QUADERNI

Quaderni
Communication, technologies, pouvoir

84 | Printemps 2014
La radicalité ouvrière en Europe

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OpenEdition Journals

Electronic version
URL: http://journals.openedition.org/quaderni/796
DOI: 10.4000/quaderni.796
ISSN: 2105-2956

Publisher
Les éditions de la Maison des sciences de l'Homme

Printed version
Date of publication: 5 May 2014
Number of pages: 13-26

Electronic reference
Bennett Carpenter and Frans-Willem Korsten, « Corporate personhood as inhuman: the paradigm of asbestos cases and Dracula », *Quaderni* [Online], 84 | Printemps 2014, Online since 05 May 2016, connection on 21 April 2019. URL : http://journals.openedition.org/quaderni/796 ; DOI : 10.4000/quaderni.796

Corporate personhood as inhuman : the paradigm of asbestos cases and Dracula

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In 2000 the Dutch Supreme Court (the 'High Council of the Netherlands') gave a verdict that became known as the 'Asbestos-arrest'[1]. It dealt with the case of an employee, Van Hese, against his employer, the ship building company De Schelde NV. Van Hese had worked with the company from 1959 to 1963 as a painter and had been subjected to asbestos dust due to his work. More than thirty years after he had worked with the company, in 1996, he was diagnosed with mesothelioma. Unfortunately, if a victim of asbestos dies beyond the limit of thirty years after he got infected, the case is no longer judicially valid in Dutch law[2]. The employee charged his former employer nevertheless, in October of 1996. When he died in November, the heirs took De Schelde to court with the principal case being whether an employer can still be held responsible for an asbestos-caused disease after thirty years. The High Court judged that in the case of asbestos, and the cancer it may produce decades after the infection, reasonability and judiciousness[3] require that the law should not be dealt with in strict terms, but rather in terms of the individual case. Therefore, the term of thirty years should be expanded[4]. The verdict made it possible for thousands of employees to either charge their former employer or to claim insurance money because of the disease they had developed more than thirty years later due to labor circumstances. So, justice was served, or was it?

In what follows the problem we want to deal with concerns not the specific issue of the vast industrial use of asbestos and the many victims it has caused globally. The problem is sufficiently documented in studies by, for instance, Jock McCulloch and Geoffrey Tweedale or Emmanuel

Henry[5]. Instead of following a sociological approach, we want to focus on a specific interstice between the cultural (specifically literary) and juridical domain, that is in turn intrinsically related to the economical, sociological and political domain. With respect to this, the asbestos issue provoked us to pose the question whether there is not a principal or intrinsic inequality in play, here, in a confrontation between two radically different forms of legal personhood. The latter term, 'legal personhood', is played out on the interstice between the cultural (literary) domain and the juridical, and concerns the question of how a *ficta persona* can become a socio-political and economical entity, in real life. Yet, as the asbestos case proves, there appear to be two forms of legal personhood in play that relate differently to different material bodies. One is alive and vulnerable in terms of death and disease, the other only seemingly alive, and invulnerable in terms of death and disease. One is individual and personal in terms of accountability, the other is a 'company', which is not accountable in terms of personal liability. One is defined in terms of lineage by biological connections, the other is defined in terms of lineage by economical connections. Of one the labor power is bought whereas body and personhood are not for sale, the other buys labor power and its corporate body can be bought or sold. One is human, the other is not.

The principal inequality between the two, and the uncanny characteristic of this inequality, are captured in the socio-cultural domain in such a way that the issue is both addressed as problematic and made acceptable. This has happened, we want to argue, through the figure of Dracula. Historically and structurally the literary figure, or the *ficta persona* of Dracula coincides, tellingly and uncanningly, with the idea and actualization of legal corporate personhood. It does so, moreover, in relation to two different juridical systems, the continental one and the Anglo-Saxon one (much more influenced by common law). Our question is first how we can read this historical and structural coincidence, that bridges different juridical and socio-cultural systems on the basis of a similar socio-economic entity – a legal *ficta persona* in the sense of corporate personhood – and a powerful cultural icon – a literary *ficta persona* that, since it was called into being, became massively popular in the course of little more than a century. The question of how to read this coincidence, however, is only a stepping stone towards the question of what this may imply in terms of the juridical conceptualization of corporate personhood in the current circumstances. With respect to this issue we want to avoid any confusion beforehand about what is at stake. What is at stake is not a consideration of this *persona ficta* as a moral person. This has been considered adequately by Sheryl N. Hamilton in *Impersonations: Troubling the Person in Law and Culture*[6]. What is at stake, in our reading, is whether this *ficta persona* is (in)human.

