

A THEOLOGY OF INCORPORATION WITH LIMITED LIABILITY REAFFIRMED

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1 Introduction

I am very grateful to Richard Higginson and to Cara and Clive Beed for their detailed comments on my earlier paper¹, not least because this is rather long and contains my full thinking on methodological issues. I would like to commence by identifying some of the substantial common ground that has emerged, before identifying the more tricky areas on which we disagree, and responding to these, hopefully in such a way that more common ground might emerge.

2 Common perspectives

2.1 The need for a prosperous, free and just society

I argued in my earlier paper that the Biblical vision was for a prosperous and free society. Higginson does not question this, other than to add that alongside this there is “a moral imperative that it should be just”². I agree with this but would welcome some debate over the exact content and significance of the Biblical vision for justice. In my view, there are many different attributes to the Biblical conception of justice, reflecting the multifaceted nature of the Old Testament Law itself, which mixes up (perhaps deliberately) concepts that we would separate out and categorise. For example, Deuteronomy 23 – 24 deals with topics as diverse as usury, divorce, oaths, toilets, and even nocturnal emissions! To see this as an aberration would pay scant respect to Biblical authority and perhaps the best explanation is that all of these issues – economic, social and moral – were intended to be seen as part of a holistic vision for society (something perhaps at odds with the use of principles which tend to be very

¹ ACE Discussion Paper 006, “A Theology of Incorporation with Limited Liability, including Reflections on Methodology”. For a shorter version see S.F. Copp, “A Theology of Incorporation with Limited Liability” *Journal of Markets & Morality* Vol. 14(1) (Spring 2011) pp. 35 – 57.

² R. Higginson, “A Response to Stephen Copp”, ACE Discussion Paper 007, p.1.

neat and tidy!). There are two aspects of this multifaceted concept of justice that are relevant to the limited liability company and its wider role in society.

The first theme dominates many Biblical passages that discuss justice, for example, Isaiah 10:1 – 2 (All scripture quotations are taken from the New International Version).

“Woe to those who make unjust laws, to those who issue oppressive decrees, to deprive the poor of their rights and withhold justice from the oppressed of my people, making widows their prey and robbing the fatherless”.

And again Micah 3: 9 – 11:

“Hear this, you leaders of the house of Jacob, you rulers of the house of Israel, who despise justice and distort all that is right ... Her leaders judge for a bribe, her priests teach for a price, and her prophets tell fortunes for money”.

These equate well to what we might refer to as “the rule of law”, i.e. the supremacy of law (as opposed to arbitrary rule), equality before the law (especially of the establishment), an independent and impartial judiciary and so on³. All of these characteristics of “justice” are fundamental to a free and prosperous society, yet Christians rarely, however, appear to have much to say on such issues despite their importance. This is a shame because the limited liability company is generally supportive of the rule of law and the rule of law is foundational to all other forms of justice. Firstly, the rule of law is more developed in societies that are more prosperous than those that are not and the contribution to prosperity made by the limited liability company can therefore be argued to support the rule of law. Second, the right to establish a limited liability company (as opposed to being required to follow some discretionary government procedure) plays an important role in minimising government corruption and the role otherwise played by existing vested interests. Third, the independence of companies from the government supports the rule of law by providing a counter-balance to excessive state power (even the most powerful and abusive companies are weak by comparison to states).

³ See further S.F. Copp, “The Legal Foundations of Free Markets” in S.F. Copp, “The Legal Foundations of Free Markets” (London: Institute of Economic Affairs, 2008), pp. 30 – 31.

The second theme can be seen in those Biblical passages that set out expectations of a just society in terms of how wealth is earned, used and distributed. The foundation of any analysis is that the Bible, if anything, is in favour of wealth and wealth creation. Wealth is often seen as a sign of God's blessing (though this is not always the case as with the tax-collectors in the New Testament⁴) and poverty is not necessarily a sign of God's disfavour (as illustrated by Job in the Old Testament⁵). Equally foundational to any analysis is God's love and compassion for the poor, something to be expected of mankind too since mankind is created in God's image. Such love and compassion is inevitably expected to be reflected in those that have wealth, as a matter of individual conscience. How such conscience should be exercised in a democracy is open to legitimate debate – can it be discharged by voting for governments committed to tackling poverty? The answer lies in how effective such government action is believed to be. I believe that such government action is subject to severe political agency problems and usually operates to damage the interests of those it is intended to assist and is too easily diverted from those who need assistance the most - but others may think differently: such a debate needs, however, to be determined through careful balancing of evidence and is unlikely to be resolved through theological insight.

