

The Spirit of Restorative Justice: An Interview with Sujatha Baliga by Sebastian Robins

Sujatha Baliga found herself sitting in a room with a murderer and his victim's parents, who had come seeking something more than punishment for their child's killer. Sujatha, and the process of Restorative Justice, was uniquely positioned to help. She came to that meeting through rigorous academic training, and also through harrowing personal experience. She grew up in Shippensburg, Pennsylvania where she experienced ongoing sexual abuse by her father. As an adult, after several emotional breakdowns related to the early childhood traumas, she decided to travel to Dharamsala, India to visit the Dalai Lama. Through slim odds, she was granted an audience with the exiled leader. After listening to her story and hearing about the anger which had motivated her to become a prosecutor, he instructed her to do two things: meditate and contemplate how she viewed her enemies. She told him she'd try the first, but that forgiveness felt impossible. The Dalai Lama smiled and said, "Ok. Then just meditate." This encounter, and these instructions, inspired her to start a mindfulness meditation practice, which led her eventually to forgive her father, and then to become one of the leading voices and practitioners of Restorative Justice.

Our traditional criminal justice system is one of retributive justice; it focuses on crime and punishment. Restorative Justice, on the other hand, focuses on the victims. It sees that for each crime committed, harm has been done to the victims, the family of the victims, the community, and often to the offender as well. This approach seeks to repair and restore health in each of these individuals and groups, in addition to—and sometimes instead of—incarceration. All those affected face one another around a circle, ask difficult questions, and listen to one another. Often they learn to forgive. The victims have a say in the consequence and rarely ask for a prison term. It is a radical, highly successful, and controversial approach that draws from various indigenous practices and that has been used effectively in post-Apartheid South Africa and post-genocide Rwanda.

Sujatha stands at the vanguard of this progressive movement which is finally gaining traction in America. Baliga was educated at Harvard University, and later at the University of Pennsylvania, where she earned her law degree. She won a Soros Justice Fellow prize in 2008 and today serves as the Executive Director of the Restorative Justice Project at Impact Justice, in Alameda County, California. Baliga is also the Founder and Executive Director of The Paragate Project, an organization dedicated to exploring forgiveness. Her recent lecture at University of California Berkeley's Law School, "Law's Middle Way: Mindfulness and Restorative Justice" typifies her skill at bringing alternative and controversial approaches to powerful institutions.

I interviewed Sujatha in Berkeley, California in the Spring of 2016. What follows is an adapted excerpt of our conversation.

Sebastian Robins (SR): Can you tell us about your spiritual and religious beliefs and how

they intersect with your work?

Sujatha Baliga (SB): I was raised Hindu and was a very devout Hindu child. I ultimately lost my faith because of the abuse I was suffering in my home and my inability to reconcile how faithful I was in following all of the good Hindu girl rules, chanting, etc., with the abuse continuing. I prayed, knowing that my father was doing this to both of us. I prayed for him, and I prayed for myself, and I prayed for the abuse to stop. And it just wasn't getting any better. And then he got sick, and he got even sicker, and he was the sole breadwinner in the family. It was terrifying for all of us, and it just became so clear to me in that moment that there was no God. Even into my 20's, I had given up on the idea of God. Funnily enough, I still felt very, very religious, but I couldn't figure out where that fit.

When I was 24, I had the opportunity to have a private audience with the Dalai Lama. I had taken a Buddhism seminar and was reading a lot about it at the time. The Golokpa Tibetan Buddhism felt extremely similar to the Vedanta Hindu upbringing I had. It felt like my spiritual home. I learned from my uncle just a few years ago that there were practices that my ancestors followed, but which had been lost do to a lack of qualified teachers, and it turns out those practices only exist in Tibet. Those were the practices I had fallen into through my following Tibetan Buddhism. I literally felt like I was able to come home through Buddhism.

For me, the Boddhisatva Path is what I aspire to, and it is about training ourselves to operate with equal love and compassion for all beings. All of them. Not excluding anyone, including those who have done absolutely horrific, unimaginable, terrible acts, and including those who have experienced them. Including me.

And so that feels like a very good fit with Restorative Justice as opposed to the criminal legal system, which forced me to have to be a victim advocate or a defense attorney or a prosecutor. The system forced me to choose a side I was trying to have a victory over. And really, there is no such thing as "victory over." There is only collective liberation, and that grounds my attraction to Restorative Justice as well as my hope that we have outcomes that are beneficial to everyone.

A good Restorative Justice facilitator operates with equal parts compassion and partiality. So instead of the imagined, and fictional, neutral mediator, we are equally partial to everyone in the circle. We want everyone's best interest to rise and for us to come up with a plan to attend to those interests.

