

A THEOLOGY OF INCORPORATION WITH LIMITED LIABILITY, INCLUDING REFLECTIONS ON METHODOLOGY

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1 Introduction

The limited liability company has been a major progressive force for more than 150 years. The framework it has provided has been a liberating force for those seeking to dig themselves out of poverty. It has played a major role in delivering innovation and in building the infrastructure on which modern society depends. It has become the dominant means of carrying on business throughout the world providing employment for countless millions of people. It provides a valuable bulwark in society against over-powerful government. Despite this, Christian writers in the UK have been surprisingly critical either of capitalism or the limited liability company. No less a figure than the Archbishop of Canterbury has turned to Marx to support his argument that unbridled capitalism amounted to “idolatry”². Michael Schluter, former chair of the Jubilee Centre has claimed that limited liability is “contrary to biblical teaching”³. Richard Higginson, Director of Ridley Hall Foundation’s “Faith in Business” Project, has argued that the concept of the public limited company is “subject to serious moral question”⁴. And Donald Hay, a Christian economist, has argued that there are “ethical grounds for objecting to the formal structure of the joint-stock company”, specifically

¹ Thanks are due to Dr Michael Schluter, Richard Teather and Tony Williams and others for their helpful comments on an early draft. The views expressed in this article are those of the author alone. All scripture quotations are taken from the New International Version.

² R. Williams, “Face It: Marx Was Partly Right About Capitalism” *The Spectator* 24th September 2008.

³ See M. Schluter, “Risk, reward and responsibility: limited liability and company reform”, *Cambridge Paper* Vol. 9(2) 2000, p. 1; see also “Is Capitalism morally bankrupt? Five moral flaws and their social consequences”, *Cambridge Paper* Vol. 18(3) 2009, that seeks to distinguish between capitalism and corporate capitalism, p. 3.

⁴ R. Higginson, “Questions of Business Life” (Carlisle: Spring Harvest Publishing Division and Authentic Media, 2002), p. 18.

criticising limited liability for enabling owners to “shrug off” responsibility for losses “in their name”⁵.

Yet the position has not always been so. In the mid-Victorian era, where Protestant evangelicalism was a basic ingredient in the dominant ideology, it seems that evangelicals did not oppose the introduction of limited liability into company law or reduce their concern for individual responsibility⁶. Many thought its introduction beneficial because it allowed small capitalists to invest and in fact a number of evangelical manufacturers converted their own businesses into limited liability companies by the 1870’s and 1880’s so as to bring employees into part-ownership⁷. Even the Times reversed its opinion on limited liability, inquiring⁸:

“ ... who they are, in a Christian community, who insist that the law between debtor and creditor shall always be of this excruciating and murderous character ... that, in every instance, there shall not only be the forfeiture of the sum expressed in the bond, but of everything else the debtor has in the world?”

Why the change? Can such divergent views be reconciled? Section 2 of this article argues that the methodological basis for criticising the limited liability company based on the use of derived Biblical principles is flawed. Section 3 argues that an alternative approach based on Biblical paradigms is likewise flawed. Section 4 sets out a theological defence of the limited liability company based on the following reasons:

- Incorporation supports the Biblical ideal of a prosperous and free society;
- Incorporation reflects the Biblical ideal for relationships;
- The recognition of corporations is required to limit government;
- Limited liability enables risk to be addressed, consistent with Biblical prudence;
- Non-payment of debt is not necessarily sinful.

⁵ D.A. Hay, “The Public Joint-Stock Company: Blessing or Curse?” (paper given to Tyndale Ethics meeting, July 1990) , p. 44.

⁶ J. Garnett, “Evangelicalism and Business in Mid-Victorian Britain” in J. Wolffe (ed.), “Evangelical Faith and Public Zeal” (London: SPCK, 1995), p. 70.

⁷ Ibid.

⁸ The Times, from the Belfast News-Letter 30th July 1855.

2 The Flawed Methodological Basis of the Criticisms of the Limited Liability Company

There are obvious methodological problems in evaluating a modern institution such as the limited liability company from a Biblical perspective. The Bible consists of ancient texts that mix religious, historical, legal, social and economic issues but does not address them in a systematic fashion. There are good reasons, however, for supposing that the Bible can be so used⁹, not least because issues of risk and liability possess a timeless quality and because it does address in varying degrees relevant financial concepts, such as debt, interest, money-changing and banking¹⁰. Nonetheless, such an exercise poses serious hermeneutic issues, especially in relation to the use of the Old Testament in Christian theology¹¹. Some recent writers approach the evaluation of the limited liability company either by trying to derive “principles” from the Bible to evaluate contemporary issues or by the use of a Biblical “paradigm” to act as a comparison with contemporary practice, or a combination of both¹².

The use of principles “derived” from the Bible appears to be excellent in theory because it should facilitate debate and reduce error. It provides a means of facilitating debate because such principles are divorced from their textual, historical and cultural context, which could be seen as useful in addressing those who might not otherwise accept their Biblical basis. It also avoids the need to apply the whole of the Bible on each occasion to the whole of a contemporary issue, a difficult and time-consuming task. If such principles could be

⁹See, for example, C. Beed and C. Beed, “Applying Judaeo-Christian Principles to Contemporary Economic Issues” (2005) 8(1) *Journal of Markets & Morality* 53, who note wide acceptance for extrapolating Biblical principles to other contexts. As C.J.H. Wright, “Old Testament Ethics for the People of God” (Nottingham: IVP, 2009) puts it, the purpose of God giving the Law to Israel was to be a light to the nations, with Israel’s overall social shape, including not only its legal and institutional structures but also its theological rationale, becoming the model or paradigm, see p. 320.

¹⁰ Deut. 15: 1 – 3 (debt); Lev. 25:36 (interest); John 2: 14 – 15 (money-changing); Matt. 25:27 (banking).

¹¹ See especially C.J.H. Wright, op. cit., Chapters 12 – 14, especially the discussions of dispensationalism, theonomism and the Jubilee Centre, pp. 399 – 411.

¹² The author has also attempted the use of such principles in his early writing on “A Christian Vision for Corporate Governance”, Chapter 5 in P.R. Beaumont (ed.) “Christian Perspectives on Law Reform” (Carlisle: Paternoster Press, 1998).

successfully derived they could be applied to complex contemporary issues over and over again without the need to laboriously restate their full rationale. It could reduce error by avoiding the risk of isolated Bible passages being taken out of their historical and literary context because a principle is likely to represent a major theme running through the Bible. It could also assist in making sense of otherwise difficult passages in the Old Testament by addressing their underlying rationale. Depending on the nature of the principles derived, it might be possible to empirically test their validity, as is commonly done with the assumptions of economic models. However, the use of such principles to date does not inspire much confidence in the process or the outcome. As will be seen below, it should either be replaced with a more effective technique or significantly refined.

2.1 The use of derived principles has no Biblical justification

There must be a set of principles for social and economic life in God's mind, Hay argues, because God is consistent in his requirements and the point of revelation is that man should be able to discern what these are¹³. The main objection, however, to creating Biblical principles is that such principles, in the sense of short, high-level abstract statements, appear very rarely used in the Bible itself to communicate concepts. Where socio-economic life was concerned, it was governed by detailed rules; where theological truths or moral principles were concerned allegories, historicism, case studies, real and hypothetical, even poetry and songs were all used. Insofar as any statement of principles can be found it lies in Christ's response to a question as to what was the greatest commandment, namely that "All the Law and the Prophets hang on these two commandments", to love God and to love your neighbour as yourself¹⁴ - but this was a commandment, not a principle. Why this reticence to use principles, which on the face of it would be much easier? Firstly, it is submitted, the use of such principles would have been inconsistent with the whole approach to Biblical revelation, which was progressive, realised through concrete lives and events in history and not abstract. Second, the use of principles might be inherently unfit for purpose, something explored further below.

2.2 Principles are too easily confused with rules

There is little difference conceptually between a principle and a rule. The Concise Oxford Dictionary, for example, defines a principle as a "... fundamental truth or proposition serving

¹³ D.A. Hay, "Economics Today, A Christian Critique" (Leicester: Apollos, 1991), p. 68.

¹⁴ Matt. 22: 34 – 40. And perhaps the Beatitudes, see Matt. 5.

as the foundation for belief or action”, alternatively “morally correct behaviour and attitudes”. A rule is defined as “a regulation or principle governing conduct ...”. So a rule is simply a particular example of a principle. Biblical principles are typically seen as ethical statements¹⁵. So Ashcroft, writing in the “Jubilee Manifesto” uses the term “principle” to refer not to a rule but “... to the summary constructs which are our attempt to capture key aspects of biblical teaching...”¹⁶. Similarly, Hay uses the term to refer to his attempt to incorporate “the essential features of biblical teaching concerning economic life”¹⁷. This is consistent with attempts in jurisprudence to distinguish between principles and rules. Dworkin, for example, distinguishes a principle, which is a standard that guides but does not determine the result (for example, the legal maxim that “no man shall profit from his own wrong”), from a “rule”, which applies in “an all-or nothing fashion” (such as three strikes and out)¹⁸. The problem is that such distinctions are hard to sustain when applied to particular issues. So, for example, Schluter’s “principle” that “[a]ll debts must be paid”¹⁹ from a lawyer’s perspective appears to have the characteristics of both a principle and a rule, since it can be applied to determine particular outcomes. But, if applied as a rule with no qualifications, it could contradict the Biblical *commandment* to love one’s neighbour, since there must be circumstances where a good neighbour would not insist on payment of a debt²⁰.

2.3 Principles cannot have exceptions but rules often should and do

Biblical principles tend to be drafted as short, high level abstract statements, typically in absolute terms with no exceptions. Hay, for example, sets out a principle that “Man has a right and an obligation to work”. There is undoubtedly some Biblical truth in such a principle

¹⁵ See, for example, J. Ashcroft, “The biblical agenda: issues of interpretation”, Chapter 5 in M. Schluter & J. Ashcroft, “Jubilee Manifesto” (Leicester: IVP, 2005), at p. 94.

¹⁶ Ibid.

¹⁷ Hay, “Economics Today, A Christian Critique, op. cit., p. 77.

¹⁸ See W. Twining and D. Miers “How To Do Things With Rules” (London: Butterworths, 1999), p. 125 – 126.

¹⁹ Schluter, “Risk, reward and responsibility: limited liability and company reform”, op. cit., p. 3.