Where do companies fit into this? Firstly, companies are an important economic tool to enable wealth generation and simultaneously also combat poverty, as illustrated in my earlier paper. The Bible is no more against this than it would be, say, against the generation of greater wealth by farmers who discovered a more efficient crop farming technique. Second, the limited liability company has and does result in a more egalitarian society, for example, private companies enable anyone to set up in business when they might otherwise be deterred by the risks and public companies enable anyone to participate in them even if they can only afford a small stake. And they encourage people to associate for non-business purposes too. Third, limited liability companies result in debts that cannot be repaid being in effect written off, something⁶ comparable with Old Testament Law⁶, and therefore consistent

⁴ Luke 19: 1 – 10 (Zacchaeus the Tax Collector).

⁵ See, for example, Job's first test, Job 1: 6 – 22; note also how Job became prosperous again and had twice as much as he had before: Job 42 10.

⁶ Deut. 15: 1 – 6.

with Biblical teaching. This directly combats the poverty that can result from business failure by sharing loss amongst creditors; in economic terms this is seen as shifting the risks of entrepreneurial failure to a superior and more efficient risk-bearer⁷, in Biblical terms this might be seen perhaps as more compassionate treatment than otherwise meted out historically to debtors.

2.2 Flaws in the use of derived Biblical principles

The Biblical case against the limited liability company is necessarily heavily dependent on the use of derived Biblical principles. In my paper I argued strongly against the use of such principles for a number of reasons, such as it being too easy to confuse principles with rules and because principles cannot have exceptions whereas rules often should and do.

Higginson acknowledges the “sloppy treatment of principles”⁸. The Beeds similarly agree that any mode of Biblical interpretation is “imperfect because of human sinfulness” and that the “ideas people derive from the Bible, principles included” are, as I put it, the fallible ideas of men⁹. The Beeds further concede my argument that “the development of Biblical principles has been insufficiently systematic” and that “instances of deriving/ using Biblical principles to date have been insufficiently rigorous”¹⁰.

Higginson stresses the need for writers not to use the terms “a principle and a rule” interchangeably because rules specify particular actions as “obligatory, permissible or forbidden” whereas principles describe “moral qualities and concerns which should be present across a range of actions”¹¹. The Beeds define principle as a “fundamental truth or primary normative element traversing the Biblical text, from which a code of right conduct

⁷ See, for example, R.A. Posner, “Economic Analysis of Law” (Boston: Little, Brown and Company, 1992), p. 394.

⁸ Higginson response, p. 2

⁹ C. Beed and C. Beed, “Biblical Principle Antipathetic to the Joint Stock Company” (“Beeds’ response”), ACE Discussion Paper 008, p. 4.

¹⁰ Ibid, p.5.

¹¹ Higginson response, p. 2.

can be determined”¹². I have some sympathy for both Higginson and the Beeds on this, though I remain convinced for the reasons set out in my paper that in practice such distinctions are hard to maintain, specifically because of my concern over Schluter’s “principle” that “[a]ll debts must be paid”¹³.

Higginson acknowledges that Biblical laws often contain exceptions and as a result is able to recognise that charging interest can be acceptable in Biblical terms where two parties are of comparable status¹⁴. However, he sees this as an example of the paradigmatic interpretation of the Bible championed by Wright¹⁵. Wright’s clearest exposition of this, perhaps, is where he argues for its use in “the narrower sense of a working model” so that principles are articulated by reference to “the total package of what it meant to be Israel, socially, economically, politically, internationally and religiously”, with the paradigm governing how principles are related to each other and prioritized¹⁶. The problem with this is that, sensible though Higginson’s approach is in relation to when interest might be charged, he has not really discharged the high hermeneutic criteria suggested by Wright ... and it is hard to see how he could do so.

Higginson further argues that I am, in effect, ambivalent in my paper over the use of principles, noting correctly that in places I favour abandoning the approach altogether whereas in others I call for a more rigorous use of the method. I accept this criticism. It is difficult, of course, to separate the poor quality of some principles that have been derived and their poor application, from the concept itself. The Beeds also note that given theologians have not come up with more effective techniques than principles, I might be forced back to

¹² Beeds’ response, p. 1.

¹³ M. Schluter, “Risk, reward and responsibility: limited liability and company reform”, Cambridge Paper Vol. 9(2) 2000, p. 3.

¹⁴ Higginson response, p. 3.

¹⁵ Ibid.

¹⁶ C.J.H. Wright, “Old Testament Ethics for the People of God” (Nottingham: Inter-Varsity Press, 2009), p. 71.

accept their possibility¹⁷. The first group of arguments I put forward suggested abandonment, i.e. the lack of a Biblical basis for the method, the potential for confusion with rules and the problem that principles cannot have exceptions. The second group of arguments I put forward suggested the need for improvement, i.e. the need to prioritise conflicting principles, the need for a more systematic development of Biblical principles and the need to avoid basing a principle on the supposed purpose of a Biblical text. Obviously, the two positions cannot be reconciled, so which side of the fence do I come down upon? This is addressed further below.

