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## INTRODUCTION

### Restorative and Responsive Human Services

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The overall goal of this book is to advance the understanding and fit of restorative justice and responsive regulation, its achievements and limits, evidence and trajectories with particular focus on the ways their theories and applications serve as a bridge between disciplines and between formal and informal human services. We take up restorative justice as justice that heals the harms that derive from injustice and regulation as what we do when obligations are not being honored. Many of the chapters in this collection show that this makes restorative justice a relational form of justice. As will be discussed in greater detail, responsive regulation builds from a framework of empowerment and aims to engage actors in cooperating with the development of the details of how their obligations will be met even when their compliance could be required. Restorative justice coupled with responsive regulatory strategies help chart practical pathways for moving from healing to problem solving and contributes to the development of theory and research relevant to tackling complex social problems.

While there are many wonderful collections on restorative justice this one has quite a distinctive focus. First, it is about exploring the ways that the nuance of restorative and relational theory enables more responsive ways of grappling with complexity than do hierarchical and prescriptive intervention approaches to the human services. We will draw upon lessons from responsive business regulation to apply them to redesigning human services delivery to advance well-being, reduce domination and to respond more quickly in ways that are supportive and responsive to evolving circumstances.

Second, we examine the potential for restorative and responsive-relational theory, along with the empirical evidence and related strategies and competencies, to contribute to the broader project of developing and maintaining robust, resilient and responsive human services as a key pillar of a healthy civil society. This requires deepening our understanding of the complex interplay of markets and human or social capital that underwrite capitalism, democracy and justice that flourish together. In this view, the system of social welfare services is understood to play an important role in regulating what Drahos calls capitalism's three large-scale processes of destructive change that currently confront regulatory networks and institutions everywhere: eco-processes collapse, techno-processes collapse and financial processes collapse (2017, p. 761). We reiterate the prediction that both the scale and intensity of relationships between and among regulators and those being regulated will increase (Parker & Braithwaite,

2003; Drahos, 2017; Levi-Faur, 2011) and this presents, even necessitates, opportunities to re-think the aims and design of the human services as sites for advancing justice. When organized for coherence and responsiveness around the principles of equity and integrity, with account taken of emergent needs and risks, welfare services are good for business over time; not for business driven by maximum profit with no regard for its impacts on people, but for businesses that thrive in republican expressions of democracy (Braithwaite, 2002, 2008, 2013, 2017a; Hodges & Steinholtz, 2017). This means taking words like *regulation* and *welfare* back from their pejorative meanings, revisiting their underlying principles and aligning them as crucial elements of social and economic justice (V. Braithwaite, 2017).

## Restorative Justice, Responsive Regulation and Republican Democracy

In the face of increasing evidence that despotic, authoritarian or simply invisible powerful hands control matters in everyday life for most citizens, the marriage of restorative justice and responsive regulation aims to encourage both the sense of possibility and responsibility. Both are vital components of innovative, purposeful and meaningful responses to complex human services challenges. But the hard questions remain about when, how, with whom and in what contexts to punish and when to persuade, when to enforce and when to support and how best to offer these processes so they invigorate mutual aid and self-help and regulatory capacities in affected social networks like groups, families and communities in the long run.

We take injustice to include harms that derive from crime, but we extend its scope to include experiences of relational, historical and structural injustice that may or may not involve legal constructions of wrongdoing. Restorative justice and responsive regulation offer a path forward for the timely sorting out of injustice in all spheres of human relations. This includes injustices seeded in structural imbalances of power and privilege that are so well known to regenerate and manifest themselves in the laws, policies and practices in human services, often cloaked in the best of intentions of the helping hand, but also often seen as politically driven tactics of repression and punishment. Restorative and responsive regulation is offered as a relational approach to program and service delivery and to engaging with the programs and providers themselves in holding to principled courses of action. This means accounting for the competent and ethical delivery of services by engaging in thoughtful problem analysis and enlisting stakeholders in partnerships while simultaneously remaining alert to the “creep” of excessive intrusion into the lives of citizens.

Such approaches sit within republican theory (Pettit, 1997; Braithwaite & Pettit, 1993) in which liberty is conceived to be freedom as non-domination. It is understood that any public protection or provision of security, including with the human services, involves some coercion. Lovitt and Pettit (2009) elaborate three ideas central to this notion of freedom. First, a free person is conceptualized as one who does not live under the arbitrary will or domination of others. By extension, a free state is one that promotes the freedom of its citizens without itself coming to dominate them. The third involves the obligations of citizenship; good citizenship requires vigilant commitment to preserving the state in its distinctive role as an “undominating protector against domination” (Lovitt & Pettit, 2009, p. 11).

The chapters of this book recurrently affirm the insight that human services without domination cannot be delivered without regulation of human services dominations, for example without regulation of abuse and neglect in aged care, without indigenous rights enforcement against child protection services that fail to honor the legislative principle of ‘restoration’ (the presumption in favor of restoring

indigenous children to indigenous extended families, even if it is to grandparents rather than parents) (Behrendt, 2017).

