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Street-Level Meta-Strategies: Evidence on Restorative Justice and Responsive Regulation

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Abstract

Restorative justice may be effective because it is a street-level meta-strategy that is responsive and relational. Nonresponsive, nonrelational strategies that are enacted from desks are less likely to be effective; best-practice strategies may be less likely to be effective than wisely sequenced meta-strategies. Responsive regulation is conceived as a strategy of moving among strategies, as opposed to selection of any best strategy. Restorative justice is a way of selecting strategies to heal the hurts of injustice. Empathic empowerment of stakeholders who take turns to speak in a circle is at the heart of its strategy for strategy selection. Restorative justice can complement responsive regulation; at their best, they are mutually constitutive. Responsive regulation may work best when restorative justice is a first preference at the base of a pyramid of strategies. Responsive regulation involves listening and flexible deliberative choice among strategies arrayed in a pyramid. At the bottom of the pyramid are more frequently used, noncoercive strategies of first choice. Despite encouraging evidence that restorative and responsive regulation can work better than less dynamic top-down enforcement, the effectiveness of restorative justice and responsive regulation depends mainly on the efficacy of the interventions that are responsively chosen. It is time to redirect research and development to improving the quality of restorative-responsive strategy selection and the quality of the diverse strategies on offer.

THE PRINCIPLE OF STREET-LEVEL RESPONSIVENESS

Restorative justice is a process in which all stakeholders have an opportunity to discuss who has been harmed by an injustice and what should be done to heal and prevent future harm. Responsive regulation means ordering preventive strategies so they can be more responsive to the environment and to how regulated actors are responding. Asking whether restorative justice and responsive regulation work is like asking whether any meta-strategy (any strategy for selecting strategies) works. This article first argues that the social science literature supports the conclusion that good meta-strategies tend to be more useful than good strategies for fixing social problems. Then, it conceives of restorative justice and responsive as meta-strategies. Finally, it considers the evidence that restorative justice and responsive regulation, and integration of the two, are good meta-strategies.

Consider problem-oriented policing as an example of a meta-strategy. Problem-oriented policing is an approach for improving police effectiveness through examining and acting on the underlying conditions that give rise to community problems. Responses emphasize prevention, going beyond the justice system alone, engaging with communities and the private sector. The evaluation literature provides encouraging evidence that when police are trained to use problem-oriented policing, their effectiveness in preventing crime improves (Braga 2008, Weisburd et al. 2010).

One snag is that police often come up with bad analyses of underlying conditions and counterproductive interventions. Another is that there is unknowable heterogeneity in what police do and how beneficial it is. Given this statistical heterogeneity of problem-oriented policing, combined with the fact that quite often local police are bound to choose counterproductive interventions, it is surprising that the evaluation literature shows modest effectiveness overall.

I argue there is an underlying principle for why problem-oriented policing works: the principle of street-level responsiveness. Selznick (1994) and Nonet & Selznick (2001) developed responsiveness as a law and society principle. Lipsky (1980) coined the idea of street-level bureaucracies (like police, old-fashioned regulatory inspectorates). Lipsky's insight was that in a police bureaucracy, particularly one practicing problem-oriented policing, the commissioner is not such a powerful person. What matters is the power to diagnose underlying problems and catalyze community responses, for example, through mobilizing neighborhood collective efficacy (Sampson et al. 1997).[1] That is the decision-making power that matters, and it resides at the street level of the bureaucracy. This review discusses Schell-Busey et al.'s (2016) evidence that street-level regulatory inspection helps prevent business offending (even if the quality of the microregulatory strategies they choose is poor). I hypothesize that this effectiveness resides in the sheer diversity of levers pulled in collective efficacy at the street level (Braithwaite 2020, table 1). Cohen (2021) showed that "street-level policy entrepreneurs" have led from below and transformed regulatory impacts, like Florence Nightingale, who professionalized nursing to cut hospital deaths with sanitary practices; Joseph Lister with antiseptic surgery; Ignaz Semmelweis with handwashing; and Li Wenliang with COVID-19 containment.

Sadly, enforcement bureaucracies are moving in the opposite direction from street-level responsiveness. Desk audits are cheap, and street-level bureaucrats fanning out to kick the tires is expensive, even if more cost effective. Desk audits are "rituals of comfort" (Power 1997) that drive regulatory ritualism (Braithwaite 2008); wherever disaster strikes, leaders like to say that they ordered an audit of that firm's compliance. Then leaders have done something; it is the auditors who let them down. Usually, the sad fact is that the leaders' policies reduced responsiveness to street-level diagnosis by tying auditors to their desks. Internet technology consultants sell regulators

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[1] Systematic reviews show collective efficacy to have explanatory power (Pratt & Cullen 2005).

robo-monitoring software to reduce even further the minimal responsiveness of desk auditing. Digitization disasters accumulate as regulators are removed from the street level; deskbound regulation destroys the human responsiveness of relational regulation (Lee & Braithwaite 2020).

Robo-regulation artificial intelligence is a story for another article. This one concentrates the disparate evidence that street-level and responsive enforcement combine to make a difference. Most people think that UN peacekeeping rarely works to end war. This perception grows from the fact that conflicts in far-flung lands grab media attention only when they worsen. Rich countries mostly pull back from funding the United Nations to deploy more peacekeepers. Yet, putting more UN police (or military) into war hot spots is more effective in saving lives than even the most effective deployments of domestic police to hot spots (Walter et al. 2020). Hultman et al. (2013) found across all African armed conflicts between 1991 and 2008 that movement from zero to just 200 UN police in a peace operation, conditioned by controls on other variables, was associated with a reduction in the expected number of civilian killings from 96 per month to 14. This is a per-month estimate; the average duration of deployments is 65 months, so small contingents of police seem to save large numbers of lives.

Collier (2009, p. 96) concluded that $100 million spent on UN peacekeepers reduced the cumulative 10-year risk of reversion to conflict from 38% to 17%. With a $500 million peacekeeping investment, risk of another war fell to less than a quarter of the risk without that investment. Collier's team presented their conclusions to a panel of Nobel laureate economists for the Copenhagen Consensus. This involved 10 rival teams making a case for spending international public money on something. The Copenhagen panel verdict selected peacekeeping as one endorsed public expenditure. Multidimensional peacekeeping as a strategy that selects a mix of strategies is more effective than less heterogenous peacekeeping (Doyle & Sambanis 2006). So I conceive peacekeeping as being like problem-oriented policing, restorative justice, and responsive regulation, all of which are effective because they are meta-strategies that integrate bottom-up dialogue on local attunement of problem solving with top-down strategies like arrest.

