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Corporate Constitutionalism and the Dialogue between the Global and Local in Seventeenth-Century English History

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This forum discusses the utility of 'corporate constitutionalism' as a category of historical analysis. Corporate constitutionalism privileges the constitutional activities of international trading corporations to understand the cross-cultural dynamics at work in European expansion. William A Pettigrew sets out the possibilities of corporate constitutionalism in the first essay which defines the concept, makes the case for viewing trading corporations as constitutional entities at home and abroad, signals some possible interpretive benefits for historians of empire, corporate historians, global historians, and constitutional historians, before offering an illustrative case study about the Royal African Company. Leading thinkers in international history (David Armitage), legal history (Paul Halliday), constitutional theory (Vicki Hsueh), and corporate history (Thomas Leng and Philip J Stern) offer their reflections on the possibilities of this new approach to the international activities of trading corporations. Although the Forum focuses on 17th century English trading corporations, it proposes to start a discussion about the utility of corporate constitutionalism for other European corporations and for periods both before and after the 17th century.

Whether as institutions that "restrict democracy" or as benefactors of "people and generations to come," corporations fascinate and divide opinion amongst contemporary commentators.[1] While modern observers regularly acknowledge and confront the cultural and constitutional facets of the corporation's global primacy, historians of the corporation have only recently begun to analyze the non-commercial determinants of corporate success. Historians are now more appreciative of the corporation's political and governmental roots.[2] They now view corporations as their early modern creators viewed them: as separate legal "persons" constituted "for better Government," as delegates of Crown authority, and as self-constituting and self-governing "bodies corporate and politic" chartered by the Crown to ensure that private profits upheld the public good.[3] This focus on corporations as political and governmental entities has encouraged recent historians to focus on the changing

constitutional prescriptions that defined how corporations governed trade. As a result, the history of the corporation is enjoying a constitutional turn.

One critical phase in corporate development—the sixteenth and seventeenth centuries—has provided the initial setting for this new constitutional approach to corporations.[4] This phase saw the corporation transformed from an institution of local government to one—the trading corporation—that proposed to govern international commerce in the interests of separate European nation states. Trading corporations emerged in several European nations in the sixteenth and seventeenth centuries, including Spain, Portugal, Holland, France, Denmark, and Sweden. The internationalisation of the corporation in this period often occurred against the backdrop of profound constitutional change within those states. Trading corporations took on the constitutional styles of their increasingly energetic state originators. In the Netherlands the relationship between the power of the state and the power of its corporations—especially the Vereenigde Oost-Indische Compagnie—was particularly pronounced.

It was in seventeenth century England, however, where the concurrence of commercial expansion led by international trading corporations and constitutional contest was most striking. In the sixteenth and seventeenth centuries, the English used corporations to establish durable commercial relationships with Africa, Asia, the Levant, North America, and Russia. Beginning with the joint-stock Russia (or Muscovy) Company in the 1550s, which established a privileged trading relationship with the Russian Tsars, continuing with the Levant (or Turkey) Company in the 1580s, which traded to the Ottoman Empire, and culminating in 1600 with the foundation of the East India Company, which sought access to the spice trade in Southeast Asia but settled into a bullion and textiles trade with the Indian subcontinent, trading corporations provided the English with their preferred spearhead to the non-European world. Corporations also established the first waves of sustainable English settlement in mainland North America with the Virginia Company from 1607 and the Massachusetts Bay Company from 1629 and established commercial relations with the fur traders of the North American Arctic via the Hudson Bay Company from 1670. From 1660, the Royal African Company (originally the Company of Royal Adventurers Trading to Africa) proposed to monopolise England's trading relationship with West Africa and became the single largest human trafficker during the period of the transatlantic slave trade. Corporations achieved these feats with the aid of often-contentious constitutional privileges provided by the English state at a time when the English constitution was the subject of intense and sometimes violent disagreement.

Trading Corporations as Constitutional Entities

Despite the famous attempts by jurists—especially Sir Edward Coke—to define a unitary constitution for the English state, the word and the practice "constitutional" evoked profound conceptual instability and ambiguity in seventeenth century England.[5] Its broader meaning as the arrangement of component parts within a

governmental system—whether within a person, or within a polity, or a corporation, or empire—was clear enough. Although English judges deployed concrete constitutional motifs at specific moments, the intensity of disagreement about the legitimacy of these motifs meant that seventeenth century England had *constitutions* as much as it had a constitution and its political and legal culture was particularly polyglot, pluralist, and contestable. Constitutional debate during this period placed discussions of state authority into a broader context that included disputes about consent, resistance, law, governance, commerce, and political economy. It concentrated on the changing relationships, the subjectivity, contests, activities and dialogues between power structures—including different branches of the law and between the legislature and executive—that were both mutable and multivalent. England's trading corporations and the constitutional privileges they enjoyed structured power at home and abroad, became focal points for constitutional contests, and often proved creative constitutional actors in their own right. In these senses, trading corporations were inherently constitutional entities placing constitutional debate into international contexts.

Corporations received their privileges from higher state authorities. These privileges were temporary and subject to constant re-negotiation. Nonetheless, through a period when the state was a developing conglomeration of institutions, corporations helped states to realise their authority at home and overseas.[6] Corporate charters codified—in constitutional terms—the parameters of corporate subordination to and autonomy from the state. For critics of the corporate form, the emphasis appeared to be on the latter. Thomas Hobbes famously resented municipal corporations as "lesser commonwealths in the bowels of a greater, like wormes in the entrayles of a natural man."[7] His dismissal records the difficulties that the possibility of corporate autonomy posed for his theory of unitary state authority. But corporations were explicitly subordinate to state authority. They could be governmental but not—according to Crown jurists and writers like Hobbes—sovereign entities.

Trading corporations provided what seventeenth century actors regarded as essential government for international trade. Like all government in this period, corporate government was subject to constitutional provisions. The influential political economist and apologist for the East India and Royal African Companies, Charles Davenant, used the words corporate and constitutional interchangeably. For Davenant, a corporation was "the only constitution" suited to the "nature and peculiar circumstances" of the African trade "so as to preserve and carry it on to a national advantage."[8] Trade without corporations was unconstitutional, chaotic, uncertain, and, therefore, unlikely to produce benefit for either nation or state. Although arguments for the total deregulation of access to overseas trade appeared more towards the end of the seventeenth century, state regulators rarely approved of such calls because they did not confer the crucial constitutional element onto international trade. Corporations provided the default solution to the problems of governing overseas trade. But they did so in a wide variety of ways producing an unprecedented flood and variety of written constitutions to describe how

corporations would govern their various trading hinterlands. In all, trading corporations negotiated forty-three separate charters during the seventeenth century. These sketched a broad outline for a discrete corporate approach to international government but they also exhibited a remarkable diversity of constitutional techniques.[9]

The corporation itself was, of course, only one of many constitutional forms to underpin overseas commercial and settlement activity. The proprietary grant was the most important alternative to the corporation. The English state endorsed this method in much of colonial North America, in Maryland, New York, New Jersey, and the Carolinas. There were, however, important constitutional differences between proprietary colonies and corporations. Corporations mixed governmental and commercial agendas and set the two into a creative tension. They raised money from hundreds and sometimes thousands of investors and had to uphold the interests of those investors to endure. This capital – as well as the corporation's ability to borrow large sums of money – provided them with the resources to cultivate and sustain state support. The state renegotiated corporate privileges throughout the century. These renegotiations bound the corporations into the domestic political processes (and constitutional disputes) of the seventeenth century more than their proprietary equivalents. Proprietary colonies participated in trade, but they were primarily conceived as land holdings and mechanisms for settlement. The personal property of a few absentees, proprietary colonies had to satisfy far more narrow concerns than their corporate alternatives. The proprietary colonies often resulted from state payments (to settle debts—as with those to the family of William Penn, the proprietor of Pennsylvania) and did not lend money to the Crown. Becoming largely personal fiefdoms, the state took sporadic interest in these ventures. Corporations brought specific constitutional traditions to the governance of overseas colonies that had to be spelt out for proprietary colonies.[10]

The other important constitutional alternative to the corporation that provided government to international trade was the direct intercession of the state itself. Trading corporations proved more agile transnational interlocutors than the states who authorised them because of their ability to become willing tributaries to foreign states. The contrasting examples of Tangier and Bombay, acquired by England at the same time, illustrate this. As a monarchical project, the Tangier experiment was limited by the constitutional difficulties intrinsic to a monarch providing tribute to another state—in this case the expanding Moroccan empire of Moulay Ismael. The Tangier experiment failed, in part, because the English Crown lacked the flexibility in its interactions and negotiations with Moulay Ismael that trading companies elsewhere exhibited in their relationships with foreign rulers.[11] As a subordinate constitutional entity, a corporation was in a position to submit itself to a foreign state and, as with the East India Company at Bombay and the Royal African Company throughout West Africa, could offer obeisance to foreign states in support of its commercial activities and territorial holdings.

Trading corporations negotiated treaties, grants of privileges, and commercial and diplomatic agreements to define the conditions of their fealty to foreign states and the

commercial and governmental privileges such fealty brought. These treaties represent early transnational constitutional agreements and were understood to be the unique prerogative of trading corporations. The East India Company director, Thomas Papillon, defended the East India Company's authority in Asia on the basis that a corporation was essential to enable the English to make "frequent applications to, and Treaties with" the great number of "Kings and Governments" that existed around the Indian Ocean.[12] The East India Company devoted great energy to securing *farmans* from the Mughal state. Together with an array of grants from Asian officials and rulers, these gave the company the right to mint money, to trade without paying customs, and to set-up trading factories and forts, to exercise legal jurisdiction over its employees and a growing range of company subjects, and to establish its rule over towns and settlements. The Levant Company's trade depended upon the capitulations decreed by the Ottoman Sultan.[13] These constituted an imaginative and flexible device that established the legal status of non-Muslim foreigners within a framework of Islamic jurisprudence and Ottoman administrative practice and that partially incorporated them within the Ottoman legal system.[14]

These extra-European constitutions helped corporations realise and protect the constitutional privileges they derived from the mother country. For example, the Levant Company's English charter confirmed its right to adjudicate between English subjects in the Levant. But the exercise of such rights depended on the terms of the *ahdname* and the *berats* (deeds of appointment) given to the company's consuls by the Ottoman government.[15] On other occasions, corporations privileged the sovereign from which they obtained their foreign rights alongside or over that, which provided their corporate charters. During a decades-long dispute about whether the fruits of consulage collected from foreign merchants freighting English vessels in the Levant belonged to the English ambassador or the Levant Company, the latter asserted that the "'Imperial Capitulations' seconded the power in its charter" and therefore granted the company the consulage fees. Both corporation and ambassador were representatives of the English state, but the corporation argued that it held authority over English trade and subjects in the Levant. In this case, the Levant Company was able to cite its constitutional relationship with the Ottoman Empire to place its financial interests above that of the monarch's personal representative.[16] As a result, one anonymous observer thought that the Company, in its claims to consulage and its relationship to the ambassador, behaved "as if they were a Little Republicque" within the English monarchy.[17] Trading corporations therefore integrated the diverse constitutional mechanisms granted to them from the various states they subordinated themselves to.

