenient": Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the First Day of September One thousand eight hundred and forty-six there shall be no Forfeiture of any Chattel for or in respect of the same having moved to or caused the Death of Man; and no Coroner's Jury sworn to inquire, upon the Sight of any dead Body, how the Deceased came by his Death, shall find any Forfeiture of any Chattel which may have moved to or caused the Death of the Deceased, or any Deodand whatsoever; and it shall not be necessary in any Indictment or Inquisition for Homicide to allege the Value of the Instrument which caused the Death of the Deceased, or to allege that the same has no Value.¹

With these words the British Parliament, in the summer of 1846, passed "An Act to Abolish Deodands," thereby undoing a law that had been in effect in England for over six centuries. A deodand was "an accursed thing."² The term itself comes from the Latin phrase deo dandum, which means "that which must be given to God." It is an example of the idea that evil objects are sacred, that they are charged with divine power, and that they therefore belong to God. In English law prior to 1846, any moveable material object—more specifically, any piece of personal chattel property—that directly caused the death of an adult human being became deodand and, as an accursed thing, was held to be forfeit to God (whose earthly representative in such cases was the royal sovereign).

The abolition of the law of deodand was a relatively minor, but essential, part of a much more sweeping transformation in British social institutions of the 1840s that established legal structures better suited to capitalist enterprise and liberal society. But the issue it addressed was far from minor. Fatal accidents are a form of historical trauma common to any culture. For those who love and materially depend on the deceased, their disruptive force becomes a negatively lived object, an impassioned fixation, which represents a crisis not only in the violated hearts of certain individuals, but in the general structure of material social relations. Any culture must establish some procedure of compensation, expiation, or punishment to settle the debt created by unintended human deaths whose direct cause is not a morally accountable person, but a nonhuman material object. This was the issue thematized in public discourse by the debate on the law of deodand. Moreover, with its abolition, British legal institutions articulated the solution of liberal capitalist society to the general problem of the relation of the value of money to the value of human life.

Since the proximate cause of the death of the deodand as a social reality was itself an inanimate material object, the locomotive, I want to begin with an event that took place sixteen years prior to the statute of abolition. From consideration of this concrete event, I am going to indulge in some inexcusably far-ranging historical reflections on accursed objects and monetary debt as material embodiments of national sovereignty. I will, however, conclude with a somewhat more scholarly account of the abolition of deodand in 1846.

The unfortunate death of the Honourable William Huskisson

In September of 1830, the world's first public railroad, the Liverpool and Manchester line, made its inaugural run. The day had been carefully orchestrated

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¹ Thanks to Michael Taussig for inviting me to give the talk from which this essay is drawn as part of the Columbia University Department of Anthropology's "Angel of History" lecture series. Cordial apologies to Shael Herman, who so generously sent me the manuscript of a work of scrupulous scholarship that I have used so cavalierly. Thanks also to Tomoko Masuzawa for her interest in this essay and for inviting me to give the talk at the University of North Carolina "Fetishism" conference that began my interest in developing a materialist critique of the work of Georges Bataille, which has been continued in this essay.  
³ Oliver Wendell Holmes, Jr., The Common Law (Boston: Little, Brown, 1881), p. 35.
not only as a business promotion, but as a national celebration. Liverpool and Manchester, the two great cities of the English cotton industry, had arranged for brass bands, speeches by local dignitaries, and a number of allegorical pageants celebrating English nationalism and industrial progress. Banners, grandstands, and archways of flowers were placed at gathering points along the route. The steam-powered cavalcade that set out from Liverpool at a rate of 12 miles per hour consisted of eight locomotives, each flying a different colored flag and given striking names such as the Phoenix and the Rocket. These pulled a train of curiously upright carriages—their design was basically that of a stage coach on railroad wheels—that were occupied by notable men of British industry and politics. There were eleven Lords, four Viscounts, and one Marquis, the ambassadors from Austria and Russia, as well as the owners of the railroad. Among the politicians were Sir Robert Peel, the cotton magnate who, as Home Secretary, had just established the world’s first modern police force and William Huskisson, a popular liberal Tory from Liverpool who, inspired as a young man by the American and French Revolutions, had been present at the storming of the Bastille but had since become a progressive conservative and tireless advocate of free enterprise.

Great crowds, estimated at half-a-million people, had turned out that day not to see any of these men, nor even the new technological wonder, but rather to catch a glimpse of the Duke of Wellington, hero of Waterloo and more recently England’s Prime Minister. The crowd was mostly festive, though a few red republicans showed up waving tricolored flags and carrying signs demanding the extension of voting rights to a larger segment of the population. Unfortunately, the celebration was disrupted by what the London Times called a “dreadful accident” that occurred when the procession made a stop to add water to the locomotives’ boilers. Among the passengers who got off to stretch their legs was William Huskisson. Huskisson had walked over to the Duke of Wellington’s car—with the intention (so the newspapers said) of shaking hands with the great man in order to make up “an old quarrel”—and was standing on the tracks chatting with a group of politicians and railroad promoters. Let me quote the account of a Times correspondent for what happened next:

Whilst he was standing with them, the Rocket engine, which, like the Phoenix, had to pass the Duke’s car, to take up its station at the watering place, came slowly up, and as the engineer had been for some time checking his velocity, so silently that it was almost upon the group before they observed it. In the hurry of the moment all attempted to get out of the way. . . . [But Huskisson] hesitated, staggered a little as if not knowing what to do, then attempted to run forward, found it impossible to get off the road, on account of an excavation of some 14 or 15 feet in depth being on that side of it, on which he was, attempted again to get into the car, was hit by a motion of the door as he was mounting a step, and was thrown directly in the path of the Rocket, as that engine came opposite the Duke’s car. He contrived to move himself a little out of its path before it came in contact with him, otherwise it must have gone directly over his head and breast. As it was, the wheel went over his left thigh, squeezing it almost to a jelly, broke the leg, it is said, in two places, laid the muscles bare from the ankle, nearly to the hip, and tore out a large piece of flesh, as it left him. Mrs. Huskisson, who, along with several other ladies, witnessed the accident, uttered a shriek of agony, which none who heard it will ever forget.

Huskisson was dragged into the Duke of Wellington’s car and a tourniquet applied to his leg, but it was clear the accident was fatal. The Duke and Sir Robert Peel insisted that the celebration be canceled and the train return to Liverpool. While the newspapers reported this merely as the expression of an admirably humane emotion, there was far more going on. Wellington, Peel, and Huskisson led the three factions of a Tory Party that had been the ruling party in England for nearly half a century but that was now facing complete collapse. Wellington, the national hero, led the conservative Tories who wished to maintain the old political order that relied on a divinely ordained monarch, an established Anglican church, the army, and unreformed judicial and financial institutions. Peel, the innovative and authoritative Home Secretary, led those Tories who recognized the need for strong new institutions to maintain social order and fiscal efficiency. Huskisson, who had pushed through major reforms as president of the Board of Trade and then as Colonial Secretary, represented those Tories most deeply involved in the global economy and who believed in the principles of free trade and “liberalism” before all else. When

3. London Times, September 17, 1830.
Wellington had been called upon to form a new government in 1828, Huskisson and other critics of the Duke's "illiberal" policies (they became known as Huskissonites) had bolted. The Tory coalition had been further weakened in 1829 as ultraconservatives became infuriated when Wellington had reluctantly pushed through a heavily hedged bill of Catholic emancipation. Worse yet, the winter of 1829–1830 saw a terrible economic depression set in. Many hard-pressed workers joined activist Political Unions. Local violence by the poor and unemployed surged. This, along with their own straightened circumstances, sent the middle classes into an apocalyptic fear of social chaos that expressed itself in a general demand for a more activist government and in a politicization of revived religious values whose focus became the demand for an immediate abolition of slavery in Britain's West Indian colonies. In June, the king had died, and a new king meant new elections in a year of crisis. The dire possibilities of such an election had been played out the following month in France, when a new election solidified an opposition backed by liberal business groups that, by the end of the month, had forced the king to abdicate. By September 15, the day of Huskisson's death, the Tory party was facing complete disaster in next month's election. The only hope of avoiding a transfer of governmental power to an opposition Whig party subject to unprecedented new social forces was to get the Huskissonites back on board. Astute politicians, Wellington and Peel saw in this bloody corpse not only a personal tragedy, but a new political fact whose ramifications had to be divined at once. However widely disliked Huskisson may have been in political circles for his vacillating unreliability, any treatment of the liberal Huskissonites fallen leader that might be perceived as disrespectful had to be avoided. (What happened, of course, is that the Whigs swept the election of November, 1830, and the way was opened for the Reform Act of 1832 that transformed the political constitution of England, which the Tories had so long defended.)

However, the railroad promoters of Liverpool and Manchester were part of the very social force that Huskisson represented, and they objected to turning a great ritual of commercial celebration into a procession of political mourning. They insisted that Wellington and Peel had a public duty to continue, that "the success of the project, on which they had expended so much capital, might depend on their [the procession] being regularly finished." They warned that if the expectations of the crowd of spectators in Manchester were not fulfilled, a riot might ensue:

The public expected that they would have the satisfaction of seeing the road opened that day, and the directors were bound to fulfill their expectations to the best of their ability. It was quite certain that the news of the melancholy accident which had befallen Mr. Huskisson would reach Manchester, and that consideration rendered it still more imperative that the whole procession should move on, to correct any exaggerated reports of mischief which might get abroad, and to show the public that the accident which happened was a mere accident, and had not happened through any fault of the machinery.5

Wellington reluctantly agreed, and the procession continued, thereby averting a disastrous impression regarding the newborn railroad industry from being made upon that newly powerful political entity, public opinion.

But there was one more hurdle that had to be cleared. Would a coroner's jury declare that the locomotive involved deodand? Huskisson's body was taken back to Liverpool where it was laid on display in the city's principal public building. In any such case of suspicious death, the country coroner was required to impanel a jury of local citizens. The jury was first required to view the body and form a personal impression of the death. They then heard testimony from eye witnesses and other concerned parties, whereupon they decided whether a criminal homicide had taken place or merely an accidental death. If the latter, their last act was to decide whether or not an object was at fault and, if so, to declare the object deodand and estimate its money value, which became an amount of debt owed to the crown. In this case, as the always pro-railroad Times duly reported, the jury 'returned a verdict of Accidental Death,' but affixed no deodand on the engine, from which it may be fairly inferred that they acquitted the engineers and the machinery of all blame.6