It is safe to say that the history of the relation between asbestos, the diseases it may cause, the cover-up of dangers and casualties by those responsible, and the possibilities of litigants to take the latter to court is by now a long and painful one. Despite its well-documented history, however, or despite its being a 'public problem' as Emannuele Henry has called it[7], the issue remains far from solved. We want to explore whether this may be so because of a principal, radical

imbalance in the system of law. We want to deal with this in an argument that unfolds in three steps. First we deal with the Supreme Court's 'Asbestos-arrest' in more detail, not for the sake of addressing the asbestos issue *per se* but for the sake of delineating the imbalance at stake through the aspect of a *ficta persona*'s ability to live on endlessly, as if in a state of un-death. Secondly we go into the historical development of corporate personhood, to deal, thirdly, with Dracula as a figure for corporate personhood. Finally, and briefly, we will deal with the implications of radical differences in personhood for the juridical system.

Buying off death: corporate liability and invulnerability

When Lawrence Garfinkel gives a reconstruction of the knowledge available about the dangers of asbestos since the twenties of the previous century it is puzzling, stunning, or repulsive to see how long companies and corporations kept working with the material nonetheless – and keep on doing so[8]. Garfinkel gives an extensive list of studies that appeared since the 1920s on the proven relation between asbestos and different diseases such as 'asbestosis', mesothelioma and cancer. So, those who were responsible for (manifold forms of) work with asbestos knew, or could have known, that there were considerable health risks involved for all their employees. This leaves us, however, with the difficult issue of concrete liability in individual cases, especially when people have been working for different companies, have been smokers meanwhile, etc.

Companies and corporations working with asbestos were brought to court from the 1930s. Since the 1970s, however, the number of cases exploded[9]. In the United States alone, by 2005, as Lester Brickman noted "*over 50.000.000 claims had been brought forward against 8400 former producers, distributors, installers and sellers of asbestos-containing products. To date, 850.000 claimants have sought compensation, costing businesses and insurance companies over 70 billion dollars,*" resulting in many bankruptcies[10]. According to Brickman, this number of 850.000 claimants in 2005, which would account for fifty to sixty million claims, was expected to double in the following decade. It did. The explanation for this massive increase in cases, according to Brickman, is that the tracing by complain management companies of individual litigants had become a form of industry itself.

Michael Wills, Labour member of the British Parliament and Minister of State for the Ministry of Justice, addressed the issue in a debate on the 5th of February 2010 in which he emphasized the vulnerability of people who are already ill when approached by a claim management company[11]. The irony of course is that they were equally vulnerable when getting the disease in their working for other companies or corporations. Another irony is that it is almost impossible for individual victims to have the knowledge and expertise to operate in this complex field. Individual litigants *need* if not claim management companies than law firms. A third irony may be that if they do not need them, they are found by them[12]. A fourth irony, finally, is that they can only be diagnosed because of yet another industry, the medical. This all may seem close to the cliché of the small individual person who is chanceless when he is

up against corporate powers. Yet that cliché has proven to be awkwardly true in many asbestos cases. Even if many individual litigants won their case against companies or corporations, they did so serving the needs of other companies or corporations.

Still, the Dutch Asbestos-arrest was important in terms of jurisdiction and seemed to serve individual rights with their demand of "*taking into consideration all the circumstances of the concrete case*"[13]. The Supreme Court then proceeded to define what the verdict of a judge in future comparable cases should contain. The first requirement was that it should concern financial restitution of damage in terms of wealth, a restitution that should benefit either the victim itself, his heirs or third parties. The second requirement was that there should not be some other form of restitution in play given for a comparable reason. The third, fourth and fifth requirement are more important for our argument, however. The third concerns "*the measure in which that what happened can be blamed on the one spoken to*". The latter is a literal translation of original Dutch term: "aangesprokene" (which would normally be translated with "addressed"). The term is derived from the verb "aanspreken": "to speak to", "to address", but also "to question someone in terms of his behavior", or "to arrest". Some entity is being spoken to, then, and it is stopped in terms of a reproach. This relates to the fourth requirement which demands that judges estimate "*in what measure the one spoken to has considered or should have considered before the expiry date came into effect the possibility that he would be held responsible for the damage*". Then, fifthly, the judges should estimate "*whether the one spoken to still, in all reasonability, has the possibility to defend himself against the accusation*". The sixth requirement is that a judge should estimate whether the liability is covered by insurance. Finally the Supreme Court turns back to the victim, asking that judges estimate whether the accusation is brought forward within a reasonable time limit.

