

A RESPONSE TO STEPHEN COPP

Richard Higginson

Ridley Hall, University of Cambridge

1 Introduction

I am grateful both to Stephen Copp for writing this article and to Ian Smith for giving me the opportunity to respond to it. There is much that I wish to applaud in Copp's article. His attempt to provide a theological justification for limited liability is refreshing, stimulating and original. He has raised some important hermeneutical issues that require careful attention, notably in relation to the ethical category of principles and the use of New Testament models as distinct from Old Testament ones. He has correctly identified some serious problems in the interpretation of the Bible and analysis of contemporary realities employed by writers from the Jubilee Centre.

Yet in my view Copp goes too far in certain respects. I believe that the use of principles, properly understood, has more to commend it than he acknowledges. Nor do I think that use of the New Testament image of the body *necessarily* points to limited liability – indeed, there may be alternative corporate structures with which it is more compatible. The public limited company is one corporate form among several that jostle for position in contemporary capitalism; they all have strengths and weaknesses. And alongside Copp's biblically based aspiration for a society that is prosperous and free, there is also a moral imperative that it should be just. The focus of attention accordingly shifts to whether, in a society dominated by limited liability, creditors of failed companies are liable to be recipients of injustice.

2 Principles and Paradigms

Stephen Copp makes a number of helpful points about ethical methodology. He notes that attempts to derive principles and paradigms from biblical texts are problematic and controversial. But this doesn't mean the attempt to do so should be abandoned. Copp himself conveys mixed messages about principles. In some places, he calls for a more rigorous use of this method ('There needs to be a much more systematic exposition of

Biblical principles than has taken place to date...’, p.10); at others, he appears to favour abandonment of this approach altogether (‘...the use of principles might be inherently unfit for purpose...’, p.4). He certainly points to some sloppy treatment of principles but *abusus non tollit usum*: just because something is misused doesn’t mean it can’t be used correctly. Let us consider some of the specific problems that Copp finds in a principle-focussed approach.

Copp claims that ‘There is little difference conceptually between a principle and a rule’ (p.4). Some writers may use the words interchangeably, but they shouldn’t. Rules specify particular actions as obligatory, permissible or forbidden. They take the imperative form. Principles, in contrast, describe moral qualities and concerns which should be present across a whole range of actions. They take an indicative rather than imperative form. Such principles often provide the rationale and justification for particular rules, but they are not to be equated with them.

Copp says that the Bible rarely uses principles (p.4). He claims that ‘The purpose of a law is occasionally stated explicitly in the Bible and where it is that provides a very clear guide of the underlying principle. 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’ (p.9). I partially agree with this but think Copp is unduly pessimistic about the prospects of discerning the principles behind most laws. With careful exegesis and knowledge of the historical context I believe substantial progress is possible. And when one comes to consider one of the key strands of biblical material considered in Copp’s article, the biblical prohibition of interest, the underlying principle is stated fairly explicitly. Out of the three key texts relating to the charging of interest in the Torah, Ex. 22:25-27, Lev.25:35-37 and Dt 23:19-20, the first two set the prohibition within a clear context of compassion for the poor and concern that they should not be exploited. See Exodus 22:25: ‘If you lend money to my people, to the poor among you, you shall not deal with them as a creditor; you shall not exact interest from them.’ Likewise Leviticus 25:35-37: ‘If any of your kin fall into difficulty and become dependent on you, you shall support them; they shall live with you as though resident aliens. Do not take interest or

otherwise take a profit from them, but fear your God; let them live with you. You shall not lend them your money at interest, nor give them your food for profit.’

The principle to emerge from these biblical laws, then, is compassion for the poor: more precisely, a deep-seated concern for the poor which should characterise and will at times be a restraining influence in decisions made about lending and investing. Copp eventually comes to a similar conclusion: although he thinks ‘the underlying principle behind the usury prohibition must remain obscure’, the most natural interpretation is ‘the traditional view that lending should be an act of compassion and charity not a means to exploit the poor’ (p.22). If we are able with confidence to deduce this, there is surely more value in the principles approach than he is willing to concede.

