




RESTORATIVE JUSTICE:

 Righting the
Relational Wrongs

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On May 6, 2014, Dr. John Smith (Professor of Old Testament, Canadian Reformed Theological Seminary) made a presentation to Members of Parliament and Senators in the Canadian Parliament in Ottawa, Ontario.

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The following pages are a transcript of the presentation from Dr. Smith.

Restorative Justice: *Righting the Relational Wrongs*



Restorative Justice: Canadian Origins

This month marks the fortieth anniversary of restorative justice in Canada. Let me take you back to an event that happened in May of 1974, in the town of Elmira, Ontario. One night, two 18-year-old men got drunk and went on a vandalism spree. They punctured twenty-four car tires, they slashed car seats, they threw rocks through the windows of people's homes and through the front window of the local beer store, they pulled someone's boat into the street, flipped it over and punched a hole in it, they damaged a traffic light at an intersection, they wrecked someone's fence, they damaged a gazebo, and they snapped a wooden cross in front of a local church. Twenty-two properties were damaged in the space of about two hours. The two teens were soon arrested and you can imagine the outrage in the community.

This event made legal history not because of the crime but because of the sentence. When the case went to court, the probation officer suggested to the judge that the offenders be told to meet their victims and repair the damage. There was no legal precedent for this at the time, but the judge agreed, so two police officers took the young men door-to-door in Elmira. They had to knock on doors, identify themselves, apologize, listen to what their victims had to say, determine the amount of restitution, and ask for forgiveness. Some of the damage was covered by insurance, but not all of it. Over the next three months the two offenders had to save money to pay for the outstanding amount and go door-to-door again with certified cheques in hand. They also had to repair the things that money could not replace, such as the cross in front of the church. And besides all that, they had to pay a fine and were put on probation for 18 months. This is the first documented case in Canadian law of what has become known as restorative justice. As a result of this case, Canada became the first nation in the world to offer a program that sought reconciliation between victims and offenders.¹

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What began as a simple experiment has blossomed in the four decades since that time. In terms of quantity, a recent survey lists more than 100 restorative programs and projects across Canada, over 300 in the US, and more than 500 in Europe.² Canada is also a leader in the academic study of restorative justice. To give an example, in 2002 the Simon Fraser University School of Criminology launched a Centre for Restorative Justice.³ In terms of quality, restorative justice has evolved into a multifaceted and complex process. A tremendous amount of literature is available that spells out its various applications, programs, and strategies in great detail.⁴

In this presentation I intend to do three things. First of all, I will outline what restorative justice is and how it currently fits into Canada's justice system. Secondly, I'm going to explore the roots of restorative justice and evaluate its principles from a Christian, Biblical perspective. And thirdly, I'd like to offer some reflections and recommendations on the implementation of restorative justice.⁵

Key Features of Restorative Justice

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Let me briefly mention a few of the distinctive features of restorative justice. First of all, it does not treat crime simply as a matter of breaking the law. Rather, restorative justice also focuses on the harm done to victims, to communities, and to the offenders themselves. Secondly, it gives the offenders, the victims, and their communities a role in the restorative process by arranging face-to-face meetings where victims can talk about the impact of the crime, offenders can take responsibility, and the two sides can discuss a plan to repair the damage done, all within a safe environment and with the help of a trained mediator. If such meetings are not possible, restorative programs offer alternatives such as restitution, community service, and other types of assistance. Thirdly, restorative justice measures success not in terms of how much punishment the offender receives but in terms of how much harm is repaired and prevented.⁶

Canada's Justice System

In 1996 the *Criminal Code* of Canada was amended to include provisions of restorative justice. It now says that

The fundamental purpose of sentencing is to contribute...to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following [six] objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- [and notice especially the next two:]
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.⁷

Further, the *Criminal Code* now includes provisions for restitution to victims of criminal offences.⁸ Most recently, the federal government announced a Victims Bill of Rights to address the impact of crime “on individuals, their families and on society at large.”⁹ In short, aspects of restorative justice have been integrated into Canada’s judicial system, at least in the letter of the law.¹⁰

So how did restorative justice morph from the brainwave of a single probation officer in small-town Elmira into a global phenomenon that has the attention of criminology departments and parliamentarians? I’m not a social historian, but at the risk of oversimplification I can think of two basic considerations.

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1. It seems to work. Involving victims and their families in the restorative process by allowing them to express how the crime has impacted their lives, and by inviting them to help set the terms for reparation, has led to greater satisfaction that justice has been done. Post-traumatic stress, anger, helplessness, vulnerability, and desire for revenge are all reduced through the constructive outlet that restorative justice provides.
2. It saves money. The process of taking responsibility for the crime, offering apologies, paying restitution, and joining programs that encourage offenders to change their environment and their behaviour has been shown to lower the likelihood that they will reoffend, thereby reducing the strain on prison facilities.