2.3 The payment of all debts is not an appropriate Biblical principle

An important part of the case against the limited liability company is that it infringes a supposed Biblical principle that “[a]ll debts must be paid”. Higginson confirms my interpretation of some of the key texts which are used to justify this principle. For example, he regards it as “a misuse of Scripture” to make an absolute prohibition out of the general observation that “The wicked borrow and do not repay” set out in Psalm 37.21¹⁸. Likewise, the Beeds accept that it is not a Biblical principle that “all debts must be paid” using it as an illustration of how “instances of deriving/ using Biblical principles to date have been insufficiently rigorous”¹⁹. They acknowledge that “the Biblically-based objection to the limited company is not that shareholders’ liability is limited”²⁰. In support, they cite the forgiveness of debts in the Mosaic Law and Jesus’ requirement that debtors must be forgiven²¹. This is significant because once it is recognised that such an absolute principle is simply not Biblical then the case against the limited liability company largely falls away, which was, of course, the purpose of my original paper!

2.4 The need for risk and reward, profit and loss to go together is not an appropriate Biblical principle

An important part of the case against the limited liability company is that the receipt of dividends by shareholders in a blue chip company can be said to be comparable to the receipt

¹⁷ Beeds’ response, p. 6.

¹⁸ Higginson response, p.5.

¹⁹ Beeds’ response, p. 5.

²⁰ Ibid., p. 3.

²¹ Ibid., p. 5.

of interest on a loan and therefore involve an absence of risk and responsibility. In my earlier paper I sought to demonstrate that this was incorrect on its facts, a reason why some would commend equity investment as against debt. However, I also sought to show that the underlying principle, derived mainly (though not exclusively) from the usury prohibition was flawed. The view which I put forward was that the most natural interpretation of the usury prohibition was “the traditional view that lending should be an act of compassion and charity not a means to exploit the poor”. Higginson confirms this, though takes me to task for rejecting the principles approach when so much could be deduced²². Whilst I have sympathy for Higginson’s view here, the fact that two completely different sets of principles could be derived by different authors from the same subject matter supports my reservations!

2.5 Inappropriateness of family farm paradigm

Higginson also agrees with my criticism of reliance on Old Testament models such as the family farm to the neglect of New Testament models, citing his earlier argument in “Called to Account” that the focus of the New Testament on breaking down conventional barriers made him question whether the small-scale family business should be regarded as normative²³. This again, is significant, because many of the arguments levelled against the limited liability company are based on its inherent characteristics that enable it to grow to a very large scale. My only regret here is that Higginson does not go further and recognise that the flaw here is the use of a paradigmatic approach which in effect sees the social and economic structures of Ancient Israel as a paradigm for modern society.

2.6 Need for more research into the impact of the limited liability company on creditors

Higginson correctly identifies the need for a detailed survey of whether limited liability is resulting in serious injustice for creditors²⁴. It is a matter for regret that there is so little empirical evidence as to the costs/ benefits of the limited liability company when the issue receives so much general discussion. My suspicion would be that injustices would be far less prevalent than thought in relation to large companies – the sort that are most often criticised

²² Higginson response, p. 2.

²³ Ibid., p. 3, see R. Higginson, “Called to Account: Adding Value in God’s World (Eagle, 1993).

²⁴ Ibid., p. 8.

in theological thinking – and much more prevalent than thought in small and perhaps even family companies – that are much closer to the perceived ideal in theological thinking. But we can agree on the need for more rigorous testing of such arguments.

3 The case against principles and paradigms repeated

The greatest divergence between myself and both Higginson and the Beeds is methodological, in particular, over the use of derived Biblical principles that they support and I do not.

Higginson believes that with “*careful exegesis* and knowledge of the historical context ... substantial progress is possible”, arguing that we should be able to “identify the key principle at the heart of a law, and then reapply it, in an imaginative but rigorous way, to our contemporary context”²⁵. The Beeds similarly believe that “The task ... is to delve into the Biblical text, and by *careful exegesis*, try to discern what it means for people today”²⁶. I observe at this point simply that exegesis is concerned with attempting to derive understanding from a text whereas eisegesis is concerned with reading meaning into the text. Where a derivative principle appears highly context-specific, for example, where the Beeds’ claim that the limited company contradicts a principle against the separation of ownership and control I am concerned that it represents the latter. Taking that example further the Beeds base their argument on the stories of Zacchaeus the Tax Collector²⁷, the Rich Man and Lazarus²⁸ and the Parable of the Talents²⁹. This represents an untenable exegetic leap. Taking the use of Zacchaeus, the story involved a man who collected taxes on behalf of a brutal and oppressive imperial – state - power, and who had almost certainly bullied and cheated his fellow Jews as a means of gaining his wealth, but who responded to Jesus by welcoming him in and demonstrating his repentance by giving away half of his possessions to the poor and restoring what he had gained by cheating fourfold. A more reasonable “principle” to derive

²⁵ Ibid., p. 3.

²⁶ Beeds’ response, p. 5.

²⁷ Luke 19: 1 – 10.

²⁸ Luke 16: 19 – 31.

