The Value of Community Participation in Restorative Justice

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Modern criminal control systems represent one of the many cases of lost opportunities for involving citizens in tasks that are of immediate importance to them.

—Nils Christie, “Conflicts as Property”

Introduction

Restorative justice is a normative theory and a reform movement attempting to bring dialogue and reconciliation among victim, offender, and community to the center of criminal justice practice. At present there are hundreds of restorative justice programs, which originated out of the experiences of the victims’ rights movement, neighborhood justice initiatives, and mediation practices of the 1970s, in the United States, handling mostly property offenses and minor assaults committed by juveniles (Umbreit 2001). The theoretical discourse of restorative justice is the product of critic-practitioners, active observers of the mainstream criminal justice system eager to communicate in practical terms with professionals open to reform ideas. Restorative justice advocates are critical of the dominant retributive and rehabilitative theories of criminal justice, and they reject professional control of the criminal justice system. Instead, they draw on diverse cultural practices of conflict resolution that are less punitive and less professionalized, such as Native American circle sentencing and Maori family group conferencing, as antidotes.

The theory of restorative justice draws attention to three main flaws in the current criminal justice system. First, the current system is state-oriented and overly procedural. The moral force behind punishment is the authority of the state, so that crimes are conceived of as offenses against the state, rather than as offenses against individuals and communities. The dominant role of state officials and professionals in the criminal justice system hinders the satisfaction of victims’ needs. As the initial harm turns into a crime and runs through the procedural rules needed to adjudicate it, the offense becomes more abstracted, more alienated from the actual experiences of victim, offender, and community. Second, the current system is punishment- and offender-oriented and neglects the more complex nonretributive needs of victims. Crime undermines victims’ sense of personal autonomy and social order. Rebuilding autonomy and trust requires more than penalizing offend-
ers: Victims need answers as to why they were victimized and need the opportunity to express their emotions both to the offender and to the community. Third, because of its formality and proceduralism, the current system neglects the need for offenders to be more integrated into their communities. Like victims, offenders are largely bystanders in their own cases. Others—prosecutors, defense attorneys, and judges—make determinations of responsibility. Reintegration requires opportunities for offenders to recognize and accept responsibility for the harm they have caused.

As a solution to these three flaws, restorative justice advocates propose a form of discourse that is outside regular criminal justice institutions, free from the domination of procedures and professionals, in which victims can communicate with offenders and offenders can acknowledge wrongdoing and accept responsibility. A pioneer of restorative justice, Nils Christie, offers a village mediation session in Tanzania as exemplary:

1. The parties...were in the center of the room and in the center of everyone's attention. They talked often and were eagerly listened to.
2. Close to them were relatives and friends who also took part. But they did not take over.
3. There was also participation from the general audience with short questions, information, or jokes.
4. The judges, three local party secretaries, were extremely inactive. They were obviously ignorant with regard to village matters. All the other people in the room were experts. They were experts on norms as well as actions. And they crystallized norms and clarified what had happened through participation in the procedure. (1977, 2)

Restorative justice takes shape in family group conferences, victim-offender reconciliation programs, circle sentencing, and reparative boards, practices that draw on the experience of many cultures. All these forms of restorative justice are voluntary, participatory, and dialogue-oriented and seek to produce some form of mutually satisfactory resolution to a harm or conflict.

Restorative justice is increasingly relevant to the practice of criminal justice in the United States. In the language of criminal justice professionals, restorative justice concepts have become an inescapable part of communicating new ideas and instituting change. It is now the rare professional conference, journal, or textbook dealing with criminal justice that does not make room for restorative justice topics. No doubt this is because restorative justice programs have become fairly common on the ground. There are statewide community reparative boards in Vermont, prominent city programs in Minnesota and New York, and statutory changes in Maryland juvenile justice programs that reflect restorative justice ideas. Other state, county, and local governments throughout the country are experimenting with a wide array of small-scale programs.

As a matter of politics, restorative justice has found support among both political liberals and political conservatives (Levrant et al. 1999). Liberals, cognizant of the limits of rehabilitation but wary of retributive theories of justice, are attracted by the humanistic, nonpunitive elements of restorative justice.
and see in these a potential for broad social change. Conservatives, seeking more justice for victims, more responsibility for offenders, and less cost for communities, recognize the limits of contemporary criminal justice in securing these goals and lean toward restorative justice as a promising alternative.

Despite its success on the ground, restorative justice is an amalgam of empirical expectations and normative ideals that has yet to be fully understood. The element of community participation in restorative justice dialogue is particularly intriguing because of its similarity to idealized accounts of public deliberation in deliberative democratic theory. Our argument in this paper is that restorative justice explanations of why community dialogue renders restorative justice practices more desirable than mainstream approaches are currently marked by a tension between what we call “progressive” and “traditionalist” interpretations. In the paper’s first section, we attempt to clarify the value of community participation in restorative justice practices by closely examining restorative justice theory. Then, in the second section, we turn to the theory of deliberative democracy to provide support for progressive interpretations of community participation. We conclude with some thoughts on why the value of community participation needs to be articulated with perspicuity in the public domain.