The entity of the one addressed, arrested, and charged, here, is defined in a particularly anthropocentric way, as if it concerns a human entity. Still, the one addressed in this case was a company: De Schelde. How could that *company* be able to act as a human individual, in taking the blame, in considering something, in defending itself? To be sure, such corporate actions have become quasi-natural by now, as if the corporation is "naturally" a juridical and somehow human person. Yet its in-human quality becomes evident when we consider the fact that it need not, and in fact did not remain constant over time. Originally installed in 1875 as the NV Koninklijke Maatschappij De Schelde (KMS), it fused with the Rotterdamsche Droogdok Maatschappij and the NV Motorenfabriek Thomassen in de Steeg in 1965. This resulted in 1966 in the Rijn-Schelde Machinefabrieken en Scheepswerven NV, which was in turn fused with the Verolme Verenigde Scheepswerven NV in 1971, leading to the so-called Rijn-Schelde-Verolme Machinefabrieken en Scheepswerven NV (RSV). This company went bankrupt in 1983, was dismantled by the state and the province, who sold their shares in 2000 to the Damen Shipyards Group under the umbrella of which the Koninklijke Schelde Groep BV (KSG) became one of the working units, under the name of which it had already

been operative since 1991[14].

Apparently corporations are capable of changing body, face or name. They may live on whereas they seemed to have disappeared, and can resurrect from what seemed to be a death. This is why lawyers have become more and more concerned with issues of responsibility and liability in relation to corporate personhood. And in order to avoid liability being fended off by the corporate mask, lawyers have looked, for instance, for ways of "*piercing the corporate veil*" as it is called, taking the shareholders to court[15]. Still, in 1991 Robert B, Thompson wrote: "*Piercing the corporate veil is the most litigated issue in corporate law and yet it remains among the least understood.*"[16] He was not the first one to state this since Benjamin Cardozo had already described this so-called "corner of the law as 'enveloped in the mists of metaphor'"[17]. We think these mists relate intrinsically to the constitution of corporate personhood, as long as it metaphorically relates to not so much a human person, but a human.

Artificial, fictive and real – corporation as a separate entity

While theoretical contributions to the contemporary debate over corporate personhood have been wide-ranging, they nevertheless tend to unfold in three schematic steps[18]. First, the attempt is made to determine which characteristics of human beings are responsible for their status as paradigmatic legal persons. Second, these characteristics are examined in isolation in order to determine whether or not non-human entities, and in particular corporations, may be said to exhibit analogous qualities. Third, this verdict then determines whether the label of corporate person should be considered a real "*identification on the level of substance*"[19] or rather merely metaphorical, a legal fiction. In addition to what might be called the "real" and "artificial" entity theories, two other possibilities exist: the corporate person can be seen as a sort of legal shorthand through which the rights of individuals can still be read (the so-called "nexus of contracts" or "partnership" theory), or else the notion of corporate personhood can be denied entirely. For reasons that will become apparent below, we do not consider either of these last two options plausible.

Admitting the incommensurability of the human and the corporation, we insist that the latter is a real agent, possessing its own objectives, desires and drives. Yet these desires are fundamentally non-human, if not, indeed, *in*human. Therefore, a distinction must be made between the human and the person. Or, we believe that the designation "person" is not so much anthropomorphic, but that the debate surrounding corporate personhood has remained too anthropocentric. Arthur W. Machen's famous definition of the corporation is telling, here: "*A corporation is a fictitious, artificial person, composed of natural persons, created by the State, existing in contemplation of law, invisible, soulless, immortal.*"[20] Although the quote is clearly ambiguous, it is paradigmatic for the refusal to consider a world populated by "persons" who interact with human beings *but do not resemble them in the sense of being human*.

The problem posed to legal thought by the rise of the modern business corporation was precisely that the latter did not fit comfortably into

a juridical system designed to mediate between (human) individuals and between individuals and governments[21]. While the corporation had existed since Roman times, medieval and early modern corporations were not yet commercial organizations but rather quasi-public entities such as cities, universities, and ecclesiastical bodies; receiving their charter from the king (or, later, by act of parliament), they were thus viewed as creations, if not extensions, of the state[22]. Meanwhile trading companies, which began to proliferate from the sixteenth century onwards, were initially organized as a variant of legal partnership and as such possessed neither personhood nor perpetual succession; as forms of private enterprise they would dissolve upon the death of any partner and could only be re-formed after paying out a share of assets to the heirs of the deceased[23]. There thus existed a clear distinction between the corporation as a creature of the state and the business partnership as an extension of the individual. Like the state, the corporation was comprised of many members but irreducible to any one of them. It was, at least potentially, immortal. In contrast, the business partnership was as mortal as its partners, and indeed died with them.

