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LEARNING FROM THE HUMAN SERVICES

How to Build Better Restorative Justice and Responsive Regulation

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Why Restorative Justice and Responsive Regulation?

A theme of this book has been that restorative justice has little chance of resilience and scale of transformative potential when it stands alone. Either as an alternative to or an add-on to criminal justice, marginalization remains its fate. We have seen that when it does scale up inside the criminal justice system, its empowerment and relational values tend to wither. While we support making restorative justice values more mainstream inside the justice system, the battle for its core strengths will be lost unless we also have a strategy for putting families, parenting and other primary group relationships as its core and at its front door across justice, health, education and other social welfare and social service settings. If the only time families encounter restorative justice is when they collide with the criminal or youth justice systems, then the family will never become a cohering locus that brings together all the institutions, specialties and sub-specialties they run into as a family with education, health, social services, car accidents and beyond. In this concluding chapter we argue that a degree of institutional forcing of a New Zealand kind is required to make families nodally powerful (Shearing, 2001; Drahos, Shearing, & Burris, 2005; Wood & Shearing, 2013). We must empower individual families (legislatively) to provide the glue to connect up the constellations of complex systems that circle around families.

States and corporations must be regulated by a restorative social movement politics that demands that scaling up. Restorative justice practice must be regulated by peer review and professional standards that bubble up from within that same social movement when practice fails to remain relational and empowering in the process of scaling up. Prospects for accomplishing this are dim without a tripartism in which the social movement for restorative justice is a third party that balances and invigorates contests between the state and regulated actors (be they individuals or corporations) (Ayres & Braithwaite, 1992: Chapter 3). States, corporate executives and professionals always take over in our version of Michels (1915) iron law of oligarchy unless third parties responsively regulate them to disrupt their takeover manoeuvres (Voss & Sherman, 2000).

One of our remedies is to set out Restorative Justice and Responsive Regulation as one path to freedom as non-domination that decenters individualized casework approaches in favor of centering

group, family and community meetings as ongoing ways of doing business. This book has argued that a relational regulatory approach is needed to reconcile human rights and social justice at the human services coal face. It is needed to shed light on the relational complexities of people impacted by life crises and crises of heavy-handed state or corporate intervention in their lives. Multiple-loop-learning among state and non-state actors and policy makers is needed (Parker, 2002). More than that, societies can and must learn how to ripple empathy, trust and hope out from families and other primary groups across civil society and up to the state (Job & Reinhart, 2003). Then our human services might CHIME with Connectedness, Hope, Identity, Meaning and Empowerment (as in the work of David Best and Amy Musgrave, Chapter 12). This book reveals that there are places in the hearts and communities of our dear planet where this happens, and happens in ways that connect up from micro problems that are the daily toil of social workers to macro-structural struggles for justice. The beauty of a strategy of struggle for social justice that centers families (and other primary groups like peer groups in schools and primary work groups in workplaces) is that it gives even the most disadvantaged individuals a starting point for collective engagement with the big political struggles that matter most.

Freedom as non-domination (Pettit, 1997) starts with a strategy for turning personal troubles into political issues (Mills, 2000), the theme of the next section. Chapter 1 articulated a macro ambition for combining Restorative Justice and Responsive Regulation to become a hedge against destructive processes of capitalism that include markets in vices from abuse of tobacco, sugar, fat, waste, carbon, to abuse of physical and chemical restraint in aged, mental health and disability care. In response, Restorative Justice and Responsive Regulation must go holistic and structural, seeking seats at many tables of deliberation for ordinary survivors of corporate harms and state harms to repair them relationally and accomplish structural transformation through maximally relational means.

Making the Personal Political in Struggles for Human Services

Valerie Braithwaite's Chapter 3 explains that trial and error learning naturally teaches families and schools to be restorative and responsive, at least to some considerable degree. This means the policy challenge can be conceived as how to encourage that natural evolution of relational practices in civil societies to grow. This is a central issue addressed in this chapter.

Several chapters show that extended families of kin and kith naturally do rally to provide relational and concrete supports when parents cannot cope or when they fail to meet community standards in caring for children. This is a core justification for the New Zealand policy in its child, family and youth justice systems of mandating and supporting the opportunity for extended family members to discuss the situation in a family group conference before the state takes any drastic action like removing a child. In most cases, it will become natural for grandparents, uncles, aunties and other family and friends to rally to provide extra support. Usually this makes it unnecessary to resort to alternative enforcement-oriented paths such as removal of a child or young person.

On the restorative analysis, the challenge for the welfare state is understood as emanating from both crises of under-funding and from the collapse of confidence in certain dedicated, unresponsive and often costly top-down policies and practices. The state takes it upon itself to remove more children than it should, to put more children, young persons and adults in foster and congregate care and prisons than it should, to expel more students from schools than it should, and to underwrite or, as is discussed later, collude with large-scale profiteering that contributes to bad health outcomes for the most marginalized (e.g., mass incarceration, over-regulation through psychotropic pharmaceuticals). This has the effect of

excessively commandeering and focusing enforcement resources in areas such as child protection investigation and police enforcement of the criminal law that dominates the helping, care, educational and other lower-tier ways to encourage self-efficacy and regulation (Featherstone et al., 2018; Braithwaite, 2015; Waldfoegel, 2001). This downloads burdens for front-line workers to find some other place for the child to get care and an education, for case managers to find health care for people with no insurance, for community corrections workers to find housing and employment for people reentering communities, for police to engage with situations that erupt from mental-health and relational challenges, and for families and communities to absorb their members along with the impacts that the over-use of enforcement interventions have created. The status quo directs attention and resources away from in-depth analysis and responsive strategy development and over-invests in punitive responses for extreme cases. Concerns that ought to invoke de-escalation and inquiry get ramped up to investigation or even armed attack.

Policies and practices of separation leave people with the closest ties to their family members and friends excluded from knowing what is happening while their relatives are separated from them. In the example of aged and disability care, policy makers took a long time to learn that they were incarcerating and tying up more old and disabled people in institutions than they needed to (Chapter 2), when so many of these aged and disabled folk who did not want to go there could have been much more cheaply supported in the community by giving more home and community care support from the state to families. Business bleats about the unreasonable regulatory burden of generous paid maternity and paternity leave as a right in labor law, but in fact this right creates stronger families that ripple out social capital from families to workgroups back to the state itself to build richer economies (Paul Adams, Chapter 6; Valerie Braithwaite, Chapter 3; Job & Reinhart, 2003). Deinstitutionalization also has its risks, of course, as we saw when most states, including New Zealand, failed to manage the closure of mental health institutions in the 1970s with sufficient home and community care support to prevent adult prisons from being transmogrified into the largest mental health institutions in western societies. Likewise in New Zealand, as in all western societies, rich restorative practice reforms are not complemented by rich enough support for family plans from restorative conferences to help the wider family of caregivers who have taken on the care of children. Nor would it seem, again with the partial exception of New Zealand in its children and young persons' services, is restorative justice well enough understood among the general public to help people exercise informed choice as indicated by Gavrilides's (2018) recent study.

Steering toward a more developed, responsively regulated, welfare state is needed to provide the supports for families to engage on more egalitarian terms with health, social services, legal and education service providers. In other words, we have argued that good regulatory settings create the conditions for restorative and responsive care, and these in turn create the conditions for stronger societies and economies in turn inviting and supporting families to take up roles as architects of civil society.

Here in our view *Aotearoa* New Zealand is the only state that has taken one of the necessary steps to defend its welfare state from wasteful and harmful child removals and incarceration of children. As we write this chapter its inspiring Prime Minister, Jacinta Ardern, is on paid maternity leave. We take from this an important message about support for pre- and post-natal care as good for children but also having exponential benefits for families, work and beyond.

