Origin Stories of the Corporation…and the State
For one reason or another, I’ve been playing a lot of Crusader Kings 2 (CK2) recently. It’s a computer game set in the medieval era in which you play an individual noble who leads your family dynasty towards greatness—or not, as the case may be. Your character has traits—some good, some bad, some horrific—which impact on your relationship with other characters in the game. There is no real aim in the game, apart from the survival of your dynasty for as long as possible; you can try to secure more lands, as well as allies, or you can sit in a backwater county for generation after generation, depending on your preference. But why am I even mentioning CK2 in a book review? Well, it’s actually a really useful representation of sovereignty in the feudal age, a topic central to Josh Barkan’s recent, detailed and stimulating book, Corporate Sovereignty.

In CK2, the aim, if there is one, is to ensure the continuation of your dynasty, of familial sovereignty if you like. If you’re a major ruler in the game it might also represent the sovereignty of the monarchical or imperial body itself—that is, the pre-modern, pre-liberal sovereignty theorized by Foucault and others like Barkan interested in the transformation of the state and law. What Barkan does is push forward this conceptual analysis of sovereignty by dissecting the corporation as an historical, legal, geographical and, critically, evolving entity that stands outside of the pre-modern and modern state as a “legally sanctioned immunity from law” (p.4). While corporations might be outside the state and law, Barkan also highlights an important ambiguity; namely, corporations start out as “the means by which states attempt to marshal the collective
power of individuals toward public ends” (p.4). They have a dual and contradictory existence in this sense; outside the state and yet of and for the purposes of the state.

What Barkan is trying to do in his book is unpack the gnarly debates around corporate power evident in critical popular works like Joel Bakan’s (2004) *The Corporation* and Ted Nace’s (2003) *Gangs of America*, as well as a vast academic literature in law, history, economics and geography on corporate governance, form and personhood—a literature too vast to cite even a small sum here without ignoring large swathes. What he does, following a Foucauldian genealogical method (p.14-18), is explore the corporation as an epistemic, political and legal category over the last thousand years, or near enough. The book primarily focuses on Britain and the United States, but has resonances elsewhere due to the influence these two countries have had on the world. Importantly—or maybe this is only my geography background coming through—he also considers the spatiality of the corporation as an entity (p.12-14).

In outlining his argument, I’m going to focus much of my attention on Barkan’s starting point in Chapter 1—namely, that the original corporate charter is a “gift” of exemption from the law, conceived as monarchical (sovereign) power. As such, early corporations stand as strange bedfellows of the early modern, and pre-modern, state–Barkan goes back to 13th century Britain to make his argument in this chapter. Corporations were, at one and the same time, in opposition to and vectors of (state or dynastic?) sovereignty. A corporate charter put the corporation outside the purview of the sovereign power, “exempting corporations from the state’s monopolies on territory and force” (p.20), yet the state was reliant on corporations. Why? Well, according to Barkan, the breakdown of feudal obligations and customs necessitated the increasing *policing* of society (in the Foucauldian sense), something which was delegated to newly chartered corporations as they “were given exceptional powers to manage, direct and channel the conduct of the corporate body, its individual members, and the lives of whole populations” (p.28) and, as
a result, “corporations became the very basis for regulating conduct” (p.30). The interesting issue is how this happened. Corporate charters gave corporations “disciplinary power over the conduct of members” (p.32), meaning that these charters, especially in the case of towns and the large joint-stock companies, actually led to the need for new laws, courts and policing that sat outside of monarchical sovereignty. Furthermore, much of this power was territorial in nature, centred on a specific organizational facility, or trade route, or municipality, and so on. Hence, the emergence of corporations in this early modern period is directly linked to the emergence of new forms of law (i.e. non-monarchical), new territorial understandings of the world (i.e. national, international), and so on, all of which are characteristics of the modern state as we now understand it. In fact, Barkan argues it was these very characteristics of corporations that led Thomas Hobbes in *Leviathan* to formulate the notion of political authority as “the sole prerogative of the sovereign” (p.37), whoever or whatever that may be. While this first chapter is sometimes dense–or intricate, to use a less pejorative term–I think it is an incredibly valuable contribution to current debates about corporate power and the relationship between business and society. What it does really well is illustrate how the corporate form (i.e. as a collective) led to the emergence of territorial forms of law (cf. bodily or personal forms associated with monarchs) and, thus, the creation of a collective, territorial-based modern (nation-)state. I will return to this below when I sum-up.