My own view is that when this principle is taken sufficiently to heart, the result need not be an absolute ban on all charging of interest. Copp rightly notes that biblical laws often contain exceptions (p.6). The prohibition of interest is an example of this; the charging of interest was permitted in the case of foreigners (see Dt 23:20). A crucial question in any financial transaction regarding lending and investment is: what is the balance of power here? Is one party exploiting the vulnerable situation of another or in danger of doing so? If so, charging interest is as reprehensible now as it was in Old Testament times. But if the two parties are of roughly comparable status, and both the borrower and the lender stand to gain rather than one lose from the deal, then charging interest may be acceptable. A nuanced attitude of this type seems to me an example of the ‘paradigm’ approach to using Scripture which has been championed by Chris Wright: we should identify the key principle at the heart of a law, and then reapply it, in an imaginative but rigorous way, to our contemporary context. But Copp is as sceptical about paradigms as he is about principles. Part of the reason for this is his belief that ‘the Old Testament model failed to deliver prosperity for all’ (p.12), which makes it ‘a questionable paradigm’ – but the problem surely lay with the people’s sinful failure to abide by the law and to follow its underlying principles rather than with any intrinsic defect in the Law.

3 Jubilee Centre – Weak Points and Strong

Readers who are familiar with Jubilee Centre writers such as Michael Schluter and Paul Mills will be aware that the position on interest which I have taken above is different from theirs. They take a more absolutist position and regard the changing of the Church's position to allow the charging of interest as a disaster. As Copp shows, their view of limited liability is similarly negative.

Schluter and Mills rely heavily for their understanding of a couple of key texts. Copp takes issue with their interpretation and I believe rightly so. First, in the Parable of the Talents they equate the putting of money in a bank for interest with the owners' reaping where he has not sown. Copp thinks a more natural interpretation of this would be that the servant, in effect, accused his master of being a thief (p.20, fn 87). I would refine and develop this point. What is the connection between the third servant's unwillingness to trade with his talent and his view of his master as a harsh man who reaps where he does not sow and gathers where he does not scatter? The most plausible explanation is that the servant objects to the fact that any profit or benefit he may derive from the practice of trade will redound not to himself but his master. The master will have reaped from the servant's industry and enterprise, without the master having done any work. So the servant is demotivated, and hides his talent in the ground. The servant is probably being unfair in his perception of the master (after all, the master praises the other two servants for their enterprise and rewards them with more responsibility) but that is the logic of his words and actions. The master then responds by saying: if that's how you view me, then you ought at least to have invested my money with the bankers. The point is by doing that the servant is spared having to do any work (so will *not* do any sowing) but the master still benefits through the accrual of interest. This gives a quite different slant on the parable from that offered by Schluter and Mills.

It is unfortunate that this parable has been viewed as a judgment on the practice of charging interest, both in a positive sense by capitalism's supporters and a negative sense by capitalism's critics. Both are misusing the parable in opposite ways. Jesus is not

making a judgment one way or the other about the morality of interest; the investment with the bankers is simply a detail of the story.

Copp also objects with justification to the use that the Jubilee writers make of Psalm 37:21: 'The wicked borrow and do not repay'. As he says, this is a reflection on the practice of evil people – and in most circumstances it *is* wrong not to repay one's debts – but it is a misuse of Scripture to make an absolute prohibition out of a general observation. As Copp shows, there is plenty of Biblical support for the occasional cancelling of debts, notably in the Jubilee provision. Indeed, as a metaphor for the forgiveness of sin, debt cancellation lies right at the heart of a Christian theology of the atonement.

Another criticism Copp makes of the Jubilee writers' approach is their reliance on Old Testament models such as the family farm to the neglect of New Testament models. Again, I agree with this. As I wrote many years ago in *Called to Account*, 'The New Testament does not place anything like the same emphasis on the categories of family and land as the Old Testament' (p.102); the focus the New Testament 'contains on breaking down conventional barriers (especially that between Jew and Gentile) makes me question whether the small-scale family business should be regarded as the normative style of arrangement' (p.103).

Copp goes on to suggest a more relevant New Testament model in the nature of the Church as Christ's body. He writes '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 organisations' (p.28). Just as there are discrete functions in the church and all need to appreciate the contribution made by others, so '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' (p.28). I agree, and believe this is a fruitful analogy; Copp draws attention to my observation that the original meaning of the word company was a fellowship breaking

bread together. However, where Copp fails to convince me is that the limited liability company is the most fitting corporate comparison to the image of Christ's body.

