

## JUST PEACE?

Peace Making and Peace Building for the New Millennium

an international conference held at Massey University, Albany, New Zealand

24-28 April 2000

Partners or Adversaries?

Keynote address for Community Day, 25 April 2000

Judge Fred McElrea

Seven years ago at Gallipoli I found the grave of my great-uncle Arthur McCoy, an ordinary seaman who died an ordinary foot soldier in a hail of machinegun fire at a place known as the Daisy Patch. They had been ordered to advance across open terrain in broad daylight under sweeping machine gun fire. It is a happy coincidence that our conference gets underway on Anzac Day. At dawn this day in 1915 several thousand young New Zealand, Australian and other allied troops went ashore at Gallipoli in a disastrous military campaign from which many did not return. The sounds of battle and of silence that we have just experienced underline the importance of the task for which we have gathered: to address the issues of peace making and peace building in a new millennium.

As the Conference Committee has worked together over the last 16 months we have hoped that the next four days would enable people from different countries and cultures, with various occupations and interests, to explore the "inter-connectedness" of peace making and peace building in the many contexts in which they arise.

Taking my own case as the example I know best, Youth Court work which I started in 1990 led to an interest in restorative justice seen through the Changing Lenses of that great prophet of justice Howard Zehr, and then to the question of whether our Youth Court principles could be applied in the adult courts. The connection between crime and lack of education then suggested the possibility of applying restorative justice in schools as an alternative to suspensions and expulsions. An invitation to address an Australian conference of Lawyers Engaged in Alternative Dispute Resolution prompted an analysis of the many close parallels between restorative justice in the criminal context and ADR (including mediation and arbitration) in the civil context. The experience of aboriginal concepts of peace making in Canada and New Zealand suggested the importance of a spiritual dimension, and respect for the created order, in building peace between people. A 1998 visit to Eastern Mennonite University in Virginia, USA, introduced me to their Conflict Transformation Program with its international perspectives. Time spent in Northern Ireland a year ago convinced me that the process being followed there in trying to build a new and lasting peace at a national level was largely a process of restorative justice - except that there seemed to be no place for victims to tell their stories, though perhaps that will come.

All of us here could tell similar stories of the connections between conflict resolution in different contexts. All of us will realise the number of different disciplines and endeavours that can be associated with the task of peace building – diplomacy, law, sociology, economics, politics, religion, education, human rights, resource management, defence studies – to name some. It is genuinely an inter-disciplinary quest, this search for peace. So it is a wonderful thing that people from those and other disciplines have gathered this week with enough time to share their experiences, their learning, their hopes and dreams, not just at an intellectual and practical level but also through the involvement of the many poets, musicians, story tellers, film makers and other artists in the daily programme. The senses, the intellect and the spirit should all be engaged in the work we are about.

Those of us assembled here come from 14 different countries in five continents. We are pleased to have also a good gender balance, both amongst the registrants and the speakers, and to be able to welcome a Youth Stream on Friday. There should be nothing exclusive about this gathering!

Another valuable feature of this conference should be the active involvement of those present. A good proportion of those attending are themselves contributing as speakers, workshop leaders, artists, or in some other part of the programme such as the interfaith gathering at St Matthews-in-the-City. In addition, time has been set aside each day for us to meet in small interactive groups to share and reflect on our experience of the conference in a personal way. The personnel in these groups should remain (more or less) constant over the four days so that friendships and understanding can grow as the conference progresses.

It would be unwise to try and predict what sort of conclusions we will take away with us at the end of the week but the Conference Committee hopes that we will all know more about three interrelated issues. The first is the meaning of peace. What does peace mean to us? What is its opposite – war, hostility, turmoil, aggression, instability? What different sorts of violence are we concerned with here? What sorts of conflict does peace rule out?

The second issue is the means to peace. How do we move towards peace? Can war or other forms of violence ever be a means to the end of peace? (Can punishment be part of a restorative justice solution?) Is there some religious or at least moral underpinning required for any worthwhile peace process? What role is played by the different disciplines already mentioned – law, diplomacy, education, and so on?

