

The State of the Company

Corporations, Colonies and Companies in Leviathan

Hein Jessen, Mathias

Document Version

Final published version

Published in:

Journal of Intellectual History and Political Thought

Publication date:

2012

License

CC BY-NC-ND

Citation for published version (APA):

Hein Jessen, M. (2012). The State of the Company: Corporations, Colonies and Companies in Leviathan. *Journal of Intellectual History and Political Thought*, 1(1), 56-85.

[Link to publication in CBS Research Portal](#)

General rights

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

Take down policy

If you believe that this document breaches copyright please contact us (research.lib@cbs.dk) providing details, and we will remove access to the work immediately and investigate your claim.

Download date: 31. Jan. 2023



The State of the Company: Corporations, Colonies and Companies in Leviathan

Mathias Hein Jessen

Journal article (Publishers version)

CITE: The State of the Company : Corporations, Colonies and Companies in Leviathan.
/ Hein Jessen, Mathias. In: Journal of Intellectual History and Political Thought, Vol.
1, No. 1, 2012, p. 56-85.

Link to publisher: <http://www.historyofpoliticalthought.net/>

Uploaded to Research@CBS: October 2016

© 2016 This work is licensed under a [Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Unported License](https://creativecommons.org/licenses/by-nc-nd/3.0/).

THE STATE OF THE COMPANY: CORPORATIONS, COLONIES AND COMPANIES IN LEVIATHAN

Mathias Hein Jessen
Aarhus University

Abstract:

Even though it has a privileged place in our political understanding as well as in the history of political thought, the state has always been understood in relation to the different associations of varying formal character that has existed within it – or of which it has consisted. This also holds true for the political thought of Thomas Hobbes, whose commonwealth is nothing but a political body structurally similar to other associations existing within the commonwealth, albeit the only one absolute and independent. Therefore it is of utmost importance for the sovereign strictly to regulate what political bodies can exist, what they can do, and to what extent they can do it. In this regard Hobbes's views on property and dominium extend to his thoughts on associations and their relation to the state. Hobbes was indeed a revolutionary political thinker and his novelty can be ascribed to his use of corporate thought which he used to formulate his thinking. Hobbes also lived in a time when big commercial corporations, the trading companies, were becoming a more and more integral part of the economic and political realities, and Hobbes himself participated in some of these endeavours. This article argues that he incorporated them into his thinking, and that they perhaps even helped him formulate his thoughts.

Keywords: Thomas Hobbes, *Leviathan*, corporations, trading companies, property, *dominium*.

Human beings have always in their social organisation formed themselves into different associations of varying formal or informal character – the most formal and notorious being, of course, the state. ‘For man’, wrote the British historian and economist Harold J. Laski, ‘is so essentially an associative animal that his nature is largely determined by the relationships thus formed’, and it is exactly this ‘necessity of social organizations’ which gives birth to the state.¹ Such associations have ranged from the informal aggregations of people to the formally organized legal personalities, what we shall here term corporations, of which the state is but one kind. There is thus no doubt, as the British political theorist David Runciman has stressed, that ‘The question of how men form themselves into associations lies at the heart of Western political thought’.² It is around a variety of associations, and not just the state, that our political understanding has been constructed, because even though the state ‘can be regarded as an association *sui generis*, to be understood in its own terms, it has commonly been understood in terms of the associations that it contains’.³ The state is but one special kind of association to be understood in relation to the different associations that exist within it – or which it consists of – as well as in terms of the relation between the state and these associations.

This also holds true for the political thought of Thomas Hobbes, whose commonwealth is but a special kind of association, or ‘system’ as he terms it. There is no doubt that Hobbes was a revolutionary and innovative figure in the history of political thought, but also that he drew heavily from the tradition of thinking of groups and associations as corporations in order to formulate this

¹ Laski 1916, p. 404.

² Runciman 1997, p. 3.

³ Runciman 1997, p. 3.

innovative political thought.⁴ Furthermore, in his thought there is a strong parallel and structural similarity between the commonwealth and the other associations within it, especially what he terms political bodies. Given his absolutist tendencies it is therefore of utmost importance for Hobbes clearly to specify the relationship between the commonwealth and the different associations within it, exactly because some of these associations as independent entities can become ‘worms in the entrayles’ of the commonwealth. And as the sovereign is the originator, distributor and guarantor of all property relations, so the sovereign also decides what political bodies can exist, what they can do, to what extent they can do it, and even where and with whom the associations of merchants can trade. In this regard there is a strong parallel between Hobbes’s understanding of the sovereign’s role in distributing property and the sovereign’s role concerning the associations of the commonwealth.

With regards to associations of merchants, Hobbes himself lived in a time of increased economic expansion that saw a boom in overseas trade and colonisation, which was to a large degree carried out by a new type of corporation, the organisational innovation of the incorporated, joint-stock, limited liability trading company. And Hobbes was, like many of the political thinkers of his age, heavily involved in these endeavours.⁵ Through his employer, Lord Cavendish, and also as a shareholder himself, Hobbes was active in the Virginia Company and in the Somers Islands Company (responsible for the settlement of Bermuda).

⁴ See Dohrn-van Rossum and Böckenförde 2004, p. 555; Gierke 2001, pp. 44-51; Skinner 2009, pp. 342-8; Skinner 2007b.

⁵ For instance, Hugo Grotius wrote some of his earlier works on direct commission from and in close collaboration with the Dutch East India Company, the VOC, and John Locke was also involved in various companies as well as colonial administration in general, see Jessen 2012; Ittersum 2006; Armitage 2004.

Hobbes's involvement with these companies has not attracted much scholarly attention. In this article, however, I wish to take seriously Hobbes's personal involvement with a truly new type of corporation and his use of corporate thought to formulate his revolutionary political thought. My argument is that this is no mere coincidence, and that Hobbes used his own experiences as well as observations of general economical, political and organisational developments to formulate his thoughts. It is with this in mind that I revisit the *Leviathan* in order to take a closer look at Hobbes's views on corporations, political bodies, trade and colonies. It should be mentioned that Hobbes's discussions of colonies, corporations and companies only plays a small part in the *Leviathan*. And his discussions of these subjects are always related to his main objective, the legitimacy and security of the absolute sovereign power. And Hobbes recognises the importance of money, wealth, trade and colonies for the wellbeing of the commonwealth – things that at his time to a large degree was supplied the trading companies.