²⁹ Matt. 25: 14 – 30.

from such a passage (and I say this by way of humour rather than as an acknowledgement of the approach) would be how excessive state power leads to corruption and therefore the desirability of a small and limited government! The crucial point of the story was, of course, as Jesus indicated at the end, that “the Son of Man came to seek and to save what was lost”: an illustration of the depth of God’s love. In conclusion, the use of derived principles will rarely be a matter for “careful exegesis”, it is too easy for it to lapse into eisegesis.

The Beeds criticise my earlier work for failing to mention the extensive theological debate over principles, whilst praising the contributions of some economists for contributing to the search for Biblical principles “unaided by this theological input”³⁰! But beyond commenting that my criticisms have been extensively debated within this literature with conclusions that are more optimistic than mine, they generally fail to address the specific arguments I put forward so I will limit myself here to addressing the specific authors they reference. From the citations they provide it can be seen that the concept of using Biblical principles has some considerable pedigree, with advocacy of its use being traced to Bernard Ramm as far back as 1950, who saw the Bible as a “book of principles more than a catalogue of specific, minute directions”³¹. Ramm referred to the concept as “principalizing”, by which he meant isolating “the great moral, ethical, and spiritual principles in a passage”, whereas Kaiser instead argues for “principlization”, meaning “to state the author’s propositions, arguments, narrations, and illustrations in timeless abiding truths with special focus on ... the current needs of the Church”³². There is, of course, a gulf between these differing approaches. The varying rationales put forward by the various authors for the use of principles can be summarised as: (1) the Biblical legitimacy of principles; (2) the need to make Biblical teaching relevant; and (3) the unsatisfactory nature of traditional Biblical exegesis.

³⁰ Beeds’ response, p.5.

³¹ W.C. Kaiser, “Must we go “beyond” the Bible? The Theological Use of the Bible”, Chapter 5 in W.C. Kaiser and M. Silva, “An Introduction to Biblical Hermeneutics” (Grand Rapids: Zondervan Publishing House, 2007), pp. 91 – 92.

³² Ibid., p. 92, citing B. Ramm, “Protestant Biblical Interpretation: A Textbook of Hermeneutics for Conservative Protestants” (Boston: W.A. Wilde Company, 1950), pp. 115 – 116.

The arguments based on Biblical legitimacy derive mainly from Kaiser who argues that the use of principles is affirmed repeatedly in the Bible, for example, the summary of the law into Ten Commandments in the Old Testament³³. However, this does pose the question as to whether the Ten Commandments and other materials truly resemble what contemporary authors see as principles. Compare, for example, the timeless elegance and relevance of the First Commandment “You shall have no other gods before me”³⁴ with Principle 1 of Hay’s “Biblical Principles for Economic Life” that states “Man must use the resources of creation to provide for his existence, but he must not waste or destroy the created order”³⁵.

The arguments based on the need to make Biblical teaching relevant are well expressed by Marshall³⁶. The range of problems he identifies in using the Bible today are fairly familiar and require no great theological insight, for example, that ethical problems confronting us, such as new structures in society, may not be directly presented in the Bible³⁷. The possible approaches he identified to dealing with the problem of using the Bible in ethics were a stark choice between “extreme Biblicism” and an emphasis on the gap between Biblical thinking and the modern world being so great that the Bible can scarce be used at all. Other positions are equally gloomy, for example, the idea that the New Testament contains too great a variety of ethical positions to discover any norm or that most New Testament ethical teaching is tied to outworn theological concepts so cannot be used now. It is unsurprising in the face of such unsatisfactory extremes that Marshall suggests an inquiry into the “underlying theological and ethical principles” expressed in the Bible. In his view, it takes both the authority of the Bible and the variety of modern situations and cultures

³³ W.C. Kaiser, “Concluding Observations”, Chapter 19 in W.C. Kaiser and M. Silva, *op. cit.*, p. 325.

³⁴ Deut. 5:7.

³⁵ D.A. Hay, “Economics Today, A Christian Perspective” (Apollos, 1991), pp. 70 and 72.

³⁶ I.H. Marshall, “Using the Bible in Ethics” in D.F. Wright, “Essays in Evangelical Social Thought” (Exeter: Paternoster Press, 1978).

³⁷ *Ibid.*, p. 40.

seriously³⁸. He hoped to identify principles of “sufficient generality” that they could be applied both to Biblical and modern situations³⁹. So far, so good. The problem comes, however, with the application of the idea. He claims that “we are no longer forced to take literally commands which are no longer applicable in changed circumstances” but hopes that as a result it may be possible to reconcile alleged inconsistencies in Biblical teaching, in effect, by identifying unifying underlying principles⁴⁰. He himself recognises that his approach is “fraught with danger”⁴¹.

