

BUILDING SOCIAL SUPPORT FOR RESTORATIVE JUSTICE

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Media, civil society and citizens

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European Forum for Restorative Justice v.z.w.

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Colophon

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Foreword

European Forum for Restorative Justice implemented a two-years project co-financed by the European Commission called “Building social support for restorative justice”. The European Forum for Restorative Justice as the promoter of this project collaborated during this project with several partners with extensive experience in the field like, the School for Mass Communication Research and the Leuven Institute of Criminology of K. U. Leuven (Belgium), Institute for the Sociology of Law and Criminology (Austria), Restorative Justice Consortium (Great Britain), Norwegian National Mediation Service (Norway), Albanian Foundation for Conflict Resolution (Albania), and Radio La Benevolencija (Netherlands).

The project “Building Social Support for Restorative Justice” has addressed three main questions: 1) how can cooperation with the media be set up to inform and educate the public about restorative justice?; 2) how can cooperation be developed with civil society organisations to create broad support for restorative justice?; 3) how can we increase the involvement of citizens in local restorative justice programmes?

Throughout the project, the above questions were analysed against a theoretical background, good practices and promising examples were identified and in the end practical recommendations, in the form of a media toolkit, a guide on how to work with civil society and citizens, and a final scientific report were prepared¹. Although the style and content of the toolkit, the guide and the scientific report are different, the documents are continuously cross linked to each other, therefore the three documents must be viewed as parts of a whole. Nevertheless, each is a self-standing part. The practical guide and the toolkit are rich with examples and strategies collected in Europe and beyond, and offer many practical recommendations on how to move forward in this area. The report, on the other hand, is mainly theoretical (but not only), and its main objective is to open up further spaces for debate and thinking along these lines, and to engage more systematically with the questions of public information about, education on and participation in restorative justice.

¹ These documents can be found at the EFRJ website: www.euforumrj.org

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Introduction

Lack of public awareness about, support for, and participation in restorative justice is an issue which puzzles many restorative justice practitioners, activists and scholars. Starting from this concern, the European Forum for Restorative Justice and several other partners involved in the field, elaborated several ideas on how to think about this issue in a constructive way and identified three fields of cooperation which would improve public awareness, support and participation in relation to restorative justice.

To concretise the ideas, the European Forum for Restorative Justice implemented a two year project co-financed by the European Commission called “Building social support for restorative justice”. The project “Building Social Support for Restorative Justice” has tried to answer three main questions: 1) how can cooperation with the media be set up to inform and educate the public about restorative justice?; 2) how can cooperation be developed with civil society organisations to create broad support for restorative justice?; 3) how can we increase the involvement of citizens in local restorative justice programmes?

The *first part* of this contribution will outline sociological background theories of relevance for the theme of developing social support in order to develop strategies for building social support for an innovative way of dealing with conflicts in society. We therefore ask which features of present day societies and which kind of societal developments constitute the ‘arena’ for building social support for a restorative justice policy?

The societal structures and developments will be investigated taking into perspective - what we have identified as - the core elements of restorative justice: *the ‘social’ or ‘life-world’ element*- Starting with the perception of crime as a disruption or disturbance of human relations, of people living together, means starting from and attending to the immediate emotional experience of the persons involved and the concrete needs originating from this experience (with an emphasis on the victim); *the participatory element* - This implies active participation of those concerned and those affected by the conflict becoming part of the effort to achieve reparation and reconciliation; *the reparative element* - The shift from restoring the balance (the scales of justice!) by inflicting the evil of punishment on the wrongdoer to restoring the balance by making good.

We will attempt to identify developments in the present day world as espoused by theory that might serve to elicit support for restorative justice, as pertaining to the above mentioned core elements of restorative justice. As regards the issue of reparation, these developments come predominantly in the way of a reinvention, or a return to modes of reaction to crime that have played an important role in the historic past. We will therefore briefly refer to the historical roots of restitution/reparation, and further see how these tendencies find their expression within new strands of legal thinking (for example: the theory of positive general prevention), and how they are further supported by psychological, and psycho-analytic theories that undertake to grasp major societal developments of the last decades.

Furthermore, we will discuss how restorative justice can make use of tendencies for more democratic participation within societies, and argue that restorative justice should be presented as a means and as an instrument of criminal and of social policy that is in tune with a global movement for more democratic participation of citizens. We will present pieces of theory that deal with identifying and analysing the strands of societal development that point in the direction of more active participation like: risk society, new governance, and solidarity; nodal governance; dominion; the principle of dialogue; and dialogue and peace-making.

Resorting to concrete experiences of doing harm and of suffering harm can counteract the tendencies of reacting to those conflicts that are defined as crimes by resorting to punishment. We have to consider the fact that restorative justice is proposed and makes its appearance in an arena where considerable importance is put on combating or fighting crime. The repressive, retributive response is to a large degree the obvious and seemingly 'natural' response. These tendencies and the concomitant discourses work as an obstacle to overcome – something to 'turn around'. When we construct and design strategies for building social support we cannot neglect the fact that we have to confront and to counteract these tendencies. We will argue that attending to concrete experiences of the people involved as it happens within restorative justice can provide an antidote to ideology-driven images of crime and against the lure of the politics feeding on these images and the fears they evoke.

Part two will focus mainly on available empirical evidence further accentuating the theoretical background presented in the first part. We will firstly outline several empirical findings pertinent to the core elements of restorative justice as explicated in the previous part, namely reparation, active participation and life-world element. These

findings come mainly from German and English speaking countries. Restorative justice in spite of its efforts remains for most of the people an ambiguous concept and notion of justice. We will nevertheless argue that although knowledge on restorative justice is poor, the attitudes about it are quite positive, especially with pertaining to the above-mentioned core elements of restorative justice.

We will discuss research from different parts of the world looking at public opinion on reparation, particularly in relation to assessing reaction to their use as alternatives to imprisonment and punishment. We will also present highly relevant empirical evidence relating to the effect of active participation of citizens in conflict settlement, and on active participation on compliance with agreements and their contents reached in participatory (restorative) procedures. Again in relation to the principle of participation we will present empirical evidence pertaining to the concept and the phenomenon of 'procedural justice'. The appeal of restorative justice, and more specifically of the 'life-world' element as it pertains to reintroducing concrete (mainly victims') experiences, is also clear from studies of participation and satisfaction conducted with victims of crime in mediation, family group conferencing and circles of support.

This part furthermore will introduce several additional variables that account for differentiated findings on the current state of knowledge about the public's attitudes towards restorative justice like: age of the offender, criminal history of the offender, seriousness of crime, socio-economic status of the offender, 'redeemability', and expression of remorse and apologies. We also highlight several studies that have pointed out methodological concerns and considerations with regard to research on public opinion or attitudes on punishment and restorative justice. The authors of these studies have contended that it is to a large extent, the lack of alternatives, scarcity of information, and lack of complexity on the cases presented to respondents that produced results that appeared to confirm the assumption that 'the public' is punitive and asks for tough reactions to crime.

In light of this theoretical and empirical outline and analysis on the core elements of restorative justice considered as elements of building social support, we will in the *third part* consider the impact of politics and politicians on social support for restorative justice. While undertaking this important consideration, we have to reckon with the difficulties of a complex relationship, which becomes relevant in two ways: firstly through an analysis of the chances of a rational evidence-based (criminal) policy, and secondly through an analysis on the public opinion on crime and punishment and the

role of politics. We will argue that while on the one hand it is important to be aware that there is a need for politics and politicians to consider and to attend to public opinion, on the other hand we have to realise that public opinion is to a large degree shaped by political conditions and by the rhetoric of the politicians.

We will highlight several reasons on why the public's perspective is critical to restorative justice. Next we will discuss the possibilities for influencing public opinion and draw on this discussion to outline implications for restorative justice. Influencing public opinion on restorative justice requires a good understanding of the nature of public opinion, and in particular of the forces that can influence that opinion. Before attempting to influence public attitudes we should have a clear view of what is possible and how this can be achieved. Broadly there are two types of problems in regard to public attitudes: first, at the cognitive level (about the level and quality of information), and second, at the emotional level (where we have to deal with the fears, frustrations, and uncertainties). To these two levels could be added a third one – the political level – the hardening of attitudes as a result of policies and political discourses and the exacerbation of popular fears by the media. We will consider the necessity to create socio-political structures that make room for social support to unfold. This implies forging alliances and work in the arena of politics – becoming part of conscious political effort, built on and using the means of deliberation and dialogue.

While the first three parts are to serve as a theoretical and empirical ground for the argument of building social support, the remaining three parts will deal with the three specific questions under investigation: 1) how can cooperation with the media be set up to inform and educate the public about restorative justice?; 2) how can cooperation be developed with civil society organisations to create broad support for restorative justice?; 3) how can we increase the involvement of citizens in the local restorative justice programmes?

Part four deals therefore with the first question: “ How can cooperation with the media be set up to inform and educate the public about restorative justice?” It discusses in theoretical terms the cooperation with the media, and is complementary to the media toolkit produced during the project Building Social Support for Restorative Justice. We will first consider media's role in society and lay out our theoretical approach in relation to knowledge (as socially constructed).

After this initial contextualising, we will turn our focus towards the complex relationship of media and public opinion, and more specifically the public opinion on

crime and justice. We will give adequate space to the myths that the media circulates about crime and justice and see how in turn these influence the public. Understanding this relationship will empower us subsequently to find ways and possibilities to deal with the media. In particular we will discuss here two major theoretical (and practical) approaches that can be interesting in the long run for the engagement of restorative justice and the media: newsmaking criminology as part of a replacement discourse and entertainment-education strategy as part of communication for social change.

This part will comprehensively target the three levels influencing the public attitudes (the cognitive level, the emotional level, and the political level). More specifically, newsmaking criminology by operating in the framework of producing a replacement discourse aims at changing attitudes by influencing the cognitive and the political level of public opinion. Similarly, this part argues for a more inclusive role for communication within current policy, practice and research in restorative justice by focusing on an emerging field - communication for social change. Mainly, a particular strategy of interest will be discussed, entertainment-education strategies, which aims at changing public attitudes by influencing the cognitive and the emotional level without distinction. Drawing from examples from other fields engaged in this approach, we will try to think of possibilities of using entertainment-education in restorative justice².

Part five tries to answer the second question: “How can cooperation be developed with civil society organisations to create broad support for RJ?” This part and the following one are closely tied to another document which is the practical guideline³ on how to work with civil society organisations in the field of restorative justice. We will first contextualize the debate on the nature of civil society and present several broad definitions which include within civil society everything that lies between the individual and the state. Furthermore, we will present a structural-operational definition to delineate civil society organisations. We will furthermore argue that it is better to understand the concept of civil society (which is sometimes inflated with the concept of community) in relation with justice in general, and in particular with restorative justice, not as global discourse but rather in the different contexts where it exists, and we will limit this outline to Western, Central-Eastern and Southern Europe.

Several ways in which restorative justice has cooperated and can cooperate with civil society will be outlined. We will firstly mention ways in which restorative justice, defined

² See the *Media Toolkit (2010)* by Brunilda Pali, European Forum for Restorative Justice

³ See the practical guide “*Restorative justice and civil society: Promising practices*” (2010) by Carmen Borg, European Forum for Restorative Justice.

broadly as an approach that deals with conflict, harm or misbehaviour and encompasses all sorts of restorative practices, has been incorporated in different contexts of civil society, this too defined very broadly as every structure that exists between the individual and the state (and we focus on cooperation or initiatives done in the field of schools and police).

Secondly we will deal with the ways in which restorative justice, defined narrowly as an approach that deals with crime, can collaborate with civil society organisations, identified according to the structural-operational definition which we elaborated previously in this part. In terms of direct cooperation we will focus on the relationship between restorative justice and the crime victims' movement, offenders' groups (prisoners, ex-prisoners, etc), the higher education sector, social welfare organisations, and the civic and advocacy area. In terms of indirect cooperation we will focus on the relationship between restorative justice and culture and recreation area, public health, international organisations, religious organisations, and finally on a multiagency approach where we include local government and other government agents.

Part six will pursue the last question of interest in the framework of this report "how can we increase the involvement of citizens in local RJ programmes?" This part will deal only with the participatory element of restorative justice, which will be analysed in five different albeit closely related areas: a) active participation of those concerned and those affected (and the 'community') by the conflict in the restorative process; b) participation of citizens as volunteer mediators/facilitators in the process; c) self-referrals from citizens who bring their conflicts to the mediation services; d) voluntary participation of lay citizens and experts in organisational structures of restorative justice organisations (like steering meeting groups, boards etc); e) voluntary promotion of restorative justice coming mainly from ex-victims of crime and ex-offenders.

We will first in this part differentiate between community justice and restorative justice highlighting the fact that they have been inspired by different theoretical foundations which have in turn led to different practices, and we will also question the unclear use of the concept of community, and put forward instead the concept of *citoyenneté* (citizenship) which is a concept better embedded in the general European legal culture and attitude towards 'the state'.

With regards to the active participation of those concerned and those affected (including 'communities of care') by the conflict in the restorative process, we will briefly discuss several models of restorative justice which involve citizens, like victim-offender

mediation, family group conferencing, the community boards, and the peace circles. Ideally, the minimal participation degree in the mediation process is the duo victim-offender. This, we argue, is anyway more than participation in the criminal justice system, there only the offender being part of the process. When it comes to involving more members of the community or stakeholders, restorative justice success and practice varies according to type of crime and to country (based on their social, legal, political, economical background).

As to the participation of citizens in restorative justice in terms of volunteering of (lay or professional) mediators/facilitators we will mention some theories that explain the reasons for the participation of volunteers in a certain process, although we know little about how community members participate in community justice initiatives, who volunteers, their level of commitment and satisfaction, and their attitudes about the philosophy and practice of the programmes in which they participate. We will furthermore, outline to a large extent the debate of lay versus professional mediators in the restorative justice scene, and argue that one characteristic does not exclude the other. In other words lay and professional can go hand in hand.

When speaking on the participation of citizens in restorative justice through self-referrals, we will try to understand what accounts for low voluntary usage of mediation given high user satisfaction and put forwards several concepts that can affect the degree of self-referrals. One of the reasons we argue is that despite different historical, political, economical conditions, all countries and most of their people value the formal legal system more than any other system or alternative. The other reason is that restorative justice services have not invested adequately towards this level. While favouring the relationship with the criminal justice system, they have ignored their relationship with the public at large, who is most of the time unfamiliar with restorative justice. This we argue is a pity, because when the public knows of restorative justice alternatives they seem to support them.

With regards to the participation of citizens (lay people or professionals) in organisational structures of restorative justice, we will argue for the value of having other professions inside our boards and steering meetings. And finally with regards to the element of participation in terms of promotion of restorative justice through public presentations (or other forms) from ex-victims and ex-offenders, we will argue for the added value of this element, because such transformative stories seem to be very powerful and affect people enormously.

2

Support for restorative justice: theoretical explorations

The task in this part consists of outlining sociological background theories and theses that are of relevance for the theme of developing social support. These ‘pieces of theory’ (*Theoriestücke*) can then be refined and confronted with available empirical evidence further accentuating this background. To be more specific, we are to develop strategies for building social support for an innovative way of dealing with conflicts in society, with the focus on those ‘conflicts’ that entail relevance for the whole social group, i.e. conflicts that have a ‘public’ angle to it. The main elements of this innovative way consist of active participation of those affected by the conflict and striving for a reparative reaction, limiting (pushing back) punitive reactions according to the ‘*ultima ratio*’- principle (last resort) enshrined in many European legislations.

We must therefore ask which features of present day societies and which kind of societal developments are of relevance and constitute the ‘arena’ for building social support for a restorative justice policy owning the elements pointed out. What are the societal conditions these strategies and activities will have to meet and to reckon with? What is the background against that we set up, promote and expand restorative justice - programmes? What are the preconditions for eliciting social support? We do need some knowledge about these societal conditions in order to adequately design such strategies. And we thus hope to increase the probability of these strategies to really make an impact – because they can be more carefully targeted: i.e. the analysis of favourable and of adverse societal conditions provides the ground for strategies of building support to become effective.

Core elements of restorative justice

The societal structures and developments have to be investigated taking into perspective the core elements of restorative justice:

The ‘social’ or ‘life-world’ element: It all starts with the perception of crime as a disruption or disturbance of human relations, of people living together. It means starting from and attending to the immediate emotional experience of the persons involved and the concrete needs originating from this experience – the experience of hurting or harming somebody and the experience of being harmed or being hurt. The sociological concept of the conflict denotes this aspect of a ‘change of lenses’.

The emphasis on the victim is another important element and is conceptually implied in this notion - though historically it constitutes a separate force and an influence in the evolution of restorative justice.

The participatory or democratic element: This implies active participation of those concerned and those affected by the conflict becoming part of the effort to achieve reparation and reconciliation. It promotes 'taking responsibility', especially on the side of the offender.

The reparative element: The emphasis on 'making good' is inextricably linked to the first two orientations: a) Concentrating on the conflict, understood as a disruption of social relations will bring about the search for means and ways of making good the harm inflicted, for reparation and for 'healing'; b) The active involvement of both the victim and the offender in this process makes possible the meeting of the victim's 'real' needs. These needs might include the need for emotional support in addition or instead of material (e.g. money) or non-material compensation. The shift from restoring the balance (the scales of justice!) by making good (acting positively), instead of inflicting the evil of punishment on the wrongdoer (acting negatively) is the other important innovative element realised through restorative justice.

This understanding of the main features, or elements of restorative justice is not to displace the 'definitions' adopted throughout this report that are taken from the UN Handbook⁴ of restorative justice. Rather it can be perceived as further elaborating the differences of restorative justice processes (the participatory element) and restorative justice outcomes (the reparative element).

Theories pertaining to reparation as a reaction to wrongdoing

Can we identify developments in the present day world as espoused by theory that might serve to elicit support for restorative justice? As regards the issue of reparation, these developments come predominantly in the way of a reinvention, or a return to modes of reaction to crime that have played an important role in the historic past. The question then is about the societal conditions that further or hinder the adoption and the acceptance of theoretical arguments for a reinvention of reparation instead of punishment. The arguments draw to some extent on the very fact that the sole reliance

⁴ *The definition put forward within the UN Handbook on restorative justice process is: "A restorative process is any process in which the victim and offender and, where appropriate, any other individuals or community members affected by a crime participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator"*

on punishment is in itself a rather late historical phenomenon. In other words, the rise of punishment is not an ontological fact, but it owns its emergence to certain social constellations and certain social dynamics.

*Historical roots of restitution/reparation*⁵

We will briefly refer to these historical roots of restitution/reparation. Restitution – or more precise – the performance of (material and non-material) services as a compensation (which often goes together with a ceremony of reconciliation) for the harm afflicted to another person has been one of the most common reactions in hunter-gatherer societies (which does not preclude manifold patterns of reactions to deviations from the rules that regulate the relationships of the members of a social group with each other also at that stage, including – besides compensation – also retaliation, or censure).

[T]he decisive feature of these regulatory practices is the immediate reaction and the involvement of those concerned. The term ‘those concerned’ requires further interpretation. Due to the size of these societies and the high degree of social interdependence within the group, a large part of its members might be affected whenever a more severe breach of the rules occurs. It has been emphasised, however, that in egalitarian societies there is a ‘naturally’ high degree of conformity to the rules of conduct and that this conformity has to be taken into account when analysing the social mechanisms of conflict regulation. (Wesel 1985: 168; translation C.P., cited in Pelikan 2006)

Ancient Greek and Roman society did also to a large extent rely on a system of fines (punitive damages) to be paid to the person harmed, although especially in the capital of Rome since the 3rd century BC, public criminal law and a system of tight and rigid police jurisdiction was used to control a ‘dangerous’ urban proletariat. Thus the fight against crime was waged for the defence of the existing social and economic privileges. While the (earlier) proto-states of the Orient have become famous for ‘inventing’ and espousing the principle of the ‘*talion*’, we know that there as well a system of private compensation played a more important role than the *talion*; besides, the ‘*talion*’ that is regarded as the most severe expression of retribution has been shown to be essentially restitutive – at

⁵ This short part can be read together with the contribution of Elmar G.M. Weitekamp in Johnstone, G. (ed.) (2003) *A Restorative Justice reader*, Cullompton, Willan Publishing, 11-124.

least in the version found in the Old Testament⁶. Another peak of the ‘*Kompositionensystem*’ – the system of a performance of services in lieu of harm inflicted on somebody- is to be found in the early Middle Ages. To a large extent the payments agreed on a contract of expiation (*Sühnevertrag*) between the person hurt and his/her kin/tribe and the ‘offender’ and his kin was to fulfil the function of closing a conflict of feud and hinder its continuation.

The rise of punishment as the sole reaction to crime

The extrusion of these practices and the rise of a separate ‘official’ criminal law and the concomitant reliance on punishment as a sanction of wrongdoing have been most convincingly explained by the historic developments that are characterised by the changes in the social structure of the society. The eclipse of the old freedoms and the emergence of the feudal system with jurisdiction as part of the patrimonial prerogatives of the lords of rank within the feudal pyramid resulted in the lords firstly trying to derive an income from the payment of fines. In addition, large segments of the population were no longer able to perform the type of compensation that was negotiated in the contract of expiation. Those holding fragmented jurisdictional powers therefore increasingly resorted to the reactions to wrongdoing that were used for ‘correcting’ dependent members of the household, namely corporal punishment. A further reinforcing factor can be observed in the Free Towns where the authorities had to deal with controlling, i.e. ‘policing’ a population marked by stark social differences. There as well, punishment served as the instrument of control and repression. Slowly, the attempt to achieve safety through deterrence became the major purpose of the criminal law system.

The modern state of Enlightenment abolished the prerogatives of the feudal lords, absorbing the modes of patrimonial domination. This modern state abolished also, or at least restricted, the jurisdictional privileges of the corporations of equals, of estates, or of guilds. All those privileged corporations become submerged under a new general, ‘positive’ law, i.e. a law that derives its validity from the fact of being set as law, i.e. from itself.⁷ It rendered obsolete the patrimonial jurisdiction of the lords and it finally (in fact only in the last century and only in a few European countries) abolishes also the right of parents to submit their children to corporal punishment (Frehsee 1993). The state, as

⁶ Herman Bianchi (1974) was one of those that has pointed to the misunderstanding that is due to an inaccurate translation, which has to read: an eye for the substitute of an eye’s worth instead of an eye for an eye.

⁷ This is not to deny that the generation of law as well as law enforcement is closely bound to political structures of power.

the new sovereign, extended its realm of power and established its monopoly of the use of force by promising equality of all those new subjects, now ‘citizens’ that come under its sole rule. It became the sole source of judicial powers and it used criminal law as pivotal instrument to establish and to consolidate its domination. The application of coercion and violence in the hands of mediate powers had to be eradicated, but also the system of compensation that was an expression of the power and the control of the criminal procedure by the parties concerned.

The elimination of the system of compensations and its replacement by a system of harsh punishments can be regarded as the irrefutable necessity on the way to establish the modern state. But while these developments can be explained reasonably well, there remains the stunning fact that compensation was not just pushed aside and lost its prominent place within criminal law reactions but has fallen in complete disrepute. This is even more surprising as we do find traces of restitution in some of the regional law codes throughout the Middle Ages, but moreover, a remarkable number of criminal law theoreticians have attributed reparation an important role – well into the 19th century. Notwithstanding this fact, we will see that these endeavours did not succeed in exerting any wider or lasting influence on criminal policy.

Reparation and punishment within the legal discourse: absolute and relative theories of criminal law

We will dedicate a section to the absolute and relative theories of criminal law and to the (predominantly German) legal theoretical thinking. It might come as a surprise that aspects of restitution are more prevalent in the so-called ‘absolute theories’ of criminal law and criminal punishment. We have to understand that these theories, carried by German ‘idealism’, were developed as a reaction and an answer to the philosophical orientation of utilitarianism, which is an offspring of the Enlightenment of the 17th and 18th century. Its protagonists, most prominently Jeremy Bentham, had regarded the usefulness for the common good as the sole yardstick for the application of criminal law reactions, meaning punishment. Against this point of view the idealism of Kant and of Hegel held that men must never become a mere instrument for the achievement of the purposes of others, an implication of which is that man gets treated as an object⁸.

⁸ Or in the translation of Bilz and Darley: “Juridical Punishment can never be administered merely as a means for promoting another Good either with regard to the Criminal himself or to Civil Society, but must in all cases be imposed only because the individual on whom it is inflicted has committed a Crime” (Bilz and Darley 2004: 1218, 1219)

Detlev Frehsee (1987) in his habilitation treatise *Schadenswiedergutmachung als Instrument strafrechtlicher Sozialkontrolle* (Reparation as an instrument of social control through criminal law) states that these philosophical conceptions provided the ground for either pure retribution (or rather vengeance) or for theories of healing. The latter line of argument has been further developed by a number of legal thinkers whose writings do in many respects resemble the line of thought of contemporary authors like Antony Duff (2002). There is e.g. F. C. Th. Hepp (1845) who contended that the crime results not only in material damage but also in a moral damage. Both have to be dealt with, have to become 'nullified' or abrogated. Only insofar reparation does not suffice to unmake the damage, punishment ought to take place. The same reasoning can be found as early as 1813 by Carl Theodor Welcker who had argued for a kind of subsidiary use of punishment stating that punishment has a place only when the intellectual damage has not been redeemed by reparation together with the material damage. Rudolf Stammler (1923) develops a vision that goes even beyond this when saying 'we can envisage a time when there will be a kind of justice that corrects the infringements of law only by way of reparation' (Stammler 1923: 159).

But this rich tradition did not gain ground and it never became the 'dominant opinion' among legal theorists. One of the most influential protagonists of this dominant opinion, Rudolf Binding (1872) argued that there is nothing in the way of crime that needs restoration – the rule of the state and the will and intention of the legislator have not in the least been altered, or 'denied' by the offender. Stark retribution according to the *talion* principle remains the only adequate answer to crime – because it owns a higher degree of plausibility and because it just reflects the dominant factual criminal law practice. It was the rise of the 'relative theories' of punishment, those criticised by the absolute theories, which finally took precedence and became the most well-known basis of punishment and for an increasingly large array of rehabilitative measures. Especially the theories focussing on the 're-socialisation' or rehabilitation of the offender almost completely eliminated reparation. At least, this is the line of development observed in the civil law countries of continental Europe.⁹

The reasons brought forward to explain the eclipse of the absolute theories of punishment are the following:

⁹ 'Absolute' theories had never played any significant role in the Anglo-American world though – until about 20 to 30 years ago when they did gain ground in the wake of a type of criminal policy that became known as 'Neo-Classicism'.

[a]bsolute theories of punishment are based on an absolute theory of the state – a state that can call on its metaphysical or theistic foundations. This type of absolute state does not need any legitimisation for exercising criminal jurisdiction by meting out punishment, whereas a secular, ‘neutral’ or pluralistic state is called upon to prove the ‘functional necessity’ of its interventions. Within a technocratic oriented and instrumentally arguing society the legitimisation of punishment is to be derived from its purpose and its effect, in other words its ‘utility’. (Neumann and Schroth, quoted by Frehsee 1987: 58, translation C.P.)

These theories were born with a built-in mechanism of becoming unsettled. Different from the philosophically, or metaphysically grounded absolute theories, the purpose or the utility, they claimed to fulfil, could be tested and had to stand up to such a test. When empirical evidence was asked for, and when it was – at least to some extent – provided, showing the poor and even detrimental effects of imprisonment, a severe crisis of criminal policy based on these theories occurred. To be more correct, we have to state that empirical evidence, meeting certain more strict methodological standards, was supplied predominantly regarding the efficacy of alternative rehabilitative measures. The statement of ‘nothing works’ that received such wide attention was therefore to some extent also used to support the abandonment of such alternatives and to return to repressive prison sentences. Research on the efficacy of the prison remained scarce though. As is still the case, it is mainly the new and alternative measures that have to stand the test of empirical research and less so the taken for granted conventional criminal law instruments. Even serious comparisons of the effects of new and old measures remained an exception.

This is not the place to narrate once more the story of the chain of reforms and measures invented and tried out to meet the ‘preventive hope’, i.e. the fulfilment of the goals and purposes attached to punishment. We will not refer in more detail to the debates that ensued, the attempt to defy the recurring doubts, and the disappointment expressed by the statement ‘that nothing works’¹⁰. It remains the prime finding that by and large we have to face the interchangeability of reactions. Since, as already stated, this comparative futility of interventions struck even more strongly the alternative

¹⁰ This statement was derived from an evaluation study of 231 U.S. rehabilitation programmes that were applied within the prison context. The authors, Lipton, Martinson and Wills had reported the result that – with a few exceptions – they had not been able to show any significant reduction in re-offending rates. Martinson later had attempted to ‘dispel the myth’ of ‘nothing works’ by stating that ‘startling results are found again and again in our study...’ (Martinson 1974).

rehabilitative measures, the search for an alternative to the alternative became apparent. Against this background, reparation made its appearance once again.

The return of reparation

Admittedly this was only one of the possible conclusions to be drawn from these research results. It has been said already that it induced on the one hand the political right-wing hardliners to call for more harsh punishment, and on the other hand the ‘liberals’ to reinforce the search for alternatives. Neoclassicism, already mentioned above, also drew arguments from this type of research results. We will not go into this topic as it is far off the main line of reasoning of this treatise. Rather this is the place to recount a variety of contributions from legal sciences, from social psychology and from psychoanalytic theory that can provide us with arguments to support the potential of reparation/restitution as a means of reacting to wrongdoing.

a) The role of the theory of ‘Positive General Prevention’

Innovative thinking within the legal sciences (*Rechtswissenschaften*) on the European continent is represented by the theory of positive general prevention.¹¹ According to this idea, the criminal law is supposed to strengthen the conscience of the members of society that the norm (and the ‘legal good’ (*Rechtsgut*) behind it) that has been violated by the criminal act, is important and has to be observed. By confirming the violated norm, the general trust in the norm and the law system in general is upheld and enhanced. The term ‘integrative prevention’ is misleading though: the integration that is supposedly achieved is the one of the general public (or the community) that is addressed by the norm – but it is by branding and by excluding the one that has violated the norm that this integration comes about (cf. Zipf 1989; Roxin 1997).

We will not go into the variants of that concept – but will briefly refer to an argument based on Niklas Luhmann’s (1972) theory of the function of law that serves the purpose of elucidating that reparation can fulfil this core function of law. Luhmann’s theoretical explication of the core, or even, as he states, the sole function of law can be regarded as the most poignant and most ‘sociological’ version of the theory of positive general prevention. According to this theory the very function of the law consists in the

¹¹ We have to be aware though that the career of this concept remained restricted to the field of theory with only minor repercussions rippling on the shores of criminal policy.

‘counterfactual stabilisation of normative expectations’ (Luhmann 1972: 43), ‘normative expectations’ being those that have come to be codified as articles of the law, in the case we are concerned with, the criminal code. In *Das Recht der Gesellschaft* (The Law of Society) (1993) he goes on to say that the norm enshrined in the code of law does not entail the promise of law-abiding behaviour, but it protects those expecting it (Luhmann 1993: 135). Thus it is the aggrieved party (the victim) that is protected by penal law. According to this conceptualisation it is not in the first instance the offender, the suspect and his/her deterrence, rehabilitation, or reintegration that is at stake – although this might be brought about.

And it is in line with this theory that punishment does not figure prominently as a necessary ingredient of criminal law. It is merely the ‘sign’ that the norm is confirmed, a sign that things are set right and the balance is ‘restored’. It is a kind of substitute for the rightful claim (or the legally backed-up expectation) that has been pushed aside and violated by the perpetrator. In civil law this sign of holding on to the norm and confirming the rightful claim of the complainant consists in the payment of compensation. With restorative justice, the verdict of punishment as a sign of counterfactual stabilisation of the norm finds a ‘functional equivalent’ in the compensation, or restoration of the damages and sufferings inflicted on the aggrieved party. In fact, one might contend that this compensation is closer to the ‘real thing’ that is protected by the rightful claim than the punishment meted out to the offender. The restorative response does find a place within the criminal law and is well able to fulfil its core function of ‘counter-factual stabilisation’ of the norm as a ‘rightful’ claim (Pelikan 2003).

Taking into account the potential resistance Luhmann’s highly abstract language might evoke one might well resort to the wording of another German author, Jan Philipp Reemtsma, sociologist, sponsor/patron of social sciences and ‘famous’ victim of kidnapping, extortion and deprivation of liberty in a basement, who said that it needs the statement of the state authorities – i.e. the courts – to affirm that ‘was has happened ought not to have happened’.

Another important set of descriptions as well as theorising regarding contemporary sociological and psychological developments that are apt to endorse the promotion of reparation can be found within the fields of social psychology, of cognitive sciences and of psychoanalysis. In each of these models, shifts and changes of the social structural conditions are identified that are presumed to promote the use of reparation as a means of reacting to deviant behaviour.

b) Contributions from psychoanalytic theory supporting the use of reparation

One strand of this theorising deals with the concept of the general need for punishment and its foundation in the hierarchic model of the psyche, i.e. the relationship between Ego, Id and Super-ego. Within this model a powerful Super-ego has to be developed to repress the anarchic, dangerous forces and strives of the Id. Subjugation and conformation to an authority (of a father or a father-figure) shapes this Super-Ego; its control of the Id is regarded as inevitable. The ensuing inner conflict is then resolved by splitting off and externalising the weak parts of the Ego and turning against the other, the scapegoat, asking for his/her punishment. The 'need for punishment' as the expression of these psychic dynamics, is said to be taken care of and complied with by the relentless infliction of pain by the state – providing a controlled and legitimate outlet for these 'irrational' needs.¹²

Now, the counter-argument points to the fact that this rigid psychic structure is to be perceived as the product of certain societal constellations and that it is moreover apt to perpetuate these very socio-political conditions – with subjugation and conformity of the individual called for and prevailing and this in turn reproduces the concomitant deformations of psychic development. It is a circle that reinforces itself, the official,

¹² *Marko Bosnjak (2007) has dealt with this function of criminal punishment, as delineated by eminent sociologists, using the term 'hydraulic model'. In his contribution to the book 'Images of restorative justice theory' he states that 'the hydraulic function of the criminal law serves to express repressive feeling of the public in an acceptable way. Given the fact, that every tragic incident excites public feeling that someone has to be blamed and consequently punished for what has happened. The public desire may be so strong that it should not go by unexpressed. If expression of that feeling in the form of repression is denied, the feeling may accumulate to the extent that at a certain point, it will trigger vigilant justice, private lynching or even a revolution Therefore it might be necessary for the criminal law to provide for a minimal and controlled expression of that repressive energy, whereby the public feeling will be satisfied, calm restored and legitimacy and authority returned to the public institutions.'*

Marko Bosnjak allocates this theory a place besides other theoretical justifications of punishment. He names as such other functions which 'have a more implicit nature since they are not listed in the explicit provision of national penal codes', the function of a solution of conflicts and the function of providing social cohesion. The first one amounts to a type of justification that could also be called 'procedural theories of justice'. In this perception the sole role of law is to provide for a fair competition of the parties – in the case of criminal law it is mainly procedural safeguards for the accused that prevent the state authorities from rash and/or arbitrary condemning and sentencing of the accused, exactly because the consequences of adjudication can deprive a person of the highly valued good of liberty.

As concerns the social cohesion function of criminal law it draws on the teachings of Emile Durkheim, who contends that society needs both crime and punishment. According to Bosnjak, 'by punishing certain behaviour, the society reaffirms the importance of certain values and unites itself around condemnation of a certain act and its perpetrator. It is a question of 'us' and 'them'. By pointing at 'them', the bad criminals, we get a stronger feeling of 'us.' The use of criminal law and of punishment is therefore implicitly necessary in order to build unity among members of the society.'

Generally, Bosnjak remarks, restorative justice theorists reject the social cohesive function of the criminal law as outlined by Durkheim and offer a restorative view of achieving it instead. And he continues: 'Even worse off would expectably be the 'hydraulic' effect'. However, some authors (e.g. Walgrave 1999) have shown a realistic perspective whereby broader interests of the society have to be respected and somehow satisfied. To take that argument further, one is ethically right to reject the 'hydraulic' effect; but since repressive feelings in the society are a fact, an alternative solution for their expression has to be found, indicating that their expression is not necessarily punitive.

‘state’ reaction to crime provides the model for any reaction to deviant behaviour and to conflict regulation within all entities of society – most important the style of education in families. And this very style of education creates the type of personality that ‘needs’ punishment as the externalisation of the inner, neurotic conflicts it produces. Authoritarian education and state-authoritarian punishment serve to erase the ability of empathy with the sufferings of others. Therefore, it is argued, the state must not become the executor of these irrational needs and thus contribute to the perpetuation of psychic constellations that have proved detrimental to individual well-being and to societal integration.

Apart from such moral and political demands, several authors have pointed to changes in the psychic structure as described by psychoanalytic theory – following changes in society at large. Alexander Mitscherlich, Heinz Kohut, and Thomas Ziehe have diagnosed a ‘new type of socialisation’ of a more hedonistic and narcissistic orientation that has supplanted the reproduction of the authoritarian personality: now the mother-child-dyad and the problems of its redemption become predominant. It is not quite clear in which way these changes impact on the individual’s ‘need for punishment’ and whether one can indeed derive from this type of psychoanalytic diagnosis the assumption that these needs become increasingly dissolved.

Anyway, the most important yield to be derived from these considerations lies with their capacity of shattering the concept of the ‘need for punishment’ as an unchangeable (ontological) fact of anthropology. We find another host of arguments supporting this contention, to be gained from ethno-psychiatry. This strand of research has contributed as well to a better understanding of the social structural conditions of a certain type of orientation (or mentality) of the public, i.e. of society in general – and thus of the possibility to promote a change in such orientations instead of perpetuating them.

c) The contribution of developmental psychology

In a similar vein run the arguments we can derive from another important piece of knowledge that is provided by education sciences, especially by research regarding the conditions and the modes of socialisation/enculturation and by pedagogy. Of high relevance are the works and writings of Jean Piaget and of his follower Lawrence Kohlberg (1976) on the building of children’s moral judgment. This strand of thought is one of the pillars of the ‘Four-way-interaction of morality, neutralisation, shame and bonds’ which Borbala Fellegi (2007) has used to explain the impact of restorative justice. In this article it is mainly the potential of restorative justice to advance the offenders

moral development along the stages Kohlberg has developed, based on his empirical research.

Another interesting empirical study done by another student of Kohlberg, Gertrud Nunner-Winkler on moral socialisation (1992) can be mentioned here. She has looked into the development of the moral judgement of young children, starting with the age group of four to five, then six to seven and finally, eight to nine years. The children were confronted with situations demanding a moral 'judgement'. This happened by way of simple pictures, comic strips, showing situations where children are tempted to transgress rules, or display selfish behaviour in order to satisfy their own needs: e.g. the opportunity to steal some sweets, to refuse to share, or refuse to give help to another child. They were asked to give their reasons for the existence (or validity) of negative and positive rules of behaviour and the motivation for abiding by the rules. The surprising thing was that already very young children did show an understanding of what is the right thing to do – and even more surprising, for a considerable part (about two thirds) of these children it was not the fear of punishment in the case of wrong-doing that served as the motivation for abiding by the rule, but an insight into what is the right thing to do (*'Selbstbindung durch Einsicht'*). Nunner-Winkler has termed this motivational driving-force self-commitment (bonding) as a consequence of insight (cognitive understanding). She summarises the results in the following way:

[A]lready at pre-school age children know universal moral rules and they understand that their validity exists independently of the orders of authority and the threat of sanctions. This said, we can observe that it needs quite some time until children develop a morally grounded motivation for rule-abiding behaviour. The individual acquisition of moral norms follows a differentiated learning process. While every child learns which norms are valid, we can see that children and adults have different moral motivations. These differences exist regarding the celerity of the build-up of moral motivations, the intensity of moral motivation and the type of motivation, i.e. the reasons and emotional forces people drive, when displaying norm-abiding behaviour. There are a few that are only keen on avoiding sanctions, another few are motivated by feelings of empathy for the victim, several strive to avoid the experience of shame and guilt. But there are many who want to follow the rules, just because the rules are there and because it is good to do the right thing. Since we have found evidence of this kind of motivation already in children, we have

to face the necessity to complement the existing traditional explanations of moral learning and to introduce a model that allocates voluntariness and insight (individual willingness and judiciousness) (*Freiwilligkeit und Einsicht*) a proper place. (Nunner-Winkler 1992:268, translation C.P.)

In her paper Gertrud Nunner-Winkler has added some speculative thoughts regarding the societal dynamics that account for these results, considerations which are to substantially modify Kohlberg's stages of moral development and the respective age groups allotted to them. She assumed that it was a major change in parent-child relationships that had taken place in Germany in the last third of the 20th century, overcoming at last the practices of an authoritarian family rule. Children were now increasingly seen and treated as partners; rules had to be agreed on – resting on the insight that came as a result of communication and deliberation.

In addition, 'morals' and morality in general saw a shift of emphasis. From abiding to narrowly circumscribed 'negative' rules 'you must not' (most evident in the field of sexual morals, e.g. 'no sex outside marriage') to wider general demands on what would be right, e.g. respecting the sexual freedom of the partner, not intruding into the other's interests by using physical and/or psychological violence. Again one can not follow this type of rules just by passive subjugation, instead it needs an understanding and an active 'living-up' to such standards of morality. This is, without doubt, a rather optimistic portrait of societal developments and it might be easy to point to adverse tendencies that speak of a general decline of morality, e.g. the claim that people have become more 'materialistic', more self-centred, egotist, hedonistic, etc. But since more often those dark sides are put in the foreground, and one knows the general complaint about the deterioration of 'the world' only too well, Nunner-Winkler's cautious diagnosis of what might have changed to the better appears even more worth to be attended to.

One can perceive a certain affinity of this variant of the Kohlberg/Piaget model of socialisation on the one hand and the theory advanced by Jessica Benjamin (built on earlier conceptual work by Donald Winnicott and by Daniel Stern) (1988) on the other hand. As with the concept of 'self-commitment through insight', Benjamin's understanding of the dynamics of the mother-child-dyad starts from the perception of the child actively constructing his/her reality – as a result of his/her interaction with the other person. This is set against a construction according to which the child is a receptor of impressions and necessities from the external world, s/he reacts to, trying to maximise his/her 'profits', as well as against another one that holds that s/he is driven

by internal forces that make her passively subjugate to the demands of the Super-Ego, once it is established. Both theoretical approaches, the one from the Kohlberg School and Benjamin's theory of recognition end up with ascribing the reparative effort as opposed to the use of punishment a more important and more effective role in reacting to crime and wrongdoing.

