Chapter 8

Retribution and restoration in biblical texts

Jonathan Burnside

Introduction

In the early days of the restorative justice movement there was an explicit assumption that retribution and restoration were opposed concepts. Further, it was widely assumed that this opposition was mirrored in the spiritual roots of many of its proponents. In part this was due to the attempt to develop a simple explanation of restorative justice that distinguished it from contemporary criminal justice practice. Howard Zehr, perhaps the most influential proponent of restorative justice in its initial decades, distinguished restorative from retributive justice in trying to explain the new paradigm (e.g. 1990: 63–82, 126–58, and 177–214).

Some advocates still view retribution as the antithesis of restoration. But others have made convincing arguments that this is in fact a false dichotomy; one that presents a misleading view of both retribution and restoration, and hence of restorative justice. Many of these arguments have had philosophical and criminological roots (e.g. Roche, ch. 5) while others have been theologically based (e.g. Marshall 2001). While the debate can hardly be considered settled, Zehr (2002) himself has moved away from his restorative versus retributive dichotomy on the grounds that this concedes to retribution important attributes of restoration.

This chapter explores the question of the relationship between retribution and restoration from a religious perspective. It focuses on the Judaeo-Christian tradition, for several reasons. First, most of the debate has taken place in the context of this tradition.[1] Secondly, the Judaeo-Christian tradition has been highly influential in the development of Western understandings of criminal justice, and it is therefore worth considering conversation within that tradition that challenges or supports those understandings.

The larger part of the chapter will explore this matter by considering the biblical texts themselves. However, rather than doing so from a particular doctrinal perspective, this examination will do so from a historical/literary

perspective. It will do so by exploring three main strands: 1) the story or 'meta-narrative' of the Bible as a whole; 2) specific provisions in the biblical legal collections related to this topic; and 3) recommended practice, based on its understanding of these provisions, in the early church.

Finally, we will make observations regarding the relationship between retribution and restoration and concerning the limits of both, and will consider penological applications that can reasonably be derived from this biblical account.

Retribution and restoration in the biblical story

Some restorative justice advocates tend to regard the biblical texts as exclusively retributivist;[2] indeed, Johnstone is able to claim that this is the 'prevailing view' (2003: 106) of biblical justice. On the other hand, some restorative justice advocates have claimed that biblical justice is exclusively restorative. Thus Consedine avers, without qualification, that 'Biblical justice was restorative' (1995 cited in Daly 2002). There is thus a need to look more closely at the biblical texts themselves, which repeatedly and wisely bear witness to the complex relationship between retribution and restoration.

We begin by looking at the relationship between retribution and restoration in the story or 'meta-narrative' of the Bible as a whole. In doing so, we need to make a couple of preliminary points regarding the biblical texts. First, although there is nothing wrong with approaching the Bible (or any other ancient text) with questions to which we seek answers, we must be careful to locate this discussion within the larger world of the text – that is, the biblical story as a whole. The Bible is not presented in the form of a philosophy textbook on the meaning of punishment. It is presented as a story – in particular, the story of the creator God who did not need to create but who made the whole creation out of overflowing and generous love. It tells of a rebellion against love from within that Creation which led to the progressive spoiling of what God had made. The remainder of the story is about how God himself took risky and costly action from within Creation to rescue it from its plight. Without going into too much detail the story then becomes:

> focused on the relationship between this God and the chosen people, Israel; and this, in turn, is focused narrowly and tightly on the one man, Jesus of Nazareth, who was declared by the creator God to be Israel's Messiah through his resurrection from the dead. In this man, and particularly through his death, the justice and peace which the creator God intends for the whole cosmos has been unveiled once and for all, offering renewed humanness for all who give him their allegiance (Wright 1999: 78–9).

The story of history is thus the story of a long search for reconciliation between God and human beings. It is, in other words, the story of restoration that involves retribution.

Secondly, this story is expressed throughout in concrete terms, being about specific people doing specific things at specific times. This makes it exactly the kind of material from which one might derive an ethical approach to punishment (Barton 1998). The downside is that, although we can identify broad themes of retribution and restoration, the sources themselves do not lay the matter out in a systematic fashion. We cannot tidy everything into neat bundles. Thus perhaps the best starting-point for our overview of retribution and restoration is to locate them in the context of biblical claims about justice.

Biblical justice

The Bible proclaims that 'justice' is a characteristic of the God of Israel and that he is its source: 'The Rock, his work is perfect; for all his ways are justice. A God of faithfulness and without iniquity, just and right is he' (*Deuteronomy* 32: 4).[3] If justice is a characteristic of God himself, it follows that justice is something about which God is passionate. God delights in justice because it reflects his character. Through the prophet Jeremiah, God declares: 'I am the LORD who practises steadfast love, justice, and righteousness in the earth; for *in these things I delight*, says the LORD' (*Jeremiah* 9: 23–4, emphasis added). The association of justice with God, and therefore with what is 'good' (including love and righteousness), means that true justice takes sides when it comes to 'good' and 'evil'. Justice is partial in the sense that it always upholds what God defines as 'good' and is opposed to what God defines as 'evil'. Justice is a vigorous virtue. The usual Hebrew term for justice (*mishpat*) can bear a variety of meanings including 'judgement'. Justice is vigorous in this sense as well because it is subject to God's intention to produce it by means of acts of judgement.[4] Here we begin to see the interplay between retribution and restoration. God's delight in good and his opposition to evil provoke a response in the form of retribution. At the same time, God's delight in good and his opposition to evil mean that what is ultimately desired is restoration to the good of God's original creative intent.