In order to shed some light on the novelty of Hobbes's political thought, especially with regards to his use of corporate theories, we will start by revisiting the relationship between the corporation and the state in western political and legal thought.

Corporations in Western Political and Legal Thought

There is no doubt that the thought of corporations and the parallel between the state and the different associations that exist within it is deeply embedded in western political and legal thought. The tendency to refer to the more formal kind of such associations as persons, bodies or corporations, as well as their relation to the state, is already present in the *Digest* of Roman law, where the fourth chapter of the third book is entitled 'Actions in the name of or against any corporate body'. Here it is invoked that 'Partnerships, *collegia*, and bodies... may not be formed by everybody at will', but

‘[t]hose permitted to form a corporate body consisting of a *collegium* or partnership or specifically one or the other of these have the right on the pattern of the state to have common property, a common treasury, and an attorney or syndic through whom, as in a state, what should be transacted and done in common is transacted and done’.⁶ Such ‘corporate bodies’ can then, when permitted, have rights ‘on the pattern of the state’ (*res publica*) and thereby own property, have a treasury and a representative. However, even though the concept of the *corpus* or *persona* in relation to political bodies was used in a wide variety of ways, it was not in Roman law a formal concept of state law, but remained a metaphor to describe the nature of political bodies and communities, colonies, administrative bodies, unions and other entities that could be the object of civil or criminal law. The use of the metaphor of the *corpus* was then widely taken up in the Middle Ages, with canonist scholars and commentators on Roman law seeking to explain and describe the nature of the church (as *corpus christi* or *corpus mysticum*) in legal and juridical terms by revisiting the sources of Roman law. And it was with the famous and highly influential commentators on Roman law, Bartolus de Saxoferrato (1313-1357) and Baldus de Ubaldis (1327-1400), that the concept started to be used more systematically as a legalistic, organisational view of (political) communities. But it is important to note here that the juridical notion of the *corpus* was not yet an abstract entity, and was still used synonymously with a lot of other concepts, such as *collegium*, *universitas*, *communitas*, *congregatio*, *consortium*, even though the canonists started to prefer *corpus*.⁷

⁶ Digest 1985, p. 96.

⁷ Dohrn-van Rossum and Böckenförde 2004, pp. 520-42; for the importance of the concept of the *corpus mysticum*, see also Kantorowicz 1957, pp. 193-218; for the history of the corporation in England especially, see Laski 1917.

It was this acceleration that also fuelled the transference of the concept into western political thought.⁸ It is again important to note that the concept of the *corpus* in relation to the state was still either largely associated with the body of the community and/or with that of the ruler; it was not yet a concept of the state as an entity completely separate from rulers and ruled.⁹ It is also of interest to note that the use of the metaphor of the *corpus* in relation to political and social communities was still largely described in relation to a transcendent or natural order. It was not until the theories of natural law emerging around the turn of the seventeenth century that it began to be considered how these bodies were formed and emerged.¹⁰ It is not until around this time that political communities were conceptualised as having their own origin separate from a divine or natural order, and as having their own logic, their own *differentia specifica*. In many ways Hobbes can be said to have most radically conceptualised the state as such. And he used different traditions of thought on the *corpus politicum* and also medieval notions of a group of persons as a *persona moralis* in order to formulate his political theory.¹¹ Even though the state at this point in time was beginning to be formulated as an idea of an entity distinct from the sum of its members, the notion of such an entity was still largely associated with either the personality of the body of the people or that of the ruler. And even though there was hardly a political theory of the time that did not use ‘organic’ metaphors, Hobbes goes further than the political thinkers before him and applies this ‘organic’ theory to a true ‘subject’ of sovereign power

⁸ Kantorowicz 1957, p. 199.

⁹ Dohrn-van Rossum and Böckenförde 2004, pp. 546-8.

¹⁰ Dohrn-van Rossum and Böckenförde 2004, p. 551.

¹¹ Dohrn-van Rossum and Böckenförde 2004, p. 555.

which allowed him to let the state become a subject in the same sense as the body of the people or that of the ruler previously was.¹²

Hobbes thus uses the tradition of organic and corporate thought in order to formulate his innovative thoughts on the nature of the state and, according to Quentin Skinner, Hobbes ‘owed an evident debt to a body of continental treatises on corporations as *personae fictae*’ in order to create the most revolutionising and innovative feature of his political theory, which was the creation of the artificial person of the state as a distinct legal entity.¹³ The suggestion, according to Skinner, ‘that the duties of subjects are owed to an *agency called the state*, rather than to the person of the ruler, was still a relatively new and highly contentious one’.¹⁴ Furthermore, this new and highly contentious idea of the artificial person of the state as the true possessor of sovereignty was not immediately perceived or had little immediate impact on the English political debate and was, Skinner argues, more readily understood on the continent. This was because ‘this view of the state essentially as an instance of such a *corporation* so readily commended itself to Dutch and German legal theorists, accustomed as they were to thinking in terms of federal states’.¹⁵ The corporations that Hobbes himself most explicitly refers to in the *Leviathan* are the great city corporations, which were important administrative entities in England up to the time of Hobbes. According to Laski, however, from the time of Elizabeth it is in the trading companies ‘rather than in the municipal corporation that the history of corporate theory must be

¹² Gierke 2001, pp. 44-51. However, to the German legal historian Otto von Gierke, this subject of the state could not for Hobbes be completely separated from the body of the ruler.

¹³ Skinner 2009, pp. 342-49, the quote is from p. 349. See also Skinner 2007b.

¹⁴ Skinner 2007a, p. 368, my emphasis.

