

#1361 Building a Better System of Justice

JAY TOMLINSON - HOST, BEST OF THE LEFT: Welcome to this episode of the award winning Best of the Left podcast, in which we shall learn about restorative justice as an antidote to a wide range of injustices we face, from mass incarceration to have any toddler throw a Cheerio at your forehead and much of what lies in between. But before we get to that, which is mostly focused on our official carceral justice system, I want to talk for a minute about the court of public opinion and the phenomenon that has taken society by storm and sent the internet into a tizzy. Of course, I'm speaking of *cancel culture*. And so we have people going around suggesting the people need to be "canceled" for their actions or their statements, and canceling can mean a lot of different things. It often means that they should be fired from their jobs and so forth. And then you've got a group of people I'm calling the decriers. They're decrying the whole concept of cancel culture as anti-free speech, and harmful to society, and doling out punishments that don't fit the crime and so on. And then you've got the group that I was more or less putting myself in, which is the dismissers. The dismissers, we're going around thinking look, there's no way that this is as big of a problem as the decriers are making it out to be, and in a lot of these instances, the people being canceled have a lot of privilege. They're used to being able to say and do whatever they want and now that they're being called out for it, they're crumbling under the weight of criticism that they've never had to experience before. I've adjusted my perspective a bit from just thinking of it as a nonissue. So for the sake of this conversation, let's assume that what the decriers say is true. That it's bad for society, canceling people is doling out punishment that is harsher than what the so-called crimes would otherwise call for, and that innocent people maybe are being punished unfairly or that even guilty people are being punished unfairly, and it has a chilling effect on society and the way we communicate as a whole. So we'll just start with that as the baseline.

I would say, first of all, our biggest problem with this is that we don't live in communities of 150 people or less anymore, but back in the good old days of village life, we had very different ways of managing our antisocial members of society, and so the fact that most of the people who we're interacting with, we actually don't know, we don't depend on them, they don't depend on us, they're not really part of our community, and yet we get to have strong opinions about them anyway, that I think is what's sort of at the core of a lot of these problems. It's sort of a problem of scale that we've run into, our social network has scaled much faster than our capacity as a society to deal with the interpersonal relationships and problems that stem from that.

But if that's an explanation of why a phenomenon like cancel culture is bad and yet it is happening, let's look a little deeper at what it is and how it came to be. And so I would strongly suggest that we not just look at whether cancel culture is good, bad, or overblown, which are the three opinions I have basically come across. I would look at what cancelled culture is an indicator of. And my suggestion is that it is an indicator of the fact that we don't have healthy ways of demanding justice. Justice is something that is inherent to practically every human being, ask any three-year-old to describe the concept of fairness and they'll probably give you a pretty accurate answer, and that goes to show how ingrained it is in us to understand fairness, to understand justice. So the fact is we don't live in a village of 150 people, which is about the number of people that we, as humans are capable of having real relationships with. Knowing and having a relationship with a person, you can have about 150

of those and then it starts to become background noise and you lose track. So we don't live in a village of 150 people. We live in this weird digital and global village where we get to have opinions about frankly way too many people, and yet we have those same inherent instincts about injustice and when we see it or we think we see it, it irks us quite a lot and we feel the need to speak out about it. Now to be clear, I'm not addressing any specific incident because I think it's ridiculous to do that in either direction. People are bringing up specific instances of cancel culture to either support why it's good or bad. Like bringing up a specific trial to describe why the whole concept of criminal justice is either good or bad. This trial was handled well, and the person got their just punishment; therefore criminal justice is good. Or, this person was wrongly accused and was falsely imprisoned; therefore, criminal justice is bad. Those aren't logical arguments. So arguing that, look at this poor case of this person who was canceled so unjustly; therefore, cancel culture is terrible. It doesn't follow logically and it's because we're missing what lies underneath. If you're telling an adherent of cancel culture to stop what they're doing, to say that it's terrible, it's anti-free speech, it's bad for society, and you want them to stop that, without pointing to a better solution; that is basically akin to telling them that you should stop seeking justice, which is never going to work.

Now on a slightly parallel, let's actually talk about criminal justice. Again, we have the adherents and the decriers. People think that our system works perfectly well and is great and bad people need to be punished and lock and cages. And you have the decriers, I am certainly in that camp, saying that our system is unjust, it doesn't do what we need it to do to make society safer and healthier, not to mention it's also racist, and classist, and all of those things that make it unfair from practically every angle, at every intersection. But again, just like with cancel culture, I encourage you to not just be a decrier without having an understanding, first of all, of what the adherents seek, because in reality we are all seeking justice. We all need for justice to be served. We want for justice to be served. We may have some different ideas of what justice is, but as we will hear in the show, people's perception of justice is largely skewed by what options we have available. Just like with cancer culture, people gravitate towards demanding that people lose their jobs because they don't have a better option. If they had a better option, well then maybe they would make a different demand.

So in both of these cases, the best way to pull someone away from a toxic, harmful system, whether it be cancel culture or our institutionalized criminal justice system, you need to point them in the direction of a better way of seeking justice, always keeping the quest for justice squarely as your focus. My position is that the model of restorative justice is the one that best fits the needs of society at all levels because it is infinitely flexible and can be made to fit every offense from the most egregious to the most mundane.

So to understand this in great detail, let's hear today's show. Clips today are from: *Why is This Happening* with Chris Hayes, *The Ezra Klein Show*, *On the Media*, *Democracy Now*, and *Justice in America*.

Abolishing Prisons with Mariame Kaba Part 1 - Why Is This Happening? with Chris Hayes - Air Date 4-9-19

CHRIS HAYES - HOST, WHY IS THIS HAPPENING?: The trauma and the fear are extremely real.

MARIAME KABA: They're real. They're real.

CHRIS HAYES - HOST, WHY IS THIS HAPPENING?: You got to start there, right, because the people that are in the Church of Abyssinia in 1993 in New York —

MARIAME KABA: They're scared.

CHRIS HAYES - HOST, WHY IS THIS HAPPENING?: There's really horrifyingly traumatic things happening all around them all the time. They are losing people they love, they're terrified to leave their homes, that's not some invention.

MARIAME KABA: That is not an invention. And I think the reality is that people's traumas are valid and they are important for us to consider, however society at large cannot be governed by making decisions about how to address things mainly by people's traumas and their fears. So one of the things I always talk about is the importance of your individual traumas being transformed into political commitments. So you have an individual trauma that you experience and then you have a political commitment that may be separate from that trauma.

Here's an example of what I mean. So I'm a survivor of rape. And I was a reactionary survivor. So there was no reason, when immediately after I was raped for me to be on a panel talking in a dispassionate way about sexual violence and sexual assault. Number one: I did not have an analysis for what had happened to me. I was just incredibly hurt and harmed and I just wanted violence against the person who hurt me. I wanted revenge. That was important. I had to process that. I had to go through that. I had to study and learn about sexual violence as a political act and as a structural issue and I had to get some information. But if you had put me right on a panel after that and said what should we do to rapists I would have said we should kill them. That would have been the response.

But that is not the way to govern in a society to have a bunch of people just going around saying lets capital punishment everybody. You have to think about the political commitment you develop from the experience you've had that's a personal and harmful experience and then you have to think about how to apply that across the board to multiple people and major different contexts.