New Zealand provides lessons for the world in the process of restorative reforms and formal push-back, and the ongoing contest between the two at the political level. When New Zealand introduced the Children, Young Persons and Their Families Act in 1989 it quickly halved the number of children

who were incarcerated in state-funded institutions and in subsequent years youth incarceration rates reduced further (Braithwaite, 2002). Likewise New Zealand has more than halved removals of children from families. It achieved this by mandating the universality of restorative family group decision-making conferences (as a human right as Joan Pennell and her colleagues persuasively put it in Chapter 7). Pennell et al. point out that protests by Māori against Eurocentric approaches motivated the underlying philosophy that children belong with their families and that government must respect cultural traditions and partner with communities. Māori are mandated as active leaders, *whanau* (extended families) are empowered as decision makers in designing practice and *iwi* (tribes) are engaged in partnership with government to plan how services are shared and delivered locally to their people. At the same time there is contestation of whether this has been genuinely realized by indigenous critics such as Moyle and Tauri (2016, p. 87) whose empirical research found that Māori often see social work practice around family group conferences as subordinating indigenous culture and people ‘within a Eurocentric, formulaic, and standardized process’. Imported Northern assessment tools operating alongside the family group conference reforms are seen to undermine Māori voice and empowerment (Moyle & Tauri, 2016). This is a colonized iron law of oligarchy that corrodes reforms that at first attracted considerable Māori leadership from the likes of Māori Chief Youth Court Judge of the early 1990s Mick Brown. The drift of the state is to claw back control in matters of child welfare but the FGC model in New Zealand does give some protection from this creep; protection that has been in need of renewal from time to time. We should not lose sight that these assessment tools are being exported from the same colonizing sources against which the 1989 Act was designed to push back. Nor that they lend themselves to increased regulatory formalism, especially when coupled with prescriptive systems of performance management and case reporting (Parton, 2017) in their countries of origin, serving to further distance state actors from the children and families (Featherstone et al., 2018; Morris & Burford, 2017; Shlonsky & Mildon, 2017).

All other states that we know have instituted programs for such restorative conferences that are non-mandatory for alleged child offenders, or for neglected and allegedly abused children. Many child welfare jurisdictions have enabling legislation such as the Province of New Brunswick in Canada (New Brunswick Family Services Act, SNB 1980) where a family group conference may be held at the discretion of the social worker. Experience tells a sad story in places like the State of Vermont (where statute requires that social workers engage with families in a process of case planning that will “actively engage families, and solicit and integrate into the case plan the input of the child, the child’s family, relatives, and other persons with a significant relationship to the child” (State of Vermont 3 V.S.A § 5121 effective Jan. 1, 2009)). The sad story is that key decisions are left entirely at the discretion of state workers (Burford & Gallagher, 2015; Gallagher & Burford, 2015). This is not good enough. The New Zealanders were wise to see that families, beyond just the parents, must be guaranteed a right to be heard in conversation with the key decision makers about any drastic action that might be taken against their child. This mission to universalize *familiness* as both a right and a proactive hedge against erosion and over-reach of the state and professional interests is taken up by Elisabetta Carrà in Chapter 5. In particular, children and young people themselves must be guaranteed by the state a more profound right to be heard in family group decision making (Burford, 2013, 2018b) and other restorative and statutory interventions about their futures (Gal, 2015) in the way only New Zealand law currently seeks to guarantee.

Chapter 1 argued that there is a lot of evidence that community-based restorative programs that are richly restorative are at risk of becoming less relational when state or other narrow interests dominate and scale them up to national programs, or even city-wide programs. Usually they fail to build in crucial

principles with inclusive and responsive oversight from the beginning. A response to this dilemma is to avoid the trap of relying primarily on either state or private programs. Most of the restorative and responsive energy is best to come bottom-up rather than top-down from the state. Most of the accountability pressure on universal state programs that lose their relational edge should also come from that bottom-up source. Likewise, most of the entrepreneurial energy to move restorative and responsive principles into completely new domains of the human services is best to come bottom-up from restorative communities. So how can that be accomplished?

RSVP: Restorative Spaces, Vistas, Places and the Role of Social Movements

An encouraging development towards accomplishing this is the Restorative City idea across the social movement for restorative justice that has expanded to states, provinces, organizations, virtual learning communities and even to “re-membered” preferred configurations of community used to mobilize just relations. Of course there are other social movements that aim to help cities and communities rebuild and flourish, but the Restorative City idea brought forward the added-value of holding restorative justice at the forefront. It started to our knowledge with the RJ City project of the Centre for Justice and Reconciliation of Prison Fellowship International. Dan Van Ness first tossed the idea around with Kay Pranis and many others in the late 1990s at KU Leuven in Belgium, long a key node of research-based restorative justice, and in other locales. A number of those involved in that Leuven conversation ended up on the RJ City Project Advisory Board. In 2006 Van Ness was the author of the first report of a five-year research project to design what a restorative city might look like (subsequently updated in 2010: Van Ness, 2010). The RJ City project imaginary was international, with Van Ness conducting project focus groups in the US, Canada, the UK and New Zealand. These were the countries where the Restorative Community vision first took off, particularly the UK.

Hull took the lead as a restorative city in the UK, followed by Leeds, where comprehensive implementation across a diverse range of agencies in each city has been attributed to the considerable capabilities of leadership embracing restorative standards and the use of a framework of results or outcome-based accountability to enlist purposeful collaboration (Hull Centre for Restorative Practice, n.d.). Following Hull and Leeds, initiatives were also underway in Bristol, County Durham, Norfolk, Wokingham, Stockport, Swansea and Cardiff (Liebmann, 2016), and with Southampton launching a Restorative City Charter in 2017 and Belfast (long a restorative justice leader) starting a Restorative City conversation in 2018. In *Aotearoa* New Zealand Wanganui is an important lead city. The Province of Nova Scotia in Canada has demonstrated high levels of achievement within the province and in collaboration with restorative networks in Leeds and Hull (United Kingdom), Wanganui (New Zealand), Canberra and Newcastle (Australia), and the state of Vermont (USA) has worked to adapt the restorative community idea into a glocal (local-global) ‘learning community’ ideal whereby restorative community networks consolidate iterated conversations about relational justice.

A mega city devastated by crime and marginalization in the US that has seen recent building of a Restorative City network is Detroit which is diffusing a ‘whole of neighborhood approach’ to expanding out and connecting up local inkspots of restorative justice in collaboration with the International Institute for Restorative Practices (Clynes, 2013). The vision of the original RJ City project was one of rather nodal governance (Shearing, 2001; Shearing & Wood, 2003; Drahos et al., 2005; Wood & Shearing, 2013) with a Hub that ‘is the Network’s coordination center and guardian of restorative justice principles, values and goals’ (Van Ness, 2010, p. 16). The Hub facilitates restorative innovations into

new justice challenges across many spheres of the life of the city. More recently the Limerick, Ireland, Restorative City has transformed the nodal idea of a Restorative Hub by re-designating it as a 'Restorative Heart', thereby linking the nodal idea to a relational ethic of care that eschews discourses of command and control (Le Chéile, 2014; see also Quigley, Martynowicz, & Gardner, 2015).

Some Australian states (the Australian Capital Territory and Victoria) and New Zealand have restorative networks where lively conversations and research collaborations are underway to invigorate the marriage of green restorative visions with restorative justice visions. In Vermont, USA a loosely knit, voluntary consortium of agencies and practitioners that began informal meetings in 1999–2000 has recently received support from state agencies and the Vermont Law School, a national leader in environmental law that is launching graduate education in restorative justice, to support its role in the development of RJ in the state. Oakland, California, has explicitly invoked a green restorative city vision (Kaplan, 1995; Louv, 2012; World Future Council, 2010; Kuo & Sullivan, 2001; Sullivan, Kuo, & Depooter, 2004; Kim & Kaplan, 2004; Dobbs, 2007; Kweon, Sullivan, & Wiley, 1998; Toronto Public Health, 2015; Roe, 2016; Baggs, 2018; University of Minnesota, 2018), this green vision programmatically married to a restorative justice vision of the city. In Oakland, this in turn connects to the Black Lives Matter campaign, a resolve to 'restorganize', a term coined by Fania Davis, to move away from imprisonment of the marginalized, and much more (Bankhead, George, & Poretz, 2018).