Restorative justice and responsive regulation both seek to be forward-thinking, that is, moving to problem solving and to planning for the future. Both hold in common the view that punishment, when it is seen as excessive, unfairly administered, or is seen as a bluff, typically fails in its goals and often provokes defiance and a rippling loss of trust in the system of regulation. Quite often even backlash. They also hold in common that when people have access to safe, timely, fair and trustworthy means of having their grievances, including their experiences of persecution, or even questions about the way they are being treated, heard and understood, that the likelihood of conflict escalation and the associated costs are reduced. Then hopes of harmonious relations and reduced threat of continued strife are increased. We expect this to hold true in most areas of the human services including health, education, social services and justice settings and encounters.

Despite its rapid increase in popularity and infusion into many areas of human services and human relations, restorative justice continues to be mainly understood as having value in criminal justice matters where the restorative justice practitioner brings all parties to an offense (the offender, law-enforcement agents and victims) together to discuss how each has been impacted, what can be done to repair or heal the effect of the harm and what needs to be done to keep further harms from occurring. The usual criminal justice conceptualizations and applications of restorative justice tend to either be fixed around diversion from legal processes or get offered wholly separately as voluntary post-legal healing opportunities. Law tends to be positioned at the center of these programs. As we enter into other areas, where the role of law and of the state is decentered to form regulatory partnerships that are hybrid, state-private, pluralistic and involve a range of formal and informal actors and stakeholders, the need for interdisciplinary research cooperation and fresh thinking about complexity is inescapable.

In its criminal law applications, a small number of disciplines and state agencies organized around crime, its reduction and its vast system of detection, prosecution, sentencing, incarceration and re-entry contribute to narrowing the spread and full realization of restorative justice. For example, scholars like Hanan (2018) argue that some restorative justice applications fail to offer genuine alternatives to the criminal court system by imposing criminal justice assumptions such as the requirement that a wrongdoer must admit to their wrongful behavior beforehand. Untested, assumptions rooted in the logic of criminal justice like this one may prefigure the process and perhaps mask outcomes that stakeholders prefer while hijacking the possibility that people may want to define their situation as a conflict for which they share responsibility.

Thus, in widening the scope to injustice, we refer to sites where the experiences of coercion and exclusion at the interpersonal level may or may not rise or best be dealt with as criminal matters can still rapidly escalate in harms to individuals and relationships, flare up through social and other media mechanisms and leave people relationally and economically, if not also physically, disadvantaged or harmed. Several chapters in this volume focus on examples of what Lejano and Funderberg (2016) might refer to as relational or “regulatory hotspots”, or even “weak” spots that render vulnerable people and resources particularly exposed to exploitation and oppression. These include examples such as interpersonal violence, bullying, riotous behavior, organized labor, family and child safety, sexual behavior and assault in public institutions, community regulation and reintegration of sex offenders, and the impact of racialized decision processes associated with mass incarceration and the use of foster care with African-American families and gendered violence. But these could well be extended out into areas such as medical errors, unfair procedures in workplaces and schools and lopsided decision-making

processes that range from environmental hazards and protections to personal choices about biological reproduction and health and the gendered use of power and control in relationships across a spectrum of relational and institutional settings (Gil & Bakker, 2006).

These examples all give testimony to the need to value pluralistic, multi-dimensional and interdisciplinary approaches to the study of social problems and recognition that it is in human encounters when people need help, including with self-regulation, that they are highly vulnerable to exploitation and manipulation by people and forces beyond their awareness and control. This necessitates careful and responsive examination of the multiplicity of influences including the excessive reach of market, state and professional powers that interact with complex rules and regulations that impact people's lives, and so often conflict with each other, but also from the persons in their own families and communities. We describe the ethical basis of the regulatory state in terms of its formal, juridical, deontological underpinnings. In contrast to this stands the alternative ethical concept of care, which is inherently relational, contextual and preferentially attentive to the needs of the vulnerable.

### **Restorative Justice: Praxis, Process, Social Movement and Law**

Many advocates, including the present authors, have argued that restorative justice as a social movement has only partially succeeded in dissuading the entrenched power of the legal profession from resisting restorative reform. This is a major constraint to full realization of restorative justice in the human services. It is one of the reasons why the Vermont Law School, a nationally recognized top environmental law school, has taken up offering graduate and certificate programs in restorative justice: to take upstream the study and practice of law in its role to safeguard holistic principles that protect freedoms of people wanting to play active roles in solving their own problems and increasing their engagement in civil society.

Restorative justice is not simply a way of reforming the criminal justice system; it is a way of transforming the entire legal system, our family lives, our conduct in the workplace and our practice of politics. Its vision is of a holistic change in the way we do justice in the world. Yet, justice reform efforts mostly draw on internal traditions of reform within western traditions (Braithwaite, 2017b; Braithwaite & Zhang, 2017; van Ness & Strong, 2015; Zehr, 1990) and this is seen as a continued source of threat to indigenous and other sources of cultural and relational problem solving and conflict resolution (Blagg, 2017; Warren, 2016). Closer examination of the host historical, legal, policy and cultural contexts of both regulation and restorative justice is, as we will see, in need of careful and nuanced study from interdisciplinary and multi-cultural perspectives.

