

**NHI Virtual Hangout
December 9, 2017**

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Agenda: Restorative vs. Retributive Justice

1. Launching Point: Exodus 21 shows that the Jewish Law is about restorative justice, not retributive justice
2. Application #1: Pastoral Ministry
3. Application #2: Social Justice and the New Jim Crow Curriculum
4. Application #3: Evangelism

(Notes are organized by topic. Mako's presentation or comments are in *italics*)

Launching Point: Exodus 21

For Mako's notes, see <http://nagasawafamily.org/exodus.21.01-36.sg.pdf>

** Why it's important? Exodus 21 has the first instance of 'an eye for an eye'*

** At first, I (Mako) thought it was an example of retributive justice. More measured and precise than the Code of Hammurabi. And more fairly applied across everyone. But still in the same category: retributive justice.*

** Several things have changed my mind. I now believe that, surprisingly, 'an eye for an eye' is about restorative justice. If I hurt your eye, I BECOME your second eye.*

** Reason #1: Jewish rabbis make a joke out of this verse. What if the offender is already blind? How do you punish an already blind man? You make him help the other person.*

** Reason #2: Exodus 21 is the first set of laws after the Ten Commandments and the Exodus from Egypt. God wanted to get rid of the 'Egyptian slave practices' from Israel, to help a traumatized people not traumatize each other or foreigners in their midst. They were not to force people into slavery (Ex.21:16), not keep people in slavery/servanthood for more than six years (Ex.21:2 - 6), not injure the vulnerable infants as Pharaoh once did (Ex.21:22 - 27), not impose harsh or unlimited beatings (Ex.21:18 - 21), and not even retaliate like Moses did (Ex.21:12 - 14).*

** Reason #3: Also, God wanted to bring Israel into the 'garden land' like Adam and Eve, to show the world something about how He wanted human life to be in the original Eden. So God wanted indentured servants (Hebrew ebed is translated 'slave') to rest and be freed on the seventh year (Ex.21:2 - 6). God inserts the vision of the creation order - with the Sabbath on the seventh day originally - into Israel's way of life. Also, God places a value on every human life.*

** Reason #4: An example of restorative justice in the immediate context, Exodus 21:18 - 19, says that if I hurt my neighbor, I must contribute to the 'complete healing' of him. This fits in with the idea that I become your second eye as I restore the relationship.*

** Reason #5: Financial compensation is named in 21:22 and 30, in place of corporal punishment. This suggests that the 'eye for an eye' principle was to name an outer limit of proportionality.*

** Reason #6: Leviticus 19:17 - 18 says to 'not take vengeance, but instruct.' The best way to reconcile this mandate with 'an eye for an eye' is to take the restorative justice framework.*

** Under Jewish law, if I sinned and hurt another person in these ways, how would I maintain my 'membership in God's covenant people'? Through my apology (repentance) and my commitment to repair the damage I've done, and restore the life I injured.*

Question: What about Jesus' statement in Mt.5:38 - 48? Did Jesus believe that the Jewish Law was retributive?

Discussion: No, as under the Jewish Law, you could insist on a compensation up to the limit of proportionality. Jesus was calling for letting it go, at least in the cases where you were being persecuted and harmed for your faith (Mt.5:38 - 48; cf. 5:9 - 12).

Question: What about the sins where you get capital punishment?

Discussion: When the Sinai covenant calls for the death penalty, those sins seem to be understood as a rejection of God, the covenant, and the covenant community. And, since the covenant represents the life God wanted to provide to His creation, based on His original vision of the creation, self-exclusion from the covenant represents death and is expressed by death. This helps to explain why the death penalty was stipulated for sins that would not ordinarily

merit it under other systems of jurisprudence, such as cursing one's parents (Ex.21:17), bestiality (Ex.22:19), and breaking the Sabbath (Num.15:32 – 36). The Sinai covenant rested on an ontological framework of the creation order, not simply a meritocratic-retributive framework. So it might raise other questions for us since it's severe, but the capital punishment laws do not reflect retributive justice. It's about mimesis, ontological mirroring. It shows what was going on inside the person. You rejected God and His creation order vision by these fairly premeditated actions: by rejecting your parents, since they presumably passed down to you knowledge of God and His ways; or by having sex with animals, since that was against God's vision for human sexuality; or by breaking the Sabbath, since the Sabbath represented the cadence of time in the creation order. We must also keep in mind that since God knew He would eventually exile Israel, because they would break His commandments, because of their fallen human nature (Dt.27 – 30), and political existence under a foreign power would mean the loss of capital punishment, thus excommunication would replace capital punishment in Mosaic Israel, as it has in the New Testament church (e.g. 1 Cor.5:1 – 13; Mt.18:15 – 35).

