



The Governor-General of New Zealand

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Speech

Annual Robson Lecture and Presentation of Pilot City Awards

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May I begin by greeting everyone in the languages of the realm of New Zealand - English, Maori, Cook Island Maori, Niuean, Tokelauan and New Zealand Sign Language. Greetings, Kia Ora, Kia Orana, Fakalofa Lahi Atu, Taloha Ni and as it is the afternoon (Sign)

May I specifically greet you: Tania Wright, Napier City Councillor; Heitia Hiha, Kaumatua, Pat McGill and Roger McNeil, Facilitator and Trustee respectively of the Napier Pilot City Trust; Award recipients; Distinguished Guests otherwise; Ladies and Gentlemen.

Thank you for inviting my wife, Susan, and I to be here, and for me to give the Annual Robson Lecture and present the Annual Pilot City Awards.

I would like to take this opportunity to comment on the contribution of Dr John Robson to New Zealand's justice system and also, specifically, the work that he and others undertook, that resulted in the abolition of the death penalty in New Zealand. The reforms that Dr Robson ushered in, also led to later changes, particularly in relation to parole reform and the adoption of restorative justice notions.

I should state at the onset, that it is an honour to give this lecture, which has previously been given by many esteemed New Zealanders. Those who have spoken at these gatherings include my predecessor Sir Paul Reeves, Chief Justice, Dame Sian Elias, former Minister of Justice, Sir Douglas Graham and Dr John Harre, the first Principal of what is now the Eastern Institute of Technology, to name but a few.

I speak today in my capacity as Governor-General but also as one whose professional work has steeped me in our country's justice system since I enrolled as a law student just over 40 years ago and a law clerk in the Crown Solicitor's Office just under 40 years ago. Since then I have seen that system from many angles. I worked as a qualified lawyer for 12 years—as a prosecutor and defence counsel—followed by 13 years as a Judge with a criminal jury trial warrant. I spent time as a Prison Board Chairman, Parole Board Member and a number of years as a working member of the Government's Criminal Law Reform committee. In the ten years I spent as an Ombudsman, I was involved in dealing with complaints made by people against government organisations, including those remanded and sentenced in our prisons.

As Governor-General today, I sit at the titular summit of the system where, on the advice of ministers, I sign laws into effect and respond to pleas for the royal prerogative of mercy. From differing perspectives, I have chosen to be Patron of the New Zealand Prisoner's Aid and Rehabilitation Society and as well the Recruit Wing 247 from the Royal New Zealand Police College.

The Robson Lecture is named after an esteemed public servant and academic, Dr John Robson. I met Dr Robson once, early in my career as a lawyer in circumstances that were highly forgettable in his life. From a personal perspective, I join those who salute his contribution with gratitude. Were it not for his work, and that of Hon Ralph Hanan, in having Parliament pass the Parliamentary Commissioner (Ombudsman) Act 1962, my later career as a serving Ombudsman might never have occurred! New Zealand was the first English speaking, non-Scandinavian country to adopt the notion which is now in more than 120 countries.

Dr Robson's stewardship of the Ombudsman concept in its infancy, and the inspired recommendation of Sir Guy Powles as our country's first Ombudsman, saw the role flourish to the point that has become an established part of New Zealand's constitutional framework. Dr Robson not only made a significant contribution to law reform and the administration of justice in New Zealand, but he then went on to research into its application as the first Director of the Institute of Criminology at Victoria University. I have, for a long time, been an admirer of a phrase attributed to Dr Robson that he was one who said, *"the best attitude to adopt was one of restless dissatisfaction with the present situation."*

The Robson Lecture marks the formal abolition of the death penalty in New Zealand, 46 years ago in 1962. From 1842 to 1957, there were 83 executions for murder and one for treason. The death penalty for treason was removed from our statute book in 1989.

As many will know, the road leading to that decision was fraught. All death sentences were commuted in 1935 before the penalty was completely abolished in 1941. A change of government in 1950 saw the penalty restored with a further change of making it inoperative again in 1957.

The issue came to a head with the debate in 1961 on what was to become the Crimes Act of that year. The Bill that Hon Ralph Hanan, as the Minister of Justice in the new Government, and Dr Robson, as Secretary for Justice, placed before Parliament, proposed reinstatement of

the death penalty, despite their own personal misgivings.

The Government decided that the vote would be a conscience issue and, despite accepting the responsibility for introducing the Bill, Ralph Hanan urged others to campaign against it. I am sure there were many members of the Cabinet and his party who may have taken umbrage at his stand, although they could not have questioned his principles.

In the end, the death penalty was abolished for all but treason when 10 members of the Government voted with the Opposition. What is probably not so widely remembered now is that one of those Government rebels was the late Sir Robert Muldoon, then the relatively newly elected Member of Parliament for Tamaki.

I have no hesitation in stating my own objection to the death penalty. Academic research shows that its use is often arbitrary and capricious, its deterrent value is highly questionable and that people from minorities often bear a disproportionate proportion of sentences.

As a system created and operated by fallible human beings, there is no guarantee that innocent people will not be executed. As the Supreme Court of Canada unanimously said in 2001:

"Legal systems have to live with the possibility of error. The unique feature of capital punishment is that it puts beyond recall the possibility of correction. In recent years, aided by the advances in the forensic sciences, including DNA testing, the courts and governments in this country and elsewhere have come to acknowledge a number of instances of wrongful convictions for murder despite all of the careful safeguards put in place for the protection of the innocent."