CHRIS HAYES - HOST, WHY IS THIS HAPPENING?: That is so in tension with the moment we're in politically.

MARIAME KABA: It is completely in tension.

CHRIS HAYES - HOST, WHY IS THIS HAPPENING?: The political moment right now is about... —

MARIAME KABA: It's about immediate visceral response.

CHRIS HAYES - HOST, WHY IS THIS HAPPENING?: To give the articulation the most charitable articulation of it. The way I think it's communicated and the way I think a lot of people pursuing it are communicating it's about centering the experience of groups —

MARIAME KABA: Who are directly impacted —

CHRIS HAYES - HOST, WHY IS THIS HAPPENING?: Who are directly impacted.

MARIAME KABA: Absolutely.

CHRIS HAYES - HOST, WHY IS THIS HAPPENING?: And who experienced trauma and as opposed to people being like eh, you got to put them in the center.

What you're saying is the unfiltered way that is expressed as politics can be destructive.

MARIAME KABA: It's very often, it's very destructive! Because here's what we know is that you can't just govern by your feelings about shit. You know what I mean? That is not just, you cannot do that in a polity —

CHRIS HAYES - HOST, WHY IS THIS HAPPENING?: You can't say that to people.

MARIAME KABA: You can say that to people. You have to build enough relationships with people that you can have those conversations.

CHRIS HAYES - HOST, WHY IS THIS HAPPENING?: Yes okay right.

MARIAME KABA: So at the basis of what I'm saying is we have to be in community with each other enough to be able to say to our friends you're being reactionary as hell. This is not, I understand your pain and I want to be here with you in your pain, but that is not the way to make policy. We're not going to extrapolate your personal harmed feelings of fear and anger and turn that into a policy that then is going to govern a whole bunch of other people who did nothing to you. This makes zero sense. So that is part of where I think at least, if we're doing criminal punishment policy work and we think we're just seeking to people's personal feelings about stuff and their personal fears, that's how come we get the policies we get. That's how we get X law, Sharon's Law.

CHRIS HAYES - HOST, WHY IS THIS HAPPENING?: Megan's Law.

MARIAME KABA: Megan's Law. Based on individual cases that happened to individual people that then get generalized to huge amounts and swaths of our population which should not be the case.

CHRIS HAYES - HOST, WHY IS THIS HAPPENING?: And in fact there's a whole victims rights movement...

MARIAME KABA: There is.

CHRIS HAYES - HOST, WHY IS THIS HAPPENING?: ...that was at the center, that was inextricable bound up with mass incarceration.

MARIAME KABA: Absolutely.

CHRIS HAYES - HOST, WHY IS THIS HAPPENING?: Victim's statements that are given —

MARIAME KABA: Certain victims though.

CHRIS HAYES - HOST, WHY IS THIS HAPPENING?: Yes.

MARIAME KABA: The victims that got to be heard and got to be spoken came from a race, class, particularly gendered set of people whose pain was seen as politic, as useful politics. And that to me is really important for you to keep in mind, which is that there were a whole bunch of other survivors. They could have come to me and asked me what they should do about sexual violence and two years after my situation they would have gotten a very different answer from me than the day after this happened. And victim rights, actually a lot of victim rights groups are now filled with people who are talking in very different ways about criminal punishment. This is true in New York State where people are now saying things like: "We don't want to be locking everybody up. This is not the way we're going to solve it." Because guess what, they've had years of seeing how that policy's actually not worked for anybody in a good way.

The transformative power of restorative justice Part 1 - The Ezra Klein Show - Air Date 6-18-20

EZRA KLEIN - HOST, THE EZRA KLEIN SHOW: What did you see in your time as a defense attorney that disillusioned you?

SUJATHA BALIGA: One of the things, one of the cases that I think most broke my heart was, there was a young man who had intervened in--a young African American man,- -had intervened in a domestic violence dispute between his cousin and the father of her child.

And he put his body in between the two of them and it escalated. And in the end he ended up stabbing the other guy to death. And, the family was just enraged and all they wanted from him was an apology. And they really like, a lot of them witnessed it and they were like, you took it too far. Like, it didn't need to go all the way there. Right. And, he was looking at 25 years, right? And so I was actually his appellate attorney and there was an open and shut appellate issue in the case. And what was really hard was that he wanted to apologize. He just wanted to say, I'm sorry. And I knew we were going to be getting him a new trial and I just couldn't let him do it, right? Because he was serving a 25-year sentence for something should've never been charged, the way it was. And there was evidence that was excluded, that clearly was exculpatory. It might not have been a hundred percent exculpatory, but an apology was going to be something that could be used in court against him. Some level of, you know, *mens rea* that I didn't want to give the other side. So this was, this was deeply troubling.

EZRA KLEIN - HOST, THE EZRA KLEIN SHOW: This is something that as we get more into restorative justice, that I was shocked reading literature, and of course it makes sense now, but the fact that the system as set up makes it a strategic disaster to take responsibility for a crime is a really profound thing, actually.

SUJATHA BALIGA: Yeah. Our current system disincentivizes truth-telling. Our system-- when you think about the Miranda warning in and of themselves, like who's going to want to tell you the truth after that. Right? Anything you say can and will be held against you in a court of law.

Well, don't say anything obviously. And when I think about all of the crime survivors I have worked with over the years, you know, what do they want? They want to know what

happened and why. And it's literally the exact information that as a defense attorney, I would have never encouraged my clients to give up. Right? I mean, this is if you're practicing in a way that isn't, I think as holistic as you might be. You know, again, I want to be really, really mindful of the fact that there are countless defense attorneys who will find ways to develop deep, deep, and meaningful and total and complete relationships with their clients, right? But the machine itself is set up to, - yeah--to disincentivize the truth.

Abolishing Prisons with Mariame Kaba Part 2 - Why Is This Happening? with Chris Hayes - Air Date 4-9-19

MARIAME KABA: I always tell people if the thing that you do in your life is to shorten the reach of these systems in the lives of people you know and yourself, you're contributing to an abolitionist horizon. So an example of that is, somebody ends up hurting somebody else. There are restorative justice, transformative justice processes and practices that people employ to try to make sure that people take accountability for what they're doing.

The key to that is that it's consensual, right? And people always say, "Well, what about the non-consensual thing?" You have to be willing to take accountability. And in our culture, what actually makes somebody willing to take accountability? In the culture we currently live in right now?

Let's say you killed somebody. Is the incentive in our culture and society at large that you should say you did that? Or is your incentive to be like, deny to the nth degree that you did it? And why is that? That's because the thing that's hanging over your head is that you go to prison for long periods of time. So it's in your interest in an adversarial system to deny that you ever did anything. To always say you never did it.

Well, if that's the culture we live in, then of course everybody's going to lie about the harms that are caused and the people who were harmed are never going to get satisfaction. Because people are constantly saying that they didn't do the thing that you know they did to you. Because they were the person that did that to you.

So you have to create different kinds of mechanisms through which we can try to encourage people to take accountability for harm that's caused without the cudgel of potential prison for that to happen. That's a longterm project that is going to take cultural shifts that I'm not going to be here to see the end of. But in the moment that I'm in right now, I believe that if we're trying to do that, more people will pick up on what we're trying to do, because they're going to see results that they wouldn't ever see in the criminal punishment system.

