

Volume XX - (2019)

The Ideal of Interdependence in Cheon Il Guk and Corporate Governance

ROBERT SCHAIRER

- **Schairer, Robert**

Journal of Unification Studies Vol. 18, 2017 - Pages 217 - 251

The ideal of interdependence (공생, 共生) spoken of in *Exposition of the Divine Principle*^[1] and written into the *Cheon Il Guk Constitution*^[2] deals with the economic aspect of the ideal society envisioned by Cheon Il Guk^[3]. It advocates joint ownership centered upon the true love of God with individuals being guided by their conscience as to what is reasonable ownership. This begs the questions, what is the structure of an ideal economic system, what are its characteristics and how can such a system be achieved? It is fine to have wonderful ideals, but ideals must be put into practice within the realm of the reality of everyday life and thus realistic solutions to difficult problems must be found. Finding such practical solutions is the responsibility of those who believe in and attend Dr. Sun Myung Moon and Dr. Hak Ja Han Moon, the True Parents of Heaven, Earth and Humankind. These are problems that humankind has struggled with throughout history and as of yet has been unable to satisfactorily solve.

In seeking to solve these problems we can search the Words of the True Parents for guidance—sometimes specific and sometimes not. Also we can learn from the methods developed throughout history and apply various existing theories and available data to determine whether or not the theory is justified. This involves the inductive method of learning. However, for problems yet to be satisfactorily solved in history we must also use the deductive method based on intuition and reason to formulate new solutions.

As Dr. Sung-bae Jin, Chairman of the Hyojeong Academy of Arts and Sciences writes, the give-and-receive methodology of Unification Thought:

...aims at the synthesis of induction and deduction, or the synthesis of induction and hypothetical-deductive methods. The conclusion of inductive inference is the trigger of intuition within the hypothetical-deductive model. Within the hypothetical-deductive method, intuition makes it possible to conjecture bold scientific theories and to see through their essence with the deductive conclusion providing momentum.^[4]

So this paper attempts to put together the puzzle of numerous pieces assembled from various sources and then using intuition and deductive reasoning to seek a solution to realizing an economic governance system based on the ideal of interdependence.

In recent history there have generally been three basic economic models: market capitalism such as that practiced in the United States, state capitalism such as that currently practiced in China, and the socialist model of communism such as what was practiced in the former Soviet Union. The track record of each of these models demonstrates that none of them are ideal and none of them as they presently exist can be the basis for the ideal economic system envisioned by the ideal of interdependence of Cheon Il Guk.

This paper will explore the concept of the ideal of interdependence from the legal viewpoint of corporate governance. Just as the individual is the most fundamental unit of a society, the business entity is the most fundamental unit of an economic system. Just as an ideal family, society, nation and world cannot be realized without first the realization of ideal individuals, an ideal economy cannot be realized without the establishment of ideal business entities. Although there are various forms of business entities such as sole proprietorships, partnerships, limited partnerships, limited liability companies, and corporations, etc. for simplicity and given that all publicly traded business entities in the United States are corporations, this paper will deal with corporations. However, the principles can be utilized in other types of business entities as well.

From a legal perspective a corporation is a “person.” So just as a mature well-balanced individual human being must grow and live while harmonizing the whole and individual purposes,^[5] a corporation should become a harmonious entity that fulfills both its whole and individual purposes. The individual purpose can be defined as maximizing the return to the shareholders and taking care of its employees. The whole purpose can be defined as including such things as serving its customers, serving the community in which the corporation is located, and taking care of the environment while acting within the law.

This paper will argue that the present legal structures of corporate governance within market capitalism of the common law system practiced in Great Britain and the United States among other countries and the civil law system practiced in much of Europe and in Korea are insufficient for realizing the ideal of interdependence. The good points of the common law system and the civil law system must be combined and improved. In particular we will see that market capitalism practiced within the United States, is too oriented toward the individual purpose of the corporation and only a portion of that purpose – maximizing the short-term financial return to shareholders, while tending to neglect the whole purpose of the corporation. This has resulted in increasingly unequal distribution of income and wealth, exorbitant pay for CEOs, the hollowing out of local communities in parts of the U.S. with the resulting alienation of portions of the population, the degradation of the environment, and the rejection of the post-World War II international institutions in the name of rejecting globalism.

With the proper rebalancing of the individual purpose with the whole purpose by introducing reforms under the umbrella concept of *hyojeong* to the fiduciary duties required of corporate officers and directors, corporations can find their proper balance and remain as the core unit in a market oriented free enterprise system, that we can call a Heavenly economy (神經濟), while fulfilling the ideal of interdependence. With these corporate governance reforms, market capitalism can be reformed to connect with the whole purpose and fulfill the concept of joint ownership included in the ideal of interdependence and realize a “socialist society on Heaven’s side” without having to turn to the centralized control, inefficiencies and loss of freedom that come with state capitalism, or communism. Thus, this paper proposes that the reform of the corporate governance system of market based capitalism to include fiduciary duties based on the ethics of *hyojeong* toward all stakeholders of the corporation can contribute to the realization of the ideal economic system envisioned by the concept of the ideal of interdependence.

Civil Law, Common Law, East Asian Legal Traditions and Heavenly Law (神法)

The world presently has three main legal systems: common law, civil law and Islamic Law. In addition, there is the East Asian legal tradition and other local legal traditions and some countries have hybrid systems of two or more of these systems. Since this paper will focus upon the concept and role of fiduciary duties in the context of corporate law, it is important to understand some basic concepts regarding the common law and civil law systems. The reason for this is that these two legal systems approach the concept of fiduciary duties from very different directions, which we will get to later in this paper.

Common law is based on custom and general principles embodied in case law. These become precedent and are “applied to situations not covered by statute.”^[6] In contrast to statutory law created by legislatures, the common law is made up of principles and rules that derive their authority from ancient customs and usages, or ruling by courts that acknowledge, affirm and enforce those customs and usages. Common law developed in the “the ancient unwritten law of England”^[7] and follows the concept of *stare decisis*, in which a court will follow an established principle of law as applied to a certain set of facts and apply it to future cases that have a similar fact pattern.^[8] England, the United States, Canada, Australia, New Zealand, to some extent India and some other Asian, African and Caribbean countries that were colonized by Great Britain follow common law. In this paper we will focus on common law as practiced in the United States.

Civil law is based mainly upon the written codes of Justinian and Napoleon and traces its roots back to Roman law. It attempts to create a system of legal rules in one comprehensive legislative enactment. Within civil law there are three basic subsets of French civil law, German civil law and Scandinavian civil law.^[9] Unlike Common law, civil law does not follow the practice of *stare decisis*, but has a similar practice called *jurisprudence constante*, which is the tendency of courts to treat a question as settled only after the accumulation of a number of decisions.^[10] It is the basis of the legal systems used in France, Spain, Germany, and other parts of Europe that were part of the Roman Empire and other nations in the world that were colonized by European nations. Also, most communist or former communist nations utilize a form of civil law.

Importantly for this paper and the development of the ideal of interdependence and the Heavenly Law of Cheon Il Guk, when the Republic of Korea was colonized by Japan, it inherited the civil law system from Japan, which had copied French and primarily German civil law.

I note that when discussing fiduciary duties in corporate governance under the umbrella of the concept of *hyojeong*, the common law approach of applying broad *hyojeong* ethical standards makes much more sense than attempting a detailed statutory approach such as we find in civil law.

In general, regulatory strategies can be done either by making rules, such as statutes, that require or prohibit certain types of behavior *ex ante* or by standards through which courts determine *ex post* whether a violation of a standard of behavior has occurred. Fiduciary duty standards are a prime example of this *ex post* approach.^[11] The problem with the rules-based approach is that particular fact patterns must be anticipated in advance and then detailed statutes written to deal with the anticipated fact patterns. Furthermore,

as new fact patterns develop the statutes must be constantly updated and amended. The advantage of the standard-based approach is that general principles and standards can be decided upon that are then applied by the courts after the fact to particular actual factual cases that arise and are brought to the courts to be resolved. Over time, with the principle of judicial precedent or *stare decisis*, a body of case law can develop that develops particular rules that fill in the details of the law. Of course, this requires a high quality legal system and high quality, ethical judges.

Furthermore, as we shall see below, the concept of joint ownership is central to the concept of the ideal of interdependence and as we shall learn below, the common law system approaches fiduciary law from the perspective of property law that includes the idea of bifurcated ownership – a legal owner and a beneficial owner. On the other hand, civil law systems approach the concept of fiduciary law from the perspective of contract law in which there is no concept of bifurcated ownership. Since the concept of joint ownership is central to the concept of the ideal of interdependence, for this particular matter, the common law approach offers a better basis upon which to build.

The Ideal of Interdependence

Let us examine what is meant by the ideal of interdependence, as it is translated in *Exposition of the Divine Principle*,^[12] or mutual existence, as it is translated in *New Essentials of Unification Thought: Headwing Thought*.^[13] The concept was introduced at least as early as 1966 in *Exposition of the Divine Principle*, which in translation states, “In seeking for a socialistic society on Heaven’s side, their original mind has drawn them to the ideals of interdependence, mutual prosperity and universally shared values.^[14] Because I do not have access to the Korean digital versions of the *Sermons of Rev. Sun Myung Moon*, I cannot determine when Rev. Moon first introduced the concept.

