

EDITORIAL

Fugitive pieces

Gale Burford*

Fugitives from (in)justice; quick to disappear, fleeting; openness to possible meanings; fugitive print—loose scraps, detached fragments, burned books, and encoded secrets, concealed in memory—and fugitive figures—subversive citizens, political exiles, queer aristocrats, runaway slaves, and amateur poets, decolonizing knowledge production.¹

1 What stories of justice does this time and place tell if we listen?

In February of this year, over 300 participants² came together at the University of Mānoa, Hawai'i, home of the East-West Center for Cultural and Technical Interchange, to participate in the *Justice innovations summit*. The gravity of the summit being held in such a global crossroads as Hawai'i, in that space, place and time, was, hopefully, not lost on most attendees; not to mention that we were gathering only months after the devastating fires on the island of Maui and only a week after the release of a report acknowledging the disaster as the 'worst natural disaster in Hawaii's history'.³ The loss of human and animal life and harms to ecosystem, physical structures and places of cultural significance is yet to be fully understood.⁴ Critics have since argued that the fires should be understood as part of the continuous, complex eco-climate catastrophes for Hawai'i, magnified by military harms and exploitation.⁵

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- 1 A composite definition that draws from Canadian authors Anne Michaels' (1997) book *Fugitive pieces* and Michael Nicholson's (2019) recursive approach to liberating new understandings through non-synchronous, that is, outside of chronological or linear ordering and reading of fugitive literature alongside published materials, and Amrita Mishra (2020) *'Fugitive' futures*.
- 2 Numbers supplied by conference organisers. Attendees came from Australia, Belgium, Brazil, Canada, Egypt, England, Germany, Italy, Japan, Nepal, New Zealand, Norway, Singapore, South Africa, Spain, Tanzania and the United States.
- 3 Maui Police Department Preliminary After-Action Report: 2023 Maui Wildfire, February 8, 2024. Retrieved from <https://www.usfa.fema.gov/blog/preliminary-after-action-report-2023-maui-wildfire/> (last accessed 23 May 2024).
- 4 Wikipedia 2023 Hawaii Wildfires. Retrieved from https://en.wikipedia.org/wiki/2023_Hawaii_wildfires (last accessed 23 May 2024).
- 5 US military activity in Hawai'i harms the environment and erodes Native sovereignty, July 26, 2022. Retrieved from <https://prismreports.org/2022/07/26/us-military-activity-hawaii-environment-native-sovereignty/> (last accessed 23 May 2024).

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Founders of the Center had a particular definition of crossroads in mind, when in 1960, a year after Hawai'i became a state, with the open wounds of Japan's attack on Pearl Harbor part of the daily consciousness, and a mere fifteen years after atomic bombs were dropped on the Japanese cities of Hiroshima and Nagasaki, the U.S. Congress established it as an education and research organisation whose mission 'is to strengthen relations and understanding among the peoples and nations of Asia, the Pacific, and the United States as part of Cold War diplomatic efforts', intentions easily appreciated as having restorative, even transformative global aims in mind.⁶

One particularly relevant and memorable evening at the Summit was organised around a traditional Hawaiian meal during which historian, composer and singer Dr. Jonathan Kay Kamakawiwo'ole Osorio, Dean of Hawai'i inuiākea School of Hawaiian Knowledge, brought to life through songs and presentation the history of the violent overthrow of the Hawaiian Monarchy, the extractive annexation of the islands, and the ongoing suppression of native Hawaiian culture, including traditional family-centred approaches to governance, conflict management and healing. The evening was an *affective experience*, of the kind said to be at the heart of the restorative justice project that holds healing from injustice, including crime, as its *raison d'être*. It sat well with the presence of delegations from Australia and New Zealand, both homes to universities recognised for leadership and research in governance and leadership, and in restorative justice.⁷ Along with other First Nation and Indigenous representatives, and a highly diverse range of attendees, these delegations contributed to a warm, accepting and deeply felt experience.

