

JUDGE MCELREA RESTORATIVE JUSTICE COLLECTION

A guide to the Judge McElrea Restorative Justice Collection at Napier Libraries



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Foreword by Professor Howard Zehr:

New Zealand Judge Fred McElrea, now retired, has been a prominent advocate of New Zealand's youth justice system but also of restorative justice more broadly, in New Zealand and internationally. This wide-ranging collection of his papers offers important insight into New Zealand's approach but beyond that, contributes significantly to the larger field of restorative justice.

I first encountered New Zealand's innovative and essentially restorative system for youth during a speaking tour there in 1994. I immediately realized the inspiration it could offer to us in North America and through the organization for which I then worked – Mennonite Central Committee – arranged to itinerate Judge McElrea and Matt Hakiaha, a youth justice practitioner, throughout the US and Canada. This trip helped introduce the possibility of a restorative, community-focused justice system to the wider world. Since then Judge McElrea has spoken and consulted in many communities internationally and contributed to numerous publications.

While Judge McElrea readily admits its limitations and challenges, New Zealand's youth justice system offers a practical, community-oriented model for combining the best of the current legal system with a restorative justice approach. He has consistently advocated the use of these and other restorative justice approaches in both youth and adult systems as well as a variety of community settings.

As this suggests, Judge McElrea has been more than a mere proponent of restorative justice; he has been a leading pioneer and critic, seeking to help the field live up to its promises and potential. He was an early advocate for involving the community more broadly than initial restorative justice practices in North America had done. As a lawyer and judge, he has imagined important ways that restorative justice can be applied within the legal system while encouraging a healthier balance of system and community roles.

Fred, as he is known in the restorative justice community, is an innovative thinker whose talks and papers are articulate and thoughtfully prepared. What a gift it is to have them collected in one place, accessible to researchers and practitioners, and easily searched through the excellent "reader/researcher aids" on the website.

I am sure that book publication would have been rewarding, but having these papers available on a website like this is so much more useful. Congratulations to Napier Libraries, David Thompson, and others who made this possible!

*Howard Zehr 23 August 2017, Eastern Mennonite University
and Zehr Institute for Restorative Justice*

Purpose and audience:

Purpose of the Collection: Spreading Good News – and Further Reform

The purpose of the collection is to gather all McElrea's work in one place and make it as accessible, prominent, organised and reader- and researcher-friendly as possible. At the times of writing them over some 20 years, McElrea composed each paper for a specific occasion or forum, mostly by invitation. But he already had a unifying purpose. That was to spread the good news of restorative justice – and to dispel myths about it (like that it entirely replaces retribution or does away with all need for prisons), while also discussing its limits and risks. He was publicising what he saw to be the far more effective and human model of justice that it offers communities, offenders and especially victims. The papers have also set out ways to raise the standards of restorative justice as its many forms have proliferated across New Zealand and around the world.

McElrea's ultimate hope was, and is, to make restorative justice, rather than court, the automatic or "default" option, at least wherever offenders admit wrongdoing. Criminal courts would remain for supervision, backstop and wherever defendants plead Not Guilty. Where a case goes to court, judges would try it as usual and, in the event of a Guilty finding, draw on the legislated range of sentencing options, including prisons – although the papers also touch on the many compelling reasons for minimising such recourse.

To that end of advocating a default restorative approach, some of the papers also detail McElrea's proposal for Community Justice Centres, or Community Resolution Centres. These would provide a dedicated forum for the systematic introduction of restorative conferences for adults; adult conferencing so far lacks the infrastructure and legislative backing that has characterised the Family Group Conferences which New Zealand led the world in legislating for youths (14- to 16-year-olds). If accompanied by proper education and funding, the proposal for Community Justice Centres/Community Resolution Centres could revolutionise criminal justice in New Zealand and – perhaps – the UK and other parts of the English-speaking or "common law" world, which, like New Zealand, largely inherited the adversarial-punitive English model of courts and punishments.

Audience for the Collection: Everyone Interested in Justice – Plus Specialists ... and Sceptics!

