sibility, to families and communities that have been fractured and fragmented through colonization. There must be a parallel process of resourcing and healing in these communities. The best elements of the family group conferencing philosophy need to be broadened out to form widening circles that encompass meaningful hapu, iwi, and community participation in their own healing and wholeness.

REFERENCES


In a historical period when representative democracy is sweeping away one dictatorship after another, democracy is becoming more shallow in its meaning for human lives. The lived experience of modern democracy is alienation. The feeling is that elites run things, that no one else has a say in any meaningful sense. It is certainly a poll-driven democracy, and polls are admittedly a kind of safeguard against the tyrannies the polls reveal as likely to reduce electoral support. However, a poll-driven democracy is also a tyranny of the unreflective median voter. We see this tyranny vividly with criminal justice. Crime is one of the insecurities of swing voters. In an unreflective democracy where the political imagination is limited to bigger doses of punishment as the cure for crime, the swing voters say they want longer sentences, and they defect from parties that come under attack in the mass media for being soft on crime. Such a democracy is impoverished.

What our experience with restorative practices has taught us is that there is a rich diversity of things citizens want out of the justice process that they only come to grasp through serious deliberative engagement with it, by listening to the arguments and experiences of others and then reflecting on their needs and aspirations for decent outcomes.

But of course this malaise of democracy reduced to the politics of the opinion poll, television one-liners, and tabloid headlines is much wider. It results from the density of governmental decisions in complex societies and the number of people who would like to have a say. In such a world, to aspire to much more than the democracy of the ballot box seems romantic. There are just too many decisions and too many people for participatory democracy to be feasible. Besides, few of us want to spend our lives in the endless meetings it would require. The expanding impracticability of all affected citizens participating in important decisions that affect their lives has reinforced the dominant view that representative democracy is all that is feasible. At the same time, if Madison or Jefferson returned to America today they would be disappointed at how remote government is from the people and at how much power governments and, worse, democratically unaccountable corporations exercise in ways that educated citizens dimly understand. The utopianism of the participatory democracy they debated has been used by generations of elected politicians to erode the sovereignty of the people in favor of the sovereignty of executive government. Roads and weapons systems are built by experts remote from elected officials, let alone from the citizens who travel by
roads and are protected by the weapons. How could it be otherwise? Is it possible that we might save democracy from its own decay? Might it be that restorative practices could have a significant role in this rescue mission?

DEMOCRACY RENEWED

Progressively, the distancing of the people from the scale of modern state and corporate governance is producing a backlash. Contemporary Madisons and Jeffersons who see direct democracy as worse than an impossible dream nevertheless keep faith with the hope that a new amalgam of citizen participation can be forged. These are folk who participate in social movements like the social movement for restorative justice. My argument is that these citizens are indeed at the frontier of a new Madisonianism, a civic republicanism for a complex world.

Native American “republicanism” had an influence on American revolutionary republicanism. Regrettably, it had precious little in the two centuries after the revolution. The freedom of the Indian was part of the imagery of the Native American garb at the Boston tea party. Some of the framers of the U.S. constitution seem to have been admirers of the Iroquois confederacy, leading Iris Young (1997) to invoke Homi Bhabha’s notion of hybridity to suggest that America may be a “hybrid democracy.” We see the symbol of the Iroquois federalism, the eagle clasping bundled arrows, on the U.S. one dollar bill. What I see as the hybrid civic republicanism of the restorative justice movement equally draws upon the institutional wisdom of Native Americans and of Polynesian Americans, revealed through New Zealand Maori as well as Hawaiian experience. In the criminal justice system, Western alternative dispute resolution (ADR) models invented in the 1970s were going nowhere slowly during the 1980s until they incorporated three crucial lessons from indigenous practices in the 1990s:

First, dyadic mediation between victim and a single offender is an impoverished formula compared with bringing into a circle a multiplicity of people who are affected in different ways, but particularly people who love and want to support those directly affected. Western feminist critiques of power imbalance in mediation, for example, have more force when applied to a meeting of a man and a woman, a man and a child, or an adversarial encounter between a teenage rape victim and a cross-examining lawyer. They still have force, but less so, when applied to a healing circle where the affected parties are assured of support from both men and women, adults and children, who stand with them. Power imbalances can still be profound in a circle, but they are more cross-cutting than in one-on-one encounters.

