

Companies want rights without responsibility

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Published: August 23 2004 21:14 | Last updated: August 23 2004 21:14

Companies seem invincible these days and they are trying to obtain even greater power. US companies have gradually come to be treated as legal individuals entitled to more and more of the rights of a person. They now even argue that the right of free speech entitles them to say what they like about their products, a point put to the US Supreme Court last year.

But the corporate person is a one-dimensional being that has the rights of a person but none of the responsibilities. Under limited liability company law, the owners - shareholders - cannot be made legally accountable, however outrageous the actions of the company they own.

This absurd state of affairs has crept up on us, as if an over-indulged child has taken more and more liberties until it is entirely out of control. Everyone wants the child to do well, no boundaries are set, and before you know it the family is at its beck and call. Usually, a few home truths, some clear rules laid down and a few tantrums are enough to restore some balance. The same approach should be used with companies.

The home truths that the owners and directors of companies have forgotten are that power must come with responsibility and that, in a free society, all are equal before the law. Present company law violates both these principles. Limited liability means that the power of a company's owners is not matched by any responsibility because the law puts them beyond the reach of their fellow citizens. This immunity provides shareholders with the greatest regulatory protection granted to one section of society by the state. The owners of companies used to be content to enjoy their privilege in a society where others had the right to publicly-owned industries and services, strong trade unions and government regulation to protect consumers, the environment and the public health from business. Nowadays, companies are bent on removing the regulated protections of all sections of society except their own.

In the US, pressure groups for the corporate interest such as the Federalist Society argue that government regulations and agencies are against the fundamentals of the US constitution. In the name of the free market, they are stripping away all forms of public protection such as environmental regulations and independent scientific advice. They also argue that the wealthy owe nothing to the rest of society and that the poor should not be encouraged to remain in poverty by being given handouts. This "gimme! gimme!" approach assumes a natural right to unrestricted acquisition for shareholders and the denial of such rights to everyone else.

It is time to end the delusion that limited liability is a natural good. Allowing shareholders to be immune from the law violates everyone else's human right to be treated equally before the law. Enshrined in the American Declaration of Independence and in human rights declarations and laws ever since, equality before the law is a fundamental tenet of a free society. The way to make companies and their owners behave is to reform or abolish limited liability. Free-market advocates confronted with the flaws in their arguments usually show disbelief and reply: "You just don't understand, stupid - without limited liability people won't invest and the whole economy will collapse." Yet limited liability was only widely adopted in the industrialised world around 1900 and in California only in the 1930s, not at the beginning of the industrial revolution. Mixed and protected economies, from Germany to South Korea, have developed successfully without shareholder domination. The US and the international economies will get along nicely without it.

A common-sense approach would be to replace limited liability with proportional liability supported by liability insurance. Under proportional liability, as used in early 20th-century California, major investors would carry a substantial risk while mutual fundholders and the like would have infinitesimal liability. For all shareholders, an insurance market would be developed. It is strange that while insurance is compulsory when we take a car on the road, we do not need it when we send a company out into the market.

The discussion on limited liability is just beginning. It may seem strange to us to regard limited liability as a state-regulated special interest protection and a human rights violation. But it is the truth. And it is the truth that will empower the next phase of the movement for corporate responsibility.

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