From weregild to a way forward? English restorative justice in its historical context

From Weregild to a way forward?

English Restorative Justice in its Historical Context

ABSTRACT

This article challenges the prevalent view of restorative justice as a new 'technique' within the English criminal justice system.[1] By discussing a number of historical examples of non-traditional forms of justice, which the article argues can be seen as largely restorative in nature, it suggests that the use of restorative justice in the present day has a long tradition, albeit one whose historic practices and processes remain relatively unexplored by many criminologists. It does not presume to offer easy answers to the effectiveness or otherwise of restorative justice, but rather aims to present the ideas and theories behind the concept in an historical context in such a way as to illuminate possible avenues forward in its modern applications.

I INTRODUCTION

Gerry Johnstone, in his inaugural professorial lecture given at Middleton Hall, University of Hull, 11 October 2004, stated that:

> *Many proponents of restorative justice, I suggest, are inclined to present it as a new 'technique' for dealing with offenders. They have tended to claim that this new technique outperforms conventional penal and therapeutic methods of intervention in preventing reoffending and producing victim satisfaction with the criminal justice system*.[2]

This interdisciplinary article, written jointly by a criminal justice historian and a criminologist, challenges the prevalent view as referred to in the above quotation of restorative justice as being a 'new technique' within the English criminal justice system; as Gade states, 'several scholars have suggested that the term "restorative justice" has a young history'. [3] By discussing a number of historical examples of non-traditional forms of justice

[1] 'English' here is but a convenient shorthand for both English and Welsh, as the two countries have largely shared a common criminal justice system (both formal and informal) for several centuries.

[2] G. Johnstone, 'The Idea of Restorative Justice' (Inaugural Professorial Lecture given at Middleton Hall, University of Hull, 11 October 2004) – available at www2.hull.ac.uk/fass/docs/law-inauguraljohnstone.doc.

[3] C. Gade, '"Restorative Justice": History of the Term's International and Danish Use' in A. Nylund et al. (eds.), *Nordic Mediation Research* (Springer Open, 2018).

that were practiced in England, which the article argues can be seen as restorative in nature, it argues that restorative justice has a long antecedence, with details of its historic practices and processes remaining relatively unexplored by both modern criminologists and practitioners, despite Braithwaite reminding us as far back as 2002 that 'restorative justice has been the dominant model of criminal justice throughout most of human history for perhaps all the world's peoples'.[4] The article does not presume to offer easy answers to the effectiveness or otherwise of restorative justice, but rather aims to present the ideas and theories behind the often somewhat nebulous concept of restorative justice in an historical context in such a way as to illuminate possible avenues forward in its modern applications and to stimulate further discussion. It illustrates that several forms of what we would now term 'restorative justice' were being practised for centuries before the term is generally accepted to have been first use in its modern iteration by psychologist Albert Eglash in 1975.[5] In most (though not all) of the several examples discussed below there is a clear separation of restorative justice practices from the more formal criminal justice system operating at the time, and this may prove to be a useful guide to the future use of restorative justice as an adjunct or parallel to more legalistic criminal justice processes.

In 1990 Howard Zehr stated that

> *Crime is a violation of people and relationships. It creates obligations to make things right. Justice involves the victims, the offender and the community, in a search for solutions which promote repair, reconciliation, and reassurance*. [6]

This article argues that an historical approach to how crimes and justice were dealt with by a range of restorative methods can offer a challenging alternative to how modern-day restorative justice is viewed by criminologists and that the approach to justice as defined by Zehr above is evident in all of the following examples.

II MODERN PERCEPTIONS OF RESTORATIVE JUSTICE

[4] J. Braithwaite, *Restorative Justice and Responsive regulation* (OUP, 2002), p. 5.

[5] Eglash used the term in a 1975 conference paper, but it did not appear in print until 1977, when Eglash's paper was published in J. Hudson, and B. Galaway (eds.), *Restitution in criminal justice: A critical assessment of sanctions* (Lexington Books, 1977). Recent research by Gade has uncovered several earlier uses of the term 'restorative justice' but such usage appears to have been overwhelmingly religious and mentioned within a specifically Christian context, rather than in its modern context (see Gade, 2018).

[6] H. Zehr, *Changing Lenses: A New Focus on Crime and Justice* (Herald Press, 1990), p. 181.

Restorative justice is still an essentially contested subject throughout the extant literature, with much discussion on what constitutes being restorative and whether we are referring to a process, outcomes or values. Modern restorative justice theory has evolved from numerous disciplines and bodies of work, all with the commonality of a dissatisfaction with the existing criminal justice system; however this means that there can be difficulties in discussing what it actually means to be restorative.[7] A wide range of literature argues that restorative justice is inspired by the approaches of various indigenous groups globally, for example, in Australia, Canada and New Zealand. In indigenous groups justice was and remains closely linked with spirituality, with an emphasis on the restoration of harmony and balance in the group.[8] When harm had been caused it was important for the wrong-doer to take responsibility for their actions and try and make amends, but also for the community to remain cohesive. Issues would be dealt with within the community in order to ensure the wrong-doer remained integrated and connected to the community. It is however interesting to note that whilst several of these practices have been at least partially incorporated into the State-based criminal justice systems of many countries, Aboriginal processes have been largely subsumed within a fundamentally Western-centric system, often to the detriment of many Aboriginal concepts of justice. [9]

Daly and Immarigeon argue that contemporary restorative justice theories arise from a social movement in the 1970s and are grounded in writing by scholars from a disparate and wide-ranging background: feminist theories of justice, psychological theories, peace-making criminology, and religious and spiritual theories.[10] Christie contributed to this movement claiming that the state had 'stolen' conflict from victims, and therefore stolen their chance to recover from the crime.[11] Christie argued that conflicts are important parts of society, and victims of crime in particular had lost their rights to participate in dealing with this

[7] H. Zehr, *The Little Book of Restorative Justice* (Good Books, 2002, revised 2014).

[8] See L. Mirsky, *Restorative justice practices of Native American, First Nation and other indigenous people of North America: Parts One and Two* (Restorative Practices eForum, 2004, April and May); and T. Wachtel, *Dreaming of a New Reality: How restorative practices reduce crime and violence, improve relationships and strengthen civil society* (The Piper's Press, 2013).

[9] J.R. Guest, 'Aboriginal Legal Theory and Restorative Justice' (1999) *Justice as Healing* discusses the fact that First Nations Aboriginals have been trying to replace such Western-based legislation and processes with a more culturally relevant system. See also M. Achtenberg, *Understanding restorative justice practice within the Aboriginal context* (Forum on Corrections Research, 2013.

[10] K. Daly and R. Immarigeon, 'The past, present, and future of restorative justice: some critical reflections' (1998) *The Contemporary Justice Review*.