The second lesson from indigenous practices was, in the words of Ada Melton (1995), that it is better to put the problem rather than the person in the center of the circle. There is a connection of the second insight with the first. This is the Maori view that it is barbaric to allow people to stand alone in the dock. While the shame of letting one’s loved ones down can be healthy and readily transcended by love and forgiveness from them, the shame of exposure in the dock, individualized guilt, and stigma can eat away at a person’s self.

The third crucial insight was that material reparation was less important than symbolic or emotional reparation (Retzinger & Scheff, 1996). Remorse and apology, as recent New Zealand evidence suggests, is more predictive of reduced reoffending following restorative conferences than material compensation (Maxwell & Morris, 1999). And symbolic reparation is often more important to victims (Sherman et al., 1998). In some contexts it can even make sense for the victim and the community to make a gift to the offender, as among the Crow people (Austin, 1984, p. 36). On Java I was told of a village where a boy was caught stealing and dealt with according to principles of musyuarah—decision by friendly cooperation and deliberation. The chief of the village summarized the feeling of the village meeting: “We should be ashamed because one from our village should be so poor as to steal. We should be ashamed as a village.” Their solution was to give the offender a bag of rice.

To summarize so far, we have identified three crucial lessons for the West to learn from indigenous practices:

1. Widen the circle—democratize it, pluralize it.
2. Put the problem in the center, not the person.
3. Shift the emphasis from material reparation to symbolic reparation—remorse, apology, love, even spiritual healing.

With this rediscovered institutional wisdom, the evidence is now strong that we can offer restorative rituals that, on average, citizens find more satisfying, fairer, and more respectful of rights than court. There are lively and important debates about differences between various kinds of conferences and circles that define a research agenda for evaluation scholars. However, I suspect there are more important things that are shared in common, and these include learning from the above three insights from indigenous practices. The more abstract lesson is that for most participants, circles and conferences are democratically satisfying. The practical lesson is that participants can be readily persuaded to attend so long as implementation failures are solved to make this convenient. It follows that conferences and circles can salvage some not insignificant participatory democracy in the twenty-first century. Moreover, we may be able to expand the application of conferences beyond criminal offending by juveniles and adults, beyond the care and protection of children, beyond bullying in schools, beyond business regulatory domains such as nursing home inspections (Braithwaite, 1999), to other problems that affect peoples’ lives directly enough for them to want to participate. Candidates seem to me unemployment, homelessness, and truancy/dropout/educational failure.

Political scientists may say that such concerns do not go to the heartland of the
democratic process. True. But how can citizens hack a path to the heartland of the democracy if the democracy has no strategy for teaching them how to be democratic citizens? Circles and conferences about matters ordinary people care about in their lived experience can teach them. If all students experience and witness serious acts of bullying at school and care about this, then before they reach adulthood all can have the experience of participation in circle solving of a difficult problem on which there are multiple perspectives. And democracy is something that must be taught. We are not born democratic. We are born demanding and inconsiderate, disgruntled whiners, rather than born listeners. We must learn to listen, to be free and caring through deliberation that sculpts responsible citizenship from common clay (Barber, 1992).

Punitive practices, like the accountability mechanisms of the contemporary state more generally, teach us not to be democratic, not to be citizens. This is because of their passive model of responsibility (Bovens, 1998). Passive responsibility occurs when we hold someone responsible for what they have done in the past. The president is censured for his sexual misconduct, the secretary of the treasury is fired for failing to prune the deficit, Colonel Gadhafi’s child is killed in a bombing raid on his home to teach the colonel that it is wrong to support terrorism. Circles and conferences, in contrast, teach active responsibility. Active responsibility means taking responsibility. In a healing circle, most citizens in the circle are not passively responsible for any wrongdoing; they are certainly not held responsible for criminal wrongdoing. Yet the hope so often realized is that they will take active responsibility for solving the problem. This is part of the ambition of putting the problem, rather than the person, in the center of the circle. In the most moving conferences, participants take active responsibility for confronting structural problems like racism in a community, sexual exploitation, domination of girls by boys in a school (Braithwaite & Daly, 1994), and even a prime minister taking responsibility for restructuring the regulation of the Australian insurance industry (Braithwaite, 1999). But mostly the active responsibility is more banal—the uncle who takes responsibility for ensuring that a car is left in the garage on Saturday nights to prevent a recurrence of drunk driving, the aunt who offers a home to a child abused by her parents, and the burglary victim who decides to install an alarm system.