Access to restorative processes remains largely on the margins. This despite restorative justice having a presence in many corners of human activity and having inched its way into most spheres of conflict resolution, mediation, healing, victim aid, human resources and personnel work, human rights commissions and inquiries into historical wrongdoing across the human services and human relations spectrum. It is offered at the discretion of providers, a discretion mostly not exercised, as part of pilot projects, an add-on or alternative to taking matters to court. Its development is seen in fits and starts. A leader or a group takes up the work, falters when champions leave, funding ends, program mandates change. This is true of restorative justice in schools, a major domain of implementation. Yet, its rise in popularity is fueled in large measure by a heightened passion of people who want to do the "right thing", give people a "say" and find antidotes to the widespread perception that democracy has been hollowed out with poll-driven alarmist predictions of what inevitability is going to happen next. Organized around

strengths and best hopes, one of the biggest challenges to the spread of restorative justice is the manipulation of public fear and anxiety that cyclically drives state and state-sponsored actors to justify assertions of control (Burford, 2018). “There is no other way” became a tag-line for neoliberal austerity and political trashing of “welfare” programs and further stigmatizing people in need of services as feckless and undeserving (Featherstone, White, & Morris, 2014; Morris & Burford, 2017).

Through a legal lens, restorative justice, like other forms of justice, can be understood as a mechanism for the maintenance or administration of conflicting claims and halting escalations of retaliation. Instead of relying strictly on legal protocols and rules, RJ works through cooperative behavior, dialog, negotiation and other processes such as mediation to arrive at agreements about the assignment of rewards and punishments. In a fully realized system of restorative and responsive human services, actors across systems from police, health, education, social services, child protection, management and administration would be armed, so to speak, with the regulatory enforcement and support tools of persuasion, negotiation, de-escalation, even coaxing (Braithwaite, 2010; Grabosky & Braithwaite, 1986; Wood, 2018) and other skills of the regulatory craft (Ivec, 2013; Morrison and Arvanitidis, Chapter 4 this volume); and would cooperate across systems in their use (Braithwaite & Harris, 2009; Cherney & Cherney, 2018; Featherstone et al., 2014; Featherstone et al., 2018; Grabosky, 1995; Harris, 2011; Ivec et al., 2015; Pennell, 2004; Pennell, Shapiro, & Spigner, 2011) as will be discussed more under the topic of responsive regulation.

### *Attending to Relational-Restorative Contexts*

As is seen in several of the chapters in this volume, especially those addressing matters in the USA, where some of the world’s most successful and creative expressions of human service innovation and experimentation can be found, there is also the enduring threat to democratic institutions that emanate from disproportionate treatment and outcomes by race, gender and inequality of wealth. These inequalities are well documented and traceable directly to the legal foundations of citizenship and privilege in the birth of the nation (Meacham, 2018; Saito, 2010). Mechanisms that hold inequality in place are understood to derive from complex interplay of law (Berman, 2006, 1983), narratives of exceptionalism and essentialism (Chase, 2018), religion (Morone, 2004; Wilson-Hartgrove, 2018; Van Molle, 2017), jurisdictional or interest-group centric constructions and interpretations of law and international law (Roberts, 2017; Saito, 2010), and even from what Chimamanda Ngozi Adichie (2009) calls ‘The Danger of the Single Story’. They are reinforced largely through sanctioned decision processes and informal processes of relational influence.

The need to check bias in decision making is well researched (Sloman & Fernbach, 2018; Mercier & Sperber, 2017; Plaster, 2010; Tavriss & Aronson, 2007) and important to this volume, but our scope goes beyond investigating and checking bias to further include the need for ongoing dialog including scrutiny of how comfortably the commitments to republican democracy fit with the on-the-ground outcomes and progress associated with social justice and human rights, and in how to make them work more closely in harmony. Done badly, restorative justice processes, like other regulatory interventions, are far from immune to capture or corruption (Strang, 2002; Braithwaite, 2002). Done well, restorative justice holds people to high standards for ethical and legal behavior and the practice of respect. Restorative justice itself, like all justice practices and policies, is seen to flourish in contexts where there is ongoing commitment to inclusive, relational and pluralistic decision making, including the principles of tripartitism, the crucial role of “third-parties” addressed in detail in Chapter 2, subsidiarity, the

preference for handling matters at the most local level, rather than stepping them up to a central authority, and forbearance, the practice of self-restraint, respect for the dignity of others and refraining from the exercise of power in order to encourage enlistment of self-regulation and cooperation.

We appreciate that in extending restorative justice and responsive regulation beyond the domains where they are most well understood as alternatives to criminal and civil law proceedings, or post-legal intervention healing, that we are leaving the door open rather wide to cover anything from a perceived slight, "put down" or misstep in decorum or ritual that causes discomfort all the way to heinous crimes repeated over generations against a group. We do value the 'restorative practices continuum' developed by the International Institute for Restorative Practices (IIRP, n.d.) that covers everything from heading off a budding conflict in a hallway conversation at school to formal proceedings or inquiries carried out under the auspices of a statutory authority or beyond. And we value fertile hybrids between restorative justice and other traditions, even as our focus is mainly with what McCold (2000) first attempted to characterize as fully restorative processes. In this he included processes such as community and family conferencing, peacebuilding circles and other processes that emphasize the use of face-to-face group meetings that bring together voluntary members of the affected relational network and go beyond technical and transactional settlements (Braithwaite, 1989, 2002; Llewellyn, 2011; Zehr, 1990).