Braithwaite & D'Costa (2018) reviewed in more detail how the social sciences are replete with examples of effective meta-strategies. The idea is that with challenges of great complexity, it is best to follow not the most evidence-based strategy but the most responsive meta-strategy. Motivational interviewing is another example of a heterogeneous but responsive street-level, iterative meta-strategy: It gives rise to many different change strategies that are chosen by counseling clients rather than by counsellors. In restorative theory terms, it is a "doing with" strategy rather than "doing for" or "doing to." Motivational interviewing is a flexible, contextual, and responsive practice that unfolds differently in each case depending on how the actor frames what motivates them. Meta-analyses of 119 studies, more than half of which were randomized controlled trials, show motivational interviewing's effectiveness as a meta-strategy for selecting what to do about health objectives, such as conquering addiction (DiClemente et al. 2017; Lundahl et al. 2010, 2013).

We can read the meta-analyses that suggest problem-oriented policing works, that motivational interviewing works at the end of its iterated reframings of motivation, that positive deviance strategies for improving village nutrition work, that a multidimensional mix of strategies works in controlling corporate crime (Schell-Busey et al. 2016), and that multidimensional UN peacebuilding and restorative justice and responsive regulation work as converging on a paradoxical insight. This is that, in a world of complexity, it is more possible to discover the meta-strategies that work best than it is to move single strategies from the realm of the knowable to the known. For example, the meta-strategy of searching for positive deviance in villages that seek to improve nutrition, then supporting that deviance, is more useful than learning which particular forms of positive deviance work most often. It is better than searching for the best practice in village nutrition. To use another

example, it is easier to know that a vague, heterogeneous concept, such as problem-oriented policing or motivational interviewing, works than it is to know that it works because it fixes the street lighting in hot spots or discovers some specific motivation for losing weight. This is a methodologically impressive paradox because it is harder to muster the statistical power to show the efficacy of heterogeneous than of homogeneous interventions (Braithwaite & D'Costa 2018, p. 553).

Restorative justice and responsive regulation are likewise meta-strategies for selecting strategies that are heterogenous and responsive to dialogue at the street level. In light of this wider pattern of evidence, it is perhaps less surprising that these might be effective meta-strategies. Restorative justice is a relational form of emotionally intelligent justice (Llewellyn 2011, Rossner 2013). It selects problem-prevention strategies that empower stakeholders by putting the problem in the center of a circle of deliberation, rather than putting the person alleged to be responsible for it in the dock. Responsive regulation is a meta-strategy for arranging problem-solving strategies in a hierarchy of coerciveness and then implementing a presumptive preference for trying the less coercive solutions first, moving up the hierarchy of strategies until one of them succeeds in fixing the problem.

This review argues that, as with problem-oriented policing, there is encouraging enough evidence, even in the face of heterogeneity challenges, that restorative justice and responsive regulation work cost effectively in preventing a variety of injustice problems that include crime and business noncompliance with regulatory laws. However, the important evaluation questions are not at the level of meta-strategy, where the evidence is persuasive enough to move forward, but at the level of the particular suites of strategies that are chosen. If all the strategies at the different levels of a regulatory pyramid are counterproductive, then trying one counterproductive strategy after another will make things worse than doing nothing, worse than attacking the problem with just one counterproductive strategy.

So the argument of this article is that it may now be time to redirect research attention onto how to improve the quality of strategy selection when we do restorative justice or responsive regulation. That goes less to whether one single strategy is better than another and more to which particular combinations of multiple strategies together secure outcomes like reducing violence or improving environmental stewardship (Gunningham & Grabosky 1998). The next section considers the latest evidence on the effectiveness of restorative justice in crime prevention, and then its effectiveness in enriching democracy and improving justice in other ways beyond crime prevention. Then we evaluate the efficacy of responsive regulation for helping with a wide variety of injustices.

EVIDENCE ON RESTORATIVE JUSTICE

Braithwaite's (2002) narrative review was cautiously optimistic on evidence of restorative justice realizing various justice values, including crime prevention. A Campbell Collaboration review by Strang et al. (2013) reached conclusions fundamentally similar to the previous meta-analyses of the effectiveness of restorative justice by Latimer et al. (2001) and Bonta et al. (2006). Strang et al. (2013) found three studies in which outcomes were worse for restorative justice, and a lesser impact than the 34% lower reoffending for victim–offender mediation found by Bradshaw et al.'s (2006) meta-analysis, or the 26% reduction compared to controls for all kinds of restorative justice found by Bradshaw & Roseborough (2005). Some of the strength of the latter results was driven by a 46% reduction in reoffending for studies that compare those who accepted restorative justice and those who declined it, a comparison biased by the likelihood that more compliant offenders accept restorative justice. Strang et al. (2013) more conservatively evaluated the effect of random assignment to restorative justice, counting cases where offenders decline restorative justice as restorative justice cases. The most recent meta-analyses by Wong et al. (2016), Bouffard

et al. (2017), and Wilson et al. (2017) all continue to show significant, usually moderate, effects of restorative justice on reducing reoffending. A previous review (Braithwaite 2016a), which this article updates, argues that other narrative reviews that reached negative conclusions about restorative justice compared to other interventions (e.g., Weatherburn & Macadam 2013) actually tap into the same pattern of statistically significant, moderate, but variable reductions in reoffending.

All eight meta-analyses found a statistically significant effect across combined studies in lower reoffending for restorative justice cases (compared to controls). Strang et al. (2013) have the most exacting methodological standards for inclusion. The overall result was the same—a modest but statistically significant crime reduction effect. Beyond the meta-analyses, Braithwaite (2016a) and Braithwaite & D'Costa (2018) also placed weight on qualitative data, such as that in work by Braithwaite & Gohar (2014), as persuasive that restorative justice can reduce serious violence and make contributions in war zones to reduce risk of armed conflict. Note also Knauft & Malbrancke (2017) and Braithwaite (2021) on the role of mediation in the Gebusi moving from as violent as societies got in the twentieth century to a society enjoying 28 years straight without a single homicide. Recent evaluations of long-term effects of brief restorative justice interventions with mostly felony offenders halved, or more than halved, reoffending (e.g., Kennedy et al. 2019). In an article in *Nature Human Behavior*, Mills et al. (2019) reported a 53% reduction in new arrests and a 52% reduction in severity scores for reoffending (including for domestic violence) in a randomized controlled trial of restorative justice for domestic violence cases. The halving of reoffending occurred for cases randomly assigned to a restorative justice intervention (Peace Circles) combined with a Duluth-style batterer intervention program, compared to cases randomized to the batterer intervention only, without restorative hybridity. Another important kind of evidence published in *Science*, but excluded from all systematic reviews because there was no control group, is Wiessner & Papu's (2012) discussion of 501 tribal wars in Papua New Guinea. These tribal wars were actually interclan wars that westerners might consider gang wars. Killings per 100,000 population fell from 91 in 2000 to 19 in 2011—still unusually violent—but continued to fall (Papu & Wiessner 2018), at least for Enga Province, as clan war incidence and deadliness declined steeply. This happened after a specialist peacemaking branch of village courts adopted a restorative philosophy to killings that favored compensation and reconciliation over prison 98% of the time.