The lesson that democracy requires active responsibility is being learned in the banal and personal cases just as it is in the less common cases that grapple with structural change. The outputs we hope for are not only solving the problem but also building community and building democracy, or at least the competence to be democratic. To rebuild a democracy of which Madison and Jefferson would be proud, we need to do more than motivate people to participate in circles that address problems of living that directly affect their personal relationships. The extra step to democratic citizenship is taken when the citizen moves from participating in restorative conferences to being active in some way in the social movement for restorative justice practices. It is taken when a citizen moves from supporting the residents of mom’s nursing home in an exit conference following an inspection, to being an aged care advocate. It is taken when a young woman who learns in a school antibullying program how to confront bullying, and then applies those skills to confront corporate bullies who destroy forests on which our wildlife depends. It may be that much of the learning to be actively responsible has always arisen from restorative everyday practices in families, workplaces, and peer groups.

The approach to the revitalization of the civic republic I articulate has four components:

1. Institutionalize circles/conferences to enable all affected citizens to participate in solving problems that directly affect them in important ways (crime, the safety and well-being of children and of aged and infirm they love, unemployment, and homelessness).

2. Where appropriate, facilitate the personal becoming political in such cases. Bring in advocacy groups, such as feminist shelter workers, that can define options for structural change, possibilities for transforming personal troubles into public issues.

3. Foster social movement politics as vehicles for active responsibility in domains where we are not necessarily directly or personally affected. Abuse of power can be checked without everyone being actively responsible for every issue that concerns them. It requires that some citizens be actively responsible around every issue of central democratic concern. It helps when everyone is concerned about refugees in Kosovo or Ethiopia, but it helps more when a few have enough concern to be genuinely and effectively involved.

4. In a civic republic where active responsibility is invigorated by the first three points, more of the most disenfranchised citizens might be motivated to take the responsibility to vote, thus revitalizing the representative democracy.

More briefly, this civic republican program is for restorative problem solving that teaches active responsibility, thereby motivating the making of the personal political, thereby motivating social movement politics and grassroots engagement with the representative democracy. For restorative justice to reach for these democratic ambitions, its advocates must advance certain values.

RESTORATIVE JUSTICE VALUES

If restorative justice means no more than a process for empowering through dialogue all the stakeholders affected by a problem, then it will be a rather limited force for reinvigorating democracy. It seems that the social movement for restorative justice needs to valorize active responsibility in civil society by pointing to the limitations of statis passive responsibility. It needs to valorize healing more
than hurting following a wrong—restoration (especially of relationships) over retributio. Most fundamentally, it should valorize democracy, especially core democratic values such as all voices being heard and treated with equal respect. Yet if democracy is the most fundamental value, it brings a paradox. What if the result of all voices being heard is that none of them want to take active responsibility, none want to heal, most want the state to invoke passive responsibility through brutal and exclusionary punishment? While this happens much less than we all expected, it does happen. When it does, if democracy is really our fundamental value, then we will want the will of the circle to prevail and for the matter to be handed back to the state. The paradox of democracy here is really a familiar one: if the electorate votes in a government with an antidemocratic agenda, democrats who voted against them should not seek to overthrow them by undemocratic means.

Nevertheless, for the republican, majoritarian democracy is only the centrally sanctioned political process because it is a means to the end of a deeper value. This value is freedom as nondomination (Pettit, 1997) or nondomination (Brathwaite & Pettit, 1990), the freedom of not having your choices dominated by those with more power than you. For a start this means that we are not moved by the majoritarian will of the conference if the voices of deeply affected persons are dominated during the conference. But more fundamentally it implies a need to constrain majoritarian decision-making to protect against the tyranny of the majority. Hence the will of the majority to flog a child should not be honored, because this would be a tyrannous violation of fundamental human rights. A further paradox of democracy is that democracy is the only way to delink whether what are the tyrannies we should constrain majorities against imposing. The people should vote on a constitution that constrains them, constrains their legislature and judiciary from engaging in a variety of forms of domination. On the republican analysis, whose heritage includes Rome, Montesquieu, and Madison, freedom as nondomination both motivates majority rule and is more fundamental than it. No one can enjoy freedom on this republican analysis in a society where majorities fail to legally tie their hands against trampling on the freedom as nondomination of those in the minority on a particular issue.