I know, however, that such rational and principled language is sometimes hard to swallow when we recoil at the tragic loss of life when someone is murdered. Even more so when it is a husband, wife, partner, child, relative or friend who has been the victim. Understandably, grief and anger often go hand in hand. At such times there is often a call to reinstate the death penalty. But when passions cool, there comes recognition that justice based on passion is no justice at all, but rather vengeance.

While Dr Robson played a key role in the abolition of the death penalty, he also instigated a number of other reforms to New Zealand's justice system, particularly around innovative sentencing options. While Dr Robson died in 1993, I believe the spirit of his work lives on in one feature of New Zealand's justice system for which it has earned international respect, namely, the development of restorative justice initiatives.

As a lawyer working in the 1970s I saw, first hand, how less than adequately the needs of many New Zealanders were sometimes handled by the court system.

Since then, there have been a number of signposts have marked features in the restorative landscape. I think of our country's Waitangi Tribunal legislation, of Ombudsman methodology our freedom of information legislation and the development of the Youth Court of the late 1980s and installation of Family Group Conferences.

Restorative justice was seen, initially, as too radical to be workable in the traditional adversarial system underpinning the criminal courts. A particular signpost for restorative justice in the courts was a crucial paper delivered by my judicial colleague Judge Fred McElrea at a Judge's Conference in 1994, where he proposed introducing restorative justice to adults, rather than in youth situations alone.

That Conference can be said to have marked the beginning of increased official interest in restorative justice. I am advised that there has been since then a series of action at Government level to explore the principles and how best to apply them in a New Zealand context.

Simultaneously, the matter progressed informally through the District Courts, with a pilot project being established by the then Department of Courts in four courts in 2001.

However, it was not until the following year when Parliament passed the Sentencing Act 2002 that saw restorative justice provisions enshrined in law for adult offenders. It was a watershed and, I believe, a positive development for all New Zealanders.

One of the greatest strengths of restorative justice is that it can accommodate a broad range of diversity. It is not aligned to one particular culture, at the exclusion of others. It is flexible enough to allow for alternative meeting places, particular protocols and other religious requirements, where appropriate. Perhaps this is where New Zealand will most benefit from restorative justice. In an increasingly diverse country, it becomes important to avoid 'one-size-fits-all' solutions.

Recognising this diversity is all the more important when we are dealing with human conflict, as with matters of offending. Restorative justice seeks to take into consideration the particular circumstances of each case and places people at the centre of the process. It increases the offender's involvement in dealing with their offending, and it gives the victim and the victim's family a real possibility of reconciliation and healing.

In doing so, it aims to find a just resolution to the crime that benefits all parties. In this way, it very positively augments our existing justice system, without compromising its basic principles of fairness and responsibility.

In light of the progress of restorative justice, through formal and less formal channels, a great deal of thought on the subject has emerged. Much of this has come about in a manner consistent with the principles of restorative justice. Simply put, many parts of New Zealand society have had the opportunity to be part of the thinking.

Being "part of the thinking" is what I urge all New Zealanders to do in discussing crime and justice issues. And it is the "thinking" that I wish to emphasise. As initiatives such as restorative justice show, resolving the perplexing issues surrounding crime, justice and punishment will require a complex array of solutions. There is no simple solution or magic lozenge. Restorative justice is just one way of dealing with the outcomes of crime. For society to make clear its abhorrence of serious crimes, and to protect the public from habitual and dangerous offenders, imprisonment will always need to be an option.

But as everyone acknowledges, we also need to work to understand and tackle the causes of crime so as to reduce our rates of imprisonment. The Napier City Pilot Trust is to be congratulated for its work in the Hawke's Bay community to reduce offending, violence and crime. Crime not only affects individuals, it also affects communities and as initiatives such as neighbourhood support programmes show, community action can play an important role. The Robson Collection at the Napier Public Library, a commendable initiative between the Trust and the Napier City Council, is another way of stimulating research and discussion around crime and justice issues.

In conclusion, issues surrounding crime, justice and punishment are complex and for which there is no simple answer, as the debate surrounding the abolition of the death penalty amply illustrates. As one who has been connected with the law and justice for all of my working life, I have seen the system and the issues it creates from many perspectives. My connection with the justice system has reinforced to me how perplexing the issues are and how the solutions to crime and justice will never be simple. Sir Winston Churchill once famously said and it remains, nearly eighty years after he said it, a good litmus test:

"The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country. A calm dispassionate recognition of the rights of the accused and even of the convicted criminal against the State; a constant heart searching by all charged with the duty of punishment; a desire and an eagerness to rehabilitate in the world of industry, those who have paid their due in the hard coinage of punishment; tireless efforts towards the discovery of curative and regenerative processes; unfailing faith that there is a treasure, if only you can find it in the heart of every man; these are the symbols which in the treatment of crime and criminal mark and measure the stored up strength of a nation and are sign and proof of the living virtue in it".

And on that note, I will close in Maori, by offering greetings and wishing you good health and fortitude in your endeavours. No reira, tena koutou, tena koutou, kia ora, kia kaha, tena koutou katoa.

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