These transnational corporate constitutions emerged from and within the political cultures of extra-European polities and used jurisprudential language to determine the place of European trading companies within their polities. They created new transnational commercial regimes determining how trade across cultural boundaries occurred. Both charters and grants proved contestable and negotiable and were open to profound misreadings by both parties. But, in so far as both the extra-European

grants to English corporations and the corporate charters themselves involved an analogous process of states delegating various degrees of self-government to corporate bodies, charters combined with extra-European grants to provide an integrated corporate constitutional framework for global interaction.[18]

The English state chartered corporations to prevent new overseas constitutions from exhibiting terms that were "repugnant" to the ill-defined English constitution. But trading corporations often developed constitutional provisions overseas that deviated from constitutional practice at home. The East India Company used its autonomy overseas to develop corporate spaces with constitutional provisions that would have been unthinkably tolerant at home. In 1667, for example, the company sustained the English Crown's policy of extending subject rights to Portuguese Catholics in Bombay. This constitutional agility also allowed the company's overseas officials like Gerald Aungier and Streynsham Master to extend Common Law rights to non-Europeans while the company used civil law vice-Admiralty courts to target English interlopers—a process akin to treating Englishmen "worse than Turks."[19] In 1687 the town of Madras was formally incorporated by the East India Company at a time when the City of London had been formally divested of its ancient corporate privileges. This corporation within a corporation enfranchised non-European peoples. Such entities proved the corporations' ability at once to incorporate non-Europeans within a corporate constitutional framework and to exclude any of their own nation who sought to infringe on the corporation's constitutional privileges—especially its trading monopoly. As the East India Company wrote to Captain Leon Brown in May 1683 use your "best endavours to suppress all interlopers and especially to defend the natives in India our Allies from any Injury, violence or depredacon that shall be offered or done against them by any interloper."[20] The corporate constitution placed corporate inclusion ahead of national affiliation to form a transnational constitutional entity. The creativity of constitutional reflection in international spaces matched the pluralism of constitutional techniques that the English used and the variety of constitutional mechanisms they encountered and often subordinated themselves to overseas.[21]

Trading corporations' distinctively adaptive constitutional arrangements became constitutive of a composite, and pluralist, transoceanic and transnational but recognizably corporate constitutional framework. Trading companies thus contributed to the emergence of what Lauren Benton has described as a "single international legal regime" that linked Europe, Africa, the American colonies, and the Indian Ocean on the basis of the common and mutually understood practice of permitting corporate and communal groups legal authority and autonomy while providing for "under specific and clearly defined circumstances, an appellate or controlling authority for state's law."[22] But within this transnational corporate constitutional framework, remarkable constitutional diversity developed. With transoceanic public, political, legal operations contesting state governance and using it for commercial advantage, the trading corporation could be both the agent of constitutional coherence but also the harbinger of constitutional diversification.

Corporate Constitutionalism Defined

Trading corporations integrated three constitutional settings: the corporate, the state, and the transnational.[23] They established byelaws to manage their internal membership. They deployed constitutional authority provided by the state. Their international trading activities depended upon the projection of state power from their domicile nation as well as negotiating privileges from foreign states. Corporate constitutional activity in one setting informed constitutional activity in the other settings from corporate, to state, to transnational and back again. In this way, the corporation projected constitutional privilege, technique, and debate around the globe. Peoples, officials, and polities around the world in turn, mediated, distorted, denied, and reformed these privileges and techniques as part of transnational corporate-constitutional experience. Corporations sustained a defining duality between subjection to and autonomy from higher state authorities at home and abroad.[24] This paradox delineated a distinctively corporate mode of transnational constitutionalism that I label "corporate constitutionalism."

Corporate constitutionalism connects constitutional activity at the corporate, state, and transnational levels.[25] It captures the corporations' protean commercial, social, artificial, natural, legal, political, and civic characters.[26] It highlights the creative constitutional tensions that arose from the corporation's dependency on state authority and the autonomy that state countenance often provided for it.[27] It juxtaposes plural written and unwritten constitutional authority, power, and creativity. It concentrates on the ways in which corporations structured constitutional debate and provoked constitutional reactions from opposing interests. It indicates the corporate routes of constitutional dialogue from local to global and back again. In this way, corporate constitutionalism aligns non-European agency with domestic constitutional debate, notes the influence of an integrated global and local dialogue upon the theory and practice of a fluid, modular state, and captures the proliferating and differentiating effects of non-European contexts on constitutional thought and practice. Such a comparative and constitutional approach to the international activities of trading corporations helps to place non-European contexts, peoples, and cultures into domestic constitutional narratives and therefore places national constitutional histories within a global constitutional denominator.[28]

The approach to seventeenth century English trading corporations proposed here views the trading corporation as a discrete constitutional entity whose history generated constitutional debate in broader national and international arenas. It portrays the corporations as bodies both reflective and refractive of state constitutional mechanisms as their constitutional provisions were so often re-negotiated at home and abroad. Instead of stressing either the trading corporation's impervious, state-like features or its business operations, this approach views the corporation's constitutional apparatus as shifting, porous membranes across and within which various forms of cross-cultural dialogue occurred. Corporate constitutionalism broadens the field of view of corporate history away from a narrow juridical

interpretation of corporate activity that views trading corporations as vehicles established solely to further the interests of their owners to a more capacious view that notes the breadth and complexity of corporations' relationships with constituencies outside their formal membership such as rival merchants, non-European states and hosts. In this light, trading corporations provide means for historians to view cross-cultural interactions, rather than just the exercise of monopoly privilege. In viewing corporations as constitutional actors and brokers, the constitutional determinants of corporate success can be seen, British history can be embedded into global history, the corporate circuitry for intensifying transnational interactions can be observed, and the long history of the modern corporation's jurisdictional evasiveness can be fully understood.

Corporate history has most often been written with reference to a single corporation. This approach has yielded important results.[29] Corporate constitutionalism tests some of the insights developed with reference to single corporations—and most often this has meant the East India Company—with reference to all of the English trading corporations of the seventeenth century to assemble a global field of view for corporate history. Contemporaries often referred to trading corporations as a discrete commercial and constitutional type.[30] Although they sometimes targeted each other's privileges, corporations often operated together sharing legal foundations, commercial strategies, and courtroom representation, overlapping personnel, and resources of capital.[31] The corporations enjoyed very different fortunes overseas, however. Corporate constitutionalism juxtaposes this apparent domestic constitutional uniformity with the divergent overseas fortunes of the companies to highlight the importance of the distinct non-European environments they worked within to any explanation of their differing commercial histories. Their divergent fortunes were often the result of commercial and constitutional differences in their overseas trading hinterlands. Because corporations integrated local and global settings, overseas divergences sometimes informed the domestic constitutional status and, increasingly as the seventeenth century continued, the public stature of the corporations.

Corporate Constitutionalism: Possible Interpretive Benefits

There are a number of possible interpretive fruits of this constitutional approach to the global activities of English trading corporations. First, corporate constitutionalism enables us to integrate the global and local in ways that deny the teleology of empire in international relations before the eighteenth century. The seventeenth century was distinctive as an era of equilibrium between regions of the globe, of intercultural accommodation after initial contact and before the era of European imperial hegemony.[32] A focus on corporate constitutionalism captures underappreciated features of this intercultural equilibrium. It highlights some of the ways in which corporations structured sites for transcultural interaction and exchange and how this dialogue could bring the discrete global and local settings for corporate activity into a creative juxtaposition.

At the heart of the integration of the separate global and local settings for corporate activity was the necessary dialogue between the corporation's defining constitutional privilege at home and abroad and a commercial strategy that carefully calibrated the trading interests of the corporation and its extra-European trading partners. Corporations were exclusive but participatory and deliberative societies or "fellowships." They were often monopolies. But the governmental and commercial futures of trading companies also depended upon the accommodation and approval of contacts and relationships that extended beyond their privileged membership: including states, customers, suppliers, competitors, as well as the private interests of their "servants" and officials.[33] Corporations required political support and constitutional privilege to gather and protect investment. Sustaining this support and privilege depended upon the establishment and maintenance of trade. Durable trading relationships depended upon the countenance of foreigners. Corporations therefore relied upon the agency and initiative of their non-European customers and suppliers.

In bridging corporate, national and supranational contexts, trading corporations appeared to finesse a double standard. At home, company members justified their monopolistic corporate trading privileges with reference to the need to intimidate the non-Europeans they traded with.[34] Overseas, however, corporate actors learned that non-Europeans provided the "social depths" of their political power and, therefore, the sources of their commercial durability.[35] At times the need to calibrate corporate interest with the commercial interests of their non-European hosts provoked near desperation among corporate actors. As an East India Company factor in Gujarat, Ralph Preston explained to the company's directors in 1614, such was the expectation among Indian rulers of the cultural supplication of European merchants to them that those rulers required company factors to be both respectable ambassadors and "banyans" or merchants—who the local rulers regarded as "little better than slaves" to sustain trading relationships—a status Preston suggested his London contacts the company would be well advised to assume.[36] At other times, corporations took the initiative by promoting their activities to non-Europeans with reference to the mutual benefits that would arise from commercial ties. After the company's occupation of Bengkulen, the East India Company's leading official in Madras, Elihu Yale cultivated the local ruler by citing the commercial benefits the English had previously yielded for the ruler of Bantam: "which from a poor Inconsiderable place; wee by our great trade, good advice & friendly assistance rais'd to a rich & powerfull Monarchy."[37] Corporate constitutions thus bridged local and global contexts and provided the framework within which their commercial, cultural, and political activities linked—peoples, places and cultures. This circulation and dialogue and mutual engagement complicates the relationship between colonisers and colonised, of indigenous and external actors, of centers and peripheries.

