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Activating civil society

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1. Introduction

As stated in the Description of Work of the ALTERNATIVE project, this paper is to deal with the ‘topic of activating individual citizens and civil society organisations’. Obviously in the context of ALTERNATIVE, for one such is expected to lead to the participation of citizens in restorative justice (RJ) procedures, in order to manage or resolve their own conflicts. Less obvious, yet still crucial is the necessity of citizens and civil society to actively participate in the promotion of alternative ideas and thoughts on how society might deal with wrongdoing, conflicts, crime (prevention), ‘victims’ and ‘perpetrators’. At present the institutionalised means of the state’s (criminal) justice system widely dominate our approaches to conflict resolution – at least in our thinking (As we have shown in ‘Ärgernisse und Lebenskatastrophen’ (Hanak, Stehr und Steinert, 1989) this is quite different in the factual life experiences of people). Restorative justice, through its procedures and practices on the one hand, and as a social movement on the other hand, has continuously challenged the hegemony of the criminal justice system and has provided meaningful ways to question its basic principles and assumptions. This is not to claim that RJ itself is without any shortcomings - but it is an alternative (which has to be improved and revised times and times again) with democratic potential as its procedures and outcomes not only allow for but depend on the active participation of citizens. In this sense it distinguishes itself radically from the present ‘doxa’ (the taken for granted body of knowledge)¹, which assigns passive roles to those affected and quite often seems to be ignorant of the human needs of those it is meant to serve. Therefore, restorative justice as a social movement has taken over a political role since its very beginnings and as such, again, is depending on the active participation of citizens and civil society.

This paper takes these issues into account and presents a detailed discussion of the three concepts central to the explications above: active participation, citizenship and civil society. As it is the product of an exclusively theoretical engagement which is meant to prepare the empirical research during the following years, we are bound to look into and learn from the past as described within the literature. When discussing

¹ For further information see section eight.

our readings we are led by the following questions: which lessons does the literature hold on the active participation of citizens and civil society for our further research strategies? Which paths or developments might prove problematic or lead us astray? Which orientations have already proven to be promising and could be further explored when planning and doing our empirical work, our action research?

Our engagement with these questions is built on work conducted earlier on, which could most appropriately be denominated as a socio-historical analysis of concepts oriented by a discourse-critical approach (for further explanations see Pelikan and Kremmel 2012). Naturally, our inquiry was of limited and biased nature, mostly informed by our respective previous fields of work. Hence an anthropological orientation, discussions within development studies, RJ theory and the history of victim-offender-mediation (VOM) in Europe are clearly to be named as our major sources of inspiration. Apart from these differences in the type of material we examined, we further applied the same pragmatic (one could also call it trivial) strategy, which we are now going to describe as detailed as possible. We picked texts we had previously identified as central for our endeavour, in that active participation (or any of the other concepts) played a significant role in their line of argumentation. Some of these texts were then analysed in greater detail and addressed with questions, as for example: What is the author trying to present as truth or fact and for what purpose? Which norms and values are (implicitly) being forwarded? Which societal reality is he/she addressing? What remains unsaid? Which tensions arise from a comparison of the theoretical meanings and practical implications attributed to active participation? Which promises is it supposed to hold and what kind of empirical data is being drawn upon to support these expectations?

This paper is structured into seven main sections, some of them including ‘sign posts’, which are situated in between the sections and contain a short reflection on the relevance of the pieces of knowledge presented in them for our empirical work.

2. Active participation and restorative justice

2.1 Back to the beginnings: ‘Conflicts as Property’

By starting off with Christie’s ground-breaking article ‘Conflicts as property’ (Christie 1977), we are giving some attention to a core text of the restorative justice movement. The article had and still has considerable impact on the discourse on crime control and conflict resolution within criminology and restorative justice. This is to say that we picked an author, who occupies a ‘dominant’ position in the (less dominant) discourse of restorative justice.

Christie deals at length with the role and position of the criminal justice system, whose agents – ‘the professionals’ – invade and steal conflicts from those involved, by working as their representatives. He points accusingly at this theft and its consequences as he regards conflicts as carrying the “(...) potential for activity, for participation” (Christie 1977, 7).

The meaning the term ‘conflict’ is assigned with carries the potential for social change, which belongs primarily to those affected by the conflict. They should get the chance to profit from this potential of conflicts through actively participating in the process of resolving them. Christie argues that the active participation in the handling of conflicts and their aftermath offers benefits for victim, offender and society. It allows the parties to identify what is relevant to them, to further ‘personalise’ what actually always was ‘their’ process. The victim will have the chance of turning from a “nonentity” (p. 5) into a central stakeholder receiving the attention he/she needs to tell the story of what happened. Meeting the offender as a human being allows for an opportunity to do away with misconceptions of him/her and deal with feelings of anxiety and insecurity. By allowing the offender to become a “participant in a discussion” he/she is not turned into a “thing” as in the criminal court, but gets the possibility to explain the reasons for his/her actions, what might include describing his/her personal background, in short: the factors, which influenced him/her when he/she did what he/she did. However, this does not stand for the automatic exoneration and exculpation of the accused. Rather Christie stresses that the direct confrontation with the victim is not to be understood as “the easy way out” (p. 9).

In this context, Christie refers to a 'negative' feature of (victim) participation for the first and only time. He states that offenders seem to "(...) prefer distance from the victim, from neighbours, from listeners and maybe from their own court case (...)." (p. 9) He does not go further into that, though. Rather he continues by treating the advantages of participation for the offender by describing his or her role in restituting the damage done to the victim as a central one. Additionally, the local neighbourhood and the state should engage in this process. These stakeholders, namely victim, offender, neighbourhood (Christie does not use the term 'community') and the state, are identified as the eventual big winners, if they were to reshape their way of dealing with conflicts and criminal behaviour. The participatory approach as outlined by Christie, would also offer great "opportunities for norm-clarification" and could have a pedagogical effect on the wider public (p.8).

He envisions a system of victim-oriented neighbourhood courts to realise this idea. In these courts, the main attention is not directed towards the control of deviant behaviour but to the restoration of the harm the victim experienced. "Service to the offender" is named as another necessary component (p. 10).

Christie does not explicitly use the term of restorative justice to denominate what these courts would be doing, but he clearly draws on what came to be defined as its major principles. He sets the vision of these neighbourhood courts against the background of a diagnosis of societal developments that account for segmentation and segregation resulting in increasing individualisation and the disappearance of neighbourhoods. Christie further establishes a link between these phenomena and the need for activity and participation, the latter providing a cure for segregation and the loss of social cohesion.

Highly industrialised societies face major problems in organising their members in ways such that a decent quota take part in any activity at all. Segmentation according to age and sex can be seen as shrewd methods of segregation. Participation is such a scarcity that insiders create monopolies against outsiders, particularly with regard to work. In this perspective, it will easily be seen that conflicts represent a potential for activity, for participation. Modern criminal control systems represent one of the many cases of lost opportunities for involving citizens in tasks that are of immediate importance to them. (p. 7)

Christie was aware of some of the problems, the concept and vision of the neighbourhood courts poses. He stated: “With lack of neighbourhoods I have in mind the very same phenomenon I described as a consequence of industrialised living; segmentation according to space and age. Much of our trouble stems from killed neighbourhoods or killed local communities. How can we then thrust towards neighbourhoods a task that presupposes they are highly alive?” (p. 12)

However the vision of the ‘good life’ in itself, a life non-alienated, a life where taking care of basic needs like health, education, and safety has not been taken over, ‘stolen’ by the professionals, actually remains quite vague. The idealisation of pre-modern or pre-industrialised societal life turned into a major point of critique of restorative justice (and will be referred to in section three).

Before presenting the divergent theoretical standpoints on this issue we will now relate the history of the further advancement of ‘active participation’ within the RJ-discourse.

2.2 Further developments of active participation in the RJ-discourse

We will do so by having a closer look at two articles, written by Albert Dzur² and Raymond Shonholtz³. The discussion of their articles is followed by a short narrative based on the concrete experience of participating in the discussions which resulted in the draft of the Council of Europe *Recommendation on ‘Mediation in Penal Matter’*(1999), during the years 1996 to 1999.

Civic implications of restorative justice – Alfred Dzur

In ‘Civic implications of restorative justice theory: Citizen participation and criminal justice policy’ (2003) Dzur analyses the role active participation of non-professionals came to play in the thoughts of Zehr (1990), Christie (1977; 1982) and Braithwaite and Pettit (1992).

Dzur’s aim is the propagation of a wider and more ambitious goal for RJ, namely influencing and transforming criminal policy and, even more general, promoting democracy in society. He therefore comments extensively on Christie and pertinently explicates the role of lay participation in achieving social change. He

² Albert Dzur has written on penal philosophy, and the ethics of penal politics, and especially on the topic of democracy and political participation.