Oliver Wendell Holmes on the problem of the deodand

There are few ideas less rational to a modern mind than the idea of holding an inanimate object to be morally guilty for some effect it has caused. In his book

of 1881, *The Common Law*, Oliver Wendell Holmes traced the basic concept of deodand back to ancient German, Roman, and Biblical laws that required the physical surrender and sacrificial destruction of any lethally noxious thing, whether it was a knife purposefully directed by the hand of a murderer or some legally inanimate object that killed a person apart from the intention of its owner. The ox that gored a neighbor to death, the wagon that ran over a stranger in the marketplace, or the slave who killed a citizen must be surrendered, although experts disagreed whether this functioned primarily as a mode of expiation for the tainted owner or as a way to satisfy the demand for revenge on the part of the victim's family and thereby avoid a blood feud. Holmes agreed with the latter view, since early law pursued the guilty thing itself even when its ownership had passed from the hands of its owner at the time of the death. As Holmes put it, "the liability seems to have been regarded as attached to the body doing the damage, in an almost physical sense." This was in accord with Holmes's general view that "all law is directed to conditions of things manifest to the senses." Hence his famous statement on the opening page of *The Common Law*: "The life of the law has not been logic; it has been experience." Holmes explained his understanding of deodand, as well as his larger claim that the impulse for revenge was the origin of law, by locating its origin in an immediately lived response, specifically "the desire of retaliation against the offending thing itself," as exemplified in the angry desire one has to kick a door that has pinched one's finger.

The reason why the apparently antiquarian problem of "the liability of inanimate things" was a central problem for Holmes in his effort to rethink modern liability law is illustrated by the confrontation between nineteenth-century industrial capitalism and the English law of deodand that is the subject of this essay. Earlier in the nineteenth century, jurists had tried to frame a legal theory adequate to the new industrial world by generalizing the principles of contract law. Such a framework worked well enough for controversies that could be understood in terms of intentional agreements between voluntary parties. But the new technologies also multiplied the sorts of events in which injury occurred as an unintended consequence of mechanical operations, and the law of torts, that is, the body of laws compensating accidental wrongs occurring outside any preexisting contractual relation, had grown from a minor supplement to contract law to a separate field of equal importance. But the principles of tort law were far from certain. In *The Common Law*, Holmes attempted to establish these principles through what could be termed a historical phenomenology of material sensibilities (in opposition to the excessive formalism and Hegelianism that dominated the legal theory of his day). The task of the modern jurist was thus to discover the "anthropology contained in the history of law." Influenced especially by the work of E. B. Tylor, Holmes sought to ground liability law in culturally specific standards of reasonable behavior, which in turn rested on what he called the "felt necessities" of a particular historical moment.

However, Holmes ultimately rejected this as a satisfactory solution to the nineteenth-century crisis in the understanding of civil and criminal liability. The drawback of a method of cultural phenomenology as legal anthropology is its failure to take into account the conceptual effects of the multiple and often competing political institutions whose power shapes the legal discourse of a society. This is well illustrated by the concept of deodand itself. A law dictionary of 1579 inadequately defines the term thus:

Deodande is when any man by misfortune is slain by an horse or by a cart, or by any other thing that moveth, then this thing that is cause of his death, and which at the time of the misfortune moveth, shall be forbayte to the Queene, and that is called deodande, and that pertaineth to the Queenes Almener for to dyspose in almes and in deedes of charites.

Although the paradigmatic event for deodand was indeed that of a material object that killed a person by its physical motion, this definition overlooks the fact that in concrete decisions about deodands, the operative

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8. Ibid., p. 49.
10. Ibid., pp. 34, 11.
11. Ibid., p. 37.
distinction was the feudal, institutional one between real and personal property. Real property formed a landed estate; the division or transfer of such property fell under the normal jurisdiction of the king’s courts. Moveable objects that were personal chattel property, however, were transferred either through sales falling under the law merchant or through inheritance after a natural death, which was handled by ecclesiastical courts. The violence that made a chattel deodand was thus an exception to the normal division of property laws, since it placed a case involving personal property under the jurisdiction of the sovereign. It is the distinction between real and personal property that explains the oddity that a bell that fell and killed someone was not ruled deodand, despite the fact that its motion was the cause of death (because it was classified as real property, part of an estate). On the other hand, the lethal fall of a man off a stationary wagon could make the wagon deodand, despite its lack of motion (because a wagon was chattel property). Deodand is thus more accurately defined as “whatever personal chattel is the immediate occasion of the death of any reasonable creature.”14 (The latter qualification indicates that the death of an infant, who lacked reason and free will and hence the capacity for expiable sin, could not be the occasion for a judgment of deodand.)

While a historical materialist phenomenology of the sort Holmes attempted in The Common Law is necessary to grasp the idea of the deodand, it seems that it must be combined with a historical analysis of the theoretical discourse forged by society’s political institutions. In the case of the English law of deodand, this means examining the political theory established to legitimate a Christian state.

The pious use value of accursed objects and the fiscal body of the Christian sovereign

The English law of deodand differed from earlier Germanic and Mediterranean laws pertaining to guilty objects since it was shaped by Christian and feudal political institutions. The deodand that was forfeit to God was not destroyed in a public sacrifice but was rather surrendered for what the Church called “pious use.” That is, its material use value was transferred from the private economy of material life to what we might call the Christian economy of charity and salvation. The accursed thing or, more often, an amount of money equal to the monetary value of that thing, was surrendered by the owner to the state for use in relief of the poor and other charitable activities. Things that had caused a human death became the rightful property of the sovereign and were given over to the king’s high almoner.