Second, corporate constitutionalism offers historians an alternative explanation for corporate success and some initial reflections on the impressive durability of the corporate model for international trade. Each corporation's commercial future depended upon its constitutional position at the corporate, state, and transnational levels. As the seventeenth century continued, the corporations' commercial

possibilities depended as much upon thwarting an alliance (sometimes formalised, mostly incidental) between domestic lobbyists, who deployed constitutional argument to challenge corporate privilege, and international merchants whose commercial support for the companies was foundational to their continued operation, as it did upon the backing of the English state. Unable to protect themselves from these alliances, several companies disappeared from view (though not without leaving a lasting constitutional impact—especially the Virginia Company and the Massachusetts Bay Company, which both established strong traditions of corporate, deliberative self-governance on the North American continent).[38] Others had their constitutional privileges drastically altered by the state. The Royal African Company failed to entrench itself either with West African polities or with its customer base in the English Caribbean and therefore succumbed to a public call for its deregulation in 1698 that pleased a large cohort of independent slave traders and largely followed from the commercial preferences of African merchants.[39] The East India Company more successfully defended its monopoly privileges at home by merging with its lobbying opponents and erecting a grand "superstructure" for free English trade on the Indian subcontinent that enfranchised the entrepreneurial instincts of its overseas factors and their Indian trading partners.[40] Conversely, the Levant Company's diffuse corporate structure became a source of institutional and commercial inertia within the Ottoman Empire that appears to have encouraged its eclipse by French competition.[41] In each case, constitutional posturing and positioning proved critical to corporate longevity. In re-orienting corporate, constitutional, and global history, corporate constitutionalism offers new means to explain how corporations emerged as organizations with "almost incalculable" power and influence.[42] The modern corporation's reliance on jurisdictional evasion owes much to the constitutions of the seventeenth-century corporation, which equipped the corporation with a jurisprudential agility that assisted their transnational commerce. The insights that corporate constitutionalism can provide about the corporations that endured and those that did not therefore also provides a means to help explain the roots of commercial efficiency and comparative advantage among trading corporations.

Third, corporate constitutionalism subjects nationalist narratives of constitutional change to international contexts. Trading corporations codified constitutional practices at home—such as the rights of members and the powers these members were subject to—and exported these to non-European contexts where they experimented with and adapted to unusual constitutional techniques. Because corporate activities were often constitutionally contentious and because their privileges were frequently re-negotiated, corporations sometimes placed these international constitutional experiences into the heated constitutional debates about the location of state sovereignty and the relationship between King and Parliament taking place in England throughout the seventeenth century as part of their attempts to sustain their constitutional position. From the altered constitutions of the corporations themselves, to new national constitutional supports for trading privileges and the corporate basis for the national debt, and to the development of a composite, pluralist transoceanic constitution which underpinned England's

expanding global reach, corporate constitutionalism suggests unfamiliar international settings for England's seventeenth century constitutional broils. This approach also suggests that rather than being caused by the need to subject diverse indigenous peoples, as James Tully has argued, constitutional change—at the corporate, state, and transnational levels—partly depended upon the exegeses of overseas environments and the adaptable and contestable nature of an uncodified constitutional tradition and was often, therefore, the result of non-European engagement.[43]

Fourth, corporate constitutionalism suggests new approaches to constitutional history. It challenges an approach to constitutional history that has focused on the nation state and, as Linda Colley has recently written, presumes the emergence of democratic politics. Corporate constitutionalism offers an account of constitutional development and proliferation that is "multistranded," contingent, and transnational because it analyses the constitutional activity, debates, and significance of corporations in multiple global settings.[44] Corporate constitutionalism aims to expand the remit of constitutional history to include corporations as well as early modern polities and to challenge the traditional focus on written constitutional authority and the explosion of constitutional writing in the late eighteenth and early nineteenth centuries.[45] Corporate constitutionalism both emphasises the constitutional significance of corporations from the sixteenth century onwards and reveals their role in the development of national, as well as imperial, constitutions. In this way, corporate constitutionalism can begin to direct a transnational, corporate focus towards larger questions about the transition from legal pluralism to an international legal system.

The Anatomy of Corporate Constitutionalism: A Royal African Company Case Study

Founded in 1672, the Royal African Company represented the high water mark of corporate constitutional power and controversy. Like its East Indian predecessor, the African Company enjoyed the right to enforce its monopoly by seizing and forfeiting violators' ships and goods. But the African Company pushed the boundaries of corporate power by receiving additional constitutional powers from the royal prerogative that enabled it to create its own vice-admiralty courts using company personnel to hear forfeiture and commercial cases. These courts did not allow the right to appeal (unlike traditional Admiralty courts) and provided the company with the right to compel customs officials to assist with the enforcement of its monopoly. The monarchy projected its own contentious constitutional authority over the state onto the Royal African Company. The company's insistence on its royal prefix advertised its place within a live constitutional debate. Both this projection and this insistence ensured that any legal contest over the company's corporate power would also ramify back onto the monarchy.[46]

The African Company's enforcement powers were profoundly controversial and placed the Royal African Company's charter into the constitutional disagreements of the 1660s-90s. These disagreements produced opposition and resistance to the

African Company's enforcement powers that achieved broader constitutional significance. Corporations like the Royal African Company concentrated their political, legal, and ideological energies to galvanise a generalised corporate position. The broader constitutional debates of this period were polarised and when they touched on corporate issues they encouraged the development of an anti-corporate front. This opposition came in many forms: from non-European states and merchants, the European competition, and from interloping English traders, and other domestic commercial and political interests. Just as pro-corporate arguments were deemed transferable to different corporations, so corporate constitutionalism allowed for diverse opposition to corporations—from within England and beyond it—to forge into a strong international platform for anti-corporate ideas, which the corporations needed to respond to. The result was the development of a powerful anti-corporate argument that had broader constitutional traction.

As such, constitutional opposition to the African Company's enforcement powers derived from precedent developed in the context of Asian trade. An interloper in the East India trade, Thomas Skinner claimed in a petition to the House of Lords in 1668 that the East India Company had illegally seized his house, ship, and goods in Sumatra because the Commonwealth had permitted free trade in the East Indies. Although no enforceable judgment came from these pleadings, the case developed an argument that Common Law rights to trade were property rights and could travel with merchants beyond England.[47] This argument channeled non-European agency through domestic constitutional opinion because it favoured both non-company trade and the Sumatran merchants who supported it. The Skinner case points to the ways in which the transnational commercial settings for corporations began to generate national constitutional shifts.

With its enforcement provisions aligned with the constitutional vitality of the royal prerogative during the 1670s and 80s, the Royal African Company enjoyed much commercial success. Perhaps because of the Skinner case, the African Company sought and received legal support for these powers in the early 1670s. These opinions buttressed corporate power in ways designed to support the specific national constitutional provision that established the corporations in the first place: namely the supremacy of the royal prerogative.[48] They also asserted the constitutional primacy for the royal prerogative in international settings by proposing to limit the efficacy of the Common Law in the absence of prerogative support in these supranational settings. One lawyer, Thomas Turnor supported the African Company's vice-admiralty courts by arguing that Common Law rights could only be effective in international settings if the King said so: "the superinduction of ye Common Law into conquerd Countries is a Ray or Emanation of ye King's own free and spontaneous Grace and Favour vouchsaf'd anon to his own very English Subjects....and no Right or Duty."[49] Such royal grace and favour was unlikely to be extended to encourage interlopers who cited the Common Law as the surest constitutional support for their right to trade and sought to infringe upon a monopoly with intimate connections to the monarchy. Turnor's arguments helped to standardise the

constitutionality of such enforcement mechanisms for other companies. The East India Company received such powers by letters patent in 1683.[50] Individual corporations generated constitutional positions that would prove formative for corporations in general. The African Company's enforcement powers prompted questions about the transferability of domestic constitutional practice overseas. In so doing, it integrated debate about transnational, corporate, and state constitutional frameworks allowing international settings to influence domestic constitutional thought and practice.

Because of this integrated anatomy of corporate constitutionalism across corporate, state, and supranational settings, alterations in any one setting could have implications for the others. When William of Orange accepted alterations to the state's constitutional practices in the late 1680s and early 1690s—that subordinated state finance to parliamentary oversight—the constitutional position of trading corporations altered. The prerogative backing for the vice-admiralty forfeiture powers of the Royal African and East India Companies could not endure the increasing tendency of parliament to assume supremacy in state deliberations about the regulation of overseas trade.

The Common Law courts supported this change. Sir John Holt struck down the "vice-admiralty" enforcement power of the Royal African Company in the Court of King's Bench in 1689. In this case, an African interloper, Jeffrey Nightingale, who had been the victim of a vice-admiralty seizure by the African Company, sued the company for redress. Politically and commercially weakened by its failure to develop a strong commercial foothold on the West African coast and aware that constitutional arguments in favour of the supremacy of the royal prerogative were unlikely to succeed in 1689, the African Company decided not to defend its enforcement powers in court for fear of having its charter eradicated and concerned about what such a broad legal pronouncement would have on the rest of the trading corporations. Holt ruled that access to trade was a portable common law right and could not be limited by the forfeiture powers of vice-admiralty courts.

This decision provided constitutional blessing for the view developed in Skinner's Case that Common Law rights to trade were internationally portable. In also associated opposition to trading corporations with broader constitutional language. Nightingale's barrister, Bartholomew Shower, proposed that the African Company's enforcement power was invalid because it privileged an outmoded version of state authority over the interests of the nation as a whole who would have their commercial interests better advanced in a parliamentary setting.[51] In the light of the international activities of the corporations whose enforcement powers Holt wished to moderate, Holt's decision connected domestic discomfort with monopolistic corporations with widespread African refusal to allow the Royal African Company to acquire durable commercial advantage on the West coast of Africa. Constitutionally formative ideas about free trade and the property and representational rights of Englishmen were created in the context of corporate encounters and engagements with the wider world. From the 1690s, the Royal African Company's corporate power became further diluted by the new constitutional primacy of parliament in regulatory affairs. Strident anti-company lobbyists accused the

constitutions of the African and Indian corporations of acting tyrannically at home and abroad.[52] But the basic pro-corporate argument proved to have enduring appeal as parliamentary debates persistently supported the view that international trade was best managed in the public interest by corporations. The constitutions of these companies would be altered, however. Intra-corporate constitutional dispute informed how this happened. Levant Company lobbyists celebrated the more decentralised governance of the regulated company model of corporations over the joint stocks of the African and Indian companies.[53] Access to the corporations would be liberated and their internal and external governance practices would be reformed. The 1698 Trade to Africa statute, which provided the first parliamentary support for the Royal African Company, opened access to slave trading on payment of a fee. This statute also forced company factors (and independent traders) to resign any political office they enjoyed in the colonies to prevent the mapping of corporate power onto state power.[54] Opponents of the Royal African Company had resented the ways in which the company's directors had entrenched themselves within the governments of Barbados, Jamaica and into the English court.[55]

Alterations to the national constitutional framework therefore worked to limit the constitutional prowess of trading corporations. But again, the international settings of corporations exposed them to such domestic constitutional challenges. The English state channeled the preferences of West African rulers as well as West Indian merchants by inhibiting the plenipotentiary powers of the Royal African Company. In the Indian subcontinent, where the East India Company's commercial and constitutional footholds were surer, the extent of constitutional assault on its charter provisions proved milder.[56] The different corporate outcomes of national constitutional pressure confirms the contrasting supranational contexts for the two companies.