[11] N. Christie, 'Conflicts as Property' (1977) *British Journal of Criminology*.

conflict as the field was monopolised by the state.[12] The historical justice practices discussed in this article do in fact reclaim the 'conflict' and deal with them within communities more informally. Two of the main underpinning theories of current restorative justice will be used to assess how these historical practices may have been restorative in nature, and whether there is potential to learn from these practices.

McCold suggests that not all practitioners and academics are discussing the same thing when they discuss restorative justice.[13] This conceptual difficulty has an effect on defining restorative justice in any succinct way. The most widely accepted definition in England and Wales comes from Marshall who defines restorative justice as:

> a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future.[14]

Restorative justice is seen as difficult to define as there is some discussion as to whether it should be defined as a process or an outcome.[15]. Some describe restorative justice as a set of ideals or values, whereas others view restorative justice as a movement.[16] Zehr states that in the criminal justice arena, restorative justice addresses the violation of relationships and not the violation of rules.[17] In the criminal justice context, restorative approaches allow those who have been affected by a crime to come together and for the perpetrator to realise the full impact of this crime. Stakeholders must then all agree on a way that this crime can be put right. Throughout the literature, arguments exist as to whether a definition of restorative justice is needed. Zehr and Mika believe that a definition would not be particularly helpful for the literature, however others argue that in order to have a

[12] This resonates with the traditional view of the state monopolisation of policing from the mid-nineteenth century onward – see D. Churchill, *Crime Control & Everyday Live in the Victorian City: The Police & the Public* (OUP, 2018) for a detailed discussion of this theory.

[13] P. McCold, 'Restorative Justice Practice: The State of the Field 1999', Paper presented at the Building Strong Partnerships for Restorative Practices conference, Burlington, Vermont, 5-7 August 1999.

[14] T.F. Marshall, 'The evolution of restorative justice in Britain' (1996) *European Journal of Criminal Policy and Research*, p. 37.

[15] A. Crawford and T. Newburn, *Youth offending and restorative justice: implementing reform in youth justice* (Willan, 2003).

[16] See for example K. Daly, 'The limits of restorative justice', in D. Sullivan and L. Tifft (eds.), *Handbook of Restorative Justice: A Global Perspective* (Routledge, 2006); J. Braithwaite, 'Principles of Restorative Justice' in A. von Hirsch, J.V. Roberts, A.E. Bottoms, K. Roach and M. Schiff (eds.), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (Hart Publishing, 2004); G. Johnstone, *Restorative Justice: Ideas, Values, Debates.* 2nd edition (Routledge, 2011); H. Zehr, *The Little Book of Restorative Justice* (Good Books, 2002, revised 2014).

[17] H. Zehr, *Retributive justice, restorative justice. New Perspectives on Crime and Justice – Occasional Paper Series* (Canada Victim Offender Ministries, 1985).

comprehensive understand of what restorative justice actually is there needs to be a universally accepted definition.[18]

Restorative justice can be seen as challenging to modern English sensibilities; the traditional criminal justice system of judge or magistrate, jury, trial and sentence, is so ingrained within our collective thought that other ways of looking at offending and justice are often viewed with suspicion and mistrust. From an historical point of view however, this is an untenable approach; our 'traditional' criminal justice system is in fact largely a modern construct. For example, the presumption of innocence until found guilty by one's peers arguably did not gain popular credence until the latter half of the nineteenth century. Before then, if one appeared in court as a suspect, the general consensus was that one was there for a good reason, as trials could cost private prosecutors (usually the victim) a lot of money and were therefore not entered into lightly.[19] Before the Prisoners' Counsel Act 1836, defendants had no formal right to defence counsel (although some judges permitted legal representation on the defendant's behalf), and trial by jury was of course limited to being decided by an all-male jury until after the First World War, with magistrates' benches being similarly exclusively male until 1919.[20] Furthermore it was not until 1933 that the Grand Jury (a committee of the 'great and the good' who decided whether a trial at either Quarter Sessions or the Assizes should proceed or there was No True Bill to be heard (i.e. there was thought to be not enough evidence for the prosecution of the suspect to continue) was abolished, thereby heralding the end of a remanent of what could be considered a largely feudal system.

The article therefore discusses several practices that the authors argue could be conceived of as being restorative in action, from the practice of 'weregild' in the Anglo-Saxon period through ritualistic public shaming, informal punishment by early nineteenth century JPs, and

[18] H. Zehr and H. Mika, 'Fundamental concepts of restorative justice' (1998) *Contemporary Justice Review*; D. Miers, M. Maguire, S. Goldie, K. Sharpe, C. Hale, A. Netten, S. Uglow, K. Doolin, A. Hallam, J. Enterkin, and T. Newburn, 'An exploratory evaluation of restorative justice schemes' in B. Webb (ed.), *Crime Reduction Research Series*, *Paper 9* (Home Office, 2002)..

[19] Admittedly, there was also a degree of concern over malicious prosecutions in the period 1750 -1850, which led to a degree of official mistrust of victims – see D. Hay, 'Prosecution and Power: Malicious Prosecution in the English Courts, 1750-1850' in D. Hay and F. Snyder (eds.), *Policing and prosecution in Britain 1750-1850* (OUP, 1989), pp. 343-395. It was not until the second half of the nineteenth century until police forces (county and borough) began to take on the role of prosecutor (a role which they retained for over a century until the creation of the Crown Prosecution Service in 1985).

[20] Councillor Ada Summers became Britain's first female magistrate at Stalybridge, Cheshire (now part of Greater Manchester) after being sworn in on 31 December 1919 (*The Times*, 1 January 1920).

printed public apologies for bad behaviour in eighteenth- and nineteenth-century newspapers as an example of reintegrative shaming.

III WEREGILD AS A FORM OF RESTORATIVE JUSTICE

Weregild (also known more prosaically as 'man-price' or 'blood-money') was a type of financial restorative justice operated under Salic law, which was first codified around AD500 by the Frankish king, Clovis (c.AD466-511) and could be considered the ultimate example of what Braithwaite terms 'reintegrative shaming', by which a transgressor is punished for the offence and then reintegrated into his or her community.[21] Its use in England dates from at least the early seventh century AD following the various invasions of Germanic tribespeople after the departure of the Romans in the early fifth century AD. The system was complex, but its basic premise was that every piece of property, together with every human life, had an equivalent and prescribed financial value. This resulted in a scale of financial restitution that could be offered to either the victim (in cases of theft or misappropriation) or (in the case of homicide) the family of the victim as full and final atonement for the offence.[22] The rationale behind weregild was to avoid the possibility of a blood feud, in which a member of the victim's family would kill a member of the offender's family in revenge and thus set in motion a feud that could last generations.[23]

Thomas *et al* argue that weregild can be seen as a type of apartheid, insofar as several laws throughout seventh-century Anglo-Saxon England clearly differentiate between Saxons and other ethnicities; for example, in the late-seventh century, King Ine of Wessex (ruled AD688-726) decreed the weregild of a Saxon to be between two and five times the value of a Briton of comparable social status.[24] Women were also covered by weregild, although their killing often demanded lesser payments than those of men – although this was not the case in some Germanic tribes; for example the Alamanni (aka Swabians) demanded a weregild

[21] For a detailed discussion of the term and the differences between 'reintegrative' and 'disintegrative' shaming, see J. Braithwaite, *Crime, shame and reintegration* (CUP, 1989). For a discussion of the origins of Salic Law, see K.F. Drew (ed), *The Laws of the Salian Franks* (University of Pennsylvania Press, 2012).

