

RESTORATIVE JUSTICE

David J. Carruthers
Chairman, the New Zealand Parole Board

1. GENERAL

Restorative justice in the criminal justice system is a way of responding to offending and the effects of crime that makes the people affected by the crime the focus of the process. Restorative justice seeks to repair harm caused by the offending, to appropriate responsibility for repairing the harm and to involve those who have been affected by the harm, including the community, in the resolution.

The many different types of restorative justice processes simply reflect national and cultural differences. Restorative justice is constantly changing to meet new circumstances.

International research shows that restorative justice significantly reduces imprisonment, reconviction and reoffending. Importantly, it provides significantly greater victim satisfaction. This paper in support of the workshop at the United Nations Congress on Crime Prevention in Brazil will in particular, focus on the research evidence which shows that use of restorative justice reduces the use of imprisonment and has other beneficial results. Restorative justice is significant in any discussion of prison overcrowding.

2. DEFINITION

Definitions can be problematic but broadly speaking restorative justice refers to: “*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*”.¹ The aims of restorative justice “*are to repair the damage created by criminal offending and restore the balance of relationships within society*.”² Restorative justice practices involve the devolution of some decision making power from the State to the community. It helps those caught up in criminal offending feel that their respective voices are heard and respected - something which victims of crime increasingly feel the traditional criminal justice system does not adequately allow.

Professor John Braithwaite, an eminent Australian criminologist, has said that restorative justice: “*has been the dominant model of criminal justice throughout most of human history for all the world’s people*”.

Certainly this is true of restorative justice in New Zealand. Consedine notes³ that prior to European contact, the indigenous Maori population had a well-developed system of custom and practice that ensured the stability of their societies, one which had much in common with the philosophy of restorative justice:

“Essentially the system was akin to what is now referred to as restorative justice. There were a number of important elements to this. When there was a breach, community process enabled a consideration of the interests of the whanaungatanga (social group) and ensured the integrity of the social fabric. Through whanau (family) or hapu (wider family) meetings, and on occasional iwi (tribal) meetings, the voices of all parties could be heard and decisions arrived at by consensus (kotahitanga). The aim was to restore the mana (prestige/authority) of the victim, the victim’s family and the family of the offender, and to ensure measures were taken to restore the future

1 Marshall T (1996) Restorative Justice: An Overview. London Home Office, Page 5.

2 Maxwell G (2007) “The Defining Feature of a Restorative Justice approach to Conflict,” Institute of Policy Studies Page 6.

3 Consedine, J. (1999) Restorative Justice: Healing the effects of crime, Ploughshares, Chapter 6. See also *Restorative Justice: A Māori Perspective* by the NZ Māori Council in *Restorative Justice: Contemporary Themes and Practice*, Bowen and Consedine (eds) 1999 Ploughshares.

social order of the wider community. Because these concepts were given meaning in the context of the wider group, retribution against an individual offender was not seen as the primary mechanism for achieving justice. Rather, the group was accountable for the actions of the individual (manaakitanga) and that exacted compensation on behalf of the aggrieved”.⁴

A traditional form of what we know as “reparation” (utu - balancing the scale) was muru. This involved the offending party and their kinsmen acting as a raiding party and plundering the offender and their kin of food or other resources (the scope and extent of the raid having been previously agreed upon).⁵

It is certain that to a degree these restorative roots in Maori culture influenced and expedited the adoption of restorative justice processes in contemporary youth justice and the movement towards the use of restorative justice in adult criminal justice settings in New Zealand.

3. RESTORATIVE JUSTICE IN THE YOUTH COURT

The enactment of the Children, Young Persons and Their Families Act 1989 in New Zealand introduced a philosophical sea change in the youth justice system. Prior to this legislation many youth offenders were sent to institutions or to detention centres or borstal, places where they would further develop their bad-boy/bad-girl image and learn new anti-social and criminal tricks.⁶

The existing system was seen to have failed to prevent reoffending and also failed in the manner in which it encouraged dependency on the welfare of the State. Further factors which influence calls for change were summarised by Maxwell⁷:

“Concern for children’s rights: a new approach to effective family therapy: research demonstrating the negative impact of institutionalism on children, inadequacies in the approach taken in the 1974 legislation for young offenders: the failure of the criminal justice system to take account of issues for victims: experimentation with new models of service provision and approaches to youth offending in the courts: and concerns raised by Maori about the injustices that had been involved in the removal of children from their families.”