In the same line of reasoning goes the contribution of pedagogy. There the concept of *self-directed active learning* has supplanted the concept of the child being just being exposed to quantities of knowledge. Self-directed learning happens as learning through experience, as a result of a confrontation with the realities of life, by acting and by participating. It is the immediate experience of the context of one's own actions and their consequences on others that are the nucleus of this type of learning. Therefore the activity of reparation required as a consequence of wrong-doing is to be regarded as an opportunity for active learning. A preventive effect that comes as a consequence of such active learning is then supposed to be of a more deep-reaching nature. As different from the effect that is supposedly reached by the imposition of punishment, having 'internalised' through active learning the legal norm that protects the integrity of the other (physical integrity and integrity of his/her possessions) offers the chance of a more long-lasting and deep-reaching educational effect. It appears as a mode of reaction that is suited to lead the offender, especially a young person through internalisation of the patterns of a normative culture to higher strata of moral development, where the emphasis is on 'lead them, instead of force them'.

d) The contribution of the psychology of the individual

Finally, another strand of changes diagnosed by the psychology of the individual (*Individualpsychologie*) appears of special salience with regard to the importance of reparation as a prime element of restorative justice. It is an assumption of individual psychology that the new type of socialisation produces no longer a type of personality that struggles against its subjugation under the authorities, but rather a personality characterised by an unstable and highly vulnerable self-esteem. This implies the danger of a denial of realities and an avoidance of confrontations with reality. Deviant behaviour is then assessed as an expression of this avoidance and of a general lack of self-assuredness. Faced with such a diagnosis, we can understand that reactions to crime ought to be based on recognition and on strengthening the Ego and the personality.

Reparation as a criminal law reaction owns the quality to achieve this kind of support. It is first of all not meant as a condemnation of the person as a whole, rather it is

directed at the criminal act committed. The offer and requirement of reparation conveys full responsibility to that person and provides him/her with the opportunity to become active and to make a constructive effort to come to terms with what he/she has done, to impact on the future of the person he/she has harmed. Acting and doing something constructive enhances his/her self-esteem. 'Reparation', says Albert Eglash, is a 'psychological exercise that strengthens the muscles of the Self' (Eglash 1977: 622, cited by Frehsee 1987: 116). The restoration of the position of the victim becomes thus the means of the rehabilitation of the offender.

Moreover, Detlev Frehsee (1987) sees reparation as a concept and an activity that is capable of transcending a narrow and dogmatic concept of guilt. Reparation contains a tendency of de-mystifying the concept of guilt and of enriching it with elements of an ethic of responsibility. Criminal liability thus conceptualised emerges from the social fabric of mutual claims of respecting the freedoms of the others. It substitutes subjugation under punishment by the requirement of making an effort, of becoming active and of rendering goods and services on behalf of the person that has been harmed. It becomes future-oriented instead of past-oriented. The principle of social responsibility, says Frehsee, derives its productive power from recognising the fact that the damage done cannot be undone, but in the presence and for the future the actors do have the freedom to exert influence on the things to come – on the future development of social relations.

Summary

What is the line of reasoning to be derived from this part of the analysis? We have started from recalling the fact that reparation has strong roots in history. It has been a major, if not the dominant mode of reaction to wrongdoing – from ancient and antique societies until well into the Middle Ages of Europe. The rise of punishment, the replacement of reparation and its falling into disrepute is closely bound to the emergence of the modern state and modern state law and the absorption of mediate patrimonial powers, including their jurisdictional powers.

But while the absolute theories of punishment (most prominently those of Kant and Hegel) had left niches for reparation and attributed it a certain role also within criminal law, it was the 'relative' theories of utilitarianism, the theories of individual prevention that paved the way for the final victory of the notion of punishment – and rehabilitation – as a means to reform the perpetrator. Although it must be added that these same theories also contributed to curbing the use of excessive 'unnecessary' punishment. They

were in tune with a more technocratic oriented and instrumentally arguing society. But since these theories, due to their utilitarian orientation, were from the onset amenable to the test of empirical research, the promise of punishment and of crime prevention by punishment was to forfeit its power to convince. This might be one of the forces that have promoted the search for alternatives to punishment and for a return of reparation.

These tendencies find their expression within new strands of legal thinking, e.g. the theory of positive general prevention. More important, they are further supported by psychological, and psycho-analytic theories that undertake to grasp major societal developments of the last decades. They all describe the new relationship between the individual within society at large and its various entities, the family, the community. The acumen to be identified as common ground of these pieces of theory is a new perception of the place of the individual in society, *vis-à-vis* the others. It is constituted by a type of bonding, borne out of freedom and self-determination. It calls for a mode of conflict regulation that does not afford passive submission under the infliction of punishment from above, but an effort and a conscious activity toward restoring the social bonds that have been severed – in other words for reparation and reconciliation.

Theories pertaining to democratic participation

This part is dedicated to the societal conditions and to theories attempting to describe the conditions regarding active participation of people/citizens in the handling of their own affairs and of regulating conflicts. As stated above, active participation is one of the core elements of restorative justice, and building social support for restorative justice can make use of tendencies for more democratic participation within societies. Restorative justice should be presented as a means and as an instrument of criminal and of social policy that is in tune with a global movement for more democratic participation of citizens. Participative conflict regulation can be propagated as an important building stone within such a wider movement. In what follows, pieces of theory are presented that deal with identifying and analysing the strands of societal development that point in the direction of more active participation.

Risk society, new governance, solidarity

Such theories come in the wake of sociologists trying to grasp the developments of the last decades, e.g. by using the concept of the risk society and the – closely related – concept of ‘new governance’. While many authors, predominantly the followers of

Foucault in France and in Germany, but in the Anglophone countries as well, interpret the ‘new governance compound’ as a new wave of tightening controls, as an expression of the ever increasing subtlety of those control mechanisms, and as the inescapable grip of the ‘cunning state’, there is another strand of interpretation that appears less pessimistic. Its proponents are John Braithwaite (2002) with his understanding of responsive regulation, Anthony Giddens (2002) with his notion of the democratisation potential that comes with globalisation and Jürgen Habermas (1988) with his theory of a ‘discourse free of domination’ that he has further elaborated talking about ‘deliberative politics’.

One focus of the interest of these theoreticians is the relationship between state regulation and the free play of market forces and the way globalisation impinges on this relationship. How much and what kind of regulation is necessary to have markets play their role as providers of goods and services without impeding or even counteracting the common good? Anthony Giddens dedicates a whole part of his ‘Runaway World’ to ‘risk’ and there he concludes ‘there can be no question of merely taking a negative attitude towards risk. Risk always needs to be disciplined, but active risk-taking is a core element of dynamic economy and an innovative society’ (Giddens 2002: 35). Earlier, in the ‘Third way’ (1998) Giddens had claimed to introduce a viable and ‘social-democratic’ path between ‘neo-classical’ market liberalism on the one hand and strong state regulation on the other. There he contends that it needs more government than before, but its economic interventions have to be different from that of the past. Government, he says ‘is not there only to constrain markets and ecological goals – it has just as significant a role in helping them work for the social good’. It has to ‘track the impact of globalisation and must stretch both below and above the level of the nation state’ (Giddens 1998: 84). In this context, Giddens draws attention to the ‘resources of civil society’ that are needed for effective governance.

Civil society and solidarity as a third mode to achieve this effective governance are referred to in the theorising of several authors writing on globalisation and global governance. Helmut Willke (2002) in an overview of ‘Global Governance’ posits solidarity as an intermediate mode of coordination and states that its introduction appears inevitable in view of the obvious shortcomings of relying exclusively on the dichotomy of market and government (or ‘hierarchy’) as the prime modes of regulation in social formations of late modernity. The term solidarity is also used by Jürgen Habermas (1990) to characterise the republican model of democracy which he contrasts with the liberal model – proposing another ‘third path’, namely a deliberative model of

democratic politics. One should not, on the other hand, completely neglect other voices, e.g. that of Belgian political scientist Chantal Mouffe (2005) who strongly opposes an interpretation of developments within modern democracy that she regards as too superficial in denoting a third path. She insists on the 'democratic paradox' and on the irreducibility of power struggles and antagonism.

A highly relevant outlook is presented by Ayres and Braithwaite (1992), also dealing with the theme of regulation and the relation between state/government and market prerogatives. They started with the acceptance of the 'inevitability of some sort of symbiosis between state regulation and self-regulation' and have arrived at promoting 'responsive regulation'. It has been further expanded in John Braithwaite's seminal book 'Restorative justice and responsive regulation' (2002). There he attempts to locate restorative justice and restorative peace-making efforts within the dynamics of globalisation, i.e. within various social formations, private or public corporations as well as within large international organisations, linking top-down strategies of conflict regulation to bottom-up initiatives. Braithwaite puts trust in the potential of bottom-up initiatives and in their capacity to find adequate responses to social conflict and to various regulatory tasks through open participatory processes. He draws on examples not only from the realm of criminal justice but – most impressively – also from nursing home regulations, or from classroom regulations in Japan. In any of these endeavours at responsive regulation, the inclusion of those concerned is an indispensable core element.

The example of the nursing home regulation is also suited to bring home the obstacles such policy choices face, or rather the reasons why they might be overthrown and abolished in the end, even where they have proved highly successful providing good services and a high degree of satisfaction of the service providers, the personnel in nursing homes as well as for the residents (cf. Braithwaite 2002: 17-18). The closing sentence of the part on Nursing Home Regulations reads 'In the face of all the evidence of the promise of a restorative yet responsively vigilant approach to nursery home regulation, a conservative government in 1997 deregulated, (...) the government inspectors lost their jobs, and Australia's nursing home residents became highly vulnerable under a poorly resourced system of privatised accreditation' (Braithwaite 2002:18).

This makes visible the insurmountable obstacle averse and ignorant politics can present. It is about failure in the political arena. This is the arena where we act when we elicit social support. Therefore we have to be aware that it does not suffice to gain this support, but it needs also the political structure for this support to enfold its potential.

This implies that we pay attention to the relationship between social support and policy-making, i.e. the ways in which the support of public and of civil society agencies has an impact policy-making. A special part will be dedicated to this issue.

Nodal governance

The concept of ‘nodal governance’ as developed by Clifford Shearing can also serve to support participatory modes of conflict regulation (Shearing and Wood 2003). The theory of nodal governance has been advanced by its protagonists as a critique of the ‘governmentality’ theorists. As different from those, they attempt to grasp recent developments of governing under conditions of globalisation as ‘nodal governance’. They contend that governance today is characterised by a plurality of actors (states, corporations, the World Trade Organization, institutions of ‘civil society’, criminal and terrorist gangs) forming more or less interconnected governance networks, by a plurality of mechanisms (force, persuasion, economic pressure, norm creation and manipulation) and by rapid adaptive change (Burriss *et al.* 2005: 31). Conventional models being unable and insufficient to explain the functioning of a governance with these many elements, Burriss *et al.* propose a new approach: the ‘nodal governance’ framework, nodal governance being an elaboration of contemporary network theory ‘that explains how a variety of actors operating within social systems interact along networks to govern the systems they inhabit’ (Burriss *et al.* 2005: 33).

What is of interest here is the macro-level, that is the explanation of the neo-liberal governmental landscape from the nodal perspective. Shearing and Wood suggest that the result of the pluralisation or multi-lateralisation of governance has been a ‘splitting of governance into a wide variety of governmental nodes’ (Shearing and Wood 2003: 403). These non-state nodes constitute ‘private governments’ and their growth has, according to nodal government theorists, in part occurred without direct state intervention. The nodal conception of governance ascribes no pre-eminence among the different nodes (Shearing and Wood 2003: 404). Specifically, states and state agencies within a nodal governance framework are not conceived as existing at the top of a pyramid of power and influence, nor are they seen as a crowning governing auspice that devolves authority to others (Burriss *et al.* 2005: 47). It is assumed that the specific way in which governmental nodes relate to one another will vary across time and space (Shearing and Wood 2003: 404).

On the other hand, nodal governance theorists now regard the rise of plural or nodal governance as making visible, or even exacerbating so called ‘governance deficits’

(Shearing and Wood 2003: 212). These are related to the growing 'wealth' disparity between the rich and the poor. One feature of the growing governance deficit is the relative inability of those without purchasing power to participate in the new forms of political power, which is said to be very obvious in the security sector. A second feature of the governance deficit, according to Shearing and Wood, is the extent to which poor people are subject to forms of exclusion from the 'bubbles of governance' through coercion and banishment by a range of agencies that operate in the interests of other groups. This happens as a consequence of their inability or unwillingness to live up to the expectations and responsibilities ascribed to participation in certain forms of communal space (Shearing and Wood 2003: 412-3). To respond and overcome these governance deficits, Shearing and Wood (2003), Burris *et al.* (2005), and Froestad and Shearing (2007) propose a model of local capacity governance, which has been developed in South Africa and Argentina.

There we are back at restorative justice and its claim to activate people, to bring them together in the effort of resolving conflicts in a constructive way and thus to contribute to grass-root democracy. The peace committees described by Jan Froestad and Clifford Shearing are practicing restorative justice as a future-oriented model of dealing with conflicts and with wrongdoing arising in poor and disadvantaged communities in South Africa. It is a project that combines peacemaking with 'doing justice' the restorative way – within the boundaries of the constitution, but leaving aside the criminal law's concern with the past, with establishing guilt and accordingly meting out punishment. Instead, negotiating arrangements and obligations that make for a better future, that is a better way of living together in the community, conveys to those concerned a sense of justice done.

We learn from this example that the developments described as nodal governance are not in themselves leading toward more participation. It affords a conscious effort to build on these structures of governance, and to reline them with dialogical procedures on the one hand and with an orientation towards 'restoring the future' as happens with the Peace Committees. On the other hand the concept of 'restoring the future' as put forward by Froestad and Shearing derives its power from its paradoxical character; for once the future cannot be restored as it is something to come – but giving people that are deprived of their future a new sense of hope and a stake in such a future can be understood as an act of restoration. In the introduction to 'Images of Restorative Justice Theory' (2007) the conclusion was drawn that it would need a closer examination of the feasibility of developing this model of conflict regulation in the European context.

On dominion

Finally, there is the concept of dominion, as explicated by Braithwaite and Pettit's 'Republican Theory of Criminal Justice' (1992). It is about active, political participation as exercising individual freedom and equality. It is about holding a place in the world, as a place of freedom and belonging and without excluding the other. Conflict regulation the 'republican' way is an important ingredient of striving for dominion. And vice versa, holding and exercising 'dominion' makes for a republican way of conflict regulation. Braithwaite and Pettit's concept of dominion is both more pragmatic and highly differentiated. It is, in fact, a comprehensive 'holistic' political theory of people going about handling conflicts and incidences of wrong-doing, of dealing with 'crime' in a society. Its basic tenets are 'rights and freedoms'. Braithwaite and Pettit go to some length to explicate the difference of this concept of freedom and the liberal one, what they address as 'negative freedom', in other words the uninhibited freedom of the market. The freedoms they associate with the concept of dominion are closer to antique rights of the 'cives' of the 'civitas' and to the concept of freedom as in medieval and early modern times in Europe where 'freedom' always and only existed in the plural and where freedoms were conferred to a person or a social agglomeration, to a town or a corporation. This implied – more pronounced in the *res publica* of Greek and Roman¹³ antiquity – those freedoms being bound to obligations of the citizen *vis-à-vis res publica*, the *polis* in Greece.

This has bearing on the time-honoured question of the right balance of freedom and social control, and there it touches on the ways social control is exercised in line with preserving freedom. And there we are back at dominion encapsulating rights and freedoms as a node of criminal justice. 'The target of the criminal justice system should be to maximise dominion' summarise Braithwaite and Pettit their reflections:

[I]f the system promotes dominion then it will certainly guard against the paradigm crimes constituted by offences against person, property, or province. And, something that is just as important, it will guard against those offences in a manner that is sensitive to the vulnerabilities of people in the face of state. (Braithwaite and Pettit 1992)

¹³ Pettit mentions only the Roman *res publica*, but these very understanding of the position of the citizen in relation to political 'public' entity can be seen in the Greek *polis*; in fact, the *polis* can be regarded as the prototype of active responsible citizenship. Albeit the rights and freedoms enjoyed as well as the obligation to be carried are reserved for an elite of male heads of households only.

It is interesting to note, that this is the very reasoning we find in classical criminal law theory. There one of the main functions of the (material) Criminal Code of law together with Criminal Procedural Law is to protect the individual, more precisely the offender from intrusions of the state into his/her freedoms. And there is also some resemblance with the concept of the *'Rechtsgut'* (the legal good) central to German legal thinking. Braithwaite and Pettit speak about person, property and province which corresponds to guarantees physical integrity, integrity of one's property and one's free movement. Apart from these nuances there is one major difference and that is the interactive, element in the dominion concept of Braithwaite and Pettit. Dominion is about the relations between persons, the *'Rechtsgüter'* remain abstract entities. And that is where the topic of participation enters the picture.

Lode Walgrave has made extensive use of the concept of 'dominion', as a replacement and/or an expansion of the concept of community in his earlier writings, and more recently in his book *'Restorative Justice, Self-Interest and Responsible Citizenship'* (2008), where he sets out to design a restorative criminal justice system. He introduces the concept of dominion and he follows by and large the line of reasoning of Braithwaite and Pettit. For Walgrave, Braithwaite and Pettit's republican theory of criminal justice 'synthesises the legal institutional dimension (the objective rights and freedoms that are legally defined) and the informal relational dimension (the subjective assurance that others will respect these rights and freedoms)'. The element of assurance and the notion of 'restoring assurance in dominion' becomes a centre piece for Walgrave's own restorative criminal justice system. Here, one might briefly consider the linguistic intricacies of the relation between assurance and security (this kind of assurance maybe is, in fact, the only 'security' a state can and ought to promise to provide for its citizens).¹⁴

According to Walgrave 'I know that I have rights, I know that others know it, and I trust that they will respect them'. And there the state and state law as the institution to assure this assurance finds its place. To further explicate this, Walgrave resorts once more to the difference already espoused by Braithwaite and Pettit, the difference between the liberal concept of 'freedom and non-interference' and 'freedom as non-domination'. While in the liberal concept rights and freedoms are a stable given and all

¹⁴ We can make reference to Luhmann's 'counter-factual stabilisation of norms'. This does sound awkward but that's what it is about: To uphold the statement enshrined in law, that what was done to somebody by somebody else ought not have happened: it is 'Unrecht' against the law, as enshrined in the criminal code, and the state by reacting to it conveying reprobation, i.e. the statement of 'Unwert' – non-worth it in the criminal code.

other citizens are possible interferers in my freedom and rivals in my struggle to expand my freedom with the state as another opponent whose interventions are to be pushed back as far as possible, the dominion as the containment and the realisation rights and freedoms the republican view are a collective good. State law does have the function of providing the assurance of those rights and freedoms, but it needs activation by the citizens, it has to be enacted and enlivened. Walgrave says that ‘dominion is not a stable given but a value to be promoted and expanded by individual and collective action’. As such dominion coalesces with what Walgrave has so beautifully – paradoxically – termed ‘common self-interest’. Dominion, he concludes: ‘is the political frame for a high-quality social life, and is thus the political translation of what I called common self-interest’ (Walgrave 2008: 141).

To work out the gist of the argument as far as it impacts on active participation as a core element of restorative justice: It has, of course, to do with the definition of freedom as non-domination (a linguistic nicety – because both terms share the same stem of ‘domus’, the house). Enjoying and ‘realising’ this kind of freedom affords a kind of activity, it is about doing and it materialises in the way conflicts and wrong-doing are responded to. Although state law is there as objective assurance, this assurance has to be subjectively filled with life, reprobation, as Walgrave says, constituting the appropriate way, the way that – parsimoniously – assures, confirms and promotes dominion. A piece of theorising, also in the realm of political philosophy that is kin to the concept of dominion can be found in Hannah Arendt’s work. The ‘place in the world’ she refers to in ‘The Human condition’ (1958) is a position that allows people to hold the ground that gives them the freedom to become active members of a body politic. In this treatise, she espouses people coming together and acting ‘politically’ as the very essence and as the highest expression of this human condition.

In the book ‘Images of Restorative Justice Theory’ (2007) a connection is projected between the political concept of dominion and the micro-dynamics of restorative justice processes. “Restorative processes are essentially about talking together and acting together. Thus the essential element of active participation makes restorative justice, in the most obvious way in the case of the peace committees, a manifestation of political action. It is in the course of this action that dominion is enacted as well as produced. The process is realising dominion, meaning making ‘the place in the world’ as a place of freedom and belonging”.

The principle of dialogue

Closely connected to active participation there is another topic pertaining to restorative justice procedures: the principle of dialogue – dialogue understood very broadly, entailing any kind of interaction that involves partners and parties on an equal footing, striving for what Habermas has conceptualised as ‘discourse free of domination’. The background for this piece of theory is Jürgen Habermas’ dealing with the repercussions of the rise of the modern state and of bureaucratic government, especially with a kind of alienation that is the effect of institutionalisation and bureaucratisation, ‘the colonisation of the life-worlds’ as he has termed it (Habermas 1988). Against the tendencies of bureaucratisation and ‘monetarisation’ Habermas has developed his discourse ethics, culminating in the concept of a discourse, free of domination. This is to be understood as an attempt to redeem the project and the promise of the Enlightenment. The values of freedom and equality ought to be saved and realised in the course of an uninhibited dialogue grounded in mutual recognition. Habermas’ theoretical project is motivated by an attempt to re-introduce a moral justification into the system of modern positive law without abandoning the rationality of law and its achievements. This can be brought about by abiding by principles that come via democratic procedures. According to Habermas, these democratic procedures follow the rules of such a discourse free of domination.

These ideas point to an alternative and new mode of conflict regulation that should be capable of overcoming those effects of criminal law which work in the direction of exclusion and alienation. It clearly has a bearing on the emergence of restorative justice, when we read ‘only those norms can claim to be valid that meet or could meet with the approval of all affected in their capacity as participants in a practical discourse’ (Habermas 1990a: 66). Although this quotation pertains to the discourse on norms that is rationally grounded and provides for them a moral justification, it seems to be able to become transferred to procedures of norm application and thus to conflict regulation. Participatory procedures and dialogue appear indeed to be the key words. We have to be aware though that Habermas is a theorist that has been influential in the world of academia but one that is also accused of being quite distant from the ‘real world’, highly abstract and therefore of little practical relevance.

This is different in the case of Johan Galtung who is a scientist as well as an ‘international’ mediator. Galtung has further expanded on the concept of dialogue and has applied it to ‘conflict work’. One could put it in a nutshell, stating that by acting out

and ‘transforming’ the conflict through a dialogical process (Galtung 1996; Lederach 2001), dominion, experienced as a sense of belonging might be achieved. The concept of transformation points to the requirement to overcome taken for granted modes of thinking and of perceiving oneself and ‘the other’. It is difficult to say whether we do find indications of increased reliance on dialogue in present day societies. The rise of mediation in many conflict areas could be regarded as such an indication. In the context of this contribution we want to establish the importance of the principle of dialogue in connection with the larger peace-building efforts Johan Galtung and John Paul Lederach are talking about. In this arena of conflict work, peace-building is set against the use of violence and is considered as complementary to the reactions of the national and international criminal courts.

Dialogue and peace-making

As another result of COST Action already mentioned, the book ‘Restoring Justice after Large-Scale Violent Conflicts’ (eds. Aertsen *et al.* 2008) has explored the restorative, i.e. the dialogical path of resolving this kind of conflicts and dealing with the devastating consequences of wrongdoings that occur in its wake. The analyses of dramatic events from different viewpoints have brought to light the inherent potential but also the serious obstacles, the dialogical – and restorative – approach faces. Brownny Leebaw is quoted by Jana Arsovska and Marta Valiñas stating that:

[R]estorative principles offer a promising approach to the dilemmas of political transition, where both condemnation and re-integration are essential, where desired transformation may benefit from wide-ranging involvement, and where political and economic resources to prosecute are simply unavailable. Restorative principles are uniquely appropriate to these goals as they are founded on an appreciation for the communicative and educative function of justice alongside a commitment to problem-solving and community reconstruction that parallels the transitional task of nation-building. (Leebaw 2008).

The authors emphasise the importance of engaging the parties in a more or less mediated encounter that aims at creating the space in which they can express and share their views (Arsovska and Valiñas 2008: 204). They point to the ‘growing number of civil society initiatives of inter-ethnic dialogue that try to build a bridge between the divided

communities and bring them into contact in a safe and welcoming atmosphere'. And they express the hope 'that more and more people realise the need to re-establish contact and feel ready to express that need and translate it into action. In spite of the heavily hostile context, these initiatives may be important catalysts for more and larger initiatives where the conflicting parties can meet and actively participate in decision-making processes or simply engage in dialogue (Arsovska and Valiñas 2008: 204).

It remains a matter of conjecture whether we can expect such changes to take place as a reaction to the experience of shortcomings or of inadequacies of existing institutions. Similar considerations are vented by Arsovska and Valiñas when talking about the prospect of restorative justice principles and procedures gaining ground on the Balkans, and especially in the case of the Kosovo conflict. They argue that 'the inadequacy (of the judiciary – both international and national, C.P.) to actually conduce to a rebuilding of trust among citizens and sustainable peace is undoubtedly one strong argument to look for complementary or alternative responses to mass abuse'. On the other hand, some analysts have argued that it needs a certain level of a functioning Criminal Justice System ('which is capable of ensuring the accountability at least of the leaders of the heinous crimes in order to restore people's trust in the institution and the rule of law') to ground and support the restorative processes where individuals are willing to meet and engage in dialogue with former enemies (Arsovska and Valiñas 2008:205).

The case of Kosovo or more generally of the Balkans might be special insofar the challenge arises to use and re-activate elements enshrined in certain parts of customary law, the 'Kanun', elements that place a high value on pardon, reconciliation and on dialogue. Arsovska and Valiñas write:

[T]hese conciliatory and restorative elements – as deeply rooted in tradition as more retributive ones – could potentially have an important contribution to social reconstruction when properly revived and strengthened (...) As a minimum, a reflection upon the potential contribution of such deeply culturally rooted and genuinely home-grown mechanisms of conflict resolution, or at least of some of their elements, should not be completely put aside. (2008:207)

Another author in the volume 'Restoring justice after large-scale violent conflicts', Vesna Nikolic-Ristanovic could be quoted to point to the potential of restorative justice approaches and to the obstacles this approach meets with in the course of peace-making efforts after the violent conflict on the Balkans (Nikolic-Ristanovic 2008: 157-183).

Nikolic-Ristanovic describes on the one hand a situation beyond retrieval and marked by the recurrence of century-old myths about victimisation and on the other hand an astonishing amount of activities that attempt to build dialogical experiences at different levels, state based as well as carried by various NGOs. It is difficult though, she says, 'to find any connection between earlier informal mechanisms and these new restorative justice mechanisms, especially since the latter were mainly imported from abroad...' (Nikolic-Ristanovic 2008: 160). She dwells at more length at some of these examples, e.g. the peace committees established by the Serbian Victimology Society. Opening dialogue as well as listening to personal experiences at some secure and, if possible, neutral place is suggested on the basis of experience from several civil initiatives in Serbia. 'This is seen as a good way of learning and understanding what has happened and building trustful relationships' writes Nikolic-Ristanovic (2008:175).

One important observation also taken up by Arsovska and Valiñas relates to the fact that dialogue has to be attempted at the individual level; there the mechanisms of empathy and of mutual recognition can be put in place. But to become an element of group reconciliation and of peace building these individual experiences have to make their show in a different arena, a political one. Nikolic-Ristanovic, giving an account of several of these initiatives, also stresses the importance of political approval or at least the importance of tolerance towards processes building contacts and dialogue between formerly conflicting sides.

Attention should also be drawn to the ideas concerning 'social support' for restorative justice that can be clearly derived from Nikolic-Ristanovic's contribution. Altogether she gives a level-headed and careful analysis of a situation and its historic background that appears to make it especially hard for any restorative justice effort to take hold. But we are also informed that notwithstanding these adverse circumstances the Sisyphus-effort of attempting conflict resolution the restorative way, and this implies also by way of dialogue, will be responded to, despite of or sometimes even because of contrary conditions.

To posit once more the decisive question: Can the bottom-up, can the dialogical approach have an impact at all? And what are the strategies to translate social support into political support? While the answer to the first part seems a clear 'yes', we will have to come back to the politics-link later on.

Summary

Eminent theoreticians have analysed developments inherent in overall globalisation and concomitant glocalisation that point in the direction of an overall demand for more democratic procedures in political decision-making as well as in conflict regulation. We have referred to Jürgen Habermas' discourse free of domination and to Anthony Giddens' espousing the role of civil society. This is not to deny that these concepts, as well as John Braithwaite's 'responsive regulation', together with the concept of dominion do own more of an appellative function – we will see that empirical evidence remains scarce. On the other hand we can find Clifford Shearing's concept of 'nodal governance' translated and made 'practical' by the work of the peace-committees of the *Zwelethemba* model. One can learn from this example that the various developments described are not in themselves leading towards more participation. It affords a conscious effort to build on these structures of governance, and to reline them with dialogical procedures on the one hand and with an orientation towards 'restoring the future' as happens with the Peace Committees on the other hand.

We could find well-researched accounts of peacemaking efforts based on principles of dialogue from the Balkans. They make us aware of the potential inherent in restorative conflict regulation as well as of the obstacles confronted. One might therefore stick to the conclusion that restorative justice responses being carried by democratisation, by the spreading of models of deliberative decision-making in the public realm, by dialogue and more specifically by responsive regulation offer the road of hope, the optimistic perspective for restorative justice in the world of today. This asks for a more systematic investigation of the empirical evidence accessible regarding the potential of active participation.

The 'life-world' element: re-introducing concrete experiences

The hypothesis was put forward that resorting to concrete experiences of doing harm and of suffering harm (as a consequence of wrongdoing) can counteract the tendencies of reacting to those conflicts that are defined as crimes first of all by resorting to punishment. The emphasis on concrete life-world experiences is in tune with the topic of participation, moreover, they are closely linked. This hypothesis implies that we have to consider the fact that restorative justice is proposed and makes its appearance in an

arena where considerable importance is put on combating or fighting crime. The repressive, retributive response is to a large degree the obvious and seemingly 'natural' response. These tendencies and the concomitant discourses work as an obstacle to overcome – something to 'turn around'. When we construct and design strategies for building social support we cannot neglect the fact that we have to confront and to counteract these tendencies.

A theoretical basis for the strategic approach to build social support for restorative justice by taking advantage of the potential appeal of the life-world element, and the obvious attraction of attending to the concrete experiences and the needs of victims can be found in a book by Wilfried Hassemer and Jan Philipp Reemtsma '*Verbrechensopfer, Gesetz und Gerechtigkeit*' (Crime victims, law and justice), (2002). There, Hassemer introduces the difference of the concrete (or real) and the virtual victim. They constitute completely different agents within the discourse on criminal law. In general, one could say that in the context of the discourse on risk and security and the obsession of politics with security, the virtual victims define and drive the political agenda. The fears aroused by the possibility to be victimised are feeding upon the notion of the pervasive and continuously increasing crime threat. In contrast, what real victims need, is – according to Hassemer and Reemtsma – the assurance and the confirmation that what has happened to them ought not to have happened – as well as being heard and supported in their claims for reparation. The concrete victim is, in fact, the one addressed by restorative justice-programmes. Therefore ways ought to be sought to allocate concrete victims a place in public perception.

One might finally explicate the experiences that were made in the course of research accompanying the Austrian pilot projects on 'Conflict regulation' (1992) that show that the concrete victim proves to be more accepting of restorative solutions than the 'virtual victim' that is confronted with questions as to the desirable reactions to certain types of crime. The overwhelming readiness of victims to participate in the VOM-effort was the nucleus of experiences within the pilot project, especially the first one that started in 1984 with juvenile offenders. It has helped the researchers to arrive at the conclusion that it is most important to provide the opportunities and the offer of a restorative path – as a reaction to crime. These opportunities proved stronger and more convincing than the dominant punitive climate and overthrew our assumptions that the need and desire for punishment would bring about the failure of the pilot project.

We have started from the hypothesis that attending to concrete experiences of the people involved as it happens within restorative justice can provide an antidote to

ideology-driven images of crime and against the lure of the politics feeding on these images and the fears they evoke. We can see though that attending to and focussing on these concrete experiences requires establishing opportunities or a forum to bring these experiences 'to the fore'. This requirement might turn out a catch 22 predicament where we have to create the situation that we need to create the situation. Repeatedly, when recommending the strategy of setting up pilot projects in a country that is struggling to establish restorative justice, we have met with the objection 'we will not be able to do this, there is not sufficient support'! Well, you will gain support once you have made it happen. It seems that we are stuck with a paradox then. But in building 'social support' we might set up islands of practical experience that are apt to reconcile or dissolve the paradox.

Conclusions

Let's turn back to the initial question guiding this first part of the contribution, namely, which features of present day societies and which kind of societal developments are of relevance and constitute the 'arena' for building social support for a restorative justice policy? Which ways are such developments captured by theories and pieces of theory?

These background theories, i.e. the sociological and political science basis outlined and set forth, both with regard to the core element of reparation and to that of active democratic participation, all identify and analyse developments that point in the direction of a different place of the individual *vis-à-vis* society at large and the 'body politic'. There is the place in the world as caught by the concept of dominion and the interplay of powers addressed by the notion of nodal governance, by the concept of responsive regulation and by that of a discourse free of domination, in more generic terms by the dialogical or deliberative approach to dealing with conflicts.

In addition we have presented an array of psychological, of psycho-analytic and of theories advanced in pedagogics that describe and analyse the process of the individual's socialisation/enculturation as answering to new societal conditions and to new challenges. It is no longer predominantly the struggle with the parental authority and the requirement of deference under an authority that shapes the young person's stance *vis-à-vis* different agencies of society, but the process of forging an identity by inter-acting with her social environment, with the others. The theories we have focussed on, put more emphasis on these processes and we can see that these very processes do have a bearing on the modes of conflict regulation that are resorted to in a society. The participatory and reparative element, inherent in restorative justice, or in other words,

the republican mode of dealing with conflicts and with deviance appear to be more in tune with this new 'socialisation type'.

Therefore, an important yield to be derived from these theoretical considerations lies with their capacity of shattering the concept of the 'need for punishment' as an ontological fact. We find another host of arguments supporting this contention, to be gained from ethno-psychiatry. Also this strand of research has contributed to a better understanding of the social structural conditions of a certain type of orientation (or mentality) of the public, i.e. of society in general – and thus of the possibility to promote a change in such orientations. Against this background, as a constructive means to restore the balance of the scales of justice appears a more adequate reaction to wrongdoing than punishment. We will in the following part present empirical evidence that will on the one hand reline the theories put forward and on the other hand provide complementary considerations.

3

Support for restorative justice: Empirical findings

Restorative justice in spite of its efforts remains for most of the people an ambiguous concept and notion of justice. The public seem to consider alternative measures to traditional modes of punishment only when they are explicitly asked to consider these options (Hough and Roberts 1998). Research in many countries indeed shows that knowledge of restorative justice is rather poor. But despite the fact that knowledge on restorative justice is poor, the attitudes about it are quite positive, especially with pertaining to the core elements of restorative justice as explicated in the previous part, namely reparation, active participation and life-world element. The current part will focus mainly on available empirical findings further accentuating the theoretical background presented in the first part, findings which come mainly from German and English speaking countries.

Empirical findings on the core elements of restorative justice

The appeal of the reparative element

Reparation (or restitution) happens usually in the form of financial recompense by the offender to the victim, and less frequently, they may involve the provision of services to the victim, or to the community. There is now a large body of research from many parts of the world looking at public opinion on reparation, particularly in relation to assessing public reactions to its use as an alternative to imprisonment and punishment. The oldest and most well-known of these studies is the one that came from the Institute for Criminology at the University of Hamburg, and was led by Klaus Sessar. This study is one of the most convincing demonstrations of the strength of public support for ‘restorativeness’ rather than punitiveness, therefore we will discuss its findings at length. The study, starting in 1984, lasted for several years, and was originally to focus on the role and importance of the victim. Within the German-speaking countries it has become one of the most influential pieces of research that was quoted and ‘used’ to support the quest for more ‘restorative’ reactions to crime.

It is significant that the book containing the study report carried the title '*Wiedergutmachen oder Strafen?*' (to make repair or to punish?) (1992) and that Klaus Sessar in his summary emphasised that reparation was not to be understood as an addition or complement to punishment but as a replacement.

In order to analyse the question, whether and to what extent restitution could replace punishment, a number of hypothetical crime cases were constructed ranging from 'free-riding on the underground' to 'rape'. Several variants were presented, according to crime type, seriousness of the incident, relationship between victim and offender and the way in which the victim contributed to the incident and finally, the type of the offender relating to his age, previous crime record and marriage status. A choice of five reactions to the cases was offered:

1. Victim and offender should privately agree on restitution or reconciliation;
2. Victim and offender should agree on restitution or reconciliation with the help of an officially appointed person (mediator);
3. The criminal justice system should initiate and supervise an agreements on restitution between victim and offender;
4. The offender should be punished. If restitution is made to the victim, the punishment should be dispensed with or reduced;
5. The offender should be punished. Even if restitution is made to the victim, the punishment should not be dispensed with or reduced.

On the average of all cases, 25% of the participants opted for a private agreement without a mediator, 18% opted for a private agreement with a mediator, 18% for the intervention of the Criminal Justice System (CJS) (without sentencing!), 18% decided on punishment to be mitigated or renounced where restitution was made, and 21% chose punishment without consideration of restitution. For most of the minor crimes the majority would not press charges or even involve the CJS. If restitution were to be made for offences like purse snatching, burglary in a factory, or the stealing of a camera from a locked car, VOM – supervised by the CJS – or the reduced or renounced punishment in case of restitution was favoured, while restitution was rejected in cases of rape and stood little chance of being accepted in cases of burglary of private homes. Further analysis showed that the characteristics of the crimes determined the respondents' attitudes much more than the characteristics of the respondents themselves.

The part of the study focussing on the victims of crime found only small differences to the general population but it contributed to a better understanding of why victims feel little need to punish. The wide-spread acceptance of restitution clearly emerged as a

major factor. It seemed to stem partly from a basic scepticism and distrust about the use of punishment, more specifically imprisonment. This perception of the prison as inhuman and above all ineffective in terms of rehabilitation, and as increasing recidivism was found almost regardless of the respondents' basic conservative or liberal orientations. Imprisonment was only defined as necessary in cases of severe violence, and for the sake of protection, whereby a number of the victims interviewed, stated that they were unhappy about their choice but could see little alternative to it. Sessar adds that 'one aspect was not observed: the demand for retaliation or revenge'. He therefore draws the conclusion that 'punitive attitudes are not to be associated with revenge, with atonement, with expiation, or with similar concepts as espoused by the philosophers and theorists of law. Citizens, and victims, are concerned with prevention, regarding serious crimes also with security and protection.'

When turning to the part of the survey dealing with the justice system and its protagonists, it is interesting to observe that as far as the handling of everyday disputes and conflicts is concerned, the attitudes of judges and prosecutors did not differ from that of the general public. A small number of judges and prosecutors even went as far as to define informal solutions as more appropriate with regard to victims. There was also predominantly the opinion that punishing the offender would be placed low down on the scale of victims' needs. Everything changed, says Sessar, when the problem of crime and the question of how to react to it were introduced. Irrespective of the constructed crime case, the judges and prosecutors turned always out to be more punitive than the general public. While up to 75% of the citizens were in the case of theft prepared to accept restitution rather than enforce punishment, only 50% of the judicial authorities were prepared to act that way. While up to 95% of the general public agreed that in given case the judge should impose a suspended sentence (and the order to pay compensation to the victim) only 83% of the judges and prosecutors were of that opinion. There were differences in-between the group of law professionals though – with the civil judges coming closest to the attitudes of the citizens and the prosecutors being the most punitive as measured by the scales constructed. In addition, quite interesting results were obtained concerning the law students and young jurists – depicting a process of increasing adaptation to the dominant, more rigid attitudes within the legal professionals.

In his conclusions, Sessar quite sharply accuses the criminal justice system of neglecting or even distorting opinions of the general public where and whenever they do not comply with the theories, or rather the ideology and the claims of this system: i.e. the

pretended claim to provide the only legitimate mode of reacting to wrongdoings – as enshrined in the penal code. The policy decisions made within the CJS and their defence do not draw on empirically assessed facts regarding the attitudes of victims and the general public, but on the needs and attitudes as constructed by the theorists of law – and by the CJS ‘personnel’, by judges and state prosecutors. They explicitly use a specific fictional construct, ‘the reasonable citizen’ - imbued with those attitudes and ‘needs’ they, the protagonists of the CJS, regard as appropriate – as ‘reasonable’ according to their own needs for self-preservation.

Summarising the results of the study, Sessar observes that ‘restitution is still evident among citizens, but has vanished in the criminal justice system’. And he continues to state that ‘it would be wrong to assume, (...) that the discrepancies within the attitudes, on the one hand of the general public and on the other hand those of the agents of the (criminal) justice system actually lead to open conflict, as the public tend not to question the system’s claim to punish’. Quoting George Orwell, Sessar kind of reverses the theoretical assumption of the ‘hydraulic thesis’ mentioned in the first part, and the conjecture that punishment serves as an outlet for the stored-up need for revenge on the side of the people. Orwell said that ‘revenge is an action one wishes to undertake when and because one feels powerless’. According to Sessar it is the CJS’s ‘claim of holding exclusive power to restore and maintain social peace and order in society, that creates the feeling of powerlessness and helplessness. This is, at least in part, an explanation for the society’s observable needs to punish which are much more a result and much less the reason of the system’s own punitive claims. It is to be assumed that if the feeling of powerlessness and of helplessness is done away with (for example, by accepting restitution as a suitable sanction to solve ‘unlawful’ conflicts) then the wish for revenge will disappear as well’.

We have dedicated some space to this research, firstly, because it did have considerable influence in German-speaking countries, and served to underpin the efforts to establish VOM in these countries; secondly because it draws attention to the relationship with the powers at work – those of the CJS and of politics made in and with the CJS. The Hamburg Victim Survey was also one of the first to address the methodological problems that go with this type of research. The authors contended that it was to a large part the lack of alternatives presented to respondents that produced results that appeared to confirm the assumption that ‘the public’ ask for tough reactions to crime and that this means – for harsher prison sentences.

After a lengthy consideration of the very important research conducted by Klaus Sessar, we will now turn our attention to similar research conducted in other countries, mostly English-speaking countries. Burt Galaway has undertaken two major investigations of public opinion towards reparation in New Zealand (Galaway 1984; Galaway and Spier 1992), which used mainly the same methods. Two random samples of 1.200 people were presented with identical descriptions of property crimes and were asked to indicate whether imprisonment or some other alternative penalty would be appropriate for such crimes. The alternative penalties consisted of a fine, probation, community service and periodic detention. In one of the random samples (the experimental group), the list of alternative sanctions provided to respondents included reparation to the victim. Galaway found that across six different crime scenarios, support for punishment in terms of incarcerating the offender declined dramatically when the offender was required to make reparation to the victim.

Research in several American states has also shown support for the use of reparation. In Ohio, about three-quarters of a survey sample of residents indicated that victim compensation was acceptable as an alternative to imprisonment (Knowles 1984) and a subsequent similar survey showed very strong support for restitution as an alternative to custodial sanctions for juvenile offenders (Knowles 1987). Pranis and Umbreit (1992) report interesting findings from a survey in which respondents in Minnesota were asked to imagine that their homes had been burglarized and to choose a sentence for the recidivist offender. Respondents had the option of choosing between two sentences: a) 4 months probation and 4 months jail, or b) 4 months probation and repayment of the 1200\$. Results showed that three times as many respondents chose repayment over the incarceration of the offender, finding which shows that the imprisonment as a punitive response carries no appeal for the public when contrasted to the compensatory alternative. Another study using focus group discussions in ten locations throughout America found that respondents favoured the use of alternatives including restitution and community service over incarceration (Doble 1987).

