

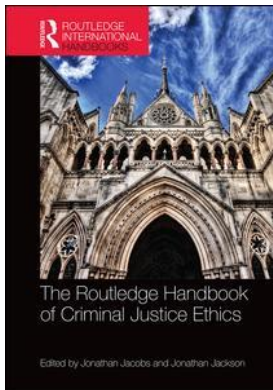
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Deliberating racial justice

Toward racially democratic crime control

Geoff Ward and Peter A. Hanink

Introduction

The pursuit of racial justice and equality within the United States remains mired in contradiction, contention, and largely symbolic intervention. While growing numbers of white Americans acknowledge the persistent inequality their non-white counterparts have long recognized (Lauter and Pearce 2015; but see Norton and Sommers 2011), substantive remedial commitments and strategies remain unclear (Berrey 2015). American criminal justice—long central to the reproduction of white advantage rooted in non-white disadvantage and thus a focus of opposition (see Muhammad 2011; Ward 2012)—is at the forefront in this contemporary awakening and search for viable solutions. Facing devastation wrought by racialized mass incarceration and its collateral group consequences (Alexander 2010; Travis et al. 2014) and confronted by a series of police killings of people of color across the US, civic leaders and public officials have increasingly called for changes to this crime control system, including greater racial and ethnic group representation.

We argue that such remedies should prioritize a more deliberative understanding of representation, viewing participatory parity in crime control as a *practice* of racial justice. The question of representation among legal authorities is of course not new, but is often reduced to a narrow distributive challenge, while substantive participation demands deliberative inclusion. Recent news stories and reports lament low and declining percentages of non-white police and prosecutors (Ashkenas and Park 2015; Fandos 2015; Bies et al. 2015), framing proportionality as a proxy for group power or influence. While status group presence is obviously important to group influence, the two are not one in the same. Indeed, despite significant percentage increases in the ranks of formal legal authorities, most notably in metropolitan police departments and prison systems, such authorities and institutions continue to be viewed by racial and ethnic minorities with suspicion, fueling calls for greater representation and accountability.

Far from being limited to the United States, calls for inclusion in crime control processes resound worldwide, historically and today (see, e.g., Brogden and Shearing 2005; Rowe 2012; Anderson and Killingray 1992). At base, such demands reflect normative expectations of respect, representative government, and participation within ostensibly democratic societies. In nation-states torn by histories of racial and ethnic conflict and inequality, this struggle for

recognition is intensified and so too are hopes that representative systems of social control might advance racial justice (Ward 2012; Smith 1993). In theory, a multi-racial and ethnic polity governed by similarly constituted deliberative bodies will generate relatively supportive and inclusive crime control policies and practices, at least in comparison to historically racially and ethnically hostile and exclusionary systems. Worldwide, racial and ethnic group domination of legal authority—through legislation, within courts, in policing, and among influential associations—has proven a fundamental mechanism of oppression and domination, that is, a practical means by which groups defined by race have been denied self-realization and societal participation.

While the idea of inclusion and reality of its denial are relatively clear, less straightforward is how substantively representative systems might be formed and function, especially as to supplant norms of institutions with long histories of racial exclusion. We celebrate pioneering legislative and legal officials, and aggregate these actors in diversity studies, but give little consideration to their representative mandate or experiences within actual deliberative milieus where crime control priorities, policies, and practices take shape. On those occasions when we do check back in on these ostensible representatives of previously excluded group interests—for example, to assess how historically under-represented police or judges experience incorporation within police or court organizations and whether those organizations are changing—the evidence is often discouraging. Empirical studies reporting “no effect” of variable racial and ethnic group representation among police or other legal actors typically interpret this as evidence of the substantive irrelevance of workforce diversity, rather than a more likely sign of legal cultures and institutions resisting change (see, e.g., Lawton 2007; McCluskey and Terrill 2005; McElvain and Kposowa 2004).

At least in the US, and likely elsewhere, there is a sort of bipolar discourse around racially representative crime control practices, with, often uncritical, celebrations of diversity inattentive to actual inclusion, on one hand, and indifference or opposition to the idea of actual racial and ethnic group recognition, on the other. For some, these reactions co-exist as a merely symbolic investment in diversity. They mark a momentous occasion of formal inclusion such as the election of Barack Obama as a sign of social progress, while contesting that President’s assertion of racial or ethnic identity or claim to group representation. This dissonance plagues the idea and practice of *inclusion*.

We seek to clarify and push this debate by advancing an ideal of deliberative racial justice in crime control processes, as a theoretical and practically useful alternative to diversity initiatives. We consider a number of the claims, implications, and challenges attendant to this approach. Our description of the form and function of this model of inclusion draws on sources in history, socio-legal scholarship, and political theory, with emphasis on Iris Young’s (2000) *Inclusion and Democracy*. We contrast this deliberative ideal with narrower empirical, policy, and public discourses on “diversity” in legal professions, which rarely broach the complex relational notion of racial and ethnic group representation. Finally, we stress the role of political culture in regulating the discussion and functioning of inclusion, including how “color-blind” racial ideology contributes to the dissonant pursuit of diversity without representation, undermining the realization of “deeply democratic” (Young 2000) criminal social control.

We begin with an assessment of what racially democratic crime control describes, requires, and offers. This discussion examines how inter-locking notions of *recognition*, *representation*, and *participatory parity* relate to this process and outcome of deliberative racial justice. We close with a discussion of objections and theoretical and practical challenges when considering the future prospects of racially democratic crime control, particularly in the United States.

The promise of racially democratic control

The pursuit of equal racial and ethnic group representation within the ranks of legal and law enforcement authorities is long-standing and widespread. The effort to achieve freedom and equality in the US by black American and other racial and ethnic groups has prioritized inclusion among arbiters of justice. In 1852, on the eve of the potential incorporation of full black citizens, early civil rights leader Martin Delaney (1852) noted that, “No people can be free who themselves do not constitute an essential part of the ruling element of the country in which they live” (209). The recognition promised by Emancipation was violently denied instead, and generations of civic leaders have since fought to dismantle a structure of racial tyranny in law enforcement systems. In these movements, representation among legislators, judges, lawyers, police, and other authorities—and throughout associated deliberative milieus that authorize representatives and hold them accountable (e.g., among voters, jurors, civilian review boards, etc.)—is idealized as a means to secure and maintain equal rights of citizenship.