¹⁵ Skinner 2009, p. 349, my emphasis. The thinkers that Skinner is referring to are primarily Johannes Althusius and Johann Werdenhagen.

interested”.¹⁶ So something happens in the corporate theory with the rise of the trading companies around 1600. Trading companies which Hobbes had an intricate knowledge of. Furthermore, according to Skinner, Hobbes was able to formulate his revolutionary thoughts on the state exactly because he conceptualised it as a corporation, which was more readily understood on the continent, which, as it happened, also had intricate experiences of huge commercial, corporate bodies. The corporation that Hobbes creates, and which is the most innovative part of his political theory, is the artificial person of the state.

Hobbes and the Purely Artificial Person of the State

In the preface to *Leviathan*, Hobbes writes that he will ‘speak not of the men, but (in the Abstract) of the Seat of Power’.¹⁷ This abstract seat of power is the artificial person of the state. In the introduction he famously writes: ‘For by Art is created the great LEVIATHAN called a COMMON-WEALTH, or STATE, (in latine, CIVITAS) which is but an Artificiall Man’.¹⁸ And the principal task of the *Leviathan* is then ‘To describe the Nature of this Artificiall man’, as well as how to keep this artificial man upright, in good health and ensuring that he does not get sick. *Leviathan* thus contains numerous analogies between the natural and the artificial man.¹⁹

The individuals in the state of nature are a multitude and therefore not a united body, so the institution of the commonwealth is then not a contract between a body of a people and a sovereign, but a covenant of ‘every man with every man’ where the individuals ‘by mutuall Covenants one with another, have made themselves

¹⁶ Laski 1917, p. 581.

¹⁷ Hobbes 2008, p. 3.

¹⁸ Hobbes 2008, p. 9.

¹⁹ Hobbes 2008, p. 10.

every one the Author'.²⁰ And the thing that they authorise is the artificial person of the state.

What it means to be an author and what an artificial person is, Hobbes describes in chapter XVI, entitled '*Of Persons, Authors, and things Personated*', which is also the last chapter in the section '*Of Man*' that leads over into the section '*Of Commonwealth*'.²¹ Here Hobbes describes how 'to *Personate* is to *Act*, or *Represent* himselfe, or an other; and he that acteth another, is said to beare his Person, or act in his name'.²² A person to Hobbes is one '*whose words or actions are considered, either as his own, or as representing the words or actions of an other man*', which when they are his own, he is a natural person, 'and when they are considered as representing the words and actions of an other, then he is a *Feigned* or *Artificiall person*'.²³ And, Hobbes continues, '*Of Persons Artificiall, some have their words and actions Owned* by those whom they represent. And then the Person is the *Actor*; and he that owneth his words and actions, is the AUTHOR: In which case the Actor acteth by Authority'.²⁴ So when an artificial person has its words and actions owned by those whom it represents, the actor acts by authority. The multitude of people who institute a commonwealth in this sense own the actions of the state, or they must 'own up' to what is done in their name.²⁵ But this artificial person can only come to life in so far as it is represented; it can do nothing on its own, so the only way a multitude can institute a commonwealth is, as Skinner points out, 'by transforming

²⁰ Hobbes 2008, pp. 120,121.

²¹ This chapter Skinner terms 'pivotal', and also that it 'has no counterpart in either of the earlier recensions of his [Hobbes] civil philosophy'. Skinner 2007c, p. 157.

²² Hobbes 2008, p. 112.

²³ Hobbes 2008, p. 111.

²⁴ Hobbes 2008, p. 112.

²⁵ Skinner 2007b, p. 184; Runciman 2000, p. 269. My focus, like Hobbes's, is on commonwealths by institution rather than by acquisition.

themselves into an artificial person by way of authorising some natural person or persons to represent them'.²⁶ And in this artificial person thus instituted

... consisteth the Essence of the Commonwealth; which (to define it,) is *One Person, of whose Acts a great Multitude, by mutuall Covenants one with another, have made every one the Author, to the end he may use the strength and means of them all, as he shall think expedient, for their Peace and Common Defence.*

And he that carryeth this Person, is called SOVERAIGNE, and said to have *Souveraigne Power*; and every one besides, his SUBJECT.²⁷

In the institution of the commonwealth two artificial persons are created: the artificial person of the state and the artificial person of the representative of the artificial person of the state, the sovereign.²⁸ Where the sovereign (which can be either one person or an assembly) is an artificial person in his public function, in his office, he is also a natural person, whereas the state in this way is a purely artificial person.²⁹ And the sovereign in this sense is then nothing else than the holder of an office, a representative,³⁰ and

²⁶ Skinner 2007b, p. 197.

²⁷ Hobbes 2008, p. 121.

²⁸ Skinner 2009, p. 345.

²⁹ There seems to be somewhat of a disagreement as to whether Hobbes's state is a person by fiction, Runciman 2000, or an artificial person, Skinner 2007b. This is somewhat irrelevant to the purposes of this article, where the important part is that Hobbes does something new to the thought of corporations and the state. Runciman and Skinner seem to agree on this, and that the state is a distinct entity separate from rulers and ruled, which can only act through a representative (ruler) and the actions of which are in some way owned by, or attributable to, the ones instituting it (ruled), Runciman 2000, pp. 271-2; Skinner 2007b, pp. 184, 194.

³⁰ According to Skinner 2009, p. 343, Hobbes 'always maintains that the status of even the most absolute monarch can never be higher than that of

what he represents is exactly the artificial person of the state created when the individuals covenant with one another and authorise one person (or assembly) to represent them as one person.

This formulation of the commonwealth as being an artificial person distinct from rulers and ruled, which can act only by way of being represented, constitutes a new departure in the history of political thought. But this type of association is not unique to the commonwealth but is merely a special kind of association structurally similar to other associations existing within the commonwealth. These associations Hobbes terms 'systemes'.

Hobbes on Corporations

In chapter XXII, entitled '*Of Systemes Subject, Politicall, and Private*', Hobbes wishes, after 'Having spoken of the Generation, Forme, and Power of a Common-wealth... to speak next of the parts thereof'.³¹ The chapter thus concerns the associations within the commonwealth, which Hobbes terms 'Systemes, which resemble the similar parts, or Muscles of a Body naturall'.³² These systems, we can infer, are thus very important, vital one could say, for the body of the state, as the muscles are what gives a body power and makes it possible to move and to do anything. By systems, Hobbes understands:

... any numbers of men joyned in one Interest, or one Businesse. Of which, some are *Regular* and some *Irregular*. *Regular* are those, where one Man, or Assembly of men, is constituted Representative of the whole number. All other are *Irregular*.

an authorised representative', who is no more than 'the holder of an office with specific duties attached'.