Support for reparation is also evident in other countries in Europe. Results from the 1984 British Crime Survey indicated that most people approved of making non-violent offenders pay compensation to their victims and community service instead of being incarcerated in prison (Hough and Mayhew 1985). Lack of familiarity impedes public acceptance of alternative restorative options. In one study involving the British Crime Survey, all respondents were asked to sentence a recidivist offender convicted in residential burglary. Half the respondents were given several options—among which

compensation and reparation for the victim-, while the other half were asked to sentence without having the options. Of those who sentenced the offender without having the list of the sentencing options 22% favoured compensations, while among those who were provided with the list the percentage favouring compensation was 44% (Hough and Roberts 1998). Furthermore, in a survey of the Dutch public, 89% of respondents believed that requiring the offender to make compensation to the victim was a suitable way of responding to the crime (Wright 1989). The International Crime Victim Surveys undertaken since 1989 have confirmed the widespread acceptance of sentences with a reparative element (Van Dijk 1992, 2007).

The potential of active participation

Active participation of citizens

Useful empirical evidence on participation can be derived from a comparative research in the course of a EU-sponsored project: 'On Coping with Social Exclusion' with qualitative data collected in eight European cities: Barcelona, Bologna, Vienna, Frankfurt/Main, Leipzig, Groningen, Leeds and Stockholm (cf. Steinert and Pilgram 2007). There 'participation' is conceptualised as the opposite of exclusion and policies of participation are set against policies displaying an obsession with 'social security'. The multitude of episodes (qualitative material) presented in this research illustrates the various patterns of coping with social exclusion and the importance of 'getting together' as one of the coping resources. Their realisation and the extent of their being used at all depends on the socio-political constellations to be found in different societies. 'Bottom-up' societies with a tradition of autonomous social organisation like England or the Netherlands (with strong welfare state traditions at the same time) as well as Italy and Spain (characterised by weak welfare state traditions, by familism and corporatism/clientelism) show a potential for community action, for marshalling strength for active self-help and for initiating and building modes and organisations of collective coping (including conflict regulation), while in 'top-down' societies like Austria and Germany (with a history of a centralised bureaucratic rule) or Sweden (characterised by centralised state welfarism) there is more reluctance to resort to this type of 'getting together'- organisation that is created by and further promoted through active participation (see also part five).

Notwithstanding these overall tendencies, the material collected at the various research sites shows that in all societies and all of the social aggregates researched,

efforts are discernible to increase the level of active participation of citizens to tackle fundamental problems: of subsistence, of housing – or of conflict regulation. This research has also some bearing on the question whether people – a majority of people – is indeed attracted by the prospect of more active participation. The cultural differences and the differences in social policy traditions in different societies have an impact on people's perceptions. Delegation of conflict regulation to the agencies of the state and to the professionals entrusted with this task appears not only self-explanatory for those citizens that have never experienced anything else – it also displays clear advantages. To be expected and to be able to remain passive has its attractions.

Evidence regarding active participation on the one hand, delegation to the agencies of the Criminal Justice System, or remaining passive on the other hand, can also be found in a piece of research done in Germany in the '80s that was presented in the book "Everyday nuisances and life-world catastrophes" (*Ärgernisse und Lebenskatastrophen. Über den alltäglichen Umgang mit Kriminalität*) (Hanak, Stehr and Steinert 1989). The researchers had collected 1100 stories of conflicts that had a potential criminal law angle to it. The most spectacular result consisted in the fact that only a small percentage (5%) of those conflicts found the way into the criminal justice system and in fact only 1% ended with a criminal sentence. The vast majority dealt with the experience of having fallen prey to theft, to swindling, or fraud, of getting involved in brawls and being hurt, by 'absorption' of the experience, forgetting about it, 'lumping it'; sometimes people talked to friends and family, sometimes they sought advice from professional agencies, sometimes they took resort to civil law and – as mentioned - only rarely did they turn to the police to enter – and to follow through – the path of criminal law.

Another piece of evidence regarding public attitudes comes from Germany. There Thomas Trenczek has observed that VOM programmes are becoming increasingly successful in directly attracting disputants involved in criminal matters and other disputes, before the legal system gets involved. He adds that 'in this context the boundaries between VOM and community mediation begin to blur – a reflection of the universal application of the mediation process' (Trenczek 2002; 2003b). In Germany NGO-s (*Freie Träger*) have played a considerable role in initiating VOM. In their outlook they have remained closely attached to the CJS though. Addressing the public might prove a viable path to further build social support. The increasing number of '*Selbstmelder*' (Self-referrals) seems to point in that direction.

Active participation and compliance with agreements

Of a different type but highly relevant is the empirical evidence that can be found on the effect that active participation in the restorative process has on the compliance with agreements (and their contents) reached during such processes. Compliance becomes most evident when compared with the low results achieved with obligations imposed by formal court decision. Compliance rates of restorative processes lie between 60% and 100% of the agreements, where the most frequently reported range between 80% and 90% (Umbreit 1994; Braithwaite 2002). A UK study by Joanna Shapland *et al.* (2009) “Does restorative justice affect reconviction?” showed that, across the eight separate tests of the restorative justice units in the Metropolitan Police, the Northumbria Police and the Thames Valley probation and prison services, 89% of promises made in restorative justice were kept, compared to only 66% of UK fines collected. Findings from the accompanying research on the Austrian pilot project on VOM with adults point in the same direction; there the ratio of agreements reached and complied with was substantially higher when there was a direct meeting between the victim and the offender (Hammerschick, Pelikan and Pilgram 1994).

The high compliance is also a result that John Braithwaite has stressed referring to the findings of the experiment and the study on nursing home regulations. Shifting from the rule book enforcement to restorative justice produced markedly better compliance with the action plans and the standards (dialogically) developed (Braithwaite 2002). One could presume that the mechanism that is at work in participatory procedures is one of voluntary self-commitment triggered by the possibility to actively contribute and to be actively involved in the creation of such obligations. This self-commitment and the high compliance following from it is one of the empirically best established and therefore most convincing effects of participatory restorative procedures.

Procedural participation

Concrete examples of participation in justice procedures are various types of citizen boards and panels, used in the United States and Canada to devise dispositions in minor criminal cases. These initiatives rely on both community justice and restorative justice rhetoric and principles, and they mostly handle victimless crime, or non-violent offending and property offending (Knapp 1999). A well known case is the one of Vermont, where citizen boards are part of reparative probation in which a judge sentences the offender to probation with a suspended sentence, volunteer board

members meet with the offender and the victim and they together agree on a contract which the offender has to carry out (Karp and Weather 2001).

Evidence pertaining to the concept and the phenomenon of ‘procedural justice’ can be read as underlining the importance of active participation. People feel more fairly treated when allowed to participate in shaping decisions which affect the resolution of their problems or conflicts. Participation has been found to enhance the fairness of trial (Thibaut and Walker 1975), of plea bargaining (Houlden 1980), sentencing hearings (Heinz and Kerstetter, 1979), and mediation (Kitzmann and Emery 1993; MacCoun, Lind, Hensler, Bryant and Ebener 1988). Judges often oppose sharing control because they think that people want to share control over the final decisions in a case, while in reality people are mainly interested in sharing the discussion over the case (Tyler 1997).

The active participation of citizens in the criminal justice process increases satisfaction with the service offered and decreases punitiveness in general (see Allen, 2002). Research also suggests that when citizens are actively engaged in criminal justice decision-making through serving on a jury (Matthews *et.al.* 2003), participating in restorative justice (Greene and Doble 2000), or sentencing hypothetical offenders through academic exercises (Roberts and Stalans 1997), they are less punitive and more likely to support alternatives to punishment. It seems that ‘easy slogans like ‘hang’em high’ or ‘lock’em up’ become less tenable when individuals are assigned the responsibility of actually trying to turn such general notions into practice (Maruna and King 2004).

The ‘life-world’ element: re-introducing concrete experiences

The appeal of restorative justice, and more specifically of the ‘life-world’ element as it pertains to reintroducing concrete (mainly victims’) experiences, is also clear from studies of participation and satisfaction conducted with victims of crime. Umbreit (1991; 1994) has undertaken two important studies which examine victim satisfaction with VOM (both studies deal with juvenile offenders). The first study consisted of post-mediation interviews with victims and juvenile offenders. The victims had a positive reaction to mediation and nearly all felt that the agreement about restitution reached at the meeting was fair. The second study consisted of interviews with victims and offenders who participated in mediation, those who were referred but did not participate, and victims who were never referred to mediation. Crime victims reported being less upset about the crime and less fearful of revictimisation after they met the

offender in mediation. At the same time, involvement in mediation significantly increased victims' satisfaction with how the juvenile justice system dealt with their case compared to victims who did not participate, and it also increased perceptions of fairness.

Similar research findings come from studies conducted with family group conferencing. Family group conferencing was introduced in 1989 in New Zealand as part of a new juvenile justice model that shares basic principles with restorative justice and is based on ancient practices originated by the Maoris of New Zealand (Aertsen *et al.* 2004). The main New Zealand research on victims' participation and satisfaction is a study of family group conferences (Maxwell and Morris 1993). From a total of 149 victims involved in family group conference were interviewed, 59% of the victims found participating in the family group conference "helpful, positive and rewarding". Satisfaction was linked in general with good briefing before the conference, satisfactory outcomes, and the victims' initial motivations for attending the conference.

Somewhat mixed results come from the evaluation of South Australia Juvenile Justice Conferencing (SAJJ) where it was showed that SAJJ achieved high rates of victim participation and strong sense of procedural justice among participants, but lower understanding of the conferencing process and the role of different people involved, and less evidence of the restorative nature of the process (Daly 1998; 2001). Canberra Reintegrative Shaming Experiments (RISE) evaluated family group conferencing and reported that in general victims and offenders were pleased with conferencing and its outcomes (Strang *et al.* 1999). In a similar fashion with the studies we mentioned above, victims of violent crime (67%) were less satisfied with conferencing than were victims of property crime (91%).

Another study showing very positive results regarding victims' experiences with conferencing was conducted in Pennsylvania. The study reported that over 90% of victims, offenders, and offenders' parents would recommend conferencing to others, would chose conferencing again, found meeting the other parties useful, and felt fair treatment (McCold and Wachtel 1998). Ninety four percent of victims felt their opinion was adequately considered, 80% of offenders developed a positive attitude towards the victims, 94% of offenders had a better understanding of how their behaviour had affected the victim, and 92% found conference a more humane response to crime. An evaluation of restorative conferencing in Indianapolis found also high satisfaction levels (McGarrell *et al.* 2000). Results showed that victims were the most satisfied with

conferencing. More than 95% would have recommended conferencing to others, were involved in the conference, and felt treated with respect.

In the same line, we have evidence coming from studies conducted with victims participating in peacemaking circles. Circles derive from traditional Native American and Canadian First Nations dispute resolution processes (Melton, 1995), take many forms and are used in various settings ranging from schools and workplaces to the criminal justice system in both adult and juvenile cases. As a response to crime, sentencing circles involve the victim and the offender and their supporters, but also key community members. A qualitative analysis of the South Saint Paul (Minnesota) circles showed that more than two-thirds felt initially uneasy about going into the circle, however, afterwards over three-quarters reported feeling comfortable speaking into the circle (Coates, Umbreit and Vos 2000). Victims and offenders liked the most the connection with the other people in the circle, and the least the time-consuming nature of the circle, but all victims and offenders would have recommended the circle process to others. Holding the offender accountable, developing future relationships between victim and offender, expressing their feelings, and receiving support from the community were also important features of the circle for the participants.

Variations on public support for restorative justice

Research on public support for restorative justice is only in its beginning stages. However, as we mentioned in part one, the existing data suggest that the principles underlying restorative justice are appealing to citizens. These findings are very important for restorative justice, and have important implications, especially in showing that although knowledge on restorative justice is poor, the attitudes about it are very positive. In this section we will introduce research that highlights several variables that account for differences with regards to public support for restorative justice like: age of the offender, 'redeemability', criminal history of the offender, seriousness of crime, socio-economic status of the offender, intention of the offender, expression of remorse and apologies.

Juvenile and adult offenders

Although there is widespread public support for restorative alternatives, the public sees these alternatives as more appropriate to juvenile offenders, and in particular juveniles without previous criminal record. For example, Gandy and Galaway (1980) found that

the majority of respondents believed that juvenile offenders were more appropriate candidates for a sentence of restitution instead of imprisonment, than were adult offenders. In the British Crime Survey, there was considerable public support for compensation than imprisonment in the case of an adult offender convicted of burglary, but when asked to consider the sentencing of juvenile offenders, support for restorative options increased significantly (Mattinson and Mirrlees-Black 2000). These findings have been replicated in other countries. For example, in a Canadian study, when respondents favouring imprisonment were asked about the acceptability of restorative sanctions, support for these alternatives was significantly higher when the offender was a juvenile (Doob 2000).

Redeemability

Furthermore, 'redeemability' is a powerful theme for those who support community penalties, because of the idea that 'people can change'. Research done by the University of Strathclyde indicates that arguments about the values and principles underlying non-custodial penalties are far more meaningful to participants than information on the effectiveness or cost-benefits of these sentences (Stead *et al.* 2002). Similarly, Canadian research by the Angus Reid Group (1997) found the argument of victim compensation to be more persuasive about supporting community penalties than arguments revolving around the high costs of imprisonment. At the same time, emotive appeals to the unfortunate and disadvantaged situation of offenders carry little weight with the public. There is greater support for community alternatives and restorative options when appeals to the public are based on what Bazemore (1999) calls 'earned redemption', whereby offenders make their way back into community through structured opportunities to make amends through positive contributions to their victims and communities, demonstrations which convince the community that the offender is worthy of further support.

Criminal history of offender

Another important variable influencing public support about restorative alternatives seems to be the criminal history of the offender. Research based on the British Crime Survey shows that when the juvenile offender was described to respondents as having committed a crime for the third time, support for imprisonment rose to 36% from 3% in the case of first-offenders (Mattinson and Mirrlees-Black 2000). Similar differentiation

between first offenders and recidivists in support for restorative sanctions is apparent also from early studies. Gandy (1978) reported differences between public reactions to first time offenders and recidivists, findings that emerge also from the New Zealand focus group research where restorative options were seen as being less suitable for recidivists (Belgrave 1995). Despite the uniformity of findings on the relationship between recidivism and public reactions on restorative alternatives, research also shows that if the current offense is nonviolent, the public view restorative interventions as appropriate also for recidivists. Gandy (1978) found also that for non-violent offenses, the existence of previous convictions made little difference.

Seriousness of crime

The general findings from research show that the severity of punishments favoured by the public rises in direct proportion to the seriousness of the crime (Darley *et al.* 2000; Gebotys and Roberts 1987; Rossi *et al.* 1985), and that public support for the restorative response to an offense decline steadily as the seriousness of the crime increase (Boers and Sessar 1989). The central role of crime seriousness as a determinant of public support for restorative initiatives also emerges from Doble and Greene (2000). They found in general very strong public support for having offenders sentenced by the Community Reparations Boards, but not for the serious crimes. The community boards have developed alternative dispositions with a strong restorative component, like community work and restitution. The survey of Doble and Greene found that 92% of respondents were in favour of the concept of the boards, however, when asked to consider specific crime scenarios, results changed. For the most serious crimes (rape, armed robbery), there was almost no support for assignment to a reparative board, while for less serious offenses (like shoplifting, auto theft, and theft) the level of public support was much stronger.

Social (occupational and educational) status of the offender

Legal scholars and social philosophers have discussed at great length the role that social status plays in reactions to crimes or transgressions (Hart 1968). Hamilton (1978a, 1978b) has argued that the perpetrator's social role may affect the level of responsibility attributed to him. For instance, the higher the social status of the offender, the more likely s/he is to be assigned responsibility. A number of studies also suggest that perceived similarity between the offender and the respondent may affect the punishment

response: generally the greater the similarity, the lower the punishment recommended (Mitchell and Byrne 1973).

But on the other hand, the similarity of respondent and violator can also lead to tougher punishment reactions. For example, punishment reactions against someone who violates a rule might be more intense if the respondent assumes that similar others should have a higher level of morality. Also, if the respondent and others in the social group have themselves successfully resisted the temptation to break the rule, then the punishment reaction will be more severe (Mills 1968). For this 'reason, renegades, heretics, and apostates evoke particularly strong condemnation and punishment because they present the strongest possible challenge to the value system of the group' (Coser 1957).

Perceived intention of the offender

The perceived intention of the offender is an important variable affecting punishment reactions. Generally, a person who has done something accidentally is perceived to be less guilty and is punished less severely, than one who acted intentionally (Rule and Nesdale 1976). Interestingly, if an offender breaks a certain rule which is important for a community, but does so for personal gain, punitive reactions are harsher than if the offender was seeking to benefit others, or was trying to avoid loss (Savitsky and Babel 1976). Indeed transgression and rule breaking which have as a reason avoiding loss seem to be less disturbing than when they are done for the purpose of gain (Kelley 1971).

Expression of remorse and apologies

Research shows also that expressions of remorse and apologies for guilty behaviour affect public preferences on punishment and alternatives. Several studies have found that apologies and the expression of remorse decrease the severity of the sentences 'assigned' to offenders by the public (Harrel 1981; Robinson *et al.* 1994; Scher and Darley 1997). Additionally, respondents are more willing to recommend VOM if the offenders express remorse (Bilz 2002). Roberts *et al.* (2003) specify other examples which illustrate public's ability for mercy and forgiveness, like battered women killing their abusive partners, active euthanasia at the terminally ill victim's pleading requests to die, or a father accused of negligent homicide because he forgot to put a seatbelt on his son who died in a car accident. In such cases, juries have acquitted the defendants

despite the evidence to prove beyond a reasonable doubt that the defendant committed the crime (Roberts *et al.* 2003).

Methodological considerations

The Hamburg Victim Survey by Klaus Sessar which started in 1984, was one of the first to address the methodological problems that go with the type of research on public opinion and attitudes. The authors contended that it was to a large part the lack of alternatives presented to respondents that produced results that appeared to confirm the assumption that ‘the public’ ask for tough reactions to crime. As we mentioned before, in his conclusions, Sessar quite sharply accuses the criminal justice system of neglecting or even distorting opinions of the general public where and whenever they do not comply with the theories, or rather the ideology and the claims of this system (Sessar 1992).

As noted by Sessar, closer research into the public’s opinion has shown that they are not as punitive as believed. Surveys or public polls on punitiveness in general show only what they have measured (public punitiveness), while remaining silent on what they have not measured (public’s non-punitive attitudes). Indeed complex and rich opinions cannot be measured if complex questions are not used in an opinion survey. In particular, respondents express less punitive preferences when they are given detailed information about the offender, are provided with a broad list of sentencing options, and are asked to participate responsibly by assigning concrete sanctions to concrete offenders (Cullen *et al.* 2000; Ellsworth 1978; Diamond 1989).

As Roberts (1992) demonstrates in his review, is it equally important to get rid of the misperceptions that the public holds towards crime, and the misperceptions that criminal justice experts and policy-makers have towards the public’s opinion on crime and punishment. Dispelling myths about public opinion might be most crucial in the area of non-custodial sentences, as Flanagan (1996) suggests that ‘perceived public opinion’ is the ‘greatest obstacle’ to the success of community-based penalties and of reparative reactions (see also Sessar 1992).

Conclusion

In this part we have focused mainly on available empirical findings pertinent to the core elements of restorative justice (reparation, active participation and life-world element). The findings presented are mainly from German and English speaking countries.

Empirical evidence shows that although knowledge on restorative justice is poor, the attitudes about it are in general (with some qualifications) quite positive.

We discussed research looking at public opinion on restitution and reparation, particularly in relation to assessing reaction to their use as alternatives to imprisonment and punishment. The oldest and most well-known of these studies is the one conducted in the Institute for Criminology at the University of Hamburg, led by Klaus Sessar. This study is one of the most convincing demonstrations of the strength of public support for restorativeness rather than punitiveness, therefore we have discussed its findings at length. We also presented lengthy research from the USA, Britain, New Zealand, and Netherlands showing support for the use of reparation. These findings are noteworthy because they show that the imprisonment as a punitive response carries little appeal for the public when contrasted to compensatory and restorative alternatives.

There is clearly strong public support for restorative concepts such as compensation, reparation, restitution, and community work. Part of the attraction of restorative justice comes from the benefit offered to the individual victim. Support for reparation reflects both a desire on the part of the public to assist victims of crime, as well as the belief that by offering reparation, the offender is taking a step toward reintegration to the community. These findings emerge predominantly from studies in which respondents are given a choice between different options. Indeed, public support for the restorative approach seems to exist especially when people are explicitly made aware of restorative justice as an option, when they are provided with a choice between a punitive and a restorative sanction. If, on the other hand, no choices are offered and if people are not made familiar to the restorative options, they hold on to their traditional views on punishment.

With regards to citizens' participation in conflict settlements, empirical evidence is highly complex and varies from country to country. The cultural differences and the differences in social policy traditions in different societies have an impact on people's perceptions. We have taken into account the fact that becoming active is far from self-evident. But this does not yet preclude the possibility that the offer of a restorative justice (or VOM)-procedure would not meet with interest and with wider acceptance. A participatory procedure that takes care of the concrete hurts and losses they have experienced stands a greater chance to be resorted to when conflicts occur. We also presented relevant empirical evidence on active participation and compliance with agreements and their contents reached in restorative procedures. We argued that the self-commitment and the high compliance following from it is one of the empirically best

established and therefore most convincing effects of participatory restorative procedures.

Again in relation to the principle of participation we presented empirical evidence pertaining to the concept and the phenomenon of 'procedural justice'. Research showed that people feel more fairly treated if they are allowed to participate in shaping decisions which affect the resolution of their problems or conflicts. We concluded that the active participation of citizens in the criminal justice process through involvement in restorative processes, by emphasizing their socio-legal responsibility, participation and having a voice in the decision-making process, increases satisfaction with the service and decreases punitive attitudes.

The appeal of restorative justice, and more specifically of the 'life-world' element as it pertains to reintroducing concrete (mainly victims') experiences, was also clear from studies of participation and satisfaction conducted with victims of crime in mediation, family group conferencing and circles of support, which showed high level of satisfaction and appreciation of such restorative settings. Moreover, most of the victims who participate in restorative processes of different forms (conferences, circles, mediation) would recommend these to other victims.

Furthermore we also introduced research that highlighted several variables that account for differences with regards to public support for restorative justice like: age of the offender, criminal history of the offender, seriousness of crime, socio-economic status of the offender, expression of remorse and apologies, perceived intention of the offender, and 'redeemability'. We saw that although there is widespread public support for restorative alternatives, the public appears to see these alternatives as more appropriate to juvenile offenders, and in particular juveniles without previous criminal record. We also highlighted how 'redeemability' (the belief that people can change, especially through 'earned redemption' whereby offenders earn their way back into society through opportunities to make amend and through positive contributions to their communities) is a powerful theme for those who support restorative justice, because it shows that an offender is worthy of further support and investment. Another variable which accounts for differentiations in findings is the criminal history of the offender. Research showed that the public sees recidivists as inappropriate candidates for restorative initiatives, but for non-violent offenses, the existence of previous convictions made little difference in terms of support for reparative sanctions rather than imprisonment.

The general findings from the research on seriousness of crime showed that the severity of punishments favoured by the public rises in direct proportion to the seriousness of the crime. For the most serious crimes (rape, armed robbery, and violent crimes), there was almost no support for participation in restorative programmes¹⁵. Although the public may support restorative initiatives most strongly when the crime is not particularly serious, researchers and practitioners of restorative justice argue that it is with respect to the most serious offences that the potential for restoration is greatest, because the expression of mercy and forgiveness has its most profound effects. However, as we have seen so far, research suggests that convincing the public that the benefit of restorative justice is likely to be greatest for the most serious crimes can be difficult, at least until models of sentencing change towards restorative ones.

Research also shows that the social status of the offender (in terms of the responsibility the public assigns to such a status), the perceived intention of the offender, the perceived motivation are important variables affecting punishment reactions. Furthermore, a number of studies also suggest that perceived similarity (of the social, occupational, and educational status) between the offender and the reactor may affect the punishment response. In general, the greater the similarity, the lower the punishment recommended but not always. Punishment reactions against a rule violator might also be more intense if the reactor assumes that similar others should know better or have a higher level of morality. Furthermore we saw that expressions of remorse and apologies for culpable conduct have an impact in most cultures on public sentencing preferences. Research shows that the public is more willing to recommend victim-offender mediation (rather than a more punitive alternative) if the offenders express remorse.

We also highlighted several studies that have pointed out methodological considerations with regard to research on public opinion or attitudes on punishment and restorative justice. The authors contended that it was to a large part the lack of alternatives, scarcity of information, and lack of complexity on the cases presented to respondents that produced results that appeared to confirm the assumption that 'the public' ask for tough reactions to crime. Several authors concluded that it is very important therefore to dispel the misperceptions that criminal justice experts and policy-makers have towards the public's opinion on crime and punishment.

¹⁵ *It's worth mentioning that the problem with offences of violence' has been overstressed due to heavy reliance on US findings. This runs counter e.g. the Austrian experience where almost 80% of the cases handled through VOM concern bodily injury – and this – as far as we know – is regarded as 'reasonable.'*

4

Restorative justice, the public and the political

Does it suffice to build social support for restorative justice without considering the impact of politics and politicians? While undertaking this important consideration, we have to reckon with the difficulties of a complex relationship, which becomes relevant in two ways: Firstly through an analysis of the chances of a rational evidence-based (criminal) policy, and secondly through an analysis on the public opinion on crime and punishment and the role of politics.

The chances of a rational evidence-based (criminal) policy

Firstly, we would like to draw attention to the fact that policymaking and politics do not follow a rational course, and are not in the first instance guided by the empirical evidence supplied by researchers and scientists. Politics is about power (which is not anything *a priori* contemptible). One ought to follow with respect to this subject the understanding of Hannah Arendt and of Michel Foucault that have conceptualised power as something dynamic, something going on in-between people, and not as a static quantity that can be attributed to one group or one person. But it is not scientific truth that guides the actions and the decisions made in this arena.

Several authors have been paying tribute to the influence politics exert on policymaking in the field we are dealing with, e.g. John Braithwaite, when reporting on the experiment of introducing mechanisms of responsive regulation in nursing homes. Although highly successful and satisfactory for both personnel and the people they cared for, it was discontinued and the old regime was established anew. Braithwaite does not go any further into the reasons for this change of politics. But this example might well serve as another indication that one cannot expect that rationally guided and evidence based politics will take precedence over considerations of sheer political power play and its 'irrationalities'.

This point of view is also taken by Howard Zehr commenting on the politics of the paradigm shift. Already in his seminal book 'Changing lenses' he says that 'political and institutional interests and processes certainly affect whether shifts occur and what form they finally take (...) The history of change in the area of law and justice is not a hopeful one. Efforts at change have often been co-opted and diverted from their original visions, sometimes in perverse and harmful ways' (Zehr 1990: 222).

That means that we have also to be aware that the continuation and reliance on the conventional retributive/rehabilitative paradigm is not only the result of a lack of information about the blessings of restorative justice.

In a more general way, the relationship between the public and politics is also addressed within the concept of nodal governance. Even if, according to Clifford Shearing, there is in the present-day world less of a hierarchical mode of governance and of control, nodes characterised by participatory conflict resolution and decision-making have to find their place in the complicated network and the interplay of nodes in order to survive. In other words, it affords a conscious political effort to establish such bottom-up models of participatory conflict regulation.

Public opinion on crime and punishment and the role of politics

Secondly, it is important to be aware of the grip politics have on the public, on public opinion and on emotions and vice versa. There is a need for politics and politicians to consider and to attend to public opinion and on the other hand we have to realise that public opinion is to a large degree shaped by political conditions and by the rhetoric of the politicians (the catch word there is ‘populist politics’ or ‘penal populism’).

Katherine Beckett has expressed this in the title of her contribution to Michael Tonry’s book on ‘Penal Reform in Overcrowded Times’ (2001) which reads ‘Political Preoccupation with Crime Leads, Not Follows Public Opinion’. And she is able to provide sound empirical evidence for this statement. Tonry himself deals extensively with the problem of the politicisation of penal policies. He attempts to outline the reasons why U.S.-American politicians have made penal policy a core issue at all, explaining that although crime and punishment have been high on American political agendas since the late 1960s, public safety was then seen as only one among several important but unglamorous core functions of government. Criminal justice policy was at that time a subject for practitioners and technocrats. But beginning in the 80s crime control has been at the centre of partisan politics and ‘policies have been shaped more by symbols and rhetoric than by substance and knowledge’. Politicians are supposed to or rather pretend to react to a demand from the general public calling for harsher punishment and for generally ‘getting tough on crime’. And there is, of course, the lure and the influence of the media that ‘have learned that crime pays in terms of a mass public fascination with the darker sides of life and that fears vicariously enjoyed in front of the television or the movie screen are generalized to life outside the home’ (Tonry 2001: 63).

More important still, several structural explanations have been put forward by eminent writers like David Garland and Anthony Bottoms to account for this change: economic and social disruption, postmodernist angst, populist punitivism. Scrutinising these ‘root causes’ and comparing situations in the U.S. and in Europe, especially continental European countries where basically the same developments and phenomena could also be observed, Tonry arrives at the conclusion that the ‘exceptionalism’ of American penal policy is the result of a special brand of politics – of the deliberate choices of politicians to follow this path. Then one might ask: What are the decisive factors that make Europe, or rather part of Europe (Scandinavia, Germany, Austria) different, or at least slower to follow the U.S. path? Tonry’s hunches in this respect sound interesting. Firstly, continental Europe appears more receptive to what he calls ‘rationalistic technology transfers’ (including day fines, conditional dismissal policies, and community service) as well as to the obligations of the European Human Rights Convention. Secondly, maybe ‘European etatist political traditions compared with common law democratic traditions have left European countries more comfortable with the idea that elites and experts, not public opinion, should decide penal policy issues’ (Tonry 2001: 15). Thirdly, according to Tonry, ‘the stronger and more extensive social welfare systems of Europe have fostered value systems in which crime control policies seen as raising more complex social issues than politicians in moralistic America believe or will admit’.

According to this view the stronger trust in elites and experts Tonry can perceive in continental European penal policy, has its merits and can be counted as an asset – together with a different brand of politics and a different role of politicians. This is well in line with the thought developed by Marko Bosnjak when exploring the ‘hydraulic function’ of law, i.e. the requirement to take into account the public’s need for the (public) spectacle of censure through retribution. Bosnjak has shown that this asks for a decision by politicians to provide for an opportunity to give vent to – and maybe further arouse – these feelings in a punitive way, or to set limits.

One might take the case of the death penalty to illustrate what is meant by a political decision to set limits. You will hear from most countries that still cling to the death penalty that ‘their’ citizens want it and ‘need’ it (the hydraulic function!). It is not so long ago that European countries also took resort to this penal sanction and they also argued with the endorsement to be expected from their inhabitants. Former Austrian minister of justice, Christian Broda was one of the protagonists working for the abolishment of the death penalty. He was the founder of the Institute for Criminology (later the Institute

for the Sociology of Law and Criminology) in Vienna and he used to say that he would never commission or support an opinion poll on this issue, but ‘as a politician you have the responsibility to go ahead and to abolish it’. We know meanwhile that those countries that have been without the death penalty for a long time do also find a majority of their population agreeing with the policy and with this ‘moral’ decision. It has become common sense and a common commitment to a moral understanding.¹⁶

The portrayal of public opinion as exclusively punitive thus serves as a potentially powerful social reality that inhibits efforts to choose and advocate a better kind of justice. It makes policy makers worried of appearing too liberal on crime-related issues, and it places advocates of a progressive justice paradigm in the position of appearing antidemocratic. Good reviews of public opinion can serve to challenge this reality. We will take recourse to a typology regarding the relationship with the public as ‘the public as a partner’, a concept in tune with the rationale of restorative justice. According to this approach, the public is a resource that has the capacity and the willingness to help develop and execute sound justice policy, rather than a reactionary adversary to be ignored, or a group of misinformed consumers that needs to be sold on an idea. According to Scott Lash and John Urry (1994) it is ironically the rapid development of a consumer rather than a producer economy which had some positive cultural as well as economical consequences. In a consumer-oriented society, consumers have realised that they can make their demands assertively where they consider the product not up to their standards, and they can make such demands not only in their private purchasing, but also towards their public sector organisations such as schools, the police, justice system, and health service. The public demands move into two related directions: one is towards increasingly targeting the accountability of professionals, who are no longer protected behind their expert claims, the second one is towards crafting demands for lay participation in decision-making (Bottoms 2003). Therefore, ‘recent decades have seen a substantial shift away from the expert-driven, bureaucratic model of penal policy to a system driven more explicitly by symbolic and expressive concerns’ (Garland 2001).

According to the view ‘public as a partner’, the primary function of the criminal justice system is to serve and protect the people. This requires a public engagement strategy in which leadership understands and respects public opinion and takes concerns seriously. According to this approach, the public is a resource of social capital that has the capacity and the willingness to contribute in the development and execution

¹⁶ Regarding this argument, one could also quote a body of empirical research that shows that the death penalty does not fulfil the function reducing the public’s need to take revenge and repression into its own hands and resort to lynch law. There is evidence to the contrary (Garland 2005; Martschukat 2007).

of criminal justice policy, rather than an antagonist to be ignored, or a group of consumers that needs to be sold on an idea. This approach may reconnect the public to the criminal justice system by restoring the public's feeling of participation and confidence in the criminal justice system. The growth of restorative justice fits well with these sociological trends, since restorative justice typically uses a lay and participatory forum, and tends to be critical towards experts' views. Taking into account these sociological and historical developments, 'restorative justice practitioners should not focus only on 'repairing harm', 'achieving forgiveness', 'victim's satisfaction', and 'reintegrating offenders' as primary indicators of success, but the accurate assessment of restorative justice ought to be on the basis of its being a democratic endeavour attempting to encourage greater public knowledge of criminal justice and more widespread responsibility for crime control' (Dzur 2003). The political and civic concern of Nils Christie on people's ownership over their own conflicts although highly emphasized in restorative justice, has never been given the importance and implication it should have; it is always been proposed as an ideal which is desirable but not realistic, and this has depoliticized and underestimated its power.

To go back to the Austrian case, one could venture the opinion that the responsible leadership exercised by Christian Broda is compatible with the option of a partnership with the public. When we have presented the example of this politician clearly 'overriding' the opinions and feelings of the public (or of the majority of the respondents in a poll) it was to direct attention to a potential nuance of the partnership strategy: could it be possible that sometimes partnership affords the exercise of a kind of responsible leadership and the setting of facts that are not to preclude dialogue but will give a new direction to this dialogue? This type of responsible leadership might also represent what Michael Tonry had referred to when talking about the features of a European penal policy that seems more capable of resisting 'populist punitivism'.

A variant of the 'hydraulic function' of punishment and moreover an elaborate argument for promoting restorative justice and for eliciting social support and succeeding in the political arena is presented by Dan M. Kahan (2006). His article dealing with restorative justice is, in fact, a 'recantation' of an earlier paper on shaming penalties as a strategy that is to decrease the reliance on incarceration – in the U.S.!¹⁷. Kahan argues that the spreading of restorative justice is due to its 'constructive ambiguity', or in other words, to its potential to address quite different, even

¹⁷ *We have to be aware that the situation both regarding the orientation and the profile of restorative justice programmes and the attitudes of the public in the field of criminal policy is quite different from that in Europe, let alone the countries that do not belong to the Common Law jurisdiction!*

contradictory, cultural and political orientations. For Kahan social support is generated when a strategy, or a policy, allows citizens of different beliefs and different cultural traditions to find something in this strategy that appears to conform to their tradition. He goes on to say that although ‘the cacophonous mix of themes in restorative justice advocacy disturbs many commentators’ it is ‘precisely because restorative justice bears a plurality of meaning, it has the potential to satisfy the expectations of citizens holding a diversity of cultural persuasions’. Thus it gratifies ‘communitarians, those of a more hierarchical bent and also those of a more hierarchical one. Individualist, too, can form an understanding...’ (Kahan 2006: 24-25). His reasoning is rooted in concepts of cultural cognition as developed by anthropologist Mary Douglas. She has developed ‘a scheme of preferred modes of social organization along two cross-cutting dimensions (‘group’ and ‘grid’) that generate essentially four distinct cultural worldviews – hierarchy, egalitarianism, individualism, and solidarism or communitarianism’. Kahan has combined these notions with Aaron Wildavsky’s cultural theory of political preference formation. Within this theory, worldviews are perceived as heuristic determinants of what individuals perceive their interests to be. In other words: support for political orientation does not come as a result of rational choice, i.e. whether it serves one’s rationally defined interests, but by considering, or rather emotionally gauging the social meaning or resonance of a proposed policy. And this social meaning is ‘measured’ against these different worldviews.

The ‘trick’ then to gain support for an innovative policy is to pay tribute to these culturally grounded worldviews and to frame and present them in a way that allows for what he calls ‘expressive political economy’. According to Kahan ‘laws that manage to affirm diverse cultural worldviews simultaneously, then, are the ones most likely to overcome political conflict and generate broad scale support’ (Kahan 2006: 12). Kahan’s article did not remain unchallenged. Partly because of his understanding of restorative justice (and the doubts regarding its potential as a strategy to push back incarceration) but also because the political strategy of designing policies that are sufficiently ambiguous and can mean something (or anything) to anybody is rejected. Dan Markel in his critique, is talking about ‘downsizing, if not squelching the play of the democratic process altogether’ (Markel 2007: 139).

On the other hand, we must not forget to mention that the history and the success story of VOM in Norway and in Austria provides some evidence of the effect of ‘constructive ambiguity’. At the time when the idea was propagated in Austria and the first pilot project was set up, the positive reactions of the media came as a surprise. But

we learned that there were several ingredients of this new instrument that were responsible for this favourable response. It could be announced as pushing back the state and relying more strongly on people's capacity to be responsible. The involvement of a semi-autonomous agency like the Association for Probation Assistance and Social Work (later the association 'Neustart') was also met with approval and perceived as abiding with the principle of 'less state'. In addition, there was a period of decreasing crime rates of young persons and simultaneously a readiness to reduce stigmatisation of young people, foreclosing their life-chances. And there was also the call for more consideration of victims' needs already appearing on the horizon. In a similar vein, Siri Kemény had observed, that:

[T]he reason why it was easy to introduce legislation establishing VOM in Norway was that the conservatives, the labour party and the socialists had different reasons for voting for the bill. Right-wing politicians thought it was positive that young offenders would be dealt with quickly, and fewer juvenile delinquents would get away with no sanction at all. Conservatives later on even proposed that mediation should be made compulsory for offenders under age of consent, i.e. 15 years of age. (...) The left wing, on the other hand, was more concerned with mediation as an alternative to the traditional penal system, as a less stigmatising and more integrative reaction. (Kemény 2000: 86)

Notwithstanding this fact, we would like to express severe doubts as to the desirability of the strategy proposed by Dan M. Kahan. In both Norway and Austria, VOM was clearly presented as an alternative to punishment and as such it found sufficient social support that became manifest as strong political support – out of various reasons that can be explained and that are in line with a variety of 'cultural' orientations. Finally, we want to refer once more to the typology of 'addressing the public' mentioned above. Kahan's strategy for securing broad social support for restorative justice could well be characterised as selling a strategy on reluctant consumers, or wheedling them into accepting it. As such it is dangerous – and maybe treacherous as well. Rather it is to be expected that at long range political struggle and the confrontation of different policies abiding to different rationales and different cultural images of society cannot be avoided.

It is necessary to repeat what was put forward in connection with Christa Pelikan's contribution to the book 'Images of restorative justice Theory' (2007) – and what coincides with Dan Markel's critique of Kahan. Talking about the different ways restorative justice could be brought on the way and find its place in society, one finds listed three potential pathways:

- new (old) modes of conflict regulation emerging as a reaction to shortcomings of the criminal justice system – one could talk of a dialectic movement;
- a spreading of participatory modes of conflict regulation that is in tune with the traits of new governance. This means on the one hand, taking into account an increasing orientation towards risk-taking and the preventive management of social relations; on the other, it entails support from the movement for models of deliberative democracy and by responsive regulation;
- striving for the restorative justice way of conflict regulation as a mobilisation of countervailing forces: restorative justice as political action and a way for building 'dominion' (Braithwaite and Pettit 1992).

While the two first ways describe structural preconditions for setting up restorative justice and for building social support (the second one was used above in the part on the potential of active democratic participation), the third one can be characterised as a proposal for political action, and one that is quite different, even opposed to 'expressive over-determination'. The idea of the countervailing force draws on the example of the micro-credits. The system of micro-credits that has come to spread in impoverished regions of the world, the Granmeen bank in Bangladesh being the most well-known of these enterprises, uses the entrepreneurial capacities of women to make a living for their families. In a similar way the peace committees in South Africa (the '*Zwelethemba*' model as described by Froestad and Shearing intend to install conflict regulation devices that are to use 'the potential of the spontaneous order built on local knowledge and local capacity' (Froestad and Shearing 2005), for securing a tolerable way of living together, for providing social cohesion, a sense of justice and safety. Thus micro-credits and peace committees set in motion countervailing forces – within the economic system in the case of the micro-credits; within the political system in the case of the peace-committees. They are radical in the face of the problems confronting these societies and the very poor communities where these projects have been established and they are pragmatic because they act on the world and in the social circumstances as they find them. They are not aloof and do not remain encapsulated in high rhetoric but put trust in the persuasive power of a practice. It is at the same time 'countervailing' and riding the tide of certain

inescapable structures and tendencies. Thus it touches on the third element introduced – the social or life-world element of restorative justice and the – political – demand for the setting up of practices, of really doing things as the most convincing strategy for building social support.

Finally, there might be also a faint ring of Chantal Mouffe's ideas on political struggle instead of relying on consensus. But the concept of countervailing forces is still something different; it is the dialectical synthesis of overcoming, surmounting and containing the antitheses of struggle and submissive adaptation. Another powerful image is presented by Michael Tonry talking about the 'rain forest' characterising American penal policy:

[...] likened to a rain forest, the canopy of sentencing statutes and guidelines overhead looks stable, but there is a profusion of new growth on the ground. Some of it, such as development in restorative and community justice, may break through the canopy and change it. Or they may grow so far and no further, or they may wither and die. (Tonry 2001: 17)

Resuming the image at the end of the part he writes 'so far, restorative justice, community justice and therapeutic jurisprudence have produced innumerable local programmes but no system-wide transformations. But they could' (Tonry 2001: 21).

The public, politics and the media

We have mentioned at the beginning of this part that it is important on the one hand to be aware that there is a need for politics and politicians to consider and to attend to public opinion and on the other hand we have to realise that public opinion is to a large degree shaped by political conditions and by the rhetoric of the politicians. We might now ask, under what conditions does public opinion as shaped by the media impact on politics? And when do the images and ideas, the notions and 'truths', presented by researchers ('crime truths', 'justice truths') become the prevailing truths in the perception of the public?