All of these concerns led to the Children, Young Person and Their Families Act 1989 a radical piece of legislation incorporating restorative justice techniques. This pioneering legislation has been the subject of scrutiny by many other nations and adopted in whole or in part in youth justice systems around the world.

4. THE KEY PROVISIONS SUMMARISED

The procedure now followed in New Zealand for youth offenders is explained by His Honour Judge F W McElrea.⁸

“A typical restorative justice conference involves the prior admission of responsibility by the offender, the voluntary attendance of all participants, the assistance of a neutral person as facilitator, the opportunity for explanations to be given, questions answered, and apologies given, the drawing up of a plan to address the wrong done, and an agreement as to how that plan will be implemented and monitored. The court is usually but not necessarily involved.

In the youth justice sphere, about one-third of conferences are not directed by the court but are

4 Ibid at 86

5 Ibid at 87

6 Ibid at 102 - 103

7 Maxwell, G. (2007), *The Youth Justice System in New Zealand: Restorative Justice Delivered Through the Family Group Conference in Restorative Justice and Practices in New Zealand* (Institute of Policy Studies, VUW) at 46

8 Judge FWM McElrea, “*Customary values, restorative justice and the role of prosecutors: a New Zealand Perspective*” presented to the *Restorative Justice and Community Prosecution Conference, Cape Town, South Africa, 23 February 2007.*

diversionary conferences, initiated - and attended - by the police. (However, New Zealand does not subscribe to the practice in some parts of Australia, Canada and the United Kingdom of having the police run the conferences. There is always an independent facilitator in charge.) If agreement can be reached as to an outcome that does not involve the laying of charges, then no charges are laid - so long as the outcome is implemented.

The youth court nearly always accepts such plans, recognising that the scheme of the Act places the primary power of disposition with the FGC. However, in serious cases, the court can use a wide range of court-imposed sanctions, the most severe being three months residence in a social welfare institution, followed by six months supervision; or the court may convict and refer the young person to the district court for sentence under the criminal justice act 1985 (s 283(o)), which can include imprisonment for up to five years.

As with other diversion schemes, if the plan is carried out as agreed, the proceedings are usually withdrawn; if the plan breaks down, the court can impose its own sanctions. Thus the court acts as both a back stop (where FGC plans break down) and a filter (for patently unsatisfactory recommendations)."

5. RESTORATIVE JUSTICE IN THE ADULT COURT

The experiments with restorative justice for young people inevitably flowed into restorative processes being used in the adult setting.

In New Zealand, adult courts began to accept restorative justice conference recommendations. These conferences were run by community groups with support from local judiciary. A common theme in the successful adoption of restorative justice processes in New Zealand and elsewhere has been the involvement of the local community and the utilisation of groups already in existence and working to deal with problems in local communities. For the most part the necessary infrastructure existed. It simply needed to be supported by the State through the provision of necessary training and/or funding.

In New Zealand some appellate decisions affirmed the right of New Zealand courts to take into account restorative justice processes in adult criminal matters but in 2002 there was legislative recognition of restorative justice in the adult criminal system.

6. LEGISLATIVE PROVISIONS SUPPORTING RESTORATIVE JUSTICE PROCESSES

In New Zealand, a number of legislative reforms were passed into law in 2002 which supported and recognised restorative practices. In summary, the Sentencing Act 2002 requires that when sentencing an offender, the court "must take into account any outcomes of restorative justice processes" and included provisions facilitating restorative justice conferences as part of the sentencing process; the Victim Rights Act 2002, which also supported such conferences or meetings as a victim's right; the Parole Act 2002, which required a Parole Board to "give due weight" to any restorative justice outcomes when considering the release of prisoners on parole; and, later, the Corrections Act 2004, which required the prison system to provide prisoners "with access to any process designed to promote restorative justice between offenders and victims" where appropriate. These legislative provisions can be accessed at WWW.LEGISLATION.GOV.NZ.