³¹ Hobbes 2008, p. 155.

³² Hobbes 2008, p. 155.

Of Regular, some are *Absolute*, and *Independent*, subject to none but their own Representative; such are only Common-wealths;... Others are *Dependent*; that is to say, *Subordinate* to some Sovereign Power, to which every one, as also their Representative is *Subject*.³³

So a system is a group united with a common interest, and all regular systems are ones who have a representative. Only commonwealths can be absolute and independent which means that all other such systems or associations that exist within the commonwealth must be subordinate to the commonwealth. And Hobbes continues:

Of Systemes subordinate, some are *Politically*, and some *Private*. *Politically* (otherwise Called *Bodies Politique*, and *Persons in Law*.) are those, which are made by authority from the Sovereign Power of the Common-wealth. *Private*, are those, which are constituted by Subjects amongst themselves, or by authority from a stranger...

In *Bodies Politique*, the power of the Representative is alwaies Limited: And that which prescribeth the Limits thereof, is the Power Sovereign. For Power Unlimited, is Absolute Sovereignty.³⁴

Of these subordinate systems there are two kinds; those which are legally recognised by the sovereign, which are then exactly persons in law, or political bodies, which we can here term corporations, and then private associations. The only acknowledged private system is the family, which also has a representative in the father, which can then also be established independently of the legal recognition of the sovereign.³⁵

We clearly see here the structural similarity between the commonwealth and the system, as the commonwealth is

³³ Hobbes 2008, p. 155.

³⁴ Hobbes 2008, p. 155.

³⁵ Hobbes 2008, pp. 162-3; see also Runciman 1997, pp. 26-7.

characterised as being a regular system, albeit the only one that is absolute and independent. All other regular systems are characterised by being a body which is represented, just like the commonwealth. To be a regular political body, the legal recognition of the sovereign is required, as he is ‘the absolute Representative of all the subjects; and therefore no other, can be Representative of any part of them, but so far forth, as he shall give leave’.³⁶ The sovereign cannot delegate a complete representation of a political body, as this would mean giving up, or dividing, his sovereignty, which cannot be in accordance with his office; ‘For what is it to divide the Power of a Common-wealth, but to Dissolve it?’³⁷ And ‘The bounds of that Power, which is given to the Representative of a Bodie Politique, are to be taken notice of, from two things. One is their Writt, or Letters from the Sovereign: the other is the Law of the Common-wealth’.³⁸ This in many ways reflected the actual practices of the time where all associations needed permission from the Crown in the form of a charter; without this authorisation members could be punished for unlawful assembly.³⁹

Hobbes stresses the importance for political bodies, and their representative, to stay within the confines of their letters and the law, because only in this way can the body be lawful and the representative be said truly to represent the body.⁴⁰ Both the commonwealth and the political bodies within it are thus bodies which in order to act must be represented. The difference is that, even though both the representative of the commonwealth (the sovereign) and the representative of the political body are both at the same time a private and a public person (or the person of their

³⁶ Hobbes 2008, p. 156.

³⁷ Hobbes 2008, p. 225.

³⁸ Hobbes 2008, p. 156.

³⁹ Thomson 1996, p. 35; Griffiths 1974, pp. x-xi; see also Laski 1917.

⁴⁰ Hobbes 2008, p. 156.

office), the representative of the political body is only a public person insofar as he acts within the confines that the sovereign has set forth. Only to this extent can he be said to represent the body and, if he acts outside of these confines, he is but a private individual to the sovereign. He no longer truly represents the body and can therefore be punished as a private person, also corporally, which the political body cannot, 'For from corporall penalties, Nature hath exempted all Bodies Politique', and these can only be dissolved or fined.⁴¹

There is thus no doubt that Hobbes recognised not only the existence of a wide variety of different associations within the commonwealth and especially the political bodies as being important for the wellbeing and also the administration of the commonwealth. But because of the structural parallel between the state and such political bodies, and because of his general absolutist tendencies, the sovereign needed strictly to regulate the existence of such bodies as well as their relation to the authority of the commonwealth.

Property and *Dominium*

The sovereign's right to decide what political bodies can exist and what they can do is in many ways in perfect concordance with what Hobbes says elsewhere about the rights of the sovereign with regard to property: 'The Distribution of the Materials of this Nourishment [of the commonwealth], is the constitution of *Mine*, and *Thine*, and *His*; that is to say, in one word *Propriety*; and belongeth in all kinds of Common-wealth to the Sovereign Power'.⁴² It is thus only after the institution of the commonwealth that private property can exist, and justice is nothing but '*the constant Will of giving to every man his own.*

⁴¹ Hobbes 2008, p. 157.

⁴² Hobbes 2008, p. 171.

And therefore where there is no *Own*, that is, no *Propriety*, there is no *Injustice*; and where there is no coercive *Power* erected, that is, where there is no *Common-wealth*, there is no *Propriety*.⁴³

In this respect, Hobbes's views on property are somewhat different from those of the preceding natural rights theories. Here the essential right to self-preservation was in many ways the right to the acquisition, or the taking possession of, the property that made this self-preservation possible. The question of first-possession in this tradition is the reason for the emergence of law, and the emergence of law is very tightly connected with property, because if there is no property, then there is nothing that can be violated.⁴⁴ Private property is then nothing other than the institutionalisation of legitimate first possession, and *dominium* could be understood analogously hereto as the institutionalisation of the legitimate rule, or property, over the dominion. But Hobbes takes this point much further: 'For where there is no *Common-wealth*, there is (as hath been already shewn) a perpetuall warre of every man against his neighbour; And therefore every thing is his that getteth it, and keepeth it by force; which is neither *Propriety*, nor *Community*; but *Uncertainty*'.⁴⁵ There is nothing as a legitimate, natural right related to first possession, and possession is only possible within the commonwealth, when it is distributed by the sovereign: 'Seeing therefore the Introduction of *Propriety* is an effect of *Common-wealth*; which can do nothing but by the *Person* that *Represents* it, it is the act onely of the *Sovereign*; and consisteth in the *Lawes*, which none can make that have not the *Sovereign Power*' and that

⁴³ Hobbes 2008, p. 101.