The Royal African Company case shows how the anatomy of corporate constitutionalism ensured that the constitutional features of corporate activity flowed through state and transnational constitutional settings. Corporations could be practically (if not theoretically) autonomous entities, but their "embeddedness" in broader constitutional arenas—at local and global levels—ensured that constitutional contention for corporations would be transmitted to those broader arenas.

Conclusion

What might corporate constitutionalism yield for historians interested in rival European corporations? How could a constitutional approach to Dutch, French, Spanish, and Portuguese trading corporations integrate European examples? How did the corporate conduction of constitutional change from local to global alter extra-European state constitutions? Answers to these questions will provide the means for a fully realised global history of corporate constitutionalism. This initial English case offers the following hypotheses for a larger analysis. Trading corporations were both constitutional bodies and constitutional actors who negotiated written (and unwritten) constitutions (charters and treaties) to manage their internal affairs and their relationships with domicile and foreign state interlocutors. These constitutions not only

transcended but also blurred the boundaries between person and society, state and market, subjection and sovereignty, global and local.[57] The trading corporation's constitutional status and its constitutional powers provided it with the means to: impersonate the state and govern trade; subordinate itself to state power, and operate between state jurisdictions. These transnational and constitutional characteristics played an important part in the development of corporate trade and national and international constitutions from the seventeenth century onwards.

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Wider Still and Wider: Corporate Constitutionalism Unbounded

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Will Pettigrew's article, "Corporate Constitutionalism and the Dialogue between the Global and the Local in Seventeenth Century English History," presents an excitingly expansive research agenda that cuts across many of the traditional divisions of early modern history: domestic and foreign, internal and imperial, constitutional and commercial, English and British, British and European, national and global. The scope of this programme is as breathtaking as it is thought-provoking. It might therefore seem perverse to ask for something still more ambitious, as I shall do in these brief remarks. However, in gesturing towards an even greater vision of what Pettigrew calls "corporate constitutionalism," my hope is to clarify rather than to complicate the immense task he has set himself and his collaborators on the "Political Economies of International Commerce" project.[58]

That project is only the most visible and prominent current manifestation of what Pettigrew calls the "constitutional turn" in the history of corporations. Three motives behind that turn stand out. First, there is the presentist anxiety over corporate power, even corporate corruption, on a worldwide scale since the global financial crisis of 2008.[59] Second, there is the more exactingly historical movement to recover the multiple similarities, particularly in the early modern period, between trading corporations and sovereign states, or what are now coming to be called "company-states."[60] And third there is the still more fundamental, but as yet less well developed, understanding that companies and states were divergent species within the genus of corporations, in the Roman-law sense of collective bodies represented as persons for the purpose of fulfilling duties and bearing rights.[61] Taken together, these three impulses—reaching back

respectively over the *courte*, *moyenne* and *longue durées*—suggest that the only mystery about the constitutional turn is not why it is happening at all, but why it has taken so long to gather speed.

One reason for the hesitancy may be the default assumption, particularly among modern historians, that "corporation" means primarily or even exclusively a commercial body. This is perhaps a mistake few people brought up in English boroughs or towns —those municipal "corporations" that supply public services such as water, swimming-baths and street-cleaning—might make. Nonetheless, it remains widespread. Pettigrew is not entirely innocent of it, as the opening lines of his article invoke present discontents about "corporations" in this specifically financial sense. Such a truncated definition of the corporation is clearly anachronistic for the period Pettigrew focuses on even if he, along with many other present-minded commentators, implicitly views the seventeenth century as the long birth moment of the modern corporation.[62]

A slightly longer perspective might question that chronology. As Pettigrew notes, even among the subset of English overseas commercial corporations he studies were sixteenth-century foundations, pre-eminently the Muscovy Company.[63] Moreover, for all their pretensions to perpetuity, few of the early modern English commercial companies staggered into the modern age, the latter-day revival of the East India Company as a high-end gift-shop notwithstanding.[64] What Pettigrew terms "corporate longevity" might actually appear to be rather short-lived *sub specie aeternitatis*.

The vision of the corporation and its relation to constitutionalism could be even more expansive in time. Even in purely English context, this would entail a very "long" seventeenth century going back at least to 1553 (and the foundation of the Muscovy Company) and forward well into the nineteenth-century afterlives of the East India Company and the Hudson's Bay Company, for instance, or to the recrudescence of private companies such as the British South Africa Company, and the Royal Niger Company in the "scramble" for Africa and beyond. It might also demand unpicking the alleged elective affinity between corporations and capitalism by unpacking the multiple early modern links between commercial corporations and other forms of corporation: for example, states, chartered towns and the London livery companies, some of which (like the Clothworkers' Company), through their promotion of long-distance trade, had an extra-European impact even before the dawn of the seventeenth century.[65]

These various links also need to be put into the context of the longer history of corporations going back to Roman law: in this regard, recent studies of Thomas Hobbes's conceptions of corporations (and his connections to the Virginia Company) provide models for articulating the history of early modern political thought with the history of corporate personhood in all its myriad forms.[66] To focus only on trading corporations assumes what needs to be explained: that is, why only some of the proliferation of corporations in early modern England turned outward, beyond the realm, as commercial organisations. Other legally constituted agents could operate in the extra-European world: naval captains, army officers, clerics and consuls, for instance.[67] Why, then, did the English crown increasingly multiply and

sub-contract the marks of sovereignty—among them treaty-making, the powers of war and peace, adjudication, territorial claim-making and the minting of coinage—to such corporations in the wider world within and beyond Europe? And what effect might that selection process have had on the constitution of sovereignty within Britain itself?

There have been intermittent answers to such questions over the years—for example, regarding the politics of the Virginia Company, the Providence Island Company or the founding of Pennsylvania[68]—but we still lack a convincingly comprehensive narrative of developments across the seventeenth century. Constructing that story might also demand a robust counterfactual from beyond England or Britain. Fortunately, there are factual counterfactuals to hand, in the histories of other early modern European countries that deployed commercial companies overseas. These included not just those Pettigrew lists—"Spain, Portugal, Holland, France, Denmark, and Sweden"—but also Brandenburg and Scotland as well. Such comparisons could reveal what, if anything, was peculiar about the English case, in the long seventeenth century or beyond. The Netherlands provides the most obvious parallel in the VOC, but the burgeoning scholarship on French commercial companies, notably the eighteenth-century Compagnie des Indes, should clarify whether England was part of pan-European developments articulated on a global scale.[69] This suggestion might place greater demands on Pettigrew's project than it can immediately bear. However, it does affirm the logic of one of his own questions—"How could a constitutional approach to Dutch, French, Spanish, and Portuguese trading corporations integrate European examples?"—by seeking to integrate English corporate constitutionalism into a firmly pan-European framework, much as Jack P. Greene twenty-five years ago traced constitutionalism in an imperial and trans-Atlantic context or Linda Colley has more recently done for anglophone constitution-making in global perspective.[70]

The contemporary stakes of Pettigrew's larger project are clear. Its place on the leading edge of current historiography is also evident. Its relation to the longer, more variegated history of legal corporatism is for the moment less obvious. After all, it was only in the nineteenth century, starting in the Anglo-American world, that the meaning of the term "corporation" narrowed to mean mostly an incorporated business entity.[71] It made sense to distinguish commercial bodies from other species of corporation only when the spheres of politics and the economy had separated, a process that had barely begun in the seventeenth century.[72] Before that separation, the term "corporate constitutionalism" might even seem to be a pleonasm, covering corporations aggregate and corporations sole, from the Crown to chartered towns and companies and a great deal between. Whether corporate constitutionalism is a useful category of historical analysis remains to be seen: a generous focus—broad in space, deep in time—will be essential to assess its utility. In the words of one of Britain's unofficial anthems, which aptly places a vision of freedom in a global sphere of action, "wider still and wider" should its "bounds be set."

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Speaking Law to the Corporate Person

PAUL D. HALLIDAY*

Law is made of metaphors. Metaphors are hard to pin down, at least to pin down as neatly as law's makers and managers might like.[73] Few metaphors are more slippery than that of the corporate person, through which many natural bodies are made one by law. Few more slippery, that is, than the metaphor by which jurisdiction is understood as law speaking. By highlighting corporate constitutionalism, William Pettigrew considers the interaction of these two conceits. Here, where the corporate person spoke and was spoken to by law we find the corporate person's "jurisdictional evasiveness," the efforts of others to check its evasions, and the reasons for their ultimate failure.

A corporation is a technique of jurisdiction by which a sovereign attempts to direct collective action.[74] Like all techniques of jurisdiction, the corporation constantly threatens to slip the traces of sovereign control. This tendency to jurisdictional evasiveness that is inherent in all creatures made by the sovereign is intensified by the corporate person's strangeness: certainly not human, but enough like one that it can insinuate itself into otherwise unseen legal, political, and economic spaces within and among multiple sovereignties. All the while, the corporate person takes on many qualities of a sovereign. It can because, as Sir Edward Coke put it, a corporation "is invisible, immortal, and rests only in intendment and consideration of the law."[75]

A strange person indeed, but perhaps no more strange than the sovereign being by whose concession a corporation is created as a juridical subject.[76] As Pettigrew suggests, we will do better in charting the history of political and legal ideas to move from our traditional focus on sovereignty to jurisdiction—to the ongoing business of speaking the law. As Bradin Cormack puts it, making this shift redirects our attention from "political theology" to the "mundane process of administrative distribution and management…through which juridical power, in confronting its own inefficacies, fantasises itself as sovereignty."[77] Jurisdiction, not sovereignty, is the means by which we might apprehend most clearly law and politics as languages and practices, in part because jurisdiction involves this fantasizing—a constant implicit assertion—of sovereignty. In other words, jurisdiction, not sovereignty, must be understood as the ground concept and practice of legal and political relations.

Listening to law speak reminds us that many voices competed not only to determine questions, but to determine the determiner of questions about the capacities of law's subjects. In this competition lay the corporation's opportunity for evasion.

Despite its evasiveness, the English overseas corporation was at one time subject to a clear determiner. After all, a corporation is a franchise, an authority to trade, to govern, or both delegated to it by the monarch. Use of that delegated authority was supervised by the king's justices in King's Bench. The Merchant Venturers, a corporation trading across the Channel, learned of the justices' supervisory power when their corporate privileges were taken away in 1615.[78] The corporate person, with neither body nor soul, may not have been controllable in the same way as a natural person. But corporations were, in fact, controllable by judicial means. In this, the corporate person was no more successful in its evasions than law's other subjects.

