

## **Resistant and Dismissive Defiance toward Tax Authorities**

### **Introduction**

This paper approaches the topic of compliance and legitimacy from a motivational postures perspective. The starting point is empirical, that is, the signals that those being regulated send to regulators around questions of compliance and legitimacy. Armed with these data, referred to here as motivational postures (commitment, capitulation, resistance, disengagement and game playing), and drawing on existing social science theory, a framework is built to guide practitioners working toward compliance with regulatory regimes.

This paper proposes two different kinds of defiance on the basis of an analysis of postures: resistant defiance and dismissive defiance. Both are negative responses to the threat posed by authority. The threat occurs by virtue of the power that authorities wield to coerce compliance. First, the moral self is threatened by possible unlawfulness: It seeks comfort in affirmation of law abidingness. Second, the democratic collective self is threatened when democratic rights are not respected: It will feel aggrieved until justice is restored. Third, the status seeking self is threatened by blocked aspirations: It seeks ways around or competes with authority in search of a win against its rules. The paper shows how resistant defiance reflects a battle between psychological processes of moral obligation and grievance. Dismissive defiance reflects a battle between the psychological processes of moral obligation and competition with authority. When authority meets resistance, its chances for successfully winning over those being regulated are improved if the authority can be seen as having high integrity. A substantial part of high integrity is acting in a procedurally fair way (Tyler 1989, 1990, 1997). When authority meets dismissiveness, however, relationships are not so easily turned around or built up. Dismissiveness may be associated with alternative authorities. If so, resolution may demand some form of power sharing, which is generally likely to mean a fundamental re-think in what the regulatory system stands for and what it hopes to control through deterrence.

### **Defining terms and ambitions**

The term compliance is used variously for a process or an outcome. When applied to process, compliance refers to the measures that entities put in place to make sure they undertake certain duties in order to comply with specific requirements. The term, compliance process, can also be used to refer to the measures that a regulator puts in place in order to elicit compliance among those being regulated. Elements in such a process might be educating, monitoring, praising, applying penalties, and offering incentives.

In this paper compliance process describes the public's assessment and interpretation of a regulatory authority's efforts to steer the flow of events in supposedly socially desirable directions and how those being regulated choose to respond to regulatory influence. The compliance process is oriented to achieving certain compliance outcomes, but the journey toward these outcomes is often littered with contestation with regulator, regulatee and other parties all exerting influence on each other. The process is dynamic with different actors having the upper hand at different points of

time and with authorities revamping strategy in response to the changing regulatory field.

Compliance outcomes may refer to either intention to act as requested (for example, I intend to comply) or the requested behaviour (for example, I complied). Cialdini and Goldstein (2004: 592) capture both meanings through defining compliance as responding favourably to an explicit or implicit request from others. Psychologists have put forward psycho-social strategies for improving the likelihood of compliance, be the context that of advertising, health routines, environmentally friendly behaviours, workplace performance, or law abidingness. What distinguishes compliance in relation to law abidingness is the presence of authority with capacity and obligation to enforce the law. In such circumstances, compliance is elicited against a backdrop of coercion. Compliance as outcome therefore may take the following minimalist form: "Tell me what I must do and I will do it, whether I agree with it or not". While recognizing this reality, every regulator would prefer that those they are regulating be committed to their objectives. Commitment brings with it possibilities for self-regulation and more cost effective compliance processes on the part of the regulator.

Consideration of compliance with authorities that have coercive powers raises the question of legitimacy: Has the authority the right to make the request; and more importantly, has the authority the right to use coercion to ensure there is compliance with the request? As noted in the introduction to this volume, legitimacy according to Beetham (1991) encompasses the degree to which an authority is using its power in accordance with established rules, the degree to which shared social beliefs underpin these rules, and the degree to which those being coerced have consented to the power relations that give authority the right to make demands and enforce them. Beetham's conception of legitimacy emphasizes the normative, that is how an authority should use its power under the law and what are the legal and moral constraints for doing so, while also making room for the subjective understandings of the public regarding the legitimacy of their authorities. It is this subjective understanding of legitimacy that frames the current study. As Suchman (1995: 574) explains, people have to believe that "the actions of an entity are desirable ... within some socially constructed system of norms, values, beliefs, and definitions". If people do not accept the same socially constructed system, acceptance of authority and what it is expecting by way of compliance will be fragile.

