

## The rise of the ‘abdroids’\*

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**Roger Warren Evans**

Company director, barrister-at-law, UK

October 1856 was a key moment in world history. For during that month, the seeds of the modern cult of **artificial personality** were sown, when the foundations of modern corporations were laid down. Every society is now, in 2002, interpenetrated by the phenomenon of artificial personality at every level and in every function. *And it all started in October 1856.*

As Parliament assembled in London for the new 1856 session, all the political talk was of ‘companies’. It was widely reported that, in both New York and Paris, legislatures were preparing to pass new laws to allow the business community to use artificial personality (‘limited liability companies’) as a means of organising major business projects. England, it was said, would lose its pre-eminent commercial position if it did not co-operate with the business community to permit limited personal liability, coupled with the other legal and commercial advantages of artificial personality. British businesses, it was said, would migrate to New York or Paris if they could not get these advantages at home. Parliament had already put a toe in this particular pond with the Companies Act 1845, but its procedures had been so cumbersome that very few businessmen had availed themselves of the facilities. The whole process, it was said, had to be made far easier, if British firms were to compete internationally, and if London was not to lose its international commercial role.

The political debate was poorly reported during these few autumn weeks because there was a strike of Parliamentary reporters, with three companies (including

\* Every ‘corporation’ is an ‘**abdroid**’. The common feature of abdroids is that they are treated by law as ‘persons’ in their own right, possessing most of the legal capacities of *natural* persons. Some ‘abdroids’ are the subject of unfettered private ownership, some are not. The sci-fi term ‘droid’ was devised by authors to describe a slave mechanism, a robot devoid of reasoning powers, wholly subordinate to the beck and call of natural persons, or human beings. An ‘abdroid’ is merely an abstract droid, a corporation, a company, an abstraction, a figment of the legal imagination, a non-physical entity, a concept, a nothing.

Hansard) vying for the right to produce the official parliamentary record. Reporters from *The Times* were not on strike, however, and the short House of Commons debate was briefly reported there. Some members of parliament (MPs) were concerned with the obvious risk of fraud and deception, but their concerns were brushed aside. The Bill quickly passed to become the seminal Companies Act 1856. Its principles have not changed, in any fundamental particular, since then.

In the intervening 150 years, artificial personality has spread throughout the world, generating both advantages and grave disadvantages throughout society. The process was at first very gradual because companies were suspected as vehicles for fraud, unsuitable for gentlemanly deployment, the last refuge of the trickster and the rogue. 'Company director' was a term of suspicion, if not contempt. The Victorians, who in 1852 had already granted artificial personality rights to workers' co-operatives, went on to grant the same privileges to friendly and benevolent societies, building societies, trade unions and credit unions, all by way of different legal codes. And, given Britain's dominant imperial position, British institutions were widely copied throughout the world. Towards the end of the 19th century other models of incorporation developed, notably the German model, which was copied lock, stock and barrel by Japan, well before the First World War. Before the First World War, the progress of incorporation was slow and patchy, inhibited by social convention. After the great Wall Street Crash of 1929, there was an accelerated flight of the business community into the thicket of artificial personality. Personal liabilities had to be limited and new defences constructed against personal financial disaster.

Contemporary society is now riddled with the phenomenon of artificial personality. It tentacles have spread far beyond the business world throughout the voluntary and charitable sectors, and many new forms of 'abdroid' have been created by the legislature (e.g. the UK quangos). In many sectors, artificial personality has become a cancer eating away at the body politic, negating personal responsibility, facilitating tax evasion, undermining moral imperatives. 'Abdroids' are the first choice of terrorists, tax evaders, money launderers, criminals of every calibre and kind, drug traffickers and smugglers. And, closely related to criminality, there is the seedy fringe of all legitimate business communities, peopled by rogues adept at the manipulation of artificial personality.

