Limits on Violence; Limits on Responsive Regulatory Theory

JOHN BRAITHWAITE

Responsive regulation is a general theory of how to steer the flow of events. This article seeks to understand when violence is and is not defensible as an enforcement escalation. It specifies limits on the claim of responsive regulatory theory that a tough enforcement peak to a regulatory pyramid helps drive regulation down to persuasion at the base of the pyramid. Those limits are about the counterproductive effects of violence at the peak of an enforcement pyramid. Erica Chenoweth and her colleagues show that nonviolent civilian resistance to regimes is twice as likely as armed struggle to succeed. Nonviolence complemented by a violent radical flank is less effective than disciplined nonviolence. This refutes the "benign big gun" aspect of responsive regulatory theory as a general theory of the regulation of social action. The theory implies that capacity to escalate to armed struggle at the peak of a regulatory pyramid should empower resistance. Can responsive theory be adapted to this empirical challenge? Can that adaptation show a productive path to an ethics of when to constrain escalation to violence as an option at the peak of all kinds of regulatory pyramids? Lessons are drawn from how Nelson Mandela's struggle against apartheid opened nonviolent paths to transformation without total renunciation of violence.

Responsive regulation is about the idea that regulation is more likely to be just and effective when it is contextually responsive to environments, social and physical, particularly to how regulated actors are responding to attempts to regulate them. The regulatory pyramid is an aspect of responsive regulation that designs a mix of regulatory options by arraying them hierarchically, with the least interventionist options intended to be the most common at the base of the pyramid. This is complemented by a capacity to escalate up through progressively more interventionist options. It is not the purpose of this article to reiterate the evidence and arguments for and against responsive regulation as a general theory to explain pollution prevention, crime preven-

tion, tax compliance, the bonus culture of banking, the prevention of war, and more (Braithwaite 2008; Ayres and Braithwaite 1992). Its purpose is only to explore the critique that certain claims of responsive regulation become false when escalation to a violent sanction is in play.

Some conceive responsive regulation narrowly as a theory of business regulation. For good or ill, Braithwaite (2008) always conceived it as a general theory of regulation where regulation is seen broadly as "steering the flow of events" (Parker and Braithwaite 2003). Steering the flow of events is viewed broadly in terms of both the objects and the methods of regulation. As discussed herein, in 1990, I applied the theory to the invasion of Kuwait by Iraq. Since then I have consistently argued that it is as relevant to regulation of states by nonstate actors as it is to regulation of nonstate actors by states. This article explores the limits of violence and, in particular, the limits of violence as a last resort at the peak of responsive regulatory pyramids, across disparate domains—prison violence, extrajudicial assassination by states, war, UN peacekeeping, and especially resistance to states, where resistance to apartheid is used as a strategic case. Because responsive regulatory theorists are minimalists about use of imprisonment, they must confront the challenge that perhaps they should be ethically consistent and be abolitionists. If they can pass this test, surely they cannot pass the moral test of finding extrajudicial assassination of criminals acceptable as a last resort? This article argues that responsive regulatory theorists cannot rule out extrajudicial assassination, just as they cannot be abolitionists or pacifists. Responsive regulation is conceived here as a theory that reveals practical ways to be parsimonious about violence without total renunciation of violence.

Responsive regulation privileges restorative dialogue over deterrence as a preferred and more effective regulatory strategy. Yet the paradox of the pyramid is that a tough deterrent peak of the pyramid drives more of the effective action down to the dialogic base of the pyramid. Responsive regulation sees the passive deterrence of criminological theory and Gary Becker's (1992) Nobel Prize winning economics of deterrence as rather ineffective but sees the dynamic escalation of deterrence in international relations theory as a more powerful explanatory idea. Part of the idea of responsive regulation is that the peak of the pyramid is a tough measure that creates so much pressure to resolve problems at lower levels of the pyramid that the peak is rarely used. The tougher the sanctions at the peak, the greater the capacity to drive regulation down to the cooperative base of the pyramid.[1] Nothing is tougher than violence. But what of the ethics of the pyramid when that tough response at the peak is violent? This article argues that there are important contexts where a violent peak to the pyramid renders the empirical claims of responsive regulatory theory false. It seeks to specify conditions where the general theory of responsive regulation can be true and ethical even when violence lurks as an ineradicable reality of how actors regulate one another.

The plan of the article is first to define a set of circumstances where we have no alternative but to resort to violence. These are in turn the impossibility of completely dismantling prison systems when these are universally violent, the impossibility of eradicating police violence when protecting others from violence, of eschewing violence in defending one country from invasion by another, and of eradicating violence from the repertoires of UN peacekeeping. In each case, a normative theory is informed by specifying ways that limits are institutionalized upon the exercise of violence.

Then we consider the work of Erica Chenoweth, Maria Stephan, and Kurt Schock on the counterproductivity of mixing nonviolence with violence in resisting tyrannous regimes. We drill down to resistance to apartheid in South Africa. This case gives texture and meaning to the warp and woof of reconciling armed struggle with nonviolence. Even here we salvage limited validity of responsive regulatory theory by conceiving of Nelson Mandela as a responsive regulatory thinker in terms of his very limited and clearly specified legitimation of violence in civilian resistance.

The conclusion redefines the limits and uses of responsive regulatory theory in light of this critique. First, *sui generis* checks and balances against escalation to any and all forms of violence are necessary. Second, the ethos of escalation in responsive regulation must be tempered by an ethos of horizontal scanning at all levels of the pyramid in search of nonviolent alternatives.

This challenge to responsive regulation is only about the efficacy and ethicality of violence. It does not reject the value of asking responsive regulatory questions like "What is the minimally sufficient escalation of enforcement to minimize domination?" Responsive regulatory theory always conceived regulation as an ethically dangerous game, especially when regulation resorts to deterrence and coercion. Responsive regulation is about the notion that an explanatory theory of regulatory effectiveness can be improved by grounding explanation in concepts that have normative power and that normative theory can be improved when grounded in concepts that have explanatory power (Pettit and Braithwaite 2000). Ayres and Braithwaite (1992) were attracted to republican political theory as a preferred normative theory of responsive regulation. This means that one should choose escalation to more coercive intervention only when the domination involved in the coercion will reduce the amount of domination in the world overall. One reviewer pointed out "there are times when violence might be effective but not morally justified." By the lights of republican normative theory, violence is only morally justified when it is effective in reducing the amount of domination in the world. It would not be morally justified when effective in reducing crime or war if the regulatory violence induced more domination than the domination involved in the crime or the war prevented. Competing ethical theories are deontological about violence, contending, for example, that one should be a pacifist even if the consequence of this stance is to increase the amount of domination in the world.