In each, we see the need for considerable investment of time in relationship building. The undervaluing of time and human labor does not square well with the needs of the human services for building trust that is so essential to reciprocity, security and relational healing whether that is at the level of engagement with human services or in the governance of these services. The transactional commodification of time as labor that underwrites the investment in relationships bumps against the needs of responsive and relational human services. We prioritize processes that tie to wider social movements in which positive behaviors are supported and reinforced over time, but also processes in which people can integrate their healing, recovery, hopes and aspirations into citizenship, purposeful and meaningful activities, that is, into roles in which they feel they have a say and experience competence.

Which brings us to another important theme. John and Valerie have studied processes of shame, stigmatization and shame management extensively and we here revisit current understandings around these very sensitive subjects. We think it is a mistake to paper over the study of shame and stigmatization with superficial applications of strengths-based approaches or by underestimating the role of shame in healthy human development. We see unhealthy shame and unhealthy pride as profound dangers to human flourishing, while healthy shame and pride management are also vital. It is vital both that men consider rape as shameful and that men take pride in their contributions as men to families and work groups that affirm and strengthen gendered rights. As is well understood, the process of acknowledging past or present domination and agreeing to transcend it is almost by definition laden with shame for some or all of people involved. It exposes one to the risk of humiliation and even cruelty. Yet, this letting go and presenting one's self as vulnerable in the moment is also understood as the very path that can naturally lead to open expressions of pain and struggle, relief and release, to apology and forgiveness. It underwrites building relational, family, peer and mentoring connections and associations that transcend restorative meetings. As will be seen in chapters in this volume, these extended connections with peers that foster hope and practical opportunities to engage in purposeful and meaningful activities have been demonstrated as crucial to recovery from addictions, reintegration post-separation and in channeling trauma and frustration into narratives of growth and overcoming. We stress voluntary engagement while acknowledging the existence of power and influence in all relationships. What emanates from these

processes contributes to building social-emotional intelligence, including building healthy strategies for shame management, and socialization into prosocial contexts of belonging that are characterized by dignity, the possibilities of forgiveness and the experience of having been treated justly.

### **The Restorative Journey: The Role of Places, Spaces and Stories**

Before turning to the subject of regulation, we consider the role of narrative or “origin stories” and the values that lend themselves to more relational understandings of justice and regulation in the jurisdictional contexts in which they are used to guide policy, practice and research.

Oral traditions of indigenous peoples and recorded history show ways that people have ameliorated cycles of violence and revenge. Long rooted in most cultures and long pre-dating the codification of rights and protections in Asia, the Middle East and among most indigenous peoples and cultures of the Pacific, the Americas and Europe, certain enduring principles stand out as the basis of mediation, conflict resolution and relational reconciliation (Braithwaite, 2017b; Braithwaite & Zhang, 2017; Llewellyn & Downie, 2011; Llewellyn & Philpott, 2014; Zehr, 1990). They also sit at the core of most of the world’s religions including Christianity, Islam, Buddhism (Braithwaite & Zhang, 2017; Kahn, 2006; Rich, n.d.) where conceptualizations of justice, charity and fairness are linked, and which constitute the bedrock visions for state–citizen relations in most modern conceptualizations of social justice and social welfare (Day, 2008). Broadly speaking, the Golden Rule about treating others as you would have them treat you, or the so-named Platinum relational revision about doing unto others as they would want done to them, sits at the heart of what matters. It is understood as the basis for continuing civility in social arrangements, heading off cycles of retaliatory escalation and holding open the door to possibilities of forgiveness and reconciliation while honoring the importance of kin and kith ties that are cross-cutting in social institutions in many societies from ancient times.

Despite what seems on the surface like compatibility, integrating indigenous and culturally embedded conceptualizations of justice into colonial constitutions and legal systems is fraught with challenges. Legal pluralism and hybridity have many desirable features and allow different traditions to learn from one another (Forsyth et al., 2018). Yet there are dangers that legal transplants from another culture into a colonial legal architecture can fatally threaten the holism or integrity of the lifeworld of that other culture (Blagg, 2017; Moyle & Tauri, 2016). At the same time it can be an error to view the holism or integrity of any culture as static or fully formed; at every point in history every legal culture inevitably adapts and changes in better and worse ways. It is vital for restorative and responsive reformers to be reflective and sensitive on these complex issues, and to apply restorative values of listening to those with views on them in particular contexts. It is a mistake to listen and never learn from non-western traditions of justice; it is a mistake to believe that it is a good thing for western universities to provide scholarships to non-western students to sit at the feet of western law professors, but an appropriation for westerners to sit at the feet of indigenous elders.