**Community Participation in Restorative Justice Theory**

**Crime, Punishment, and the Relation between Communities and Their Criminal Justice Systems**

Crime, for advocates of restorative justice, means more than violation of the laws of the state and more even than harm to victims. To paraphrase Christie (1981, 11), crime is a dysfunctional way of saying something, and punishment, for restorative justice theorists, is an equally dysfunctional way of answering. Crime and punishment have spillover effects on communities: fear and insecurity even among nonvictims, loss of wage-earning family members, and weakened social ties, among others (Baker 1997, 106). Nevertheless, the idea that the community has a stake in an offense—that apart from direct victims, a larger social network might also be a harmed party—is incorporated into mainstream criminal justice practice only in abstract, highly formalized ways (Zehr 1990). The prosecutor and judge may proclaim the voice of the community, but apart from participation as silent jurors and, upon request, as witnesses, community members do not, themselves, speak out in criminal justice proceedings to address the harm an offense like shoplifting or personal assault has caused to a larger social network. In response to this neglect, restorative justice proponents call for more public participation in the criminal justice process so that the harm to community is more clearly brought to the attention of the offender.

Yet harm to community is a notoriously vague idea, and restorative justice theorists have not provided guiding principles for determining legitimate communal harms (von Hirsch 1998, 675). In addition, the simple fact that a criminal offense spills over to affect, indirectly, a larger group does not
explain why that larger group must represent itself in the criminal justice system. Just as modernity has brought division of labor to many social tasks, it may be a reasonable trade-off for efficiency that a formal representative such as prosecutor or judge addresses communal harms. Because in many jurisdictions both prosecutor and judge are held accountable to the public through elections, the communities have opportunities for making sure the indirect effects of crime are acknowledged in court. The restorative justice critique of the status quo, therefore, is best seen not merely as an argument for more attention to community harm, but as a call to change the relationship between communities and their criminal justice systems. More particularly, restorative justice calls for a shift in the “essential role of the citizen from service recipient to decision maker with a stake in what services are provided and how they are delivered,” a focus on how the community can be an active participant and resource rather than a “client” of professional services (Bazemore 1998, 334). Rather than the general claim that “communal harm” needs to be addressed, then, the best reasons for public participation are more precise reasons that link community participation to a better functioning criminal justice system or some other benefit to the community.

Restorative justice advocates offer three more precise reasons for participation, most frequently expressed in the context of criticism of mainstream criminal justice practices. Restorative justice critic-practitioners, pointing to professionalism, proceduralism, and the social distance between the agents and institutions of the criminal justice system and the communities it serves, argue that the lack of public participation causes criminal justice procedures to be ineffective at deterring crime, “restoring” victims, and reintegrating offenders; to undermine community authority and self-governance; and to exacerbate public fears and misinformation. So, expressed positively and in the spirit of reconstructing criminal justice practice, we find the following reasons for participation:

- **Efficacy**: Laypeople are better than criminal justice professionals at certain key tasks, such as reprobation and reintegration of offenders and communicating sympathy for victims.
- **Empowerment**: The more the public participates, the more it takes back the authority for social control ceded to the state.
- **Education**: By participating, people learn more about offenders and victims and the criminal justice system, learn more about their own social norms, and may come to have more rational demands on the criminal justice system.

Most restorative justice advocates hold all of these to be reasons for more community involvement in criminal justice practice but differ, as we will discover, on how these reasons are to be interpreted. It is this interpretive wriggle room that allows restorative justice to be a platform shared by both political liberals, who agree with the progressive interpretations of these reasons, and political conservatives, who side with the more traditionalist interpretations.
Efficacy: The Strengths of Informal Social Control

The efficacy argument is based on the strengths of “informal” as opposed to “formal” social control. For restorative justice advocates, the informal monitoring of criminal activity has deterrence effects unmatched by the formal efforts of the police. Community members have a better sense of who is doing what, when, and where in their neighborhoods. In addition, citizens can be more intrusive into their own lives than can state officials. They are a “more powerful agent of social control, if for no other reason than the fact that parents, teachers, or neighbors provide a level of surveillance that can never be matched by the police in a free, democratic society” (Clear and Karp 1999, 18). “Uncle Harrys” who can take car keys away from an alcohol-abusing friend or relative for a week or a month or a year have at their disposal “a more plural range of incapacitative keys they can turn than a prison guard who can turn just one key” (Braithwaite 1999, 67). Social intimates also have many other informal sanctions beside incapacitative ones, such as social ostracism.