Hybridity of State/Community/Market Provision

A bottom-up community-based model of relational justice is a beautiful ideal. It is one, however, that ultimately can burn people out, leaving behind disappointment and the usual "we tried that; it doesn't work", often reflecting too little appreciation of the relational complexity involved in responsively engaging with change. As has often been the case in human service sector reform efforts, we see examples of this at a more micro level with restorative justice in schools. An entrepreneurial member of a school community who might be a teacher, a counsellor, a parent or even a student shows the leadership to establish a restorative justice program in a particular school. It flourishes for a number of years, reducing suspensions, improving learning and grapples with bullying and other behavior problems. Then that key entrepreneurial leader moves on to another school or another phase in their life. Many other members of the school community say they want the restorative program to continue but they are flat out with their teaching and family obligations and do not have the capacity to step up to volunteer the energy the departing entrepreneur contributed. So the restorative program begins to wither away. After a number of restorative schools wither, critics enter the fray with the counter-narrative that restorative circles in schools gave troublemakers too much voice to give teachers a hard time (Roberts, 2018).

An important research agenda is to study the exceptional communities where this has not happened. One may be Nova Scotia, where Jennifer Llewellyn has reported that, at the time of this writing, 106 schools persist in providing restorative programming. Our hypothesis on why this seeming sustainability has been accomplished in Halifax is that compared to most cities it has an unusually vibrant bottom-up quality to its restorative network. This means when one entrepreneur moves to another job or place, there are many other relational entrepreneurs, and critics with their own ambitions, waiting to step into the breach. This is consistent with the experience in Hull, UK. Leadership has been persistent, present and visible with considerable investment in relationship building. Restorative standards have been infused in all aspects of the life of the school and with the community. This has generated high levels

of recognition and prompted investment in moving the approach out to other schools and involving new partners.

Another reality check for school programs is the imperative for advocates who enjoy relational rituals to listen to teachers and students who enjoy it less, who might say they want restorative justice, but that they want to reduce the frequency and duration of disruption to teaching time from the convening of circles. In the interests of sustainability, advocates must be self-critical about whether each ritual element, each form of protracted talk that they favor, is a good use of time in the interests of the education of the students.

Our conclusory remedy to the limits of the beautiful ideal of purely a bottom-up community-based model of relational justice is that explicit commitment to a hybrid of state/community/market provision is needed to generate practice, policy and research insights across disciplines, methodologies, organizational and funding silos (on the hybridity ideal see Wallis et al., 2018). Halifax as a city, and the Province of Nova Scotia, manifest this hybridity because it is also a place where solid bases of restorative programming and training have been forged in a variety of state institutions, even if they are not as universalistic as *Aotearoa* New Zealand youth justice and child protection, or as driven and centrally supported as is Leeds where leadership and commitment of resources come from the child and family services, and Hull where the leadership has emanated from schools. In Nova Scotia, a state-funded university, Dalhousie, has also been critical to the solidification of restorative community in that Canadian province in part from the leadership and support of the Dalhousie Law School and the Nova Scotia Restorative Justice Community University Research Alliance under the directorship of Jennifer Llewellyn (Chapter 9) but also from willing and committed government, cultural and service user groups and coalitions. So we resist putting all the weight on a restorative community network to drive everything. This is why we are attracted to a hybrid of a vibrant bottom-up restorative community network and a New Zealand-style universal state program that provides a solid base for restorative justice training and reinvention when the restorative community loses energy or falls on hard times as a result of internal divisions or any number of other normal stresses of civil society mobilization. At the same time, the state efforts are more likely to stay on course and be responsive to families, community and culture, if they are held to account from strong engagement with those groups.

For the same reason, market provision of restorative and responsive human services can be embraced rather than spurned. Restorative activists sometimes disparage those who establish businesses to sell restorative services or restorative training. John Braithwaite witnessed an extreme version of this on a committee considering a draft mediation and traditional justice law for Afghanistan in 2014 that would empower, authorize and mandate standards for mediation and restorative justice, particularly in the form of traditional *jirgas* and *shuras*. More than a few around the table argued that acceptance of money for providing mediation services was corrupt and should be banned by the law the committee was drafting. One can't help but admire the superiority of Afghan society in terms of its commitment to an ethicality of the volunteerism of 'whitebeards and whitehairs' and younger helpers who volunteer and even put their own money into providing food and transport to convene mediations. But the group ultimately rejected a recommendation to the justice minister that the law make it a crime to accept payment for mediating a dispute.

This debate in Kabul was one that kept coming back to remind us of the virtues of restorative mediation as something that has its greatest power when it is a gift of love for a community of friends, and when seen as such. Neoliberal restorative justice and responsive regulation is certainly a risk that we do well to see through Afghan eyes. Yet the sustainability of relational giving is something that can

at times be preserved by a bit of help from markets in mediation and training services, just as it can be preserved at critical junctures by help from state provision. How could these three writers think otherwise when they have spent their lives in universities that operate in the market for training and in state-funded universities. Yes, we can guard against universities slipping more deeply under the spell of a neoliberal market mentality, but that does not mean that we think university teaching should be something always volunteered without payment. We need strong gift economies in the human services; but gift economies can be brittle; reliance on them must be hedged by state and market supports so they become even stronger gift economies.

The dangers of excess in neoliberal market provision of human services are mainly posed by underinvestment in tax collection and in public spending on the human services. While many human services have improved and have attracted increased funding over time, most have not. Best et al. (2016) have pointed out that a precondition for many of the recovery capital programs discussed in Chapter 12 (Best and Musgrove) is secure housing. Secure public housing is expensive, so most western states have retreated from it. This issue is also discussed in Wilson and Fox's Chapter 13. For a person with a substance abuse problem, for example, only if they have that publicly funded base of secure housing when they do not have the resources to pay for it in the private market for housing will recovery grow. Nearly all economies have grown much wealthier year by year during the past 70 years. This has made it easier and easier for them to fund human services with the decency required for human flourishing. Instead, we have seen the super-rich capture most of these fruits of greater affluence at the expense of the poor. Improved restorative and responsive support for the poor awaits more effective restorative and responsive regulation of the taxpaying of rich individuals and corporations (Braithwaite, 2005). In the above fundamental senses, effective restorative and responsive regulation of business is inextricably linked to viable restorative and responsive regulation of human services, and vice versa.

Limits of Law Reform Ritualism

While that is the essence of the positive message of this book about how to build human services that deliver freedom from want and freedom from violence and domination, a conclusion about our negative message is also in order. This book has shown through varied examples that the state rarely delivers high-quality human services by simply enacting a law that says something should be done. Laws do not of themselves mobilize relational energy and commitments. We have seen, for example in Leigh Goodmark's Chapter 11, that laws that mandate reporting of child abuse, mandatory arrest and no-drop laws for domestic violence prosecutions are examples of rituals of comfort (Power, 1997) that have equivocal evidence of effectiveness and create complex and conflicted choices for the most disadvantaged people. They are laws designed to seduce critics of failed state responses to domination that something tough is being enacted. No-drop laws for domestic violence and mandatory reporting of abuse have arisen along a trajectory of commitment to maximally punitive criminal enforcement against serious violence, followed by evidence of failure of these policies. The response has been to dig the system deeper into that hole of failure by measures that limit discretion against being non-punitive (Burford, 2018a) but allow discretion to double-down on punitive measures.