Some indigenous justice approaches have been seen as a legitimate way to contest, or provide a counter-weight to the weight of authoritarian creep through the lopsided administration of laws and rules and their disproportionate impact of advantage that the rule- and law-making systems give to people with the most access to institutionalized power. As was argued by some Māori leaders in New Zealand in the lead-up to their 1989 implementation of family group conferences (Children, Young Persons and Their Families Act, 1989; Ministerial Advisory Committee, 1986; Rangihau, 1986) in matters concerning the care and protection of children and youthful offending, it was the historical

and continued harms perpetrated by state intervention that they wanted front and center in all considerations of their dealings with the state. This included disruption in their connections to and roles as stewards of natural resources, the forced separation of families from their kin and kith, including the removal of their children and young people and the systematic eradication of their languages all being accomplished through the administration of laws and policies that criminalized behaviors crucial to their survival and fostered shame (Kupumamae, n.d.). The dominant legal decision processes, they argued, were contributing through legally sanctioned decision-making processes to their own genocide. Masked in practices carried out in the name of mercy, charity, protection of children, education and progress were views that regarded them as primitive people whose culture should be regulated out of existence. The "origin story" of restorative justice in NZ, then, attends to far more than individual incidents of harm and focuses also on historical harm and decision-making processes. The family group conference was intended to invigorate contextual-relational understandings and discussions of the complex of ways in which harm and structural advantage occur, and to stand against single or dominant explanations that marginalize less powerful persons or groups. This requires vigilance to the "creep" of dominant and technical changes that can signal stepping away from central principles, especially empowerment. A 2005 international survey of restorative and family engagement practices found over 50 unique names in the USA for restorative practice that revealed more about the marketing of the practices and suggested erosion of principles meant to be driving the practice (Nixon et al., 2005).

We do not intend to place at the feet of restorative justice the responsibility for fixing all the structural inequalities in the world but we do agree that all restorative justice and regulatory responses ought to seek to be transformative by exposing ongoing disadvantage as in the case of gender and racially based violence and control, environmental harms and other complex structurally reproduced disadvantages. Justice that is restorative and responsive, according to this volume, should work to open new spaces for the law and social sciences to complement one another, for disciplines to set aside differences and work together to solve complex problems while supporting insider leadership of locally affected relational networks.

On the subject of complementarity and coordination, Gunningham, Grabosky and Sinclair (1998) pointed out that strategies like restorative justice could not sit in isolation, in siloes, apart from other regulatory approaches. They must sit as strategies, combined or sequenced amongst others, avoiding incompatible combinations of strategies, yet embedded with other approaches available that have compatible aims: those of both ensuring that people step up to the plate to meet their obligations but also to restrain the excesses of state and powerful non-state actors from overreach into the lives of citizens. This extends to the role of research on the use of restorative justice that must examine the fit of restorative innovations within a continuum of restorative options and be understood within hybrid approaches to governance. This requires exploration of how restorative values and practices resonate with existing and emerging values and systems rather than being plugged in as set pieces to existing institutional forms. Responsiveness can in this way be seen as principled hybridity with restorative justice that responsively checks and balances restorative justice principles. Understanding restorative justice in such ways helps us understand what restorative justice informed decision processes and systems might look like across institutional, disciplinary settings and environmental contexts. Hence, our interest is in more fully restorative practices driven by values and principles associated with the democratization of decision processes emphasizing pluralism, inclusion and unfettered access in working to achieve just processes and outcomes and to expand freedom (Llewellyn, 2011).



## Responsive Regulation

Why indeed, to paraphrase Peter Drahos (2017) should a book, in this instance aimed mainly at people who toil in the human services, be devoted to understanding regulation? Drahos (2017) said of regulation that lawyers have long since turned it into a dull topic mainly concerned with authoritative rules issued by the state and how these rules get delegated into practice (xxvii). On the other hand, few words, especially in the USA, trigger off reactions as strong as “well-regulated militia” (US Constitution, 2nd Amendment). Frankly, it’s a pretty confusing picture in the US where deregulation efforts beginning in earnest in the early 1980s resulted in an increase of regulations by more groups instead of fewer (Levi-Faur & Jordana, 2005; Jordana, Levi-Faur, & Marin, 2011; Braithwaite, 2006), although some might say that the deregulation movement has been more about gaming regulations by people with the most power than about reducing the number of regulations. To top it off, the system of rulemaking at the federal level in the US has become so “ossified” as to invite circumvention through presidential policy making that leaves the public and members of Congress in the dark about what is happening (Kovacs, 2017). Little wonder that confidence in this body is strained (NPR/PBS, 2018).

Regulation in the human services is even more confusing where it seems that many advocates of less government intrusion into people’s lives advocate very specific controls such as drug testing to qualify for certain services and policing of women’s exercise of reproductive rights. Evidence of racialized increases in regulatory intrusion when people attempt to board aircraft, excessive force in policing, incarceration, burgeoning foster care usage, proliferating drug testing, the use of graduated sanctions to withhold health care and social services all point to much greater regulation, scrutiny and use of punishment and exclusion of some groups (Abramowitz, 2018; Metzl & Roberts, 2014; Wu, Cancian, & Wallace, 2014). Untangling regulatory overreach from regulation that is necessary and desirable for security and well-being and are competently and ethically carried out is a theme of this book. From a republican perspective regulatory overreach is regulation that increases the amount of domination in the world; necessary and desirable regulation or deregulation is that which reduces domination. But these conceptualizations of regulation are only a part of why regulation should be on our minds.