³ Raymond Shonholtz was the Founder of ‘Partners for Democratic Change’; he was a community mediator who has written on conflict resolution and non-violent dispute settlement.

proposes “to judge RJ as a democratic experiment attempting to encourage greater public knowledge of criminal justice, more widespread responsibility for crime control, and ultimately, less [public support of] punishment in the form of incarceration.”

Dzur, speaking of Christie, juxtaposes the alienation of modern life on the one hand and the active responsibility of the actors concerned and the involvement of the community on the other hand: alienation is counteracted by self-activity; de-professionalisation and de-centralisation appear as values *sui generis*. Christie, according to Dzur, is arguing for a more democratic criminal justice process.

Citizens are to take charge of the awful power of criminal prosecution and sentencing to prevent the wrong sorts of values from taking precedence. Just as in domains like health care or the environment, public policy in the criminal justice domain should serve public interests, as seen by reflective, engaged citizens. But it is to be more democratic in another sense too. Criminal justice ought to treat offenders as citizens, not as deviants or others or abstractions. Democracies have no place for social categories of that sort [sic!]⁴ (Dzur 2003, 285).

Howard Zehr, according to Dzur, is decidedly less political than Nils Christie. He is more concerned with the psychological and – we would venture to contend – with the spiritual aspect of RJ. The detrimental effects professionalisation and ‘abstract proceduralism’ (i.e. focussing on the rules of the criminal procedure) hinder both “the reintegration of offenders into law-abiding society” and the opportunity for victims to regain “their sense of autonomy and of belief in social order.” The participation and engagement of victims and offenders in a dialogue that is not dominated by the professionals of the criminal justice system (CJS) is expected to achieve these aims. The ‘community’ is also mentioned in this context. Zehr contends that “The lack of public participation inherent in professionalisation results in stereotypical views of offenders and defensive fears about crime” (Zehr 1990 in Dzur 2003, 287). The restorative procedure is deemed capable of “validating and challenging retributive emotions; without enacting a dialogue between victim and offender, the need for

⁴ Democracy thus appears as another concept that is central to the discourse on active participation. But moreover, the concept of ‘the other’ is definitely put forward as being incompatible with democracy.

retribution can find expression in public demands for draconian punishment” (p. 287).⁵

The citizens’ role in justice – Raymond Shonholtz

In his article ‘The Citizens’ Role in Justice: Building a Primary Justice and Prevention System at the Neighborhood Level’ (1987) Raymond Shonholtz confronts us with an argument in favour of citizen participation in the justice system, slightly similar to Christie’s at first sight.

Shonholtz starts off on the grounds of a critique of the criminal justice system, yet he is coming from a different angle. While Christie tackles the issue of the ‘theft’ the institutions and agents of the criminal justice system commit when active participation of laypersons in the resolution of conflicts is not allowed for, Shonholtz does not criticise the criminal justice system in its basic function. Rather he points to its limited scope, as it does not include preventive action.

He then identifies the citizen as the primary agent and owner of the responsibility for “prevention and early intervention”: “Prior to a violation of law, all disputes are private and without a formal entry into the legal system. There is only one group in democratic society that can intervene in such conflicts: citizens. Citizens acting and serving in their civic capacity can affect social and private situations provided their intervention is voluntary and without coercion.” Thereafter he introduces the term community to his argumentation, which comes to play a major role next to “the citizen”: Nevertheless he neither comes up with working definitions nor does he discuss the process of acquisition, by which people are turned into citizens. This is even more striking as he initially points at “citizens” because of their (legal) status in a specific legal system.

Shonholtz’ understanding of crime related problems in society seems to rest on the findings of Broken Windows Theory (he explicitly refers to the article ‘Broken Windows’ published by Wilson and Kelling (1982)). As Broken Windows Theory has

⁵ It is interesting to note that this line of argument is more often used to defend the need for criminal law - including punishment! Marko Bosnjak has written on the subject of the ‘hydraulic’ function of criminal law. He explains that it is about the “expression of public repressive feelings in an acceptable way.” He goes on to say that: "Every tragic incident excites public feeling that someone is to be blamed and consequently punished for what has happened. (...) the public repressive feeling may be so strong that it may 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 lynch 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" (Bosnjak 2007).

formulated it, social disorder has a considerable impact on community life, as visible signs of disorder (like broken windows) convey the feeling of insecurity because they suggest that public conduct is out of (social) control: “By undermining a community’s ability to sustain and maintain standards of social control, social and physical disorder can foster an ever-increasing form of criminality within the community” (Shonholtz 1987, 44-45). This theoretical foundation fits Shonholtz’s argumentation quite well, which is mainly concerned with establishing the point that both fear of crime and incidents leading to or of violence are largely “precriminal in nature” (in a sense of outside the realms of criminal law). Thereby the reliance on the agencies of law enforcement can be viewed as a misplaced strategy. The responsibility for crime prevention rather has to rest with the citizens or the community; such is introduced as a step towards a more effective handling of social disorder and interpersonal crime. Shonholtz’ basic line of argumentation thus reads as follows:

If disorder is the basis or a major factor for the expansion of crime in a community and if prior and ongoing relationships serve as the largest statistical pool for homicides and felonious assaults, then it is a social imperative to begin to restore citizens’ rights and responsibilities in order to perform their historic civic function in addressing social disorder and persons in conflict (Shonholtz 1987, 48).

Shonholtz major focus lies on the citizen (extended through some kind of community concept). The state only leaving a few footprints in the picture is largely out of sight. Shonholtz eventually addresses the question of which role governments are playing in this process, but he limits his remarks to recommendations on possible policies in support of a citizen based “primary justice and prevention system”. He thus states: “If a city truly desires to put into place a program that over time will address the underlying causes of disorder in the neighborhood and reduce the presence of violence in the family, neighborhood, and school, it becomes critical that it implement and support a process that reaches disputes before they explode (...)” (Shonholtz 1987, 50).

While we do not object to his observations on the potential of civic engagement in conflict resolution for the purpose of crime prevention, possibly having a positive effect on social cohesion and on quality of life in neighbourhoods, we want to problematise the hidden implication that the underlying causes of violence are solely

to find on the community or relational level and the responsibility for preventive action therefore rests with citizens alone – or, as Shonholtz puts it: “(...) all prevention work is within the ambit of civic rights associated with citizenship within a democratic society” (Shonholtz 1987, 52).

This suggests that the state is not accountable for effectively contributing to crime prevention as it also does not contribute to the causes for violence, criminality whatsoever. These problems are believed to root somewhere else and to be out of reach for the state. Such thinking originates in the very orientation of Broken Windows Theory as has already been pointed out and critiqued elsewhere (see e.g. Sampson 2012).

Our critique is certainly not meant to undermine Shonholtz’ position in favour of the active participation of citizens in violence and crime prevention. Yet, in support of this objective, it is vital to look closer into his style of argumentation and draw attention to the implicit explanations of societal problems as outside of the realm and responsibility of the state. Accepting this argument we would fail to see and to address the structural problems which also contribute to what is of course necessary preventing - by a variety of measures, which include both the active participation of citizens in conflict resolution but also the active engagement of the state.

Discussions on active participation and restorative justice in the Council of Europe’s Committee on Mediation in Penal Matters

In the following we will turn to the discussions that took place within the Council of Europe’s ‘Committee of Experts on Mediation in Penal Matters’, in which active participation came to play a pivotal role.⁶

The committee of experts had started its work by collecting reports on the state of affairs in different countries - first of all those that were represented in the committee: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, France, Germany, Greece, Hungary, Ireland, Italy, Liechtenstein, Norway, Slovenia, Spain, Turkey, UK.⁷ Christa Pelikan remembers vividly that, relying on her extensive knowledge of the Austrian VOM practice, she had expected to see the confirmation of the informal quality of the VOM process, together with its reparative outcome as the central

⁶ Such type of policy-making is to be included in the notion of discourse as forwarded by Foucault (1981). It exemplifies how societal practice (policy-making) feeds back into theory, shapes knowledge and thus exercises power.

⁷ It was decided to further collect information on the countries that were not represented in the Committee; this was done by the members volunteering to provide these country reports, either on the basis of their own knowledge or by using their contact to experts in these countries.

characteristics of this alternative way of conflict resolution. But when reviewing the reports carefully in the aftermath of the first three-day's sessions in 1996, she arrived at the conclusion that what distinguished VOM from the criminal procedure was NOT in the first instance its being less formal, i.e. not bound to the rules of the criminal procedure but rather the requirement of the active involvement and participation of the parties concerned. Instead of devolving the conflict that had become known to the agencies of the CJS to the professionals of that system, it was the expectation that victim and offender should and could in between themselves - with the help and assistance of an impartial third person - try for a solution of the conflict that restored the harm and damage done. Becoming active oneself was to replace delegation. The Recommendation (1999) that was adopted by the Committee of Ministers refers to active participation first of all in several places of the preamble:

Noting the developments in member States in the use of mediation in penal matters as a flexible, comprehensive, problem-solving, participatory option complementary or alternative to traditional criminal proceedings;

Considering the need to enhance active personal participation in criminal proceedings of the victim and the offender and others who may be affected as parties as well as the involvement of the community;

It becomes even more explicit in the Explanatory Memorandum with the Recommendation, where the following is stated:

The involvement of the parties, i.e. normally the victim and the offender, as the main actors in a criminal case, is different from that in "traditional" criminal proceedings where the state and the offender are the main actors. One objective of mediation is thus to provide a possibility for the parties to handle their "own" conflict and solve it to their mutual satisfaction. This implies that the parties personally play a more active and constructive, sometimes innovative, role.

