

A Theology of Incorporation with Limited Liability

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Those involved in business have long sought to limit their liability, either in specific contracts or, generally, for the risks they face. The widespread availability of general limited liability for corporations across the world since the early nineteenth century is thought to have contributed to the enormous economic growth over that period. The limited liability company is, however, often blamed for the adverse consequences of this growth, not least in Christian theology where limited liability is thought by some to be contrary to biblical principles. This article seeks to demonstrate that the limited liability company is not only consistent with biblical theology in encouraging prosperity and freedom under limited government, specialization with interdependence in business relationships, and broader human flourishing but also reflects the character of God in reconciling ideas of law and grace.

Introduction

The limited liability company has been a major progressive force for more than 150 years.¹ 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 overpowerful government. Despite this, Christian writers in the United Kingdom 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 Center 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 Additionally, Donald Hay, a Christian economist, has argued that there are “ethical grounds for objecting to the formal structure of the joint-stock company,” specifically criticizing 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 responsibility.⁶ 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 1870s and 1880s so as to bring employees into part-ownership.⁷ Even *The Times* reversed its opinion on limited liability, inquiring:⁸ “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? This article sets a theological defense of the limited liability company based on the following reasons:

1. Incorporation supports the biblical ideal of a prosperous and free society.
2. Incorporation reflects the biblical ideal for relationships.
3. The recognition of corporations is required to limit government.
4. Limited liability enables risk to be addressed, consistent with biblical prudence.
5. Nonpayment of debt is not necessarily sinful.

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 used,⁹ 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 banking.¹⁰ Some recent writers approach such issues by trying to derive “principles” from the Bible to evaluate contemporary issues, by the use of a biblical “paradigm” to act as a comparison with contemporary practice, or by a combination of both. We will address these issues briefly where they arise.

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) society.¹¹ There can be little doubt that the company has succeeded in doing so. For example, the combined market capitalization of the FT Global 500 companies was shown in 2010 to be \$23,503 billion.¹² Its use is legitimized because most people prefer a prosperous society to a poor one. However, 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 because there are clear biblical warnings against doing so¹³ 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 Law.¹⁴ Indeed, some measure of prosperity would be expected to follow from obedience to the Law because it provided for the rule of law, an impartial judiciary and the upholding of property rights, which are 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, extremes of wealth and poverty should be mitigated, for example, by personal giving and/or 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 theology has been overly concerned, to the exclusion of the causes of prosperity. Heslam has noted that “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.”¹⁵ Those who are unemployed are twice as likely to experience persistent poverty.¹⁶ Companies play a major role in tackling poverty: none of the top fifty companies measured in terms of employees on *Fortune* magazine’s Global 500 employs less than 250,000 people,¹⁷ and in the United Kingdom some 40.6 percent of private sector employment is within large enterprises, probably all companies.¹⁸ In a sense, it is unimportant whether or not this was Parliament’s intention in 1855; however, there is evidence that some MPs at least saw the potential of the limited liability company to help the working classes even if others disagreed.¹⁹ 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 also 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.”²⁰ Freedom is, however, difficult to define. In *The Constitution of Liberty*, Hayek explored and rejected ideas of political freedom; metaphysical freedom; and freedom as omnipotence, power, and wealth in favor of freedom being where “coercion of some by others is reduced as much as possible.”²¹ Consistent with Hayek, in the Old Testament debt conflicts with the ideal of freedom because it gives one person control over another.²² Accordingly, Israelites were warned against borrowing: “You will rule over many nations but none will rule over you.”²³ 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.”²⁴ A borrower was said to be a “servant to the lender,”²⁵ though there is evidence that the practice of debtors (and their children) being enslaved was disapproved of.²⁶ However, in biblical terms, freedom, in the sense of liberty from unreasonable coercion, 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.”²⁷