In trying to understand the economic concept of interdependence from a legal perspective, I will refer to the words of True Parents, *Exposition of the Divine Principle, New Essentials of Unification Thought*, the writings of Unificationist theological scholars, and also look at the existing laws in common law and civil law systems for guidance and for a basis upon which to build.

To start with, we are able to read Rev. Moon’s words and establish that the ideals of interdependence, mutual prosperity and universally shared values are truly to be a fundamental ideal in Cheon Il Guk and that the concept of interdependence deals with the economic aspect. This much is stated in *Exposition of the Divine Principle* and *New Essentials of Unification Thought*. As indicated in the following passages, Rev. Moon envisioned it as a global family under God:

In an ideal society or nation, all people transcend nationality and race to engage in mutual cooperation, create harmony, and live in happiness. This community is that of an extended family in which people are conscious of being the sons and daughters of one God and become a single fraternity under the True Parents... They will live lives of interdependence, mutual prosperity, and universally shared values within the culture of God’s heart... The ideal society is, economically, a society of the ideal of interdependence, politically, a society of mutual prosperity, and ethically, a society of universally shared values.^[15]

Humanity desires a world interdependence, mutual prosperity and universally shared values, which is a reflection of God’s ideal kingdom. It is not a world where one can live alone; no one individual can create such a world. Whenever we talk about “I” there must also be “my partner,” whether it is my spouse or my family. This should not remain as a concept, but should be applied to real life. The kingdom of God is the world where this concept is manifested in reality, on the stage of life.^[16]

The new age in the twenty-first century is an age of universal values. It is an age when material things do not dominate our mind and spirit. It is an age when we live in oneness with God. In the twenty-first century, people will realize that living for the sake of others is far more valuable than living for oneself. Self-centeredness will fade away and altruism, based on interdependence, mutual prosperity and universally shared values, will finally and triumphantly emerge.^[17]

To realize a society of universal values, interdependence and mutual prosperity and unite humanity as one great family, we need to break down the walls in our hearts and eliminate the barriers between nations.^[18]

Next, given that the *Exposition of the Divine Principle* states that it will be “a socialist society of Heaven’s side,” will it truly be a socialist economy without private ownership of property? For those of us who have grown up in democratic capitalist nations, I think most of us are relieved to learn that it will be an economy based upon private ownership of property in which individual ownership based on the individual purpose is harmonized with the whole purpose. Rev. Moon states:

In the ideal world built by the people who have actualized God’s love, the whole purpose and the individual purpose are naturally harmonized. Since human beings also have desires and the autonomy of love, they are permitted individual ownership and individual purpose. Even so, they do not pursue unlimited individual possession or an individual purpose that undermines the whole purpose. Perfected human beings are meant to own property commensurate with their position and circumstances according to their conscience and original nature.^[19]

Furthermore, this ownership will be by co-ownership or joint ownership that is guided by the conscience and that is modelled after the family model of ownership that in a sense contains the concept of legal owners and beneficial owners as found in the common law system, but centered upon the true love of God. Rev. Moon states:

The core content of the principle of interdependence is co-ownership based on God's true love. The basic model of the society of interdependence is the family. By co-ownership I do not mean ownership merely in relation to material possessions, but ownership based on God's love... In the family, even though all property would be legally held in the parents' names, in practice it would be jointly owned by the parents and the children; that is by the whole family... When this ideal form of ownership of the family, based on such love, expands to the society, nation and world, it becomes the form of ownership of the ideal world.^[20]

Since our degree of private ownership on the individual level is guided by what is reasonable based upon the conscience, what is the conscience? As the object, the conscience forms a vertical axis together with God as the subject and pushes us toward goodness. Let us look at some of Rev. Moon's words describing the conscience.

It is the central point of love where you are totally united in mind and body the perpendicular space where God can dwell. Where is the center of the individual, family, tribe, people, nation, world and cosmos? The center, no matter how small, is the conscience. One's conscience upholds the place where the axis of universal love resides. Such is the conscience of one who has attained unity of mind and body.^[21]

Within us there must be a function that drives us to seek the absolute God. Without such a function, we would not be able to reach Him. There must be a force to stimulate us and push us forward. That force is the conscience... The conscience is the force that urges us to become a better, more valuable individual.^[22]

The conscience always works to lead us toward something better, bigger, more valuable and more universal. Therefore, we can conclude that the conscience does not function on its own; it integrates the shared purposes of the subject and object partners.^[23]

The subject partner and object partner interact based on the conscience. It is a heavenly law and principle that the conscience cannot work without a subject partner. When we can see that our conscience is working constantly in pursuit of something higher, we can conclude that there is a subject partner on a higher dimension. We cannot deny the existence of the subject partner of our conscience, whom we call God.^[24]

New Essentials of Unification Thought fills in the idea a little more to include the concept of spiritual ownership centered upon true love, not simply materialistic ownership, in that we are entrusted by God with joint ownership with God and others to take care of God's property. This concept of being "entrusted" with joint ownership is crucial; it is where the concepts developed in the fiduciary law of common law are directly relevant. *New Essentials* states,

The principle of mutual existence is a concept dealing with the economic aspects of an ideal society, especially the aspect of ownership. In terms of ownership, in a capitalist economy there is private (individual) ownership, while in socialist economy there is social (national) ownership. Yet, in both economies the element of love is totally excluded. That is to say, whether private or socialist (public), economy is simply materialistic ownership, without regard to the mental aspect... In contrast, in the principle of mutual existence, joint ownership is based on God's true love. In other words, it is first, the joint ownership of God and myself; second, the joint ownership of the whole and myself; and third, the joint ownership of my neighbors and myself. This means that, through God's infinite love, we (myself, my neighbors, and the whole) are entrusted to jointly take care of God's property, which is given to us as His loving gift.^[25]

Furthermore, it explains that this ownership is to be based upon the family model in which God, parents and children are three levels of joint owners and that model can then be expanded to other forms of economic entities in which for example a business entity is owned jointly by God, the executives and the employees.

The family joint ownership in which three generations possess things together, is the prototype for various other kinds of joint ownership. Thus, joint ownership in the principle of mutual existence is joint ownership of God and I, the whole and I, and my neighbors and I, all based on God's true love. It is the joint ownership of all three levels of the other and I. In short, it may be called "the joint ownership of God, the whole, my neighbors, and I."^[26]

The extension of this joint family ownership is the joint ownership of various other organizations. For example, the joint ownership of a company is the joint ownership of three parties: God, who is the subject of true love, the executives, who are in the position of parents, and employees, who are in the position of children. Therefore, it is the joint ownership of the three levels of "the other and I," namely, "God and I," "executive and I," and my fellow

employees and I.’[27]

In the original world, even when a company is founded by entrepreneurs, it should first be offered to God. After it is offered to God, thus becoming God’s possession, it is returned to the entrepreneurs with God’s true love; then it will be possessed jointly by the entrepreneurs and God. Such a procedure is more than a mere formality. Only through such a procedure can God’s true love, protection and help effectively come to a company. The same thing can be said of other organizations as well.[28]

Next, Dr. Thomas Selover, the President of SunHak Universal Graduate University, explains that this interdependence is based upon the very connectedness that exists within God’s creation when he explains that,

The concept of interdependence, *gongseng* (공생, 共生), is based fundamentally on the nature of existence itself. Things are born or generated in such a way that they are interdependent with one another. If we want to recognize Heavenly creativity in the world, we must start by looking at the interdependence of things, or what advocates of intelligent design such as Michael Behe call ‘irreducible complexity.’ Irreducible complexity means things are made or designed to be interdependent with each other and could not have come to exist without each other.[29]

Dr. Hwa Myung Kang, Professor of Liberal Arts at Sun Moon University, fills in the picture a little more saying that a “joint economy aims for inclusive growth that shares gained benefits with all members of society and contributes to the harmonious development of society, instead of focusing on strong growth, which concentrates on economic expansion and profit making.[30] This is supported by *New Essentials of Unification Thought*, which states,

[In] future industry, an enterprise will seek to contribute to the progress of the welfare of all humankind rather than aiming only for the interest of the entrepreneurs. Therefore, the overall result of industrial activity will be the multiplication of beneficial goods for humankind.”[31]

In other words, in addition to the purpose of the individual—making a profit—there must be the purpose of the whole in which the corporation lives for the sake of others—for the benefit of the society as a whole.

Finally, joint ownership is to be ownership that harmonizes the individual and whole purposes guided by the conscience. As Jinsu Hwang of SunHak Universal Peace Graduate University explains, “The concept of the appropriate possession has two assumptions: 1) a human being has dual purposes: the purpose for the whole and the purpose for the individual, and 2) there exists conscience lively acting in the human mind. In this context, it is said that any individual can possess an appropriate amount of resources according to her or his conscience, in order to achieve the purpose for the whole precisely through achieving the purpose for the individual. What is important here is that the realization of the purpose for the individual must act as a medium to fulfill a greater good, that is, the purpose of the whole.”[32]

The above passages inform us that some of the key characteristics of the ideal of interdependence are: joint ownership with God, who has entrusted us with ownership of creation; joint ownership with our neighbors and within the corporation, based upon the joint ownership model found in a family centered on true love; interconnectedness, as is found in the world of creation; the balancing of the individual and whole purposes, reasonable ownership based on one’s conscience, and the development of a balanced economy in which the benefits are shared with all stakeholders within a global community in which all humankind is one family under God. As we will see below, the principle of fiduciary duties can provide the legal guidelines upon which to build a corporate governance structure with the concept of *hyojeong* based upon the joint ownership envisioned in the ideal of interdependence of Cheon Il Guk.