So for now, I always tell people who get mad at me about abolition and I'm like, "Well, why are you angry?"

Do people get mad at you?

Oh, all the time. And not only get mad, but they just want to have debates and they want to come at me in this really very aggressive way. And I'm always like, "If the system that currently exists is a system you think should continue, then why are you talking to me?" Because then the system is doing exactly what you hoped it would be doing.

But the truth of the matter is, the reason people are mad is because the system that currently exists is such a mess. And they acknowledge it is. They know it is. They know that when something happened to them, they did not get what they needed from that system. But they need the system there, because they need something to hold onto because what else? It is going to be anarchy.

CHRIS HAYES - HOST, WHY IS THIS HAPPENING?: You're literally reading my mind right now.

MARIAME KABA: Okay! People are just like, "We've got to have something! And this thing right now that we have is better than nothing." And my thing is that's actually a false choice, because where I'm working in the world, most of the people I know who need support and want an intervention didn't ever avail themselves of the system in the first place. Can you imagine if...

What is it, the numbers that I heard recently where that a thousand people getting raped, that out of that number, I think it's something like 200 people report. And from the 200 people that report, 20 are moved forward to a prosecutor. And out of those 20 convictions, less than five people. And out of those convictions, only maybe one ends up behind bars in a sexual assault. Out of a thousand cases.

So when people tell me, "What are we going to do with all the rapists?" I'm like, what are we doing with them now? They live everywhere. They're in your community, they're on TV being outed every single day. So the fact... You think that that system is doing a deterrent thing that it's actually not doing.

CHRIS HAYES - HOST, WHY IS THIS HAPPENING?: What you just articulated is the fact that the system as currently constituted both does way too much and too little at the same time.

MARIAME KABA: Too little, and also just too ineffectively.

CHRIS HAYES - HOST, WHY IS THIS HAPPENING?: Right. I mean the homicide clearance rate in Chicago is-

MARIAME KABA: 17 percent

CHRIS HAYES - HOST, WHY IS THIS HAPPENING?: 17 percent. So 83 percent of people are literally getting away with murder. So if there's a single thing you want from the system, if you were to say, "We want a system that does one thing, and we want a system that does one crime, which is the worst crime you can do is murder a person, and the system should find the person who did that and punish them and lock them up."

MARIAME KABA: It's not doing it.

CHRIS HAYES - HOST, WHY IS THIS HAPPENING?: It doesn't even —

MARIAME KABA: It's not doing it.

CHRIS HAYES - HOST, WHY IS THIS HAPPENING?: To a preposterous degree.

MARIAME KABA: Hugely disproportionate. So I'm like, why are you mad at me for articulating a different vision? At least try it. See what's going on. You've had literally 400 years of the other side, and people want us who offer different visions to come up with, first

non-resourced... Because right now what are we spending? \$172 billion between locking people up, law enforcement, and the criminal courts, every year on the federal side. What are you getting for that?

My organization is not getting \$172 billion, I promise you. We are not getting \$1 million. We are not getting proportions of those dollars to do what people then say, "Prove to us that your model will work." I'm like, based on what? Based on shoestrings and some shoe polish? Because that's what we have. Our resources are dwarfed by the state's resources and as long as that's the case, I'm not proving shit to you. If you give us \$170 billion, then you can expect some results. Right now, you all who are down with this current adversarial, punishing, oppressive system are getting \$172 billion every year and you're not asking the prisons to show you results. No.

Does anybody go to their local prison and say, "Tell me how many people have left here and are okay and aren't doing things in the community?" Nothing. You don't ask the cops for results. We don't ask anybody for results. They're not responsible for coming with an evaluation plan to show how they've used the money. They get unlimited money every single year, more and more and more money, no questions asked. How come that system gets to operate with impunity in that kind of way? And you're asking nonprofit groups on the ground who sometimes are not even nonprofits, just community groups in their neighborhoods, moms sitting on chairs... When they are trying to get a \$10,000 grant, to show that they're going to end all violence within five years.

So the whole entire system is set up to actually be just unbalanced in terms of where the energy should be put, in terms of telling that system that is doing the wrong thing, Rather than advancing the alternative.

Repairing Justice. An Alternative to Prison with Danielle Sered Part 1 - On the Media with Bob Garfield - Air Date 7-31-19

BOB GARFIELD - HOST, ON THE MEDIA: Let's start with assumptions. Someone does something violent, and the best thing to do is lock them up for as long as possible, which, you know, it doesn't on the face of it sound like a foolish proposition. Rapists murderers, people who kick old ladies in the face on subway cars, they need to be dealt. With what's wrong with that assumption?

DANIELLE SERED: So, the fact that people who caused serious harm need to be dealt with is entirely right. The question comes when we start to answer how. And it depends on what our aspiration is. If our aspiration is to sort of perform punitiveness, then we should lock them up for a really long time. If our aspiration is to produce safety or to heal victims or help people become people who will never cause that harm ever again, then prison has very little to offer for us. I'm in the business of ending violence, and we in that business know that core drivers of violence are shame, isolation, exposure to violence, and then inability to meet one's economic needs. The four core features of prison are shame, isolation, exposure to violence and an inability to meet one's economic needs.

We've baked into our central response to violence exactly the things that generate it. That's not what a society that wants to be safe does. The other assumption that animates our appetite for punishment is the assumption that that's what crime victims want. The truth is, in our public discourse, we have heard from a tiny fraction of crime victims and largely from a non-representative fraction. We've heard mostly from White women like me, even though a young man of Color is 10-and-a-half times more likely than I am to be robbed or assaulted, and even likelier than that to be killed. And so our picture of who crime victims are and what crime victims want is artificially monolithic and distorted in a way that means that we are enacting things in their names without ever having actually asked them what it is they want.

BOB GARFIELD - HOST, ON THE MEDIA: You mentioned safety; you mentioned punitiveness. There's also the question of deterrence and rehabilitation, and as you say, justice for victims. Can you give me just a short list of why those goals aren't being met?

DANIELLE SERED: Prison is antithetical to accountability which is confusing because we often use the terms punishment and accountability interchangeably, and in fact, I think they couldn't be more different. So, punishment is passive. Punishment is something someone does to me. All I have to do to be punished is not escape it. Accountability is different. Accountability means that I acknowledge what I've done. I acknowledge its impact. I express genuine remorse. I make things as right as possible, ideally in a way defined by those I hurt. And I do the enormous labor of becoming someone who will never cause that kind of harm ever again. That is some of the hardest work any of us will ever do, and prisons aren't built for it. Prisons separate people from those to whom they owe a debt; they preclude discussion and conversation. They create barriers to victims getting answers to their questions, like how dare you? And why? And was that a real gun? And what if I had fought back? Or what if I hadn't fought back? Or what were you going to do? Or why did you choose me? All of those things. They constrain someone's ability to actually make repair, whether that's paying restitution to the people from whom they stole property or who've accrued medical debt because of the injuries they caused to them, and other forms of repair, like paying it forward in the neighborhood by helping younger people not cause comparable harm.

BOB GARFIELD - HOST, ON THE MEDIA: Deterrence as a justification for the status quo is manifestly a failure because we have millions of people in prison for violent crimes. They clearly have not been deterred.