[22] Weregild did not differentiate between murder and manslaughter.

[23] There has been recent discussion as to the exact nature and prevalence of such feuds in Anglo-Saxon society – see J.D. Niles, 'The myth of the feud in Anglo-Saxon England' (2015) *Journal of English and Germanic Philology*.

[24] M.G. Thomas, M.P. Stumpf and H. Härke, 'Evidence for an apartheid-like social structure in early Anglo-Saxon England' (2006) *Proceedings of the Royal Society of London B: Biological Sciences.*

payable to the family of a murdered woman twice or more that of a man of equal social status.[25]

The idea of a person's life having a financial value at first sight appears anathema to modern eyes; but this, it could be argued, is because we in England are so conditioned by our unique combination of common law and elements of bastardised Roman law, to think of an offender's debt being to that of the State rather than to the immediate family of the victim, and also that the offender must be punished either formerly by the imposition of a death penalty or more latterly by a substantial period of imprisonment.[26] It could be argued that a modern version of weregild has in fact been recreated in civil courts rather than criminal courts in the form of wrongful death judgements; the Fatal Accidents Act 1976 (amended under the Administration of Justice Act 1982) allows for dependency, bereavement and funeral cost claims to be sought by dependents following a wrongful death.[27] Weregild also applied to stolen property and here modern sensibilities appear to be less offended; financial recompense for inanimate objects such as goods or property is more reasonable and familiar to us in the form of compensation.

IV INFORMAL RITUALISTIC SHAMING AS A FORM OF RESTORATIVE JUSTICE

From the mediaeval era through to the early modern period ritualistic shaming acts such as the Skimmington – see *Figure 1* below (in which victim(s) were paraded through the local community usually seated backwards on a horse, surrounding by a clamorous crowd shouting and beating on pots and pans) were largely used in response to what Stephen Banks in his excellent recent study of informal justice in the period 1760-1914 terms 'inappropriate gender behaviours' such as cuckolding or scolding.[28] Banks points out that 'most public collective acts were intended primarily to shame their victims rather than to

[25] D. Herlihy, 'Life expectancies for women', in R. T. Morewedge (ed.) *The Role of Woman in the Middle Ages* (State University of New York Press, 1972), pp. 6-7.

[26] For an excellent overview of the development and history of Roman Law, see P. Stein, *Roman Law in European History* (CUP, 1999).

[27] Civil law exists to protect individuals from the actions of one another and the State, whereas criminal law is concerned with offences against society as a whole.

[28] S. Banks, *Informal Justice in England and Wales 1760-1914: The Courts of Popular Opinion* (The Boydell Press, 2014), p. vii. Such shamings had many regional variants in name; for example, 'Riding the Stang' in northern England, the 'Skimmington' in southern England, the 'Ceffyl Pren' in Wales and more generically, 'Rough Music', but all followed a similar pattern of ritual humiliation in front of one's peers.

harm them'; whilst there was undoubtedly an element of punishment intended, such actions were not designed to be malicious in nature, but were a local sub-judicial response to perceived bad behaviour of a member of the community – making a clear distinction between bad behaviour and a 'bad' person.[29] He further suggests that this is an approach which indicates that legal belief mattered as much as legal reality – i.e. what sectors of the local populace considered to be the law as opposed to what was 'The Law' underlay much of this type of shaming.

Figure 1 Hudibras encountering a Skimmington, engraving by William Hogarth, 1726 (author's collection)

This is clearly illustrated in Samuel Butler's epic mock-heroic poem *Hudibras* (first published in 1684 as an often ribald and scathing Restoration satire, similar in structure and story to Cervantes' *Don Quixote*), in which the eponymous 'anti-hero', an unlikeable knight errant, receives a raw egg in his eye for mistakenly (and loudly) denouncing a Skimmington that he encounters as 'an 'Antichristian opera'. It is left to his much more intelligent and worldly-

[29] Ibid, p. vii. Banks recognises that some instances of rough music could occasionally result in more serious consequences in which offenders were not reintegrated into their community; he gives an example of 'five licentious women' who were paraded through the streets of London before being imprisoned in Newgate and subsequently banished from the City in 1529 - see Banks, *Informal Justice in England and Wales*, p. 26.

wise squire Ralpho to explain that it is in fact a shaming ritual designed to embarrass both a scolding wife and her hen-pecked (and cuckolded) husband:

'(It) is but a riding, us'd of course
When the grey mare's the better horse;
When o'er the breeches greedy women
Fight to extend their vast dominion;
And in the cause impatient Grizel
Has drubb'd her Husband with bull's pizzle,
And brought him under Covert-Baron,
To turn her vassal with a murrain;
When wives their sexes shift, like hares,
And ride their husbands like night-mares,
And they in mortal battle vanquish'd,
Are of their charter disenfranchis'd
And by the right of war, like gills,
Condemn'd to distaff, horns, and wheels:
For when men by their wives are cow'd,
Their horns of course are understood.[30]

Those conducting such public shaming clearly considered themselves to be acting within the confines of what they viewed to be the law of the land (or at least the law of their locale), and were carrying out what could be argued to be an early form of restorative justice; although there was clearly a disintegrative element in the shaming, following the ritualistic exposure of their perceived shortcomings in such 'rough music' ceremonies, the victim(s) were eventually usually allowed to take their place back in the community with no further penalty being imposed – an early example of reintegrative shaming? Banks argues that such shaming rituals continued (albeit often in a largely bastardised form) well into the twentieth

[30] S. Butler, *Hudibras in three parts, written in the time of the late wars* (Vernor and Hood, 1805), lines 698-712. 'Covert Baron' refers to the legal protection of a wife by her husband, whilst the phrase 'turn her vassal with a murrain' means that the overbearing wife has turned her meek husband into a slave by means of a disease or pestilence (most likely a sexually transmitted disease). 'Their horns of course are understood' refers to the practice of depicting a cuckolded husband as wearing the horns or antlers of an unsuccessful stag who loses his mate during a fight in the rutting season. The term 'cuckold' probably derives from the adulterous female seen to be harbouring a cuckoo (i.e. her lover) in the domestic nest.

century, with the last report of a Skimmington being practised in the early 1950s in Sussex.[31] Croll gives several examples of public shaming through the use of local newspapers in the Victorian period, and it can be argued that such ritual shaming has continued in a more recognisably modern form; in 2005 Central Trains became the first of several British train operators to put up posters naming and shaming convicted fare dodgers in prominent positions on their station platforms.[32] These posters gave the name, age and address of offenders (all of which were of course in the public record), and the posters were viewed as somewhat controversial. [33] Of course, in the modern cases, such public shaming was in addition to any fines imposed by the courts; naming and shaming in this case being used by corporate bodies rather than individuals and as an adjunct to more formal legal process rather than as an alternative method of restorative justice.

