The Doctrine of Restitution

Introduction

Today's church has little if any understanding of the doctrine of restitution; the word may even be foreign to most of you. And yet, the doctrine of restitution and the principles governing it are foundational to our interaction with each other both as human beings and as a church and society.

For the most part, we have turned over what would be covered under "restitution" to the civil magistrate, and the government's punishment of crimes. Don't get me wrong--this is not necessarily a bad thing and doesn't really exclude the application of the doctrine of restitution. On the contrary, I would like to suggest that the government's penal code should be a reflection of the biblical idea of restitution.

Situations for the application of restitution occur all the time, so it would be wise for us to have at least a foundational understanding on what the doctrine of restitution is, what it applies to, when it applies, and how it applies.

Restitution Defined

Everyone says it, but it’s true—defining terms is key to understanding and communication. Webster's dictionary gives the two following definitions of the word "restitution":

- The act of returning or restoring to a person some thing or right of which he has been unjustly deprived; as the restitution of ancient rights to the crown.

- The act of making good, or of giving an equivalent for any loss, damage or injury; indemnification.

Basically, restitution is compensation for stolen/damaged/lost property or physical harm, paid by the person responsible, to the owner of the property or to the person who suffered the physical harm. Or put more simply, if you cause another person loss, in any way, whether physically or monetarily, restitution is making right the wrong, or “restoring” that person to the position they were in before you caused them injury.

If you think about it, then, restitution applies to almost every tangible offense you can commit against another person. Capital punishment, as described in Genesis 9:6 is really a form of restitution.

The Bible has a fundamentally different perspective about crime and punishment than us modern Americans. We think of punishment in terms of jail time. You steal, you go to jail. You kill, you go to jail. We want the person who committed the crime to "do his time". However, in the Bible, the punishment for a crime (even if it is death) is really about restoring to the victim. You murder
someone's husband and you get killed as well—not only is that a punishment, it's a very real way of "paying" that person back for the harm you caused them. So, in the Bible, the "punishment" for an offense typically flows from the perpetrator to the victim, making right the wrong as much as possible. That's restitution.

Restitution has many purposes. It serves as a punishment to the one who has committed an offense; it serves as a means of making right the offense; and it serves as a deterrent to those who would consider committing such offenses.

On a very broad level, restitution covers all crimes and offenses which could be generally termed “theft”. Exodus 21 & 22 give many, specific examples of theft and physical injury, and often the situations we see today fit nicely into these specific categories. However we need to be careful to understand the principles which govern the restitution in each of these situations so if we come across situations which do not seem to us to “fit the pattern” we are able to make just judgments.

**An Exposition of Exodus 21 and 22**

In this passage we see two main categories of loss: 1) physical harm, and 2) economic loss. In every case here except one, the compensation is of monetary value, and is not physical in nature. The only case where restitution seems to be physical in nature is the case when men injure a pregnant woman or her baby in the course of “striving together.” (21:22-25)

The specific situations listed in Exodus 21 and 22 are as follows:

1) Exodus 21:18,19 speaks of making restitution for injury done to another person in the course of a quarrel. If the person injured was not killed and was able to work again, the responsible party was to pay for the loss of his time, and the cost to have him thoroughly healed. The principle here is, if you physically injure another person you pay for any expenses reasonably related to the injury you caused, and you are to compensate the person for “loss of profit” which he lost due to being injured.

2) Exodus 21:22-25 details a situation where men who are striving together hit a pregnant woman and her child is born. If there is not harm done, the one who hit her is to be fined, but if there is harm done, the one responsible it to pay “life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, stripe for stripe”. The seeming severity of the consequences speaks to the severity of the crime, and here we begin to see established that the consequence or restitution to be required is proportionate to the nature of the offense as well as its severity.

3) Exodus 21:26-27 says if a master strikes his slave and either destroys his eye or knocks out his tooth, the slave is to be let go free. This is seemingly contradictory with the situation directly before this where physical punishment of the exact nature as that which was caused was required. The only difference between this situation and the one in verses 22-25 may at first
glance seem to be the “status” of the person injured and the person causing the injury. In this case it was a slave injured by his master—in the previous it was a pregnant woman or baby injured by quarrelling men. However, we need to take into account the context surrounding each of these cases. In one case it is peers arguing and fighting with each other. The case of the master and slave, on the other hand is a case in which what began as legitimate discipline went too far.

Physical restitution—an eye for an eye, tooth for tooth, etc.—was required in cases where the physical injury was permanent. In other words, if man punched his neighbor in the face, and caused him to have to go to the doctor and be off work for two days, the punishment required was not to punch him in the face and make him miss work for two days. The punishment was for him to pay the man to be healed and to pay for the time he missed work. The question is, why the difference?

