



Précis Paper

Law, Order and Punishment in Rural, Regional and Minority Communities

A discussion about access to justice and issues of law, order and punishment in rural and regional minority communities in New Zealand, Australia and Canada.

Discussion Includes

- Access to legal counsel
- Police intervention
- Availability of services
- Availability of sentencing options
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Law, Order and Punishment in Rural, Regional and Minority Communities

In this edition of BenchTV, Dr Guy Charlton (Lecturer, University of New England Faculty of Humanities, Armidale), Kyle Mulrooney (Lecturer, University of New England Faculty of Humanities, Armidale) and Kingi Snelgar (Barrister, Manuka Chambers, Auckland) discuss access to justice and issues of law, order and punishment in rural and regional minority communities in New Zealand, Australia and Canada.

Access to legal counsel

1. One of the primary issues faced by persons in rural communities is access to appropriate legal counsel which is foundational for access to justice.
2. In rural, regional and remote areas there is a smaller pool of lawyers and often lawyers who do not have the adequate particular expertise for an individual's case.
3. Lack of legal representation in rural areas has also created an impetus to plead guilty, which is seen to be 'taking the easy way out.'
4. Lawyers in rural areas are also overworked and the legal aid system in New Zealand means that they are often not properly compensated for their time.

Police intervention

5. Another issue in relation to rural and minority communities is that it seems that a lot of interaction with the police leads to criminalisation of conduct with police intervention leading to interactions with the criminal justice system which can be avoided by better use of police discretion.
6. The way that the police and the prosecution exercise their discretion has the power to keep people out of court. Statistically, the length of time that somebody might go into the court system for something minor such as a driving offence, can take months or even up to a year before their case may be resolved.

Availability of services

7. In Australia and in particular, NSW and Victoria, for the last several decades, the number of courts and areas of justice that have been shut down and congregated in metropolitan areas has made people's physical access to justice difficult and few and far between.

8. When thinking of things that compound with crime and criminality such as alcohol and drug use, availability to access types of assistance services outside for these issues are generally not readily available in these remote and rural areas.
9. Nevertheless, covid-19 has changed this somewhat and many public health services have had to rapidly uptake in rural communities.
10. Alternatives to justice rely so much on extraneous services, not just criminal justice services but the third-party health-based services that are absent in rural and remote areas.
11. In Australia, aboriginal peoples are higher in number in rural and regional areas and yet these culturally appropriate and sensitive services are absent.

Availability of sentencing options

12. Another issue in rural and regional areas is the availability of sentencing options in rural spaces. This often means the choice between a slap on the wrist or imprisonment and the responses in-between which are important in responding to the majority of crime are absent.
13. Studies have shown that the rates of recidivism are reduced when indigenous people remain in their communities.
14. Sentencing principles, especially in Canada explicitly command the judge or guide the judge around aboriginal people especially and in Canada the judge must take into account colonisation and its subsequent implications.

Indigenous peoples and the justice system

15. In New Zealand it costs about \$100,000 per year to house somebody in prison. The Maori make up over half of the prison population.
16. Further, in New Zealand, there has been increased mass incarceration over the past few years however no correlation to increased crime rates to justify it.
17. The shared commonality around overrepresentation in Australia, Canada and New Zealand is that aboriginal peoples and indigenous peoples are some of the most imprisoned peoples in the world.
18. In Canada, by 2020, about 5% of the total population and a third of the prison population were indigenous peoples. This statistic is represented in other 'like' jurisdictions such as Australia, New Zealand and the US. This is quite telling about the sociological foundations of crime and victimisation.
19. New Zealand has one of the highest rates of incarceration in the world. Canada is quite low and is about 110/100,000, Australia is up in the 180s/100,000 and New Zealand is in the 200s/100,000. The US is extremely high and sits in the high 600s/100,000 people.

The sentencing process in New Zealand and Australia

20. Part of the New Zealand sentencing process allows for cultural reports which have resulted in lower sentences for Maori and the Pacific cultures. These cultural reports acknowledge some of the facts between the background of the offender and why they have committed a crime.
21. The issue in New Zealand is that people are becoming desensitised to the content of the reports and it has become normalised to the extent that there is not enough weight placed on them.
22. In Australia, an issue seems to be that police appear to use arrest more often than probably is necessary rather than a notice of appearance. This means that people must apply for bail and under NSW law it is now much more difficult to have bail granted as one generally needs to prove why they should be granted bail.