INSTITUTIONALIZED VIOLENCE OF PRISON AT THE PEAK OF PYRAMIDS

After business regulation, the context where responsive regulatory theory has been most widely applied is as a criminological theory. Regulatory scholars and criminologists alike mostly believe that capital punishment, corporal punishment, and torture have no place in the armory of sanctions that can ethically be used to steer the flow of events. Braithwaite and Pettit (1990) argue that the reason these forms of violence should be totally banned as regulatory tools is that they destroy a civic republican conception of freedom as nondomination. While Ayres and Braithwaite (1992) argue that one does not need to be a civic republican to find responsive regulatory theory useful, they argue that it provides a satisfactory normative theory of when it is and is not ethical to escalate to the peak of a pyramid. A vibrant global human rights movement is a crucial vehicle of struggle for taking tools like torture and judicially ordered executions out of the hands of states. On the republican account, the right regulatory tool will not only eschew banned forms of violence, it will also be minimally sufficient in punitiveness. It will itself be regulated by limits and checks on its excess. Otherwise justice systems become the great threats to freedom, as opposed to its fundamental guarantor. Nondomination is the core value of this republican political theory (Pettit 1997; Braithwaite and Pettit 1990). It provides a normative compass for responsive regulation.

In contrast to torture or capital punishment, republican theory does not argue for a total ban on the use of imprisonment. It argues that on most occasions when imprisonment is used as a sanction in contemporary regulatory systems, it is in excess of minimal sufficiency for controlling domination. That is, the domination of imprisonment becomes greater than the domination prevented by the regulatory intervention. The injustice of prison becomes greater than the injustice of crimes that are prevented. Rape, violence, murder, and domination by prison officers or other inmates are endemic in prison systems. So there is a possibility that any specific decision to imprison might increase the amount of domination in the world rather than reduce it. There certainly are situations, however, where the domination of imprisonment is less than the domination prevented by specific regulatory escalations to incarceration. A serial murderer, a serial pedophile, a war criminal like former Liberian President Charles Taylor might threaten levels of domination that exceed the domination they suffer from incarceration.[2]

Even so, republican normative theory requires us to be contextually responsive in our judgments of the justice of imprisonment. We cannot read off the justice of imprisonment from the seriousness of crime. Simply because one is guilty of arguably the most serious crime of all, genocide, it does not follow that imprisonment is a just response. After the Rwandan genocide, 126,000 people were imprisoned awaiting trial for allegations of participating in the genocide. Many were children who had participated in hacking others to death. Some of them, however, had reason to fear that they themselves

would be killed if they did not participate; some had seen their siblings killed for refusing to do so. Many, in other words, were guilty of participation in the genocide, but their pleas in mitigation would have meant that any criminal court would find them deserving only modest punishment, or none. Sadly, the impoverished Rwandan criminal justice system could not cope with 126,000 defendants awaiting trial on such serious charges. Many of these children suffered a decade in prison awaiting trial during which they were sexually abused. Many contracted HIV/AIDS and other diseases in crowded prisons and died. This then was an approach to regulating genocide that flouted the minimal sufficiency requirement of republican justice. It created a world with more, rather than less, domination. A decade on, there was recognition of the error. The more restorative approach of traditional Rwandan *gaccaca* justice was deployed, with many imperfections but less domination, to clear the prisons of alleged war criminals (Clark 2010; Dallaire 2008).

As a general proposition, death rates from homicide, suicide, and infectious diseases, such as HIV/AIDS, hepatitis, and particularly multiple drug resistant tuberculosis, are elevated by sending more people to prison, as is the impoverishment of the family members of those sent there (Braithwaite 2000). Therefore, republicans see a general ethical imperative to commit to the minimal sufficiency principle with imprisonment, resorting to restorative justice when this provides the alternative of a world with less domination.

According to mainstream criminal law jurisprudence, the proportionality principle is a guarantor against excess in resort to imprisonment. Republican theorists share the objective of imposing upper limits specified for each type of crime beyond which a term of imprisonment can be imposed (Braithwaite and Pettit 1990). They view the proportionality principle, however, as a dangerous rationale for doing so. This is because the principle, in comparison to the minimal sufficiency principle, legitimates imprisonment as decent so long as it is proportionate. The republican contention that proportionate sentences of imprisonment are near universally excessive in Western jurisprudence is a check on a republican opting for excess in the practical reality of the violence of incarceration. The obligation of the republican is to campaign against the excesses of Western criminal law even in societies with comparatively low imprisonment rates, to advance alternatives that better comply with the minimal sufficiency principle such as restorative justice.

In sum, republican political theory does provide a coherent account of when violence can be ethically acceptable as an unpreventable consequence of escalation to incarceration at the peak of a responsive regulatory pyramid. Moreover, responsive regulation provides an account of what can and should be done by way of regulation to prevent violence inside prisons. This does not diminish how ethically tortuous are the judgments confronted by a republican judge or any kind of judge.

EXTRADJUDICIAL ASSASSINATION AT THE PEAK OF PYRAMIDS

Now we turn to an arena where we might expect a different result from imprisonment. Surely extrajudicial assassination of criminals, even terrorists, would be an escalation to the peak of a pyramid that responsive regulatory theory would want to ban totally. Not so, even here, is the argument of this section.

It is hard to imagine a situation where a drone firing a missile at a house in a village or a car in a street would not be regarded as unjust, indeed criminal, according to the republican theory of criminal justice. Countries like the United States and Israel that use extrajudicial assassination repeatedly, frequently killing civilians as collateral damage, also create dangerous cycles of violence begetting violence, that are likely to escalate as countries like Iran and Pakistan capture drones and reverse engineer the technology. The prospect of violence cascading to new forms of domination in the long run of proliferating technologies of domination is what makes the drone killings epidemic so wrong. It must be absolutely prohibited by international law for civilians to be intentionally killed in another state's territory without the specific approval of that country in accordance with its law (or military targets without a declaration of war). Just because there are clear cases where escalation to extrajudicial assassination is wrong by the lights of republican theory, this does not mean it is always wrong.

I once interviewed a senior Australian military lawyer who argued that in the law of war it should always be a crime to assassinate without trial an unarmed civilian head of an enemy state. I challenged him: should we not view Colonel Klaus von Stauffenberg's attempts on Hitler's life in 1944 as courageous rather than criminal? The military lawyer's answer was interesting. It was, "Yes, von Stauffenberg was brave. Yes, this could have saved a million lives in the final year of the war. But no, the right thing for von Stauffenberg would be to accept that he planned a crime, to confess in court, arguing as a plea in mitigation that he was attempting to save lives through his crime." In other words, the right thing was to commit the crime, but it would be wrong in doing so to undermine the integrity of the law that says it is a crime for a soldier to assassinate an unarmed civilian.

This article will discuss the more general rights and wrongs of violent versus nonviolent resistance to state tyranny. It concludes that it is counterproductive and ethically wrong to complement campaigns of nonviolent civilian resistance with violent civilian resistance. Before getting to that argument about macro strategy, it is important to remember the contextual quality of responsive regulatory theory. The analysis of this article implies it would have been wrong to urge Jews, even Jews who were certain to die in the holocaust, to rise and fight, as in the Warsaw ghetto uprising. However, imagine you are an active German nonviolent resister to the Nazi regime who is hiding a group of Jews in your house with a plan to get them to freedom.

