

The Corporation and Three Cokes

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It's a very great pleasure to be part of this symposium on *The Corporation, Law and Capitalism*. The book narrates a complex and immensely illuminating historical story, of which I am going to zoom in on just one strand. Or rather, I am going to zoom in on just one individual. Taking that person as my point of departure, I will tell a very short story of my own inspired by Dr Baars's themes.

Edward Coke 1552-1634

Edward Coke was an English judge and Member of Parliament who lived during the late Tudor and early Stuart periods. He was born in 1552 at Mileham in the county of Norfolk, and died in 1634. He had a high profile in his own time, and remained famous in the succeeding centuries for his thirteen-volume collection of cases and related materials ('Coke's Reports') and for his four-volume treatise on the law ('Coke's Institutes'). These texts are still important as sources on the history of the English common law. It is said that they were also a major influence on legal developments in the early years of the United States.

Towards the beginning of *The Corporation, Law and Capitalism*, Dr Baars refers to a case reported in the fifth volume of Coke's Reports that was decided in 1612 by the Court of Exchequer (including Coke himself as Chief Justice of the Common Pleas). Entitled *The Case of Sutton's Hospital*,¹ it concerned the will of one Thomas Sutton. Sutton was a wealthy businessperson and financier who bought the site of a dissolved monastery in London known as the Charterhouse, and left it and another part of his fortune to a charitable foundation which he had incorporated as a vehicle for establishing and maintaining a 'hospital' (or really an almshouse), school and chapel there. The question that arose in the case was whether the corporation – as an abstract entity separate not only from Sutton, but also from the hospital, school and chapel he sought to endow, and from the king by whose authority the

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¹ (1612) 77 Eng. Rep. 960.

incorporation of the charitable foundation had been effected – had the capacity to accept this bequest.

Coke and his fellow judges decided that it did. In the passage that Dr Baars quotes, the court said, to be sure, the corporation was ‘invisible’ and could appear in court only through a representative and not ‘in person’. Not having a soul, it could not be excommunicated, and nor could it commit treason. It was ‘not subject to imbecilities, death of the natural body, and divers other cases’. But if it had no *natural* existence, it nonetheless had a *legal* existence. It was a ‘lawful’ entity, and it had the same capacity to transfer, and (as here) to accept the transfer of, property as ‘any person in England’.² *The Case of Sutton’s Hospital* has long been seen to mark a crucial step towards the modern idea of the corporation. Whatever the intentions of the Court of Exchequer in this dispute over Thomas Sutton’s charitable bequest, the idea that became associated with the judgment was that corporations are ‘legal persons’, with the same competences and rights to deal with property as human beings.

Thomas Coke 1754-1842

Fast forward two centuries, and I want now to shift the focus to one of Coke’s descendants, Thomas Coke, the first Earl of Leicester, who lived between 1754 and 1842. This Coke was a Member of Parliament like his ancestor, but he did not pursue a career in the law. Rather, his main interests were related to his position as a wealthy rural landowner. In 1776, when he was in his early twenties, Coke’s father died and he inherited a large estate at Holkham on the north Norfolk coast. This included the family residence, Holkham Hall, and 30,000 acres of agricultural land. Coke immediately threw himself into the project of improving his new estate. I use the word ‘improve’ here advisedly, for it had a meaning that was quite specific at this time.

On the one hand, improvement meant embellishing an estate. This was the era when architects and especially garden designers such as Lancelot ‘Capability’ Brown and Humphry Repton worked to commissions from rich aristocrats and gentry to create palatial houses surrounded by ‘landscape parks’ with artful arrangements of trees, carefully sited artificial

² (1612) 77 Eng. Rep. 960, 973.

lakes, and broad, expansive vistas that would enable an owner and his guests to take in the scene and appreciate the wealth and social status it represented. Thanks to Coke's great-uncle, Holkham Hall was already one of the country's finest Palladian mansions, so Coke turned his attention to the grounds, engaging Humphry Repton among others to expand and redesign a huge landscape park, which Coke used in the aristocratic manner for hunting game birds.

On the other hand, improvement also meant extending and consolidating the holdings of an estate, and making the land more productive and more profitable. Another aspect of what Coke did, then, was to enlarge the Holkham estate by incorporating a number of neighbouring farms, and to enhance the productivity of the land by introducing new methods of husbandry and new agricultural technologies. Coke indeed gained a reputation as a great pioneer of 'agricultural reform'. There exists a large literature on 'Coke of Holkham' or 'Coke of Norfolk' (as he became known), describing how he sowed non-traditional crops such as turnips, developed the use of certain grasses as animal feed, and undertook innovative forms of selective sheep-breeding – all in ways that enhanced farming yields and evinced the scientific and businesslike approach which would become synonymous with modern agricultural practice. He also adopted an unconventional system of four crop rotation, which boosted soil fertility and reduced the incidence of pathogens and pests.