Goldingay’s approach also comes down essentially to relevance⁴², though his comment is brief. The problem he identifies is the way in which direct commands in the Bible are specific or particular and are therefore seen as being of little use to us; if the principles underlying the concrete commands are identified they can be turned back into concrete commands for our own situations⁴³. Yet he acknowledges that the principles may be difficult to discern and later goes on to suggest that Jesus set one principle against another and suggested priorities between them, for example, human need over ritual obligation⁴⁴. This would appear to conflict with the Beeds’ assertion that principles do not contradict⁴⁵.

The arguments based on the unsatisfactory nature of Biblical exegesis are well put by Virkler and Ayayo⁴⁶. Interestingly, they commence by distinguishing principilizing from traditional Biblical hermeneutics as answering a different question, i.e. not “What was the author’s meaning when he wrote a particular text?” but “What are the implications of that

³⁸ Ibid., p. 51.

³⁹ Ibid.

⁴⁰ Ibid., p. 52.

⁴¹ Ibid., p. 54.

⁴² J. Goldingay, “Models for Interpretation of Scripture” (Carlisle: Paternoster Press, 1995).

⁴³ Ibid., p. 92.

⁴⁴ Ibid., pp. 97 – 98.

⁴⁵ Ibid., p. 5.

⁴⁶ H.A. Virkler and K.G. Ayayo, “Hermeneutics” (Michigan: Baker Academic, 2007).

meaning for us in a different time and culture?”⁴⁷ (which takes us back to the relevance argument). Central to their rationale is the unsatisfactory nature of Biblical exegesis, for example, they cite Muller as arguing that the results of the exegesis are thrown into one door of a black box and the application of the text is taken out of another with a somewhat mysterious and arbitrary passage between the two!⁴⁸ Since their rationale for principlizing is based mainly on the unsatisfactory nature of Biblical exegesis, the alternative they identify becomes especially important. Their method for principlizing is demonstrated by two case studies, commencing with historical-cultural analysis, contextual analysis, followed by lexical-syntactical and theological analysis prior to application⁴⁹. However, neither application resembles the brief statements of principles which I condemned in my earlier paper; each represents a longer summary of context and explanation, so the first statement is grounded in a reference to Nadab and Abihu and the second Eve’s temptation.

The movement to reliance on principles is not one which is limited to theology, where its real-life significance is perhaps marginal; it has also attracted a vast literature in relation to law, especially in the context of the development of principles-based regulation, where many would see its use as not only seriously flawed but responsible for serious real-life problems. None of these issues are addressed by those who disagree with my conclusions. The weaknesses inherent in the use of principles are extensively discussed in my paper and it is regrettable that the Beeds, in particular, do not really get to grips with the detailed problems of application that I draw attention to. I see nothing in the theological literature to which they refer to change one iota of my earlier paper. The fundamental problem with principles, in the form which they are usually presented, is that they are divorced from the Biblical text that gave birth to them and therefore will always be susceptible to subjectivity, misinterpretation and misapplication. Ultimately the danger of the principles approach is that it allows Christians to follow the spirit of the age and select and prioritise those principles that best fit in with their world-view.

⁴⁷ Ibid., p. 193.

⁴⁸ Ibid., p. 194, citing R.A. Muller, “The Study of Theology: From Biblical Interpretation to Contemporary Formulation” (Grand Rapids: Zondervan, 1991), p. 161.

⁴⁹ Ibid., pp. 195 – 200.

Higginson and the Beeds have rightly chided me for my lack of an alternative to the principles-based approach. Can I propose a hermeneutically legitimate alternative? It would be inappropriate for me to attempt to develop here a full model of what I think is needed but I hope the following might be pointers that could lead to some common ground.

1. I think the term “principle” should be abandoned; the term has too many meanings, some of which are inconsistent with what theologians and others are attempting to achieve (for example, a rule is defined as including a principle); there has to be a degree of sympathy with Ashcroft in the “Jubilee Manifesto” who uses the term principle to refer “... to the summary constructs which are our attempt to capture key aspects of biblical teaching concerning economic life”⁵⁰.
2. The typical drafting style of a “principle”, as a short, high level abstract, often normative, statement, is unhelpful. The key reasons for this are that such principles can be indistinguishable from rules, simplistically drafted and are divorced from the Biblical exegesis which provides not only their justification but the living context necessary to interpret and adapt the principle to concrete situations.
3. There needs to be some new form of doctrinal statement that incorporates relevant Biblical exegesis and cannot become divorced from that, probably much lengthier than present such principles.

4 Criticisms of the limited liability company rebutted

4.1 Hierarchy not necessarily unbiblical

The Beeds’ first argument against the limited liability company is that the limited company depends on internal hierarchical levels of control, deriving from the wealth of stockholders and directors⁵¹. They argue strongly against hierarchical control, going so far as to claim that it is “antipathetic to God triune’s preferred mode of organisation”, observing that “The

⁵⁰ J. Ashcroft, “The biblical agenda: issues of interpretation”, Chapter 5 in M. Schluter & J. Ashcroft, “Jubilee manifesto” (Leicester: Inter-Varsity Press, 2005), p. 94.