The Old Testament ideal appears to be a debt-free society; hence, the seven-yearly requirement that Israelites cancel debts among themselves.²⁸ The resulting moral hazard, namely, that no one would lend to the poor near the deadline for cancellation was condemned as a “wicked thought”; the potential debtor could “appeal to the Lord against you, and you will be found guilty of sin.”²⁹ Furthermore, any Israelite who sold himself to another had not only to be freed

in the seventh year but also to be supplied liberally with livestock, grain, and wine—in other words, fully restored to the independence necessary to avoid becoming indebted again.³⁰ In the fiftieth year, the year of Jubilee, the Israelites were to “consecrate the fiftieth year and *proclaim liberty* throughout the land,”³¹ 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 and related financial services sector (with which many of the problems associated with the limited liability company are connected). 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.

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 recognized as an artificial person for legal purposes, so 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 specialize in running companies, enables shares in companies to be bought and sold easily, and allows ownership to be more widespread. However, the company can only operate effectively as a separate person if the law recognizes 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 she or he has agreed to contribute by way of share capital) as an inseparable part of incorporation.³² After some early confusion when statute required corporations to be registered but insisted on shareholders being liable for their debts,³³ the position was corrected by the *Limited Liability Act 1855* that provided for how existing and future companies could be registered with limited liability.³⁴ 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.”³⁵ 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 body.³⁶ The context was the need to avoid damaging divisions in the church between those with different charismatic gifts by emphasizing their mutual interdependence. Yet, in doing so, it provides an ideal for cooperative human relationships and, therefore, business organization. Key features of this ideal are the recognition of free will and/or inclusiveness (choice replaces birth as the nexus between members), specialization and/or interdependence (each member provides different but important functions), complexity and/or 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 organization because it contradicts or discourages these features.³⁷ 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 specialized 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). As Higginson has observed, the term *company*, is derived from the Latin *cum panis*, referring to a fellowship breaking bread together.³⁸

The Recognition of Corporations Is Required to Limit Government

If the church is seen as an artificial person, what is its position in relationship to the state? 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."³⁹ In terms of the Catholic Church, Gregg put it nicely:

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.⁴⁰

Accordingly, it was expected that the church should be self-governing.⁴¹ 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 activities.⁴² 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 organization below the state.... If [individuals] ... cannot cohere for common purposes, then they will need an intrusive state to provide the organization they cannot provide themselves.⁴³

The purpose of conferring such autonomy on people, according to Gregg, is so that they can freely exercise their own moral choices and flourish.⁴⁴ 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 that is developing anticancer 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.”⁴⁵ 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.”⁴⁶ The idea that people find their true expression in relationships with others and therefore require freedom of association is long-standing⁴⁷ and can be seen reflected in natural law.⁴⁸ To the reformers who were 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.”⁴⁹

The role of the company in contributing to limited government is significant on a number of levels. First, attempts by people to organize themselves are fragile and fraught with risk. For example, unless the affairs of the organization are separated from its members, people will be reluctant to become members because of the risk of their personal assets being 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 twofold: to protect individuals, families, and communities from harm and to provide the legal framework that allows people to plan their economic and social life.⁵⁰ 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 organizations of a charitable or social nature are established as companies limited by guarantee. Even Christian-based organizations do not shy away from using the limited company in practice. Notably Traidcraft, established in 1979 as a Christian response to poverty, is a public limited company.⁵¹ Third, the governance of companies can be seen to have encouraged the virtues required for limited government to be effective. While now weakened by modern statutory intrusions, traditionally the judiciary placed very high weight on the principle of majority rule and noninterference with the management of companies in decisions such as *Foss v. Harbottle*.⁵²