DANIELLE SERED: When it comes to deterrence, if prisons worked to produce safety, we'd be the safest country in all of human history. No nation has ever locked up more of its own people than we have. But deterrence depends on a few things. It depends on a level of civic education, and it depends on people knowing what the law is and what the consequences are for breaking that law, which is totally not present for us. It depends on consistency, meaning if I do X, Y will happen every time. That could not be less true.

The biggest predictor of outcomes in the criminal justice process is sadly not your guilt or innocence but your race, and that is not something that someone can be deterred out of being. And finally deterrence depends on hope. It depends on the prospect that if you are law abiding, if you're part of the social contract, if you do all of those things, that you will get the basic entitlements of a just society. That includes an ability to meet your basic

economic needs, some basic level of safety, some decent education. And when none of those things are promised, absent a real, structural basis for hope, deterrence falls short.

The transformative power of restorative justice Part 2 - The Ezra Klein Show - Air Date 6-18-20

EZRA KLEIN - HOST, THE EZRA KLEIN SHOW: So, what is it? What is restorative justice?

SUJATHA BALIGA: It's interesting to ask that question because two of my teachers, one is Howard Zehr, who's called the grandfather of restorative justice, and I feel that he theorizes and teaches restorative justice in incredibly brilliant ways, that can help those of us who are trained in Western thinking.

And then my other mentor and teacher is Robert Yazzie, just the former chief justice of the Navajo Nation, who, when people talk about Howard Zehr's definition of restorative justice, Robert Yazzie finds it to be hubris that we think that we can define restorative justice as a way of life, it's a way of being. But I will name Howard's definition, which I think is really beneficial. So he says, it's an approach to justice that involves, to the extent possible, all those who have a stake in a specific offense, to collectively identify and address harms, needs and obligations, in order to put things as right as possible.

And, I think there's so many pieces of that definition that just calm my heart, you know? And I think how it ends: putting things as right as possible, I think is a really important place to start in that like when we're talking about homicide, things are never going to be put a hundred percent right. It can't be. When we think about things like truth and reconciliation commissions, we're never going to turn back the clock. So this is not, that's not what it's talking about. Restorative justice isn't asking us to return or restore to some preexisting state. That's a big critique of the word. But rather that it calls us to be restored to our wholeness, as individuals and collectively. I think that that's really what the "restored" is, restored to our spirit, restored to how it is that we're supposed to be. And words like *ubuntu* come to mind when I think about restorative justice. This word that really we came to know here in the U S through the South African truth and reconciliation. It's defined sort of, as I am because we are, or, a person is a person through other people. This is the basis of restorative justice.

EZRA KLEIN - HOST, THE EZRA KLEIN SHOW: I've heard you talk about the three questions the current system asks and the ones that restorative justice asks. Can you go through those?

SUJATHA BALIGA: Yeah, those are also Howard's questions.

So it's interesting. He has more than three; there's six actually, but we get stuck on the first three and I think the other ones are also really important.

But the three questions are-- this is the paradigm shift that restorative justice calls us to. And I really love the way Howard frames restorative justice as a fundamental paradigm shift, so there's a debate within the restorative justice academic community about whether or not restorative justice should be framed as a paradigm shift or sort of as what I would call an add on to the current criminal legal system. And the three questions are this.

So in the current way of thinking, we generally think of: What law was broken, who broke it, and how should they be punished? That's sort of the thumbnail sketch of the criminal legal system as it currently operates. And the paradigm shift restorative justice calls us to a completely different set of questions.

It asks: Who was harmed, and what do they need, and whose obligation is it to meet those needs? So without that third question, whose obligation is it to meet those needs, it wouldn't be justice. It would be just what I do when, my kid tells me something sad happened to him. I'm like, what, what hurt and how do we fix that? What do you need rather not how do we fix it, but what do you need? What do you think you need next? But when it's somebody else did it to me, then I'm like, well, what's the justice question that starts to arise there? And, how do we start to think about making that right with that person?

That's the justice piece.

Repairing Justice. An Alternative to Prison with Danielle Sered Part 2 - On the Media with Bob Garfield - Air Date 7-31-19

BOB GARFIELD - HOST, ON THE MEDIA: I don't know how acute your hearing is, but if you listen carefully, you will hear tens of thousands of eyes rolling. Dialogue. Circles. Talking sticks. It all sounds kind of kumbaya and bleeding heart in exactly the way conservatives ridicule the left about. What's the answer to the eye rolling?

DANIELLE SERED: So, I actually don't find that this is a liberal/conservative divide in ways many other things are. Conservatives often understand debt. They understand that if someone hurt you, you want to ask how dare they hurt you. You want some power in the process to decide what should happen to them and what they should have to do. Libertarians understand that when someone commits violence, it's not the state that was hurt. The DA is fine. The judge is fine. The victim is the one who is struggling. So, there's an obligation that's between people, the debt that's owed to them that instead gets paid to the state in a superunproductive form. The thing, too, is that in putting somebody away, people don't have to do things to fix things. People don't have to repair the damage they've done. That repair falls on the society, even though they themselves are the ones responsible for causing that harm. It means that we spend our taxpayer dollars housing and feeding people who have caused harm. At the same time, we spend a couple of our taxpayer dollars trying to tend to the people they hurt, and we let them off the hook for doing that repair.

BOB GARFIELD - HOST, ON THE MEDIA: Small footprint so far. Kind of pilot projects in two boroughs of New York. Great data based on tiny sample size. What are the prospects for restorative justice . . . for it getting traction for being more widely embraced . . . for it being an arrow in the quiver of a thousand DA's instead of just two.

DANIELLE SERED: So, in our current system it's as though there's a hamburger stand in the middle of the desert that serves really nasty burgers, and there's a long line because there's nothing for 200 miles. And, if you looked at that hamburger stand, and you surmised that

those were the best burgers in this country, you'd be making a mistake. And, if you surmised that everyone's favorite food was burgers, you'd be making a different kind of mistake.

What I know is that if there were also a taco spot and a pizza spot and a veggie spot, the line that the hamburger stand would get shorter and shorter and shorter as people availed themselves of options that actually might nourish them. So, the reason that I'm hopeful about the expansion of restorative justice is I think that it is in line with what most victims actually want.

It's just not in line with what our public narrative has been about victims. We've lifted up a handful of stories, we've given the megaphone only to the most vengeful. And we've done that at great expense to victims. So, if changing everyone's minds were required for this expansion, I'd be a skeptic like most everyone else. What I understand is that the story we've been told about who people are and what they want is largely a lie. And so all we have to do is act on the thing that is true instead of acting on the lie that we've been told, and we'll find vast demand for this across the country.

Mass Incarceration, Violence & the Radical Possibilities of Restorative Justice with Danielle Sered - Democracy Now - Air Date 3-14-19

Well, can you explain Danielle, if there are any precedents or examples of the kind of restorative justice that you're advocating?