If true justice upholds good and opposes evil it follows that there are two sides to justice in the Bible. On the one hand, justice brings down the oppressor and on the other hand it liberates the oppressed. Accordingly, a single act of justice can be experienced differently and have different outcomes depending on whether one is the oppressor or the oppressed. For one person, justice is cause for pain; for another, justice is cause for celebration: 'The LORD watches over the sojourners, he upholds the widow and the fatherless; but the way of the wicked he brings to ruin' (*Psalm* 146: 9; cf. *Psalm* 103: 6). The same act of justice brings oppressors 'to ruin' and 'lifts up those who are bowed down'. The oppressed are typified as the hungry, the blind, those in slavery and those who have no male protector who can act on their behalf in a patriarchal society (*viz.* aliens, widows and the fatherless). Placing retribution and restoration in the context of biblical justice we see that retribution for the oppressors typically brings restoration for the oppressed.

This means that it is misleading to characterize biblical justice as severe, retributive justice. It is more accurate to characterize biblical justice as transformative: a saving action by God that puts things right. This is reflected in actual biblical images of justice. The prophet Amos, speaking roundabout 760 BC, declared 'Let justice roll down like waters, and righteousness like an ever-flowing stream' (*Amos* 5: 24). Justice is here seen as a mighty, surging river, like the River Jordan in full flood. This image indicates that justice is not a static state but an intervening power that brings life to a parched land. Retribution and restoration are held together in this single image of a powerful river that strikes and changes, destroys and heals.

The Exodus

The greatest example of God's justice in the Old Testament (judging oppressors and liberating the weak) is the Exodus of the Hebrew people from Egypt. The book of *Exodus* tells the story of how God destabilized the totalitarian rule of Pharaoh in order to deliver the descendants of Abraham from slavery. The climactic moment occurs when God parts the waters of the 'Yam Suph' ('Sea of Reeds'), Pharaoh's armies are destroyed (retribution) and the Israelites are set free (restoration):

> Then Moses and the people of Israel sang this song to the LORD, saying, 'I will sing to the LORD, for he has triumphed gloriously; the horse and his rider he has thrown into the sea. The LORD is my strength and my song, and he has become my salvation' (*Exodus* 15: 1–2).

In this paradigmatic act of God, justice, punishment, freedom and salvation are inseparable. So too are retribution and restoration.

The 'new Exodus'

In the same vein, the greatest example of God's justice in the New Testament is the crucifixion of Jesus;[5] an event that is expressly characterized as the 'new Exodus'. *The Gospel according to Luke* describes a conversation between Jesus and two famous Old Testament figures (Moses and Elijah), in which the latter 'spoke of his [Jesus'] departure [the Greek word *exodus*], which he was to accomplish at Jerusalem' (*Luke* 9: 31). Jesus' 'departure' refers to his looming crucifixion. Elsewhere, the death of Jesus and baptism[6] in the name of Jesus are likened to the slaughter of the Passover lamb prior to the Exodus from Egypt and the crossing of the Sea of Reeds, respectively (*First Letter to the Corinthians* 5: 7; 10: 2). The death of Jesus[7] is thus explicitly presented as a new and better Exodus.

This is because the New Testament understands the crucifixion of Jesus as the means of overthrowing a far greater oppressor than Pharaoh and also as the means of liberating a far greater number of people. In brief, Jesus saw that the real oppressor of Israel was not the Romans but the Accuser, Satan, 'a quasi-personal source of evil standing behind both human wickedness

and large-scale injustice' (Wright 2001: 316), opposed to humanity and to God's purposes. Consequently, the human beings who needed liberation were not only the inhabitants of occupied Israel in the first century AD but all who were enslaved to Satan's power – that is, the entire human race. This indicates a further dimension to the story of oppression and freedom. Humanity is not neutral; it has joined Satan's rebellion against God and thus the cross addresses, head on, personal and corporate sins, rebellions and failures of the captives themselves. As Barth observed: 'only the cross shows us just how abhorrent our actions are' (cited in Holmes 2005: 123). The New Testament claims that the cross was the place where Israel's Messiah won this ultimate victory over evil[8] and that it was here that the Messiah was enthroned (*Mark* 10: 37–40; 15: 27). For our purposes, it is important to note that the apostle Paul describes Jesus' crucifixion – the greatest act of salvation – as a manifestation of God's justice:

> [The crucifixion] was to show God's righteousness [which can also be translated as 'justice'[9]], because in his divine forbearance he had passed over former sins; it was to prove at the present time that he himself is righteous ['just'] and that he justifies him who has faith in Jesus (*Romans* 3: 25–6).

Retribution results in restoration to favour with God: the object of wrath is transformed into a child of God.[10] There is an ultimate restoration, but not one that ignores the need for a penalty.

The cross is thus the ultimate act of God's justice in the Bible because it overthrows the ultimate oppressor and it bestows the ultimate freedom from tyranny (*Hebrews* 2: 14–5). Of course, the cross itself should never be separated from Jesus' resurrection and ascension which together amount to God's 'vindication' of His people and His purposes. Vindication is itself a moment of and the completion of God's redemptive justice.[11] Together, the cross and the Resurrection display the relationship between retribution and restoration. As O'Donovan writes:

> In the light of the resurrection the cross is seen to be a judgement which is, at the same time and completely, an act of reconciliation: an act of judgement, because it effected a separation between right and wrong and made their opposition clear; an act of reconciliation, because by this judgement the way was opened for the condemned to be included in the vindication of the innocent (1996: 256–7).