Meta-analytically and in qualitative reviews (Braithwaite 2002), what we have is more mixed, discouraging results before the late 1990s and more encouraging results since, especially most recently. Some early programs were reckless in implementation and evaluation. But we see a pattern of fire-aim-ready policy learning. In Australia, early results from Indigenous yarning circles and Koori Court sentencing circles were mixed to discouraging, but recent results are more encouraging on reduced reoffending and reduced resort to imprisonment (Yeong & Moore 2020).

None of those most involved in restorative justice research and development predicted huge crime-reduction effects because they saw badly managed conferences that made things worse rather than better. A banal kind of counterproductive restorative justice, for example, is one in which either the victim or the offender pulled out at the last moment, leaving the other side angrier than they would have been had reconciliation never been attempted (Strang 2002). There were early disappointments in the weakness of restorative effects on property crime (Strang et al. 2013). One Canberra experiment found a positive effect on crime for property offenders, particularly for Indigenous offenders (though not a statistically significant difference). Simultaneously, all were surprised at more than a 40% reduction in reoffending (compared to controls randomly assigned to court) in the first-year outcomes of the youth violence experiment in Canberra (which reduced in year two), and even more surprised when one of the British violence experiments also achieved a 45% fall in offending over two years. Reductions in the other violence and mixed

violence/property experiments in Strang et al.'s review are still very substantial, but about half this level.

What we have are some studies (mainly with property crimes) showing disappointingly inconsequential effects of restorative justice and others (more with violent and serious crime) showing large effects. The puzzle remains to explain why restorative justice interventions often disappoint and often surprise with their effects. It was a surprise to me, as the person who invited Sherman and Strang to conduct their pathbreaking independent evaluation in Canberra, that a two-hour intervention could ever produce a huge reduction in reoffending. How could it be that just two hours in a life are not overwhelmed by other things that happen to a person in all the other hours that pass in successive years?

Criminologists had become overly cynical that even rehabilitative interventions that ran for weeks and years could not have a substantial impact on lives overwhelmed by all manner of toxic elements that are present every day, every week. So what foolishness led them to believe that a two-hour intervention might make a difference?

Those of us who see the limits of a myopic focus on overly narrowed outcomes like reduced crime in meta-analysis of randomized controlled trials, as in the Cochrane and Campbell collaborations, must concede some important strengths to that approach. One was revealed from the beginning, when in 1993 Lawrence Sherman asked Terry O'Connell, John McDonald, and me what our predictions would be about percentage impacts at different follow-up times. The exact numbers proffered fade after 28 years, though it was certainly a lower effect size and duration than Strang et al. (2013) actually found. Sherman's response is easier to remember—"If you only expect an impact so small, we will need to randomize thousands of cases to deliver the statistical power to detect such a small effect." That is precisely the way meta-analysis comes into its own decades later. Many studies are so methodologically flawed that they should be simply dismissed; many useful studies show statistically insignificant reductions of reoffending on sample sizes too small to have the statistical power required. Yet, when these data sets are combined, differently conceptualized meta-analyses all show modest, statistically significant reductions in offending from the combined data sets. It is the combined data sets, with their greater statistical power, that detect significant reduction of reoffending.

Braithwaite's (2002, pp. 95–102) view is that the most important thing about restorative justice is whether it puts offenders and victims into follow-up rehabilitation programs that make things better or worse for them, not only in terms of reoffending. The critical effects are about what restorative justice enables more than about how we interpret its direct effects. One of the many ways restorative justice can make things worse is by putting young people into programs, such as scared straight programs, that worsen reoffending. The most important finding of Latimer et al.'s (2001) original meta-analysis was that by far the largest effect size of restorative justice was not on reoffending but on completion of what was agreed by the restorative justice conference to support victims. Counterintuitively, if a court orders payment of compensation to a victim or attendance at a drug rehabilitation or anger management program, it is less likely to actually happen (or be completed) than if it is agreed to by a restorative justice conference. This is counterintuitive because if you fail to follow the orders of a judge, you are in contempt, which can be sanctioned by imprisonment. In contrast, almost nowhere are there legal consequences if you fail to complete a restorative justice agreement; it is just a voluntary agreement.

A reason for this result is that families are more effective in informally enforcing voluntary agreements they sign than are police in enforcing orders judges sign. Or police are just too busy to enforce them (Braithwaite 2002). Both a weakness and a strength of restorative justice follows. Counterproductive remedies agreed upon by restorative justice conferences are more likely to actually happen than those ordered by a court. Conversely, if the restorative justice conference

agrees on completion of rehabilitation that works, the offender is more likely to complete the program as agreed than if a judge ordered it.

Braithwaite (2002, pp. 95–102) and Ahmed et al. (2001, pp. 62–69) argue that potentially the greatest strength of restorative justice is as a superior delivery vehicle for rehabilitation programs that work. Then, the challenge becomes one of communicating to families that they need to own the rehabilitation options they choose for the family. At the same time, facilitators should put families in touch with experts they might listen to about what works (and who can help put them into it). In this we learned from Pennell & Burford's (2000) empirical work on family group decision making in Canada. In their programs, families made the final decisions to commit to rehabilitative/ preventive programs, but professionals were on tap, called into family group decision-making meetings to put options on flip-chart sheets.

Pease (1998) argued that criminology's problem is not in knowing what works in preventing crime but in motivating stakeholders to implement what works. Restorative justice is a promising approach for solving this problem. Notwithstanding paradigmatic advances by pracademics like Pennell & Burford, we are only at the beginning of learning how to redesign justice so that it improves the quality of the choices empowered communities make in how to respond to injustice. With improved standard setting and training, better restorative justice programs can deliver more in all these ways than can quick and dirty restorative practices by poorly trained people, of which there are a lot. Effect sizes for restorative justice improve more strongly (compared to other interventions) when more hours of preparation and more restorative components are invested in them (Lipsey 2009, pp. 141–42). Although it is true that in meta-analyses such as Lipsey's, some rehabilitation strategies have higher effect sizes than restorative justice does, this misses the point if restorative justice is a meta-strategy for selecting and better delivering several of those very strategies with stronger direct effects.

WIDENING EVALUATION CRITERIA

Braithwaite's (2002) narrative review aimed to be more exhaustive, declining to see crime prevention as the most important outcome. By civic republican lights, restorative justice's promise lies in conceiving the judicial branch of governance, rather than the executive and legislative branches, as the better venue for renewing democratic spirit among jaded citizens whose trust has troughed. Restorative justice gives citizens a genuine say in something they deeply care about: what the state should do about their children when they suffer some abuse, or perpetrate abuse, that lands them in trouble.

Restorative and responsive justice in schools not only works in preventing school bullying, thereby preventing future crime (McCold 2008, Morrison 2007). When it teaches children how to confront problems in their school dialogically and democratically, it also teaches children how to be democratic. We are not born democratic. We must learn to be democratic in families and schools. That is what restorative justice is most virtuously about (Braithwaite 2015a). In schools or communities, when restorative justice catalyzes "wounded healers" to help others avoid the kinds of harms they have suffered (Maruna 2001), or to protect victims from the kinds of crimes they have committed, its potential for crime prevention may be to cascade collective efficacy in participatory communities (Braithwaite 2019).