So, restorative justice practices are thousands of years old. They're actually far older than the court systems, that we think that they're the innovative intervention to transform. Restorative practices have their roots in Native communities in this country and in other indigenous communities across the world. And so, since time immemorial, when communities have dealt with people who belong to them, who are members of their community, who commit acts that they know to be wrong, they look for courses of actions that will not only change that behavior, but will keep that community whole. And so, there are programs around the country that apply restorative justice to lower-level crimes than those we address, that apply restorative justice with younger people in the juvenile system, even with serious crimes. Common Justice is the first to apply these practices as a diversion from the criminal justice system, but it is anything but new. Compared to restorative justice, the criminal justice system is like a little toddler on its grandmother's lap.

I wanted to read a quote of Michelle

AMY GOODMAN - HOST, DEMOCRACY NOW!: Alexander, the scholar, civil rights lawyer and the author of *The New Jim Crow*. She wrote in her New York Times column about [Danielle] Sered's book. She said, "Our criminal injustice system lets people off the hook, as they aren't obligated to answer the victims' questions, listen to them, honor their pain, express genuine remorse, or do what they can to repair the harm they've done. They're not required to take steps to heal themselves or address their own trauma, so they're less likely to harm others in the future. The only thing prison requires is that people stay in their cages and somehow endure the isolation and violence of captivity. Prison deprives everyone concerned—victims and those who have caused harm, as well as impacted families and communities—the

opportunity to heal, honor their own humanity, and to break cycles of violence that have destroyed far too many lives.” You use examples in your book, [Danielle] Sered. Those are the words of Michelle Alexander, recommending *Until We Reckon*. Danielle Sered, give us some of the examples.

DANIELLE SERED: I think one of the most powerful ones, early on—as I said earlier, that we only take cases into the project if the victims of the crime consent. It’s important to remember fewer than half of victims call the police in the first place. Another half don’t even make it past grand jury. So that means that the victims who remain in the system following indictment are the ones with the greatest appetite for incarceration. These are the victims we ask whether they want to see the person who hurt them go to prison or come to Common Justice.

Early in our experience, we were talking to a mother whose 14-year-old son had been robbed and beaten. The young man who caused this harm to him was facing at least three years in prison. And I was having a conversation with that mother about whether he should go to prison or Common Justice. And she said to me, “When this young man first hurt my child, first I wanted him to burn to death, and then I wanted him to drown to death. And then I realized, as a mother, I don’t want either of those things. I want him to drown in a river of fire.” And she said, “But the truth is, three years from now, my 9-year-old boy will be 12. And he’ll be going to and from school, to and from the corner store, to and from his aunt’s house alone. And one of those days he’ll walk past this young man. And I have to ask myself, on that day, do I want this young man to have been upstate, or do I want him to have been with y’all?” She said, “Now, if he were before me today and I had my machete”—not a machete, my machete—“I would chop him to bits, bury him under the house and sleep soundly for the first time since he dared lay his hands on my baby. The truth is, I’d rather him be with y’all.”

I think we have a myth that moving toward some different response to crime requires forgiveness, requires mercy, requires compassion, requires victims who embrace the people who hurt them as though they are their own family, as though they could be brothers. That’s not what it requires. What it requires is pragmatism. That mother made a decision to Prioritize the safety of her children and children like him over her emotions that may or may not be a mother's obligation. It certainly seems that prioritizing safety over emotion is the job of the criminal justice system.

Restorative Justice with Sonya Shah - Justice In America with Josie Duffy Rice and Clint Smith - Air Date 3-13-19

CLINT SMITH - HOST, JUSTICE IN AMERICA: I'm curious, what spaces you find yourself doing this work in? What are the sort of different dynamics that shape what the process of restorative justice looks like in each, we talked a little bit about the sort of desire to pull it away from operating within the state, but I'm curious like in school, in community organizations, in somebody's kitchen, whereas a lot of this happening and how does the place that it happens and that sort of way shape what the process looks like?

SONYA SHAH: Yeah, so there's a huge budding restorative justice movement in schools for sure. I think that, so I guess another story is useful, but, and I, and I'll tell sort of an Oakland

based story. So maybe about 10 ago there was a woman named Rita Alfred and she, you know, took a circle process training and she was a disciplinary hearing officer for the Oakland School District and decided after that training, you know, I really want to try something different. So she went into a West Oakland middle school and in the first year in the school, she taught all the principals and staffs how to do circle process RJ-style. And then in the second year she taught all the kids. And in two years, this was studied by the Henderson Center for Social Justice at Berkeley this school that was in West Oakland that had high suspension and expulsion rate, lots of kids of color, the expulsion rate went to zero and the suspension rate went down 75 percent.

Wow.

And this is consistent. So this is 10 years ago, right? So boom. So this happens and it's happening all over. It's happening in Pennsylvania. It's happening in Colorado. It's happening in Minnesota. And slowly and gradually it catches on. And a lot of these school boards in different states have adopted restorative practices as a way to do discipline. Meaning that instead of, you know, having a suspension expulsion kind of punitive system decided by the vice principal, you go to a restorative process, which pulls in parents and teachers and principals and kids and all of that kind of stuff. And the statistics across the board in all of these states are the same that somewhere in between, if you offer restorative practices as a process, that expulsion rate and suspension rates have gone down between like 56 to 85 percent depending on what school. Right? And now when we're talking about kids of color and we're talking about the school to prison pipeline, we know how important it is to actually bring down suspension and expulsion rates in these particular situations. So the school's movement is huge. Of course like anything as it gets big, there can be like some processes that get more eroded where, you know, if not trained well, restorative justice becomes another kind of scripted tool that some teacher is slapped with doing and has no idea that it's really like a paradigm shift of how you think about harm. So when it's not done well, it's replicating like something harmful and that has happened and when it is done well it's because the restorative justice coordinator has internalized a different paradigm. The school is internalizing a different way to think about discipline, to think about like not discipline but even like when harm is happening around you and the health of kids. Right? So it's like most of the training that happens around how to do RJ in schools is really about taking a whole school approach and not saying like don't be just that teacher or that one person out there in the school who's trying to do it differently. You need the whole school on board. So that's a big piece on the school's thing. And the person that I'm close to who runs the Oakland Unified School District program, he has often said like for, we have 33 restorative justice coordinators in the Oakland schools, which are sadly on the chopping block right now, but that's another story because of the city budget, but anyway, so he has said that basically 90 percent of doing restorative work in schools is community building. 90 percent of the time all you're doing is being in circle, building, community building relationship and it is so that when the 10 percent of when you know the stuff hits the fan happens, that folks are ready, they're ready to deal with the harm when it happens. Right? But you have to do that 90 percent of your time is community building and relationship building. So that's very much how this work is being infused kind of in the schools context. Also, there's a really large contingent of folks that are trying to do what's called restorative community conferencing. So it's like diversion for young people who do harm out of any juvenile justice system. So we know that if a young person, you know, at 16 to 20 touches,

you know, the juvenile justice system, is incarcerated, they are like 90 percent likely to go into an adult system. We also know that because of all of the research, all his stats, everything, that like there's like this spike of crime of like harm that happens at the age of particularly boys between the age of like 16 and 20. So it's like what do we do to, what do we need to do to get young boys, probably mainly more young boys of color through that age? Right? So how can we divert them out of the juvenile justice system? What restorative community conferences are, are basically working with the whole community to refer cases to an outside system and then solving it before it ever goes to juvenile justice. Or if they go to the court, working with the DAs to divert the cases to an outside organization and have everybody on board to say, 'if you go through this restorative community conference process and come up with a plan, you will never, your case is closed.' You know, 'if you fulfill the plan, it's done and you never touch the system.' So that restorative community conferencing and diversion program is alive and well. It's something that started in New Zealand and has been happening in Baltimore with a program that Lauren Abramson started and is now rooted in Baltimore, I think it's Restorative Response Baltimore, with Sujata Baliga's work, uh, here in Oakland, with, I know folks like Wakumi Douglas in Florida and Travis Claybrook in Tennessee and you know, they're all these different places that are trying to do the diversion work and it has proven to actually work from the New Zealand context and is proven to now be working here.