Between Christ's Resurrection and return

The New Testament closes with the book of *Revelation*, which looks ahead to the return of Christ as Judge who gives the Last Judgement on behalf of God. This raises the question of how the Bible understands the exercise of judgement in the period between Christ's Resurrection and his return. Whole books have been written on single aspects of this complex and fascinating topic; suffice it to say that a key text is *Romans* (13: 3–4):

> For rulers are not a terror to good conduct, but to bad. Would you have no fear of him who is in authority? Then do what is good, and you will receive his approval, for he is God's servant for your good. But if you do wrong, be afraid, for he does not bear the sword in vain; he is the servant of God to execute his wrath on the wrongdoer.

The passage recognizes that: 'Society cannot live without judgement – it is precisely for this reason that political authority persists in its functions until Christ's coming' (O'Donovan 1996: 256). This passage reveals that the purpose of the prevailing authorities is judgement ('he [government] is the servant of God to execute his wrath on the wrongdoer'). However, it is wrong to assume that 'judgement' refers simply to retribution. O'Donovan reminds us that: 'judgement in the ancient world always has in mind a decision between two parties' and thus the purpose of the authorities, according to the apostle Paul in *Romans*, is 'to "praise" the party who has acted rightly' (1996: 147). This is in long-range continuity with the biblical vision of justice noted above. Justice is opposed to evil and it upholds the good, about which God is passionate. Within the broader structure of Paul's thought this righteous judgement is 'a restraining element in society which preserves the social order that furthers the spread of the Gospel' (O'Donovan 1996: 148). Again, retribution is harnessed to the purpose of restoration: 'God's servant for your good'.

The Last Judgement

This brings us to the projected end of the biblical story, which is described in the last book of the Bible, the book of *Revelation*. The Last Judgement is presented as an act of divine justice that finally brings the victory of Israel's Messiah on the cross to bear eternally upon the whole of Creation. There is eternal retribution for those who reject God's means of reconciliation through Jesus Christ and eternal restoration for those who choose to accept. As in previous pictures of biblical justice (see above), there is retribution followed by the prospect of restoration for those who have chosen to repent of their rebellion against God and who have chosen to side with God's good purposes. There is retribution and judgement upon evil (the 'lake of fire'; *Revelation* 19: 20–1; 20: 10, 14–5). When all that threatens God's good creation is finally dealt with, it is possible to turn to healing, transformation and restoration. *Revelation* describes the restoration of believers to God in terms of an intimate relationship: 'And I saw the holy city, new Jerusalem, coming down out of heaven from God, prepared as a bride adorned for her husband' (21: 2). Everything that oppresses God's creation is overthrown and everything that seeks freedom from bondage is fully liberated.[12]

It is clear from these examples of God's just acts, first, that retribution has a positive role to play in securing justice (overthrowing the oppressor and liberating the oppressed) and, secondly, that retribution paves the way (at least potentially) for restoration. Throughout the Bible, the interdependence of retribution and restoration reflects the consistent character of a God who

remains true to himself by punishing sin, but who also wishes offenders to repent and be reunited to his original good purposes. As Marshall sums up:

> the New Testament looks *beyond retribution* to a vision of justice that is finally satisfied only by the defeat of evil and the healing of its victims, by the repentance of sinners and the forgiveness of their sins, by the restoration of peace and the renewal of hope – a justice that manifests God's redemptive work of making all things new (2001: 284, emphasis in original).

Retribution and restoration in the biblical legal collections

We turn from the role of retribution and restoration in the overall story of the Bible to some specific examples of how they relate in the biblical legal collections. This shows that the relationship between retribution and restoration does not merely function at the level of narrative only, nor is it restricted to divine activity. Retribution and restoration can also be held together at the level of human judgements. Many examples could be given but, to keep length under control, I have selected a few of the primary biblical passages on the subject. Of these, the *lex talionis* (see below) is particularly important because this is commonly, and wrongly, assumed to indicate a purely retributive approach.

Physical assault

First, *Exodus* 21: 18–9 which reads as follows:

> When men quarrel and one strikes the other with a stone or with his fist and the man does not die but keeps his bed, then if the man rises again and walks abroad with his staff, he that struck him shall be clear; only he shall pay for the loss of his time, and shall have him thoroughly healed.

What is interesting about this passage is that it imposes a duty on the perpetrator of a physical assault to see that his victim is 'thoroughly healed'. The retributive penalty (here, a literal 'paying back') aims at restoration in the fullest sense. The perpetrator is to see that the victim is restored to his original position; so far as possible the obligation is not reduced to payment of a fine or damages. Thus if the victim was a farm hand, for example, and unable to work because of the injury, the most natural thing would be for the offender to send his son to farm the land, or else to send someone to look after him. This contrasts with the goal of our modern 'compensation culture' which is to give money *instead of* restoring the situation. The paradigm case in biblical law is not one of calculation of damages because the obligation is one of restoration, not compensation.

Theft

Moving from personal injury to theft, *Exodus* 22: 1–4 prescribes multiple restitution for stealing animals. The sanctions vary according to whether the stolen goods have already been slaughtered or sold and are hence unrecoverable (*Exodus* 22: 1) or whether they are still in the thief's possession (the paradigm, perhaps, of being 'caught in the act'; *Exodus* 22: 4). The advantage of multiple restitution is that it not only puts the victim back in the position he was before the crime (in so far as that is materially possible) but also places him in a financially better position. Again, the retributive penalty (here, a literal 'paying back') aims at restoration.