⁵¹ Beeds’ response, p. 1.

Trinity is the example *par excellence* for how work should proceed”⁵². They support this, undoubtedly correctly, by claiming that in at least ten teachings, Jesus “... sought to reduce the presence of power, authority and hierarchy within His movement and to encourage egalitarian propensities within it”⁵³. However, they then proceed to extrapolate from this that “The model implies that God and Jesus want people to devise ways of running collective activity that mitigate the undesirable hierarchical qualities inherent in much current activity”⁵⁴. Furthermore, the Beeds are scathing about authority in companies being “unidirectional from shareholders, to directors, to managers, to workers”; “Workers in the firm have little say”, they argue⁵⁵.

There are, however, equally valid theological arguments against the Beeds’ denunciation of hierarchy. Central to their argument is the use of the Trinity as the divinely preferred mode of organisation and Christ’s teaching on the kingdom which was to be egalitarian⁵⁶. The theological weakness in this position is that both the Trinity and kingdom, in the aspirational sense associated with the term, were without sin, it is sin in human relationships that necessitates accountability, for example, in the form of the last Judgement and accountability in turn which necessitates hierarchy. Hierarchy is, therefore, accepted in the Bible as something needed whilst man is sinful (rather like Christ’s response to the necessity for the institution of divorce⁵⁷). Accordingly, hierarchy was respected by Christ himself in certain circumstances, for example, in his encounter with the Centurion⁵⁸. Early Church teaching was sharply critical of those who would not accept divinely instituted hierarchies⁵⁹. Even when Christ famously remarked that the rulers of the Gentiles lorded it over them and so on, the remark on closer analysis does not amount to a criticism of

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Mark 10: 1 – 12.

⁵⁸ Luke 7: 1 – 10.

⁵⁹ Romans 13: 1 – 7; Titus 3:1.

hierarchy but rather to the *behaviour* associated with it, which he enjoined the disciples to substitute with servant-hood⁶⁰. The uni-directional nature of hierarchical control reflects its role in providing accountability; it was not only recognised and approved by Christ in the New Testament but reflects the nature of our accountability to God, which is similarly uni-directional!

In addition to the theological arguments, there are also sound practical reasons against rejecting the limited liability company for depending on hierarchical levels of control. Firstly, hierarchy is common to large organisations that are not companies, including governments, the armed forces, churches (the Roman Catholic church perhaps pre-eminently), healthcare, housing and so on, this implies it is a function of size and complexity (not least as some such hierarchical organisations preceded the company). The protection of shareholder wealth is irrelevant here since all large organisations see the need to protect their resources in such a fashion. Second, the majority of companies are small, indeed very small, and do not have any hierarchy, many of them instead demonstrating that equality that the Beeds seek. However, caution must be exercised in seeing this as a good thing since it renders small organisations less internally accountable and may require extensive regulation instead to ensure the protection of consumers. Thirdly, there is no reason to distinguish between hierarchy/accountability founded on shareholder/ director wealth (likely to have been obtained through business transactions based on free choice), and that founded on the wealth of governments and the organisations they spawn (likely to have been ultimately obtained through coercion). The absence of “say” in such organisations is a factual claim which requires more evidence, some companies and other large organisations do see it as in their own interests to give workers a say, others do not, and one suspects more complex factors are at work in competitive markets.

4.2 Separation of ownership and control

The second group of arguments against the limited liability company, some of which are shared in common between Higginson and the Beeds relate broadly to the separation of ownership and control in such a company. For example the Beeds criticise the limited liability company for separating “duties of operation from ownership” (more usually referred

⁶⁰ Mark 10: 35 – 45.

to as ownership and control)⁶¹. Whilst Higginson and the Beeds put forward very different theological rationales for their arguments, their criticisms of shareholders in limited liability companies are very similar. Higginson criticises them, for example, having little or no say in corporate decision-making, failing to attend the AGM and doing little to influence corporate policy⁶². The Beeds criticise them, for example, for taking little interest in the company's operations and their passivity, whilst noting that they might not be able to do more⁶³. Indeed, for the Beeds the Biblically based objection to the limited liability company is that shareholders have little responsibility “for any aspect of the firm's operations, liability included”⁶⁴. The rationale for such separation of ownership and control was touched on, albeit briefly, in my earlier paper⁶⁵. In some form or another it is common to nearly all large/complex activities regardless of their legal form, which raises the question as to whom is the most desirable monitor: the Beeds appear to think this is the state⁶⁶, I disagree, because of the extensive political agency problems inherent in even the most liberal democracy, i.e. the people simply cannot exercise enough control over their politicians.

The theological rationale for the Beeds' criticism of separation of ownership and control is that Christ taught that the “ownership of wealth should not be divorced from the duties and responsibilities it entails”⁶⁷. This is in essence the same point as I addressed in my original paper⁶⁸. The theological arguments in favour of such propositions that I sought to challenge there relied on using some Biblical ideal of the family farm, a Biblical principle that stewardship should involve work, the interpretation of the usury prohibition, and the

⁶¹ Beeds' response, p.2.