And thirdly, what are the prospects of meaningful peace? That expression encompasses both the maintenance of peace - “lasting peace” - and also the notion of a peace that is worthy of the name. Is peace alone enough? If peace is only the absence of open conflict, is it just peace – merely peace - that we seek? If we seek justice will peace follow? If we seek a just peace in a pluralistic society, whether international or national, whose idea of justice is to prevail? What values must be embraced for peace to survive?

Of course, because the conference title thus links together peace and justice (with a question mark), we will inevitably be asking also about the meaning of justice, the means to justice, and meaningful justice. The one prediction that I am prepared to make is that we will find peace and justice to be almost inseparable.

The arrangement of the conference days according to four levels of human organisation – personal, community, national and international – had a certain appeal but is somewhat artificial, precisely because of the inter-connectedness of peace making and peace building at those different levels. What we may find for example is that personal peace requires, and also contributes to, good relationships within one's community; that meaningful peace in the community depends in part on just social structures being erected and maintained at a national level; and that international peace is easily jeopardised by nations, communities, or even individuals, who are unable to resolve their own conflicts.

By making the personal day the last day instead of the first of the conference, the Conference Committee hoped that we can all conclude the week by looking at our own lives and asking what we can do, not just to be at peace ourselves, but to share that peace in our communities, our nations and the international community.

Before going any further on your behalf I wish to thank Massey University, Albany for their willingness to host this conference, and for the huge amount of time invested by Dr Warwick Tie of Massey's College of Humanities and Social Sciences, who has been convenor of the Steering Committee almost since we first met at the end of 1998. There will be a time later to thank the other members of the Committee, but if you think the programme before us reflects a rather wide range of interests that is because of the energy and diversity of the Committee.

The planning for this conference was well underway before we learned that the year 2000 had been designated by the United Nations as the International Year for the Culture of Peace. On Thursday we will hear a few words about that from Brother Pat Lynch of the New Zealand National Commission for UNESCO. As I said at the launch of that initiative in Wellington last year, a culture of peace is exactly what is needed to escape the cycles of violence that we live with at all levels. For it is a culture of violence that threatens to overwhelm us, and the courts see the ugly and violent side of our culture all the time. We also see the good and hopeful sides of people, and that is encouraging. What becomes apparent is that violence comes in many forms.

Serious physical violence is the most obvious and newsworthy but it is a mistake to see it in isolation. It often grows in a culture of sexual and emotional violence, as the Family Court knows. It goes hand in hand with the abuse of alcohol or other drugs, resulting in violent deaths on the roads as seen in the traffic courts. Violent upheavals caused by industrial strife spill over into the Employment Court, and unsafe systems of work can result in prosecutions in the District Court. Rape and pillage of the land brings work for the Environment Court. Youth Court judges see the results of some students traumatically suspended or excluded from schools often without real hope of completing their education as citizens. Racial prejudice and other forms of ethnic injustice represent a further ugly face of violence which different courts and tribunals grapple with. All of these comments apply of course at all the different levels I mentioned earlier.

As our esteemed guest the Mennonite writer Howard Zehr has noted, at the heart of most violence is disrespect. So I suggest a culture of peace must engender respect – first and foremost respect for other people, but also respect for our forebears and future generations, for other ways of thinking, respect for creation, and self respect.

I am glad that we have people here who will tell us stories about different aspects of peace. Telling their stories is very important for victims as part of holding offenders accountable, finding validation, and the healing of memories. This applies also in my view not only to today's manifestations of violence but also to the memories of past humiliations and injustice. Those ancient memories - whether in the Balkans, Northern Ireland, Australia or New Zealand - also need healing if retribution is not to be sought down through the generations. The inclusion of Crown apologies in some Waitangi Tribunal settlements is a reflection of this truth. In restorative justice conferences, and for many cultures, the apology is a prerequisite to making peace and moving forward. The bare words may mean little to others – one newspaper recently called the practice a “modern conceit” - but they can mean a lot to the parties. Where they signal a change of heart then reconciliation becomes possible and the cycle of violence can be broken.