In addition to deterrence effects, public participation produces positive effects on offenders and victims. Though restorative justice advocates do not want to focus narrowly on offenders, something they see as a flaw of mainstream criminal justice practice, they do have high hopes for transforming offender attitudes through face-to-face dialogue with victims and community members. In restorative justice programs community members are thought to represent social mores violated by offenders. They “speak the same language” as the offender and are therefore thought to communicate disapproval better than criminal justice professionals, who might be seen as “part of the system.” As John Braithwaite (1999) puts this point, “It is not the shame of police or judges or newspapers that is most able to get through to us; it is shame in the eyes of those we respect and trust” (40). Such reprobative effects of public participation are seen as good for victims as well, since in shaming an offender the community is standing with the victim, reaffirming the wrong done by the offender and reaffirming the moral order of the community. Merely dyadic communication between victim and offender is less powerful for affirming that the victim did not deserve to be harmed and treated as less than an equal. Public support of the victim’s perspective, then, shores up the victim’s fractured sense of social order.

Public reprobation puts pressure on offenders to recognize the harm inflicted by their actions, acknowledge responsibility, and distance themselves in a productive way from their actions. As important, reprobation is to be accompanied by reintegration, something members of the public are again seen as better able to perform than professionals (Braithwaite 1999, 40). Successful resolution for offenders means joining the victims in criticizing criminal activity. Expressions of reprobation are followed by “gestures of reacceptance into the community of law-abiding citizens. These gestures of reacceptance will vary from a simple smile expressing forgiveness and love to quite formal ceremonies to decertify the offender as deviant” (Braithwaite 1989, 55). This is a tricky business indeed, since for public reprobation and reintegration to be effective, offenders must feel they have a stake in the
community and belong to the social order (Clear and Karp 1999, 118–19). So community members must keep in mind, even when they are reprobative, that the offender is to be treated as a member of community who has violated its norms only temporarily. Though this mode of communication is quite clearly complex, restorative justice advocates see laypersons as better able to accomplish it than professionalized members of the criminal justice system.

**Empowerment: Community-Building through Public Participation**

A second virtue of public participation in criminal justice practice is its effect on strengthening communities. By being included in a restorative justice program, “the community is given a forum through which it can exercise its responsibility for its members rather than suffer crime passively and depend entirely upon the coercive power of the state for protection and order” (Schweigert 1999, 33). When the public is more involved in the criminal justice system, people meet one another, neighbors are no longer strangers, and informal social control is increased. Seen this way, empowerment is an indirect good produced by participation, just as disempowerment is an indirect evil produced by criminal justice professionalism. Participation ideally strengthens the social ties that empower community members to deter crime and shame and reintegrate offenders. Though this is a circular argument, it is neither vicious nor sociologically implausible. People do learn by doing, and over time, community members might realize a source of pride in their ability to solve social problems, something that might, in turn, help them solve those problems.

Some restorative justice theorists also see empowerment as good for its own sake—the good of self-government, independent of any indirect effect on deterrence, recidivism, or victim satisfaction. Seen this way, restorative justice programs are something like small experiments in direct and deliberative democracy. Though restorative justice proceedings deal with local issues and are quite narrowly focused on individual criminal acts, they do link to macro-level social relations and general issues of democratic politics. Participation at the local community level in restorative justice proceedings can help citizens address the pieces of larger social problems that intersect with the criminal act being discussed. Braithwaite (1999) writes, “I have known restorative justice conferences where supporters of a boy offender and a girl victim of a sexual assault agreed to work together to confront a culture of exploitative masculinity in an Australian school that unjustly characterized the girl as ‘getting what she asked for’ ” (37). Participation in criminal justice proceedings like restorative justice conferences can also school people in broader democratic competencies. By taking some responsibility for crime control, people become better democratic citizens, something that has positive effects in social domains other than criminal justice.

Whether empowerment is a direct or indirect good, as a reason supporting public participation in the criminal justice process, it is an important element of restorative justice theory. One chief criticism of restorative justice by hardheaded realists is that community-based approaches may work only
in places with low violent-crime rates and high levels of social trust and communal feeling. Critics point out that restorative justice may have a role to play in countries like New Zealand and Australia, and in states like Vermont, where indeed it has flourished, but not in places where community is fractured and crime rates are high. The possible empowerment effects of public participation give restorative justice advocates a way of responding to this charge. Restorative justice does not presuppose “a geographical community that may not exist” but “looks for community on many and any bases” (Braithwaite 2000, 122). If communities are simply where people come together to resolve social problems, then restorative justice procedures can be said to build community and depend upon community ties—albeit under development—at the same time.

**Education: Affirmation and Development of Social Norms through Participation**

Like empowerment effects, the educational effects of participation in restorative justice programs are other frequently understated links in the larger argument, which tends to emphasize efficacy effects as the strongest reasons for implementing restorative justice programs. Yet a core restorative justice critique of mainstream criminal justice practice is that it is overly retributive and punitive. Though not formally analyzed, this critique points to the motivations behind designating an act a crime and attaching a punishment to it. As Joel Feinberg (1970) has noted (though not endorsed), “punishment generally expresses more than judgments of disapproval; it is also a symbolic way of getting back at the criminal, of expressing a kind of vindictive resentment” (100). Punishment relieves retributive sentiments that naturally arise from the relations of dominance inherent in much crime (Murphy 1988). Even if natural, however, retributive sentiments can produce seriously flawed criminal justice policy. For restorative justice thinkers, contemporary methods and justifications of punishment are rooted in bureaucratically resilient professional practices and in natural, understandable, but ultimately dysfunctional public sentiments about crime and criminals (Zehr 1990, 58–59, 195).