This distinction began to unravel in the early seventeenth century with the emergence of chartered trading companies, the first of which were the East India Company, founded in 1600, and the Dutch East India Company, founded in 1602. Despite state-granted monopoly privileges, and although acting in some sense as sovereign powers, such chartered companies initially operated much like uncharted partnerships, dividing assets among investors at the end of every voyage[24]. But in 1623 the Dutch Estates General granted the Dutch East India Company perpetual existence, with England quickly following suit. Shareholders could no longer withdraw from the company at will but were compensated by a new right to sell their shares, resulting in the "joint-stock company."[25]

Theoretically and practically, the joint-stock company represented a tremendous shift, combining elements of private enterprise with the rights and privileges of state incorporation, including the right to sue and to be sued in the corporate name, the ability to purchase land and, perhaps most significantly, perpetual succession[26]. As, simultaneously, a private commercial venture and a state-sanctioned entity of at least notional public interest, the status of the chartered company was radically ambiguous: to whom was it ultimately accountable? While this ambiguity implicitly threatened the very foundations of common law, it did not yet become a full-blown legal problem, primarily because the king and parliament jealously guarded their powers of incorporation, issuing charters only rarely. The vast majority of British companies remained unchartered and continued to be treated as a form of legal partnership well into the nineteenth century[27]. As a result, the full legal problem of corporate personhood would first emerge, not in England or on the continent, but in the newly-liberated American colonies.

While the joint-stock company was familiar to the American colonies, many of which had, after all, been established by corporate bodies[28], the corporation was a relatively rare legal form in early America[29]. At the time of independence, most enterprise was still in the hands of individuals, families, or in legal partnerships[30], while corpo-

rate status was generally reserved for business activities perceived to be in the public interest: banks and insurance companies, large-scale building projects, waterworks, etc. Following the well-established precedent of common law, the corporation was still thought of as a state-sponsored entity, one which "*owed its existence more to government than to its corporators and, as a creature of positive law, had only the rights and privileges that obtained from the government's grant.*"[31]

This situation began to alter in the years following independence, when the powers of incorporation passed from the British sovereign to the individual American states, which issued charters with greater alacrity than had the King or Parliament[32]. Meanwhile priority was shifting from an elite class of landowners to a new manufacturing-based elite, which quickly discovered that incorporation, with its tremendous flexibility and limited liability, was more suited to its economic interests than were narrower forms of legal partnership. The relative ease of incorporation, combined with transformations in the burgeoning capitalist economy, led to an explosion of chartered corporations, particularly after states began to pass general incorporation statutes from the early nineteenth century on. Motivated by a populist, Jacksonian suspicion of the special privileges extended in corporate charters, such statutes, which essentially made incorporation available to anyone, for any purpose, ironically increased the number and extent of business corporations to unprecedented proportions[33].

Faced with this dramatically altered social, political and economic landscape, American jurisprudence began to revise its conception of the corporate person. The proliferation of private corporations with no demonstrable public purpose undermined the notion of incorporation as a privilege granted by the state, while businessmen began to chafe at the notion that such a "privilege" could be amended, or even rescinded, by legislative whim. Instead, they began to argue that corporations were essentially *contractual*. They were engendered not by the state, but by the corporators and investors who came together to form them[34]. On this view, the notion that the state could regulate, restrict or otherwise dictate the pursuits of chartered entities appeared as an undue restriction on the pursuits of the private individuals; or, as one bar attorney had it, "*the rights and duties of an incorporated association are in reality the rights and duties of the persons who compose it.*"[35]

This view met with some sympathy in the courts, which were struggling to make sense of an entity which had quite obviously escaped the confines of government legislation. Thus, in the well-known *Railroad Tax Cases* of 1886, the circuit court ruled that corporate property could not be taxed differently than individual property, for "*to deprive the corporation of its property, or to burden it, is, in fact, to deprive the corporators of their property or to lessen its value.*"[36] Where common law had considered the corporate person a metaphysical being distinct from its individual incorporators, the court now argued that this "person" was a mere contrivance, or legal fiction, through and beyond which the figures of real persons could be discerned: "*The courts will look through the ideal entity and name of the corporation to the persons who compose it, and*

protect them, though the process be in its name"[37]. In so ruling, the court was falling back on the sole alternative available from within a framework which contraposed state and individual as the dual categories of legal thought. If the corporation could no longer plausibly be claimed as the creation of the one, perhaps it could simply be regarded as an extension of the other. Yet this proposition was no sooner formulated than it created additional problems, already discernible in the case of the railroads themselves, which, financed by selling equity and debt security to thousands of small investors, could not plausibly claim to operate as a mere aggregate of their shareholders. Indeed, the ability to maintain operational continuity despite changes among officers and shareholders was one of the distinguishing features of the corporate form. Further, in rendering the corporation no more than the sum of its corporators, this framework threatened to destroy the distinction between incorporation and legal partnership – along with the benefits, such as limited liability and perpetual succession, which this distinction had maintained. In the face of this, the law was forced to conclude that the corporate person must, after all, possess some agency independent of the will of its corporators. As the English legal theorist Frederic William Maitland summed it up succinctly: "*If n men unite themselves in an organized body, jurisprudence, unless it wishes to pulverize the group, must seen n + 1 persons.*"[38]