Youth Offenders

23. The youth incarceration rate in Canada in the early 90s was really high. At that time, the Government put out some policies that were extremely punitive but would only impact a small subsection of young offenders, such as multiple murderers. Hidden away in the Act were diversionary, rehabilitative things for young offenders. Over a 10-year period the youth incarceration rate dropped dramatically.
24. In New Zealand there are family group conferences which is one of the ways in which a young person can enter the court. At a family group conference, the family, the young person, the police and the social workers come together and decide whether the matter is something that should go to court.

Programs for young people

25. In Australia, there are some successful programs targeted at rural and regional youth. Backtrack is one of the most popular in Armidale NSW. Over 50% of the participants of BackTrack are aboriginal youth. In the program, these kids have their own program at Backtrack where they are able to operate in such a way to retain the kids interests. It is focused on teaching valuable skills and services and giving young people a purpose.
26. In New Zealand there are alternative program providers for young people where mainstream school is not appropriate for them
27. There are also special courts in New Zealand that are based on traditional meeting places where young people go before a judge and a panel of elders and are monitored there.

Issues with the alternative process

28. These alternative court processes however come at the sentencing stage where there is often an acceptance of guilt so that people can access programs and not wait another year to attend court. There needs to be alternative processes at the charging stage, for example what more can we put at the initial policing stage to prevent a person from entering the court process.
29. The primary issues is that the whole system is a system of risk aversion. It is every actor in the chain avoiding responsibility of risk. For example, it is much easier to make the decision to hold the individual as opposed to taking the risk that they are going to go out and reoffend.
30. Further, conditions which are often placed on offenders, for example preventing them from drinking alcohol or seeing certain people, are setting them up to fail. One of the greatest charges is charges against the administration of justice. That is a cycle of going back before the courts for simply breaking conditions such as drinking alcohol or seeing persons that the offender has been restricted from seeing.

Mechanisms for diversion in sentencing

31. In New Zealand, within the last 15 years there has been a push to bring in more specialised courts to deal with specialised issues. In 2012, drug courts were piloted successfully reducing recidivism and have been approved by the New Zealand Government to be used across the country.
32. There are also youth courts that sit in the traditional meeting houses which have been around since 2008. There are now 15 of those special courts across the country. These include a judge, a panel of elders that sit alongside the judge and help with the judicial processes.
33. There is also a court for new beginnings for homelessness that is addressing the underlying causes of homelessness.
34. The New Chief District judge of New Zealand is Maori and has mentioned that he wants to change the way that people are treated in the mainstream adult courts. One simple example he talks about is calling people by their first name.
35. In Canada there is an arrangement where the local indigenous community can serve as the basis for the release of an individual under the *Corrections and Conditional Release Act*, S.C., 1991, s81. This act allows for indigenous communities to contract to provide correctional services for people who are released from prison.
36. In New Zealand, the treaty settlement process has meant that a lot of tribal nations are in a position to take over social services and are entering into memorandums of understanding and strategic partnerships with government organisations to take back control of social services. In the justice space and in the prison space there has not been that level of partnership in New Zealand.

BIOGRAPHY

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Prior to his position at University of New England, he was a Senior Lecturer in Law at AUT University, Auckland New Zealand. He is from Milwaukee, Wisconsin, USA where he practised law as a general practitioner, and he has lived and worked in a variety of Commonwealth countries.

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Kyle has a B.A (Hons) in Criminology and Justice (University of Ontario Institute of Technology), M.A in the Sociology of Law (International Institute for the Sociology of Law), PhD. fellow in Cultural and Global Criminology (University of Kent/Universitat Hamburg). He teaches a number of subjects currently like Crime Prevention and Researching Crime.

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Kingi is a criminal lawyer acting in private and legal aid instructions to PAL 3. In the past he was a Lecturer at Auckland University of Technology and was the Commissioner at the Criminal Cases Review Commission.