A further complication is the global proliferation of legislatures, of territorial jurisdictions asserting the right to permit the adoption of artificial personality. It must be evident that there can be no 'common law' or 'customary law' of companies: every jot and every tittle of company law is the emanation of statute, the express decision by some legislature, somewhere. In the USA, every state claims the right to regulate its own distinctive form of company—there are Californian companies, New York companies, Arkansas companies, Maryland companies, Delaware companies—and their laws are all different. Many of the former component countries of the Soviet Bloc have their own company law. An independent Scotland would certainly develop its own law of incorporation. There may be as many as 250 different company law jurisdictions throughout the world. And the deployment of artificial personality is accelerating: in the UK alone, corporations are now being formed (under the Companies Act alone, disregarding all the other incorporation systems) at the rate of 5,000 *every week*.

The effect of this development has been to enable the fixers and managers of the world, in both the public and private sectors, to operate in secret, to break laws with impunity, to evade taxes without detection, to operate criminal networks where the godfathers are never caught, and to oppress and deceive the hapless majority of humankind. On the one hand, the discovery and development of artificial personality was one of the greatest inventions of human society, just as the discovery of zero transformed mathematics. On the other hand, the corruption and oppression facilitated by artificial personality threatens to engulf the world in its own venality.

The time has come for governments, acting in concert by way of international treaty, to clean up company law globally, particularly in its business applications. The UK government is about to embark on a new round of company law reform (following a four-year Department of Trade and Industry [DTI] review process), and the impact of American corporate scandals is bound to be reflected in that. But a far more radical approach is needed, embracing artificial personality as a generic social institution, with new provisions made for social enterprises of all kinds. The principal problems, it is true, lie in the private-profit trading sector, and that is where the UK legislation will principally focus. But the Al-Qaeda investigations have also demonstrated the extent of corruption within the charitable or not-for-profit corporate sectors, often considered to be above suspicion. Artificial personality has penetrated every aspect of our lives, and any reform strategy must take that systemic penetration fully into account.

In practice, each national system of company law would have to be cleaned up by specific national legislation tailor-made for its own purposes. There could be no international statute. But there are, nevertheless, broad reforming principles upon which international agreement should be sought. Given such agreement, reached by international concordat, it would be for each signatory state to go away and reform its own laws within an agreed period: say, five years.

The starting point is the proposition that the power of trading corporations has increased to unacceptable levels, and ought to be constrained by governments. The abuse of corporate power takes the form of workforce exploitation, trade union repression, environmental pollution, money laundering, destructive relocation, market manipulation, monopolistic exploitation, corporate fraud, bribery, tax evasion, excessive executive remuneration and the deception of investors. These abuses of power touch every corner of every contemporary society. And they call for a radical programme of legal reform, not to prevent the use of corporations for trading purposes but to limit the damage caused by the abuse and exploitation of the processes of incorporation.

It should be acknowledged from the outset that the deployment of corporations (artificial legal persons, 'abdroids') has proved advantageous to the modern world, in the development of both political and commercial institutions. The statutory device of limited liability, the mobilisation of multiple shareholders in support of trading enterprise, the emergence of stock markets, and the facilitation of business succession and transfer—these are all key systemic gains that could not have been achieved without the use of incorporated forms of trading. The treaty objective should be to strengthen and improve that process, not to obstruct it.

Reforms should seek to secure the implementation of five key reforming principles. Minor tinkering, the mere modification of the duties of directors or auditors will not address the underlying faults of system. These five principles are conceived essentially as applying to major corporations, or 'abdroids': sole traders and partners, who trade without incorporation, accepting personal responsibility for their actions, their commitments and their debts, would not in any event be affected by these reforms, nor would their requirements apply to small local companies. It is contended that the opportunity to use 'abdroids' for private trading purposes should be considered a privilege to be granted to the business community only *upon terms*, and those terms should have regard for the public interests of the wider society. Properly understood, there is an underlying deal between society and its business communities. The treaty negotiations should seek to redefine and renew that deal.

## I. Greater transparency

Trading corporations now enjoy far greater rights of secrecy and confidentiality than governments and public agencies. Corporations are treated as *private* organisations as a matter of law, subject only to the regulatory principles of *private* affairs, and *private* property. Their operations are, however, of the greatest national and international importance, and should be open to far greater prior scrutiny, by both public and the investigative media. These legally protected 'private' rights of secrecy should be curtailed, while retaining confidentiality for matters of high competitive significance, as directed by the board of the company. All general meetings of shareholders should be open to the public and the media, and public access should be given to corporate records.