Courts and judges, too little considered in our accounts of imperial actors and their global walkabout, spoke law to corporations and thereby checked their evasions in the seventeenth century. That courts and judges did this work imperfectly does not change the fact that in many ways, corporate bodies were no more successfully evasive of those jurisdictions that would speak law to them than any others who claimed to act by the sovereign's permission: hospitals and colleges, justices of the peace and commissioners of sewers or bankrupts, and so many others. To see this, we must integrate judicial institutions, ideas, and actions fully into our understanding of how global trade and empire were made and managed. As Pettigrew proposes, doing so integrates global and domestic aspects of constitutionalism, and suggests the change over time in the location of the ultimate jurisdiction to determine the jurisdiction of corporate persons. Once upon a time, that ultimate jurisdiction lay with courts and their justices.

But corporations asserted their own jurisdiction. They pronounced, in word and deed, competing ways of conceiving their being: a "*nomos*," as Robert Cover put it, "an integrated world of obligation and reality from which the rest of the world is perceived."[79] Conceiving their role in ways that conflicted with the pronouncements of courts, corporate bodies spoke law back to those who might speak it to them. Like any distinct community within a sovereign's fantasised sphere of control, every corporate person asserted a *nomos* at odds with the *nomos* guiding the courts. What Pettigrew calls the corporate person's "duality between subjection and autonomy" may be understood as a natural feature of all juridical subjects in what are inescapably plural legal environments.[80] Courts try to eradicate that duality by speaking what they declare to be *the* law against the counterclaims of self-forming sectarian communities, corporations, and others. Courts thereby solve, as Cover put it, "the problem of too much law." "Confronting the luxuriant growth of a hundred legal traditions," judges "assert that *this one* is law and destroy or try to destroy the rest."[81] By such means, according to Cormack, "a juridical order encloses the world."[82] Or at least it tries.

Corporate constitutionalism persisted in unenclosed spaces. The corporate person asserted its power to speak law to those it pretended to rule in far flung lands. Overseas corporations, like the ships that carried their wares, acted as of jurisdiction tracing lines of self-generated authority across spaces left unenclosed by multiple sovereigns.[83] By operating within and at the behest of multiple sovereigns, the global commercial corporation pursued its own diplomacy, built armies, and made and executed laws often

at odds with those of the sovereign who gave it being and of other sovereigns in whose territories and seas it lived its life.[84]

The more a corporate person spoke law, the more it developed the sound of a sovereign's voice. In reply, the justices of King's Bench in the seventeenth century momentarily seemed to solve the problem of too much law by speaking over the corporation's voice. This judicial capacity reached outward with empire in all its forms, and was as much a part of corporate constitutionalism as the corporation itself. Indeed, it was in the interaction of court and corporation that there was constitutionalism of any kind. But in part owing to the limits of writs and warrants and other techniques of jurisdiction, the justices could only do so much. Thus part of the story that needs to be told in charting corporate constitutionalism concerns the techniques by which the metaphors that are law become, or do not become, operational in the physical world. The effectiveness of the techniques by which judicial speech may be given force in the world weakened as the distances those techniques had to cover grew.[85]

The eighteenth-century response to the failure of one court's techniques for containing the corporate person's evasions was to turn to another court, to Parliament. Parliament's creation of new courts or modification of the techniques of old ones underscored the crucial point: that it now spoke law to *all* other claimants of jurisdiction. A growing parliamentary constitutionalism sustained an evasive corporate constitutionalism, in part by checking what courts like King's Bench had once been able to say. This happened most famously when Parliament created a Supreme Court in Calcutta by the Regulating Act of 1773.[86] Though made to curb some aspects of East India Company rule, further statutory regulation checked that court's ability to speak law. As court and company battled in Calcutta, Parliament asserted its ultimate jurisdiction, thereby sustaining corporate constitutionalism.[87] Parliament maintained the spaces where the corporate person's alternate understanding of law could be asserted and made real in the world. The story of corporate constitutionalism remains one of evasion.

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Constitutional Turns and Corporate Responses to the Empire of Uniformity

VICKI HSUEH*

At the core of Pettigrew's article "Corporate Constitutionalism and the Dialogue between the Global and Local in Seventeenth Century English History' is not simply an affirmation of the new "constitutional turn" in the growing historical scholarship on

corporations but also a more urgent and pointed call to examine the global activities of seventeenth century English trading corporations with particular attention to the protean, contested, dialogic, and creative dimensions of their constitutional activity. Early modern English trading corporations should be seen, in Pettigrew's view, as discrete constitutional entities which operated in multiple settings around the world and at various local, national, and transnational registers. In that sense, corporate constitutionalism did not exhibit the unbroken extension of power from center to periphery. Dependent on state authority and yet also often virtually autonomous in their operations abroad, corporations, as Pettigrew emphasises, were both "reflective and refractive of state constitutional mechanisms because their constitutional provisions were so often-re-negotiated at home and abroad." Further complicating their legal standing, corporations were also part of the polyglot, contentious, and pluralist legal and political culture of the period, in which—as the now massive literature on early modern constitutionalism has made clear—multiple forms of written and unwritten constitutional authority, power, and invention operated.

Pettigrew's article is ambitious both in carving out new lines of investigation and also in raising some essential questions about the relationship of corporate constitutionalism to power, difference, and ambition. In particular, one of the great strengths of the project is its challenge to the familiar Whig narratives of triumphal expansion. By illustrating the ways in which constitutional experiments reverberated around a transoceanic framework in which overseas expansion impelled new perspectives on government not just abroad but also at home, corporate constitutionalism offers the possibility of contesting narratives about the insular development of the English constitution, while also duly recognizing that constitution's pluralist and hybrid constitutional terms and techniques. In short, according to Pettigrew's proposed directive, a "comparative and constitutional approach to international activities of trading corporations helps to place non-European contexts, peoples, and cultures into domestic constitutional narrative and therefore places national constitutional histories within a global constitutional denominator." As Pettigew notes, this approach contests James Tully's influential view that early modern and modern constitutional change sought, among other interests, to subject indigenous peoples and to? regulate and order cultural diversity.

Yet I suspect that there is still additional room for Pettigrew to more precisely and directly detail how corporate constitutionalism distinguishes itself from Tully's account, particularly with regard to power and culture. In Tully's formulation, "modern constitutionalism" possesses several features. It is "defined in contrast to ancient or historically earlier constitution" and "rests on the "stages" or "progressive" view of human history, which the classic theorists produced in order to map, rank and thereby comprehend the great cultural diversity encountered by Europeans in the imperial age."[88] Further, modern constitutionalism holds "concepts of popular sovereignty which eliminate cultural diversity as a constitutive aspect of politics" as it also characterises itself in terms of "a society of equal individuals who exist at a "modern" level of historical development." And, indeed, one of the essential components of Tully's argument

is that he finds that modern constitutionalism's "empire of uniformity" has elbowed out less hierarchical forms of cultural adjudication—the traditions of indigenous peoples, treaty conventions, and the multiform, irregular ancient constitutionalist forms of common law and civic humanist adjudication.[89] These are more situated, mediated, and dialogic modes of understanding and recognizing culture, Tully suggests, and they offer an important and overlooked resource for adjudicating the diverse claims.[90]

Particularly since Tully's formulation is global in scope and examines the impact of modern constitutionalism on colonial practice and theory from the sixteenth century to the twentieth, it would greatly strengthen the impact of Pettigrew's proposal to clarify how his constitutional case studies challenge, provoke, and re-conceptualise modern constitutionalism's core features. In particular, a clearer conceptual account of corporate constitutionalism's alternative treatment and understanding of diversity, culture, and uniformity would be beneficial. While Pettigrew touches on some of the relevant differences between the at times widely different kinds of non-European and indigenous nations and peoples, the *constitutional* aspects of these differences are not yet fully spelled out. How precisely are difference and diversity addressed and mapped by corporate constitutionalism? Is corporate constitutionalism "aspectival" in some of the ways that Tully suggests?[91] Is it relational, open to change, and shaped by context? In what way do the different constitutional features of corporate constitutionalism (among them, mixed combinations of the ancient constitution, treaties, statutes, and the common law) deal with non-European engagement and in what way are power and privilege (on the part of multiple actors, agencies, and institutions) being exercised in the creation and exercise of corporate constitutional techniques? How does corporate constitutionalism then differentiate itself from ancient constitutionalism, common constitutionalism, and treaty constitutionalism?

In that vein, Pettigrew's article could also more persuasively illustrate how power functions in corporate constitutionalism. Tully's work, in that sense, profoundly illustrates the political possibilities and appeal of "redescription with critical intent."[92] Casting even greater attention to the roles that power plays in the contestations and creations of corporate constitutionalism would usefully deepen understandings of corporate influence. In part, increased attention to power could deepen the meaning of constitutional "determinants," a term that, in Pettigrew's article, at times flattens the particular interests, intentions, and ambitions of corporations along with their various agents and representatives. In addition, greater attention to power also would help to clarify the dynamics at work in constitutional and cultural "dialogue" and "mutual engagement." Are these "transcultural interactions and exchanges" even-handed and equitable? Or can they veer into domination, exploitation, and subjugation? Under what conditions and situations? As evident in Pettigrew's case study of the Royal African Company, constitutional operations *on the ground* often involve fluidity, exchanges, and interaction and these require the work of translators, go-betweens, and traders. What emerges are forms of practice and understanding which were certainly dependent on intercultural and cross-cultural knowledge but also very much bound up in—as well as facilitators

of—differential power relations. While Pettigrew's conception rightly emphasises the fluidity, porousness, and modular functions of corporate constitutionalism, it is not fully clear precisely how difference and diversity is defined and adjudicated, particularly in the more integrative aspects of Pettigrew's proposal, which looks not only to link the local and the global, but also the corporate, state, and transnational.

To give power and culture a more accentuated role would not simply add further depth and nuance to Pettigrew's conception of corporate constitutionalism but it would also more explicitly interrogate received wisdom about the history of the corporation. As Jo Guldi and David Armitage have observed, one of the notable features of trendy "critical turns" is that they mask "old patterns of thought that have become entrenched."[93] What is at stake in Pettigrew's article is not merely a more refined historical assessment, but also a more profound assessment of the power and pitfalls of transnational institutions. As reflected in Pettigrew's references to Tully, Noam Chomsky, and Alfred Chandler and Bruce Mazlish, the political and social utility of a reconceived corporate constitutionalism is significant. More than mere critique or revision, a manifesto of the kind attempted by Pettigrew in his article proclaims its ambitions publicly and performatively not only to offer a new agenda but also to rally forces, as much as possible, for enacting change. A more conceptually precise and power-laden conception of corporate constitutionalism would yield powerful and compelling insights not simply for historians but for many others invested in the "jurisdictional evasions" of corporations past and present.