Question: Is there space for growth happening on the part of Israel? Or God? What is Israel didn't understand God properly? What about the flood, Sodom and Gomorrah, the Egyptian firstborn, and the Canaanites? Is there development in Scripture? Or is there only a unity of Scripture without development?

Discussion: If you look at instances only, it can seem retributive. At the big picture level, there is a pattern of restoration that's happening. Also, are we at risk of saying that we are at the top of the progress path? Only if we extrapolate out through church history so that we think we have better answers than the early church. But the progress path can stop with Jesus. It doesn't commit us to read church history in that way.

Discussion: Didn't Rene Girard and others see a development of ethics in the Old Testament leading up to Jesus?

Discussion: Rene Girard and Harden would say there's a developmental critique of sacrifice. One of the principal texts is Jeremiah: Jeremiah says when Israel came out of Egypt, I did not command you to sacrifice. That's true from the golden calf onward. But I don't see what they see. In the Old Testament, the reality is that we have a collective nation dealing with physical land. God wanted to influence culture, putting Israel at the crossroads of three continents. Girard and Harden have no theology of Israel. If you have a theology of Israel, then all the other things tend to fall into place.

Application #1: Pastoral Ministry in Retributive vs. Restorative Frameworks

In a retributive justice framework, we may run into a pastoral tension. When we hold a person accountable for an action, why do we ask them to make amends? Can we? How?

God might be 'aware' of the person's sin in some sense. But according to penal substitution, God says that He is not 'angry' with the person anymore because He already 'exhausted his retributive justice' on Jesus. So can a spouse who was cheated on be angry with the adulterer? Or, can victims of systemic sexism or racism be angry about the system? Is there a place for healthy anger as part of a response to being hurt (Eph.4:26 - 27)?

Also, according to 'imputed righteousness,' God credits the person with the merit-driven righteousness of Jesus. So not only does God not hold anything against the offender. He also adds positive credit to his/her account. If you believe this, how does accountability work? How does a sense of obligation work?

Discussion: I resonate with this as a problem. Even when a minister commits sexual sin or some abuse, some leaders defend themselves on the basis that 'grace' makes me 'innocent.' It's a psychologized view of repentance. In this view, what's important is that 'I feel bad.' Actions, by contrast, are understood as a form of works-righteousness. It's an internal-to-external view. 'I feel repentant. I don't have to make restitution, or be held accountable by stepping down.' It's not that the actual relationship, which is external to the offender, is simultaneously important to God.

Discussion: When discussing social injustice, like racism or sexism in America, some people claim that 'anger is not Christian.' In their view, anger discredits a person. They assert that they were not personally culpable for past injustice. Because the issues becomes more abstract and distant than, say, a husband who abuses his wife, the practice of social justice is seen as extracurricular. Sometimes, when I am trying to speak as a Christian about our

social justice obligations I run into people who say: We can't talk about justice. We can only talk about charity. Justice is what we owe others, out of a sense that we need to repent and make something right. Charity is what we give to others, without obligation, which means that we can just 'feel good about ourselves' for doing something so 'above and beyond.'

Discussion: I think we do have to say that God embraces us. But we still have obligations to do things towards my neighbor and God. I'm not disembedded from my context.

Discussion: In the OT sacrifices, when you sinned, it polluted the tabernacle. You contaminated the ground. The purpose of the animal and its blood was to clean up the tabernacle. Sin is like static electricity that got attached to the tabernacle. So you had to offer the animal to cleanse and make right what had gone wrong. And forgiveness is offered as we make it right. So we can see another reason why the OT is about God's restorative justice.

Discussion: Some evangelicals take the concept of 'justification' as if it means God the Father regards the person through the lens of Christ as a penal substitute, so the Father sees the person 'without any anger' and 'with merits.'

(Mako) But what if 'justification' means 'God accepts your apology, and your commitment to restore the damage to your own human nature and the damage you did to others, because He will work with you to do it.' This changes the meaning of 'justification' so that God's acceptance of the offender ('yes, you're still part of My family and My community') can co-exist with His anger directed at the corruption of sin within the person. Jesus' parable of the Pharisee and the tax collector in Luke 18:9 - 14 is the only example of him using the word 'justified.' And the tax collector is justified based on his apology, humility, and implicit commitment to restore what he had stolen.