Perhaps because of its focus on democratic empowerment, restorative justice helps victims of crime more powerfully than it helps offenders (Angel et al. 2014, Braithwaite 2002, Poulson 2003, Strang 2002, Strang et al. 2013), even though a notable minority of victims are left worse off as a result of restorative justice. Victims are disempowered by justice systems of modernity. Restorative justice reduces victim fear, post-traumatic stress symptoms, anger, vengefulness, and victim beliefs

that their rights have been violated and increases feelings of personal safety and victim belief that justice has been done. Restorative justice is also perceptually fairer than conventional justice for all kinds of participants in justice processes; this contributes to effectiveness (Tyler et al. 2007). A problem is that the system has become excessively captured by justice professionals in the interests of justice professionals. Discourtesies as basic as not telling victims the date of their offender's trial are endemic.

Whether it is self-harm by victims, offenders, mothers, children of offenders, or other third players, it is more important to evaluate restorative justice in terms of the contribution it makes to reducing self-harm than reducing harm against others. This is because justice practices are major causes of self-harm. Self-harm is a bigger problem than violence in all developed societies. The United States has 3 suicides for every homicide, the United Kingdom more than 6, France more than 13, South Korea and Slovenia more than 30, and Japan more than 90 (World Popul. Rev. 2021a,b). Suicide is more widely underreported than homicide. This goes to the importance of work like that of Sherman & Harris (2015) showing a 64% increase in death rates for all causes among misdemeanor domestic violence victims after their abuser was randomly assigned to arrest, in comparison to police-issued warning without arrest. Death as a negative outcome from encounters with justice was hugely higher for African American victims and offenders. Black lives indeed do not seem to matter as much as white lives. Linda Gosnell from the Canberra randomized controlled trial team noticed a pattern of many comparatively young people in the experiment having died 12 years later, some in horrible ways such as hanging themselves in a prison cell, gunshot, and drug overdose. Sherman and Strang are undertaking a long-term follow-up of deaths. Although the numbers remain small, they may be statistically significant for the violence experiment (the most successful experiment on reduced reoffending), because to date we know of no violent offenders randomly assigned to a restorative justice conference in the 1990s who have died. At this research frontier, we know enough to have good questions about whether restorative justice can reduce death, but no answers.

Reclaiming a voice for families, friends, and victims in justice processes is a germinal democratic project, especially with the truly disadvantaged. Justice professionals retort that they are not in the business of revitalizing democracy or doing justice therapeutically; rather, they must simply decide justice justly. Here we go back to Shapland et al. (2008), who found that the benefits of restorative justice exceeded costs by a ratio of eight to one. The likelihood is that if we divert resources currently flowing into the pockets of justice professionals to restorative justice programs that empower communities, we can enrich democracy and reduce the cost of the justice system, while also advancing narrowly conceived justice objectives like crime prevention. Indigenous restorative justice programs in Australia (Daly & Barrett 2014) and Canada (Native Couns. Serv. Alta. 2001) have shown high benefit-to-cost ratios. These ratios could be even more impressive if restorative justice could improve its abysmal record in reducing imprisonment rates. An exception is the innovative Bangladesh restorative program, which, in combination with paralegals, secured early release for 8,000 adult prisoners (Braithwaite 2015b); Zhang & Xia (2021) found that the world's largest restorative justice program in China has contributed to a reduction in incarceration there.

Restorative justice is not only about justice systems or strengthening democracy but also about renewing the collective efficacy of communities, families, and schools. Strengthening these levels of collective efficacy has value in itself, independent of contributions to democracy or justice. We must research whether restorative justice can be adjusted to strengthen individuals as human beings, to build families, schools, workplaces, and communities that nourish their humanity (Braithwaite 2002). Current work is about how criminal justice can do less harm as a cause of
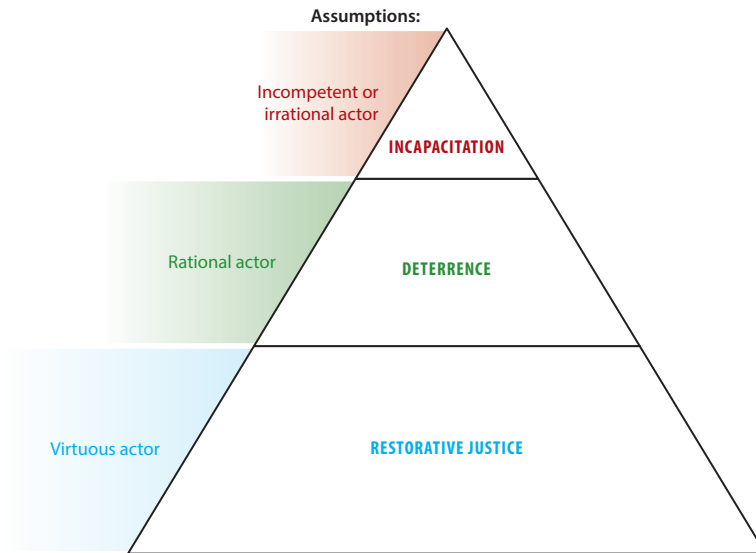
Figure 1

Toward an integration of restorative, deterrent, and incapacitative justice.

war and, when combined with restorative rights enforcement, can help reduce prospects of armed conflict through Indigenous justice and restorative peacemaking (Braithwaite & D'Costa 2018).

IS RESPONSIVE REGULATION EFFECTIVE?

Responsive regulation locates restorative justice as just one strategy in a hierarchy of strategies for regulating a problem. In terms of the shift in evaluation strategy advocated here, the evidence that restorative justice is effective is the most important kind of evidence to ponder for the evaluation of responsive regulation. Normally, restorative justice as a preferred relational strategy is privileged over more interventionist and punitive strategies based on incapacitation or deterrence (**Figure 1**). Use of the responsive regulatory pyramid aims to favor solving problems at lower levels of the pyramid. **Figure 1** implies that in addition to evaluating responsive regulation in terms of whether restorative justice works, it is also important to evaluate it in terms of whether deterrence and incapacitation can be more effective as strategies integrated with restorative justice. Deterrence and incapacitation effects may not be large, but dynamic deterrence embedded in pyramidal escalation may be more effective and legitimate than passive deterrence (Braithwaite 2018). Evidence for this is based on Sherman's insights that random assignment to restorative justice sharpens deterrence of future offending, whereas traditional punishment blunts it (Braithwaite 2018).

Responsive regulation generated interest as a policy idea, despite its banality, because it formulated a way of reconciling the clear empirical evidence that sometimes punishment works, and sometimes it backfires. Likewise with persuasion (Ayres & Braithwaite 1992, Braithwaite 1985). The pyramidal presumption for persuasion gives the cheaper, more respectful option a chance to work first. More costly punitive attempts at control are held in reserve for the minority of cases in which persuasion fails.

