Preface

The ambitions of this study were to be a sustained and systematic comparative study of regulation and to make a fresh contribution to regulatory theory. Chapter 1 shows that the data collection was unusually comprehensive and sustained over a long period. Chapters 2–6 summarize the data for the United States (US), then England, then Australia. While the data collection was considerable in the 1980s, 1990s and 2000s for all three cases, it was most thorough for Australia in the 1980s and 1990s. Because these Australian data have been extensively written up in two dozen previous publications, this book concentrates on data that have never been published before, especially from the United States, but also from the United Kingdom (UK) and the latest unpublished data from Australia. All but three of the chapters have resisted the temptation to rehash these previous publications. Chapters 3 and 7 are exceptions that incorporate some substantial reliance on Braithwaite (1994), though most of their content is new, introducing more recent data. Chapter 8 has adapted a number of ideas from John Braithwaite (2002c). The fact that we refer to the findings of our previous published work from this study rather than rehash them means that there is an embarrassing amount of self-citation and citation of work of our colleagues.

Part II – Chapters 7–10 – develops the theoretical contribution of the project inductively from the empirical material in Part I. The theoretical contribution of Chapters 7 and 8 is to develop the idea of regulatory ritualism, to show how pervasive and multidimensional a problem it became with the rise of regulatory capitalism since the 1970s (Levi-Faur 2005, 2006). Ritualism means acceptance of institutionalized means for securing regulatory goals while losing all focus on achieving the goals or outcomes themselves (Merton 1968). Our theoretical interpretations also owe a lot to Michel Foucault because we find many of the regulatory rituals that have grown are rituals of discipline that oppress vulnerable actors. Our intellectual style is not nihilistic. In the face of a rising tide of regulatory ritualism, we document actors at many levels of the regulatory game effectively resisting and transcending ritualism. Our text abounds with stories of inspiring activism to transform aged care, advancing freedom as non-domination (Pettit 1997) and improving quality of care.

While aged care is a massive problem in its own right, we hope our data will prove of some relevance to other arenas where health-care workers

such as nurses toil (for example, hospitals) and social carers (for example, child care and care of the disabled). And we hope it makes some contributions of general relevance to the study of regulation and governance.

A fundamental theoretical contribution, induced from our empirical work, was Valerie Braithwaite's idea of motivational postures. Her postures of resistance, game-playing, disengagement, capitulation and commitment have informed a new policy analysis of regulatory responsiveness, especially in the domain of tax policy in Australia and New Zealand, but in other nations and arenas too. In Chapter 9, the motivational postures are deployed to develop a response to regulatory ritualism in aged care. This book is the first of a trilogy of Regulatory Institutions Network (RegNet) contributions with Edward Elgar. In the next year another will be completed by Valerie Braithwaite that builds on the motivational postures work herein, entitled *Defiance in Taxation and Governance*. And John Braithwaite will be producing a book entitled *Regulatory Capitalism* that further develops the theme of the current book.

Finally, Chapter 10 develops the idea of 'the new pyramid' – a strengths-based pyramid that is linked to a regulatory pyramid. Judith Healy (2007) is further refining the idea in wider arenas of health regulation of complementing 'pyramids of sanctions with pyramids of supports'. We like Malcolm Sparrow's (2000) prescription of 'pick important problems and fix them'. But we conclude this is better accomplished when nursing homes also 'pick strengths and expand them'. Chapter 10 argues, relying heavily on the English data, that pyramids can work better when they network escalation. Single strands of control tend to snap, but networked webs of control can be resilient. The conclusion then seeks to rise to the challenge of integrating normative and explanatory theory to show how webs of control can be crafted to expand freedom by controlling domination. In addition, the linking of networked strength-building to networked regulatory control through the new pyramid can deliver us an empowering regulatory strategy. It does this in conditions of a least likely case of empowerment (the frail aged). We also show how the project of empowering clients is linked to the improvement of the oppressed working conditions of base-level service delivery staff whose numbers have exploded in conditions of regulatory capitalism. They are much more shockingly exploited and disciplined than the factory workers of industrial capitalism, especially in the United States. The frail aged can and do find strength in helping others, including their impoverished care workers; care workers can and sometimes do find strength through new career trajectories of excellence in helping the frail aged.