The wild swings in the conceptualization of the corporate person in the latter half of the nineteenth century indicate a profound crisis of legal thought. Beginning as an artificial entity dependent on the state, the corporate person was subsequently read as a synecdoche of its human corporators, only to return into itself as an independent entity, but freed now from the shackles of the state. But if the corporation was an entity neither dependent on the state nor reducible to its corporators, what was it? Or how do we *envision* a "person" who is not essentially human?

Dracula, or inhuman personhood

The profound error of nineteenth-century jurisprudence was not, pace some theorists, to have granted the corporation the status of "person," but rather to have failed to adequately conceptualize the non- or in-human nature of this person. The late nineteenth-century corporation was indisputably an entity in its own right, possessive of self-agency and pursuing interests which could no longer be traced either to the behest of the state or to the will of its human corporators. But if, like these latter, the corporation was in some sense a creative, autonomous, self-directed agent, it differed from them in significant ways. The corporation, for example, unlike its corporators, did not possess bioligical life, yet in some sense could live forever[39]. It appeared in no place at all, or else in many places at once. Invisible, intangible, and at least potentially immortal, it would appear that we are dealing with an unprecedented legal entity. If there is no legal precedent, however, there is a literary one. Examing this queer nexus of qualities, of a "person" who is not human, who is distinctly *not* alive and yet in some sense "lives" forever, we argue that the figure which most closely resembles the legal conception of corporate personhood is, in fact, the vampire. We agree, here, with an analysis put forward by Gail

Turley in "Bankerization panic and the corporate personality in *Dracula*"[40].

While the metaphoric entwinement of capitalism and vampirism dates back at least as far as Marx ("*capital is dead labour which, vampire-like, lives only off living labor*") we believe it is not "capital" which should be termed vampiric, but individual *capitals*, or corporate persons. For the corporation, like the vampire, "lives off" the lives of a number of individual human personalities without whom it could not function or exist. Yet the corporation is distinct from the persons who constitute or "feed" it, possessing a discrete personality which is neither necessarily represented *by* nor embodied *in* its corporators. While the corporation relies on the continuance of human life *in toto*, the individual lives and deaths of its corporators (its "hosts") are immaterial. Moreover, theoretical debate about corporate personhood has centered around questions of intentionality that are the precise questions one might ask about the vampire: can it be said to have a "soul", a "will" or a "mind" analogous to that of the human individual; can it be said to possess moral agency; can it be said to hold the fundamental right to pursue happiness; does it have an emotional, let alone a spiritual life[41]?

From a diachronic perspective, the rise of the vampire in the field of literature and of the business corporation in the field of law, share a starkly similar historic trajectory. Both were relatively rare (literary and economic) forms before the industrial era, and both rose gradually to prominence across the nineteenth century. By the early twentieth century, they both possessed enormous (real or cultural) currency. In other words, the nineteenth-century vampire novel cannot be disassociated from the cultural and economic conditions of its production, any more than the business corporation can be detached from these literary after-images. In this regard, the historical development of corporate personhood across the 19th century can best be understood, as was noted by Turley, against the emblematic vampire story of that era: Bram Stoker's 1897 novel, *Dracula*.

Debate has raged, in economically-oriented analyses of Stoker's *Dracula*, about whether the Count represents an anachronistic land-based and serf-based feudalism surviving long past its time; hence the metaphoric vampirism. Or is Dracula, in point of fact, the emblematic "new face" of capitalism? David Seed, for example, states confidently that Dracula "*represents a reversion to a feudal aristocracy that imperiously claims allegiance regardless of checks and balances*"[42], whilst Franco Moretti is equally confident that "*like capital, Dracula is impelled towards a continuous growth, an unlimited expansion of his domain.*"[43] Both of these contradictory analyses contain an element of truth. At a historical moment of both industrial and economic revolution, Dracula represents the transition of a landowning upper class towards a landless, stateless, "disembodied" capitalism, one which must however search for new legal forms in order to carry out this transition.