The deodands responsible for sudden death were classified under a legal category of sovereign property that included any catastrophic source of royal revenue. Other examples were cargo washed ashore from shipwrecks, prizes seized in war, and chance discoveries of hidden treasure or gold mines. Various events of sudden violence and fortuitous encounter (what miners used to call a “lucky strike”) produced a type of wealth that was held to belong to the sovereign if these occurred within the sovereign’s territorial jurisdiction; they fell outside the normal privileges and protections inhering in real and personal property against the power of the state. The owner of such wealth was not the king in his status as a mortal person, but rather the monarch in his or her identity as the immortal body of the nation’s sovereignty. As Kantorowicz mentions in his book on medieval political theology, The King’s Two Bodies, this was conceived not through the modern distinction between the private sphere and the public sphere, but rather through the peculiar medieval distinction between the king feudal and the king fiscal. The king feudal was a particular mortal individual placed at the top of the hierarchy of voluntarily contracted feudal relationships. The king fiscal was the immortal king as the sovereign “crown.” The latter, in Latin, was also called the res fisci (literally, “the fiscal thing”). The fiscal sovereign consisted of those materialities sacralized in the world of secular time by mundane historical events, as opposed to those objects sanctified through the divine salvational power that had entered the world through Christ. The wealth that became part of the king’s fisc was conceived as a permanent, inalienable component of the sovereign, unlike the property that belonged to the king in his capacity as a mortal feudal lord, which could be sold off at need. As the fourteenth-century legal theorist, Bracton, wrote:

A thing quasi-sacred is a thing fiscal, which cannot be given away or be sold or transferred upon another person by the Prince or ruling king; and those things make the

This Christian feudal ideology produced what Kantorowicz calls "that seemingly weird antithesis or parallelism of Christus and fiscus." The Christus, the ecclesiastical body of Christ in this world, that is, the church with its eucharistically present Christ, its divinely empowered priests, and its sacramental objects, was concerned with the salvation of people's immortal souls. The fiscus, the fiscal body of the crown, that is, the king in his divine right as monarch, his officers, and the quasi-sacred objects that were the sovereign's wealth, was—in theory, at least—concerned with enacting God's law of Christian charity in the historical world of mortality embodied life. (I might note that while the use of wealth and money for the purpose of salvation in heaven corrupted and delegitimated the church, most spectacularly in the practice of selling indulgences, the use of wealth and money for the purpose of charity on earth successfully helped legitimize both the modern state and the charitable institutions, such as hospitals, to which the state granted special privileges.)

In the late twelfth century, the responsibility for deodands became part of the new office of the coroner. As is implied by the name itself, which is derived from corona, the Latin word for crown, the coroner was the direct agent and chief accountant of the sovereign in local affairs. The coroner's duty was to safeguard the rights of the crown by impaneling juries and holding courts of inquest into such things as shipwrecks, treasure-trove, and any unexplained death that might bring revenue to the crown. As I have already mentioned, in late medieval times revenue derived from deodand judgments usually took the form of the money value of the accursed object rather than the thing itself. In the terminology of English common law, this meant that the thing had become liable for an action of debt, since the term "debt" referred to a specifically monetary obligation. This also meant that if the deodand object was destroyed, the debt was canceled, since it was the thing itself, not its owner, that was the debtor. If the owner wished the continued use of the guilty object, then the money owed for its killing of a person was determined by the value of that particular object, be it a sword, an ox, a slave, or even, once such things came into existence, a locomotive.

**The incorporation of capitalist debt into the sovereign body**

Before turning to the abolition of deodand, I need to mention two important changes affecting the relation between deodand judgments and monetary debt that occurred prior to the nineteenth century. One need only be noted: the institution of the coroner had undergone a democratic transformation that altered it from being a direct agent of the crown in local affairs to being a representative of the local interests that was able to use the powers of the crown. This occurred not only because local citizens made up coroner's juries, but also because the coroner himself became a locally elected official. The other, however, requires a longer discussion; the fiscal body of the state underwent a fundamental transformation by its incorporation of a capitalist system of debt.

Since the time of the emergence of Christianity as the state religion of Rome in the fourth century, the law of Christian states had been characterized by an absolute ideological opposition to commercial debt, that is, to trade credit in the form of interest-bearing loans. The lending of money for profit, no matter how small, was condemned as usury, as a violation of the fundamental Christian principle of caritas (charity). As Shael Herman notes in his book, *Medieval Usury and the Commercialization of Feudal Bonds*, the main scriptural authority for this injunction was Luke 6:35, "Lend: expect nothing in return." This position had only been reinforced with the development of European canon law in the twelfth century:

Assuming money had immutable and absolute value, the Church apparently considered the idea of the time value of money as heretical as the teachings of Galileo and Copernicus. The autonomous system of canon law established by Gratian about 1142 had as one of its

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foundation stones an absolute ban on usury. In 1139, the Second Lateran Council deprived the unrepentant usurer of church sacraments and barred his burial in sacred ground.19