Two things we should note. 1) The gouging of the eye or the knocking out of the tooth is irreparable physical damage. Your body can’t heal from that. With time, your body can heal from bruises. 2) The restitution must always be from the guilty party to the injured party. It is not restitution to say because a man caused another person to suffer that he should suffer in the same way. Restitution mandates a detriment to the guilty party which directly benefits the injured party. In the example of the man who punched his neighbor in the face and made him miss work—to make that man suffer and miss work as well might be a good thing, but he took something from his neighbor which making him suffer does not necessarily pay back. The neighbor is not restored to his former position in any way because the man who hit him suffered the exact same physical harm.

Again, what we need to note here is that the statement eye for eye, tooth for tooth is not necessarily meant to be taken as a literal punishment. The line that seems to be drawn is, if compensation can be made in a monetary or economic way, that is always appropriate, and the amount is to be determined on a case by case basis. The overarching principle is the person wronged should feel like justice has been done—he should be put in the same position he was before the offense.

Physical suffering was to be exacted when monetary means are not a sufficient compensation to the injured party, and even when a physical punishment was required, it is always determined on a case by case basis. The quarrelling man who unintentionally killed a baby or pregnant woman was always to be killed—no exceptions are given. And yet in other cases of unintentional, accidental killing, a man was not required to pay life for life (Deut. 5:41,42).

4) Exodus 21:28-32 deals with situations in which a person’s animal kills another person. In each case the ox was to be stoned. However, if the owner knew of the ox’s tendency to gore, the owner was to be stoned along with the ox; in some cases, the owner could pay a ransom for his life. If the person killed was a slave, the ox was to be stoned and the master to be paid thirty shekels of silver. Several applicable factors and principles come into play here. Responsibility of
persons for the actions of animals which have the ability to kill or seriously injure other people. The carefulness or negligence of the owner is also taken into account when determining the punishment.

5) Exodus 21:33-36 lays out several more instances, in which the main guiding principle is whether a person took steps to prevent injury to his neighbor’s animals—whether he exercised love toward his neighbor and used due caution and care.

6) Exodus 22:1-4 deals with theft crimes. “If a man steals an ox or sheep and kills it or sells it,” The significance of this phrase is that the stolen item is not in his possession. He has already used it for his own means. “He shall repay five oxen for an ox and four sheep for a sheep,” The difference here is likely due to the utility and use of each of the animals in question. The ox is an animal used for work in an agrarian society, and a sheep is an animal which is used for profit as opposed to physical labor. In other words, for a man to steal an ox was directly affecting that person’s ability to meet his needs and the needs of his family as opposed to a sheep which represented stock of wealth—savings in today’s terms.

If the thief was caught breaking in in the night, and killed, there was no bloodguilt. If the thief had no money to pay, he was to be sold as a slave.

If the thief had the stolen beast still alive in his possession, he was to pay double, whether it was ox, sheep, or donkey.

7) Exodus 22:5 – this verse deals with theft committed via “secondary means”; an ox is spoken of specifically here, but this would apply also to servants working under command of their masters. The fact that the man “caused” or “lets loose” the ox covers both intent or negligence on his part; either he turned the animal loose in his neighbor’s field, or he turned his animal loose, and he neglected to watch it, and it grazed in his neighbor’s field. In either case, the restitution is the same—he was to compensate from the best in his own field and vineyard.

8) Exodus 22:6 – unlike the verse before, the situation here seems to be the case of accidental destruction of a neighbor’s field or grain. The language does not indicate intent, but rather that the man started the fire on his own property, but whether by neglect or simple accident, it spread to his neighbor’s field. Restitution was to be in full.

9) Exodus 22:7-13 talks about a case where a person has entrusted money or goods or an animal to his neighbor to keep safe for him—a deposit. If it is stolen and the thief is found, the thief is to pay double. If the thief is not found, the owner of the house is required “come near to God” in other words to make sure he acted in good faith and did everything he could to protect his neighbor’s property. If he is found guilty before God, he is to pay double.

In both of these situations, God requires a high level of responsibility from the person who was entrusted with another’s property. The fact itself that the item had been stolen almost seems to be
an indicator the person had been careless. That money could have been stolen from the person’s house, or that an animal as large as an ox could simply die or disappear without the depositary noticing is unlikely outside of some negligence on the part of the depositary. If the depositary is found to be at fault, he is to repay double.