Peter Drahos (2017) and Valerie Braithwaite (2017) both eloquently describe how ubiquitous regulation is in our daily lives, much of it informal and much of it beneath our immediate span of awareness. We may say “move along” when the person in front of us stops abruptly to check their cell phone while blocking the exit from the cinema. Or smile at a child’s parent when that child is tending to another child’s scuffed knee on the playground. Or demand to know “how can this be?” when we hear of a city where residents were not told their water was contaminated by city health officials. Ford (2018) shows how complicated is the relationship between innovation and regulation. On the one hand, regulation should support industriousness, creativity and strengthen self-reliance and self-regulation, but on the other it is hard to imagine life without some consensus about governance and what kind of relationships people prefer to have with each other.

For example, a PEW poll (2012) showed that overall Americans dislike the idea of regulation but when the aims, and mechanisms of a particular regulation or a regulatory strategy are spelled out and clearly understood, people are more inclined to support a wide range of regulations and their entrenched views tend to dissipate. The same poll suggests that views of regulation are highly divided along political lines, particularly on certain hot-button topics.

In its responsive-relational use, regulation helps in the development of a less dominating society and in the development of theory, practice and new research propositions and approaches that can help

more fully realize what it means for human services to be collaborative, to be offered in partnerships, to engage thoughtfully with complex problems, to avoid blame and retribution and reward success, citizenship and ethical behavior. It does this by re-centering government's role as but one strand in the production of well-being and security. Networked relations hold promise of improving standards relating to security, accountability and well-being while promoting healing and inclusivity in decision making as building blocks of empowerment practice (Braithwaite, 2002). Mimi Kim (n.d.) pointed out that "The first responders to a violent situation are usually friends, family, community members, and clergy. . . . Why aren't we doing more to equip them with the knowledge and the skills to be able to intervene effectively?" We go further in this volume to ask why aren't the members of these social networks, the informal relations, front and center in all human service considerations?

We take up this challenge as one of incorporating the ethic of "responsiveness" into all work in the human services. Quoting Selznick (1992, p. 336), Hong and You (2018) centered the notion of responsiveness as a cornerstone for maintaining "institutional integrity while taking into account new problems, new forces in the environment, new demands, and expectations" (p. 6). "Responsiveness in this context becomes a democratic ideal—responding to peoples' problems, environments, demands: 'responsiveness begins with outreach and empowerment . . . The vitality of a social order comes from below, that is, from the necessities of cooperation in everyday life'" (Selznick, 1992, p. 465 as cited in Hong & You, 2018, p. 7).

The responsive principle of tripartism, about which more will be said in Chapter 2, should be quite familiar and even agreeable to many practitioners in the human services who subscribe to contemporary empowerment practices that employ strengths-based strategies and techniques found in motivational interviewing (Miller & Rollnick, 2012), community oriented narrative approaches (Buckley & Decter, 2006), solution focused counseling (de Jong & Berg, 2002), certain family therapies (Denborough, 2001), behavioral health and primary care (SAMHSA-HRSA, n.d.), positive psychology (Snyder & Shane, 2006), social work (Saleebey, 2013) and learned optimism (Seligman, 1998).

Tripartism was originally invoked to highlight the limits of transactional relationships between the state and business (Braithwaite, 2018). With the worst excesses of business-state corruption almost any third party might help in exposing the corruption to the disinfectant of sunlight. The presence of third parties, which most often means a number of them, especially when confronting complex problems, increases the likelihood of cooperation and compliance with obligations to reduce domination. Regulation can too often be captured or corrupted by the power of money and other dominant sources of influence like lobbying. The more complex the regulatory environment and the higher the stakes, the more likely transactional approaches will fail. Engaging other actors who have a stake in the outcomes can offset the power dimensions. Witness the onslaught of power brought to bear on environmental protection concerns to protect financial interests. The amount of money Volkswagen was able to invest in software development to fool the emissions control inspectors was evidently worth the risk of fines it ultimately paid and even the sacrifice of its CEO. The importance of listening to multiple stakeholders and making responsive, that is, deliberative and flexible choices from regulatory strategies was key to the EPA finally eliciting an admission that VW was cheating. A key concept is that of the regulatory pyramid that conceptually arranges the possible strategies starting at the bottom of the pyramid with those that privilege persuasion over coercion, enlist cooperation over threat and encourage self-regulation and learning (see Chapter 2). In the human services, fully restorative justice processes move regulation to the level of inclusion of social networks of influence including family, group and community beyond the use of more transactional, individualized approaches to casework

and therapy that are embedded in the very infrastructure of state-centered human services and often in their contracted-out services.

## Widening the Circle of Justice Reform: A Human Services Context for Justice that Heals

We decided not to struggle too much with a definition of the human services. Their core concerns with the care and protection of children and the aged, education, health services broadly conceived, public housing, services for the disabled and protective services for the general population (such as ambulance, fire and emergency services) and various forms of social security is a clear enough core. Rather than become preoccupied with defining boundaries beyond that core, we are concerned about the contexts in which they are experienced by the people who need them, the ways they are governed and whether they are “any good”. What makes the human services a unique site for the pursuit of justice? Having set out that restorative justice is essentially relational, we are interested in the economics of human capital that underwrites investment in a ‘relational state’ (Cooke & Muir, 2012). Consistent with the focus on human capital, Gill and Bakker (2006) point to the human services as being mainly about regulation of labor (as compared to market buying and selling) and particularly the investment of time that relationships involve when contrasted with transactional or contractual approaches.