7. RESTORATIVE JUSTICE PRACTICES IN ADULT COURT

In adult criminal justice systems, restorative justice can occur:

- (a) as part of police adult diversion process;
- (b) pre-sentence (after a guilty plea but before sentencing); and
- (c) post-sentence (in the parole of offenders and as part of re-integration back into the community).

(a) POLICE DIVERSION

For many years, the police in New Zealand have utilised a “diversion” scheme whereby an adult offender who accepts responsibility for offending, is not prosecuted through the court but makes amends for the wrong by performing some kind of community work, paying reparation where appropriate and apologising to the victim. This saves considerable judicial time and the offender avoids the consequences of a conviction.⁹

The police have recently started considering referrals to a restorative justice process for certain offenders who receive diversion. In such cases, the agreed means of making amends, will in large part, stem from the restorative justice meeting, rather than simply being directed by the diversion officer. Restorative justice used in this way, provides a more meaningful intervention for an offender with better prospects for rehabilitation.

(b) RESTORATIVE JUSTICE CONFERENCING IN THE ADULT COURT

Once charges have been laid in court, there are some restorative justice processes which run alongside the court process. The Sentencing Act supports restorative justice and allows the engagement in a restorative justice process to occur prior to sentencing so that the outcome of that can then be taken into account by the sentencing judge. There is no definition of restorative justice in the Act, so a variety of restorative justice processes can be used, but the most common process is the restorative justice conference, which is akin to the FGC in the youth court.

The general process for restorative justice conferencing in New Zealand is outlined below:¹⁰

(b)(i) BEFORE A CONFERENCE

Restorative justice facilitators meet separately with the offender, the victim and their support people, to assess whether a restorative justice conference would be helpful.

If the offender does not take responsibility, is aggressive, or cannot participate fully because of ill health or a disability the process will not proceed.

If the victim and offender agree to meet and there is likely to be a positive outcome, the facilitators arrange a conference.

Sometimes the conference will involve members of a community panel as well as, or instead of, a direct victim.

(b)(ii) AT A CONFERENCE

A restorative justice conference is a relatively informal meeting between the offender and the people affected. They are there to talk honestly about what happened, what harm has been caused, and to work out ways forward. Conferences are private meetings. However, a report is prepared for the court. How participants agree to move forward is for them to decide. Some conferences result in an agreement on a plan of action that the offender will do to put things right, but this is not the outcome at every conference.

The facilitators make sure that everyone is safe and supported, and that all participants have their say without interruption.

9 More info on the adult scheme is available at <http://www.police.govt.nz/service/diversion/policy.html>

10 <http://www.justice.govt.nz/publications/global-publications/r/restorative-justice-english-courts-118/publication#20>

Most conferences will agree on things the offender can do to begin to put right the harm caused by the offence.

A report of the meeting and any agreements will go to the judge if the meeting happens before sentencing.

(b)(iii) AFTER A CONFERENCE

The facilitators write a report about what happened at the conference and any agreements reached. Copies are given to the victim, offender, and any others involved in the case, such as the police prosecutors, victim advisers, probation officers and lawyers.

The purpose of the restorative justice report is to clearly set out agreements, as information for a judge. They are not used to make sentencing recommendations to the court.

If the offender is still waiting to be sentenced the restorative justice report is given to the sentencing judge.

The sentencing act 2002 requires the outcome of restorative justice processes to be taken into account by judges when sentencing. The judge also considers any other reports such as a pre-sentence report about the offender written by the probation service or a victim impact statement.

The judge chooses whether or not to make all, or some, of any restorative justice agreement part of the sentence.