⁴⁴ For a more thorough outline of this argument, see Luhmann 1993, esp. pp. 11-22.

⁴⁵ Hobbes 2008, p. 171.

is nothing but *distribution*, ‘which we call Law, and defined Justice, by *distributing* to every man *his own*.’⁴⁶

Justice is then nothing other than the distribution of property, which is done by the law. And this can only be done by the sovereign: ‘In this Distribution, the First Law, is for Division of the Land it selfe; wherein the Sovereign assigneth to every man a portion, according as he, and not according to any Subject, or any number of them, shall judge agreeable to Equity, and the Common Good’.⁴⁷ It is thus not any subject, neither *any number of them*, that is a group, or association, who themselves can make anything their private property. This only the sovereign can do. This right of distributing property and land also extends beyond the territory of the commonwealth where the sovereign decides where, with what and with whom the subjects, or associations of merchants, can trade: ‘As the Distribution of Lands at home; so also to assigne in what places, and for what commodities, the Subject shall traffique abroad, belongeth to the Sovereign’.⁴⁸ In this regard, Hobbes’s thoughts reflect the actual practice of the time, when it was the Crown’s prerogative to control foreign trade as well as having authority over its subjects abroad.⁴⁹ And in a very real way, the lands beyond the territory of the commonwealth could not be land, or property, before the Crown had granted them to someone as land or property. The New World in a sense did not exist before it had been granted as property by the Crown.

In Hobbes’s commonwealth, law and property are thus intimately and intricately connected to an even stronger degree than in earlier natural rights theories. The Hobbesian sovereign has, it could be said, the absolute *dominium* of the entire

⁴⁶ Hobbes 2008, p. 171.

⁴⁷ Hobbes 2008, p. 171.

⁴⁸ Hobbes 2008, p. 161.

⁴⁹ Thomson 1996, p. 35; Griffiths 1974, pp. x-xi; see also Laski 1917.

commonwealth, because ‘the Propriety which a subject hath in his hands, consisteth in a right to exclude all other subjects from the use of them, and not to exclude their Sovereign’.⁵⁰ And this *dominium* also extended to the different associations and corporations within the commonwealth precisely because all associations followed the same model and the commonwealth and all other associations were thus structurally similar. Therefore all associations were at risk of becoming independent entities and thereby a threat to the absolute sovereignty of the commonwealth.

The Worms of the Corporation

At the end of chapter XXIX, entitled ‘*Of those things that Weaken, or tend to the Dissolution of a Common-wealth*’, Hobbes underlines the threat of competing centres of power, or independent associations, to the sovereign:

Another infirmity of a Common-wealth, is the immoderate greatnesse of a Town, when it is able to furnish out of its own Circuit, the number, and expence of a great Army: as also the great number of Corporations; which are as it were many lesser Common-wealths in the bowels of a greater, like wormes in the entrayles of a naturall man.⁵¹

Hobbes is here directly referring to the great city corporations, especially that of London, which had supported parliament in the civil war. These city-corporations had for long been administrative entities in England and had also been the biggest incorporated entities until the rise of the trading companies.⁵² In this quotation, however, Hobbes speaks of ‘also the great number of corporations’, which could indicate something other than the cities. And earlier, in

⁵⁰ Hobbes 2008, p. 172.

⁵¹ Hobbes 2008, p. 230.

⁵² Laski 1917, pp. 580-1.

chapter XXII on systems, he uses the word corporation for an association of merchants.⁵³ The corporations here mentioned are the ‘lesser commonwealths in the bowels of a greater’, and to quote Runciman, this ‘image only makes sense if commonwealth and corporation can be understood in equivalent terms – if the corporation is but a lesser commonwealth, then the commonwealth must be but a greater corporation’.⁵⁴ In *Behemoth* the corporations are viewed as one of the causes of the civil war, where ‘the city of London and other great towns of trade, having in admiration the great prosperity of the Low Countries after they had revolted from their monarch, the King of Spain, were inclined to think that the like change of government here, would to them produce the like prosperity’.⁵⁵ It is interesting to note here how ‘the great towns of trade’ in Hobbes’s mind were inspired by the United Provinces, a system of federal states, which had revolted against their ‘rightful’ sovereign, the King of Spain, by claiming that both the United Provinces and each province in it self were sovereign, independent entities. As mentioned earlier, it was also, according to Skinner, in the United Provinces, with its system of federal states, where Hobbes’s understanding of the state as an artificial person was more readily understood than in England.⁵⁶ It was also here that perhaps the most developed mercantile corporate body in the world, the Dutch East India Company could be found.

In Hobbes’s mind the danger of corporations would arise if they could furnish their own army, that is, to the degree that they could become independent of the commonwealth. In the state of nature,

⁵³ Hobbes 2008, p. 160. In the Latin version of *Leviathan*, Hobbes calls such groups of merchants ‘*systema mercatorum*’ and, ‘the great number of corporations’, who are like worms in the bowels of a man, ‘*oppidorum incorporatum multitudo*’, see Runciman 1997, p. 25, note 50.

⁵⁴ Runciman 1997, p. 25.

⁵⁵ Hobbes 1990, pp. 3-4.