V 'INFORMAL' FORMAL JUSTICE – THE RESTORATIVE JUSTICE MEASURES OF A NINETEENTH-CENTURY SHROPSHIRE MAGISTRATE

Thomas Netherton Parker MA (1772-1848) was Deputy Lieutenant of Shropshire, a landowner and a magistrate for Oswestry borough and the county of Shropshire, who kept two 'Justice's Notebooks' between March 1805 and June 1843, in which he detailed many of the grievances that came before him. This in itself is not so unusual; many Justices of the Peace appear to have kept some working record of their time in office. However, what is unusual is that these particular notebooks survive, and they offer a unique insight into the workings of the mind of an early-nineteenth-century magistrate.[34] Parker was interested in

[31] S. Banks, *Informal Justice in England and Wales 1760-1914*, p. 198.

[32] A. Croll, 'Street disorders, surveillance and shame: regulating behavior in the public spaces of the late Victorian British town, (1999) *Social History*.

[33] In Telford 'in 2011, a man who had changed his name by deed poll to Darth Vader was found guilty of non-payment of a train fare and was publicly shamed under that name on such a poster – see http://www.shropshirestar.com/news/2011/01/27/im-no-fare-e-vader-says-lord-darth/.

[34] Thomas Netherton Parker, *Justice's Book, 1805*–1813, Shropshire Archives 1060-168 and Thomas Netherton Parker, *Justice's Book, 1813-1843,* Shropshire Archives 1060-171. Less than 40 such notebooks appear to have survived from the late seventeenth century to the mid-nineteenth century, and each one of them is a treasure trove of cases that would have otherwise remained largely unknown to history, as the majority of the cases either never saw a higher court or were not reported in newspapers. See N.E.C. Darby, *The magistrate and the community: summary proceedings in rural England during the long eighteenth century* (Unpublished Doctoral thesis, The University of Northampton, 2015), for a detailed account of the workings of magistrates in summary courts in the early modern period.

a wide range of contemporary issues, including poor relief and the condition of the agricultural labourer.[35]

His notebooks (which details well over five hundred cases) contain the usual cross-section of offences that came before a provincial JP: minor assaults, petty theft, abscondence from service etc. However, they also illustrate the fact that until petty sessions were put on a more formal footing in the mid-nineteenth century, as Darby states, 'rural magistrates had a more individualised approach to their summary work and decision-making than their London equivalents'; they heard far fewer cases and were in many cases far more closely involved in communal activities and daily life.[36] In a significant number of cases, Parker excercised a considerable amount of judicial discretion in dealing with both suspects and alleged victims, most notably in cases involving offences against the person and master/servant quarrels. Many of the complaints brought before Parker concerned minor scuffles (both verbal and physical) between individuals; and in numerous such cases Parker appears to have gone out of his way to avoid involving the parties in a more formal legal process. He attempted to get the individuals concerned to settle their dispute in an amicable and informal manner, by settling their differences and shaking hands before him. In this way, both honour and justice were satisfied.

Darby's research has confirmed that this was not unique to Parker; she summarises her findings with regard to assault cases from studying the notebooks of over a dozen magistrates in central and southern England in the table reproduced below; this shows that over half of all assault cases mentioned in her sources were either agreed before commencement of formal court proceedings or were dismissed:

Action taken in assault cases, where specified.[37]

	Number	Percentage
Agreed	177	44%
Further action	110	28%

[35] He also invented a novel (and highly complex) turnpike gate, an amusing animated model of which can be found at http://www.rigb.org/blog/2015/september/reflections-on-a-farm-gate.

[36] Darby, *The magistrate and the community*, Abstract. This is not to deny that urban magistrates could also show similar initiative or discretion – see J. Davis, 'A Poor Man's System of Justice: The London Police Courts in the Second Half of the Nineteenth Century' (1984) *The Historical Journal* for several such examples.

[37] Reproduced from Darby, *The magistrate and the community*, Table 5.1, p. 290.

Dismissed	51	13%
Order	31	8%
Summary punishment	27	7%
Total	396	100%

Parker was therefore clearly not unique in attempting a type of restorative justice in which the participants were encouraged to settle their differences by arbitration – what could be seen as a precursor of the restorative conference.

Similarly, several of the cases in Parker's notebooks involved the breaking of contracts by domestic servants and labourers. In one such case in July 1805, a dairymaid absconded from her master's premises before her labour contract had expired. She was pursued for three days by the parish constable and brought before Parker, who ordered that her employer pay two shillings for the cost of the arrest warrant and the services of a legal clerk, together with seven shillings and sixpence for the cost of the parish constable's time. This sum was then ordered to be deducted from the dairymaid's future wages and she was also ordered to complete her employment contract.[38] This meant that whilst the dairymaid was considerably out of pocket, she did not have to face further charges and also ensured that she remained in employment during a somewhat turbulent economic period.

VI PUBLIC APOLOGIES AS RESTORATIVE JUSTICE

In the first quarter of the eighteenth century a new phenomenon began to appear in newspapers; that of the printed public apology. Such apologies make their first appearance in the late-1710s and continue through to the end of the nineteenth century, though they appear to have been most popular in a fifty-year period straddling the turn of the eighteenth century[39]. The apologies rapidly assumed a largely standardised format; they normally began with one of three stock phrases: 'Pardon Asked', 'Beg Pardon', or 'Public Apology', and then continued with the name and profession of the apologist, followed by

[38] See D.J. Cox, and B. Godfrey (eds.), *Cinderellas & Packhorses: A History of the Shropshire Magistracy* (Logaston Press, 2005), pp. 28-31 for further details of Thomas Netherton Parker's life and career as magistrate.