Historically, efforts to advance recognition have been countered by measures to *deny* representative social control. This opposition sought to maintain white societal domination by either preserving monopolistic control over legal authority and influence or severely restricting the authority of token non-white representatives. Reconstruction, a reform period during which black Americans experienced dramatic but short-lived advances in representation among legal authorities, was followed in the 1890s by a concerted effort to reverse these gains. “To extinguish the memories of black jurors, judges, police and legislators during Reconstruction was to make clear the undisputed and permanent authority of whites,” Leon Litwack (1998) writes. “The entire machinery of justice—the lawyers, the judges, the juries, the legal profession, the police—was assigned a pivotal role in enforcing these imperatives ... underscoring in every possible way the subordination of black men and women of all classes and ages” (249).

Decades later, when the first black American officers were recruited to police forces in the 1930s and '40s, their authority was severely constrained. In many cities, black officers were forbidden from detaining or testifying against white Americans in court and were not issued weapons or uniforms for concern that these signs of authority would be gravely offensive to whiteness (Dulaney 1996). Black and other non-white legal authorities have as often been employed to *preserve* status quo race relations, including white domination, as to change them. This is clearly conveyed in a 1912 *Harper's Weekly* article on the exploits of Native American police, “Who maintain the peace on the reservations, often at risk of life and dishonor among their own people.” The article celebrates a “peace” preserved by native police killing a Crow Indian leader behind a popular rebellion. “It took more than purely physical courage to enforce the law in an Indian reservation setting,” the article notes, “it took moral stamina to stand behind white men’s rules that were unpopular with the policeman’s own people” (Chapman 1912).

There are many more recent illustrations of fraught diversity initiatives in the realm of crime control. In 2003, the US Department of Justice (DOJ) under the Republican administration of President George W. Bush and Attorney General John Ashcroft, announced an initiative to increase diversity among (federal) US Attorneys. The effort illustrates the celebratory tones of contemporary diversity discourse and its more clearly symbolic than substantive commitments, which Ellen Berrey (2015) aptly calls the “halo and haze” of diversity (42). The episode also underscores the need for closer theoretical, empirical, and public policy attention to representative social control.

The Justice Department’s “New Diversity Program,” no doubt related to the literal prosecution of a growing War on Terror, was introduced with a press release touting the importance of participatory parity in the US justice system. The statement declares:

Our pursuit of justice is stronger, and fulfillment of our national mission more effective, when we bring to bear the experience, judgment, and energy of colleagues from a wide spectrum of racial, ethnic, economic, and geographic backgrounds. ... To succeed fully in our mission, we must earn and retain the trust and confidence of all Americans in how we fulfill our responsibility as custodians of justice. And that ... is a function of the American people's understanding that [the DOJ] draws on the finest legal talent from every quarter of this great nation. (US Dept. of Justice 2003)

The program got off to an inauspicious start. It began with a commissioned study of diversity in the ranks of US attorneys, the findings of which seem to have so displeased the administration that the report was shelved until congressional black and Latino caucuses forced its release. When the department complied in distributing its 186-page report, half of the content was redacted, including the entire report summary (Lichtblau 2003).

An un-redacted version of the report was eventually generated and circulated by a self-described "information archaeologist," revealing pervasive race and sex-based harassment, reprisal, and other discrimination allegations. Non-white and women lawyers (esp. non-white women) lamented exclusion from positions of influence, hostile work environments, and other forms of marginalization, notwithstanding their formal inclusion (Johnston and Lichtblau 2003). The matter cast doubt on the administration's actual commitment to participatory parity, while illustrating the significance of inclusion among legislators whose modest intervention had altered the visibility and trajectory of this effort.

Efforts to deny, expand, and contain participation in systems of social control belie both the importance and challenge of accessing legal authority, historically and today. Whether in the case of historical policing or contemporary federal courts, these examples further illustrate how a broader political culture devaluing and denying racial and ethnic group recognition can not only limit *statistical* inclusion, but also constrain and alter the *substantive* meaning of numerical presence to representative government.

Deliberating racial justice: Recognition, participation, and equal representation

An absence of societies organized by principles of deliberative racial justice compels us to imagine what such a world would look like, a task for which political philosophy is well suited (see Rawls 2001: 1–5). In envisioning racially democratic crime control, it is useful to employ related language expressing values in the present political culture, beginning with the idea of inclusion. While inclusion is most often deployed in a minimalist sense, to relay a statistical presence, we reject this interpretation and offer one instead rooted in a deliberative ideal of democratic participation. Whereas inclusion is often viewed as a finite *outcome* (e.g., proportional representation), a deliberative ideal of racial justice regards inclusion as an ongoing participatory *process* reflecting racial and ethnic group recognition, participation, and dominion.

Diversity rhetoric tends to assume that as historically excluded groups officially join the ranks of formal and informal authorities (e.g., as officials of various sorts or registered voters), they claim influence in these deliberative realms. Ample evidence exists to refute this assumption. For example, notwithstanding formal political equality, political scientists have observed that, particularly when dealing with broader problems of social and economic equality, federalism—i.e., the sharing of power between local and central governments—limits representative social control. In a study of the politics of gun control in the US, Miller (2008: 4) finds that, "Policies widely supported by local officials and citizen alliances [in poorer and minority urban communities]

are sometimes thwarted by legislators representing much larger constituencies with little or no connection to local problems and much less connection to serious crime.”