⁵⁶ Skinner 2009, p. 349.

the primary reason for the *bellum omnium contra omnes* was exactly the independence of the individual ‘of doing any thing, which in his own Judgement, and Reason, hee shall conceive to be the aptest means’ for ‘the preservation of his own Nature’.⁵⁷ The reason for the perpetual war was the independence of the individuals in determining the best means to preserve their own life. Similarly, when Hobbes describes the state of nature, the example he offers – in addition to ‘the savage people of *America*’⁵⁸ – is the relationship between sovereign states, where ‘in all times, Kings and Persons of Sovereigne authority, *because of their Independency*, are in continuall jealousies, and in the state and posture of Gladiators’.⁵⁹ Independent entities will then in some way always be in competition with each other, and it is exactly because of the threat of such independent, self-sufficient entities that the associations within the commonwealth must be regulated and only act within the confines of what the sovereign decides. This is, according to Runciman, precisely because the commonwealth is structurally parallel to the political bodies and therefore ‘Hobbes’s state cannot allow unregulated association, because all associations follow the model of the state’.⁶⁰ The associations of the commonwealth needed to be regulated because they were always at risk of emerging spontaneously, even without the legal recognition of the sovereign. If in effect such associations and political bodies only came to life and acted according to the commands of the sovereign, there was no need to emphasise the importance of the regulation.⁶¹ And precisely because these associations and corporations were structurally similar to the commonwealth and could therefore come

⁵⁷ Hobbes 2008, p. 91.

⁵⁸ Hobbes 2008, p. 89.

⁵⁹ Hobbes 2008, p. 90, my emphasis.

⁶⁰ Runciman 1997, p. 27.

⁶¹ Runciman 1997, pp. 30-1.

to constitute a threat to the commonwealth, their relation to the commonwealth needed to be strictly regulated.

In Hobbes's political and economic context, however, a new type of corporation was emerging, that of the trading company, and Hobbes recognised the importance of the trade and wealth that these companies were providing, even if he was somewhat weary of the nature of these corporations.

Colonies and Trade

In chapter XXIV, entitled '*Of the Nutrition, and Procreation of a Common-wealth*', Hobbes stresses the importance of money, which passes through the body functions like 'the Sanguification of the Common-wealth: For Naturall Bloud is in like manner made of the fruits of the Earth; and circulating, nourisheth by the way, every Member of the Body of Man'.⁶² Money is the blood of the state and, like trade and commodities, very important for the wellbeing of the state, as 'The NUTRITION of a Common-wealth consisteth, in the *Plenty, and Distribution of Materials* conducing to Life'.⁶³ And Hobbes was aware that all of the necessary nutrition cannot alone be had within the confines of the territory of a commonwealth, but has to be supplied from without 'by importation of that which may be had abroad, either by Exchange, or by just Warre, or by Labour'.⁶⁴

As already mentioned, in Hobbes's time the means to procure these commodities from foreign lands was for the most part supplied with the help of trading or colonial companies.⁶⁵ Even though associations of merchants had earlier been chartered to

⁶² Hobbes 2008, p. 174.

⁶³ Hobbes 2008, p. 170.

⁶⁴ Hobbes 2008, pp. 170-1.

⁶⁵ A strict division between colonial and trading companies is misleading given the overlap in activities between the two types of companies, Griffiths 1974, p. 137.

trade around the world, the trading companies emerging from around 1600, with some of the first and most famous being the English East India Company (chartered in 1600) and the Dutch East India Company (1602), were truly organisational innovations. The earlier companies were regulated, meaning that membership was restricted to professional merchants in exchange for a fee, membership wasn't alienable without permission and the ventures were undertaken at the individual merchant's own risk.⁶⁶ The trading companies, on the other hand, were predominantly joint-stock enterprises, which meant that their capital was owned by multiple investors, the shareholders enjoyed limited liability, the shares were freely alienable, ownership and control were thus separated, and their incorporation gave them a permanent, legal personality distinct from owners and directors.⁶⁷ The trading companies were granted a monopoly on the trade in a certain area and were given wide-ranging authorities to uphold this monopoly by waging war and making peace (with non-Christians), to make laws and judge accordingly, to erect strongholds and fortifications, and in some cases to coin their own money and have their own flag.⁶⁸

Hobbes was active in some of these endeavours, specifically the Virginia (1606) and Somers Islands (1615) Companies. The Virginia Company was divided in two parts, one based in London (of which Hobbes was a part) and one in Plymouth. Each company was in charge of its own part of land in Virginia, but with some overlap. The colonial activities of the London Company were not arranged as a joint-stock, but the trading activities were, at least from the second charter of 1609.⁶⁹ The Somers Islands originally

⁶⁶ Thomson 1996, p. 33; Scott 1968, vol. 1, p. 10.

⁶⁷ Thomson 1996, pp. 32-33; Scott, vol. 1. pp. 152-3.

⁶⁸ Thomson 1996, p. 35.

⁶⁹ Scott 1968, vol. 2, pp. 247-56; Griffiths 1974, pp. 141-2.

belonged to the Virginia settlement, but later, in 1615, a separate company was chartered.⁷⁰ From 1622-24, Hobbes participated in many meetings of the councils of the companies, was a shareholder himself and assisted in practical affairs such as the drafting of documents.⁷¹ It is therefore fair to assume that Hobbes had an intricate knowledge of the workings of these companies as they were ‘the most important and time-consuming business interest of his pupil-patron’, Lord Cavendish.⁷² Hobbes also witnessed the political struggles within the companies, especially the Virginia Company, between their powerful members, particularly regarding the anti-royalist tendencies of some of them.⁷³

Hobbes himself mentions these companies explicitly in chapter XXII: ‘when there were Colonies sent from *England*, to Plant *Virginia*, and *Somers-Ilands*; though the government of them here, were committed to Assemblies in *London*, yet did those Assemblies never commit the Government under them to any Assembly there; but did to each Plantation send one Governour’.⁷⁴ The companies, or settlements, were then not in Hobbes’s view independent entities, but committed to England. In chapter XXIV he explains not only the role of plantations and colonies, but also their relation to the commonwealth:

The Procreation, or Children of a Common-wealth, are those we call *Plantations*, or *Colonies*; which are numbers of men sent out from the Common-wealth, under a Conductor, or Governour, to inhabit a Forraign Country, either formerly voyd of Inhabitants, or made voyd then, by warre. And when a Colony is settled, they are either a Common-wealth of themselves, discharged of their subjection to

⁷⁰ Griffiths 1974, p. 165.

⁷¹ See Malcolm 1981.

⁷² Malcolm 1981, p. 298.

⁷³ See Malcolm 1981.