²⁰ See also Matthew 6: 12. Schluter acknowledges in support of this principle that there is some provision for limited liability in Biblical law, *ibid*, but nonetheless the principle is drafted in these absolute terms.

and it is supported by reference to well-known Biblical passages. Yet as soon as we turn to Hay's more detailed explanation we see the weakness of the principle created. As he explains, in the New Testament work "is expected of [those] who are *fit and able* to work"²¹. But the principle itself is not qualified in this way. If the principle as drafted was taken out of context, it could be used to justify all manner of evil, such as forced labour of children, the sick and the elderly. It is, therefore, not fit for purpose. In contrast, Biblical Law does contain exceptions. A good example was the Old Testament obligation on Israeli men to fight for their country²², so strong that when the Reubenites and Gadites wanted to settle instead, they were warned by Moses that this would be sin²³; yet subject to exceptions for those who had built new houses, had recently planted vineyards or had become engaged to be married²⁴. In the New Testament, Christ can be seen demonstrating exceptions to the Sabbath law by permitting his disciples to pick corn and eat on the Sabbath because they were hungry and, when criticised, by healing a man on the Sabbath, something that could only be done with God's active participation²⁵.

2.4 Principles will conflict and must be prioritised

There has been some reluctance to accept the possibility that Biblical principles for social and economic life might conflict. Hay, for example, argues that if there are different or opposing principles then one or the other must be in error because consistency in the mind of God rules out principles conflicting or having priority over each other²⁶. But he also acknowledges that conflicts may arise when such principles are applied in practice²⁷. The inevitability of such conflicts has been recognised in jurisprudence, where Dworkin observed that principles can conflict without being invalid and that in any given context the result is obtained by weighing competing principles²⁸. Twining and Miers similarly observe that a rule represents a

²¹ Author's emphasis.

²² See Num. 1, where God required Moses to conduct a census of "all the men in Israel twenty years old or more who are able to serve in the army". See also Num. 31.

²³ Num. 32:20 – 24.

²⁴ Deut. 20:2-9.

²⁵ Matt. 12: 1 – 13.

²⁶ For example, Hay "Economics Today, A Christian Critique", op. cit., pp. 68 – 69.

²⁷ Ibid., p. 77. See also Ashcroft, op. cit., p. 96, referring to justice and mercy.

²⁸ See Twining and Miers, op. cit., p. 125.

compromise between conflicting values²⁹ (a term that differs little in meaning from a principle). Take then, for example, the simple antithesis of the Biblical principles that man is, on the one hand, made in the image of God and is therefore of inestimable value and, on the other hand, that man is sinful and therefore deserves eternal condemnation. Taking either principle in isolation and applying to a practical issue could lead to completely different results, for example, on a debate as to the merit or otherwise as the death penalty³⁰. It should be noted that this is not saying that the Bible contains contradictory principles: as we have seen already, the Bible does not generally adopt the use of such principles.

Once we accept that principles derived from the Bible will often conflict when applied because that is a consequence of using principles, then what matters is how such conflicts are to be reconciled. This problem is not new to law as a discipline and emerged sharply in England when the Law Commissions attempted to create “guiding principles” to govern the reform of shareholders remedies and directors’ duties³¹. How should such principles be weighted and, in particular, what weight should be attached to economic efficiency?³² Ultimately the solution came through the democratic process with all its faults, in the long-drawn out process for the development of the *Companies Act 2006*. This does not help us, however, when it comes to reconciling principles derived from the Bible. Wright helpfully identifies a similar problem with Old Testament Law: not all laws were of equal importance in terms of their moral values³³. The pecking order Wright develops starts with God and then life: where life conflicts with property rights it prevails³⁴. Significantly, he identifies that

²⁹ Ibid., p. 129.

³⁰ See also Ashcroft’s example of how Twining and Miers’ ladder of abstraction can be used as a technique to derive two different sets of principles from the same Old Testament law, *op. cit.*, pp. 96 – 97.

³¹ See Law Commission, “Shareholder Remedies” (Law Commission Report No. 246, 1997), pp. 4 - 7; Law Commission “Company Directors: Regulating Conflicts of Interest and Formulating a Statement of Duties” (Law Commission Report No. 261, 1999), pp. 24 – 31; and Maughan and Copp “The Law Commission and Economic Methodology: Values, Efficiency and Directors’ Duties”, *op. cit.*, pp. 111 – 112.

³² C.W. Maughan and S.F. Copp, “The Law Commission and Economic Methodology: Values, Efficiency and Directors’ Duties” (1999) 20(4) *The Company Lawyer* 111 – 112.

³³ Wright, *op. cit.*, p. 305, citing 1 Sam. 15:22, Hos. 6:6, Prov. 21:3 and Mark 12:32 – 33.

³⁴ Ibid., pp. 306 – 309.

human need is prioritised over strict legal rights and claims, including the needs of a debtor over those of a creditor³⁵. This is consistent with the New Testament where Christ did not hesitate to answer a question as to which was the most important commandment, when he could have easily answered that all were³⁶. Such an approach may be uncomfortable if Biblical principles are seen in absolute terms since it requires complex trade-offs that can only be resolved by a more sophisticated approach to Biblical analysis.

2.5 The development of Biblical principles has been insufficiently systematic

Doubts have been raised about the validity of seeking to derive general Biblical principles on the ground that these would, in effect, be tainted by subjectivity because of the incursion of value judgements and other ideologies³⁷. Such doubts have, however, been rejected by Beed and Beed because a number of authors, both Catholic and Protestant, writing independently, arrive at remarkably comparable principles³⁸. There has to be a degree of caution towards such conclusions, however, because a number of such authors appear to have been writing in broadly the same historical period and would therefore have been likely to have been influenced – whether consciously or not - by similar trends in ideology, for example, the widespread hostility towards individualism, markets and the role of business as against collectivism, state intervention and the influence of a myriad of lobby groups, for example, organised labour. Perhaps this conclusion shows simply that there should be a much more rigorous debate over the true nature of Biblical social principles than the consensus identified shows there has been to date. Pilch and Malina succeed in identifying over one hundred biblical social values³⁹, a concept not far removed from the “principles” discussed here, yet typically writers on economic issues identify much fewer, for example, Hay identifies just eight⁴⁰. By way of an example of a significant omission, Hay identifies the importance of the king being subject to the law in Israel and charts the disparity between the breakdown in the Biblical ideal against the increase in power and economic activity of the king - but fails to

³⁵ Ibid., pp. 312 – 314.

³⁶ Mark 12: 28 – 34.

³⁷ See Beed and Beed, op. cit., p. 70 and Ashcroft, op. cit., pp. 95 and 97.

³⁸ Beed and Beed, op. cit., pp. 70 – 71.

³⁹ J.J. Pilch and B.J. Malina, “Handbook of Biblical Social Values” (Peabody, MA: Hendrickson Publishers Inc, 1998).

⁴⁰ Hay, “Economics Today, A Christian Critique”, op. cit., pp. 72 – 77.

make the rule of law one of his principles for economic life and even proceeds to support discretionary intervention by government “where a perceived injustice cannot be adequately put right within the legal framework”⁴¹. Yet the rule of law must be one of the most important Biblical principles to become enshrined in Western thinking and one widely regarded as fundamental to economic development and prosperity. There is clearly a need for a much more systematic development of Biblical principles.

2.6 Principles should rarely be based on the supposed purpose of a Biblical text

The purpose of a law is occasionally stated explicitly in the Bible and provides a very clear guide as to the underlying principle⁴². But more often than not the Bible does not do so and the task of formulating a principle, in effect, requires an educated guess as to a law’s purpose. It is a difficult task to ascertain the principles behind a contemporary law (or indeed a rule of any kind⁴³). For example, in England it would be necessary to look first at any Law Commission Report, any Government White Paper, and then Hansard, the official record of the debates that led to the legislation. Even then a straightforward answer is not always possible. Wright recognises the importance of being able to identify the objective of any particular Old Testament law and suggests a particularly rigorous approach, preceded by an awareness of Old Testament economics, politics, sociology, legal history and more⁴⁴. He stresses the need to look at a wide range of issues, such as the sort of behaviour that a particular law would encourage or discourage⁴⁵. However, despite this he recognises that some laws might defeat such a process and the conclusions in others may remain doubtful⁴⁶. C.S. Lewis strongly chided those who thought they could reconstruct the purposes and influences behind a Biblical text because when reviewers commented on his writings, he

⁴¹ *Ibid.*, pp. 38, 40, 72 – 77 and 174. See also Ashcroft, *op. cit.*, pp. 92 – 93.

⁴² See, for example, Deut. 24: 6 which prohibited taking millstones as security for debt because these were a person’s livelihood.

⁴³ See Twining and Miers, *op. cit.*, pp. 183 – 187.

⁴⁴ Wright, *op. cit.*, pp. 321 – 324. His approach is developed within the context an attempt to regard Israel and its law as paradigmatic, see pp. 320 – 321, a concept explored further below.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

observed 100% failure⁴⁷. Worse still, with the Old Testament one is essentially seeking to comprehend the mind of God, not an easy task.

2.7 The use of principles, good in theory?

The problem is that the high hopes identified at the outset for principles derived from the Bible are not realised. There is no Biblical support for the idea of deriving Biblical principles in this way. The use of Biblical principles fails to facilitate debate precisely because in formulating a principle separate from its Biblical roots the rationale is lost so that recourse must be had to the underlying Biblical texts. The principle as a result becomes an obstacle to debate, a distraction from applying Biblical truth to contemporary issues. Errors are more likely to occur because principles are difficult to distinguish from rules and the development of rules requires a complex balancing of conflicting principles so that exceptions can be incorporated. There needs to be a much more systematic exposition of Biblical principles than has taken place to date and great caution when attempting in effect to guess the supposed purpose of a Biblical rule. Given the level of detail, for example in the Old Testament Law, on issues such as liability and debt, any principle which might have been – but was not – specifically addressed in the Bible should be treated with caution. Finally, great care should be taken with the language of “Biblical principles” so that these are not inadvertently accorded greater status than they deserve; such principles are simply the fallible ideas of men and can be challenged like any other.

3. Flaws in the use of “Paradigms” or “Models” derived from the Bible

An alternative or complementary approach to trying to derive “principles” from the Bible to apply to contemporary issues is to rely on a Biblical “paradigm”, specifically to use the Old Testament model of society as an example or ideal for today⁴⁸. A paradigm can be defined as a “typical example”, “pattern” or “model” of something and, in turn, a model is a “simplified description” of something used to “assist calculations and predictions”⁴⁹. Wright regards the society and laws of Israel as the Biblical paradigm, but whilst being critical of the use of

⁴⁷ C.S. Lewis “Modern Theology and Biblical Criticism” (1967), set out in J. McDowell “Evidence for Christianity” (Nashville: Thomas Nelson, 2006), Chapter 17, esp. pp. 613 – 614.

⁴⁸ See, for example, Ashcroft, op. cit., pp. 90 – 92.