The Concept of Hyojeong

Hyojeong (孝情) is a concept created by Dr. Hak Ja Han Moon by taking two core concepts of traditional Korean culture: *hyo* (孝), which has the dictionary definition, “filial piety, being dutiful to ones parents;” and *Jeong* (情), which has the dictionary definition, “1. affection, love. 2; compassion, sympathy, tender feelings; and 3. feeling, sentiment.”[33] *Hyo* is made of up the radicals 老, old, and 子, son, denoting the maxim, “Old over son; duty of young.”[34] *Jeong* is made up of the radicals of 心, heart, and 青, blue. “The second part (blue) carries the meaning of fresh, pure, and true. Thus, it denotes pure heart, i.e. pure emotion. ‘Fact’ comes from heart with nothing to hide.”[35] Since this concept of *hyojeong* will be central to the concept of *hyojeong* fiduciary duties that will be applied to the corporate governance regime based upon the joint ownership of the ideal of interdependence, first we need to examine its meaning in more detail and look at what various scholars have to say about the concept in its constituent parts and as a whole.

First regarding *hyo*, the *Exposition of the Divine Principle* states that “the beauty that children return in response to the love of their parents is called filial piety.”^[36] According to Dr. Sung-Bae Jin,

Hyo (孝) is a Chinese character that combines *noh* (老): an elderly person with *ja* (子): son. The structure of this letter contains the expressive inscription of the son walking the elderly by supporting the hand of the vulnerable one with his head... In Confucian philosophy, *hyo* was defined as the practice of virtue (仁), while the central concept of Confucius lay in the word virtue (인, 仁): to love others and lead a moral life.^[37]

Dr. Thomas Selover tells us,

One of the most influential classical Confucian passages about *hyo* is *Analects* 1.2: “Being filial as a child and deferential as a younger brother are surely the roots of humankindness (*ren*, 仁, 仁).” Prof. Huang Yong of Chinese University of Hong Kong notes, “According to the neo-Confucian interpretation, particularly the Cheng Brothers and Zhu Xi...it means that “filial piety and brotherly love are the beginning of practicing humanity.” Agreeing with Prof. Huang, there is certainly a practical, action-oriented dimension to filial piety; it is not simply an attitude or emotion. At the same time, filial piety comes to be expressed as natural, not out of duty to follow a rule or obligation, or even a conscious sense of propriety. It is by reflecting back on actual experiences of filial piety in action that it is possible to know for oneself the heart-and-mind of *hyo*.

The character graph for filial piety (孝), composed of elder (parent) above and child below, presents us with a visual symbol of the lineal connection between parent and child. The representation is not (as some modern critiques would see it) a vigorous adult dominating and suppressing a growing child. Rather, it portrays the elderly or infirm parent being carried on the back of the vigorous adult child. Seeing the character in this way, we come to recognize that the filial child has sympathy or compassion for the situation of the parent. Extending this image in the direction of theological construction, the emphasis of *hyo* leads to a theological stance which seeks to inspire in disciples (as children of Heavenly Parent) a proper and passionate sense of sympathy for Heavenly Parent’s situation. As we shall see, this sympathy for Heaven in turn undergirds the values of common cause, co-prosperity and interdependence in society.^[38]

What about *jeong*? What do various scholars tell us about the meaning and importance of this concept. Dr. Sung-bae Jin ties *hyo* to *shimjeong*, sometimes translated as “heart,” which contains the Chinese character for *jeong* and means “the impulse to give true love to one’s object partner and receive joy and happiness from that object partner.”^[39] He writes:

Therefore, as the origin of *hyo* is found in 仁(仁) according to Confucianism, the concept of *hyojeong* (孝情) in *Hyo Jeong Character Education* places the root of *hyo* in *shimjeong*. Just as the heartfelt motivation of parental love leads to the child’s devotion and loyalty, the origin of *hyo* is based in *shimjeong*. These two pillars of *shimjeong* and *hyo* are the fundamental principles sustaining morality and ethics within a family.^[40]

Dr. Selover explains,

In characterizing *jeong* (情), the second component of *hyojeong*, we can begin from the fact that in the classical texts of Confucianism, the word has a wide field of meaning, including “feeling” (*jeonggam* 정감, 情感)—denoting feeling-in-motion or emotion, “situation” (*sajeong* 사정, 事情), and “circumstances” (*jeong-hwang* 정황, 情況). Joining these meanings together, we can say that *jeong* is experienced as an emotional or intuitive bond of sensitivity to the situation of others... The point of *hyojeong* as differentiated from *hyo* alone is that it involves others in a feeling-realm of mutual participation. In other words, *hyojeong* is not only a vertically-directed concept; it also includes a horizontal expansion. In this way, *hyojeong* can represent an important insight for articulating the goal of a society based on shared, common humanity.^[41]

According to C. Fred Alford, *jeong*, or *chǒng* as he spells it, “is, in fact, the highest value in Korea.” Furthermore that it “is an ideal that is realized only in relationships with others.” “It is hard to overestimate the importance of affection in Korea. Not only is it what makes life meaningful for most Koreans, but it is the leading principle of social organization.” He quotes Korean scholar Pyong-choon Hahm from his book *Korean Jurisprudence, Politics and Culture* who states,

If a choice is to be made between law and affection as an agency for maintaining the culture, the Koreans would clearly prefer the latter as they have done in the past. The importance of affection in Korea lies in its function as a source of social stability and order. It was an important means of social control. [Traditional wisdom] stressed the fact that as long as the family remained cohesive and stable the country and the world also remained orderly and peaceful (Hahm

In relation to globalization, which is deeply relevant to the issue of the ideal of interdependence as the ideological foundation of the economy in Cheon Il Guk, Alford states that “Globalization threatens to result in a society without affection, something that Koreans not only dislike but dread, for it is affection that binds humans together in society. It is affection that makes society worthwhile. By affection I mean *chông*... Koreans will be alone in a world of otherness as a world of otherness intrudes on them. It is what Koreans most fear, becoming alien to themselves, living in a world of pure change.”[43] Keep in mind that Alford’s book was published shortly after the Asian financial crisis, or what Koreans call the “IMF problem” that shook the Korean economy and society to its roots.

So *hyojeong* consists of vertical and horizontal, front and back, bonds of affection that bind us to God as our Heavenly Parent and to each other as brothers and sisters. It is learned in the family and extends to our friends, neighbors, community and the natural environment in which we live. The problem with the market capitalist system, which is centered upon the individual purpose, is that it tends to sever these bonds of affection that we feel towards each other, with our community and with the natural environment all in the pursuit of maximizing profits. The problematic side effects of globalism that Alfred mentions are not unique to Koreans as we can see from the current wave of anti-globalist populism. However, the solution is not walling out the other, but creating an economy that supports and strengthens the bonds of affection, or the bonds of *hyojeong* that make life worth living and expanding those outward rather than tearing them to shreds.

Finally, to get a sense of *hyojeong* in relation to his father and his relationship with nature, let’s read a couple passages from the autobiography of Dr. Sun Myung Moon. For if there was ever a man who felt and lived *hyojeong*, it was he:

I would often fall asleep in the hills after playing there. My father would be forced to come find me. When I heard my father shouting in the distance, “Yong Myung! Yong Myung!” I could not help but smile, even as I slept. My name as a child was Yong Myung. The sound of his voice would awaken me, but I would pretend to still be asleep. He would hoist me onto his back and carry me home. That feeling I had as he carried me down the hill—feeling completely secure and able to let my heart be completely at ease—that was peace. That is how I learned about peace, while being carried on my father’s back.[44]

When I went to the mountains, I would touch all the flowers and trees. I wasn’t satisfied to just look at things with my eyes; I had to touch the flowers, smell them, and even put them in my mouth and chew on them. I enjoyed the fragrances, the touch, and the tastes so much that I wouldn’t have minded if someone had told me to stick my nose in the bush and keep it there the whole day. I loved nature so much that anytime I went outside, I would spend the day roaming the hills and forget about having to go home... Gradually I learned to be friends with everything in nature in a way we could share our hearts with each other.[45]

Corporate Governance and the Agency Problem

The modern corporation has five characteristics: (1) It is a legal personality that is the legal owner of a pool of assets that are distinct from the other assets owned by the owners of the corporation—its shareholders, (2) the owners of the corporation and its managers have limited liability, (3) the ownership of the corporation is represented by transferable shares, (4) management is delegated under a board structure and (5) there is investor ownership.[46] These characteristics make it possible to raise large amounts of capital from a diverse group of investors.

For our purposes here, the important points are that the corporation is a legal person, owned by investors, and managed by a board of directors. Thus, ownership and management are separated, and this gives rise to what is called the “agency problem.” The agency problem is what gives rise to the necessity of the application of fiduciary or agency law.