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In short, restorative justice has broad appeal. On the one hand it speaks to those concerned with the wellbeing of the community, while correcting the extreme view that offenders are merely victims of their circumstances. On the other hand it appeals to those who emphasize individual responsibility and fiscal restraint, while correcting the equally extreme view that all offenders should be isolated from the community. In short, the ideals of restorative justice can bring people of very different political stripes together to rethink the goals of the justice system. As one advocate recently put it, “Instead of the old ideas about rehabilitation and deterrence, ideas now largely discredited, we need to think in radically different terms about a system that *restores* the peace of the community shattered by crime.”¹¹

Biblical Roots of Restorative Justice

Now one would hope that the spread of restorative justice is due to more than utilitarian or economic considerations. Indeed, practitioners are quick to point out that although restorative justice has only recently begun to be applied to our country’s justice system, it actually has deep roots in the traditional practices of the Maori people as well as Native American communities. Strikingly absent from the literature is any reference to a Christian origin for restorative justice in Canada. In

itself that's okay: Christians are not the only people to come up with good ideas. And yet one might expect that they would have come up with this one. You see, the very idea that a criminal might have a change of heart, express remorse, and ask a victim for forgiveness, the idea that a victim might move beyond fear and rise above hostility to forgive the one who caused suffering and loss, the idea that it might be possible to love one's enemy, is one of the most cherished values of the Christian faith, taught by Jesus Christ himself. Christianity prizes the notion of a change of heart on the part of the wrongdoer and of forgiveness and love on the part of the victim. And yet restorative justice is beginning to flourish precisely in what is sometimes called the post-Christian era, or at least an era when Christians tend to bemoan the disintegration of our country's Judeo-Christian heritage. As a Christian, I find that both intriguing and humbling.

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While Christians have not always been front and center in promoting the cause of restorative justice in Canada, the principles that underlie it do find support in the Bible. I think, for example, of the restitution laws in the Old Testament law code.¹² God taught his people to show concern for their neighbours' wellbeing. In Deuteronomy 22 we read, "If you see your brother's ox or sheep straying, do not ignore it but be sure to take it back to him... Do the same if you find your brother's donkey or his cloak or anything he loses. Do not ignore it. If you see your brother's donkey or his ox fallen on the road, do not ignore it. Help him get it to its feet."¹³

An Israelite was also responsible for accidental loss. We read in Exodus 21, "If one man's bull injures another man's bull so that it dies, the owners are to sell the live bull, split the proceeds, and also split the dead animal between them." Each party is left with equal value. The guy with the stronger bull does not benefit; both suffer the same loss. Then the passage continues, "If it was known that the bull had the habit of goring, yet the owner did not keep it penned up, the owner must pay,

animal for animal, and the dead animal will be his.” This was a case of negligence: the owner could have foreseen that an accident might happen, but failed to take precautions, so he has to pay at a level of one for one, and he also has to do the work of disposing of the dead animal.

A step beyond negligence was theft. If someone stole an animal and the animal was found alive in his possession, the thief had to pay back double. But if the thief had profited from the crime by selling or slaughtering the animal, and therefore could not restore it, then he would have to pay back five head of cattle for an ox, or four sheep for a sheep (Exodus 22). We find an extreme statement in Proverbs 6: “People do not despise a thief if he steals to satisfy his hunger when he is starving. Yet if he is caught, he must pay sevenfold, though it costs him all the wealth of his house.” The point is that poverty was no excuse for avoiding restitution.¹⁴

Willingness to offer restitution was a sign of godly character. Consider the prophet Samuel: when he retired from public office, he said to the people, “Here I stand. Testify against me in the presence of the LORD and his anointed. Whose ox have I taken? Whose donkey have I taken? Whom have I cheated? Whom have I oppressed? From whose hand have I accepted a bribe to make me shut my eyes? If I have done any of these, I will make it right” (1 Samuel 12).

***GOD LEGISLATED
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More passages could be mentioned, but the principles are clear. In the first place, theft not only involves loss of property but also loss of trust. God legislated restitution as a means to restore both the property and the relationship between the two parties. Secondly, God required different levels of restitution depending on the damage done to the property or to the relationship between the parties concerned. Thirdly, the laws of restitution focus on the responsibility of the wrongdoer. The obligation did not lie first of all with the victim to *demand* restitution but with the wrongdoer to *offer* it generously, to demonstrate the depth of his remorse and his eagerness to regain his neighbour’s trust.