⁴⁹ Concise Oxford English Dictionary (Oxford: Oxford University Press, 2008).

Biblical principles, does not reject them as inconsistent with such a Biblical paradigm⁵⁰. Instead, he sees the use of a Biblical paradigm as embodying such principles but not simply reducible to them⁵¹. He argues therefore that in its broader sense a paradigm operates as a matrix in which principles can be hung together to provide a coherent worldview but in its narrower sense it is a working model where specific principles can be isolated in relation to a particular law or institution⁵². There has to be much sympathy for such an approach. In any society there are complex interactions between institutions, laws and social practices and changes in one area can often have unintended consequences in others. If it were possible to portray Ancient Israel, in effect, as a complex working model with these interactions then it would be much more feasible to see the significance of each individual component. Furthermore, the use of a Biblical paradigm might command some support from an economic perspective because the goal of the Old Testament Law – which must form an important part of any such paradigm - is stated with admirable clarity, it is “prosperity”⁵³. In this respect, any Old Testament paradigm should have much in common with the neo-classical economic model of resource allocation, which is also concerned with maximising prosperity, i.e. net social benefit (and where, if the Pareto standard of optimality is achieved, no change in policy makes anyone worse off)⁵⁴. There are three difficulties, however, in developing a Biblical paradigm that make the exercise inherently flawed: what exactly should constitute the paradigm; the unsatisfactory nature of such paradigms as models; and the continued reliance on derivative Biblical principles.

3.1 Paradigms based on Old Testament Law and Old Testament society will diverge

There is no definitive way of determining on what a Biblical paradigm should be based: Old Testament Law, Old Testament Israel or both (as Wright suggests⁵⁵)? This matters because each would lead to very different outcomes. A paradigm based on Old Testament Law might

⁵⁰ Wright, *op. cit.*, pp. 63 and 70 – 71.

⁵¹ *Ibid*, pp. 70 – 71.

⁵² *Ibid.*, p. 71.

⁵³ Deut. 28: 11.

⁵⁴ Maughan and Copp “The Law Commission and economic methodology: values, efficiency and directors’ duties”, *op. cit.*, 109 at 112. Questions of the distribution of wealth fall outside of the economic model but are included within the Old Testament paradigm.

⁵⁵ *Op. cit.*, p. 63.

give the impression of an ideal society with both prosperity and a fair distribution of wealth. A paradigm based on Old Testament Israel might demonstrate a broken society, riddled with greed, exploitation and unfairness. Regardless of its aspirations the Old Testament Law failed to deliver prosperity for all, so-called “social justice”, leaving distributional unfairness no less serious than the complaints made against free market economies. So the prophet Amos famously condemned Israel for its religiosity and inequality of wealth (the rich lived in stone mansions, laid on beds inlaid with ivory, dined on choice meats and drank bowlfuls of wine)⁵⁶. But he condemned with equal vigour Israel’s failure to uphold the rule of law (taking bribes and depriving the poor of justice) and property rights (the poor were forced to give the rich grain)⁵⁷, requirements of free markets. Quite why the Old Testament Law resulted in such failures we do not know. The suspicion must be that there were flaws in institutional structures that could not have been overcome at that time. The limitations of law as a way of influencing behaviour is not only something recognised by lawyers⁵⁸ and economists⁵⁹ but forms the basis of the entire New Testament message that true behavioural change requires a change in human nature⁶⁰. So the failure of the Old Testament Law makes it a questionable paradigm, consistent with the claims of the writer of the Letter to the Hebrews that the New

⁵⁶ Amos 5: 21 – 23, 5: 11, 6: 4 and 6: 6.

⁵⁷ Amos 5: 11 – 12.

⁵⁸ There is a considerable literature on the concept of the limits on law generally commencing with A. Allott, “Limits of the Law” (London: Butterworths, 1980); for a Christian perspective see P. Beaumont (ed.) “Christian Perspectives on the Limits of the Law” (Carlisle: Paternoster Press, 2002); see also B.R. Cheffins, “Problems with State Intervention”, Chapter 4 in “Company Law, Theory, Structure and Operation” (Oxford: Oxford University Press, 1997), esp. pp. 199 – 203 that address enforcement and implementation problems.

⁵⁹ See, for example, D.C. North, “Institutions, Institutional Change and Economic Performance” (New York: Cambridge University Press, 1990), pp. 36 – 37, 41 – 42 and 44, who argues that formal rules make up a small, albeit very important, part of the constraints that shape choices and who points to the importance of informal constraints and internally enforced codes of conduct that modify behaviour, including strong religious beliefs. For the economic approach generally to developing optimal policies to combat illegal behaviour, see G.S. Becker, “The Economic Approach to Human Behaviour” (Chicago: University of Chicago Press, 1978), Chapter 4.

⁶⁰ John 3: 1- 15; Rom. 2: 17 – 29.

Testament covenant would not have been needed if there had been “nothing wrong” with the Old Testament covenant, referred to as “obsolete”⁶¹, further that “The Jewish Law is not a full and faithful model of the real things; it is only a faint outline of the good things to come”⁶².

3.2 Simplified Biblical paradigms do not necessarily make good models

Insofar as a Biblical paradigm represents a simplified version of reality, perhaps consisting largely of principles, it is in effect a model. The purpose of using a model for academic purposes is that the real world is too complex to explain and predict as there are too many variables. Therefore, academics seek to reduce this complexity to a small number of variables so that they can isolate causal relationships between them. In this sense a model is a simplified form of reality. Such an approach can be of considerable value. The development of models in economics, for example, has contributed much to understanding real-world institutions and behaviour and how prosperity can be achieved. The concepts of a model based on the Old Testament Law and the economic model are not necessarily very different. Neither necessarily represents the real-world but provides a bench-mark against which real-world practices can be compared. The value of a model in economics does not, however, depend on how well it conforms to the real world but how well it predicts – accordingly, the basic model of resource allocation (by voluntary exchange in competitive markets in response to price signals) represents a simplified form of reality (for example, by excluding the role of institutions), but works remarkably well despite its “apparent naivety and lack of realism”⁶³. In economic models, *assumptions* are made as to key factors, often matters of behaviour, that lead to economic prosperity, such as human rationality (which differs little from the sort of principle – human sinfulness - that might be adopted by a theologian). The point of making this comparison is that given they both share a similar objective, it might be expected that the behavioural assumptions of the economic model would be fairly consistent with Biblical principles forming part of an Old Testament model, especially since the economic model was derived in part at least by observations made of societies predominantly shaped by Judaeo-

⁶¹ Heb. 8:7 and 13.

⁶² Heb. 10: 1 “Good News Bible” (The Bible Societies/ Collins, 2004), cited for emphasis).

⁶³ C.W. Maughan and S.F. Copp, “Company Law Reform and Economic Methodology Revisited” (1999) 21(1) *The Company Lawyer*, pp. 17 – 20.

Christian values⁶⁴. The challenge would be to focus on the differences (for example, the broader scope of the Old Testament rules and their distributional content, such as debt cancellation) and explore empirically how these impact on prosperity. But the drafting of Biblical principles rarely resembles economic assumptions or is subjected to empirical testing, raising questions as to their value as a model.

3.3 Paradigms consisting largely of derivative Biblical principles will suffer substantially the same problems as such principles

The use of a paradigm still appears to depend largely on the identification of Biblical principles since the Old Testament is not being applied literally. It is possible that an attempt to derive a comprehensive Biblical paradigm would overcome some of the objections raised in the previous section of this article to the use of derived Biblical principles, for example, it might enable conflicts in the application of such principles to be reconciled. It is furthermore possible that utilising more established techniques of model-building to construct empirically testable principles in the context of a paradigm or model might improve the quality/ utility of such principles. However, the lack of any Biblical justification for using such principles and their inherent unfitness for purpose remain.

3.4 The Ancient Israel family farm is an inappropriate paradigm or model for business organisation

The Old Testament superficially has little to say about business organisation. Schluter argues that the Biblical “ideal” for business organisation lies in the “business (farm) owned, managed and worked by the extended family”⁶⁵. Hay adopts a less rigorous Biblical ideal, arguing that the model should be “people in community”, taking as his examples the family (in the Old Testament) and the people of God (in both Old and New Testament) - but in setting out his “stewardship principles” he nonetheless refers to the Ancient Israel family farm as the “paradigm” in the context of access to and control over resources⁶⁶. Beed and Beed also demonstrate how influential the role expected to be played by the family farm in

⁶⁴ C.W. Maughan and S.F. Copp “Economic Efficiency, the Role of Law, and the Old Testament”, *op. cit.*, 249 at 255 – 257.

⁶⁵ Schluter, “Risk, reward and responsibility: limited liability and company reform”, *op. cit.*, p. 4.

⁶⁶ Hay, “The Public Joint-Stock Company: Blessing or Curse?”, *op. cit.*, p. 29. Hay also argues later that those who work in a business should be given responsibility for it (p. 44).

Ancient Israel has been in developing Judaeo-Christian principles that can be applied to economic issues⁶⁷. It is, however, arguable that there are other explanations for Old Testament laws that gave rise to the family farm which cast doubt on its value in other contexts. For example, Meyers has suggested that the reason for making land inalienable from the family was to prevent holdings becoming too small to be viable, with the diverse environment of ancient Israel farming resulting in family specific expertise that needed to be retained to ensure family survival⁶⁸.

Given the diversity of potential views on the content of the paradigm of the ancient Israel family farm, the following issues have been identified for evaluation that might most logically flow from it or could be associated with it. These are: (1) the significance of the family nexus; (2) the inevitable small scale of such enterprise; (3) the need for ownership, management, and working to go together; (4) the need for risk/ reward and profit/ loss to go together. These are addressed below.

(1) The extended family does not have to be the nexus of economic life

How literally should the family nexus in the ancient Israel family farm be taken? Schluter takes it very seriously, setting out as a Biblical principle the need to centre social and economic life on the extended family, seeing a range of benefits in this, such as maximising opportunities for creativity and participation⁶⁹. There are good theological reasons, however, for arguing that the family should not be the nexus of business organisation. In the New Testament, Christ ushered in a new era in which membership of God's kingdom no longer relied upon family connection but a personal relationship with God instead⁷⁰. When the early Christians sought to limit this, they were reminded of it in striking ways, such as Peter's vision⁷¹. Not only were family relationships now seen as potentially conflicting with God's Kingdom, the priority for believers, but Christ insisted that salvation depended on loving God

⁶⁷ Beed and Beed, *op. cit.*, pp. 59 – 60.

⁶⁸ L.G. Perdue, J. Blenkinsop, J.J. Collins and C. Meyers, "Families in Ancient Israel" (Kentucky: Westminster John Knox Press, 1997), pp. 20 and 30.