SR: Restorative Justice is posited as an alternative to our criminal justice system. Can you talk about our current model and why it needs remedying?

SB: Our current criminal legal system—and I call it our criminal legal system, and not the criminal justice system because I don't think it produces justice—is adversarial in nature. Any other government-operated process that produces a 75% failure rate would never be tolerated. But the fact is that over 75% of people who have been incarcerated return to our prisons. It's literally foolish that we are pursuing something that almost universally fails to achieve what we hope to accomplish.

SR: And how did we get to this place?

SB: There are a number of factors involved. For one thing, people imagined that mass incarceration might be lucrative.

And I think there is another way to look at it: there was a benevolent notion to the original penitentiary. It was originally a place you went to be penitent. It was like grown ups getting time out, a place to contemplate. But we've gone completely off the rails from that original intention.

Given our history of racial violence and segregation, we must remember that new policies will always replicate those historical problems until we heal those original wounds. In terms of solving the problems of the racial mess of our criminal justice policies, we need to think about a national truth and reconciliation commission around both the taking of indigenous land and our history of slavery and its vestiges, which persist to this day, primarily in housing, employment, health care, schools, and mass incarceration, to name just a few. We need to have the courage to do that if we're really going to solve this. That being said, it doesn't mean we can't also simultaneously work to end ineffective ways of upholding justice.

SR: Are there not any merits to our current system that have persisted over time? Aren't there benefits to a supposedly objective, formulaic meting out of justice?

If it were effective in actually doing that, then maybe I would agree that we should hold our noses and put up with some of the more objectionable elements. But let's just step back and take a snapshot of domestic violence, to give but one example. 50% of survivors who experience severe violence do not contact anyone in the system at all. Of the 50% who do contact the system, only 20% said they felt safer afterwards. 20% said they felt less safe after engaging with the system.

Federal sentencing guidelines used to be mandatory. And the idea behind mandatory guidelines is that they were meant to reduce disparities. When we get rid of discretion, sentences go down, but they don't go down across the board; they go down for White people and go up for everyone else.

So, every tweaking we do, to what I think of as a fundamentally flawed approach to justice, is going to fail. You could break it down at every level: victim satisfaction, recidivism, and other aspects. Even the risk assessment tools we develop to do analysis about who should get what types of sentences play themselves out in racially disproportionate ways, as well.

SR: How would you characterize Restorative Justice and the alternative you are advocating?

SB: Restorative Justice if nothing else is a paradigm shift away from a justice of punishment and retribution towards a justice that heals. In our current criminal legal system, we ask three questions: What law was broken? Who broke it? How do we punish them?

Restorative Justice asks: Who was harmed? What do they need? Whose obligation is it to meet those needs? My mentor and friend Howard Zehr encourages us to see that crime is a violation of people and interpersonal relationships. And those violations create obligations, and the central obligation is to do right by the folks you've harmed. Restorative Justice looks to attend to that, and then to build a community structure in which the person who harmed is supported in tending to those needs. And maybe that person can't serve all those needs, so Restorative Justice looks to the community to help serve the needs. It acknowledges that there is a relationship that has developed. In the

case that a stranger committed the crime, the relationship develops at the moment the crime occurred. And, in the vast majority of cases, with intra-familial or intra-community crimes, a relationship predates the crime. In this case, a relationship is broken through different types of harm. How do we come back together in order to move forward in a positive way? There is nothing about a court hearing that moves us in that direction.

I think the biggest thing for me, as a survivor of child sexual abuse, the thing that is so important, is truth-telling. The truth is hidden around certain crimes because of shame and secrecy and because of the criminal legal consequences that cause us to hide what's actually happening.

Restorative Justice, especially when it operates in a way that guarantees that nothing you say will be used against you in a court of law, then, we get to the truth. The criminal legal system as it is disincentives truth-telling.

SR: Is it fair to give the victim discretion in creating accountability? Doesn't our criminal system promise some degree of rational meting out of justice?

SB: I need to continually remind folks that our current system does not solve anything. All of these arguments against Restorative Justice neglect to acknowledge that our current model has completely failed. In 100 cases of child sexual abuse, less than 3 get convicted of anything, and it's usually a plea deal in which the person is convicted of something far less than they actually did, and those who are convicted don't show a decrease in recidivism. So, we have failed. Everything we are worried about that might happen with Restorative Justice, has already happened a million times over with our current failed model.