The interplay of markets and human services is an important challenge to take up in re-visioning what virtue- and principle-driven human services would look like if they embraced checks and balances on the excesses of market manipulation and fostered full participation of people as citizens. It is a central conceit, an hypocrisy, that the opiate crisis in the USA and its interconnections with racialized use of incarceration, policies of zero tolerance, mandatory arrest and no-drop policies (Goodmark, Chapter 11 this volume), foster care (see Roberts, Chapter 8 this volume), including the now acknowledged inappropriate use of psychotropic medications with foster children and other interventionist handling of families in child protection (see Pennell et al., Chapter 7 this volume) are at the same time so well understood as products of both the legal and illegal manipulation by pharmaceuticals (Carr, 2018; DHHS, 2015; Dukes, Braithwaite, & Moloney, 2014; Jacobson, 2018; Villanueva, 2018) and damaging lack of regulatory oversight of pharmaceuticals with vulnerable populations (USGAO, 2011).

This is important in realizing the potentials for partnerships across settings where enlisting cooperation amongst actors who have vastly different funding sources and work parameters lacks support. Restorative justice practitioners who have spent time coaxing police officers to restorative city meetings or restorative sessions, let alone entreating them to imagine themselves as “public health interventionists” (Wood, 2018), or convincing medical and mental health personnel who are unable to bill for their time to attend a family’s group conference, well understand the different value placed on their time and the underlying values behind the allocation of time as labor.

In this connection, we are mindful of the conceptualizations of the welfare state that took shape in the 20th century and how these positioned the state or government at the center of the protection and promotion of the social and economic well-being of its citizens. In his introduction to Esping-Andersen’s *Welfare States in Transition* (1996), Dharam Ghai (1996) pointed out that “despite the progress made by Western welfare states in the centuries-old struggles to achieve social protection and security, social policy is in such a state of flux that advanced welfare states are under siege” (p. vi). Indeed, in the USA the grand accomplishments since the New Deal as laid out by the American Academy of Social Work and Social Welfare (2013) are many, and so are the regulatory challenges.

Comparing business regulation with regulation in the welfare state, Mabbett (2011) says that labor market regulations “reach deep into the heart of the welfare state . . . having pronounced implications for social policy, even while its proponents seek to preserve national welfare state competencies” (p. 14). She points to the strong impact on the welfare state of ideas and institutions exerting what she calls “a race-to-the-bottom dynamics in welfare provision” warning that liberalism’s notions of safeguarding domestic stability no longer constrain market integration (2010). Gill and Bakker (2006) argue that in the era of neoliberalism, the welfare state is trampled under the forward march of global capitalism. But we caution that this may over-romanticize past eras. The argument that caring institutions were once governed by enabling professions and are now run over with profit motives needs to be understood alongside the reasons social, civil rights, shelter and anti-violence movements mobilized to call attention to the many abuses in foster and congregate care, hospitals, prisons and families and the ways that these same powers continue to reproduce themselves (see Llewellyn, Chapter 9 this volume; Llewellyn & Morrison, 2018).

These legacies endure. Beyond the “creep” of crime and commodification logic (Coker, 2016; Drahos, 2017) into everyday life, the historical evidence, as Saito (2010) points out, is abundant on the enduring impact of an “insistent and unilateral perspective of ‘what’s good for America is right for the world’” (as quoted in Higginbotham, 2012, p. 486; see also Roberts, 2017, on international law as western and exclusionary of the marginalized). Speaking of criminal justice reforms, Boyes-Watson (1999) also early on warned of the likely subversion of the very aims of criminal justice reforms when the state’s role in restorative justice programming dominates non-state partner interests. Coker (2016) and Kim (2014) have described the “creep” of crime and “carceral” logic, while Heiner and Tyson (2017) and Whalley and Hackett (2017) point to “carceral” feminism, all pointing to authoritarianism by any other name, as interventions dominated by the criminal justice system, but which we argue extend well beyond into “business as usual” in the human services as top-down governance and regulatory formalism. Despite years of commitment to the rhetoric of empowerment, participatory governance, student-centered learning, patient-centered medicine and family- and community-engaged practice, the drift is back to command-and-control. Heiner and Tyson (2017) warn for example that repackaging justice as caring in the guise of gender-responsiveness still looks like carceral-authoritarian control instead of genuinely reducing and undoing domination and the reproduction of injustice.

What is seen by some as the widespread failure of the welfare state can also be understood as at best a widespread failure to regulate capitalism and at worst a deliberate extension of the politics of enslavement and exclusion (Hyslop, 2016; Roberts, 2002, 2012). Few would now dispute that the extremes in wealth accumulation and disparity are the result of the power of money to game laws and to use the legal system in the favor of corporate interests and that welfare state services do not get to the citizens who are most needy (Bywaters et al., 2014; Katznelson, 2006; Piketty & Goldhammer, 2013; Wilkinson & Pickett, 2009). Yet, prosecutors devote more resources to prosecuting welfare fraud than to financial crimes that create the kinds of mass welfare dependency that we saw following the sub-prime mortgage crisis (Friedrichs & Schwartz, 2008). The important focus may be as much or more about ensuring that people are brought up to a “floor” as trying to put a lid on the ceiling.