One common reason for persuasion's failure is that an actor is a rational calculator of likely costs of enforcement compared with gains from lawbreaking. Escalation through progressively more deterrent penalties sometimes takes the rational calculator up to the point at which it

becomes rational to comply. Initially low deterrence might give the offender a free hit, but the aim of the pyramid is to communicate inexorability: The regulator will not go away but will keep escalating until the problem is fixed. Quite often, however, a regulator finds that they try restorative justice and it fails, they try escalating up through increasingly punitive options, and they all fail to deter. In business regulation, one common reason for successive failure of restorative justice and deterrence is that noncompliance is not about lack of goodwill to comply, or about rational calculation to cheat. It is about a want of competence to comply. The managers of a nuclear plant lack the engineering know-how for the demands of safe nuclear production. They must be removed from managerial control. If the entire management system is unequal to the task, a firm might lose its license to operate nuclear plants. So when deterrence fails, the pyramid suggests that incapacitation is the next port of call (**Figure 1**).

RESPONSIVE LISTENING

The demeanor of the responsive regulator, like that of the restorative justice practitioner, is to be a listener, but a listener with the resolve to persist with the problem until it is no longer a problem. The pyramid communicates that resolve explicitly. We are willing to listen and discuss, and to try countless approaches, yet at the end of the day we will escalate through more interventionist strategies until the problem is fixed.

The child development literature shows that parents who natter at their children (rather than confront misbehavior with firm resolve) are ineffective at preventing harm (Eddy et al. 2001, Patterson 1982). Nattering parents shout at a son to stop hitting his sister as they rush from dining room to kitchen without pausing to ensure the violence ceases. Their nattering fails to elicit understanding of why violence is so disapproved. Motivational interviewing evaluations reveal that to change behavior, we must genuinely listen to narratives of noncompliance. Eighty randomized controlled trials have mostly supported motivational interviewing (DiClemente et al. 2017; Lundahl et al. 2010, 2013). Most critically in the motivational interviewing evidence, the listening must lead to agreement on desired outcomes, self-monitoring, and external monitoring of progress toward those outcomes. That commitment is secured by helping people find their own motivation to attain an outcome. Responsibility for arguing for change passes to clients; it is the client who must come to believe they can overcome barriers preventing change. In the translation of this approach to regulation (broadly conceived to include crime control),

- Regulation should be collaborative, valuing regulatee strengths and drawing on regulatee values, motivations, abilities, and resources to help the regulatee bring about desired change.
- Regulators should evoke and explore regulatee ambivalence to help the regulatee resolve it and move toward positive change.
- Regulators should focus conversations on regulatee statements and emphasize change talk in those statements to strengthen motivation to transform.
- Regulatees, rather than regulators, should voice the arguments for change.
- Regulators should roll with the resistance that emerges and focus on change talk.
- Regulatees should develop a plan for change, deciding what is needed and when and how to proceed. Regulators should offer advice cautiously.
- Commitment for change must come from regulatees. Regulators should listen for whether regulatees are ready to commit to the change plan based on their commitment language and then to a joint regulator–regulatee plan for monitoring progress.
- To effect this change in approach, regulators must listen with empathy and nurture hope and optimism.

Motivational interviewing dimensions of motivation mirror much of what emerges in Valerie Braithwaite's research on motivational posturing (Braithwaite 1995, 2009), trust and governance (V. Braithwaite 1998), and hope and governance (Braithwaite 2004).

Jenkins (1994) showed the importance of confidence or self-efficacy in regulatory compliance. It is easy to grasp the intuition that we achieve more against our outcomes on those days when we arrive at work feeling confident that we can tackle them. Collective efficacy is even more important to compliance with the law than is individual self-efficacy (Sampson et al. 1997). Clear empirical evidence that managers' self-efficacy predicted future regulatory compliance was no surprise. "Importance" has a longer history of explanatory power in law, particularly with the explanatory power of legal cynicism in explaining compliance (Sampson & Bartusch 1998). In motivational interviewing, readiness is operationalized by asking, "How ready are you to make these changes?" This is based on the finding that ambivalence is the crucial dilemma we face when changing our behavior. We have the feeling that life is short; there are good and bad sides to everything. So we often focus on the bad side and take the lazy path of not making a change we know we should bother to make. This insight appears in Matza's (1964) brilliant ethnographies. Delinquents often have little commitment to law breaking; rather, they drift ambivalently between worlds of delinquency and law-abidingness. They do not think lawbreaking is right so much as drift into techniques of neutralization that soften the moral bind of law.

Responsive regulators are therefore skilled at reflective listening that reflects back commitment to achieve outcomes grounded in motivations chosen by the speaker. They ask open questions as opposed to rhetorical or yes/no questions. Questioning shows respect for the person, and active listening that summarizes back to the speaker the wisdom of their own paths for steering their journey to change. This is a common human skill that good parents have. It rolls with resistance; it does not argue combatively but communicates commitment to stick with the problem until it is sorted.

NURTURE MOTIVATION TO CONTINUOUSLY IMPROVE

Although responsive regulatory theory denies the existence of a standard pyramid for all contexts, it is hard to imagine why any regulator would neglect to include informal praise among the range of frequently used tools. No tool is cheaper. The evidence of the effectiveness of informal praise in improving nursing home quality-of-care outcomes and legal compliance in the years following an inspection was strong (Makkai & Braithwaite 1993). Yet in some jurisdictions, there was systematic indoctrination of inspectors away from the natural human propensity to say, "well done," after things were put right (Braithwaite et al. 2007, chapter 4). The reason was fear that praise could be used as a legal defense. Responsive regulatory theory interprets this as misguided; the development of a pyramid of supports to complement a pyramid of sanctions has been one response (Braithwaite 2008).

Regulation based on static rules ossifies industry standards at the state of the art at the time rules were written. Responsive regulation is regulation that expects, encourages, and sometimes requires continuous improvement. That means continuous improvement in discovering lower-cost ways to achieve regulatory outcomes and improvement to better outcomes. These objectives are intertwined because when compliance costs fall, compliance tends to rise. It is rarely a path to innovation for states to set standards and tell industry how to achieve them. Australian aged care regulation includes many standards that require homes to gather evidence that they continue to improve on that standard—that outcomes are better this year than last (Braithwaite et al. 2007). Mikler (2009) found that greater success of Japanese auto regulators in reducing emissions, and lesser success in the United States and Europe, was based on imposing expectations on automakers

that they must innovate to exceed new ceilings as soon as another Japanese manufacturer took environmental engineering up through an old ceiling.