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 tower),⁵³ but it was inactivity that was condemned (the Parable of the Talents).⁵⁴ Complex activity, whether in a business or nonbusiness context, poses a dilemma if the legal framework discourages entrepreneurial behavior by imposing unpredictable and unquantifiable risks that cannot prudently be anticipated. If a group of people are not recognized 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 exacerbated the problem because it potentially made each shareholder liable for the whole of the company's debts. Because liability consequently depended on other shareholders' wealth, the prudent had no way of knowing or planning for their potential exposure.⁵⁵ This exceeded any normal understanding of personal responsibility in the Bible as 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 debt.⁵⁶ 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 on how risks should be born 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 organizations), can in principle place a term in its contracts seeking to exclude or limit liability, for example, to a specified sum.⁵⁷ Most organizations in fact use such clauses (including many Christian organizations) in their standard terms and conditions. However, 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 statute,⁵⁸ even though MPs were made aware of these practices.⁵⁹ There is 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.”⁶⁰ The reference to terms and conditions indicates that such drafting was not unusual and, therefore, could have been adopted in commercial contexts too. Thus, 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 measurement,⁶¹ but only a few business activities were ruled out, such as prostitution, or heavily regulated, such as real property and money-lending.⁶² 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. This principle is important to Schluter’s critique of the limited liability company⁶³ though this is surprising because equity investment is often commended for satisfying this principle, in contrast to debt.⁶⁴ 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 transferred.⁶⁵ Accordingly, it was lawful for a party to demand a profit-share because the profits arose from his own property. Other biblical support is suggested by Mills

to be the biblical legitimacy of leasehold and hire contracts.⁶⁶ However, these are unsatisfactory. For example, Leviticus 25:14, cited in support of leasehold contracts, 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. Because harvests may fail, it is hard to see how this supports an argument that risk 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 underlying principle behind the usury prohibition must remain obscure. 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 poor.⁶⁷ 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, because the availability of security reduces the incentives for prudent lending and therefore increases the likelihood of default and human misery. This characterized 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 the business.⁶⁸ Mills correctly concludes that the prevalence of debt finance encouraged the creation of the limited liability company.⁶⁹ This insight is fascinating if it shows that the limited liability company was a second-best solution to the breaching of the usury prohibition. 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.

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, that is, 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, that is, 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 here.⁷⁰ 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 refuge⁷¹—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 because, 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).

Nonpayment 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. However, 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 nonpayment 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 sin.⁷²

The use of “principles” derived from the Bible, for example, requiring all debts to be paid, poses serious issues of methodology.⁷³ Such principles, in the sense of short, high-level abstract statements, appear very rarely used in the Bible itself to communicate concepts. Where socioeconomic life was concerned, it was governed by detailed rules; where theological truths or moral principles were concerned, allegories, historicism, case studies, real and hypothetical, and even poetry and songs were all used. 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 as the foundation for belief or action,” alternatively “morally correct behavior and attitudes.” A rule is defined as “a regulation or principle governing conduct.” As can be seen, a rule is simply a particular example of a principle. Schluter’s “principle” that “[a]ll debts must be paid”⁷⁴ from a lawyer’s perspective appears to have the characteristics of both a principle and a rule, because it can be applied to determine particular outcomes.⁷⁵ However, if applied as a rule with no qualifications, it could contradict the biblical commandment to love one’s neighbor because there must be circumstances where a good neighbor would not insist on payment of a debt.⁷⁶ The inevitability of such conflicts has been recognized 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 principles.⁷⁷ Twining and Miers

similarly observe that a rule represents a compromise between conflicting values⁷⁸ (a term that differs little in meaning from a principle). However, there has been a reluctance to acknowledge this by Christian writers.⁷⁹ Wright helpfully identifies a similar problem with Old Testament Law: not all laws were of equal importance in terms of their moral values.⁸⁰ The pecking order that Wright develops starts with God and then life; where life conflicts with property rights life prevails:⁸¹ significantly, human need is prioritized over strict legal rights and claims, including the needs of a debtor over those of a creditor.⁸² 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 were.⁸³ It is submitted, in conclusion, that even if there could be said to be a biblical principle that all debts must be paid, that 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. I turn next to the support claimed for the principle.