It is also true that the infrastructure of welfare state services was designed for a very different time and set of circumstances than we presently face (Cottam, 2015). How do we conceive of human services in a time of great social reckoning especially in the USA around our history of race and gender, shifting economic lenses and volatile swings of partisanship that with each swing erase the investments in regulatory protections and innovation of the last regime?

This requires ongoing consideration of context and relational definitions of citizenship and the “floors”, that is, the minimum standards for well-being (V. Braithwaite, 2004, 2006, 2009; Gill & Baker, 2006; Lewellyn, 2011) and framing justice as a central concern across institutions, across disciplines, across sites of delivery of human services, and perhaps most importantly the complex responsive-relational interplay between and among these institutions and the ways they nurture, or undermine hope. Here we are speaking of hope, not of the kind that is passed along from top-down political or poll-driven declarations of promises, but hope of the kind empirically valorized by contributors to Valerie Braithwaite’s (2004) special issue on hope; hope that is grounded in the aspirations of the everyday lives of citizens and realizable in the expression of freedom and in meeting of obligations as citizens.

## Who Cares? Re-centering Justice in the Human Services

Adams and Nelson (1995), in their pioneering work centering human services in community and family contexts, asked “What would it be like if services were designed to strengthen rather than substitute for the caring capacity of families and communities?” (p. 2). Besides calling out the dangers of the state substituting for, and by extension harming the capacities of families and communities, they also acknowledged that “flexible, responsive, empowerment-oriented services already exist”. Citing the ground-breaking work of Lisbeth Schorr (1988), they write that the crucial, most efficacious elements of the services shown to be of greatest worth, including responsiveness, are the very ones sacrificed when programs grow to scale. Typically, the elements that are eroded or simply taken away are those that have to do with processes associated with empowerment, particularly investments in human relationships (Adams & Chandler, 2004). Why would that be so? Who benefits? And to what ends?

As several chapters in this volume make clear, keeping the integrity of relationships with primary social groups and relational networks at the forefront of policy, research and practice has proven to be challenging for a variety of reasons. These include the disempowering impacts that legal, professional and other special interest influences can directly have on the self-help and mutual aid capacities of families and indirectly through the design of funding and reimbursement regulations. Beyond this are the long-standing fears that resurface from time-to-time that associate social group and community work with radical political activism (Andrews & Reisch, 1997, 2002; Reisch & Andrews, 2002; Specht & Courtney, 1995) and the structural challenges the human services are up against in achieving social justice and supporting people to exercise their rights. Individualized, case management and casework-driven processes in the human services have lent themselves to silencing of grievances, distancing of workers from clients and to separating them from allies in their social networks. This book locates the need to support the family, broadly defined, as a cornerstone of civil society (Burford, 2005; J. Braithwaite, 2004).

We take up Ghai’s challenge to reimagine the welfare state and its human services as part of wider reforms beyond simply trying to save this or that service from the chopping block or ceding that a service or category of services ought to be offered by the state or privatized. The marriage of restorative justice and responsive regulation is best understood in the wider shifts occurring in governance from a top-down command and control emphasis to a state that de-centers, or perhaps re-centers regulation to better match conditions of high complexity. This involves new partnerships between government and non-government actors in hybrid, pluralistic arrangements, some self-directed, others part of relational networks that are negotiated. This trend, once thought of as a move to greater privatization of services, getting the state out of the business of providing direct services, is now understood in more flexible terms and necessary to sustain reforms (Patashnik, 2008).

The hybridization of governance, as applied in the human services, means that a service might be contracted out but taken back if a provider fails repeatedly to deliver, and returned to the state for reassessment. Reassessment might mean an end to privatization, re-contracting to another business provider or contracting to a charitable provider. The critical thing, according to our analysis, is that contractors can be responsively regulated. Levi-Faur (2011) argues that these relations can be understood as processes of governing capitalism through regulatory relationships that are “constitutive and mutually supportive rather than competitive and substitutive” (p. 3). It is this potential for a “happy marriage” in which “governments shed their responsibilities for service provision and shift more of their energies to regulate the service provision of diverse types of actors, including other state actors (Gilardi, Jordana, & Levi-Faur, 2006; Parker & Braithwaite, 2003; Jordana et al., 2011). This is neither privatization nor nationalization, neoliberalism, nor socialism nor conservatism. This is a way of bringing together broader views of the ways that capitalism is regulated with a more diverse group of scholars with a broader outlook on the political economy of capitalism (p. 13)”.

This sits within a republican conception of justice as freedom from domination that opens space for consideration of what it means to work towards justice across institutions beyond criminal justice to explore the possibility of citizen-involved movements that could parallel or take the place of the imposition of the law.

An absence of regulation for relationality is one answer of this volume to why flexibility and empowerment are ground down by growth to scale. More than that, meta-regulation for relationality is needed. Hence, when regulators are asking service providers to provide proof of boxes that are ticked, wise meta-regulators of those regulators ask them why they do not instead give more emphasis to peer review; they ask why regulators do not opt for “conversational regulation” (Black, 2002), why regulators do not demand that service providers convene meetings with stakeholders to decide which failures of service delivery are most in need of continuous improvement, and what might be the action plan to deliver that continuous improvement (as discussed for aged care regulation in Braithwaite et al., 2007).

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