Lending money at interest was sacrilege because it exercised a power akin to unholy magic. Money was the tool of the great magician himself, the figure of the Antichrist, Simon Magus, when he tried to buy the miraculous power of the Holy Spirit from Saint Peter (in Acts 8:9–22). It was the need to preserve the holy power actualized in the sacrament of the Eucharist from corruption by the unholy power of money that made simony (a term derived from Simon Magus) the central issue in the Gregorian reformation of the Catholic Church.20 Outside the church, whose priests held a monopoly on the power of the Holy Spirit, piety in the secular world was expressed in the act of charitable giving. Charity was the most godly of acts because it came closest to God’s mode of action, the gift of the natural world that God created. The realm of secular temporality was itself a gift. As Karl Pribram has written, “Time was regarded as a common property given to all men as a free gift.”21 The gift of time, with its natural fruitfulness, came under man’s stewardship in the form of real property (farmland and durable goods able to produce new things because they embodied the power of nature). But consumer goods and other movable personal property lacked such productive capacity; their “intrinsic goodness” could only be consumed by the owner or given away for another to consume. Since Aristotle, money had been classed among the consumer goods. Money could only be spent or lent, and lending was properly giving since money was naturally barren. The usurer who lent money at interest was corrupting the holy gift of time in the same way that Simon Magus tried to use money to acquire the power of the Holy Spirit from Saint Peter. Charging interest was thus not merely an unnatural use of money; it was a quasi-magical act entailing spiritual pollution.

Given the inevitable need for legitimate institutional structures to accommodate the monetary credit-debt relations crucial to the development of any widespread commerce, medieval states developed a number of creative evasions of the ban on usury. One, of course, was the use of non-Christians as agents for loans. This received institutional form in England in the curious office called the Exchequer of the Jews. Another evasion, one available to land-rich monasteries and Christian lords, was the ruse of subinfeudation; agricultural land was nominally transferred as a non-tenurial lease to a lender, in his guise as vassal to the borrower, so that a loan given to a feudal debtor could masquerade as rent and the interest on the loan paid to the creditor could masquerade as direct income earned by a feudal vassal from agricultural production.22

By the fifteenth century, laws against interest-bearing loans had been sufficiently undermined and European commerce had reached a sufficiently critical mass so that the greatest among the financiers providing intermediation services to commercial enterprises were able to draw enough currency from the web of monetarized debt values realized in bills of exchange and other financial credit instruments to begin making very large loans to the sovereigns of Europe. Monarchs of the sixteenth century like Charles V fought their wars on credit supplied by bourgeois bankers like the Fuggers and the Medici. Moreover, they increasingly fought these wars with weapons bought on credit from commercial industrial enterprises located in free cities. The expansion or contraction of the monetary value realized by private merchants in the form of capitalized debt and trade credit became precariously dependent on the fortunes of war and the victory or defeat of the particular sovereign a money lender or materials supplier had decided to back. That is, prior to the great overseas expansion that opened a vast field for speculative investment in colonial adventures and slave plantations, great merchant capitalists waged their surplus money on great sovereigns who waged war.

In sixteenth-century Europe, the institutional linkage between the monetary values produced by commercial credit and those arising from public debt was still rather inchoate. My favorite example of this concerns a shipload of bullion belonging to Genoese merchant-bankers that was intended as a loan to the Spanish forces in the Netherlands who were fighting against the revolt of the Protestant Dutch. The dangers of the high

22. Elaborate notions of leasing have seen a great revival since 1995, when Citibank and other Western banks, in conjunction with financial institutions in Malaysia and the Gulf states, began to invent the accounting methods of “Islamic banking.” Like medieval Christian law, Islamic Shari’a law bans the charging of interest.
seas forced the ship to take refuge in an English port, and Queen Elizabeth seized the treasure, which she desperately needed for her efforts to support the Dutch against the Spanish. Her seizure was legitimate according to the medieval law of sovereignty that I have already discussed, but Elizabeth, for practical political reasons, chose to treat this money as a loan, that is, as a debt owed to the bankers of Genoa who would have to be repaid. The Italian financiers accepted this shift of sides in their funding of the continental war. They couldn’t do anything about it anyway and, after all, the money was not lost, only lent to an unexpected borrower.23

The crucial transformation in the fiscal body of the English sovereign occurred at the end of the following century, long after European monarchs had become thoroughly dependent on commercial credit. The great event was the founding of the Bank of England in 1694 and the creation of the first modern national debt. Unlike previous state debts, the British national debt that secured the Glorious Revolution was intended as a permanent entity that was never to be paid off. Individuals could invest in this debt by buying what we would call government bonds, from which they derived specified interest payments at specified times and which they could cash in at any time, making it a floating debt that came to be funded by all of the monied classes in the English nation. It thus became a political vehicle for building a national alliance between previously hostile agricultural and commercial economic interests, as well as an economic vehicle that provided the public money with which the new British state could build a navy whose primary political purpose was the protection and expansion of an overseas commercial empire.24 Since the Bank of England was also the dominant source of private business loans in the nation, this institution for the first time enabled a functional unification of the body of monetary values existing in the form of private trade credit within a national economy and the body of monetary values created through public borrowing and the other fiscal activities of a sovereign state. This innovation not only transformed the nature of the fiscal sovereignty of the state, but it set the stage for the modern history of money.