The above uses of compliance and legitimacy all have their place. The approach outlined in this chapter uses the terms to frame the domain of enquiry – individuals' response to the tax authority in relation to payment of income tax. Other concepts will be used in this paper to do the work in explaining how to create a tax system that has legitimacy with the public and has an effective compliance process. Legitimacy is overarching, describing public perceptions of government responsibilities including the legality and appropriateness of the tax code. The compliance process refers to the ways in which Australian taxpayers make sense of and respond to the Australian Tax Office as a statutory authority that requires them to pay income tax. In terms of this paper, compliance may be thought of as framing the analysis of how authorities might go about eliciting public cooperation within a regulatory field. Legitimacy is broader, framing the analysis of whether or not the existence of the regulatory field is justified.

The perspective that underpins the empirical analysis presented in this chapter is the voice of the taxpayer. Of as much importance, however, if not more in certain contexts, are the tax professionals and financial advisers who are interpreting the tax code for ordinary taxpayers, sometimes aggressively, sometimes cautiously, all in a bid to ensure taxpayers are only paying the amount of tax that they have to pay while remaining inside the law. The arguments of tax professionals and the counter arguments of tax officials mean that the interpretation of the tax code is not infrequently placed before the courts. Within the tax domain, legitimacy has not only the complexity described by Beetham (1991) but also ambiguity (Picciotto 2007), making the authority of the Australian Tax Office quite contestable among those with resources to challenge its decisions through the courts.

### **Theoretical propositions in motivational posturing theory**

The starting point for motivational posturing theory is that authorities that make regulatory demands threaten our freedom. Through making demands they threaten our sense of ourselves as people who can act responsibly and do the right thing. The significant body of criminal justice literature on shame and humiliation illustrates the moral self that is threatened by authorities (Braithwaite 2009; Harris 2007; Scheff and Retzinger 1991; Sherman 1993). Demands also may threaten our sense of ourselves as part of a collective or community where the voices of individuals are listened to respectfully and heeded. The social justice and human rights literatures link injustice to identity threat and loss (Tyler 1989, 1990, 1997; Young 2000). And finally regulatory demands may threaten through blocking pathways to successfully achieving personal goals. A substantial literature addresses the importance of goal achievement to human development (Rokeach 1973; White 1959).

These three selves that may come forward within any one of us to defend against a regulatory regime are referred to here in the tax context as the moral self, the democratic collective self and the status seeking self. We all like to think of ourselves as good people, as having democratic rights, and as having opportunity to pursue personal advancement. When tax authorities make their presence felt, taxpayers invariably pause to consider how they will be affected. Tax authorities, like all regulators, threaten because they have the potential to diminish conceptions that we have of ourselves – of our moral self which may be found wanting under closer scrutiny, of our democratic collective self that we may find is unacknowledged, even abused, and of a status seeking self that may find future hopes and ambitions placed beyond reach.

### ***Protecting the self through adjusting social distance***

The immediate response to threats to our freedom is to find some way of regaining that freedom. Brehm and Brehm (1981) describe reactance as a response that directly counters attempts to rob individuals of particular freedoms. If people are pressured into expressing a certain attitude, for instance, they may persist in expressing the opposite attitude and become resistant to further efforts of persuasion. Behavioural examples abound. Among the most creative are breaking or circumventing computer codes that have been put in place to protect intellectual property rights. Each innovation of authorities to protect their material is an invitation to those resourceful enough to crack the code, often sharing their success with liked minded others.

Reactance is not the only tool we have in our repertoire of responses to those who want to curb our freedom. The early years of socialization equip us well for the task. We learn through trial and error that freedom can be best regained through control of social distance – or the distance of influence and attention – between self and authority. We keep our distance if we are fearful that the authority does not value our self as we do. If we are confident that our self is at one with authority or that we can convince the authority that our self is worthy of respectful treatment, we move closer, regarding such positioning as mutually favourable.