Chapter 10 also seeks to advance the epistemology of regulatory science. Nursing home regulation allows quantitative measurement of compliance

with higher reliability (for example, inter-rater reliabilities from .93 to .96) and response rates (for example, response rate of 96 per cent for chief executive officer [CEO] interviews) than can be found elsewhere in the regulatory literature (Braithwaite et al. 1991). Nineteen different reliability and validity tests on our Australian data included a correlation between state-assessed and self-assessed compliance of .88 (Braithwaite et al. 1991). Chapter 7 suggests how this was possible because of the design of Australian regulation. Many multivariate analyses were run based on two waves of data collection from very different kinds of actors on different sides of the regulatory fence in Australia. Unlike our RegNet collaborations at the Australian National University (ANU) on tax compliance and restorative justice, we were unable to launch randomized controlled trials on the effects of regulatory interventions. But the health sector is more rich than any other in randomized controlled trials on a number of the regulatory questions of interest to us. We have been able to draw this rigorous work by others into our analysis.

While our epistemology values these kinds of quantitative analyses on representative samples, it also values triple-loop learning (Parker 2002) from accumulations of semi-quantitative root cause analyses on small, unrepresentative samples from highly specific contexts. Attending to this work helps us learn how to learn to do better at the governance of health and social care. Finally, we must learn how to be better clinicians who diagnose regulatory failure on an N of 1. This is important, we argue, because the world is too complex for much of it to be known or knowable by quantitative, deductive science. Our new pyramid model is also part of an epistemology of how to do a regulatory science that combines ethnographic research with high-brow and low-brow quantification to grapple with a world of complexity.

Early on David Ermann, Diane Gibson, Ann Jenkins and Debra Rickwood joined this project, made great contributions to the Australian data collection in particular, and published many extremely important works from the data during the 1990s. Readers will find numerous references to that work throughout the book. Heidi Fisse played a particularly important role in organizing the most challenging aspects of the data collection in the early 1990s. Others who made major contributions to data collection in the 1980s and 1990s were Jon Collins, Coralie Friend, Joan Hoare, Steven Jones, Miriam Landau, Malcolm Mearns, Ygtaka Shimizu and Nancy Walke. In the current decade we leaned heavily on Leah Dunn for research assistance.

The authors and their co-authors from earlier eras of the project were supported by a variety of employers across these decades. Two deserve special mention. We thank the Research School of Social Sciences at the

Australian National University and its five Directors since the time this project was conceived. John Braithwaite was at the time of writing the longest-serving member of that School, though Valerie Braithwaite has worked much longer for ANU. Toni Makkai won an Australian Research Council postdoctoral fellowship to join the project. She is now Director of the Australian Institute of Criminology. The opinions expressed in the book do not necessarily reflect the policy positions of the Institute or the Australian Government. Many colleagues in both the old and the new Coombs building, where the Regulatory Institutions Network is located, have sustained us intellectually during the long journey of this project. Single ideas in this book bear the hands of a number of different RegNet colleagues. Philip Pettit, David Levi-Faur and Peter Drahos deserve special mention, however. The American Bar Foundation was more than just one of the important funders of this research; it was a splendidly gregarious, kind and intellectually stimulating environment for us when we were undertaking our US fieldwork and introduced us to the influence of Ian Ayres. The other funders deserve our sincere thanks. They are the Australian Research Council, the Australian Department of Health, Housing and Community Services, the Australian Commission on Safety and Quality in Health Care, the Florida Department of Health and ACT Health. The greatest thanks should go to the many residents, staff, proprietors and nursing home regulatory officials whose conversations and insights drive any value this book might have.

Our special gratitude to the following colleagues who gave of their time to comment on draft chapters: Gabriele Bammer, Murray Batchelor, Mark Brandon, Kevin Bryant, Ross Bushrod, Lawrence Cram, David Crosbie, Paul Dugdale, Chris Falvey, John Finnegan, Judith Healy, Timothy Jost, Tina Magennis, Pascal Perez, Elizabeth Pringle, Carolyn Scheetz, Clifford Shearing and Kieran Walshe.

Now some notes on terminology. We try to make comparisons among cases easier by using common terms cross-nationally where we can. So we call nursing home inspectors what Americans today call 'surveyors', Australians call 'assessors' and the British call 'inspectors'. Even though we know this will aggravate Americans and Australians, 'inspectors' is the term we chose because, at some period of the history of this project, all three nations used the term 'inspector'. While all nations started out calling clients of nursing homes 'patients' at the beginning of this study, and the English today prefer 'service users', we use 'residents' because that is the term used in the other two nations today and in all three for most of the history of this project. 'Nursing homes' itself is a term falling out of official favour today in Australia and the UK, even though it remains widely used in practice. While ageing in place is eroding once clear distinctions between

‘nursing homes’ and ‘hostels’/‘care homes’/‘assisted living homes’, our core meaning of ‘nursing homes’ as residential homes for the aged that supply geriatric health-care services retains considerable meaningfulness.

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