Every citizen with an interest in justice will get something out of this collection. This goes doubly if you live in a common law country. But most papers assume no knowledge of either restorative justice or the traditional common law criminal justice system. And McElrea's straight-talking style is all the more accessible precisely because many papers were speeches, and often to lay audiences, including community groups, victim support groups, marae, churches, even school prize-givings.

As the Complete Overview and Synopsis Table shows, other papers addressed specialists. Such papers detailed cutting-edge developments in restorative justice, and critiques of the adversarial-punitive system, for audiences of lawyers, judges, restorative justice practitioners, academics, policy makers, legislators and reformers. If they are like us, then legal professionals will find much here that is new and surprising. The surprises start with the rather unplanned history of the adversarial court system we take for granted and the punishments it metes out. Lawyers also get a rare insight into how a sitting judge navigated law reform, and thus the boundary between government's judicial and legislative branches.

Finally, if you're skeptical of restorative justice, the papers acknowledge common critiques of it and address many head-on in a way we hope will provoke further thought.

Biography of Fred McElrea:

Born in Dunedin, New Zealand, Fred McElrea graduated with an LLB and an MA (first class honours) in philosophy from Otago University then an LLM from London and a DipCrim from Cambridge University. After 18 years in civil litigation in Auckland, he served as a judge of the District Court (1988–2013), the Youth Court (1990–2001) and as an Alternate Judge of the Environment Court (2001–2013), all also in Auckland. He sat on the Supreme Court of Tonga for three months in 2004. Other appointments besides those in restorative justice have included:

- Part-time lecturer in Criminal Law/Advanced Criminal Law and in Civil Procedure at the University of Auckland
- Member of the New Zealand Council of Legal Education
- Council member of the Legal Research Foundation
- Chairman of the Representation Commission (an independent statutory body responsible for redrawing New Zealand's electoral boundaries) for two elections
- Chairman of the Executive of the Auckland City Mission, an Anglican charitable trust

McElrea and New Zealand's Early Lead in Restorative justice

McElrea discovered restorative justice through his work as a judge in the youth jurisdiction. Fortuitously, he took up his warrant the year that the Children, Young Persons and Their Families Act 1989 introduced Family Group Conferences (FGCs), rather than prosecution, as the default process for offending by 14- to 16-year-olds that the offender did not deny. On sabbatical back at Cambridge in 1993, McElrea realised that to a large extent this home-grown FGC model, which had strong Māori roots, embodied and extended “restorative justice”. That term was new to him and to New Zealand; yet the country now led the world in legislating for it – for youth – all but in name.

Thus, McElrea found himself on one of the branches of a burgeoning international restorative justice tree, which would flourish in academia and, to a lesser extent, in practice around the world over the rest of his career. Drawing on, and being quoted by, academic and policy research, McElrea nevertheless emphasised practice over theory. He wrote the first papers of this collection in 1993. He began making contact with restorative justice pioneers around the English-speaking world, including the American “grandfather of restorative justice”, Dr (later Professor) Howard Zehr, who first came to New Zealand in 1994. For the next two decades, McElrea continued advocating for the adoption, improvement and extension of restorative justice.

Restorative justice in McElrea's judicial capacity

Some of this work was carried out as a judge. McElrea enjoyed the support of fellow judges like Stan Thorburn and several Chief District Court Judges (including Ronald Young, David Carruthers [both later knighted] and Russell Johnson, who died in office) and Principal Youth Court Judges (including Mick Brown [later CNZM] and Andrew Becroft). From 1994 he took a judicial lead in applying the restorative justice provisions of the Sentencing Act 2002 to adults, integrating those provisions with traditional sentencing principles, and developing the restorative justice jurisprudence in environmental offending. He was the Restorative Justice Liaison Judge and addressed conferences of Justices of the Peace and District Court, High Court and Court of Appeal judges. In 2011 he received a Prison Fellowship International Certificate of Recognition for “exemplary work as a public official in significantly advancing restorative justice”. McElrea continues to stress the role of the judiciary both in court and outside court in leading legal opinion and practice towards whole-hearted, well-resourced restorative justice.