The social distance we place between self and authority provides us with comfort that we can manage any attention the authority directs toward us. As we step outside the reach of authority the fear that we may be made to do something we do not want to do lessens and the influence that authority has over us weakens. We also lose openness to persuasion and negotiation – or to changes the authority may make to win our cooperation. The closer we are the more vulnerable we are to the authority's influence, but so too is the authority potentially vulnerable to ours.

### *Engaging the moral self*

It is common for the moral self to be aligned with legitimate authorities. We refer to this phenomenon in individuals as law abidingness. If authorities ask something of us, we assume they have good reason and that it is the right thing to do. By meeting the request, we further assume that we will be free from further intrusion and domination. We regain freedom through appeasing authority. In the process our moral self receives the affirmation it needs. We do what authorities want us to do, the authorities don't bother us because we have done the right thing, and we feel affirmed in the knowledge that we are good law abiding people.

The moral self has capacity to be the regulator's best friend. But is this always the case? There are occasions when individuals find it impossible to restore the moral self through alignment with authority. Authorities may punish or treat people disrespectfully in an indiscriminate fashion – those doing the right thing as well as those not. Should these conditions prevail, the moral self will be denied the acknowledgement and assurances it requires. In time it may lose its salience and the authority may be unable to engage it in processes to either re-affirm legitimacy or build compliance. Greater social distance between self and the regulator may follow, with the moral self withdrawing from engagement, making way for a threatened democratic collective self or status seeking self to become dominant.

### *Engaging the democratic collective self*

The democratic collective self enters into a compact with government. That compact involves being an active and responsible citizen – including paying taxes. In response the government is expected to maintain order and provide security and look after people's needs – for education, health care, jobs, and infrastructure. No group of people is expected to have special privileges nor does any group expect to be discriminated against. Governments are expected to act in accordance with principles of justice, both in terms of outcomes and processes. When governments or their agent – for example, the tax authority, deviate from acting justly, the democratic collective

self sees the behaviour as a breach of trust, as an offence that breaks the compact. The democratic collective self enters unsafe territory and fears the onset of further injustice. Under such circumstances, putting social distance between self and the authority becomes a way of dealing with a sense of betrayal by the authority and avoiding unwanted intrusions on freedom. Restoration of the democratic collective self involves removing injustice from the system.

### ***Engaging the status seeking self***

The status seeking self is an expression of an individual's journey of accomplishment and fulfilment. Individuals have aspirations and life goals, shaped and directed by culture and background most certainly, but internalised and tailored to individual circumstance to the point of being personally owned and giving individual's purpose and meaning in their lives. When these goals are blocked by events of any kind, individuals experience threat or loss as they re-adjust to their new circumstances.

In the context of the payment of income tax, a tax authority threatens the accumulation of capital, and therefore those with aspirations for improving their socio-economic status in society. Where paying tax is seen to hold back an individual aspiring to expand a business, or having discretionary income to enjoy some luxuries, or even have enough money to house, feed and clothe a family, individuals might be expected to adopt a negative attitude to both taxation and the authority that administers it. Viewing the tax system unfavourably is likely to result in increased social distance between self and the authority, adopting an "out of sight, out of mind" position until a way is found to beat the system. Status seeking involves competition and there is no reason why a competitive challenge should not be launched against government if it is blocking advancement.

### ***Motivational posturing***

As individuals assess the tax system – the authority as well as the taxation levels, payment methods and sanctioning procedures for self and others, they develop postures that sum up what they think of this regulatory system. Postures are signals or messages to self, others and authorities about their comfort with the regulatory system. They are composite narratives made up of attitudes, beliefs, emotions, expectations and norms. They inform us of how individuals and groups of individuals are likely to position themselves to deal with messages from the authority that try to educate, persuade or threaten people into adopting compliant behaviours. The term motivational is pertinent because there is a purpose to the posturing – to defend the self from regulatory assault. But unlike the more traditional meaning of the term motive, the response of those being regulated is not hidden from view or buried amidst other beliefs and values. The threat is social – domination by an outside entity – and the response is social, although undoubtedly shaped by an individual's long held personal values, beliefs and experiences. The response, be it one of social distancing or social alignment, is a statement for others to see. It will more than likely be shared with others, fine-tuned through dialogue with others, and used to justify the social distance that the individual has placed between self and the authority. The purpose of protecting the self is to feel good about the self, to be comforted by the support of others, and to find a way around the feared constraints of the system.