With respect to this it is telling that *Dracula* is, in several ways, a curiously *legal* document. Indeed, Jonathan Harker, the first of the novel's (many) protagonists to encounter the vampire, travels to Dracula's remote castle in answer to a request for legal counsel. Significantly, the

issue at hand involves a real estate transaction: Dracula wishes to purchase property in Britain, and lacks the knowledge and ability to complete the transaction himself. He reveals that while previously he has known England only through books, he now looks to Harker to provide him with knowledge of the culture and the language sufficient for him to "pass" as an Englishman:

"*Well I know that, did I move and speak in your London, none there are who would not know me for a stranger. That is not enough for me. (...) I have been so long master that I would be master still*."[44]

Dracula's need for real estate advice is thus merely a preliminary; what he truly needs Harker to provide is a *mastery* of the language, idioms and customs of his culture, one that will allow him to pass for an English person – or can we say, a "person" *tout court*, one that remains *master*, however? The peasants of Dracula's native environs know him for what he is. It is only through the mediation of Harker as foreign (legal) body that Dracula can hope to "pass" not just as a British *person* but as a *human* one.

Accordingly, Harker initially treats the count as a human client, precisely because he cannot conceive of him otherwise. He possesses no other conceptual category within which to make sense of this peculiar figure. In many ways, Harker's initial failure is a failure of the legal imagination. Or, the creation of a legal category of corporate personality mimicked the move made by Harker. Faced with a fundamentally new entity for which no (legal) conceptual frame existed, the law tried to resolve the discrepancy by placing the corporation *within* the category which it most closely resembled. The corporation acts like a human individual in *some* ways, just as in some ways Dracula does, indeed, resemble a "model" human being. Thus an attempt was made, overlooking apparent discrepancies, to "fit" the corporate "person" into a preexisting human category.

The subsequent unfolding of the narrative can be read, in part, as an attempt to overcome this initial error, as Harker and the novel's other protagonists come to realize the consequences of having treated Dracula anthropomorphically. These consequences are, initially, legal and economic: Dracula takes his enormous pile of gold (petrified capital) and invests in a number of real estate purchases, aided of course by Harker's business acumen. Only after having so established himself is he able to go about his real business: extracting human blood, not out of pleasure but, as it were, out of economic necessity. As Moretti notes, Dracula is compelled to pursue fresh victims, just as capital is compelled to accumulate[45]. Only now do the novel's protagonists begin to realize that this being is not a "person" like others; his essence if of a different sort than the human, indeed is parasitic upon the human. However, this realization is not straightforward, and in fact requires something like a verdict. They begin to record their encounters and experiences and then to circulate these as a form of evidence, or testimony. Only after having examined the facts of the case can they arrive at a conclusion, assign a name to this strange creature, and take action to deal with him.

Read as an allegorical (dis)embodiment of corporate personhood, the lesson of Stoker's

Dracula is that the corporate person cannot be adequately dealt with until the nature of its in-human nature of personhood has been conceptualized. Like the vampire, the corporate person possesses neither soul, nor body, nor biological life, yet these distinctions were not fully addressed by nineteenth-century jurisprudence, which proved less capable than Dracula's protagonists in this regard. This is what allowed these latter to pursue the vampire, to confiscate his resources and, ultimately, to kill him.

It would be a mistake to take this defeat too literally, as the allegorically possible death of the corporate person. After all, capital continued to live on in England after Dracula's demise, and it is not clear how, or if, one can kill a corporate person. Instead, we argue, the vampire's defeat represents the symbolic victory of a contractual conception of corporate personhood over the "real entity" theory. It is no coincidence, then, as Moretti notes, that the novel's cast of characters represent "*all the different interests and cultural paradigms of the dominant class (law, commerce, the land, science)*"[46], for these bulwarks of the traditional elite are symbolically conjured and then united in their opposition to the new menace. But whereas Moretti reads this symbolic grouping as representative of the collective powers of nationalism (ignoring the vital inclusion of a Dutch and an American character), we propose that they can be read as embodying a rival conception of the corporate entity as *contractual*: as a free association of individuals engaged in a mutually benificial entreprise, through and beyond which their individual visages can still be traced.

Read metaphorically *Dracula* on the one hand harks back to an anachronistic, conception of corporate identity in which the individual's will supersedes that of the inhuman, totalizing corporate form. Such a retrograde conception, however, yearns to reverse both the industrial and legal revolutions of the 19th century and the new economic and political forms to which they gave birth. The truly "fantastic" element of *Dracula* does not reside in the fact that the vampire, in the novel, is ultimately vanquished, but that, in reality, we granted him immortal citizenship, in the shape of inhuman corporate personhood.

