

Review of *Victim's Rights: A Biblical View of Civil Justice*, by Gary North (Tyler, Texas: Institute for Christian Economics, 1990)

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Is there a Biblical response to the failure of modern criminal jurisprudence? Finally an attempt has been made. It is important to begin the dialogue. This first attempt is fortunately just a beginning.

Victim's Rights: A Biblical View of Civil Justice, is Gary North's 33rd book—at least according to the list printed across from the title page. For such productivity, North is one of the most uninventive writers I've read. He hashes out the same material over and over (in the exact same typeset). His footnotes repeatedly reference the same books—books by friends or former friends that he has at one time or another called “the best book I've ever read” or “a book that will change the way we think about _____” or “one of the truly foundational works...”

I'm glad North is an easy read, because I was able to get through the introduction quickly. It is his standard “let-me-show-you-how-I'm-about-to-smash-the-dispensationalist-pinheads” sermon. (Gary, babe, you're preaching to the choir. We're already on your side. None of the dispensationalist pinheads are reading your books. They got disgusted when you started slapping them silly 30-odd books ago.) North rides into battle with the banner of Christian Reconstruction flapping in the breeze. (He uses the term five times too many in the introduction.) Whatever happened to “wise as a serpent and gentle as a dove”?

The format of *Victim's Rights* is like that of so many other of North's books, the pseudo-commentary. He begins each chapter with a Scripture passage to set up his discussion. The biggest problem with this approach is that he often fails to actually base his extensive extrapolations on the text. A clear example of this is chapter 1. The text is Exodus 21:15, “And he that smiteth his father, or his mother, shall surely be put to death.” He also uses Exodus 21:17, “And he that curseth his father, or his mother, shall surely be put to death.” From this he develops the foundation of the whole book. He actually only mentions the passages on one page and then only as a set up for his further discussions of the phrase “shall surely be put to death”.

It is obvious from chapter 1 that this book fundamentally is based (as is much of North's post-1987 work) on Ray Sutton's *That You May Prosper: Dominion By Covenant*. After rehashing Sutton's thesis of the five-point structure of covenant theology, North lays the foundation of his book on Sutton's concept of the covenant lawsuit. It is “the theological basis for all prosecutions by any court”. (p. 23) To North the covenant lawsuit is not something that must be a conscious act on the part of an individual. Many acts automatically constitute the initiation of the lawsuit. In fact, any sin is the act of bringing a covenant lawsuit against God. (p. 27)

Once he gets the lawsuit idea rolling, North plugs the parties into multiple and conflicting roles. The first lawsuit is in the Garden. Adam and Eve initiated the lawsuit against God merely by being tempted by Satan. North says, “Because of Satan's rebellion and his temptation of them, they were forced to decide: *Against whom would they bring the required covenant lawsuit: God or Satan?*” [emphasis in the original] They are required to sue. But instead of being plaintiffs, they are witnesses. Oh, yes, and they are the judges. But then they are convicted (as defendants, apparently), not on the merits of the case, but rather for perjury. Perhaps we can now change the Puritan rhyme from, “In Adam's fall/sinned we all”, to, “In Adam's lie/we all die.”

And we must needs add one more party, for their perjury then created a Victim: God. But God is also the Judge (wait, didn't we fill that role already?). And He is also the Defendant in the lawsuit (remember, Adam *et ux.* are the plaintiffs). So let's get this straight. The defendants are judges. The Judge is a Defendant. The plaintiffs are defendants. The Defendant is a Victim. The judges are convicted of perjury. And I thought the American legal system was complex!

North misuses other legal terms that he throws around, most egregiously “case law”. Case law is a uniquely Anglo-American concept and it is foreign to biblical law. Case law is the determination of the law by judges. Judges determine the law by hearing a case. A case is a controversy between parties with adverse interests. Out of the facts of that case, principles of law are discovered which have not otherwise been established by any authority. Thus the first principle of case law is that law exists outside of statutes objectively established by a lawgiver.