Money has traditionally been defined as currency, that is, as anything generally accepted as payment for goods and services and for the settlement of debts. A particular commodity, gold (along with other precious metals) functioned as the primary world currency from the beginning of the European colonial expansion until the 1970s. This meant that the supply and hence the value of money was dependent upon the chance discovery of precious metal mines and new techniques for refining these metals, because they affected the commodity value of the currency substance.25 But the British invention of the modern central bank made the creation and fluctuation of monetary debt values realized in the capitalist accounting practices of private business enterprises an increasingly recognizable causal factor affecting the value of money. It also made the ability of states during crises, primarily wars, to issue paper fiat money, that is money whose acceptance is coerced by the state as legal tender and whose value is secured only by the general credit of the state, a third obvious determining factor. The creation and fluctuation of monetary value in capitalist societies thus appears to be triangulated between the changing market values of commodities and commodity currencies, the private monetary debt values created by trade credit and bank loans, and the standing public debt and issues of credit money of sovereign nation-states. That the value of money has become increasingly determined by the monetary values created in intermediated credit-debt relations, both private and public, rather than in the direct commercial exchange of commodities, is hardly news to economic historians. But economic models of the origin of monetary value do not take into account fatal accidents and other torts as an origin of novel debt liabilities and hence of new monetary values. To do so would be to acknowledge that death, the destruction of life, the very antithesis of an economically productive event, sometimes creates money.

23. This little-noted aspect of the famous “ship money affair” is mentioned in J. E. Neale, Queen Elizabeth I: A Biography (Garden City, New Jersey: Doubleday, 1957), pp. 176, 183–184.
25. I am referring to theories of money then current; the idea that prices were in truth more influenced by population growth was not part of orthodox economic theory prior to the nineteenth century. For a brilliant survey of price movements and their determinants, see David Hackett Fischer, The Great Wave: Price Revolutions and the Rhythm of History (New York: Oxford University Press, 1996).
The abolition of deodand: the money value of human life and immortal bodies without sovereignty

During what is still usefully referred to as the Industrial Revolution, capitalist manufacturing enterprise extended its dynamic drive toward technological innovation beyond the production and supply of wars and colonial adventures. It is undeniable that many of the new objects it produced in the world of early-nineteenth-century civil society were notable for their danger. Gas lighting, heavy machinery, even plate-glass windows became a new source not only of economic prosperity, but also of accidental death. Among these objects, the one with the greatest lethal potential was steam-powered transportation. In 1769 the inventor Nicolas Cugnot drove the world's first steam-powered land vehicle into a wall. (He was thrown into a French prison for being a danger on the road.) In 1801 at the trial run of the first English locomotive, the engine overturned and caught fire, while a demonstration two years later had ended with a boiler explosion and four deaths. I have described the accidental death of William Huskisson on the occasion of the opening of the first public railroad in 1830.

That no deodand was declared in Huskisson's death was important at the time, since powerful forces opposed the fledgling railroad industry. In those days a corporation such as the Manchester and Liverpool Rail-Road had to receive a special charter from Parliament. The fight to win this had been hard, since established interests, notably the owners of the canals with whom the railroads would compete for the domestic carrying trade, were adamantly opposed. As a publication called The Anti-Rail-Road Journal argued a couple of years later, the Manchester and Liverpool, which had turned a profit in its first years only because it had received a special tax exemption, benefited a relatively small number of investors, in contrast to canals, which had a far more extensive base of investors. The establishment of railroads inevitably diminished the property value of the canals in which many of the rural middle and upper classes had invested their capital, and these latter were the principal consumers who had created a prosperous internal market in England. This forecast of dire consequences for the general economy had a certain resonance in the depressed economy of the early 1830s. The antirailroad interests warned that a new and socially destructive principle had been introduced into the politics of corporations:

It is now to be laid down as a principle on which Parliament intends to act, that encouragement is to be afforded to every scheme which shall profess to be beneficial to its proprietors contrary or to the injury occasioned to property already in existence.26

The 1830s and 1840s do, in fact, represent the moment of the legal revolution that created modern corporations. The ancient law of corporations had concerned a special privilege granted by the state in the form of a charter to engage in and usually monopolize some socially beneficial—whether profitable or charitable—activity. The emergence of a capitalist economy required instead that incorporation be a routine procedure, a private right in civil society rather than a special privilege granted by the sovereign state. It also required that corporations be legitimized in terms of market competition rather than monopoly privilege. This entailed a theoretical contradiction between the right of property owners to enjoy a settled expectation in the stable value of the objects in which they had vested interests and the right of business owners to engage in free enterprise through market competition in which property values are always in flux and in which there are supposed to be both winners and losers (in this case, the railroad owners were the winners and the owners of canals and turnpikes the losers). This contradiction between the principles of property ownership and market competition was a fundamental problem underlying the later transformation of legal theory by such thinkers as Oliver Wendell Holmes.27

In this new institutional context, a parallel contradiction emerged in the sphere of public law; the state had a duty to protect the property and contracts of private individuals, but it also had a duty to act for the good of society as a whole. This often involved the confiscation of private property under the state's power of eminent domain or the diminishment of property values through state regulation, which happened to make some social groups winners and others losers. Indeed these contradictions determine the argumentative structure of legitimized politics within capitalist democracies. The logic of legitimate economic and