⁶⁹ Schluter, "Risk, reward and responsibility: limited liability and company reform", *op. cit.*, p. 4; he observes that in Biblical law the extended family is given extensive responsibilities, including those of a political and judicial nature.

⁷⁰ Matt. 10: 34 – 37; also the Parable of the Good Samaritan, Luke 10: 25 – 37.

⁷¹ Acts 10.

and loving one's *neighbour* as oneself, illustrating this with the familiar parable of the Good Samaritan⁷².

An alternative principle that might legitimately have been put forward could have been that Christians should only set up businesses with each other, especially given the wording of 2 Corinthians 6: 14, which states that believers should not be "yoked together" with unbelievers⁷³. This implies a relationship over which a Christian could neither control the direction being taken nor exit when appropriate, something that implies the need for close legal scrutiny of particular arrangements for doing business. Given that the purpose of most businesses of whatever form is to serve their consumers, the strength of the New Testament commandment to love one's neighbour suggests, however, that Christians should be able to link themselves with any business through which they believe they can best serve their neighbour, subject only to the caveat as to legal scrutiny. A focus on loving one's neighbour might, furthermore, suggest that it would be legitimate for a Christian to work in a limited company engaged in research and development of anti-cancer drugs, but might call into question, perhaps, the legitimacy of working in a partnership engaged in debt collection.

There is no strong Biblical justification for economic links to be based on the family or any other nexus. In fact, the structure of the limited company is neutral as to ownership patterns and a great many family businesses (and specifically Christian businesses) have been created and operated as limited companies, not least because the flexible nature of a company's constitution facilitates this so well. It is commonplace for this to contain provisions that restrict share ownership to members of a particular family (or even families), and perhaps limited further to those who actively work in the business⁷⁴. The use of the limited company encourages the creation of family businesses, therefore, not the reverse.

⁷² Luke: 10: 25 – 37. The opportunity to insert love for one's family in between love for God and one's neighbour must be read as deliberately not taken up.

⁷³ This would in fact justify a limited liability regime because it would enable Christians to participate in business (something desirable if Christians are to be the "salt of the earth": Matt. 5:13) and render questionable such participation if there was an unlimited liability regime in which Christians were jointly and severally responsible for the liabilities of unbelievers.

⁷⁴ The alternative to the limited liability company envisaged of a partnership with joint and several liability would in contrast tend to discourage family members with limited resources from being involved.

More to the point it enables people to form economic communities of the sort that they *choose* and, hopefully, in the case of Christians they will exercise that choice wisely in accordance with the command to love one's neighbour.

(2) Economic activity does not have to be on a small scale

Concerns over corporate size are not new and have enjoyed some popularity at least since the publication of Schumacher's "Small is Beautiful" in 1973⁷⁵. The use of the family nexus as a paradigm for business organisation has been unfortunate because it implies that business organisation from a Biblical perspective should be on a small scale and that size is bad. Schluter certainly sees the limited company in these terms, arguing that larger companies conflict with the family because they act against family interests, for example, by requiring mobility of labour⁷⁶. This particular objection fails, however, because it is not the size of a company that generates the need for mobility but the nature of the underlying business. So, for example, a one-man company that specialises in repairing oil-rigs may involve that person in much international travel, whereas an international retailer may have a great many local people in long-term stable employment in a small area. A more satisfying principle which Schluter uses to critique corporate giantism is that economic (and political) power should be diffused as widely as possible, supported for example by the Jubilee land laws⁷⁷. The difficulty with this is that there is no reason why family owned businesses should not be very large, as some are and no reason why problems associated with corporate giantism, for example, cannot be associated with quite small businesses, depending on the nature of the market they operate in. The solution here might instead be to ask what would best achieve the outcome most consistent with the Biblical position, which must be less concerned with the existence of corporate power (a very difficult concept to define and not necessarily associated with size) than its abuses (much easier to define and unacceptable regardless of size or whether a business is structured as a company or otherwise). The starting point here should normally be the promotion of competitive markets with educated and informed consumers and low transaction costs. The danger of attacking corporate size is that it could easily infringe the neighbour principle. Corporate size may well emerge as a response, for example,

⁷⁵ E.F. Schumacher, "Small is Beautiful" (Blond & Briggs Ltd, 1973).

⁷⁶ Schluter, "Risk, reward and responsibility: limited liability and company reform", *op. cit.*, p. 4.

⁷⁷ *Ibid.*

to the need for economies of scale to facilitate research and development into anti-cancer drugs – then such a purpose might not only be justified by the neighbour principle but an excellent example of how the limited liability company contributes to broader Biblical ideals of human flourishing.

(3) Ownership, management and work do not have to go together

The Biblical ideal of the family farm, as Schluter observes, is one that is owned, managed and worked by the extended family⁷⁸. The questions that this has given rise to, typically within the context of critiquing the limited liability company, have been on the one hand whether it is Biblical to own a business without managing/ working in it and on the other hand whether it is Biblical to work in a business without owning/ managing it (though obviously other permutations are possible).

Is it Biblical to own a business without managing and/ or working in it? Hay sees share ownership, and control of a business, through a board of directors, as inconsistent with his Biblical principle that stewardship should involve work⁷⁹. However, Hay's understanding of work appears too narrow and to neglect specialisation, something which is commended in the Bible⁸⁰. Shareholders provide a highly specialised service both in terms of providing initial (and subsequent injections) of capital to a company and also by exercising a monitoring function. That monitoring function may appear insignificant when all is run well, as it should, but it becomes important when they are not. This service is "work", especially for the large institutions that of necessity devote resources to this, often on behalf of pensioners, who can no longer work. Furthermore, any Biblical principle requiring people to work must be subject to the neighbour principle: there are times when a person will not be

⁷⁸ Ibid.

⁷⁹ Hay, "The Public Joint-Stock Company: Blessing or Curse?", *op. cit.*, p. 44.

⁸⁰ See the discussion of incorporation in the section below. Separation of ownership and control is, of course, not a characteristic dependent on limited liability and is not restricted to the limited liability company. Instead, it results from the need to raise the very large sums of capital necessary for major projects. In fact the limited liability company has enabled many socially desirable projects that would now be regarded as necessary infrastructure to be completed, see the arguments and evidence put forward as long ago as 1855 by Bouverie in the House of Commons in the debate on the Limited Liability Bill, *Hansard HC*, vol. 139, col. 325 (29 June 1855).

able to work and it is appropriate for them either to be able to earn a living from the fruits of past work or to be supported by others.

Is it Biblical to work in a business without owning and/ or managing it? Ownership of land was clearly very important in ancient Israel and considerable efforts were made in the Old Testament to ensure its non-alienability from the family. But can it be read from this that everyone should have a right to a stake either in the land or the means of economic production (as land was in ancient Israel)? Hay argues that in their work a person “should have access to resources, and control over them”⁸¹. Beed and Beed discuss various ways in which both Catholic and Protestant economists have looked to workers’ cooperatives and conglomerations of workers’ cooperatives as examples of real-world organisations resembling some Biblical principles - a second-best application⁸². Schluter, in contrast, argues that it is legitimate in biblical terms to employ people on a wage, but they should have the opportunity to influence where they work, because being made in the image of God brings with it gifts and creativity⁸³. This appears consistent with Schluter’s preference for family ownership⁸⁴, since family and employee ownership are potentially inconsistent⁸⁵. The difficult question here is less the principle – since it is rarely undesirable to involve employees in ownership/ management – but how conflicts with other principles are addressed. If employee participation is voluntary then there are few Biblical obstacles and indeed the limited liability company can and does make a major contribution to enabling this. If mandatory then there are serious Biblical obstacles: not only would there be no way of assessing the form that such participation should take but enforced participation would infringe property rights in existing businesses, in other words it would amount to theft. And under an unlimited liability regime mandatory employee participation would turn a job into a millstone.

⁸¹ Hay, “The Public Joint-Stock Company: Blessing or Curse?”, *op. cit.*, p. 29.

⁸² Beed and Beed, *op. cit.*, pp. 71 -72.

⁸³ Schluter, “Risk, reward and responsibility: limited liability and company reform”, *op. cit.*, p. 4.

⁸⁴ But as Hay points out, “The Public Joint-Stock Company: Blessing or Curse?”, *op. cit.*, p. 28, in the Old Testament people were reminded that the land belonged to God and they were tenants.

⁸⁵ Excluding the possibilities of employees joining a family by adoption or marriage.

Before leaving this topic it might be interesting to add an additional perspective on the family farm paradigm. If this was applied rigorously the probability might also need to be addressed that such a family farm would also have provided a place to live for those it comprised. So the paradigm might need to be extended to cover people's entitlement to somewhere to live. But that would distract from this article's defence of the limited liability company.

(4) Risk and reward, profit and loss do not have to go together

If the ancient Israel family farm is taken as the paradigm, then not only can ownership, management and work be argued to go together but also the moral entitlement to take the reward (profit) can be linked to the risk (of losses) being undertaken as well. The idea of linking risk and reward is, however, independent from the family farm paradigm. It is very familiar in the context of the Biblical ban on taking interest because it supports the use of forms of co-ownership that enable a financier to obtain a reward whilst avoiding the prohibition on lending for interest. Ironically, if the family farm were to be taken literally as the paradigm form of business organisation then even finance provided on a co-ownership basis would be ruled out because it would dilute family ownership of the farm. The argument that the limited company infringes Biblical principles because risk and reward must go together is a surprising one therefore, because equity investment is often commended for satisfying this principle whereas debt is criticised for infringing it⁸⁶. Schluter, however, sees the receipt of dividends by shareholders from a blue-chip company as comparable to the receipt of interest for a loan, involving an absence of risk and responsibility⁸⁷. This argument,

⁸⁶ See, for example, P. Mills, "Finance", Chapter 11 in M. Schluter & J. Ashcroft, "Jubilee Manifesto" (Leicester: IVP, 2005), p. 205.

⁸⁷ Schluter, "Risk, reward and responsibility: limited liability and company reform", *op. cit.*, p. 4. The other illustration given is that of the Parable of Talents where he equates the putting of money in the bank for interest with the owner's reaping where he has not sown; however, a more natural interpretation of this would simply be that the servant, in effect, accused his master of being a thief. There is a further problem with this analogy in Old Testament terms. In Deut. 6: 10 – 12 the Israelites are reminded that when they were given the land, they would gain cities they did not build, houses filled with things they did not provide, wells they did not dig and olive groves they did not plant. Obviously God did not consider himself bound by such a principle.

based on a lack of risk and responsibility fails on its facts, namely that share ownership does involve risk and responsibility. For example, not long ago BP shareholders were nursing a fall in value of nearly half its share price, perhaps some £50 billion and had their expected dividend of \$10.5 billion suspended, with BP's chairman suffering a loss of £1.7 million personally on his shareholding because of the environmental damage the company was alleged to be responsible for⁸⁸.