The homepage for the Summit⁸ indicated that it would be an international event where 'different disciplines including restorative justice, transformative justice, transitional justice, therapeutic jurisprudence, victimology, Indigenous peacemaking' would meet. Attendees were entreated to address in workshops, panels and keynote presentations questions such as the following:

How do restorative justice, transformative justice, therapeutic jurisprudence, transitional justice, Indigenous people's peacemaking practices, and victimology intersect and help create access to justice for people and communities?

What are the most effective applications of these different strategies for environmental protection and justice, schools, corrections, child and family services, domestic violence, gender violence and peaceful communities?

6 East-West Center origins. Retrieved from <https://www.eastwestcenter.org/about-ewc/origins> (last accessed 23 May 2024).

7 E.g. Australian National University School of Regulation and Global Governance in Canberra, Australia and the Te Ngāpara Centre for Restorative Practice at Victoria University of Wellington, New Zealand.

8 Justice Innovations Summit 2024. Retrieved from <https://justiceinnovationssummit.org/> (last accessed 23 May 2024).

How can the different justice innovations work together institutionally and systemically to create more lasting changes?

The organisers summarised their hope for the Summit in the following way:

we [ambitiously] aimed for a unique ‘SUMMIT’ experience, steering away from the typical transfer of knowledge we’re used to in standard conferences, creating new collaborations emphasizing the quality of our linkages and exploring ‘(K)new’ innovations - connecting & valuing differences in a place where boundaries blend, vision is extended, and provide us with an elevated space to find pathways to our preferred futures.

While the questions certainly stimulated my thinking before and since the Summit, it is quite impossible to imagine a tidy list of themes, even from the day-long pre-conference workshop I participated in, let alone the plenary sessions and the many individual workshops. What follows is a collage of my own ‘fugitive pieces’, some from the Summit, others from my ongoing file of queries, readings and notes of ongoing exchanges, all the while struggling to make sense of the shifting contexts and challenges justice-seekers everywhere face. As Summit II is already being planned, I end with reflections on how that event might build and expand from existing and developing networks of relations – kin-keeping, tending and making, if you will allow – and offer some questions and nudges.

2 Scaling injustice across time, space and contexts

As time passes, people, even of the South, will begin to wonder how it was possible that their ancestors ever fought for or justified institutions which acknowledged the right of property in man [sic] (Ulysses S. Grant (2012), 18th president of the United States).

This admittedly Americentric quotation crept back to me as I was preparing notes of takeaways from the Summit.⁹ I say Americentric even though the long march to abolitionism has global roots and far-reaching implications. For the United States, the failure to see the abolition project through is an open wound, a complex, unfulfilled project that poses profound questions about our capacity to summon levels of cooperation necessary to set things right. Grant penned the above reflection in his memoirs some twenty years after the official surrender of the Confederacy. His optimism is evident, the belief that at some point citizens would ultimately be united around the moral conclusion that enslavement and slavery were and are wrong. He acknowledges that the right to own a human being had been institutionalised, deeply embedded in laws, policies and practices, and that it would fall to future generations to come to terms with the dreadful realisations of

9 Braithwaite (2003) points out the inextricable and unique entanglements between slavery and the emergence of the American criminal justice system, in contrast to other Western criminal justice systems.

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their, our, ancestors' failings. This is an acknowledgment that can be understood as an opening for restorative processes that were insufficiently heeded, or, worse, rejected, a context we might now compare to current rejections of restorative efforts to change systems. Grant was unequivocal in his view that enforcement of the separation of church and state – including rejecting the idea of aiding church-sponsored schools – was vital to regulate if the nation was ever to fully realise its guarantee of 'equal rights and privileges for all men [sic], irrespective of religion or race'.¹⁰ This is a warning that rings loudly in the contemporary moment. The heavy lifting of remaking, reforming, reconstructing, regulating and perhaps dismantling some or part of those institutions is still before us. The experience of the Summit refreshed my questions of how our, my, descendants will regard our current moral choices and practices, as well as the justice innovations we came together to discuss. The conference organisers challenged us, and perhaps could have challenged us even more, in the words of one wise and dear Summit co-attendee, to move beyond the admittedly necessary work of awareness-raising and debate along values lines to focusing on capacity-building, especially the capacity to engage with each other in increasingly polarised contexts (Kleinfeld, 2023).