27. The argument of this paragraph and the one that follows relies heavily on Robert Meister's still unpublished study of American constitutional law.
political action that emerged in Anglo-American legal culture during the nineteenth century represented society as divided into two spheres, the public and the private. The public sphere of the sovereign state was conceived as a realm of coercive force that was justified only if it protected private rights in general and encroached on them only for reasons of the good of the whole society and not in a manner that deliberately redistributed wealth or power from one social group to another. The private sphere was conceived as a realm of voluntary association between private parties who established explicit reciprocal obligations by freely agreeing to enter into contracts. One thing Marx realized in his studies of revolution and class struggle in France at the end of the 1840s was that the discourse of political conflict between different groups in a modern society involved representing one’s own group as acting in the interests of the whole society and opposing groups as acting in the interest of only their own part of society. Similarly, in legal disputes, a state’s donation of land to the railroad industry, or a court’s refusal to hold a railroad corporation liable for the burned wheat fields of farmers that had been ignited by a spark thrown from the wheel of a passing locomotive, could be justified by arguing that railroads and other embodiments of industrial progress benefited society as whole, whereas land owners or farmers represented only their own partial interests, and the public good outweighed these. Many of these legal controversies arose from wrongful injuries and deaths caused in unintentional accidents.

Within this new institutional and ideological context, there are two developments directly related to the emergence of a new model of the debt liability arising from accidental death. One was the civilization of such debt, in the original sense of the word “civilization”: the transfer of social controversies that became justiciable cases from the criminal law of the state to the civil law of private individuals. The other was the institutional production of a new kind of (legally) immortal person: the modern limited liability corporation.

The civilization of accidental death was the issue that led to the abolition of deodand in 1846 as being “unreasonable and inconvenient.” The 1840s was known in England as the decade of the “Railway Mania.” By the early 1840s a disjointed network of railroad lines had spread over England. This led to a proportionate increase in railroad accidents and a growing number of deodand judgments against locomotives, a very expensive capital asset. These raised economic problems for railroad corporations and theoretical problems for law courts. For instance, a fatal accident on the Eastern Counties Railway in 1840 had resulted in four deaths and a judgment of deodand on a locomotive valued at 500 pounds; but did this mean that the company owed the crown a total of 500 pounds or did it mean that it owed 500 pounds for each death? One way or another deodand judgments on locomotives tended to get appealed all the way up to the Queen’s bench, where they were almost invariably overturned. But local juries whose towns and farms had been invaded by the new reality of mechanized transportation were continuing to use the power of deodand to do justice as they understood it. There was no other way to compensate an accidental fatal injury. In cases where a person was maimed or mutilated, he or she could sue for damages. But in the case of accidental death, the injured party having ceased to exist, no one had standing to file a civil lawsuit. It was in order to pass the “Fatal Accidents Act” of 1846, which would allow this, that Parliament found it necessary to abolish the law of deodand.

The debate in Parliament emphasized the irrationality of deodand as a remnant of primitive law that should have passed away long ago. Deodands, said Lord Denman, were “a remnant of a barbarous and absurd law.” Lord Campbell, the great law reformer of his day, stated that certain doctrines of the revered common law were “not applicable to the present state of society. One of these doctrines was, that the life of a man was so valuable that they could not put an estimate upon it in case of a death by accident.” That is, the irrationality of deodand was that, in holding the value of human life to be infinite and hence unmeasurable, “compensation was made, not according to the extent of the injury inflicted, but according to the value of the instrument of injury.”

The only cautionary note raised in the debate came from a politician who mused that, although he “was no advocate for the absurdity of the law of deodand,” it seemed to him that “a simple compensation to the Crown was a very ready means of getting at the compensation which was due to the injured party.”

28. Hansard’s Parliamentary Debates, 3d ser., vol. 87 (1846), col. 974. (Sixth session of the fifteenth parliament of the United Kingdom, House of Lords, 7 May 1846).
29. Ibid., col. 968 (24 April 1846).
30. Ibid., col. 626 (11 August 1846).
31. S. Wortley in ibid., col. 625 (11 August 1846).
This was a reference to the Scottish law of deodand, under which the state remained the party conducting the lawsuit and collecting the money due, but the state would then deliver the money to the closest relative of the deceased rather than to a charitable institution. The abolition of deodand meant that it would not be the powerful state that sued railroads and other corporations for compensations, but rather the relatives of the fatally injured person.32

There were a number of forces other than the modern industrial corporation that were working for the abolition of deodand. One of these was modern medical science, in the person of the coroner of Middlesex County, Thomas Wakely, one of the great medical reformers of the time. As editor of the journal Lancet and as a member of Parliament, Wakely tirelessly pressed for the reform of legal institutions in the name of modern medical science.33 Wakely pushed the abolition of deodand in the House of Commons as part of his effort to restructure the office of the public coroner into something closer to that of a modern medical examiner. We should recall that this was an age still shocked by the scandalous activities of Burke and Hare, who robbed graves in order to provide corpses for doctors and medical researchers.34 The transformation of the institution of the coroner into that of medical examiner was of some cultural importance, since it shifted the authority and the conceptual framework that provided the reasons explaining why a particular death occurred. Juries of ordinary citizens were basing their judgments of liability for death upon their response to the viewing of a dead body and their understanding of witnesses’ narratives of what happened. Reformers like Wakely were revaluing the reasons for death within a scientific framework of purely physical causality from which moral considerations were, quite properly, removed.