Leaders can be helped to pull laggards up through new ceilings of excellence by conceiving all regulatees as potential leaders (Gunningham & Sinclair 2002). Every workplace actor is capable of being the leader of excellence on something. There was virtue in US nursing home reforms that required each home to have a staff and resident meeting to choose a poor quality-of-care outcome to improve in the next year. The law then required them to craft their own strategy for improving it. A little study was mandated to monitor improvement (Braithwaite et al. 2007). This allowed even homes with low managerial self-efficacy—because everyone knows they are bottom-feeders of the industry—to build their collective efficacy by excelling in something (Jenkins 1994). On that challenge, they can become role models of why everyone can improve on that particular regulatory standard. In the best responsive regulatory systems, every firm is motivated to become a champion in something, dragging up the standards of the laggards across the industry on that outcome. Sporting coaches understand the virtue of having their weakest player set some new benchmark for the team in the gym.

The paradox of the pyramid is that by being able to escalate to tough responses at its peak, more of the regulatory action is driven down to the deliberative base of the pyramid (Ayres & Braithwaite 1992, chapter 2). Braithwaite (2002, pp. 106–9) argues that escalating up to deterrent sanctions often makes things worse before they get better. One reason is that punishment, according to responsive regulatory theory, simultaneously increases deterrence and defiance (**Figure 2**). At low levels of punishment, defiance is likely to exceed deterrence. **Figure 2** expresses this as the resistance effect exceeding the capitulation effect at lower levels of coercion. The dotted line is the net compliance effect represented as a sum of the resistance score and the capitulation score. Only when punishment bites very deeply near the peak of the pyramid, resulting in many giving up on resistance, does the deterrence effect exceed the defiance effect. Yet one reason that escalation only as far as lower levels of the pyramid often elicits compliance is that the first step up the
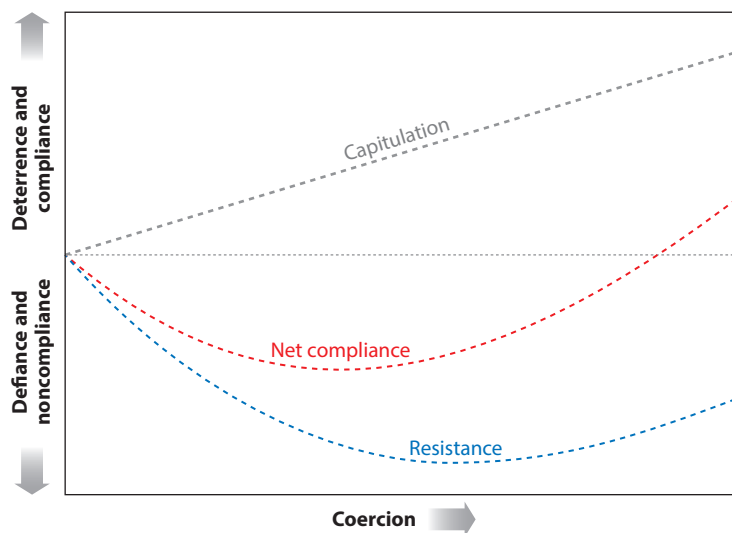

Figure 2

Effect of coercion on compliance as the net result of a capitulation effect and a defiant resistance effect based loosely on experiments summarized by Brehm & Brehm (1981) and subsequent research (Rains 2013).

ladder is a signal of the regulator's willingness to redeem its promise to keep climbing until the problem is fixed. Put another way, the first escalation becomes a wake-up call that engages senior people to ponder a slippery slope.

Hence, the redundancy idea of the pyramid can remain valid even when defiance effects of punishment initially exceed deterrence effects. The redundancy idea is that all regulatory tools have deep dangers of contextual counterproductivity. Therefore, a mix of regulatory tools should be deployed. The best way to do so is dynamically, so in sequence, the strengths of one strategy are given the chance to cover the weaknesses of another.

Risk of defiance exceeding deterrence is one reason that the peak of the pyramid should be threatening in the background but not threatened directly in the foreground. Making threats increases defiance, turning the defiance curve in **Figure 2** more steeply downward. How, then, can regulators be threatening in the background without making threats? One way is by being transparent that the pyramid is the new policy in advance of escalating for the first time. Responsive regulators want the industry to be open with them, and they want to convince the industry that openness with them pays. Empirically, openness with street-level inspectors pays (Rickwood & Braithwaite 1994). Inspectors must be the change they want to see by communicating openly with stakeholders. More than that, they do best to include the industry and other stakeholders in their pyramid design processes. This is of a piece with Pennell & Burford (2000) embracing families in restorative processes. Pyramid design workshops that are inclusive of the industry, the regulator, and community organizations that are critics of both can improve outcomes even in advance of a pyramid being deployed. At the regulator's pyramid design workshop, when the three kinds of players describe the pyramid of escalations they would plan to deploy in response, all three begin to see that they are likely to be better off playing at the base of the pyramid. So with a challenge like the regulation of sex work, the regulator and the industry listen to a community organization (such as a sex worker's union) saying they will escalate to a complaint to the minister, then a press release, then a broad-based community campaign if confronted with captured regulation. Industry says if it faces vexatious enforcement it will escalate to complaints to politicians, to a media campaign, or to funding opposition political parties. Participating in a collaborative design workshop of what would be a reasonable pyramid for the regulator to deploy can dampen defiance effects in **Figure 2** because the industry is more likely to perceive that they agreed to the escalation that occurs.

Second, if the pyramid has been designed collaboratively, the regulator will not need to make threats because the pyramid has been constituted as threatening by the process of the collaborative design workshop itself. The regulator simply redeems the promises of the pyramid and the workshop. Threats are not needed; escalatory action is needed if noncompliance persists. Restrained reminders that this is an example of the kind of conduct we must monitor until it ceases are also important.

Unfortunately, there has been no random assignment of regulatory agencies, individuals, or regions to regulate responsively compared to control regulators who follow some more standardized prescriptiveness. We have much less persuasive evidence of, for example, a single regulator, the Australian Taxation Office, moving from a nonresponsive to a responsive approach to regulating profit shifting by multinational corporations and collecting a billion dollars more tax in the post(responsive) versus the pre(nonresponsive) period (Braithwaite 2005). Valerie Braithwaite tried in vain to persuade that regulator to randomly assign companies to the pyramidal versus the standardized approach. Alm et al.'s (2020) alternative method was to simulate effects of responsive regulation with a novel agent-based model applied to 33 European economies. They concluded with qualified optimism that the simulation reveals that responsive regulation explains reduced tax base erosion via evasion and avoidance better than narrower economic models do. One big

qualification is that this form of responsive regulation cannot work without combining both international cooperation and domestic adjustments.

Van der Heijden's (2020) meta-review of a mix of qualitative and quantitative evaluations of responsive regulation found a positive effect of responsive regulation in eight settings, no effect in one, a negative effect in six, and effects in nine others that were qualified or context specific. So van der Heijden's astute, underwhelming conclusion on whether responsive regulation works was, "It depends."

