

Reflections for New Zealand

after UK visit (Oxford, Ditchley, London) June 2000

Judge FWM McElrea

New Zealand's Youth Justice System

1. Our legislation desperately needs a better victim focus – as per my suggestions years ago.
2. It is being run by the wrong people – there should be a separate department (i.e. not part of Care and Protection or Social Welfare).
3. A major deficit is the lack of good programmes (in the UK Youth Offender teams and Youth Offender panels will provide that but have their own problems).
4. New Zealand's Youth Justice system has been a major factor in the world restorative justice scheme – because it is main stream and does hard cases but a key factor in this is the absence of any gate keepers (Police or Judges).
5. NZ's training needs are very strong.
6. The absence of a Youth Justice Board or something similar has probably made it easier for our deficiencies to go unremedied for so long.
7. The lack of inbuilt evaluation is also a major deficit which should have been remedied long before now.
8. Lack of attendance by victims at FGC's is an appalling indictment on past and present practice. It is embarrassing to have to accept the criticism of New

Zealand's lack of victim involvement in its Youth Justice system. Australian visitors to New Zealand are very much aware of this and are properly critical of it. Since my return to New Zealand I have heard a victim support representative say that victims do not regard the Youth Justice system as restorative justice but are supporting the adult scheme because attendance by the offender is voluntary.

9. The RISE project in Australia requires at least five support persons for the offender (or perhaps it is four plus the offender) and at least one victim supporter. We seem to have no minimum requirement.

Restorative Justice generally

1. The idea of equal justice for victims has major appeal. The goal is ultimately equal resources for victims. In the pilot scheme in New Zealand we need to stress the availability of a separate plan for victims.

2. UK concerns about fairness are largely lawyer driven in my view – but the RISE results show a higher perception of fair process for the RJ system than the traditional court system!

3. As earlier noted there are no votes in penal reform – it is a moral issue. For me the corollary of this acknowledgement is that you do not design something that the media won't object to – you design something that one day will help guide public opinion.

4. It was interesting to see the repeated references to the role of respect/disrespect. Howard Zehr's paper at the Legal Research Foundation conference in New Zealand in 1995 blazed a trail in this respect. More modern references include Tyler's work on respectful policing in the USA – something that is apparently bearing good fruit.

5. RJ seems to have value in other contexts – e.g. police disciplinary procedures (in Thames Valley) and in some professional disciplinary bodies. Auckland District Law Society has a mediator working in this area. Is there any reason why it shouldn't be applied to complaints against Judges?!

6. Restorative Justice is needed vertically as well as horizontally – as was said to me in Northern Ireland in March 1999. It could well have particular application in inter-ethnic issues e.g. Police-Maori relationships and the Waitara shooting aftermath.

7. A particular insight from Roger Graef is the extract from his 31 May 2000 Radio 4 programme interview:

"Frankly, it [restorative justice] stands a better chance than pure punishment, which these kids are used to. All their lives are full of punishment. If you are Home Secretary or you are a comfortable person sitting in a good well-balanced home, you think punishments are a serious threat, but if you have been brought up being battered around when you have just opened your mouth at the wrong time, then more punishment is just normal stuff. Your cousins have been in jail, your uncles have been in jail, your father may have been in jail, it's nothing."

10. In Canada two lines in the Criminal Code have been interpreted by the Supreme Court to include restorative justice principles. I have mentioned this in my report to the Chief Judge/Principal Youth Court Judge/Chief Justice.

11. RJ can be politically popular – the example of Ronald Earle, the Texas District Attorney whom I met in Florida in November 1998, was mentioned at Ditchley as an example of somebody running successfully for office on a restorative justice programme.