⁶² Higginson reponse, p. 6.

⁶³ Beeds' response, pp. 1 – 2.

⁶⁴ Ibid., p. 3.

⁶⁵ See sub-heading “Economic activity does not have to be on a small scale”.

⁶⁶ Beeds' reponse, p. 4.

⁶⁷ Ibid., p. 2.

⁶⁸ Under the headings “(3) Ownership, management and work do not have to go together” and “(4) Risk and reward, profit and loss do not have to go together”.

treatment of leaseholds and hire contracts in the Bible. Each of these arguments was shown to be fallacious and I received some support from Higginson on aspects of this (see above). The Beeds base their argument on the stories of Zacchaeus the Tax Collector⁶⁹, the Rich Man and Lazarus⁷⁰ and the Parable of the Talents⁷¹. I have already sought to show above why I regard this as an example of bad exegesis of these passages. But even at a lower level of evaluation, such arguments can be seen to be flawed, for example, in the Parable of Talents Christ made no criticism of the master in the story, the owner, for his delegation in entrusting property to his servants while he went on a journey, without continual supervision (or seemingly any instructions as to what they should do)!

Higginson's rationale is very different and critiques the "relational distance" within companies⁷², an argument that draws upon a body of literature associated with the Jubilee Centre⁷³ (and to which I might also be regarded as having contributed⁷⁴). The basic idea behind a relational approach to critiquing public policy is that such policy should promote "relational proximity", which is defined by Schluter and Lee as "A closeness of relationship between two individuals, through which each is able to recognise the other more fully as a complete and unique human being"⁷⁵. Relational proximity can be assessed, it is argued, by reference to a range of factors, such as "multiplexity", where meetings take place in more than one context⁷⁶. It is here that I have taken issue with the approach to analysis. In

⁶⁹ Luke 19: 1 – 10.

⁷⁰ Luke 16: 19 – 31.

⁷¹ Matt. 25: 14 – 30.

⁷² Higginson response, p. 6.

⁷³ See, for example, M. Schluter and D. Lee, *The R Factor* (London: Hodder & Stoughton, 1993).

⁷⁴ S.F. Copp, "Developing a Relationally Based Law of Contract: A Question of Good Faith" in P. Beaumont and K. Wotherspoon (eds) "Christian Perspectives on Law and Relationism" (Carlisle: Paternoster Press, 2000), Ch. 3.

⁷⁵ M. Schluter and D. Lee, "The R Factor" (London: Hodder & Stoughton, 1993), p. 276.

⁷⁶ *Ibid.*, p. 70.

“Developing a Relationally Based Law of Contract”⁷⁷, I submitted that the model of relationism and in particular relational proximity, needed to be modified to be an effective tool in that setting. I suggested that there needed to be an additional characteristic of “relational integrity” mainly on the ground that a close relationship had little value unless characterised by some definable quality of “goodness”⁷⁸. To return to Higginson’s use of the relational critique, he observes that “the personal involvement and emotional investment of most shareholders in the running of a company is very slight” and “at odds with the model of the body of Christ” where different parts should “Rejoice with those who rejoice; weep with those who weep”⁷⁹. I start with some sympathy for his observation, given that I adopted the imagery of the body of Christ to justify the limited company in my original paper. The real problem, however, with his approach is that it is incredibly subjective and substitutes Kingdom values into a non-Kingdom context. To put it another way, the reason that members of the body of Christ would respond with rejoicing or weeping to others is because of the intense and transcendent nature of the love between them introduced by a common relationship through the Holy Spirit. Such a love can never be experienced in secular affairs but at best a poor shadow of it. Its absence would characterise any social arrangement and not just the limited liability company. However, I would accept that there are some contexts, such as programme trading, where purchases and sales of shares are driven electronically and which negate any possibility of such relationships that may be open to question from a Christian perspective.

4.3 Distributional inequality and justice

The Beeds boldly claim that the company has been “a vehicle for consolidating and generating greater inequalities in the distribution of wealth and income”⁸⁰. They commence by blaming the initial distribution of resources, so that from the inception of the company in

⁷⁷ S.F. Copp, *Developing a Relationally Based Law of Contract: A Question of Good Faith?* in P. Beaumont and K. Wotherspoon (eds), “Christian Perspectives on Law and Relationism” (Carlisle: Paternoster Press, 2000), Ch. 3.

⁷⁸ *Ibid.*, pp. 62 – 65.

⁷⁹ Higginson response, p. 6.

⁸⁰ Beeds’ response, p. 2.

19th century England inequalities allowed mainly the well-off to buy shares; they then claim that important beneficiaries of the greater wealth generated have been rich shareholders with just some of the wealth percolating down to employees⁸¹. They correctly point out that Christ required the rich to share their wealth with the poor which would result in a more equal distribution⁸².