Restorative justice theorists have two different ways of understanding what the public learns from participation in restorative justice proceedings. On one interpretation, the public learns what it has already known all along, namely, that it has certain constant standards of behavior. Through participation, then, communities reaffirm their normative orders. On another interpretation, the public modifies its standards and changes its normative order to be more rational, more inclusive, or more effective. Though these seem like exclusive interpretations, many restorative justice thinkers hold both at the same time. One way to explain how these different views can be held simultaneously is to say that restorative justice theorists see participation as having moral education effects, meaning that the community learns about both the strengths and weaknesses of its own moral resources. As Francis Schweigert puts it, “all have a stake in learning ways of interacting that will reinforce positive behavior and attitudes and reduce harmful behavior.
Ultimately, the educative aim of criminal justice is to achieve more resilient and peaceful communities” (1999, 33).

Different views of educative effects are harder to reconcile if emphasis is placed on the public’s becoming less retributive and more rational about crime, criminals, and conflict resolution—“more rational” meaning in this case “more self-aware and deliberate about criminal justice policy choices.” Strong versions of each interpretation are incompatible. If the public needs to learn to be less punitive and more rational, then the educative effects of restorative justice proceedings cannot simply be matters of reaffirming community norms. What Christie (1977) writes about the need to stage “a political debate in the court” (8) is difficult to square with traditionalist confidence in the moral order. The “competency development” Todd Clear and David Karp (1999) think mainstream community members require to “overcome the temptation to exclude deviants from their midst” (110) would be hard indeed under conditions designed merely to resurrect, affirm, and apply community standards. So those restorative justice theorists worried about “othering” and exclusion would resist strongly the idea that expression of unreconstructed social morality, like “get tough” legislation, would be good in and of itself as an exercise in norm affirmation.

Traditionalist versus Progressive Interpretations of the Meaning and Purpose of Community Participation in the Criminal Justice Process

Though most striking in the restorative justice understanding of moral education, interpretive differences mark the understanding of efficacy and empowerment as well. Under the traditionalist view, the source of community volunteers’ efficacy is their membership in a moral order external to a forum of restorative justice. By contrast, under a more progressive interpretation, efficacy flows from the volunteers’ social ties and relationships—including their relationships, as citizen-strangers, with all members of their community—which become imbued with meaning in such forums. As for empowerment of communities through participation in restorative justice, this too can be understood in very different ways. Traditionalists conceive the ends or purposes of empowerment quite narrowly, as focusing on crime control and response, while progressives see empowerment broadly, as contributing to a civic responsibility and competence that can be useful in many different domains of democratic politics.

It will not do simply to characterize these interpretive differences as “liberal” and “conservative.” Though it is fairly clear that most liberals would favor progressive interpretations as good reasons for supporting restorative justice programs and most conservatives would favor traditionalist interpretations, the “liberal” and “conservative” labels distract from some of the nonideological, or more general theoretical, grounds of these interpretive differences. The terms “traditionalist” and “progressive” are better suited, then, for labeling these differences.

“Traditionalist” and “progressive” are ideal-typic categories; we have not encountered any perfectly traditionalist or perfectly progressive restorative
justice advocate. In a number of instances and circumstances, this is not self-contradictory. One can see, for example, community participation as a form of education that both affirms and clarifies social norms if there is a consensus that those norms are coherent and desirable. But if we suspect that our community’s dominant way of thinking about crime and crime control is faulty, then we would wish to move beyond affirmation and clarification to seek change. As for crime, racial and sexual offenses in particular raise questions about dominant community views that might need to be challenged to successfully discourage offenders. As for crime control, the so-called zero-tolerance and three-strikes policies of some states raise questions about whether dominant community views about deterrence are coherent and desirable.

A number of more general theoretical fault lines concerning the meaning of community and the ultimate purpose of community-based justice separate traditionalists from progressives and help explain their interpretive differences over the meaning and purpose of community participation. Is community a fixed and timeless source of norms and standards? Or is it constructed and dynamic, something that changes in response to new demands? Are communities, if they are to be considered communities, relatively homogeneous in their values and cultural practices? Or must communities actively and self-consciously forge connections, given significant differences in values or cultural practices among community members? Is restorative justice merely the means for better crime control and response outcomes for victims, offenders, and communities? Or would a truly restorative justice be a part of a broader social movement for greater participation and greater justice in all domains of collective life?

Many of the characteristic images found in restorative justice literature and program descriptions seem to depend upon the more traditionalist ways of understanding restorative justice. But the theory itself and, our particular concern in this paper, the value of the efficacy, empowerment, and educative effects of public participation in the theory do not. One thing we hope to show in the next section is that the account of public deliberation found in contemporary democratic theory gives support for the progressive strands of restorative justice theory.