Since ownership and management are separated in a corporation, the fundamental problem is to assure that the managers of the corporation manage the corporation for the benefit of the owners and not for their own benefit. Because of this separation between the shareholders and managers, there are numerous possibilities for conflicts of interest and opportunism can arise.[47] Alan Palmiter explains:

At the heart of corporate law lie duties of trust and confidence—fiduciary duties—owed by those who control and operate the corporation’s governance machinery to the body of constituents known as the “corporation.” Directors, officers, and controlling shareholders are obligated to act in the corporation’s best interests, which traditionally has meant primarily for the benefit of shareholders—the owners of the corporation’s residual financial interests... State courts, not legislatures, have been the primary shapers of corporate fiduciary duties. Judicial rules balance management

flexibility and accountability, producing often vague and shifting standards.

Corporate law allocates risks between shareholders and managers in an attempt to minimize shareholder-manager conflicts and to maximize the firm's overall success. It creates a structure for business activities and devices to control conflicts of interest among corporate constituencies. These conflicts are often referred to as "agency problems" since they mimic the conflicts in the principal-agent relationship.^[48]

The agency problem is economic terminology for problem that develops when the welfare of the party referred to as the "principal" depends upon the actions of a party referred to as the "agent." The fundamental issue is how to ensure that the agent acts for the benefit of the principal and not in the interest of the agent.^[49] In other words, it is how to ensure that the agent lives for the sake of the other—the principal. Corporate fiduciary duties serve to help shareholders deal with the agency problem.^[50]

There are three basic categories of agency problems in a corporation. First there is the conflict between the business owners—the investors, and those whom they hire to manage the corporation—the directors and officers. Second, there is the conflict between controlling and non-controlling owners of the corporation. Third, there is the conflict between the corporation and other parties that the corporation contracts with or deals with such as creditors, employees and customers.^[51]

For the agency problem, there is an asymmetry in information: the agent has better information than the principal and as a result the principal has difficulty in ensuring that the agent is performing as promised. This asymmetry of information provides an incentive for the agent to divert to himself benefits that he promised to the principal—in other words, for the agent to live for the agent's sake rather than for the sake of the principal. This reduces the value of the agent's performance to the principal.

In order to obtain the promised performance, the principal must incur the additional expense of monitoring the agent's performance. The more complex the task undertaken by the agent the more the principal will have to trust the agent and the greater the agency costs will be. The agency problem becomes even greater when there are numerous principals with differing interests and when they face coordination costs that tend to discourage collective action, such as in a publicly traded corporation.^[52]

The economic system of Cheon Il Guk, guided by the ideal of interdependence, should pursue what is called "overall social efficiency" that balances the whole purpose with the individual purpose. Thus,

The appropriate goal of corporate law is to advance the aggregate welfare of all who are affected by a firm's activities, including the firm's shareholders, employees, suppliers, and customers, as well as third parties such as local communities and beneficiaries of the natural environment. This is what economists would characterize as the pursuit of overall social efficiency.^[53]

This raises the issue of how to set up a legal system that supports this overall social efficiency. In order to understand this issue and how corporate law can be used to reach this goal, we must first understand the fundamental problem: How do we get the managers of the corporation to act for the sake of fulfilling those interests and not their own interests? As stated above, this is known as the agency problem and this is where fiduciary duties become important.

Fiduciary Duties

Directors and officers are agents of the corporation, and as such they owe fiduciary duties to the corporation. As taught in business schools around the globe, the basic duty of directors is to maximize the value of the corporation for the shareholders. Although civil law places more emphasis on meeting the needs of all stakeholders than does common law, this principle of maximizing the return to shareholders is taught to MBA students in finance courses even in civil law countries such as the Republic of Korea. The relationships with other constituencies such as creditors, employees, suppliers etc. are governed by contracts and statutes.

As fiduciaries of the corporation, directors have two basic duties: the Duty of Care and the Duty of Loyalty. In addition, they have a Duty of Honesty in all transactions with shareholders. The Duty of Care requires directors to make informed and reasonable decisions and to exercise reasonable supervision of the business. The Duty of Loyalty requires directors to act in good faith and in the best interest of the corporation. Although these fiduciary duties are often written into the corporate law statutes of the various states, they originate in the unwritten common law of agency.

So, what does agency mean? The *Third Restatement of Agency* states,

Agency is the fiduciary relationship that arises when one person (a 'principal') manifests assent to another person (an

'agent') that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests assent or otherwise consents to act.^[54]

Furthermore, these

...fiduciary relationships involve the kind of trust and reliance that society is interested in nurturing. This is the first element required for the law to impose on one party—the fiduciary—duties of honesty and trustworthiness. The second element of a fiduciary relationship is the entrustment of property or power. Entrusted property and power initially belong to the entrustors, and should be used, at least in part, for their benefit.^[55]

The Duty of Care is the care that a reasonable person would use in managing his or her own property. An officer or director must make informed decisions while acting with the care a reasonable person would use to manage his or her own property, while exercising due diligence after reviewing all information and both the monetary and non-monetary aspects of a transaction.

According to the Model Business Code Act, "Each member of the board of directors, when discharging the duties of a director, shall act: (1) in good faith; and (2) in a manner the director reasonably believes to be in the best interests of the corporation."^[56] The standard of care is an *objective standard*—a reasonable person in the director's position, as opposed to a subjective standard—what the particular director actually believes to be reasonable.

A court will generally not second-guess the actual business decisions made by a director or officer and will not replace it with the court's own decision as long as those decisions are rational, made in good faith, based on reasonable information and there is no conflict of interest. There is a rebuttable presumption "that in making a business decision, the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company... Thus the party attacking a board decision as uninformed must rebut the presumption that its business judgment was an informed one."^[57]

This rebuttable presumption is known as the Business Judgment Rule. There are three requirements that must be met for the Business Judgment Rule: (1) the director or officer must have no conflict of interest regarding the matter decided; (2) the director or officer must have been adequately informed about the relevant facts involved in the decision; and (3) the decision of the director or officer must have been rational as of the time it was made.

The American Law Institute defines the Business Judgment Rule as follows: "A director or officer who makes a business judgment in good faith fulfills the duty [of care] if the director or officer (1) is not interested in the subject of the business judgment; (2) is informed with respect to the subject of the business judgment to the extent the director or officer reasonably believes to be appropriate under the circumstances; and (3) rationally believes that the business judgment is in the best interests of the corporation."^[58]

The combination of the Duty of Care with the Business Judgment Rule means that a court will look very carefully at the process by which an officer or director made a decision, but will not look very closely at the wisdom of the decision itself. A director may be held personally liable for money damages to the corporation when an officer or director has violated his or her Duty of Care to the corporation and this violation causes damages to the corporation. This may happen when the director fails to do what directors normally do, such as attend meetings, learn about the corporation's business, read reports and financial statements given to the director by the corporation, obtain help from outside sources when the director sees or should see signs that something is seriously wrong, or fail to behave diligently and utilize standard procedures.

The rationale for the Business Judgment Rule is that a certain amount of risk-taking is required for a business to develop and prosper, and it is in the interest of the shareholders for directors to take rational risks. Directors and officers must constantly engage in risk/return judgments usually on the basis of imperfect information, and judges are not meant to make business decisions using 20/20 hindsight. Also, shareholders can spread the risk of business decision mistakes by diversifying their portfolio (diversification of risk), while directors can usually only serve on a small number of boards and thus cannot spread their risk as well. If officers and directors have to worry about facing personal liability for every wrong business decision, they will become too risk averse. Yet, making a profit in business requires taking risks.

Even if a business decision is informed, the Business Judgment Rule will not apply if the directors have a financial or other personal interest in the transaction. Disinterested means not having an interest on either side of the transaction nor an expectation of gaining any personal benefit from the transaction. However, even if one or more directors have a personal interest in the transaction, the Business Judgment Rule can still apply if a majority of the disinterested directors approve the transaction after full disclosure by the interested director. This brings us to the Duty of Loyalty.

The Duty of Loyalty states that officers, directors and controlling shareholders owe the corporation and its shareholders undivided loyalty, that they must act in good faith, and that they must not put their interests in front of the corporation. A transaction that involves alleged self-dealing will be examined closely by the

courts. If self-dealing is found, the transaction is voidable and the interested actor may be required to pay damages to the corporation, unless the interested party can show that the transaction was fair and reasonable to the corporation or unless the conflict was fully disclosed in advance and approved by the disinterested directors.

Thus, if there is a conflict of interest, the interested party must fully disclose the conflict and the nature of the transaction in advance and a majority of the disinterested directors or disinterested shareholders must pre-approve the transaction after receiving this full disclosure. In the alternative, the interested party can show that the transaction is basically fair to the corporation or the disinterested shareholders can ratify the transaction after the fact after receiving full disclosure.

An aspect of the Duty of Loyalty is that officers and directors must offer to the corporation an opportunity that is likely to be of interest to the corporation before he or she can take that opportunity for himself or herself. A test used for what is known as the Business Opportunity Doctrine is the Line of Business Test, in which if an officer, director, or controlling shareholder learns of an opportunity in the course of his or her work for the corporation and the opportunity is in the corporation's line of business, a court will not permit the officer, director, or controlling shareholder to keep the opportunity for himself or herself.