To implement these projects, Coke needed a work force, ideally an inexpensive and readily available one – and this brings us to something else that was part of his programme of improvement: Parliamentary enclosure. Enclosure had been going on for a very long time in England, but Parliamentary enclosure coincided with Coke's lifetime. It refers to the process by which he and other landowners were able to petition Parliament for a local Act that would grant them exclusive possession of their land. The corollary of enclosure was extinguishment of the customary rights of common that belonged to peasants and other local villagers. Customary rights of common were of a variety of sorts. Some had to do with the way in which the land was worked (the traditional English 'open field' system of agriculture), but others were use-rights that belonged also to those who did not live primarily by working the land (artisans and other landless people). These latter included rights to glean after the harvest,

to graze a cow on common land, to collect wood and other forms of fuel and building material, and to gather fruit and nuts, whether for household use or to generate income.

For many rural people at the time, entitlements of this kind were what stood between starvation and total dependence on the market – the market in provisions, but also and relatedly the labour market. In other words, rights of common afforded some level of independence with respect to wage-labour, some buffer against complete proletarianisation, and hence some protection from the capitalist landowners and manufacturers to whose control (and wage rates) a poor labourer would otherwise have no choice but to submit. When these rights were extinguished, that independence and that protection came to an end, and improvers like Coke got their cheap and readily available work force. This is, of course, the story of primitive accumulation related by Karl Marx near the end of the first volume of *Capital*, which also features in Dr Baars's book. And while Marx spoke of 'primitive' or 'original' accumulation, we know – and Dr Baars reminds us – that these processes which paved the way for the exploitation and oppression of working people, these processes by which land ceased to be a shared basis of life and became instead a private possession, aesthetic object and commercial resource, did not end with the consolidation of capitalism.

Thomas Coke 1965-

To bring my narrative up to the present, I want to fast forward another two centuries to yet another generation of this family. The Holkham estate is today owned by a man again called Thomas Coke, the eighth Earl of Leicester, born in 1965, with a wife called Polly and four children named Hermione, Juno, Edward and Elizabeth. The estate has a website³ which informs you that Holkham is 'still privately owned and is the centre of a thriving 25,000 acre agricultural estate which provides resources both to maintain the house and to ensure that the social fabric of rural life remains intact'. You may read furthermore that the estate has 'not stood still' but has '[moved] with the times', and its enterprises now include a caravan park, 'several shops, property development and an internationally acclaimed inn'. Holkham is declared still to be 'very much a lived in, family home'. At the same time, parts of the Hall are open to visitors, and are also available as a venue for weddings and other celebrations. In the

³ See <https://www.holkham.co.uk/> (last visited 3 February 2020).

landscape park, there is a programme of 'nature rambles', and some of the farm buildings and workshops on the estate have been turned into a serviced workspace, touted on the website as the 'UK's coolest office'.

In 2014 the *Guardian* ran an article on Holkham Hall and its owners.⁴ The occasion for the article was the appearance of a book of photographs of the estate by Magnum photographer Chris Steel-Perkins, who had previously documented poverty around Britain. It is reported that the estate's manager was initially wary about giving Steel-Perkins access. 'We can easily be depicted as an anachronistic relic of the 19th century', the manager is quoted as telling the *Guardian's* journalist, 'but we're not that'. The article suggests that he need not have worried. While the eventual book may appear to portray a 'deferential Downton Abbey style existence', the photographer 'also discovered a world permeated by contemporary corporate values'. Under the eighth Earl, the estate has come '[in many ways ... [to resemble] any other modern corporation'. Coke's father oversaw a 'mix of farming, forestry and shooting, with a few tourists visiting the house', but this nowadays Coke has introduced 'board meetings and non-executive directors'. After taking senior staff on a visit to Volvo's headquarters in Gothenburg to see how they do business, he has already put 'some unusual incentives in place: if an employee doesn't perform a task on time, they must bake a cake'.

I am presumably not alone in hearing an echo there of a famous line attributed to Marie Antoinette, but let's set that aside and register the simple point that, having started at the beginning of the seventeenth century with the emergence, or at any rate early development, of the corporation as a legal artefact, and having paused to notice the late eighteenth-century phenomenon of Parliamentary enclosure and its ideology of improvement, we finally reach the twenty-first century, when what we see in the mirror are conditions of advancing corporatisation, commodification, hyperconsumerism and, as some now say, 'new enclosure'. I have told this story of three generations of the Coke family in order to hint at something of the subject-matter of *The Corporation, Law and Capitalism*. But you really need to read the book, because there you will find not only an incredibly rich discussion of the interrelation of law, commodification and the corporation as conjoined technologies of global

⁴ 'Holkham Hall: a modern-day Downton', *The Guardian*, 17 October 2014.

capitalism, but also some wonderfully suggestive analysis of such familiar features of our contemporary landscape as corporate accountability, corporate social responsibility and corporate criminal liability. To which list a visitor to the website of Holkham estate might be moved to add another familiar feature of a different, if perhaps not wholly or invariably unrelated, kind: the 'corporate event'. 'Whether you want to get the creativity flowing in your team, push them out of their comfort zone, or simply reconnect', the website proposes, 'we can provide the tools and the setting'.