Public Deliberation: Restorative Justice and Contemporary Democratic Theory

The idea that the best response to crime is a form of value-oriented, participatory, and transformative public dialogue has much in common with recent work in democratic theory. Some restorative justice theorists even explicitly link their ideas to this other literature (e.g., Braithwaite 1999). Deliberative democrats, though concerned with broader collective decision making, are quite similar to advocates of restorative justice in criticizing mainstream procedural and professionalized politics as ineffective at resolving social conflicts, as disempowering, and as unreflective. And there are close resemblances between restorative justice ideals and the deliberative democratic ideals of public participation and reasoned, value-oriented debate in
political forums. There are also important differences between these theories, in guiding assumptions and also in the level of analysis. Such similarities and differences help us clarify the value of community participation in restorative justice.

Shared Goals: Transformation through Value-Oriented Dialogue Outside State Institutions

Ideal public deliberation in both theories is to be transformative, though as we will see, the goals deliberative democrats have for transformation have much more in common with progressive than with traditionalist views of restorative justice. Deliberative democrats believe that in modern politics, citizens have become bystanders to collective decisions that affect them and have become distanced from one another. Because of this distance, opportunities for advancing public goods diminish. Citizens in contemporary “soundbite” democracy are less aware of others’ lives and less engaged in social practices that would allow them to learn about how others different from them in class, region, and race are affected by collective decisions. In response, deliberative democrats believe participants in public dialogue should take seriously the reasons and values behind their opponents’ positions, seek to foster a public perspective on issues, and reflect more carefully and critically on their own interests.

Public deliberation done well can transform in a number of ways. Because deliberation provides information about possible policy outcomes and about the preferences and reasons of others, certain incoherent or otherwise irrational preferences can be avoided. Because deliberation with others forces a confrontation of reasons, certain repugnant or selfish preferences are discouraged. Deliberative democrats, like restorative justice theorists, do not expect altruism or other radical changes in human motivation. Nor do they believe in any sort of obvious “public good” toward which all rational beings must incline. But they both expect “the forceless force of the better argument” and appreciation for the reasons of others to mold attitudes and behaviors. And they both believe that well-structured public forums can help initially disinclined people feel the forceless force.

Both restorative justice advocates and deliberative democrats are wary of the state. Public participation is, ideally, to be outside of state authority and, at the very least, to be free of the dominant voice of state officials. In Jürgen Habermas’s (1996) vision of ideal deliberation, public discourse is to be held in the “wild public sphere,” unaccountable to the rules and procedures of the “formal public sphere” of legislatures. James Fishkin (1991, 1995) has theorized and administered public deliberation as a random national sample of citizens gathered together outside of hierarchies and formal procedures. Fishkin’s group is given information and opportunities to discuss policy issues with experts and political actors, but its deliberations are not directed by those experts and actors. As with restorative justice dialogue, public deliberation of this sort is thought to give more authentic voice to the interests and values of participants than what would ordinarily happen through politicians or policy professionals.
In both theories a key virtue of public participation and dialogue is the airing of values, something seen as missing from mainstream politics and state procedures. For deliberative democrats like Amy Gutmann and Dennis Thompson, the prevalence and importance of moral questions about the subjects of collective decisions call for more participatory and deliberative politics. Those on the losing side of morally significant decisions, such as patient populations who would have benefited from medical research banned by the state, require more than the reason “the votes were against” them. Because of the serious, perhaps mortal, consequences of such a decision, it is critical to consider seriously all sides of the issue and all the relevant value positions of those affected by the decision. As Gutmann and Thompson (1997) write, “in the face of scarcity, deliberation can help those who do not get what they want or even what they need come to accept the legitimacy of a collective decision” (39; see also Gutmann and Thompson 1996, 30).

**Constraints, Supports, and Background Assumptions:**
*Where Deliberative Democratic Theory Is More Explicit than Restorative Justice*

Though theories of restorative justice and deliberative democracy both place at center stage public dialogue, there are important differences between the way each has understood the constraints, supports, and background assumptions of this dialogue. Deliberative democrats have developed a relatively strict account of how the legitimacy of a collective decision depends on the reasonableness of the debate and the structural integrity of the forum in which dialogue takes place. They have closely analyzed the agent- and system-level norms they think should constrain and support reasonable dialogue and provide structural integrity. Further, they are explicit about the plural and popular sources of authority in an ideal public forum.

There is a good deal of agreement among deliberative democrats about the regulatory norms that support an ideal process of public deliberation. Though in both democratic theory and restorative justice literatures, the space of dialogue is to be informal, outside the state’s rules and control somehow, deliberative democrats have specified a variety of semiformal norms of dialogue that must govern this space in order for it to be a source of legitimate collective decisions. Three agent-level norms in particular serve the overarching goal of reasonableness. The norm of rationality directs participants to argue for their positions with publicly accessible reasons and evidence. The norm of respect holds deliberators to standards of conduct: They are to put arguments in terms others might possibly accept, and in turn, they are at least to give a serious hearing to the well-reasoned and factually supported arguments of others. A third norm, integrity, constrains deliberators to make only those arguments they themselves hold to be true or choice-worthy, to accept the consequences and implications of those arguments, and to apply them to their own case.