To make things even worse, new laws typically do not foresee the way police, statutory front-line actors of enforcement at the street, school-hallway or client interface will make them work. Because police could get into trouble for failure to arrest, when both partners at a scene of domestic violence accused the other of initiating the violence, frequently, especially in minority families, the police take

the safe path of arresting both (Burford, 2018a; Roberts, Chapter 8; Goodmark, Chapter 11). This has driven the unexpected result that the campaign for more aggressive criminal enforcement against domestic violence has resulted in increasing numbers of minority women, the most marginalized of people, being charged. Dorothy Roberts in Chapter 8 reports that black children in the United States are nearly nine times more likely to have an incarcerated parent than white children.

Sherman and Harris (2015) followed up the Milwaukee domestic violence experiments by counting how many victims had died by 2012–13 in cases randomly assigned to mandatory arrest (or away from it) in 1987–88. They found that victims were 64 per cent more likely to have died from all causes when their abuser was arrested and jailed compared to cases randomly assigned to a warning and being allowed to stay at home (normally with minimal social support). For African-American survivors, this elevated risk from their perpetrator being randomly assigned to arrest was particularly high: 98 per cent higher risk of early death when their offender was arrested and went to prison, as opposed to receiving a warning. Calling the police for help for a woman can be a risk factor for losing housing, having child protection enter your life, being further abused or worse (Goodmark, 2012, 2018).

Webs of regulatory action and nodes of human activism are also required to bring laws to life. Mandatory reporting laws can be undermined by 'don't ask, don't tell' realities of ritualistic response to them. No-drop laws can be undermined by no-pick-up realities. Particularly ritualistic are laws that mandate tough criminal enforcement as the one and only response to a specified wrongdoing. The criminal justice system has long faced a system capacity crisis (Pontell, 1978) which means that when new laws are written to mandate more criminal prosecutions, criminal prosecutions must be reduced somewhere else where other laws mandate a criminal enforcement response. The way this mostly works is that if we mandate more criminal enforcement against blue-collar criminals, the effect is that the impunity white-collar criminals already enjoy becomes even more certain as a more total impunity. This occurs not only because wealthy criminals have more political power to plead for impunity, but because their crimes are more complex and resource-intensive to prove than, for example, the crimes of a teacher or child care worker who fails to report bruises on a child.

Besides, responsive regulatory theory argues that criminal law has more power when it is held in reserve near the peak of a regulatory pyramid, when many other lower-cost, less-punitive remedies have been tried first (Leigh Goodmark, Chapter 11). This book has discussed the many reasons for this. If persuasion has been tried before punishment, when the punishment does come it can be accepted as more legitimate. This is especially so when agents of law enforcement say 'I am giving you a warning and some support to come into compliance this time, but you must realize that I will be in trouble with my boss if you break this law again and I do not refer your case for prosecution' (or for some other drastic state action like child removal).

David Karp's analysis in Chapter 10 of the failure of the criminal legal system and regulatory formalism to make criminal enforcement effective against the epidemic of campus rape, sexual harassment, rape chants and rape culture on campus illustrates the policy failure well. Legal formalism seems to heighten defiance and denial by perpetrators and fails to embrace remedies that teach others the lesson the perpetrator has learned. Those of us who live among university students know well that they are overwhelmingly reluctant to disrupt their studies and their lives by reporting campus date rape to the police. Karp documents this empirically. Hence Karp makes the case that universities have a responsibility to fill the vacuum with an evidence-based response that replaces inaction with something effective, which he argues includes campus restorative justice (prevention circles, restorative conferences and reintegration circles for re-entry support), restorative enquiries (Llewellyn, Chapter 9) and a campus

sexual assault regulatory pyramid. Moreover, structural change was required of 'the Faculty, the university and the profession' and the higher education ecosystem, its regulation and self-regulation. 'Regulatory formalism as the systemic or ideological backdrop makes working responsively and restoratively difficult if not, sometimes, impossible' is Llewellyn's important structural conclusion (Chapter 9).

Jennifer Llewellyn focuses on one particularly wide and notorious sexual harassment incident at one university, Dalhousie, to explore broader learnings about the untapped 'potential of restorative justice as a theory of justice to affect our understanding of justice itself and the structures, systems and institutions through which it is pursued'. At the heart of her analysis is the relational complexity required for responsiveness. Restorative and responsive justice requires 'more than a one-off intervention (no matter how restorative)'. It can also require a multidimensional enquiry or even a multidimensional UN peace operation that restores and transforms the human services of a society, and much more.

The more promising line of empirical enquiry is to come to an understanding of when and how horizontal moves to enforcement of norms against violence in civil society work. This is because, as Mimi Kim (n.d.) put it in our discussion of her work in Chapter 1, first responders to violent situations are usually friends, family, community members and clergy, so why are we not doing more to equip them with the knowledge and skills for responsive interventions. Or as Leigh Goodmark put it in Chapter 11:

The notion of community responsibility for harms, if married to justice strategies that rely upon, even require, community involvement, could reinvigorate community efforts to "police" intimate partner violence. Asking community members to identify intimate partner violence and to conceive of and implement appropriate responses could fundamentally transform how communities understand that violence, leading to the shifting of community norms that anti-violence advocates have long sought.

(Chapter 11)

Joan Pennell and Gale Burford's (1995) Newfoundland and Labrador research on family group decision making concerning violent abuse of children and women was one example of a program designed to strengthen horizontal response and extended family empowerment to enforce anti-violence norms relationally. The initial sampling was of violent abuse, but it turned out that families with a lot of that very often also had a lot of other challenges, including some families where there was sexual abuse, that also had to be addressed in the intervention. This necessitated offering every family member in the circle, including those who had abused others, the opportunity to have a designated support person lest their behavior or emotions, including shame, violent or sexual victimization required help to manage, and to ensure that abused persons had someone with them who could support them. It was a practice influenced by Paul Adams and his characterization of the virtue 'of accepting that one is not and should not be in control of a family' (as discussed in Chapter 6). The approach and implementation results have been described in detail (Burford, Pennell, & MacLeod, 1995; Pennell & Burford, 1995) with protocols field tested and adapted for use particularly in situations of intersecting child abuse and domestic violence (Family Group Decision Making, Pennell et al., Chapter 7; Nixon et al., 2005; Sen et al., 2018).

The empirical evaluation of outcomes of the Newfoundland and Labrador program (Burford & Pennell, 1998; Pennell & Burford, 2000) found a marked reduction in both child abuse and neglect and abuse of mothers and wives and several other relevant measures after the restorative intervention.

Briefly, of note is the way holism made the intervention into more than a child protection innovation; it was a generalized human services intervention for the whole family that prioritized the needs of children but also set the needs of the children in the context of the need for safety for all family members. Programs like this one and others that have built off similar assumptions about the capacities of families and communities including *Hollow Water*, *Ma Mawi* and many others (Burford & Pennell, 1998; Pennell & Burford, 1995; Government of Canada Department of Justice, n.d.; Couture et al., 2001; Daly & Barrett, 2014; *Daybreak*, 2018; Government of Canada Public Safety Canada, n.d.; Sawatsky, 2009; *Ma Mawi Wi Chi Itata*, n.d.; *Mi'kmaq Family and Children's Services of Nova Scotia*, 2018; *George Hull Centre for Children and Families*, n.d.; Pennell et al., Chapter 7; Schmid & Morgenshtern, 2017; Sen et al., 2018) show that assumptions that restorative family violence programs necessarily threaten domination rather than assumptions that restorative family violence programs will dominate rather than liberate women must be questioned. We see this questioning in the Royal Commission of senior feminist judge, Marcia Neave (*State of Victoria Royal Commission into Family Violence*, 2016) and in the work of many scholars and leaders in North America (discussed in Goodmark, Chapter 11 and in Roberts, Chapter 8) and others (c.f. Coker In Press; Coker & Ahjané, 2015; Goodmark, 2018; Pennell & Kim, 2010).