We will once more pre-empt and refer to a concept put forward at a later point in this report, namely the concept of a 'replacement discourse'. To illustrate its explanatory power we want to take recourse to an example from divorce law – or rather the law on child-parent relations (*Kindschaftsrecht*). In this realm a remarkable, highly relevant

replacement has been taking place in the course of the last 30 years. The idea of divorce as implying the child afterwards living in a new one parent- (single mother) family or one reconstituted by a consecutive marriage of this parent with only sparse contact with the 'other' biological parent has been overthrown by the understanding that it is of prime importance for the child to have continuous contact with both parents and that the 'old' family is only reconstituted, transformed, one could say. This notion was first put forward as the result of empirical research on the effects of divorce. It spread then amongst the professions of psychologists and the social workers involved in cases of divorce and working with children of divorce, took hold with magistrates and judges and increasingly the general public¹⁸. Nowadays, when working in this field, you will only in rare instances hear anything else but the conviction that contact with the parent that is not the primary care-taker is important and should take place. As a matter of fact, the notion or prescription that contact with the other parent must not be hindered and should not be terminated, except in cases where violence and/or sexual abuse has been proved, has evolved into a kind of dogma of 'contact by all means' – the swing of the pendulum coming to another extreme with consequences that are sometimes detrimental to the well-being of the child.

Now, why did this happen – what are the ingredients of this success story (if one wants to call it that)? The existence of sound empirical evidence¹⁹ cannot sufficiently explain its increasing usage and the imprint it made on the public's mind. Firstly, there are demographic developments, and certain societal developments that might account for the support those findings gained: the rise in the sheer number of divorce and of children affected by it. From something extra-ordinary it had become something quite ordinary, concerning a considerable percentage of the populace. Secondly, there was and there still is a change in partnership and in parent-child relations. The breadwinner-homemaker dichotomy is dwindling (at least it has been modified) and fathers are supposed to take a more active part in the upbringing and the education of children. Divorce as an event that terminates these relationships is experienced as not fitting these perceptions of roles and of responsibilities and the concomitant emotions.

In addition to this social-structural base and the affective-emotional underpinning of the post-divorce experience, new pressure groups have been formed and new alliances forged. The fathers, demanding their right to contact on the one hand, and the lay- as

¹⁸ *There is some evidence that working class families were most reluctant to take on this principle and make it part of their 'belief system'.*

¹⁹ *Albeit not all of it was that sound and we do find academic debates as to the research methods applied and the interpretations ventured in this field as well.*

well as professional groups advocating the interests of children, on the other hand. They were able to exert considerable influence in the course of the legislation process, most pronounced so regarding the legislation on joint custody in Germany. Conversely, having this new point of view promulgated by legislation, helped to further ingrain this notion in the heads and minds of ‘the public’. There we can perceive mutually reinforcing developments. The lobby of the ‘divorced fathers’ would probably not have made it without the support of the children’s lobby. For the paradigm to become a reality in the political arena it needs more than the support of one lobby. It has to rally a majority of potential supporters. Still, the trickling down effect of the shift of paradigm is the most stunning phenomenon. It is caught in the maxim: ‘you have to separate parenthood from partnership – the end of partnership does not end your parenthood’. Once, in the early years, only quoted by child and family psychologists, you can hear it now from any parent affected by divorce. It seems that media presentations of dramatic cases of obstruction of contact by care-taking mothers helped to make the topic accessible to the wider public and paved the way for this shift of paradigm. One could rightly say that in family law a replacement discourse had taken hold.

Let’s see whether we can draw up a parallel – and how far it will carry us. We have pointed to the societal developments that might support and promote the acceptance of a mode of conflict regulation based on active participation of those involved. In addition, restitution, paying attention to victims’ needs and evoking the taking on of active responsibility of the perpetrator vis-à-vis the victim is apt to appeal to different strata of the public – and to people of different cultural orientations – although not to all kinds of political orientations and not to all interest groups. As somewhat different from the example of joint custody, opposition is expected to remain.²⁰ Political struggle is not to be evaded. The hearts and minds of ‘the public’ will not and ought not to become appeased by a strategy that leaves restorative justice a ‘cacophonic mix of themes’ that can mean anything to anybody (‘all things to all people’, says Paul McCold).

Kathleen Daly in her article “Restorative Justice: The real story” (2002) has left open the question whether in the end the real story of restorative justice will prove more powerful than the myth of restorative justice. The real story is what she has observed, and what has emerged from her empirical studies. This deviates considerably from the restorative justice myth. Restorative justice ‘on the ground’ does – according to her observations – contain elements of retribution. It is not, what it pretends to be: reparative, abstaining from retribution, committed to an ethic of care. Rather the

²⁰ It has, in fact, not become completely eradicated from the discourse on joint custody as well.

practice of conferencing – as seen by the clients – has indeed to quite some extent the constructive ambiguity Dan M. Kahan has identified.

One might share Kathleen Daly's tentative conclusion insofar one regards as important both becoming aware of and facing the real story – and holding on to the myth which we would rather call the vision. We would like to add one consideration. Detecting and 'unveiling' the real story might make us aware of a potential, inherent in restorative justice that has hitherto been hidden – behind the veil of the mythical perception. Once more one can draw on Christa Pelikan's (2002) research experience gained in the course of a study on cases of partnership violence in Austria. Observing these VOM sessions had made the researcher realise that the real potential of this procedure does not lie with directly impacting on and 'correcting' the perpetrator but with empowering the victim which then becomes able to leave or change the relationship. It had also made her realise where the limits of restorative justice are to be drawn. To convey this more clearly will also be a contribution toward gaining well founded social support for restorative justice.

Influencing public opinion

The belief in the judgment of the people or having the public as a partner assumes that political, social, economic, and moral issues are 'common concerns' of people. Based on this belief it is possible to speak of the concept of public opinion, which can then be defined as 'the shared opinions of a collection of individuals on a common concern' (Yeric and Todd 1983). Roberts and Stalans (2004) based on their extensive research on public opinion and attitudes on restorative justice have identified four main reasons why the public's perspective is critical to this justice paradigm: first, compared to the criminal justice system, in restorative justice, the victim, the offender and the community (therefore the public) are expected to take an active role in the justice process; second, legislators and policy-makers frequently approve and create laws and policies consistent with public opinion; third, it is necessary to have a rigorous scientific evaluation of public opinion because a number of studies have shown a gap between the views that the public holds, and the opinions ascribed to the public; finally, restorative justice claims to offer a better civic alternative to criminal justice responses to crime, therefore public reaction represents one of the most important grounds on which to make comparisons (Roberts and Stalans 2004).

We need to explore more how restorative justice is different from other approaches in terms of involving a broader public in the justice process. There are two main differences

between criminal justice system and restorative justice in participation levels, one is a difference in terms of the parties involved in the conflict resolution, and the other is a difference in terms of the 'managers' of the conflict. With regards to the first difference, we know that in contrast to criminal justice system, restorative justice involves in the conflict those most affected, like the offender, the victim, and the 'communities of interest'. The recent trends of family group conferencing, or using healing circles, and community boards introduce models that are able to include even more actors than only the 'communities of care'. Criminal justice system on the other hand is still at the level of discussing how to include victims in the process, which has been in many cases even damaging to the point of creating secondary victimisation. With regards to the second difference, the advantage of restorative justice lies in the replacement of government actors of crime control with community agents. Christie (1981) has identified as one of the main values of restorative justice the fact that its procedures are de-professionalised and de-centralised.

Restorative justice is among other things a social theory of criminal justice, a normative critique of mainstream ideas and practices involved in the criminal justice system (Dzur 2003). There have been three main accounts in the theoretical mainstream of restorative justice which have stressed out the main advantages of restorative justice: the value of participatory justice emphasized by Nils Christie, the value of a healing dialogue emphasised by Howard Zehr, and the value of dominion emphasised by John Braithwaite and Philip Pettit. The main advantages that restorative justice has compared to criminal justice and which are emphasised by these accounts are first of all, the replacement of punishment as incarceration with restitution, reparation, community alternatives and other alternatives which come as a result of a decision making through dialogue and secondly the replacement of government agents of crime control with community agents. Restorative justice, then, as a normative theory points to lay participation in the criminal justice process as a way to achieve its goals, and for this the political dimension of participation and citizens' opinions and attitudes become important grounds on which to make comparison with the criminal justice system.

Furthermore, it becomes very clear from research that it is necessary to have a rigorous scientific evaluation of public opinion because of the gap between the views that the public holds, and the opinions ascribed to the public by the politicians and the media (Applegate 1997; Cullen *et al.* 2000; Roberts 2003). The mainstream view that the public just wants to 'lock offenders up and throw away the key' is a serious misreading of the public's perspective. Closer research into the public's opinion has shown that people

are not as punitive as is often thought. Additionally, as we showed in the previous part, surveys in many countries have found broad public support for using community based and restorative alternatives. As noted above, there are also many methodological problems with public opinion research, problems which have contributed to misconceptions and wrong attributions. As Roberts (1992) demonstrates in his review, not only is it important to get rid of the misperceptions that the public holds towards crime, but it is equally important to dispel the misperceptions that criminal justice experts and policy-makers have towards the public's opinion on crime and punishment.

In the second part in order to dispel the misperceptions on public opinion, we introduced extensive research that shows 'the other side' of public opinion on crime and punishment, that is public support for restorative alternatives. In this part we will focus on how to influence public opinion in order to educate and inform people on restorative justice. From research we know that public knowledge about several aspects of the criminal justice system and restorative justice is poor (Doob and Roberts 1988; Indermaur 1990; Tarling and Dowds 1997; Hough and Roberts 1998; Morgan and Russell 2000; Mattinson and Mirrlees-Black 2000). In theory, therefore, improving public knowledge about crime, sentencing, criminal justice, and restorative justice might be expected to result in more positive attitudes towards the system. There is, however, little known about whether it is possible to influence knowledge, attitudes and confidence in the criminal justice system by providing information, and there is almost nothing on restorative justice. Despite this lack of substantial literature, there is growing literature demonstrating that people will modify their attitudes to justice when provided with more information (Roberts 2002; Doble 2002; Hough and Roberts 1998).

Most of the existing research relates to crime prevention campaigns, however, some of these also evaluate changes in knowledge and attitudes. In the US, the National Crime Prevention Council (NCPC) evaluated their long running 'McGruff' crime prevention campaign. The NCPC found that a quarter of those interviewed reported having learnt something new from the crime prevention campaign (O'Keefe *et al.* 1996). For such campaigns to change behaviour, the intended audience must have interest in and involvement with the subject matter and pay attention to the message (Parrott 1995). Parrott (1995) suggests that to promote active processing: the presentation of the information should be unusual or unfamiliar; there should be a discrepancy between expectations of the information and the reality; and the information should request the audience to do something. There is also evidence that campaigns are more effective if

they relate to subjects associated with strong public opinion and concern, and topics on which there is generally a consensus of opinion (O'Keefe *et al.* 1996).

Audio-visual and printed sources are most commonly described as the main source of information about crime and the criminal justice system. In a study by Mirrlees-Black (2001), three-quarters of people mention television and radio news as information sources. Television documentaries, local and tabloid newspapers were mentioned by about half of respondents. Broad-sheet newspapers are an important source for about a third (Mirrlees-Black 2001). In the US, members of the public from Alabama and Delaware were more likely to advocate alternatives to custody for non-violent offenders after seeing and discussing a video detailing the problem of prison overcrowding and alternative programmes. The information provided was specifically targeted a changing opinion on this particular issue, and it caused a shift in opinion towards alternatives to custody (Doble 1997; Doble and Immerwahr 1997; Roberts 1997). Interestingly, psychological research has found most support for the hypothesis that information in a printed form leads to better recall than that in audio or audio-visual formats (Furnham, Gunter and Green 1990).

There are some interesting findings from an experimental research study mounted by the British Home Office in 2000 (Mirrlees-Black 2002). The aim of this work was to determine whether providing information on the criminal justice system has an effect on levels of public knowledge; whether any improvements in knowledge that result have an impact on attitudes and confidence in the criminal justice system (CJS); which of three methods (a booklet, a seminar, and a video) of presentation of information would be the most efficient and effective for imparting information to the public. The research surveyed a nationally representative sample of 1022 people to assess levels of knowledge about crime, sentencing and the CJS; attitudes to sentencing; and confidence in the CJS. Providing simple factual information improved knowledge about crime and sentencing, and also had an impact on attitudes to and confidence in the CJS. After being given information about crime and criminal justice procedures and practices, participants were (on average): less worried about being the victim of crime; less likely to say sentencing is currently too lenient; and, had more confidence that it is effective in bringing people who commit crimes to justice, and respects the rights of the accused. Each of the three information formats tested (the booklet, seminar and video) improved knowledge and had some influence on attitudes. The key distinction between them, though, was the extent to which they reached their potential audience. The study concluded that seminars are unlikely to be an effective way of conveying this type of

information to a wide cross-section of the general public. The seminars were the most expensive because they incurred venue and travel costs, and they also required a significant time input on behalf of presenters. The booklet was read by the greatest proportion of those it was offered to, and it also scores highly on cost-effectiveness.

One of the most frequently mentioned strategies for increasing public confidence in community sentences is to provide a larger quantity and better quality information about crime and justice to the public (Roberts and Stalans 1997; Stalans 2002; Gainey and Payne 2003). The research evidence in favour of this strategy, however, is somewhat mixed. As we saw, it is obvious that information can make a change. In almost every survey of the public where such comparisons are made, individuals who are provided with additional information about various alternatives to punishment are less likely to favour imprisonment than those who are given no such information (Roberts 2002). In particular, explaining the variety of restitution and compensation alternatives to respondents who are unfamiliar with them has the immediate effect of reducing punitive tendencies in survey respondents (Hough and Roberts 1998). Furthermore, respondents who express punitive views in the abstract often moderate those views when presented with information about the offenders themselves and concrete cases (Doob and Roberts 1988).

On the other hand, much of the research demonstrating the impact of education on attitudes shows only very short-term effect. For instance, Gainey and Payne (2003) found that a 35-minute presentation of information about crime and justice can increase support for alternative sanctions, but the duration of this effect is unknown. Additionally, much of this research is influenced by an 'Hawthorne effect', based on which participants modify their views on follow-up surveys simply because they are expected to. Finally, the practicality of introducing these educational efforts on a large scale is doubtful. Considerable research suggest that even an entire academic term spent learning about criminology and criminal justice has a negligible impact on students' attitudes toward crime (Giacopassi and Blankenship 1991; Jayewardene *et al.* 1977). How much education and information is then really needed to change deep-seated attitudes and how possible is it to educate the population in this way?

Bowers (2002) argues that attitudes serve four functional purposes: to organise vast amounts of knowledge, to express values, to help defend one's ego and to obtain rewards and avoid punishment. Typically, only the knowledge function is addressed when it comes to strategies for attitude change. Many initiatives or campaigns talk about making messages 'easy to remember and recall', while ignoring the fact that attitudes exist not

only to organise information, but also for other reasons. Many attitudes, such as racism and sexism, serve purposes that have little to do with knowledge organisation, and therefore education may do little to change them. When attitudes are based on other than informational discrepancies or deficits, it may prove difficult to change them. According to Allen (2002), perhaps the most promising finding regarding education, is that the active participation of citizens in the criminal justice process increases satisfaction with the service and decreases punitiveness. Projects that attempt to educate and inform the public about the ‘facts’ about crime, are likely to have marginal impact on public understanding of crime or punitive attitudes if not combined with active citizen involvement strategies.

The role of the media as a transmitter, amplifier, and a filter between the public and the criminal justice policy makers, leaders, academicians, etc, must be considered. Crime frequency in the media can affect public opinion either directly, by increasing fear of crime, or indirectly by setting the public’s agenda to increase the salience of crime as a political issue (Beale 2002). Research shows that most people’s sense of the seriousness of the ‘crime problem’ appears to be based upon what they have seen in the media, rather than their own concrete experience (Roberts and Doob 1990). When people think about crime, they think about the violent crimes they have learned about from the mass media. The media overrepresent crimes of violence (Graber 1980; Doob 1985; Gordon and Health, 1981). In newspaper coverage of crime, reporting focuses disproportionately on violent crimes, especially homicide, and underrepresents less serious and property offenses. In television crime dramas, the storylines focus on “trackdown and capture”, but other justice processes such as arraignment, pre-trial hearings, jury selection, mediation process, and other alternatives receive scarce attention (Dominick 1978).

Indermaur and Hough (2002: 210) argue persuasively that ‘Anyone who wants to improve public debate about crime needs to be attuned to [the] emotional dimension [of attitude formation]’. Academics tend to favour rational arguments over emotive ones, while the public is deeply affected by emotive arguments (and politicians know this very well) (Tetlock 1994; Ryan 2003). Unfortunately, we know very little about what emotive themes are likely to support restorative options because we know remarkably little about the social psychology of non-punitive attitudes²¹. Whereas the ‘authoritarian personality’ has generated wide research across academic disciplines, research on the liberal, permissive, emphatic, forgiving or non-punitive attitudes is scarce (Martin 2001). As a

²¹ *There is some indication from developmental psychology provided in the first part: the research of Gertrud Nunner-Winkler in the wake of Jean Piaget and Lawrence Kohlberg.*

result, we can imagine how the public's punitive attitudes could be awakened and utilised in support of a repressive and punitive criminal justice agenda, but we have little idea how to promote a more tolerant society.

Conclusions: implications for restorative justice

We have in this part of the report drawn attention to the necessity to go beyond building social support, and consider the necessity to create socio-political structures that make room for social support to enfold. This implies forging alliances and work in the arena of politics – becoming part of conscious political effort, built on and using the means of deliberation and dialogue. This is well in line with a strategy to perceive 'the public' as a partner in the strife for building social support. And it is also compatible with the notion of a replacement discourse. We hope that the examples we have chosen to illustrate the dynamics of such a replacement discourse will serve the purpose to enhance our understanding of the complex interplay of actors – not least of research – in the effort of building social support for restorative justice.

It might well be the case that the world portrayed by the theories attended to is already the one Michael Tonry refers to when expressing the hope for a next shift of attitudes toward crime and criminals, 'a shift toward more humane values and greater acceptance of human weaknesses' – a hope which he combines with the contention that 'there will be people inside the bureaucracies and outside who will push for change' (Tonry 2001: 15).

What further conclusions can we draw from the detailed consideration of the relationship between restorative justice and the public? Influencing public opinion on restorative justice requires a good understanding of the nature of public opinion, and in particular of the forces that can influence that opinion. Before attempting to influence public attitudes we should have a clear view of what is possible and how this can be achieved. Broadly we identified three types of problem with regards to public attitudes: at the cognitive level, at the emotional level, and at the political level.

A considerable amount of research has demonstrated a strong association between knowledge and attitudes: people with the least accurate opinions tend to hold also the most negative opinions. On the other hand, much of the research demonstrating the impact of education on attitudes shows only very short-term effect. Research suggests that the presentation of new information, factual or statistical, can change attitudes, but that change is limited. If attitudes toward criminal punishment are driven largely by emotive rather than instrumental concerns, as the wider criminological literature

suggests, then rational appeals to the benefits of various justice options will have only limited impact on public views. It is often public emotions that define public debates and political initiatives in the field of justice, not public information. Concrete experiences are the most promising path to winning people's hearts and minds – therefore building social support needs to set up those concrete examples.

5

Media and restorative justice: approaches of communication

This part discusses in theoretical terms the cooperation with the media, and is complementary to the media toolkit produced during the Building Social Support for Restorative Justice project. To the reader who is more interested (or only) interested in having a concrete and practical insight into the channels of cooperation, we advice reading the media toolkit - a user friendly material accompanying and complementing this report where concrete tools for working with the media in different ways are depicted, - while for the reader who would also like to understand the relevant and the more ambitious developments in this area, we advice to read this part.

In what follows, we will first make a brief consideration of media's role in society and lay out our theoretical approach in relation to knowledge (as socially constructed). After this initial contextualising, we will turn our focus towards the complex relationship of media and public opinion, and more specifically the public opinion on crime and justice. We will give adequate space to the myths that the media circulates about crime and justice and see how these influence the public. Understanding this relationship will empower us subsequently to find ways and possibilities to deal with the media. In particular we will discuss here two major theoretical (and practical) approaches that can be interesting in the long run for the engagement of restorative justice and the media: newsmaking criminology as part of a replacement discourse and entertainment-education strategy as part of communication for social change.

Media as an arena for socially constructed knowledge

The multi roles of the media

Media are a crucial and integral part of our lives generating popular interest and debate about almost all social problems like: health, politics, justice, crime, punishment, education, security, taxes, immigration, poverty, etc. In order to address a particular social problem, we need an understanding of the mass media's role in contemporary social life, especially at a time when we have increasingly become a knowledge society.

One of the main roles of the media in our lives seems to be what in the social sciences is called socialisation- the process of developing a sense of self connected to a larger social world through learning and internalising the values, beliefs, and norms of one's culture. Through socialisation we learn to perform diverse and sometimes contradictory roles as citizens, friends, workers, students, and we also learn to behave in socially appropriate ways. Certain social institutions have explicit roles in socialising young people (such as the family and schools) and others have less intentional but very powerful roles in the process (such as peers). The mass media is a powerful socialising institution. Media affect how we learn about our world and interact with one another, through the process of mediating our relationship with other social institutions (like criminal justice system, ministries, prisons, NGOs, etc.). We base most of our knowledge on government news accounts, not experience, and we are dependent on the media for what we know and how we relate to the world. Therefore media often act as the bridge between our personal/private lives and the public world. It is because of this connection that we need to pay special attention to mass media if we want to understand how society functions and how social problems are addressed.

Media play many different - and sometimes incompatible - roles. For the audiences, it is a source of entertainment and information; for media workers, media is an industry that offer jobs - and therefore income and professional identity; for the owners, the media is a source of profit and a source of political power; for society at larger, the media can be a way to transmit information and values (socialisation). Peterson *et al.* (1965) identified six social functions of the media under 'libertarian theory' – public enlightenment; servicing the political system; safeguarding civil liberties; profit-making; servicing the economic system; and providing entertainment. In contrast, 'social-responsibility' theory assigns functions to the mass media as obligations emanating from their constitutionally guaranteed freedom. Thus it accepts the 'traditional' functions defined by libertarian theory, but it normatively hierarchises them: the tasks of servicing the economic system, providing entertainment and making profit should be subordinated to higher tasks of public enlightenment and promoting democratic processes.

Precisely because this normative subordination does not happen, we unfortunately see that modern mass media have created a new type of 'public' which is largely depoliticised, commercialised and excluded from public deliberation (Splichal 2000: 29). A series of studies of news production argue that, in one way or another, news content is becoming less informed and less 'political'. News organisations, operating in

an increasingly competitive market, have fought to raise productivity and maintain audience share by cutting editorial budgets and popularising news content. Investigative, contextualised journalism and coverage of complex debates and policy-making have thus made way for scandal, ‘infotainment’, personality-led news and public relations material (Kimball 1994; Franklin 1994, 1997; Ewen 1996; Tiffen 1999; Curran 2000; Davis 2000a, 2002; Hess 2000; Hallin 2000). In effect, news values, that once drew journalists to cover those social and political processes that increased inequality, are being adapted to encourage alternative, more profitable forms of news reporting.

Media and social constructionism

As we briefly discussed above, media are centrally situated in the distribution (and creation) of knowledge, and what we see as crime and justice is largely defined, described and delimited by media content and process. People acquire social knowledge from four main sources: personal experiences, significant others, social groups and institutions, and the media. These sources of social knowledge create at least three realities: experienced reality, symbolic reality, and socially constructed reality. By experienced reality we mean something that creates knowledge gained from one’s directly experienced world, an inclusion of all of the events that have happened to a person. By symbolic reality we understand all the knowledge of the world gained from other people, institutions, and the media, that is shared via symbols, language being the most common symbolic system to share knowledge - art, and music being others. And finally by socially constructed reality we understand the reality perceived as the ‘real’ world by each individual. It is constructed from knowledge each individual gains from his or her own experienced and symbolic realities together. The social theory that studies such ‘realities’ is called in turn social constructionism. In other words, social constructionism studies the shared ideas, interpretations, and knowledge that groups of people agree to hold in common and views knowledge as something that is socially created (Surette 2007).

To illustrate this: the media institutions, mainly news-media join in continuous public conversations about justice, which mainly has come to mean just procedures, or procedural justice rather than justice based on truth or ethics. While the news discourse is politically and socially constructed, and includes aspects that are fabricated and fictive, it tries to erase these aspects through realistic packaging. This realistic packaging helps the institutions to constitute the truths of their discourses, as natural and unmediated, as if their procedures and knowledge are one and the same, as if theirs is

not only one way of seeing but the way of seeing. This is what we mean by socially constructed reality, a reality presented and perceived as real, but which is socially constructed. To say that knowledge is socially constructed does not mean that there is no reality, for example life and death, but it is to say that given that we are always already constituted in language and the social reality, there is no other way we can know but through the socially constructed reality. In addition, to say that knowledge is socially constructed is to say that knowledge is not a thing, but is a human activity, an activity done through economical, cultural, social, political and power dynamics.

What happens then as knowledge becomes socially constructed? Let us illustrate this through a step-by-step example while we focus on crime. The first stage of social constructionism is the happenings of the “real” physical world, for example several scattered types of crimes throughout the country, done by different individuals. The second stage is where the competition for social construction takes place. Political interest groups would be interested in constructing the facts towards the framing “crime is out of control” if they would need to implement a tighter anti-immigration law, have more police on the streets, or have more prisons built, while NGOs engaged in social justice or peace efforts would favour the social construction of “societies are rather safe”. They would all use the media as a competition arena. What happens in the end is that the ones who are more media-adept constructionists have at least a great advantage in this process (Surette 2007). The rules for defining public events are increasingly becoming media rules. These institutional members will present their own message and images within the respectability and familiarity of media formats. The final stage is that a particular social construction prevails with the public, and in general this loop feeds back on the criminal justice policies which are designed and implemented according to the successful social construction.

Often the medium is as important as the message to be transmitted and the type of media and the medium used will shape a message completely. Mc’Luhan’s (1964) phrase “the medium is the message” is an important and appropriate reminder that often there are interactions between the nature of ideas being conveyed and the nature of the medium of communication. All knowledge is mediated by a medium, and each medium (print, radio, television, or the world wide web) has its own distinctive format, and also different procedures for the selection, transmission, and reception of knowledge. Several studies have noted that as events are formatted for a particular medium, their meaning and significance changes. The effects go beyond mere distortion, like getting a few facts

wrong, or not giving both sides; instead a systematic reinterpretation and focus takes place.

What does this understanding and conception of knowledge leave us with? First of all, it saves us from engaging in useless debate of facts vs. construction. It is crucial especially for academics who insist on pure fact and information delivery rather than mediatizing and marketing their messages to understand that this is a false dichotomy, that all knowledge is socially constructed, all knowledge is knowledge from someone's point of view. From the stages that we considered above, it becomes crystal clear that media has become if not the arena, then one of the most important arenas for the competition of social constructions which influence the public, and in turn the policies and legislation. This leads us to the conclusion that we cannot afford by any means to ignore the media. Rather media should become the most politically important arena for the transmission of our knowledge and beliefs.

Media, crime, and justice

We discussed above how media have a crucial role in society and how all knowledge is socially constructed. We also extensively discussed in the second part the importance of the relationship between public opinion and restorative justice. We need to make now clear the link between media and public opinion, in order to understand how we can influence public opinion. Research shows that crime and violence in the media can affect public opinion mainly in two ways: directly, by increasing fear of crime and perceptions of the frequency of crime - e.g. most people's sense of the seriousness of the crime problem appears to be based upon what they have seen or read in the news, rather than their own experience - or indirectly by setting the public's agenda to increase the salience of crime as a political issue - e.g. determining which issues the public believe to be most important (Beale 2002; Perse 2001; Rogers *et al.* 1997). The media then, by emphasising or ignoring topics influence the ranking of issues that are important to the public- that is, what the public thinks about rather than what the public thinks, and in time it will construct the public agenda.

It might be relevant to ask the question why do the media show such an interest in crime and how do they set the agenda? First of all, it is undoubtedly true that the public itself has a deep interest in crime because it is an issue which influences people's lives (instrumental) and minds (symbolic) deeply. The subconscious fears and resentments that are an important feature of life in high crime societies find a cultural outlet and expression on the TV screens, where they are played in the form of revenge dramas and

moral narratives of crime and punishment, stories of criminals brought to justice, and news of atrocities that provoke outrage and demand catharsis (Sparks 1992; Ericson *et al.* 1991; Duclos 1998; Reiner *et al.* 1998). These media representations in turn give shape and emotional weight to our experience of crime in a way that is largely dictated by the structure and values of the media. Secondly, realising this interest (or for their purpose this market) the media feed the public constantly on the topic of crime. But as Garland (2000) notices, this is not to say that the media has produced our interest in crime. “Without a grounded, routine, collective experience of crime, it is unlikely that crime news and drama would attract such large audiences (...) The media has rather tapped into, then dramatised and reinforced a new public experience of crime -an experience with profound psychological resonance - and in so doing, has institutionalised that experience by providing us with regular, everyday occasions in which to play out the emotions of fear, anger, resentment and fascination that crime provokes” (Garland 2000: 363).

Besides these reasons, we should also mention equally important but not openly admitted ones, like Victims Rights Movement and the Prison Industrial Complex, phenomena which have been highly prevalent in the USA, but not without their echo in other parts of the world too. A political focus on crime has supplemented the media’s focus. The individuals and groups that build and staff prisons with their pervasive network of monopolies have a strong financial interest in policies that will maintain or increase the rate of imprisonment, and they are an increasingly important political force in many places (Beckett and Sasson 2000). Similarly if we take a look at the USA, we see clearly that the victims’ rights movement has also supported a political agenda of vindictiveness and punitiveness, and they are also direct beneficiaries of the current tough on crime policies. Such shared public secrets (like the Prison Industrial Complex) - secrets kept from the public but which at the same times the public chooses to keep safe from itself, like some kind of knowing what not to know- sustain social and political institutions²².

There are further problems in the media framing of reactions to crime. For example, the media seem to project two conflicting messages about law enforcement. On the one hand, the message is that the expertise to deal with crime can only be found in the police and the criminal justice system (while mediation services are never mentioned as an option). Therefore, enhancement of the criminal justice system and the police is one core

²² For a very interesting project and a discussion focusing on “public secrets” by Sharon Daniel see the website <http://www.vectorsjournal.org>

message in the media construction of crime fighting. On the other hand, an opposite core message is that the incompetence of the criminal justice system and the police requires that individuals protect their own homes and communities and solve crime problems themselves, a solution clearly leading to violence. But what the media do not portray is the fact that there is an alternative way between criminal justice system and self-justice, which is restorative justice, an alternative which incorporates both ways and excludes violence as a means to do justice.

Other ‘mistakes’ that media makes with regards to crime and which feed subsequently on the opinion on punishment are the presentation of distorted facts or myths. Media present crime as being predominantly violent and for that reason the more prevalent the crime, the less it is reported. Under these construction and framing, the public underestimates the severity of sentences, the amount of time offenders spend in prison before being released on parole, and the severity of penalties, while they overestimate the number of offenders released on parole, the rate of crime, the violent crimes, and the number of offenders who will commit new offences (Roberts 1986). Several psychological mechanisms that generally play a role in knowledge acquisition and attitude formation - overgeneralisation (the process through which we generalise single case information to all the cases), availability (the process through which we explain facts with the most available to our mind), over-confidence (unrealistic confidence in our correct way of knowing, in our memory and in our logical explanations), and biased processing of information (the process through which our brain process information in a biased way, shutting itself to information which contradict its knowledge and opening itself only to information which confirms its knowledge) - also play a role in the formation of ‘wrong’ factual knowledge and therefore inadequate attitudes (Surette 1998). These ‘myths’ about crime and punishment lead in the long run to the development of over punitive sentiments and fear of crime. Research shows that when children watch too much crime and violence in TV, they develop fears which result in a multitude of emotions and attitudes which has been called the “mean world syndrome”, in which they think prevalently that the world is bad and there is no kindness and hope in humanity.

Furthermore the main criminological theories (accounting for why do crime happen), can be summarised roughly into: rational choice theories (which claims that committing a crime or not depend on the rational choice of everyone), biological theories (which attribute a crime to the genetics and biology of human body), psychological theories (which mainly attribute crime to human psyche, or better to the pathologies within in),

sociological theories (which offer sociological explanations for crime, e.g. attributing it the social structure, like class, education, etc), and political theories (which attribute crime according to main political theories, e.g. issues of power, racism, gender, etc.) (Surette 1998). On the other hand, it is easily discernible that media favours and depicts only certain criminological theories over others. The dominant media construction of criminals, crime, and criminality is conservative in that the explanations of criminality emphasize individual traits (e.g. biology, rational choice, psychology) as causes and minimize social and structural one. In law enforcement, as in news, personalisation combined with an event-orientation produces the appearance or collective representation that troublesome persons rather than troublesome social structures are at fault (Surette 1998). This mystifies the social roots of trouble in a society that is structurally unequal. By individualising problems on a case-by-case basis, the news leave out systemic and structural accounts that might question the authority of cultural values, the state, and the news and legal institutions themselves. This emphasis leads us to respond to crime as an emotional, human drama and to think of criminals as more numerous, more threatening, and more dangerous than they typically are (Garland 2000).

To further illustrate this more concretely: television's message about crime and justice might be summed up in two perspectives: the personalised crime perspective and the retributive justice perspective. The personalised crime perspective is, as we mentioned before, a set of assumptions that reduces crime to a personal trouble. Criminality is viewed as the failure of an individual who is morally weak or mentally deficient, a perspective which avoids the sociological causes of social problems such as poverty, unemployment, and discrimination. The retributive justice perspective - based on the common sense notion that strict punishment is not only deserved for crime but teaches lessons and deters others - is a means to vent structurally caused discontent on a safe object; the culpable, blameable, and imminently punishable scapegoats of which the street addict, the prostitute, the immigrant or the assassin are but a few examples. For instance, Bauman (2000) points to the profound anxiety and insecurity produced by the flexibility of the labour market under the deregulated capitalism favoured by neo-liberal states. Indeed, the relationship between economic insecurity and scapegoating behaviour is well known. For instance, in their now classic study, Hovland and Sears (1940) found that the frequency of lynching in the southern US states was negatively correlated with the price of cotton. When farmers suffered the most frustration, they were most likely to redirect their anger on black men accused of crimes. "Ceaselessly

blacklisted, suspected in advance if not in principle, driven back to the margins of society and hounded by the authorities with unmatched zeal, the (non-European) foreigner mutates into a 'suitable enemy' to use Nils Christie's (1986) expression at once symbol of and target for all social anxieties, as are poor African-Americans in the major cities of the USA" (Wacquant 1999).

Politics and power work in part through regulating what can appear, what can be heard (Butler, 2004:147). In the last book of Judith Butler, *Frames of War* (2009), she highlighted the way the dominant media frames exert their power to regulate and organise our affects and our senses to the point of perceiving certain life as life worth grieving and certain life as not even life. The frames that work to differentiate the lives we can apprehend from those we cannot not only organise visual experience but also generate specific ontologies of the subject. Such frames are operative in imprisonment, but also in the politics of immigration, and in war, according to which certain lives are perceived as lives while others not. The differential distribution of grievability across populations has implications for why and when we feel politically consequential affective dispositions such as horror, guilt, righteous sadism, loss, and indifference (Butler 2009: 24). To encounter the precariousness of another life (as victim or offender), the senses have to be operative, which means that a struggle must be waged against those forces that seek to regulate affect in differential ways, challenging dominant interpretations by the media. Seen in this light, we realise how certain public identification with (in general) victims, but mostly certain types of victims takes place and how this regulation of affect influences in turn reactions to crimes. What stands before us as a responsibility therefore is challenging the dominant media frames in every way possible, and creating alternative frames which lead the public to identify or at least to recognise all life as such, all life as precarious, a recognition which would generate a social and relational ontology of the subject.

Influencing public opinion through the media

What we discussed above is that the media through the selection of certain information and the depiction of crime and punishment in certain ways, distort public perception as much as they inform (Roberts and Doob 1990; Iyengar 1991; Roberts and Stalans 1997; Surette 1998; Oliver and Armstrong 1998). Recognizing the tremendous influence that the mass media have on the development of beliefs, attitudes, and on the subsequent development of policies of criminal justice, Surette (1990:3) explicates that "these policies determine what behaviours we criminalise, what crimes we tolerate, how we

treat criminals, and how we fight crime...” As the mass media create a ‘social reality of crime’ for their audiences, they also shape their audiences’ perceptions about crime and the larger world. In fact as we mentioned before, the research of Gerbner *et al.* (1978, 1979, 1980) demonstrates an association between television viewing and what they call a ‘mean world view’, a view characterised by mistrust, cynicism, alienation, and perceptions of higher than average levels of threat and crime in society. The principal idea that we adhere to is not that media inevitably produces particular effects - which is also true (as in the case of the “mean world syndrome”) - but that media has become an important cultural arena for defining, enacting, constructing and legitimating a wide range of behaviour, including crime and justice. A useful model that captures the interplay of the forces that influence public opinion was proposed by Kennamer (1992). In this model the media occupy the heart of the interaction of the three forces involved in the generation of public policy which are policy-makers, special interest groups, and public (s). Each of these parties may only express themselves to other parties through the depiction of their position in the media.

To influence public opinion, one of the most fundamental strategies involves providing succinct, accessible information on crime to journalists. Some criminologists have advocated an informed and strategic approach in terms of getting relevant criminological knowledge into the media. Barak (1994) calls for a ‘newsmaking criminology’ and Henry (1994) for efforts to provide the media with a ‘replacement discourse’ - an alternative discussion that focuses on relevant goals such as the promotion of the paradigm of restorative justice, and secondly to provide the public with better information about crime and justice. By ensuring relevant information is made accessible to the media, we may be able to generate a more informed public debate on justice. On the other hand, Indermaur and Hough (2002: 210) argue persuasively that ‘Anyone who wants to improve public debate about crime needs to be attuned to [the] emotional dimension [of attitude formation]’, given that the punishment of criminal offenders is a deeply emotive issue. In this project we focus equally on information and education, and on appeals to the rational and emotional side of the public. Neither of them alone would make a substantial change in the desired direction, but the combination of efforts on the two elements would be stronger. In the sections that follow we will address two main theoretical (highly intertwined with practice) developments in the field of media with regards to information and education on crime, justice, and other socially relevant topics: newsmaking criminology as part of a replacement discourse, and entertainment-education strategy as part of communication for social change.

Replacement discourses*The importance of news media*

Why the focus on the news media? In the contemporary knowledge society news is a representation of authority; it represents the authorized “knowers” and their authoritative versions of reality. People don’t watch news (only or mainly) to get simple facts, but to receive the moral message and implications that they transmit. Furthermore, crime is among the most popular of all news topics regardless of type of media. The presentation of crime in the news media helps define the boundaries of society, contributing to social stability by revealing what is acceptable behaviour. The news is taken seriously by the public because of its moral authoritative power, and not because it is the best available source of primary or ‘raw’ facts (Katz 1987). News as we mentioned is what is presented as real, true, and objective. The feeling we get when we watch it, is that we are getting an objective view of the world, while the reality is that we are getting an edited, constructed and framed slice of the world.

What ultimately gets in the news is determined by a filtering process. The need to satisfy organisational objectives and the interrelationships between news and source organisations determine which crimes are considered for presentation, which survive the newsmaking process and how much space is given to a story. The primary objective of the news media is to provide a product that sells, something that will appeal to the largest percentage of a diverse audience. The interrelationship between news organisations, their journalists, and the types of criminal justice agencies are significant in determining what crime news is published or broadcast and how that news is presented. Gans (1980) defined news as information which is transmitted from sources to audiences, with journalists - who are both employees of bureaucratic commercial organisations and members of a profession- summarising, refining, and altering what becomes available to them from sources in order to make the information suitable for their audiences. For example editors in general are not interested in stories from a prison, of rehabilitation in prison, good conditions of prison, early release of convicts. Good news about prisons and prisoners are news that the press finds difficult to handle, and the reasons for this resistance are both pragmatic and ideological. The market potential of rehabilitation stories is considered poor. On the other hand conflict is the fuel for media material, and television particularly thrives on debates between prison reformers and hardliners who are often forced into dichotomous, adversarial positions by provocative interviewers.

Newsmaking criminology

The sociology of social construction in relation to issues of deviance and control has been represented historically by three prominent theoretical traditions: symbolic interactionism, labelling, and postmodernism. Currently in the study of crime and justice there is an emerging theoretical model - Constitutive Criminology- that combines insights from the two older theoretical traditions and from a more recently developed synthesis of postmodernism and cultural Marxism. Constitutive criminology, as articulated by Henry and Milovanovic (1996), yields an ideal theoretical venue from which to study newsmaking criminology - the study of and interaction with crime and justice news construction. The authors represent the world of constitutive criminology as that which is concerned with identifying the ways in which the interrelationships between human agents and their social world constitute crime, victims, and control as realities. What they argue for is that mass media realities of crime and societal reactions to various crimes, criminals, and victims, reinforce paradigms or models for addressing crime and crime control as though they were independent social problem unrelated to cultural production and mass media. Constitutive criminology is oriented to how we may deconstruct these realities, and to how we may reconstruct alternatives (Henry and Milovanovic 1996). In other words it works toward the development of a replacement discourse. The replacement is with alternative conceptions and practices such as those which are part of an emerging 'criminology of peacemaking', which refers to those proposals and programmes that foster mediation, conflict resolution, reconciliation, and community.

In this theoretical framework, Barak (1994) proposes newsmaking criminology, which refers to criminologists' conscious efforts and activities in interpreting, influencing, or shaping the presentation of 'newsworthy' items about crime and justice. Any account of social life is necessarily partial. We selectively and systematically omit in order to sharpen and differentiate, therefore to focus on a topic is to enhance by elimination. Journalists are professional account makers, skilled at purposive elimination, in order to reach enhancement. Criminologists are not inactive in this process. Our assent to communicated truths is emergent though our silences, because as Michel Foucault (1979) has reminded us, silences are strong tools in the construction of reality. To transcend our passive contribution to such socially constructed and publicly consumed crime truths, it is necessary for criminologists to actively intercede in the constitutive process (Henry and Milovanovic 1996: 216).

When journalists move knowledge produced in the domain of the disciplines of social sciences (like criminology) into the domain of news, they remove certain crucial features, such as complex statistics, and contradicting and coexisting situations, and recast it into “soundbites”, in terms compatible with the norms and procedures of journalism. Language and jargon is a key issue of false representation, opening up the possibility of misinterpretation. When social scientists employ terms which journalists assume the general public will not understand, journalists feel free (almost obliged) to translate such terms into everyday speech. There are no studies illustrating the relationship between restorative justice practitioners and journalists, but there is a very interesting study of the relationship between social workers and journalists, which shows several striking parallels to keep in mind. From this research it became immediately evident that there is an enormous conflict of opinion between them. For example, it is claimed by many social workers that the media are only interested in the sensational and therefore concentrate largely on child abuse tragedies, that many papers are hostile to the concept of welfare state, that journalists don't understand the various functions of social services and their importance to the society, that they are not interested in more mundane but vital work that is undertaken with a wide range of groups such as elderly or handicapped. Journalists on the other hand view social workers as being a naive group with an unreal sense of their own importance who have a total ignorance of how media operate and show no willingness to learn. When covering social work issues journalists frequently complain of the secretiveness and specific and jargon-like language of social workers. A major source of misunderstanding arises out of the concept of confidentiality. Newspaper stories and television programmes frequently require a human interest angle and this usually means talking about or interviewing a social worker's client. More often social workers refuse to refer journalists to clients, to avoid a breach of confidentiality. Journalists reply that they would be happy for the social worker to approach the client first to find out if they are willing to talk to the media.