In the common law governing not-for-profit corporations there is also a Duty of Obedience that requires officers and directors to obey the laws of the government, adhere to the purposes of the corporation stated in the articles of incorporation, and obey the internal bylaws of the corporation. Previously this duty was part of the common law governing for-profit corporations to prevent actions that exceeded the purposes for which corporations were formed. However, these days unless a corporation is formed for a particular purpose to meet some kind of regulatory requirement such as to obtain a banking license, the articles of incorporation state that the corporation may engage in any legal purpose. Thus, this duty has for the most part disappeared from corporate law governing for-profit corporations. However, it is still applicable to not-for-profit corporations, sometimes is considered part of the Duty of Loyalty, and is generally regarded as not being subject to the Business Judgment Rule.^[59]

In addition to the above-mentioned duties based on the common law of agency, officers and directors also owe the Duty to Notify and Account, the Duty of Honesty, which requires they have a duty to disclose all *material facts* when requesting shareholder action, and a Duty of Confidentiality.

The Difference Between Civil Law and Common Law Approaches to Fiduciary Law

The common law legal systems and the civil law legal systems approach fiduciary law from very different angles. "The common law draws the regulation of fiduciaries mainly from property law, while in the civil law it is based on contract law."^[60] As a result of this difference in approach, there is a much greater emphasis on morality in common law, whereas violations of fiduciary duties in civil law countries are viewed more just as contractual violations, without the heightened moral dimension found in common law countries.

In a sense, the difference is the added moral dimension in what one may call a "covenant" as opposed to a "contract." As explained by David Brooks through quoting Rabbi Jonathan Sacks;

A contract is a transaction. A covenant is a relationship. Or to put it slightly differently: a contract is about interests. A covenant is about identity. It is about you and me coming together to form an 'us.' That is why contracts benefit, but covenants transform.^[61]

Thus, the fiduciary duties in common law are not just transactional and based on the interests of the parties but go to the identity of the directors and officers as being agents of the corporation and forming a larger whole to which they must subordinate themselves. "Us" implies joint ownership spoken of in the ideal of interdependence.

An example of the strong moral emphasis placed on fiduciary duties in common law countries is the following quote written by the famous judge Benjamin J. Cardozo when he was the Chief Judge of the New York Court of Appeals. He would later go on to serve as an Associate Justice of the Supreme Court of the United States from 1932 to 1938 and has a law school named after him. In ruling that there had been a violation of the Duty of Loyalty, he wrote in his distinctive style that,

Salmon had put himself in a position in which thought of self was to be renounced, however hard the abnegation. He was much more than a coadventurer. He was a managing coadventurer (Clegg v. Edmondson, 8 D. M. & G. 787, 807). For him and for those like him, the rule of undivided loyalty is relentless and supreme (Wendt v. Fischer, supra; Munson v. Syracuse, etc., R. R. Co., 103 N. Y. 58, 74).^[62]

This emphasis on the morality in the common law fiduciary duties is emphasized by Dr. Frankel, who states,

Common law courts regulate fiduciary relationships by imposing a high standard of morality upon them. This moral theme is an important part of fiduciary law. Loyalty, fidelity, faith, and honor form its basic vocabulary. For instance, embezzlement is stealing by a trusted person; it is seriously immoral. It has been suggested that altruism is the basis of this morality—that at common law, fiduciaries are to serve members of society, contribute to society and channel their self-interest in a way that benefits others.^[63]

Finally, the moral thrust of fiduciary law forms a bridge between altruism and individualism by focusing the on the objectives for which the fiduciary must aim, which include not merely the interests of the entrustors, but also the collective good.^[64]

As stated above, fiduciary duties in common law countries are based upon property law in which one person entrusts property or power to another person—the fiduciary. The entrusted person, the fiduciary, becomes the legal owner and the entrustor is the beneficial owner. “The focus in the common law is on *protecting entrusted property or power*; it imposes duties on fiduciaries to prevent the misappropriation of entrusted property and the misuses of entrusted power because they do not belong to the fiduciaries. Even though fiduciaries have legal ownership of the property or the legal right to exercise power, beneficial ownership of the property or power belongs to the entrustors, so fiduciaries must not act carelessly or in conflict with their entrustors’ interests.”^[65] Again, this bifurcated ownership between the legal owner and the beneficial owner, which does not exist in civil law countries, can form the basis to connect with the idea of joint ownership found in the ideal of interdependence.

On the other hand, in civil law countries, fiduciary duties are based upon contract law in which there is no bifurcation of ownership. “A transfer of ownership must be complete. In most civil law jurisdictions, a transfer to a trustee shifts full ownership without exceptions... The civil law addresses the entrustors’ risks by focusing on the terms of the agreement among the fiduciaries and entrustors, the fairness of these terms and the circumstances that led to the parties’ agreement.”^[66] Thus, the fiduciary duties are transactional and based upon the interests of and the agreement between the two parties and lack the moral emphasis found in common law jurisdictions and do not form the basis for the concept of joint ownership required by the ideal of interdependence.

As stated above, a major goal of fiduciary law is to protect the trust, confidence or dependency that the principal entrusts to the agent when giving the agent power over the principal’s assets. A major difference between common law and civil law systems is that civil law deals primarily with the Duty of Care and not the Duty of Loyalty. Korean Fulbright Scholar, Dr. Lee states that “the principle-based regulation in the name of fiduciary law is urgently necessary in Korean corporate law context” and he “explores the hypothesis that it is desirable for Korean courts to protect people’s trust or confidence in others through the adoption of Anglo-American concept of fiduciary law and exercising judicial discretion in the name of fiduciary duties.” He investigates “the question whether and how to adopt and develop fiduciary principles in Korean private legal system.” He points out that “in civil law countries, there is no equivalent principle of *fiduciary* law. Instead, there are isolated *specific provisions* dealing with conflicts of interest such as prohibition of self-dealing and prohibition of competition with the principal, etc.”^[67] When speaking of fiduciary law, he is referring to the Duty of Loyalty, since Korean law does have a Duty of Care.

Legal scholars Katherina Pistor and Chengang Xu point out that the fiduciary duties in corporate law in common law countries have largely been developed over time by case law, which civil law countries do not have, when they write,

Fiduciary duty is a core concept in Anglo-American corporate law for delineating the rights and responsibilities of directors and managers, as well as dominant shareholders vis-à-vis minority shareholders. Yet its precise meaning is difficult to discern without reference to a large body of case law. Thus, in Anglo-Saxon countries, courts are in charge of determining the boundaries of managers’ obligations to shareholders—boundaries, which are inherently difficult to circumscribe exhaustively. As Clark puts it, “this general duty of loyalty is a residual concept that can include factual situations that no one has foreseen and categorized.” [However.] “The same qualities that make the concept of fiduciary duties so resilient over time make it extremely difficult to transplant to other legal systems. The meaning of fiduciary duty cannot easily be specified in a detailed legal document.”^[68]

As mentioned above, the Duty of Loyalty can be dealt with in a civil law country by writing in specific provisions to deal with conflicts of interest for status-based persons into the statute. So, these are not totally alien concepts to civil law countries such as Korea. However, there is no unwritten overarching Duty of Loyalty with the moral implications that are found in common law countries such as the United States. They must be written into the statute with specificity and lack the moral emphasis found in common law countries.

Problems with the Current Corporate Governance Model and Various Attempted Solutions.

The *New Essentials of Unification Thought* speaks of the owner/entrepreneur and the firm as being an expansion of the family model of God, parents and children, as God, executive and employees. This model is

based upon what is called “personal capitalism” that dominated in the late 19th and early 20th centuries and may hold true when dealing with a privately held closed corporation in which the entrepreneur is both the owner and manager of the corporation. However, from 1950-1970 most large publicly traded corporations were based upon what Alfred Chandler termed “managerial capitalism”^[69] in which ownership is separated from management and the management elite pursued growth and empire building. As William A. Darity Jr. states, “the social dominance of the captains of industry has given way to the social dominance of... a professional-managerial elite.”^[70]

However, from the 1980s with the increase in global competition, changes in technology, and new financial techniques that made financing more widely available, economic democratization began to take hold through mergers and acquisitions that were often hostile takeovers. Managerial capitalism began to give way to “financial capitalism” in which small shareholders and especially institutional investors began to exert their influence. “Therefore a new mode of corporate governance based on financial criteria has been imposed. The main objective is to protect external investors by limiting the obstacles that affect their control. Transparency, responsibility from top management, contestability of corporate control, and managerial compensation associated with the maximization of shareholder value are advocated.”^[71] This “maximization of shareholder value” has resulted in an extreme focus upon the individual purpose of the corporation at the expense of the whole purpose.