How do I see that? It is important to see that in the flow of the story, right after this parable, we have the motif of new birth (infants in Luke 18:15 - 17), and then a contrast between the rich man who doesn't repent and therefore doesn't experience new birth (Luke 18: 18 - 30) and Zaccheus the wealthiest and most powerful tax collector who does repent in the format of restorative justice, and experiences new birth like a child who climbs trees (Luke 19:1 - 10). Zaccheus gives half his wealth to the poor and promises 4 times what he defrauded others; that's at the higher end of what the Jewish Law required thieves to restore. In Exodus 22:1 - 14, thieves had to restore between two to five times what they stole; that's the cost of rebuilding trust. So in the narrative of Luke, the parable of the Pharisee and the tax collector (Luke 18:9 - 14) prepares us to understand the story of Zaccheus the tax collector (Luke 19:1 - 10). Zaccheus is the tax collector of the parable, who repents and works towards restoration.

[We also talked about how the Lutheran-Calvinist doctrine of justification is being challenged, not just on the horizontal dimension by N.T. Wright but on the vertical dimension by Alister E. McGrath. McGrath points out, in his massive book *Iustitia Dei: A History of the Christian Doctrine of Justification*, how this was at first a translation issue from Hebrew to Greek and then to Latin. See the last pages of Mako's notes on Exodus 21, here: <http://nagasawafamily.org/exodus.21.01-36.sg.pdf>.]

Application #2: Christian Restorative Justice and the Criminal Justice System, NHI's New Jim Crow Curriculum

*I told some stories about how I've used the curriculum. The first time I used it at my church, I had new non-Christian people showing up every week. It's important as an issue. And the format of each module is (1) a 1 - 2 page summary of one chapter of Michelle Alexander's book *The New Jim Crow*, which we discuss; (2) a short comparison between a Bible passage and another source, which represents the choice between restorative justice and retributive justice; and (3) a practical action step of calling your Congressperson about repealing mandatory minimums, etc.*

To see the modules, see: <http://www.newhumanityinstitute.org/resources.curriculum.tnjc.htm>. This is an example of how I use Exodus 21 in Module 2, Section 2:

The Code of Hammurabi
Persons Unequal,

Retributive Justice

Code of Hammurabi: ¹⁹⁷ If a man has broken another man's limb, his own shall be broken. ¹⁹⁸ If a man has destroyed an eye or a limb of *a poor man*, he shall pay one maneh of silver. ¹⁹⁹ If a man has destroyed an eye or a limb of *the servant* of another man, he shall pay one-half of a mina. ²⁰⁰ If a man has made the tooth of another to fall out, one of his own teeth shall be knocked out. ²⁰¹ If the tooth be that of *a poor man*, he shall pay one-third of a maneh of silver.

Historical and Cultural Background

- *The Code of Hammurabi* comes from Babylon about 1754 BC, about 400 years before Moses. Despite the difference in time, Moses and the Israelites probably would have been aware of law codes like this.
- Judging from use of 'one third of a maneh of silver,' the amount seems non-trivial and perhaps significant for a poor person, but not enormous either.¹

The Jewish Law: *Persons Equal, Restorative Justice*

Exodus 21 ¹⁸ If men have a quarrel and one strikes the other with a stone or with his fist, and he does not die but remains in bed, ¹⁹ if he gets up and walks around outside on his staff, then he who struck him shall go unpunished; he shall only pay for his loss of time, and shall take care of him until he is *completely healed*... ²² If men struggle with each other and strike a woman with child so that she gives birth prematurely, yet there is no injury, he shall surely be fined as the woman's husband may demand of him, and he shall pay as the judges decide. ²³ But if there is any further injury, then you shall appoint as a penalty life for life, ²⁴ eye for eye, tooth for tooth, hand for hand, foot for foot, ²⁵ burn for burn, wound for wound, bruise for bruise... ²⁸ If an ox gores a man or a woman to death... the owner of the ox shall go unpunished. ²⁹ If, however, an ox was previously in the habit of goring and its owner has been warned, yet he does not confine it and it kills a man or a woman, the ox shall be stoned and its owner also shall be put to death. ³⁰ If a ransom is demanded of him, then he shall give for the redemption of his life whatever is demanded of him.

Leviticus 19

- (A) ¹⁷ You shall not hate your fellow countryman in your heart;
(B) you may surely reprove your neighbor, but shall not incur sin because of him.
(A') ¹⁸ You shall not take vengeance, nor bear any grudge against the sons of your people,
(B') but you shall love your neighbor as yourself; I am the Lord.

Leviticus 24 ²² There shall be *one standard* for you; it shall be *for the stranger as well as the native*, for I am the LORD your God.

Historical and Cultural Background

- *The Jewish Law*: Jewish tradition holds that this was given by God to Moses while Israel was in the wilderness. It takes the form of case law examples based on the Ten Commandments, so principles need to be reasoned out.