Human-inhuman: restructuring the juridical system

With the conceptual creation of the corporate entity as distinct from any corporators – whether individually or as some metaphoric whole – came a drastic shift in the way corporations would be treated by the law. By now, the corporation is, in any sense, a "real" rather than a metaphoric person. It is itself an "autonomous, creative, self-directed"[47] being, striving to persist and develop its capabilities. Accordingly it has gained access to a plethora of legal and particularly *human* rights to which it had never before been presumed to have access, such as the right against self-incrimination and, in the USA, the right to lobby the government. With respect to this, the "*word proved the perfect rhetorical weapon, asserting the panoply of individualist protections for the corporation and shifting the role of the state from guardian to invader of rights.*"[48] The fundamental and principal inequality this produces between the soulless, immortal body of the corporation and the vulnerable bodies of

human beings has become amply evident. It can be solved, we suggest, by moving away from an anthropocentric analysis of corporations, just as one would want to avoid dealing with Dracula as a real human being. Yet if we succeed in no longer thinking of corporations as "human", this must imply that we have to restructure the juridical system in terms of human and inhuman realms *that answer to different regimes of justice*. This is, at least, the radical option we need to think through in current circumstances.

N · O · T · E · S

1. Van Hese/Schelde, HR 28-04-2000, NJ 2000, 430.
2. Article 3:310 *BW*.
3. These are terms that are explicitly mentioned, as "*redelijkheid en billijkheid*", in Dutch law, article 6:2 *BW*.
4. The text can be found at: <http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2000:AA5635&keyword=nj-2000-430>; last visited October 26, 2013.
5. Paradigmatic studies are: J. McCulloch and G. Tweedale, *Defending the Indefensible: The Global Asbestos Industry and its Fight for Survival*, Oxord, Oxford University Press, 2008; E. Henry, *Amiante, un scandale improbable: sociologie d'un problème public*, Rennes, Presses Universitaire de Rennes, 2007.
6. S.N. Hamilton, *Impersonations: Troubling the Person in Law and Culture*. Toronto/London, University of Toronto Press, 2009.
7. E. Henry, *op. cit.*
8. L. Garfinkel, "Asbestos: Historical Perspective", in J. Mager Stellman (ed.), *Encyclopaedia of Occupational Health and Safety*, Geneva, International Labour Office, 1998, pp. 28.36-28.39.
9. There are many law firms by now specializing in the issue, such as, for instance, the Pittsburgh based firm Savinis, D'Amico, & Kaine; see: http://www.sdklaw.com/Asbestos-Disease/What-The-Asbestos-Industry-Knew.shtml
10. L. Brickman, "Ethical Issues in Asbestos Litigation," in *Hofstra Law Review*, n° 33, 2005, pp. 833-912.
11. The debate can be found at http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100205/debtext/100205-0012.htm; last visited October 23, 2013.

12. Brickman notes that "*Most if not virtually all nonmalignant asbestos claims today are recruited through attorney sponsored asbestos screenings*". (L. Brickman, *op. cit.*, p. 843.) In terms of the judicial asbestos industry there are several phases in the process of a case in which the litigant depends on a company's expertise, for instance in terms of witness preparation. Such preparation may bring in other "vulnerabilities" in relation to the lawyer's questionable ethical or illegal behavior (*Ibid.*, p. 846).

13. See note 4.

14. See Damen Schelde Naval Shipbuilding lemma: http://nl.wikipedia.org/wiki/Damen_Schelde_Naval_Shipbuilding; last visited October 26 2013.

15. "*Piercing the corporate veil is the process of imposing liability for corporate activity, in disregard of the corprate entity, on a person or entity other than the corporation in question.*" L. D. Solomon & L. J. Saret, *Asset Protection Strategies*, Chicago, Wolters-Kluwer, 2008, p. 66.

16. R. B. Thompson, "Piercing the Corporate Veil: An Empirical Study", *Cornell Law Review*, 1991, p. 1036.

17. *Ibid.*

18. C.f. M. Dan-Cohen, "Epilogue on Corporate Personhood and Humanity," in *New Criminal Law Review*, n°2, vol. 16, Spring 2013, p. 300.

19. P. de Man, "Anthropomorphism and Trope in the Lyric," in *The Rhetoric of Romanticism,* New York, Columbia University Press, 1984, p. 241. Quoted in B. Johnson, "Anthropomorphism in Lyric and Law," in *Material Events: Paul de Man and the Afterlife of Theory*, Minneapolis, University of Minnesota Press, 2000, p. 209.