The second principle of case law, which makes it binding on latter instances of similar activity, is *stare decisis* or precedent. Precedent is the principle that higher courts construe both statutory and non-statutory (i.e. rulings from lower courts) law and these constructions are binding on lower courts. Sometimes, in an effort to discover the hidden laws out in the æther, courts create law out of whole cloth. A prime example of this is *Roe v. Wade* in which the U.S. Supreme Court discovered a right to pre-natal infanticide and even “discovered” that the law divided pregnancy into three trimesters, each with it's own set of rights and privileges.

An example of North's strange use of this concept is his explanation that the idea of the subpoena is founded in God's questioning of Adam and Eve in the garden. If such is the

theological foundation, it is interesting that the historical foundation is so profoundly removed from it. It is as if the theology was waiting for the practice to develop from a completely different source. The theology could then latch onto said practice.

The Anglo-American subpoena is actually rooted in the general compelling powers of the court. In its origin it was related to the power of *mandamus* (the power to require an official to act in accordance with the law), and it was not developed by the law courts, but rather by the Chancery courts. In the middle of the fourteenth century it was created from the older writ *certis de causis*, a summons to appear before the King's Council "for certain reasons". The words *sub poena* (i.e., "under penalty") were added because the Council wanted to make the writ more effective.

If the questioning of Adam and Eve in the Garden demonstrates legal theory, it is perhaps the principle that God does not recognize the privilege against self-incrimination. The chief weakness in using the case law method is North's lack of a foundation for such usage. In North's usage, case law is apparently the principles to be derived from any legal or quasi-legal confrontation recorded in Scripture. He never shows how case law is mandated by God for demonstrating legal requirements equal to His statutes and commandments.

North also equates the Book of the Covenant (i.e., Exodus chapters 21-23) with case laws. How he does this is an utter mystery to me. The quintessential statute is: "If A does B then C." Statute books read like this long before the Anglo-American system began to develop. I would propose that they in fact begin with passages such as Exodus 21-23. How much more of a statute can be found than "And he that stealeth a man, and selleth him, or if he be found in his hand, he shall surely be put to death" (Ex. 21:16)? In this situation, if A does B and C or D then E.

And where does precedent fit into this? Case law is not law binding on any parties other than the litigants in the instant case, unless there is some sort of precedential power. Though a hierarchical court structure existed in the Hebrew republic, there is no indication that the rulings issued on a particular set of facts in a higher court were automatically binding in a subsequent case with different litigants in a lower court.

And if case law is to be binding, then it must have the same force as statutory law. Thus, each judge, and particularly appellate judges, must be inerrant. With each decision they are issuing new revelation of that which is eternally God's law, but which he didn't bother to give to us until the instant case. I suppose North could confine his concept of case law to those "cases" decided in Scripture. Then we are bound to a law not expounded to us as law (i.e., the subpoena in the Garden), but which must be interpreted and codified from incidents of varying litigious value. Unfortunately, North hasn't explained himself to this extent (at least not in this book) and thus we don't know where he draws the line on this suspect case law method.

Thus North's concepts of case law and even of the covenant lawsuit rest on very shaky

ground. It is unfortunate that he bases much of his book on these principles. It is also unfortunate that these are not the only unsatisfactory aspects of the book.

It is only at this point that the topic of the book can be addressed: victim's rights as the principle in criminal law. In North's view, all crimes must have a victim and all victim's actually only represent God as the true Victim, since any attack on a person is an attack on that person as the image of God. The criminal really isn't interested in injuring people, but rather in injuring God. Even if the criminal doesn't know he is primarily interested in attacking God, he is. This principle is necessary to give the concept of victim's rights cosmic proportions.

The next lengthy discussion centers around the pleonasm "he shall surely be put to death". A pleonasm is the doubling of a Hebrew word for emphasis, thus the text reads more literally, "dying he shall die". North decides that the pleonasm means judicial discretion in imposing sanctions is eliminated when the State initiates the lawsuit (because of the lack of a human victim of legal capacity). (p. 49) However, the more he discusses this, the less convincing his arguments become. Ultimately he arrives at almost the same conclusion as many dispensationalists, the death penalty mandatorily applies to murder, but not to much else. The dispensationalists argue from the Noahic covenant. North argues from the lack of a victim to ask the court for a lesser penalty. Both arguments are exceedingly weak. It is not within the scope of this review to discuss how dispensationalists can find Noah's covenant binding and Moses' covenant void. But we must consider the mysterious missing ingredient in North's discussion of murder: the *go'el* (blood-avenger/kinsman-redeemer).