The lex talionis

Third, we turn to the *lex talionis* ('eye for an eye and a tooth for a tooth') formula.[13] This is important because one of the reasons why some restorative justice practitioners regard retribution in negative terms is due in part to their misconceptions of this biblical teaching. The formula appears in a number of places[14] and has been associated by many with the misuse and overuse of punishment. As Gandhi put it: 'An eye for an eye makes the whole world blind.'[15] However, Gandhi's rejoinder reflects a popular misunderstanding of the text. The word 'for' (*tachat*) can mean 'in the place of' – that is to say, one thing being given in the place of another (Daube 1947: 103–5). Thus 'life for life' (e.g. *Exodus* 21: 23) points towards compensation, the return of a living creature for a dead one, rather than another dead one (Daube 1947: 112–5; Jackson 2000: 289). Thus *talion* may have provided guidance as to the appropriate level of compensation and not just the permissible level of retaliation.[16] This is implicit in the classic statement of the *lex talionis* in *Leviticus* 24: 13–32 (Milgrom 2001: 2128–33). Verse 18 of this unit states: 'He who kills a beast *shall make it good*, life for life'. This is mirrored in Verse 21a: 'He who kills a beast *shall make it good*'. 'Making good' is more consistent with compensation than retaliation. To this extent, once again, retribution and restoration go together.

The only case of *talion* being physically implemented for non-fatal assaults in the Hebrew Bible is found at the beginning of the book of *Judges*:

> Adonibezek [a Canaanite king] fled; but they [the men of Judah] pursued him, and caught him, and cut off his thumbs and his great toes. And Adonibezek said, 'Seventy kings with their thumbs and their great toes cut off used to pick up scraps under my table; as I have done, so God has requited me.' And they brought him to Jerusalem, and he died there (Judg. 1: 6–7).

Although there is no compensation in this (rare) example, it is possible to find what Jackson calls 'cognitive equivalences between retaliation and retribution' (Jackson pers. comm.). Daube (1947: 128) writes:

> retaliation, roughly, does restore the original proportion of power between the two persons or families concerned. The difference between

> it and restitution proper is that it restores the original relation in a negative way, by depriving the wrongdoer of the same thing of which he has deprived the person wronged; while restitution is positive and gives back to the person wronged that which the wrongdoer has appropriated.

In the absence of compensation, the 'repayment' of retribution may also be said to have an expressive function: denouncing the offender's act and/or reasserting the victim's right. This may be especially relevant where, as in *Judges* 1: 6–7, the offender's act is 'clearly deliberate' (Jackson pers. comm.). This expressive function may also be restorative in the philosophical sense that it is 'the denial of wrong by the assertion of right' (Bradley cited in Walker 1991: 78). Notably Adonibezek accepts the legitimacy and the justice of his punishment; indeed, he goes so far as to see it as a manifestation of divine punishment.

Retribution and restoration in the early church

We turn from retribution and restoration in ancient Israel, as depicted in the biblical legal collections, to retribution and restoration in the life of the early church, which claimed to be in continuity with ancient Israel as the 'people of God'. In general terms the exercise of judgement in the life of the Christian community was to stand in contrast to the exercise of judgement in the rest of world (as noted above). Once again, the Bible wisely bears witness to the complex relationship between retribution and restoration.

The Gospel According to St Matthew (18: 15–20)

St Matthew's *Gospel* describes the following practice of judgement, aimed at the reconciliation of the offender. The outcome of a successful reconciliation is 'gaining a brother' (v. 15). O'Donovan describes this as 'an institutional commentary on Jesus' parable of the lost sheep'[17] (1996: 150). If restoration fails, the only alternative is retribution which takes the form of expulsion from the community. This is logical because 'the essence of the offence has been to reject God's judgement in the community, and so, in effect, to reject Christ himself' (1996: 150).

The Corinthian correspondence (First and Second Letters to the Corinthians)

This provides an example of recommended practice in the early church when the offender refuses to recognize that a wrong has taken place. Censure and retribution on the part of community are required, and this takes the form of exclusionary punishment.

The offence in question concerned an incestuous relationship between a man and a woman in the church at Corinth (a lively Greek seaport in the Roman Empire). Under Roman law, the punishment for incest was 'exile and the loss of citizenship and property for both parties in the liaison' (Winter

2001a: 6; see also Winter 2001b: 44–57). Upon learning of this offence, the apostle Paul demanded that the Christian community exclude the man involved in a decisive act (presumably the woman involved was not a Christian): 'You are to deliver this man to Satan for the destruction of the flesh, that his spirit may be saved in the day of the Lord Jesus' (*First Letter to the Corinthians* 5: 5). 'Delivering to Satan' probably refers to putting the man outside the church and thus into the realm of the Satan: 'the act of exclusion ... was the sign that attempts to reconcile could go no further' (O'Donovan 1996: 259). Winter notes that in this respect 'the Christian community is seen to reflect (however imperfectly) a characteristic of God himself' (2001a: 6). This is because we read later in the same letter that God removed some members of the Corinthian church from the active life of the community either permanently (by death) or temporarily (absence through weakness and illness) (*First Letter to the Corinthians* 11: 30). These, too, are forms of exclusionary punishment.