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"Corporate Constitutionalism," the Merchant Adventurers, and Anglo-European interaction

Q1 TOM LENG*

Will Pettigrew has presented a stimulating overview of how overseas trading companies acted as agents in the extension of English presence across the globe during the long seventeenth-century. This paper responds to this agenda with reference to a Company which predated these trans-continental corporations, but which has been overshadowed by their rise: the Merchant Adventurers, a regulated company which formally monopolised England's cloth trade to northwest Europe. This involves extending the concept of

corporate constitutionalism backwards in time, and reconsidering the origins of England's trading corporations in Anglo-*European* interactions. As we will see, many of the issues that we associate with corporate contact with the world beyond Europe had been foreshadowed by a corporation operating in less exotic, but still challenging, territories.

Much like the later global trading corporations, the Merchant Adventurers emerged from mercantile efforts to negotiate access to overseas markets, notably a grant of 1296 from the Duke of Brabant which then became the basis for corporate organisation.[94] Although these initiatives were closely linked to royal diplomacy, it was only later that these merchants secured formal domestic recognition, acquiring charters from the crown recognising them as a self-governing corporation. Because the Low Countries attracted merchants from across England, the constitutional development of the Company was shaped by struggles between merchants of London and towns such as York, Newcastle and Hull, many of which established their own local merchant corporations. By the sixteenth century, the Company had a complex existence with its chief court and governor located overseas, but with its London branch controlling interactions with the English crown, whilst provincial merchants often chafed at regulations which they saw as favouring the Londoners. Coordinating these various locales was the Company's major challenge.

To the extent that the organisation of the Merchant Adventurers was a product of "constitutional hybridity," the context was Anglo-European interaction. English merchants operating in the Low Countries traded alongside communities of foreign merchants arranging themselves into "nations" as a means to negotiate with local rulers. Many were from southern Europe, and they in turn transported northwards practices of mercantile association and residence developed in the Mediterranean in context of Christian-Muslim interaction.[95] The Merchant Adventurers therefore became a key vector in the incorporation of England into a cosmopolitan culture of commerce characterised by shared practices such as double-entry bookkeeping.

When these merchants came to domesticate their constitutional structures, they were bought into closer proximity to England's own guild-system, as well as the English crown. Negotiation with the latter offered the opportunity to secure exclusive access to the privileges won overseas, but this generated much resentment and charges of monopoly. As with the later global trading corporations, the Merchant Adventurers were critical in structuring English access to foreign markets, but the Company also prompted many of those discussions about "consent, resistance, law, governance, commerce, and political economy" that would later become associated with the great seventeenth-century joint stocks.

Of course the Merchant Adventurers had to bridge a much narrower cultural gulf than these later examples, but this did not lessen its controversial status. The negotiation of English access to European markets was enmeshed with the corresponding issue of foreign access to England, and thus a matter for royal diplomacy, as well as tariff policies, chief way for the crown to regulate access to markets. This in fact afforded the Company with the opportunity to enhance its position in the mid-sixteenth century, asserting its status as the crown's favoured conduit for

Anglo-Dutch commerce at the expense of its foreign rivals, notably the Hanseatic League.[96] Ironically, just as they were profiting from this nationalistic commercial policy at home, the Merchant Adventurers were able to profit from the willingness of continental cities to compete amongst themselves for merchant custom, by offering lucrative privileges to foreign traders.[97] Having been forced by political instability in the 1560s to look for alternatives to its seat at Antwerp, the Company was able to relocate to Emden and Hamburg.[98] Of course the collapse of the Antwerp entrepôt has long been considered a watershed moment in the globalisation of English commerce, as enterprising English merchants travelled further afield to access imports previously sourced via Antwerp.[99] But Antwerp's collapse also had the potential to liberate the Merchant Adventurers, allowing them to access the vast central European market more directly. However, this was a challenge to the Company's corporate ideals. When sales at Emden in 1564 were slack, many members broke ranks with their brethren by travelling to the Frankfurt fair, and restraining this inclination to leave the mart town would be a continual problem.[100] In this light, critics of the Company could argue that as Germany was clearly "a place of libertie to all nations in Christendome for free dealinges," corporate regulations were not a necessary prerequisite to trading there.[101]

Following the outbreak of the Dutch Revolt the Company returned to the Low Countries, basing itself in Middelburg, Zeeland. But members were reluctant to abandon their German customers, and from the 1580s onwards the Company had two continental bases. Political rivalry between the Dutch states however hindered the Company's efforts to restrain trade to Middelburg, and the emerging entrepôt of Amsterdam was much less inclined to grant privileges to particular groups than Antwerp had been.[102] After Antwerp, defining the boundaries of England's cloth trade to north-west Europe, and with it the scope of the Company's privileges, became increasingly difficult, making it much harder for the Company to control the continental side of its trade or prosecute interlopers. The situation was complicated further still when in 1597 the Holy Roman Emperor banished the Company from his territories on grounds of being a monopoly. This episode exposed the fault line in the edifice of corporate unity that the dual-mart system had created. Whereas the Company initially withdrew to Middelburg, many members trading to Germany refused to follow suit. The subsequent contest between rival factions, played out before the Privy Council, brought the Company much negative publicity. As many members appeared to "rather desier to be set at liberty then to contynew in that bondage w[hi]ch is nowe laid on them by the evill governement of the Company," one commentator raised the possibility of "an absolute dessoluc[i]on of the Company for a tyme."[103]

Eventually a compromise was brokered whereby the Company nominated Stade as its unofficial German mart town, but at the expense of concealing its corporate status; members were effectively posing as interlopers. But the episode had bought into the question the necessity of corporate government, and likely had some bearing on the famous parliamentary free trade bill of 1604. Certainly one of its supporters cited the "late experience at Stoade, where they have had no Government the 4 or

5 yeares past, the Cloath hath had as good a vent as before, and our Nation better welcome to the people."[104] The issues raised in relation to the Merchant Adventurers in 1604, encompassing the rights of Englishmen overseas, the government of trade, and the powers of merchants in relation to the state, framed much of the debate on corporations for the century to come. At least one high profile critic of the Company believed that "what p[re]tences soev[er] the Marchantes make to drawe themselves into companyes, they ev[er] have in yt their privat ends, and all those take their ground from the Marchantes adventurers."[105] The lesson was clear: "yt is not Convenient that Marchantes have such power passed ov[er] unto them, as that thereby they may govern the estate of thinges both at home and abroad as they list, and they not to be Curbed therein by the State."

The Merchant Adventurers had to contend with such arguments until 1689, when the Company lost most of its privileges.[106] In the meantime, of course, it had ceased to be the most powerful or even controversial merchant company, eclipsed by the great trans-national corporations. But the controversies associated with the Merchant Adventurers continued to shape debates on trading companies, and it would be interesting to consider how organisations like the East India and Royal Africa Companies drew on the experiences of their forbearer in deflecting charges of monopoly. Certainly the merchant company had a history in England that long predated the Elizabethan wave of incorporations that gave rise to England's first trans-continental companies. Much of the early modern debate about the relationship between states and merchants emerged in this setting. A "fully realised global history of corporate constitutionalism" will surely find room for the Merchant Adventurers, and the Anglo-European context in which they operated.

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Parasites, Persons, and Princes: Evolutionary Biology of the Corporate Constitution

PHILIP J. STERN*

This welcome call for a constitutional approach to the history of the seventeenth-century colonial and commercial company raises any number of important provocations for early modern political, legal, economic, imperial, and global history, as well, as the authors are quite aware, having great potential to explain the origins of

the bewildering power of multinational corporations in our postmodern one as well. Yet, if Pettigrew's article persuades that the history of all hitherto existing societies is to be a history of corporations, the spectre that continues to haunt it is of course that of Thomas Hobbes. His ubiquitously cited antipathy towards corporations—quoted here, as well as in an embarrassingly frequent number of places, including my own work—as "lesser Common-wealths in the bowels of a greater, like wormes in the entrayles of a naturall man" belies a far more complex and perhaps contradictory role for the corporation in early modern political and imperial thought. The parasitic corporation found in chapter 29—by which he quite specifically meant merely the large, numerous, and well-armed boroughs and cities that had been so recently troubling to the English monarch—comes at the end of a long list of even far more life-threatening intestinal diseases of the body politic, such as mixed government and incomplete sovereignty.[107] Elsewhere, whether understood as a "politicall system" or a *persona civilis,* the corporation appears to be integrally part of the very musculature of the body politic; even large overseas trading corporations, while suspect and perhaps noxious as "double monopolies" at home and abroad, were not inherently destined to devolve into the "Wens, Biles, and Apostemes" of the commonwealth.[108]

I raise Hobbes neither to praise nor bury him, and certainly not to extol any virtues of a history of the corporation that retreats from the capacious call found here into a more familiar canon of political thought. However, it seems not a bad place to start, given the charge to pursue an "anatomy of the corporate constitution," packed as it is with metaphors about the composition and health of the body and implications for understanding early modern institutional power. To *incorporate*, to make into a body, was to *impersonate*, in both senses of the word: that is, to make into a person, but one that is in some sense only comes into being through mimicry, language, performance, and the law.[109] Yet, if diagnosing the corporate body politic requires some form of gross anatomy, it also calls for dissection of its biology on every level, from the biochemical and molecular to the morphological, ecological, ethological, and of course, evolutionary. As Hobbes recognised, there was an "unspeakable diversitie" of corporations, in number, kind, and circumstances; the question of a corporate biology would be, in a sense, to figure out how much one could generalise or systematise such a multiplicity, over time and place. Or, as the early twentieth-century legal theorist Frederic Maitland put it, "there seems to be a genus of which State and Corporation are species," and we were "a little behind the age of Darwin if between the State and all other groups we fix an immeasurable gulf and ask ourselves no question about the origin of species."[110]

Certainly, at the core—and quite famously on the cover—of Hobbes's *Leviathan* is the very image of a corporation: the "artificial man" of the state, many reduced into one under a single head, a legal person and common government. That corporations were themselves commonwealths only serves to reminds us that Hobbes's "greater" commonwealth, the Sovereign himself, was a corporation.[111] In England, this became articulated in the legal theory of the "corporation sole," or what perhaps

more famously has come to be known as the "King's two bodies": the one natural, mortal, and finite; the other, political, perpetual, and imperishable.[112] Such a corporation was less a product of "jurisdictional evasiveness" than a function of the evolution of the notion of governance and jurisdiction itself, centuries of conceptualizing legally fictitious persons which gave birth to both the power of corporate associations as well as unleashing a conception of the sovereign state as transcendent, abstract, and impersonal—as well, as of course, a body formed immemorially by compact.[113]

Like his many contemporaries, Hobbes was deeply familiar with the corporation, both through his own involvement with concerns like the Virginia and Somers Island Companies[114] as well as, far more influentially, the palpable legacy in both theory and practice of medieval jurists' constant and extensive debates over the concept and nature of the *persona ficta*, in the rights of universities, bishoprics, cities, guilds, and ultimately commercial and colonial combines with relation both to monarchs, emperors, and the body the Church and the *corpus christi* itself.[115] This of course raises the question: if the only thing that truly distinguished the species *civitas hobbesiana* from other *personae civiles* is what Maitland dismissed as simply a "jurist's theory," then it remains to be resolved whether the corporation was a fundamentally distinct, rival, or generically similar concept to the state. The possibilities are not mutually exclusive. Perhaps it may be that the corporation did not develop a "long history of jurisdictional evasiveness" as a means to survive so much as the national state, with its similar biology but potentially different sociology, may represent simply some sort of unique corporate genetic mutation.