The transformative power of restorative justice Part 3 - The Ezra Klein Show - Air Date 6-18-20

EZRA KLEIN - HOST, THE EZRA KLEIN SHOW: It seems to be that something that is important here, and maybe power isn't exactly the way to talk about it, but also is the capacity for the survivor to reemerge as the protagonist in their own story--that when you are victimized in a crime, you've lost power in a profound way, but you've also sort of lost your own plot. Right? You had planned one thing and something else, something potentially quite terrible has happened. And when the state takes over, the state has its set of remedies, primarily incarceration. And when you take over, you have all kinds of remedies, and your remedies might be a tinkerbelle, but it might be that this person has to, from what I've read about restorative justice, has to engage in all kinds of self improvement, but also to some degree, part of it might be that you get to tell a story where you're someone who forgave, you get to tell a story where you're somebody who rose above it, right?

You were the leader of a circle that has been written about in a big New York Times Magazine profile years back about a murder between a young man who killed his girlfriend. And the parents entered into restorative justice with him. And something that struck me so much was them sort of saying in that piece, that what this did for them was it gave them back control of their story and it gave them back control of their daughter's story.

And I'm curious if you could talk a little bit about that. the question of who gets to have the story when it's the state and who gets to have the story when it's the circle.

SUJATHA BALIGA: Such a beautiful way to put it.

When I think a lot about the Grosmaires in that case, you know, it really was two pieces.

One was that listening to the Grosmaires say, we get to decide, we have to be able to be a part of deciding what happens with regards to our daughter, right? Like that somebody else would be pulling all the shots, deciding how it gets charged, all of that. And I know that the DA in that case was responsive to them and was listening to them.

But in the end, there's a beautiful show, Problem Areas that Wyatt Cenac had done on HBO a few years ago. And there was an episode on this particular case that gets covered in this episode and the DA actually, went on that show, which I thought was really generous and amazing and really honest. He was saying like, I'm the decider. Like, I decide what happens in these cases. And it cuts to, Andy saying, what I heard from him over and over again, he's like, how is somebody else the decider about our daughter? And so I think that that's a really important piece of the continued disempowerment that crime survivors feel when the state swoops in and makes decisions for us.

But more on the story piece, I think Kate speaks about this so beautifully. And she wrote a book called, I think it's called Forgiving My Daughter's Killer. And when she talks about the restorative justice journey that their family went on, really it was about telling the story differently, and Howard Zehr speaks of this so beautifully that he really literally uses the word "re-storying," that we're all "re-storying " what happened. And so , I think that this is an incredibly important piece. The "re-storying" for survivors.

Repairing Justice. An Alternative to Prison with Danielle Sered Part 3 - On the Media with Bob Garfield - Air Date 7-31-19

BOB GARFIELD - HOST, ON THE MEDIA: I do detect at least one structural problem with restorative justice in the context of the American version of rule of law. And that is, our criminal justice system is not based on the victim versus the accused. It's based on the state versus the accused, the society versus the accused. When victims are explicitly part of the remediation for a crime, does that square with the, you know, the Constitution?

DANIELLE SERED: There is nothing in us understanding something as a crime against the state that requires that the state's response is to put people in cages. What it requires is that the state leverage its power in the interest of collective safety and collective wellbeing.

So, if the judgment is that the best way to produce that collective safety and wellbeing is through an intervention that is proven to work rather than through an intervention that is repeatedly going to fail, I think that's not only within the purview of the Constitution but actually within the scope of obligations of a state's responsibility to its citizenry. The other thing that's true is that fewer than half of victims call the police in the first place. While we enact all of this punishment in victims' names, we are doing something that the majority of victims find somewhere on the spectrum between useless and harmful. And so, I also think there's an obligation on the part of the state to exercise its authority to produce safety in a way that actually includes most of its citizens.

BOB GARFIELD - HOST, ON THE MEDIA: I asked you before about how something like this could scale. I want to ask the same question, but not just about dealing with violent felons, but dealing with other aspects of transgressive behavior in the society, whether it be in

political rhetoric, online behavior and so forth. Is this not just an approach to the criminal justice system, but an approach to conflict resolution of all kinds?

DANIELLE SERED: It's applicable in all sorts of contexts. Restorative justice is fiercely proportional. It means it brings you face to face with the impact of the harm. When that impact is small, you see a small harm clearly; when it's great, you see a great harm clearly. My belief that it is most applicable in the most serious cases because it's powered by the severity of that harm. But the basic idea scales every where from how we think about an attempted murder to how we parent our young children. I would do with my godson, when he was young, a practice where, if he did something bad, he'd have to say what he did and say he understood the impact and ask how he could fix it and do that and say he was sorry.

He was capable of doing that for, like, throwing a Cheerio at my face. He would have to say, I threw the Cheerio and it made you sad because you asked me not to. And so it was mean of me to do it. And I'm sorry. And what can I do? And I'd say you can kiss me on my forehead. And then he would kiss me on my forehead where the Cheerio hit, and then he would say, I'm sorry. No, I'll probably never do it again.

Restorative Justice with Danielle Sered - Justice In America with Josie Duffy Rice and Clint Smith - Air Date 3-13-19

CLINT SMITH - HOST, JUSTICE IN AMERICA: There are criticisms of restorative justice. To be clear, it's not perfect. First, the fact that both parties must agree to even take part in the restorative process means it is limited in the situations in which the responsible party is interested in amends in the first place. That can obviously be limiting into who is participating or not participating in the process. There are also of course situations in which the person who has caused harm is coerced into the process by the looming threat of criminal consequences, but even then they have a stake in the resolution.

JOSIE DUFFY - HOST, JUSTICE IN AMERICA: People also criticize restorative justice for keeping professionals out of the process. Not just legal professionals but people like therapists, for example. Another criticism is that restorative justice doesn't really address the fundamental power structures that often lead to harm. Power dynamics are a concern in the restorative process – things like race and gender and age and class and sexual orientation don't go away just because the restorative justice process is happening. Nor does social context, especially for kids, which may ultimately lead the harmed party to feel pressured into resolution before they feel ready.

CLINT SMITH - HOST, JUSTICE IN AMERICA: Restorative justice isn't perfect, and maybe it's not for everyone or for every type of harm that's been done. As we said, there's no one solution to this disaster of the criminal justice system that we've created. But in general, restorative justice does offer a different way to think about harm, healing, restitution and consequences.

JOSIE DUFFY - HOST, JUSTICE IN AMERICA: And fundamentally, it does attempt to rethink how we imagine punishment, which is key for any deeply rooted, real change to our criminal

justice system. Here's Danielle Sered talking once more on the difference between punishment and accountability.