The Biblical foundations for the principle that risk and reward must go together are surprisingly shaky. The origins of such arguments lie in the Scholastic interpretation of the usury prohibition, for example, Aquinas' view that it was acceptable for a person to entrust money to a merchant in partnership because dominion of the money remained his and was not transferred⁸⁹. Accordingly, it was lawful for a party to demand a profit-share because the profits arose from his own property. Other Biblical support suggested by Mills was the Biblical legitimacy of leasehold and hire contracts⁹⁰. The rationale, according to Mills, is that a borrower under a loan is transferred both the principal (i.e. the money) and the associated risks (presumably arising from its use), whereas in a leasehold or hire contract, ownership and risk remain with the owner⁹¹. Consequently, Mills argues a financial investment can only be justified where ownership and risk of loss are retained. These will be addressed in turn.

The justification for leasehold contracts is based on Lev. 25:14 – 16 and 29 – 31. The first passage requires the price for the sale of land prior to the Jubilee year to be based on the number of years left and is expressly justified on the basis that what is really being sold is the number of crops; the second is less obviously relevant, dealing with redemption of property in a walled city. Since harvests may fail, it is hard to see how this supports an argument that risk

⁸⁸ R. Fletcher et al., "BP oil spill: Largest shareholders cut stake as price falls" (Daily Telegraph, 14th June 2010); J. Quinn and R. Mason "Oil spill: BP suspends dividend to pay for \$20 bn clean-up fund" (Daily Telegraph, 17th June 2010); and R. Mason "Chairman's £1.7 m loss on BP shares" (Daily Telegraph, 12th June 2010).

⁸⁹ "Aquinas on Usury", from "Aquinas Ethicus: or, the Moral Teaching of St. Thomas. A Translation of the Principal Portions of the Second part of the Summa Theologica" (London: Burns and Oates, 1892), Question LXXVIII (Liberty Fund Inc), see http://oll.libertyfund.org/index.php?option=com_content&task=view&id=875&Itemid=282 [accessed 5/12/10]

⁹⁰ Mills, *op. cit.*, p. 206.

⁹¹ *Ibid.*

remained with the owner: in reality the tenant is paying for a specific number of years crops and if the harvest fails the tenant bears the risk of loss. The justification for hire contracts is based on Exodus 22:14-16 which addresses when restitution has to be made for the injury or death of a borrowed animal; where the hire has been paid for the hire fee is deemed to cover the loss, otherwise it depended on the owner's presence (and presumably control). Mills interprets this as the hire charges acting as compensation for the owner "as they retain the risk of the objects rented out". However, a more straightforward interpretation of the passage might be that it limited the borrower's liability to the hire fee rather than the value of the animal (which would usually be higher)⁹² and, in fact, ensured that the loss was *shared* between them, the owner losing out on the possible reversionary interest in the animal (which could have died anyway under his ownership by then) and the hirer losing out on the unexpired part of the hire period.

The underlying principle behind the usury prohibition must remain obscure and the attempts to support a link between risk and reward, by reference to other types of contract alluded to in the Bible, unconvincing. The most natural interpretation of it is the traditional view that lending should be an act of compassion and charity not a means to exploit the poor⁹³. But it might also be explained in conjunction with the Biblical restrictions on taking and enforcing security as a means of restraining reckless or excessive lending, since the availability of security reduces the incentives for prudent lending and therefore increases the likelihood of default and human misery. This characterised the position where companies operated under unlimited liability prior to 1855 where a shareholding operated in effect as a personal guarantee of such companies' debts, and all that those who lent to companies were said to be concerned with was the personal wealth of shareholders rather than the merits of

⁹² Furthermore, this limitation of liability applied regardless of whether or not the owner was present and therefore who was at fault.

⁹³ See, for example, "The New Bible Dictionary" (Leicester: Inter-Varsity Press, 1978), p. 304, that states simply that loans in Israel were charitable and not commercial and were intended to tide a farmer over a period of poverty. It is interesting that in Lev. 25:36 - 37 the prohibition on interest follows an instruction to look after any fellow-Israelite who becomes poor and is then repeated together with a command not to sell food at a profit, something which seems to have attracted much less comment.

the business⁹⁴. Mills correctly concludes that the prevalence of debt finance encouraged the creation of the limited liability company⁹⁵. This insight is fascinating if it shows that the limited liability company was a second-best solution to the breaching of the usury prohibition. Even if a link between risk and reward was Biblical, the question would remain as to exactly how much risk needed to be shared to satisfy such a principle. It could easily be argued that under unlimited liability shareholders would have borne an excessive risk because they would normally have been jointly and severally liable for all a company's debts, exposing them to a real and unpredictable risk of bankruptcy whereas employees, suppliers and others, in contrast, would have more control over their exposure, limited broadly to their contractual entitlements and, perhaps, any employer/ customer-specific investment. In conclusion, however, there is little support for a Biblical principle linking risk and reward so strongly that parties could not agree to contract otherwise.

3.5 The empty paradigm?

Once the core principles that might be associated with the ancient Israel family farm are analysed and seen to be flawed, it can be seen that this is, in fact, an empty paradigm devoid of any real normative content. It is especially significant that the most conspicuous flaw relates to the family nexus which simply conflicts with New Testament teaching. For any paradigm to be of value (either in a positive or normative sense) it must fully integrate New Testament theology, not least as the teachings of Christ himself must be seen in a sense as part of a continuum with Old Testament theology. The Old Testament Law had not given rise to an ideal society, hall-marked by social justice, as is often thought; instead it had given rise to a society characterised by many of the same flaws as today. Christ's approach to this was radical: the Old Testament Law could be summarised in two commandments (to love God and to love your neighbour as yourself); there were times when specific requirements of the Old Testament Law could be overridden (where people's needs were more important); happiness, a key element of the prosperity promised in the Old Testament, did not depend for example, on possessions; and, fundamentally the need for behavioural change so radical that it could be described as being "born again" was required, (rather than over-reliance on rules).

⁹⁴ S.F. Copp, "Limited Liability and Freedom", in S.F. Copp (ed.), "The Legal Foundations of Free Markets" (London: IEA, 2008), pp. 169 – 170.

⁹⁵ Mills, *op. cit.*, p. 211.

4 Biblical Arguments for the Limited Liability Company

4.1 Incorporation supports the biblical ideal of a prosperous and free society

The main purpose of the limited liability company is to provide an efficient mechanism for conducting economic or other activity and by doing so contribute to a more prosperous, i.e. wealthy, society⁹⁶. There can be little doubt that the company has succeeded in doing so, for example, the combined market capitalisation of the FT Global 500 companies was shown in 2010 to be \$23,503 billion⁹⁷. Its use is legitimised because most people prefer a prosperous society to a poor one. But is a prosperous society a good thing theologically? This is regrettably an uncomfortable subject for Christian theology because of misguided attempts to construct a “prosperity gospel” that seeks to link individual piety to prosperity (and occasionally vice versa). These are misguided since there are clear Biblical warnings against doing so⁹⁸ and because such a gospel would seem to have little to say about the responsibilities that individual prosperity entails. Despite this, the goal of a more prosperous society should be seen as consistent with Biblical theology. Israel was promised prosperity in the Old Testament (in strikingly materialistic terms), if it was obedient to God and the Law⁹⁹. Indeed, some measure of prosperity would be expected to follow from obedience to the Law since it provided for the rule of law, an impartial judiciary and the upholding of property rights, key elements in any successful economic system.

The Biblical view on prosperity differs, however, from an economic perspective in that an integral part of both the Old Testament Law and New Testament teaching is a concern for distributional issues, in effect that extremes of wealth and poverty should be mitigated, for example, by personal giving/ lending or the periodic writing off of debts. Wealth is invariably condemned where this balance has not been maintained. The question from a Biblical perspective is whether the company exacerbates distributional problems or alleviates them. A caricature of companies is that they generate wealth that benefits a few wealthy shareholders. In contrast, companies play a key role in reducing poverty, an issue with which Christian

⁹⁶ The reference to non-economic activity reflects that many charities and other non-profit bodies are also established as companies and therefore the company does not only contribute to wealth generation in the monetary sense.

⁹⁷ <http://www.ft.com/reports/ft500-2010> [accessed 5/12/10]

⁹⁸ See, for example, Job.

⁹⁹ Deut: 28 – 30.

theology has been overly concerned, to the exclusion of the causes of prosperity. Heslam has noted, “While attention is often drawn to the fact that nearly half the world’s population lives on less than US \$2 dollars per day, the question of what happened to the other half is rarely asked, even though the answer ... is vital to addressing poverty”¹⁰⁰. Those who are unemployed are twice as likely to experience persistent poverty¹⁰¹. Companies play a major role in tackling poverty: none of the top 50 companies measured in terms of employees on Fortune magazine’s Global 500 employs less than 250,000 people¹⁰² and in the UK some 40.6% of private sector employment is within large enterprises, probably all companies¹⁰³. Christian theology should, therefore, be more sympathetic to the company. If God’s will for mankind includes prosperity, then Christians should support innovation that contributes to prosperity unless there is very good reason not to.

The Biblical ideal, however, is not only a prosperous society but a free society, two concepts that intertwine. The importance of freedom in the Old Testament can be seen in how God rescued the Israelites from slavery in Egypt and in the New Testament when Jesus summed up his calling as being “... to proclaim freedom for the prisoners ... to release the oppressed”¹⁰⁴. Freedom is, however, difficult to define. In “The Constitution of Liberty”, Hayek explored – and rejected – ideas of political freedom, metaphysical freedom, freedom as omnipotence, power and wealth, in favour of freedom being where “coercion of some by others is reduced as much as possible ...”¹⁰⁵. Consistent with Hayek, in the Old Testament

¹⁰⁰ P.S. Heslam, “The role of business in the fight against poverty”, Chapter 10 in I.R. Harper and S. Gregg, “Christian Theology and Market Economics” (Cheltenham: Edward Elgar, 2008), p. 164.

¹⁰¹ Joseph Rowntree Foundation, “Poverty dynamics research in the UK” (June 2007), p. 3: see <http://www.jrf.org.uk/sites/files/jrf/2041.pdf> [accessed 5/12/10].

¹⁰² <http://money.cnn.com/magazines/fortune/global500/2010/performers/companies/biggest/>. [accessed 15/9/10].

¹⁰³ Department for Business, Innovation and Skills Statistical Press Release Corrected Version July 2010 identifies 59.4% of such employment as being with small and medium sized enterprises, again a very significant proportion of which are likely to be companies.