Beyond these studies, quantitative evidence based on comparisons with controls has become stronger that a responsively mixed set of strategies can be much more effective than a single punishment or persuasion strategy. Choi et al. (2016) tested the effectiveness of the historical construction between 1992 and 2006 of the Australian Securities and Investment Commission's (ASIC's) responsive regulatory pyramid. They showed that as successive reforms progressively equipped ASIC with new layers of more varied arrows in its law enforcement quiver, the effectiveness of enforcement progressively increased. A difference-in-difference analysis (to mimic experimental design), with the impact of New Zealand securities and financial market regulation as a control, reinforced this result. Choi et al. (2016) were interested in the effectiveness of securities regulation in making markets more transparent to investors, and therefore more efficient and less prone to artificial bubbles that burst. Did regulation produce an improved information environment and market liquidity? Choi et al. measured the impact of financial disclosure regimes by variables such as reduction in financial analysts' forecast errors, forecast dispersion, bid–ask spread, and increase in the turnover rate from the market liquidity test. ASIC budget and enforcement intensity (measured by prosecution counts) helped analysts to reduce forecast errors for future profits. The responsive regulation effect more strongly increased predictive accuracy over and above those impacts on the transparency of markets. The leverage was formidable, with an Australian sample of 148,498 firm-month observations, plus 116,585 for New Zealand (with each observation based on the median for a number of analysts).

Choi et al.'s (2016) research has the strength of a multiconstruct, multimethod move to a pooled time-series, cross-sectional analysis of all major corporations in an economy on an outcome that securities enforcement is designed to deliver. Then it was combined with a difference-in-difference analysis of two whole economies. It delivers a larger *n* of observations than law and social science research normally can manage.

Schell-Busey et al. (2016) completed the most comprehensive review of vast literatures on corporate deterrence, or at least that subset of it that met the standards of a Campbell Collaboration meta-analysis. They found no evidence for the effectiveness in reducing crime of any single measure of corporate deterrence. Like Choi et al. (2016), they did find regulatory effectiveness in a mix of different forms of punishment and persuasion:

> Our results suggest that regulatory policies that involve consistent inspections and include a cooperative or educational component aimed at the industry may have a substantial impact on corporate offending. However, a mixture of agency interventions will likely have the biggest impact on broadly defined corporate crime.... Single treatment strategies.... have minimal-to-no deterrent impact at the individual and company levels. However, studies examining multiple treatments produce a significant deterrent effect on individual- and corporate-level offending. Mixture of agency interventions is apt to have the biggest impact. (Schell-Busey et al. 2016, pp. 387, 401)

Braithwaite (2016b) considered evidence that if Schell-Busey et al.'s (2016) outcomes had been broadened beyond reducing crime to reducing workplace deaths, reducing environmental protection, and like outcomes more commonly and importantly measured in policy literature,

Schell-Busey et al.'s conclusion about the effectiveness of a mix of strategies is even more convincingly affirmed.

The imperative now is for research that tests small elements of that approach, and several of them in combination, such as the proffering of praise (Makkai & Braithwaite 1993), eliciting of pride (Ahmed et al. 2001) or trust (J. Braithwaite 1998, Murphy 2004), building of self- and collective efficacy (Jenkins 1994, Sampson et al. 1997), open communication (Braithwaite 1985), eliciting of responsive motivational postures (V. Braithwaite 1995, 2009), engagement of third parties such as unions in safety regulation (Braithwaite 1985), proffering of procedural justice and restorative justice (Braithwaite 2002, pp. 78–79; Makkai & Braithwaite 1996), reintegrative shaming and avoidance of stigmatization (Makkai & Braithwaite 1994a), movement in tit-for-tat fashion between one level of a pyramid and the next (Nielsen & Parker 2009), and projection of deterrence from the peak of a pyramid (Braithwaite & Makkai 1991, Makkai & Braithwaite 1994b). The ultimate conclusion of this article is that these kinds of evidence on what helps at different layers of the pyramid are of growing importance now that there is some empirical basis for encouragement with a restorative and responsive meta-strategy. This is because to a degree it is self-evidently true that if we stick with a problem by trying one prevention strategy after another until the problem disappears, we have caused the problem to disappear—only a degree of truth, as I now explain.

Eck (2002, pp. 108–9) considered how evaluation designs with weak internal validity for small-scale crime prevention interventions can work well enough:

> They need to be sufficiently rigorous to show that the problem declined following the intervention, but they need not eliminate all rival hypotheses. Indeed, there can be a great deal of doubt as to what exactly caused the decline in the crime. Simple, pre-post and short time-series evaluations that take into account the most likely rival hypotheses...provide sufficient evidence to make decisions about the program [and inform] the way practitioners normally learn from experience. How good is good enough? Hints as to how we can proceed come from civil engineering and the construction of one-of-a-kind structures. Counting the number of bridges standing and comparing this to the number that collapsed, for example, does not make for success in bridge construction. All we know for certain about standing bridges is that they have not fallen, yet. Rather, there is heavy reliance on theories of physics and materials, plus preimplementation analysis and planning, coupled with evaluations of catastrophic failures.

To this, we might add monitoring for evidence of stress, such as cracks, and simulation of effects of new stressors—then trial-and-error repair. With such contextually responsive intervention, our interest is in sticking with the problem until it goes away. In the end, we might not quite understand why one of our trial-and-error interventions worked. Indeed, our initial theory may have been flawed; the success of the intervention might delude us into thinking we had a good theory. Even so, the hypothesis is that trial and error grounded in a theory that seems to have worked in the past, in a body of practical experience, yet also grounded in a responsive analysis of the context by actors close to the street, succeeds more often than a guess. Listening and learning helps spread news of types of interventions associated with a problem disappearing in the past. That makes an intervention worth considering for insertion into a future pyramid. But because we do not fully understand the causal mechanisms that made it work, if indeed it has worked, we do not assume it will work in the future. So we hedge its promise with other layers of the pyramid that hold out different theoretical bases for their effectiveness.

When an intervention is proposed that the evidence suggests makes things worse, we want to hear from experts during the deliberative process who argue against deploying this strategy. Evidence-based theories provide an array of generative metaphors to guide disparate, redundant

attempts to improve things through varied approaches that evidence suggests can be encouraging in some contexts. When we escalate through three different levels of the pyramid that fail to fix the problem and then to a fourth, after which the problem stops, we do not know if what happened at the fourth rung was a cumulative accomplishment of the three rungs below, or if what we did at the fourth rung undid damage done at the three lower rungs. All we have is a theoretically informed process of monitored trial and error. Engineers fixing bridges, clinicians healing patients, and regulators preventing pollution are not science-free zones; they are zones where both science and systemic wisdom count when grounded in street-level responsiveness.

METHODOLOGICAL CHALLENGES

The evidence is convincing that both restorative justice and responsive regulation can help as regulatory strategies. At the same time, the evidence is not there for the view that these strategies are consistently effective. This pattern likely will persist even as empirical evidence illuminates the limits and strengths of restorative and responsive regulation. Why is this?