3 Of crossroad moments and right-sizing paradigm shifts

Grant was optimistic. He believed that moral clarity would emerge and serve to conduce civil society in united cooperation. The current resurgence of the Lost Cause narrative¹¹ surely puts to the test the capacities and limitations of justice innovations globally to engage with polarisation (Kleinfeld, 2023)¹² and to understand polarisation as a weaponised political strategy. Some legal scholars cogently argue that restorative justice is at a crossroads: hard choices need to be made, most immediately in educational settings, where restorative practices or innovations are faced with hostile, politicalised challenges (Cohen, 2022; González & Buth, 2019; González & Schiff, 2023).

Social work in the United States had a future-shaping crossroads moment that grew out of the ideological backlash from the McCarthy/Hoover 'Red scare' era¹³ of political fearmongering and suppression that wound down in the mid-1950s. But the damage was done. In most universities, the budding profession of social work shifted to a more generalist focus. Two of its previous methodological specialities,

10 Ulysses Grant Remarks at the Ninth Annual Meeting of the Army of the Tennessee in Des Moines, Iowa, September 29, 1875. Retrieved from <https://www.presidency.ucsb.edu/documents/remarks-the-ninth-annual-meeting-the-army-the-tennessee-des-moines-iowa> (last accessed 23 May 2024).

11 The Lost Cause of the Confederacy (or simply the Lost Cause) is a counter narrative claiming that the cause of the Confederate States during the American Civil War was just, heroic and not centred on slavery.

12 Thank you, David Moore, for bringing the Kleinfeld report and other relevant readings to my attention. And for your insightful conversation about them.

13 McCarthyism, or Hooverism or Red Scare: an era of political suppression in the United States characterised by induced moral panic, provoking fear of 'leftist' or progressive 'social' ideologies or practices. See https://en.wikipedia.org/wiki/Red_Scare (last accessed 23 May 2024).

social group work and social work with communities, largely disappeared, relegated to courses as opposed to methods. To make a deservedly longer, more nuanced, and complex story short, progressive, activist-minded social workers of the time had reached too far into issues such as ‘advocacy for the poor and oppressed, and support for politically unpopular positions (such as abortion rights and affirmative action today)’ (Andrews & Reisch, 1997: 212). The Jane Addams narrative of progressive, neighbourhood-based social work in the United States was relegated for the most part to ‘outside the system’ status, while a vast build-up of federal, state and other jurisdictionally centred jobs developed, the character of which we can now regard as services disconnected from the people they serve. For social work still jostling in those years for recognition as a distinct area of academic scholarship and research, as well as an emerging professional discipline, a crossroads moment ultimately separated the political movement from the drive for recognition as a profession and an academic discipline. What was thought to be a defining future that constituted a paradigm shift that would bring the country in league with Western European welfare states became an organised and determined political movement that aimed, and aims still, to eliminate federal entitlements, downsize government and strengthen states’ rights. Importantly, the movement is integrally connected with aims to dissolve the boundaries between church and state mentioned earlier. I would like to have heard more about how each of the justice innovations engages with such issues and how each addresses issues of scaling up and out in their host contexts, bearing in mind that increased visibility typically brings increased complexity and the potential for conflict.

4 The other R word, problems with binary thinking in a relational world, more on emergent fault lines naming and framing paradigms

The medical services would have been fine if it hadn’t been for all the casualties (attributed to a British politician defending the medical services in the Boer Wars).

In the final chapter of our edited volume *Restorative and responsive human services* (Burford, Braithwaite & Braithwaite, 2019), John and Valerie Braithwaite and I asserted that:

A theme of this book has been that restorative justice has little chance of resilience and scale of transformative potential when it stands alone. Either as an alternative to or an add-on to criminal justice, marginalisation remains its fate. We have seen that when it does scale up inside the criminal justice system, its empowerment and relational values tend to wither. While we support making restorative justice values more mainstream inside the justice system, the battle for its core strengths will be lost unless we also have a strategy for putting families, parenting and other primary group relationships as its core and at its front door across justice, health, education and other social welfare and social service settings (Braithwaite, Burford & Braithwaite, 2019: 210).