An SS officer arrives who will discover and arrest them. Are you not right to seize an opportunity to murder that officer and rush the vulnerable to freedom? That would be the right way to be responsive to that context, even as you implement nonviolent resistance in a way that as a general principle of strategy eschews violent resistance. Indeed in that situation, it may even be cowardice for you not to attempt to murder the SS man. This is because of the judgment that murder in this context will reduce the amount of domination in the world.

After lectures about responsive regulation, I am usually asked "Are there not situations where the risk is so great or immediate that it is folly to start at the base of the pyramid, escalating only reluctantly?" I say, yes, the model only urges a presumption for lower over higher levels of the pyramid; peaks are only presumptively strategies of last resort. Then I use two examples. First, extremely high risk is rarely reason to override this presumption. The example is the lessons of Joseph Rees' (1994) research on the near nuclear reactor meltdown at Three Mile Island. The US regulatory regime before Three Mile Island mistakenly assumed that because nuclear meltdown risk is catastrophic, regulation must be tight, tough enforcement of detailed rules. Unfortunately, this regime at Three Mile Island created a workforce of rule-following automatons who lacked systemic wisdom of the safety system they were managing, of how to be responsive to a crisis. For a more detailed account of the Rees learnings in a responsive regulatory frame see Braithwaite (2002, 64–65).

The second example is of a suicide bomber about to explode in a crowded place. If a police sniper has a clear shot at the terrorist, it can be right to take it. Then, because this is a decision for quick and dirty extrajudicial assassination, the police commander must scan as quickly as she can the options at lower levels of the pyramid. Perhaps she is about to assassinate an innocent Brazilian on a train, as London police did in 2005? Perhaps his mother, who is at hand, can persuade him to surrender? Perhaps the clear shot is not so clear? The general lesson is that sometimes it is necessary to be decisive rather than graduated in order to protect people; yet we should override the presumption favouring a persuasive approach with extreme caution. Caution means a quick string of tough questions about the alternatives. The institutional paradox is that by republican lights, it can never be just for a judge to order an execution, while police executions, with their weaker accountability checks, can be. The reason is that a defendant in a capital case before a judge is in custody. In custody, terrorists can be constrained from the kind of harm they pose. Hence, even if a convicted terrorist is determined to return to suicide bombing, it is minimally sufficient to prevent that by continued incarceration until the terrorist is rehabilitated.

Again the conclusion of this section is that the republican normative theory can provide an account of when it is ethical to resort to extrajudicial assassination as a last resort at the peak of a responsive regulatory pyramid.

WARS OF INVASION

Applications to questions of war and peace were contemplated in the process of developing responsive regulation. *Responsive Regulation* was being written when Saddam Hussein invaded Kuwait on August 2, 1990. For responsive regulatory reasons, Braithwaite's view in the 1990–91 media was that the US-led attack on Iraq was a poor judgment (see Braithwaite 2002, chap. 6). Iraq committed a war of aggression against Kuwait on a flimsy pretext. International law rightly allows military aid to an illegally invaded nation. The objective of the United States in seeking to reverse that invasion was laudable. It was the way that objective was executed that was lamentable from a responsive regulatory perspective. The errors started long before the invasion in a Western policy of looking the other way when Saddam Hussein committed crimes against humanity, directed at both Iranian foes and his own people. These errors helped convince Saddam that allies would look the other way again when he invaded Kuwait.

The opportunity to put this right occurred at a meeting between the Iraq president and the US ambassador on July 25, 1990 (for a transcript and commentary on the feeble US signaling at this meeting, see Salinger and Laurent 1991, 47–62). Saddam made his intent to invade clear enough in advance of the meeting. The US ambassador protested weakly because she knew Saddam was an important ally, and there had been a timing slipup; she had not received instructions from Washington when Saddam walked into her office. The ambassador failed to communicate the fact that the United States was willing to use all means necessary to prevent or reverse an invasion of Kuwait. Saddam left convinced that the United States would complain loudly about the invasion but would not act, just as when another key ally, Indonesia, invaded East Timor.

From a responsive perspective, the ambassador failed to display the reality of the enforcement pyramid her president was willing to deploy to stop or reverse an invasion. Then after the invasion of Kuwait, the United States escalated far too quickly to war. Again the early diplomatic pressure, the ineffectual, unsmart sanctions that were not given time to bite,[3] did not persuade Saddam that he was on a slippery slope that would lead to terrible defeat. Compare this Iraq diplomacy with the patient multiplexity of the diplomacy and sanctions that ultimately ushered a comparatively peaceful dismantling of apartheid, as discussed soon. So we saw too weak a display of a pyramid of resolve that an invasion would not stand, then too rapid an escalation up that very pyramid.

Then when the Iraqis did announce that they would abandon Kuwait in compliance with US demands, there was no responsive de-escalation. US aircraft pursued them from the air, shooting them in the back as they retreated to return to their families. This criminal indignity seemed cowardly to the Arab world. It was seen as a humiliation that compounded a long history of indignity and crimes against Islam by the West. The press of the

Muslim world quoted US officials who said that their intent in doing this was to humiliate Saddam so his people would overthrow him. Seeds of the War on Terror were sown. A sordid debate ensued in the Western media that the criminal "duck shoot" had not gone far enough; it should have moved on to totally crush Iraq's war fighting capacity, to guarantee a more total humiliation of Saddam to ensure he would be replaced (by parties unknown, unimagined!). The compromise was to urge the Kurds in the north and the Shi'a in the south to armed insurrection. The result was more wanton slaughter that consolidated Saddam's power but sowed seeds of future civil wars. Every chapter of the debacle was diplomatic ineptitude and/or violent excess begetting further violence.

One implication of this case study is that responsive regulation in international affairs is not a pacifist prescription. It means signaling clearer resolve to resist the invasions of Hitlers, Husseins, and Suhartos than was signaled to those tyrants. It also means signaling and enacting a minimal sufficiency principle in a way that makes clear that minimal escalation is a precursor to firm escalation. This will patiently, inexorably unfold unless invasions are reversed. As with the prison violence and extrajudicial assassination challenges, responsive regulation can be more effective when it has access to violence as a last resort at the peak of the pyramid to resist invasions; again, republican political theory is useful to inform when such escalation might be defensible and indefensible.