Joan Pennell, Kara Allen-Eckard, Marianne Latz and Cameron Tomlinson build on this contribution in Chapter 7 by discussing how family empowerment restorative processes run well can build 'collective hope'. They discuss the mistake of shielding children too much from participation because of the friction that arises in conflicts between the state and the family. Lost hope means that families are likely then to react through motivational postures of resistance, disengagement or game playing to undermine agency rules. Special opportunities for building the self-efficacy of children are then lost. These child engagement issues were viewed through the empirical prism of data from the North Carolina Community Child Protection Team (CCPT) (Pennell et al., Chapter 7). Chapter 13 by Wilson and Fox likewise has this kind of emphasis on engagement with the creation of a politics of health.

Pennell and Burford's research is just one part of a wider body of research that has found women's voices tend to get more air time in restorative conferences than in other processes like court cases. Gabrielle Maxwell (1993, p. 292) concluded that restorative conferences are 'places where women's voices are heard'. Rigby (1996, p. 143) showed with data from 8,500 students that at all ages girls are more interested than boys in talking through school bullying problems. Kathy Daly (1996) found that while a minority (15 per cent) of youth justice conferencing offenders were female, women could still be a majority in the room (with 54 per cent of victims, 58 per cent of victim supporters and 52 per cent of offender supporters being women). In the Canberra RISE experiments offenders were more likely to feel that they were disadvantaged due to 'age, income, sex, race or some other reason' when they were randomly assigned to court than when they were randomized to a restorative justice conference (Barnes, 1999; Sherman & Barnes, 1997; Sherman et al., 1998). Joe Hudson (1998) likewise found in Canada that 80 per cent of restorative conference participants were 'very satisfied' that all participants were treated as equals, a result that could not be achieved without most women being satisfied on this score. In Pennell et al.'s Chapter 7 in this book, mother and child participation was reported as high in North Carolina Community Child Protection Team (CCPT) meetings. The challenge as they see it is to build what Tali Gal (2015) calls a culture of child participation. Leigh Goodmark makes the point in Chapter 11 with respect to gendered violence that 'Restorative processes are free of the evidentiary constraints that restrict voice'. In contrast, David Karp argues in Chapter 10, legal formalism can undermine women's agency in the case of university sexual assault and harassment. So can informalism of

course. The challenge of restorative and responsive justice is a formalism that both checks and enables informalism; and an informalism that checks and enables formalism.

We have seen more generally in this book that improved human services never inexorably follow from a law that simply mandates them. Nor does it follow from empowerment alone, as Paul Adams argues: empowerment, good processes and values must be complemented by habits, dispositions, qualities of character, virtues, required for and developed by such practice. Democracy as the art of association and social justice count among these virtues on the Adams analysis (Chapter 6). The accomplishments of indigenous justice in *Aotearoa* New Zealand have been significantly enabled by the way the Treaty of Waitangi allowed the flourishing of indigenous versions of these virtues. 'The practice of the virtue of social justice consists in learning new skills, both of leadership and of cooperation and association with others, to accomplish ends that no one individual can achieve on his own' (Adams, Chapter 6).

The Treaty was the worst kind of ritualism for Māori after 1877, however, when *Wi Parata v Bishop of Wellington* ruled the Treaty a nullity for the racist reason that Māori were not capable of signing a treaty (Evans, 2018). It was only during the Māori Renaissance when Māori civil society responsively escalated their demands, their protest marches, their occupations of land, that a nullified law was brought to life by renewed contestation through the Waitangi Tribunal from the mid-1980s. This was the virtue that Paul Adams (Chapter 6) described in Edward R. Murrow's 1960 documentary, *Harvest of Shame* (Friendly & Murrow, 1960), when the film exposed the appalling conditions of agricultural migrant labor in the United States, and when the laborers themselves rose up to organize and demand social justice. The Waitangi Tribunal institutionalized an incipiently restorative practice of justice in the way it conceived Māori as survivors and the Crown as the 'offender' (Evans, 2018; O'Sullivan, 2007). Tribunal settlements include historical accounts of Treaty breaches acknowledged by the Crown, cultural redress in forms such as changing place names, transferring land to claimant groups or national parks, co-governance of rivers and lakes formerly dominated by *Aqua Nullius* (Marshall, 2017, 2018) and commercial redress. For all the limits of restorative practice in New Zealand through Māori eyes (Moyle & Tauri, 2016), the Treaty at least provides a structurally restorative and responsive foundation for justice as a better future (Froestad & Shearing, 2007).

In conversations within the Canberra Restorative Community (Tito Wheatland, 2018), one topic of conversation is the signing of Treaties between the Australian Capital Territory (ACT) government and the elders of the Ngunnawal and Ngambri peoples. One hope for such treaties could be that they would mandate a reduction in child removals from Aboriginal families. It is the same problem here that Dorothy Roberts (Chapter 8) documented for the United States that 'prison and foster care systems work together to monitor, regulate, and punish black mothers in ways that help to extend an unjust carceral state'. Sadly in the decade after the Australian Apology by Prime Minister Rudd for the Stolen Generations of Aboriginal children, the Australian Capital Territory became the jurisdiction with the highest rate of indigenous child removal of any jurisdiction in Australia.

The ACT Law Reform Advisory Council has pointed out that Canberra has since 2008 had *Aotearoa* New Zealand style laws to enable family group conferences before child removal in which families are empowered to decide what the process will be for deciding what to do about the neglect or abuse of a child. The key difference from the New Zealand law is that it is not mandatory to empower families in this way. The consequence of that difference, in turn, has been that ACT child protection authorities have opted consistently to keep the power over families in professional hands. Responsive escalation of civil society enforcement against the state is needed to bring a non-punitive law to life, whether through demands for mandatory empowerment of Aboriginal families in an ACT Treaty or

just by protests against government inaction to use this law. Inspiringly organized indigenous 'GMARs' (Grandmothers Against Removals) featured in Larissa Behrendt's (2017) documentary, *After the Apology*, agitating for political change. Canberra Restorative Community aligned with some of the GMARs to advocate a meaningful dialogue on state child removals. GMAR, filmmaker, restorative community, then Treaty activism on this issue illustrates one possible healing edge of civil society regulation of state domination of indigenous families. The alliance of GMAR, filmmaker, restorative community, then Treaty activism on this issue illustrates one possible healing edge of civil society regulation of state domination of indigenous families.

Another part of the Canberra Restorative Community conversation on the desirability of ACT Treaties with indigenous peoples has picked up on some of David Best and Amy Musgrove's recovery capital work (Chapter 12). Best and Musgrove point out that programs to foster recovery from addictions and other challenges faced in the human services rarely work without the client enjoying secure housing. The lack of secure housing, particularly for indigenous Australians, is a blight on Australian society. There is almost non-existent shame in white Canberra society about comfortable suburban landholders living on, claiming to own, stolen land. By-passed shame and denial are rife.¹ A practical process of shame acknowledgement and apology for the theft of Canberra's land is needed. It would not be a practical outcome to gift back all of Canberra to Aboriginal Elders because this would cause business disinvestment that would hurt Aboriginal people along with everyone else. One pathway beginning to be discussed in the Canberra Restorative Community is giving all Ngunnawal and Ngambri a right of return to their traditional lands and fully publicly funded housing on that land in a form chosen by the indigenous people themselves. Likely they would choose some sort of mix of cooperative housing in a space where indigenous justice and indigenous rule could be given some special sway, and some privately owned houses for those who choose to eschew cooperatives. To achieve this politically, however, greatly escalated pressure would be required on white society and its political leaders to acknowledge shame for the harm of the theft of the land, and acquit that shame by negotiated reparative action. In the USA this would include both acknowledgment of harm and theft with indigenous and enslaved peoples' groups but also to address continuing harms.