Restorative justice in his non-judicial capacity

Mostly, though, McElrea has spoken or written in a non-judicial capacity, as a well-informed private citizen. As a skim of the paper titles reveals, he addressed audiences in New Zealand, Australia, the UK, Europe, the Americas and South Africa. He gave interviews, talked to politicians, contributed book chapters and articles in peer-reviewed journals, was sought out by postgraduate students, and consulted on restorative justice to people in the places just mentioned plus Russia, Israel, Ireland and Japan. McElrea chaired and co-founded the Advisory Board of Massey University's Centre for Justice and Peace Development. He was a founding member of the AUT Restorative Justice Centre in Auckland.

In 1994 McElrea proposed introducing Community Group Conferences as an equivalent for adults of Family Group Conferences for youth. The first such conference was organised by Revd Douglas Mansill in Auckland. McElrea soon developed plans for dedicated Community Justice Centres (later called Community Resolution Centres) to be the venue for such conferences. He would continue to flesh out the proposal into civil as well as criminal areas and advocate it as the new default where offending is admitted.

McElrea has also been a keen advocate throughout his career of reducing reliance on prisons, which would go hand-in-hand with such a switch of default. He was a founding member of the board of directors of the International Corrections and Prisons Association for the Advancement of Professional Corrections.

New Zealand stalls then rallies with a legislative initiative

In the mid-1990s the New Zealand government sponsored pilot restorative justice programmes for adults. However, the country gradually fell behind and McElrea and others criticised this. Then in 2002–2004 a second wave of legislation led by the Sentencing Act 2002 expressly brought some provision for court-referred, pre-sentencing restorative justice into the mainstream adult system. Latterly, in 2014, the Sentencing Amendment Act has made it compulsory for District Court judges to consider restorative justice where a suitable forum exists – though notably not as a default, not as a form of complete diversion from court, not in the High Court, and without committing resources to match the new demand and prove whole-hearted commitment. Also in 2014, Victoria University of Wellington established New Zealand's first chair in restorative justice, which was awarded to Dr Chris Marshall.

Retirement and personal

McElrea retired altogether from judging in 2013 – he had gone part-time in 2008 – and with his wife, Margaret, moved to a lifestyle block out of Wanaka in Central Otago. Against the backdrop of the Southern Alps, they variously run chooks, a small flock of sheep or a few head of cattle, and enjoy a cheeky Cairn Terrier named Georgie. They love their visits from five adult children and six grandchildren and they get up to Auckland several times a year. Though now landlocked and no longer skippering his own boat as he did while living in Auckland, McElrea still finds the odd chance to sail with friends, and keeps a sailing dinghy in his garage for use on Lake Wanaka. Recently he enjoyed ten days volunteering as a builder's labourer for Habitat for Humanity in southern India, rode in a Central Otago Cavalcade, and he generally enjoys adventures! He is actively involved in the Anglican Church, both in his local parish and at a diocesan level. McElrea still helps the occasional postgraduate student and is always keen to encourage the study and especially practice of restorative justice.

Nudged by Margaret, an experienced librarian, to “do something about all those great papers you wrote”, McElrea has been collaborating with David Thompson, a freelance Auckland editor and trained lawyer, and Napier Library. The result is the McElrea Restorative Justice Collection, to be formally launched in late 2017.

David Thompson

David Thompson, BA, LLB Hons (first class), is a freelance Auckland writer, grant writer, editor, proof-reader and researcher. He tutored at Victoria University of Wellington and Auckland law schools, worked a stint at a large law firm and for over a decade headnoted judgments for Brookers (now ThomsonReuters). Since 2012 Thompson has worked mostly for academics and an NGO, but clients also include publishing (and other) companies. His own writing has been published in Metro, North & South, New Zealand Lawyer Magazine and Good Magazine, and on scoop.co.nz.

Like many law students, Thompson graduated knowing almost nothing of restorative justice. However, he has been firmly convinced by McElrea's lucid arguments and the efflorescence of other material on the subject, and likewise hopes for further adoption of McElrea's proposals. He is very happy to receive and relay any reader feedback on the McElrea Collection: David.J.ThompsonNZ@gmail.com.

Further Assistance:

We hope you enjoyed learning about the Judge McElrea Restorative Justice Collection. For more information on how to use this collection, take a look at our [How to use the collection guide](#).

If you would like any help finding your way through our resources, we have a [Research Enquiry](#) service available, or you can ask our friendly library staff.