[39] One unusual example appears as an apparent outlier in *The Times*, 8 April 1919, in which a Mrs Drew of Bromley, Kent paid for an advertisement to appear stating that she had recently been the subject of 'slanderous statements' and that as a result, she would 'not hesitate to enforce a public apology or establish her innocence by action in the courts when she discovers the originator of the slander'.

the date and time of the offence, a brief summary of the offence with the name and address of the victim and an explanation that by granting the offender the chance to make such a public apology the victim has spared the offender an appearance in court:

> **Pardon asked; and a caution to Boatmen**.
>
> WHEREAS I JOHN CUFLIN, Boat-master of Leicester, did in the night of the 21st of October instant, cut, take, and carry away from a Boat at Shipley Wharf, a Rope belonging to Mr. Robert Shaw, of Shawley, in the county of Derby, and by my asking his pardon in this public manner, has kindly stopped all prosecution against me.
>
> his
>
> JOHN X CUFLIN
>
> mark
>
> Witness,
>
> Paul Brentnall
>
> Joseph Boam
>
> Shipley Wharf, October 22nd 1801[40]

Contrary to the 'conventional' view of a 'shift from a participatory system of discretionary justice to a monopolistic criminal justice system' in the early and mid-nineteenth century, Churchill has recently argued that 'ordinary people made extensive use of the criminal law, yet only as one means of redress among many available', and the use of printed public apologies can be seen to reinforce this interpretation of the disjuncture between informal individual interventions and the increasingly State-sponsored criminal justice system. [41] His argument that many private individuals remained 'reluctant prosecutors' would seem to be strengthened by the fact that such apologies were not only utilised as a victim-led method of restoring the status quo for petty offences such as the one reproduced above, but also in cases where the offence was more serious in nature, including interpersonal violence.[42] The offence described below exemplifies this, and was by no means an isolated example:

> **PARDON ASKED – WHEREAS I, LEVI WARD**, of Clayton, in the County of York, Weaver, did, on the 31st Day of July last (1821), assault and ill-treat Mr Benjamin Wood, of Bowling, Inspector of Worsted Yarn, for which Offence he has commenced a

[40] *Derby Mercury*, 5 November 1801.
[41] D. Churchill, *Crime Control & Everyday Life in the Victorian City*, p. 189.
[42] Ibid, p. 193.

> Prosecution; but on my agreeing to ask his Pardon and pay Expenses, he has consented to stop the Prosecution. I do, therefore, most humbly ASK his PARDON, and thank him for his Lenity, and promise never to be guilty of the like Offence again.[43]

This particular apology is unusual in that it is concerned with an attack on a Worsted Inspector. Such men were employed by the Worsted Committee in several Yorkshire towns and cities from the 1770s and had considerable powers within the community; they had the power to enter the homes and premises of employees and search for misappropriated pieces of worsted. If any were found, the penalties could be severe; a month's imprisonment or a maximum fine of £20 – a considerable sum in the late-eighteenth century. Unsurprisingly, such men were often not popular in their home towns and were occasionally the victims of reprisals.[44] That this particular Inspector was prepared to forego the more usual course of formal legal action is worthy of comment – perhaps the Inspector simply possessed more humanity than was normally credited to such officials. The example above however is typical in that it closes with a promise not to reoffend. Such future-oriented narratives appear in a high percentage of such apologies, and emphasise the fact that the publication of such apologies could only ever be a single event rather than a structured programme of reintegration within society, albeit one that had undergone a period of negotiation. The authors of this article hope to carry out a large-scale research investigation into such apologies and will utilise life-course analysis to investigate whether or not the apologists did in fact desist from further bad behaviour – in essence to see whether or not such apologies did in fact work from a restorative justice perspective. [45]

Such public apologies were nearly always printed on the first page of the newspaper; an obvious attempt to ensure their notice by a wide audience. The fact that until the 1850s newspapers were out of the financial reach of the majority of the working population due to

[43] *Leeds Mercury* 20 October 1821. As Robert Shoemaker (co-founder of the Old Bailey Proceedings Online website – see https://www.oldbaileyonline.org/) has pointed out (pers comm 1 September 2018), if victims were prepared to offer offenders the option of not going to court after perpetrating a relatively serious offence, they were technically compounding a felony; an offence under common law that was itself classed as a misdemeanor. This offence was abolished (with certain exceptions) by the Criminal Law Act 1967.

[44] For a detailed account of the history of the Worsted Inspectorate in Yorkshire see B. Godfrey, and D.J. Cox, *Policing the Factory: Theft, Private Policing and the Law in Modern England 1777-1968* (Bloomsbury Academic, 2013).

[45] For examples of life-course methodologies and analysis, see B. Godfrey, S. Farrall, & D.J. Cox, *Criminal Lives: Family Life, Employment, and Offending* (OUP, 2007) and S. Farrall, B. Godfrey, & D.J. Cox, *Serious Offenders: A Historical Study of Habitual Criminals* (OUP, 2010)..

a combination of high Stamp Duty being imposed upon them and low levels of adult literacy suggests that such apologies were not mainly designed to publicly shame the offender within his or her own social class, but rather to express to the victim's peers his or her magnanimity and generosity of spirit, and also to reaffirm that they were the blameless and innocent party in the matter in question, as exemplified in the following apology:

> **PARDON ASKED**
>
> I, SARAH CLARKE, of Greet's Green, West Bromwich, wife of John Clarke, Puddler, do hereby EXPRESS my SORROW and regret at having committed a most violent and gross Assault upon Joseph Haden, one of the Officers of the Oldbury County Court, and do gratefully acknowledge the kindness of the High Bailiff in refraining from prosecuting me for the same – Dated 23rd October 1866. SARAH CLARKE
>
> Witness – J. DALBY [46]

The above example is interesting in that not only does it publicly shame the female transgressor, but it also names her husband and details his profession, thereby ensuring Sarah's total humiliation – a clear example of disintegrative shaming.

The number of printed public apologies in newspapers reduced considerably from the mid-nineteenth century onward; this was due to a number of factors, most prominently the rise of the police as a prosecuting agency following the 1856 County and Borough Police Act (19 & 20 Vic c69), which made the presence of police forces mandatory throughout all English and Welsh boroughs and counties, and the 1855 Criminal Justice Act (18 & 19 Vict c129), which gave increased powers to magistrates to try more offences summarily, thereby reducing the chance of an offender receiving a longer prison sentence at either Quarter Sessions or Assizes; it is possible that such a move reduced the worry of a victim that an offender would serve an unnecessarily harsh prison sentence for what could be seen as a fairly minor act of bad behaviour.

VII MODERN RESTORATIVE JUSTICE THEORY AND ITS APPLICATION TO HISTORICAL RESTORATIVE PRACTICES

This section of the article focuses on the theories underpinning modern restorative justice practices and ideas, contending that many such modern theories and practices can be

[46] *Birmingham Daily Post* 26 October 1866.

evidenced in the historical examples discussed in the first section of the article. The underlying principles of restorative justice are first outlined followed by an overview of how several aspects of restorative justice theories and concepts relate to the historical examples given above.