10) Exodus 22:14-15 discusses the case of a borrowed animal or possession. The borrower was expected to return the borrowed item in the same condition it was when borrowed. If the animal (or possession) was damaged, the borrower was expected to pay full restitution. However, if the owner was present when the object was damaged or injured, the borrower was not expected to make restitution, the logic likely being that if he was present, he knew exactly what had happened and could attest to it not being the borrower’s fault.

**The Category That We Haven’t Discussed**

Up to this point, we have mentioned offenses in which the thief has been caught. Leviticus 5:14-6:7 describes several cases in which “the thief has realized his guilt”. Three categories are detailed—those who sin unintentionally, those who sin but don’t know their actions are against the law of God, and those who sin intentionally but realize their guilt and confess prior to being caught. In each of the three cases, the person who sinned realized his guilt and confessed his sin. Restitution in such cases is in full plus one fifth.

Some may ask why. God has laid out clear benefits to confessing and forsaking sin and one of them is a lighter “punishment” if you will. In this we see the love of God—he desires for us to be happy and holy—he desires for us to obey his law, and he blesses those who do.

**Examples of Restitution**

Throughout Scripture we see examples of theft, including Rachel (Gen 31) and Achan (Josh 7), but when we think of stealing and restitution, most likely the first thing we think of is Zacchaeus (Luke 19:1-10). We think of how he stole tax money, and after being saved decided to give back four times to anyone he had stolen from. All of us probably have many different thoughts about the story, but at least one thing we should not miss is the attitude of Zacchaeus. When he restored the money to those he had stolen from, he did it joyfully and willingly. This should always be the attitude of a saved man—that he would have such a heart of repentance that he would be glad to restore many times what he took.

**When Is Restitution Necessary?**

Simply put, Scripture is very clear that restitution is always required when by his actions (negligent or intentional) a person damages or injures the person or property of another. Now, the overly critical person will object that there are cases not mentioned here in Exodus where one person causes damage to another person but punishment not restitution is required. The most obvious case would be murder—once you take a person’s life you can no longer make
restitution. It is my argument that Exodus 21 and Leviticus 24:17 make very clear that this is a case of restitution—life for life.

In every case where sin manifests itself in physical damage to the person or property of another, restitution is required, even to the point of death. Therefore whenever an authority is dealing with a case where a person has been injured by the actions of another or his property has been converted in some way by another, the question of restitution must always be addressed.

**How Should We Think About Restitution in Today’s World?**

Now, all that's well and good, but we don't have oxen today, with all their accidental goring and trampling. So how do we take these principles and apply them today?

There are a number of main principles which are clearly laid out in Exodus 21 and 22:

- Restitution is to be made according to the offense – eye for eye, tooth for tooth.
- Restitution is to be made to the party injured/offended
- Restitution is decided on a case by case basis, BUT each case listed gives us relevant principles to apply in cases we see today

In Exodus 21 and 22, I believe we see three major categories of theft, each of which demands restitution.

- The first major category is physical injury to another person, laid out in Chapter 21 verses 12-32
- The second major category is intentional theft, seen in Chapter 22 verses 1-4
- The last major category is “unintentional”, accidental, or negligent destruction (theft) of the property of another – Chapter 21:33-36, and Chapter 22:5-15

I would make the argument that virtually every crime we see today fits into these categories, and it just requires basic understanding and application of these principles to see that. Here are just a few examples.

Believe it or not, even modern law reflects a lot of these principles of restitution. In most cases, the specific consequences have been replaced, but the recognition that some form of punishment is required is still there. Negligence suits are very common in tort law today. Although people today are all too willing to pass the consequences of their actions on to others, at the same time, the idea of “accidental” injury is a biblically valid concept. In any case, the question is how should we approach situations today in the light of biblical concepts of restitution?

Assault and battery are fairly common crimes in today’s world. On the criminal side, the punishment in today’s legal system is usually some form of imprisonment. The person injured
may also institute a civil suit for medical expenses, etc. One problem is, the civil suit almost always follows the criminal case, and the person guilty is usually imprisoned with no way to compensate the injured person. The other problem is, in a lot of cases, the guilty person has no way to pay for the injured person’s medical bills. Translated that means, although the court may rule in favor of the plaintiff, the defendant doesn’t have enough money and will just file bankruptcy, and the plaintiff (injured person) never sees any of the money. In contrast, according to Exodus, if you injure a person, you pay for their medical bills as well as the time they had to be off work to heal—you don’t get put in prison. And if you don’t have the money to pay, you get to file bankruptcy—you become a debtor to that person until you can pay in full.