Exclusionary punishment involves censure and retribution because it recognizes that a wrong has taken place. However, it is also intentionally restorative in the sense that its purpose was to reconcile the offender with the church's judgement that his behaviour was wrong. Judgement:

> served the church's need to make a public distinction between right and wrong, to 'purge out the old leaven' (*First Letter to the Corinthians* 5: 6); but this was to be done by confronting the offender and inviting him in penitence to join the church in making this distinction (O'Donovan 1996: 259).

The goal is restoration: 'that his spirit may be saved in the day of the Lord Jesus.' Once again, retribution aims at restoration.

A further glimpse into the practice of the early church is found in a subsequent letter from the apostle Paul to the same church. In the *Second Letter to the Corinthians* (2: 1–8) the community is taught how to receive back into its fellowship a man who had been excluded from the community, along the lines mentioned above, but who was now repentant. We do not know whether the repentant offender is the incestuous man referred to in the *First Letter to the Corinthians* but, whoever it was, the apostle claims that three things should characterize the community's new relationship with the repentant offender. First, they were to show 'grace' (2: 7) (i.e. do good towards someone who does not deserve it). In this regard, the community shows the justice of the cross noted above. Secondly, they were to encourage the formerly excluded person and help him to re-establish his relationships (2: 7). Interestingly, they were to show 'grace' and encouragement lest 'he may be overwhelmed by excessive sorrow' (2: 7). Thirdly, they were to 'affirm their love' for the person. 'Only then can the person know that the past is the past and that restoration of relationships has been achieved ...' (Winter 2001a: 7). Once again we see that 'punishment is meant to be remedial with the ultimate aim of restoring fractured relationships' (2001a: 7).

Some limits to retribution and restoration

Our overview of the relationship between retribution and restoration in the Judaeo-Christian tradition enables us to make some observations regarding their limits.

Limits to retribution

There are limits to retribution in biblical law. *Deuteronomy* 25: 1–3 indicates that offenders deserve to be punished in proportion[18] to their offence, affirming the value the Bible places upon moral autonomy. However, there is an upper limit in the sense that no offender deserves to be degraded. The passage reads:

> If there is a dispute between men, and they come into court, and the judges decide between them, acquitting the innocent and condemning the guilty, then if the guilty man deserves to be beaten, the judge shall cause him to lie down and be beaten in his presence with a number of stripes in proportion to his offence. Forty stripes may be given him, but not more; lest, if one should go on to beat him with more stripes than these, your brother be degraded in your sight.

This is close to what Duff calls 'the central retributivist slogan', namely 'that the guilty should be punished as they deserve and because that is what they deserve' (2002: 96). This is reflected in biblical law – with the important gloss that no one deserves to be degraded. There are limits to retribution. It is perhaps significant that in setting limits to retribution *Deuteronomy* 25: 3 refers to the offender as 'your brother'. 'Brotherhood' is one of the key themes in *Deuteronomy*, a book that 'envisages a society that is quite distinct from every other known society in its world: [one] based on the absolute respect for all its members' (McConville 2003: 189).

A limit to retribution is related to the perceptions of offenders. Perceptions in turn affect attitudes and much is said in biblical law about cultivating the attitude of heart that leads to forbearance from conflict. For example, *Exodus* 23: 1–9 contains a series of prohibitions against the perversion of justice (23: 1–3; 6–9). At the centre of this unit is the following admonition: 'If you meet your enemy's ox or his ass going astray, you shall bring it back to him. If you see the ass of one who hates you lying under its burden, you shall refrain from leaving him with it, you shall help him to lift it up' (*Exodus* 23: 4–5). Commentators have queried the relationship between this 'humanitarian' provision and the surrounding prohibitions. Jackson points out that verses 4 and 5 envisage 'a context of enmity' (2000: 224) specifically between the owner and the person who is obliged to help. Enmity is thus the key to the internal structure of the unit because enmity leads to litigation. By placing the command to assist one's enemy at the heart of a passage concerned with litigation, the Bible is encouraging its hearers to have the attitude of forbearance that makes litigation unnecessary. By limiting litigation and encouraging forbearance the passage also limits retribution.

How does this advice sit with, for example, the *lex talionis* noted above, whether conceived as compensation or physical retaliation? Here we must recognize that it was always possible to transcend even the literal application of the *lex talionis* in biblical law. The fact that a punishment was *permitted* in biblical law did not mean that it *had* to be applied – or even that it *should* be applied. For example, a text from the wisdom literature recommends that *talion* should *not* be exacted: 'Do *not* say, "I will do to him as he has done to me; I will pay the man back for what he has done"' (*Proverbs* 24: 29; emphasis added). Retribution is permitted but it is not mandatory in biblical law. In fact, other parts of the legal collections command that the best response of all is forbearance and love: 'You shall not take vengeance or bear any grudge against the sons of your own people, but you shall love your neighbour as yourself: I am the LORD' (*Leviticus* 19: 18). This reflects the character of God who does not take pleasure in inflicting pain and who sets the greatest value upon reconciliation: 'I have no pleasure in the death of the wicked, but that the wicked turn from his way and live; turn back, turn back from your evil ways; for why will you die, O house of Israel?' (*Ezekiel* 33: 11).