Deliberative democrats have also been more explicit than restorative justice theorists about the ideal structural features of good public dialogue.
In particular, they worry about a public forum’s accessibility to affected publics and about the socioeconomic inequalities that put pressure on agents inside the forum and restrict, sometimes in covert and indirect ways, their abilities to participate as equals inside. The system-level norms of accessibility and equality lead to both procedural and substantive guarantees on accessibility (Bohman 1998). Procedural accessibility allows all citizens—and even noncitizens, for some deliberative democrats like Seyla Benhabib (1994)—affected by a decision the right to be included in deliberation. Substantive accessibility calls for public education that equips would-be deliberators with the skills of argumentation needed to exercise that right (Dryzek 1990). Procedural equality dictates equal weighting of each participant’s vote and grants citizens equal standing to raise issues and set agendas in a public forum (Cohen 1989). Substantive equality means that structural constraints on the force of the better argument, such as social and economic inequalities, should be somehow protected against in deliberative democratic procedures. For reason-based arguments to hold sway, the practical ability of deliberators to influence others and to utilize institutional powers must not be muted or amplified by threats or rewards offered by socioeconomic elites (Fishkin 1991).

Scope of authority is another issue of concern to deliberative democrats. There are sharp differences between “weak” and “strong” public spheres, where the former merely voice or acclaim positions while the latter truly have the power to enact collective decisions (Fraser 1992). Though some have suggested that deliberations can perform advisory rather than legislative functions (Dahl 1997), on the whole, deliberative democrats suggest that strong public spheres are more likely to generate the transformative effects sought. Scope of authority is related to the structural norms of accessibility and equality, since the freedom to participate as an equal granted by those norms would be sharply circumscribed if deliberative agendas were constrained by forces outside the forum. Some deliberative democrats go as far as to say that there are to be “no prima facie rules limiting the agenda of the conversation” (Benhabib 1994, 31), such that participants should consider themselves bound only by the results of their deliberation and not constrained by the authority of prior norms or requirements (Cohen 1989, 22).

A difference of emphasis, but one with important consequences, is the strength of deliberative democrats’ presumption of value pluralism. Deliberative democratic theory begins with the assumption that people disagree on fundamental values and that they have different “comprehensive moralities” that they bring into a public forum (Rawls 1997). Indeed, value pluralism is the reason deliberative democrats theorize procedures rather than principles, since under conditions of pluralism, substantive theories of social justice meet with difficulty in finding the public agreement needed to guide policymaking (Bohman 1996). Though democratic deliberation gives time and attention to neglected values that arise in political decisions, a perhaps equally important feature is the fact that it requires that people agree only on rules of procedure and not on substantive theories of justice. Even citizens with different comprehensive moralities can commit to decisions that follow fair procedures and rational debate (Cohen 1989, 21).
Using the Comparisons

The public deliberation of restorative justice is imperfect, from the perspective of the ideal-typic account of deliberative democrats, because it is somewhat coercive, allows inequality among participants, and may deviate from norms of rationality and respect. It is somewhat coercive since in some (but not all) restorative justice programs, offenders may suffer greater penalties if they do not participate (Coates 1990, 128). In most programs offenders are in an unequal, subordinate position to victims, since it is the victim’s voice that is usually privileged and affirmed by the other participants. And public deliberation in restorative justice proceedings is likely to be unreasonable and disrespectful at times if victims or their supporters are allowed to express their emotions. Yet these differences, in themselves, do not bother us. Restorative justice programs are likely to differ from the ideal-typic public deliberation of democratic theorists in ways that reflect nonideal motivational and practical realities of criminal justice and other political domains: Citizens come into a forum with passions, not just reasons; they bear histories of conflict with others; they often feel they have been treated unfairly; they hold stereotypes of classes, races, and regions; and they rationalize the pursuit of their own self-interests in collective decisions. What concerns us is how restorative justice programs approach coercion, inequality, and emotional expression. This is where examining restorative justice in the light of deliberative democratic theory can help us see more clearly the value of the progressive strands of restorative justice.

Their recognition of value pluralism leads deliberative democrats to an important presumption: Any agreement that emerges in public dialogue will likely be endogenously rather than exogenously formed—as a result of the trade in ideas and arguments inside the forum rather than because of an existing consensus outside. Therefore, the normative legitimacy of collective decision making is grounded not in its agreement with social norms outside the forum, but in the adequacy of the structure and conduct of dialogue. This presumption, if valid, supports the progressive view that restorative justice programs educate not by revealing the moral order outside, but by clarifying and rationalizing collective beliefs. Similarly, deliberative democrats’ preference for “strong” rather than “weak” public spheres supports progressive restorative justice inclinations to treat broader political goals than merely crime control and resolution. And the core values of equality, rationality, and mutual respect that ground deliberative democratic agent- and system-level norms are also behind the progressive emphasis on including offenders as equal members of a process of community self-definition.