The flaw in the Beeds' argument is simply that Christ's condemnation of the misuse of wealth has absolutely nothing to do with the limited liability company. There is no evidence to believe that the distribution of wealth under a system of large partnerships (consider the institutions that dominated prior to the limited liability company) would have been any better and some good reasons to believe it would have been worse. At least with limited liability companies, whose shares are traded on open markets, it is possible for some of the relatively less poor to get their foot on the ladder, no such avenue would exist in an economy of partnerships – or for that matter the favoured cooperative – since access to these is strictly restricted to insiders and those they allow in.

Higginson limits his concerns for a just society to the treatment of creditors and suppliers⁸³. Correctly, he notes that this is a matter for investigation, as discussed above.

5 The supposed benefits of alternative business models such as cooperatives

Given their strong feelings towards the limited liability company it is unsurprising that both Higginson and the Beeds turn to alternative models. Higginson argues for cooperative and partnership models where all employees are shareholders because they produce greater team spirit and smaller wage differentials⁸⁴. He observes that one of the exciting stories of recent years is the flourishing of social enterprises, fair trade organisations and micro-finance⁸⁵. Similarly, the Beeds prefer worker owned and controlled firms, such as worker cooperatives,

⁸¹ Ibid. p.3

⁸² Ibid.

⁸³ Higginson response, pp. 8.

⁸⁴ Ibid, p. 7.

⁸⁵ Ibid.

partnerships and sole proprietorships, referring to Christian exemplars, such as two Daily Bread Cooperatives in Northampton and Cambridge with high-tech versions such as worker cooperatives in Mondragon, Spain⁸⁶. Again, flatter pay scales are cited as one justification⁸⁷. The Beeds even see the state as a way of avoiding the use of limited liability company for major infrastructure projects⁸⁸, which conveniently ignores both that private sector innovation usually creates new technologies (such as the railways or the internet that are recognised as infrastructure belatedly by states) and that the record of governments in project management is dismal⁸⁹. Given the variety of examples mentioned it is not possible to do a detailed critique of each. Instead, I will briefly comment on cooperatives. The main theological justification given by the Beeds for preferring cooperatives is that they may “mitigate hierarchical control” (p.1). But this paper has shown that hierarchy may reflect an equally Biblical preoccupation with accountability, something which is of considerable importance in any real world structure where one is dealing with fallen man who is subject to a range of temptations. In cooperatives it can be unclear as to who is accountable to whom for what. Such structures can be characterised by waste and inefficiency, acceptable perhaps when they represent a lifestyle choice but not if they were to replace the model represented *par excellence* by the public limited company where competitive markets for capital drive out waste and inefficiency. Waste and inefficiency mean that somewhere a consumer on the margin may starve.

6 Conclusions

I am delighted to see that so much common ground emerged from this debate (something I had never anticipated when I drafted my original paper). These include:

- The need for a prosperous, free and (I accept) just society
- That there are flaws in the use of derived Biblical principles

⁸⁶ Beeds’ response, p. 1.

⁸⁷ Ibid., p. 3.

⁸⁸ Ibid.

⁸⁹ See, for example, D.R. Myddelton, “They Meant Well, Government Project Disasters” (London: Institute of Economic Affairs, 2007).

- That the payment of all debts is not an appropriate Biblical principle
- That the need for risk and reward, profit and loss to go together is not an appropriate Biblical principle
- The inappropriateness of the family farm paradigm
- The need for more research into the impact of limited liability on creditors.

There remains disagreement over the use of derived Biblical principles (there has been little discussion of paradigmatic approaches so I will not comment further on these). In my earlier paper, I argued that such principles were flawed for the following reasons:

- The use of derived Biblical principles has no Biblical justification
- Principles are too easily confused with rules
- Principles cannot have exceptions, but rules often and should do
- Principles will conflict and must be prioritised
- The development of Biblical principles has been insufficiently systematic
- Principles should rarely be based on the supposed purpose of a Biblical text

Having addressed the specific objections made I maintain these arguments. I do, however, accept the criticism as to my lack of an alternative. In return I make the tentative suggestion that the term principle and the drafting style of principles should be abandoned, because they are associated with short, high level abstract statements, in favour of more detailed statements of doctrine that retain the Biblical exegesis from which they were derived and can therefore be anchored in that and not develop a life of their own.

Claims that the limited liability company infringed a Biblical principle against hierarchy were rebutted both at a theological and factual level. Hierarchy is a necessary result of man's sinful nature and the need for accountability, a doctrine that pervades the whole Bible. Separation of ownership and control was seen to have been accepted in the Bible and critiquing it on relational grounds was flawed because company structures have to provide for secular rather than Kingdom relationships. Blaming the company for distributional inequality was also flawed and the alternatives worse. In particular, the preferred alternative of cooperatives was seen to be flawed at a theological level because they result in less accountability and ultimately a less prosperous society.