The judge must, by law, consider what victims think, but also has to think about other information and laws when deciding on the sentence.

Conferencing has been piloted in four district courts in New Zealand as a court referred restorative justice project since 2001.¹¹ An evaluation of the pilot¹² found that there were high levels of satisfaction amongst participating victims and offenders. The evaluation also showed a reduction in the re-conviction rate of offenders, fewer and/or shorter sentences of imprisonment imposed on participating offenders and more use made of home detention.

(c) MATARIKI COURT

Judges continue to support and adopt new initiatives for adults which draw on the philosophy underlying restorative justice. A good example is a special court being set up in the northern most region of New Zealand to deal with the sentencing of indigenous Maori people. It is essentially a restorative justice conference which incorporates Maori tikanga (custom), but takes place in a special court room with a judge as facilitator.

The process, though different from conventional sentencing hearings, will not be alien because of its connection with modern concepts of restorative justice, therapeutic justice, and sentence monitoring. The process is similar to that used in the Koori Court of Victoria,¹³ Australia, the Murri Court of Queensland,¹⁴ the Sentencing Circles of New South Wales,¹⁵ and the Gladue Court of Toronto,¹⁶ Canada, but will be a distinctly New Zealand model.

The Matariki Court will sit in a standard courtroom around an elliptical table. A judge (expected

11 <http://www.justice.govt.nz/publications/global-publications/i/information-about-the-court-referred-restorative-justice-pilot/publication>

12 <http://www.justice.govt.nz/publications/global-publications/n/new-zealand-court-referred-restorative-justice-pilot-evaluation-may-2005/publication>

to be a Maori judge in the pilot) will preside. At the hearing, the prosecutor will outline the offence, defence counsel will make a submission, a probation officer will speak and the views of whanau (family) and other representatives will be sought. Two kaumatua (elders) of the defendant's iwi will then participate in a judge-led discussion which may include interaction with the defendant, to arrive at a suitable sentence.

This special court sitting draws on other recently adopted initiatives in the youth court, which involves a youth court judge sitting at the local marae (meeting house) to monitor the compliance of Maori youth offenders with the outcomes of their FGC.

(d) RESTORATIVE JUSTICE POST SENTENCING

A more recent development in the general field of restorative justice has been its use post-sentence as part of the parole system for prisoners.

It is important first to give those initiatives some context.

The primary purpose of parole is to manage the safe release of prisoners from prison back into the community. The international research shows that sensible parole decisions based on the best research, can be three to four times more successful in preventing re-offending than automatic release at the end of a fixed sentence. The Canadians claim six or seven times more success, but their extraordinary use of halfway houses is part of the explanation for this. In New Zealand, the statistics are elusive as it is hard to get a control group! It is thought that parole in New Zealand achieves similar results to those revealed by the international research.

This makes sense because one would expect that those who are helped to get work, to have an income, to have a good place to live, and to have pro-social people surrounding them, are going to do better than people who are simply released from prison without any support.

There are other beneficial purposes of a good parole system. Very briefly, they are to encourage good conduct in prison and to provide an incentive to undertake tough rehabilitative programmes, which have been shown to be effective in reducing re-offending, and to save public money (it now costs approximately NZ\$95,000 a year to keep a prisoner in prison in New Zealand).

Finally, in New Zealand at least, managed parole which realises the benefits referred to above, can have positive impacts on the disgraceful statistics which show that 51% of the adult male prison population are Maori when only 15% of the entire New Zealand population identify as Maori. Worse still, the prognosis for children of prisoners is well known; the research shows that they are nearly seven times more likely to become prisoners themselves. If something can be done about ameliorating that problem, then it is another significant step towards a peaceful and crime free society.

13 Koori Courts were created in order to allow participation of the Aboriginal community and culture in the legal system, in an attempt to bridge the cultural differences between Indigenous Australians and the imposed colonial law.