Despite only a few countries having already developed a wider or even a nationwide practice of VOM at the time this session took place, and with the majority of the experts reporting no experience at all, or only very scattered and 'episodic' experience, the notion of informality became pushed into the background and appeared not as a constitutive characteristic any longer.

In the following years the pivotal importance of active participation became even more pronounced. It was always the opposition to the ways of the CJS that was stressed: tackling the aftermath of the crime by drawing on the victim's and the offender's own resources, instead of waiting for the decision of the judge, that remained abstract and remote from the concrete life-situations of the people affected by an offence. It was indeed the propagation of the re-appropriation of the conflict. In Austria the researchers had seen that it was accepted by both the victims and the offenders and that it was feasible. In the reports on the pilot projects in preparation of a nationwide practice based on amendments to the Juvenile Justice Act and a few years later to Criminal Procedural Law they had insisted on following Nils Christie's grand project of a new participatory way of dealing with conflicts that have been framed as crimes.

But: in Austria as in other 'civil law' countries of the European continent a professional model of doing VOM had been established from the beginning. The mediators, the 'Konfliktregler' were supposed to promote the active participation of victim and offender. The essence of their professional quality was the ability to remain in the background and to elicit and promote the capacity of the parties to work through the conflict and to arrive at an agreement about compensation and restoration.

In workshops and seminars with the Austrian social workers that were to act as mediators starting from their practical experience, reflecting on it, discussing extensively, the seminar participants tried to assist in extracting and clarifying this paradoxical new professional profile. Therefore we contend that, although VOM was established as a professional model, active participation as a core element was there since from the beginning and remained strong. In Germany and in Austria, the neighbourhood, or community element was completely missing though.

3. On community

Within the main argumentative lines of the Anglophone discourse, community was and has indeed remained the locus of realising active participation. The discourse on community appears in itself a vast field. We will therefore restrict ourselves, trying to focus on the community as a societal entity where active participation is enacted - tracing the discourses on participation through and within these entities.

The active participation of the neighbourhood or the community was - as we have seen already in Christie's article of 1977, and even more pronounced in *'The Limits to Pain'* (1982) - an indispensable requirement of 'doing restorative justice'. In fact, it was included in the CoE-Recommendation as well and stated very clearly:

Mediation provides a chance to bring the community closer to the criminal justice system by the participation of those who are directly concerned with the crime, by the use of voluntary mediators from the local community, and by the possibility of programmes run by community-based agencies. Community involvement may lead to a better public understanding of crime and consequently encourage community support for victims, rehabilitation of offenders and prevention of crime (Council of Europe 1999).

In the years after 2000 the extension of the demand for expanding the role of the community had become pervasive. When mapping RJ programmes all over the world, Paul McCold attributed the grade 'fully restorative' only to those programmes that could show community representatives present at the RJ-meeting.

It was also Paul McCold who contended that "Community is not a place" (McCold 1998, 71). We will take this famous statement as a starting point for this short treatise. When dealing with the aftermath of an incident that has resulted in somebody harmed by someone else, by bringing together those involved and assuming that these are not only the individuals that have acted and have been acted upon but also those belonging to the protagonists, the people in their immediate social surroundings, , we end up with concentric circles of affected persons. Can these circles be considered as manifestations of community – a community of care? Or are these entities just supporting networks? Where does community begin and where will we rather have to use the notion of society?

As already pointed out, the discourse on community is difficult to comprehend in its manifold extensions (for a more detailed overview on this conceptual field as it appears in the RJ discourse, see Vanfraechem 2007).

Inge Vanfraechem has mentioned, albeit only in passing, some of the points of critique raised by e.g. Johnstone, who states that in "(...) modern towns and cities, people are not strongly attached to their communities, which does not mean that people are individualistic. (...)." (Vanfraechem 2007, 78). Community control has become frail and those interdependencies as such do not amount to a concept of

'community'. Crawford and Clear (2001) ask to what extent community as a 'loose tie' can lead to norm-making and norm-affirmation. On the one hand, this conception of community as loose ties could offer a lot of possibilities for restorative justice in modern society. On the other hand, it could limit its use when people can switch between communities if they disagree with certain values (Crawford and Clear in Vanfraechem 2007, 78).

And there are voices, that warn that "communities may lead to the exclusion of certain people (Pavlich 2002), rather than ensuring public goods for society at large (Crawford and Clear, 2001)" (Vanfraechem 2007, 79).

At this point, we want to refer to a critical discussion of the community concept as it appears within the German discourse, using the article: "Die 'Community' als Simulation und Realität" (Hanak 1996) as a source of inspiration and starting point. Gerhard Hanak dedicates himself to the following questions: Where does the quest for community emerge from? Or asked differently: which deficiencies trigger this revival of the community, the 'Gemeinwesen'? He turns to Reinhard Kreissl (1987) who pointed out that the interest in community as the locus of crime prevention occurs against the background of quite diverse world views and different types of criminal policy. Both radical critics of mainstream criminology and conservative theoreticians (as well as practitioners) from the ranks of the police recommend a reversion to the community as a panacea for all kinds of social disorder. The image of the intact community of neighbourhood thereby functions as an empty container that is used and filled by different groups according to their respective needs and ideological preferences with different content and different political concepts and programmes. Kreissl is highly sceptical towards this 'community-rhetoric' as well as towards the policy aims which are pursued that way. He contends that the discourse uses predominantly empty words and does not refer to any societal reality, rather it invokes bygone times and tries to revive lost modes of socialisation or societal organisation (Vergesellschaftung) through active intervention (Kreissl in Hanak 1996, 64-65, translation C.P.).

Kreissl claims that an explanation of the rising importance of the concept of community grounds on its attractiveness in the face of state fiscal crisis that prompts a kind of turning back to the potential of local and communal self-help. In addition, it conveys to citizens in urban areas the feeling of being able to get the opportunity to really participate, thereby counteracting experiences of alienation which mark late capitalism. The citizens get the message that "the state and its bureaucracy retreats

and devolves its competencies unto those concerned – and especially so in the realm of security, in the field of crime that is supposed to really matter” (Kreissl in Hanak 1996, 65, translation C.P.).

Gerhard Hanak himself has done extensive empirical research in two Viennese neighbourhoods about experiences of safety and about the chances of activating the inhabitants to take part in the provision of safety for themselves. What he had seen and heard in the course of this research enables him to detach himself not only from Kreissl’s criticism of the ‘community’ rhetoric (the fictitious community) but also from a perception of social control in the tradition of Foucault, i.e. from the contention that there is a development where the central state increasingly reaches out to direct and control everyday life and its potentially deviant expressions, going as far as ‘the dust of events’, as far as people’s attitudes and opinions. Hanak proposes the conjecture that this scenario of an ever-increasing refinement of a disciplinarian regime might also be a myth - more fiction than reality.

The empirical material from Vienna had shown him that

the city, at least this city, is a place of striking non-synchronism, where old-fashioned residuals stand beside futuristic and hypermodern modes of societal organisation. While the trends of a “dissolution of milieus and of ‘individualisation’ exist and are a reality that has influenced and changed urban living and daily life in the city for large segments of the population, this is only one side of the coin. Beside them older subcultures survive and new ones emerge. There are many enclaves that evade the main trends, even counteract them and thus produce new lines of conflict” (Hanak 1996, 67, translation C.P.).

What are the conclusions to be derived from this fragment of a discourse on modes of social control and, more specifically, on the revival of the community? – community as a means for restoring order – or understood even wider: for providing a sense of cohesion, of belonging?

The results of Hanak’s research have shown the multiplicity of local subcultures. They are not only heterogeneous, but are also often opposing each other and contradictory in themselves. Considering these preconditions, giving back the conflict to the community where it was generated, might indeed contribute to a better understanding of the concrete social meaning of the actions of the parties concerned. The participation of wider circles of affected persons in processes of conflict

regulation thus might bring two advantages with it: firstly, a better and more comprehensive understanding and a more complete recognition of the needs and interests of the parties immediately concerned – by making contextuality and the embeddedness in social networks visible – and secondly, to elicit the support and the taking on of responsibility by members of these social networks.