Marshall suggests that there is a dedication amongst practitioners to an alternative view of justice that focuses on people, and rather than viewing offences as a crime against the state, viewing them as offences against people and how this can be repaired.[47] In a similar vein, Pranis argues that whilst the definition is contested and varies throughout the literature there are a set of core values that exist in restorative justice, these being: dignity, inclusion, humility, respect, mutual care, and non-domination.[48] Sharpe also argues that whilst definitions vary at the heart of any restorative justice programs the aims are to place decisions in the hands of those who are affected by a crime, make justice more healing and transformative, and, reduce the likelihood of future offending.[49] A common misconception and misunderstanding of restorative justice is the failure to appreciate the important parts of restorative justice lie in the purposes, values and principles which should then guide the responses to crime.[50] Throughout the literature, a number of underlying principles of restorative justice are suggested including: flexibility, non-discrimination, inclusiveness, empowerment, responsibility, accountability, honesty, trust, and equality.[51] The value of restorative justice does not come from the particular methods used, rather the underlying values and intentions, and we would argue that many of the historical examples discussed in this article exhibit fundamentally exhibit restorative values and intentions. Whilst the discussed historical examples may not easily fit in with many of the processes of the current English criminal justice system, we contend that they do have resonance with much modern restorative justice theory.

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[47] T.F. Marshall, *Restorative justice: An overview* (Home Office, Research Development and Statistics Directorate, 1999).

[48] K. Pranis, 'Restorative Values', in G. Johnstone and D.W. van Ness (eds.), *Handbook of Restorative Justice* (Willan, 2007).

[49] S. Sharpe, *Restorative justice: A vision for healing and change* (Mediation and Restorative Justice Centre, 1998).

[50] A. Morris, and W. Young, 'Reforming Criminal Justice: The Potential of Restorative Justice', in H. Strang and J. Braithwaite (eds), *Restorative Justice: Philosophy to Practice* (Ashgate/Dartmouth, 2000).

[51] C. Barton, *Restorative Justice: The Empowerment Model* (Hawkins Press, 2003); D. Bolivar, I. Aertsen and I. Vanfraecham, 'The Ritual of Apology and Restorative Justice: Exploring the Victim's Perspective' in D. Cuypers, D. Janssen, J. Haers and B. Segaert (eds.), *Public apology between ritual and regret* (Rodopi, 2013); RJC, *Principles of Restorative Processes*, (Restorative Justice Council, 2004).

Zehr and Mika state that the fundamental underlying principles are that crime is a violation of people and relationships, these violations cause obligations and liabilities for a number of people and restorative justice aims to heal and put right these wrongs.[52] The priority in any restorative justice process should be to meet the needs of the victim and to ensure that the offender is aware of the damage they have caused to people and relationships, and their liability to heal that damage.[53] Marshall posits that his set of restorative principles may orientate any agency that works in relation to crime, these are: the scope for personal involvement of those concerned (e.g. victim, offender, families, community); viewing crime problems within the social context they occur in; a preventative problem-solving direction; and, flexibility and creativity in outcomes that satisfy all stakeholders.[54] Zehr provides a helpful analogy in terms of restorative justice by providing a restorative 'lens' through which to view crime and justice.[55] The central tenets of this restorative lens are: focusing on harm and the needs of victims, the community and offenders; addressing the obligations of offenders that arise from harm, but also the obligations of the community; to incorporate an inclusive and collaborative process; to involve all legitimate stakeholders; and, to seek to put right the wrongs that have happened.[56] This 'lens' stands as a reminder of the paradigm shift that restorative justice requires; a paradigm shift that is clearly apparent throughout the above historical practices, where the responsibility is placed on the offender with support from the community to make things right. It is however acknowledged that there are problems with each of the historical examples; they should not be seen as paradigms of restorative justice.

Another way of viewing restorative justice is by providing a comparison between the questions the Westernised criminal justice system would ask, and contrasting them with the questions a restorative justice approach asks.[57] When a crime has been committed in the criminal justice arena often the questions asked will be: Who has committed the crime? What rules have been broken? How should the individual be punished? This ties in with the

[52] H. Zehr and H. Mika, 'Fundamental concepts of restorative justice' (1998) *Contemporary Justice Review*.
[53] G. Johnstone, *Restorative Justice: Ideas, Values, Debates.* 2nd edition (Routledge, 2011).
[54] T.F. Marshall, *Restorative justice: An overview* (Home Office, Research Development and Statistics Directorate, 1999)..
[55] H. Zehr, (2002, revised 2014) *The Little Book of Restorative Justice* (Good Books, 2002).
[56] Ibid.
[57] G. Johnstone, 'How, and in what terms, should restorative justice be conceived?', in H. Zehr and B. Toews. (eds), *Critical Issues in Restorative Justice* (Criminal Justice Press, 2004).

idea in the Western criminal justice system that a criminal act is a violation of the state, and as such is punished by the state in its assumed role as victim. Using restorative justice, the crime is seen as a violation of relationships and therefore different questions will be asked. Through a restorative 'lens', the questions asked will be more along the lines of: what happened? Who has been affected by this act and how? How can this be righted in a way that those involved find satisfactory? Where does the responsibility lie? How can things be done differently to prevent this happening again?[58] The focus here is on hearing different perspectives and how all stakeholders can be supported moving forward, whereas a Western criminal justice model approach will instead attempt to fact find and punish those involved with a means to deter. When considering the historic practices discussed in this article, viewing the practices through a restorative lens is in fact easier than the more Westernised traditional criminal justice concepts.

VIII AGENCY AND ACCOUNTABILITY

O'Mahoney and Doak's empowerment theory is a newer contribution to the theoretical understanding of RJ and has an interesting and relevant take on the practicing of restorative justice.[59] They argue that whilst restorative justice has a myriad of definitions and processes it surrounding it, in a more simplistic interpretation there are two underlying aspects of restorative justice: agency and accountability. Simply put, agency refers to giving participants the opportunity to act for themselves when wrongdoing has occurred, a right which the formalised criminal justice system distinctly takes away.[60] Accountability, as stated by O'Mahoney and Doak should be taken in its most empowering sense, where individuals are able to take responsibility for any harm they have caused and actively decide to try and repair this.[61] Looking to Parker, the magistrate discussed above, it can clearly be seen that he wished to afford those involved in the crime with both agency and accountability. By encouraging them to move away from the more formal criminal justice system and settle their issues through discussion and agreement they were afforded both the means to address the harms caused and to hold those responsible accountable. In the

[58] H. Zehr, *The Little Book of Restorative Justice*.
[59] D. O'Mahoney and J. Doak, *Reimagining restorative justice. Agency and accountability in the Criminal Justice Process* (Hart Publishing, 2017).
[60] Ibid.
[61] Ibid.

majority of these cases the victims are involved within the decision-making process and were able to convey the impact of the crime, both of which are important components in restorative processes.[62] By creating this space for individuals who have been involved with the crime to meet and discuss the incident, Parker afforded them a powerful alternative to the more traditional processes they would have gone through otherwise. In both the cases of Parker and the printed apologies it can be seen that the individuals involved were provided accountability in the sense that they were given space in which to explain their behaviour to the victim or community. In this sense, whilst it may be difficult to know how these processes were decided upon, and who instigated the procedures (together with an uneven power balance in the respect of many of the offenders not being able to read or write and therefore almost entirely dependent on the victims or their representatives to phrase such apologies), the processes definitely have elements that could be considered restorative if we look to O'Mahoney and Doak's theory.