Thus, the history of the corporate constitution seems to be one of simultaneous convergence and divergence with the nation. Pettigrew's article quite rightly also points to the global and transnational character of the commercial and colonial corporation specifically. We are pointed particularly to points of divergence, which are certainly persuasive—such as the greater capacities companies had to deal with the diversity of sovereignty and religion found in the extra-European world; it certainly offers a potentially deep structural answer to the puzzling question as to why Bombay became a cornerstone of the modern British Empire while Tangier burned. But, here one might turn from the divergence of state and company to consider their connections. Are their different paths to be found in the corporate constitution itself? To answer this, one might also need to consider how and why dissenters flourished in proprietorship Pennsylvania and Catholics in Maryland as much as Presbyterians did in Massachusetts, and the successes and failures all had in dealing with the several indigenous forms of sovereignty found within and without their borders. If we take Charles I at his word that the Crown believed corporations such as Virginia, Bermuda, and New England suited for trade but not "fit or safe to communicate the ordering of State affairs,"[116] then one must consider whether the proprietorial forms that followed were really any less categorically influential on the colonial constitution than the corporation.[117] And, of course, while corporations may seem jurisdictionally evasive, they would seem far less so when measured up against the host of pirates,

mercenaries, merchants, and others that constantly challenged the authority of both state and company alike.[118]

These are simply a few, hopefully open-ended questions, inspired by what is clearly an important and timely call for a wide-ranging research agenda on the impact of the early modern corporation on constitutional thought. Such work both picks up on a great inertia of current research and pushes it in new, exciting, and perhaps as-yet-unknown directions. It suggests a way to think about corporations—from the East India Company to the Royal College of Physicians—within the language of constitutionalism, while continuing to push us beyond singular, teleological notions of territorially-bounded state sovereignty. A gross anatomy of the corporation is one, like surgery itself, that is both an art and a science, comprehending critical patterns while also remaining as complex, varied, and unpredictable as the body itself.

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Notes

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1 Noam Chomsky, "Domestic Constituencies," in *Z Magazine*, (May, 1998) <http://chomsky.info/199805__/>; George Osborne, address to the Institute of Directors quoted in *The Guardian*, (3 October, 2014). <http://www.theguardian.com/politics/2014/oct/03/george-osborne-charities-business-chancellor>

2 On the political roots of the early modern corporate body see especially Halliday, *Dismembering the Body Politic: Partisan Politics in England's Towns*; Withington,

"Public Discourse, Corporate Citizenship, and State Formation in Early Modern England"; Stern, *The Company State*.

3 See Carr, *Select Charters of Trading Companies*, p. xii.

4 Another "critical phase" occurred between circa 1780 and 1840 when the functions and behavior of corporate vehicles were transformed as they became much more detached from the state.

5 Coke, *The second part of the Institutes of the lawes of England containing the exposition of many ancient, and other statutes*.

6 Withington, *Society in Early Modern England*, 206; Halliday, *Dismembering the Body Politic*. On the historiographical move from "state-building" to "state formation" see Braddick, *State Formation in Early Modern England*; Hindle, *The State and Social Change in Early Modern England*.

7 Hobbes, *Leviathan, or The Matter, Forme, and Power of a Common Wealth, Ecclesiastical and Civil* , pt. 2, ch. 29, 174.

8 Davenant, "Reflections upon the Constitution and Management of the African Trade," 332.

9 This tally of corporate constitutions includes all of the charters issued to the following corporations across the seventeenth century: African (7), East India (13), Hudson's Bay (1), Levant (6), Massachusetts Bay (2), Russia (6), Virginia (4), New England (2), and other North American Trading Companies (2).

10 Davis, *Corporations: A Study of the Origin and Development of Great Business Combinations and of their Relation to the Authority of the State*, vol. 1, 194.

11 Stein, "Tangier in the Restoration Empire."

12 Papillon, *The East-India-Trade a most Profitable Trade to the Kingdom*, 18.

13 See Sen, *Empire of Free Trade: The East India Company and the Making of the Colonial Marketplace*; Stern, '"A Politie of Civill & Military Power,'" 263–7.

14 Boogert, *The Capitulations and the Ottoman Legal System: Qadis, Consuls and Beratlis in the 18th Century*; Eldem, "Capitulations and Western Trade," 283–335.

15 On this point, see Boogert, *The Capitulations*, 25–6.

16 "Sir Sackville Crowe, complainant v. The Governor and Merchants of England trading to the Levant Seas, defendants: brief," c. 1661, TNA, SP 105/109, f. 214v.

17 "Narrative of some of the Levant Companies Proceedings with his Late Majesties & Your Crowne," TNA, SP 97/19, f. 266r-v.

18 Benton and Ross, "Empires in Legal Pluralism: Jurisdiction, Sovereignty, and Political Imagination in the Early Modern World," 9.

19 Stern, '"A Politie of Civill & Military Power,'" 253.

20 British Library, IOR E/3/90 1683 May 23rd London to Capt Leon Brown [Capt of the ship transporting above letters to India] (p. 165–66).

21 Orr, "A Prospectus for a 'New' Constitutional History of Early Modern England," 433.

22 Benton, "The Legal Regime of the South Atlantic World"; Benton, *Law and Colonial Cultures: Legal Regimes and World History,* 49–59.

23 I deploy "transnational" in much the same way as David Armitage in *Foundations of Modern International Thought*, 18.

24 See Stern, '"A Politie of Civill & Military Power,'" 283.

25 For the very different concept of "business constitutionalism" applied to the consistent ways in which the metropolitan managers of the East India Company sought to manage the Asian trade see Chaudhuri, *The Trading World of Asia*, ch. 2.

26 Halliday, *Dismembering the Body Politic*, ch. 2.

27 The constitutional category I define here is therefore meant to accommodate the differing perceptions of the corporation that have included understanding corporations as "sovereign" (Philip J Stern), as "franchises" (Paul Halliday), and as "societies" Philip Withington.

28 In this sense my notion of corporate constitutionalism offers some reflections on the processes that led to the formation ultimately of what Regina Grafe and Alejandra Irigoin have termed a "stakeholder empire." See Grafe and Irigoin, "A stakeholder empire: the political economy of Spanish imperial rule in America."
29 Stern, *Company-State.*
30 John Cary, *An Essay on the State of England, in Relation to Its Trade*, 47.
31 Pettigrew and Cleve, "Parting Companies: The Glorious Revolution, Company Power, and Imperial Mercantilism," 627.
32 Darwin, *After Tamerlane: The Global History of Empire since 1405*, ch. 3.
33 Mentz, *The English Gentleman Merchant at Work: Madras and the City of London, 1660–1740*, 264; Nierstrasz, *In the Shadow of the Company: the Dutch East India Company and its servants in the period of its decline (1740–1796)*.
34 See especially Child, *A Treatise Wherin is Demonstrated*, 38.
35 Withington, "Public Discourse, Corporate Citizenship, and State Formation in Early Modern England," 1024; Ogborn, *Global lives: Britain and the world, 1550–1800*, 87–93; Hasan, "Indigenous Cooperation and the Birth of a Colonial City: Calcutta, c. 1698–1750," 73.
36 Foster, *Letters Received by the East India Company from Its Servants in the East*, 261 (Ralph Preston to the East India Company, Amadaver, 1 January, 1614).
37 IOR G/19/21, Yale to "his most Imperial Majesty Jeanepatwan [?] Emperor of the Island of Sumatra and Territories thereof" Madras, 12 Sept. 1687, (f. 33v) IOR G/19/21, Yale to the "Emperor of the Island of Sumatra and Territories thereof" [the ruler of Bengkulu], Madras, 12 Sept. 1687, (f. 33v).
38 Breen, *Puritans and Adventurers : Change and Persistence in Early America*; Greene, *Creating the British Atlantic: Essays on Transplantation, Adaptation, and Continuity*; Winship, *Godly Republicanism: Puritans, Pilgrims, and a City on a Hill.*
39 Pettigrew, *Freedom's Debt: The Royal African Company and the Politics of the Atlantic Slave Trade*, 38.
40 Erikson, *Between Monopoly and Free Trade: The English East India Company*.
41 The Levant Company was a regulated company and therefore had a more decentralised corporate governance structure.
42 Chandler and Mazlish, "Introduction," 2.
43 Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity*, 58.
44 Colley, "Empire of Writing: Britain, America and Constitutions, 1776–1848," 239.
45 For recent work on constitutional history that privileges the late eighteenth and nineteenth centuries see Ginsburg, et al., *The Endurance of National Constitutions*,.
46 Much of what follows is drawn from Pettigrew, *Freedom's Debt*; and Pettigrew and Cleve, "Parting Companies."
47 Lincoln's Inn Library, *Maynard MSS*, No. 42. I'm grateful to Dr George Van Cleve for bringing this material to my attention.
48 For an alternative reading of these debates see Pincus, *1688: The First Modern Revolution*.
49 Opinion of Thos. Turnor, Gray's Inn, December 12, 1677; Opinion of Thos. Corbett, 1677 (?) including brief summary of oral opinion of Sir John Maynard, TNA SP, vol. 398, fos. 110–19.
50 Stern, *Company-state*, 59–60.
51 Shower's argument is in Renton, *The English Reports*, vol. 89, 498 (1 Show. K.b. 137, 138).
52 On the African Company as tyrannical see Wilkinson, *Systema Africanum*, 3. On the East India Company see *Reasons humbly offered against grafting or splicing and for dissolving this present East-India Company*, 4.
53 *Some Considerations Humbly Offered, against Granting the Sole Trade to Guiny from Cape Blanco to Cape Lopez, to a Company with a Joint Stock, exclusive of others*. See also Pettigrew and Stein, "The Public Rivalry between Regulated

and Joint Stock Corporations and the Development Seventeenth-Century Corporate Constitutions."