At this point in the article, interestingly, I found myself drawing on certain argument rehearsed by the Jubilee writers. While I am unpersuaded by much of their biblical exegesis, I do think some of their criticisms of the way that public limited companies operate are apt and relevant. In his paper 'Is Capitalism morally bankrupt?', Michael Schluter points out how debt finance generally results in relational distance rather than relational 'proximity' because the lender generally has no incentive to remain engaged with, or even in regular contact with, the borrower. So providers of capital, investors or shareholders frequently

- Have little or no say in corporate decision-making
- Do not even know (or care) in which companies they hold shares
- Fail to attend the annual general meetings of companies
- Do little to influence company policy, preferring to 'exit' if things go badly rather than seeking to influence a company's decision

Copp fails to take sufficient account of these procedural problems. He would doubtless observe that, notwithstanding the relational distance, shareholders are still playing an invaluable role in a company's affairs by putting up the risk capital (and as he rightly asserts, there is genuine risk involved: shares can go down as well as up). But the personal involvement and emotional investment of most shareholders in the running of a company *are* very slight. This is at odds with the model of the body of Christ where St Paul is clear that the different parts of the body relate to each other in close and tangible ways: 'Rejoice with those who rejoice; weep with those who weep' (Rom..12:15). Relational proximity, to use Schluter's phrase, is paramount.

There are alternative corporate models where this relational proximity is more evident. An equity arrangement where the investor's rewards are more directly linked to the success of the company usually guarantees a closer involvement in the firm. Cooperative or partnership models where all the employees are shareholders tend to

produce a greater element of team spirit, as well as producing less exaggerated wage differentials. Compare the differential ratio between the chief executive and average employee salary at John Lewis (75:1) with that at Tesco (750:1)! Equity and partnership structures would appear to have more in common with the ‘body of Christ’ model found in 1 Corinthians 12 than the typical plc.

This leads me to comment on Stephen Copp’s introduction, where he makes a close connection between the limited liability company and capitalism as a whole. While the plc may be the dominant form of capitalism, it is far from being the only one. I think one of the virtues of capitalism is the breadth of corporate structures that it allows. In fact the exciting story of the last few years is that alternative business models such as social enterprises, fair trade organisations and micro-finance have been able to flourish within the umbrella of global capitalism, even during a time of recession.

The public limited company has certain advantages going for it, and Copp is not slow to list them – notably its effectiveness in raising capital because the risks to investors are reduced. But its strengths and weaknesses need to be systematically assessed against those of alternative business models. By the relational yardstick, the plc compares unfavourably overall.

4 Not Forgetting Justice

While he is sceptical about the place of principles, Copp makes a strong claim for prosperity as a paradigm or goal of biblical economics (p.11). To this he later adds freedom: ‘The Biblical ideal...is not only a prosperous society but a free society, two concepts that intertwine’ (p.25). I fully agree that these are important biblical motifs but we should surely add a third, namely justice. I do not have space to make a substantial case for this here but would refer readers to the Grove booklet on *The Ethics of Executive Pay* that I have recently co-authored with David Clough. Sufficient to say that the four words used for justice (two of them Hebrew – *tsedaqah* and *mishpat* – and two of them Greek – *dikaioyne* and *krisis* – occur over 1000 times, many of them in an economic context. To Copp’s citation of Dt 28:11 about abundance of prosperity I would add Psalm

85:10-13, *the* great statement of biblical *shalom*, the ideal to which God's people on earth should aspire:

'Steadfast love and faithfulness will meet;
righteousness and peace will kiss each other.
Faithfulness will spring up from the ground,
And righteousness will look down from the sky.
The Lord will give what is good,
And our land will give its increase.
Righteousness will go before him,
And will make a path for his ways.'

The picture of material abundance is very much linked with the pursuit of righteousness – a word that can equally well be translated justice.

Justice matters in the treatment of creditors and suppliers. They are the recipients of injustice if legitimate claims they make for payment are left unpaid when a company goes bankrupt. This is where limited liability faces its fiercest moral test. The fact that shareholders' liability is severely limited does not necessarily mean that creditors will suffer. As Copp points out, directors bear some responsibility, and if a company does go belly-up, some creditors' debts may be paid from the sale of corporate assets. There is no space here for a detailed survey of whether limited liability is resulting in serious injustice for creditors. But it is a matter which warrants investigation. If unpaid creditors *are* suffering from a system that limits shareholders' liability, a biblical concern for justice demands that be given weighty consideration as we evaluate the case for and against the public limited company.