I mention these laws not to argue that they should remain in force today but to make the point that the essential principles of restorative justice are eminently Biblical.¹⁵ The Bible is then also a touchstone whereby to evaluate the modern phenomenon of restorative justice. You see, for all the ostensible similarities between the Biblical laws of restitution and current premises of restorative justice, the two are not identical. Let me mention a few important differences.

Differences Between Biblical and Modern Approaches to Restorative Justice

One difference is that in the Bible, restitution had limited applicability. It was not prescribed for violent crimes such as murder. Leviticus 24 says, “Whoever kills an animal must make restitution, but whoever kills a human must be put to death.” In Numbers 35 we read, “Do not accept a ransom for the life of a murderer, who deserves to die. He must surely be put to death.” In other words, the cost of human life is too high for an offender to repay, except with his own life. The Old Testament also prescribed the death penalty for adultery.¹⁶ I say this not to argue that capital punishment should be reinstated but simply to caution that we should not expect too much from restorative justice. There is a place for prisons—especially to incapacitate offenders who are violent and dangerous. I’m impressed with the optimism and energy with which proponents of restorative justice are investigating its application to cases of serious and violent crime,¹⁷ but the laws of Scripture give a more realistic picture and make us sober about our ability to restore. Often the loss that a victim has experienced is too great for even the most contrite offender to repay; the wounds are too deep for the most skillfully mediated sentencing circles to repair.

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That leads me to a second observation. Proponents of the restorative model tend to assume an antithetical stance over against the punitive model of criminal justice, but the Old Testament laws include both. For example, Deuteronomy 13 says that those who tried to persuade the Israelites to serve false gods were to be executed. Why? So that

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“all Israel will hear and be afraid, and no one among you will do such an evil thing again.” (I mention this example not to advocate the death penalty for blasphemy today, but to show that the Bible includes both punitive and restorative principles of justice.) Ecclesiastes 8 promotes speedy justice as a deterrent to criminals. It says there, “When the sentence for a crime is not quickly carried out, the hearts of the people are filled with schemes to do wrong.” Think back for a moment to the law that required a thief to pay back five head of cattle for an ox. Such a generous restitution would help the victim to move past the crime and put aside anger towards the thief, but it would also be a deterrent for the thief who would think twice before stealing again. So the biblical model of restorative justice includes deterrence.

I believe that in our society as well, there is a place for both the restorative and the punitive models. Much as I applaud the new sentencing objectives that have been added to the Criminal Code (“to provide reparations for harm done to victims or to the community; and to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community”), I would not want these to *replace* the other objectives (“to denounce unlawful conduct; to deter the offender and other persons from committing offences; to separate offenders from society, where necessary”); those objectives remain crucial for maintaining justice and order in society. In fairness, I suspect that proponents of restorative justice would agree. They recognize that the restorative process sometimes fails because a victim or an offender simply doesn’t want to go through it, or because efforts at reaching an agreement run stuck and cooperation proves impossible.

Thirdly and lastly, perhaps the most important difference between the Old Testament laws of restitution and the principles of restorative justice is that the Bible treats crime not only in terms of harm done to victims and their communities but also as an offense against God. On the very day that a thief made restitution to his neighbour, he also had to bring a guilt offering to the priest. As Leviticus 6 puts it, “the priest will make atonement for him before the Lord, and he will be forgiven.” The godliest ruler of Israel, King David, slept with another man’s wife

and arranged to have her husband murdered. How do you ever move past a crime like that? David prayed for forgiveness and restoration. The Bible gives us his prayer in Psalm 51: "Create in me a pure heart, O God, and renew a steadfast spirit within me. Do not cast me from your presence or take your Holy Spirit from me. Restore to me the joy of your salvation." It's an acknowledgement that true restoration cannot be achieved by human effort but only as a divine answer to prayer. In the well-known words of Alexander Pope, "To err is human; to forgive, divine." And in the immortal words of Psalm 23, "The Lord is my Shepherd...He restores my soul."

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As much as restorative justice endeavours to address the spiritual wounds left by crime, it cannot overcome the very real guilt and shame that results from offending God, it does not address *that* spiritual wound. It does not restore the whole person; it's simply not equipped to do so. Scripture makes us sober about the ability of restorative justice to move an offender to remorse or a victim to compassion and love. To generate love for one's enemy is an ideal beyond the power of the justice system to achieve. My intent in saying this is not to denigrate the very valuable results that the restorative process can yield, but simply to identify a limitation. If this limitation is acknowledged, then opportunity can be given to others who are equipped to fill the gap, and here I think particularly of churches, who have been entrusted with the ministry of reconciliation and who can therefore complement the restorative process with the message of repentance, forgiveness, and grace.¹⁸

Closing Reflections

In closing I'd like to offer four short reflections.