On the other hand, this particularity of life-situations and life-worlds might also be experienced as narrow-mindedness, or rather as parochial restriction, the restriction of patriarchal, and patrimonial relations of power and domination. Community-specific modes of conflict regulation might stand in an antagonistic relationship to the material and procedural norms of state law. This state criminal law is supposed to overcome and supersede particularistic norms by adherence to principles of the ‘Rechtsstaat’ (which are close to but not completely identical to the ‘rule of law’).

It has to be emphasised that the norms and rules of a ‘subculture’ that might become manifest as a ‘community’ are not per se egalitarian, resting on the full participation of its members. In the course of history we have indeed more often seen societal formations which were marked by traditional and male domination.

The call for community involvement came especially strong from the regions of British colonisation. There the orientation toward more community involvement was in a way an attempt to make atonement for the sins of the colonial forefathers. The oppression of the indigenous population was at least to some degree to be compensated for by recognising the life-styles and the modes of conflict resolution of their descendants. To promote the participation of the communities is a conscious effort to pay homage to and to do ‘justice’ to an oppressed stratum of society.

Excursus on ‘scenes’ as a manifestation of community

Even if we still find local subcultures and local communities, they cannot be seen as the elements of what we call ‘Basisdemokratie’, a bottom up democracy that is re-activated. They also cannot be understood as social entities with a particular set of values that exists in opposition to or besides the validity of state law as enshrined in its legal codes.⁸ An interesting mode of scientific engagement with these social settings was brought forward by Michaela Pfadenhauer in her article on ‘Ethnography of Scenes’ (2005).

⁸ See also Frehsee (1999, 40).

Research on ‘scenes’ has become part of a ‘life-world ethnography’. The researchers that have directed their interest at the phenomenon of scenes are talking about ‘post-traditional communities’. Pfadenhauer explicates:

As a result of the marked effects of modernisation — such as pluralisation, individualisation, multi-optionalisation and experience orientation — different forms of socialisation have progressively developed that have primarily been subsumed under the label "youth cultures" since the mid 1980s. In the relevant literature of the 1990s, these youth cultures were less and less regarded as class- or stratum-specific and increasingly as style- and theme-specific phenomena, thus as cultures ‘without emphatic sub’ (...) (Pfadenhauer 2005, 4).

In this article we find an aspect which might be of interest for our research. The phenomenon of scenes is a network of ‘audiences’, but also a network of ‘communicative action’ (Habermas 1987). It is based on immediate (which does not imply face-to-face) interaction, and it is to a large part using the new electronic media. “Scenes form around a common thematic field of interest and can be arranged nationwide and partially also by the media (...) In scenes, affiliation becomes the object of internal (and not necessarily verbal-discursive) negotiation processes, in which the (pertinent production of) knowledge and competence regarding the thematic orientation of the scene make up the main criteria” (Pfadenhauer 2005, 10). These post-traditional entities of getting together, of community building are of a completely different kind. They are different from traditional communities and from civil society organisation (see later); they are based on displaying individualism and build on actuarial interaction pursuing predominantly the goal of having fun.

Is this immediacy of experiencing through enacting a scene a functional equivalent of the experience of some communalities of personal history and the feeling of belonging to a traditional culture? And what does this entail when it comes to dealing with conflict - what influence do these contrasting patterns of association (Wessels, 2003) exert with regard to the propensity of individuals to engage actively in conflict resolution? Is the preference of delegation and the tendency to remain

passive more prevalent in post-traditional scenes or in traditional communities? And which one of them is conducive to which attitude?⁹

On dominion

After this short excursus on scientific engagement with a contemporary manifestation of community, we return to the shortcomings of the community concept, or rather to the suggestion of a theoretical concept, trying to overcome them: ‘Dominion’, which has extensively been explicated by Braithwaite and Pettit’s ‘Not just deserts: A Republican Theory of Criminal Justice’ (1992). Dominion 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, 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 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 ‘freedoms’ as in medieval and early modern times in Europe (where it 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 Roman antiquity – those freedoms being bound to obligations of the citizen *vis-à-vis res publica*, the *polis* in Greece.

Lode Walgrave has made extensive use of the concept of ‘dominion’¹⁰, 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

⁹ Although scenes are NOT in the first instance a subject matter of interest within this project, we consider the concept to be a useful supplementary, in the light of the discussion of the influence of age on modes of conflict regulation by the team from NOVA. (Foss *et al.* 2012).

¹⁰ See also Walgrave (2002).

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)" (Walgrave 2008, 140). 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 may be, in fact, the only 'security' a state can and ought to promise to provide for its citizens.

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 (2008, 141) 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 to do with the definition of freedom as non-domination. Enjoying and 'realising' this kind of freedom affords a kind of activity, in other words: the assertion of dominion becomes manifest as actively participating in the handling of conflicts and in responding to wrongdoing.

Signpost #1

The demand for active participation of 'the people', more specifically, of those affected by conflict or by incidents of 'crime' has been projected as the dream of a society where alienation can be overcome. Put more modestly, active participation is meant to counteract the detrimental effects of modernity, the effects of bureaucratisation and of the abstractedness of criminal law and the criminal procedure on people's lives and ways of living together.

Applied and restricted to the field of criminal law it meant a more satisfactory, more sustainable, a more humane way of going about conflict regulation. Beyond that the wider political implications of active participation of those concerned was expected to both promote democratic values and serve as an exercise ground for democratic practice.

The re-appropriation of conflicts through parties, victims and offenders concerned, becoming active in the solution of 'their' conflicts was soon expanded to the call for the inclusion of wider circles of affected persons – the community.

The importance of this concept was further enhanced in connection with the notion of crime prevention. The involvement of the community was perceived as necessary in order prevent 'pre-criminal' behaviour. In this context community involvement means community control, relying on the strength of informal control mechanisms.

In this respect critique was voiced. Community control is assumed to produce exclusion – of those not belonging, those who are not regarded as 'one of us.' That way, communities can act as social entities that informally enforce conformity and suppress diversity.

There the concept of dominion can provide guidance. It stresses an area of freedom as non-domination that is realised through the active participation of citizens, especially regarding the handling of conflicts, including incidents of wrongdoing.

4. Active participation and social exclusion

We will at this point turn away from the community discourse in the immediate context of RJ and look at the meaning, the operation of active participation has acquired within the discourse on social exclusion. In the context of the EU sponsored project ‘Social Exclusion as a multi-dimensional process. Sub-cultural and formally assisted strategies of coping with and avoiding social exclusion’ (CASE).¹¹ The concept of participation had figured prominently.¹²

One of the main ‘findings’ that evolved from the research activities and from countless and very intensive discussions among the project partners was the pivotal importance of participation, which the project partners set against ‘security’. Security in the context of the debate on the welfare state is largely to be understood as social security. And more specifically: insurance against the risks of wage-labour as the prime mode of provision for most people.

The logic of participation is one of access to necessary resources¹³ for leading the life that a person wants to live and for managing the situations of possible social exclusion. “It is the point of a social formation and its state to provide the means of survival for all and beyond that the means of the good life (according to the standards of the society in question)” (Pelikan *et al.* 2003, 257). Analysing the strategies for asserting people’s participation the project partners had identified one set of resources they had called ‘getting together’ (Pelikan 2001, 24).

This type of resources for coping with social exclusion has its place besides resources provided by state welfare and private agencies of various kinds and besides the resources based on bonds of mutuality (families and neighbourhoods that provide mutual help proving vital in times of utter need and poverty, a situation the researchers found evidence of in Barcelona and in Bologna). For the purpose of a meaningful comparison that offers

¹¹ It was coordinated by Heinz Steinert and Arno Pilgram at the IRKS, with the project partners situated in eight university and research institutes (in Barcelona, Bologna, Vienna, Frankfurt/Main, Leipzig, Groningen, Durham and Stockholm).

¹² For further publications of the project in English, see Steinert (1999a, 1999b).

¹³ ‘Resources’ was another key concept in this research project. “Welfare is the provision of resources for participation.”, Heinz Steinert had stated in the introduction to the book ‘Welfare Policy from Below’ (2003, 7).

additional insight into the dynamics of coping with (impending) social exclusion and its expression in space, i.e. within a concrete socio-economic context, the researchers have devised two main types of social constellations – the divided or ‘contested’ societies and societies with stratified inequality. To explain briefly: Divided societies are those with a longstanding history as a class society, where the traditions of the fight for labour rights and the protection of the workers that was gained by this struggle are present in people’s knowledge and perceptions constituting and carrying a distinctive mentality. While England and the Netherlands have strong welfare traditions that are relevant for developing strategies for coping with social exclusion, the countries in the South are marked by late take-off and therefore weak welfare traditions, The societies with stratified inequality on the other hand, have a history of subjects (subordinates) of a centralised bureaucratic rule (as in Germany, in Austria and also in other central and eastern European countries); or – as holds for Scandinavian societies, e.g. for Sweden - with a tradition of democratic participation.¹⁴

In relation to strategies of coping, there is one feature of the divided society that strikes the outside observer: it is the potential for community action, for marshalling strength for active self-help and for initiating and building modes and organisations of collective coping. What are the historical and structural conditions that enable and promote this kind of getting together and to build associations that work toward empowerment, ‘real’ empowerment?