The *go'el* is mentioned twice in the book and both times only in passing. The principle of the blood-avenger is not explained away, but neither is it explained in a theonomic framework. Despite the extensive space he gives to homicide and the death penalty, North leaves us hanging on this point. North refers often to the subrogation of rights in the relatives of a victim, but specifically denies these rights in relationship to murder. He says the State must execute the murderer because the decedent cannot represent his own rights as a victim and insist on a lesser penalty. Why does not the *go'el* have the legal standing to fill this role?

North attempts to tackle one of the major "case law" obstacles to the mandatory death penalty for murder, but he fails to pull it down. David committed murder by sending Uriah to be killed so that he (David) could have Bathsheba as his wife. North's explanation is that the death of his first child by Bathsheba, plus the later deaths of Amnon, Absalom, and Adonijah, totalled the four-fold restitution for lamb stealing. He justifies this interpretation by citing Nathan's lamb analogy. He does not explain how prophetic symbolism has controlling authority over a Mosaic statute requiring the death penalty for the murderer. The Law never offers an optional penalty of executing the criminal offender's children, nor does it offer the four-fold option in exchange for life.

As the book progresses and gets further from the foundations laid in the first few

chapters, it gets better. North comes to many correct conclusions, despite the shaky underpinnings. The major flaw is the same error found in almost every other work by Gary North. He operates under the assumption that economics is God's primary concern in relationships among people. It often seems that the relationships are merely a result of economic transactions, rather than transactions as an outgrowth of relationships. In his chapter on kidnapping, he spends most of the time analyzing in terms of the economic theories of Adam Smith, Judge Richard Posner, et al.

Another weakness in North's thesis is that it makes all civil law criminal law. He excludes any concept of civil tort. For example, all negligence must therefore be criminal negligence. However unintentional the act, the result is a crime. But let's put North's reasoning together and look at the result. First, sin is the act of bringing a covenant lawsuit against God. Second, crime is an act of defiance against God law and covenant. Therefore the grocery store that didn't get the water mopped up before the little old lady slipped and fell (the classic negligence tort) brought a lawsuit against God and defied His covenant, by not mopping the floor soon enough.

This is not to imply that there is a Biblical distinction between civil and criminal law. There is no such distinction apparent in Scripture. This distinction in modern jurisprudence is of relatively recent invention, but this does not mean that all law should only be what we consider now as criminal law. North simply does not lay a sufficient foundation for this conclusion.

There is no discussion of I Corinthians 6:1-8. Any book which purports to expound a Biblical view of civil justice cannot be complete without a mention of Paul's admonitions about brother believers going to law against each other. Surely there are many different interpretations of this passage. I am surprised that North did not find one (or generate one) to fit into his thesis.

Just so I don't leave the impression that this book is of no value, chapter 7 contains a very good discussion of the laws concerning animals that kill people. It includes interesting historical examples, including the story of how the unwillingness or inability of a woman to control her pig led to the origins of bicameral legislatures in America.

On p. 171, North finally calls all of these Biblical laws what they are: statutes. The use of the term "case law" begins to fade, but not necessarily in exchange for the appropriate term.

In the area of negligence, North recognizes a similar distinction to that in Anglo-American tort law. A landowner (or occupier) has differing responsibilities to others on his land, depending on whether they are trespassers, licensees (someone you don't mind being there), or invitees. These distinctions vary from jurisdiction to jurisdiction, but on the whole, this is the general principle.

The argument in support of speeding fines is good economics. Unfortunately, it is a bit thin on theology. North thinks speeding could create victims of pedestrian accidents, therefore those who don't actually cause an accident should pay the restitution on behalf of those who do, but leave the scene. Therefore fine money should be deposited in a hit-and-run fund. He ties this into the concept of the covered pit only by the most tenuous of arguments.

Drunk driving is a subject that deserves more space. That this is a major area of criminal justice is indicated not only by the number of accidents and deaths that are alcohol-related, but by the number of cases where the driver was apprehended before he hurt anyone. In one large midwestern city (and this may be true of other cities), there are courts with full dockets five days a weeks that hear drunk driving cases almost exclusively. North gives this only a page and relies again upon the same unknown future victim principle as with speeding.