Virtues of Restorative Justice

With intimate partner violence, Leigh Goodmark in Chapter 11 sees accountability as a central issue and argues that forward-looking active responsibility enabled by restorative justice is superior to backward-looking passive justice in the legal system. She sees the criminal legal system as undermining safety for women and children by stigmatizing the violence of men, making the label 'rapist' the whole story of who they are, for example, instead of reintegratively shaming rape culture and the practices of rape they perpetrated. It is community members who 'have regular, even daily, contact with residents' that are in the best position to provide workable supervision to enforce agreements or court orders and restorative justice, Goodmark argues. Community members demanding community rights to stakeholder decision making are in the best position to catalyze this community ownership of active responsibility. Dorothy Roberts in Chapter 8 argues that 'restorative justice breaks away from the retributive paradigm that punishes past wrongdoing to focus instead on "making the future safer" by reconciling offending and victimized individuals to each other and/or to their communities'. Roberts contends that dominant conceptions of restorative justice fail to meet this potential because they do not account for institutionalized discrimination, surveillance and violence perpetrated by the very state systems relied on for restorative processes. Family group decision making and feminist anti-carceral approaches to domestic violence, according to Roberts, can be the light on the hill for how we might develop a

restorative justice framework that contributes to dismantling unjust carceral systems and creating an equitable and humane society.

See also Wilson and Fox's Chapter 13, which contends that a "risk/need/responsivity" model (Bonta & Andrews, 2016) that empowers community members using the Circles of Support and Accountability model is an example of communities as responsive regulators. Circles of Support and Accountability are found by Wilson and Fox to enjoy growing evidence of cost-effectiveness, as in Duwe's (2018) randomized controlled trial showing a statistically significant difference in rates of sexual recidivism (an 88% reduction), as well as a return on investment of \$3.73 for every dollar spent. The responsivity principle means in Wilson and Fox's account that clients are able to respond to interventions in terms of client capacities, motivation and learning cycles, for example. Under this restorative model, ordinary citizens can contribute to public safety by integrating and supporting persons who have sexually offended upon release from prison.

Virtues of Responsive Regulation

Brenda Morrison and Tania Arvanitidis in Chapter 4 concluded that nine heuristics of a regulatory framework would have helped the response to the 2011 Vancouver Stanley Cup riots. They brought together an evocative illustration of what is required for these nine principles of responsive regulation to work: attend to context; listen actively; engage resisters with fairness; praise committed innovation; achieve outcomes through support and innovation; signal a range of sanctions; engage wider networks; elicit active responsibility; evaluate and communicate lessons learnt. This is the chapter that goes to these critical step-by-step processual demands that are the essence of responsive regulation. In both restorative justice and responsive regulation, the strong evidence base that motivational interviewing works (Lundahl et al., 2010) informs the practical edge of how to listen actively, the first of the nine principles. If desistance from alcohol abuse is agreed in a restorative and responsive process as an aim, the motivational interviewer asks the drinker why this aim matters to them and their family, and then later what strategies might follow from this shared reason for wanting to desist, to which the family could commit to support them. The same motivational interviewing strategy can be applied to a restorative and responsive approach to reducing the use of restraints in a facility for the disabled. Like Jennifer Llewellyn (Chapter 9), Morrison and Arvanitidis found a formalistic and prescriptive system that consistently emphasized deterrence made a restorative and responsive response difficult. Learning and growth through norm clarification is difficult when instead of a collective response to a collective cultural phenomenon, the response is a long line of individual prosecutions. 'Collective commitment to listen and learn' is the starting point for that more contextually subtle response sought by Morrison and Arvanitidis. This is complemented in their analysis by a redundancy of strategies that cover weaknesses of one response with strengths of another as the society commits to stick with talking through and responding to the problems (which included trauma) until they were resolved. Morrison and Arvanitidis explain how social support and educative responses are so much more important than formal legal responses to moral panics of the kind they studied. What seems like an issue for the legal justice system then becomes an issue for the heart and soul of the democracy.

Carrà conceived the familiness of relational sociology as a fundamental building block of responsive human services in Chapter 5. The ideals identified by Carrà here include family-focused policies, empowerment of family associations, whole family and thick family approaches, family systems theory, family impact analysis as an alternative to individual impacts and good practices in services to the family.

This was embedded in the pluralism of her lively evidence-based defense of Mediterranean virtues against Northern liberalism. This is the chapter on why families must be at the front door of a human services that transcend individual casework.

David Best and Amy Musgrove (Chapter 12) conceive the building of recovery capital as fundamental to the strengths-building of a restorative and responsive project for human services. They developed the responsive pyramid into a 'regulatory diamond' whereby regulatory capital becomes fundamental to recovery capital. This can happen when bonding capital adheres across the elements of the diamond. Then we can have human services that CHIME with the Connectedness; Hope; Identity; Meaning; and, Empowerment that the evidence suggests works with recovery from addictions to drugs, alcohol, gambling and more (see also Wilson and Fox in Chapter 13).

The Ugly Side of Responsive Regulation

It is possible for a restorative justice person to be a pacifist, an abolitionist on criminalization, who eschews institutionalized state politics. We deeply respect the positions of many of our restorative friends who defend those standpoints. But it is not possible for a responsive regulatory thinker to be like that. It is possible, as Jennifer Llewellyn argues in Chapter 9, to adopt a 'restorative approach to responsive regulation', to refuse to conceive restorative justice and responsive regulation as merely process ideals, but to see them also as infused with distinctive values such as environmental restoration, relational justice, listening, empowerment and non-domination. We can do our best to preserve these and other restorative values as we escalate up responsive regulatory pyramids, as Llewellyn argues in Chapter 9. Responsive regulation must have, as Llewellyn and Chapter 2 argue, explicit strategies for relational de-escalation such as GRIT (Graduated Reciprocation in Tension Reduction) (Osgood, 1962) and for horizontal scanning to forestall escalation, as it does have (Ayres & Braithwaite, 1992; Braithwaite, 2008).

We can do our best to honor restorative values as we escalate up a responsive regulatory pyramid to putting a person in prison while listening to prisoners, empowering prisoners with voice and choice, setting up restorative justice units in correctional administrations, abandoning criminal law's proportionality principle by releasing prisoners as soon as they no longer pose a severe danger and similar measures that deliver on restorative values. What we cannot do is describe escalation to imprisoning a person as a restorative justice measure because to imprison is to dominate a person, to strip them of freedom, to wrench them from their children, partners, parents and dearest friends, to uproot indigenous people from the sacred spaces of their land that forges who they are, their CHIME in the words of Best and Musgrove (Chapter 12). Dorothy Roberts in Chapter 8 dramatically illustrates how more than half of all mothers in US prisons receive no visits at all from their children. To describe imprisonment near the peak of a responsive regulatory enforcement pyramid as anything less than an anti-restorative measure would tear the heart out of what it means to be restorative, as Jennifer Llewellyn argues in Chapter 9. Yet sadly, we point out that of course it is sometimes necessary to imprison serial killers to long sentences and sometimes it is necessary to do worse to school shooters and suicide bombers. Responsive regulation has a pointy end to its enforcement pyramid. The responsive regulatory theorist must not be timid in saying that it is a good thing that the state has the power to remove children from families, even as these authors believe, because of their restorative values, that the overwhelming majority of children that are being removed from families by the state in our societies should not be so removed.

In political campaigns to change this reality it is occasionally necessary to get our hands dirty with the ugly politics of ending the political careers or the civil service careers of those defending the

barricades that keep children under state and professional control. These people believe in what they are doing; they have families to care for and bills to pay; and we know politicians often suffer mental health problems when we drive them from office, stripping them of their identity as a leader. Politics is ugly this way. Getting our hands dirty with the business of ridding ourselves of them is not a very relational practice, though the best politicians do their best to make our politics more relational. Responsive regulatory theorists believe that sometimes it is necessary to get ugly, as in the actions that created the Waitangi Treaty, to get into the streets, occupy buildings and yell. Yet restorative and responsive activists also believe that civil society activism should mostly be transacted collaboratively in a soft register.