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Now, five years on, the evidence to support the assertions appears to be gaining strength, and not just for the reasons I would have predicted at the time we were preparing the volume. To be clear, the term ‘responsive’ in the title of the volume refers to ‘responsive regulation’, with regulation being the other R word, the one that so often causes people, especially in the United States, to bristle at the mere thought that anyone could exert influence alongside them, let alone to or for them. An important principle of regulation that is responsive is centring the needs of the persons, places, networks, systems, including ecosystems, being regulated. Being in relationship involves regulation, the exercise of influence, preferentially as co-influencers, but the exceptions to that line of thinking are too many and nuanced to explore here. While we see the widespread acceptance of restorative practices in one form or another by most of the justice innovations addressed at the Summit, we also continue to see examples of jurisdictions and sites pulling back, adapting in ways that undercut core principles for a variety of now familiar reasons, including the rapidly changing contexts of political polarisation.

The operative words in our assertion above are

have a strategy for putting families, parenting and other primary group relationships as its core and at its front door across justice, health, education and other social welfare and social service settings.

At one level, this implicates the relationships between such dominant paradigms as capitalism and the welfare state, which we argued live better together when they temper each other. Going too far in the direction of dominance by welfare is corruptible and is seen to undercut mutual aid, self-help, family and community agency. The dangers of unchecked capitalism probably, hopefully, need no elaboration for the readers of this journal. The long drive to dismantle welfare states, or, as is the case in the United States, to continue to perpetuate domination, is highly organised, politicised and violent (Dettlaff, 2023; Katznelson, 2013). Trust that institutions can continue to progress in the direction of freedom and democracy needs urgent building (Braithwaite, V. 2024; Samuels, 2023). If the institutions, including the law, policy and rule-making processes through the design, delivery and evaluation processes are not engaged with, and accountable to, the networks, cultures and lived experiences of the primary group relationships of their students, patients, clients, etc., they invite continued capture, and/or as we see, corruption by dominant interests. The assumption, along with empirical evidence, is that power and wealth game systems to secure and increase their own power and wealth (Braithwaite, 2024). Our warnings about the values withering as they scale up inside systems are largely about accountability and transparency and the absence of regulatory capacity at the metaphorical front door of institutions. Engagement with relational networks committed to reducing domination is a protective factor that needs ongoing renewal, refreshing and regulation by other partners in the regulatory, restorative mix. Engaging with relational networks is a lot of work. Already overworked teachers, social workers, hospital nurses, librarians and chief executive officers and janitors can be further swamped, and most likely resist, the demands of sitting in circles and attending to the contexts and

complexities of their relational worlds. Elders, parents, and community insiders are often exploited as the only people at the table who are not paid to be there.

We are not without good ideas, and experiences, about what human services committed to relational, restorative work can look like in schools, hospitals, emergency first responders, climate disaster and care for the elderly, and more; yet these approaches often wither or never make it to the community-building stage. Instead, removing a child from home, suspending a student, denying eligibility for a service or incarceration, exposure to temporary shelter arrangements, and worse, are the defaults in the face of unchecked political manipulation and market deregulation economics. Different stories emerge when systems are required to engage in accounting with groups, families and networked relations and listen to their experiences. Using a relational approach means engaging with existing networks of relations (Folgheraiter, 2004; Morris & Burford, 2009) who have lifelong investments in kin-keeping and kin-tending long beyond the state's involvement. Such practices speak to the core of using a relational approach in which the families and other groups in civil society are supported in developing their own capabilities and agency as networked actors (Bartels & Bencherki, 2017; Braithwaite, 2019; Burford, 2005) with vital roles to play in holding institutions to high standards and being held to high standards in meeting their own obligations.