PEACEKEEPING

Like all layers of any regulatory pyramid, UN peacekeeping often fails. Yet overall the evidence is surprisingly clear that deployment of peacekeepers, especially when backed by the authority of the United Nations, reduces the recurrence of war (Riordan 2013; Call 2012; Fortna 2008; Gilligan and Sergenti 2008; Sambanis 2008; Quinn, Mason, and Gurses 2007; Doyle and Sambanis 2006; Walter 2002; Regan 1996). In the best multivariate studies the coefficients for a war reduction effect of peacekeeping are large when the UN sanctions the peacekeeping and when it is multidimensional. While most peacekeeping is not about peace enforcement, it is doubtful that peacekeeping would have been as effective as it has been if peacekeepers had not had the capability of escalating to use of their weapons. This is so for responsive regulatory reasons. Quite often peacekeepers need to display their weapons to protect civilians from warlords and armed gangs committing mass rape and murder. This does not mean they need to fire them much at all. Rarely is this needed. Again, however, this regulatory challenge implies that if one wants to do best by maximizing freedom as nondomination, one must accept escalation; one must not be a pacifist.

We should take seriously the theory of nonviolence that because violence begets violence, any truck with a little violence can cascade to wider waves of

violence (Braithwaite 2012). This means we cannot secure a genuinely peaceful objective by violent means without that peace being corrupted into something less than peace. UN peacekeeping puts this dilemma into empirical perspective. Peacekeepers are usually armed. At times peacekeepers have used force that has escalated cycles of violence, just as domestic police regularly do. Peacekeeping forces vary in their use and access to arms, just as domestic police forces do, with US police more consistently carrying arms and more frequently using them than British police, for example. The Bougainville civil war is a case where unarmed peacekeepers authorized by the United Nations made an extremely positive contribution to ending a civil war that has not recurred during the past fifteen years (Regan 2010). When the New Zealand military commander first proposed that peacekeepers agree to requests from the Bougainville leaders that they be unarmed, many New Zealand and Australian generals thought this reckless. In retrospect, almost all observers regard this decision as courageous, even inspired, and rate Bougainville's peace operation an outstanding success (ibid.). The UN Mission in Nepal (UNMIN) is another that made a useful contribution to monitoring Nepal's transition to peace from 2006 without deploying armed peacekeepers at any stage.

There have not been enough cases of unarmed peacekeeping to test the hypothesis that unarmed peacekeepers are more effective than armed ones. Even if it were the case that unarmed peacekeepers were more effective on average, it would still be necessary to have armed peacekeeping because many states would refuse to send their peacekeepers into extremely dangerous operations to disarm militias without being armed themselves. So we can have the view that unarmed peacekeeping can be a good thing in cases like Bougainville. Yet where there is dangerous peacekeeping to do for which states will not risk their soldiers without arms, so the responsibility to protect (Evans 2008) obliges us to opt for peacekeepers who are restrained in their resort to guns (in preference to no peacekeeping at all). This is because the evidence shows that armed peacekeeping amounts to a limited prospect of violence that can be effective in ending more extreme violence.

There is a continuum in the capacity for violence here. Peacekeepers can be unarmed with no access to arms, unarmed with access to arms on a ship docked in a nearby harbor (as with the Bougainville peacekeepers), normally unarmed police peacekeepers but with backup available from armed troops, normally armed patrol by peacekeepers, up to patrols that are always armed soldiers. Peacekeeping policy that jettisoned access to any of the options along this continuum of escalation would be discarding an option that sometimes would reduce violence with lesser violence than any other option. More than that, the theory of responsive regulation (Braithwaite 2002, chap. 6) concludes that the display of a capability to escalate up a regulatory pyramid drives more of the regulatory action down to the less coercive base of the pyramid. Conversely, if we lop the top off a regulatory pyramid, more regulatees conclude that they have an interest in testing the moderately

coercive options in the middle of the pyramid, secure in the knowledge that regulators cannot escalate beyond them. Keeping a tough peak to the pyramid as the only alternative to a base of education and persuasion, eliminating escalated sanctioning capabilities at the middle of the pyramid, is also a mistake. This increases the risk of a regulator left with a choice between a response that is too soft to work and one that is too hard to attract the political support to use. The latter is a common flaw of licencing schemes where the only choice is between scolding the licensee and corporate capital punishment by withdrawing their license to do business.

Equally, we learn from experience with responsive regulatory applications that the paradox of the pyramid is that through having capacity to escalate up through a graduated hierarchy of coercion, one can better drive the regulatory game down to the dialogic, noncoercive base of the pyramid. A presumption in favour of solving problems as low as possible in a regulatory pyramid, or a peacekeeping pyramid, can paradoxically deliver less violence when the capacity to reluctantly override that presumption is abundantly clear to those being regulated.

In a sense, the key challenge is to defeat the danger of violence begetting violence to which the theory of nonviolence points. This is done by embedding a presumption in favour of nonviolence, and a reluctance to override it, deeply into the consciousness of leaders and peacemakers. One might say leaders like Mahatma Gandhi and Nelson Mandela inspire us because of the depth of that embeddedness in their character. The best police services and the best peacekeeping units inspire us with their deeply enculturated reluctance against escalation to violence. Where the rejection of a gun culture is imbued into the ethos of peacemakers, combined with a responsibility to protect that deploys violence as a last resort, the benefits of access to a complete regulatory pyramid can be secured without sliding down the slippery slope of violence begetting violence. In other words it is theoretically and practically possible to reap the benefits of a responsive regulatory design while navigating around the real predictive power of the theory of nonviolence.

Braithwaite (2013a) argues that the UN peacekeeping operation in the Democratic Republic of Congo failed to escalate sufficiently in response to mass rape at Luvungi in 2010. At least 387 people were raped, most repeatedly gang raped, over three days. When UN peacekeepers attempted to arrest the warlord who allegedly ordered this, Colonel Checka, he escaped. After the UN peacekeepers left, Checka's men threatened the community with another mass rape unless they recanted their testimony. This warlord's business model was to control local mines, often using villagers as slave labour. Fear of atrocity disciplined them to comply with his exploitation. Braithwaite's (2013a) argument was that after the failed attempt at arrest and the revictimization of the rape victims with this threat (and then some of them being raped), the United Nations should have made it clear that Colonel Checka must either surrender for trial or be hit by Special Forces.

The argument was that even if a Special Forces raid in response to intelligence about his movements failed to capture him, it could at least remove him from the control of the mines that are the lifeblood for his violence. The Security Council responded to this kind of criticism; in a major departure of UN peacekeeping, a new "Intervention Brigade" commenced operations in September 2013 to "neutralize and disarm" rebel groups in the Congo (Cammaert and Blyth 2013), so far with some success.

Whereas in corporate regulation, it seems so hard at times to persuade needed escalations to the peak of a regulatory pyramid and easy to persuade regulators to try self-regulation, in appeals to major powers what is sometimes hard is persuading them to de-escalate from militarized responses. In this context, I was chastened by Ian Ayres, writing at the time of sharing a draft of the advocacy of this military escalation in the Congo:

> There are particular dangers of applying responsive regulation in a war context because of risk that two antagonistic pyramids will fight each other . . . if both sides credibly commit to escalate, catastrophes can ensue . . . it has always struck me as odd that we always attribute more rationality to our opponents in war than to ourselves . . . in the sense, that we claim that we are going to fight to the end no matter what, while we believe that the other side will rationally back down. (Ian Ayres, personal communication, May 15, 2012)

I will have more to say about how to respond to these particular risks of antagonistic escalation with armed violence by channeling escalation away from violence in escalation. First, however, in the next section we move to the arena where there is an even more profound risk of violence to take into account. With respect to peacekeeping, nevertheless, I have argued, consistent with the three previous case studies, that peacekeepers should have access to a continuum of violent escalation because this can, if deployed with minimal sufficiency, reduce the amount of violence and domination in the world.