The other important new social authority on death at this time that had an interest in the abolition of deodand was the insurance industry. The abolition of deodand and the passage of the Fatal Accidents Act meant that compensation for death was now a matter for civil remedies. These companies had such a remedy, a profitable one, in the form of life insurance and personal injury policies. It was the insurance industry that articulated the modern ideology explaining the proper monetary compensation for human life from a capitalist perspective. The best statement I have found of this appears in a fascinating book called The Money Value of Man that was published by two statisticians in collaboration with the Metropolitan Life Insurance Company. The book begins with a historical review of primitive modes for placing a money value on human life. One of these is compensation based of the value of noxious objects, as in the law of deodand. The other is, of course, human slavery. But the modern—and correct—approach, we are assured, is to view “man as a wage-earner or salaried worker.”35 Using actuarial tables of average life expectancy and the likely career trajectory and wage income of a person in a given occupation, one can calculate the amount of lifetime wage earnings lost by an individual killed in an accident before his natural time. In a capitalist society, this is obviously the correct logic for compensating a life, and we may note the class specificity it involves; people with different levels of income have differently valued lives. (The democratic wild card to this is the jury award of punitive damages, a practice the insurance industry is still ferociously fighting today.)

While medical reform and the rise of for-profit social insurance companies were important in the abolition of deodand, by far the greatest social force arose from the owners who managed and invested in corporations. The mid-1840s was the moment when the heterogeneous assemblage of rail lines built in the 1830s were gathered under the control of a few large corporations and when nearly all the liquid capital of England began to flow into railroad investment.36 The reason for this was not

32. The debates also offer one harbinger of the coming class differential in monetary compensations for accidental death when Lord Campbell starts joking with the Lord Chancellor: “There is one objection to these Bills which I have heard. It has been said, ‘Suppose the Lord Chancellor were to meet with an untimely end by a railway accident, which we all pray may never occur, how would the Jury estimate the loss to his family? What would be considered as the value of the tenure of his office? (The LORD CHANCELLOR: Hear, hear!) What would be considered a fair compensation to be awarded to his family for their loss?’” Ibid., col. 173 (7 May 1846).
33. For the important social contributions of Wakely, see S. Squire Sprigge, The Life and Times of Thomas Wakely (1899; reprint, New York: Krieger, 1974).
34. The role of British medical science in revising the institutions and ideology dealing with death in the decades prior to the 1840s, culminating in the Anatomy Act of 1832, has been discussed by Ruth Richardson in Death, Dissection and the Destitute (London: Penguin, 1988).

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only high profit rates but also financial security. While railroads were a notably dangerous enterprise for their customers, they offered unparalleled safety to their investors. This is because railroads, in contrast to older corporations, had been granted the privilege of limited liability. That is, investors were liable for the debts of the business entity in which they had invested only up to the amount of money they had actually invested. (The danger of unlimited liability has once again been demonstrated in the recent phenomenon of "debt millionaires" who invested in Lloyd's of London during its recent period of excessive speculation and fraud.) In the 1840s and 1850s, the advantage of the limited liability corporation form became evident to most corporations and investors, and a series of parliamentary acts were passed that established general limited liability as an essential quality of the modern corporation.

From the anthropological perspective I am adopting here, this represents the cultural production of a new kind of transhuman person (a corporation is a person in the eyes of the law) not subject to human mortality. The material assets of a corporation are owned by this entity and continue to be should any, or all, of its human owners die. In this, modern corporations are true immortal spiritual beings, as much as any god or sovereign. However, it is precisely their private status, the absence of the divinely legitimated power and the quasi-religious public duties of sovereignty, that distinguishes them. That these immortal beings are constituted through their monetary relation to the income-producing things they own is obvious to anyone who knows how to read a double-entry balance sheet; productive assets are represented as monetary values on one side of the sheet, while the mortal ownership of these assets appears as an equal amount of monetary value on the other side. The latter are divided into what is called "owner's equity," the portion of capitalized monetary value that belongs to the corporation's owners, and liabilities, the balance of capital value that is owed as debt to outside creditors. It is debt that knits together the economic relations of different corporate entities and that becomes recognized as itself an asset in the balance sheets of banks and other financial corporations (and in the form of accounts receivable in commercial and industrial enterprises). That is, monetary debt, as constructed within this historically specific cultural system of economic accounting, is the fundamental medium of capitalist social relations.

Capitalism can fully establish itself as the structuring system of a social reality only to the extent that monetary debt in this sense becomes a practical logic and "felt necessity" in everyday social interactions. It may be that the historical limits of capitalist relations appear in those traumatic events that fall outside the economic realm of commercial exchange and contractual agreement, but whose material impact on individual human lives, in cases of accidental injury, and on whole peoples, in the form of war, nevertheless valorizes new debt relations that the modern social order must somehow realize in the form of monetary value. If there is a logic to the accumulation of such monetary values, I believe it has yet to be adequately theorized.

St. Martin's, 1966), p. 264. R. Dudley Baxter states that the capital speculatively invested in railroads at this time was "more than half as large as the national debt" so that railroads became "virtually mortgaged to the debenture and preference capitalist." "Railway Extension and its Results," in Essays in Economic History, vol. 3, ed. E. M. Carus-Wilson (New York: St. Martin's, 1966), p. 37.