Emotional distress cases—I know all of you have just rolled your eyes, but let me explain. There are legitimate cases where people carelessly or intentionally do something which causes so much emotional trauma that it manifests itself physically. Of course, in today’s sue happy world, the term emotional distress or emotional damages gets thrown around so much that true cases lose their credibility. In such (legitimate) cases, I believe this passage mandates restitution in the form of medical bills and the cost for the person to be healed. If the person cannot be healed, the guilty party must pay eye for eye, tooth for tooth, which might look something like paying for medical bills and personal support for the duration of the injured person’s life.

Defamation—defamation is essentially verbal degradation, where the one injured suffers physical implications from “intellectual” injury. A classic defamation case would run as follows: Joe and Fred work together. Joe gets ticked off at Fred, so he spreads rumors at their job that Fred is a liar and a thief. Fred is subsequently fired, and the rumor continues to follow him so he can’t get hired at another company, and ends up moving to another city to escape the false allegations. Exodus 21 speaks to this case—there is no bodily harm inflicted, but the guilty party has caused harm—loss of work, etc.—and should be required to compensate for the physical damage and should be required to do what it takes to “heal” him— to right the wrong.

Determining Appropriate Restitution

When approaching the question of “How much restitution?” first we need to identify the category into which the offense falls.

*Physical Offense*

If the offense is a physical offense—one person injures another, the principles are really clear. 1) If the guilty party has caused injury which is accidental or negligent, or where there is “provocation” he is to pay for loss of time as well as expenses to heal the other person (Ex 21:18,19). 2) If the guilty party has intentionally caused irreparable physical damage, “as he has done it shall be done to him.”(Lev 24:19)—eye for eye, tooth for tooth, fracture for fracture.

There are not a whole lot of things up for discussion here. Some want to argue whether God meant literally an eye for an eye and a tooth for a tooth. While that is a legitimate question, the
real point is God takes sin very seriously and we should too. Instead of seeking to get/impose the least punishment, we should seek God for appropriate restitution. Whatever the punishment is, God is very clear that it should cause the guilty party as much pain, loss, etc., as what he had done. In either case, you are under responsibility before God to make sure the severity of the punishment as closely as possible parallels the offense.

*Intentional Theft*

When coming to a case of stealing, the first question to ask is, “Does the thief still have the item in his possession?” If he does, he is to pay back double (Ex 22:4).

If the thief does not still have the item, if he has used it for his own profits, in whatever way, then he must pay back either fourfold, or five times, based on the value and use of the item in question (Ex 22:1). If the item is of higher value and is used by the victim as a means of provision for himself and his family (ox), the restitution is five times. If the item of lesser value and the purpose of it is savings (sheep), restitution is to be fourfold.

*“Unintentional” or Careless Theft*

In this category are all actions in which the injury done is by carelessness or negligence on the part of one person, not necessarily out of willful sin. However, in every case, restitution is at least 100%, but could be up to double in the case of gross negligence (Ex 22:7-9).

*Conclusion*

It is my belief that every case we will see today fits into these categories and is governed by these principles. Application of these principles may be clear in some cases, but more or less ambiguous in others. The responsibility of the authority is always to seek the will of God specifically in each situation, but God has not left us in the dark. His Word is sufficient for every area of life, including restitution.

Perhaps the most pressing question is how the whole idea of restitution fits into our status as citizens of the United States. In many cases, the government doesn't apply principles of restitution. So how do we act?

There are two sides to that coin. The first case would be you have committed a crime against another person, one you now realize is covered under restitution, but is also criminally punishable by the government. In that case, you're at the mercy of the victim. God has appointed the civil government for the purpose of punishing evil, and it would be perfectly just for them to turn you over to the authorities.

And that brings us to the flip side of the coin, and that would be where you are the one who has been offended--someone committed a crime against you. They have realized their guilt and want to seek restitution. How do you respond? That's a good question, and one which must be
answered on a case by case basis. In some cases it may be best just to turn the offender over to the authorities; in others it may be better to let him seek restitution. That's a decision you have to consider before God. But again, know that God has appointed civil authorities for punishment of evil, and it is not unjust for persons to have to pay the civil and criminal consequences of their actions.

In either case, although restitution is mandated, but it should be performed joyfully, especially by those who would be the children of God. Restitution shows us how the law of God rights wrongs and metes justice, and it leads us to his Gospel. It is only by his grace and mercy that we would even be able to realize guilt and confess our sin. The law of restitution is only the beginning—it leads us to Christ and reveals our sin and punishes our guilt—it shows our weakness and frailty and points us to Christ, and gives those who have sinned a clear beginning to the pathway of walking in the light.