THE RADICAL FLANK EVIDENCE ON NONVIOLENT RESISTANCE

Erica Chenoweth and Maria Stephan (2011) studied 323 resistance movements between 1900 and 2006. The success rate of groups that used a violent strategy of resistance was 26 percent; for resistance that was predominantly nonviolent, it was 53 percent. These were all movements with maximalist objectives such as regime change. Other research shows terrorism has an even lower success rate, achieving its policy objectives in only 7 percent of its campaigns (Abrahms 2006; see also Cronin 2009). The two main factors that drove the success of nonviolence, according to this data, was that nonviolence was most effective when it could attract very large numbers of participants into resistance campaigns (Chenoweth and Stephan 2011, 34–41) and when this in turn persuaded the security forces to withdraw support for the

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regime. The latter condition for the effectiveness of nonviolence occurs if the military and police defections are large-scale (ibid., 48). Their data also show that nonviolent campaigns with high levels of citizen participation are much more likely than violent resistance to attract international diplomatic support. Every single campaign in their data set that achieved active and sustained participation of more than 3.5 percent the population succeeded, and every single campaign that passed that 3.5 percent threshold was non-violent (Chenoweth 2013, 11).

Moreover, they find that when resistance movements achieve their objectives by nonviolent means, the successor regime is more likely to be democratic and peaceful than it is in cases where regimes change through armed struggle (Chenoweth and Stephan 2011, 218). Their book is methodologically convincing in discounting the alternative explanation for these patterns that recognition of the hopelessness of a cause leads to violence (as opposed to violence undermining the cause) (ibid., 62–82). They convince both by qualitative diagnosis of causal sequences in particular cases and through an instrumental variable approach with several estimation procedures to test for endogeneity. More diagnosis is needed, however, and this research project makes one small contribution to that end.

In subsequent work, Schock and Chenoweth (2012) found that of the 108 nonviolent campaigns in their data set, those accompanied by contemporaneous violent movements had a success rate of 46 percent compared to 60 percent success of nonviolent campaigns without a violent radical flank. The reason is that a violent radical flank reduces popular participation in nonviolent resistance (by about half)—this when the scale of participation is the key predictor of success in the earlier book. This fourth case, civilian resistance to states, is much more challenging to a responsive regulatory theory that can justify access to violence as a last resort with imprisonment, extrajudicial assassination, wars of invasion, and peacekeeping because this can reduce the amount of violence and domination in the world. In this case, Schock and Chenoweth table evidence that violence and nonviolence are noncomplementary or incompatible strategies (see Gunningham and Grabosky 1998). In the context of resistance movements with maximalist objectives like state regime change, are they right that violence tends to be consistently self-defeating?

DRILLING DOWN TO THE SOUTH AFRICAN CASE

Braithwaite (2013b) shows that resistance against apartheid has qualitative patterns of periods of success and failure internal to the case that are broadly consistent with the Schock and Chenoweth (2012) result. The resistance to apartheid made great strides during the African National Congress's Defiance Campaign of the 1950s, with African National Congress (ANC) membership growing from 7,000 to 100,000 and international attention focusing

on their cause for the first time. A consequence was a disastrous decline in investment confidence in South Africa. With the shift to armed struggle as the predominant strategy of resistance after the Sharpeville massacre took sixty-nine lives in 1960, the resistance entered its least effective period of the entire apartheid era. This impotence lasted a decade and a half until a new generation of union activists began to agitate first in Durban, and new student leaders emerged to form the Black Consciousness movement. Union leaders became more effective as the 1970s and '80s progressed in using strikes as a political weapon. A final surge of effectiveness for nonviolence came with the formation of a coalition of more than 700 community organizations called the United Democratic Front in 1983. Their organized community uprisings, rent strikes, consumer boycotts, and stay aways rendered the country increasingly ungovernable. During this wave of nonviolent resistance, the ANC became much more effective in mobilizing international diplomatic support, sanctions—economic, artistic, sporting—and an international solidarity movement.

In spite of their recognition that nonviolent resistance was the main game, Nelson Mandela, Oliver Tambo, and Desmond Tutu never fully renounced the armed struggle. The conclusion of Braithwaite (2013b) is that had they done so, the solidarity of the resistance would have been weakened, and the apartheid government would have been handed the victory of dividing them. More importantly, had Mandela renounced the armed struggle, Braithwaite (2013b) concludes that the ANC as a party might have lost its leadership of the resistance to the more violent policies of the Pan Africanist Congress or AZANIA, a point made in a number of my interviews and in the literature (e.g., Ellis 2012, 284–86). Even within the ANC, Mandela's leadership might have been displaced by a "one settler, one bullet" revolutionary. This in turn would have made it impossible for leaders like President de Klerk and Foreign Minister Pik Botha, who sought to lead the National Party from the right to a negotiating middle ground with the ANC, to contain their violent right flank, which was better armed than the ANC's left flank. In addition, in 1992 peace might not have been secured had the National Party leadership not been able to use the force of an armed security sector to contain the murderous violence of its then ally against the ANC, Chief Buthelesi's Inkatha Freedom Party, and against armed factions of the ANC who were joining the fray against the IFP.[4]

Braithwaite (2013b) concludes that both the ANC and government negotiators used the spectre of their violent radical flanks to push their negotiating partners toward a middle ground where a peace and terms for a more just South Africa could be settled. Braithwaite (2013b) uses Regan's (2010, 47–50) work to show that the spectre of moderates walking out and being left to deal with armed spoilers was also invoked to good effect in delivering a workable peace agreement for the Bougainville civil war. Spoilers are probably more often harnessed by violent political projects than by nonviolent ones.[5] That is a key question for this analysis. If the forces of violence are

effectively harnessing spoilers and the forces of nonviolence are not, violence has a structural advantage in contests for power. Therefore Braithwaite (2013b) tweaked the lessons of Chenoweth and her collaborators with the following conclusions:

1. Because the evidence suggests that nonviolent resistance to tyranny is generally more effective than armed struggle, national and international solidarity networks should presumptively pour support toward the non-violent elements of resistance struggles.
2. Because a violent radical flank depletes mass mobilization and regime defections, solidarity networks should not hedge by providing support mainly to nonviolent mainstream resistance combined with lesser support for a violent flank.
3. Nonviolent movements to resist tyranny should cultivate nonviolent radical flanks that make more extreme demands to reduce tyranny. This nonviolent spoiling can shift the middle ground in negotiations that thereby go further in dismantling tyranny.
4. When tyranny is confronted, the historical fact often remains that violent radical flanks exist. When they exist in desperate conditions, nonviolent leaders like Nelson Mandela have less legitimacy in the eyes of some followers than advocates of violence. The important objective is that the most nonviolent leader who has a serious chance of success prevails at the leadership of the resistance. Sometimes that will require that nonviolent leaders like Mandela and Tutu refuse to renounce armed struggle, decline to denounce their violent radical flanks. Cultivating unity in a broad-based coalition of resistance also argues for this.
5. When a violent radical flank exists, nonviolent leaders are negligent if they do not strengthen their negotiating position by deploying the spectre of their violent radical flank as the alternative if the moderates walk out.
6. In summary, nonviolent resistance leaders and their international supporters
   (a) Should cultivate the creation of radical flanks;
   (b) Should not cultivate the creation of violent radical flanks;
   (c) If violent radical flanks exist in spite of their opposition to them, they must be reluctant to cast them out of resistance coalitions;
   (d) If violent radical flanks exist, moderates should serve the purposes of nonviolence and resistance to tyranny by willingness to invoke the spectre of violent spoilers.[6]

Translating these propositions into responsive regulatory theory terms, nonviolent movements should want to collaborate with radical flanks as they escalate the networking of resistance, as we see in the idea of a networked escalation of resistance pyramid (Braithwaite 2008), where pressure is networked from more and more partners at higher levels of the pyramid. They should not, however, cultivate escalation to violence at the peak of their

regulatory pyramid. If the reality is that a nonviolent movement has a violent radical flank in spite of its best efforts to dissuade them from violence, they should use them as spoilers in the way they were used in South Africa and Bougainville. It is best to use their spoiling as "threatening in the background, but not threatened in the foreground" in responsive negotiation of transition from tyranny (Ayres and Braithwaite 1992, chap. 2).

Because hard power can be more rhetorically seductive than soft power in conditions of tyranny, responsive nonviolent leaders must pay more attention to refining tactics of de-escalation down their pyramid and lateral movement to more creative forms of resistance at the same level of the pyramid. This they must consider before they indulge a politics of reluctant escalation. Jennifer Wood and Clifford Shearing (2007, 106–7) have made the important critique of the regulatory pyramid that it can encourage the thought that if regulatory intervention fails at one level of the pyramid, it is natural to escalate rather than scan laterally with fluidity and agility looking for horizontal problem-solving partners. I always trained regulators not to abandon restorative justice conferences at one level of the pyramid, when a first conference failed, but instead to hold another conference that widens the circle to participants who can bring new problem-solving resources into the circle, then another that widens it again, or narrows it to excise spoilers, until middle-ground negotiators can build trust without them.[7] Even so, the Wood and Shearing critique is important showing that special training is desirable in how to think more laterally and in a less automatically escalatory fashion. So Braithwaite (2008, 99) proposed a set of corrective principles of responsive regulation and nodal governance:

1. Never escalate to hard options without considering all the available softer regulatory interventions. If the situation gives you time, engage in a brainstorming dialogue to discover them. Be open to reframing the norm to be secured on the basis of that dialogue.
2. Use restorative justice dialogue over resolving regulatory dilemmas to bubble up norm improvement, including law reform and radical deregulation.
3. Have a preference for "governing by providing" over "governing by regulating." Try to solve problems by providing resources to the potential target of regulation when those gifts might motivate them to govern themselves.
4. Jump to a coercive option when quick but contested diagnosis suggests this will achieve the result with less force overall than a sequence of failed escalations.
5. When you do not yourself have the power to control the situation, consider networking with partners horizontally, or better still with partners who can *de-escalate* coercion, before considering vertical escalation.
6. If you need to escalate vertically, but lack the power or resources to do that, scan creatively and optimistically for potential network partners with

resources you lack. Search also for other weak actors whose combined power tied in a node governs the situation with greater power than the sum of its parts.

7. If you want to regulate to achieve a result with minimum force, belong to an organization with symbols that signify a capability and resolve to escalate right up to the peak of a regulatory pyramid that is threatening in the background (but rarely threatened in the foreground). Belong to an organization that both walks softly and carries a big stick.[8] If you do not belong to such an organization, network with someone who does.

What this article questions is the violence of the big stick metaphor in point 7. As more powerful players with whom Nelson Mandela networked well before he became president, like President Bill Clinton of the United States or the head of South Africa's National Intelligence Service Niel Barnard, testify, Mandela was rather gifted at all these skills, even as a man confined to prison. He was not the first African to use North Atlantic powers to help him achieve his objectives nonviolently. In Peter Gelderloos's (2007, 24) scathing critique of nonviolence, he says, "Nonviolence declares that Africans could have stopped the slave trade with hunger strikes and petitions." In important ways, he is right in that British men-of-war blowing slaving vessels out of the water in locales like Rio harbour was important to ending the international slave trade. The reason the British used naval dominance in this way was to prevent other nations from gaining a strategic trade advantage over British plantation economies that had renounced the slave trade. So what was it that caused Britain to renounce the slave trade ahead of other nations? It was petitions, lobbying, and a wide plurality of lobbying tactics by a globalizing social movement against slavery (Braithwaite and Drahos 2000, 223–24).

To put all of these principles in an even more general framework, it is best that civilian resistance campaigns against state tyranny are utterly nonviolent, rejecting the natural inclination to think that a violent peak to their pyramid will assist them. Yet if others foist this upon them, they might as well use the spectre of a violent peak to their pyramid. Networking with spoilers, as opposed to providing them resources or guns, can deliver this. This can make up some of the ground the movement loses from depleted participation in their struggle by ordinary folk who run from an association with violence. Once a violent radical flank exists, this depleted participation is inevitable, especially after state spin stigmatizes the whole movement as terrorist.

TACTICS FOR MINIMIZING ESCALATION TO VIOLENCE AT PEAKS OF PYRAMIDS

I have argued that if our objective is the republican one of maximizing freedom as nondomination, we cannot afford to be pacifists or prison abolitionists when it comes to preventing tyrants from invading other countries,

regulating terrorism or rape, making peacekeeping work effectively, or even in mounting civilian resistance against evils like slavery, apartheid, or dictatorship. At times it can be right to free a group of slaves by murdering a slave trader or by sinking a slaving ship arriving to collect slaves. Yet such scenarios are rarely encountered by most citizens, while all of us can easily seek out opportunities to promote cultures of nonviolent resistance against tyranny.