Is there an explicit obligation in Psalm 37:21: “The wicked borrow and do not repay” to pay debts? 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 needy.⁸⁴ The most natural interpretation of this verse would entail no more than that deliberate nonpayment of debts is sinful. Henry, for example, 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.”⁸⁵ In other words, nonpayment of debts is simply being described as an example of the behavior of those who are sinful, rather than nonpayment being sinful *per se*. This also fits with the context, that is, the oppression of the poor, because nonpayment of debt by the poor to the wealthy would hardly be a cause for such a lament.

Does the principle entail that all debts must be paid? Is this implicit in all forms of contract? Does contract somehow legitimize debt? The traditional justification for enforcing contracts in English law is the importance of the bargain, an agreement consisting typically of freely made mutual promises.⁸⁶ Personal responsibility for debt in biblical terms has to be founded on 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 promises).⁸⁷ There are, however, objections to using this to justify a general principle that requires the payment of

debts. First, there can be legitimate circumstances where promises should not or cannot be met.⁸⁸ 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 who 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: We must forgive debts due to us if we want forgiveness of our greater debt to God.⁸⁹ A link is made in the Bible between debt and sin; sin can lead to poverty, poverty to debt, and debt to subjugation.⁹⁰ However, the Bible is equally clear that poverty does not necessarily result from sin. Similarly, disease does not necessarily result from sin either.⁹¹ 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 commented:

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.⁹²

This generalized 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 judgment.⁹³ 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 toward sin.⁹⁴ 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 nondeliberate failure to pay debts be distinguished? What of other grades of fault, such as recklessness, negligence, and so on? Nonpayment of debts procured by extortion does not appear to be regarded as sinful: In Habbukuk 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 judgment.

The Old Testament appears to have recognized the need to limit liability for the consequences of actions in various ways. The *lex talionis* limited retribution to an eye for an eye,⁹⁵ 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 trial.⁹⁶ Charging interest to fellow Israelites was forbidden,⁹⁷ limiting the extent of a debtor's 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 livelihood.⁹⁸ Debts owed by Israelites had to be cancelled every seven years⁹⁹—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, he distinguished between natural disasters for which neither God nor man was responsible and the failure to complete a building through failing to budget appropriately.¹⁰⁰

In any event, setting up a limited liability company does not necessarily reduce personal responsibility as much as might be thought, that is, as enabling those who incorporate a limited liability company to walk free of its debts on insolvency. In practice, markets are not 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 sham.¹⁰¹ 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 trading.¹⁰² Third, directors who, for example, are responsible for several "Phoenix" companies that fail, can be disqualified from so acting.¹⁰³ While 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 because 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, while addressing wrongdoing 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.

Conclusion

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: Because the body represents a highly complex organism, the case for business organization 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 nonpayment of debt shown not to be invariably sinful. There will always be a tension between law and grace in developing practical rules for socioeconomic life, but the limited liability company goes some way toward reconciling these where debt is concerned.

Notes

- * Thanks are due to Dr. Michael Schluter, Richard Teather, Tony Williams, and others for their helpful comments on an early draft. The views expressed in this article are those of the author alone. Scripture quotations are taken from the Holy Bible, New International Version, Copyright © 1973, 1978, 1984 by International Bible Society. Used by permission of Hodder & Stoughton, a member of the Hodder Headline Group. All rights reserved.
1. This article focuses on limited liability companies incorporated in England and Wales, and all references to law and legal practice are therefore to the laws of England and Wales, which are stated as of October 20, 2010.
 2. R. Williams, “Face It: Marx Was Partly Right About Capitalism,” *The Spectator* (September 24, 2008).