The potentials for the 'restorative city', or other jurisdiction movements and activities like restorative inquiries, unarmed peace forces and violence interrupters, that could bridge formal and informal helping and engage with citizen participation, is a hopeful but as yet to be fully explored innovation. The danger, of course, comes if the restorative brand is beholden to funding constraints, public image constraints, or fails to build in rigorous approaches to self-interrogation and principled governance. Nor is engaging with groups and relational networks easy for people who have been schooled in 'individualized' approaches. Deep listening to a family group as they tell of their experiences with the 'system' can send unprepared workers in search of employment elsewhere. González and Buth (2019) and González and Schiff (2023) are right to raise alarms about what is happening in schools. It raises questions about how engaged schools and other organisations, such as statutory child and family services, are in their whole-school/organisation efforts to engage proactively with networks, in ways such as has been the case in Hull, England, through the Hull Collaborative Academy Trust¹⁴ or the George Hull Centre in Etobicoke, Ontario.¹⁵ Both have long used family group conferences that work to balance domination by any one or set of regulatory partners, and foster ongoing purposeful, not tokenistic, activities and dialogue with relational networks. Responsive regulation is what we do to enlist people in cooperating to meet their obligations and hold others to meeting theirs. Accounting, the process of being transparent, is more complex than simply the command-and-control notion of 'holding someone to account', although the latter becomes necessary if we are unable to enlist cooperation in ways that reduce or stop harms. Accounting,

14 Hull Collaborative Academy Trust, see <https://hcat.uk/about-us/> (last accessed 23 May 2024).

15 The George Hull Centre, also known as 'Libby's Place', see <https://georgehullcentre.ca/> (last accessed 23 May 2024).

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or being accountable, is not just something we do when harm has occurred: it is also a process, a way of being, a skill of citizenship. In her cogent argument to regard regulation as respect, and to shift mindsets away from 'regulatory managerialism that is embedded in systems that are not publicly accountable', Cristie Ford (2023: 3) suggests that this is the real paradigm shift that is needed to untangle regulation and punishment from one another.

5 Fugitive futures: some assembly required

We don't have a word for non-linear in our languages because nobody would consider travelling, thinking or talking in a straight path in the first place. The winding path is just how a path is, and therefore it needs no name (Yunkaporta, 2020: 18).

There's more to this story than meets the eye (said by grandmothers everywhere).

The Summit lit up, or reignited, many connections for me. It was lovely to see old friends from many far-flung places and meet new ones. The event was satisfying in kin-tending and making. It was also a deep reminder of human cruelty to other humans and to the planet. The blueprint for cultural genocide of Indigenous groups has some common threads. Take land by laws or domain and violence, suppress language, remove children, and, as the final stroke, suppress the very knowledge and practices they have developed for healing themselves. It makes me very happy that Indigenous peoples are willing to share. I recall years ago a Māori kaumātua giving a group of us a smile when she gently responded to someone describing restorative justice as a paradigm shift. She thought it good that Pākehā (white New Zealanders) were coming around to their thinking. You might call it a paradigm-realization moment for me, as I would never have thought before then how culturally and narrowly confined is the space in which the term is applied in everyday use. As for restorative justice, it was the very early 1990s, and the term was still pretty new to both our group facilitator and me.¹⁶ At that early stage of our pilot of family group decision making in the Canadian province of Newfoundland & Labrador, which was adapted from New Zealand's approach, Joan Pennell and I did not yet employ the language of restorative justice or restorative practices (Pennell & Burford, 1994).

Whatever twists the path shows us, the involvement of law schools, and the legal profession will be vital actors in safeguarding the spaces in which justice innovations are operationalised across institutions.¹⁷ These innovations cannot scale up within institutions without legal and social license (Raufflet et al. 2013) to operate. The number of law schools, centres, labs and clinics that have surfaced in

16 See Juan Tauri's *Restorative Justice is not Māori Justice*: <https://e-tangata.co.nz/comment-and-analysis/restorative-justice-is-not-maori-justice/> (last accessed 27 May 2024).

