

The Roots and Values of Restorative Justice

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Excerpts from the interview “In Conversation: Strong Towns and Restorative Justice” (*emphasis added*), October 24, 2019, by John Pattison

Professor Laurent: “Restorative justice gets at that core of what was important and how we solved problems in the past. As we were evolving, for most of human history, we were extremely interdependent on one another. If a conflict popped off between you and me, we needed to stay in community. Imagine that you're the strong hunter and I'm a good gatherer. We can't sacrifice our core relationship because we need one another. And so, when a conflict happened, the primary purpose was not vengeance or retribution. The primary purpose was to repair the harm and bring people back into the fold of community.”

For most of human history, for most of the world's people, restorative justice was the way we solved problems. And yet today, what feels so innate in us is a retributive notion of justice — an eye for an eye, just deserts. That model of justice feels very natural to us because it's what we've operated under since the Middle Ages. But, really, for much more time than that, we were under a restorative way of being with one another.

So there's a transition that happened ... in which the State became the primary actor in conflict. We moved from hunter-gatherers into more organized societies and the State decided it was in its best interest to be the mediator between conflicts. ***The State took responsibility and subsumed the conflict.*** Imagine a conflict between me and you; well now the conflict is no longer between us, the conflict is between you and the State. This is the model we are under today.

Because the State has assumed that role, ***they've moved me as the victim to the side.*** I'm automatically on the periphery of the problem. ***It started well-intentioned enough for the State — it wanted consistency, efficiency, a predictable system, and fairness — but what it did was take away our personal stake in the relationship.***

The State is also going to collect a fee for taking over that problem. Being the arbiter, investigator, and prosecutor of a conflict requires resources. Now fast-forward to today, where in Spokane County (and many others) we're spending about 70% of our budget on criminal justice. The State takes the fee, which means restitution to the victim gets smaller.

And I as the victim have abdicated most of my responsibility to the State. I have become passive in the conflict. ***The State's role is adjudication and punishment, even though its values may not align with my values or my needs.*** What has happened is that the conflict is no longer between the victim and the offender. Niles Christie, who was one of the writers in this area, says the State actually *steals* the conflict. In stealing the conflict, the State usurps the rights and

the responsibilities of the parties to come to an understanding of what happened, to work together to formulate a solution and to re-engage the community.

And, in fact, conflict is *never really* just between two people. It's between the two people and all the people around them. But all of these folks have abdicated responsibility too. ***The offender no longer really takes responsibility, because their job is to stay silent***, to not assume culpability, right? The victim is moved off to the side, because it's no longer defendant versus victim, it's defendant versus State. ***My needs as a victim are not central***. And then the community is often completely absent in a criminal proceeding today. The whole community is moved off to the side, as the State says, "We don't have the time to deal with you, your needs, your need for information and knowledge, your need to know why this happened."

It's laudable to want to have a consistent system, to have predictability and fairness. But by making those values the primary values, it took away the other values we had, which were relationship repair, interdependence, and community engagement and involvement. A value like individualization can be just as important as consistency, maybe more important at different times, depending on circumstances, right?

We have shifting needs but we also have a system that doesn't really allow for much flexibility.

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There are some people who think restorative justice should be our *primary* mode of criminal justice. I think that's a dangerous approach. ***I think restorative justice is a complementary system that walks alongside our current iteration.*** Because we're just in that place.

You will have many victims who, frankly, don't want to engage in this process, who aren't interested in getting more information, and who just want somebody punished. That's a completely valid, autonomous decision that every victim should have. On the flip-side of the coin, you're going to have offenders who aren't ready or don't have the capacity to engage in the accountability mechanisms that need to be present to put them together with the victim. If you don't have somebody who is willing to look at their life, wanting to be truly accountable, then a restorative process should never go forward. This is a huge mistake we can make in restorative justice programs."