Bourdieu's (1993) concept of the field of capital or power is helpful to address the above-mentioned differences and challenges. Bourdieu identified three forms of power or capital: economic, cultural, and social capital. Economic capital is material wealth, financial resources or economic goods (money, stocks, property, etc.) Cultural capital is cultural competencies and qualifications, talents, knowledge and expertise, and level of mental and intellectual growth. Social capital is having the skills to socialise, having interesting relationships and memberships of networks, place in society, image and good will. Successful collaboration involves partners who possess together sufficient

economic, cultural and social capital to make working together attractive, worthwhile, and profitable. But Bourdieu (1993) also says that a basic antagonism between fields - or completely different working 'habitus' - is often very difficult to overcome.

But let us turn our attention to the replacement discourse. As Henry and Milovanovic (1996) emphasize, a replacement discourse is not the same as oppositional discourse, even though both may result in public challenges to prevailing crime definitions. Oppositional discourse is as constitutive of existing reality as is supportive discourse since each addresses and therein reproduces the prevailing conceptions while disputing their content. Replacement discourse, in contrast, is directed at the dual process of deconstructing prevailing structures of meaning and displacing these by completely new conceptions, distinctions, words and phrases, which convey alternative meanings. Recent examples of replacement discourse can be found in the work of Christie 'Conflict as Property' (1977), the sociology of deviance conceived as a 'sociology of acceptance' (Bogdan and Taylor 1987), Katz's (1988) formulation of murder as 'righteous slaughter', and Pepinsky (1991) with his ideas of 'peacemaking criminology'. Such alternative constructions of crime are however unlikely to impact the public domain of crime if they remain confined to academic discourse. Newsmaking criminology as a replacement discourse - in order to create a change - should intercede in the public debate primarily through the news media. Let us then consider in details the newsmaking criminology approach and the methods it uses.

There are mainly four styles of criminological intercession identified by Henry (1994):

Disputing data: the criminologist as expert. It is primarily reactive, involving criminologists challenging published news reports and crime stories with a dispute about their content, typically the dispute is over a distortion in the image presented of offenders, victims, policy, or crime. It may involve charges of omission, but importantly it also involves new or alternative data to correct the original image. The problem with this form is that the journalist retains control over the direction of the story and the impression is that 'experts disagree'.

Challenging journalism: the criminologist as journalist. One way to make 'disputing data' into an exercise of replacement discourse is for criminologists to take over the authorship of crime news articles, rather than allowing themselves to be used as subjects or sideshows within them. Here the criminologist either becomes a freelance journalist, writing commentary or feature articles (Roberts and Gabor 1989), or becomes the freelance reporter and writes articles for the news media on issues raised by events, or at criminology conferences (Johns 1986).

Self-reporting: the criminologist as subject. Here a criminologist is typically involved in a research study, programme evaluation, or programme implementation and either actively publicises the results or provides the words for local journalist to describe their work. The advantage is that the story is the prime, if not the exclusive source for the news-item.

Confronting media: the criminologist as educative provocateur. Here the media are both the direct target and the medium. In other words, the subject of study and object of criticism of this version of replacement discourse is the media itself.

Communication for social change

A message inherent in a certain format can have different degrees of explicitness, information value and effectiveness. Explicitness of a message means offering and presenting material which is explicit to people who know that the objective is to inform/educate them. Low explicitness means that the informational/educational message is hidden and people do not think about this objective when they read or watch something. Information value refers to the amount of information that is included in a certain format. Effectiveness is whether the objectives of the media format are achieved in terms of increased knowledge or changed attitudes and behavior of the targeted audience. Research shows that the more explicit and informative a message is, the less effective it will be²³. Restorative justice services and programmes in general use mainly explicit and informative formats to target their audiences. In the previous section we also discussed at great length the importance of news for the creation of a replacement discourse. On the other hand, keeping in mind the concerns of the limits of effectiveness in proportion to explicitness of information and education, in this section we will address a complete different area (communication for social change) and format (entertainment-education).

In comparison to other social science disciplines, the field of communications in general, and communication for social change in particular is quite new. The field of communication for social change (CSC) covers a variety of concepts and strategies such as: communications for development, development communications, social marketing, “edutainment”, “infotainment” or entertainment-education/enter-educate (E-E), participatory communication, etc. Although research attempts to make a great deal of the distinction, between information, education and entertainment, people do not

²³ These insights come from a presentation of Steven Eggermont held in the International Seminar “Building Social Support for Restorative Justice”, June 2009, Leuven, organised by the European Forum for Restorative Justice.

separate the information (and/or education) and entertainment components of their habitual newspaper reading and broadcast use. For these reasons theories of education and mass communication have been troubled by a naive distinction between information (or education) and entertainment. The E-E approach posits that an individual can learn by observing and imitating the overt behaviour of others in real life or on television (vicarious learning).

Education-Entertainment strategies

Education through communication is difficult, because the audience for education is generally inattentive and uninterested. The synergy of entertainment and education consists of deliberately combining the joy of entertainment with the empowering potential of education.²⁴ The best definition of E-E strategy is given by Singhal (1990) who sees E-E as “a process of putting educational content in entertainment messages in order to increase knowledge about an issue, create favourable attitudes, and change overt behaviour concerning the educational issue”. The theory and practice of E-E are based on inclusiveness, diversity, and a variety of genres, multidisciplinary theories, methods, formats and channels, and the essence of the E-E strategy is to use the mass media characters as models of behaviour for influencing people towards social change.

Many educators (especially health educators) have started to use ‘social marketing’ principles to raise and hold the attention of their target groups. Social marketing has evolved from business marketing practices, but is distinguished by its emphasis on so-called non-tangible products, like ideas, attitudes and lifestyles (Lefebvre and Flora 1988). One of the essential aspects of social marketing is a consumer, client orientation (what do they want), instead of an expert-driven orientation (what do they need). From the marketing perspective, popular television programmes can be an interesting persuasive mass medium. According to Montgomery (1989), E-E as a popular art form has a unique ability to engage viewers in ways that news programmes do not.

The E-E approach draws upon Albert Bandura’s (1986) Social Cognitive Theory, which posits that an individual can learn by observing and imitating the overt behaviour of others in real life or on television (vicarious learning). Bandura found that imitation or modelling could be influenced by the type of reinforcement the role model received; role models who were rewarded were more likely to be imitated than role models who were punished. Moreover, research indicates that the cognitive processing of

²⁴ The section on E-E strategy relies heavily on the comprehensive papers of Martine Bouman (2002, 2004).

information occurs best when triggered by a positive affective evaluation. Emotional appeals can lead to attitude change especially when people's motivation to think about the message is low (Petty and Cacioppo 1986). If people do not appreciate the E-E formula inherent in a drama they will stop watching and become less receptive to the message, therefore the drama must be sufficiently gratifying and the educational message should not be too obvious. The E-E strategy aims at being more compatible with the lifestyles and culture of audiences who lack a 'reading culture' and make less use of print media and more use of television (Bouman 2002).

E-E, while being mainly a field of scholarly analysis, has a professional practice strongly linked to the entertainment industry. This mingling between communication scholars and television professionals has highlighted many challenges which we should also keep in mind during a possible future engagement with E-E in restorative justice. The most important thing to start with is to frame our requests in a way that the media partners feel that there is something for them to gain. In the E-E collaboration so far there has been always tension between following systematic and organised plans, as socially engaged professionals are used to do, and following creative impulses, as television professionals are used to do (Runco and Albert 1990). Socially engaged professionals often become annoyed with how television professionals indulge in fantasies and therefore feel the urge to pull the creative team back to reality. Social professionals usually have scientific training in which matters of objective information, truth, balancing of values, and standardised protocols and procedures are important, while television professionals have professional training in which creativity, originality, spontaneity, and authorship are important.

But what are some of the lessons learned from these previous collaborations which can be useful to the future collaborations between media professional and restorative justice professionals as well? First of all, it is crucial that in a common E-E television project, both the restorative justice organisations and the television organisation delegate professionals who are capable of dealing with the tensions of combining entertainment and education and differences in work culture. Restorative justice professionals - among other things - should invest more time in watching different genres of television in order to become more television literate. Secondly, time should be invested in a preparatory stage for creating mutual understanding and a joint frame of reference between the television professionals and the restorative justice communication professionals, because when the actual production process starts, there is no time for relationship building (Bouman 2002). Thirdly, RJ professionals should be prepared to

work in a high risk environment where things can get out of control, because while in restorative justice field clear goals can be set, and messages can be created while following a careful structured plan, working in the entertainment field on the opposite involves high risks.

Bourdieu's (1993) concept of the field of capital or power is again helpful to address these challenges. Based on his typology of capitals, Bourdieu would conclude that successful collaboration involves partners who possess together sufficient economic, cultural and social capital to make working together attractive, worthwhile, and profitable. But Bourdieu (1993) would also conclude, as already mentioned, that a basic antagonism between fields (or completely different working 'habitus') is often very difficult to overcome. The design of an optimal E-E television programme is not possible when the frame of reference of one partner dominates that of the other, because the asymmetry of power leads to undesired field antagonism. While a field with the greatest economic and commercial interests will try to dominate the other fields, what is required is a joint frame of reference that incorporates elements of the 'habitus' of both professional fields, or create a common 'E-E habitus'. To do so, restorative justice organisations must become more media and television literate, and the television organisations must recognise that commercial interests can go hand in hand with social accountability (Bouman 2002).

Alternative media strategies

Media studies have for a long time focused mainly on the question of the effects of mass media on audiences. Findings in several different research areas suggest that the concept of mass influence, enacted through the mass media, is of itself no longer adequate to explain the utility of communications. Media effects research, while generally supporting a minimal effects model -which says that the effects of media on society are minimal - remains inconclusive and strongly contested. Media and audiences are becoming more fractured and dispersed with the arrival of new media. Put together, these trends suggest that traditional critical paradigms in media studies – those based on effects - are difficult to isolate and establish, media texts are complex and contradictory, and audiences are active and influenced by other social and cultural factors.

We cannot afford at this point in time when media is constantly changing to use only one static strategy. In what follows we will analyse in the framework of communication for social change (CSC) alternative media strategies. As we mentioned in the beginning of this section, CSC covers a variety of concepts and strategies such as: communications

for development, development communications, social marketing, “edutainment”, “infotainment” or enter-educate (E-E), participatory communication, community informatics, alternative media, etc. CSC is defined as a process whereby internal or external groups intentionally send messages through various communication mediums into a targeted community or society with the intention that their message will be properly ingested to produce a change in behavior or action (McGrath 2003:1). The principles and objectives of communication for social change are: it empowers individuals and communities, it engages people in making decisions that enhance their lives, it focuses on direct and many-to-many communications, it relies on democratic ideals, it allows previously unheard voices to be heard, and both the process of communications and the content of the messages are controlled by the receiving communities.

These efforts within the field of communication for social change go hand in hand with the new movement within the media themselves on the democratisation of the media. Here, it is useful to distinguish between democratisation *through* the media (the use of media, whether by governments or civil society actors, to promote democratic goals and processes elsewhere in society), and democratisation *of* the media themselves. Marx’s concept of press freedom suggests that participation in public communication is determinative for the relationship among individuals in a group, community and society. This is not limited to political participation in the sense of raising citizen initiatives and individual participation in the processes of political decision-making, for example, public expressions of opinion and participation in voting and elections. Although political dimensions of participation are most widely seen and most often discussed, participation extends deeper into the existence of human beings and beyond politics: *through participation the individual moves from privacy into publicness.*

A great deal of critical scholarship revolves around discussions of what Jürgen Habermas (1989) calls the *public sphere* – typically conceived as subsuming the news media – as a site of political power, cultural recognition and representation. Social movements - such as restorative justice - are crucial actors in this arena located outside the realm of traditional politics. Habermas in his later works supported alternative media’s role in promoting civic participation (Habermas 1992). Alternative media provide a ground for the communicative action and interaction that Nancy Fraser describes as *counter-public spheres*, where members of subordinated social groups ‘invent and circulate counter-discourses, which in turn permit them to formulate oppositional interpretations of their identities, interests and needs’ (1992: 67). Activists

are participants in such counter-public spheres, where culture flows through participation in both alternative media and social protest – an association confirmed by communication research. For example, a content analysis of protest coverage concluded that alternative media created a sense of community, in addition to increasing the body of knowledge shared by activists, providing mobilizing information about future events and linking radical movements nationally and internationally (Hertog and McLeod 1995; McLeod and Hertog 1999).

Scholars seeking to understand the role of alternative media in social change might hesitate to shift their gaze and their resources due to the facts that news audiences (which are anonymous and dispersed throughout society) are more difficult to identify than news texts (which are convenient to collect and analyze) or news producers (who are easy to identify and contact through their employment). This neglect of audiences seems paradoxical when one considers that alternative media aim to learn from people at the grassroots level as well as to inform them. The producers of non-profit, low-budget, amateur and community media commonly lack the time, funds and training to study their own users. By contrast, mainstream media richly reward market-research firms for delivering detailed proprietary information about audience demographics, attitudes and behaviors.

Another interesting movement in line with the above trends is civic journalism, which begins with the understanding that journalists have a fundamental responsibility for *strengthening* civic culture. The culture of journalism is well schooled in making separations: journalists vs. those they cover; news vs. editorial; facts vs. values; print vs. the electronic media. On the other hand civic journalism is about making connections between journalists and the communities they cover, and between journalism and citizenship. It is first of all a set of practices in which journalists attempted to reconnect with citizens, improve public discussion, and strengthen civic culture. Second, it is an ongoing conversation about the ultimate aims of journalism. Public journalists are people who believe that the press should take a far more assertive role in trying to make democracy work than they have in the past. Finally, it is a growing movement of working journalists-print and broadcast-some academics, philosophers, and a number of institutions who see civic journalism as central to the reconstruction of public life.

Civic journalism is an ongoing experiment. Like many projects of new citizenship movements, it is rooted in the diverse practices of local communities. There is no right way to do civic journalism. There are, however, basic principles. The journalist's primary orientation should be toward citizens and their concerns, with the relationship to

politicians and insiders seen as secondary-important, but only insofar as it illuminates what matters to citizens. A public is something more than a market for information. Publics are formed when we turn to face common problems in argument, dialogue, discussion, and fostering this view means that journalists must shift from seeing readers or viewers as audiences to seeing them as citizens; from seeing consumers to members of a community (Perry 2003).

Conclusions: changing restorative justice communication process

The restorative justice field has much to gain from moving beyond its traditional communication strategies and initiatives and recognizing communication as a full partner, rather than an “add on” to the restorative justice movement. Restorative justice the way the movement stands now has great communicative potential but not communicative power. To explain better by what is meant by communicative power, let’s look at the definition provided by Andren (1993) on individuals and try to make the parallel with the movement. According to Andren’s normative definition: *a person has communicative power* to the extent that s/he (1) has consciously developed opinions and attitudes of his own; (2) s/he knows how to express his opinions and attitudes in adequate ways; (3) s/he has access to media where s/he can express his opinions and attitudes; (4) by having access to the media, s/he can reach a large and/or influential audience or a particular audience which he wants to influence; (5) by reaching the target audience s/he will, in fact, influence the opinions, attitudes, or behaviors of other citizens in accordance with his intentions. (1993: 61).

In this part we have advocated three ways of working with the media by focusing on information, focusing on education, and focusing on participation. Thinking in terms of the levels on which the public opinion can be influenced, we made an exercise on identifying major possible ways to do this. As a result we addressed two main theoretical (highly intertwined with practice) developments in the field of media with regards information and education on crime, justice, and other socially relevant topics: newsmaking criminology as part of a replacement discourse (targeting mainly the cognitive and the political level), and entertainment-education strategy as part of communication for social change (targeting mainly the emotional and the cognitive level).

Newsmaking criminology refers to criminologists’ conscious efforts and activities in interpreting, influencing, or shaping the presentation of ‘newsworthy’ items about crime and justice. This approach argues that to transcend our passive contribution to such

socially constructed and publicly consumed crime truths, it is necessary for criminologists to actively intercede in the constitutive process of such knowledge and truth. Newmaking criminology works in the theoretical framework of a replacement discourse, which is directed at the dual process of deconstructing prevailing structures of meaning and displacing these by completely new conceptions, distinctions, words and phrases, which convey alternative meanings. The styles of newmaking criminology that we mentioned were: Disputing data where the criminologist acts as an expert; Challenging journalism where the criminologist acts as a journalist; Self-reporting where the criminologist acts as a subject, and; Confronting media where the criminologist acts as an educative provocateur.

Subsequently, we moved onto a complete different area (communication for social change) and format (entertainment-education). Entertainment-education is a strategy and a process of putting educational content in entertainment messages in order to increase knowledge about an issue, create favourable attitudes, and change overt behaviour concerning the educational issue. The strategy is based upon the belief that emotional appeals incited by a message can lead to attitude change especially when people's motivation to think about that message is low. We also reflected on a possible future cooperation between media professional and restorative justice professionals, and argued among other things that restorative justice organisations must become more media literate, and the media organisations must recognize that commercial interests can go hand in hand with social accountability. We concluded that the restorative justice field has much to gain from moving beyond its traditional communication strategies and initiatives and especially in recognizing communication as a full partner, rather than as additional to the restorative justice process. Restorative justice has great communicative potential but yet not communicative power.

6

Civil society and restorative justice: channels of cooperation

One of the main questions which this contribution addresses is: “How can cooperation be developed with civil society organisations in order to create broad support for RJ?” There are mainly three concepts which need clarification and careful analysis here. One is the difficult concept of civil society, a concept so broad and hard to grasp and ‘utilise’, and to a some extent an easier one, and therefore better one to work with, the concept of civil society organisations. The other concept in need of clarification and understanding is cooperation. Understanding what kind of cooperation should we develop goes hand in hand with understanding what kind of social support do we aim to create for restorative justice. This part will address these concepts and attempt to answer to some extent the question we started with. The current part and the following one are closely tied to another document which is the collection of cases²⁵ on how to work with civil society organisations in the field of restorative justice. The collection and the parts mirror and complement each other in many ways. While the part will offer some insights into the matter of cooperation with civil society in the area of restorative justice, and will delineate a certain understanding and approach to the matter, the case collection will offer concrete strategies and illustrate this thinking through presenting and analysing the work done in the field through many good examples gathered throughout Europe and beyond.

Civil society: a complex discourse

What is civil society?

A search for clear definitions in literature has proved useless, because of their multitude and variety. Civil society is currently part of a global discourse, but its origin lies in the European philosophical tradition. Interestingly, up to the end of the 18th century the term was equal with political society or state. After the 18th century many great thinkers have contributed to the discourse of the development of civil society, among which Locke, Hegel, Paine, Tocqueville, Marx, Gramsci, Arendt, Althusser, Habermas and more recently Giddens.

²⁵ See “*The practical guideline on working with civil society and citizens in restorative justice*” (2010) by Carmen Borg, *European Forum for Restorative Justice*.

Although the debate on civil society has been very complex and all these and other thinkers, depending on their social context, have added their own flavours to this debate, we can very roughly try to identify the two major lines of this discourse.

The first line of the debate has moved along the duality economy/state. One group of thinkers have always emphasized the economical aspect of civil society, placing it therefore more towards the area of economy and arguing that civil society cannot be viewed in isolation from economical forces. The other group has always looked at it as a sociological phenomenon, and has inquired into the civil society as composed of associations and the role it plays as an intermediary between the individual and the state. We could very roughly say that in Europe both these accounts have been influential, on one side with Hegel emphasizing the economic interests of civil society and on the other with Locke emphasizing the associational side and the role of civil society.

Besides this first line of concern, the second line has been with regards to the relation between state and civil society. Within this line, one group of thinkers has emphasized the need for the civil society to be completely autonomous of state, while the other group has argued that this autonomy is impossible as state and civil society are organically linked. Again we can say that in Europe, the relation between the state and civil society is highly prevalent and has rarely been questioned compared to US where civil society is often articulated as existing against and/or apart from the state. The way continental Europe treats civil society is instrumental and analytical, while the US which sees it as a fundamentally good thing in itself (Hyden 1997).

In recent years interest throughout the world in the broad range of institutions that occupy the social space between the market and the state has grown considerably. Most writers on civil society agree that civil society has an institutional core constituted by voluntary associations outside the sphere of the state and economy. Named ‘as the “non-profit,” the “voluntary,” the “civil society,” the “third” the “social profit,” the “NGO,” or the “charitable” sector, this set of institutions or associations includes within it a large range of entities—hospitals, universities, social clubs, professional organisations, day care centres, grassroots development organisations, health clinics, environmental groups, family counselling agencies, self-help groups, religious congregations, sports clubs, job training centres, human rights organisations, community associations, homeless shelters, and many more’ (Salamon, Sokolowski, and List 2003).

Similarly, Braithwaite and Strang (2001) adopt a very broad definition and conception of civil society as composed of all the institutions intermediate between the individual and the state. This lets in families, schools, churches, private workplaces, students' groups, media, trade unions, social movements (such as the victims of crime and women's movements), and communities. Another definition in the same line is the one of Habermas (1992a) where the range is from churches, cultural associations, sport clubs, debating societies, independent media, academies, groups of concerned citizens, grass-root initiatives and organisations of gender, race and sexuality, all the way to occupational associations, political parties and labour unions.

All the current broad definitions, both the ones which locate civil society between the individual and the state, and the ones locating it between the state and the market have their problems. For example, whether civil society includes business or whether the market constitutes a separate sphere is unclear. The other crucial problem with the boundaries of civil society lies in its relationship to state and politics. Would it make sense, following Antonio Gramsci, to distinguish "civil" from "political" society? How should we then distinguish between political associations themselves and the political activities of civil society, for example interest groups and religious bodies mobilized in pursuit of political goals? (Foley and Edwards 1996). We will not try to answer these questions here, but we will rather adopt a definition which methodologically helps us avoid unclear and blurred boundaries to the largest extent possible. Despite adopting the following definition, we will also later in this report turn to the broader definition and see how we can use both.

A structural-operational definition

Despite the complexity of the discourse, and despite the blurred boundaries between economy, state and civil society we need to some extent a methodological differentiation which we can grasp and work with. For the sake of having some clarity in this part in terms of our approach to civil society, we will use a structural-operational definition proposed by Salamon, Sokolowski, and List (2003), a definition which guides us towards some understanding on delineating which organisations to target within civil society. In their project (mention the project here), a consensus emerged on five structural or operational features that defined the entities comprising the so-called civil society sector:

- *Organisations*: this means that the entities comprising the civil society sector must have some structure and consistency to their operations, whether or not they are formally constituted or legally registered (a structure and consistency reflected in regular meetings, a membership, and/or procedures for taking decisions that participants recognise as legitimate)
- *Private*: the sense of this is to delineate between state and civil society organisations which are not part of the apparatus of the state, even though they may receive support and funding from governmental sources.
- *Not profit distributing*: this feature implies that they are not primarily commercial in purpose and do not distribute profits to a set of directors, stockholders, or managers. Civil society organisations can generate profits in the course of their operations, but any such profits must be brought back into the objectives of the organisation.
- *Self-governing*: the sense of self-governance is that the organisations have their own mechanisms for internal governance, are able to start and cease operations on their own authority, and are fundamentally in control of their own affairs.
- *Voluntary*: this feature implies that membership or participation in these organisations is not legally required or otherwise compulsory.

The result is a definition that encompasses informal as well as formal organisations; religious as well as secular organisations; organisations with paid staff and those staffed entirely by volunteers; and organisations performing essentially expressive functions—such as advocacy, cultural expression, community organising, environmental protection, human rights, religion, representation of interests, and political expression—as well as those performing essentially service functions—such as the provision of health, education, or welfare services. While the definition does not embrace individual forms of citizen action such as voting and writing to legislators, it nevertheless embraces most organised forms, including social movements. Intentionally excluded, however, are government agencies, private businesses, and commercial cooperatives. This definition will be our starting ground when considering cooperation with civil society, but it is worth mentioning that the definition for us has only instrumental value, therefore we will feel free to adapt or enlarge our scope whenever needed or whenever in our interest. The clearest example which comes to mind, excluded by this definition, but nevertheless of great relevance for our work is cooperation with local and administrative government like municipalities, and also in several countries political parties' forums.

Where does restorative justice stand within civil society?

Another interesting question is whether restorative justice is part of civil society, and whether it is possible for restorative justice organisations to speak of (and therefore isolate the concept of) a civil society and establish a certain relation with it, as if these organisations or for that matter the restorative justice movement was not part of it. Here the structural-operational definition that we just presented will help us make some clarification. Let us state the obvious at this point, in order to be clear of who is talking and what is being said. The current contribution and the project Building Social Support for Restorative Justice of which this contribution is a product, or a result, has been prepared mainly by the European Forum for Restorative Justice, in collaboration with other institutions which have an interest in or which work in the area of restorative justice. Therefore, the voice behind the ‘we’ is sometimes the European Forum (which sometimes means the researchers working concretely on the project and sometimes the whole membership) , sometimes the whole group which participated in creating this ‘discourse’ (the partners and supervisor), and sometimes it attempts to encompass (and therefore also create constantly through a discourse) the whole movement. Often, these ‘we’-s have indeed blurred boundaries. It becomes nevertheless for the sake of analysis necessary to clarify what we mean by the relationship of restorative justice and civil society and who is the concrete subject attempting to create or foster such a cooperation.

There is a whole growing literature around new social movements (NSMs). Social movements in general can be defined as groups of like minded individuals combining in a variety of organisational forms to attempt to enact or redirect social change. For many theorists, contemporary social movements are fundamentally different from those of classical industrial society, therefore called also new social movements. But what are considered as defining characteristics of new social movements? New social movements are generally defined by four main features:

- 1) Non-instrumental, expressive of universalistic concerns rather than direct interests of particular social groups
- 2) Oriented more toward civil society than the state (suspicious of centralized bureaucratic structures and oriented toward changing public views rather than elite institutions, more concerned with aspects of culture, lifestyle, and participation in the symbolic politics of protest than in claiming socio-economical rights)
- 3) Organised in informal, loose and flexible ways, avoiding hierarchy, bureaucracy, and even sometimes qualifications for membership.

4) Highly dependent on the mass media through which appeals are made, protests staged and images made effective in capturing public imagination and feeling (Nash 2000).

At a quick glance we recognise the first and the third characteristics as defining features of restorative justice, but hesitate to ascribe immediately to the other two. For writers like Melucci, a central prerequisite for the redefinition of democracy by NSMs is the creation and maintenance of public spaces independent of the institutions of government, the party system, and the state structures (Melucci 1989). Restorative justice has always been in practice a movement dependent on the state, as its activity has been defined in a close relation to the criminal justice system, and legislation. Two things are worth mentioning here, first that although restorative justice has closely collaborate with the state, it also has a strong orientation towards civil society, especially recently, and secondly that the NMSs theories have underestimated the relationship of the social movements and the state. With regards to the last feature, restorative justice as a movement has not relied on the media as much as other NSMs have, but having understood the importance of this cooperation it is recently moving towards this direction.

Finally we can say that although civil society and social movements are not one and the same thing, they are highly connected and intertwined to each other. If we come back to our previous argument then, when the 'we' of speaking (or rather intentionally embracing) is restorative justice as a movement, we indeed cannot clearly isolate it from civil society, but rather have to understand that it is (like all social movements are) a dynamic constituting part of civil society. On the other hand, several social movements utilize more organised forms to achieve their objectives which can take the form of civil society organisations, associations, and institutions, like the European Forum for Restorative Justice, and that is the 'we' we have in mind when we try to imagine concrete cooperation with other civil society organisations. The European Forum, because of its broad membership encompasses many other restorative justice organisations, doing many different things, and it is often in the name of all of them that we speak, or about all of them. This large representation will become more obvious in the collection of cases on working with civil society organisations and citizens, through the illustration of concrete experiences.

Different concepts of civil society in Europe

Although, it is possible recently to speak of a global civil society, it is not wise to speak of civil society generally and globally when we speak of justice, and especially restorative justice. In what follows we will briefly analyse the concept of civil society (which is sometimes inflated with the concept of community) in relation to justice in general, and in particular with restorative justice, in Western, Central-Eastern and Southern Europe.

Considerations in Western Europe

In an important book edited by Joanna Shapland (2008) called “Justice, community, and civil society”, different authors analysed the concept of community and/or civil society in relation with justice in their own countries, and the whole volume tried to compare these relationships among countries. In the book, there is not one single definition of civil society, which sometimes means simply the citizens of one country, and community is sometimes used interchangeably with civil society. Anne Wyvekens and Philip A. Milburn (2008, same volume) wrote in two different, albeit complementary articles, that in France the word ‘community’ itself is seen with suspicion by the state, given the strong emphasis on the Republican ‘Jacobin’ concepts like unity and equality, compared to the negative connotation that the word ‘community’ (a withdrawal in itself) has. In this tradition there can be no intermediate political collectivity between the individual and the state. Nevertheless, both authors write that the state of France, due to a number of different reasons, has made serious attempts to get justice closer to citizens, whereby started also the movement called ‘proximity justice’ (*la justice de proximite*), which meant literally a justice reaching out to the population and to other institutions, a movement belonging to the trend of deliberative democracy. France has turned for help to two types of agencies in this process: non-profit-organisations and professionals, two types of societal forms which remain partly under state control by legislation, funding, and other conditions.

Mediation schemes in France have mainly been organised through the offices of prosecutors, relying on former police officers or former professional magistrates, all acting as pseudo-lay magistrates in a very well controlled mediation schemes (Milburn, 2002). Other community service and reparations orders are carried out by two professional state agencies placed under the Ministry of Justice, although the professionals have a certain degree of freedom in their work. The word ‘restorative’ is hardly used as Milburn specifies. Although according to Wyvekens (2008) the proximity

justice has evolved from local experimentation to having its own definition in the statute, it has by no means changed the French way of perceiving or doing justice, which is mainly through the vertical relationship between citizens and institutions. As Milburn also says, power and responsibility in France lie either with the citizen or with the state, never with an intermediate body.

Similarly, according to Axel Groenemeyer (2008), in Germany, the concept of community (*Gemeinschaft*) and civil society (formerly: *Bürgerliche Gesellschaft*; today: *Zivilgesellschaft*) had been abandoned as a framework for a political discourse after the establishment of a national community (*Volksgemeinschaft*) in Nazi Germany, which has loaded the term community with unpleasant memories. The various existing discourses instead of using the concept community to delineate a certain group, chose to speak in very concrete terms and of very specific institutional forms like families, voluntary associations, local protest groups, and self-help groups. In the only cases when community is addressed explicitly (*'Gemeinde'*), it means a locality or place, a unit of local government administration rather than something cultural or ideological.

On the other hand, while civil society (*bürgerliche Gesellschaft*) since the Enlightenment until 1980s meant more or less an autonomous public sphere, of free citizens, having a bourgeois culture and belonging to the economy rather than the state and the family, after 1980, and more precisely after 1990, due to trends of democratisation in Eastern Europe and the discourse on multiculturalism, the concept of civil society (now as *'Zivilgesellschaft'*) came back into the German political discourse mainly as a re-translation from the English language. Nevertheless, just like in France, the model of republican integration on the basis of universalistic rights and laws has never been questioned in Germany. According to Groenemeyer (2008), faith in universalistic law-based policy-making is accompanied by strong ties to professionalism and professional associations. Another important feature of German political institutions and culture is the status of local government which is guaranteed a right to self-administration by the German Constitution and relies on forms of local participation of informed citizens.

Whereas parallel abolitionist movements, like anti-psychiatry in the 1970s, had an important impact and gave rise to political reforms in Germany, the abolitionist movement (giving the conflicts back to the people) in criminology remained marginal and never made it to the political agenda²⁶. Although some efforts are made in the field of crime prevention, like community policing, these activities are never 'bottom-up' but

²⁶ On the other hand, they didn't make it anywhere else either.

rather controlled and initiated by the police. Similarly, the role of lay persons in criminal justice is strictly limited. The dominant roles of professional criminal justice institutions are not contested, but highly trusted and respected by the German public (see also similar arguments made by Tonry (2001) explicated in Part 3).

Measures of restorative justice, such as victim-offender mediation and reparation/compensation, are organised outside but in close relation to the justice system by professional social service organisations and non-governmental associations. A qualitative study conducted by Tränkle (2007) on German and French victim-offender mediation schemes touches upon this aspect. Drawing on the observations of the parties' attitude towards mediation in penal matters, this author points out:

[O]ne reason behind the difficulty of making victim and offender participate in the mediation process can be found on the macro-social level: in modern societies, there is ordinarily no social necessity for the parties to find a solution for their conflict. There are social institutions such as the prosecution authorities who are responsible for dealing with this kind of case (von Trotha, 1982). My study shows that the participants themselves do not see the need to negotiate on their own, since it is easier to let the prosecution authorities take a decision. (Tränkle 2007: 409)

Marijke Malsch (2008, same volume) analysed in her article the lay elements in the criminal justice system in the Netherlands. She concludes in her review that lay participation in the Dutch criminal justice system is mostly absent. Malsch specifies that among the programmes undertaken in the Netherlands to bridge the gap with the community and individual citizens are Justice in the Neighbourhood (*Justitie in de Buurt* -JiB)- an initiative in which prosecutors have their office in neighbourhoods and can be easily reached by people, and *Eigen Kracht* conferences in which victim, offender and community meet in a conference. The function of the JiBs is not only to bring justice close to the neighbourhoods, but also to foster cooperation with youth care, schools and community service, police, Child Care and Protection Board, probation service, and victim support organisations. *Eigen Kracht* conferences are introduced and executed by Eigen Kracht Centraal, and each year some hundreds of conferences are organised, and employ an extensive number of volunteer lay facilitators. Another initiative with restorative elements and which involves the community to a certain extent and is directed to young people is *Halt* (the alternative). It aims to provide alternative

resolutions for criminal acts committed by youngsters outside the criminal justice system. Nevertheless, the sense in which the community is involved is only with regards to restoring public property. Same goes for alternative sanctions with adult offenders. Malsch concludes that although the Dutch criminal justice system is highly professional by nature, it also seeks methods to bridge the gap with the 'community' (which in Dutch is translated after English as neighbourhood, given that originally the term has religious and ethnic implications, ill-suited for inclusion into justice policies), or more generally the gap to citizens.

Even in post-conflict contexts, like Northern Ireland, where the power and legitimacy of the state have been challenged, the impetus towards a firm reassertion of the state's monopoly over justice is more powerful (McEvoy and Eriksson 2008). The Northern Ireland conflict produced a state system which privileged control over justice and security, and the emergence of community-based restorative justice programmes was treated with suspicion by the state institutions²⁷. Current existing community restorative justice schemes function primarily locally within a relatively small geographical area. One field where community and the local roots have been emphasized in Northern Ireland but also in UK has been the policing and therefore crime control.

We therefore see a general trend in Western European countries, despite their huge differences. While most of the Western European countries rely heavily in state institutions, and professionalism and legitimacy of the criminal justice system in these countries are unquestioned values, there is a recent trend in line with global developments, towards a movement towards citizens' inclusion in public policies, and of closing the gap between state and citizens. Shapland in the introduction to the volume she edited on justice, state and community concludes that 'the future will see the development of new forms of accommodation around communication, partnership, and plural means of dealing with crime' between civil society organisations, criminal justice system, communities, and citizens (2008:26)²⁸.

Considerations in Central-Eastern Europe²⁹

The way in which societies in transition think about informal and formal justice procedures represents a very interesting social phenomenon. First, it must be noted that

²⁷ On the side there were problems with some of them resorting to violent methods of conflict handling

²⁸ In that line see also the material and the analysis provided by CEPEJ

²⁹ The following section relies on the AGIS 2 Report prepared by Borbala Fellegi (2005) on restorative justice developments in Central and Eastern Europe.

community-based control mechanisms are not entirely new in the post-communist countries given that they were intensively used in the former regimes. However, the controlling function of smaller communities (for example the so-called ‘social courts’ or ‘comrade courts’) was primarily focusing on representing ‘the state’s’ norms (i.e. obey the Party’s rules) and not on the communities’ own values. Second, the judicial transition has resulted in a clear shift from the so-called ‘socialist’ criminal justice model to the Western European model (Bárd 1999: 435) by introducing the safeguards of democratic systems and by creating a consistent commitment to the rule of law and the principle of legality³⁰.

This rapid change explicitly contrasted with the past system. Fellegi (2005) argues that it has proved however extremely difficult to move towards a ‘higher’ level of democracy, based on a justice system in which decentralised institutions and pluralistic approaches would have the duty to maintain social order, with the active participation of the civil society. Advocates of restorative justice are caught in a gap between the two systems by promoting the necessity of informal processes in a democratic justice system, and as a consequence, their strongest opponents are often those professionals who used to fight most vigorously for the democratic changes from a legalistic point of view. In addition, the general distrust towards informal procedures is also the underlying reason why courts do not tend to follow the principle of relative proportionality, according to which they should ‘differentiate among individual offenders who have committed the very same kind of criminal act’ (Gönczöl, 2005: 185). In other words, there is a strong resistance from the criminal justice practitioners to giving more individualised responses to crimes and making sentences more case-specific.

During the socialist – communist era, the ‘sense of community’ almost disappeared: people relied heavily (and often exclusively) on the state authorities for solving economic and social problems and state authorities were perceived as the sole responsible institutions for economic and social well being. This resulted in the passivity of the civil society in which people accepted the ‘status of a subordinate rather than a citizen’ (Jasinski 1999: 374). Therefore, one of the main issues in these countries is how to stimulate people to play a more direct role in conflicts, occurring in their community. It also leads to the general question of how to motivate citizens to become more conscious about social problems around them and how to encourage them to involve themselves actively in public issues.

³⁰ Principle of legality as enshrined in Article 49 of the Charter of Fundamental Rights of the European Union (cf. Aertsen in *Rebuilding community connections*, 2004)

Another problem in these transitional societies is the lack of tradition of multi-agency, interdisciplinary cooperation in dealing with social problems. Even creative and committed actors working for 'better societies' often show lack of confidence towards the activities of other colleagues. This distrust can be perceived both horizontally (between actors of the same sector) as well as vertically (between different professions). It also contributes to the fact that criminal justice professionals have hardly any trust in extra-judicial organisations, such as NGOs, and do not favour 'sharing the work' with them. Since the concept of 'common interest' was often used for maintaining the ideology of communism, this objective is today viewed with suspect. The lack of a tradition of common interest and a competitive attitude among organisations and professionals instead of cooperation defines the general attitude toward civil society.

The main challenge of the non-governmental organisations is the increase of their credibility in the eyes of state institutions and their actors as well as in the eyes of the general public. This issue is closely related to the previously mentioned problem of the dominance of state institutions in dealing with crime. In most of the countries in transition governments still have not created a consistent policy for cooperating with NGOs. Furthermore, in some countries, the ongoing 'commercialisation' of the NGO sector is an often experienced process by which services tend to focus on profit-making and their societal mission tends to be a secondary factor in their activities. There are also concerns about the future monopolisation of mediation services by a limited number of agencies.

Considerations in Southern Europe³¹

There are different cultures of civic involvement and participation in Northern and Southern Europe. Faget (2000) outline several approaches that have been proposed to account for these differences. Max Weber (1934) has argued that the religion (referring to the Protestant ethic in the Northern Europe and the Catholic ethic in Southern Europe) has had a strong influence in establishing a certain relationship between the state and the citizens in these countries (cf. Faget, 2000: 42).

On the other hand, Todd (2000) argues instead that the type of family structure has traditionally played a relevant role in defining the level of civic involvement (cf. Faget, 2000: 42). Although modernisation has brought about a substantial change in the family structure, a similar family model has traditionally been present in Southern European

³¹ The following session relies on AGIS 3 Report by Clara Casado Coronas (2008) on the restorative justice developments in Southern Europe.

countries. Intra-family solidarity ties tended to be particularly strong and frequently extended beyond the nuclear family household; hence the obligations of care and protection reached also to members of the extended family. The crucial role that the family has played in some of these countries as the main mechanism to obtain the necessary income and resources for sustenance, including the care of children, the elderly and the ill among others (high 'in-group solidarity'), may be considered one of the factors associated to the rather low interest of society in public affairs and in participating in formal or informal organisations (low 'out-group solidarity') (Casado Coronas, 2008). Although this is certainly the case and it helps us understand some of the differences between Northern and Southern countries, we have to be careful to categorise and consider these countries as homogeneous, or for that matter, even one country as homogeneous.

The experts involved in the AGIS 3 project expressed their concerns that individual citizens and civil society organisations in certain Southern European countries may not be active or strong enough to strive for restorative justice and undertake initiatives to demand more restorative justice-oriented policies. The experts discussed the impact civil society organisations can have on policymaking, the degree of social mobilisation or the culture of volunteering and on how the 'relation between the state and the citizens' depends on a wide range of complex historical, cultural, political, social and economic factors. As Ferrera (2005) points out, the distinctive type of social policies in Greece, Italy, Portugal and Spain, led to significant difficulties in tackling poverty and establishing social assistance schemes. The majority of the other European countries had set up a solid social security system and strong anti-poverty policies by the 1950s. At that time, the political and economical conditions of Greece, Italy, Portugal and Spain were substantially different, thus the welfare state provision remained considerably more fragile in Southern European countries until the 1980s or 1990s when welfare state reform started and the state-supported social assistance net began to be reinforced. Ferrera also observes that the family model that used to be common in these countries has traditionally played the role of the primary 'safety net' making the state the subsidiary agent of social assistance. The Turkish welfare state model exhibits traits of both the liberal welfare state model, and the Southern European model. The important role of the family and the extended informal economy are some of the dimensions that the Turkish welfare state shares with the Southern European model (Akçizmeci 2006:165)

According to the experts, aspects such as fear of crime, feelings of insecurity and the degree of punitiveness are particularly relevant with regard to social receptiveness for the values and principles of restorative justice. The findings of the European Survey of Crime and Safety (2005) indicate that in all the countries surveyed, the ‘population feeling unsafe on the street after dark’ rate above average in Greece, Italy, Portugal and Spain, whereas Belgian and French citizens are amongst those who feel moderately safe after dark (EU ICS, 2005: 66)³². It is well-known, that feelings of insecurity and fear of crime and attitudes towards crime and punishment are closely linked. The decline of informal mechanisms of social control, the high degree of mobility and uncertainty in the labour market as well as the growth of urban areas and the increase of social heterogeneity are aspects that tend to erode social cohesion, thus to some extent contributing to people’s sense of insecurity and ‘distrust towards others’.

Forms of cooperation between restorative justice and civil society

There is no clear agreement on what the terms ‘civil society involvement’, ‘social mobilisation’ or ‘community participation’ mean with regard to restorative justice. In fact, there are different proposals concerning the way in which society should ideally take part in restorative justice processes and in the restorative justice movement itself. The supranational standards clearly support the importance of civil society’s involvement in restorative justice at different levels but do not specify how the participation of the wider community should be assessed. The UN Basic Principles on the use of restorative justice programmes in criminal matters establishes the community as one of the beneficiaries of restorative justice practices but conversely does not attribute to it any specific, active role. It also states that ‘civil society’ is the actor who, in cooperation with Member States, ‘(...) should promote research on and evaluation of restorative justice programmes (...)’. The Handbook on Restorative Justice Programmes further points out that one of the underlying assumptions of restorative justice programmes is ‘that the community has the responsibility to contribute to this process’ (UN, 2007: 8).