14 The Murri Court sentences Aboriginal and Torres Strait Islander offenders who plead guilty to an offence which falls within the jurisdiction of the Magistrates Court. Murri Court provides a forum where Elders, Respected Persons, Community Justice Groups and the offender's family can be involved in the sentencing process. Murri Court proceedings are less formal than those in conventional Magistrates or Children's Courts. The Magistrate, Elders and other participants may sit at a table close to the defendant, rather than on a raised bench.

15 See Criminal Procedure Amendment (Circle Sentencing Program) Regulation 2005. It directly involves local Aboriginal people in the process of sentencing offenders, with the key aims of making it a meaningful experience for the offender and improving the Aboriginal community's confidence in the criminal justice system.

16 The Toronto Gladue (Aboriginal Persons) Court is a specialist court of the Ontario Court of Justice, the criminal jurisdiction of which is remarkably similar to that of the New Zealand District Court. For more detail see http://www.aboriginallegal.ca/docs/apc_factsheet.htm

New Zealand has had its own successes with restorative justice post sentencing. There is a vigorous restorative justice programme being run in parts of the country by the Prison Fellowship, although it is not yet systemic. There are many good examples of such interventions.

A young woman who, as a child, had watched her mother being murdered by her then partner, sought a restorative justice conference with the murderer who was still in prison. It was a tough conference because she was a very staunch and courageous woman and had lots of questions which the court process had left unresolved. She got the answers she needed. The victim says she is not now concerned about the prospect of the offender being released. It is not always about forgiveness, which sometimes happens. It is about meeting victim's needs.

These things do not happen unless there is genuineness and honesty. Everyone in this meeting was alert to that. The result is that the tragedy will remain a tragedy and the loss will remain a loss. But it means that fear of reprisals is put to one side and if these people ever meet again in a small country like New Zealand, they will meet without embarrassment and with dignity. Family and friends and others who might otherwise live in fear, can also be freed to get on with their lives. These opportunities, are being missed because restorative justice is not yet systematically available.

There are other opportunities arising from general restorative practices post sentence. The faith-based communities in Canada developed the concept of "circles of support" for indefinitely detained prisoners; - often child sex offenders who are notoriously difficult to support back into the community. This way of working - constructing artificial support where no natural support now exists - is well known in "therapeutic communities" and it is to be found now widely in the United Kingdom and elsewhere. New Zealand is just starting to develop its own version of circles of support within its own cultural context.

Under the Parole Act, the Parole Board is obliged to "give due weight to" the outcome of any restorative justice conference or process. The outcome is not definitive, nor should it ever be. What this way of working does achieve, however, are better outcomes for victims. All the international research supports that. The present court system leaves many of the questions a victim wants to ask outstanding and leaves many issues unresolved.

Under the restorative justice model the focus is on the harm caused by the offences - harm to victims, communities and offenders. The aim of the process is to repair that harm. To facilitate the same, the focus shifts away from the state and the courts towards the victims, the offender and their families and communities. A healing process is sought for both victims and offenders.

There is now an agreement with the Department of Corrections, which manages prisons in New Zealand, to fund any restorative justice conference which the Parole Board recommends. A process is being developed to ensure that opportunities are not missed because it is easy for these conferences to be undermined by those who have no concept of how it might work and who have no confidence in its efficacy.

Referrals come from the Parole Board but they can also be instigated by victims, offenders, case officers, probation officers, social workers, prison chaplains, prison fellowship and other organisations and people. It is not uncommon for prisoners to express their remorse and sorrow and ask if they could meet with the victims' families in a conference. It is not uncommon for victims to seek the same.

This is highly professional work and no place for well meaning but untrained enthusiasts. The role of the trained professionals to whom these matters are referred is first to meet with the prisoner to determine suitability and agreement to attend such a conference. If the prisoner is thought to be sensible then contact is made with the victim to determine whether they are suitable and will agree to attend a conference? If they are, then the arrangements move onto contact with support persons,

preparing everyone for the conference, arranging a date and eventually running the conference. A report is then prepared on the agreed outcomes. It is a professional process requiring considerable skills.¹⁷

It must be acknowledged that not all cases will be suitable for a post-sentence conference. If an offender continues to deny involvement or blame others, a conference is not appropriate. It will not be helpful if offenders have untreated mental health problems which prevent them taking part in any rational discussion. It will not be appropriate or helpful if victims are so angry, bitter and intransigent that they are not able to take part in any exchange. They have to be ready to participate. It may take time but often people come to a point where they wish to get other answers about something which remains a tragedy and continues to blight their lives.