In the following chapters Barkan delves into a range of issues that lead the reader closer and closer to the modern day. He covers “Property”, “Personhood”, “Territory” and “Responsibility” in Chapters 2-5, before discussing “The Corporate University” in Chapter 6. While I think all these chapters have something insightful to say in their own right, some work better together than others. The last of them, on the university, feels somewhat out of place in the overall argument of the book, for example. That is a minor quibble more than anything else.
In Chapter 2 (“Property”) Barkan transfers his focus to the United States and liberal governmentality. Here the limits of the state, as identified in liberal thought, ushered in a new way of organizing society based on the individual and law. As a consequence, corporations actually appear as feudal privileges in 19th century eyes—monopolistic “monsters” distorting the actions of individual, naturalistic decisions and choices. The evolution of incorporation, corporate personhood, and so on during the 19th century leads to a gradual rethinking of corporate power; no longer simply distortions of (natural) markets, corporations are increasingly seen as effects of the market and therefore as a (welcome) market limit on state power (p.55). Barkan follows up this discussion with a chapter on “Personhood” (Chapter 3), in which he considers how corporate personhood—especially after the 1886 Santa Clara decision in the US, which granted constitutional protections to corporations as well as natural persons—can be seen as an attempt “to rationalize an institution closely connected with early modern models of sovereignty and police within the juridical framework of a liberal capitalist political economy” (p.68). How corporate personhood has changed is a fascinating history in itself, and something I’ve attempted to theorize myself. What is evident is that since the early 1800s the corporation has been transformed from an arm of the state into a market-legitimated representation of individual interests (i.e. shareholders) threatened by the state, and yet a bulwark against that threat at the same time. Barkan explores the geographical implications of his arguments in the two preceding chapters in Chapter 4 (“Territory”). Going back to the early modern period, he points out that the sovereign (i.e. monarch) and sovereignty was not a spatial entity, being centred on a person or dynasty (à la CK2). The gradual shift from local police powers, in the form of hospitals, poorhouses, towns and the like, to individual, liberal rights was dependent on “the development of national regulatory structure” (p.99, emphasis added). In turn, international law ended up being a “patchwork of bilateral treaties and national laws” (p.100) which lacked
real enforcement. What is interesting from a geographical perspective is that the state’s origins seem to be in the very corporations they come to regulate; that is, the regulation of conduct, morals and economy starts with the corporate form and is gradually extended outwards, territorially- and spatially-bounded by the corporate form itself. Whether I am mis-representing Barkan’s view with this characterization of his argument, I am not sure, but it is one of the more fascinating insights he offers.

Finishing his book with Chapters 5 and 6 (“Responsibility” and “The Corporate University”), Barkan updates his analytical lens with two very current issues. In the former he covers debates on the responsibility of corporations to society, tracing the roots of the “neo-liberal” attack on ideas of social responsibility (e.g. Milton Friedman’s [1970] “The Social Responsibility of Business is to Increase its Profits”). What he illustrates is the extent to which corporations have consolidated power as a result of global legal and regulatory regimes–like the WTO or UN Global Compact–rather than had it curbed by these structures. In the latter chapter he argues that it is easier to understand the erosion of other (corporate) entities when we understand the entanglements of political sovereignty and corporate power. It is all too easy, for example, to see how one corporation (e.g. the university) can be perverted/converted into another (e.g. a business) with little effort if we appreciate how similar they are to one another. What this final chapter highlights, for me at least, is the need to rethink, quite radically, what universities are for and what they do; for example, rather than corporate structures, we could transform universities into co-operative entities (see e.g. Matthews 2013) comprising a collective of students, faculty and staff, able then to organize themselves as they see fit rather than to the whims of beguiling market melodies.

It is hard to sum-up a book like Corporate Sovereignty. It covers so many topics and subjects it is sometimes difficult to keep track of the threads of the story. That is not to criticize
it, but to emphasize that this is an important book with an important argument. It needs to be read with care, thought about at length, and integrated in our work.

I will finish this review with one comment, not critical but contrarian perhaps. Where I think Barkan has missed a trick, as it were, is that he could have been bolder in his conclusions—or I may simply have misunderstood his argument. I started this review by referring to *Crusader Kings 2* for a very specific reason. In my reading of *Corporate Sovereignty*, it is possible to argue that there seems to be no *state* before the expansion of (in)corporation, at least as we understand it today. No individual sovereign had *state*—as opposed to dynastic—sovereignty, so it seems odd to argue that state sovereignty is tied to the exemption or immunity from the state given to the corporation. It would seem that Barkan’s research and analysis actually offers us another tantalizing possibility, namely that the modern state actually emerged from the corporate form—although not in the sense offered by the likes of Otto von Gierke (p.80). My reading of Barkan—at odds with his own position perhaps—is that the modern state only emerges and stabilizes as an entity because of (in)corporation, at least as we understand the state today (i.e. territorial, juridical, authority). So, although government, or governing, centred on the crown in the feudal era, this represented a familial dynastic arrangement that gradually transformed into a modern state as the direct result of the emergence, spread, and territorial and legal expansion of the corporate form—in towns, in joint-stock companies, in workhouses, in canals and turnpikes, and so on. We might think of this as the shift from a familial dynasty to a dynasty of strangers. This, to me, represents several radical implications: [i] the state is itself nothing more than a form of corporate power; [ii] if we accept neoliberal thinkers like Hayek and Friedman then we might argue that the corporation is inherently totalitarian, just like the state; and [iii] radical change will only really be possible when we rid ourselves of the corporation and the state (to paraphrase Mikhail Bakunin).
References


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