Miller (2010: 834–35) notes three major challenges posed by a federal division of power. First, a federal system lends itself to a “decoupling” of criminal justice issues from other socio-economic inequalities. Second, a federal system adds “several layers” between the overwhelmingly poor (minorities who experience the worst of these inequalities) and the overwhelmingly wealthy (white formal authorities tasked with addressing them). Finally, a federal system forces urban areas to compete, rather than cooperate, for scarce state and federal resources. This disjoint is no mere inefficiency in the case of gun control. In this case, a constituency most vulnerable to lethal gun violence has diminished ability to translate that interest into public policy limiting gun ownership.

Various practices related to selection, professional socialization, and the organization of decision-making have also been shown to undermine potential for claims-making, relegating formal representatives of historically excluded groups to positions from which they are less able to influence deliberations. The rise of actuarial decision-making (e.g., risk assessment or sentencing guidelines) is one example (see Ward 2008, 2012; Ward, Farrell, and Rousseau 2009). *Standardizing* use of discretion runs counter to an “integration and learning” perspective (Ely and Thomas 2001), which values diverse outlooks and experiences as organizational (i.e., decision-making) resources.

The principle of “bleached out professionalism” (Wilkins 1998) in legal ethics is another case in point. The ideal of “bleached out” or “pure” professionalism envisions the legal actor as one whose identity becomes totally subsumed by professional legal norms and expectations, ostensibly rendering other aspects of identity (e.g., race and ethnicity, gender and sexuality, etc.) irrelevant to legal practice. Of course, legal realists have long recognized the myth of objectivity in law and legal institutions, which are encoded by centuries of selective status group inclusion (esp. elite, white, male). As Wilkins (1998) writes, “feminist scholars have argued that the rigid, detached, hierarchical, and adversarial character of traditional notions of lawyer professionalism reflect a distinctly ‘male’ identity,” and critical race theorists have similarly noted the racial encoding of law and the legal profession (1519–1520). As such, “bleaching-out” seems more accurately understood as accommodation of dominant group norms and expectations. Insofar as this normative notion remains influential in legal education and professions, it conditions the substantive meaning of increased statistical inclusion.

As these wide-ranging examples of “after inclusion exclusion” (Carbado et al. 2008) illustrate, even when historically excluded groups gain increased presence among arbiters of justice, institutional cultures and practices condition and often diminish the actual standing and influence of marginalized constituencies, limiting actual *recognition*, *representation*, and *participatory parity*.

Recognition

Representative social control incorporates a number of ethical claims, the most basic being that all members of a society should enjoy moral and political standing, where respect includes a recognition of legitimate interests (Young 2000: 23). Racially democratic control builds upon this normative foundation, envisioning racial and ethnic groups engaged in an inclusive, communicative democracy. Within that deliberative milieu, diverse values, interests, and experiences around crime and its control would be duly expressed, acknowledged, and reconciled with one another.

This has never been the case. Those in power have long excluded certain groups—whether due to race, sex, ethnicity, creed, or class—from deliberative milieus of criminal social control, as

well as other realms of policy (e.g., education, health, civil law, etc.). Exclusion has been rationalized in part by rejecting these groups' basic moral claims to respect and thus their human and civil rights (see Mills 1997; Dayan 2011). Disrespect rooted in alleged inhumanity or fundamental moral and intellectual inferiority works to deny democratic inclusion, framing subjects as beings to be ruled (i.e., controlled) rather than engaged or incorporated in governance (see, for example, Ward 2012: 38–44).

Such arguments were often used in the nineteenth- and twentieth-century US to justify exclusions of black Americans and others in an idealized white democracy. The sentiment was enshrined in law in *Dred Scott v. Sanford* (1857), in which the US Supreme Court held that black Americans had long been “regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect.” By establishing race (i.e., whiteness) as a determinant of basic respect and democratic standing, the court formalized non-white exclusion from the polity to whom “obligations are owed, to whom rules apply, and whose injuries call for [amends]” (Foner 1998: 74–75; see also Mills 1997; Dayan 2013), or severely abridged such obligations.

Overt disregard of ethical and political claims based on race or ethnic group membership is relatively rare today, particularly in public discourse and policy. Yet similar ordeals of invisibility and degradation linger (see Dayan 2013: 133–35), including through negations of claims to representation. Evidence in policing is especially illustrative and disconcerting. Several studies point out that non-white police struggle to endure and challenge white-dominated police cultures, so as to transform institutions through inclusion. These studies note, for example, routine racist hazing of black, Latino and Asian police in Europe and North America, where being subjected to racist jokes, epithets, and other abuse shapes rituals of socialization in white-dominated police organizations (see Cashmore 2001; Bolton and Feagin 2004; also see Chow 1991).

Non-recognition more commonly manifests today as avoidance and selective engagement. Though color-blind racial ideology—which, as we discuss further below, disavows the significance of race and objects to race consciousness—is the most extreme expression of this non-recognition, substantively hollowed-out diversity discourse is an analogous manifestation. While academics and policy-makers might lament the lack of diversity in legal and law enforcement fields and celebrate the presence of under-represented actors in policing, courts, or legislatures, few engage the specific matter of *group recognition* in conceptual or practical depth. When diversity agendas are expressed, little attention is typically paid to envisioned or actual cultural and institutional change. Discussions or acts of substantive recognition are often met with opposition.

In essence, symbols of inclusion are celebrated while substantive recognition is downplayed and contested. When it was noted that US Supreme Court Justice nominee Sonia Sotomayor had ties to a “Latino advocacy group” and publicly opined that a “wise Latina woman with the richness of her experiences” would enrich the rule of law, her celebration as a potential statistical first gave way to considerable unease, disparagement, and opposition (Sotomayor 2009; Oliphant and Savage 2009). Relationships with civil society organizations—voluntary and self-governing associations that exist outside of the governmental and for-profit sectors (Salamon et al. 2003: 8)—are essential to a deliberative ideal of representation, as we elaborate further below, yet are used here and in other cases to question professional qualifications and integrity.