Many who work in the justice sector are now coming to see the limitations of the traditional western adversary model of justice that we have inherited. As most here will know, New Zealand has also a quite different model operating in the Youth Court, which is sometimes called restorative justice. Youth Justice is not directly part of this conference, but part of today's time will be devoted to restorative justice. There the emphasis is on holding offenders accountable in a way that is meaningful to them by allowing them to face up to their victims in a safe, community setting. Some of us have been arguing for many years for the Youth Justice approach to be tried with adults, and some have put such views into practice in different voluntary schemes. It is very pleasing that many of New Zealand's successful restorative justice writers and practitioners like Jim Consedine, Doug Mansill, Helen Bowen, Jim Boyack, Anne Hayden, Kay Whelan, Roger Kemp and others can interact today with people like Howard Zehr and others from overseas.

A few moments ago I raised the question whether punishment can be part of a restorative justice solution. Perhaps because of my background I have always believed it can, and I have never seen restorative justice as an alternative to punishment. My preference is to say that punishment should not be the overriding objective in dealing with crime, because that is to put the focus on the perpetrator to the exclusion of the victim. Most family group conference plans in the Youth Court have one or more punitive elements, such as unpaid community work, curfew (house arrest), or other loss of privileges. These elements may also serve utilitarian functions such as engendering good work habits, or keeping the young person out of trouble, but they are usually seen also as punishment. The real success of our family group conference process lies, in my view, not in pursuing a non-punitive objective but in the use of procedures that put the victim at the heart of the process and make the community a partner with the State in finding positive solutions. As Dr Nigel Biggar of Oriel College, Oxford, writes in his essay “Can we reconcile peace with justice?”

...justice is primarily not about the punishment of the perpetrator but rather about the vindication of the victim. (in *The World of Forgiveness* vol.2 No. 4, May 1999, page 27)

So it was with particular interest that I received recently a copy of Charles Barton's new book *Getting Even – Revenge as a Form of Justice* (Open Court, Chicago, 1999). The noted Australian criminologist John Braithwaite recommends the book as a serious intellectual challenge to those of us who reject the concept of revenge. Dr Barton is one of our panellists today and does not need me to speak for him, but it is interesting to me that he supports restorative justice as a means of victim empowerment. Thinking about his message I am more and more convinced that the problem is not a retributive philosophy so much as the two-party adversary system so heavily dominated by professionals (especially lawyers); this has distorted our sense of justice and forced us into the win/lose mentality that, incidentally, so often produces a lose/lose result. For lawyers, attacks on the adversary system have usually come from those

advocating the European inquisitorial system, but both of those systems are State dominated and by their very nature disempower the victim. I suggest that restorative justice, understood as a revolution in criminal procedure, can enable or lead to a victim centred experience of justice, and with it a reordering of our objectives. If we get the procedures right it seems that the rest is likely to follow.

The experiential aspect is significant. The views of those present at a restorative justice conference will often change as a result of the element of human encounter. Courts are far too adept at preventing human encounter at a meaningful level. Their ritual and drama makes good television but the players' roles are predetermined and fashioned by the professionals according to the philosophy of another age. And I am not just talking of a couple of hundred years. Riane Eisler's *The Chalice and the Blade: Our History, Our Future* (HarperCollins, San Francisco, 1987) gives one the long picture. She tells of the Minoan people who lived in peace on the island of Crete for two or three thousand years. At about 2000 BC their population was some 100,000. She describes theirs as a "partnership" culture, where men and women could be gods, leaders, guides and protectors. It was a culture amazingly rich in the arts and with an advanced standard of living. Crete was, in Homer's words, "a rich and lovely land". (Eisler, page 56). It was a place where "the economy prospered and the arts flourished". (Eisler page 31).

The author then contrasts this partnership culture with the "dominator" culture – "in which men must keep conquering – be it nature, women, or other men" (page 171). As a Christian I was fascinated to see her description of Christ as teaching and living out partnership values, as contrasted with the Christian Church which very quickly reverted to the hierarchical, patriarchal, authoritarian model that goes hand in hand with male violence in the dominator model.

Eisler does not limit herself to Minoan Crete, but goes right back to the Neolithic age and summarises the changing view of that past found in modern writers:

'The old view was that the earliest human kinship (and later economic relations) developed from men hunting and killing. The new view is that the foundations for social organisation came from mothers and children sharing. The old view was of prehistory as the story of "man the hunter-warrior". The new view is of both women and men using our unique human faculties to support and enhance life. ...

