

***Characteristics of restorative justice
as compared with western criminal justice***

<i>Western criminal justice</i>	<i>Restorative justice</i>
1 Decides guilt and imposes sentence	Applies only where guilt is admitted
2 Taking part is compulsory	Taking part is voluntary for all those involved
3 Excludes the victim from the process	The victim is central to the process
4 Imposes solutions from the top down (the State)	Finds solutions from the bottom up (community)
5 Decision made by one person (Judge or Magistrate)	Decisions made by community group
6 Relies heavily on the threat of force	Relies on agreement of those directly affected by the offending
7 Punishment is the main object of sentencing	Main object is putting right the wrong -- but punishment may be part of that
8 Offender is not held accountable in a personal way and need not speak at any stage	Offender is held accountable face to face and must be willing to answer questions
9 Focuses on individual responsibility	Can consider the responsibility of others
10 Does not promote spiritual values	Can build on Christian values -- e.g. repentance, remorse, forgiveness, new life
11 Professional people play a key role -- lawyers, probation officers, Judges	Professional people play a supportive role only - main roles are played by those most affected
12 Does not address victims' needs or actively promote peace	Aims to heal the wounds of the past, especially for victims, and build peace
13 Is essentially a 19 th Century British model	Has roots in many cultures, and can reflect the local culture.

Hon Justice FWM McElrea

Supreme Court of Tonga

Nuku'alofa

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Examples of operation of RJ in NZ

1. Family group conferences for young people.

Family group conferences have been compulsory for all youth offending since 1989 under the children, young persons and their families act 1989

These of two types: (1) diversionary conferences, where no charges are laid in court if everyone agrees (including police officer).

(2) conferences directed by the Youth Court

Young offenders family are present to support him and to consider family responsibility.

Other persons present include police youth aid officer, facilitator, youth advocate (lawyer), victim and supporters, one or two community representatives -- e.g. from drug and alcohol agency or offenders school

Common procedure followed for both youth conferences and in all conferences:

- (a) facilitator ensures was all relevant people are invited and chairs the meeting
- (b) facilitator welcomes all to meeting and ensures safety of all concerned and their understanding of the process is
- (c) police officer reads out the charges (sometimes also a summary of facts)
- (d) offender confirms acceptance of responsibility
- (e) victim speaks about the effects of the crime in personal terms
- (f) offender is invited to respond -- usually expresses remorse and shame and apologises
- (g) other persons present can express their views
- (h) meeting discusses what can be done to put things right -- for the victim, for the offender and for the community
- (i) a plan is prepared and people designated to monitor the plan
- (j) if plan is not carried out the matter goes to Court
- (k) if the conference has been directed by the court, the conference recommends an outcome or sentence to the court and the facilitator provides a report to the court about the conference

2. Court-referred conferences for adults

- Usually a guilty plea is required first
- an adjournment is granted for RJ conference to be held
- the court receives the report of the conference and takes it into account in deciding on sentence -- it must do this under the Sentencing Act 2002
- the court can adjourned sentencing and if the RJ plan is carried out the charges can be withdrawn so that there is no conviction. Alternatively, the plan can form a part of the sentence, for example as conditions of supervision and/or community service
- even where imprisonment is imposed the RJ plan can form part of the parole conditions

3. Environment Court RJ conferences

These operate in a similar way but relate to offences against the environment.

Outcomes will include work done to repair the damage as well as compensation for victims.

4. RJ conferences and schools

RJ conferences are held in many schools to try and avoid the suspensions and expulsions. This helps to keep young people in the education system and give them a training for life

5. Conferences organised by local body groups -- e.g. safer community councils

These conferences for adults are arranged where the police referred matters to the local council. They can operate like diversionary conferences for young people, or like Court referred conferences.

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