Similarly, Judge Ashley Tabaddor, an American immigration judge of Iranian descent, was recently ordered to recuse herself from cases involving Iranians, after accepting an invitation to attend a White House roundtable with Iranian-American community leaders (Associated Press 2014). The Department of Justice reportedly ordered her recusal on grounds that this roundtable

participation, where she joined with other prominent Iranian Americans in a community outreach meeting hosted by the White House, created an impression of impropriety. The sanction seems to contradict previously noted Department of Justice claims regarding the importance of inclusion to the effective pursuit of justice and fulfillment of national interests, again betraying a lack of commitment to substantive group representation or actual participatory parity.

Critics were quick to note contradictions and concerns about precedent. In Judge Tabaddor's case the National Association of Immigration Judges observed that, "While the government once sought to appoint judges who reflected the country's racial and ethnic diversity, the [DOJ] order deters those same judges from participating in their communities" (Associated Press 2014). The Public Affairs Alliance of Iranian Americans asked, if she cannot hear cases involving Iranians, "Can an African American judge hear an employment discrimination lawsuit involving African Americans? Can a female judge hear a sex discrimination lawsuit? Can a gay judge hear a case relating to the rights of gay citizens?" Answering in the affirmative, they cite a 1974 opinion by black US District Judge A. Leon Higginbotham (*Pennsylvania v. Local Union 542*), who asserted, "So long as Jewish judges preside over matters where Jewish and Gentile litigants disagree; so long as Protestant judges preside over matters where Protestants and Catholic litigants disagree; so long as white judges preside over matters where white and black litigants disagree, I will preside over matters where black and white litigants disagree" (Austin and Shehabi 2015).

The irony of Judge Tabaddor's discrimination lawsuit was not lost on a writer for *The National Review*, a conservative publication that seized the occasion to ridicule the liberal administration and its contradictory diversity discourse. "U.S. Attorney General Eric Holder, whose department is charged with the alleged discrimination, has spoken at great length about how his life experiences as a black man influence his view of justice," Lovelace (2014) writes. "But [Holder] has not so far commented on what, if any, insights he might have, as a non-white person, into the unique Iranian-American experience."

Representation

Having outlined the basic problem of recognition and its bearing on inclusion, we turn our focus to more practical matters of representation, including what it means to represent others and to enjoy democratic participation, in the system of participatory parity envisioned as racially democratic crime control.

Representation references a number of cultural and institutional processes. These include framing or constructing meaning (e.g., through language, visualization, or other rendering), which is a constitutive rather than descriptive act (Hall 1997). Social phenomena such as "crime" have no pre-existent, fixed, objective meaning; their meaning is constantly rendered or constituted by those whose voices are represented. Though the term is more commonly invoked to describe political participation, especially through the influence of political representatives, both uses are critical to the idea of deliberative racial justice, where participatory parity in justice processes is expected to generate inclusive constructions (i.e., ideas and practices) of justice.

The contrast between diversity and inclusion mirrors that between aggregative and deliberative conceptions of democratic participation. In *Democracy and Inclusion* (2000), political theorist Iris Young distinguishes between these two models of democracy in terms of their normative ideals of inclusion. The *aggregative* model locates democracy in the aggregation of citizen preferences in selecting public officials and policies. With this "allowance for the expression of and competition among preferences," the democratic process amounts to a market in which, "aggregations of the strongest or most widely held preferences" win more shares of representation (19).

By contrast, *deliberative* representation focuses on participation in ongoing dialogues comprising democratic decision-making. This view of a representative democratic process prioritizes actual “discussion of problems, conflicts, and claims of need and interest,” viewing the aggregation of public sentiment in selecting official “deciders” as an insufficient model of inclusion. The deliberative view, a more actively inclusive ideal of democratic participation, expects collective agreement to be developed through the expression of the best arguments or reasons. In a “deeply democratic” society this inclusive democratic dialogue and reasoning is commonplace and widespread, culturally and institutionally (Young 2000: 5).

The agenda of increasing statistical diversity among formal legal authorities is most consistent with an aggregative notion of democratic participation. In a narrow, aggregative sense, additional non-white police or court officers, for instance, are expected to shift “influence shares” to those racial and ethnic groups and to signify the legitimacy of these legal institutions by their numerical (e.g., proportional) presence. Diversity is seen as an institutional additive, blended into the mix of existing legal authority (norms, policies, etc.) in order to substantively incorporate constituent preferences and symbolize the inclusivity of the social control apparatus.

Yet deliberative democratic representation demands more concrete and active representational bonds between representatives and constituents. We have seen in the earlier examples of Justice Sotomayor and Judge Tabaddor how ties to the associational life of civil society are invoked as evidence of bias and impropriety. Against the ideal of a “bleached out professional” (Wilkins 1993), these actors have “gone too far” in their embrace of identity and by maintaining such bonds have compromised their objectivity and integrity. Of course, these active bonds are critical to the “authorization” of potential representatives—establishing an *actual representative relationship*—and to maintaining the “accountability” of representative actors to those constituencies whose plural claims they are expected to help voice (see Young 2000: 128–33).

What substantive difference would racial and ethnic diversity in the judiciary or another legal field make if these actors did not maintain ties to civil society organizations where diverse group concerns, ideas, and preferences are expressed? These ties are key to representative relationships. As Young (2010) writes, “[R]epresentation systems sometimes fail to be sufficiently democratic not because the representatives fail to stand for the will of the constituents, but because they have lost connection with them” (128). She explains,

The process of authorization and accountability that constitute the representative function should not be confined to official government bodies. ... Free associative life of civil society contributes to the formation and expression of interests and opinions ... [and] the consolidation and expression of social perspectives. Organization and agitation in the public spheres of civil society ... are among the best methods of maintaining connections between representatives and constituents, and insisting that representatives be accountable. (153)

This broad participatory feature of communicative democracy is thus crucial to deliberative racial justice. In *The Black Child Savers: Racial Democracy and Juvenile Justice*, for example, Ward (2012) found that formal inclusion of black Americans among juvenile justice authorities contributed to a deactivation of civic initiative around issues of juvenile social control, leaving these representatives isolated from black civil society. The resulting loss of connection weakened vital relationships, including access to culturally informed service resources, means of maintaining legal professional accountability, and leverage to influence future directions in juvenile justice policy. This loss of connections upon which substantive representation would depend helped render these authorities less reliable and effective as advocates of group interests, diminishing their relevance to group representation, notwithstanding their increased presence.