17 See also the Notes from the Field on legal education at the university level in a previous issue (2024/1) of this journal.

the past two or three years, along with what seems like a considerable increase in texts and journal articles by legal professionals, is promising and at the same time needs regulation. Restorative justice, and other justice innovations, have many of the same and other unique challenges in scaling up inside universities as do innovations in any organizational setting. The future of justice reform and the spread of restorative and relational principles is dependent on the extent to which law schools and lawyers model transparency and relational engagement across institutional settings and between state and non-state actors.

Not all the innovations represented at the Summit would be best served by pursuing disciplinary status. Perhaps the fate of some justice innovations and approaches should be to remain at the margins, slipping in here, exiting there, never fossilising, always transforming to meet whatever contingency presents an opening for creativity, hybridising, keeping their subversive edge. Others might professionalise or align themselves as sub-disciplines of more established disciplines.

The Summit experience was a reminder of the ongoing need for janitorial work on definitions that stand on their own rather than depending on binary co-dependence. Participants at the Summit could be heard using transformative/restorative in the same sentence, often seemingly as interchangeable terms. Some of this is reflective of the age-old problem of academic scholarship being hostage to capitalism. Ideas and definitions spread slowly with copyright issues and lag time to publication; practitioners are also often too busy to keep up with current academic scholarship and depend on research and academic allies. Leaders like Howard Zehr have long ago stepped back from using the retributive/restorative binary, but its use, as he wisely predicted, persists.

Miranda Forsyth (2007) offers a way to bring nuance to the 'working inside' versus 'working outside the system' binary. She developed a typology of ten different state and non-state justice systems, ranging from wholly absorbed into the state to wholly outside and suppressed by the state. While she did not develop the typology for this purpose, her work does stimulate thinking about continuums rather than binary opposites. Binaries tend to capture the extremes. As with transactional vs relational, seen on a continuum we can imagine definitions for each that are not mutually constitutive, or co-dependent for definition. Gina Starblanket's research (2017), drawing from oral histories of the Numbered treaties negotiated between the Dominion of Canada and Indigenous peoples, demonstrates how a relational understanding of these treaties, which has potential applicability to most treaties negotiated between people who have very different ontological and epistemological positions in the world, can be used to challenge the notion that written treaties are simple land transactions and should be understood rather as frameworks for what kind of relationships they will have.

Future Summits might pose questions about what justice stories are embedded in the places where the meetings are held. My interest in listening for underlying stories of restoration that span place, time and context sparked years ago, and was piqued by Pali and Aertsen's (2021: 5) observation about bridging restorative and environmental restorative justice that

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despite its strongly anthropocentric approach, thanks to its underlying relational philosophy (Llewellyn & Morrison, 2018), it [restorative justice] has the potential, more than any other justice approach, to incorporate eco-centric perspectives, indigenous justice approaches and perspectives from the rights of nature movement.

Throughout the Summit I wondered what a session might look like if a case or a real-world example that involved something like voter suppression, water pollution, overfishing, corporate malfeasance or domestic violence was put before a circle of people who could speak to how each might approach the problem. Given the rich convergence of history and current issues, and the potential for convergence of the very issues Pali and Aertsen speak to, and with so many rich innovations on display, I thought it was a bit of a lost opportunity not to engage in an open session or even have plenary times set aside for synthesis sessions, some double and triple loop learning demonstrations over the days of the conference.

The Summit certainly nourished hope, evidenced in part by the considerable diversity of participants. Many presenters/leaders had ‘lived’ experience of systemic harms and shared their experiences openly, taking up roles as leaders, helpers, teachers, some from both state and non-state organisations and contexts, and who engage with gendered and racial violence in creative relational ways. The openness to talking about justice innovations and their fit within gendered violence and sexual assault and harm is a sea change. The openness of younger leaders who have experienced systemic and interpersonal harm and sharing the joys of their healing was inspiring and healing. As one international visitor pointed out, the conference gave a much needed, timely boost to social movements for justice. It was also a refreshing reminder of thinking beyond-the-boxes to consider the universal ties we share, what Neiman (2023) suggests are the recognition of pain and the desire for freedom, those building blocks of justice that seeks to reduce domination in the world.

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