The New Zealand experience is that, when successful, a restorative justice conference has produced, if not forgiveness, an understanding and ability for both victim and offender to move on and allow others to do the same. When this happens, it is truly impressive and often very humbling. It makes the board's decision making much easier although that is of course a secondary function.

8. SUMMARY

The differences between youth justice and adult justice in delivery of restorative justice processes present two potential models for reform. But perhaps the most substantial difference is that the FGC is mandatory in New Zealand for virtually all youth offenders, while uptake in the adult setting is much more sporadic, depending as it does on the agreement of all involved for it to occur. It may be that in the future, restorative justice conferences should become mandatory for adult offenders unless there are strong and good grounds not to do so.

In New Zealand most restorative justice has taken the form of family group conferences for young persons and community panels for police diversion. In other countries circle of sentence, which originated in Canada, has been the primary restorative justice process but restorative justice has also taken other forms. Those forms include offender-victim mediation¹⁸ and restorative reintegration techniques such as the circles of support and similar reintegration initiatives involving the community, victims, and concerned others.

9. RESTORATIVE JUSTICE IN EDUCATION

There are clear similarities between the ways society has historically sought to regulate behaviour in the wider community and in the school community. For many years, school disciplinary procedures were similar to the procedure traditionally followed by courts, both in the way responsibility was established and in the way consequences were visited upon those found guilty.

Perhaps the most fundamental similarity has been the belief that a tariff based deterrent sentence has been thought necessary to deter future offending by the culprit and others in the respective communities. Meting out negative consequences following undesirable conduct has been the primary approach - as a way to deter future similar conduct.

The focus in both arenas has therefore traditionally been on finding a suitable punishment for the offender. Little focus has been given to the cause of the offending. Neither the procedures in the wider community nor school communities are particularly suitable for identifying and addressing the causes. Little if any focus has been on teaching new positive behaviours.

If success is measured as preventing further offending by the present offender and others in society, both systems have traditionally been found lacking. It must be recognised that after the punishment

17 For a clear statement of the principles to be considered see: United Nations (1999) Declaration of Basic Principles on the use of the Restorative Justice Programmes in Criminal Matters: General Assembly Vienna : United Nations

18 See e.g. Umbreit, "Victim meets Offender' the impact of restorative justice and mediation. "Willowtree Press Inc. New York 1994

has been exacted, the offender will almost always return to life in their respective community. In what condition do we want that person to return? In the school setting, the final consequences (suspensions and exclusions) prevent the offender receiving one of the most fundamental tools for building their future, an education. Involvement in education is crime prevention at its best.

Finally, both systems have tended to neglect the victims of the offending in addressing the harm caused to them and giving them a voice in determining the way in which the wrong committed against them can be righted.

The perceived shortcomings outlined above have all influenced the adoption of restorative justice practices in New Zealand's criminal court systems. Since the same shortcomings can be identified in the education setting, and since both are in the business of what Margaret Thorsborne and David Vinegrad call "behaviour management",¹⁹ it was inevitable that restorative justice practices be extended into the school setting.