54 *Reasons humbly offered against establishing, by Act of Parliament, the East-India-trade, in a company, with a joint-stock, exclusive of others, the subjects of England* , 3.

55 Egerton Family Papers, Mss EL 9610, 1, Huntington Library, San Marino, Calif. This manuscript copy was printed as *Amendments Humbly Proposed to the Bill, for Settling the Trade to Africa, with the Reasons Thereof* (n.p., [1698]).

56 Pettigrew and Cleve, "Parting Companies," 633–8.

57 Chandler and Mazlish, "Introduction," 2. See also Ciepley, "Beyond Public and Private: Toward a Political Theory of the Corporation," 140.

58 University of Kent, "Political Economies of International Commerce": http://peic.org.uk/.

59 Barkan, *Corporate Sovereignty: Law and Government under Capitalism*, is a sophisticated treatment explicitly tied to recent events.

60 Stern, *The Company-State: Corporate Sovereignty and the Early Modern Foundations of the British Empire in India*; Weststeijn, "The VOC as a Company-State: Debating Seventeenth-Century Dutch Colonial Expansion.".

61 Maitland, *Maitland: State, Trust and Corporation*.

62 Robins, *The Corporation that Changed the World: How the East India Company Shaped the Modern Multinational*; Dalrymple, *The Anarchy: How a Corporation Replaced the Mughal Empire, 1756–1803*.

63 Willan, *The Early History of the Russia Company, 1553–1603*. A new history of the Muscovy Company is a major desideratum.

64 The East India Company Fine Foods: http://www.eicfinefoods.com/.

65 Ramsay, "Clothworkers, Merchant Adventurers, and Richard Hakluyt," 504–21; on the London companies, 1400–1900, see "Records of London's Livery Companies Online": http://www.londonroll.org/home.

66 Malcolm, "Hobbes, Sandys, and the Virginia Company"; Jessen, "The State of the Company: Corporations, Colonies and Companies in *Leviathan*"; Springborg, "Hobbes, Donne and the Virginia Company: *Terra Nullius* and 'The Bulimia of Dominion.'"

67 On consular jurisdiction, see especially Stein, "The Mediterranean and the English Empire of Trade, 1660–1748."

68 Kupperman, *Providence Island, 1630–1641: The Other Puritan Colony*; Armitage, "Greater Britain: A Useful Category of Historical Analysis?" 441, and n. 72.

69 Gottmann, "French-Asian Connections: The Compagnie des Indes, France's Eastern Trade, and New Directions in Historical Scholarship"; Cross, "The *Compagnie des Indes* and the Fate of Commercial Empire in the French Revolution."

70 Greene, *Peripheries and Center: Constitutional Development in the Extended Polities of the British Empire and the United States, 1607–1788*; Colley, "Empires of Writing: Britain, America and Constitutions, 1776–1848."

71 Handlin and Handlin, "Origins of the American Business Corporation"; Kaufman, *"Corporate* Law and the Sovereignty of States."

72 Hont, *Jealousy of Trade: International Competition and the Nation-state in Historical Perspective*; Grewal, *The Invention of the Economy: The Origins of Economic Thought*.

73 Winter, *A Clearing in the Forest: Law, Life, and Mind*.

74 Jurisdiction is "a technology or set of techniques that capture or attach its objects to law." Dorsett and McVeigh, "Questions of Jurisdiction," 12.

75 Renton, *The English Reports*, vol. 77, 973 (*The Case of Sutton's Hospital*, 1615, in 10 Co. Rep. 32b).

76 For all the significance of Otto von Gierke's account of the corporation as arising by an inescapable logic of

collective action, without the necessity of legal recognition, I take it for granted that a corporation exists as a juridical being *only* by concession of, or delegation by, the state. For discussion, see Ciepley, "Beyond Public and Private: Toward a Political Theory of the Corporation."

77 Cormack, *A Power to do Justice: Jurisdiction, English Literature, and the Rise of the Common Law, 1509–1625*, 8–9.

78 TNA, KB21/5, f. 48v and KB21/5a, fols. 16v. and 20v. Neuhauser, "Privy Council Regulation of Trade Under James I," 1034–5. This result was achieved using process by information in the nature of quo warranto. Notably, this was the same year in which Coke's court decided the *Case of Sutton's Hospital* (cited above, note 76), in which Coke's dicta laid down the basic elements of corporate personhood that have been quoted ever since, and *Bagge's Case*, by which the same court showed corporations that it could force them to do the court's bidding by writs of mandamus. Renton, *The English Reports*, vol. 77, 1271 (11 Co. Rep. 93b).

79 Robert Cover, "Nomos and Narrative," *Harvard Law Review* 97 (1983–84), 31.

80 Benton and Ross, *Legal Pluralism and Empires, 1500–1850*.

81 Cover, "Nomos and Narrative," 53.

82 Cormack, *Power to do Justice*, 9.

83 We might thus usefully apply to corporations the language Lauren Benton uses to discuss ships, which trace paths of jurisdiction across oceans otherwise empty of sovereign claims. Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900*, ch. 3.

84 Stern, *The Company State: Corporate Sovereignty and the Early Modern Foundations of the British Empire in India*.

85 Thus Cover specified the speech that is jurisdiction as "the judge's elaboration of the privilege of force." Cover, "Nomos and Narrative," 54.

86 13 George III, c. 63.

87 Travers, *Ideology and Empire in Eighteenth-Century India: The British in Bengal*, ch. 5.

88 Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity*, 58, 62–70. For a more developed account, see Tully, *Public Philosophy in a New Key*, especially vol. 2: *Imperialism and Civic Freedom*.

89 Ibid., 37.

90 Ibid., 211.

91 Ibid., 99, 203–6.

92 Tully, *On Global Citizenship: James Tully in Dialogue*.

93 Guldi and Armitage, *The History Manifesto*, 47.

94 Sutton, "The Merchant Adventurers of England: their origins and the Mercers' Company of London."

95 Calabi and Keene, "Merchants' lodgings and cultural exchange."

96 Ramsay, *The City of London in international politics at the accession of Elizabeth Tudor*.

97 Gelderblom. *Cities of commerce. The institutional foundations of international trade in the Low Countries, 1250–1650*.

98 Ramsay, *The Queen's Merchants and the Revolt of the Netherlands. The End of the Antwerp Mart*. For Hamburg, see Lindberg, "Merchant Guilds in Hamburg and Konigsberg: a Comparative Study of Urban Institutions and Economic Development in the Early-Modern Period."

99 Brenner, *Merchants and Revolution. Commercial change, political conflict, and London's overseas traders, 1550–1653*.

100 Baumann, *The Merchants Adventurers and the continental cloth-trade (1560s–1620s*.

101 British Library Lansdowne MS 56, fol. 176.

102 Gelderblom, *Cities of Commerce*.

103 Huntington Library, California, Ellesmere MS 2374.

104 British Library Lansdowne MS 487, p. 298.

105 Hatfield House Archives, Cecil Papers, 112/63, "Sir John Popham to the Earl of Salisbury," 11 Sept. 1605.

106 Ormrod, *The Rise of Commercial Empires. England and the Netherlands in the Age of Mercantilism, 1650–1770*.

107 Hobbes, *Leviathan,* 230.

108 Hobbes, *Leviathan,* 165; Hobbes, *Hobbes On the Citizen* , esp. ch. 5; Jessen, "The State of the Company: Corporations, Colonies and Companies in *Leviathan*."

109 Orts, *Business Persons: A Legal Theory of the Firm*, 43; Pettit, *Made with Words: Hobbes on Language, Mind, and Politics*, chs. 4–5. One the modern legal and philosophical complicity between concepts of state and corporation, see Barkan, *Corporate Sovereignty: Law and Government under Capitalism*.

110 Maitland, "Introduction," in Otto von Gierke, *Political Theories of the Middle Age*, p. ix.

111 On the language of commonwealth in relation to urban corporations specifically see, Withington, *The Politics of Commonwealth: Citizens and Freemen in Early Modern England*; Halliday, *Dismembering the Body Politic: Partisan Politics in England's Towns, 1650–1730*.

112 Largely due to the pioneering work of Ernst Kantorowicz in excavating Frederic Maitland's engagement with the subject. See Maitland, "The Crown as Corporation"; Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theology*.

113 Quentin Skinner influentially located this transformation with Hobbes, though did not originally stress the role of corporate thinking in that evolution.: Skinner, "The State." More recently, though, he has explored those connections more explicitly: see, e.g., Skinner, "Hobbes and the Purely Artificial Person of the State"; and his 2008 British Academy Lecture, published as Skinner, "A Genealogy of the Modern State." See also David Runciman's response to the former, "Debate: What Kind of Person is Hobbes's State: A Reply to Skinner"; as well as, among others, Bus, "Law, sovereignty and corporation theory, 1300–1450," 473–74; Foiseneau, "Elements of Fiction in Hobbes's System of Philosophy," 80.

114 As Noel Malcolm has pointed, out, in all of *Leviathan*, one finds only six scattered "direct echoes" of his connection to the Virginia Company, most of which are his more famous observations about Native Americans and none of which seem to be about the operation of corporations *per se.* Malcolm, "Hobbes, Sandys, and the Virginia Company." On Hobbes, see also, Aravamudan, "Hobbes and America"; Foiseneau, "Elements of Fiction in Hobbes's System of Philosophy," 80–81; Jessen, "The State of the Company," 76; Springborg, "Hobbes, Donne and the Virginia Company: *Terra Nullius* and 'The Bulimia of Dominum.'"

115 Colish, *Medieval Foundations of the Western Intellectual Tradition, 400–1400*, 267, 343; Siepp, "Formalism and realism in fifteenth-century English law: Bodies corporate and bodies natural"; Tierney, *The Idea of Natural Rights*, 309; Tierney, "Corporatism, Individualism, and Consent: Locke and Premodern Thought"; Tierney, *Foundations of the Conciliar Theory: The Contribution of the Medieval Canonists from Gratin to the Great Schism*, 90, 98–140.

116 "Proclamation by Charles I in Regard to Virginia," 135.

117 MacMillan, *The Atlantic Imperial Constitution: Center and Periphery in the English Atlantic World*, 153–54.

118 Among others, Thomson, *Mercenaries, Pirates, and Sovereigns: State-Building and Extraterritorial Violence in Early Modern Europe*.