In what follows we will consider several ways in which restorative justice has collaborated and can collaborate with civil society. We will divide the following section in two parts. In the first part we will see the plurality of ways in which restorative justice,

³²A more differentiated account is provided by Claus Boers in the document containing the contribution to the 22nd Criminological Research Conference of the European Committee on Crime Problems within the Council of Europe: Boers, Klaus, *Crime, fear of crime and the operation of crime control in the light of victim surveys and other empirical studies*, Strasbourg, 2003 (PC-CRC 2003)

defined broadly as an approach that deals with conflict, harm or misbehaviour and encompasses all sorts of restorative practices, has been incorporated in different contexts of civil society, this too defined very broadly as everything falling between the individual and the state. Within restorative justice movement there is a large number of scholars and practitioners who defend a broad definition and scope of restorative justice, so we can only do justice to this approach by touching upon this perspective. The second part of the section will deal mainly with the ways in which restorative justice, defined narrowly as an approach that deals with crime³³, can collaborate with civil society organisations, identified according to the structural-operational definition proposed by Salamon, Sokolowski, and List (2003) which we elaborated previously in this part.

Restorative justice and civil society (both broadly defined)

Restorative justice began as an idea about a constructive response to crime, as a theory of criminal justice distinct from approaches based upon the application of punishment. The International Institute for Restorative Practices has coined the term restorative practices to refer to the broader application of restorative justice beyond the crime context and criminal justice settings (Wachtel and McCold 2004). According to the supporters of the thesis that restorative justice should be used broadly to encompass all kind of restorative practices, if we are serious about conceiving of taking responsibility as a democratic virtue, then it will not be enough to cultivate restorative justice only in formal criminal justice institutions. They argue that people also need involvement in disputes in schools, workplaces, families, and elsewhere in the community. From this logic, Wachtel and McCold (2004) developed their definition of restorative practices as ‘processes where those directly affected and/or those in positions of responsibility respond to misbehaviour with both limit-setting and social support by encouraging responsible cooperation’.

The best written example illustrating the complex relationship of restorative justice (whereby defined as a hybrid between a conception of restorative justice as a process and also restorative justice as a values’ system, in terms of a continuum of practices) and civil society (defined as everything between the individual and the state, including families, schools, police, movements, workplaces, etc) is the book by Strang and Braithwaite

³³ More specifically we follow the definition based on the United Nations Handbook on Restorative Justice Programmes according to which a restorative justice process is ‘any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator’.

(2001) “Restorative Justice and Civil Society”. As Braithwaite and Strang state in the Introduction to Restorative Justice and Civil Society:

[I]f the social movement for restorative justice is about more than changing practices of states, if it can have an impact on an entire culture, if it actually succeeds in changing families and schools towards more restorative practices, the effects on crime might be much more considerable. (2001: 6)

Wachtel and McCold (2001) in their article on restorative justice in everyday life conceive restorative justice as being a ‘philosophy’ rather than a model of dealing with crime only. In their view, if we understand restorative practices as a set of activities in a continuum, it becomes possible to think about and do restorative practices in everyday life, like schools, work places, families, etc. If this set of activities, which can range from a simple properly asked affective question in a school or family group conferencing after a wrong doing, are seriously promoted and considered in our everyday life, the effect can be a contagion of restorativeness like some sort of a good virus in society. Restorative practices demonstrate mutual accountability – the collective responsibility of citizens to care about and take care of one another. Others authors interested in a potential broader role for restorative justice, especially in work places and bureaucratic institutions are James Ritchie and Terry O’Connell (2001). They argue that one of the problems of institutional life was its ‘addictiveness’ element and obsession with itself. Creating restorative environments according to these authors means promoting responsiveness, which could be translated into maximising participation in decision-making, shifting emphasis from formal/institutional to informal/social controls, and employing tensions within the institution creatively. To express better the idea of restorative justice being a constitutive part of everyday life we quote the conclusion offered by Ted Wachtel and Paul McCold:

[W]e know the world will change only very slowly and very imperfectly. We cannot afford to be unrealistic or utopian. We must be flexible and experimental. (...) Most of our current practices are not only ineffective in changing negative behaviour, but they undermine democratic citizenship. (...) If systems are not inherently restorative, they cannot hope to effect change through an occasional restorative intervention. Restorative practices must be systemic, not simply situational. You can’t have just a few people running

conferences and everyone else doing business as usual. You can't be restorative with students and punitive with staff. You can't have restorative police but punitive courts. To reduce the growing negative subcultures inside and outside corporate life, to successfully prevent crime and to accomplish meaningful and lasting change, restorative justice must be perceived as social movement dedicated to making restorative practices integral to social life. (2001: pp 128-129)

Restorative justice and schools

The first field where restorative practices were developed has been the education field. The relevance and implication of using restorative justice to school settings was obvious from nearly the beginning of the movement. For school settings, the culture of the institution can itself become a restorative, that is, a social environment which encourages responsible behaviour by continuously holding individuals respectfully accountable to each other and the group through restorative practices (McCold 2002). The introduction of restorative justice in schools is based in two main ideas: one is a preventive one which takes very seriously the fact that criminal behaviour has its seeds early planted in young people, and which believes that early intervention is crucial to reverse this trend; the other is a restorative one, which believes that all institutions in the society need to move away from a social preoccupation with punishment and toward an even more radical social change that replaces vertical with horizontal relationships.

Restorative justice in the school setting views misconduct not as a school-rule-breaking, therefore not a violation of the institution, but as violation against people and relationships in the school and wider school community. It provides an opportunity for schools to practice participatory, deliberative democracy in their attempts to problem-solve around those serious incidents that they find so challenging. The theories which explain the success of restorative processes can also inform professional development efforts aimed at building healthy relationships (Cameron and Thorsborne 2001). Strong institutional investment that enables the capacities for individuals to participate in communal life, is the cornerstone of building responsible citizenship (Selznick 1996).

Morrison(2005) argues that restorative values need to be incorporated into the school curricula, and Braithwaite (2001) has proposed that schools should experiment with holding restorative justice meetings (with family, friends, and teachers) at regular intervals for all students. Schools can contribute to this using a variety of restorative practices ranging from formal to informal, including structured restorative milieus,

circles of support and accountability, restorative conferences, family group decision-making, youth development circles, problem-solving groups, peer mediation, small impromptu conferences, one-to-one mediation, restorative questions, and affective statements. The adoption of informal and preventative restorative practices would address many of the concerns facing European school systems, including the need for flexible classroom management approaches, the prevention of conflict and violence, support for disadvantaged groups, countering under-achievement, integration of ethnic minority groups, and preventing exclusion from school (European Commission 2006). In the practical guideline examples of school mediation and the application of restorative practices in schools will be presented and analysed.

Restorative justice and police

Based on the philosophy of crime prevention, restorative justice has fostered a natural relationship with the police. The police occupy a unique position in democracy, they are at the same a time a friend and a foe of the people, acting based on consent, but also based on force, as the monopoly of force is vested with the police. There has been a shift toward a problem-solving community style of policing, and therefore restorative justice offers a tool for the police to deal with offences which should not go further than the community level. Restorative justice approach helps the police resolving neighbour and community disputes and dealing with school exclusion, bullying and truancy. Restorative justice programmes could be a starting point for the task of redefining the civic rights and responsibilities of individuals and their communities. From that may emerge a consensus that only where the police and public work together will communities start to feel safer form crime, disorder, and fear.

There is compatibility between restorative justice ideals and the most visionary standards of community policing. A case study of the congruence and divergence of ideals and the practical dilemmas of the restorative mission may be seen in the transformation of the Police Service of Northern Ireland to the new community policing paradigm. The transition of this province from conflict to peaceful democratic state is still in progress. But the embrace of a community policing ideal is both central to this transformation and reflective of the challenges to truly implement restorative practice through policing. Community policing practice in Northern Ireland represents both the highest ideals as well as the most difficult implementation dilemmas. In addition to failure to address systemic aspects, police legitimacy and the state / local tensions are central concerns. Although the state interests in Northern Ireland include seeking

community legitimacy of police, it necessarily must advance interests of the state and supra-state entities, including the interests of global capital and state security. Civic society and community policing which it represents, seeks local democratic control and responsiveness to other human needs. As these tensions manifest themselves in policing policy, paradoxes emerge. The state seeks an increase in arrests to demonstrate police legitimacy, however community members identify crime prevention, dispute mediation, youth order and non-arrest activity as paramount. Training of police to achieve state goals requires instilling the attitudes of suspicion, secrecy, hierarchy, and advanced technologies, while local policing goals necessitate collaboration, openness, access, problem-solving, and human relatedness skills. State policing interests seek equal treatment across populations, yet locally accountable policing may produce variations in treatment in order to respond to local needs and preferences.

Siri Kemeny (2010), has written that she believes social support for RJ in civil society in Norway can best be developed via a sound cooperation between the police and the Mediation Services (MSs). The MSs do not have an organisation at present that makes it possible to “reach the community” without help from others. For this purpose they are far too centralised. The police on the other hand, are numerous, and, by its function, get in contact with all kinds of groups and individuals in the community. The police in Norway have in general a strong civil character. If the police do community police work according to RJ principles, they can identify conflicts and problems in the local community and in cooperation with the MS organise conferences to discuss and help people/the community to solve their conflicts and problems. This will eventually also have a crime preventive effect. She argues in the power of this cooperation hoping that in the future the police (stimulated by the Ministry of Justice) will not be so eager to formally register every little act that can develop into an offence, or even not register the smaller offences in their files, to show in their statistics. In general one should rather strive for a decriminalisation in our societies, with more social peace attained via the empowerment of conflict handling in the local communities. The practical guide will describe a case of community policing.

Restorative justice and civil society organisations (both narrowly defined)

The other way to view restorative justice is as we mentioned before in terms of programmes which follow restorative justice process and produce restorative outcomes in the aftermath of crime. This definition or way of approaching restorative justice so narrowly does not exclude faith in restorative justice values, or deny the importance of

restorative practices. But this narrow definition attempts on one hand to target change within the criminal justice system and to work critically with concepts of crime and justice the way they are treated inside the criminal justice system, and on the other hand, such a narrow definition while being less ambitious in terms of target settings and practices it tries to act upon such settings in more concrete and systematic ways.

Once we narrow restorative justice down to a group of programmes dealing with crime exclusively, the task of collaborating with civil society becomes automatically more difficult, just like it becomes the task of communicating with the media, and of involving citizens or community. It is far easier for people at all ages and levels in society to grasp and deal with the concepts of harm, conflict, and misbehaviour rather than the concept of crime. For this reason, in this part of the section, we would like to go back to the structural-operational definition of civil society organisations provided by Salamon, Sokolowski, and List (2003).

Types of civil society organisations

Based on the structural-operational definition of civil society organisations that we presented, Salamon, Sokolowski, and List (2003) listed an international classification of civil society organisations which will be useful for us to consider further in details. We will put in brackets beside each potential category of interest, additional or more specific types of organisations relevant to restorative justice. Once this exercise of specifying relevant organisations has been made, we will turn towards the concept of cooperation and try to analyse the way this cooperation could be fostered. This would mean identifying modes of cooperation.

The list consists of the following broader categories, which we have filled with potential useful examples:

1. Culture and recreation (students' groups, sport clubs, cultural organisations, cinemas, music groups, music and film festivals, cultural centres, debating societies)
2. Education and research (schools, universities, institutes, associations, academies, law schools)
3. Health (hospitals, domestic violence/abuse/trafficked women's shelters, mental health centres, local Red Cross, medical centres, family health centres)
4. Social services (victims' support, immigration services, services for the handicapped, mental health services, children and youth centres, nursing houses)
5. Environment (Green peace, Friends of the Earth)
6. Urban development and housing (urban planning organisations and institutes)

7. Civic and advocacy (legal organisations, Roma rights groups, human rights groups, women's rights centres, migrants' rights centres, victims' rights centres, women's organisations, immigration centres, prisoners' rights groups, youth centres, mediation centres, groups of concerned citizens, grass-root initiatives, organisations of gender, race and sexuality)
8. Philanthropic intermediaries (charities)
9. International (organisations like Red Cross, UNICEF, OSCE, Open Society, Amnesty International, IOM, WHO, Green Peace)
10. Religious congregations (churches, mosques, religious associations, Christian groups like SOLWODI)
11. Business and professional (professional skills training centres, general training centres, occupational associations, labour unions)
12. Other (independent media)

Types of cooperation

There is absolutely no single definition for cooperation, because its meaning depends on the context one intends to use it. But maybe in this case, a simple dictionary definition can help us in starting our exercise, a definition, according to which cooperation is 1) *the process of working or acting together, for a common purpose or benefit; joint action, and 2) more or less active assistance from a person, organization, etc.* (ex. *We sought the cooperation of various civic leaders*). In this section we will try to identify how these two types of cooperation can be fostered with the types of the civil society organisations that we mentioned in the previous section. It is worth mentioning that these definitions of cooperation are also instrumental in the sense that we only use them as far as they are helpful for our analysis. Let us start with the first concept of cooperation, which is that of working or acting together for a common purpose or benefit or engaging in joint action.

a) Direct cooperation (working together for a common purpose)

Talking of cooperation of restorative justice with civil society organisations, the most direct and important cooperation is without doubt the one with the victims' movement.

Restorative justice and the crime victims' movement

The relationship between these two movements is highly complex. Concerns for victims was starting to emerge as an issue in 1970s in Continental Europe (van Dijk 1988), but it

was in the United States that the movement had its genesis (Strang 2001). It is of course impossible to view the victims' movement as totally independent from other movements, like the civil rights movement, the women's movement, the gay and lesbian movement, etc, the strong impetus of which caused to a certain degree the victims' movement. Karmen (1990) describes the victim movement as a large and diverse coalition of activists, self-help groups, and other (even government- financed) organisations that, on both national and international level, act together to lobby for increased rights and expanded services (cf. Kilchling 2003). Strang (2001) identifies two different albeit related strands of victim movement, one is based on victims' rights and was largely developed in America, while the other was based on victims' support and was developed much more in Continental Europe, although both these approaches happened everywhere. The function of the European organisations was primarily to offer services and alleviate the victims' suffering, and only secondarily to lobby for their rights (Maguire and Shapland 1990).

Shapland (2000) wrote that victims are still not woven into justice, and they are mostly viewed as a fastidious group towards which the criminal justice system has to make some concessions. In this front, restorative justice can offer a more optimistic response to victims, given that victims are a constituting part of the restorative approach, rather than only an addition to it. Despite this crucial importance that restorative justice movement has for the crime victims' movement, their relationship has only recently started to improve. The initial hostility was due to the misconception that restorative justice was mainly about improving the lives of offenders, and to do this they were using the victims. This misconception was partly based on some truth, not in the sense that restorative approaches were using the victims, but in the sense that they did start mainly based on concerns for offenders. Only lately has the movement found its true balance, and therefore a more sincere and careful approach for the victims. For a concrete and good example of the development of the relationship between the restorative justice and victims' movement we will refer in the guide to APAV's (*Apoio a Vittima*, Portugal) history.

What are some of the things to keep in mind during such cooperation? The first thing is to make personalised contact and familiarise oneself with the victim services and also be committed to entering a long relationship with them. One deficiency which comes out of the APAV's report on mediation centres is that they are not familiar with the crisis and trauma of victimization, therefore one of the most crucial actions to undertake is to understand this problem and volunteer to go through victim services

trainings on the matter. Another important issue is sometimes the existence of wrong perceptions that mediation services and victim services might have of each other. It is of a paramount importance to be realistic and understand these perceptions while proving with time that mediation services too have victims' best interests at heart. Mediation has to be offered as a potential service to victims, but also understand that while this is an important action, for the victims and victim organisation this is only one of the many necessary services available. In the same line, another problem with restorative justice for the victims lies in our vocabulary. Words like forgiveness, reconciliation, mediation, negotiation can be problematic for victims who have been traumatised by a crime and cannot imagine their needs to be on the same level with the needs of the offenders. Furthermore, to foster the relationship with the organisations even further, it is in our best interest to invite and involve victims' representatives in our boards and committees, and vice-versa to always participate in their networks.

Restorative justice and offenders' groups (prisoners, ex-prisoners, etc)

Another direct cooperation for restorative justice services is their relationship with individual offenders and semi-organised offenders' groups (or organisation that aid ex-offenders at re-entry level though various services and legal counselling). One way of viewing this could be in the framework of restorative justice programmes taking place outside of prisons (most of them) and deal therefore with ex-offenders or ex-prisoners³⁴, and the other in the framework of restorative justice programmes taking place in prison and deal therefore with prisoners (who might also be prisoners in transition to freedom, therefore often target of assistance programmes).

A very interesting restorative project that deals with ex-offenders comes from Zimbabwe, where many ex-offenders encounter rejection by their families and communities of origin and the fear of revenge on the part of victims or victims' families. PF Zimbabwe has created the Victim Offender Reconciliation Programme to assist this reintegration process. Through this programme, PF Zimbabwe offers the opportunity for prisoners or ex-prisoners to have a face-to-face meeting with those impacted by their crime: their families, their victims and/or the victim's family, and community leaders. The process allows these parties gain a greater understanding of the crime, how it

³⁴ It seems that we are using offenders and prisoners interchangeably here, but this is not the case. When we speak of individuals, they might be offenders, ex-offenders, prisoners, or ex-prisoners, while when we speak of organised or semi-organised groups we are undoubtedly speaking of prisoners or ex-prisoners as we don't know of any structured organisation of offenders who have not been in prison.

affected everyone, and how the ex-offender can return to and reintegrate into his/her community. It is generally initiated by the offender. PF Zimbabwe receives requests for victim offender reconciliation in various ways. One type of request comes from ex-prisoners upon release. If they have been rejected by their communities or fear violence from their victims, they can seek assistance through the victim offender reconciliation programme.

There exist furthermore in several countries re-entry programmes and campaigns about new ex-prisoners which operate as cooperation between governments and civil society organizations and attempt to unite forces around issues such as education and employment, health, housing, family, public safety, and faith. These programmes and campaigns (sometimes at the local and sometimes at the national level) are an excellent opportunity for restorative justice services to bring forth their contribution to the full re-entry of these groups, which as we know often might depend on reconciliation with victims and the communities. Consistent with the underlying purposes of restorative justice, prisoner assistance programmes attempt to develop in prisoners capacities which allow them to function in the legitimate community. According to Bazemore and Walgrave, prisoner assistance programmes provide opportunities for prisoners to make the transition from institutionalization to community membership, from stigmatized offender lacking social capital (Bazemore and Walgrave 1997: 33) to restored individual possessing marketable skills. An example of prisoner assistance programmes is the Detroit Transition of Prisoners (TOP) which consists of a church-based, non-residential aftercare programme providing accountability for ex-prisoners. The TOP programme also works to mobilize the support of the business community, social service agencies and other local resources to provide for the needs of the ex-prisoner and his/her family (Van Ness and Strong 1997: 130). Van Ness and Strong argue that these spheres of interdependency translate into accountability as the ex-prisoner assumes job and familial responsibilities

Other restorative programmes (victim awareness and empathy programmes, amends programmes, mediation programmes, prison-community programmes, conflict resolution programmes, transformation programmes) taking place in prisons started as initiatives asked by the prisoners themselves, some from victims, and others from the government agencies. One of the most impressive ambitious programme is the Belgian effort to create a restorative prison culture in each of its 32 prisons with a restorative justice co-ordinator assigned to the prison to introduce restorative justice to prison staff and prisoners (Biermans and d'Hoop 2001).

Restorative justice and the higher education sector

The collaboration between mediation centers and services and universities has been world-wide very tight and fruitful. This collaboration can take many forms. One such form has been implementation of restorative justice practices by universities themselves through the creation of experimental or pilot projects and mediation centers. In Argentina, the law school at the University of Buenos Aires and the NGO, Fundación Libra are pursuing mediation in criminal matters (among others). In Chile, the *Universidad Catolica de Temuco* created a mediation centre to handle cases ranging from crimes to family disputes to community conflicts. In Portugal, the Catholic University of Lisbon together with APAV (Apoio a Vittima) has run two mediation projects.

Another form of collaboration has been the combination of the preparation of training modules by university lecturers and practitioners. In Albania, the Foundation for Conflict Resolution (AFRC) and the School of Magistrates have collaborated since the beginning of AFRC. The School of Magistrates aids in the training of the mediators, and support the foundation in the organisation of national and international conferences.

Universities have generated an enormous research on restorative justice which has both been fed by the mediation centers and has supplied to them important information and theoretical material. Many PhD students and other senior researchers conduct their research by the mediation centers and are in close contact with the mediators. The mediation services on the other hand have a strong interest to generate research which will offer them feedback and evaluation on their own work.

Another important function that universities have is the promotion of international networking in restorative justice and exchange of best practices. One of the best examples in this field is the Catholic University of Leuven (K.U.Leuven). The Department of Criminal Law and Criminology in the K.U.Leuven has been the centre which together with the international coordinating group gave rise to the European Forum for Restorative Justice. This non-governmental organisation was set up because European victim-offender mediation projects - although a steadily growing practice with more than 800 projects all over Europe - had seldom established contacts beyond national borders. Informal contacts revealed that practitioners, academics and policy makers were looking for a more regular exchange and mutual support in developing victim-offender mediation and other restorative justice practices.

An important initiative is the introduction of restorative justice into the university curriculum. Examples of this can be found in Albania, Bulgaria and in Romania, where

restorative justice became an important subject in the formal education system of lawyers and social scientists thanks to the innovations of local NGOs and academics. University of Hull in UK has a well established 'Restorative Justice Group' which is made up of academic staff and postgraduate students researching in the field. With a range of well-received national and international publications on the topic this group is currently in the process of building on its already strong reputation by launching a Masters Degree alongside the development of a number of other exciting projects including an international conference and a research programme around the themes of restorative values and ethics in society.

Restorative justice and social welfare organisations

The cooperation in this field seems to be very broad because of the nature of the social welfare type organisations. They deal most of the time with violence and victimhood and therefore a high number of conflicts and crime. Social welfare organisations include all types of services directed towards vulnerable groups in need, like child services, domestic violence or human trafficking shelters, sexual assault centers, and so on.

An impressive example of such cooperation comes from University Hospital of Copenhagen in Denmark. Every year Centre for Victims of Sexual Assault at the University Hospital of Copenhagen (Rigshospitalet) receives about 250 women (and a few men) who have been raped or subjected to attempted rape. Forensic examination, medical and psycho-social treatment is being offered – and since 2005 also restorative dialogues. The project was started thanks to a few women who had the courage to articulate their wish to make contact with the man who had sexually violated them - and thanks to professional helpers that were ready to really 'hear' them. The restorative dialogue offered at the centre is always initiated by the woman and her wishes decide how and when contact to the offender is made. Methodically they have applied a very flexible approach and look upon every little step as being part of the restorative process for both the woman and the man as soon as he is invited to take part in the process.

Another good example of cooperation between restorative justice and other services like child care and protection is recently taking place throughout Europe in the form of youth conferences. In such restorative justice conferences participate people from the police, the children protection office, the school, the family and members of the community. During these conferences, both victim and offender express their feelings. The dialogue allows the offender to understand the harm caused in the victim and express the wish of making amends. Everybody in the conference joins and speaks about

what happened. The conference ends with a written contract signed by both victim and offender and their families. Restorative Justice Conferencing can be a unique platform for co-operation between different services.

Another interesting cooperation is between women's shelters and the feminist movement and the mediation services. In Austria the research of Christa Pelikan (2009) has shown that the cooperation between Neustart as a provider of VOM-services and other agencies outside the CJS is of special importance in connection with applying the *Tatausgleich* to cases of partnership violence. NeuStart does in fact cooperate with a large number of NGO's that provide services for offenders – and in the case of the VOM also for victims. The cooperation works mainly in the way of providing clients with addresses and recommendations – quite often preparing first contact with the respective NGO. The cases of partnership violence have from its beginning met with the critique from the women's organisation, from the women's movement. In her research, Christa Pelikan has paid attention to the display of power imbalances in the course of a VOM-procedure. As a matter of fact, this research has shown that VOM has the potential to promote and enhance the empowerment of women – under certain circumstances. Ten years later the situation has change significantly and the social workers of VOM have established working relations with the representatives of the 'Centres for Protection from Violence'. Quite often they give advice to the women – also regarding their participation in the *Tatausgleich*, and sometimes they also accompany the woman and act as a support person in the process. The satisfactory state of affairs regarding the practice has not – yet – resulted in easing and appeasing the apprehensions and the severe doubts regarding the application of VOM that still exist at the 'higher echelons' of the Women's Movement, those feeling responsible to preserve the correct ideology. The research of Christa Pelikan is also meant to contribute to stimulate discussion at that level as well and to feed the remarkable research results into this discussion.

In Albania, an impressive project was developed in 2005, called "Building the Capacities of Anti-trafficking Local Networks (on Reconciliation and Mediation). The trafficking of women and children is as much an economical as a psychosocial and family structure problem in the Albanian society. Many victims are approached on basis of 'morality' and have immense problems to be integrated back to the family and society because of stigma and stereotypes. This conflict between victim and family, or victim and other parties is one of the major handicaps in the process of reintegration of trafficked victims to the society. Moreover there is to a certain extent lack of coordination of the relevant structures (education system, civil society, and local government) in dealing

with the problem of trafficking, which makes the process of reintegration more difficult to be dealt with. With this project AFCR aimed to increase capacities on conflict resolution, reconciliation and mediation for civil society organizations and local government institutions involved in anti-trafficking networks in Albania, like civil society organizations, anti-trafficking police, educational directories, municipality representatives, and governmental social services etc. Moreover, in the project AFCR local offices dealt concretely with mediation of existing conflict cases, especially with a focus on mediation of victim and family. This project served two major aims, firstly it increased the capacity of these structures to deal better with conflict cases between family and victims of trafficking, and secondly it offered reconciliation and mediation for concrete conflict cases between victim and family or other parties. These processes helped in the long run decrease the stigma towards the victims and make society more open to acceptance of such human suffering.

Restorative justice and the civic and advocacy area

By the civic and advocacy area we mean mainly the legal, civic and advocacy organisations mainly operating in support of marginal or vulnerable groups, like groups of women's rights, gay and lesbian rights groups, the immigrants' rights centres, and diverse minority rights. There is a cross-cut of interests of mediation services and the above-mentioned groups, one is the legal interest and the involvement in the rights movement, and the other interest is the human interest, given that both areas deal with different types of victims and offenders, topics of violence, reconciliation, justice are of paramount importance.

An interesting example of such cooperation comes to us from the Balkan region. Acknowledging the added value of engaging in interdisciplinary cooperation, the "Legal Issues Group" (LIG) was established as a cross-cutting project between Balkan Human Rights Network (BHRN) and SEE-RAN (a network of domestic refugee aid organizations in Bosnia and Herzegovina, Croatia, Montenegro, Serbia, Kosova, Albania and Macedonia). The LIG focuses on advocating and lobbying for the rights of refugees, returnees, IDPs, minorities, asylum seekers and other vulnerable groups. This includes monitoring, legal analysis and advocacy/lobbying as the three main types of activities. The legal issues dealt with by the LIG encompasses; inter alia, property, right of reconstruction, housing care, pensions and other social rights, legal status/citizenship, asylum and refugee law, access to justice (and to mediation), freedom of movement and visa laws/regulations, legal barriers to social integration and reintegration, non-

discrimination, and adherence to international instruments and good governance/implementation of laws.

Another interesting area to explore within the restorative justice area would be the development and enhancement of types of intercultural mediation, which could be developed together with or offered as one of the services that other civic organisations offer let's say to immigrants or ethnic and sexual minority groups. Such a mediation practice would have to be entirely different from the 'logic of identity' that is often used in mediation in order to bring closer victim and offender by emphasizing the same or shared values. Such a focus of mediation would have to focus on the impact of diverse cultural factors. Instead of sharing the same values, the participants bring their very specific cultural background into the situation whereby cultural dimensions become factors which needs to be considered. Within an intercultural mediation process particular rules and when appropriate definite preliminaries should be discussed in order to achieve its acceptance by all parties. For the purpose of procreating a mutual understanding, behavior pattern should be explained during the process if they are due to culture specific values.

Known by many different names-culture broker, community interpreter, medical interpreter, and communication facilitator-the intercultural mediator has as a primary task the facilitation of communication and the therapeutic relationship in the presence of linguistic and/or cultural difference. The Immigration Plan of "la Caixa" Social and Cultural Outreach Projects has undertaken an ambitious project to train all of the cultural mediators in Spain, including both those currently working and those newly entering the field, to meet existing needs. In the first phase of the project, the training was developed in Catalunya, in collaboration with the the Catalan Department of Health, executed by the Psychiatry Department of the Vall d'Hebron University Hospital (Autonomous University of Barcelona) and certified by the Health Studies Institute of the Department of Health. Drawing from the four years experience of the NGO SURT and the Department of Psychiatry of the Vall d'Hebron University Hospital, the programme provides 200 hours of theoretical and 1200 hours of practical training. 50 currently employed intercultural mediators and 30 novices are being trained. In subsequent phases the training will be adapted to needs of other autonomous regions of Spain. Modules include medical anthropology, Western biomedicine, community health, linguistic interpretation, cultural competence, professional identity, and ethics (Qureshi *et.al.* 2009). This extremely interesting examples highlights the cutting points of the education of an intercultural mediator, where mediation and conflict resolution

techniques should have certainly been among the modules. Cooperation therefore requires an expansion of the thought on the possibility of where restorative justice principles and practices could be useful.

b) Indirect cooperation (in terms of active mutual assistance)

The division between direct and indirect cooperation includes a certain degree of methodological artificiality. Most of the time the boundaries are blurred, but for the sake of better understanding by indirect cooperation, we mean cooperation between mediation services and settings which have other primary objectives than justice, (like social justice or restorative justice). Such settings can be culture and recreation, health, religion and international organisations which have broader and diverse aims. In what follows we will try to see how each of these settings can cross cut with restorative justice through concrete examples.

Restorative justice and the culture and recreation area

The first setting which comes to mind in the recreation area where the collaboration could be fruitful is without doubts the area of sports, starting from the (presupposed) premises that sport has a constructive mission in contributing to social cohesion, education and global welfare. A recently launched project is the one by EFUS (European Forum for Urban Security). The GOAL project, co-financed by the European Commission, aims to the exchange of practices that will enable the publication of a guide for local partners in the field of violence prevention in sports, especially in the field of football.

In Germany, the Servicebuereau for Victim-Offender Mediation and Conflict Settlement has attempted to foster a serious relationship with the German Soccer Federation (DFB). The relationship had several aims. One aim was to have the DFB support a advertising campaign for restorative justice, like having the key people in such sports organisations who are also very popular figures speak on behalf of restorative justice, and have banners on restorative justice placed during football matches. The second aim was to introduce restorative justice inside the structure of the internal legal system of such federations. The DFB is under constant pressure to reduce violence and vandalism during and after the games and does not have the capacity to respond adequately to such phenomena. There is pressing need to restructure the antiquated internal system of DFB, which only sanctions offenders through fines or bans. These

means are insufficient and most often lead to further escalation, but they rarely contribute to a satisfying resolution of a dispute. The Servicebureau for Victim-Offender Mediation and Conflict Settlement has been asked to develop such a concept of mediation within the sports courts. The sports' courts are spaces and places where all conflicts related to the sports are handled. Sport courts sanction in cases concerning clubs or persons. For example, cautions for athletes, fines, bans for clubs and players, deprivation of goals and scores, transfer to other leagues, bans for club functionaries. Only the statutes and the applicable legal system of the relevant umbrella organisation are the legal basis. The basis for sanctions consists of the regulations, statutes and rules of the associations which every member club has to adhere to.

Sports are important because they are intrinsic to the European culture, bring people together, and create enthusiasm. At the same time, sports are the source of many – sometimes violent – conflicts, and that is where restorative justice can contribute by providing sports with adequate ways to settle conflicts and contribute to achieve social peace. Sports need restorative justice and restorative justice needs sports (Delattre 2008).

Another area of possible cooperation is the socio-cultural area, which includes very diverse groups, like cultural centres, cinema, theatre groups, film festivals, music festivals, student groups. Suggnome, the Flemish mediation center is working at a project together with a theatre group to create a mobile theatre which has inherent restorative justice themes. A great resource is film festivals. There are many interesting short films produced about restorative justice which could be used to bring the concept to the public visually and emotionally, and stir up genuine debate in the audiences.

Howard Zehr, has very often touched upon the link of arts and restorative justice as a powerful way to educate the public. He has been involved in an impressive project in Philadelphia, called the Mural Art Project (www.muralarts.org). The Mural Arts programme is a unique effort that uses the creation of murals as a way to revitalize and re-engage communities. Artists work with community members to identify issues of concern to them, then to decide how they should be represented in a mural. The artists design the mural and its placement in consultation with the community, then lay it out in a way that community members can participate in painting it. Hundreds of murals dot the city and many new murals are created each year.

The Mural Arts Programme began as part of the Philadelphia Anti-Graffiti Network and was initially developed to provide alternatives to young people who were engaged in graffiti and other minor crimes. While the programme has grown substantially over the

years, this fundamental objective still applies-to use mural-making and art education as a means of combating and preventing crime and its impact on communities. The Mural Arts Programme offers a wide array of mural-making programmes for adult men and women at correctional facilities in the Philadelphia area-The State Correctional Institution (SCI) at Graterford and several sites within the Philadelphia Prison System, including Riverside Correctional Facility for women, Curran-Fromhold Correctional Facility, the House of Correction and the Philadelphia Industrial Correctional Center. They work with men enrolled in an officially recognized work programme in which participants receive a stipend to create murals for schools and community centers throughout Philadelphia. Collaborations with victim advocates, community members and juvenile offenders have resulted in the creation of murals on the themes of healing, balanced and restorative justice and forgiveness. They also have mural-making programmes in the Philadelphia Prison System. The Mural Arts Program is currently working with adjudicated youth at five sites: the Philadelphia Youth Study Center (YSC) a detention center for youth; Philadelphia Industrial Correctional Center (PICC), where youth who have been charged as adults are detained; St. Gabriel's Hall, a residential programme for delinquent boys; and VisionQuest-particularly juveniles participating in the HomeQuest programme. The inmates and youth meet and discuss themes of forgiveness, crime, its impact on communities, and decision making. While sharing personal stories, they discuss the harm they have caused themselves, their families and the community. Students receive instruction in mural-making and create outdoor murals. Students who are highly motivated are encouraged to continue Mural Arts Program instruction at the E3 Power Centers as part of their community re-integration plan when they return home.

One recent project called the “Healing Walls” involved prisoners, victims and victim advocates in painting several murals. A new documentary film, *Concrete, Steel & Paint*, about this project was released. When men in a prison art class agree to collaborate with victims of crime to design a mural about healing, their views on punishment, remorse, and forgiveness collide. At times the divide seems too wide to bridge. But as the participants begin to work together, mistrust gives way to genuine moments of human contact and common purpose. Their struggle and the insights gained are reflected in the art they produce <http://www.concretefilm.org/>

Restorative justice and public health

The Public Health Model (PHM) was originally developed for understanding the epidemiology of disease and generally for controlling, if not eradicating, public health threats. The original model was used to examine the interaction of a host or person, an environment or culture, and an agent. Health educators and public health practitioners are familiar with the public health model uses for early epidemiological advances, such as the prevention of infectious diseases through government sanitation, food additives and vaccination efforts. There are three levels of the model, primary, secondary and tertiary prevention. *Primary prevention* involves actions that keep healthy people healthy: inoculations, iodized salt, and clean air. The entire population is the host. *Secondary prevention* involves actions to restore a person with symptoms or risk factors to a full state of health: antibiotics, separation from allergens, appendectomy, or setting a broken bone. It is possible to end all symptoms preventing any morbidity. *Tertiary prevention* is applied to persons who cannot be made completely healthy again. For persons with chronic or terminal disease we can take actions to restore as much health and function as possible while full restoration is not possible (Rodman 2006)

By applying the PHM to restorative justice, we find that the host is "those affected by wrongdoing", the agent is "wrongdoing and crime" and the environment could be our culture, country, village, school, family, or workplace. Wrongdoing is causing harm and sometimes death. Using RJ processes of restorative conferences, family group conferences, circles and mediation, we can restore to the degree possible those affected. Some wrongdoings cause irreparable harms and cannot be fully restored. The literature of resiliency and protector factors consistently name similar factors in good and bad life outcomes for youth. Those who are bonded/connected to family, school, church are undoubtedly more resilient (Rodman 2006).

An increasing body of evidence gained over the last few decades has made it increasingly clear that emotions and state of mind have a powerful effect on physical as well as mental health. Depression, anxiety, hostility, chronic stress, and social isolation have all been shown to have damaging effects on health, particularly with regard to problems involving the heart and cardiovascular system, including heart attacks, strokes and high blood pressure. Other factors relating to emotion and state of mind, including social connection, have been shown to have protective effects on cardiac health. Expressing emotion, especially emotion about traumatic events, has been shown to strengthen immune function and to lessen the symptoms of asthma and rheumatoid arthritis, which are both immune-related problems. Many of the emotional and social factors that can affect health play themselves out in our relationships with other people.

For many people, relationship problems are among life's most stressful experiences. What does this have to do with mediation? The mediation process can help to resolve interpersonal problems that cause us to experience relationships as a source of stress rather than as a source of support. Even when health problems are intractable, such as with chronic illnesses or end of life issues, resolving conflict and improving clarity in important relationships can reduce symptoms, improve the quality of life, and allow a greater sense of peace for both the ill person and those who are close to them. Resolving relationship problems can be mentally and physically beneficial for everyone, regardless of their current state of health.

Recently, FOCUS, the newsletter of the Harvard Medical, Dental, & Public Health Schools published a healthcare conflict resolution article which begins with the statement, "Everyone in health care, it seems, has a war story about conflict at work." Leonard Marcus, who directs the programme for Health Care Negotiation and Conflict Resolution at Harvard, and his team teach conflict resolution skills to health care leaders from different organisations. The course adapts to health care the basic principles of conflict resolution.

Restorative justice and international organisations

There is already a flourishing cooperation between international organisations like UNICEF, OSCE, Open Society, IOM, etc. and mediation services in the societies in transition. UNICEF has especially been involved in many projects that regard juvenile justice, and has promoted projects with restorative justice components.

In 2003, a cutting-edge project was launched in Serbia by the government and UNICEF, called "Children's chance for change". The three-year project aimed at increasing the rights of children in conflict with the law and harmonisation of the national legislation with the international/European standards of care and protection of children at risk and children in conflict with the law. Having the improvement of care and protection of children in custody as one of the critical activities of the project, the Juvenile Correctional Institution in Krusevac (JCIK) was selected as a pilot site for the development of an alternative and community based care and prevention programme. The Mediation Service (MS) developed within JCIK is the first victim offender service established in Serbia and Montenegro in closed settings, and it was developed in a fully participatory manner, as a result of partnership between JCIK, the Ministry of Justice of Republic of Serbia and UNICEF.

Similarly, in the framework of the Juvenile Justice Reform undertaken in Albania (2006-2008) by UNICEF and the Albanian Ministry of Justice, with the support of European Commission and SIDA, the Albanian Foundation for “Conflict Resolution and Reconciliation of Disputes” (AFCR) was contracted by UNICEF to implement the project on “Victim-offender mediation and restorative justice in juveniles aged 14-21” project. The main goal of the project was applying the diversion method of mediation in penal cases with juveniles involved, either in the role of victim or offender, as the only diversion method available in Albania. Recently, AFRC has together with UNICEF implemented another project called “Promotion and implementation of the Restorative Justice Approach in Cases of Juveniles in Conflict with the Law and Integration of Peer Mediation in Pre-university Education”.

Remaining again in Albania (only because more information has been available, but essentially it represents any society in transition), the Open Society Foundation (Albanian branch-OSFA) has been extremely helpful to the institutional strengthening for the Albanian Foundation for Conflict Resolution and Mediation. Transition from a centrally planned system to democracy and market economy was accompanied by the emergence of a whole new set of problems and issues, unknown to the Albanians before. In the conditions of a weak state and absence of rule of law, these problems often escalated to conflicts. Often, due to mistrust in the authorities, people resorted to the practice of taking the law in their own hands. Research into the traditions of the Albanians showed that mediation and peaceful resolution had worked well throughout the centuries. On this solid basis, the Foundation for Conflict Resolution and Mediation came into existence. The mission of the Foundation was to contribute to reduction of conflicts and self - adjudication. The OSFA Law Program’s support for conflict resolution and mediation goes back to the year 2000. It provided support to eight mediation centers at the local level. The objectives of the support were focused on strengthening peaceful resolutions through mediation and legal counselling to individuals and communities in conflict. During the years of OSFA support, 2000-2005, the Foundation for Mediation and Conflict Resolution managed to strengthen itself institutionally, as well as to set up and consolidate the network of conflict resolution coordinators. Furthermore, one of the successful projects supported by OSFA during the years was the one dedicated to education of school age children on bringing to the fore peaceful aspirations and attitudes and the peaceful resolution of conflicts. OSFA provided support to the Program over the year 1997-2003. The main objectives of the project were: promotion of the culture of peace and dialogue among high school children;

creation of mediation groups in 22 schools throughout the country to enable the resolution of conflicts by youngsters themselves whenever they occur.

Restorative justice and religion

The link between restorative justice and religion is not difficult to make. There are many books and articles tracing the religious and spiritual roots of restorative justice, the most important of which has been “The spiritual roots of restorative justice” published in 2001, edited by Michael L. Hadley. This interdisciplinary study explores what major spiritual traditions say in text, tradition, and current practice about criminal justice in general and restorative justice in particular. It reflects the close collaboration of scholars and professionals engaged in multifaith reflection on the theory and practice of criminal law. A variety of traditions are explored: Aboriginal spirituality, Buddhism, Chinese religions, Christianity, Hinduism, Islam, Judaism, and Sikhism. Drawing on a wide range of literature and experience in the field of Restorative Justice and recognizing the ongoing interdisciplinary research into the complex relationships between religion and violence, the contributors clarify how faith-based principles of reconciliation, restoration, and healing might be implemented in pluralistic multicultural societies.

In this section, we will not deal with the issue in those terms, but we will rather treat religion here as part of civil society. It is therefore better to say that here the focus is on the religious or faith-based groups as promoters of restorative justice (although many of those go beyond promotion and are instead deliverers of RJ services world-wide, mostly restorative practices or approaches in general). Immediately as we try to identify such groups, very well known names come to mind. Such is The Church Council on Justice and Corrections (CCJC), a national faith-based coalition of eleven founding churches. CCJC works with both multi-faith and non-religious partners and has achieved international recognition for its contributions to creative thinking about criminal justice. They have been promoting a different approach to justice and getting restorative justice on the agenda for over 30 years. Another such groups, especially very well known to researchers who use online resources is the Prison Fellowship International, a Christian organization with parts in many countries (over 100 nations). Each of these (and many others, particularly in Canada) are using RJ approaches and building social support through consistent hands-on service delivery, education and advocacy that is nothing short of astonishing. Their website at Restorative Justice Online is a treasure trove of research, resources and information.