DANIELLE SERED: [Begin Clip]

In our culture when we say accountability we usually mean punishment. But I understand that the two are not only different I actually believe that they're incompatible. So punishment is passive. Like punishment is something somebody does to us. All we have to do to be punished is to not escape it. It doesn't require anything in terms of our agency. It doesn't require us to work. It doesn't require us to acknowledge anything. It is something that is inflicted upon us by somebody else. Accountability is different. Accountability is active. At Common Justice we believe accountability has a few key elements. It requires that you acknowledge what you have done, that you acknowledge its impact on others, that you express genuine remorse, that you make things right to the degree possible, ideally in a way defined by those who were harmed and that you do the extraordinary hard labor of becoming someone who will never cause that kind of harm again. That kind of accountability is some of the most difficult labor any of us will do. And it's not only harder than punishment, it's also more effective, both for the person who caused harm, because it actually animates transformation, but essentially also for the person who was harmed because it actually answers to their pain and their needs. The problem with prison is that it makes almost no room for accountability whatsoever. People are separated from those they've harmed, they're separated from those to whom they owe a debt, their ways of paying that debt, whether through something concrete like restitution or others things like paying forward their responsibility by being agents of positive change, are vastly constrained. And they're in an environment that discourages honesty about what one has done and that dramatically constraints one's ability to reflect deeply on the impact one has had on other people's lives.

And so prison not only doesn't produce accountability, nothing about it does, but it interferes with it in such a way that it guts our ability as a society to actually hold accountability as a core value when something wrong has been done.

Repairing Justice. An Alternative to Prison with Danielle Sered Part 4 - On the Media with Bob Garfield - Air Date 7-31-19

BOB GARFIELD - HOST, ON THE MEDIA: Tell me about results. In your book, you have many heartwarming examples. Anecdotally, this is an easy sell. You use some percentages of outcomes, but the sample size as we've discussed is quite tiny. So, do we have any reason to think that this scales, that you can build a criminal justice infrastructure around healing circles?

DANIELLE SERED: No and yes. The no is that restorative justice will not wholesale replace incarceration. Nothing will. Part of the problem with incarceration is it treats a thousand different problems with one single tool, and that's never going to produce meaningful results. The best results will always come from a variety of interventions that are actually appropriate to the kind of harm someone is causing to change.

But, on the other hand, the part where I say yes is that we spend \$80 billion on our correction system. So, in cases where we're spending, say, a hundred grand and locking someone up for a decade, we're spending a million dollars on an intervention that is unlikely to actually produce positive results.

However small our operations are, however intensive our services, it would take us a lot to get to a million dollar cost per case. And I think all of us can understand that if we have those kinds of resources to invest in a single person, that at much, much smaller levels, we can invest in results that actually transform.

The other thing that's true too, is if you start to do things in response to violence that actually reduce it, then the volume in the criminal justice system will diminish, and you won't have to do as much. The corrections system has an amazing business model where their intervention and response to violence generates violence, which brings them more work to do. A different model would have interventions that responded to violence that reduced violence and thereby reduced the overall workload. And it's in that efficacy that there's truly a path to scale.

The transformative power of restorative justice Part 4 - The Ezra Klein Show - Air Date 6-18-20

EZRA KLEIN - HOST, THE EZRA KLEIN SHOW: Does this scale? Can this actually be a replacement for the system we have now, in a world where we did move towards, say, prison abolition? Is restorative justice, to the extent it's a paradigm change, not an add on, can it be a replacement? can it be what we do, not just something that a couple of people do.

SUJATHA BALIGA: I definitely want to let the listeners know that this was not a set up and I did not feed you this question, but this is literally what my organization is working on and why I don't get to be in these circles very much anymore. We're literally strategizing the scaling. Like this is our goal.

When I think about the totality of ending mass criminalization in America, as we know it, there's so many pieces, so many amazing people across the nation doing work in so many different ways, at dismantling what exists. And then in the end, we're going to need this other thing that we're going to need. People are still gonna keep department each other, right?

I dream of a day-- and I think I look to Mariam Kaba a lot who constantly reminds us to look to that horizon of a day when we're not going to need anything that we have today, that if everyone's needs were truly met, et cetera. And even then, in 500 years from now, and I'm seeing some sort of Star Trek future where everyone's needs are met, et cetera, et cetera, they're still going to be harm. There's still going to be egos. There's still going to be... right? Like as a Buddhist, I can say until every single human is fully enlightened, we're still going to be hurting each other.

And so what are we going to need instead? And so my hope has been to build that for when we get to the place, when, instead of being a part of the act of dismantling, I think that's a lot to ask of restorative justice to be the thing that dismantles and be the thing that we use after it's dismantled.

And so here we are. I think of it in terms of like in the Audre Lorde quote, we can't use the master's tools to dismantle the master's house, getting that wrong, but something to that effect. And I've been thinking about trying to use restorative justice end mass criminalization is sort of like trying to get the master to dismantle his own house with indigenous people's tools, Mennonite people's tools. Like that's not going to happen, right? So how do we build this other world instead? And have it be ready and have it be continuing to expand and keeping track of the data to show that it is actually so much more effective than the criminal legal system, as we know it. And so we've been doing all of that. And we're starting to think about scaling, what does that look like and how does it that happen?

So we're up against a lot in this process. It is really hard to answer this question. When the structural realities of operating it, operating in tandem with the criminal legal system, literally make it impossible. Right? So we have to get these memorandum of understanding from any, every jurisdiction, where it's guaranteed that things are not going to operate. We need the funding. We need the--these are the sort of things. But are the tools there? Is the whole template for how we could have restorative justice in every single place in this nation available? Yes. My team literally has put these things together. We have a tool kit. We have the trainings, we have all the assistance for these community-based organizations to build their--I don't say replicate, because we are not trying to make--it's not like making little Impact Justices all over the nation. Instead, it's working with Soul Sisters Leadership Collective in Miami, to get them what they need so that they can hold this down in Miami and it can grow and grow and grow and be available, for taking these things on. It's working with YASP in Philadelphia. And these are all in places where, particularly in places where we've had amazing district attorneys like Larry Krasner and George Gascon and people who've been willing to do this. Working with Community Works in Alameda County and RYSE in Richmond and helping these folks. They're all ready to go. Everybody's willing to do this.

And it really is a matter of us taking it to the next step of figuring out how for these folks to get a portion, a portion of what it is that we spend on mass criminalization and even on policing. So this aligns beautifully with this defund moment, where people are asking, like in Berkeley, \$75 million of the general fund a year, 38% of our general fund, goes to the police, right? In Oakland it's worth like 45%, I think, of the general fund, like \$290 million, goes to policing in Oakland. And, we're asking for a million, we're asking for 3 million in these cities.

And it should be more, if we were to be operating at best practices, but scaling is absolutely possible. And we have a plan for that, and it needs to happen, alongside all the other amazing work that is happening, to reduce our over-reliance on, our reliance at all on, mass criminalization.