IX REINTEGRATIVE SHAMING

Braithwaite's reintegrative shaming theory has long been used as an underpinning theory conveying the underlying mechanisms of a restorative processes.[63] He suggests that an individual's pro-social behaviour originates from the desire to belong to a group and avoid discontent of those within the group, and argues that key mechanism in restorative justice processes lies in relationships. It is thought that antisocial behaviour arose when individuals are distanced from social relationships by other individuals who, whilst unimportant, reprimand their behaviour.[64] When an individual has caused harm, reintegrative shaming theory makes the case for community involvement and disapproval when an individual has caused. Importantly, the individual should be treated with respect and reintegrated back into the community. The behaviour should not be condoned, however the community should make it clear that once they have repaired harm they are to be integrated back into the community. This is in direct contrast to 'stigmatising shaming' that forces individuals who have caused harm to become further disconnected from the community and support

[62] J.J. Choi, D.L. Green and S.A. Kapp, 'Victimization, Victim's Needs, and Empowerment in Victim Offender Mediation' (2010) *International Review of Victimology*; H. Zehr, *Transcending: Reflections of Crime Victims* (Good Books, 2001); D. O'Mahoney and J. Doak, *Reimagining restorative justice.*
[63] J. Braithwaite, *Crime, shame and reintegration*.
[64] Ibid.

that they need i.e. has a disintegrative effect.[65] If we look at the above historic practices through a reintegrative shaming lens there are certainly areas that can be seen as reintegrative. The ability to remain within the community, with their family and with their job would have certainly been important for integration, but they were also met with disapproval of their behaviour. Particularly with public printed apologies, there is clearly a definite element of disapproval of behaviour and community involvement. However, often within a printed apology there was also a promise of better behaviour in the future (and our ongoing research intends to look into this aspect of the content of printed public apologies to see whether or not they were effective in preventing re-offending); clearly aimed at seeing the apology as an ongoing process of restorative justice rather than as a single event.

X APOLOGY AND RESTORATIVE JUSTICE

There is a considerable amount of research that considers the concept of apology within a restorative process. Whilst an apology doesn't necessarily have to be part of a restorative justice, it is seen as an important part in creating restorative processes that are perceived as successful.[66] Strang found that what most victims want from their offenders is a sincere apology, however, Daly argues that not all individual offenders will have the skill to communicate this.[67] This may lead to feelings of discontentment from both victims who feel they have not got their 'proper' apology, together with feelings of frustration from offenders who feel unable to fully participate and be heard in a restorative process. Bolivar *et al* found two main causes surrounding why apology seems to satisfy victims who go through a restorative process.[68] Both of these can be readily applied to the use of public printed apologies as seen earlier in this article. The apology allowed for the victim to have their status as a victim confirmed (publicly in the case of printed apologies) and shows that the offenders willingness to apologise confirmed that they were not intrinsically bad. There is certainly a need for more research on public apologies and restorative justice, as there is a

[65] Ibid.
[66] J. Shapland, G. Robinson and A. Sorsby, *Restorative Justice in Practice: Evaluating What Works for Victims and Offenders* (Routledge, 2011).
[67] H. Strang, *Repair or Revenge: Victims and Restorative Justice* (Clarendon Press, 2002); K. Daly, 'The limits of restorative justice', in D. Sullivan and L. Tifft (eds.), *Handbook of Restorative Justice: A Global Perspective* (Routledge, 2006).
[68] D. Bolivar, I. Aertsen and I. Vanfraecham, 'The Ritual of Apology and Restorative Justice'.

need for further research into the complexities of apology within a restorative justice process.

XI CONCLUSION

As Marshall has stated,

> Restorative Justice is not, therefore, a single academic theory of crime or justice, but represents, in a more or less eclectic way, the accumulation of actual experience in working successfully with particular crime problems. [69]

This article has shown that despite considerable academic research into restorative justice, there still remains much confusion as to what exactly all the elements are which make up a successful restorative justice programme; often restorative justice appears to be viewed as an event rather than as a process, and one whose origins are contested by criminologists and sociologists. This is problematical both when trying to decide if a process is genuinely restorative or not, and also in the implementation of new strategies.

We have also argued that to aid with the creation of such a strategy, it is necessary to cast an historical eye over past processes that have often occurred either in opposition to, or as an adjunct to the prevailing 'traditional' state-sponsored criminal justice system in order to both learn from past mistakes and gain from past successes. As Cicero stated in his vindication of the uses of historical knowledge, 'to be ignorant of what occurred before one was born is to remain forever a child', and this applies equally to knowledge of the antecedents of modern-day restorative justice processes.[70] The article has demonstrated that prior to the 1970s, when the term 'restorative justice' first came into mainstream usage by both academics and practitioners alike, there have been numerous examples of practices and processes that bear many of the necessary traits of what we now call restorative justice. It is not our intention here to make a case for the redeployment of such historical practices, but there is clearly a need for a much more coherent strategy when discussing alternative methods of justice that may or may not be restorative in nature or intent, and academics and practitioners could perhaps do worse than consider elements and ideas from some of

[69] T.F. Marshall, *Restorative justice: An overview*, p. 7.

[70] M. T. Cicero, *De Oratore* (55BCE), XXXIV sec. 120: "*Nescire autem quid ante quam natus sis acciderit, id est semper esse puerum*".

the historical examples discussed above in order to develop what perhaps could be viewed as a new approach to an old system of justice.

XII BIBLIOGRAPHY

M. Achtenberg, *Understanding restorative justice practice within the Aboriginal context* (Forum on Corrections Research, 2013) available online at http://www.csc-scc.gc.ca/research/forum/e121/e121j-eng.shtml.