Probably the easiest link we can make on restorative justice and religious groups is the relationship with the Quakers. While the similarity of restorative justice philosophy and the Quaker philosophy has been more than once highlighted, we will refer here to the work of a very important organised group (whose aims are even more radical than those of most of the restorative justice activists), The Quaker Committee on Jails and Justice (QCJJ), a committee composed of volunteer members whose long term goal has been defined as the abolition of prisons. The members of QCJJ believe that prisons and jails are basically expressions of violence, and of society's inability to resolve its problems. QCJJ works toward finding and promoting community alternatives such as restorative justice. They argue that the goal of abolition requires economic and social justice, concern for all victims (prisoners, guards, victims of crimes, families), and caring reconciliation among people. Abolition of prisons according to them does not mean abolition of responsibility, but rather an acceptance of responsibility: the responsibility of the offender to alleviate, in some meaningful and creative way, the harm done by the offence. It is also the responsibility of society to those people, both staff and inmates, presently trapped in a violent system which breeds crime, rather than prevent it, as well as the responsibility towards the victims of crime who are largely ignored in the present system.

Restorative justice and the multi-agency approach

It is almost self evident that the best way to work, especially in the field of restorative justice is through a multi-agency approach. It is basically impossible in this field to work alone since our work cross cuts with many sectors at once. There are examples of such multi-agency cooperation everywhere in Europe, but we would like to bring the example of the steering committees in Belgium as a good networking example on the ground. According to Leo Van Garsse (2009), if we really want to respect parties, then we should also take into account the institutional context they are in, being victim or offender, and that means taking seriously that mediation between "victim" and "offender" implies the system or the government. If we ignore this, we risk disrespecting the people we are working with. Instead of declaring wars or creating gaps, if we really want to create social support for restorative justice we should seriously empathise not only with the actual institutional positioning of victim and offender, but also with the key-actors in the institutions. This implies that we should consider and take into account their role, the particular reasoning they are standing for, the problems they are facing.

Several local developments and understandings were partly a result of the first steering group. It led to the strategy to promote social support for mediation by priority through the establishment in every judicial district of this kind of groups composed of different actors that agreed to consider the promotion of this mediation - by offering as a common goal, creating together a strategy for the implementation of mediation and for a CJS really open for this kind of participation of the public to the process of judicial decision-making process. In every judicial district, the objectives of a steering group were negotiated in a protocol. The different actors (prosecutors, judges, lawyers, police-officers welfare-people, local prison staff...) eventually agreed on participation in a two-month steering-committee, offering moral support for restoration and participation, follow up of the practice and offer critical advise, supporting and advising mediators, and considering further local creative initiatives in a restorative direction.

Another setting we have in mind when we think of multiagency cooperation is local government like municipalities because very often municipalities are the cultural, social, political and economical engines of urban settings. They serve as forums for hosting local cultural activities like film festivals, music festivals, sports tournaments, etc. Municipalities are in general institutions that employ people with many different skills and interests, and they are the meeting point for discussion and action about diverse issues, like crime concerns, but at the same time employment, housing, and education. They most probably have some sort of relation with all the other institutions existing in a city, like banks, schools, universities, NGOs, private companies, other public institutions, the criminal justice system, prisons, etc. In Norway, we came across several projects which had cooperated with the local municipalities in order to promote restorative justice. The project “Mediation Café” utilised the contacts of the municipality and a concrete space in their cultural centre to implement the idea for the project, which consisted in having an informal café inside the community where people could easily come and discuss their problems and also concretely use mediation to conflict cases.

Conclusion

The question addressed in this part was: “How can cooperation be developed with civil society organisations to create broad support for RJ? We started by contextualizing the debate on the nature of civil society and presented several broad definitions which have as essence that they include within civil society everything that lies between the individual and the state. Furthermore, we presented a structural-operational definition to delineate civil society organisations as having five main features: being

Organisations: being Private: using Not profit distributing: being Self-governing: and having participation which is Voluntary. Other examples of relevance for restorative justice that do not count as state government are local and administrative government agencies like municipalities, and also in several countries political parties' forums.

Later on, we attempted a link between civil society and new social movements, where we argued that restorative justice as a movement is (like all social movements are) a dynamic constituting part of civil society. We furthermore argued that it is better to understand the concept of civil society (which is sometimes inflated with the concept of community) in relation with justice in general, and in particular with restorative justice, not as global discourse but rather in the different contexts where it exists, and we will limit this outline to Western, Central-Eastern and Southern Europe. The outline of the Western Europe countries was based on the book edited by Joanna Shapland (2008) called "Justice, community, and civil society", where different authors analysed the concept of community and/or civil society in relation with justice in their own countries, and the whole volume tried to compare this relationship among countries. We showed how, because of their historical differences but also due to their similarities, in France, Germany, Netherlands, and even in Northern Ireland the role of lay persons in criminal justice is strictly limited, and the dominant roles of professional criminal justice institutions are not contested, but highly trusted and respected by the public. Measures of restorative justice, such as victim-offender mediation and reparation/compensation, are generally organised outside but in close relation to the justice system by professional social service organisations and non-governmental associations. The word and the concept of community is seen with uneasiness by almost all of these societies, who prefer instead using other concepts which are politically less loaded. Despite the fact that most of the Western European countries rely heavily in state institutions, professionalism and legitimacy of the criminal justice system, there is a recent trend in line with global developments, towards a movement of citizens' inclusion in public policies, and of closing the gap between state and citizens.

The outline on Central Eastern Europe was based mainly on the AGIS 2 Report by Borbala Fellegi (2005) on restorative justice developments in Central and Eastern Europe. We showed how these societies have lived in their communist pasts caricatures of community involvement, which has deeply affected the way they think about common interest or community initiatives. In fact the way in which societies in transition think about informal and formal justice procedures represents a very interesting social phenomenon. We also argued that the judicial transition has been from the 'socialist'

criminal justice model to the Western European model marked by a consistent commitment to the rule of law and the principle of legality, which has created great difficulties for restorative justice given that their strongest opponents are often those professionals who used to fight most vigorously for the democratic changes from a 'legalistic' point of view. Another problem in these societies is the lack of a tradition of civil society, because the state was controlling everything in the society and this has made citizens very passive about public issues. An additional concern is the lack of tradition of multi-agency, interdisciplinary cooperation in dealing with social problems, while general distrust prevails. Finally, in some countries, the ongoing 'commercialisation' of the NGO sector is an often experienced process by which services tend to focus on profit-making and their societal mission tends to be a secondary factor in their activities, and there are also concerns about the future monopolisation of mediation services by a limited number of agencies.

The outline presented on the situation on Southern Europe was based on AGIS 3 Report by Clara Casado Coronas (2008) on the restorative justice developments in Southern Europe. There she presented arguments to show that there are different cultures of civic involvement and participation in Northern and Southern Europe. The main reason for this differences in defining the level of civic involvement was seen to be the type of family structures, and more precisely the role that the family has played in these countries as the main mechanism to display high '*in-group solidarity*', which may be considered one of the factors associated to the rather low interest of society in public affairs and in participating in formal or informal organisations (low '*out-group solidarity*'). In addition, the political and economical conditions of Greece, Italy, Portugal and Spain were substantially different from that of Western Europe, thus the welfare state provision remained considerably more fragile in Southern European countries until the 1980s or 1990s when welfare state reform started and the state-supported social assistance net began to be reinforced. Furthermore, the decline of informal mechanisms of social control, the high degree of mobility and uncertainty in the labour market as well as the growth of urban areas and the increase of social heterogeneity are aspects that tend to erode social cohesion, thus to some extent contributing to people's sense of insecurity and 'distrust towards others'.

Further in our part, we considered several ways in which restorative justice has collaborated and can collaborate with civil society. We first outlined several ways in which restorative justice, defined broadly as an approach that deals with conflict, harm or misbehaviour and encompasses all sorts of restorative practices, has been

incorporated in different contexts of civil society, this too defined very broadly as everything falling between the individual and the state. In this part we focused on cooperation or initiatives done in the field of schools and police. Secondly we dealt with the ways in which restorative justice, defined narrowly as an approach that deals with crime, can collaborate with civil society organisations, identified according to the structural-operational definition which we elaborated previously in this part. We made an effort to identify within several broad categories different organisations which are of interest for restorative justice. The part dealt with possible ways to cooperate with some of them rather than presenting a full panorama. We chose to follow the first two basic definitions of cooperation (direct: working or acting together for a common purpose, and indirect: offering active assistance to each other).

In terms of direct cooperation we chose to focus on the relationship between restorative justice and the crime victims' movement, offenders' groups (prisoners, ex-prisoners, etc), the higher education sector, social welfare organisations, and the civic and advocacy area. In terms of indirect cooperation we focused on the relationship of restorative justice between culture and recreation area, public health, international organisations, religious organisations, and finally on a multiagency approach where we include local government and other government agents. Most of the examples which were touched upon very briefly in this part, will be further elaborated in the practical guideline on civil society and citizens.

Citizens and restorative justice: levels of participation

The last question being pursued in the framework presented in this contribution is ‘how can we increase the involvement of citizens in the functioning of local RJ programmes?’ Although, restorative justice is a concept and a collection of practices constituted by several core elements (reparation, dialogue, ‘life-world’ experiences, participation, etc.), the current part will deal only with the participatory element of restorative justice, which will be analysed in five different albeit closely related areas: a) active participation of those concerned and those affected (and the ‘community’) by the conflict in the restorative process; b) participation of citizens as volunteer mediators/facilitators in the process; c) self-referrals from citizens who bring their conflicts to the mediation services; d) voluntary participation of lay citizens and experts in organisational structures of restorative justice organisations (like steering meeting groups, boards etc); e) voluntary promotion of restorative justice coming mainly from ex-victims of crime and ex-offenders.

Participation of victim, offender, and ‘community’ in the restorative process

Before we elaborate the levels of participation in restorative justice in general, and participation of the victim, offender and the ‘community’ in the restorative process in particular, we believe we need to say two words about the concept of ‘community’, and its relationship to restorative justice in Europe (cf. part five).

“Community” and restorative justice: a note

The community literature in restorative justice is predominantly Anglo-American (mostly American), and often in fact the reference to community has led to an interchangeable usage of community justice and restorative justice (Bazemore and Schiff 2001). Although, there is no doubt that they have many features in common, we should be careful not to confuse the two, as they have been inspired by different theoretical foundations which have in turn led to different practices. One of the main pillars of community justice is crime prevention. The other important foundation is community empowerment and participation (which more often means geographical community).

Another foundation has been the theory of broken windows (Wilson and Kelling 1982), which argues that minor disorders need to be taken seriously in order to prevent escalation. From there one strand of development has led to zero-tolerance initiatives, order maintenance, and heavy street-level community policing. But problem-solving can be seen as the final foundation of community justice. (Goldstein 1979). This implies cooperative efforts to building partnerships between criminal justice agencies, other governmental agencies and local communities (Kurki 2000).

Restorative justice on the other hand puts emphasis on the process rather than on the outcome, to principles of dialogue, respect, responsibility, and ‘restorativeness’, to which community justice pays no particular active attention (in the sense that it does not actively pursue them as core principles, or highlights them). Another major difference is that restorative justice is mainly focused on crime as harm to relationships and on crime once it has happened rather than crime prevention like community justice does. The other major difference is the antagonism between restorative justice and punishment, while community justice takes no issue with punishment. What they share however is the focus on community empowerment and participation, and this principle has been mainly a reason of confusion between the two.

While in theory, restorative justice movement is often articulated as a movement apart or different from ‘the state’ (as represented mainly by the criminal justice system), by reaching out for the involvement of the community (and returning the conflicts to the community), the concept of community employed uncritically by restorative justice is very problematic. George Pavlich (2002), an influential critic of the notion of community in restorative justice literature writes “appeals to homogeneous, consensual and unified images of community harbour serious dangers marked by identity though exclusion”. Walgrave (2002) writes that “community is the utopia of the communitarians, for whom community is the ‘antidote to the *fin de siècle* crisis of modernity’, or a mirage of what we are craving for in a desert of fragmentation and individualism” (p. 75). Although community in literature is in general divided either in geographical communities or communities of interest, there is actually no definition of community; it remains a very fluid, unclear and problematic concept.

It’s worth mentioning again, although this difference was elaborated in the previous parts, that most people in the European countries do not have the same skeptical view of ‘the state’ as most Anglo-American do. They generally see the state as something useful, which at most is to be improved and also controlled by the rule of law rather than radically questioned (Willemsens and Walgrave 2007). Although, in theory, as we

mentioned before restorative justice is envisioned as a movement operating apart from 'the state', in practice restorative justice services are linked very closely with it through the criminal justice system and the legislation. The practitioners always hope to turn 'the state' into a partner in making restorative justice work rather than turn against it. The *citoyenneté* (citizenship)-instead of community- is a better embedded and preferred concept which includes all rights offered by the state as well as obligations towards it. That is why European countries have always from the beginning attempted to include restorative justice in a judicial framework, and create models that locate restorative schemes under state-guaranteed supervision (or in NGO like structures that work in close cooperation with 'the state'), rather than into the community.

These are mainly the reasons why in this framework we have preferred to use generally the concept of citizens rather than the vague concept of community. And when we use the notion of community, its definition typically used in restorative justice is 'community of care', understood as anyone who feels connected to the victim and/or offender emotionally, physically or in other ways. To illustrate this let us remember again our working definition of restorative justice elaborated in the United Nations Handbook on Restorative Justice Programmes. Restorative justice process is "any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator"

Involvement of the stakeholders and community in mediation

The first type of participation, which is involvement of the stakeholders and community in mediation, is the core element which constitutes restorative justice, because the minimal participation degree in the mediation process is the duo victim-offender, which we argue, is anyway more than participation in the criminal justice system; there only the offender being part of the process with the agents of the CJS completely shaping and controlling it.

When it comes to involving more members of the community or stakeholders, restorative justice practice and success degree varies according to type of crime and to country (based on their social, legal, political, economical background). It makes perfect sense to say that in sexual offence cases, where the issues are too intimate and intimidating, it is not desirable to have any other stakeholders rather than the victim and offender. The opposite is true for minor crime in juvenile cases, where we would prefer to have the largest participation possible. Similarly, it is known that in more collectivistic

or traditional cultures (sometimes where also state power is not very strong, or on the opposite when it is too strong), families and key members of the community play a crucial role and are naturally required to participate in the process of reconciliation, while in more individualistic cultures (especially in welfare states), privacy and intimacy are emphasized values which in turn lead to the minimum number of participants involved in the process. We will briefly discuss several models of restorative justice which involve citizens, like victim-offender mediation, family group conferencing, the community boards, and the peace circles.

Victim-offender mediation

Victim-offender mediation usually involves a one-to-one meeting between the crime victim and the offender, although someone may come with them to provide support, especially in the case of juveniles. Although considerable variation exists across programmes (like indirect ‘shuttle’ or ‘pendulum’ mediation), the common element is a direct voluntary encounter between crime victim and offender. This encounter is generally facilitated by a mediator (or sometimes two). The process aims to empower two people—one who has suffered harm and one who has caused it—by providing an opportunity to talk about it in a non-threatening atmosphere, so that each can express his/her own feelings and listen to the other’s feelings. The victim’s need for reparation, both financially and emotionally, are ideally addressed and the offender proposes and offers ways of compensating the victim and offers an authentic and acceptable apology (Aertsen *et. al.* 2004).

In contrast to the offender-driven nature of the current criminal justice system, restorative justice focuses on crime victims, offender and community. Victims of crime feel increasingly frustrated and alienated by the current system of justice, and they have generally no legal standing in the courts, because the crime is perceived to be against ‘the state’. It is worth mentioning that very often we come across a process of secondary victimisation which happens to victims who go through a process with the criminal justice system who is totally insensitive to their pain. In this sense, restorative justice in general, but victim-offender mediation in particular is a victim-centered approach to crime, because it gives the opportunity to the victims to be directly involved in responding to the harm caused by the crime (Umbreit 2001).

Family group conferencing

Recently, the rapid development of the conferencing model in restorative justice and its implementation in several countries, especially in Western Europe, has dramatically changed participation of stakeholders in the restorative process. This is leading to a larger participation of family and friends, more adequate future planning, and better care for both victim and offender, in terms of restoration and rehabilitation. In this model, the mediator plays mainly the role of the facilitator, which is something that gives more decision-making power to the stakeholders themselves. The process also opens up for dialogue an arena for all the ones who have an interest in the question.

Family group conferencing model, rooted in traditions of the Maori of New Zealand, since 1989 a formal programme in New Zealand and also as a police-initiated diversion approach known as the Wagga Wagga model in Australia, using police officers or school officials to “facilitate” family conferencing meetings, has become one of the most influential new models in North America and Western Europe (Aertsen *et al.*, 2004), dealing with a variety of offenses, including theft, arson, minor assaults, drug offenses, vandalism, etc.

The family group conference started precisely as a critique to victim-offender mediation practices because it emphasized the fact that crime by definition has a societal element and therefore isolating the conflict to dealing only with victim and offender is not the best thing to do. Conferencing relies on a notion of “the community of people most affected by the crime,” or “community of care” called also “supporters,” who are left undefined. This community is brought together by a trained facilitator to discuss how they and others have been harmed by the offense and how that harm might be repaired, through engaging the collective responsibility of the offender’s support system for making amends and shaping the offender’s future behavior. The facilitator organizes the event, inviting the participants and asking both victim and offender to identify key members of their support systems, who are invited to participate. This model is very interesting because it gives us an opportunity to leave the notion of ‘community’ undefined, or rather define (structure, mold, shape, craft) it in the process of selection itself. Community in this case is only a community-in-process, a community-in-the-making, and it differs every time, from country to country, from crime to crime and from person to person.

The community reparative boards and panels

This concept traces back to so-called youth panels, neighborhood boards, or community diversion boards, which go back to the 1920's, and have continued under the name "reparative boards" in United States (in San Francisco and Vermont in particular). They usually involve adult offenders convicted of nonviolent and minor offenses; more recently, the boards have also been used with juvenile offender, and they typically include a small group of citizens who have face-to-face meetings with offenders ordered by the court to participate in the process and prepare sanction agreements with offenders, monitor compliance, and submit compliance reports to the court. These panel initiatives rely on both community justice and restorative justice rhetoric and principles, and they mostly handle victimless crime that bother the community, or relatively low-level, non-violent offending and property offending (Knapp, 1999).

In Vermont citizen boards are part of reparative probation in which a judge sentences the offender to probation with a suspended sentence, volunteer board members meet with the offender and the victim and they together agree on a contract which the offender agrees to carry out (Karp and Weather, 2001). These boards focus on developing alternative dispositions with a strong restorative component, including the imposition of community work and restitution. Sally Engel Merry and Neal Milner in the book *The Possibility of Popular Justice: A Case Study of Community Mediation in the United States* (1995) have described and analysed in length the case of San Francisco Community Boards, which they define as 'one of the most prominent examples of a form of community mediation deeply rooted in community life. Its ideology focuses on the capacity of popular justice to embody community power and to express community values. This vision has captured the attention of idealistic programme developers, foundations, government policymakers, and countless eager volunteers. It has inspired numerous programmes and training models.'

Their goals are said to include among others, promoting citizens' ownership of the criminal and juvenile justice systems by involving them directly in the justice process, and generating meaningful community-driven consequences for criminal and delinquent actions, thereby reducing costly reliance on formal justice system processing. The literature is not consistent when it comes to evaluating the success of such community boards, and whether they were able to empower and engage communities the way they envisioned, but nevertheless they are important initiatives of citizens' involvement in restorative justice. Similar initiatives have never taken place in Europe and this is not

surprising having in mind all the differences we mentioned between Anglo-American countries and continental European ones with regards to first the concept and the approach to community, and second with regards to the state and justice– not least the immanent structure of their respective CJS (with the Europeans allowing sanctions only to be imposed through a court sentences).

Peacemaking, sentencing and community circles

The circles represent the evolution of restorative justice to include local residents in decision making in order to empower and develop communities. Circles derive from traditional Native American and Canadian First Nations dispute resolution processes (Melton, 1995), take many forms and are used in various settings ranging from schools and workplaces to the criminal justice system in both adult and juvenile cases. As a response to crime, sentencing circles involve the victim and the offender and their supporters, but also key community members and are open to everyone in the community.

There is no evidence of the practice of circles outside North America (Aertsen *et al.*, 2004). There is nevertheless a recent joint initiative, part of a common project between Albanian and Norwegian mediation services, where the indigenous brothers Philip and Harold Gatensby from Canada were invited to guide participants in a summer school in Albania through the circle storytelling tradition, and also for training in Norway to present elements of the circle tradition. The circle was presented as an oral and storytelling tradition of ancestral knowledge. From the information we have from Norway, we know that this collaboration in terms of a working ‘habitus’ was very interesting and challenging. The forthcoming reports of that experience will shed some more light on the possibility whether the healing circles can be seen as an approach transferable to the European context³⁵.

³⁵ *The following insights were shared with us by the Director of the Norwegian Mediation Services Per Andersen who described like this the encounter with the brothers: “The circle become whatever the participators brought into it. There was no script, although the brothers had some sort of method, but they were actually quite reluctant to tell us anything about any sort of planned method. When the week passed by and Wednesday and Thursday arrived some of the participants were very curious (and some also irritated) to know or learn more about the method they used. As I understood it, the brothers hesitated because: 1) There was no procedure or fixed method or 2) They hesitated to tell us anything that we ourselves did not understand by our own “mind trip” during the week we spent together. So it was like “if you do a circle it’s nothing like the one you make yourself”. And so the week passed, and the curious and the irritated did not get a manual or a procedure on how to conduct a circle. For some of us this was some sort of revelation on the thinking behind what a circle can be. They did not bring up the reason for the meeting at the beginning (as we do in conferences), but assumed that the participants themselves would start talking about the difficult question they had in mind some time during the circle. And they had the ‘talking piece’ which went around and only the one having the piece had the right to talk.”*

Participation of citizens as volunteer mediators (and facilitators)

The second type of participation is the participation of citizens in restorative justice in terms of volunteering of (lay or professional) mediators/facilitators. We know little about how citizens participate in restorative justice initiatives, who volunteers, what is their level of commitment and satisfaction, and what are their attitudes about the philosophy and practice of the programmes in which they participate. Recently, volunteers have become actively engaged in restorative conferencing programmes, but despite recent growth in the use of volunteers in restorative justice initiatives research has not fully examined their role in the process.

There are several reasons why the role of the volunteers in restorative justice is unique. First, volunteers are less likely than professionals to have competing interests among each other. Second, volunteers may be perceived by offenders as the “moral voice of the community” (Etzioni 1996), rather than as instruments of ‘the state’, although we should keep in mind that research in Europe might not lead to the same conclusion. As was highlighted in the first part, participation is not automatically seen as a value by many European citizens who prefer rather to lay back and let ‘the state’ and the experts deal with conflicts, crime, or other social issues. Third, the unpaid status of the volunteers can increase their influence, because this can be seen as an additional value to their work, reflecting their level of commitment and engagement with an issue. Although any model of restorative conferencing—whether family group conferencing, victim-offender dialogue, peacemaking circles, or reparative boards—has the potential for such citizens’ involvement, those approaches that concretely involve a wide array of volunteers would have the greatest potential for maximizing sustained community involvement.

With regards to theories that try to explain the reasons for the participation of volunteers in a certain process, we do not have specific explanations for restorative justice, but general ones which show a tendency either towards the psychological or attitudinal accounts of activism, or towards the microstructural accounts of it. The basic assumption underlying the former accounts is that psychological or attitudinal characteristics in line with a certain movement either compel participation, or render the individual susceptible to recruiting appeals. On the other hand, the later accounts say that it is unimportant if a person is ideologically or psychologically predisposed to participation if there are no organizational structures that facilitate participation. Without structural factors that expose the individual to participation opportunities or pull them into activity, the individual will remain inactive. There are other predictors of

activism too. Interpersonal ties are one of the strongest predictors of recruitment into membership. Membership in organisations is another predictor. The empirical evidence linking individual or organisational ties to movement participation appears to be stronger than the simple association between either psychological attributes or attitudes and individual activism (McAdam and Paulsen 1993).

The debate about lay versus professional mediators is a permanent one in the restorative justice scene. Should the involvement of lay mediators be considered as a priority in the policy development of restorative justice in European countries? Is “mediation between people who have been divided by crime one of the most skilled and sensitive tasks to which anyone could be assigned (Marshall 1999)” or do we need highly professionalised mediation? To act as a lay mediator provides citizens with a better insight into the phenomenon of crime. Hence, in an indirect manner, it helps the wider community gain a more comprehensive picture of the underlying causes of crime and how the system responds to it. But as Aertsen observes ‘(...) Lay people involved in mediation and conferencing practices do not necessarily reflect and activate local communities as such (...)’ (2006: 80). Involving volunteers in mediation work also means that citizens would have to acquire knowledge and skills on peaceful conflict resolution techniques, which in turn may also have a preventive impact since they would be able to use them in other conflict situations in their everyday life.

Furthermore, the movement towards the involvement of lay mediators is in line with similar movements of de-expertisation and de-professionalisation in all of Western Europe. The ‘culture of volunteering’ one’s private time to the community is determined to a great extent by the social and economical conditions of a given country. Movements of de-expertisation and de-professionalisation in all fields of social life taking place in Western Europe, and especially in the Scandinavian countries (we will say more on this later) are not taking place in Eastern and Southern Europe because of their different historical moments, and socio-economic situation.

Whether it is lay-people based mediation or professionalised mediation, mediating between victims and offenders requires a wide range of personal skills, such as: “good communication skills, particularly deep listening skills; problem-solving and negotiation skills; a commitment to equal opportunities; the ability to feel empathy for different kinds of people; a good understanding of local cultures and communities; the ability to acknowledge, recognise and deal with one’s own preconceptions and prejudices; the ability to remain neutral and non-judgemental; the ability to handle strong and difficult emotions in others; patience; the ability to facilitate the process while empowering the

parties to take control of the content; mental agility; the ability to offer and receive constructive feedback; a commitment to learning and developing one's own mediation practice; a commitment to regular supervision (Aertsen et al. 2004: 55)". Additionally, mediators need to have a deeper understanding of not only restorative justice and mediation, but also of the criminal justice system, victimology, legal rights of participants and services linked to the criminal justice system.

Therefore, the question of how to recruit and train highly skilled mediators is a crucial issue in all countries – at the beginning of the implementation process as well as later on. However, the establishment of a stable training system is undoubtedly a bigger challenge at the start of the process of introducing restorative justice. Well-designed training programmes, suitably tailored to the local culture and possibilities, can open doors for establishing successful pilot projects as well as stimulate the introduction of quality services in a country. Moreover, as mentioned before, providing practical training and information on restorative justice can positively influence the attitudes of criminal justice professionals. Furthermore, training is an important issue concerning the further improvement of restorative practices. The Council of Europe Recommendation R(99)19 emphasises in its Explanatory Memorandum, that "[Mediators'] training should continue throughout the course of their work". Hence, the possibilities for professional exchange, supervision, study visits, gaining information about different models can significantly contribute to providing high-standard restorative services in all countries.

In Central and Eastern European countries the most visible improvements have been experienced in the field of training and education. In several countries training is already organised on a nation-wide level. For example, in the Czech Republic it is centrally organised and provided by the national Probation and Mediation Service, while in Poland training programmes are mainly run by an independent NGO, the Polish Centre for Mediation. In other countries the implementation process started with the training of volunteer mediators by an NGO; in Ukraine, for example, by the Ukrainian Centre for Common Ground (UCCG). Meanwhile trainers of this NGO had already started cooperation with Moldovan colleagues and contributed to the development of a Moldovan training system. In some countries, such as Albania, Hungary, Poland and Russia, experienced trainers from Western countries (Norway, Germany, the United States and the United Kingdom) helped the implementation process by providing thorough training for committed NGO activists working on the local institutionalisation.

However, some NGOs, such as 'Ars Publica' in Croatia, started the introduction of the restorative approach mainly on the basis of a local training programme (Fellegi 2005).

In these countries the idea of basing the mediation system on a 'hybrid' scheme, in which professional and voluntary mediators are both employed, is widely accepted. According to this model, more serious or complicated cases (or specific categories such as domestic violence) could be referred to professional mediators, while less serious ones could be mediated by volunteers who symbolise the link to the community. However, it is important to point out that volunteers can and should work on a 'professional' level and their voluntary status does not mean at all that they do not have strong skills and provide high-quality services. By supervision and intensive consultation, professionals can support the everyday work of volunteers. Concerning both the practice and the selection of mediators, defining basic standards is also important. Therefore a consistent accreditation system – preferably coordinated by an umbrella organisation – and selection procedure is needed in order to assure an adequate quality of services. Ethical codes for mediators can have an important role in this.

To highlight the focus on the combination of mediation by lay people and good training skills, we will briefly refer to the case of Norway.³⁶ Mediation services in Norway are primarily based on volunteer mediators under the coordination of a paid staff member in each office. Availability of positions for volunteers is advertised in local papers, and usually there are many more applicants than available vacancies. The selection procedure before training is based on a first interview which explores the applicant's motivations. Humanitarian aspects, personal skills and willingness to learn are the most often mentioned reasons. During the selection the mediation service also tries to balance the different backgrounds of volunteers to represent the different age, ethnicity and gender groups of the society. As part of the training procedure, volunteers observe mediations as well as participate in face-to-face talks with experienced mediators in order to receive feedback. There is a strong emphasis on interpersonal and continuous supervision, on personal reflection, on role play based activities, on the role of the code of ethics, and the general learning culture within the organisation. Additional seminars with invited experts from different fields are often organised in order to discuss diverse issues that relate to crime, such as immigration, domestic violence, etc.

The question "How can we increase the involvement of citizens and/or volunteers in the functioning of local restorative justice programmes?" with an emphasis on

³⁶ This information was taken by the report *Meeting the Challenges of Introducing Victim-Offender Mediation in Central and Eastern Europe(2005)* by Borbala Fellegi.

involvement of citizens as mediators was also the main question addressed by Siri Kemeny in the International Seminar on Building Social Support for Restorative Justice in June 2009, organised by the European Forum for Restorative Justice. The presentation of Siri Kemeny was extremely interesting and helpful in giving an answer to the above question that we would like to present here the intact (slightly abridged) version rather than quoting parts of it. The presentation attempts to answer the question from the perspective of the Norwegian Mediation Service:

“How can we increase the involvement of citizens and/or volunteers in the functioning of local restorative justice programmes? This can be seen as a contradiction in terms because we live in situations where important parts of civil society are constantly weakened. This impoverishment is at least partly a result of the expanding educational system in our/these societies. Nils Christie warned against the lawyers and the increasing professionalization of our society more than 30 years ago. This warning was taken seriously by the Norwegian policy makers and politicians: The Norwegian Mediation Services (MS), our KONFLIKTRÅD, was without discussion established as a layman’s institution. One of the main considerations behind the creation and implementation of the MS, was, I quote: “to strengthen the communities’ ability to resolve minor offences without weakening the legal protection.” The choice of establishing the MS as a lay-mans’ institution was, of course, to make this vision of strengthening the local communities’ ability to resolve their own conflicts – even the minor offences – come true. To strengthen the local communities’ capability in this respect, also meant in a certain way, to counteract exaggerated professionalization.

Has MS has succeeded in this purpose? Has the element – the counteracting of the increasing professionalisation in our societies - been sufficiently focused upon in RJ work? I have lately quite stunningly realised, that the Norwegians, are almost alone in including this element into their considerations and reasons for establishing their RJ institutions. Finland and to some degree Netherlands also worked towards the same direction. In general, the professionalisation forces have increased since Christie pointed at them. An increasingly large part of the population is receiving high school (a minimum), college or university diplomas, often of an unspecified type. This means that they are highly educated for tasks not yet specified. RJ practices – mediation, conferencing and the like, is an obvious and tempting possibility for future jobs. In Norway mediation and conferencing in the RJ context is only done by volunteers, or lay people, that have received basic training. How come that the MS as a layman’s institution was not set under debate, that it was seemingly taken for granted? The

answer must have something to do with the Norwegian society, a society underpinned by a strong ideology of egalitarianism (and in practice also fairly egalitarian), a society of peers, even if the gap between the rich and the poor is increasing., where democracy is deeply rooted, ideologically and in people's mindsets, but also in everyday life, in the local communities and in the way people behave.

At the same time, people in Norway (and of course also in the other Scandinavian countries) are all social democrats in their hearts. People have a strongly social democratic mindset (which is not bound to giving their vote to the social democrats). The Labour party and the Trade Unions have for a very long time been trendsetters, and we have all been influenced by them. Voluntary communal work has also been part of this movement, when the country had to be re-built after the Second World War, and this voluntary communal work trend is still alive and thriving. Furthermore, the educational system is strongly based on social democratic, egalitarian values.

But despite this good ground, we must ask which elements in the social democratic welfare societies are counterproductive to foster social support for RJ? The welfare state has strong paternalistic elements, acting as a caretaking father towards its citizens. The negative effect of this is that the citizens have become used to the state taking care of all their problems – health care, education, social security, social peace, etc. Combined with strong formal education local communities are losing not only the social capital, but also the practical life knowledge – the experience exchanged and elaborated in the pub, over the kitchen table and in the streets. The neighbourhoods are emptied for tasks – the ground for learning and developing this kind of knowledge is lost. The rationale behind this attitude is 'why care, why interfere – experts know better. They are certified to know'.

So far the MSs have not succeeded to revitalise and strengthen the local communities, and thus add to the social support of RJ. But I see a potential for this to happen in the future. During the last two years there have been signs that give reason to believe that this will happen. There is a strong need for empowerment of the local communities. But it takes time for the citizens to get used to the idea of having a shared responsibility for our common welfare, and for keeping the social peace. The citizens of today must also re-learn that rights also yield obligations, and solidarity must also be revitalised and re-learned. If we really want RJ not only to gain social acceptance and support, but also to become a tool to "reinvent" social capital and local, practical knowledge in local communities, mediation and the facilitating of conferences should be done by volunteers. And – to succeed – attention must be paid to how the RJ services

are organised. To be visible in the local community, they should be decentralised. I also see positive developments after the implementation of the conferencing model. It has really taken off. With more people participating and having experience with RJ, the idea spreads much faster and thus social support is created. With conferencing, RJ has “gone home” with the police and the prosecutors. Many of them have become “believers”.

The idea of RJ can best be promoted when the citizens realise that they, as part of the community, have a responsibility to take care of the social peace, while the state has the responsibility to preserve (law and) order. At present I think that social support for RJ in civil society in Norway can best be developed via a sound cooperation between the police and the MSs. The MSs do not have an organisation at present that makes it possible to “reach the community” without help from others. For this purpose they are far too centralised. The police on the other hand, are numerous, and, by its function, get in contact with all kinds of groups and individuals in the community. The police in Norway have in general a strong civil character. If the police do community police work according to RJ principles, they can identify conflicts and problems in the local community and in cooperation with the MS organise conferences to discuss and help people/the community to solve their conflicts and problems. I hope that in the future the police (stimulated by the Ministry of Justice) will not be so eager to formally register every little act that can develop into an offence, or even not register the smaller offences in their files, to show in their statistics.

We should rather strive for a decriminalisation in our societies, with more social peace attained via the empowerment of conflict handling in the local communities. The picture is different from one country to the other, but the international scene does also influence the national development. What has taken a very long time in Norway, can today take much shorter time in another country, aided by the international climate. The role of the EU should not be underestimated either. And of course, it is important to pay attention to the local culture. Maybe to campaign for volunteer mediators will be counterproductive in certain countries. Still, I think it is important to stress that the local community, the citizens’ network should be involved, should be empowered to continue the effort to build and develop their own local community, by their own means.” (Siri Kemeny 2009)

Self-referrals from citizens

The third kind of participation we will address is the participation of citizens in restorative justice through self-referrals, which basically means that citizens bring their

own conflicts on their initiative to the mediation services before they take them to the courts. This is the weakest kind of participation in restorative justice. In a review of citizen participation in alternative dispute resolution, Harrington (1984, 1985) argues that few disputants seek community mediation without some sort of legal system referral. What accounts for low voluntary usage of mediation given high user satisfaction?

There are two types of explanations: the “instrumental” and the “cultural” (Merry and Silbey 1984). Inside the instrumental branch of explanations we can find Pearson’s (1982) three explanations for low voluntary usage rates of alternative dispute resolution. First, she argues that many disputants are unaware of these programmes, secondly that lawyers are steering clients away from these processes, and thirdly that there are other alternatives which are more convincing to citizens. We too, in this contribution, have showed extensively through empirical evidence that indeed most people are unaware of these programmes and of restorative justice in general. Pearson (1982) too brings evidence that such failure to apply to mediation programmes comes due to lack of public education about the concept. A concept which is not popularly understood does not inspire confidence and therefore usage. Furthermore Merry (1982) argues that despite the fact that many people do not expect to achieve satisfaction in the court, their belief in their legal right to go to court often supersedes the satisfaction concerns. The ambivalence of the legal community about mediation is also greatly influencing decisions of disputants to refer their cases to these programmes. On the opposite, research suggests that many cases referred have their origins in the attorneys’ encouragement to their clients.

The second branch of ‘cultural’ explanations explains low voluntary usage as a by-product of local customs and habits of conflict management that are not oriented toward the use of mediation. To go beyond ‘cultural’ explanation, we can even argue on the effect of modernization in different societies. For many new nation states, very legal systems are a symbol of modernization and although they have mediation as part of their traditional and cultural background, this is often equated with backwardness. There has been a global tendency towards professionalization of life, highly related to the importance placed on experts, meaning that people prefer to have their conflicts solved by experts, and institutions rather than themselves, or other lay people. Despite different reasons and historical, political, economical conditions, all countries and most of their people value the formal legal system more than any other system or alternative.

Morrill and McKee (1993) offered an alternative explanation for the low voluntary usage of these mediation services by citizens, which they called organisational survival strategies. These strategies orient the mediation centres towards closer ties with governmental agencies for referrals and funding. While favouring the relationship with the criminal justice system, they have ignored their relationship with the public at large, who is most of the time unfamiliar with restorative justice. The tendency of ignoring relations with public is changing, with more and more services paying great attention to increasing publicity for their work through the media and other means and improving their relations with the broader public. Morrill and McKee (1993) focused on the survival strategies of a community mediation centre, which revealed that it survives by maintaining referral relationships to established state control organizations and concentrates on providing services to these organizations. These actions constrain the centre from seeking voluntary users.

Being one of the first supporters of the relationship with the public– within a closely CJS-connected RJ-policy –, Gerd Delattre, head of the Servicebureau for VOM and Conflict Settlement, has focused his energies on the relationship with the media and also with sports' clubs, and other institutions in civil society. Another interesting concept that he has put forward, relevant for our enquiry in this part is the concept of “multipliers”, by whom he means people or groups who are open-minded and interested in the ideas of restorative justice (doctors, therapists, priests, teachers, trainers, etc.) and don't perceive it a professional danger. According to Delattre, they should be informed on restorative justice, and tied up in networks of multipliers. To put it in his words, the future of restorative justice should be different that it is now: “I have a vision: I will be a retired person some day and visit some European capitals. I will ask ordinary people on airports or railway stations: what is restorative justice?, or ‘could you show me the way to the next conflict settlement agency?’ And I will get a satisfactory answer. Be it in Berlin, Brussels, or Budapest!” (Delattre, 2008).

The way to approach citizens is also by examining social organisation in different contexts, which means by exploring any informal networks in geographic, economic, kin, or other relationships among people within a given society. Although it is clear that “community” is a difficult and unclear concept without any substance, we should not give up the idea of identifying certain social aggregates and forms in our societies that we can rely on. But in order to find those already existing forms (networks and entities) in a given society, we need to approach the issues through ‘local analysis’, i.e. by compiling knowledge ‘on the ground’. For example, speaking of citizens who could be helpful in

spreading ideas or concrete knowledge of restorative society, a brilliant example are taxi-drivers. But micro-community is more meaningful in certain contexts, for example Turkey, or more specifically Istanbul. They are a very vital and vibrant group in contact with many different people, and are in the specific context mentioned very communicative. The idea to them could in turn be spread out through the means of radio, a medium of information and entertainment on which they rely extremely during the whole day. But this idea can work out only in one particular context.

It all boils down to becoming quite concrete, and instead of speaking of society in general or of community we should try to identify people situated in specific social circumstances with specific modes of relating to each other. To come back to Gerd Delattre's concept of multipliers, we have to be able to concretely identify such groups, by whom he means people or groups who are interested in the principles of restorative justice (doctors, therapists, priests, teachers, trainers, etc.), who should be informed on restorative justice, and who are tied up in further networks of multipliers. If we try to think of the context of priests who are in contact with many people in the community, people who also in different ways bring their problems (which might be legal, conflictual, etc) to them and ask for support or advice. If the priests would be well informed and supportive of restorative justice, the potential of reach for self-referrals would be great. Such reasoning goes as well with other key professions and possible networks as well.

Participation of lay citizens and experts in organisational structures of restorative justice

In his presentation "Implementation of a restorative justice culture through networking with official and private agencies: A critical view on the Flemish example of the local district steering-committees" in the International Seminar on Building Social Support for Restorative Justice organised by the European Forum in June 2009, Leo Van Garse, a pioneer in the restorative justice scene in Flanders, Belgium, introduced a very interesting example of collaboration between different structures to foster a culture of restorative justice. In these steering groups prosecutors, judges, representatives from bar association, from victim support, and from offender-assistance, police-force, prison staff, and representatives from university, province or municipality, and of course from the mediation services compose the steering committees who comes together regularly (generally once in two months), offer support for restoration and participation elements, follow up of the practice of mediation and offer critical advise, and consider further local creative initiatives in a restorative direction. Participation in such meetings offers the

participants the possibility of knowing each other better learning to exchange ideas in an open and respectful way, of discussing and clarifying ones own goals and concerns, of having constructive confrontation of experiences, insights and defensible concerns. They come to such meetings in a voluntary fashion, although sometimes the fact that they represent an institution can put in discussion the free choice of the participants.

The European Forum for Restorative Justice is also a structure which has a board of totally unpaid and voluntary committed experts from the restorative justice scene in Europe. Most of the organisations of restorative justice most probably rely on such voluntary participation and commitment from different experts which proves to be crucial support in the survival of such organisations. These people sometimes are people directly involved with restorative justice, but often they are people who are mainly interested in restorative justice ideas but are not directly involved in practice. As we have seen from the case of Norway, it seems to be of great importance to have journalists involved in such organisational structures like boards, because they can provide contacts, insights and expertise that others in restorative justice cannot.

Promotion of restorative justice from ex-victims and ex-offenders

In the seminar on Building Social Support for Restorative Justice we also witnessed a presentation called “With their own voices: The Woolf Within” and watched a film about a transformative story of an ex-victim and ex-offender from UK, Will Riley and Peter Wolf³⁷, who had participated in restorative justice practice and were committed to spread together their messages in very strong support for restorative justice. Such transformative stories seem to be very powerful and affect people enormously. Moreover in this case, the support went beyond promotion. Will Riley launched “Why Me?”, a campaign group set up by and for victims of crime who have benefited from restorative justice and want others to be able to benefit from the same opportunity.