Five motivational postures have been identified in the taxation field. They have parallels in other regulatory fields such as child protection, occupational health and safety, peace building, nursing home regulation and agricultural reform. The postures have been empirically derived through factor analyzing inventories measuring attitudes to authority and to regulatory systems and through listening to the accounts that people provide for their interactions with authority.

Two postures reflect a degree of alignment with authority or what Losoncz (2010) has called accommodation to the demands of the system. The first is called commitment because it conveys a belief that the regulatory purpose is sound and that the regulatory system should be valued and supported by everyone. The second is called capitulation. Similar to McBarnet's (2003) usage, capitulation reflects acquiescence to the powers that be, along with general acceptance that it must be right because they are the authority.

Whether one believes in the authority because it has sound purpose or because it has the force of the law behind it, the motivational posturing response is likely to be alignment. Postures of commitment and capitulation are likely to be buttressed by a moral self that is dealing with the potential threat of regulation through the following line of thought: "They must know this is the right thing to do, I will support them and do the right thing, then I will have nothing to fear from the authority because I am a good citizen".

In contrast to the postures of accommodation are the postures of defiance. Defiance is defined as a signal that individuals express toward an authority (and shared with others) that communicates unwillingness to follow the authority's prescribed path without question or protest. Defiance may take two forms. In the first form, defiance is an expression of dislike for or hostility toward an authority, while accepting that the authority has legitimate power that may be used to coerce cooperation. This is called resistant defiance because the need for the system is accepted. The source of discontent lies with power being used inappropriately and poor decisions made. The posture of resistance is at the core of defiance of the same name. Resistance is the motivational posture of grievance with insistence that authorities fix the problems of their making and honour their compact with the people. This is also the essence of resistant defiance – fix the problems so that the tax system functions as it should.

While resistance is directed at how the system operates, the other form of defiance, dismissiveness, is directed at whether or not the system should exist. Dismissiveness is a form of defiance that credits neither the authority nor the system with soundness of purpose. Dismissive defiance reflects lack of deference for the authority. For the dismissively defiant, a good outcome would be no regulatory system. Two postures are associated with dismissive defiance, disengagement and game playing. Disengagement is a posture of anomie where people have lost their connection with the norms and values of the regulatory system and continue living their lives paying no heed to the demands of the regulator. In keeping with Durkheim's (1952) formulation of anomie, it is not simply a case of not knowing what the regulator expects: It is often a consequence of a mismatch between the rigid norms of a regulator on the one hand, and individual circumstances and larger social norms on the other.

While disengagement has a degree of fatalism about it (for example, the authority will do what it will do and I am not going to lose any sleep over it), game playing has a combative agenda of beating the authority at its own game. Game playing has an element of extreme reactance. The posture of game playing shows no respect for the spirit of the regulation, but observes technical requirements as part of a game of beating the designers of the system, finding loopholes and creative ways of working around the regulation. The game becomes personally satisfying and liberating for self and others, because it involves challenge and competition, often through cleverly deconstructing the rules.