A problem is that if we leave ourselves with access to escalation to violence, we are likely to do so more often than best serves minimization of domination. We are especially at risk of that if we are part of a Great Power system. Give even a good president access to a button he can push to exterminate an enemy from a drone, and he is likely to push that button more often than can be justified by the objective of tyranny reduction. All pyramids need special barriers, checks, and balances against escalation to violence. For police killing people in accountable democracies, that check is a special inquiry by an independent police ombudsman whenever a police officer kills or a citizen dies in custody. That needs at times to be balanced by independent public enquiry into cases where there is concern that a rape or murder occurred as a result of alleged police failure to escalate sufficiently. Media scrutiny on such reports is also critical to creating barriers against excess in escalation to violence or negligence in failing to lock up a danger to the community. Restorative justice advocates demand more than these vertical checks. They argue also for more communal horizontal checks. One is that families of the victim of an unjustified police killing should have a right to meet in a restorative justice conference with the police officer who killed their loved one and with their police superiors so they can make justice demands and reform demands upon the police. Likewise, a good restorative check on US presidential excess in drone assassinations would be a policy that the president always offers to meet in a restorative circle in the White House to apologize, offer compensation, and hear other justice claims from the families of innocent civilians killed in drone attacks.

To legally come to the aid of a country that is being invaded, the key checks are that such military action is approved by the Security Council and lawful under international law. These constraints have become progressively more real since 1946, putting aside recent aberrations such as drone attacks, intentional bombardment of the home of Libyan President Gaddafi accompanied by implausible denials that the intent was not to target the president or his family. Wanton invasions of other states' territory have become infrequent since the 1950s, in comparison to previous centuries.

Barriers against state excess in domestic escalation to a violent peak of a pyramid can include constitutional protections, public reporting in public enquiries, and restorative justice. For nonstate actors engaging in civilian resistance to tyranny, international law is not centrally relevant, though the ANC did sign up to the Geneva Protocols while the apartheid state did not. The moral authority of the criminal law is important. The criminal law has so

much power in contemporary societies not because it results in punishments that rationally deter us from committing crime. We do not murder the work colleague who makes life difficult for us because going to jail would be painful; we refrain from murder because murder is simply unthinkable to us. We do not calculate the rationality of murder; it is right off our deliberative agenda. The moral power of the criminal law in action constitutes that barrier against resort to murder. Some of the worst mass murderers, such as Adolf Eichman, struggle against their own revulsion as slaughter unfolds (Cesarani 2004, 11,16). International criminal law can also help a little in reinforcing its more culturally powerful national counterpart. So the key protection against excess with escalation to violence in civilian resistance is nurturing the belief that it is a crime to inflict violence on another person except when criminal law excuses apply. This is why there is merit in the answer of the Australian military lawyer that it was important for von Stauffenberg to believe that he was committing a crime for which he ideally should account to a court, in the same moment as he believed it was right to murder Hitler. Even if the assassination had succeeded and ushered in a democratic Germany in 1944, its courts should have found that Hitler's assassination was a crime.

As a barrier against escalation of civilian resistance to violence, the culture of the criminal law can be productively reinforced by the consciousness of resistance movements with cultures of nonviolence. This was what Mahatma Gandhi and Martin Luther King sought to inculcate with imperfect success. Chenoweth and Stephan's (2011) data are instructive here too. They show that nonviolent campaigns of civilian resistance with maximalist objectives like regime change were almost nonexistent before King's birth, before the momentum of the Quit India campaign built in the 1930s and '40s, though of course there were important predecessors with less maximalist objectives such as the rise of nonviolent trade union and women's movements and the social movement against slavery. Indeed, Chenoweth and Stephan's (2011, 7–8) data show that by far most of their successful nonviolent campaigns since 1900 occurred after 1980. To use a military metaphor, nonviolence is on the march as a global cultural force. The peace movement does mobilize barriers of shame against escalation to violence with increasing discipline. Violence and rape has become more shameful in many countries (Pinker 2011). Of course, there are cases of tragic failure, like Syria, where the resistance set out with an admirable determination to resist the regime only by nonviolent means.[9] A third cultural force that can constitute a barrier against violent excess in civilian resistance is the global human rights movement.

The peace and human rights movements must be creative in constituting a proliferation of heads of cultural and institutional power that erect barriers against escalation to violence. Responsive regulatory theory has always been about institutionalizing reluctance to escalate. The contention here is that *special barriers* against escalation to a violent peak of the pyramid are needed that are above and beyond the standard reluctance to escalate. We must

become more creative in erecting them. That said, the routine responsive regulatory reluctance to escalate, the determination to de-escalate whenever that is possible, that is structured into responsive regulatory theory, is also helpful in steering us away from violent peaks.

In addition to erecting special social and legal barriers against escalation to violence, we need more options at lower levels of pyramids. A standard way of reducing resort to the violent sanction of imprisonment is to have more alternative sanctions, alternative community monitoring strategies and rehabilitative options. International sanctions as an alternative to war have a patchy record of success, but they are becoming more creative and variegated with smart sanctions. The potential for smart sanctions to backfire, sanctions such as preventing international travel of leaders and of their children enrolled in Western universities, seizing assets in foreign banks, is lower than the extreme ways war can backfire. When used well (meaning responsively) smart sanctions can also be a way of the international community signaling that it will stick with this problem until it is put right (as opposed to being read as weak sanctions that mean this is as far as the international community is prepared to go). Put another way, sanctions that empirical evaluations show to be frequently ineffective (Hufbauer, Schott, and Eliott 2009; Pape 1998) can become useful contributors to an integrated hierarchy of sanctions that are effective when woven together. A good example of new alternatives to war was President Obama's resistance to pressure from Israel for a pre-emptive strike on Iran's nuclear program in 2012 with the argument that more insidious damage can be done with cyberattacks that will not cause violence to cascade in the way military bombardment would.

In addition to more variegated layers in regulatory pyramids that can deliver inexorability to capitulation, we need to cut paths to horizontal diversity and innovation in nonviolent resistance. This is where the seven nodal governance principles developed in response to the Wood and Shearing (2007) critique can play a role in reinforcing reluctance to escalate vertically to violence. This is the main thought of this article. Pacifism is ultimately not ethically or pragmatically sustainable as a universal ideal. We can learn this from lives like those of Nelson Mandela and Desmond Tutu. Mandela, Tutu, and von Stauffenberg were examples of lives well lived without utter renunciation of murder. What we can do, however, is refine tactics of erecting barriers against escalation to violence. We can also cut paths through the barriers to horizontal innovation in networked governance of domination. That will give more vitality to nonviolent resistance to tyranny, making it even truer that nonviolence is the more effective kind of resistance.

CONCLUSION

Schock and Chenoweth's (2012) radical flank results show a set of circumstances where some predictions of responsive regulatory theory are false.

Violence is the worm in the apple. Violence corrupts resistance movements to state power that seek to be effective in reducing the amount of domination in the world. Violent attempts at regime change lead to erosion of domestic support for resistance movements and often of international support in contemporary conditions. As nonviolence advocates have long argued with respect to movements for regime change, when domination is the means of resistance to domination, replacing one form of domination with another is a likely outcome of the regime change. Not only is this a point about the benign big gun of responsive regulatory theory being false in this domain, it is also a challenge to generalizing responsive regulatory theory as equally relevant to the regulation of states as it is to regulation by states.