What we do know is that in a three year study we did here in Alameda County with the first several hundred kids who went through the Restorative Justice process, the kids have an 11.8% recidivism rate, which is very, very low when compared to national averages. We also compared this to kids who just got probation—kids in this same county, who match up by age, race, severity of crime, number of prior convictions, and zip code. Those who just got probation have a 31% recidivism rate. For those who were locked up, the recidivism rate was even higher. So the more we ratchet up our response, the worse the outcome. That's what's happening in our current system.

Now, let's talk about Restorative Justice. It's important to note that Restorative Processes aren't just about a crime victim getting to decide what happens to the person who harmed them. Restorative processes are about a group of people coming together—people who know all parties involved very well as well as community members and anyone else impacted by the harm. I've been in a circle with 45 people in the case of an attack on a mosque.

The outcome in a case like that isn't just based on what the mosque president said, for example. The person who committed the crime looks at how they are going to do right in four ways: by the victim, by their parents, by their community, and by their self. So, you have a four-part plan to repair the harm. And making sure that we are touching on all four of those things ensures the kid stays out of trouble. It's not a dialogue between two people. It's a larger community question.

SR: How does your legal training inform your work with Restorative Justice?

SB: Generally speaking, my training as an attorney is a liability for Restorative Justice

work! (Laughs.)

I need to take off my lawyer hat when I'm facilitating circles. Whatever professional hat we're wearing when we come to Restorative Justice, we need to take it off, whether it's a social worker who wants to social-work it or a psychologist who wants to analyze everybody. We really leave it to the wisdom of the families and the communities, and when we're working with families and communities from different cultural backgrounds, their idea of a positive outcome may look radically different from my idea of a positive outcome. In the end, if they are happy, and this person isn't going to commit more crimes, and this person got their needs met, it's none of my business. It's not mine to judge or decide. I'm not the arbiter for what is justice for other people.

One of the best things about Restorative Justice is that I don't have to have all the answers. I used to have to have the answers as a lawyer. Now, I just need to have answers about the "how," like how we are going to do this in a safe and positive way that meets the needs of everyone. But I don't need to have answers about the "what." That's always theirs to answer and that's really great. It's really liberating. Way less stressful.

SR: What are the origins of Restorative Justice?

SB: Restorative Justice has multiple roots. Howard Zehr and his Mennonite community are part of the origin. Zehr talks about Biblical Justice and how it informed the Mennonite version of Restorative Justice in the 1970's.

Apart from (and far pre-dating) that, there are many indigenous traditions from around the world that involve sitting in a circle and participatory decision making and collectively moving together. This notion of the collective really exists deeply in our language. We don't talk about individual justice; there is only a sense of collective justice.

I just came back from meetings in New Mexico sponsored by The Office of Violence Against Women to talk with different Native American tribes as well as those of us who practice non-indigenous forms of justice about domestic violence. The conversation was very challenging because there are 567 federally recognized tribes, and each of them may have their own justice process, and each of them may look more or less like the Mennonite-initiated, Western notions of Restorative Justice.

And there are many folks in those tribes who would say, "don't use your colonizer language to talk about what we have been doing since time immemorial. Don't try to shove what we do into your colonizer box."

So, I try to be very careful and sensitive when I talk about what I learned from whom. The Family Group Conferencing Model comes from the Maori people, but it's not as if I'm doing a Maori process, per se. I'm very clear that I have changed it to make it fit into an American context.

We have to be careful because too often we take the sacred out of things. I heard an indigenous woman speaking about Restorative Justice and peacemaking circles and she said, "You came to us asking to learn about our medicine. You took it away and you stripped it of its healing properties and now you want to sell it back to us in a pill."

As she was describing this, I was thinking about people who are meditating just to practice mindfulness without the Bodhisatva vow as its root. If I am sitting down just to watch my breath so I can make a killing on Wall Street instead of training my mind so I

may be of greater benefit to all sentient beings, then we've gone so far off the mark. And it's the same thing with yoga. Am I practicing yoga to have a hot body? Or am I doing it to become enlightened for others' benefits and my own? For the collective liberation of all people?

And so I shudder to think that I might be trying to do the same with Restorative Justice. I struggle with non-indigenous applications of Restorative Justice in this country. I really worry about taking the medicine out and offering back the pill. It's very easy to get off the mark if we're not starting spiritually, and if not spiritually, then with values. We have to have a sense of the shared values as the starting point for all of our work, otherwise we'll just be sitting in circle and coming up with punitive outcomes.

Another of my mentors is Robert Yazzie, the former Chief Justice of the Navajo Nation. He always talked about "moving forward in a good way." It's very clear to me that that impetus is part of everything he does.