10. THE NEW ZEALAND EXPERIENCE OF RESTORATIVE JUSTICE IN SCHOOLS

Restorative justice conferencing was formally introduced into schools in New Zealand in the late 1990's as part of a Ministry of Education initiative called the suspension reduction initiative. (There had been many such private initiatives). A group from Waikato University was contracted to provide restorative justice conferencing into five schools initially; with 24 schools subsequently sending their staff for training. The group drew on the FGC concept. Suspension in those schools went down.²⁰

In 2005 Sean Buckley and Dr Gabrielle Maxwell conducted an examination of the experiences of 15 schools in New Zealand who were utilising restorative practices.²¹ they reported that there were five common restorative practice methods being employed:

"the restorative chat is a one on one private conversation between staff and student where an issue is discussed using a series of questions based on a restorative approach that aims to explore the events, their consequences and how any harm can be repaired (that is, 'what happened?', 'what were you thinking at the time?', 'who do you think has been affected?', 'how could you have acted differently?' and 'what do you need to make things right?')

The restorative classroom is an open dialogue held within the classroom to discuss specific conflicts as they arise and how members of the class should approach potential conflict situations before they happen. Often, a class will write down its agreed set of guiding principles and display these within the classroom. At any stage, the class can revisit these principles and make changes.

The restorative thinking room is a room specifically set aside for students who have become involved in a conflict situation and who may need time away from peers to regain their composure. Time is spent in the restorative thinking room working through several restorative questions with a staff member and discussing the conflict and how to repair any harm caused.

A restorative mini conference is held for more serious conflict situations. It includes the victim, the offender, a staff member and perhaps one other individual. The number of those in attendance is limited in order to make it easier for the conference to be quickly arranged and held.

The full restorative conference is loosely based on the youth justice family group conference. It

19 *Restorative Justice Practices in Schools: Rethinking Behaviour Management*, Margaret Thorsborne and David Vinegrad, 2002, at 7

20 Wendy Drewery, *Restorative Practices in Schools: Far-Reaching Implications*, Chapter 10 in *Restorative Justice and Practices in New Zealand* (Institute of Policy Studies, VUW)

21 *Respectful Schools: Restorative Practices in Education. A Summary Report*. Wellington: Office of the Children's Commissioner and The Institute of Policy Studies, School of Government, Victoria University.

may take several days or weeks to organise, because participants are likely to include, though are not limited to, victims, offenders, staff, family/whanau, officials, and other support personnel. Conferences are used for the most serious of conflict issues and can take several hours”.²²

Buckley notes that much like the adult criminal justice system, some of the schools have been unable to secure the funding required to move to a fully restorative practice, so “*have been forced to operate between management paradigms, either reverting to one based on exclusionary processes or mixing this with a restorative process when only limited support exists for restorative options*”.

That has also been the experience in the adult court system, and it should not be seen as a disadvantage. A brief outline of how restorative justice is used in the New Zealand court system illustrates the different ways restorative justice can and is being used in the school setting while co-existing with the existing exclusionary processes:

“As a diversionary procedure a restorative justice conference is convened in suitable cases prior and as an alternative to a formal disciplinary investigation being launched. In the criminal system police are utilising restorative justice conferences to develop a plan for ‘righting the wrong’ as part of their adult diversion schemes. In the education setting a restorative justice conference is convened to develop a similar plan, the successful completion of which would mean that disciplinary procedures need not be invoked.

*As a procedure to be used to determine a suitable sentence/punishment/plan (or to present such exclusion). In the youth court there is a separation to be found between (a) adjudication upon liability, i.e. Deciding whether a disputed charge is proved, and (b) the disposition of admitted or proved offences. The adversary system is retained for the former, while a FGC, a key restorative practice, is utilised for the latter. Something similar is already used in schools. The school could, if it wishes, conduct its usual investigations in order to be satisfied that the conduct occurred. The next step, (as in the youth court) would be to have a restorative justice conference to which decision making power in respect of disposition can be devolved. The school board could meet periodically to supervise compliance with the plan developed at the conference, as the youth court does.”*²³

The vision for restorative justice in schools envisages a fully restorative approach (whole of culture) to the way the school orders itself in all its relationships and every aspect of its functioning; a fully restorative therapeutic learning community.

Already some schools around the world have achieved this final form. For others it will be a step too far and smaller steps need to be taken before pursuing wholesale change.