In sum, under the new view of cultural evolution, male dominance, male violence, and authoritarianism are not inevitable, eternal givens. And rather than being just a "utopian dream", a more peaceful and equalitarian world is a real possibility for our future.' (page 73)

In the context of Eisler's thesis, one can perhaps see restorative justice as inherently a democratic, partnership model and the adversary system as essentially an autocratic, dominator model, and can realise that opposition to restorative justice will come from those who are determined to retain dominator values at the core of our society.

It is very pleasing to know that in New Zealand both government and opposition parties have expressed support for restorative justice, and that the current Minister of Corrections and Minister for Courts, the Hon Matt Robson (whose speech to us tomorrow now has to be read to us by a colleague) has recently said he will be pushing for new restorative justice initiatives as part of "a new partnership, between the community and a government committed to community involvement in its own safety".

As to the relationship between central government, the community and individuals affected by conflict (including crime), I have proposed and now repeat the concept of Community Justice Centres operating throughout the country alongside the courts and providing services in both the civil and criminal areas. Ultimately they could be taken over by local body or other elected local groups but at least initially they could be established and run by or under contract to the Department for Courts.

The ideal location for such centres would be the places where you might now find a Citizens Advice Bureau, but eventually they might be purpose built so as to house the Community Justice Centre, Victim Support, Citizens Advice Bureau, local Community Constable (if the area has one), and possibly other services such as health, child care, budgeting and recreation.

In areas with a strong Maori population the Community Justice Centre could be operated by the local Iwi (tribal) Social Services, either for its members only or perhaps for the public generally. The Waipareira Trust in West Auckland is a non-tribal urban Maori organisation with a sound track record in providing social services and could well be contracted to operate a Community Justice Centre in that area. South Auckland would probably have one or more such centres run largely by Pacific Island communities.

Each Community Justice Centre would employ one or more conference co-ordinators either full time or part time, each responsible for their own "patch" and working closely with the police and community in developing preventative measures and providing good programs for those who do offend. They would also convene and facilitate restorative justice conferences where matters are referred by the police, the courts or the parties, both for adult and youth justice matters. They would monitor the outcome of conference plans, or (better still) ensure that a nominated community person does so. Conferences which reached agreement that no court proceedings were necessary (and the police would usually participate at the conference) would produce a plan for the offender and a plan for the victim.

Some State funding of programs would be essential, but the objective would be to maximise the local community's sense of ownership of and participation in this whole process. In fact the State should not have any extra spending as there would be savings in prisons and corrections budgets. All of these savings should be channelled into the community-based system for several years to ensure it is well established.

On the civil side, the Community Justice Centre would be the first port of call for those with a dispute. (For larger enterprises the local Chamber of Commerce could perform a similar role). The Centre would get the parties in and through the services of trained mediators would attempt to settle the dispute there and then, failing which ADR options would be offered to the parties. Any agreement reached at or through the services of the Community Justice Centre could be registered in the courts and enforced as a judgment of the court. Cases not resolved in this way would be referred to the present Disputes Tribunal using lay mediators in claims up to \$7,500, or to the courts.

This approach would allow for considerable community input, both paid and unpaid. Disputes to be resolved need not be limited to those involving legal rights,

but could include (by consent) school exclusions, conflicts between local government and local residents groups, arguments concerning the use of local resources, or indeed any dispute that the parties feel might be resolved in this manner. The object would be to encourage the community to take an active part in peace making and peace building in their own sphere of influence.

In short, Community Justice Centres would become the primary means of delivering justice services and resolving disputes, both civil and criminal, with a smaller lower court system in support and the upper levels of courts remaining for appeal purposes and for interpreting and developing the law. Justice services would better reflect the cultural diversity of New Zealand. The community would be much more involved in the ownership and resolution of conflict. Restorative justice processes would become the primary means of dealing with disputes and enhancing peace in the community.

Haere mae ra nga manuhiri tuaarangi e.

Ki te korero o te rangimarie.

Come forward you visitors from afar.

Come forward and speak of peace.