The responsive regulatory thinker believes it is a good idea to have prisons that take freedom away from some rapists. Yet they also believe that the overwhelming majority of people who are currently sent to prison, even as rapists and murderers and even in societies with low imprisonment rates, can be regulated at lower levels of the enforcement pyramid in more relational ways without dragging offenders away from their families. Responsive regulatory theorists believe it is a good idea to have institutions dedicated to killing people in large numbers called defense departments. They see the empirical record of history that states without armies are taken over internally by armies without states, or externally by armies with a state (Braithwaite & D'Costa, 2018, pp. 125–127). Yet they think our objective should be to always prefer relational diplomacy and never to deploy an army to a war at the peak of this pyramid except for defense against attack. It should never be used preemptively. Our human services would have far fewer challenges if in the past we had been more successful in keeping our soldiers at home taking care of their families. Even in war, to the extent possible, we can seek to focus on 'achievement of the conditions of just relationship—of mutual respect, care/concern and dignity' (Jennifer Llewellyn, Chapter 9). The responsive regulatory thinker is not reluctant to say that the state should have the power for extra-judicial assassination. Yet it should only use that power in extreme situations such as a police sniper taking out a school shooter or a terrorist about to ignite a suicide vest.

As Valerie Braithwaite explained in Chapter 3, a responsive regulatory theorist does not wish to abolish school suspensions of students, even as they believe the overwhelming majority of students who currently get suspended should be dealt with lower in an enforcement pyramid. Optimum harm minimization in schools requires that we move down the U-curve of harm of Figure 2.3 (Chapter 2) by reducing over-regulation. The responsive regulation theorist certainly agrees with more purist restorativists that societies are too judgmental—and that restorative justice activists can be too judgmental about one another. Yet responsive theorists cannot totally embrace 'no-blame' approaches. Productive shifts toward less blaming cultures of regulation tend to encourage regulated actors, be they parents or pilots, to learn from their near misses by being open about them. Yet this can only be secured by blaming and sometimes punishing quite severely those who cover up their near misses. One way the Catholic Church might have learnt from the indigenous wisdom employed in places like the First Nation community of Hollow Water in Manitoba (Couture et al., 2001; Sawatsky, 2009) is that a matter as serious as sexual abuse of children can be responded to non-punitively, but only if those who cover up abuse after they were given the opportunity of a restorative resolution are targeted and prosecuted. Again, as Chapter 3 argues, while it is imperative for parents to be less judgmental of their children as we encourage them to learn from their own mistakes, it is our mistake when we fail to confront our children with love about their cover-ups of bad behavior.

We cannot fail to blame Canberra homeowners in denial who feel there is no shame involved in living on land stolen from people much poorer than themselves. When men who indulge in domestic violence refuse to engage with relational justice to effectively regulate their violence, we can be left

with no choice but to lock them up. The balancing of restorative justice with responsive regulation does therefore involve some contingent brutalizing of the relationality of mainstream restorative discourse. More importantly, of course, it relationalizes the institutionalized brutality of the punitive discourse of the mainstream of the wider state and society. The argument of this book is that without both kinds of balancing we fail to be the activists we could be for societies with less domination. Integrity requires that we speak plainly and clearly about the dark side of some of the things the responsive regulatory theorist intentionally supports. We must not pretend that we have a philosophy, a theory and a political practice that is all light, freedom and peace in its restorative virtue. The contestatory core (Pettit, 1997) of republican political theory that is the normative heart of responsive regulation also mandates that we put our dark side on the table, and what we propose to limit its damage, so this can be contested across the democracy.

From Naïveté to Getting Results by Averting Capture

Why is it important to labor this point with such a long list of nasty practices that responsive regulatory theorists openly endorse? It is important because this responds to the main criticisms of restorative and responsive theorists that they are naïve. Restorativists reject Hobbesian prescriptions to design institutions with the presumption that people will be knaves. Yet as they design institutions on the presumption that most people can be coaxed and caressed against being knaves most of the time, they must have safety nets for the cases where people persist in acting as knaves, especially when they are powerful people. Many readers will be familiar with this criticism with respect to domestic violence. Feminist critics rightly point out that the empirical record is that many batterers repeatedly apologize and commit to changing their ways to their partners, only to willfully batter again (Busch, 2002; Stubbs, 2010). Their contrition can be part of a conscious tactic of manipulation of naïve partners (and naïve restorative advocates) who wish to place trust in their shallow promises. Of course, we respond that this is why restorative justice must be complemented by many layers of escalated regulatory practices up to incarceration that we stick with until abuse stops.

The need to be on guard against naïveté is even more profound with corporate criminals because many corporations have skyscrapers full of highly paid lawyers and accountants whose job is to find new ways of getting around laws after they are nailed for their breach. So too are state authorities. They have legal departments using an arsenal of legal and regulatory tactics to defend against charges of human rights abuse and calls for transparency and accountability. Justice departments outsource incarceration, defense departments conduct and outsource torture, child protection outsources careless and uncaring out-of-home care, immigration departments outsource detention centers. Europe today even outsources the turning back of boats to slave traders, and quite recently the USA outsourced the detention of migrant children to private contractors (Fernandez & Benner, 2018).

Politically progressive people are repeatedly dissuaded from supporting restorative and responsive business regulation because they think that those who advocate this approach are a coalition of naïve nice guys duped by a larger pro-business group of supporters who see responsive regulation as a politically sophisticated path to business capture of the regulatory state. The problem they point to is real. Many regulators do embrace responsive regulation because they want to be loved by business, they want to get their pro-business political bosses off their back, they want to get a job in business after they leave government service, to stop the constant harassment by powerful business lobbyists making their daily work life a misery, or they are hegemonically seduced by the belief that what is good for

General Motors is good for America. This is why we need active citizens in the social movement sector to regularly call for the replacement of captured regulators. Capture in domains well beyond financial regulation takes the more nuanced form of regulators wanting to be comfortable doing desk audits of paperwork, systems analyses and risk analyses when to become more effective most regulators need to kick more tires and kick more corporate heads than they currently kick so they can be taken more seriously. Human rights agencies and ombudsmen that regulate child protection agencies likewise need to transcend state capture by getting out to talk to families who have been ignored, and sometimes they need to recommend shake-ups to the management structure of the child protection agency.

These various forms of capture by the powerful are why we need prosecution units in business regulatory agencies that counter the ruthlessness of the corporate lawyers with their own brand of determination to be very tough and cynical in a rather anti-restorative way, even as front-line regulatory staff are more faithfully following restorative values. It is why restorative and responsive activists were on Wall Street with the Occupy movement, willing to break laws about legal assembly, even if they had to travel from Australia, after the great crash of 2008. This regulatory politics is a human services issue. The behavior of Wall Street up to 2008 caused 34 million people to lose their jobs worldwide (ILO, 2010); it threw a greater number of people out of their homes. It goes without saying that if human services social work is just a professional practice that mops up after such catastrophes rather than getting active with the brutal politics of confronting political capture by Wall Street as a preventive practice, it is hardly a profession that takes its values seriously. It is a marginal profession for nice people who do nice stuff sometimes. At the end of the day, nice people who wanted to be nice to their first black president allowed the Obama Administration to give handouts to Wall Street to bail them out without demanding a share of the ownership of these companies on the stock market proportionate to the quantum of the bailouts in the way Gordon Brown's administration did demand in the UK. In Britain these shares were sold for the benefit of taxpayers when bailed-out banks returned to profitability. The Obama Administration insisted on some Green New Deal reforms in 2008, for example, insisting that General Motors reciprocate its bailout by building greener cars, but China and Korea went much further with such demands toward a Green New Deal after the Global Financial Crisis (Tienhaara, 2018, pp. 12–13).