1. When considering criminal legislation, Canada's lawmakers should continue to pay close attention to the worthwhile perspectives and real contributions of restorative justice. However much our constituencies might clamour for stiffer penalties, bigger jails and longer prison sentences, these are not the only answers, nor even the best ones. Separating offenders from society is only one of the six objectives of sentencing that are mentioned in the *Criminal Code*, and Section 718 says that it should be used only when necessary.¹⁹ Society should, of course, be protected from violent and dangerous offenders, but incarceration should not become the default response to criminal activity. Alternative options such as probation, fines, conditional sentences, and restitution orders should be fully explored. When offenders are imprisoned, their prison sentences could include a restorative component. For example, one might explore the possibility of giving prisoners meaningful work with pay, and using some of that pay to help with restitution payments, family support payments, and investing in education. The goal is to promote a sense of personal responsibility in offenders and to create a venue for restoring relationships in the community. In short, the criminal justice system should continue to acknowledge the wounds that need to be healed and the relationships that need to be restored.

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2. A biblical understanding of restorative justice does not tilt the balance away from holding offenders responsible for their actions. It is not “soft on crime.” Quite the opposite: it confronts offenders with the damage that their actions have caused, it encourages them to take responsibility, and it provides a mechanism for reparation and healing to begin. Restorative justice “works to maintain the balance between punishment and individual responsibility on the one hand, and reparation and healing on the other,”²⁰ and as such it deserves our thoughtful support.

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3. Whatever its merits, restorative justice is not a panacea, nor will it usher in a utopia. It does not have the power to remove guilt towards God nor the power to repair the broken condition of human hearts. It aims to repair deep emotional, relational and spiritual wounds. Such restoration is crucial to be sure, but it goes beyond the role and capabilities of the state. Restorative justice is therefore a forum where church and state can work side by side for the restoration of the whole person and of harmony in society, each respecting the jurisdiction of the other. But full restoration and perfect justice will only come at the end of time when Jesus Christ comes back as Judge to make everything right.

4. Finally, to our Christian citizens: as Christians we often find ourselves inclined to bemoan the erosion of Biblical values in our land. With such a mindset, we might very well become blind to the positive developments that are sitting right under our noses. If, on the other hand, we look for the positives, we might just be surprised at what we find. I think that restorative justice is a case in point. It offers a wonderful opportunity for prayer and work.

May God bless us all with much wisdom, as we strive to build our nation “upon principles that recognize the supremacy of God and the rule of law.”²¹

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Endnotes

¹ Also known as the “Kitchener Experiment,” this case is commonly cited as the beginning of restorative justice in Canada. For an autobiographical account, see Russ Kelly, *From Scoundrel to Scholar ... The Russ Kelly Story* (Fergus, ON: Russ Kelly Publishing, 2006). The origins of restorative justice have become the subject of critical study. See, e.g., Elmar Weitekamp, “The History of Restorative Justice,” in G. Bazemore and L. Walgrave (eds.), *Restorative Juvenile Justice: Repairing the Harm of Youth Crime* (New York: Criminal Justice Press, 1999), 75-102; Douglas J. Sylvester, “Interdisciplinary Perspectives On Restorative Justice: Myth in Restorative Justice History,” in *Utah Law Review* (2003): 471-522.

² “Restorative Justice Briefing Paper: What is Restorative Justice?” (<http://www.pfi.org/cjr/restorative-justice/introduction-to-restorative-justice-practice-and-outcomes/briefings/what-is-restorative-justice>). Each country has its own perspectives to offer. For a British collection of papers produced by the Jubilee Centre in Cambridge, see Jonathan Burnside and Nicola Baker (eds.), *Relational Justice: Repairing the Breach* (Winchester: Waterside Press, 1994). For an American perspective, see, e.g., L. Harold DeWolf, *Crime and Justice in America: A Paradox of Conscience* (New York: Harper & Row, 1975), and, more recently, Charles Colson, *Justice that Restores* (Leicester: Inter-Varsity Press, 2002). For a Dutch reflection on general principles of justice, see Jochem Douma, *Ethiek en Recht* (Kampen: Van den Berg, 1990), esp. 60-80.

³ Centre for Restorative Justice, Simon Fraser University (<http://www.sfu.ca/crj.html>).

⁴ See, for example, Restorative Justice Online (www.restorativejustice.org), produced by Prison Fellowship International’s Centre for Justice and Reconciliation.