¹⁰⁴ Luke 4: 18.

¹⁰⁵ F.A. Hayek, “The Constitution of Liberty” (London: Routledge, 1960), Chapter 1. See also Hay “Economics Today”, op. cit., p. 87 who argues that different types of freedom need to be distinguished, regarding economic freedom as open to debate. But what does personal

debt conflicts with the ideal of freedom because it gives one person control over another¹⁰⁶. Accordingly, Israelites were warned against borrowing: “You will rule over many nations but none will rule over you”¹⁰⁷. The Israelites were promised blessings for obedience to the Law but curses for disobedience, one being that the Israelites would be forced to borrow from foreigners: “He will be the head, but you will be the tail”¹⁰⁸. A borrower was said to be a “servant to the lender”¹⁰⁹ though there is evidence that the practice of debtors (and their children) being enslaved was disapproved of¹¹⁰. However, in Biblical terms freedom, in the sense of liberty from unreasonable co-ercion is not an end in itself: as Gregg has argued, it is a means for achieving a higher freedom of self-mastery so as to choose morally good acts, “freedom for excellence”¹¹¹.

The Old Testament ideal appears to be a debt-free society, hence the seven-yearly requirement that Israelites cancel debts between themselves¹¹². The resulting moral hazard, namely that no-one would lend to the poor near the deadline for cancellation was condemned

freedom mean without economic freedom? As N. Barry put it: “Where would the right to free expression be without the right to own a printing press and publishing company?”, see “Economic Rights”, Chapter 6 in S.F. Copp (ed.), “The Legal Foundations of Free Markets”, *op. cit.*, p. 138.

¹⁰⁶ Debt is clearly not the only way in which the freedom at the heart of the Biblical vision can be lost. There are other types of (usually contractual) obligation that can have the same crippling effect. For example, common relationships such as employer and employee or landlord and tenant can be structured in such a way that people become subject to unreasonable degrees of coercion under the dominion of another.

¹⁰⁷ Deut. 15: 6.

¹⁰⁸ Deut. 28: 43 – 44. It is interesting to reflect on the impact of bail-outs on the true sovereignty of countries with a debt crisis.

¹⁰⁹ Prov. 22:7.

¹¹⁰ 2 Kings 4: 1 - 7, where the Prophet Elisha worked a miracle to protect a widow from this outcome; imprisonment is referred to in Matt. 18:21 – 25, but note the latter example occurred in a Parable, not a factual account.

¹¹¹ Gregg, “Catholicism and the case for limited government”, *op. cit.*, pp. 258 – 9, citing the Swiss theologian S. Pinckaers, “Les Sources de la morale chretienne” (Fribourg: Universite de Fribourg, 1993), p. 354.

¹¹² Deut. 15: 1 – 3.

as a “wicked thought”, the potential debtor could “appeal to the Lord against you, and you will be found guilty of sin”¹¹³. Furthermore, any Israelite who had sold himself to another had not only to be freed in the seventh year, but to be supplied liberally with livestock, grain and wine, in other words fully restored to the independence necessary to avoid becoming indebted again¹¹⁴. In the 50th year, the year of Jubilee, the Israelites were to: “consecrate the fiftieth year and *proclaim liberty* throughout the land”¹¹⁵, when property sold in the previous fifty years could generally be redeemed. If the Old Testament ideal was for a debt-free society then this has radical implications for the banking sector and related financial services (with which many of the problems associated with the limited liability company are associated). At one level, the limited liability company contributes to a debt-free society because much business debt is written off when repayment becomes impossible and because it encourages equity finance as an alternative to debt. However, as will be seen, its role goes further than this in encouraging freedom in the broadest sense of human flourishing and excellence.

4.2 Incorporation reflects the biblical ideal for relationships

One reason the company works, both for business and other purposes, is that a group of people can be recognised as an artificial person for legal purposes, so that the company can have its own identity (name/ brand), own its own assets and be responsible for its own liabilities, and continue in existence indefinitely separate from the people that comprise it. This has many important consequences, for example, it encourages skilled people to specialise in running companies, enables shares in companies to be bought and sold easily and for ownership to be more widespread. However, the company can only operate effectively as a separate person if the law recognises it as such, which means making it - and no one else - exclusively responsible for its debts and liabilities. The common law regarded limited liability (i.e. the doctrine that a shareholder has no liability to contribute to the debts of an insolvent company beyond the amount s/he has agreed to contribute by way of share capital) as an inseparable part of incorporation¹¹⁶. After some early confusion when statute

¹¹³ Deut. 15: 9.

¹¹⁴ Deut. 15: 12.

¹¹⁵ Lev. 25: 10.

¹¹⁶ B.C. Hunt, “The Development of the Business Corporation in England 1800 – 67” (Cambridge, Mass.: Harvard University Press, 1936), p. 41, citing *Elve v. Boyton* (1891) 1 Ch. 501 at 507.

required corporations to be registered but insisted on shareholders being liable for their debts¹¹⁷, the position was corrected by the *Limited Liability Act 1855* that provided for how existing and future companies could be registered with limited liability¹¹⁸. However, the recognition of a group of individuals as an artificial person has long been controversial, as Salmond put it: “Ten men do not become in fact one person because they associate themselves together for one end any more than two horses become one animal when they draw the same cart”¹¹⁹. Is there theological support for treating a group of people as a separate person?

The Church is vividly portrayed in the New Testament as Christ’s body¹²⁰. The context was the need to avoid damaging divisions in the Church between those with different charismatic gifts by emphasising their mutual interdependence. Yet in doing so it provides an ideal for cooperative human relationships and, therefore, business organisation. Key features of this ideal are the recognition of free will/ inclusiveness (choice replaces birth as the nexus between members), specialisation/ interdependence (each member provides different but important functions), complexity/ size (the body is a highly complex, not simple, organism) and central direction (the Holy Spirit). For these reasons, I reject the use of the Old Testament family farm as a paradigm, or model, for business organisation since it contradicts or discourages these features. From a theological perspective, the church as Christ’s body represents Christ to the world and the presence of the Holy Spirit transcends the individuality of its members: it can, therefore, be said to act as an artificial person. The company reflects aspects of this ideal, for example, shareholders, directors and employees all provide distinct but specialist functions and are interdependent on each other (so if shareholders do not effectively monitor their company it may fail resulting in losses, for example, to employees).

¹¹⁷ Ss. 2 and 25 *Joint Stock Companies Act 1844*.

¹¹⁸ And formed the basis for subsequent legislation. The policy factors that led Parliament to adopt limited liability have been considered by the author extensively elsewhere: many of them were strongly consistent with Christian principles, for example, the removal of disincentives to working class investment and avoiding the problems caused by discretionary government control and the influence of vested interests: Copp, “Limited Liability and Freedom”, op. cit., pp. 171 – 172 and 176 – 181.

¹¹⁹ “Jurisprudence” (1902 ed.), p. 350, cited by H.J. Laski, “The Personality of Associations” (1916) (4) *Harvard Law Review* 404 at 406.

¹²⁰ 1 Cor. 12: 12 - 13. See also Eph. 4: 16.

As Higginson has observed, the term “company”, is derived from the Latin “cum panis”, referring to a fellowship breaking bread together¹²¹.

4.3 The recognition of corporations is required to limit government

If the church is seen as an artificial person, what is its position in relation to the state? And what should be the position of other groups, such as the company, by analogy? Jesus appears to have assumed, as did the Jewish prophets before him, that state power was limited and could be questioned by reference to a higher authority, as when he responded to the Pharisees that they should “Give to Caesar what is Caesar’s, and to God what is God’s”¹²². In terms of the Church, Gregg put it nicely in these terms¹²³:

“The ... Catholic Church’s own self-understanding ... means that it cannot accept a state that purports to have no theoretical or practical limits ... whether the absolutist claims are made by an eighteenth-century monarch, a nineteenth-century Jacobin, a twentieth-century Bolshevik or a 21st-century radical secularist”.

Accordingly, it was expected that the church should be self-governing¹²⁴. The Roman Catholic doctrine of subsidiarity goes further in expecting higher authorities, such as the state, to intervene in lower authorities only to a limited degree to assist and coordinate their activities¹²⁵. Fukuyama has argued in similar fashion:

“A liberal state is ultimately a limited state, with government activity strictly bounded by a sphere of individual liberty ... it must be capable of self-government at levels of social organisation below the state ... If [individuals] ... cannot cohere for common

¹²¹ Higginson, *op. cit.*, p. 51.

¹²² Matt 22:21; Luke 20: 22 - 26; Romans 13: 1 – 6.

¹²³ S. Gregg, “Catholicism and the case for limited government” in P. Booth (ed.), “Catholic Social Teaching and the Market Economy” (London: Institute of Economic Affairs, 2007), p. 257.

¹²⁴ See 1 Cor. 6 (lawsuits among believers); Acts 6.1 - 6 (poor relief in the church); Acts 15 (doctrinal matters decided by the Jerusalem council).

¹²⁵ Gregg, “Catholicism and the case for limited government”, *op. cit.*, p. 264.

purposes, then they will need an intrusive state to provide the organisation they cannot provide themselves”¹²⁶.

The purpose of conferring such autonomy on people, according to Gregg, is so that they can freely exercise their own moral choices and flourish¹²⁷. The idea of human flourishing is often more associated with voluntary associations, such as charities, clubs and the like but should be extended to business, for example, a scientist working for a drugs company developing anti-cancer drugs may legitimately regard that as where they flourish. As Gregg comments, “commercial society has contributed to a healthy limiting of the State’s ability to unreasonably obstruct our capacity to make free choices” and “absolutism ... lasted the longest in those societies where private commercial activity was limited”¹²⁸. In principle, therefore, the state should respect the autonomy of all groups within society, including those concerned with business; for otherwise we would be faced with what Laski has termed the “all-absorptive state”¹²⁹. The idea that people find their true expression in relationships with others and therefore require freedom of association is long-standing¹³⁰ and can be seen reflected in natural law¹³¹. To the reformers responsible for the introduction of limited liability companies in England this was seen as a triumph for a “right of unlimited association”, seen in terms of “human liberty – that people may be permitted to deal how, with whom they choose, without the officious interference of the state”¹³².

The role of the company in contributing to limited government is significant on a number of levels. Firstly, attempts by people to organise themselves are fragile and fraught with risk. For example, unless the affairs of the organisation are separated from its members, people will be reluctant to become members because of the risk of their personal assets being

¹²⁶ F. Fukuyama, “Trust” (London: Hamish Hamilton, 1995), pp. 357 – 358.

¹²⁷ Gregg, “Catholicism and the case for limited government”, op. cit., pp. 264 – 265.