## II. Better checks and balances

Modern management has taken exclusive control of corporations, through the domination of their boards of directors. The 19th-century checks and balances, between shareholder and board, between auditor and shareholder, between board and management, have completely broken down, atrophied. Executive management dominates every corporation, with CEOs enjoying unprecedented concentrations of power. These autocratic systems, without effective checks or balances, are dangerous. The remedy is to enable shareholders to share power with the management, in particular with the right to a prior vote on key issues facing the company, including executive remuneration. Managers must be shorn of the autocratic powers that they have acquired by default and legal loophole.

### III. Regulated company formation

The right to use an artificial person for trading purposes represents a privilege, a key advantage granted to the business community. Yet company formation is effectively accorded 'on demand' in the UK, and in most other jurisdictions. No prior checks are made before the creation of a new corporation is authorised, nor are the identities of the promoters or their purposes scrutinised. Before authority is given for the creation of any new 'abdroid', the applicants should be required to satisfy the Companies Registrar that its formation is for a legitimate purpose, that there is no element of tax avoidance, and that the tax affairs of the promoters are in good order; other considerations should also be taken into account, such as possible terrorist links and smuggling connections. The formation of off-the-shelf 'shell' companies should be prohibited. And registration charges should be significantly increased so as to deter the frivolous use of incorporation procedures.

### IV. Liability for subsidiaries

When the concept of limited liability was developed in the 19th century, the object was to protect wealthy *individual investors* against the risks of financial ruin, in the event of a firm's collapse. No shareholder could under any circumstances be called upon to pay more to the company than he had personally pledged to invest. That protection has proved a key advantage in the development of modern economies and should not be displaced or qualified; such considerations remain valid. There was, however, no suggestion that a corporate shareholder (i.e. an investor that was itself a corporation) should be able to create another artificial person, and hide behind its own subsidiary. The extension of limited liability to artificial persons themselves, to 'holding' or 'parent' companies, has now become a vehicle for deceit and fraud, and should be discontinued. Every company should be required to bear its due share of the indebtedness of any failed subsidiary.

### V. Qualified property rights

Corporations have succeeded to all the property rights accessible to natural persons, as a matter of general legal reasoning. 'Abdroids' are entitled to enjoy all the relevant rights of a natural person. In Anglo-American legal systems, this means that corporations can take advantage of the very powerful 'absolute' property rights enjoyed by natural persons. These include the right to exercise property rights arbitrarily, without assigning any reason for their exercise, and without any requirement to act reasonably in using them: such property laws even accord to a natural person the right to destroy his own property at whim. This presumption should be changed: all corporations should, as a condition of enjoy-

ing the advantage of artificial personality itself, be placed under a general legal duty to *act reasonably* in the exercise of their powers. Corporations should expect to be subject to judicial scrutiny for acting arbitrarily, unreasonably, negligently or destructively. This principle would act as a powerful constraint on the abuse of power, throughout the entire corporate sector.

It should be recognised from the outset that, given the international character of modern trading systems, these radical measures would require for their implementation an extensive measure of agreement between the principal trading jurisdictions. Significant diplomatic negotiation will be required, by way of an extended process of negotiation. The process will take at least ten years. *But it is time to make a start.*<sup>1</sup>



I suspect I should have been a psychologist. For I am preoccupied, both in my scrutiny of my fellow creatures and in my legal studies, with the phenomenon of personality—both natural and artificial. By education I am a linguist, a historian, an economist, and a lawyer. By trade I am a general manager and company director, one of the puppet-masters of the trading system, manipulating a bewildering array of imaginary corporate puppets.

As a history student at Cambridge, I was always deeply affected by the impact of personalities, both ancient and modern: they interpenetrated my world of 'systems', in both historic and economic analysis. The conduct of all our daily lives is profoundly conditioned, at every stage, by the ramifications of personality. Democratic 'politics' is conditioned by personality, however strong the protestations may be to the contrary. Great religions turn crucially upon great personalities. And, as a near-professional linguist, I recognise that human language has a key part to play in humankind's manipulation of abstract concepts.

roger@warrenevans.net

1 Check out [www.tamethecorporations.net](http://www.tamethecorporations.net) and state your views.