

No one has a right to limited liability

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In this morning's video I note that we've had limited liability companies in their current form for about 170 years now, but no one back then imagined we'd have more than five million of them. So, are we really doing the right thing giving limited liability to anyone who asks for it now, or should we be more circumspect?

<https://www.youtube.com/watch?v=HPw2p5lLxN4?si=vHvmfdKoICslHd87>

The audio version of this video is here:

https://www.podbean.com/player-v2/?i=vk2j5-16a9222-pb&from=pb6admin&share=1&download=1&rtl=0&fonts=Arial&skin=8bbb4e&font-color=&logo_link=episode_page&btn-skin=ff6d00

The transcript is:

Limited liability is a privilege.

It's one I've enjoyed on many occasions throughout my career because I've been a director of quite a lot of companies over the last 40-plus years. They were put in place to undertake an economic activity and we were protected as directors, as shareholders - and I've been both - from the consequences of our actions by the existence of limited liability.

Limited liability was a creation that was first known about in the Elizabethan era, but in

its modern form, it was created in a way that is readily available to everyone from about the 1850s onwards, when in the UK, companies were first allowed to be registered with limited liability by the prospective shareholders getting together, signing a document to declare that they wished to be a company, applying to have limited liability, and being granted it by a registrar.

That registrar still exists. It's called the Registrar of Companies in the UK, and they run something called Companies House, which still records all those companies which enjoy this privilege of limited liability which enjoy this privilege of limited liability to this day. There's over 5 million companies that have that privilege right now.

But I stress this is a privilege. And when you think about it, it is a totally absurd privilege. Just imagine that today somebody came up with this idea that one or two people - and one is enough - can sign a piece of paper and say that they want to be a limited liability company and as a consequence if something goes wrong in the trade that they undertake then, in the vast majority of circumstances, they will not be responsible to the creditors of the company that they have created for the debts that it has incurred, even though those creditors, whether they be employees, or suppliers, or a tax authority, have incurred liabilities with that company in good faith. Everyone would say that this was an abuse of the rights of those employees, those creditors, and that tax authority. And they would be absolutely right to do so, because limited liability is an abuse of the rights of those people.

What it says is that all those people who trade in good faith with the company might be taken for a ride as a consequence, and lose their money, and have very little, and in some cases, no right of recovery whatsoever. And that's okay. The shareholders can walk away, the loss is suffered by somebody else, and society supposedly benefits.

Well, the truth is that society probably has benefited from the existence of limited liability overall. There is evidence that this capacity to create limited liability companies has permitted the accumulation of capital from a wide range of sources to create undertakings that could otherwise not have existed.

For example, the railways of the UK would not have been built without the existence of limited liability companies, and many other large companies ever since have accumulated capital in this way, and overall, we've probably benefited as a result.

But the concept is still used, and well over 95 percent of all companies are tiny, run by one or two people at most these days. Do they need limited liability? Should they be protected from the consequences of their own actions, which only they know about, especially when the accounts that they have to put on public record are very limited in scope and aren't available until nine months after their year-end, meaning that everyone who is trading with them is at significant risk most of the time.

Is that privilege something that we should still provide to everybody who asks for it? Or

should we regulate its availability a lot more tightly?

Should we, for example, make this privilege of limited liability available to people even with regard to their tax liabilities? Why should we do that?

Should we make it available with regard to the obligation that people have to their employees? Why should we do that?

And is it fair to do this with regard to trade creditors as well? People who genuinely supply goods and then lost their money as a consequence.

These are genuine questions that need to be answered because this cost is imposed on society at large. And there's no real evidence, especially when it comes to smaller companies, that the benefit is significant.

There is ample evidence that the benefit is abused. We do know that there are many companies that are created that never account for what they do.

We do also know that maybe 30 per cent of small companies don't pay their corporation tax liabilities, and in that case they probably don't also hand over the VAT that they owe and the PAYE that they also have owing to HM Revenue and Customs in regard to their employees and the deductions that are payable by them.

Do we, therefore, want to do this?

I ask the question in all seriousness because I think the assumption that limited liability is a universal good thing is something that we need to challenge now.

The time has come to question whether we need fundamental reform of the availability of limited liability to make sure that it provides a benefit to society and not a cost.