In a more recent example, Cornell Williams Brooks, the President of the National Association for the Advancement of Colored People (NAACP), stressed the value of associational ties to the federal government's response to police violence and other racially disparate crime control today. "We are the nation's primary care physicians when it comes to civil rights," Brooks claimed, emphasizing NAACP work behind the scenes to advance racial justice, including by providing information facilitating government action. "Whether or not CNN or MSNBC follow what we do, we do it day in and day out. Let's look at Missouri, where the Department of Justice issued a scathing report describing profound racial disparities in Ferguson, an unholy trinity of courts, police, and city hall. Where did this evidence come from?" he asked, "From a 2014 state racial profiling law co-written by the NAACP" (Seligson 2015: 48).

As these and other examples help illustrate, representation arises through sustained exposure to constituencies, in exchanges where priorities are expressed and strategies take shape in narrative traces that inform representative actions (e.g., around policy preferences, funding allocations, tactics, etc.). Engagement is particularly vital to continual authorization of representatives and to maintaining accountability, limiting the likelihood of selective stakeholder representation (e.g., black middle class), of drift into established and often antagonistic police or court organizational culture, or loss otherwise of an ability or inclination to represent the plurality of group interests.

Participatory parity

A final point of distinction regarding racially democratic crime control concerns its broader meaning and challenge of *equal* group representation. In this framework, equal representation in crime control implicates a wide range of contexts and relationships where ideas, priorities, and practices of justice take shape. Such milieus are many, spanning formal and informal institutions, and a diverse array of civil society organizations. Equally important here are the substantive relationships between representatives and constituencies and substantive relationships among constituents and representatives within specific community and institutional or organizational contexts.

What does it mean in this context for racial and ethnic groups to be represented equally, and how is that representation achieved? The notion of "participatory parity" summarizes the equitable outcome and practice envisioned as deliberative racial justice. Political theorist Nancy Fraser (2005: 87) describes democratic justice and participatory parity as mutually entwined and co-implicated aspects of inclusion, explaining:

On the one hand, the principle of participatory parity is an outcome notion, which specifies a substantive principle of justice by which we may evaluate social arrangements: the latter are just if and only if they permit all the relevant social actors to participate as peers in social life.

On the other hand, participatory parity is a process notion, which specifies a procedural standard by which we may evaluate the democratic legitimacy of norms: the latter are legitimate if and only if they can command the assent of all concerned in fair and open processes of deliberation, in which all can participate as peers.

Participatory parity represents an important departure from a common emphasis on "proportionality" as both a mechanism and indicator of equal representation. This distributive frame envisions authorities standing in for status groups they represent and idealizes proportionality

among representatives, relative to population percentage. Yet this formulation rests on a problematic, essentialist notion of racial and ethnic group identity. If we accept the basic proposition that all black Americans (or white Americans, etc.) are not the same, a one-to-one match between black population percentage and that of police, judges, and so on does not ensure recognition or representation of this plurality.

Young's (2000) solution to this problem of essentialism is to frame representation instead "as a differentiated relationship among plural actors," where equity resides not in proportional balance but in the richness of these relationships. This helps to resolve the implausible notion that an individual (e.g., a black male police officer) can stand in for the experience and opinions of "black people," since "[t]here is no single will of the people that can be represented" (127). Drawing on Derrida's work on temporality, this notion of democratic inclusion foregrounds "a process involving a mediated relation of constituents to one another and to a representative." Young explains:

The representative function of *speaking for* should not be confused with an identifying requirement that the representative *speak as* the constituent would, to try to be present in their absence. . . . [C]onceiving representation under the idea of *différance* means describing a relationship between constituents and the representative, and among constituents, where the temporality of past and anticipated future leave their traces in the actions of each. (127)

Rather than expect authorities to stand in for the status groups they represent, locating equity in proportionality, equal representation is contingent upon the active maintenance of relationships with various publics, through which the authority gains shared understanding of constituent ideas and preferences (i.e., authorization), and greater responsibility to express them (accountability).

Whatever their representational ties to social life, if formal representatives are marginalized within legal institutions, then the robustness of these ties to constituents will be trivialized accordingly. Recall how women and non-white US attorneys claimed to be denied access to positions of influence, which undercut their representative potential, blocking "traces" of constituent influence that might otherwise influence federal crime control policy and practice. Patterns of racial segmentation—such as the concentration of non-white actors in less powerful legal fields (see Ward 2006), and other noted ordeals of "after inclusion exclusion" (Carbado et al. 2008), where new forms of marginalization arise amid formal access—clearly diminish racial and ethnic group recognition and participation, notwithstanding visible diversity.

The obligations posed by this deliberative idea of equal representation are not only upon the state (i.e., to increase access) or particular legal institutions and official actors (i.e., to engage civil society), but also civic actors, who are challenged to cultivate and sustain means of authorization and accountability. The resulting "inclusive communicative democracy" would involve an ongoing, productive, and likely contentious "process of anticipation and recollection flowing between representative and constituents' participation in activities of authorization and accountability" (Young 2000: 125). Whereas legal and law enforcement authority is often prone to set itself apart from the people, and particularly marginalized groups, the public can and often does challenge this distance (e.g., through protest, calls for civilian review, etc.) and thus renegotiates these terms of participation in representative social control. Whatever the racial and ethnic or other/intersecting status group in question, it represents a heterogeneous democratic voice vying for influence over ideas and practices of crime control, through the activity of communicative democracy.