⁷⁴ Hobbes 2008, p. 159.

their Sovereign that sent them... or else they remain united to their Metropolis... and then they are no Common-wealths themselves, but Provinces, and parts of the Common-wealth that sent them. So that the Right of Colonies... dependeth wholly on their License, or Letters, by which their Sovereign authorised them to Plant.⁷⁵

These colonies, or these companies, are then to Hobbes still adhering to the commonwealth and as such very important parts of it. It is interesting, however, that Hobbes chooses here to use the metaphor of the child. In contrast with all the other corporate metaphors that Hobbes uses to describe the commonwealth, the child is not a part of a body, but something external to it. The child in this way is an enlargement of the family, contributes to it and stays in a relationship of honour and friendship to the family, but there is also a constant risk of his growing up and becoming an independent person and thereby perhaps posing a threat to the commonwealth.

So it is quite clear that Hobbes acknowledges that colonies and plantations can be very important for the commonwealth, also because they could help problems of overpopulation where ‘The multitude of poor, and yet strong people still encreasing, they are to be transplanted into Countries not sufficiently inhabited’.⁷⁶ These were also commonly held persuasions and arguments of the time, for instance in a pamphlet from 1609 regarding Virginia, entitled *Nova Britannia [sic]*, which sought to attract settlers to Virginia as well as support for the project by arguing that it was a good place for the ‘swarms of idle persons which having no means of labour to relieve their misery, do likewise swarme in lewde and naughty practices, so that if we seeke not some waies for their forreine employment, we

⁷⁵ Hobbes 2008, p. 175.

⁷⁶ Hobbes 2008, p. 239; see also Levy 1954, p. 591.

must provide shortly more prisons and corrections for their bad conditions'.⁷⁷

Colonies and plantations were then indeed very profitable and healthy for a commonwealth, but with regards to what he calls a 'Bodie Politique, for the well ordering of forraigne Traffique', Hobbes is more sceptical.⁷⁸ These associations, where merchants unite themselves into one group, were precisely what Hobbes terms corporations.⁷⁹ These associations, whose 'End of their incorporating, is to make their gaine the greater, which is done in two wayes; by sole buying, and sole selling, both at home, and abroad. So that to grant to a Company of Merchants to be a Corporation, or Body Politique, is to grant them a double monopoly, whereof one is to be sole buyers; another to be sole sellers'.⁸⁰ So

Such Corporations therefore are no other then Monopolies; though they would be very profitable for a Commonwealth, if being bound up into one body in forraigne Markets they were at liberty at home, every man to buy, and sell at what price he could.

The end then of these Bodies of Merchants, being not a Common benefit to the whole body... but the particular gain of every adventurer.⁸¹

Hobbes then in some way acknowledges that these companies could be very profitable for the commonwealth, but that this effect is hindered by their monopolies. In chapter XXIX, '*Of those things that Weaken, or tend to the Dissolution of a Common-wealth*', monopolies are also one of the things he attacks: 'Again there is sometimes in a Common-wealth, a Disease... and that is, when the Treasure of the

⁷⁷ Quoted from Griffiths 1974, p. 146.

⁷⁸ Hobbes 2008, p. 160.

⁷⁹ Hobbes 2008, p. 160.

⁸⁰ Hobbes 2008, p. 160.

⁸¹ Hobbes 2008, p. 161.

Common-wealth, flowing out of its due course, is gathered together in too much abundance, in one, or a few private men, by Monopolies'.⁸² Hobbes's fear is that such entities can become very powerful and thereby a threat to the sovereignty of the commonwealth. Here too Hobbes's fears and thoughts in many ways reflect the actual practices and discussions of his time. The critique of the trading companies was in the seventeenth century not primarily directed at the fact that they were equipped with what today we would term defining features of state sovereignty, such as the right to make war, peace and laws, but at the privileges of monopoly which the companies constantly had to defend.⁸³ The monopolies, and not the possession of 'sovereign' characteristics, is what Hobbes is most afraid will make such companies threats to the sovereign power of the commonwealth. But Hobbes's arguments regarding the monopolies are not primarily economical, as they are political. His fear of the monopolies is primarily that that they are hindering revenue, but he makes the further argument that this can entail independent entities becoming too powerful by controlling the revenue of the commonwealth and thereby threaten the absolute power of the sovereign.

Conclusion: the State and the Company

As I have tried to show, Hobbes was well aware of the importance of money, trade and colonies for the wellbeing of the commonwealth. But he was sceptical of the corporations that in his time for the most part were providing this vital revenue, the trading companies. Like all other associations, political bodies and corporations they were structurally similar to the commonwealth, and therefore, given his defence of absolute sovereign power, they

⁸² Hobbes 2008, p. 229.

⁸³ Thomson 1996, p. 37; see also Stern 2011, esp. chapter 2.

needed to be strictly regulated. The sovereign's *dominium* of the commonwealth thus also extended to all kinds of associations within the commonwealth. In this way, Hobbes's thoughts on the sovereign's prerogatives of the associations of the subjects mirrors the actual practice of his day, but Hobbes perhaps, given his views on absolute sovereignty, wished strengthen these regulatory practices. And perhaps in this regard he drew upon his own experiences in the Virginia and Somers Island Companies. Here Hobbes had first-hand experience of political action in the internal conflicts and debates of the companies.⁸⁴ Not only could his aversion to the monopoly-privileges of the companies have been influenced by the anti-royalist tendencies which he observed in the companies, but perhaps also by the general quarrels and disagreements that hindered the good governance of a company whose prime concern should be securing vital revenue and trade for the commonwealth. This could perhaps have spurred Hobbes's convictions that such political bodies needed to be strictly regulated.

Again it is important to stress that Hobbes's interest did not lie in the economical realm. Wealth and trade were important for the commonwealth, but for him the main objective was securing absolute sovereignty. Hobbes lived in a time of rapid economic expansion with a boom in overseas trade and colonies as well as organisational and agricultural innovations and a rapid acceleration of economic thought.⁸⁵ One of these organisational innovations was the rise of the incorporated, joint-stock, limited liability trading company, an organisation that Hobbes's was involved in. It is true

⁸⁴ Malcolm 1981, p. 315.