North's theory of fines to the State rests on an almost non-existent foundation. This is indubitably because of his resort to economic logic in the absence of Scriptural prescriptions. In his minuscule discussion, primarily within his discussions of speeding and drunk driving, he somehow reaches the conclusion that fines reduce the size of civil bureaucracy because they limit the State's claim to omniscience. His only statement which makes any sense is that fines for the purpose of generating general revenue (e.g., speed traps) are unbiblical.

North also expresses a very simplistic view of modern American plea-bargaining. He assumes that bargains are for confessions to milder crimes than actually committed. Actually, in most cases where the crime admitted is not the most serious offense charged, another crime also included in the commission of the offensive act is charged. However, a large amount of plea bargaining has nothing to do with substituting crimes. It has to do with sentencing options.

There is no discussion of how plea-bargaining in an unbiblical system can be used by either defense attorneys or prosecutors to achieve a Biblical result. The statutorily presumptive sentence for a crime that calls for unbiblical incarceration might be bargained to a Biblical restitutionary penalty. A prosecutor with a Biblical world-view can be a very powerful person, especially if he is the elected prosecuting attorney and not a deputy who must get certain agreements approved by his superiors. A prosecutor can drop unbiblical charges before they ever go to trial. Because of prosecutorial discretion, a case may never be filed. (A good example of this is Bexar County, Texas during much of the 1980's, when the district attorney let it be known that he would not file any charges against home schoolers for violation of truancy law, regardless of the wishes of public school superintendents. At that time, these laws were being enforced on a (school) district-by-district basis.)

North briefly departs from the normal economic interpretation in his discussion of four-fold and five-fold restitution. In one chapter, he rejects economics in favor of Jordanesque

symbolism. In fact, he claims the thesis presented by James Jordan in *Law of the Covenant* is really his. He argues that the high penalties imposed for stealing sheep and oxen are based upon the symbolic nature of these animals. However, in the next chapter he re-explains the whole subject in economic terms.

The discussion on receiving stolen property also has a number of weaknesses. This is because he once again mixes civil and criminal law. He discards the maxim, "finders, keepers; losers, weepers" as contrary to the responsibility not to buy stolen items. "Finders, keepers" has never had anything to do with stolen property. Rather, it is a maxim concerning lost property. It has nothing to do with the loser weeping because he knows the finder has the loser's property. And even in the modern American legal system lost property is held by the new owner against all others, except the true owner. The original owner's problem is not that the new owner has the property, it is that the original owner does not know where the property is. He lost it.

Because he insists that all law is what we now classify as criminal law, North fails to see Exodus 22:9-15 as the law of bailments. He only gives this passage a cursory mention, stopping just long enough to give an economic reason why it is easier to prosecute a neighbor as opposed to an unknown thief.

Chapter 15 is excellent. As tends to be the case with this book, it stands out because North completely reverses his position that all civil power is aimed at criminal behavior. The passage upon which the chapter is based is Exodus 22:5-6 concerning property torts. He actually deals with it as property tort, without using that phrase. He never mentions criminal liability.

A chief weakness of this book is the difficulty encountered when trying to deal with the entirety of civil justice using a quasi-commentary on Exodus 22. For example, North only mentions drug laws once, and that in passing. Violations of drug laws are the largest single portion of the criminal dockets in this country. North actually only mentions drug "dealing" and never addresses the much more pervasive problem of possession. In fact, he never addresses any laws prohibiting the possession of contraband.

For all the problems with this book, North ends with the correct conclusions: first, the prison system is a failure; second, men prefer failure to God's Law. North acknowledges that he has not presented the definitive solution to the problem of unbiblical criminal (or civil) justice, but rather he has merely opened the floor for discussion. He offers a lot of good ideas and some starting points from which more refined answers can be developed.

North has the disadvantage of lacking one thing in his intellectual arsenal: modern legal training. A radical and instant demolition of the present system is unlikely. The work at hand must be done with an knowledge of the cracks into which Biblical principles can be wedged, in order to slowly chip away at the humanistic Statist megalith. Lawyers with a Biblical world-view must take an active role as both thinkers and doers to bring the legal system into conformity with the Word of God.