There is, therefore, a need for the justice of the law to constrain the justice of the people (especially through the institution of rights). Equally, however, there is a need to ensure that the justice of the people percolates up to influence the justice of the law (Parker, 1999). A judicial system that is cut off from impulses bubbled up from popular restorative justice will be an inferior one (Habermas, 1996). Equally, a restorative justice that is cut off from the filtering down of the justice of the courts will be inferior. This is a controversial claim in respect of indigenous justice. In a multicultural society, however, it would be intolerable to suggest that an indigenous girl who did not wish to submit to the justice of the elders should be denied protection that would be extended to her if she were nonindigenous. This is especially so if the girl contests her very membership in this indigenous group by dint of mixed birth, by attempting to leave the community, or perhaps even simply by asserting that she “doesn’t want any of that Maori shit” (Maxwell & Morris, 1993).

Indeed it may be that just as Western justice has something to learn from indigenous restorative traditions, so indigenous justice has something to learn from the rights of liberal legalism. Today, many indigenous people themselves agree that fundamental legal protections against the tyranny of the majority should extend to all citizens regardless of ethnicity. That said, there are major dangers in reimporting restorative justice back into indigenous communities with added Western language. A good example is the accreditation of mediators. This kind of Western professionalizing project can disempower indigenous elders. While dialogue where indigenous elders and Western mediators/facilitators exchange the wisdom of their experience must be a good thing, policies that usurp respected elders for “better trained” nonelders are a threat to good governance (and are unjust). This follows from our republican analysis that active responsibility is the key to good governance. Indigenous peoples who have experienced Western occupation/domination have suffered loss of active responsibility to the most extreme degree. They have suffered most from the dead hand of passive responsibility of the Western state. Few acts of domination could therefore be worse than to seize back from them those manifestations of active responsibility that survive.

There will never be consensus on all the values that should inform restorative practices. Most restorative advocates think reintegration into communities, community development, holism, shared learning, repair of harms, restoration of relationships, forgiveness, and love are values that should centrally inform restorative processes. Many, especially indigenous elders, think spirituality is fundamental. All these values are contested to varying degrees within the movement, however. While dissent and debate on most values is inevitable and desirable, it may be that there must be consensus on certain minimum values that allow the very possibility of a restorative space. My submission is that these values are democratic liberation itself, equal respect for the voices of all stakeholders, a rule of law that secures freedom as nondomination and allows a space for those stakeholders to have a say.

CONCLUSION

This essay sought to understand how people in ordinary families and communities can have more of a say in a world dominated by big business, professional politicians, and technocrats. Democratic participation requires democratic competence that must be learned through the exercise of active responsibility. Restorative processes can be one crucial vehicle of empowerment where spaces are created for active responsibility in civil society to displace predominantly passive, statist responsibility. Representative democracy with a separation of powers is more
sustainable than direct democracy. There are too many of us and the world is too complex for us to find time to participate in a direct democracy, even in endless citizen-initiated referenda. However, the conference-circle technology of democracy can give us an opportunity to directly participate in certain major decisions that impact our lives and those of our loved ones. Through this engagement with democratic participation in complex problem solving, citizens learn to be actively responsible. This is a deliberative theory's answer to a representative democracy that, by failing to cultivate relationships in a community, produces a people "characterized by selfishness, apathy, alienation, lack of knowledge and prejudice" (Warren, 1992, p. 11). Fishkin, Lukin, and Lukin (1999, p. 8) claim to observe among participants in their deliberative polling "a gain in empathy and mutual understanding." Restorative processes have produced more systematic evidence of such gains (Braithwaite, 1999).

Once citizens learn to be actively responsible, as opposed to learning to rely totally on protection by a state that enforces passive responsibility, they will become active in social movement politics. Nongovernmental organizations (NGOs) offer the second great avenue for revitalizing meaningful forms of citizen participation in a democracy. They can be as relevant to democratizing global institutions, such as the IMF, the World Bank, and the World Trade Organization (WTO), as they can be to democratizing the state (Braithwaite & Drahos, 2000). Non-governmental organizations' influence can feed back into restorative justice conferences as advocacy of making the personal political, by invoking the possibility of agitating for structural change. The most important way this happens is when the justice of the people puts pressure on the justice of the law to change. This indeed is a shared project of the partnership restorative justice advocates seek to forge.

REFERENCES