We see similar restraint upon litigation and retribution in the early church. Jesus demands of 'the multitudes' in the *Gospel According to St. Luke*: '... why do you not judge for yourselves what is right? As you go with your accuser before the magistrate, make an effort to settle with him on the way' (12: 57–58). O'Donovan notes that 'reconciliation is itself a form of judgement. Those who avoid the law court by settling the quarrel have in fact judged for themselves' (1996: 259). Here we see the long-range continuity with the attitudes promoted by biblical law: the community established by Jesus is to be characterized by a lack of litigation and vengeance and by forgiveness and love towards the enemy.[19]

Limits to restoration

There are also limits to the goal of restoration in biblical law. At the level of the biblical meta-narrative, it is possible for human beings to choose not to be part of God's planned-for restoration. The book of *Revelation* closes with a picture of the new heavens and the new earth that God has accomplished, but not all human beings choose to be part of this work of restoration. Their tragic and avoidable absence, as the Bible sees it, reflects God's respect for moral autonomy. Moral autonomy sets limits to both retribution and restoration.

There are also some practical limits to restoration in biblical law. In *Exodus* 22: 5, which concerns agricultural delicts, restitution is simply made 'from the best in his [the offender's] own field and in his own vineyard'. There is no guarantee that it will fully compensate the victim for the loss. There may not be full restoration. However, any disparity must be offset by the advantage of resolving the matter quickly and allowing the parties to get on with their lives. Biblical law seems to recognize that there are times when the quest for full restoration is detrimental. It appears that any outstanding injustice must be left, ultimately, with God. There are also limits to restoration to the extent

that the parties are unwilling to enter into the attitude of heart towards offenders commended by both the Hebrew Bible and the New Testament (see above). Human nature sets limits to the restorative ideal. Again, the Bible wisely bears witness to the complex relationship between retribution and restoration.

Penological applications

Finally, we turn to the penological applications that can reasonably be derived from this biblical account, particularly for restorative justice.

First, the biblical material shows that there is a role for retribution and challenges those within the restorative justice movement who view retribution and restoration as mutually exclusive. *Deuteronomy* 25: 1–3 reminds us that proportionality is a perfectly sound basis for a responsible sentence. It takes offenders and their choices seriously and is one way of affirming the moral value and dignity of persons.[20] It is both difficult and dangerous to move too far away from this (e.g. mandatory, indeterminate or exemplary sentences). The biblical material also shows that there are limits to retribution and that care must also be taken to avoid degrading the offender. This challenges our perceptions and attitudes towards offenders. Punishment may lower an offender in the eyes of others but not to the extent that he loses dignity as a human person. This has political application given the increasing reliance upon imprisonment around the world. Indeed, some have argued that the institution of mass imprisonment 'depend[s] upon our refusal to comprehend the human beings we so completely condemn' (Garland 2001: 185) and certainly the human consequences can be degrading in the extreme. Nor are we justified in using offenders in a utilitarian fashion as a means to some other (conscious or unconscious) end – for example, as a way of soothing cultural anxieties (Garland 2001: 167–205).

Secondly, the biblical material shows that retribution should aim at restoration, and challenges retributivists outside the restorative justice movement who would deny this. It also reminds us that there are, sadly, limits to restoration. Daly's analysis of data from the South African Juvenile Justice (SAJJ) research which concerned youth justice conferences suggests that there are 'limits on offenders' interests to repair harms and on victims' capacities to see offenders in a positive light' (2003a: 28).

Thirdly, the biblical material helps us to see how retribution and restoration can work together. At both the level of meta-narrative and at the level of specific examples in the biblical legal collections and the life of the early church, it affirms the conclusion that while responses to crime should aim for 'restoration', this is properly achieved through retribution (Duff 2002).

The political application of a biblical vision of justice might inspire a number of policies. The danger lies in isolating one element of an inseparable whole to the exclusion of others. The temptation is to stress, for example, retribution without any thought of restoration (the claim that 'prison works') or restoration without retribution (Richards 1998). Either element, on its own, quickly leads to injustice. The political application of a biblical approach for

a given criminal justice process at a given point in time depends on current practices and previous penal history. For this reason Christians in different countries have campaigned at different times to redress quite different imbalances.[21]

Fourthly, the distinction between secular judgement and the church's judgement has major political application. If the purpose of government is to express God's judgements, there is a sense in which political authority may need to recover confidence in its ability to punish justly, which is to say that it may also need to reconnect with what it means to judge with humility. As O'Donovan (1996: 278) writes:

> Christian liberalism taught judges to look over their shoulders when they pronounced on fellow-sinners' crimes. It taught them they were subject to the higher judgement of God, who would judge mercifully those that judged mercifully. Ex-Christian liberalism inherited all the hesitancy; but, no longer grounded in religious humility, it became moral insecurity. From this springs the haunted unease with which the West views its own agents of law ... We have made the detection and punishment of major crime more efficient than any other society, yet we believe in it less.

Finally, the argument of *Romans* chapter 13 suggests that 'Secular justice could not itself effect what church justice set out to achieve, [namely] the repentance and regeneration of the sinner' (O'Donovan 1996: 260). This supports and illuminates von Hirsch's objection that it should not be the business of the state to use censure to try to bring about the repentance of an offender (1993). According to O'Donovan, this is indeed what secular justice cannot do. It is, however, what the church can do as it witnesses to 'the fact of reconciling judgement already given' in the form of the cross (1996: 259).