The financial scandals in the early 2000s involving corruption at public corporations such as Enron, the subprime mortgage crisis that nearly destroyed the world economy that started in 2008, and the glaring growth in income inequality have raised serious doubts about the long-term viability and equity of the financial capitalism model. As a result, there have been some attempts to introduce Corporate Social Responsibility (CSR) and Creating Social Values (CSV) to begin seeking to “protect the interests of all corporate stakeholders and guarantee social equality.”^[72]

In his paper “How Creating Shared Value is taking Corporate Responsibility one Step Further,” Jose Paz Rendal informs us that for A.B. Carrol, an early proponent of CSR, CSR means that “the social responsibility of business encompasses the economic, legal, ethical and discretionary expectations that society has of corporations at a given point in time.” Furthermore, according to Porter and Kramer, the originators of the idea of Creating Social Value, “The concept of shared value can be defined as policies and operating practices that enhance the competitiveness of a company while simultaneously advancing the economic and social conditions in the communities in which it operates. Shared value creation focuses on identifying and expanding the connections between society and economic progress.”^[73]

Thus, efforts are being made to develop practical theories and strategies to address the shortcomings of the current short-term viewpoint of financial capitalism in the U.S. and connect the corporation to larger societal purposes. Yet, as Dr. Kang points out,^[74] these are dealt with primarily as practical methodologies for improving the long-term profitability of the corporation and do not deal with the issue of joint ownership centered on true love as envisioned in the ideal of interdependence and do not address any legal mechanism by which this can be brought about. Given that the restoration of human beings will take time, legal mechanisms are needed to help move the process along.

From a legal perspective, in today’s world the common law and the civil law systems approach corporate governance differently. In common law countries such as the United States, the goal of corporate governance is to maximize shareholder value. On the other hand, in civil law countries, the goal of corporate law is to balance the interests of all the stakeholders of the corporation such as the employees, creditors, communities, etc.

For example, in the United States the board of directors is elected by the shareholders—the legal owners of the corporation. However, in contrast to this, in Germany, a civil law country, the employees have a right to elect a portion of the directors based upon the concept of codetermination. Thus, although not legal owners of the corporation, based on statutory law they have rights that in a common law country such as the U.S. are reserved only for the legal owners, the shareholders.

The problem with the civil law approach is that it is difficult to monitor the performance of directors when there are so many different interests.

Balancing stakeholder interests sounds like an entirely reasonable idea. But it cannot serve as a company’s singular governing objective because it is impossible to simultaneously satisfy the interests of all stakeholders. In the absence of a singular governing objective, executives are free to decide as they see fit and to balance those interests however they think is right. And without knowing how managers decide, it is almost impossible to hold them accountable for what they decide.^[75]

This is made even more difficult by the fact that the civil law countries do not have a strong fiduciary Duty of Loyalty. This opens the door to all kinds of related party transactions and self-dealing. In Korea, the “Korea Discount” refers to the fact that the stock price/corporate earnings ratio is lower than in other advanced countries such as the United States. It is generally believed that the cause of this discount is the lack of transparent corporate governance and the problem of conflicts of interest.

On the other hand, the fundamental problem with the common law approach is that it tends to focus on short-term value while neglecting long-term value and the interests of other stakeholders. As Shin Jang-sup writes, the emergence of “financial capitalism” has coincided with increasing income inequality in the U.S.

Corporate managers accepted the maximizing shareholder value ideology as the new creed of managing corporations... The collapse of the middle class and the emergence of the ‘1% versus 99%’ framework in the U.S. had much to do with this restructuring.... But an undeniable fact is that major beneficiaries of pursuing economic democratization through shareholder democracy in the U.S. were financial institutions and some corporate executives who were awarded with lucrative stock options. Most workers and ordinary people were marginalized.”[\[76\]](#)

Thus, market capitalism that has progressed from “personal capitalism” to “managerial capitalism” to “financial capitalism” clearly must progress onto a new stage of capitalism. We can see that presently market capitalism, whether in a civil law country or a common law country, is still far from the ideal that human beings have been seeking throughout history. We can call this new stage “Heavenly capitalism,” which will be based on the ideal of interdependence in which the interests of all shareholders are taken into account centered upon true love.

Corporate Governance Based on Hyojeong Ethics as the Conscience of the Corporation

The Corporate Governance system of Cheon Il Guk based on the ideal of interdependence should be based upon the Heavenly Law that incorporates the fiduciary duties and case law system of the common law system, the focus of all stakeholders of the civil law system, and the new ethics of *hyojeong*, which inherits many points from the traditional East Asian system while adding totally new dimensions. These ethics of *hyojeong* should be incorporated into the fiduciary duties of the corporation’s directors and officers. This will create a new Heavenly corporate law that will embrace and implement the idea of joint ownership centered on true love, which is the basis for the ideal of interdependence.

As we have seen, in the name of maximizing shareholder value, corporate law in common law countries has made maximizing the financial return to shareholders as the goal. It focuses upon the agency problem—how to ensure that the directors manage the business for the benefit of the shareholders rather than for their own benefit. It is rooted in property law and the concept of bifurcated ownership of property. In other words, there is a legal owner—the person entrusted with the property, and a beneficial owner—the person who entrusted the property. As the legal owner, the entrusted person or agent is supposed to manage the property for the benefit of the entrustor or principal. This common law of agency has been incorporated into the common law of corporate governance and into the statutory corporate law of the various states. The common law of the fiduciary duties of directors, who are agents of the corporation, states the general principles and standards that have been applied to various fact patterns by courts and has resulted in the gradual development and filling in of the details of the fiduciary duties.

On the other hand, corporate law in civil law countries, has at least in theory focused on the various stakeholders of the corporation, not just the shareholders. It is statutory in nature and is based on contract law in which there is no bifurcation of ownership. Therefore, any restraints on the behavior of the directors must be written into the contracts or statutes. There are no general unwritten fiduciary duties as applicable guiding principles.

One major difference between the common law countries and the civil law countries deals with the Duty of Loyalty that governs conflicts of interest. Although civil law countries may write in specific provisions into their statutes to prohibit self-dealing and other transactions involving conflicts of interest, there is no overarching general principle prohibiting conflicts of interest. If it is not prohibited by the statute it is ok. This is because in contrast to the common law system in which there is the concept of the legal owner and the beneficial owner, in a civil law country since it is based on contract law, once the ownership of the property is transferred, the person who has transferred the ownership of the property no longer has any ownership rights and must rely only on contractual or statutory provisions to restrict the usage of the property by the new owner. As a result, the common law corporate governance laws have tended to deal better with the agency problem and protecting the rights of the shareholders. However, since the main focus of common law corporate law is maximizing the return to shareholders, civil law corporate law, which focuses more on all the stakeholders, has arguably been able to better take into account the other stakeholders.

Joint ownership of the ideal of interdependence starts with joint ownership of God’s creation between God and human beings. God as True Parent or Heavenly Parent entrusts the creation to human beings, who are God’s children and are to be the lords of Creation. Thus, human beings are to care for and love the creation on behalf of God. In effect, God is the entrustor and human beings are the trustees. There is bifurcated ownership. Human beings own the world of creation jointly with God. Thus the relevance of the fiduciary law of common law.

However, the joint ownership envisioned in the ideal of interdependence does not stop with joint ownership between God and human beings. Human beings are not only individual embodiments of truth but are connected beings—connected to nature, to their families, to their neighbors and communities etc. Hence, the

joint ownership concept of the ideal of interdependence extends to the various stakeholders of a corporation. This is where the concept of *hyojeong* comes in. As Dr. Selover states, “The point of *hyojeong* as differentiated from *hyo* alone is that it involves others in a feeling-realm of mutual participation. In other words, *hyojeong* is not only a vertically-directed concept; it also includes a horizontal expansion. In this way, *hyojeong* can represent an important insight for articulating the goal of a society based on shared, common humanity.”^[77] Thus the connectedness based upon *jeong* becomes multidimensional.

This raises the question of how this joint ownership can be realized. As explained above, the ideal of interdependence is based upon joint ownership centered upon the true love of God. It relies upon the conscience of the individual to self-regulate him or herself regarding what is reasonable ownership. The Korean word that I have translated as “reasonable” is *jeokjeong* (적정, 適正), which can be translated as “propriety, rightness, or reasonableness.” It appears that in her paper Dr. Hwa Myung Kang translates it as “appropriate” when she states that “the principle of mutual existence proposes a balance between joint ownership and appropriate possession based on true love.” She goes on to say that “each individual will possess the appropriate amount of material possession as he or she needs, according to their pure conscience.”^[78] In a paper I translated by Dr. Hang Jae Kim,^[79] I almost translated the word as “proper” but then decided upon “reasonable” because that is a term that is used often in American corporate law. So I am using that translation here as well.

Reasonable private property ownership is based upon the conscience of the individual. In the eyes of the law, a corporation is a person. But if that is the case, what can act as the conscience of a corporation? We can say that the “mind” of the corporation is the board of directors, since they are responsible for managing and directing the use of the assets of the corporation, which can be called the corporation’s “body.” Then, what can act as the center of the mind or the conscience of a corporation? The fiduciary duties of the directors centered on the ethics of *hyojeong* can act as the conscience that guides the corporation.

Presently the fiduciary duties of the directors of a corporation serve the goal of maximizing the financial return for the shareholders. We can view this as the individual purpose of the corporation. However, just as an individual human being has an individual purpose and a whole purpose that must be harmonized together, a corporation, which is a legal person, must have a whole purpose as well as an individual purpose, and the individual purpose must be harmonized with the whole purpose.