20. A. W. Machen, "Corporate Personality", in *Harvard Law Review*, vol. 24, 1911, p. 257.

21. G. Marks, "The Personification of the Business Corporation in American Law," in *Yale Law Journal*, n°4, *v*ol. 54, Autumn 1987, p. 1445.

22. C.f. Sir F. Pollock on corporations and the churches in "The Sorts and Conditions of Men", in *The History of English Law before the Time of Edward I*, vol. 1, Cambridge, Cambridge University Press, 1898, pp. 469-495.

23. M. Blair, "Corporate Personhood and the Corporate Persona," *University of Illinois Law Review,* n°2, vol. 2013, pp. 791-792.

24. H. Hansmann, R. Kraakman & R. Squire, "Law and the Rise of the Firm," in *Harvard Law* Review, n°5, vol. 119, March 2006, p. 1367.

25. See M. Blair, *op. cit.*, p. 792.

26. R. Harris, *Industrializing English Law: Entrepreneurship and Business Organization, 1720-1844,* Cambridge, Cambridge University Press, 2000, p. 78.

27. M. Blair, *op. cit.*, p. 793.

28. J. Stancliffe Davis, *Essays in the Earlier History of American Corporations,* Cambridge, MA, Harvard University Press, 1917, p. 3-4.

29. *Ibid*., pp. 87-90.

30. G. Marks, *op. cit.,* pp. 1441-1445.

31. *Ibid*., p. 1441.

32. M. Blair, *op. cit.*, p. 792.

33. G. Marks, *op. cit.,* pp. 1453-1454.

34. M. Blair, *op. cit.*, p. 802.

35. V. Morawetz, *A Treatise on the Law of Private Corporations Other Than Charitable,* Boston, Little, 1882, p. 2.

36. The Railroad Tax Cases, 13 F. at 757 (C.C.D. Cal. 1882)

37. *Ibid.*, at 748. Quoted in G. Mark, *op. cit.*, p. 1461.

38. F. W. Maitland, *The Collected Papers of Frederic William Maitland,* vol. 3, Cambridge, Cambridge University Press, 1911, p. 316.

39. B. Johnson, *op. cit.,* p. 222.

40. G. Turley, *From Dickens to Dracula: Gothic, Economics and Victorian Fiction,* Cambridge,

Cambridge University Press, 2005, pp. 112-157.

41. For a succinct resumé of these questions see T. W. Smythe, "Problems about Corporate Moral Personhood," in *The Journal of Value Inquiry,* n°4, vol. 19, December 1985, pp. 327-333.

42. D. Seed, "The Narrative Method of Dracula," in *Nineteenth-Century Fiction,*n°1, vol. 40, June, 1985, p. 62.

43. F. Moretti, "Dialectic of Fear," in *Signs Taken for Wonders,* London, Verso, 1988, p. 91.

44. B. Stoker, *Dracula*, London, Wordsworth Editions Limited, 1993, p. 19.

45. F. Moretti, *op. cit.*, p. 92.

46. *Ibid.*, p. 98.

47. G. Marks, *op. cit.,* p. 1478.

48. *Ibid.*, p. 1472.

R · É · S · U · M · É

Partant d'un arrêt de la Cour Suprême des Pays-Bas qui fait suite à une plainte introduite par un ouvrier de l'amiante, ce texte interroge le déséquilibre originel qui sous-tend toute relation entre deux personnalités radicalement différentes, l'ouvrier et l'entreprise, dont la première est dotée d'une identité physique alors que la seconde ne l'est pas. Cet article propose d'analyser quelques tenants et aboutissants en termes de responsabilité, d'héritage et de subsistance, de cette inégalité qui fonde le champ de tension entre l'instance employante et celui qu'elle emploie. Plus particulièrement, la figure romanesque de Dracula, dont le succès est contemporain de l'émergence de l'entreprise commerciale, sert ici à problématiser l'étrangeté pourtant culturellement assimilée de cette instance hybride qui s'est imposée en tant qu'absolue nécessité et monstruosité tout à la fois : une combinatoire d'anthropomorphisme et de sa plus simple négation.

Abstract

On the basis of a recent verdict of the Dutch Supreme Court known as the "Asbestos-arrest", this article reflects on the original unbalance which underlies every relation and conflict between a worker and a corporation, both embodying two but radically different forms of personhood. To question this fundamental inequality in terms of accountability, subsistence and identity, this text argues that the figure of Dracula, which had its first heyday simultaneously to the emergence of the business corporation, captures this inequality in such a way that the issue is both addressed as problematic and made acceptable, revealing further on a smokescreen that hides the real problem: a corporation is non-human and thus, contrary to the worker, can't be killed.