Two kinds of politics were needed in 2008 to bring restorative values of voice, healing and forgiveness together with political acuity in contesting power. One was for active citizens to confront the police lines, disrupt the traffic, call the Obama Administration out. Active citizens should have been arguing for a publicly owned ratings agency to compete in the market with the corrupted practices of Moodys and Standard and Poors. The second kind of politics was to give dramatic examples of restorative response to the most horrible of business crimes when corporate contrition is given a chance to prove it is genuine, and monitored. Our favorite example is that when Michael Milken (of Michael Douglas 'Greed is Good' on Wall Street fame) was convicted after the 1987 Wall Street crash, he offered in plea negotiations a billion-dollar fine payment, certain measures to help victims and a number of years of community service commitment to helping developing countries extricate themselves from the debt crises that were afflicting them in that period. Ralph Nader excoriated the offer; no one who mattered in the United States thought it good idea to take Milkin's offer seriously. He went to prison for his terrible crimes of the 1987 crash.

John Braithwaite argued at the time for the benefits of taking up Milkin's offer to repair financial harm because Michael Milkin was the most brilliant mind in the world financial system of that era. It was an idea spurned as being soft, restorative and naïve. But the story evolved to have a restorative rather than the feared exploitative turn. In 2017, John was in Myanmar talking to the senior economic

advisor of Aung Sun Suu Kyi on the considerable problem of insolvent banks that posed a deep risk to the fragile future of that struggling country. The advisor had his files in a bag marked 'Milkin Family Foundation Workshop on Bank Regulation in Myanmar'. Yes, even though Michael Milkin did go to prison after his offer was spurned, he honored the offer to repair the harm regardless. After anecdotes of this kind, the restorative and responsive activist can move on to point out that the restorative city movement started as an idea hatched by Prison Fellowship International, an organization founded by Watergate criminal Charles Colson after his release from prison.

To put all of this another way, a kind of shock politics is needed to take on wicked challenges like these and like climate change. One of the best ways of preventing climate change is to shift the shape of economies through tax and other regulatory policies that shift spending away from the consumption of consumer durables and toward the consumption of human services. Spending on social workers, teachers and other care workers causes little pollution compared with spending on material consumption. On the one hand, paradigm shifts can be coaxed by confronting cynics with shocking examples of why it might have made the world a safer place to have worked restoratively with a Michael Milkin, with China on climate change, with the Taliban leadership after the September 11 attack on New York, with Saddam Hussein as he planned and executed the invasion of Kuwait, with Muammar Gaddafi during the Arab Spring (Braithwaite & D'Costa, 2018, Part I). On the other hand, responsive regulatory paradigm shifts can be coaxed by confronting the weakness of calls simply to put bad individuals in prison when what was needed was strategic socialism to temporarily put corporations that had behaved badly into public ownership. The point of this is that part of the power of restorative and responsive regulation comes from its advocacy of more brutal stuff than politics as usual. The theoretical reason for this is the paradox of the pyramid that by being able to escalate to very tough stuff, more of the regulatory action that matters can be driven down to collaborative trust, just relations and relational justice with verification at the base of the pyramid. It is the politics of walking softly without being a soft touch. It is the power of re-narrating history both through stories of wading through the corpses of political and corporate careers we killed off and stories of flipping great evil to a politics of care.

Conclusion: Learning from the Human Services and The Regulatory Imagination

Some change is afoot. Contemporary English regulation of aged, disability and all residential social care of adults has taken a relational turn, emphasizing the imperative to 'do with' rather than 'do to' or 'do for' aged care and disability residents (Trigg, 2018). While the US and Australian regulatory systems have not made this shift, individual nursing homes have. The English regulatory shift has been dramatic, bringing all quality regulation decisions under the umbrella of one relational principle: 'the Mum test'. Chief Inspector of Social Care, Andrea Sutcliffe, explained the Mum test as follows:

[I]nspection teams [are asked] to consider whether these are services that they would be happy for someone they love and care for to use. If they are, then we will celebrate this through our ratings. If they are not, we will take tough action so improvements are made.

(Trigg, 2018, p. 126)

The Mum test is a version of the Platinum Golden Rule. It motivates just five questions about fundamental standards (that sit under each question): Is it safe? Is it effective? Is it caring? Is it responsive? Is

it well-led? For example, standards under the 'Caring' question include: 'How are positive caring relationships developed with people using the service'? Standards under the 'Responsive' standard include: 'How do people receive personalized care that is responsive to their needs?'; 'How does the service routinely listen and learn from people's experiences, concerns and complaints'? (Care Quality Commission, 2015). This is a promising approach aimed at averting the danger of gaming and ritualism that 'hits the target but misses the point' (Bevan & Hood, 2006, p. 521; Trigg, 2018).

The human services take the kind of virtues that Paul Adams discussed in Chapter 6 and Jennifer Llewellyn in Chapter 9 more seriously than other domains of governance. These are virtues and arts of association and non-domination. Such virtues are important to all corners of state and society. Welfare states are transparently involved in governance by providing, distributing and steering. This is perhaps not so obviously true for those parts of state and society that fight wars and run stock markets. Part of our argument is that war and markets can likewise only be governed by judicious mixes of providing, distributing and steering. The literature on regulatory capitalism is about the discovery that the steering part of governance has become more pivotal in contemporary conditions of complexity (Levi-Faur & Jordana, 2005; Braithwaite, 2008).

The human services are a key to preventing capitalism from descending into horrific future economic catastrophes, future fascisms and future wars. Yet this promise of the human services can only be realized if societies sharpen their steering capabilities. What we are particularly thinking of here is the uncertainty over whether Artificial Intelligence ultimately will cause massive unemployment when, for example, all the truck drivers, delivery drivers, taxi drivers, Uber drivers, bus, train, light rail drivers and postal workers are replaced by driverless vehicles or decentralized drone deliveries. And this is just one example of a much more generalized risk of massive unemployment when the next financial crash occurs. These authors are not competent to answer when and whether this risk will be fully realized. The remedy to the risk, if and when it is realized, however, seems clear to us. It is to steer the economy so that more tax is collected from the corporations and individuals who garner the benefits of these improved efficiencies so that a good slice of those economic windfalls are redistributed to public provision of jobs that are desperately undersupplied in domains like health, education, aged care, disability care and services for children and parents. Accomplishing this is not beyond the wit of our regulatory imaginations. It will certainly need aggressive regulation by social movement activists for a politicized human services, regulation of those who happen to be in the right jobs and the right industries to collect these windfalls, so the growing riches can be redistributed for the benefit of all.

Nuanced hybridity has been shown to be important for responsive engagement with the complexity of the challenges of diverse human services considered in this book. This nuanced hybridity is equally relevant, however, to the complexity of the challenges of war, peace and business (Forsyth et al., 2017; Wallis et al., 2018). Wherever domination arises, regulatory theory questions that go to how to regulate for non-domination are likely to be worth asking. At the same time, this book has argued that regulatory theory is insufficiently engaged in the human services. This is because regulation of others inevitably has its ugly side even when the regulation is explicitly designed to reduce the amount of domination in the world. We hope for a future of human services scholarship that is less squeamish about regulatory theory. And we hope for moving beyond the considerable literatures showing both promise and limitations of restorative justice and of responsive regulation (Braithwaite, 2002, 2016) to empirical evaluations of innovative regulatory mixes that are restorative and responsive.

Note

1. At least in other parts of Australia landowners can say they bought their land from someone who did not steal it, as in turn did their vendor, and that it was a long time ago that the land was stolen. This particular politics of denial is denied to Canberrans because of a peculiarity of its history. When the new national capital was planned more than a century ago it was decided that all land would be owned by the Crown and made available on 99-year leases. People buy and sell homes as elsewhere, but legally in Canberra our homes are leased from the very Crown that stole the land from the traditional owners after frontier wars and other genocidal practices were directed against them to our benefit.

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