Conclusion

This chapter challenges perceptions that the Judaeo-Christian tradition represents severe retributive justice and that there is a dichotomy between retribution and restoration. It follows some recent challenges to restorative justice as a whole – namely, a questioning of the assumption that retribution and restoration are fundamentally opposed and a growing recognition that this is, in fact, a false dichotomy. It is hoped that this biblical reappraisal of the spiritual roots of restorative justice will further undermine this dichotomy and provide further grounds for recognizing the necessity of both retribution and restoration to punishing with justice. The Bible indicates that there is an interdependence of retribution and restoration at a number of different levels; not only at the level of the overall biblical story but also in the specific provisions of the biblical legal collections and the recommended practice of the early church. The biblical material also helpfully reminds us of some of the practical limits to both retribution and restoration, and some of the

penological applications to which it points. Throughout, the Bible wisely bears witness to the complex relationship between retribution and restoration.

Selected further reading

Burnside, J.P. (forthcoming) *Jewish Justice In the Bible*. Cambridge: Cambridge University Press. An overview of biblical justice from the patriarchal period to the trials of Jesus.

Burnside, J.P. (2005) 'Criminal justice', in M. Schluter and J. Ashcroft (eds) *Jubilee Manifesto*. Leicester: Inter-Varsity Press. A descriptive account of the operation of divine justice in the Bible and of the role of relationships in securing justice, with some implications for contemporary practice.

Jackson, B.S. (2006) *Wisdom-laws: A Study of the Mishpatim of Exodus 21:1–22:16*. Oxford: Oxford University Press. An authoritative investigation of the earliest biblical legal collection, which provides insight into the practical operation of biblical law and biblical justice.

Marshall, C.D. (2001) *Beyond Retribution*. Grand Rapids, MI: Eerdmans. A thorough account of New Testament teaching on justice and punishment from a theological perspective.

O'Donovan, O. (1996) *The Desire of the Nations*. Cambridge: Cambridge University Press. A leading work of political theology, which explores ideas of political authority, justice and punishment from a biblical and theological perspective.

Notes

1 An exception is Hadley (2001), which offers the perspectives of a number of religions.

2 For a critique of retribution as a theoretical construct, and a discussion of the theological considerations that arise, see Marshall (2001: 97–143).

3 Scripture quotations are taken from the Holy Bible, Revised Standard Version, unless otherwise stated.

4 I am grateful to Gordon McConville (pers. comm.) for this observation.

5 As many have noted, this is ironic, because Jesus' execution is the result of human *in*justice. Ultimately, the full meaning of the cross is something that can never be fully comprehended and there is a risk of making it appear one-dimensional in a thumbnail sketch of this kind. See Holmes: 'the cross is a single decisive event that evades ... categorisation precisely because it is so basic to any properly theological account of the nature of true humanity, true justice, true sacrifice, true relationship, or a host of other realities' (2005: 105).

6 Baptism is a religious ceremony which signifies that the person has converted to Christianity.

7 Classic accounts of penal substitution (e.g. by the Swiss reformer John Calvin) '[assume] that sin requires satisfaction [and] that God cannot simply forgive, without some act of reparation taking place' (Holmes 2005: 107). Penal substitution as a way of explaining the efficacy of Christ's work upon the cross has come under heavy fire from some theological quarters (e.g. Marshall 2001: 59–69), yet there remain strong scriptural and exegetical arguments for understanding Christ's sacrifice in substitutionary terms (see Holmes 2005). Penal metaphors are important within the overall meta-narrative noted above because 'they take the reality of sin seriously ... A key element of penal substitution is language of acts of transgression – crimes – and the guilt they bring, which must be dealt with' (Holmes 2005: 123).

8 See *Colossians* (2: 13–15) 'And you, who were dead in trespasses and the uncircumcision of your flesh, God made alive together with him, having forgiven us all our trespasses, having cancelled the bond which stood against us with its legal demands; this he set aside, nailing it to the cross. He disarmed the principalities and powers and made a public example of them, triumphing over them in him.'
9 This is the translation used in the New International Version of the Bible.
10 As the *Gospel According to St John* puts it: 'to all who received him [Jesus], who believed in his name, he gave power to become children of God; 13 who were born, not of blood nor of the will of the flesh nor of the will of man, but of God' (1: 12–13).
11 I owe this observation to Jonathan Chaplin.
12 See Marshall (2001: 175–99) for a general discussion.
13 See Marshall (2001: 78–92) for a general discussion.
14 *Exodus* 21: 23–25, *Leviticus* 24: 18–20 and *Deuteronomy* 19: 21.
15 http://www.quotationspage.com/quotes/Mahatma Gandhi/, accessed 22 October 2005.
16 Zehr (1985) rightly recognized that the *lex talionis* could be a means of establishing restitution: 'the value of an eye for the value of an eye.'
17 The parable of the lost sheep is found in the *Gospel According to St Luke* 15: 5–6.
18 The Bible is critical of disproportionate responses (e.g. *Genesis* 4: 23–4).
19 This is part of the reason why the apostle Paul was appalled to hear of a court case between two Christians in Corinth (*First Letter to the Corinthians* 6: 1ff.). There was a contrast between the exercise of judgement by the 'prevailing authorities' noted above and that exercised among the church community (see, generally, Winter 1994: 106–21, 2001b: 64–75). Whereas: 'The secular function in society was to witness to divine judgement by, as it were, holding the stage for it; the church, on the other hand, must witness to divine judgement by no judgement, avoiding litigation and swallowing conflict in forgiveness' (O'Donovan 1996: 259). Where Christians in conflict could not agree together Paul held that church authorities could step in to deliberate on the case (6: 4). But this was not the ideal scenario: it was better to suffer wrong (6: 7). Even in the exceptional case involving church authorities, the church's exercise of judgement would be very different from that of the secular world: 'The sole purpose of the church court was to make the implications of God's judgement clear, by reconciling the contending Christians in a common understanding of God's right' (O'Donovan 1996: 150). It was to be a witness to 'the fact of reconciling judgement already given' (O'Donovan 1996: 259).
20 Cf. Von Hirsch: 'a condemnatory sanction treats the actor as a *person* who is capable of moral understanding ... [This] is a matter of acknowledging his dignity as a human being' (1993: 11; emphasis in original).
21 Some of the reform initiatives to which a biblical vision of justice might point are set out elsewhere (Baker and Burnside 1994; Burnside and Baker 2004; Burnside 2005; Burnside with Loucks, Adler and Rose 2005).