The postures of commitment, capitulation, resistance, disengagement and game playing are familiar to and readily used by most of us. They will be used when authority intrudes on our freedom and threatens our moral, democratic collective or status seeking self. In the course of experiencing some intrusion from authority, we may use one or all of the postures. Postures are not mutually exclusive and may emerge at different times depending on the context we find ourselves in and depending on how the authority deals with us. For example, take a small business owner who has left her business in the capable hands of her nephew while she takes an overseas trip. She returns to find that her quarterly business tax returns have not been filed while she has been away. The tax office has written to her threatening fines. She has never been in trouble before. She rings to explain the situation, but fails to gain leniency or sympathy – or even a hearing. She writes a letter of complaint. The unpaid tax accrues interest. Her desire for a fair hearing and to make amends changes when her plea for a little more time to sort things out falls on deaf ears. She needs money fast to pay her debt to the tax office. As she begins to grow her business again, she remembers the problems she had with the tax office and decides to keep some of the profits out of view. She finds an aggressive tax planning adviser who is prepared to help her avoid as much tax as possible. She pays the tax she owes and her penalty, but she has also developed a defiant posture to tax office authority. She will capitulate when there is no other way. But she will also game play when the opportunity presents itself and disengage when gains from evading tax are too great to forfeit. In this sense, our posturing is a function of who we are, our social milieu and the treatment we receive at the hands of the regulator.

### ***The integrity of the regulator***

Motivational posturing theory allows individuals to choose their comfort zone in relation to a regulator such as the tax office. The social distance between regulator and the regulated may be high or low. It follows that the actions of a regulator, particularly positive initiatives to improve relations with those being regulated, are going to make a difference and influence posturing, although most impact is likely to be felt by those whose social distance is not too great. They will be the ones who are attentive, while those who are more socially distant are more likely to be “deaf” to the regulator’s message. Nevertheless, efforts to build relationships with the socially distant in a regulatory community need not be counterproductive. So long as someone notices the positive engagement of the authority with the community, the message can be carried along networks that include those who have positioned themselves beyond the authority’s reach (Braithwaite & Drahos 2000). In time, those beyond reach may become more open as they are exposed to third parties carrying a more conciliatory message from the authority.

Building relationships with regulatory communities is an essential part of the process of building the integrity of the regulatory agency. Integrity refers to soundness of purpose, a willingness to be open and accountable to the public for actions, capacity to acknowledge shortcomings and lead with new solutions, and finally commitment to respectful treatment of citizens through adherence to principles of procedural justice (Selznick 1992; Braithwaite 2003). Integrity can be measured by an independent overseeing agent that routinely scrutinizes the tax authority's actions (for example, an ombudsman) or by the people whom the tax office serves (that is, the general public, taxpayers and citizens alike).

As is the case with legitimacy, both the objectively assessed and subjectively evaluated faces of integrity are important. There is little integrity in being popular with the public, but wanting in substance when an independent overseer undertakes a more meticulous, evidence based review; and it would be an odd sort of integrity that is evident to an independent overseer, but not to the people one serves. Yet in periods where integrity has been in a slump, integrity in the public's eye and integrity as observed by the overseeing agent are likely to be out of step because of lag times in detecting improvements or decrements on the various dimensions. For this reason, both the objective (evidence assessed by an overseer) and subjective (perceptions of the public) are important facets of integrity to monitor. In this particular paper, the focus is on the subjective.

When the public perceive an authority acting with integrity, social distance should decrease between regulatees and the regulator, that is, the postures of accommodation (commitment, capitulation) should become stronger and the postures of defiance weaker (resistance in particular, disengagement and game playing depending on circumstances). The circumstances in which integrity may fail will be those where all hope is lost that any good can come of showing the authority deference. The postures of disengagement and game playing are most likely to be implicated in this way of thinking about the authority. If individuals, or more likely a group of individuals, have already come to the conclusion that an authority is irrelevant in their lives, it may not matter whether or not that authority acts with integrity. The objective for these so-called regulatees is to keep the ties broken so that the authority remains irrelevant. Integrity only matters to those who have ceded regulatory control to an authority and have accepted a subordinate role within the system – or can see some advantage in doing so.

### **Psychological processes by which threats to the moral, democratic collective and status-seeking self become postures**

Two processes have been useful in explaining how threat to the moral self, democratic collective self, or status seeking self are processed and how appraisal of such threat is related to motivational postures. One of these processes focuses on emotions, cognitions and reasoning with the objective of removing threat and protecting self. The second has the same objective, but the process relies less on thinking about the threat and more on copying those who seem to have come up with the best response to the threat.