As soon as we start talking about the sacred, we risk going away from the idea of a rational, secular system of justice and into potentially divisive traditions. How do you not turn off the secular judge or the atheistic DA or the skeptical principal? The answer is in the values we use. The values become the bridge.

For me personally, I facilitate every Restorative Justice process as a Buddhist, but secretly! (Laughs.) When I am sitting and holding space in a horrific conference about an unspeakable crime, I am meditating and praying the entire time. But I'm not doing it out loud, and I'm not imposing it on anyone else. That's my personal way of dealing with it. It's extremely hidden.

I try to disassociate Buddhist work from my public life, from my personal life and my Restorative Justice work, and every time I'm asked to speak about the nexus of meditation and Restorative Justice, I get a little anxious about it—I find myself equivocating. I agree with His Holiness the Dalai Lama that we need to have a secular ethics in order to move forward. I don't want to fight the reality of American secularism and even the atheists' disdain of having things imposed on them. So, to that end, values are central.

Without values, we are completely lost. And those values should be collectively identified by the people in the circle and never imposed.

While Restorative Justice has some basic notions of respect and responsibility and reciprocity, the fundamental values that will guide the conversation come from the people in the circle. So, we start restorative processes with a conversation about values: "What kind of values do you hold when you talk about difficult things? What kind of values do you hold when you are being your best self? When you are advocating for yourself? What kind of values do you hold when you are operating in community?"

We have those conversations and then we have a consensus-based set of values that are going to guide our conversation. It's the first thing we do.

SR: Restorative Justice requires tremendous participation and presence and trust from the criminal and the victim, does it not? How do you help people into that place?

SB: In the Restorative Justice process, participation is required by the person who caused the harm. The person who was harmed may choose to send in a surrogate, although the

best outcomes occur when the person who was harmed can be present. The entire process is driven by what feels good to the survivors, by what is going to make it feel safe and possible for them to engage. Trust building is really about following the lead of everyone who is in that space, and building it based on what they need and want.

So, in the beginning, there is a lot of just plain old listening and answering the first two questions: Who was harmed? And What do they need? I spend the first few meetings just listening. And for the people who caused the harm, I just come with a completely non-judgmental approach. Even if you've shot your girlfriend in the head, I have to start with the attitude that I'm just here to help you through this and I don't bring any judgment. I want them to not feel judged. Nobody is going to come clean about the totality of what happened if they think I'm going to drop the hammer on them. So, first of all, no hammer.

I sit down and say, "I want to help you make this right." Or, as right as possible, because when someone's lost a loved one, there is no making it completely right. And I speak using we: "We're in this together; let's find a way through this." I don't make false promises, that's very important. Someone might ask me, "Is it going to be alright in the end?" Gosh, no. You killed that person. How is that going to be ok in the end? No false promises.

Even with regard to the process, someone might ask, "Is it going to be safe to be in the same room with him?" And I'll ask them, "Well, what does safety look like to you? Let's figure out how we can design something that creates safety for you."

Each person is different. If my father could come back from the dead, I could have a conversation with him without anyone in the room. But that's me today. Ten years ago, I could never do that without my husband. (Laughs.) And ten years before that, I could never do that, period. So everyone is at a different place in time and in their own life. So being as responsive to that as possible is really important.

SR: Is this the work you are doing with the Paragate Center on Forgiveness?

SB: Yes, in a way. Forgiveness and Restorative Justice are interesting cousins. I can't think of a better cauldron for cooking up forgiveness than a Restorative Justice process in which a victim feels completely heard by the person who harmed them, and the perpetrator has some desire to make amends. The completion of that process can help with a victim letting go of their anger.

That being said, a Restorative Justice process never has forgiveness as a prerequisite or an expected outcome. It may or may not happen, but there is never any pressure on survivors to forgive, because they might not be interested in forgiveness. They might just want their car back! (Laughs.)

For me, personally, I was never going to get my childhood back, and that's why I started to explore forgiveness. Forgiveness may or may not flow out of a Restorative Justice process. It's lovely when it does. But to be honest, it's just as lovely when I see people parting ways on good terms, whether or not we ever got to forgiveness or even said those words. It's like, oh, ok these neighbors who were fighting over one of their kids stealing the other's car and smashing it up are not going to have that much heat between them any more, and that's really good.

The forgiveness work is really an internal journey. It's not dependent on anything from

anyone else. And in the same way that Restorative Justice does not require forgiveness, forgiveness certainly does not require Restorative Justice.

I feel very clear about forgiving my father, and my father passed before I was able to fully confront him.

SR: Forgiveness is central to your story. How did you forgive your father?