3. See M. Schluter, "Risk, Reward and Responsibility: Limited Liability and Company Reform," *Cambridge Paper* 9, no. 2 (2000): 1; see also, "Is Capitalism Morally Bankrupt? Five Moral Flaws and Their Social Consequences," *Cambridge Paper* 18, no. 3 (2009): 3, that seeks to distinguish between capitalism and corporate capitalism.
4. R. Higginson, *Questions of Business Life* (Carlisle: Spring Harvest Publishing Division and Authentic Media, 2002), 18.
5. D. A. Hay, "The Public Joint-Stock Company: Blessing or Curse?" (paper given to Tyndale Ethics meeting, July 1990), 44.
6. J. Garnett, "Evangelicalism and Business in Mid-Victorian Britain," in *Evangelical Faith and Public Zeal*, ed. J. Wolffe (London: SPCK, 1995), 70.
7. *Ibid.*
8. *The Times*, from the Belfast Newsletter, July 30, 1855.
9. See, for example, C. Beed and C. Beed, "Applying Judeo-Christian Principles to Contemporary Economic Issues," *Journal of Markets & Morality* 8, no. 1 (Spring 2005): 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: Inter-Varsity Press, 2009), 320, puts it, the purpose of God's giving the Law to Israel was for Israel 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.
10. Deut. 15:1–3 (debt); Lev. 25:36 (interest); John 2:14–15 (money changing); Matt. 25:27 (banking).
11. The reference to noneconomic activity reflects that many charities and other nonprofit bodies are also established as companies and therefore the company does not only contribute to wealth generation in the monetary sense.
12. See <http://www.ft.com/reports/ft500-2010>.
13. See, for example, Job.
14. Deut. 28–30.
15. P. S. Heslam, "The Role of Business in the Fight Against Poverty," in *Christian Theology and Market Economics*, ed. I. R. Harper and S. Gregg (Cheltenham: Edward Elgar, 2008), 164.
16. Joseph Rowntree Foundation, "Poverty Dynamics Research in the UK" (June 2007), 3. <http://www.jrf.org.uk/publications/poverty-dynamics-research-uk>.
17. See <http://money.cnn.com/magazines/fortune/global500/2010/performers/companies/biggest/>.

18. Department for Business, Innovation and Skills Statistical Press Release Corrected Version, July 2010 identifies 59.4 percent of such employment as being with small- and medium-sized enterprises, again a very significant proportion of which are likely to be companies.
19. See generally S. F. Copp, “Limited Liability and Freedom,” in *The Legal Foundations of Free Markets*, ed. S. F. Copp (London: Institute of Economic Affairs, 2008), 171–72; see specifically Lloyd Davies who claimed that “not only would the poor man be benefited, but the rich also ...”; in contrast, see Bass: “he did not agree that the Bill was intended much for the benefit of the very poor ...” (Hansard HC, vol. 139, cols. 1390–92, July 26, 1855).
20. Luke 4:18.
21. F. A. Hayek, *The Constitution of Liberty* (London: Routledge, 1960), chap. 1. See also Hay, *Economics Today, a Christian Critique* (Leicester: Apollos, 1989), 87, who argues that different types of freedom need to be distinguished, regarding economic freedom as open to debate, but what does personal 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,” in *The Legal Foundations of Free Markets*, 138.
22. 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.
23. Deut. 15:6.
24. Deut. 28:44. It is interesting to reflect on the impact of bailouts on the true sovereignty of countries with a debt crisis.
25. Prov. 22:7.
26. 2 Kings 4:1–7, where the prophet Elisha worked a miracle to protect a widow from this outcome; imprisonment is referred to in Matthew 18:21–25, but note the latter example occurred in a parable, not a factual account.
27. S. Gregg, “Catholicism and the Case for Limited Government,” in *Catholic Social Teaching and the Market Economy*, ed. P. Booth (London: Institute of Economic Affairs, 2007), 258–59; citing the Swiss theologian S. Pinckaers, *Les Sources de la morale chretienne* (Fribourg: Université de Fribourg, 1993), 354.
28. Deut. 15:1–3.
29. Deut. 15:9.