Even the similarities between the two theories reveal support for the progressive elements of restorative justice. In deliberative democracy all persons are expected to be open to transformative dialogue, something that aligns with the progressive expectation that offenders, victims, and community members might all learn something from the restorative interaction. Dialogue is value-oriented in ideal democratic deliberation, but the values about which the dialogue takes place are far from taken for granted. Rather, public dialogue roots out inconsistencies, incoherences, and injustices in the positions
people take for granted. Taken as a whole, then, the comparison and contrast with democratic deliberation shows that the expectations and justifications most deliberative democrats have of community participation in public dialogue are most closely aligned with progressive views of community participation in restorative justice programs.

**Conclusion**

The comparison of restorative justice and the theory of deliberative democracy supports our argument that restorative justice advocates need to clarify, preferably in favor of progressive interpretations, their accounts of community participation. This is not only an academic issue. Without a clear account of community participation, reform-minded criminal justice professionals may believe that superficial or merely symbolic community participation can suffice for their programs to be considered restorative. Without a clear account, restorative justice can easily come to be seen as requiring only that a few community members be added to an otherwise overwhelmingly professionalized procedure. In addition, community participation is not without costs. In the relatively nonparticipatory public spheres of contemporary America, bringing citizens into the criminal justice domain as decision makers will have costs in terms of time, energy, and the scarce funds allotted to city and state criminal justice administration budgets. We need a clear account of the value of participation to justify these costs for any long-term program.

We need a progressive account of community participation in restorative justice because it is both more realistic and more normatively appealing than its traditionalist rival. It is realistic because community action is something that is mobilized; it does not just happen, does not just materialize once professionals get out of the way. The progressive view recognizes that community participation must be encouraged, nurtured, and organized. In addition, the progressive view holds that participation comes in more and less appealing forms. Just as it is too optimistic to see communities as ready and waiting to participate, it is too romantic to expect community members in diverse and dynamic localities to agree on a substratum of moral standards that can be brought to bear on criminal offenses. In some cases, of course, such as theft or violence, it is not hard to imagine value consensus. But other cases, such as sexual harassment and racial discrimination, may require deeper and more critical analysis of underlying social mores. Community moral standards may be flawed and may appear differently to different cultures and different generations within the community. For all these reasons, the progressive view of restorative discourse as constructed, as endogenous to a properly organized public forum rather than exogenous and existing outside it, makes sense.

The progressive vision of restorative justice, and of public deliberation in other social domains, is complex. Recognizing the partiality, dynamism, and pluralism of communities, progressives seek public spaces that will bring citizen-strangers together in the shared, thoughtful exercise of democratic responsibilities.
Notes

1 In our experience as advisors to and observers of a restorative justice program in Salt Lake City, this idea of a shared language between offender and community representative was a very common assumption among both community volunteers and the professionals involved.

2 Clear and Karp write: “The criminal justice system is built on the professional administration of justice, providing few avenues for citizen participation and usurping community-level opportunities for the exercise of informal social control. Lawyers speak for their clients; the true stakeholders are excluded from the process. Defendants are expected to deny culpability, victims are expected to be tough and not to forgive, community residents are expected to be the ‘eyes and ears’ of the police but not to resolve their own conflicts. A community justice model reverses these expectations, vastly increasing the roles and responsibilities of victims, offenders, and other members of the community in the pursuit of public safety and justice” (1999, 81).

3 Braithwaite (2000) has called restorative justice programs “micro-institutions of deliberative democracy that allow citizens to discuss the consequences of criminal acts, who is responsible, who should put them right and how” (128). Christie (1977) believes more participation in bureaucratic systems like the criminal justice system is necessary for a fully democratic society: “conflicts represent a potential for activity, for participation. Modern criminal control systems represent one of the many cases of lost opportunities for involving citizens in tasks that are of immediate importance to them” (7, emphasis in original).

4 “We hope that citizens are learning in [restorative justice] conferences how to deliberate respectfully in the face of the greatest of the provocations of daily life. If they can learn to deliberate wisely and respectfully in the most provocative contexts, then they are citizens well educated for democracy” (Braithwaite 1999, 79).

5 For other questions about restorative justice from a realist perspective, see Dzur and Wertheimer 2002.

6 This understanding of punishment is actually better characterized as an “expressive” rather than “retributive” theory, but restorative justice theorists tend to collapse the two.

7 As Brenda Baker (1997) puts it, punitive criminal justice policy can be “a kind of mythologizing that supports a belief that ‘they’ are completely different from ‘us’. It precludes the one really effective way to break down such alienating tendencies, namely, personal interaction on a day-to-day basis through which concrete knowledge of others as individuals and relations of trust can develop” (103–4). Braithwaite (1989) concurs: “Punishment erects barriers between the offender and punisher through transforming the relationship into one of power assertion and injury” (72).

8 “Participation in expressions of abhorrence toward the criminal act of others is part of what makes crime an abhorrent choice for us ourselves to make” (Braithwaite 1989, 74).