⁵ I owe a debt of gratitude to Mark Penninga and André Schutten of ARPA Canada for their incisive critique of an earlier draft of this paper. I also thank Karl Veldkamp for helpful comments and resources.

⁶ “Restorative Justice Briefing Paper: What is Restorative Justice?” (<http://www.pfi.org/cjr/restorative-justice/introduction-to-restorative-justice-practice-and-outcomes/briefings/what-is-restorative-justice>).

⁷ *Criminal Code*, s. 718 (<http://laws-lois.justice.gc.ca/eng/acts/c-46/page-405.html#h-262>).

⁸ *Criminal Code*, s. 738 (<http://laws-lois.justice.gc.ca/eng/acts/c-46/page-420.html#h-269>).

⁹ For an overview of the consultation process leading to this bill, see the Department of Justice website at <http://www.justice.gc.ca/eng/cj-jp/victims-victimes/vrights-droitsv/>. An online version of Bill C-32 can be found on the Parliament of Canada website at <http://www.parl.gc.ca/>.

¹⁰ It goes beyond the scope of this paper to examine the implementation of restorative justice in courtroom sentencing. For a detailed study of obstacles that hamper judges from using it more effectively as well as proposals to facilitate its incorporation, see Megan Stephens, “Lessons from the Front Lines in Canada’s Restorative Justice Experiment: The Experience of Sentencing Judges,” in *Queen’s Law Journal* 33.1 (Fall, 2007): 19-78.

¹¹ Colson, *Justice that Restores*, 8. Not everyone is convinced of the merits of restorative justice: for a thorough-going critique, see Annalise Acorn, *Compulsory Compassion: A Critique of Restorative Justice* (Vancouver: UBC Press, 2004), but see also the review of this book by Eyal Kimmel in *Ottawa Law Review* 37.2 (2006): 357-64.

¹² Exodus 21:28-22:15; Leviticus 6:1-7; Numbers 5:5-10; Deuteronomy 22:1-4; see J. Smith, “Stolen Goods, Broken Trust: The Law and Gospel of Restitution.” *Reformed Perspective* 31.1 (November 2011): 20-24.

¹³ Scripture quotations are taken from the *Holy Bible, New International Version* (1984).

¹⁴ There is an interesting parallel for this point in Canadian legal history. In 1995 the federal government reviewed the Bankruptcy Act. One of the amendments made was that a person who owes restitution payments for a sexual assault or a physical assault will have to keep making such payments even in case of bankruptcy. Bankruptcy is not a way out (Linda Silver Dranoff, *Everyone’s Guide to the Law: A Handbook for Canadians* [Toronto: HarperCollins, 1997], 215).

¹⁵ Whether and to what extent the laws of the Old Testament remain in force today is a question of perennial debate among Christian thinkers. For a taste of the debate, see Gary Scott White (ed.), *God and Politics: Four Views on the Reformation of Civil Government* (Phillipsburg: Presbyterian and Reformed, 1989). My own view is best summarized in the Belgic Confession, Article 25: “We believe that the ceremonies and symbols of the law have ceased with the coming of Christ, and that all shadows have been fulfilled, so that the use of them ought to be abolished among Christians. Yet their truth and substance remain for us in Jesus Christ, in whom they have been fulfilled. In the meantime we still use the testimonies taken from the law and the prophets, both to confirm us in the doctrine of the gospel and to order our life in all honesty, according to God’s will and to his glory” (*Book of Praise* [Revised Edition; Winnipeg: Premier Printing, 2006], 459).

¹⁶ Leviticus 20:10..

¹⁷ For samples, see <http://www.sfu.ca/crj/research/currentresearch.html>.

¹⁸ See, for example, 2 Corinthians 5:18-20, where Paul tells the church: “All this is from God, who reconciled us to himself through Christ and gave us the ministry of reconciliation: that God was reconciling the world to himself in Christ, not counting men’s sins against them. And he has committed to us the message of reconciliation. We are therefore Christ’s ambassadors, as though God were making his appeal through us. We implore you on Christ’s behalf: Be reconciled to God.”

¹⁹ *Criminal Code*, s. 718 (<http://laws-lois.justice.gc.ca/eng/acts/c-46/page-405.html#h-262>).

²⁰ Colson, *Justice that Restores*, 125.

²¹ Constitution Act, 1982 (<http://laws-lois.justice.gc.ca/eng/const/page-15.html>).

About ARPA Canada



The mission of ARPA Canada is to educate, equip, and encourage Reformed Christians to political action and to shine the light of God's Word to Canada's municipal, provincial, and federal governments.

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