30. Deut. 15:12.
31. Lev. 25:10.
32. B. C. Hunt, *The Development of the Business Corporation in England 1800–1867* (Cambridge: Harvard University Press, 1936), 41, citing *Elve v. Boyton* (1891) 1 Ch. 501 at 507.
33. SS. 2 and 25 *Joint Stock Companies Act 1844*.
34. This 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, such as 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,” in *The Legal Foundations of Free Markets*, 171–72 and 176–81.
35. “Jurisprudence” (1902 ed.), p. 350, cited by H. J. Laski, “The Personality of Associations,” *Harvard Law Review* 4 (1916): 404 at 406.
36. 1 Cor. 12:12–13. See also Eph. 4:16.
37. Schluter argues that the biblical ideal for business organization lies in the “business (farm) owned, managed and worked by the extended family”: “Risk, reward and responsibility: limited liability and company reform,” 4. Hay, in setting out his “stewardship principles” argues that the Ancient Israel family farm should be the paradigm (but elsewhere adopts a broader model of “people in community,” using the family and people of God in Old and New Testament as examples): Hay, “The Public Joint-Stock Company: Blessing or Curse?” 29.
38. Higginson, *Questions of Business Life*, 51.
39. Matt. 22:21; Luke 20:22–26; Rom. 13:1–6.
40. S. Gregg, “Catholicism and the Case for Limited Government,” in *Catholic Social Teaching and the Market Economy* (London: IEA, 2007), 257.
41. 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).
42. Gregg, “Catholicism and the Case for Limited Government,” 264.
43. F. Fukuyama, *Trust* (London: Hamish Hamilton, 1995), 357–58.
44. Gregg, “Catholicism and the Case for Limited Government,” 264–65.
45. S. Gregg, *On Ordered Liberty* (Lanham, Md.: Lexington Books, 2003), 97.

46. Laski, “The Personality of Associations,” 407. This answers the possible objection that the role of stated owned enterprises, that possess the form of a corporation, did little to limit government in centrally planned economies because such corporations were unlikely on an ongoing basis to emanate from the free choices of individuals to associate and no individuals would have any property rights in such corporations to incentivize their actions.
47. See, for example, Laski, “The Personality of Associations,” 404.
48. 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,” *Journal of Religious Ethics* 20, no. 1 (1992): 179 at 198.
49. Robert Lowe, Hansard HC, vol. 140, cols. 129–31 (February 1, 1856).
50. P. Booth, “Introduction” in *Catholic Social Teaching and the Market Economy*, 32.
51. See <http://www.traidcraft.co.uk/>.
52. (1843) 2 Hare 461.
53. Matt. 13:45–46; Luke 14:28–30.
54. Matt. 25:14–30.
55. 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 (June 29, 1855).
56. H. J. Stephen, *Stephen’s Commentaries on the Laws of England* (London: Henry Butterworth, 1841–1845), vol. 2:214.
57. Subject to legal regulation, see, for example, E. McKendrick, *Contract Law: Text, Cases and Materials* (Oxford: Oxford University Press, 2010), chaps. 9, 13, and 14.
58. *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 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.