¹ Converting to present dollars is difficult, but as points of comparison, within the Code, one-third of a maneh of silver was the compensatory worth of a slave fatally gored by an ox, the penalty for causing the death of a pregnant slave girl, the penalty a creditor would have to pay if he wrongfully seized collateral from a debtor, and the payment a poor man would have to pay his wife to divorce her.

- ‘An eye for an eye’ is a principle in Exodus 21:23 – 25 that Jewish rabbinical commentators interpret as *not* retributive. It is an outer limit of proportionality for cases of bodily harm, meant to represent proportional financial compensation (*Talmud BavaKamma* 83b – 84a) or, in some cases, lashes (*Makot* 1:1). They actually reason that because of the possibility that the offender is already blind: One cannot blind an already blind man! So they believe that the ‘eye for an eye’ is meant as proportional compensation: If you blind someone’s eye, *you* become his ‘second eye.’²

Application #3: Evangelism Using Restorative Justice

I showed people some of the slides of an interactive display called ‘Whose Justice?’

* Images here: <http://nagasawafamily.org/proxe-justice-four-types.pdf>

* Images (small, arranged) and written instructions: <http://nagasawafamily.org/proxe-justice-four-types-instructions.pdf>

Basically, I engage non-Christians with the observation that when we say the word ‘justice,’ we mean at least four different things.

1. *Meritocratic-Retributive justice: You get what you worked for, whether good or bad*
2. *Distributive justice: You get what ‘human rights’ says to give you, like clean food, air, water; a level playing field; etc.*
3. *Libertarian justice: You get freedom as an individual because, when you start with the individual, maximum freedom is the most just condition.*
4. *Restorative justice: You work towards a healthy vision of relationship because you don’t start with the individual, you start with a vision for relationship.*

Everyone believes in all four of these aspects of justice. The problem is that in secular thought, there is nothing that tells you how to organize these four principles. The Enlightenment wanted to throw the church out of politics, so it started with the individual and tried to build from the ground up. But there is no way to do it. Why can’t I just sell my U.S. passport on the open market? Why can’t I sell my vote to the highest bidder? Because of restorative justice: We believe in a vision of relationship between citizens, that citizens don’t do that to each other because of our relationship.

Biblically, there is a way to organize these four principles:

1. *Restorative, because God has a vision for relationship among us*
2. *Distributive, because in both Old and New Testaments, there is a command to care for the poor and vulnerable.*
3. *Meritocratic-Retributive, because in both Proverbs and 2 Thessalonians, there is the principle of ‘you don’t work, you don’t eat’*
4. *Libertarian, because things like freedom of religious conscience is a New Testament ethic, like Roger Williams argued*

So only with Jesus is God’s restorative justice revealed and anchored. For sure every secularist is just being arbitrary.

² This restorative justice reading is reinforced by these facts: (1) In Exodus 21:18 – 19, just before this example of bodily harm, the offender must care for the injured victim until he is ‘completely healed.’ (2) In Exodus 21:22 and 30, financial compensation is named there, too. (3) In Leviticus 19:17 – 18, the law instructs Israelites to ‘not take vengeance.’ ‘The Torah’s command to love one’s neighbor is put in parallel with a prohibition against taking vengeance upon one’s neighbor,’ such that these commands are mutually interpreting. Darren W. Snyder Belousek, *Atonement, Justice, and Peace: The Message of the Cross and the Mission of the Church* (Grand Rapids, MI: Eerdmans, 2012), p.408 says, ‘In fact, the text gives us parallel sets of contrasting parallels. Taking these separate, we see the contrasts: in the first set, hating a neighbor in one’s heart (A) contrasts with reproving one’s neighbor (B); in the second set, taking vengeance upon a neighbor (A’) contrasts with loving one’s neighbor (B’). Taking these together, we see the parallels: hating one’s neighbor (A) is parallel with taking vengeance upon one’s neighbor (A’) – and both are prohibited; likewise, reproving one’s neighbor (B) is parallel with loving one’s neighbor (B’) – and both are commanded. Repaying harm for harm and injury for injury in due measure, while following the rule of the law (lex talionis), does not fulfill God’s intent for his covenant people. Not retribution but reproof fulfills the righteousness that God wills; not hate but love is the holiness that God desires.’ The entire book is an argument that God’s justice is not retributive but restorative, and reparative. (4) God anticipated Israel’s exile from the garden land and loss of political sovereignty (Dt.27 – 28; cf. Ex.20:4 – 6), reenacting Adam and Eve’s exile from their garden land (Gen.3:20 – 24); and Israel would not be able to enact capital punishment while being ruled by another nation; so the principle of restoration and compensation was important to establish from the start. Therefore, Jewish law was victim-oriented and restorative, not primarily retributive in nature.