Preface

In the 1990s people started recognizing that while the state was running fewer things, it was regulating more of them, and spending ever higher proportions of its budget on regulation. So some analysts (including me) started talking about the state as a regulatory state. Then it was recognized that many other organizational actors beyond the state were also doing a lot more regulating of other organizations than in the past, so some analysts (including me) spoke of a regulatory society. Along came David Levi-Faur and Jacint Jordana to point out that capitalist markets had become more vibrant at the same time as regulation of markets had become more earnest.

Not only did they coin a term, ‘regulatory capitalism’, that better captured the realities than the ‘regulatory state’ or ‘regulatory society’, they also produced a large body of cross-national data on the global expansion of privatized markets and regulatory institutions. David’s foreword to this book gives the flavour of these data. At the Australian National University (ANU) we established a Regulatory Institutions Network to study this phenomenon. David Levi-Faur joined us as a Faculty member for a period, Jacint Jordana as a Visiting Fellow. They proved delightful and stimulating members of our intellectual community. David proposed that we start a new journal called *Regulation & Governance*, which we set up with Cary Coglianese as a Co-editor and Jacint Jordana as a member of the Editorial Board.

We said in the promotional blurb for the new journal: ‘Research on regulation and governance, once fragmented across various disciplines and subject areas, has emerged at the cutting edge of paradigmatic change in the social sciences.’ The notion that the kind of globalizations that had evolved by 1980, the kind of societies we now live in, are regulatory capitalist, rather than neoliberal or welfare states, is an example of the kind of reframing of social science agendas this new field is stimulating. The long journey of Western history of the past millennium is from feudalism to regulatory capitalism (so far), with liberalism, neoliberalism, the welfare state, fascism and communism all re-theorized herein as significant side-tracks of modest duration within that long history of the West.

With the exception of three decades of Chinese communism, these are Western sidetracks that the South and East have not followed in long or

large ways. Levi-Faur and Jordana's work shows graphically (for example, Figures F.1 and F.2) that regulatory capitalism in contrast is something that in its first three decades has expanded remarkably rapidly beyond the West. Chapter 2, for example, discusses how waves of scandal and reform on Wall Street create large ripples of regulatory reform in China. Obversely, while Asian financial crises do not ripple much reform back to the West, in the regulatory capitalist era, unlike previous eras, they do at least ripple regulatory reform right across Asia. Most villages in Africa and New Guinea may be almost totally cut off from this globalizing phenomenon as sites of production, but not of consumption and trade. Hence, Africans and New Guineans have potentially much more to gain than Europeans from the globalization of open-source biotechnology as considered in Chapter 5 because their health and productive systems are the most vulnerable to decimation by the globalization of disease in forms such as HIV-AIDS.

While the globalization of business regulation has a long history (Braithwaite and Drahos 2000), in domains that are central to the constitution of networked knowledge capitalism, such as competition policy and intellectual property regulation, most of the globalization has occurred since 1990. The majority of the world's states have only begun to take the enforcement of competition law and intellectual property law as institutional priorities since 1990. *Global Business Regulation* (Braithwaite and Drahos 2000) was a book that attempted to explain *how* what we now call regulatory capitalism globalized through a variety of mechanisms such as modelling. This book does not return to that full story; rather, it seeks to identify some patterns in regulatory capitalism and what they imply for how we might struggle to make it work better.

The traditional social science disciplines are not well prepared to come to grips with globalizing networking because of their preoccupations only with geographically bounded national societies, or political systems, or economies, legal systems, business systems, philosophical systems, cultures and identities, macro-international relations, micro-individual action or individual psyches. We must draw on all of these and more to understand regulatory capitalism. It has an ecology of patterned niches. It has an evolutionary history, codes and architectures, including micro-codes that may not be molecular, rather values and motivational postures that are recurrently patterned in response to regulatory institutions (Braithwaite 2008). Integration of knowledge at this level is not the way of the social sciences, yet it is the way the organization of scholarly communities in the biological sciences has accomplished huge strides in recent decades.

Regulation has certainly proved a rewarding field of research for me. It has attracted many inspiring PhD students and postdoctoral fellows. My passion for the subject must be pathological, as I notice that of the small

number of really close friends I have, the majority are my co-authors of books on regulation! I have enjoyed so much learning and love from them. Now I have decided to get a life and instead dedicate myself to fieldwork and books on peace-building (albeit that draw on regulatory theory!). Twenty-five years ago I wrote in the preface to a book that this would be my last book on regulation or crime. I moved away from the world of research and teaching to take a position in the Australian consumer movement, which I found most rewarding. But Valerie Braithwaite, who always seems to have a better understanding of where I am heading than I do myself, insisted on the deletion of this last book reference. This time Val has not censored the Preface, so it really will be the case that any future books will be on peace-building. I therefore have used this book to pull a lot of my work together as a small contribution to the rich conversation on regulation that now abounds in the universities of the world.

Some pages and bits of pages have been taken here and there from previous work. There is an amount of self-reference at which more humble scholars would shudder in shame. The works I have most drawn upon are:

- Braithwaite, J. (1984), *Corporate Crime in the Pharmaceutical Industry*, London: Routledge & Kegan Paul.
- Braithwaite, J. (2002), *Restorative Justice and Responsive Regulation*, New York: Oxford University Press.
- Braithwaite, J. (2004), 'Methods of power for development: weapons of the weak, weapons of the strong', *Michigan Journal of International Law*, 26(1), 298–330.
- Braithwaite, J. (2005), *Markets in Vice, Markets in Virtue*, New York and Sydney: Oxford and Federation Press.
- Braithwaite, J. (2006), 'The regulatory state?' in R. Rhodes (ed.), *Handbook of Political Institutions*, Oxford: Blackwell.
- Braithwaite J. (2006), 'Responsive regulation and developing economies', *World Development*, 34(5), 884–98.
- Braithwaite, J. (2007), 'Contestatory citizenship; deliberative denizenship', in G. Brennan, R. Goodin and M. Smith (eds), *Common Minds: Essays in Honour of Philip Pettit*, Oxford: Oxford University Press.
- Braithwaite, J., T. Makkai and V. Braithwaite (2007), *Regulating Aged Care: Ritualism and the New Pyramid*, Cheltenham: Edward Elgar.

But this is not just, not mainly, a book that synthesizes an old body of research in a new way. No chapter has been previously published and every one of them is mostly a fresh contribution to the new theme of regulatory capitalism. I really am grateful to David and Jacint for how I have been stimulated and energized by their way of seeing contemporary

globalization as on a trajectory towards regulatory capitalism. Indeed, I am grateful for the stimulus from the whole wonderful community of scholars who have passed through ANU over the past few decades. That community has been strewn with fine human beings and fine minds. In specific chapters, I acknowledge individual appreciation that is due to many of them. Special thanks to Leah, Celeste, Brian, Val and the family for their day-to-day kindness, tolerance and support, to Peter and Jean for being so careful with the references and indexing, and to Edward Elgar and all of his helpful and professional staff, particularly Caroline Cornish and Alexandra O'Connell. Without the Australian Research Council, the work would not have been possible. Without my University of Tasmania colleague Dianne Nicol, and my RegNet colleague Janet Hope, Chapter 5 would never have happened.

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