There have been various management strategies that have attempted to introduce the whole purpose into the management of corporations such as Corporate Social Responsibility (CSR) and Creating Social Value (CSV). However, such strategies have not been introduced into the corporate governance laws and still are primarily profit-driven strategies. This paper argues that the whole purpose of the corporation can be included into corporate law by expanding the goal of fiduciary duties from just maximizing shareholder value to maximizing the return to all stakeholders, including non-material returns, and that these expanded duties can be placed under the umbrella of *hyojeong*.

Thus, in making corporate decisions, the Duty of Care will require the directors to consider the effects of a decision on the employees, the community in which the business is located and the environment. However, just as with the current Duty of Care as currently applied, the Business Judgment Rule will be an affirmative defense to protect against frivolous lawsuits and second-guessing by the courts. Since this will be based upon Heavenly Law in which there is a concept of bifurcated ownership, the other stakeholders will be included into the concept of joint ownership as beneficial owners. Thus from a legal perspective, joint ownership is achieved within the framework of a market economy without having to have socialized ownership or without having to rely only on the good conscience of directors as fully restored human beings.

Even if the directors are fully restored human beings, anyone who has dealt with the reality of business knows that at times one is faced with agonizing decisions. Fiduciary duties help guide the directors to make the correct decision. They strengthen and support the consciences of the individual directors. They make decision making easier. If the fiduciary duties are adjusted to align with the whole purpose centered upon true love, then they can engage in give and receive action with the consciences of the individual directors to help them make a decision that aligns with their own conscience. Then the *hyojeong* fiduciary duties can truly act as the conscience of the corporation.

Clearly, we have a way to go before all humankind is restored as true human beings who are 100% obedient to the dictates of their conscience. In the meantime, what to do? Money is a tremendous temptation that is at the source of much misbehavior and conflict, and it will continue to be so for the foreseeable future. Introducing the concept of *hyojeong* ethics into the fiduciary duties of directors of corporations can help to rebalance corporate governance law to include the whole purpose and realize the ideal of interdependence based on joint ownership of all the stakeholders centered upon true love.

Presently in common law countries, relationships with these other stakeholders are only governed by contracts and statutory law. There is not any overarching fiduciary duty or principle to deal with these relationships. For example, employees have employment contracts with their employer and there are statutory protections such as workers compensation laws, minimum wage laws, unemployment insurance, social security taxes, etc. Statutory and contractual provisions are very cold and impersonal and do not contain the contents of a heartistic connection or emotional bond found in the concept of *hyojeong*. However, in the ideal of interdependence the managers of a corporation are in the position of parents and the employees are in the position of children, and so there must be a heartistic connection based on *hyojeong*. This *hyojeong* connection

can be introduced through the fiduciary duties of the officers and directors that include looking after the well-being of the employees, as well as other stakeholders.

The goals of the fiduciary duties will include the traditional fiduciary duties found in common law of Duty of Care and Duty of Loyalty. Although the Duty of Loyalty is not found in civil law jurisdictions, it is very important to prevent the directors from acting in their own self-interest. This becomes especially important when the fiduciary Duty of Care is expanded to include other stakeholders. One major danger in doing so is that directors may be able to more easily divert corporation assets and income to serve their own interests. Thus, the Duty of Loyalty assumes even greater importance. In addition, the Duty of Obedience should be included to require the directors to obey external laws and internal articles of incorporation and bylaws. This is especially important in the case of not-for-profit corporations that have restricted purposes written into their articles of incorporation. Furthermore, there must be a strong Duty of Honesty and corporate governance must be transparent.

As stated above, the Duty of Care based upon the ethics of *hyojeong* will be expanded to include other stakeholders. These *hyojeong* ethics can be categorized based upon the three great blessings found in the Bible. The three great blessings are to be “fruitful and increase in number; fill the earth and subdue it” [80] and refer to God’s purpose in creating human beings. The first blessing is to achieve “perfection of individual character,” the second blessing is when a married couple joins “in loving oneness as husband and wife” and raise children, and the third blessing is “the perfection of a human being’s dominion over the natural world.” [81]

When applied to a corporation, the first blessing means that directors of a corporation must take reasonable care to produce products and services that promote the nurturing of the mind and body unity of true human beings centered on the true love of God and that provide a reasonable return to investors. Under the second blessing the directors of a corporation must take reasonable care to produce products and services that promote marriage and true families centered upon the true love of God while taking reasonable care of the employees of the corporation. Under the third blessing directors of the corporation must take reasonable care to make use of the natural resources in an environmentally responsible way and to produce products and services that do not harm the environment. In addition, they must take reasonable care to support the community within which the business is located, including paying all required taxes to support the government that should be acting for the sake of the people.

If the shareholders are true human beings who are guided by their conscience, then they will want the directors to manage the corporation in a manner that fulfills the whole purpose and thus this will not conflict with their desire for a reasonable return on their investment. In fact, for true human beings guided by their conscience, the “value” referred to in “maximizing shareholder value” will be redefined to include far more than just financial returns but to include non-material values centered on true love. Furthermore, given that some studies have indicated that management by CSR does not reduce long-term cash flow and return on investment for shareholders and in fact may reduce a corporation’s cost of equity, it is not a given that this structure will reduce the long-term financial returns to shareholders. [82]

Conclusion

The ideological foundation of Cheon Il Guk is the ideal of interdependence based upon the idea of joint ownership centered upon the true love of God. Each individual will determine what is reasonable ownership based upon the dictates of his or her conscience. The basic unit of economic activity is the business firm, and in this paper, I have utilized the corporation as a representative example. The corporation is a legal person that owns the assets of the corporation. It is managed by a board of directors who are elected by the shareholders of the corporation. The shareholders of the corporation invest their money into the corporation and entrust their investment to the directors of the corporation. This gives rise to the agency problem—how to ensure that the directors, who have more information than the shareholders about the corporation, manage the corporation for the benefit of the shareholders who entrusted them with the management.

Traditionally this problem is dealt with by imposing fiduciary duties upon the directors. However, these fiduciary duties only protect the shareholders and no other stakeholders. Since the ideal of interdependence is based upon joint ownership, the scope of these fiduciary duties must be expanded to include other stakeholders such as God, the employees, the community and the environment, who are beneficial owners of the corporation. Moreover, these fiduciary duties must be based upon the ethics of *hyojeong*, in other words, based upon fulfilling the three great blessings centered upon the true love of God. *Hyojeong*-based fiduciary duties will then be able to act as the conscience at the center of the mind of the corporation, the directors, and bring the individual purpose of the corporation, which is the shareholders’ material and non-material return on investment, into harmony with the whole purpose of supporting the fulfillment of God’s ideal of creation.

This transformation of market capitalism to the “socialist society on Heaven’s side” based on the ideal of interdependence spoken of in the *Exposition of the Divine Principle* can be done peacefully and gradually at least partly based upon this reformation of the fiduciary duties of directors of corporations to fiduciary duties under the umbrella of the ethics of *hyojeong* that include the whole purpose. Of course, many, many issues remain to be solved, much research is still required, and many of the details need to be filled in. In addition, many other aspects of an ideal economic system need to be studied, analyzed and reformed. However, if Cheon Il Guk adopts a Heavenly Common Law as proposed in this paper, then many of the details of this corporate governance system can be filled in gradually over time through Heavenly case law and judicial

precedent. Hopefully this paper can make some small contribution to the study of this important issue of how to develop the concept of the ideals of interdependence, mutual prosperity and universally shared values.

Notes

[1] *Exposition of the Divine Principle* (New York: Holy Spirit Association for the Unification of World Christianity, 1996), pp. 342-343: “Responding to the promptings of their inmost hearts, people everywhere have ardently aspired to the world of God’s ideal where the purpose of creation is fulfilled. In seeking for a socialistic society on Heaven’s side, their original mind has drawn them to the ideals of interdependence, mutual prosperity and universally shared values.”

[2] FFWPU, *Cheon Il Guk Constitution*, 2nd Amended Version, 2016, “Article 9: The Fundamental Ideals. Cheon Il Guk shall be based on the fundamental ideals of interdependence, mutual prosperity and universally shared values.” p. 22.

[3] The term is translated as the” Principle of Mutual Existence” in the *Essentials of Unification Thought: Headwing Thought*.

[4] Sung-bae Jin, *A New Renaissance: Systemizing the Academic Studies of Godism*, Unification Thought Institute, 2018, p. xi.

[5] *Exposition of the Divine Principle*, p. 33: “All entities have dual purposes. As was explained earlier, every entity has dual centers of movement, one of internal nature and another of external form. These centers pursue corresponding purposes – for the sake of the whole and for the sake of the individual – whose relationship is the same as that between internal nature and external form. These dual purposes relate to each other as cause and result, internal and external, subject partner and object partner. In God’s ideal, there cannot be any individual purpose which does not support the whole purpose, nor can there be any whole purpose that does not guarantee the interests of the individual.”