S. Banks, *Informal Justice in England and Wales 1760-1914: The Courts of Popular Opinion* (The Boydell Press, 2014)

C. Barton, *Restorative Justice: The Empowerment Model* (Hawkins Press, 2003)

D. Bolivar, I. Aertsen and I. Vanfraecham, 'The Ritual of Apology and Restorative Justice: Exploring the Victim's Perspective' in D. Cuypers, D. Janssen, J. Haers and B. Segaert (eds.), *Public apology between ritual and regret* (Rodopi, 2013)

J. Braithwaite, *Crime, shame and reintegration* (CUP, 1989)

J. Braithwaite, 'Restorative justice: Assessing optimistic and pessimistic accounts' in M. Tonry (ed.), *Crime and justice: A review of research* (University of Chicago Press, 1999)

J. Braithwaite, *Restorative Justice and Responsive regulation* (OUP, 2002)

J. Braithwaite, 'Principles of Restorative Justice' in A. von Hirsch, J.V. Roberts, A.E. Bottoms, K. Roach and M. Schiff (eds.), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (Hart Publishing, 2004)

S. Butler, *Hudibras in three parts, written in the time of the late wars* (Vernor and Hood, 1805)

J.J. Choi, D.L. Green and S.A. Kapp, 'Victimization, Victim's Needs, and Empowerment in Victim Offender Mediation' (2010) *International Review of Victimology*

A. Croll, 'Street disorders, surveillance and shame: regulating behavior in the public spaces of the late Victorian British town, (1999) *Social History*

N. Christie, ‘Conflicts as Property’ (1977) *British Journal of Criminology*

D. Churchill, *Crime Control & Everyday Live in the Victorian City: The Police & the Public* (OUP, 2018)

D.J. Cox, and B. Godfrey (eds.), *Cinderellas & Packhorses: A History of the Shropshire Magistracy* (Logaston Press, 2005)

A. Crawford and T. Newburn, *Youth offending and restorative justice: implementing reform in youth justice* (Willan, 2003)

K. Daly, ‘The limits of restorative justice’, in D. Sullivan and L. Tifft (eds.), *Handbook of Restorative Justice: A Global Perspective* (Routledge, 2006)

K. Daly and R. Immarigeon, ‘The past, present, and future of restorative justice: some critical reflections’ (1998) *The Contemporary Justice Review*

N.E.C. Darby, *The magistrate and the community: summary proceedings in rural England during the long eighteenth century* (Unpublished Doctoral thesis, The University of Northampton, 2015), available online at available online at http://nectar.northampton.ac.uk/9720/1/Darby20159720.pdf.

J. Davis, ‘A Poor Man’s System of Justice: The London Police Courts in the Second Half of the Nineteenth Century’ (1984) *The Historical Journal*

K.F. Drew (ed), *The Laws of the Salian Franks* (University of Pennsylvania Press, 2012)

S. Farrall, B. Godfrey, & D.J. Cox, *Serious Offenders: A Historical Study of Habitual Criminals* (OUP, 2010)

C. Gade, ‘“Restorative Justice”: History of the Term’s International and Danish Use’ in A. Nylund et al. (eds.), *Nordic Mediation Research* (Springer Open, 2018)

B. Godfrey, S. Farrall, & D.J. Cox, *Criminal Lives: Family Life, Employment, and Offending* (OUP, 2007).

B. Godfrey, and D.J. Cox, *Policing the Factory: Theft, Private Policing and the Law in Modern England 1777-1968* (Bloomsbury Academic, 2013)

J.R. Guest, 'Aboriginal Legal Theory and Restorative Justice' (1999) *Justice as Healing*

D. Hay, 'Prosecution and Power: Malicious Prosecution in the English Courts, 1750-1850' in D. Hay and F. Snyder (eds.), *Policing and prosecution in Britain 1750-1850* (OUP, 1989)

D. Herlihy, 'Life expectancies for women', in R. T. Morewedge (ed.) *The Role of Woman in the Middle Ages* (State University of New York Press, 1972)

J. Hudson, and B. Galaway (eds), *Restitution in criminal justice: A critical assessment of sanctions* (Lexington Books, 1977)

G. Johnstone, 'The Idea of Restorative Justice', (Inaugural Professorial Lecture given at Middleton Hall, University of Hull, 11 October 2004) – available at www2.hull.ac.uk/fass/docs/law-inauguraljohnstone.doc

G. Johnstone, 'How, and in what terms, should restorative justice be conceived?', in H. Zehr and B. Toews. (eds), *Critical Issues in Restorative Justice* (Criminal Justice Press, 2004)

G. Johnstone, *Restorative Justice: Ideas, Values, Debates.* 2nd edition (Routledge, 2011)

T.F. Marshall, 'The evolution of restorative justice in Britain' (1996) *European Journal of Criminal Policy and Research*

T.F. Marshall, *Restorative justice: An overview* (Home Office, Research Development and Statistics Directorate, 1999)

P. McCold, ‘Restorative Justice Practice: The State of the Field 1999’, Paper presented at the Building Strong Partnerships for Restorative Practices conference, Burlington, Vermont, 5-7 August 1999

D. Miers, M. Maguire, S. Goldie, K. Sharpe, C. Hale, A. Netten, S. Uglow, K. Doolin, A. Hallam, J. Enterkin, and T. Newburn, ‘An exploratory evaluation of restorative justice schemes’ in B. Webb (ed.), *Crime Reduction Research Series, Paper 9* (Home Office, 2002)

L. Mirsky, *Restorative justice practices of Native American, First Nation and other indigenous people of North America: Parts One and Two* (Restorative Practices eForum, 2004, April and May).

A. Morris, and W. Young, ‘Reforming Criminal Justice: The Potential of Restorative Justice’, in H. Strang and J. Braithwaite (eds), *Restorative Justice: Philosophy to Practice* (Ashgate/Dartmouth, 2000)

J.D. Niles, ‘The myth of the feud in Anglo-Saxon England’ (2015) *Journal of English and Germanic Philology*

D. O’Mahoney and J. Doak, *Reimagining restorative justice. Agency and accountability in the Criminal Justice Process* (Hart Publishing, 2017)

K. Pranis, ‘Restorative Values’, in G. Johnstone and D.W. van Ness (eds.), *Handbook of Restorative Justice* (Willan, 2007)

RJC, *Principles of Restorative Processes*, (Restorative Justice Council, 2004). Available online at www.restorativejustice.org.uk

J. Shapland, G. Robinson and A. Sorsby, *Restorative Justice in Practice: Evaluating What Works for Victims and Offenders* (Routledge, 2011)

S. Sharpe, *Restorative justice: A vision for healing and change* (Mediation and Restorative Justice Centre, 1998)

P. Stein, *Roman Law in European History* (CUP, 1999)

H. Strang, *Repair or Revenge: Victims and Restorative Justice* (Clarendon Press, 2002)

M.G. Thomas, M.P. Stumpf and H. Härke, 'Evidence for an apartheid-like social structure in early Anglo-Saxon England' (2006) *Proceedings of the Royal Society of London B: Biological Sciences*

T. Wachtel, *Dreaming of a New Reality: How restorative practices reduce crime and violence, improve relationships and strengthen civil society* (The Piper's Press, 2013)

H. Zehr, *Retributive justice, restorative justice. New Perspectives on Crime and Justice – Occasional Paper Series* (Canada Victim Offender Ministries, 1985)

H. Zehr, *Changing Lenses: A New Focus on Crime and Justice* (Herald Press, 1990)

H. Zehr, *Transcending: Reflections of Crime Victims* (Good Books, 2001)

H. Zehr, *The Little Book of Restorative Justice* (Good Books, 2002, revised 2014)

H. Zehr and H. Mika, 'Fundamental concepts of restorative justice' (1998) *Contemporary Justice Review*