59. Copp, "Limited Liability and Freedom," 164–66.
60. 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!
61. Lev. 19:11 (lying and deceiving); Lev. 19:35 and Deut. 25:13–16 (measurement).
62. See further C. W. Maughan and S. F. Copp, "Economic Efficiency: The Role of Law and the Old Testament," *Journal of Interdisciplinary Economics* 14 (2003): 249 at 288–97.
63. Schluter, "Risk, Reward and Responsibility: Limited Liability and Company Reform," 4.
64. See, for example, P. Mills, "Finance," in *Jubilee Manifesto*, ed. M. Schluter and J. Ashcroft (Leicester: InterVarsity Press, 2005), 205.
65. "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.). http://oll.libertyfund.org/index.php?option=com_content&task=view&id=875&Itemid=282.
66. Mills, "Finance," 206.
67. See, for example, *The New Bible Dictionary* (Leicester: InterVarsity Press, 1978), 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 Leviticus 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 that seems to have attracted much less comment.
68. Copp, "Limited Liability and Freedom," 169–70.
69. Mills, "Finance," 211.
70. See, for example, B. R. Cheffins, "Company Law, Theory, Structure and Operation" (Oxford: Oxford University Press, 1997), 506–8.
71. Num. 35:11–15. See further the discussion in the next section.
72. Schluter, "Risk, Reward and Responsibility: Limited Liability and Company Reform," 3.
73. The author has also attempted the use of such principles in his early writing: "A Christian Vision for Corporate Governance," in *Christian Perspectives on Law Reform*, ed. P. R. Beaumont (Carlisle: Paternoster Press, 1998).

74. Ibid.
75. See for example the discussion of the “all or nothingness” of Dworkin’s definition of a rule in W. Twining and D. Miers, *How to Do Things with Rules* (London: Butterworths, 1999), 125–26.
76. See also Matt. 6:12. Schluter acknowledges in support of this principle that there is some provision for limited liability in biblical law: “Risk, reward and responsibility: limited liability and company reform,” 3; but nonetheless the principle is stated in these absolute terms.
77. See Twining and Miers, *How to Do Things with Rules*, 125.
78. Ibid., 129.
79. 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 the possibility of principles conflicting or having priority over each other. See *Economics Today*, 68–69.
80. Wright, *Old Testament Ethics for the People of God*, 305; citing 1 Sam. 15:22; Hos. 6:6; Prov. 21:3; and Mark 12:32–33.
81. Ibid., 306–9.
82. Ibid., 312–14.
83. Mark 12:28–34. See also James 2:8–11.
84. Ps. 37:14.
85. Matthew Henry’s Concise Commentary (original ed. 1706), see <http://www.biblestudytools.com/commentaries/matthew-henry-complete/> (my emphasis). 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 judgment. 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.
86. 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 (e.g., 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,” 249 at 276–82.

87. 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,” in *The Legal Foundations of Free Markets*, ed. S. F. Copp, 72.
88. For 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,” *Cambridge Papers* 16, no. 4 (2007). “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 recognize our need for mercy for all our broken promises, and extend that mercy to others for theirs.”
89. 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.”
90. See, for example, Deut. 28 generally and in particular vv. 15, 20, 44, and 47.
91. See, for example, Job 1:8–12; Luke 13:10–17.
92. B. C. Hunt, *The Development of the Business Corporation in England 1800–1867*, 117. Citing “Partnerships, Limited and Unlimited Liability,” *Encyclopaedia Britannica*, 8th ed. (1859), XVII, 321 (author’s emphasis).
93. See, for example, Gen. 1:26–27 and Rom. 12–16.
94. See A. E. McGrath, *Christian Theology: An Introduction* (Oxford: Blackwell, 2001), 440–45.
95. 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.
96. Num. 35:10–15; Josh. 20:1–9.
97. 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 stipulated 20 percent for loans of money and 33.33 percent on loans of grain, see D. L. Baker, “Safekeeping, Borrowing and Rental,” *Journal for the Study of the Old Testament* 31, no. 1 (2006): 27 at 38.
98. Ex. 22:26–27; Deut. 24:12–13; Deut. 24:6.
99. Deut. 15:1–3. The moral hazard this gives rise to was recognized 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, 47.

100. See Luke 13:4 (deaths of eighteen people from collapse of tower); Luke 14:28–30 (failure leads to ridicule).
101. See, for example, P. L. Davies, *Gower and Davies Principles of Modern Company Law* (London: Sweet & Maxwell, 2008), chap. 8.
102. *Ibid.*, chap. 9.
103. *Ibid.*, chap. 10.