The divided society has always carried the underlying knowledge, i.e. the historical experience of a cleavage, of the class struggle, and the necessity to stand up for one’s interest and to do this together with those on the same side. The episodes of ‘collective coping’ collected in the CASE project tell about associations that congregate around rather specific but shared situations of hardship and social exclusion. E.g. the Milun Centre of the Asian women in Harehills in Leeds provided for mutual assistance of these women to get better education and better job qualification in order to become more independent. As Bridgette Wessels has said: The centre provides a place to develop social networks, mentors and friends, and it provides opportunities to ‘move on’ to acquire more qualifications, work experience and jobs/careers. For most women it forms a

¹⁴ This typology represents a modification of the famous and contested regime typology of Esping-Andersen and his critics and followers (Esping-Andersen 1990).

‘transformational space in which they explore, develop and rehears their emerging identities as they negotiate Western and Eastern culture’ (Wessels, Janssen and Miedema 2003, 248). The association of the ‘disabled’ in Newton Aycliff brought the together people in a similar situation of disadvantage in their fight for specially adapted housing and more generally in the fight for their rights. Getting together and collective coping become “vehicles to obtain resources with which to build meaningful lives“ (Pelikan, 2001, 24).

Bridgette Wessels (2003) has attempted to enumerate the social conditions that are responsible for a collective effort to tackle situations of social exclusion. These are:

- the requirement of a shared or common experience of social exclusion,
- the need for an active person taking the initiative and seeing things through, and
- the important pre-condition of succeeding to enlist help and material support from an official state or municipal agency (Wessels, 2003, 185).

It seems worthwhile to turn our attention to those societies, or rather research sites, where these strategies of getting together are widely absent. These are also the cities, or the quarters, the authors of the study have characterised as marked by stratified inequality, in Frankfurt, Vienna and Leipzig. Stratified inequality, that has always been there, even if it appears intensified by (labour) market mechanism and stiffened competition, is easily dissolved into a notion of and a perception as individual fate. The ‘Implicit Social Contract’ effective in this type of society, i.e. the shared and individually re-constructed knowledge and perception of what is right and just and what is inevitable fact, is centred on the functioning of the labour market and the wide acceptance of the stratified inequality it produces. Though this is true for most of our Western societies, in the cities of Germany and Austria these traits and tendencies are enhanced and exacerbated because of the background of the political history of a society of subordinates (Untertanengesellschaft), ready to submit to what is ordered from above and to wait for what is given from above. Welfare is dispensed from above and it is claimed from the respective agencies.

The other subtype mentioned above, societies with a tradition of democratic participation, that developed into centralised state ‘welfarism’, is represented by the case of Sweden. Stratified inequality, though less pronounced as in Central Europe, is also

widely taken for granted and easily accepted, although there is a marked difference, when comparing Sweden to Austria's and Germany's welfare state. In Sweden, turning to the welfare state implies realising a citizen's legitimate claim and not, as might hold at least to some degree for Frankfurt and Vienna (and Leipzig), the request of a potential recipient of benefits. Accordingly, the coping strategies consist in the first instance in turning to the institutions of the welfare state.

It is not by chance that the other impressive examples of the initiation, the development and the effectiveness of a collective effort to cope with social exclusion come from the Southern European research sites. The reason why we have come to identify the Italian and the Spanish examples as located in a 'contested society', lies with the traits and traditions of its socio-political structure in the case of Bologna, and with the pronounced socio-economic cleavage in Barcelona, manifest in episodes of severe hardship and extreme poverty, of living 'down and out'.

Summarising the analysis and the comparison of the material on 'getting together' that was collected within the CASE project, Christa Pelikan has stated:

'Getting together' has been shown to be a coping strategy that confers a double value upon its actor-users. Getting together and collective coping in itself is an important step for overcoming social exclusion, it is a rewarding experience and it sets off processes of social change for wider segments of society. Since research has also shown that some kind of official - state or municipal - support is a major prerequisite for these strategies to succeed, this support ought to be demanded (Pelikan 2001, 27).

Overall, the importance of active participation was further emphasised in the conclusion of the volume: 'Welfare Policy from Below' where we find the recommendation "(...) welfare policy organised around the provision of infrastructure for coping actively with diverse difficulties that arise out of different ways of life can be attractive for both sides [the state and the people]" (Pelikan *et al.* 2003, 257).

Where do these considerations leave us? The material of the CASE research introduces us to a branch of the discourse on active participation that is situated in the wider context of social policy, more specifically the strategies to deal with phenomena of social exclusion. It accounts for the potential of active participation, -but also for its

limitations and it brings to the fore the societal preconditions for active participation to take place, to be resorted to and to become successful.

Apart from the intense 'getting together'-activities, participation appears as a constituent of socialisation (*Vergesellschaftung*). And it is a core concept when talking about and dealing with differences in society. Heinz Steinert had contended:

(...) the most interesting characteristic that distinguishes the participation from the security understanding of welfare is diversity. Thinking in terms of security easily implies shielding all persons from all possible risks in all possible positions in society. There is an in-built dynamic of escalation of 'security'. One risk eliminated makes us see the next and want this eliminated too; seeing other people have a certain security makes us demand it too. Security is insatiable and universalising. An orientation at participation and its resources on the other hand, implies that different situations need different resources, that there must be a wide array of them, but not everyone needs to 'have' them (all) (Pelikan *et al.* 2003, 261).

We will in this place put forward the contention that participation understood as taking part in the various fields of life and throughout different phases of the life-cycle constitutes a person's place in society and is thus closely connected to citizenship.

5. On citizenship

When thinking about citizenship in the context of ALTERNATIVE one of its meanings immediately comes to mind. Citizenship ('Staatsbürgerschaft'), amongst other things, means the formal membership of a political unit – prevailingy the nation state. It is a concept with discriminating qualities, as it draws a line between those who belong, and those who do not. It is something that many people, with whom we are going to engage with through our empirical research, might not have. At the same time, some might possess the status of a national citizen but will not necessarily perceive of themselves as belonging members, or they will not be perceived as such by others. These short considerations already show quite clearly that the study of citizenship complicates by

asking what the experience of being a citizen actually means to people – thereby launching the attempt of approaching citizenship from the perspective of its subjects.

James Holston comes up with an agent-centred definition of citizenship in his work ‘Insurgent Citizenship’: “(...) the experience of citizens with the elements – such as property, illegality, courts, associations, and ideologies – that constitute the discursive and contextual construction of relations called citizenship and that indicate not only particular attributes of belonging in society but also the political imagination that both produces and disrupts that citizenship” (Holston 2008, 9).

From this point of view, the sole legitimacy of the state in defining citizenship is challenged. While it remains essential not to lose the state or state law out of sight, the (discursive) meanings and practices citizenship entails, have to be studied through a multidimensional approach, also aiming to understand the citizens’ view(s) of the state and of society’s relationship with its individual members– which might differ substantially from a merely legal perspective of rights and duties (Holston 1999, 157, Holston and Appadurai 1999, 14). Thus, citizenship is not only about the legal status of being a member (or not), but also about the individual’s sense of belonging (or not) to the nation/the state/society.

Just as much, citizenship is not only about the right to participate in politics, but also about the right to participate in other realms of social life. Theoretically, this understanding can be traced back to T. H. Marshall who was the first to link the citizen’s legal status to the substantive rights he/she is entitled to because of their membership to the state and society. “Citizenship is a status bestowed on those who are full members of a community. All who possess the status are equal with respect to the rights and duties with which the status is endowed” (Marshall in Holston 2008, 168).

Marshall introduces the terms ‘civil’, ‘political’ and ‘social’ citizenship, which developed in some sort of evolutionary sequence and comprise sets of rights (needless to say that Marshall is referring to the case of the British welfare state). A brief summary or sketch of this sequence might read: As adult citizens became (theoretically) equal subjects before the law (civil citizenship), they turned into bearers of rights and duties. They were then allowed to vote and thereby voice their opinion on who should shape the law they were subjected to (political citizenship). The realization of civil and political citizenship can only be ensured by social citizenship – the right to the benefits of the welfare state – ideally

guaranteeing security from all sorts of social disadvantages and enabling citizens to make informed choices when making use of their political right to vote. Seen from a more general perspective, civil and political citizenship alone did not suffice to counteract processes of economic and social exclusion, thus making a redistribution of wealth through the welfare state necessary, in order to allow all (or more realistically: more) citizens to participate in society (Marshall 1950, for a brief summary see Cohen 2010).