Objections, challenges, and prospects facing deliberative racial justice

In the previous section we discussed the promise of racially democratic control within modern multi-ethnic societies, focusing on a deliberative notion of racial justice rooted in a norm of recognition and practice of participatory parity. We are not so naïve as to consider this likely in the near future and realize the challenges are tremendous. In the US, for example, there is increasing concern that a merely flawed democratic political system has given way to oligarchic concentration of power among the elite that effectively prevents the representative ideals we advocate. Nevertheless, if only to escape the illusion that diversity equals inclusion, we advance this alternative understanding of racially democratic social control. In the interest of entertaining its practical potential, we turn our attention in this closing section to more proximate ethical and political objections to a race-based agenda of participatory parity and to other challenges and prospects facing racially democratic crime control.

Objections to racial logic

Racially democratic control envisions participatory parity within and across all deliberative milieus of crime control, with emphasis on substantive racial and ethnic group inclusion in this communicative democracy. Participation must go beyond formal authorities (e.g., police, courts, and legislatures) to include informal authorities (e.g., political parties, neighborhood groups, and other civil society organizations) and their collective engagement in processes of representative government. We contrast this deliberative ideal of racial justice with a more symbolic and essentialist *distributive* idea of representational diversity, arguing that it offers a means of more substantive inclusion.

A basic objection to this idea of democratic social control is that racial and ethnic groupings are illegitimate bases of political recognition. The objection casts such representational notions as trappings of a benighted past, the legacy of which we as a society must shrug off by disavowing race. Color-blind racial ideology represents an extreme, conservative version of this argument.

In his dissent in *Plessy v. Ferguson*, Justice Harlan declared, “Our Constitution is color-blind.” In the century that followed, “color-blindness” came to stand for the idea that the “races are formally and legally equal,” such that “neither substantive inequality, nor past or present forms of racial oppression change how the law should treat racial groups or individual members of such groups” (Harris 2000). This is often translated to mean “race has all but disappeared as a factor shaping the life chances of all Americans” (Bonilla-Silva 2006) and that “being blind to race will lead to racial equality” (Obasogie 2013). Beyond contending that the US is *already* post-racial, color-blindness attributes lasting conflict and inequality to racial provocations of liberal or progressive activists and intellectuals and to alleged “pathologies” of non-whites (see Brown et al. 2005).

Color-blindness obviously challenges an agenda of racially and ethnically representative governance. In particular, it restricts the pursuit of inclusion to a narrow “discrimination and fairness” perspective (Ely and Thomas 2001), providing only a negative right to be spared discrimination while denying positive rights to group recognition, representation, and participatory parity. Senate confirmation hearings for US Supreme Court Justices Clarence Thomas and Sonia Sotomayor put color-blind ideology and these implications for representation on political theatrical display. In 1991, white, Republican senators rallied to Thomas’s defense against what he termed a “high-tech lynching for uppity blacks who in any way deign to think for themselves,” while disregarding African Americans who questioned Thomas’s credibility as a representative black leader, given his political conservatism. Two decades later, many of these same

white, Republican senators mocked and criticized Sotomayor for her suggestion that a “wise Latina” might provide a different, and useful, perspective to the Court. According to the ideology of color-blindness, Thomas’s deployment of race was “proper,” as he argued that his race was being used as a “barrier” and the only proper role for government is the removal of explicit racial barriers. Yet Sotomayor’s reference to race or ethnicity was castigated as “improper” as she asserted her own recognition of racial and ethnic group differences, in reference to her personal and professional identity and the relevance of her candidacy to a more inclusive legal culture.

Color-blindness is not alone in disavowing race discourse. A contrasting, and perhaps more compelling version of this argument advocates abandoning racial logic, whatever the remedial intent, to avoid reifying its ideological and political destruction (Montagu 1974; Miles 1989; Darder and Torres 2004). This line of argument is generally critical of what “knowledge production, in general, and the social sciences, especially, have done ... to create, authorize, legitimate, and license the figures of racial otherness, [and perpetuate the] fabrication of racial selves and social objects” (Goldberg 1993: 208).

In their book *After Race* (2004), Darder and Torres insist, “we must disconnect from ‘race’ as it has been constructed in the past, and contend fully with the impact of ‘race’ as ideology on the lives of all people.” This in part means that “the everyday use of ‘race’ for symbolic and political purposes has to be uprooted,” (2–3) and replaced by what they call historical materialist analyses attentive to racisms, yet divested of racial logic. “In order to analyze ... new racialized relations,” they write, “we do not need to employ a concept of ‘race.’ Indeed, its retention is a significant hindrance” (Darder and Torres 2004: 46). Similar arguments have been made by a number of scholars who critically examine racism while objecting to racial discourse (see Miles 1989).

These progressive interventions have generated valuable alternative frameworks, such as “Cultural Citizenship,” as a way of describing interests in inclusion but without reference to race (Rosaldo 1994). Similar to our agenda, cultural citizenship “seeks to understand differences significant to people along a continuum, in the hope of disrupting the racialized discourse of the Other” Darder and Torres (2004) write, yielding “a political strategy [meant] not only to establish a collectivity in which no one is left outside the system, but to extend the rights of first-class citizenship to all people” (23).

Our interest in participatory parity in crime control (and beyond) aligns with this progressive vision but specifies the need for substantive racial and ethnic group inclusion for what we consider pragmatic reasons. Most of all, we specify a deliberative theory of racially and ethnically representative crime control to counter a commonplace distributive notion of inclusion, which limits recognition, representation, and participation. By advocating *democratic crime control* in what are presently racialized social systems, in which exclusions align in part with racial and ethnic group status, we are not invested in the perpetuation of racial structures. We make no assumptions regarding either the lasting significance of race in these societal contexts, or any claim to universal application, irrespective of specific racial histories. Moreover, we expect a practice of deliberative racial justice to generate new structures of racial meaning, by weakening white racial dominance (ideological and structural) in particular.