Initiatives like this are not solitary, and they are predominantly taking place in North America and UK. Recently, the Leuven Institute of Criminology hosted a presentation against death penalty which narrated a personal story. The presentation relived the horrific Oklahoma City terrorist attack in which Bud Welch's (the presenter) young

³⁷ Peter Woolf was a prolific offender, ensconced in a world of violence and depravity, who, by his own reckoning committed about 20,000 crimes. Then he burgled a house, fought with his victim and ended up in prison yet again. This time though it was different. Peter met with his victim, Will, in a restorative justice session that took place in the prison. The meeting changed both their lives forever. Peter and Will tell their stories in this film which coincides with the launch of Peter's book, *The Damage Done* published by Bantum Press and the launch of *Why Me?* founded by Will, a campaign group set up by and for victims of crime who have benefited from restorative justice and want others to be able to benefit from the same opportunity.

daughter was killed. His story reveals a bitter struggle and unorthodox relationship with the father of the convicted killer (with death penalty), Timothy McVeigh. It became clear that Bud Welch was travelling in many places to tell his story and advocate the abolishment of death penalty through his story. There is no research showing what reasons account for these differences across continents in the frequency and acceptance of personal story telling in public as an advocacy, or fundraising, or promotion strategy. The culture of narrating one's story and exposing oneself to strangers must be probably seated in deep traditional and religious habits and beliefs, but we will not offer any explanation on that given that it would not rely on any scientific evidence of some kind. We can only say that mainly in North American there is a certain openness and willingness to reveal personal information to strangers fairly quickly, especially channeled into a kind of public speech genre which has some political objectives (fundraising, promotion, awareness raising, vote collection).

As we mentioned before such stories are also often told for fundraising reasons, and the survival of NGOs through charity funding is especially relevant for America, Canada, and UK, while we would (not exclude but) generalise that in continental Europe that is not how NGOs survive. In many European countries, NGOs are financed by European big donors, or even the governments themselves rather than individuals. Even when we do not depend on charities, the dilemma of creating communication campaigns where there is no option of finding and telling the personal stories of those helped by an agency remains even for restorative justice organisations Europe-wide. If telling personal stories – of a few people whose lives have improved because of our work – is not possible, what other strategies could work to raise funds or to reach audiences? How can a socially committed NGO raise awareness of their organisation, reach out to potential donors and raise funds when it is not possible to know the specific personal stories of the people who benefit from the service? We will not answer these questions here, but we just wanted to pose the problem for ourselves in order to think how we can use this (apparently very transformative and powerful) way of reaching audiences through personal stories in each of our contexts.

We can mention here two different ways to promote an idea, in our case restorative justice, without public presentation but through personal storytelling. One could be through use of video, and the other through radio. Videoleters practice is a tool for reconciliation in post-war countries and a conflict prevention tool in multiethnic societies. Katarina Rejger and Eric van den Broek, the Dutch filmmakers, having already made several movies about the aftermath of the Balkan wars of the 1990's, embarked on

an extraordinary project called "Videoletters" designed to further reconciliation among people from the former Yugoslavia who had once been friends and who had been separated and even alienated by the bloody nationalist conflict. The idea was simple: someone who had lost touch with, say, a childhood friend or a lifelong neighbor from a different ethnic group was invited to record a message. The directors then traced and showed the video letter to the "lost" friend, who was usually eager to reply. In most cases, the exchange resulted in an emotional reunion. The episode "Emil and Sasa" recounts how the war separated two youths who grew up in Pale, the wartime capital of the Serb-dominated area of Bosnia. We don't know the effects that the presentation of such video-letters would have on the general public, but the chances are good that that would be a moving tool in awareness raising.

Another interesting and inspiring example comes from Ecuador. Charito Calvachi-Mateyko, a Restorative Justice Practitioner in Ecuador uses her Latino networking to get radios to have her programmes. She started with *Latinas of Today and Tomorrow* to promote Latina role models for the new generations. Now she tells stories of transformation of young people who have gone through restorative processes in a programme called *For a Culture of Peace*. Stories move people's hearts. And at hearing restorative juvenile justice stories, the thought of new ways to deal with juvenile justice is planted. People who hear her stories always remember them and want to hear the next one. She hopes to expand to the whole of Latin America. While it is true that radio in Europe does not have the audience power that it has in many countries in Africa, and Latin America, these good examples are nevertheless useful for our contexts as well.

Conclusion

The question pursued in this part was 'how can we increase the involvement of citizens in the functioning of local RJ programmes?' and to answer this question the current part dealt with the participatory element of restorative justice, which was analysed in five different areas: a) active participation of those concerned and those affected (and the 'community') by the conflict in the restorative process; b) participation of citizens as volunteer mediators/facilitators in the process; c) self-referrals from citizens who bring their conflicts to the mediation services; d) voluntary participation of lay citizens and experts in organisational structures of restorative justice organisations (like steering meeting groups, boards etc); e) voluntary promotion of restorative justice coming mainly from ex-victims of crime and ex-offenders.

We differentiated firstly between community justice and restorative justice highlighting the fact that they have been inspired by different theoretical foundations which have in turn led to different practices. We also questioned the unclear use of the concept of ‘community’, and put forward instead the concept of *citoyenneté* (citizenship) which is a concept better embedded in the general European legal culture and attitude towards ‘the state’.

With regards to the first type of *participation, which is involvement of the stakeholders and community in mediation*, we said that this is the core element of restorative justice, because the minimal participation degree in the mediation process is the duo victim-offender, which we argue, is anyway more than participation in the criminal justice system; there only the offender is the passive object of the adjudication process, the victim remaining marginal. We argued that when it comes to involving more members of the community or stakeholders, restorative justice practice and success degree varies according to type of crime and to country (based on their social, legal, political, economical background). We also briefly discussed several models of restorative justice which involve citizens, like the victim-offender mediation, family group conferencing, the community boards, and the peace circles.

With regards to the *participation of citizens in restorative justice in terms of volunteering of (lay or professional) mediators/facilitators* we mentioned some theories that try to explain the reasons for the participation of volunteers in a certain process, which show a tendency either towards the psychological (or attitudinal) accounts of activism, or towards the microstructural accounts of it. We furthermore highlighted the debate of lay versus professional mediators in the restorative justice scene, and mentioned the training requirement and standards. We argued that no matter what the preference in the debate will be (depending on the country and depending on the type of cases), it is important that volunteers should be trained and work on a ‘professional’ level and their voluntary status does not mean at all that they do not have strong skills and provide high-quality services.

To highlight the focus on the combination of mediation by lay people and good training skills, we referred to the case of Norway, which was illustrated and analysed in depth by Siri Kemeny’s contribution during the International Seminar on Building Social Support for Restorative Justice in June 2009, organised by the European Forum for Restorative Justice. She emphasised the fact that the Norwegian Mediation Services (MS), was established as a layman’s institution in order to strengthen the communities’ ability to resolve minor offences without weakening the legal protection. Norwegian

society was presented as based on a strong ideology of egalitarianism, a society of peers, where democracy is deeply rooted, ideologically and in people's mindsets. At the same time, Siri argued that people in Norway (and in other Scandinavian countries) have a strongly social democratic mindset, and that they prepared to engage in continuing voluntary communal work. She strongly argued that if we want RJ not only to gain social acceptance and support, but also to become a tool to "reinvent" social capital and local, practical knowledge in local communities, mediation and the facilitating of conferences should be done by volunteers, and that we should rather strive for a decriminalisation in our societies, with more social peace attained via the empowerment of conflict handling in the local communities.

With regards to *participation of citizens in restorative justice through self-referrals*, we tried to understand what accounts for low voluntary usage of mediation given high user satisfaction. According to 'instrumental' explanations, it was argued first that many people are unaware of these programmes, secondly that the legal community is steering clients away from these processes, and thirdly that there are other alternatives which are more convincing to citizens. According to 'cultural' explanations it was argued that low voluntary usage is a by-product of local customs and habits of conflict management that are not oriented toward the use of mediation but towards a strong legal and expert culture. We also argued that while favouring the relationship with the criminal justice system, restorative justice organisations have ignored their relationship with the public at large, who is most of the time unfamiliar with restorative justice.

We put forwards several concepts that can affect the degree of self-referrals. One was the concept of 'multipliers', people or groups who are open-minded and interested in the ideas of restorative justice (doctors, therapists, priests, teachers, trainers, etc.) and don't perceive it a professional danger. The other concept is that of networks or forms of organisations in a certain setting, which we argued can be approached through a careful local analysis only. We argued that we need to think of people as situated in their concrete social environments and networks.

With regards to the participation of citizens (lay people or professionals) in organisational structures of restorative justice, we argued for the value of having other professions inside our boards and steering meetings. We presented the case of the Flemish Steering Committees as an interesting example of collaboration between different structures to foster a culture of restorative justice. We also presented briefly the case of the European Forum for Restorative Justice, a structure which has a board of totally unpaid and voluntary committed experts from the restorative justice scene in

Europe. We argued that it extremely important to have journalists on board, including social designers, and other key professions with skills different from ours.

With regards to the element of participation in terms of promotion of restorative justice through public presentations (or other forms) from ex-victims and ex-offenders, we argued for the added value of this element, because such transformative stories seem to be very powerful and affect people enormously. Initiatives of this kind are many and they are predominantly taking place in North America and UK. We argued that the culture of narrating one's story and exposing oneself to strangers must be probably seated in deep traditional and religious habits and beliefs. Moreover we argued that very often these public narrations go together with fundraising attempts, which are not strictly speaking concerns of many European countries, given that their NGOs are financed by European big donors, or even the governments themselves rather than individuals. Despite these differences we tried to find a way to think how we can use this (very transformative and powerful) way of reaching audiences through personal stories in each of our contexts. We illustrated this thinking through two different ways to promote an idea, in our case restorative justice, without public presentations in front of audiences but through personal (nevertheless public) storytelling. One could be through use of video, and the other through radio.

To conclude we can say that restorative justice as a movement while focusing (rightly so) on its relationship with the criminal justice system has ignored considerably its relationship with 'ordinary' people. These two (criminal justice system and people) need each other constantly and restorative justice can potentially work as a mediating philosophy and practice between 'the state' and the people. There can be no justice in a world without connectedness, empathy, dialogue, participation, and understanding, and that's where restorative justice has a key role to play. But social capital enhancement or democratic participation cannot flourish in a world without an infrastructure of security, evolving around human relationships guaranteed by institutions of justice. Restorative justice should be presented as a means and as an instrument of criminal and of social policy that is in tune with a global movement for more democratic participation of citizens. Even if restorative justice ignored its relationship to the public to a certain extent, it is the right time to make up for this mistake. Current trends in sociological and political science theory point to a global emphasis on democratic participation, the inclusion of citizens in decision-making processes, on the reliance on dialogue in conflict-resolution, and more generally spoken, on social capital development, all of which are in line with the philosophy of restorative justice.

8

Conclusion

Although public support and public participation is crucial to the degree of being constitutive of restorative justice, the reality shows that the public is not thoroughly familiar with and participative in this approach to justice. Based on this concern, throughout the project “Building social support for restorative justice” we have tried to answer three main questions:

- 1) how can cooperation with the media be set up to inform and educate the public about restorative justice?;
- 2) how can cooperation be developed with civil society organisations to create broad support for restorative justice?;
- 3) how can we increase the involvement of citizens in local restorative justice programmes?

In other words, the main task of the whole treatise consisted in understanding how to build social support for restorative justice, while looking at the possibility of cooperation with media, civil society and citizens. The contribution was divided into six main parts, and must be read together with two complementing (nevertheless self-standing) documents; the media toolkit, and the practical guide on civil society organisations and citizens³⁸.

Before tackling the questions more concretely, we thought it necessary to ground our answers in theoretical and empirical findings. Therefore, in *the first part* we outlined several sociological background theories of relevance for developing social support. While doing this, we have asked which features of current societies and which societal developments are of relevance for building social support for restorative justice. These societal structures and developments were investigated taking into perspective, what we have identified as the core elements of restorative justice: the reparative element, the participatory or democratic element, and the ‘life-world’ element.

³⁸ These documents can be found at the EFRJ website: www.euforumrj.org

The analysis of the societal developments started with the reparative element of restorative justice, where we saw how these developments came predominantly in the way of a reinvention, or a return to modes of reaction to crime that have played an important role in the historic past. Reparation has been a major, if not the dominant mode of reaction to wrongdoing – from ancient and antique societies until well into the Middle Ages of Europe. The rise of punishment, the replacement of reparation, and its falling into disrepute is closely bound to the emergence of the modern state and modern state law and the absorption of mediate patrimonial powers, including their jurisdictional powers. But while the absolute theories of punishment (most prominently those of Kant and Hegel) had attributed a certain role to reparation within criminal law, it was the ‘relative’ theories of utilitarianism that paved the way for the victory of the notion of punishment – and rehabilitation – as a means to reform the perpetrator. We also added that the same theories also contributed to curbing the use of excessive ‘unnecessary’ punishment. They were in tune with a more technocratic oriented and instrumentally arguing society. But since these theories, due to their utilitarian orientation, were from the onset amenable to the test of empirical research, the promise of punishment and of crime prevention by punishment was to forfeit its power to convince. This might be one of the forces that have promoted the search for alternatives to punishment and for a return of reparation.

We moreover discussed how these tendencies find their expression within new strands of legal thinking (e.g. the theory of positive general prevention) and how they are further supported by psychological (developmental and individual psychology), and psychoanalytic theories that undertake to grasp major societal developments of the last decades. What these theories have in common is that they all describe the new relationship between the individual within society at large and its various entities (like the family, the community), creating therefore a new perception of the place of the individual in society, *vis-à-vis* the others. This place of the individual is constituted by a type of bonding, borne out of freedom and self-determination, and it calls for a mode of conflict regulation that does not afford passive submission under the infliction of punishment from above, but an effort and a conscious activity toward restoring the social bonds that have been severed – in other words for reparation and reconciliation.

The analysis further tackled the participatory element of restorative justice through outlining the societal conditions and theories attempting to describe the conditions regarding active participation of citizens in the handling of their own affairs and of regulating their own conflicts. We argued that restorative justice should be presented as

a means and as an instrument of criminal and of social policy that is in tune with a global movement for more democratic participation of citizens. Participative conflict regulation can be propagated as an important building stone within such a wider movement. We presented pieces of theory that deal with identifying and analysing the strands of societal development that point in the direction of more active participation.

Eminent theoreticians have analysed developments inherent in overall globalisation and concomitant glocalisation that point in the direction of an overall demand for more democratic procedures in political decision-making as well as in conflict regulation. We have referred to Jürgen Habermas' discourse free of domination and to Anthony Giddens' espousing the role of civil society. These concepts, as well as John Braithwaite's 'responsive regulation', together with the concept of dominion own more of an appellative function (we saw that empirical evidence remains scarce). On the other hand we presented Clifford Shearing's concept of 'nodal governance' translated into the work of the peace-committees of the *Zwelethemba* model. We argued that the various developments described are not in themselves leading towards more participation, but it needs a conscious effort to build on these structures of governance, and to reline them with dialogical procedures on the one hand and with an orientation towards 'restoring the future' as happens with the Peace Committees. We found well-researched accounts of peacemaking efforts based on principles of dialogue from the Balkans, which make us aware of the potential inherent in restorative conflict regulation as well as of the obstacles confronted. We concluded that restorative justice responses being carried by democratisation, by the spreading of models of deliberative decision-making in the public realm, by dialogue and more specifically by responsive regulation offer the road of hope and an optimistic perspective for restorative justice in the world of today.

The emphasis on concrete 'life-world' experiences is in tune with the topic of participation. Relying on concrete experiences of doing harm and of suffering harm (as a consequence of wrongdoing) can counteract the tendencies of reacting to those conflicts that are defined as crimes by resorting to punishment. We have to consider the fact that restorative justice is proposed and makes its appearance in an arena where considerable importance is put on combating or fighting crime, and where the repressive, retributive response is to a large degree the obvious and seemingly 'natural' response. These tendencies and the concomitant discourses work as an obstacle to overcome – something to 'turn around'. When we construct and design strategies for building social support we cannot neglect the fact that we have to confront and to counteract these tendencies.

In addition we have presented an array of psychological, of psychoanalytic and of pedagogical theories that describe and analyse the process of the individual's socialisation/enculturation in the light of new societal condition and new challenges. Today the individual's struggle is no longer with the parental authority and the requirement of deference under an authority that shapes the young person's stance *vis-à-vis* different agencies of society, but the process of forging an identity by inter-acting with her social environment, with the others. The theories we focused on put more emphasis on these processes, which have a bearing on the modes of conflict regulation that are resorted to in a society. The participatory and reparative element, inherent in restorative justice, or in other words, the republican mode of dealing with conflicts and with deviance appear to be more in tune with this new 'socialisation type', and these theoretical considerations seem to have a capacity to shatter the concept of the 'need for punishment' as an ontological fact. Against this background, we argued that reparation as a constructive means to restore the balance of the scales of justice appears a more adequate reaction to wrongdoing than punishment.

We argued that attending to concrete experiences of the people involved as it happens within restorative justice can provide an antidote to ideology-driven images of crime and the fears they evoke. This requires establishing opportunities or a forum to bring these experiences 'to the fore'. This requirement might turn out a catch 22 predicament where we have to create the situation that we need to create the situation. Repeatedly, when recommending the strategy of setting up pilot projects in a country that is struggling to establish restorative justice, we have met with the objection 'we will not be able to do this, there is not sufficient support'! Paradoxically support for restorative justice projects can only be gained once these projects happen. But we argued that we need to set up islands of practical experience that are apt to reconcile or dissolve the paradox.

After explicating several pieces of theory on the core elements of restorative justice (reparation, active participation and life-world element) relevant for building social support, we focused in *the second part* mainly on available empirical findings pertinent to these elements, which further accentuate the theoretical background. The findings presented were mainly from German and English speaking countries. Empirical evidence showed that although knowledge on restorative justice is poor, the attitudes about it are quite positive, especially with pertaining to the core elements of restorative justice.

We started the part by discussing research from different parts of the world looking at public opinion on restitution and reparation, particularly in relation to assessing the reactions from people on their use as alternatives to imprisonment and punishment. The oldest and most well-known of these studies is the one conducted in the Institute for Criminology at the University of Hamburg, led by Klaus Sessar. This study is one of the most convincing demonstrations of the strength of public support for 'restorativeness' rather than punitiveness, therefore we have discussed its findings at length. Summarising the results of the study, Sessar observes that 'restitution is still evident among citizens, but has vanished in the criminal justice system'. We also presented lengthy research from the USA, Britain, New Zealand, and Netherlands showing support for the use of reparation. These findings were noteworthy because they showed that the imprisonment as a punitive response carries little appeal for the public when contrasted to the compensatory alternative.

There is large empirical evidence showing strong public support for restorative concepts such as compensation, reparation, restitution, and community work. Clearly, part of the broad attraction for restorative justice comes from the benefit that it offers to the individual victim. The idea that the offender has made amends to the individual victim (or sometimes to the larger community) carries considerable popular appeal. This may reflect on the part of the public a desire to assist victims of crime, and the belief that by making compensation, the offender is taking an important step toward his or her reintegration into the community. These findings emerge predominantly from studies in which people are given a choice between these options and punitive sentences such as imprisonment, or in studies in which people are made familiar with restorative options. Devoid of choices, however, people hold on to their traditional views on sentencing. These results led us to conclude that restorative justice needs to be made more familiar to the public, but also that there are several methodological problems with such type of public opinion research.

With regards to citizens' participation in conflict settlements, empirical evidence is highly complex and varies from country to country. The cultural differences and the differences in social policy traditions in different societies have an impact on people's perceptions, and becoming active is far from self-evident. But this does not yet preclude the possibility that the offer of a restorative justice (or VOM)-procedure would not meet with interest and with wider acceptance. These results also show that the sparse use that is made of the CJS is due to its main features of being removed from people's real concerns and of giving them no real voice. A participatory procedure that takes care of

the concrete hurts and losses they have experienced might stand a greater chance to be resorted to when conflicts that can be framed as wrongdoing occur.

We also presented empirical evidence relating to the effect of active participation and compliance with agreements and their contents reached in participatory (restorative) procedures, compliance which becomes evident especially when compared with the results achieved with obligations imposed by formal court decision. We argued that the self-commitment and the high compliance following is one of the empirically best established and therefore most convincing effects of participatory restorative procedures. Again in relation to the principle of participation we presented empirical evidence pertaining to the concept and the phenomenon of 'procedural justice'. Research shows that people feel more fairly treated if they are allowed to participate in shaping decisions which affect the resolution of their problems or conflicts. We concluded that the active participation of citizens in the criminal justice process through involvement in restorative processes, by emphasizing their socio-legal responsibility, participation and having a voice in the decision-making process, increases satisfaction with the service and decreases punitive attitudes.

The appeal of restorative justice, and more specifically of the 'life-world' element as it pertains to reintroducing concrete (mainly victims') experiences, was also clear from studies of participation and satisfaction conducted with victims of crime in mediation, family group conferencing and circles of support, which showed high level of satisfaction and appreciation of these restorative settings. Moreover, most of the victims who participate in restorative processes of different forms (conferences, circles, mediation) would recommend these to other victims.

While there is broad empirical evidence showing positive public attitudes about restorative justice, additional research highlights several variables that account for differences on public support for restorative justice like: age of the offender, criminal history of the offender, seriousness of crime, socio-economic status of the offender, and 'redeemability'. In other words, although there is widespread public support for restorative alternatives, the public appears to see these alternatives as more appropriate to juvenile offenders, and in particular juveniles without previous criminal record. Furthermore, 'redeemability' (the belief that people can change, especially through 'earned redemption' whereby offenders earn their way back into society through opportunities to make amend and through positive contributions to their communities) is a powerful theme for those who support restorative justice, because it shows that an offender is worthy of further support and investment. Another variable which accounts

for a differentiation of findings is the criminal history of the offender. Research showed that the public sees recidivists for violent offences as inappropriate candidates for restorative initiatives, but not the ones for non-violent offenses.

General findings from the research on seriousness of crime and support for punishment versus restorative options showed that the severity of punishments favoured by the public rises in direct proportion to the seriousness of the crime. For the most serious crimes (rape, armed robbery, and violent crimes), there was almost no support for participation in restorative programmes. When it comes to violent offenders, the public seems to have the need to feel confident that the offender would not pose a threat to people's safety and that the victim is satisfied with the outcome of the restorative process. If restorative justice can reconcile the public's desire for safety and rehabilitation then it is likely to receive public support. On the other hand although the public may support restorative initiatives most strongly when the crime is not particularly serious, researchers and practitioners of restorative justice have pointed to the fact that it is with respect to the most serious personal injury offences that the potential for restoration is greatest. However, from what we have seen so far, research suggests that convincing the public that the benefit of restorative justice is likely to be greatest for the most serious crimes may prove difficult.

Research also showed that the social status of the offender (in terms of the public responsibility the public assigns to such a status), the perceived intention of the offender, and the perceived motivation are important variables accounting for differences in punishment reactions. Furthermore, a number of studies also suggest that perceived similarity (of the social, occupational, and educational status) between the offender and the respondent may affect the punishment response. In general, the greater the similarity, the lower the punishment recommended but not always. Punishment reactions against a rule violator might also be more intense if the respondent assumes that similar others should know better or have a higher level of morality. Furthermore we saw that expressions of remorse and apologies for wrong conduct have an impact in most cultures on public sentencing preferences, with the public being more willing to recommend victim-offender mediation (rather than a more punitive alternative) if the offenders express remorse.

In the end of the second part, we referred to several studies that have pointed out methodological concerns and considerations with regard to research on public opinion or attitudes on punishment and restorative justice. The authors contended that it was to a large part the lack of alternatives, scarcity of information, choice of method, and lack of

complexity on the cases presented to respondents that produced results that appeared to confirm the assumption that ‘the public’ ask for tough reactions to crime and for harsher prison sentences. Several authors concluded that these methodological concerns have to be taken very seriously and the misperceptions that criminal justice experts and policy-makers have towards the public’s opinion on crime and punishment have to be dispelled.

In light of the empirical data we also asked ourselves whether it suffices to build social support for restorative justice without considering the impact of politics and politicians. In our *third part* we started our consideration on the relation of restorative justice, the public and politics, while reckoning with the difficulties of a complex relationship, firstly through an analysis of the chances of a rational evidence-based (criminal) policy, and secondly through an analysis on the public opinion on crime and punishment and the role of politics. We argued that it is important to be aware that there is on the one hand a need for politics and politicians to consider and to attend to public opinion and on the other hand we have to realise that public opinion is to a large degree shaped by political conditions and by the rhetoric of the politicians. We have in this part drawn attention to the necessity to create socio-political structures that make room for social support to enfold. This implies forging alliances and work in the arena of politics – becoming part of conscious political effort, built on and use the means of deliberation and dialogue.

We briefly argued that there are several reasons why the public’s perspective is essential to restorative justice because: first, compared to other justice paradigms, in restorative justice, the victim, the offender and the ‘community’, therefore the public are expected to take an active role in the justice process; second, legislators and policy-makers frequently approve and create laws and policies that are consistent with public views; third, it is necessary to have a rigorous scientific evaluation of public opinion because a number of studies have shown a gap between the views that the public holds, and the opinions ascribed to the public by the politicians and the media; finally, restorative justice claims to offer a more civic alternative to criminal justice responses to crime, therefore public reaction represents one of the most important grounds on which to make comparisons.

Influencing public opinion on restorative justice requires a good understanding of the nature of public opinion, and in particular of the forces that can influence that opinion. Before attempting to influence public attitudes we should have a clear view of what is possible and how this can be achieved. Broadly there are three types of problem that we are dealing with in regard to public attitudes: First, at the cognitive level, with regards to

the level and quality of information. Second, at the emotional level, where we have to deal with the fears, frustrations, and uncertainties experienced. Third, at the political level, where the hardening of attitudes takes place through the exacerbation of popular fears by the media.

A considerable amount of research has demonstrated a strong association between knowledge and attitudes: people with the least accurate opinions tend to hold also the most negative opinions. On the other hand, much of the research demonstrating the impact of education on attitudes shows only very short-term effect. Research suggests that the presentation of new information, factual or statistical can change attitudes, but that change is limited. We argued that if attitudes toward criminal punishment are driven largely by emotive rather than instrumental concerns, as the wider criminological literature suggests, then rational appeals to the benefits of various justice options will have only limited impact on public views. It is often public emotions that define public debates and political initiatives in the field of justice, not public information. Concrete experiences are the most promising path to winning people's hearts and minds – therefore building social support needs to set up those concrete examples.

After an extensive theoretical and empirical grounding of the concept of social support for restorative justice, we started our analysis of the concrete questions put forward at the beginning of this study; namely how to work with the media, civil society, and citizens in restorative justice. *The fourth part* discussed in theoretical terms the cooperation with the media, and is complementary to the media toolkit produced during the Building Social Support for Restorative Justice project. To the reader who is also interested in having a concrete and practical insight into the channels of cooperation, we advised reading the media toolkit- a user friendly material accompanying and complementing this report where concrete tools for working with the media in different ways are depicted.

The media are a crucial integral part of our lives generating popular interest and debate about all social problems, including crime and justice, and in order to address a particular social problem, we need an understanding of the mass media's role in contemporary social life. We focused mainly on the socializing role of the media - the process of developing a sense of self connected to a larger social world through learning and internalizing the values, beliefs, and norms of one's culture. Media affect how we learn about our world and interact with one another, through the process of mediating our relationship with other social institutions (like criminal justice system, ministries,

prisons, NGOs, etc.). We base most of our knowledge on several social issues on news accounts, not experience, and we are dependent on the media for what we know and how we relate to the world.

We laid out our theoretical approach in relation to knowledge (as socially constructed) and argued that the media are centrally situated in the distribution (and creation) of knowledge, and what we see as crime and justice is largely defined, described and delimited by media content and process. During such processes, the media present a reality which is perceived as real, but which is socially constructed. Several institutional members present their message and images within the respectability and familiarity of media formats, and the more media-adept groups have a great advantage in winning on a particular construction. The media have become one of the most important arenas for the competition of social constructions which influence the public, and in turn the policies and legislation. This led us to the conclusion that we cannot afford by any means to ignore our relationship with the media, but rather media should become the most politically important arena for the transmission of our knowledge and beliefs.

Furthermore, we argued that the link between media and public opinion need to be made clear, in order to understand how we can influence public opinion. We presented research which shows that crime and violence in the media can affect public opinion directly, by increasing fear of crime and perceptions of the frequency of crime, or indirectly by setting the public's agenda to increase the salience of crime as a political issue. Nevertheless, we argued that the media has not created attitudes on crime or our fascination with it, but has rather tapped into, then reinforced a new public experience of crime-an experience with profound psychological resonance-and has institutionalised that experience by providing us with regular, everyday occasions in which to play out the emotions of fear, anger, resentment and fascination that crime provokes.

There are several 'mistakes' or myths that the media generates on crime and which feed subsequently on the public opinion on punishment. We also showed that media favours and depicts only certain criminological theories over others. The dominant media construction of criminals, crime, and criminality is conservative in that the explanations of criminality emphasize individual traits (e.g. biology, rational choice, psychology) as causes and minimize social and structural one. We argued that to encounter the precariousness or vulnerability of another life (as victim or offender), the senses have to be always vigilant, which means that a struggle must be waged against those forces that seek to regulate affect in differential ways (make us feel and perceive

only in certain circumstances and not others), and we must do this mainly by challenging dominant interpretations by the media. What stands before us as a responsibility therefore is challenging the dominant media frames in every way possible, and creating alternative frames which lead the public to identify with or at least to recognise all life as such, all life as precarious, all life as worth living, a recognition which would generate a social and relational ontology of the subject rather than an individual ontology.

Thinking in terms of the levels on which the public opinion can be influenced, we made an exercise on identifying major possible ways to do this. As a result we addressed two main theoretical (highly intertwined with practice) developments in the field of media with regards information and education on crime, justice, and other socially relevant topics: newsmaking criminology as part of a replacement discourse (targeting mainly the cognitive and the political level), and entertainment-education strategy as part of communication for social change (targeting mainly the emotional and the cognitive level).

Newsmaking criminology refers to criminologists' conscious efforts and activities in interpreting, influencing, or shaping the presentation of 'newsworthy' items about crime and justice. This approach argues that to transcend our passive contribution to such socially constructed and publicly consumed crime truths, it is necessary for criminologists to actively intercede in the constitutive process of such knowledge and truth. Newsmaking criminology works in the theoretical framework of a replacement discourse, which is directed at the dual process of deconstructing prevailing structures of meaning and displacing these by completely new conceptions, distinctions, words and phrases, which convey alternative meanings. The styles of newsmaking criminology that we mentioned were: Disputing data where the criminologist acts as an expert; Challenging journalism where the criminologist acts as a journalist; Self-reporting where the criminologist acts as a subject, and; Confronting media where the criminologist acts as an educative provocateur.

Subsequently, we moved onto a complete different area (communication for social change) and format (entertainment-education). Entertainment-education is a strategy and a process of putting educational content in entertainment messages in order to increase knowledge about an issue, create favourable attitudes, and change overt behaviour concerning the educational issue. The strategy is based upon the belief that emotional appeals incited by a message can lead to attitude change especially when people's motivation to think about that message is low. We also reflected on a possible

future cooperation between media professional and restorative justice professionals, and argued among other things that restorative justice organisations must become more media literate, and the media organisations must recognize that commercial interests can go hand in hand with social accountability. We concluded that the restorative justice field has much to gain from moving beyond its traditional communication strategies and initiatives and especially in recognizing communication as a full partner, rather than as additional to the restorative justice process. Restorative justice has great communicative potential but yet not communicative power.

Moving to a slightly different area, in the *fifth part* we turned our attention to the question: “How can cooperation be developed with civil society organisations to create broad support for RJ? Part five and six are closely tied to the practical guide on how to work with civil society organisations and citizens in the field of restorative justice. The guide and the parts mirror and complement each other in many ways. While the last two parts of this report offered some insights into the matter of cooperation with civil society in the area of restorative justice, and delineated a certain understanding and approach to the matter, the practical guide offers concrete strategies through presenting and analysing the work done in the field through many good examples gathered throughout Europe and beyond.

We started answering the question by first contextualizing the debate on the nature of civil society and presented several broad definitions which essence is that they include within civil society everything that lies between the individual and the state. Furthermore, we presented a structural-operational definition to delineate civil society organisations as having five main features: being *Organisations*: being *Private*: using *Not profit distributing*: being *Self-governing*: and having participation which is *Voluntary*. Other examples of relevance for restorative justice are local and administrative government like municipalities, and also in several countries political parties’ forums.

We drew a link between civil society and new social movements, where we argued that restorative justice as a movement is (like all social movements are) a dynamic constitutive part of civil society. In addition we argued for the advantage of understanding the concept of civil society (which is sometimes inflated with the concept of community) in relation with justice in general, and in particular with restorative justice, not as a global discourse but rather in the particular contexts where it exists, and

for this reason we limited this part of the report to Western, Central-Eastern and Southern Europe.

With regards to the situation in Western European countries, we showed how, because of their historical differences but also due to their similarities, in France, Germany, Netherlands, and even in Northern Ireland the role of lay persons in criminal justice is strictly limited, and the dominant roles of professional criminal justice institutions are not contested, but highly trusted and respected by the public. Measures of restorative justice, such as victim-offender mediation and reparation/compensation, are generally organised outside by professional social service organisations and non-governmental associations but in close relation to the justice system. The word and the concept of 'community' is received with a certain uneasiness by almost all of these societies, who prefer instead using other concepts which are politically less loaded. We concluded that despite the fact that most of the Western European countries rely heavily in state institutions, and professionalism and legitimacy of the criminal justice system, there is a recent trend in line with global developments, towards a movement of citizens' inclusion in public policies, and of narrowing the gap between state and citizens.

On the other hand, Central Eastern European countries have experienced in their communist pasts caricatures of community involvement, which has deeply affected the way they think about common interest or community initiatives. The perception of informal and formal justice procedures in societies in transition represents a very interesting social phenomenon. We also argued that the judicial transition has been from the 'socialist' criminal justice model to the Western European model by creating a consistent commitment to the rule of law and the principle of legality (as enshrined in Article 49 of the Charter of Fundamental Rights of the European Union), which has created great difficulties for restorative justice activists given that their strongest opponents are often professionals who struggle for democratic changes from a legalistic point of view. Of concern in these societies is the lack of a tradition of civil society, because the state was controlling everything in the society and this has made citizens very passive about public issues. An additional concern is the lack of tradition of an interdisciplinary cooperation between agencies in dealing with social problems, while general distrust prevails. Contributing to this distrust is the fact that, in some countries, happens an ongoing 'commercialisation' of the NGO sector which services tend to focus on profit-making and their societal mission tends to be a secondary factor in their activities.

With regards to the restorative justice developments in Southern Europe, we presented arguments to show that there are different cultures of civic involvement and participation in Southern Europe compared to other places in Europe. The main reason for the differences in the level of civic involvement was seen to be the type of family structures, and more precisely the role that the family has played in these countries as the main mechanism to display high 'in-group solidarity', which may be considered one of the factors associated to the rather low interest of society in public affairs and in participating in formal or informal organisations (low 'out-group solidarity'). In addition, the political and economical conditions of Greece, Italy, Portugal and Spain were substantially different from that of Western Europe, thus the welfare state provision remained considerably more fragile in Southern European countries until the 1980s or 1990s when welfare state reform started and the state-supported social assistance net began to be reinforced. Furthermore, the decline of informal mechanisms of social control, the high degree of mobility and uncertainty in the labour market as well as the growth of urban areas and the increase of social heterogeneity are aspects that tend to erode social cohesion, thus to some extent contributing to people's sense of insecurity and 'distrust towards others'.

Further in our part, we considered several ways in which restorative justice has collaborated and can collaborate with civil society. We first outlined several ways in which restorative justice, defined broadly as an approach that deals with conflict, harm or misbehaviour and encompasses all sorts of restorative practices, has been incorporated in different contexts of civil society, this too defined very broadly as everything falling between the individual and the state. In this part we focused on cooperation or initiatives done with the schools and police. Secondly we dealt with the ways in which restorative justice, defined narrowly as an approach that deals with crime and only once this has happened, can collaborate with civil society organisations, identified according to the structural-operational definition which we elaborated previously in this part. We made an effort to identify within several broad categories different organisations which are of interest for restorative justice. The part dealt with possible ways to cooperate with some of them rather than presenting a full panorama. We chose to follow the first two basic definitions of cooperation (direct: working or acting together for a common purpose, and indirect: offering active assistance to each other).

In terms of direct cooperation we addressed the relationship between restorative justice and the crime victims' movement, offenders' groups (prisoners, ex-prisoners,

etc), the higher education sector, social welfare organisations, and the civic and advocacy area. In terms of indirect cooperation we focused on the relationship of restorative justice between culture and recreation area, public health, international organisations, religious organisations, and finally on a multiagency approach where we include local government and other government agents. Most of the examples which were touched upon very briefly in this part, are further elaborated in the practical guide on civil society and citizens.

In the *last part* we addressed the question: “How can we increase the involvement of citizens in the local RJ programmes?” In order to answer this question we focused mainly on the participatory element of restorative justice, as pertaining to five different areas: a) active participation of those concerned and those affected (and the ‘community of care’) by the conflict in the restorative process; b) participation of citizens as volunteer mediators/facilitators in the restorative process; c) self-referrals from citizens who bring their conflicts to the mediation services; d) voluntary participation of lay citizens and experts in organisational structures of restorative justice organisations (like steering meeting groups, boards etc); e) voluntary promotion of restorative justice coming mainly from ex-victims of crime and ex-offenders.

Before analysing developments in the five identified areas, we saw it necessary to make a brief note on the concept of ‘community’. We first differentiated firstly between community justice and restorative justice highlighting the fact that they have been inspired by different theoretical foundations which have in turn led to different practices. We also questioned the unclear use of the concept of community and put forward instead the concept of *citoyenneté* (citizenship) which is a concept better embedded in the general European legal culture and attitude towards ‘the state’.

With regards to the involvement of the stakeholders (and ‘community of care’) in the restorative process, we highlighted the fact that this is the core element of restorative justice, because the minimal participation degree in the mediation process is the duo victim-offender, which we argue, is anyway more than participation in the criminal justice system; there only the offender is the passive subject of the adjudication process, the victim remaining marginal. When it comes to involving more members of the ‘community’, restorative justice practice and success degree varies according to type of crime and to country (based on their social, legal, political, economical background). We also briefly discussed several models of restorative justice which operate on different

degrees of citizens' participation, like the victim-offender mediation, family group conferencing, the community boards, and the peace circles.

When it comes to the participation of citizens in restorative justice in terms of volunteering of (lay or professional) mediators/facilitators we mentioned several theories that try to account for the reasons for the participation of volunteers in a certain process, which show a tendency either towards the psychological (or attitudinal) accounts of activism, or towards the microstructural accounts of it. We argued that a combination of both tendencies is necessary to ensure a good level of volunteerism. We furthermore highlighted the debate of lay versus professional mediators in the restorative justice scene, and mentioned some of the training requirement and standards. We argued that no matter what the preference in the debate will be (depending on the country and depending on the type of cases), it is important that volunteers should be trained and work on a 'professional' level and their voluntary status is no indication of their skills and the results of their work.

To highlight the combination of being a lay citizen and being at the same time highly professional in offering the service of mediation we referred to the case of Norway. The Norwegian Mediation Services, was established as a layman's institution in order to strengthen the communities' ability to resolve minor offences without weakening the legal protection. Norwegian society is based on a strong ideology of egalitarianism, a society of peers, where democracy is deeply rooted, ideologically and in people's mindsets, who engage in continuing voluntary communal work. We argued that if we want RJ not only to gain social acceptance and support, but also to become a tool to "reinvent" social capital in local communities, mediation and the facilitation of restorative justice conferences should be done by volunteers, and that we should strive for decriminalisation in our societies, where social peace is attained via the empowerment of conflict handling in the local communities.

As to participation of citizens in restorative justice through self-referrals, we tried to understand what accounts for low voluntary usage of mediation given high user satisfaction. According to 'instrumental' explanations, it was argued first that many people are unaware of these programmes, secondly that the legal community is steering clients away from these programmes, and thirdly that there are other alternatives which are more convincing to citizens. According to 'cultural' explanations it was argued that low voluntary usage is a by-product of local customs and habits of conflict management that are not oriented toward the use of mediation but towards strong legal and expert culture. We also argued that while favouring the relationship with the criminal justice

system, restorative justice organisations have ignored their relationship with the public at large. We put forward several concepts that can affect positively the degree of self-referrals. One was the concept of ‘multipliers’, people or groups who are open-minded and interested in the ideas of restorative justice (doctors, therapists, priests, teachers, trainers, etc.) and don't perceive it a professional danger. The other concept is that of networks or forms of organisations in a certain setting, which we argued can be approached only through a careful local analysis.

With regards to the participation of citizens (lay people or professionals) in organisational structures of restorative justice, we argued for the value of having other professions represented within our boards and steering meetings. We presented the case of the Flemish Steering Committees as a very interesting example of collaboration between different structures to foster a culture of restorative justice. We also presented briefly the case of the European Forum for Restorative Justice, a structure which has a board of totally unpaid and voluntary committed experts from the restorative justice scene in Europe. We further argued that it extremely important to have journalists on board, including social designers, and other key professions with very different skills from ours.

Finally, when tacking the element of participation in terms of promotion of restorative justice through public presentations (or other forms) from ex-victims and ex-offenders, we argued for the added value of this element, because transformative stories seem to be very powerful and affect people at the emotive level enormously. Initiatives of this kind are many and they are predominantly taking place in North America, Canada and UK. We argued that the culture of narrating one's story and exposing oneself to strangers must be probably seated in deep traditional and religious habits and beliefs. Moreover we argued that very often these public narrations go together with fundraising attempts, which are not strictly speaking concerns of many European countries, given that NGOs in Europe are either financed by large European donors, or by the governments themselves, but not individuals. Despite these differences we tried to find a way to think how to use this (very transformative and powerful) way of reaching audiences through personal stories in each of our contexts. We illustrated this thinking through two different ways to promote an idea, in our case restorative justice, without face to face public presentation but through personal storytelling in alternative ways, one through use of video, and the other through radio.

To conclude we can say that restorative justice as a movement while focusing (rightly so) on its relationship with the criminal justice system has ignored considerably its

relationship with citizens and ‘communities’. These two (criminal justice system and people) need each other constantly and restorative justice can potentially work as a mediating philosophy and practice between ‘the state’ and the people. On one hand, justice is not possible in a world without dialogue and participation, and that’s where restorative justice has a key role to play. On the other hand dialogue and democratic participation cannot flourish in a world without an infrastructure of security, law, and order, that can only be guaranteed by institutions of justice. Restorative justice should be presented as a means and as an instrument of criminal and of social policy that is in tune with a global movement for more democratic participation of citizens. The current theoretical trends show that there is global emphasis on democratic participation, inclusion of citizens in decision-making processes, de-expertisation of services, citizens’ politics, community movements, social capital development, which are in line with the philosophy of restorative justice.

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