Holston somewhat simplifies this picture. He summarizes civil, political and social citizenship under the term 'substantive citizenship' (sets of rights), in opposition to 'formal citizenship' (legal status). He then observes that, although theoretically linked, these two aspects of citizenship often come along hand in hand in practice.

We know that there are vast, substantive differences of citizenship between social groups and regions at subnational and transnational levels, even when participatory political rights are nationally effective. If formal citizenship refers to membership in the territorial nation-state, and substantive citizenship to the array of political, civil, socio-economic, and cultural rights people possess and exercise, then much of the turmoil in contemporary democracies (both emerging and established) derives from the disjunctive relation between the formal and the substantive (Caldeira and Holston 1999, 721).

Although Holston and his colleagues derive their theoretical insights mainly from empirical research in postcolonial states, their observations do hold for other contexts as well and might help to stimulate the social imagination we need for our action research, taking the multiplicity of perspectives into account. How do people at our research sites experience their relationship to the state and to other citizens (whether they are 'national' citizens themselves or not)? How do they establish a sense of belonging and (shared) responsibility for the space and society they live in? How is their presence perceived by others, the media, the state and its officials? Which rights and duties do they perceive themselves as entitled to and are their perceptions opposing external perspectives or conditions, are they opposing the law? Which tensions and conflicts arise between citizens as agents, who develop strategies to engage with the structures of the welfare state and its resources? Underlying these questions is the assumption, as summarised by Holston and

Appadurai (1999, 16): "(...) that people use violence to make claims on the city and use the city to make violent claims. They appropriate a space to which they then declare they belong; they violate a space that others claim. Such acts generate a city-specific violence of citizenship."

In his chapter 'Spaces of Insurgent Citizenship' of the book 'Cities and Citizenship' (1999a), Holston further extends these explications by discussing how increasing migration flows have added complexity to the notion of (formal) citizenship, eroding the concepts at its core.

(...) both national participation and community have become difficult notions for citizenship in the context of the new urban and, often at the same time, global politics of difference, multiculturalism, and racism. (...). These kinds of problems [referring to the problems posed by differentiated citizenship] challenge the dominant notion of citizenship as national identity and the historic role of the nation-state as the pre-eminent form of modern political community (Holston 1999a, 169).

In the European context, the intersections of citizenship and migration directly point to the role of the welfare state and the access to its provisions, which does not only depend on the possession of national citizenship, or the status of being a legal resident. Recent years have seen a (re)coupling of welfare with work and many European states have added further requirements for migrants. In the case of Germany and Denmark these being the attendance to language and integration courses, other countries have introduced integration tests as a prerequisite for residency and naturalization as discussed by Yasemin N. Soysal (2012). The author points out how these integration tests are representative of the national and European frameworks for integration. As defined by these frameworks, "integration" is an endeavour solely to be carried out by the "good" migrant, who is to integrate himself/herself (instead of being integrated), has to prove his worth as a productive individual, and "earn" citizenship by actively contributing to the society of reception. Work is the primary means of integration and protection against social

exclusion for the individual entrepreneur, who bears the primary responsibility for his/her own well-being.¹⁵

However, Soysal shows that this responsabilisation of individuals that goes along with the requirement of active participation can be traced back to the human rights movement in the 1960's and 1970's, which was paralleled by progressive pedagogies in the educational field.

Signpost #2

Right now, we will go back to the point where we introduced the discourse on participation in relation to 'coping with social exclusion'. In this context, participation comes to denominate the access to the resources necessary in order to live a 'good life' – according to the standards of the society in question. 'Getting together' can be understood as a concretisation of 'community' participation: it is about people becoming active, cooperating in order to overcome deficiencies of their life situations, becoming a player vis-à-vis other state or municipal agencies and vis-à-vis their fellow citizens. As we have seen, the probability that this mode of association, usually called community activity, or community involvement, will become prevalent within society depends on existing structural traits and on traditions.

We have further introduced the concept of citizenship as the experience of people as members of a state's society, entitled to their citizens' rights. As we have pointed out, this experience has increasingly become one of fragmentations or disjunctions. Who is regarded a member of society, or who regards oneself as belonging to society does not necessarily depend on one's legal status as a citizen or resident of a given state. Nor is the possession of documents a guarantor for the realisation of the substantive rights associated with citizenship (or legal residency).

Furthermore, the lens of citizenship can turn into a blinding one, if we fail to see those, whose discrimination lies at the very heart of the conception of citizenship: those who do not possess citizen status at all, are legally excluded from participating as full members of society and highly vulnerable to social exclusion. Social infrastructure enabling people to

¹⁵ For a discussion of the consequences of these conditional formulations of the welfare state for (il)legal migrants and their coping strategies, see e.g. Karazman-Morawetz and Rönneberg (2007).

participate in all realms of society is the major public means to contribute to the realisation of citizenship and to prevent social exclusion.

While our action research aims at the facilitation of people's participation in the resolution of "their" conflicts, we have to keep in mind the structural field in which such conflicts occur and the coping strategies people might encounter. These coping strategies can be changed and modified by people's actions, but are also determined to a certain extent through the societal structures in which they take place. The state is a major force shaping these structural settings. Its responsibility involvement must not be forgotten, even if the focus of our attention is directed towards non-state actors like individual citizens and civil society.

6. On civil society

6.1 The 'counter-concept'

Civil society generally evokes positive emotions and general acceptance, albeit it is generally not considered a 'hurray' word.

Its discursive history shows many strands though, the stream of the discourse nourished by springs and rivulets of diverse origin.

Brunilda Pali has sketched the landscape or scenery of the development of the term in the 'Building Social Support for Restorative Justice'-report (Pali and Pelikan, 2010, 103,104):

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 - as far back as Greek and Roman antiquity. 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 (...). 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 has always emphasised 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 emphasising the economic interests of civil society and on the other with Locke emphasising 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 emphasised 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 see it as a fundamentally good thing in itself (...).

These two conceptualisations of civil society are both set against something else, the inescapable forces of economy on the one hand, the power of the state and its dictates on the other hand: civil society appears as the promised land, where citizens (lat. 'cives') freely associate, not submitting to the constraints of the economy, where they are evading, or even encountering and fighting state power. The 'belief' in the good thing in itself is indeed prevailing in the US.

6.2 A broad definition of civil society

Pali contends that beyond this antagonistic conception of civil society most writers on the subject agree that civil society has an institutional core constituted by voluntary associations outside the sphere of the state and economy. Named

as the “nonprofit,” 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 (...).

In the report on ‘Building Social Support for Restorative Justice’ she has come forward with a ‘structural-operational definition of civil society’ as proposed by Salamon, Sokolowski, and List (2003), in order to guide “(...) us towards some understanding on delineating which organisations to target within civil society” (Pali and Pelikan 2010, 105). There are

five structural or operational features defining 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 (Pali and Pelikan 2010, 106).

Pali states that

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 (Pali and Pelikan 2010, 106).

6.3 Civil Society in the countries of Europe

Of more immediate relevance for the project ALTERNATIVE appears Brunilda Pali's review of the specific features and idiosyncracies of civil society in different parts of the world. She has in turn drawn on a book edited by Joanna Shapland called 'Justice, community, and civil society' (2008).

The programme of the book according to Shapland is to compare these relationships among countries. "In the book", Pali states, "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" (Pali and Pelikan 2010, 109).

E.g. Anne Wyvekens and Philip A. Milburn, authors in Shapland's book, write 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.

In Germany on the other hand, according to Axel Groenemeyer, another contributor to Shapland's book, although even more pronounced reservations existed and still exist regarding the use of the concept of community, civil society, 'Zivilgesellschaft' has made its way into politics and society since the 1980s: civil society is understood as an expression of commitment to causes of a more general concern - and as an expression of acting as a responsible citizen.

The difficulties existing in the countries of Southern Europe have been treated quite extensively in the context of the AGIS project 'Restorative Justice: An agenda for Europe' and the extensive report written by Clara Casado that was dedicated to restorative justice developments in Southern Europe. She refers the discussions of the experts involved in the project. The main topics they dealt with were: /the impact civil society organisations can have on policymaking, /the degree of social mobilisation or the culture of volunteering and /the relation between the state and the citizens and the way it depends on a wide range of complex historical, cultural, political, social and economic factors.

Casado refers to Maurizio Ferrera, a researcher who has expanded on the work of Gosta Esping-Anderson on welfare regimes, applying and modifying it with regard to the

Southern European countries. He points to the distinctive type of social policies in Greece, Italy, Portugal and Spain. He contends 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 (Casado in Pali and Pelikan 2010, 115).