SB: How I forgave my father was a very spontaneous experience. As I mentioned, I had this audience with His Holiness when I was 24. I asked His Holiness for advice on how to forgive my father, and his first question to me was, “Do you feel you have been angry long enough?”

That was an extremely useful question because in all my explorations of forgiveness up until that point, I had felt that it was either being shoved down my throat or that it was the right answer and I just hadn’t figured out how to be good enough to forgive yet. It was almost that my continued anger towards my father was somehow my shortcoming and the consequences of that continued anger on my relationships, on my own life, on my health, my migraines, all of it were somehow my fault because I wasn’t a good enough survivor to forgive him. So, when His Holiness asked me that question—“Do you feel you’ve been angry long enough?”—it was a true question. He was genuinely asking me what my feelings were on the matter and with no judgment about what the right answer was. So, I took a minute in his presence to just sit and survey anger’s impact on my life, and I came to my own conclusion that anger had reached a point where it had diminishing returns for me.

At one point anger was the backbone of my healing—when I had a self-righteous feeling: “You can’t do that to me. No father should touch his daughter like that.” But it had gone beyond the bounds of righteousness and into rage. It had its own life that I had no control over, and it leaked out in all kinds of inappropriate ways and places that weren’t serving me or my purpose in life, which was to be of benefit to people who had suffered what I suffered.

So, then I was like “alright I’m done. Now I really want know how to do this.” And he said, “Okay I have two pieces of advice for you. One is to meditate. Your mind is bright but it’s out of your control. So, you want to reign that in.” And I agreed. The second piece of advice he gave me was to align myself with my enemies without excusing their behavior. He asked me to find some way to be aware of their concerns and their needs and to open my heart in that way, and I let him know that I thought that was crazy. I thought, “I’m about to go to law school to be a prosecutor to lock those guys away.” I was distraught by what he said. Actually, not distraught, more angry because I hadn’t worked on my anger yet. He patted my knee and said, “okay, okay you just meditate.”

So, I went off and I immediately started sitting, and I sat a 10-day Vipassana course. There were nine days of doing breath observation and body scanning and getting to this point of having real control over your mind, which was the first time in my life that I’d experienced that to that degree. On the tenth day, they teach you this practice called *metta*, which is a loving-kindness practice to cultivate that sense of peace and calm or the subtle awareness of the sensations in your own body that you can experience dispassionately. And we were meant to send that outward to others.

First, we thought of people we love, and we sent it out to them, then to people to whom we felt neutral and then we sent love to our enemies. When they started talking about

enemies, as if an apparition, as if in my worst throes of post-traumatic stress flashbacks, there arose my father walking towards me to molest me. And instead of what I had done habitually, which was to replay that memory with me stabbing him to death or just slapping him or whatever it was that I would typically do, I simply allowed the memory to play itself out as it actually occurred. I didn't try to change the past. I stayed with my feelings of peace and left his problem with him. As his hands reached out to touch my body, this subtle feeling of peace and this sensation of awareness and presence and peace in myself flowed out of me and into him, and he just dissolved into light and he was gone.

In the weeks that followed, I had no migraines. I had nothing. It was all over—all my stomach problems and my rage too. I just wasn't raging at anybody anymore. I feel like I really got at a root cause of all my other sufferings. It's not that I excused his behavior. I still have spent the rest of my life trying to end intimate-partner violence and sexual harm, but I feel that I am now able to come at it more from a position like trying to solve a problem with a computer. You know? I'm not trying to solve it with a hammer. In the beginning, I hesitated to talk about it because I didn't want to proselytize about forgiveness. I really honor what His Holiness said in his question: "do you feel you've been angry long enough?" I want people to answer that question honestly for themselves because you can't forgive a minute before you're ready and because there's no right or wrong to it.

SR: Does your experience imply that there is merit to anger?

SB: One day I saw a car with the bumper sticker that had once read "If you're not angry, you're not paying attention." And the second "not" had been in big red letters, but it had faded before the other letters, and so it now read, "If you're not angry, you're paying attention." That changed everything. I thought, "What am I paying attention to?" I'm not angry anymore because I'm paying attention to my breath, to the present moment, to the people in front of me, to their humanity.

It doesn't mean that I don't still get angry. I get angry, and anger has its place. I think the most important thing is to not repress it. Repression leads to the building up and the unhealthy explosion. It's not about not being angry. It's about the ability to express or manage the anger when it occurs. It's about observing my anger with compassion when it arises and looking at the roots of my anger, and being present to whatever is coming up for me. It's about acting and not reacting.

SR: Thank you for taking the time to talk with me and for sharing so much with us about your life and work.

SB: Thank you.