We consider racially democratic crime control an anti-racist strategy aimed at what Goldberg (1993) describes as “dissolving in theories and in practice both the institutions of exclusionary power and the powers of exclusionary institutions.” As a theoretical frame and prospective practice, it involves an assumption of more substantive power within crime control systems, “the power of the racialized, of the racially excluded and marginalized, to articulate for themselves and to represent for others who they are and what they want, where they come from, how they see themselves incorporated into the body politic, and how they see the social body reflecting

them” (Goldberg 1993: 237). In theory, deliberative racial justice has the potential to negotiate a world where exclusionary racial politics dissipate and social justice flourishes.

Challenges of intersectionality, geopolitical scale, and racial endogeneity

Countless other conceptual and practical challenges lie in the way of racially democratic crime control. These include intersectionality, globalization, and racial endogeneity to name only a few. While this list is neither exhaustive nor addressed comprehensively here, we note these examples to acknowledge their practical importance, and to encourage further engagement in theoretical and empirical research.

Intersectionality refers to the ways in which status characteristics such as gender and race interact to shape multiple dimensions of experience (Crenshaw 1989, 1991). These complexities become obscured in various cultural and institutional contexts, such as social movements and law, with the effect of eliding and reproducing some forms of subordination. For example, an initiative focused on increasing the presence of women and non-whites among police or court authorities might neglect representational interests of women of color if these statuses are not understood as intersecting. While focusing on intersections of race and gender, Crenshaw’s foundational analyses fueled engagement with other categories of difference, such as class, age, and sexual orientation, which further complicate an idea of racially democratic control.

We have provisionally acknowledged this challenge by emphasizing the need for a more plural orientation toward racial and ethnic group experiences and interests, in contrast to the essentialism characteristic of diversity discourse. As Young (1989) notes,

No one can claim to speak in the general interest, because no one of the groups can speak for another, and certainly no one can speak for them all. Thus the only way to have all group experience and social perspectives voiced, heard, and taken account of is to have them specifically represented in the public. (262–63)

Rather than speaking as “black America,” as if with a singular voice, the black official authorized by and accountable to black *communities* (young and old, rich and poor, women and men, LGBTQ and not) and diversity within these collectivities, becomes better able and inclined to speak with this multitude in mind. If representatives limit engagement to select constituencies, for example, by engaging civil society organizations with particular ideological orientations or dominated by elites, their authorization and accountability will be limited accordingly.

Ultimately, intersectionality reminds us that representative social control must involve the expression of the “needs and points of view” arising from complex, overlapping, and dynamic societal constituencies. This is a considerable practical challenge, given the uneven expression of constituent interest within associational life, and presents an important issue for further theoretical and empirical investigation.

Related to this, we should acknowledge considerable geopolitical challenges facing the idea of racially democratic crime control. Namely, at what geopolitical levels or targets should representative social control be aimed, and how is this accomplished? While our discussion up to this point has focused on national and local levels, we have left unaddressed issues of transnational and international representation. As laws passed in one country increasingly impact the lives in others, a deeply democratic view would require that voices of those who would be most affected would be heard, not just in their own nation-states, but also in other nations and by international bodies.

Consider the obvious example of immigration law and resulting immigration control policies and practices. Numerous scholars observe transnational racial and ethnic group interests in immigration, including how US policies criminalizing immigrants simultaneously impact populations within and beyond the borders of the United States (see Menjivar and Abrego 2012; Zilberg 2004; Heyman 2002). If “[r]epresentation should be designated whenever the group’s history and social situation provide a particular perspective on the issues, *when the interests of its members are specifically affected, and when its perceptions and interests are not likely to receive expression without that representation*” (Young 1989: 265–66, emphasis added), how is substantive representation mapped onto these problems of justice? The examples not only defy national boundaries and governance structures but also seem to exponentially increase status group intersections (e.g., ethnicity/gender/class/age interacting with nationality/citizenship) requiring representation.

Populations ethnically defined in the US as Hispanic, Latino, or Asian have some intersecting experiences and interests with counterparts elsewhere in the Latin or Asian diaspora (and with other women and men, young and old, etc.), but these are certainly limited. Mexican American authorities or civil society organizations cannot sufficiently represent the plurality of experiences and interests among Mexican nationals, in the case of US immigration control and otherwise, let alone those of other Latinos within and outside the United States (e.g., El Salvadorian Americans, El Salvadorian nationals in the United States, and citizens of El Salvador), who are still further distinguished by status group differences.

As Young’s analysis concludes, a project of democratic inclusion must ultimately come to terms with such realities of globalization. This presents substantial conceptual and practical challenges we cannot resolve here, but we acknowledge the uncertain meaning and plausibility of “participatory parity” in the case of such an obviously transnational issue as immigration control and likely many others less obvious to us.

Racial endogeneity

Finally, work on racial endogeneity—noting that practical meanings of race (including racial group representation) are constituted *within* various milieus rather than established from *without*—points to the roles of these constructions in conditioning the meaning of inclusion (see Carbado et al. 2008). One implication of this line of work is that an official or policy embrace of the deliberative ideal of representation we advocate is no assurance of an actual practice of deliberative racial justice in particular contexts.

Organizational behavior research on “diversity perspectives” as a mediator of the substantive importance of statistical diversity is illustrative here. In a qualitative study of three culturally diverse organizations, Ely and Thomas (2001) observed several distinct perspectives on workforce diversity, which vary in terms of their rationale for diversifying, the value placed on cultural identity, the connection between diversity and work functions, and indicators of organizational progress. Further, these diversity perspectives had implications for workgroup functioning.

The three perspectives—integration and learning, access and legitimacy, and discrimination and fairness—can be effective motivators for increasing statistical presence, but only the first two *frame* that presence as substantively meaningful to the organization, albeit in different ways. The “access and legitimacy” regards inclusion as a means of penetrating specific markets or communities, while the “integration and learning” framework views diversity as a source of broad, substantive organizational enrichment, specifically through the often contentious but productive activity of soliciting and reconciling competing interests and viewpoints.