#### ***Cognitive appraisal***

Perceptions of threat may be dealt with through analysing thoughts and feelings, that is, through reason – for example, we might say to ourselves “I feel afraid or unhappy in response to the authority, why is that, what can I do to make myself feel better, what are my best options for resolving this situation?” Through this appraisal process that has been examined at length in the stress and coping literature (Pearlin and Schooler 1978; Lazarus and Folkman 1984), response options are reviewed and decisions made. In the regulatory context, this is often a social process where stories are exchanged, people look to others to make sense of the threat they feel, and come up with solutions or possible responses. Injustice is often the rallying point for exchanging regulatory stories. Authorities become the out-group in story telling and regulatees unite around the themes of unfair treatment, unreasonable demands, and the authority’s poor judgement. The process may not be evidence-based or strictly logical, but it has the quality of psycho-logic. A number of theories address such processes in decision-making (for example, belief-attitude-value consistency theories (Rokeach 1968), reasoned action and planned behaviour theories (Ajzen 1985; Ajzen and Fishbein 1980), stress and coping theories (Pearlin and Schooler 1978; Lazarus and Folkman 1984) and rationalization theories (Sykes and Matza 1957)). These theories rely on a process of reasoning that brings consistency between beliefs, attitudes, feelings and actions, including what Harris (2007) calls our ethical identity – those attributes about ourselves that we like, strive for, and feel proud of.

Resistant defiance, at least in the tax context, is best explained by such rational processing (Braithwaite 2009). In the case of resistant defiance, defending against regulatory threat and protecting ethical identity gives rise to a battle that looks like this. On the one hand is a moral self that wants to be law abiding and will align itself with an authority that has credibility and legitimacy. The proper postures for this self are commitment or capitulation. On the other hand is an offended democratic collective self that favours the posture of resistance. These two selves compete for dominance – is the moral self the more reasonable and sensible self to adopt, all things considered; or has the democratic collective self been so offended that no decent person could turn away from fighting such injustice? For the postures of commitment, capitulation and resistance, a form of deliberation can take place in the tax context about what is the most reasonable response. Persuasion is possible, through reasoning with self or reasoning with others. This includes dialogue with authority. It is in this context that the integrity of the authority becomes paramount as a way of establishing credibility and trustworthiness with the public. There is no assumption here that the sense of grievance is justified. It may be a rationalization to avoid facing up to wrongdoing. Authorities with integrity can work through misplaced as well as justified grievance.

### ***Social modelling – or contagion***

Sometimes the threat context is so complex and bereft of explanation that there is too little information to form a judgment. The threat from authority, while registering, is not conducive to understanding through the process of reasoning. Just as psychology has been instrumental in promoting explanations of human behaviour based on cognitions and reasoning, it has a strong tradition in learning theory and social modelling (Bandura 1977, 1986). Sometimes we don’t need to understand – we just look at what others are doing – particularly those who are successful and well

regarded, and emulate their actions. Copying others need not be incompatible with some level of reasoning of course. We choose role models on the basis of their similarity to who we are or who we want to be. The important point here is that sometimes individuals are expected to adapt in environments where they do not have resources to permit sound reasoning: for example, where individuals don't understand what the regulatory authority is doing or wants them to do. In such circumstances, feelings of threat can be dealt with through watching others, observing consequences, and following in the footsteps of those getting the best outcomes.

In the area of taxation, it appears that threat to the status seeking self triggers a modelling process whereby people turn to an alternative authority on tax matters, putting their faith in aggressive tax planners and advisers. The process that takes hold in this context resembles what economists call contagion (Braithwaite 2005), whereby the individual does what others are doing to improve their economic position and beat the system. Contagion and the desire to pay as little tax as possible fuels the postures of disengagement and game playing. Dialogue is likely to be irrelevant in this context, as is the integrity of the regulator. All eyes are turned elsewhere, toward an alternative authority that has found a pathway for outsmarting the tax office and denying them control.