¹²⁸ S. Gregg, “On Ordered Liberty” (Lanham: Lexington Books, 2003), p. 97.

¹²⁹ Laski, op. cit., p. 407.

¹³⁰ See, for example, Laski, op. cit., p. 404.

¹³¹ The idea of freedom of association has been linked to the religious tradition in the West, with the independence of the Hebraic prophets and the early Church: see D. Sturm, “Natural Law, Liberal Religion and Freedom of Association” (1992) 20(1) *Journal of Religious Ethics* 179 at 198.

¹³² Robert Lowe, Hansard HC, vol. 140, cols 129 – 31 (1 February 1856).

exposed to claims that need bear no relation to the extent of their involvement. The company can overcome such problems. Booth argues from a Christian perspective that the role of government is two-fold: to protect individuals, families and communities from harm and to provide the legal framework that allows people to plan their economic and social life¹³³. The provision of an effective corporate structure can therefore be a legitimate responsibility of government. Second, the mechanism provided by the company is not restricted to business activity and makes a much more significant contribution to civic society than is often appreciated. A significant number of organisations of a charitable or social nature are established as companies limited by guarantee. Even Christian based organisations do not shy away from using the limited company in practice. Notably Traidcraft, established in 1979 as a Christian response to poverty, is now a public limited company¹³⁴. Third, the governance of companies can be seen to have encouraged the virtues required for limited government to be effective. Whilst now weakened by modern statutory intrusions, traditionally the judiciary placed very high weight on the principle of majority rule and non-interference with the management of companies in decisions such as *Foss v. Harbottle*¹³⁵.

4.4 Limited liability enables risk to be addressed, consistent with biblical prudence

Questions of uncertainty, risk and liability are timeless and are addressed both in the Old Testament Law and in Jesus' Parables in the New Testament. Entrepreneurial risk-taking and prudence were both commended (the examples of a merchant who sold everything to gain a particular pearl and a person building a tower¹³⁶) but it was inactivity that was condemned (the Parable of the Talents, Matt. 25:14-30). Complex activity, whether in a business or non-business context, poses a dilemma if the legal framework discourages entrepreneurial behaviour by imposing unpredictable and unquantifiable risks that cannot prudently be anticipated. If a group of people are not recognised as a separate legal person then not only the company's assets but the personal assets of the shareholders may have to be used to pay the company's debts. However, the general partnership principle under which partners are jointly and severally liable for a partnership's debts was applied to early companies and

¹³³ P. Booth, "Introduction" in P. Booth (ed.), "Catholic Social Teaching and the Market Economy", op. cit., p. 32.

¹³⁴ <http://www.traidcraft.co.uk/> [accessed 5/12/10].

¹³⁵ (1843) 2 Hare 461.

¹³⁶ Matt. 13: 45 – 46; Luke 14: 28 – 30.

exacerbated the problem since it potentially made each shareholder liable for the whole of the company's debts. Since liability consequently depended on other shareholders' wealth, the prudent had no way of knowing or planning for their potential exposure¹³⁷. This exceeded any normal understanding of personal responsibility in the Bible since it forced all shareholders to be liable for the share of debts that should properly have been the responsibility of others. The risks were increased further by harsh bankruptcy laws. Stephen writing between 1841 and 1845 referred to how "the debtor might be left to languish, for an indefinite period of time, in hopeless confinement", when imprisoned for debt¹³⁸. The likely result – inactivity by groups of people who react prudently to legal risks – seems inconsistent with New Testament teaching. Are there any alternatives that could reconcile the need for entrepreneurial risk-taking and prudence?

The most obvious solution is for people to agree upon how risks should be borne so that the party most able to quantify and bear a risk does so. Quite a lot can be done legally to achieve this. Any business, whether a sole trader, partnership or company (or for that matter non-business organisations) can, in principle, place a term in its contracts seeking to exclude or limit liability, for example, to a specified sum¹³⁹. Most organisations in fact use such clauses (including many Christian organisations) in their standard terms and conditions. But it is possible to go further and in effect try to create a limited liability company outside of statute by putting into all contracts a clause that liability under the contract will be limited to the assets of the company and not the individual members. An attempt to do so was successfully upheld in the English courts prior to the introduction of the limited liability company by statute¹⁴⁰, even though MPs were made aware of these practices¹⁴¹. There is

¹³⁷ In 1855 Bouverie argued for limited liability in Parliament specifically because unlimited liability deterred 'men of prudence and capital', who were most likely to make a success of a company, from investing: Hansard HC, vol. 139, col. 321 (29 June 1855).

¹³⁸ H.J. Stephen, "Stephen's Commentaries on the Laws of England" (London: Henry Butterworth, 1841 – 1845), Vol. 2, p. 214.

¹³⁹ Subject to legal regulation, see, for example, E. McKendrick, "Contract Law: Text, Cases and Materials" (Oxford: Oxford University Press, 2010), Chapters 9, 13 and 14.

¹⁴⁰ *Hallett v. Dowdall* (1852) 21 L.J.Q.B. 98; 18 Q.B. 2; 19 L.T. (o.s) 300; 16 Jur. 462; 118 E.R. 1, where an insurance company placed a clause in all its policies of insurance that: "the capital stock and funds of the said Company shall alone be liable to answer and make good all claims and demands whatsoever under or by virtue of this policy". This was upheld by the

evidence in the Bible for contractual type practices. For example, a vivid description of the detailed procedures used by Jeremiah to buy a field included a reference to “the sealed copy of a deed containing the *terms and conditions*, as well as the unsealed copy”¹⁴². The reference to “terms and conditions” indicates that such drafting was not unusual and therefore could have been adopted in commercial contexts too. So, is there any theological argument against prudently agreeing that one party’s liability should be limited?

There is little in the Old Testament that would directly restrict modern ideas of contractual freedom. It required standards of integrity in matters of process but interfered little with the actual content of what people could agree upon. Accordingly, there were strong rules on lying, deceiving and the use of dishonest standards for measurement¹⁴³, but only a few business activities were ruled out, such as prostitution, or heavily regulated, such as real property and money-lending¹⁴⁴. Any restriction, therefore, has to be implicit rather than explicit in the Old Testament. The most prominent candidate would be the argument that there is a general principle that risk and reward must go together and not be split, a principle which is important to Schluter’s critique of the limited liability company¹⁴⁵, though surprising because equity investment is often commended for satisfying this principle, in contrast to debt¹⁴⁶. However, it has been seen in Part I of this article that there is little support for a Biblical principle linking risk and reward so strongly that parties could not agree to contract otherwise.

court because there was no reason why the parties should not agree to this if they wished. An attempt to place such a limitation in the company’s constitution – its deed of settlement – was unsuccessful in *Re Sea, Fire and Life Assurance Company* (1854) 3 De G. M. & G. 459; 2 Eq. Rep. 260; 23 L.J. Ch. 966; 22 L.T. (O.S.) 338; 18 Jur. 387; 2 W.R. 322; 43 E.R. 180.

¹⁴¹ Copp, “Limited Liability and Freedom”, *op. cit.*, pp. 164 – 166.

¹⁴² Jer. 32: 9 – 12. Terms and conditions were inserted notwithstanding that it was God who had commanded Jeremiah to make the purchase, an interesting application of prudence!

¹⁴³ Lev. 19: 11 (lying and deceiving); Lev. 19:35 and Deut. 25: 13-16 (measurement).

¹⁴⁴ See further Maughan, and Copp, “Economic Efficiency, The Role of Law and the Old Testament”, *op. cit.*, 249 at 288 - 297.

¹⁴⁵ Schluter, “Risk, reward and responsibility: limited liability and company reform”, p. 4.

¹⁴⁶ See, for example, Mills, “Finance” in M. Schluter & J. Ashcroft, “Jubilee Manifesto”, *op. cit.*, p. 205.

Nonetheless, there are important differences between statutory limited liability and what can be achieved by contract. In particular, statutory limited liability generally can act as a shield for shareholders not only against contractual claims but also against liability for the company's torts, i.e. for its negligence. How important this is in practice is difficult to determine. Most companies carry insurance against third party liability and companies have an incentive to do so because those most heavily affected by any such loss will be those whose incomes depend on the company, i.e. including its directors. There has been an extensive debate in academic legal circles over the economics and morality of this, which it is not proposed to repeat here¹⁴⁷. From a Biblical perspective the following observations may be helpful. First, if the relevant Biblical principle is personal responsibility it is unclear why *shareholders* should be made personally responsible for torts committed by a company rather than its *directors* who manage its business – or for that matter the individuals who *actually* committed the tort in question. Second, in the most serious cases of negligence, those that led to death, where the penalty would have also been death, the Old Testament instead prescribed that there should be cities of refuge - in effect limiting a person's liability for negligence. Third, if state intervention by way of limited liability results in loss to innocent third parties, then it would be as logical for the state to compensate those affected, since presumably the state benefits from encouraging limited liability companies through receipt of higher tax revenues (though state compensation would lead to a moral hazard for directors).

4.5 Non-payment of debt is not necessarily sinful

Perhaps the most important criticism of the limited liability company (and probably that which most directly relates to the company structure itself rather than secondary attributes such as company size), is that the company enables businesspeople to walk away from “their” debts. But why should this invariably be sinful? Schluter has argued for a Biblical principle that “all debts must be paid”, based on: (1) explicit support from Psalm 37:21, in effect that non-payment of debt is always sinful; (2) implicit support through the legitimacy of contract; (3) implicit support through the use of debt as a picture of sin¹⁴⁸. The use of such “principles”, derived, from the Bible, has been seen in Part I of this article to pose serious issues of methodology. The conclusion reached was that even if there could be said to be a Biblical

¹⁴⁷ See, for example, B.R. Cheffins, *op. cit.*, pp. 506 – 508.

¹⁴⁸ Schluter, “Risk, reward and responsibility: limited liability and company reform”, *op. cit.*, p. 3.

principle that all debts must be paid, this principle must yield to other more important principles, for example, the protection of life and liberty, and be susceptible to exceptions, if applied as a rule.

Is there an explicit obligation to pay debts created in Psalm 37:21: “The wicked borrow and do not repay”? The seeming absence of such a direct statement from the detailed Old Testament Law and reliance on a Psalm seems a weak foundation for legal and economic policy. This particular Psalm is a reflection on the fate of evil men and describes the actions of the “wicked” in various ways, for example, those who use arms to bring down the poor and needy¹⁴⁹. The most natural interpretation of this verse would be no more than that deliberate non-payment of debts is sinful, for example, Henry commented that “It is a great sin *for those that are able* to deny the payment of just debts, so it is a great misery not to be able to pay them”¹⁵⁰. In other words, non-payment of debts is simply being described as an example of the behaviour of those who are sinful, rather than sinful *per se*. This also fits with the context, i.e. the oppression of the poor, since non-payment of debt by the poor to the wealthy would hardly be a cause for such a lament.