Implications for a hypothetical police or court organization are not difficult to imagine. In an organization where the “access and legitimacy” perspective prevails, hiring Asian police or

prosecutors may be envisioned as a means of increasing effectiveness and perceived legitimacy in Asian community contexts, and the value of ties to Asian associational life will be similarly framed. Yet Asian operatives will likely resent this constrained organizational purpose and influence, and their positions may be devalued in the organization, leading to conflicts surrounding segregated group functions. By contrast, in an “integration and learning” environment, Asian police or court actors are more likely to be envisioned as general contributors to the organization, so too associational ties, and valued alongside other racial and ethnic group collectives as sources of enrichment in core workgroup functions. While this more robust perspective invites more active contention, in the form of productive disagreements, the “integration and learning” frame is ultimately found to be associated with enhanced organizational innovation, productivity, and satisfaction (Ely and Thomas 2001: 261).

The ideal of deliberative racial justice envisions an *actual* participatory process premised upon “integration and learning,” resulting in what we call racially democratic social control. Yet realities of racial endogeneity present challenges as translating policy into practice is concerned and to empirical research that might evaluate the status and impact of deliberative racial justice. Contexts surely vary in terms of how well diverse constituencies are enabled to participate in decision-making, over time and across space. The extent of shared dominion over crime control processes (i.e., processes of defining, interpreting, and enforcing criminal law) is difficult to impose or observe from without, contributing to a noted overreliance on distributive proxies (e.g., “percent black”) of these more nuanced deliberative ideals in research and policy.

Several studies reliant on such measures cast doubt on the impact of “diversity among legal authorities” (see Ward 2006 for a review), but more recent work employing nuanced assessments of representation challenges this conclusion (see, e.g., Lyons et al. 2013; Sharp 2014; Ward et al. 2009). What is clear is that we have not lived in a world where participatory parity in crime control is sufficiently widespread to evaluate its symbolic or substantive impact. Mixed and unimpressive findings to date seem more likely to reflect qualitative variation in this absence of participatory parity—and limits of theoretical and empirical engagement with deliberative inclusion within specific contexts—rather than evidence of the actual irrelevance of racially democratic crime control.

Conclusion

In Ferguson, Missouri, where Michael Brown, an 18-year-old African American was shot multiple times by white police officer Darren Wilson in 2014, demonstrators quickly highlighted the police force’s history of targeting young black American men for aggressive policing and the exploitative practices of municipal courts (Apuzzo and Fernandez 2014). Challengers noted that the city of Ferguson was 67 percent African American, but 94 percent of the police force was white, as were the mayor and five of the six city council members. After a lengthy and unusual grand jury process, Wilson was not indicted for Brown’s death. An ongoing expose of widespread racist cultural and institutional practices of Ferguson officials, bolstered by the noted Justice Department report finding conditions that harken to debt peonage, along with the pressures of emergent social movement frames and resources, seems to make certain some formal reconfiguration of participatory parity in that region and a relative increase in deliberative racial justice.

Events in Ferguson recall those in Anaheim, California, two years before, when the police shooting of Manuel Diaz, a 25-year-old Latino man, was followed by protests and demonstrations that highlighted that city’s increased Latino population and its experience of police violence. Though over 50 percent of Anaheim’s residents were Latino, its mayor and city council, chosen in at-large elections, were white. Among the demands of activists was a move to council districts and

the appointment of a Spanish-speaking Latino police chief, presumably advancing Latino recognition, representation, and participatory parity (Whiting 2015). These are not foregone conclusions.

The apparent pursuit and promise of participatory parity is kept alive in these moments of crisis, especially when there are faint signs of changing power relations. Marilyn Mosby, the prosecutor for Baltimore City and a young black woman, presented such a moment when she rose in stark contrast to her middle-aged white male counterpart in Ferguson, announcing indictments of six police officers for the death of Freddie Gray, a black man who died in police custody. Her announcement not only presented a different legal outcome, provisional as it was, but seemed to convey a different representative process and relationship, evident in her own outrage and apparent identification with the aggrieved. Would there have been the same outcome if narrative traces of national (esp. black American) outrage were not so intense in that moment and in the deliberations of that particular city administration, led as it is by a black mayor and majority black city council? We cannot answer that question empirically, but the anecdotal distinctions are no less striking and relevant to our discussion.

While these moments undoubtedly generate important civic dialogue, policy changes, and shifts in formal representation, they are never certain to sustain the change in political culture envisaged by democratic social control. For the government of a multi-racial and ethnic polity to be representative in an expansive and meaningful way requires more than the removal of *de jure* barriers to participation and more than mere statistical diversity in the ranks of formal authorities. It requires active inclusion that recognizes *de facto* barriers and creates pathways to overcome them, not simply in the ranks of authorities, but within the civil polity broadly—where ideas about social control circulate and become fashioned into priorities and rendered as norms, policies, and practices.

As we have noted, this ultimately calls on the citizenry to remain engaged in democratic deliberations and to create and sustain democratic institutions that translate group interests into collective decisions and actions. This ongoing representative engagement of a diverse citizenry—what Young calls “deep democracy”—is crucial to social justice. As Young (2000) explains,

We deepen democracy when we encourage the flourishing of associations that people form according to whatever interests, opinions, and perspectives they find important. Strong, autonomous, and plural activities of civic associations offer individuals and social groups maximum opportunity in their own diversity to be represented in public life. (153)

What are the present and future prospects of such a robust system of racially democratic control? Focusing on the US context, but confident that this is true elsewhere, we acknowledge that this society is far from achieving a deeply democratic system of criminal social control, and governance more generally. The mix of continued exclusion, often illusory progress, and discouraging cultural and institutional obstacles makes this unlikely to change dramatically in the foreseeable future. Yet, continued contestation over substantive representation and the relative rather than absolute ideal of deeply democratic control provide considerable space for optimism and progress.

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