[6] *Merriam Webster’s Dictionary of Law*, page 88

[7] *Black’s Law Dictionary*, 6th edition (West Publishing Co., 1990), p. 276

[8] *Horne v. Moody*, Tex. Civ. App., 146, S.W.2d 505, 509, 510, in *Black’s Law Dictionary*, 6th edition, p. 1406

[9] Michael Graff, “Law and Finance: Common-law and Civil-law Countries Compared,” ResearchGate, 2005, p. 1

[10] Gillian K. Hadfield, “The Quality of Law in Civil Code and Common Law Regimes: Judicial Incentives, Legal Human Capital and the Evolution of Law,” University of Southern California Law School, 2006, p. 2

[11] See John Amrou, Henry Hansmann and Reiner Krakkman, “Agency Problems and Legal Strategies,” in *The Anatomy of Corporate Law: A Comparative and Functional Approach*, 2nd Edition, 2009, Kindle edition, 944-954

[12] *Exposition of the Divine Principle*, pp. 342-343

[13] Unification Thought Institute, *New Essentials of Unification Thought: Headwing Thought*, 2006, p. 507

[14] *Exposition of the Divine Principle*. 1996, p. 342

[15] *Sermons of Rev. Sun Myung Moon*, Vol. 269, p. 15, April 17, 1995 as translated into the first edition of *Cheon Seong Gyeong*, p. 2476. Please be advised that the English translation misstates that interdependence deals with the political aspect. I confirmed that this was a mistaken translation by looking at the original Korean text

[16] *Cheon Seong Gyeong, An Anthology of True Parents’ Teachings*, Family Federation for World Peace and Unification, 2013, p. 1096

[17] *Ibid.* p. 1314

[18] *Ibid.* p. 1382

[19] *Sermons of Rev. Sun Myung Moon*, Vol. 271, p. 76, August 22, 1995 as translated in the first edition of *Cheon Seong Gyeong*, 1st Edition, p. 2477

[20] *Ibid.* p. 2476

[21] *Cheon Seong Gyeong, An Anthology of True Parents’ Teachings*, Family Federation for World Peace and Unification, 2013, p. 28

[22] *Ibid.* p. 29

[23] *Ibid.* p. 29

[24] *Ibid.* p. 30

- [25] *New Essentials of Unification Thought: Headwing Thought* (Unification Thought Institute, 2006), p. 608
- [26] *New Essentials*, p. 609
- [27] *New Essentials*, p. 609
- [28] *New Essentials*, p. 609
- [29] Thomas Selover, "[Heavenly Society \(신사회\) and the Development of Hyojeong \(孝情\) Culture](#)," *Journal of Unification Studies* 19 (2018): 23-31.
- [30] Hwa Myung Kang, "A Study on the Creation of Shared Values from the Perspective of Unification Thought" in *Vision for the Unity of Sciences and a Hyojeong World of Peace*. Hyojeong Academy of Arts & Sciences Symposium and Inauguration in Europe, The 28th International Symposium on Unification Thought, p 137-8
- [31] *New Essentials*, p. 612
- [32] Jinsu Hwang, "A Study on the National Policy of Cheon Il Guk: Based on the Concept of Mutual Existence, Mutual Prosperity, and Mutual Righteousness," in *Vision for the Unity of Sciences and a Hyojeong World of Peace*. Hyojeong Academy of Arts & Sciences Symposium and Inauguration in Europe, The 28th International Symposium on Unification Thought, p 128-9
- [33] Samuel E. Martin, Yang Ha Lee, Sung-Un Chang, *New Korean-English Dictionary*, Minjungseorim, 1979, p.1450, 1875.
- [34] James C. Whiltlock Jr., *Chinese Characters in Korean, A "Radical" Approach: Learn 2,300 Chinese Characters Through Their 214 Radicals*, Ilchokak, 2001, p. 157, 323
- [35] *Ibid.* p. 144, 281
- [36] *Exposition of the Divine Principle*, p. 38
- [37] Sung-Bae Jin, "The Theoretical Foundation and Principles of Hyo Jeong," in *International Academic Symposium on the Compilation of Educational Material Related to Hyo Jeong and Character Education*, 2017, p. 61-63
- [38] Selover, "[Heavenly Society](#)."
- [39] Definition given at Original Divine Principle Workshop held in Las Vegas in 2009
- [40] Sung-Bae Jin, "The Theoretical Foundation and Principles of Hyo Jeong," in *International Academic Symposium on the Compilation of Educational Material Related to Hyo Jeong and Character Education*, 2017, p. 61-63
- [41] Selover, "[Heavenly Society](#)."
- [42] C. Fred Alford, *Think No Evil: Korean Values in the Age of Globalization* (Ithaca and London: Cornell University Press, 1999), pp. 71-73
- [43] *Ibid.* p.154-155
- [44] Rev. Sun Myung Moon, *As a Peace Loving Global Citizen*, p. 3
- [45] *Ibid.* p. 29-30, 32
- [46] John Amrou, Henry Hansmann, and Reiner Kraakman "What is Corporate Law?" in *The Anatomy of Corporate Law: A Comparative and Functional Approach*, 2nd Edition (Oxford University Press, 2009), Kindle edition, p. 394
- [47] Alan R. Palmiter, *Corporations: Examples and Explanations, 7th Edition* (New York: Wolters Kluwer Law and Business, 2012), Kindle edition, location 802
- [48] *Ibid.* location 810
- [49] John Armour, Henry Hansmann and Reiner Kraakman "Agency Problems and Legal Strategies," *The Anatomy of Corporate Law: A Comparative and Functional Approach*, 2nd Edition, 2009, Kindle edition, 926
- [50] Alan R. Palmiter, *Corporations: Examples and Explanations, 7th Edition*, Wolters Kluwer Law and Business, New York, 2012, Kindle edition, location 820
- [51] Armour, Hansmann and Kraakman "Agency Problems and Legal Strategies," pp. 944-954
- [52] *Ibid.*, p. 926
- [53] *Ibid.* 794-805
- [54] Section 1.01 of *Restatement (Third) of Agency*, American Law Institute, 2006
- [55] Tamar Frankel, "Toward Universal Fiduciary Principles" *Queen's Law Journal*, 2014, p. 397

- [56] Committee on Corporate Laws, *Model Business Corporation Act Annotated Third Edition*, ABA Section of Business Law, 1983-202de Act
- [57] *Smith v. Van Gorkom*, 488 A.2d. 858, (Del. 1985).
- [58] ALI Corp. Governance Project, Section 4.01(c).
- [59] See Alan R. Palmiter, “Duty of Obedience: The Forgotten Duty,” *New York Law School Law Review*, Vol. 55, 2010/11, pp. 457-478
- [60] Frankel, “Toward Universal Fiduciary Principles,” p. 394
- [61] David Brooks, *The Second Mountain: The Quest for a Moral Life*, Random House, New York, 2019, p. 55
- [62] *Meinhard v. Salmon*, Court of Appeals of New York, 249 N.Y. 458; 164 N.E. 545; 1928 N.Y. LEXIS 830; 62 A.L.R. 1
- [63] Frankel, “Toward Universal Fiduciary Principles,” p. 405
- [64] *Ibid.* p. 418
- [65] *Ibid.* pp. 399-400
- [66] *Ibid.* p 400
- [67] Choong Kee Lee, “How to Adopt and Develop Anglo-American Concept of Fiduciary Law in a Civil Law System: A Korean Perspective” (NYU Sch. Law, 2017), www.law.nyu.edu/sites/default/files/ECM_PRO_071736.pdf
- [68] Katherarina Pistor and Cheggang Xu, “Fiduciary Duty in Transitional Civil Law Jurisdictions: Lessons from the Incomplete Law Theory,” *European Corporate Governance Institute Working Paper*, Oct. 2002
- [69] Alfred D. Chandler Jr., “The Emergence of Managerial Capitalism,” *The Business History Review*, Vol. 58, No. 4 (Winter 1984), pp. 473-503
- [70] William A. Darity Jr., *International Encyclopedia of Social Science* (Thompson Gale, 2008), p. 247
- [71] International Encyclopedia of Social Science, found at www.encyclopedia.com/social-sciences/applied-and-social-sciences-magazines/capitalism-managerial
- [72] William A. Darity Jr., *International Encyclopedia of Social Science* (Thompson Gale, 2008), p. 247
- [73] Jose Paz Rendal, “How Creating Shared Value is taking Corporate Responsibility one Step Further,” 2015, p. 8, 15-16
- [74] Hwa Myung Kang, “A Study on the Creation of Shared Values from the Perspective of Unification Thought” in *Vision for the Unity of Sciences and a Hyojeong World of Peace*. Hyojeong Academy of Arts & Sciences Symposium and Inauguration in Europe, The 28th International Symposium on Unification Thought
- [75] Michael J. Mauboussin and Alfred Rappaport, “Reclaiming the Idea of Shareholder Value,” *Harvard Business Review*, July 1, 2016
- [76] Shin Jang-sup, “Failure of US ‘economic democratization.’” *The Korea Times*, July 12, 2016
- [77] Selover, “[Heavenly Society](#).”
- [78] Kang, p. 138
- [79] Kim, Hang Jae, “The Vision and Ideological Foundation for the Heavenly Unified Korea (神統一韓國),” translated by Robert Schairer. (Unpublished paper)
- [80] Genesis 1:28
- [81] *Exposition of the Divine Principle*, pp. 33-35.
- [82] Joela M.A. Jansen, “The Effect of Corporate Social Responsibility on the Cost of Equity from a Legal Origin and Cultural Perspective,” University of Groningen and Uppsala University, 2017