

## Reasonable Disagreement, Democratic Legitimacy, and Criminal Justice Reform

Although consensus is growing that the American criminal justice system must be reformed, there is significant disagreement about why and how change should occur. Such reasonable disagreement is inevitable in a society where people are free to disagree over the validity of different moral viewpoints like utilitarianism, Catholicism, or Kantianism. Those concerned with theorizing about issues in criminal law reform have not sufficiently considered the importance of reasonable disagreement. Most have focused on developing a comprehensive moral theory for specifying how to enact changes to the system. To take reasonable disagreement seriously, reformers cannot rely on moral arguments alone, knowing such justifications will be unacceptable to many citizens. Theorists of criminal justice reform must also develop understandings of how to resolve disagreement about criminal justice reform in democratically legitimate ways. This paper proposes a deliberative democratic approach to resolving such disagreements.

Some prominent theories of criminal justice, which I term public reason theories, focus on what sort of reasons may be appealed to in deliberation about the criminal justice system. While developing such an account is crucial, it only goes so far in resolving disagreement through legitimate, inclusive democratic participation. Theorists should consider not only *what* kinds of reasons can be appealed to—but also *who* can engage in deliberative decision-making and *in what contexts*.

Other approaches directly address how to structure deliberative institutions aimed at the resolution of disagreement about criminal justice issues. One important version of this approach is the empowered participatory democracy view, which defends a system in which local institutions support public control over decisions. This approach also has limits, though. Broader structural issues in the public sphere must be addressed to keep entrenched economic and social inequalities from warping local democratic decision-making. Relying only upon micro-level participatory governance would mean that most citizens could not have access to the justifications considered in particular decisions.

In light of these deficiencies, this paper improves upon the public reason and empowered participatory democracy views to put forward a deliberative approach to criminal justice reform. First, it defends a conception of the sort of reasons one can appeal to in deliberation, which limits justifications to those that respect universal free and equal citizenship. Second, to support inclusive deliberation, it draws on deliberative systems theory, calling for both local solutions and macro-level reforms.

The paper offers several examples of changes that the approach requires. Crucially, the media must act as a conduit for deliberation between all parties involved in debates about criminal justice, including prisoners. Enabling inclusive deliberation also means eliminating felon disenfranchisement, as well as prison gerrymandering. Rather than supporting a punitive culture, society must view both accused and convicted people as fellow citizens, which rules out the brutal conditions in prisons today. By enacting genuinely democratic change in the system, these proposals will further the legitimate resolution of disagreement about criminal justice reform.