Is the principle that all debts must be paid implicit in all forms of contract: does contract somehow legitimise debt? The traditional justification for enforcing contracts in English law is the importance of the bargain, an agreement consisting typically of freely made mutual promises¹⁵¹. Personal responsibility for debt in Biblical terms has to be founded on

¹⁴⁹ Ps. 37: 14.

¹⁵⁰ Matthew Henry’s Concise Commentary (original edn 1706), see <http://www.biblestudytools.com/commentaries/matthew-henry-complete/> (my emphasis) [accessed 5/12/10]. Henry notes how some interpret the verse not as an example of wickedness but of how the wicked have been reduced to misery, poverty and the mercy of their creditors by God’s just judgement. In the New Testament, the obligation to settle debts is included shortly after the obligation to pay taxes and revenue (seemingly in an eschatological sense, because the day of salvation was near): Rom. 13: 6 – 8., implying perhaps that Christians should avoid entangling commitments.

¹⁵¹ Care must be taken not to force Old Testament concepts into modern notions of law (as opposed to issues of conscience); categories of law (such as crime or tort); or to make assumptions where there are gaps (for example, in areas such as contracts, damage, process and sanctions), see C.W. Maughan, and S.F. Copp, “Economic Efficiency, The Role of Law and the Old Testament”, *op. cit.*, 249 at 276 – 282.

agreement, in effect, a promise that money advanced will be repaid. Otherwise, the transfer of money would be a gift. Keeping promises matters from a Biblical perspective because God's relationship with man is defined in terms of a covenant(s) with mankind, i.e. a formal agreement consisting of the exchange of promises¹⁵². There are, however, objections to using this to justify a general principle requiring the payment of debts. First, there can be legitimate circumstances where promises should not or cannot be met¹⁵³. Second, anyone entering into a contract with a company that has limited liability enters into it with full knowledge that the company alone will be liable for any loss and no other party, so this does not breach any contract. To give an everyday example, when I order a computer from a large retailer such as Tesco, I neither know nor have any interest in whom its shareholders might be, I buy solely on the reputation of the company as an artificial person.

Is debt a picture of sin, as in the Lord's Prayer, and if so what significance does this have? There are two apparent purposes to the analogy. First, it compares the sense of obligation of a debtor to a creditor: in the same way as a creditor could demand a debtor's possessions and person so God has rights over mankind for his sins. Second, rather than demanding that all debts be paid, it asks the opposite, that we forgive debts due to us if we want forgiveness of our greater debt to God¹⁵⁴. A link is made in the Bible between debt and sin; it is that sin can lead to poverty, poverty to debt and debt to subjugation¹⁵⁵. However, the Bible is equally clear that poverty does not necessarily result from sin, similarly that disease

¹⁵² See, for example, Ex. 24: 7 – 8; Aquinas saw making a contract with no intention of adhering to its terms as a form of lying, cited in S. Gregg, "Natural Law, Scholasticism and Free Markets", Chapter 3 in Copp (ed.), "The Legal Foundations of Free Markets", op. cit., p.72.

¹⁵³For example, Herod felt obliged to have John the Baptist beheaded in part because of his promise on oath to Herodias' daughter : Matt. 14: 9 – 10. See also C. Eade who comments in "Promises, promises" (2007) 16(4) *Cambridge Papers*, "God chooses to continue in relationship with those who trust him, despite their inability to keep their promises ... We cannot sincerely advocate better promise-keeping if we do not recognise our need for mercy for all our broken promises, and extend that mercy to others for theirs."

¹⁵⁴ Matt. 6: 9 – 15. Otherwise, perhaps the Lord's Prayer should have been worded "Lord, we promise to pay our debt to you in full as we expect others to pay their debt to us in full."

¹⁵⁵ See, for example, Deut. 28 generally and in particular vs. 15, 20, 44 and 47.

does not necessarily result from sin¹⁵⁶. More fundamentally there are many circumstances in which people can find themselves in debt without any moral blame; it would be inconsistent with the Biblical emphasis on personal responsibility to regard people as committing sin simply by being in debt and therefore this interpretation of the Lord's Prayer is rejected.

Limited liability has been interpreted as breaking one's personal responsibilities, for example shortly after the 1855 legislation permitted limited liability, McCulloch commented¹⁵⁷:

“In the scheme laid down by Providence ... there is no shifting or narrowing of responsibilities, every man being personally answerable for all his actions. But the advocates of limited responsibility proclaim in their superior wisdom that the scheme of Providence may be advantageously modified, and that debts and obligations may be contracted which the debtors *though they have the means*, shall not be bound to discharge.”

This generalised idea of personal responsibility potentially provides greater support for requiring all debts to be paid. The idea that individuals are personally responsible for their actions can be traced in Biblical terms to the creation of man in the image of God and to the final judgement¹⁵⁸. In the Biblical view, man not only possesses the ability to order his choices, as rationality is understood in economics, but also the ability to comprehend their moral consequences, even if with Paul and Augustine, it would be acknowledged that man has a bias towards sin¹⁵⁹. The arguments above raise the question as to the link between personal responsibility and sin, what lawyers might refer to as *mens rea* or the need for guilty intent. Should deliberate and non-deliberate failure to pay debts be distinguished? What of other grades of fault, such as recklessness, negligence and so on? Non-payment of debts procured by extortion does not appear regarded as sinful: in Habakkuk 2:7, it is promised that those who became wealthy by extortion will see their debtors rise up against them as part of God's judgement.

¹⁵⁶ See, for example, Job 1: 8 – 12; Luke 13:10 – 17.

¹⁵⁷ B.C. Hunt, *op. cit.*, p. 117, citing “Partnerships, Limited and Unlimited Liability”, *Encyclopaedia Britannica*, 8th edn. (1859), XVII, p. 321 (author's emphasis).

¹⁵⁸ See, for example, Gen. 1: 26 – 27 and Romans 12 – 16.

¹⁵⁹ See A.E. McGrath, “Christian Theology An Introduction” (Oxford: Blackwell, 2001), pp. 440 – 445.

The Old Testament appears to have recognised the need to limit liability for the consequences of actions in various ways. The *lex talionis* limited retribution to an eye for an eye¹⁶⁰, when in tribal societies blood feuds are not uncommon. Towns were designated cities of refuge so that those who had killed someone accidentally could hide before standing trial¹⁶¹. Charging interest to fellow Israelites was forbidden¹⁶², limiting the extent of a debtors' obligation. Creditors were restricted in the action they could take against a debtor, for example, a cloak, the means of protecting a person's life or health, could not be retained overnight and a millstone could not be taken away, because this would take away their livelihood¹⁶³. Debts owed by Israelites had to be cancelled every seven years¹⁶⁴, a temporal limitation conceptually indistinguishable from a quantitative limitation of liability based on the value of a company's common stock. Indeed, the seven yearly debt write-off was much more onerous for creditors than limited liability, since limited liability only makes a difference if a company becomes insolvent and many survive longer than seven years. In the New Testament, Christ distinguished moral culpability for different types of failure, for example, between natural disasters for which neither God nor man was responsible and the failure to complete a building through failing to budget appropriately¹⁶⁵.

In any event, setting up a limited liability company does not necessarily reduce personal responsibility as much as might be thought, i.e. as enabling those who incorporate a limited liability company to walk free of its debts on insolvency. In practice, markets are not

¹⁶⁰ See Ex. 21: 23 – 24, where it applied to cases of serious injury, and Deut. 19: 21, where it applied in the context of giving false testimony.

¹⁶¹ Num. 35: 10 – 15; Josh. 20: 1 – 9.

¹⁶² Ex. 22: 25. Interest rates in the Ancient Near East were quite high compared with modern society, for example, the Laws of Eshnunna and Hammurabi stipulate 20% for loans of money and 33.33% on loans of grain, see D.L. Baker, "Safekeeping, Borrowing and Rental" (2006) 31(1) *Journal for the Study of the Old Testament* 27 at 38.

¹⁶³ Ex. 22: 26 – 27; Deut. 24: 12 – 13; Deut. 24: 6.

¹⁶⁴ Deut. 15:1-3. The moral hazard this gives rise to was recognised and failure to lend close to the end of the period was regarded as especially sinful: Deut. 15: 9 – 10. It seems that this was not consistently observed in Old Testament times, with actual observance only recorded after the Exile, see Baker, *op. cit.*, 47.

¹⁶⁵ See Luke 13: 4 (deaths of 18 people from collapse of tower); Luke 14: 28 – 30 (failure leads to ridicule).

kind to new companies, which may face rigorous credit checks, requirements for directors' personal guarantees and more. The law too has weakened the effects of limited liability. First, the courts are prepared to strip away the benefits of limited liability in limited circumstances, for example, where a company is a facade or sham¹⁶⁶. Second, the law contains many provisions to protect creditors that can be used to impose liability on directors who, for example, engage in fraudulent or wrongful trading¹⁶⁷. Third, directors who, for example, are responsible for several "Phoenix" companies that fail, can be disqualified from so acting¹⁶⁸. Whilst a purist might respond that provisions impacting on directors do not amount to an exception to the principle of limited liability, because they affect directors not shareholders, in many companies the shareholders and directors are the same individuals. The balance set by the law at any given moment may be seen as inadequate, especially as in the real-world the courts have to balance conflicting objectives, such as the need to encourage entrepreneurship and promote certainty in business dealings on the one hand, whilst addressing wrong-doing on the other. The solution for this, however, should be more effective engagement with the law reform process rather than rejection of the company concept.

5 Conclusions

The Biblical ideal is for a prosperous and free society, which the limited liability company supports, for example, by reducing poverty (through employment) and coercion (that can result from debt). The Biblical ideal for relationships was seen in the image of the Church as a corporate body: since the body represents a highly complex organism, the case for business organisation being necessarily small and simple was rejected. The limited liability company was seen as providing the practical means, not only by which such a body could be created and operate effectively, but also by which absolute state power - something rejected by Biblical theology - could be limited. By enabling risk to be prudentially addressed, the limited liability company encourages the entrepreneurial risk-taking commended in Biblical theology, with non-payment of debt shown not to be invariably sinful. There will always be a tension between Law and Grace in developing practical rules for socio-economic life but the limited liability company goes some way towards reconciling these where debt is concerned.

¹⁶⁶ See, for example, P.L. Davies, "Gower and Davies Principles of Modern Company Law" (London: Sweet & Maxwell, 2008), Chapter 8.

¹⁶⁷ *Ibid.*, Chapter 9.

¹⁶⁸ *Ibid.*, Chapter 10.