⁸⁵ See Appleby 1978, esp. Chapter 2; Finkelstein 2000, esp. pp. 89-97. Even though Hobbes discusses economic subjects, he for instance makes no mention of central concepts discussed at his time such as rent, price, interest, wages or balance of trade, see Levy 1954, p. 590. And his focus on property focuses more on the sovereign's prerogatives than on property as an economic concept.

that it hard to establish for sure that there is a connection between Hobbes's involvement in these companies and his political thought.⁸⁶ There is no direct causal link. But there are some interesting connections that could be speculated upon.

For instance, it is remarkable that, if the revolutionary part of Hobbes's theory was indeed the creation of the artificial person of the state distinct from rulers and ruled, it is highly revealing that he should have formulated these thoughts at the same time of the emergence of the organisational innovation of the joint-stock, limited liability, incorporated trading company, which entailed precisely the creation of a juridical, legal person distinct from owners and directors, as well as a separation of ownership and control. And furthermore, it is interesting that his thought was more readily understood on the continent, where there was a greater tradition of thinking in terms of corporations by way of federal states, and where the most developed mercantile corporate body, the Dutch East India Company, was to be found.

The question I wish to conclude with is whether it is not possible that Hobbes could have used his experience of actually existing corporate bodies in order to formulate his revolutionary political thought. This connection must perhaps remain necessarily oblique, but is that a reason not to try to ask the question? In order to understand the thought of Hobbes, and not just Hobbes, we must not reduce the context of their writing to what they read or with whom they discussed, but instead open the context to include also general economic developments, social trends, and organisational and administrative changes and innovations that could have inspired or influenced the thoughts of the people we wish to understand, as well as to truly understand the genealogy of the modern state.

⁸⁶ Malcolm 1981, pp. 317, 319.

Works Cited

- Armitage, David (2004). 'John Locke, Carolina, and the "Two treatises of Government"' *Political Theory* 32.5, pp. 602-27.
- Appleby, Joyce Oldham (1978). *Economic Thought and Ideology in Seventeenth-Century England*, Princeton, NJ.
- Digest (1985). *Digest of Justinian*, ed. Theodor Mommsen, Philadelphia, PA.
- Dohrn-van Rossum, Gerhard & Böckenförde, Ernst Wolfgang (2004). 'Organ, Organismus, Organisation, politischer Körper' in *Geschichtliche Grundbegriffe*, vol. 4, eds. Otto Brunner, Werner Conze and Reinhart Koselleck, pp. 519-622.
- Finkelstein, Andrea (2000). *Harmony and the Balance – An Intellectual History of Seventeenth-Century English Economic Thought*, Ann Arbor, MI.
- Gierke, Otto (2001). *Natural Law and the Theory of Society, 1500-1800*, ed. Ernest Barker, Union, NJ.
- Griffiths, Sir Percival (1974). *A License to Trade – The History of the English Chartered Companies*, London.
- Hobbes, Thomas (1990). *Behemoth – or The Long Parliament*, ed. Ferdinand Tönnies, Chicago, IL.
(2008). *Leviathan*, ed. Richard Tuck, Cambridge.
- Ittersum, Martine Julia van (2006). *Profit and Principle – Hugo Grotius, Natural Rights Theories and the Rise of Dutch Power in the East Indies (1595-1615)*, Leiden.
- Jessen, Mathias Hein (2012). 'Kan et privat firma føre en retfærdig krig? – Hugo Grotius og det Hollandske Østasiatiske Kompagni [Can a private company wage a just war? – Hugo Grotius and the Dutch East India Company]' *Slagmark – Tidsskrift for idéhistorie* [Battlefield – Danish Journal for the History of Ideas] 63, pp. 49-63.
- Kantorowicz, Ernst H. (1957). *The King's Two Bodies – A Study in Mediaeval Theology*, Princeton, NJ.

- Laski, Harold J. (1916). 'The Personality of Associations' *Harvard Law Review* 29.4, pp. 404-26.
- (1917). 'The Early History of the Corporation in England' *Harvard Law Review* 30.6, pp. 561-88.
- Levy, Aaron (1954). 'Economic Views of Thomas Hobbes' *Journal of the History of Ideas* 15.4, pp. 589-95.
- Luhmann, Niklas (1993). 'Am Anfang war kein Unrecht' in *Gesellschaftsstruktur und Semantik*, vol. 3, Frankfurt/Main, pp. 11-64.
- Malcolm, Noel (1981). 'Hobbes, Sandys, and the Virginia Company' *The Historical Journal* 24.2, pp. 297-321.
- Runciman, David (1997). *Pluralism and the Personality of the State*, Cambridge.
- (2000). 'Debate: What Kind of Person is Hobbes's State? – A Reply to Skinner' *The Journal of Political Philosophy* 8.2, pp. 268-78.
- Scott, William Robert (1968). *The Constitution and Finance of English, Scottish and Irish Joint-Stock Companies to 1720*, Cambridge.
- Skinner, Quentin (2007a). 'From the state of princes to the person of the state' in *Visions of Politics: Vol. 2: Renaissance Virtues*, Cambridge, pp. 368-413.
- (2007b). 'Hobbes and the purely artificial person of the state' in *Visions of Politics: Vol. 3: Hobbes and Civil Science*, Cambridge, pp. 177-208.
- (2007c). 'Hobbes on Persons, Authors and Representatives' in *The Cambridge Companion to Hobbes's Leviathan*, ed. Patricia Springborg, Cambridge, pp. 157-80.
- (2009). 'A Genealogy of the Modern State' *Proceedings of the British Academy* 162, pp. 325-70.
- Stern, Philip J (2011). *The Company-State – Corporate Sovereignty and the Early Modern Foundations of the British Empire in India*, Oxford.

Thomson, Janice E. (1996). *Mercenaries, Pirates & Sovereigns – State-Building and Extraterritorial Violence in Early Modern Europe*, Princeton, NJ.

Tuck, Richard (2009). *The Rights of War and Peace – Political Thought and the International Order from Grotius to Kant*, Oxford.