First, they are meta-strategies of regulation whereby regulation is conceived broadly as steering the flow of events (Parker & Braithwaite 2003). By my theoretical lights, and in the literature reviewed here, restorative and responsive regulation are as relevant to micro behaviors, such as bullying in schools or workplaces; to intrafamily relationships; to intermediate forms of regulation, such as the regulation of gangs that engage in crime, of small businesses paying taxes or complying with environmental laws; and up to the macro regulation of commanding heights of capitalism, global financial crises, and regulation of warfare. But they are unlikely to be relevant to all problems. Reviews of the evidence for the effectiveness of meta-strategies can be systematic only if they are focused.

The Campbell Collaboration review suggests that restorative justice may be more effective when it is integrated with courtroom justice (Strang et al. 2013). The evidence is very preliminary on this, however. The Canberra results suggest that sending a case to restorative justice sharpens the deterrent threat of a future court case (Braithwaite 2018). The dawning has been slow for deterrence theory that the kind of dynamic deterrence responsive regulatory escalation can deliver is superior to the static deterrence of criminological and economic theory (see Braithwaite 2018, Kennedy 2009, Kleiman 2009).

So we need reviews of the evidence for the effectiveness of restorative and responsive regulation on something as focused as small business tax compliance, as Valerie Braithwaite began to assemble through 100 working papers of the Centre for Tax System Integrity.[2] Limited systematic empirical work of that kind has been done across the myriad of more focused topics. And little work has compared alternative iterations of integrated suites of strategies, as opposed to experiments with one-shot strategies.

Even at that level of enhanced focus, the most useful kind of research is on the effectiveness of different kinds of rehabilitative or preventive strategies that might be selected for integration into a sequence of restorative circles for serious repeat offenders. Restorative justice and responsive regulation are strategies for choosing multidimensional dynamics for solving problems. As already explained with respect to restorative justice, getting the meta-strategy right for the selection of strategies matters, but so does the success of the approaches selected. The same is true of the wisdom of each of the strategies deployed at different layers of a regulatory pyramid. If restorative

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[2]See the collection here: **http://regnet.anu.edu.au/research/centres/publications/Centre-for-Tax-System-Integrity-(CTSI)**.

justice and responsive regulation are applied to particular problems with frequent agreements to do things with empirical support, then these meta-strategies should be potent in reducing those problems.

CONCLUSION: LOOPS OF RESTORATIVE AND RESPONSIVE LEARNING

One conclusion is that restorative justice is as much a responsive practice as responsive regulation and restorative and responsive practice are each a constitutive part of the other. Restorative and responsive justice listens to the wisdom of stakeholders regarding what should be done about a problem of which they have contextual experience. It follows up through monitoring by stakeholders themselves as to whether interventions are working. Ideally, a celebration circle is convened when an agreement is completed. It is a strategy that is responsive to complexity and to changing regulatory environments and flux in regulatee responsiveness. The response that issues is therefore flexible, multidimensional, and layered into one strategy tried after another. Some of the responsively chosen strategies prove counterproductive, whereas others reflect brilliant contextual problem solving by stakeholders. Outcomes depend on the wisdom of the substantive choices at different layers of the pyramid.

More profoundly, restorative and responsive regulation is a meta-strategy that assumes most approaches fail in most circumstances of their application. Business meta-strategy for becoming more innovative has invoked this prescription with guidelines like "fail fast, learn fast, adjust fast" and "try, learn, improve, repeat." Even strategies strongly supported by systematic reviews, as we know from drug therapies in medicine, can fail more often than succeed in practice, because doctors do not get the diagnosis quite right, do not get the dosage quite right, or get the dosage right but the timing wrong, or forgetful patients take the wrong dose at the wrong time. Sure, doctors need to be knowledgeable scientists, but they must also be diagnostically competent at failing, adjusting, and learning. Clinical method improvement must complement improved science.

In assuming that practitioners of and stakeholders in regulation choose ineffective strategies most of the time, that side effects like self-harm can be more important than a treated problem like crime, responsive regulation amounts to a policy prescription for how to keep trying new strategies in response to recurrent failure. Just as the way to test the effectiveness of clinical methods is not to evaluate the impact of one visit to the doctor but to evaluate a sequence of clinical encounters that iterates to interventions that work, so we should evaluate restorative justice at the level of a sequence of circles rather than the impact of just one circle (as evaluation does currently). Likewise, the best way to evaluate a restorative and responsive meta-strategy is to test the impact of iterated moves up and down a regulatory pyramid rather than one intervention at one layer of a pyramid. Improving the quality of the deliberative interface between experts who know what the research shows and street-level stakeholders with the ability to contextually attune and deliver strategies is one key to a future in which evaluation of meta-strategies might show progressively larger effects.

Just as it is self-evident to some degree that clinical medicine must try-fail-adapt-learn, so it is with regulatory strategy. Equally, it is hardly controversial that regulation is normally better as a street-level practice of inspectors than as a desk audit. Social science meta-analyses across diverse domains confirm the value of accomplishing frontline contextual wisdom in the meta-strategy of responsively selecting strategies. If law and social science scholars accept that, then we can get on with the work of populating regulatory pyramids with improved suites of regulatory mixes. Ultimately, this view abandons search for the most evidence-based single strategy, the optimum level of deterrence according to law and economics dictates, or any such holy grail in favor of improving the average quality of the suite and diversity of strategies that can cover the weaknesses

of one with the strengths of another. Improving the deliberative quality of strategy selection is vital to this. Research is needed on which restorative justice innovations constitute the future promise of responsive regulation, as in the work of Pennell & Burford (2000; Burford et al. 2019).

We could therefore give a tautological answer to the question of whether responsive regulation works. Of course it works to stop using a strategy when it fails and then replace it with another that the evidence and contextual diagnosis suggest is more likely to succeed. Yet this may be wrong, because had we stuck with the strategy that was failing, it might have been given time to work. Triple-loop learning is the responsive regulatory approach to listening and learning about such mistakes (Parker 2002). So a wing of a nursing home sticks with a particular kind of infection-control strategy for longer than has occurred before and completely eliminates formerly common infections on its wing. In the second loop of learning, every wing of every home in that chain of homes eliminates infections by sticking with that intervention. In the third loop of learning, a regulator sends out an advisory commending this lesson to the entire industry, enabling a fourth loop of learning, where lessons spread from society to society, firm to firm, and across the world. A fifth loop is practice leading theory development, when researchers randomly assign nursing home wings to the intervention.

Restorative and responsive justice is an approach that takes all five of these loops seriously in an integrative approach to evaluation. Scientific myopia ossifies justice imaginations at the fifth loop. Focusing quantitative evaluation on some narrowed and static conception of intervention across a whole system can help us to try-fail-adapt-learn, but less so than when this fifth loop is integrated with the four prior loops of learning through monitoring (Sabel et al. 2018).

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Contents

Indexes

Errata

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