These findings are in line with those of the aforementioned CASE project (which has taken place earlier) that a late take-off concerning welfare state provisions goes together with residuals of corporatism/clientilism as well as of familialism. While corporatism might be perceived as a forerunner of civil society it does lack the prime constituent of active participation though. Regarding the Spanish welfare system, Angela Gabàs (Rönneling and Gabàs, 2003, 117) had stated that the persistence of clientelism and patronage systems is responsible for a selective distribution of subsidies – thus enhancing dependency instead of equality and active participation we would assume.

To the AGIS report, Pali has added that “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 (...)” (Pali and Pelikan 2010, 115).

As an antagonistic force, civil society has made quite a career in the countries of Central and Eastern Europe, in the 'new democracies'. An absolute state and absolute party rule forms the background that has to be overcome. And on the way to democracy civil society associations are called upon to play an important role. Prominently, in Poland the Catholic Church becoming an ally of the trade-unionist movement, was the embodiment of civil society against the state and against the rule of the communist party. And there we find also the name of *Solidarność* – solidarity. Solidarity constituting the traditional cement of syndicalism and trade-unionism that is still called for as creating togetherness for civil society movements.

Meanwhile in the Central and Eastern European countries civil society is perceived less as a movement, rather its institutions appear as a preferred means of promoting democratic development from the side of global players, i.e. by civil societal associations working on a global scale. (Only recently the protagonists of the EU have demanded from Russia's president Vladimir Putin to open more space for civil society as an expression of democracy - an appeal that was met with cold contempt and treated as another sign of

unwarranted mingling into Russia's internal affairs.) In fact, these global players of civil society are also criticised as promoting a neo-colonial project, driven by global elites in their own interest (see Sen 2010).

6.4 Civil Society and political theory

As already indicated, the discourse on 'Civil Society' is vast indeed and it is extremely complex. This complexity has been spread out most impressively by sociologists/political scientists Jean L. Cohen and Andrew Arato in their comprehensive volume on 'Civil Society and Political Theory' (1994). They have identified three strands of opposing concepts, pertaining to the theoretical discourse: 1/ Elites vs. participatory democracy; 2/ Rights-oriented liberalism vs. communitarianism, 3/ Neo-conservative advocates of the free market vs. defenders of the welfare state.¹⁶ The authors follow the emergence of the discourse on civil society in continental Europe, starting with Hegel's concept of the 'bürgerliche Gesellschaft' and trace its 'contemporary revival', going on to extensively discuss 'The Discontents of Civil Society', in its manifestation as the 'normative critique' of Hannah Arendt, the 'historicist critique' of Carl Schmitt, (historian) Reinhart Koselleck and Jürgen Habermas, the 'genealogical critique' of Michel Foucault and finally the 'system-theoretic critique' of Niklas Luhmann. The depth of knowledge regarding all of these European thinkers, but especially their discussion and explication (*Auseinandersetzung*) of Habermas is truly stupendous – and it makes for laborious but highly gratifying reading.

In the main chapter Cohen and Arato set out to outline a 'Reconstruction of Civil Society' based on Habermas' discourse ethics and integrating the main arguments of the critiques treated earlier. They contend that collective actors in late modernity advocating civil society have in mind a normative model of a societal realm different from state and economy and having the following components: /Plurality: families, informal groups and voluntary associations whose plurality allows for a variety of forms of life /Publicity:

¹⁶ This represents a more complex elaboration of 'civil society as a counter-concept' the way we have outlined it in the introduction to this section.

institutions of culture and communication; /Privacy: a domain of individual self-development and moral choice; and /Legality: structure of general laws and basic rights to demarcate plurality, privacy and publicity from at least the state and, tendentially, the economy (Cohen and Arato, 1994, 346). “These projects”, they continue,

are hardly self-validating. Both Hannah Arendt and Michel Foucault have made powerful arguments attacking these claims. For Arendt the differentiation of a social realm distinct from the state was the beginning of a fateful depoliticisation of society, leading to the collapse of the boundary between public and private and the emergence of both mass society and totalitarianism. For Foucault the very norms of civil society constituted only the visible support of less obvious social disciplines and microtechnologies that combine into a new and seamless system of bondage (p. 346).

And the authors conclude: “If these and other critics of the norms of civil society are to be answered it must be on the basis of a new, comprehensive and justifiable practical political philosophy. It is our contention that discourse ethics, suitably reinterpreted, is the best candidate to accomplish this task.” (p. 346)

The aim posited by Cohen and Arato regarding civil society reads: “What is needed is a conception of civil society that can reflect on the core of new collective identities and articulate the terms within which projects based on such identities can contribute to the emergence of freer, more democratic societies” (p. 421). This concept overcomes the dualistic versions that have dominated the discourse so far by using a three part model of lifeworld, and of political and economic subsystems. The authors insist that the model of a differentiated civil society retains its utopian promise in welfare states as well as in states formerly governed by state socialism. It is indeed a theoretically highly sophisticated edifice - but one that nevertheless claims practical relevance. Notwithstanding its impressive achievements we regard it far beyond the scope of this paper and its usage rather besides the purpose we strive for.

6.5 Civil society as an intermediary concept: third paths and tripartite models

In order to do justice to a truly political understanding of civil society, at the same time streamlining the sheer abundance of writing on the subject, we will in this place further on focus on those concepts that understand civil society as a ‘third way’ or an intermediate societal entity (this is similar to the grand endeavour of Cohen and Arato albeit on a much more modest scale.)

The most famous - and most controversial - ‘third way’ is probably Anthony Giddens’ proposal: in his book ‘The Third Way’ (1998), he 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. 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.

As hinted above, Giddens’ third path concept has met with critique: it was denounced as a hidden neo-liberal agenda in the disguise of a new social democratic path (see e.g. Roper 2000). The critique lashed against Giddens and his ‘Third Path’ applies to global civil society organisations in general. The suspicion is uttered that they serve as a Trojan horse that allows international powers, and most important, market forces to wheedle their way into countries in transition and in Third World countries (see Bernstorff 2009).

The notion of civil society and solidarity as a third mode to achieve effective governance, are referred to in the theorising of several authors writing on globalisation and global governance. Helmut Willke (2006) 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 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. This is explicated in a contribution to theories of democracy, presenting a differentiated account of the two models, their achievements and deficiencies. According to Habermas, the decisive difference concerns the importance attributed to the democratic policy process, the role of the law and the position of the citizen. He contends that

[i]n a republican view, a community's objective, the common good substantially consists in the success of its political endeavour to define, establish, effectuate and sustain the set of rights best suited to the conditions and mores of that community, whereas in a contrasting liberal view the higher law rights provide the transcendental structures and the curbs on power required so that pluralistic pursuit of diverse and conflicting interests may proceed as satisfactorily as possible (Habermas 1990, 15).

Habermas arrives at the deliberative model of democracy which claims to avoid the 'ethical overburdening' of the republican model and its unrealistic supposition of a citizenry that is able to act collectively and as a reflection of an ethical everyday life-context. It avoids on the other hand also the absorption of politics and political communication by the state apparatus and their assimilation to market structures. Democratic politics is to be realised by institutionalising procedures that guarantee the generation of political power that accrues from communication and that find the public arenas where this communication is to occur.

6.6 On solidarity

The exhaustive treatise of Cohen and Arato (1994) deals at some length with Habermas' discussion of the concept of solidarity within his discourse ethics. Since solidarity, albeit espoused by many writers on civil society, has generally remained vague, we will draw from these chapters.

Interestingly, Habermas has developed his understanding of solidarity in close connection with the concept of identity. Identity, on the other hand, does seem to involve

substantive assumptions about what seems to constitute the ‘good life’, implying judgements on the validity of particular ways of life. He also establishes a link between solidarity and justice and he, finally, allocates his concept of the lifeworld a prominent place in the argumentative chain.

Habermas starts from the contention that the proper complementary concept for justice is not benevolence, empathy, intuition or caring, but solidarity. Justice and solidarity do not represent two distinct principles but are two sides of the same principle. This is further argued the following way:

- Human beings are individuated through communicative processes of socialisation (*Vergesellschaftung*) in an intersubjectively shared lifeworld.
- They acquire an individual identity only as members of a collective and simultaneously, they acquire a group identity.
- Identity – as the identity of the group and of unique individuals is reproduced through intact relations of mutual recognition.
- The further individuation proceeds, the more the lifeworld is differentiated, the more the individual is involved in a thick and subtle network of multiple and reciprocal interdependencies. Indeed the extreme vulnerability of individual and collective identities derives from the fact that the person forms an inner core only to the extent to which she simultaneously externalises herself in a communicatively produced interpersonal relationship!
- Lifeworld as “the intuitively present, in the sense of familiar and transparent, and at the same time vast and incalculable web of presuppositions that have to be satisfied if an actual utterance is to be at all meaningful, i.e. valid or invalid” (Habermas 1987, 131).
- Solidarity is rooted in the experience that each must take responsibility for the other because as consociates they each share an interest in the integrity of their common life context.
- Justice refers to equal freedoms of unique and self-determining individuals – legitimate norms are those accepted by all potentially affected participants in a discursive process.