References

Baker, N. and Burnside, J. (1994) *Relational Justice: A Reform Dynamic for the Criminal Justice System*. Cambridge: Jubilee Policy Group.
Barton, J. (1998) *Ethics and the Old Testament*. London: SCM.

Burnside, J. (2003) *The Signs of Sin: Seriousness of Offence in Biblical Law. JSOT Supplementary Series*. 364. Sheffield: Sheffield Academic Press.
Burnside, J.P. (2005) 'Criminal justice', in M. Schluter and J. Ashcroft (eds) *Jubilee Manifesto*. Leicester: Inter-Varsity Press.
Burnside, J. and Baker, N. (eds) (2004, repr.) *Relational Justice: Repairing the Breach*. Winchester: Waterside Press.
Burnside, J. with Loucks, N., Adler, J. and Rose, G. (2005) *My Brother's Keeper: Faith-based Units in Prisons*. Cullompton: Willan Publishing.
Burnside, J. and Schluter, M. (1994) 'Relational justice: a reform dynamic for the criminal justice system', *New Life*, 11: 17–30.
Daly, K. (2002) 'Restorative justice: the real story', *Punishment and Society*, 4: 5–79.
Daly, K. (2003) 'Making variation a virtue: evaluating the potential and limits of restorative justice', in E.G.M. Weitekamp and H.-J. Kerner (eds) *Restorative Justice in Context: International Practice and Direction*. Cullompton: Willan Publishing.
Daube, D. (1947) *Studies in Biblical Law*. Cambridge: Cambridge University Press.
Duff, R.A. (2001) *Punishment, Communication and Community*. Oxford: Oxford University Press.
Duff, R.A. (2002) 'Restorative punishment and punitive restoration', in L. Walgrave (ed.) *Restorative Justice and the Law*. Cullompton: Willan Publishing.
Garland, D. (2001) *The Culture of Control*. Oxford: Oxford University Press.
Gorringe, T. (1996) *God's Just Vengeance*. Cambridge: Cambridge University Press.
Hadley, M.L. (ed.) (2001) *The Spiritual Roots of Restorative Justice*. Albany, NY: State University of New York Press.
Holmes, S. (2005) 'Can punishment bring peace? Penal substitution revisited', *Scottish Journal of Theology* 58: 104–23.
Jackson, B.S. (unpublished) *'Lex Talionis:* Revisiting Daube's Classic.'
Jackson, B.S. (2000) *Studies in the Semiotics of Biblical Law. JSOT Supplement Series* 314. Sheffield: Sheffield Academic Press.
Johnstone, G. (ed.) (2003) *A Restorative Justice Reader: Texts, Sources, Context*. Cullompton: Willan Publishing.
Marshall, C.D. (2001) *Beyond Retribution*. Grand Rapids, MI: Eerdmans.
McConville, J.G. (2002) 'Deuteronomy, Book of', In D.T. Alexander and D. W. Baker. (eds) *Dictionary of the Old Testament: Pentateuch*. Leicester: Apollos.
Milgrom, J. (2001) 'Leviticus 23–27', in *Anchor Bible Commentary*. London: Doubleday.
O'Donovan, O. (1996) *The Desire of the Nations*. Cambridge: Cambridge University Press.
Phillips, A. (1973) *Deuteronomy*. Cambridge: Cambridge University Press.
Rex, S. (2001) 'Rethinking community punishment', *Relational Justice Bulletin*, 10: 4–5.
Richards, M. (1998) *Censure without Sanctions*. Winchester: Waterside Press.
Von Hirsch, A. (1993) *Censure and Sanctions*. Oxford: Oxford University Press.
Walker, N. (1991) *Why Punish?* Oxford: Oxford University Press.
Winter, B.W. (1994) *Seek the Welfare of the City*. Grand Rapids, MI: Eerdmans.
Winter, B.W. (2001a) 'Punishment as remedy', *Relational Justice Bulletin*, 12: 6–7.
Winter, B.W. (2001b) *After Paul Left Corinth*. Cambridge: Eerdmans.
Wright, T. (1999) *The Myth of the Millennium*. Glasgow: Azure.
Wright, T. (2001) *Luke for Everyone*. London: SPCK.
Zehr, H. (1985 repr. 2003) 'Retributive justice, restorative justice', in G. Johnstone (ed.) *A Restorative Justice Reader*. Cullompton: Willan Publishing.
Zehr, H. (1990) *Changing Lenses: A New Focus for Crime and Justice*. Scottdale, PA: Herald Press.
Zehr, H. (2002) *The Little Book of Restorative Justice*. Good Books.