Summary

JAY TOMLINSON - HOST, BEST OF THE LEFT: We've just heard clips today, starting with *Why is This Happening* with Chris Hayes in two clips speaking with Merriame Kaba about the failures of our current system and the absurdity of basing a system of justice on the feelings of the victims rather than provable benefits to society. *The Ezra Klein Show*, in four clips, spoke with Sujatha Baliga about how our system incentivizes people to lie and deny responsibility about the basic tenants of restorative justice, the critical difference between the state holding all the power versus the harmed being empowered during the process, and lastly, a vision for

how the system can scale. *On the Media* spoke with Danielle Sered in four clips about how our current antiviolence system actually cultivates violence, about how restorative justice will spread naturally when people have it as an option, more on the dynamics of state versus personal power to resolve issues, and more thoughts on how the system can scale.

Democracy Now also spoke with Danielle Sered about how it is the job of the system to prioritize safety over emotion. And in two clips, *Justice in America* spoke with Sonia Shaw about restorative justice in schools, about some of the criticisms of restorative justice, and they also played a bit of Danielle Sered explaining the difference between punishment and responsibility.

Voicemail: Even the clip out of context gave enough context - Dave from Olympia, WA

CALLER: DAVE FROM OLYMPIA, WA: Hi, Jay it's Dave from Olympia. I just finished listening to episode 1358 *How System of Power Defends Itself*. it was interesting and well put together, but I smelled a rat from the very beginning. The original clip, which is clearly taken out of context. It still had enough context to make me think, that Tom guy, he's like, he's got some issues, there's something deeper going on there that if you looked at, even in the t, I would say deceptive clip, she still references *constituents* being concerned. She still says ,we've explained it to you, read a book, and then the condescending closing of, oh, my friend will explain it to you. And that, that snide voice; I'm just like that guy, that guy is I mean, maybe he's just a misogynist, but there's stuff going on there.

So, interesting to see how the event was taken out of context and blown up for political purposes, but it's shocking that it was, that people didn't feed through it. And maybe people did and it got played within the bubble media that doesn't want to understand that, but man that's just pathetic.

A great dissection of the event, however, thanks Jay!

Final comments on the one thing I know about all of your friends

JAY TOMLINSON - HOST, BEST OF THE LEFT: Thanks for listening everyone. Thanks to Amanda Hoffman for all of her work on our social media outlets and activism segments, and thanks to all those who called into the voicemail line. If you'd like to leave a comment or question of your own to be played on the show, you can send us a voice memo by email or simply record a message at (202) 999-3991.

So thanks to Dave for calling in. We always love hearing from Dave. He's been listening for so long. I mean, I think we've at least had his decade celebration and he's such a big supporter of the show. He has his own tier of membership named after him. Cause he wanted to support the show more than the existing tiers allowed. So I had to give him a tier of his own. So in response to his message though, about Tom and that whole episode and the saga, it actually continued after that episode posted, I ended up being in conversation via Twitter with Tom and other people involved in that story, and so I want to add one comment here that I didn't have a chance to make in the show or in any of those exchanges online

afterward, and it is on the thing that Dave was pointing out. The, I will have my friends explain to you and it sort of, it plays into the, I have a Black friend, my Black friend will explain my position, and I'm defending myself against accusations of racism by calling my Black friend to my defense. And here's what I want to say about "Black friends". Keep it in mind, you think well, but you can't possibly know anything about Tom's Black friends, but I can. I can know something about Tom's Black friends; I also know something about your friends too. The one thing I know about Tom's friends and about your friends, not that your friends are relevant to this conversation, but the one thing I know about friends is that they are self selected. So if you base your opinions and you bolster your confidence in your own position based on what your friends tell you is good and appropriate and okay to do in whatever circumstance, you just have to take that with a grain of salt.

So like I said, I don't know anything about Tom's Black friends except one thing, they're willing to be friends with Tom. So of course this shouldn't be news to anyone, but Black people aren't a monolith. There's a huge range of opinion within the Black community, and so Tom's friends are somewhere on that spectrum. Where? I have, I have no idea, but what I do know is that they are willing to be friends with Tom, and what I'm pretty confident of is that there are a lot of Black people who would not be friends with Tom. So the use of his own friends as a defense against accusations of racism becomes pretty silly when you then realize, well okay, you might have some Black friends who agree with you, good for you, I guess, but how many Black friends don't do you have because you've met Black people and they've thought, oh, I do not want to be friends with that, dude. Cause I guarantee you, the number is higher than zero. Frankly. It's just like if I were to base all my opinions and my confidence in my own positions on what my listeners said about my positions.

Spoiler alert: you mostly agree with me, but that doesn't mean that that is good evidence that I'm right. It's just evidence that you have self-selected yourself into my audience because you agree with me. So I don't go around reading or listening to listener comments who say I'm right and then bolster my own confidence in myself. I listen to other people. I listen to experts. I read and listen widely so that I can get as much information as possible so that I can be right. If I based my opinion of myself on the opinions of people who have self-selected as agreeing with me, well then, that way lies a dead-end, antiintellectual culdesac, where we all just can be wrong together, continuing to agree with each other and bolster our own confidence in ourselves.

So this isn't just saying anything bad about friends, friends are, great listeners are too, but I tend to trust the people who are willing to challenge me at least some of the time more than I would trust someone who agrees with me on everything. And if Tom's Black friends, aren't challenging him even when he goes around on the internet saying that the concept of antiracism as described by the books of the moment, *White Fragility*, *How to Be an Antiracist* is a cult.

If his Black friends aren't challenging him on that. I think that says more about his Black friends than about him, but if he is using his Black friends as a shield against criticism and as evidence that he doesn't need to learn anymore, then that's completely on him for buying into the self fulfilling prophecy of only taking the advice of your friends, who by definition are less likely to challenge you to grow, to challenge you to change or open your mind farther, because if they were those kinds of people, there's a lot less chance they would be your friend in the first place.

Now just quick note that I'm taking something that I don't know the name of, it's kind of a vacation, but I'm going to be working. Maybe it's a sabbatical from the show so I can do other work. Anyway, vacation's going to be involved, but also work is going to be involved so I'm taking off from making new episodes through to the end of August. I figured I'd take this opportunity of a slow news month, nothing's really happening right now...joke, and I'm going to use this time to retool and refresh and gear up for the rest of the year. Member's got a whole run down of what I'm up to. It took me about 25 minutes to explain to the members on the bonus episode, all the things I'm going to be doing, so you'll excuse me for not going down the list right now, but rest assured I will be doing some resting and also doing a whole lot of work and it just requires being away from the show for a concentrated amount of time so I can get a bunch of stuff done. So I'll be back in September, and in the meantime, there'll be hopefully well chosen, handpicked rerun episodes to keep the feed fresh, so be on the lookout for that.

As always, keep the comments coming in at (202) 999-3991. That is going to be it for today. Thanks to everyone for listening. Thanks to those who support the show by becoming a member or making donations of any size at patreon.com/bestoftheft, that is absolutely how the program survives. Of course, everyone can support the show just by telling everyone you know about it, and leaving us glowing reviews on Apple Podcast and Facebook to help others find the show. For details on the show itself, including links to all of the sources and music used in this and every episode, all that information can always be found in the show notes on the blog, and likely right on the device you're using the lesson. So coming to you from far outside, the conventional wisdom of Washington DC. My name is Jay!, and this has been the Best of the Left podcast coming to you as often as we are able, thanks entirely to the members and donors to the show from Bestoftheleft.com