- Solidarity refers to both the concerns of consociates linked together in a lifeworld, for the integrity of a shared common identity as well as for individual and even subgroup identities (Cohen and Arato 1994, 377f).

Signpost #3

Civil society in its various manifestations is firstly set against the forces of the economy, more precisely: the market and those of the state. It is secondly, conceptualised as a societal entity in-between state and market, or in-between hierarchy and competition. Finally it is espoused – together with the concept of solidarity - as bridge-building discourse and practice.

Here we find Habermas' deliberative model of democracy and more generally the discourse ethics. Solidarity and justice, identity and lifeworld are brought together in securing the 'good life' for people living in a given society. Applying the dialogic, the deliberative principle to the handling of conflicts could indeed be called the alternative 'restorative justice' way of providing this good life marked by security and justice.

These bridge-building concepts and practices are what we look out for in our research sites and what we strive to establish. It will therefore be less the search for specific manifestations of civil society and their role but for the spaces, for the arrangements, and for the ecological conditions for dialogue and dialogical working with conflicts.

7. Active participation in the security discourse

7.1 On governance, governmentality and responsibility

Active participation does figure prominently at an intersection of the RJ- and the security discourse, as exemplified by Mulcahy (2000), who is referring to a particular strand of critique launched toward community mediation or rather the 'evangelicals of community mediation'. This critique is directed at the propensity of the informal modes of community mediation to further expand state power and promote its intrusion in realms of 'private

life'. These conceptions had previously and most prominently been forwarded by Michel Foucault.¹⁷

Although not obvious at first sight, active participation does play a significant role for and within the operations of governmentality. This new mode of governance is about the transformation of modes of domination, "is about the question how the actions or the conduct of individuals are and can be guided, steered, controlled or influenced" (Krasmann 2003, 136). Governing becomes effective not by making people submit to the rule from above but by imprinting on the individuals' mind, by making them conform by themselves, from within. They are no longer to bow and to comply passively but by becoming active and by participating in various arenas that influence the public and the private.

Within the critique put forward by Foucault and his followers one focus of interest is the question to which extent and in which way this does influence the role of the state vis-à-vis society. The main argument goes in the direction of an enhancement of state power. The rule from within is supposed to be more subtle, hidden and thus inescapable than the rule from above and from the outside.

There is another facet of 'new governance' that becomes relevant in the security discourse: the individual is responsible for securing his/her livelihood on the market of labour and of goods, and also for providing for his/her own security.¹⁸ Responsibilisation implies leaving this care to his/her own devices and capacities. He/she has to be active and has to take risks.

Neo-liberal subjects, says Susanne Krasmann, are considered to be the active, auto-responsible selves, the entrepreneurs of themselves. They are assigned both the freedom of decision and the responsibility for the consequences of their acts, for the choices they make in concrete life situations and for their whole living (Gordon 1991, Krasmann 1999a, 2003). 'Governance' in Foucault's sense does not refer to the suppression of individuality or, vice versa, to a mere subordination to governmental will, but rather to the '(self)-

¹⁷ See, for example, his lectures at the Collège de France in Paris between 1970 and 1984, especially in the courses of 1978 and 1979. In these courses, titled 'Security, territory and population', and 'The birth of biopolitics', Foucault started to define and explore a new domain of research, which he called '*gouvernementalité*' – 'governmentality', in his own neologism.

¹⁸ And it is security, as different from safety: safety is pertaining to protection from exterior dangers, while security is about forestalling the risks that lie in the future, see Legnaro (1997). At the same time this security appears increasingly threatened, see Kreissl (2007) and Zedner (2002).

production' of individuality, or more precisely, to the invention and promotion of possibilities, i.e. technologies of the self through which the subjects themselves are rendered able and willing to conform with the objectives of government (Lemke et al. 2000, 28f; Quensel 2002).

With a different angle to it: it is the overall, inescapable domination of market forces that makes people internalise the rules that guide the market and that call for a self-reliant and enterprising individual (see Pelikan 2007, 41). The critics of new governance declare these tendencies of responsabilisation – indeed affording more active participation of the individuals – to constitute just a strategy designed to better meet the challenges of society's and of the global world's increasing complexity and 'blindness'. Individuals are according to this perception wheedled into taking care of themselves and submit - not to the rule of an authority but to the logic of the market which always carries an inescapable truth and power. Active participation would then be a false promise, an illusion – as is the freedom promised by the rules of the market.

These critiques “share a perspective on the modern state and on the role of state law that proclaims to look beneath the surface of the equality and freedom that are the achievements and the promises of the Enlightenment. Beneath this surface they perceive forces at work, mainly it is market forces, that bring about mechanisms of hidden repression. Because of its veiled and subtle character, this type of repression is more pernicious and above all inescapable than the mechanisms of open repression” (Pelikan 2007).

This type of critique has also been applied to restorative justice: more precisely to VOM (Täter-Opfer-Ausgleich) projects in Germany. Yvonne Bauer has attempted to analyse whether, because of its position inside the state criminal justice system, VOM is to be regarded a medium through which the state exerts power (Bauer 1997, 62- 66). She concludes that the VOM model constitutes a new power mechanism, which enables the state to bring people to accept the validity of the transgressed norm and act in conformance with it. What is new about it, Bauer (1997, 100) suggests, is that this “process of interrogation, confession and reflection” need no longer be enforced as used to be the case by the holder of political and juridical power or the medical practitioners, psychologists and pedagogues of the nineteenth and twentieth century. Instead, the process is carried out directly by the individual concerned, i.e. the offender himself. This

results not from a free decision but rather from a decision taken under some kind of ‘voluntary constraint’, because the mediator always reminds the offender of the consequences of a refusal: the reopening of the criminal procedure, which is interrupted during the period of the alternative procedure of the Täter-Opfer-Ausgleich (Krasmann 1999b, 73). The voluntariness of the process is therefore only superficial and serves, in fact, as these critics suggest, to disguise the true character of the Täter-Opfer-Ausgleich: a new mechanism to produce conformity (Bleckmann and Tränkle, 2004, 97).¹⁹

Here one has to consider that VOM in Germany is, as in most other (Central, Eastern and Southern) European countries, performed without any involvement of community representatives. It is a professional model, albeit the professionals should ideally incite and support the active responsibility of victims and offenders as parties to the process. It remains indeed closely bound to the CJS which has political and ‘mental’ difficulties to recognise the different rationale underlying RJ and VOM and - following from that - its need for autonomy.

There is another aspect of new governance and of responsabilisation. Shearing and Wood have pointed to the ‘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 collectivities. 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, Froestad and Shearing (2007) have pointed to the South African ‘Zwelethemba’ model of local capacity building. There we can find orientation as to the strategies to promote active participation in conflict resolution that avoids the pitfalls of ‘fake’ participation as warned against by the authors quoted above. The Zwelethemba model is realised in poor rural communities of South

¹⁹ For these critics the point is not whether it is a good or a bad thing to get people to conform to rules, but that this is done by the bait of (a fake) voluntariness.

Africa. It is built around a process that came to be called 'PeaceMaking' because it is concerned with establishing peace in the face of interpersonal conflict.. PeaceMaking takes place at PeaceMaking Gatherings to which people who are thought to have the knowledge and capacity to contribute to a solution that reduces the likelihood that the dispute will continue are invited.

The goal is instrumental. The key question guiding the PeaceMaking process (and the set of steps established for this) is, 'how do we make a better tomorrow?' This focus on the future has its roots in the life experience of poor people who are required daily to get on with the business of living together. A significant feature of the Zwelethemba model, compared to both retributive and some restorative justice arrangements, is that the matters of dispute are not addressed through a backward looking process that seeks to balance wrongs with burdens but through a forward looking one that seeks to guarantee that the disputants' moral goods will be respected in the future (Froestad and Shearing 2007).

Signpost #4

Active participation is a constituent of the strategies of new governance, since new governance is generally marked by a preoccupation with security it figures prominently in the security discourse. Techniques of responsabilisation, which are closely related to active participation, and designed to make people take care of their own affairs - to become entrepreneurs of themselves - implies increasing reliance on communities and organisations of civil society. While this also holds the promise of freedom and self-realisation, it is on the other hand criticised as a means of more sophisticated and refined means of social control that results in people submitting to the inescapable pressure of competition in the market.

To conclude: watch out for the pre-occupation of community organisations with matters of security and the concomitant strategies of exclusion.

A true alternative policy of communitarianism would abstain from abiding to the paradigm of control and security. The newly empowered communities ought to be enabled to recognise and to deal with diversity, to give a place to different subcultures. This

orientation ought to guide the attempts of activation and of conferring responsibility for conflict resolution onto various organisations of civil society – as we might find in our action research.

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