9 “This understanding moves beyond changing the offender to focusing on interventions and outcome standards for the justice process that give equal emphasis to community change; this focus implies a vision of justice as ‘transformative,’ as well as ameliorative or restorative” (Bazemore 1998, 337).

10 Clear and Karp (1999) write: “the community is obligated to clarify local normative standards, expressing to the offender in particular what is and is not acceptable behavior. Certainly there is room here both for moral education and for democratic discourse about the legitimacy of a given standard. Most important, however, is the collective process that reminds all parties of the significance of the standards in the face of a concrete manifestation of harm wrought by transgression” (91).

11 We follow Levrant et al. (1999) in their judgment that political liberals and conservatives embrace restorative justice for different fundamental reasons. We expand on Levrant et al. in this paper by noticing additional reasons and interpretive possibilities.
When Barbara Hudson (1998) asks restorative justice programs to “formulate strategies” to “change social attitudes from tolerance to disapproval” of racial and sexual violence (247), she is asking them to be more progressive, in our view.

Adorning the Vermont reparative-probation program brochure, for example, is a tableau of an offender—clearly so because of his reversed baseball cap and visible tattoo—helping mend a fence while a farmer, presumably the property owner, helps. Here we have a narrow purpose, crime response in the form of fixing what was broken (or community service for some other, less tangibly reciprocated, offense), a presumption of shared values and shared community conveyed through the image of collaborative work. Contrast that traditionalist picture with Christie’s (1977) progressive verbal image of restorative justice as “a continuous discussion of what represents the law of the land” (8). These are not mutually exclusive images, of course, but they signal very different emphases and ideals.

As Gutmann and Thompson (1997) write: “The din and deadlock of public life—where insults are traded, slogans proclaimed, and self-serving deals are made and unmade—certainly reveal the deep disagreements that pervade public life. But soundbite democracy does nothing to resolve those disagreements on mutually acceptable grounds and still less to help citizens live with their ongoing disagreements in a mutually respectful way” (39).

Benhabib (1994) writes: “Agreements in societies living with value-pluralism are to be sought for not at the level of substantive beliefs but at the level of procedures, processes, and practices for attaining and revising beliefs. Proceduralism is a rational answer to persisting value conflicts at the substantive level” (34).

While restorative justice is largely a body of work created by critic-practitioners, people who have had a good deal of experience working in the criminal justice system, deliberative democratic theory is almost completely academic in origin. There have been growing calls for inquiry into how the ideals of public deliberation function in non-ideal circumstances, namely, the imperfect real world of politics, in which trade-offs among values are often required and in which it is not possible to satisfy all of the standards of structure and conduct posed by agent- and system-level deliberative norms (Blaug 1996; Elster 1998; Schauer 1999).

References


Restorative justice began as an effort to deal with burglary and other property crimes that are usually viewed (often incorrectly) as relatively minor offenses. Today, however, restorative approaches are available in some communities for the most severe forms of criminal violence: death from drunken driving, assault, rape, even murder. Building upon the experience of the Truth and Reconciliation Commission in South Africa, efforts are also being made to apply a restorative justice framework to situations of mass violence. In many high context cultures, crime is considered first of all to be a violation of traditional law and of religious values. Community elders may establish the offender’s obligations even if he himself does not accept them. The value of community participation in restorative justice. Albert W. Dzur & Susan M. Olson. Journal of Social Philosophy 35 (1):91–107 (2004). Learning the Common Good: Principles of Community-Based Moral Education in Restorative Justice. Francis J. Schweigert - 1999 - Journal of Moral Education 28 (2):163-183. Offenders, the Making of Amends and the State. Linda Radzik - 2007 - In Gerry Johnstone & Daniel W. van Ness (eds.), Handbook of Restorative Justice. pp. 192–207. Forgiveness and Public Deliberation: The Practice of Restorative Justice. Albert W. Dzur & Alan Wertheimer - 2002 - Criminal Justice Ethics 21 (1):3-20. Restorative Justice: Ideas, Values, Debates. Gerry Johnstone - 2002 - Willan. Analytics. 5. What are the values and principles of restorative justice? 6. When is restorative justice used? 7. When is restorative justice appropriate? 8. Does participation in a restorative justice process/programme. • In Restorative Justice approaches, the victim and offender are part of the process/programme and the key decisions that are taken are influenced by them. 5. what are the values and principles of restorative justice?Â Whilst participation in a Restorative Justice process or programme may be taken into consideration when determining an offenderâ€™s parole, this is not the only factor taken into consideration by the Parole Board. The Parole Board is still guided by other rules relating to parole. The Parole Board is still guided by other rules relating to parole. PDF | Restorative Justice and Transitional Justice are two distinct, through closely over-lapping, concepts which have been catapulted to the forefront. In particular, Henham contends that the legitimacy of sentencing for international justice is in many respects dependent on developing meaningful links with the legitimate aspirations for justice, which includes building trust in the institutions of civil society. Therefore, he involved in restorative justice programmes and other cross-community building. NGOs have a vital role to play in reducing interface tensions. David Oâ€™Mahony moves the focus to examine the role that restorative justice.