One thing is certain. The experience of the criminal justice system in New Zealand has given birth to a new approach to the management of relationship problems in many New Zealand schools. Other countries have had similar successful experiences. Both justice and education have, in this area, much to learn from each other about a process which will always be dynamic and challenging.

11. CONSEQUENCES OF RESTORATIVE JUSTICE - REDUCTION IN USE OF PRISON AND REOFFENDING

There have now been a number of studies looking at the effects of restorative justice in its very many guises on reoffending and re-imprisonment.

22 Taken from Restorative Practices in Education: The Experiences of a Group of New Zealand Schools by Sean Buckley, chapter 11 in *Restorative Justice and Practices in New Zealand* (Institute of Policy Studies, VUW)

23 *Restorative Justice Practices in Schools: Rethinking Behaviour Management*, Margaret Thorsborne and David Vinegrad, 2002, at 7

The New Zealand court referred restorative justice pilot was evaluated in terms of reoffending over a two-year follow up period. The report can be found at <http://www.justice.govt.nz/publications/global-publications/e/evaluation-of-the-court-referred-restorative-justice-pilot-case-studies/publication>. It showed a reduction in re-imprisonment rates, a reduction in reconviction rates and significant benefits to victims.

A review of restorative justice conferencing on reoffending by Dr Heather Strang and Professor Lawrence Sherman conducted under the auspices of the Jerry Lee Centre of Criminology in Pennsylvania but concentrating on the United Kingdom position, showed a significant reduction in reoffending. A summary of the findings of that research project showed a 27% reduction in crime.

Interestingly enough, that research also showed that restorative justice conferencing worked best for the most frequent offender, worked best for violent offences rather than property offences, was more effective for serious offending and was wasted on minor offences.

Yet another important finding from that research was the beneficial effect on victims which showed a dramatic decrease in post-traumatic stress symptoms and consequently a significant effect on the health budget - an aspect of restorative justice which has hitherto been neglected.

These research evaluations have been replicated in the Australia Rise Evaluation, a long-term project conducted in Canberra, Australia,²⁴ in the Indianapolis Juvenile Property/Violence Study in the United States and in the studies in Northumbria, London and the Thames Valley in the United Kingdom.

Additional support, if it is needed, can be obtained from a 2008 study conducted by the Sheffield University - Centre for Criminological Research. Their website is <http://www.shef.ac.uk/law/research/ccr/>.

12. CONCLUSION

Victims of crime and offenders are disenchanted with the criminal justice system. Last year the Chief Justice of New Zealand delivered a speech which received widespread coverage in the media. In it, she suggested that the traditional criminal court process should not overly accommodate victims, focusing instead on the dispassionate and fair delivery of justice.

Against this view, Professor Howard Zehr²⁵ has recently advocated restorative justice processes as providing a mechanism through which victims rights may receive greater recognition. Incorporating restorative justice as a mandatory practice at all court events would also go some way to lowering our imprisonment rate and reducing re-conviction rates. It clearly has positive effects for victims, helping them understand the offending and to move on with their lives.

Restorative justice conferences can also be a better place than courtrooms for identifying and addressing the underlying causes of crime. Restorative justice conferences can bring an offender into contact with the necessary state agency into to provide the services an offender needs if they are to turn away from crime and/or drug dependency.

This is not to say that there should be no punishment for criminal offending. The worst and most dangerous offenders are likely to require incarceration in some form. However, there is support in New Zealand to tilt further still in favour of a restorative approach to criminal justice in the adult courts.

24 See <http://www.aic.gov.au/rjustice/rise/>

25 Author of the seminal book on restorative justice (1990) *Change Lenses: A new Focus for Crime and Justice* : Herald Press.

The advantages of restorative justice processes are first and foremost in bringing home to the offender the consequences of his wrongdoing and making him accountable. They also meet the needs of victims so that they are victims no longer. They also have to do with preventing reprisals and revenge.

Restorative Justice can restore some peace to communities after terrible things have happened. It can also have other consequences in the reduction of imprisonment, preventing re-offending and better outcomes for victims.