This is a different result from that produced by a republican normative analysis of responsive regulation through prisons, in which rape, murder, and suicide are more common than in conditions of freedom. It is a different result from the need for police to sometimes use snipers, the imperative sometimes to send armies to countries that are being invaded and for UN peacekeepers to sometimes carry guns and shoot them. Violence of these kinds as last resorts is morally necessary in rare situations. Indeed, I have argued that appropriate violent options at the peak of enforcement pyramids in all these fraught contexts can make responsive regulation more effective and just. Smoke curling from a benign big gun can underwrite the dynamic deterrence theory of the responsive regulatory pyramid (Braithwaite 2013a, 138–40). It can be more just to mobilize violence as a last resort, as in the sniper's bullet for the suicide bomber, rather than allow them to kill others. In most contexts, in other words, responsive regulatory theory is right to argue that violence that is threatening in the background, though rarely threatened and even more rarely used, makes a contribution to a world with less domination. Police officers and peacekeepers who can shoot straight make that contribution. So do judges who can incarcerate. So does a UN Security Council that can order use of force to reverse an illegal invasion.

The presumptive preference of responsive regulation for nonviolent over violent regulation nevertheless remains helpful in the dilemma of resistance to state tyranny that is less effective and just when it cultivates a violent radical flank. When a violent radical flank is a fact on the ground that is not of one's own creation, one can still seek to educate devotees of violence to what they can achieve through nonviolent alternatives in all the resistance contexts that arise. Like Mandela, one can still use the violent radical flank productively to induce the dynamic deterrence of the pyramid if they are a fact on the ground. One can do this even though it would have been better to have prevented them from becoming that fact on the ground.

Across the board, what is the best way to make responsive regulatory theory less frequently false in commending escalations to violence that back-fire? It is to view violence as a *sui generis* escalation that requires special checks and balances. Because violence is seductive to those with the power to order it at a distance, we need a lot of special checks and creative intellectual

work on how to put new balances in play. This creativity has not been absent in the architecture of a United Nations that does make it more difficult than in previous centuries for one nation to invade another, that deploys peace-keepers to protect the vulnerable with rules of engagement that institution-alize reluctant resort to force. It has been present in an international human rights movement that has had success in campaigning for the abolition of capital punishment and in institutionalizing ombudsmen who publicly report on police excess. More such institutional creativity is needed on new checks, and there should be more empirical research on which checks are most effective. Particularly needed is innovation and research on paths to de-escalation—ceasefires, gun buy-backs, disarmament, confidence-building gestures, gifts to enemies afflicted with a natural disaster—and creativity of horizontal moves in networked pyramids in preference to escalation—the policeman who brings a nun to stand between two fighting catholic gangs to plead for safe passage of medical care to their wounded and then for peace (Braithwaite 2008, 107).

An attitude that desists from viewing nonviolence as a wooly ideal is imperative. Nonviolence is a disciplined pursuit, one that requires education about the reasons for nonviolent discipline, organization, and creative search for alternatives to violence (Sharp 1973). Nelson Mandela saw nonviolence as a discipline rather than a dogma. Likewise, responsive regulation is a theory that sees itself as frequently wrong. The natural inclination of a resistance movement against tyranny to want a violent flank is something that responsive regulatory theory says should work. This is a context where responsive regulatory theory proves to be in error.

NOTES

1. Actually, the theory was advanced in the more cautious formulation that if the sanctions available at the peak were too weak, the capacity to drive regulation down to the base of the pyramid would wither.
2. This can become more so to the extent that we can put in place strengthened independent regulation of prisons that reduces the violence and dominations of prison life, though this can never eliminate them.
3. Later in the 1990s the sanctions came to bite too much. According to a UNICEF survey (Ali and Shah 2000) carried out in cooperation with the Iraqi government, infant mortality rates increased from forty-seven per 1,000 live births during 1984–89 to 108 per 1,000 in 1994–99, and under five mortality rose from fifty-six to 131 per 1,000 live births. The highest rates were seen in 1998. However, others have argued that these figures are too high and that the methodology used was unsound. See Amatzia Baram (2000) and Richard Garfield (1999) for example. Garfield (1999) argued that a more moderate estimate of lives lost to sanctions is somewhere between 106,000 and 227,000 for the entire 1990–98 period.
4. One reviewer points out here that "the security forces did not contain violence by Inkatha—they deliberately fomented it." It is true that they deliberately formented it, but it is also true that President de Klerk ultimately called his security sector commanders to account when he feared the country was descending into a civil war

for which he could be blamed. Security sector force was ultimately used and was necessary to bring Inkatha, but not only Inkatha armed violence, under control (see Braithwaite 2013b).

5. A contemporary example concerns the half century of conflict in West Papua, Indonesia. In 2013, the Indonesian military was still secretly providing arms and money to elements of the Free Papua Movement to encourage them to cause violence. This is a tactic to turn Indonesian public opinion against genuine engagement with a peace process for Papua that is being led by Papuan church leaders as a nonviolent campaign. Countertactics pursued by the peace movement include exposing these spoiling tactics of the Indonesian military and in July 2013 convening a Citizens Tribunal into the Biak Massacre (Biak Massacre Citizens Tribunal. 2013. http://www.biak-tribunal.org/ [accessed July 6, 2013]).

6. As key peace mediator between the ANC and Afrikaner leaders, Michael Young of Consolidated Goldfields put it in my 2013 interview with him: "When you are waging an insurrection you play every card you've got."

7. This is what happened in the negotiations between the ANC and Afrikaner leaders convened in Britain by Michael Young of Consolidated Goldfields, who had served on the staff of two former British conservative prime ministers. Trust was built first with a core group of more moderate middle-ground figures and later the circle was expanded to more hardline ANC and South African government figures (Braithwaite 2013a).

8. This is a reference to the virtues of "benign big guns" in Ayres and Braithwaite (1992) that in turn picks up the Theodore Roosevelt metaphor of walking softly while carrying a big stick.

9. The failure here was likely a result of targeted provocations by Salafi/Takfiri spoilers who set out to learn lessons from Al Qaeda's failures in ceding victory to nonviolent democratic forces in the early months of the Arab Spring (in cases like Tunisia). It seems likely that historians will ultimately conclude that neither the state nor Syrian civil society were the first to resort to extremely violent provocation, but internationally funded Islamist spoilers (Chakrabarti 2013; Jha 2012). Their aim was to destabilize nonviolence and provoke atrocities from the Syrian military.

JOHN BRAITHWAITE *is a Distinguished Professor and Founder of RegNet (the Regulatory Institutions Network) at the Australian National University. He is embarking on a twenty-year comparative project called "Peacebuilding Compared." His best known work is on the ideas of responsive regulation and restorative justice.*

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