### ***Generalizability?***

It is a question for further enquiry whether, in other regulatory contexts, resistant defiance is based on reasoning and dismissive defiance is based on modelling. The assertion may be generalizable on the following grounds. Where authorities are effective and use coercion to enforce compliance, most people who are concerned for their own well-being will reason that when the costs of non-compliance are too high, compliance is the better option (Ayres and Braithwaite 1992). Regulatory institutions use various kinds of messaging to remind those whom they are regulating to think of the risk of getting caught and the costs, and do the right thing. With framing of this kind, regulatees, if they want to fight back, are most likely to develop reasoning around injustice and unreasonableness on the part of authorities and push for change within the democratic system. Most will consider it foolhardy to challenge the formal authorities head on. That is, unless the authority loses credibility and legitimacy on a grand scale.

In circumstances where authorities have either lost coercive power or lost all credibility and legitimacy, the government lacks an institutional frame for putting forward a convincing case for compliance. Individuals who are estranged from government institutions must find it difficult to explain to themselves why they should comply, particularly if they consider the chances of being caught minimal, and if they are conscious of sacrificing goals and aspirations for no good reason. Individuals are likely to experience a degree of cognitive dissonance in this situation. The assumption is that processes of socialization into law abidingness continue to be influential even in our individualistic and socially heterogeneous society, and even when our institutions are failing. This means that it is not so easy to adopt the persona of someone who genuinely does not care about authority as is the case with disengagement, or is prepared to challenge the power of authority as is the case with game playing. In order for dismissiveness to be embraced and confidently displayed, individuals need exposure to role models with leadership qualities that quell the

nerves of those not accustomed to defiance, and with capacity to inspire a new definition of a moral self. In taxation this has been successfully accomplished by some within the financial planning industry – tax minimization and avoidance advisers find savings within the law, while avoiding the intended control of authorities.

### **Evidence to support the theory from the field of taxation**

Three surveys of Australians' views about and experiences of taxation and the Australian Tax Office were conducted in 2000, 2002 and 2005. The surveys were conducted at a time when tax reform was being undertaken in Australia and the public were being introduced to a new tax, a goods-and-services tax, for the first time. 511 respondents completed the survey at all three time points providing a panel for looking at the development of posturing over an extended period of time. (See Braithwaite and Reinhart (2005a, 2005b) and Braithwaite et al. (2001) for a description of the sampling frame and final sample).

The methodological approach of this study was exploratory and broad-brushed. Various theoretical approaches were tested in developing the theoretical framework presented in this paper. Each set of hypotheses, once tested, led to theoretical modifications, further testing, and further model building using regression analyses, path analyses and structural equation modelling. It is the end result of this process that is presented here. (For further information on the theoretical building blocks and empirical modelling, see Braithwaite 2009.)

For reasons of parsimony, structural equation models for the two kinds of defiance are presented separately. In time, more data analysis and theory building will bring simplification of these models and possibly the capacity to combine the two types of defiance into one model. At this stage, the complexity and detail of the two path models serve an important function – ensuring the theory is well grounded in the data.

The measures that made their way into the final models of resistant defiance and dismissive defiance are described briefly below and in detail elsewhere (Braithwaite 2009; <http://vab.anu.edu.au>). Various scales and indices were combined into composite measures of core constructs. It is the composite core constructs and their constituent parts that are outlined below.

### ***Measures of the moral self, expressed in terms of alignment with authority***

*Perceptions of deterrence:* The index for measuring perceived deterrence was a multiplicative term comprising likelihood of being caught X likelihood of sanctioning X perceived problems resulting from being caught and sanctioned. Respondents' assessments of these deterrence components were made in relation to two scenarios: (a) Imagine you have been paid \$5000 in cash for work that you have done outside your regular job. You don't declare it on your income tax return; and (b) Imagine you have claimed \$5000 as work deductions when the expenses have nothing to do with work. For each scenario, one question assessed likelihood of being caught, while likelihood of sanctioning and resulting problems were assessed in relation to four possible sanctioning outcomes.

*Thinking morally:* This construct represented commitment to law abidingness on tax issues. Four measures were combined to represent the construct: (a) an honest taxpayer identity index (2 questions); (b) a personal honest taxpaying ethic scale (4 questions); (c) disapproval of tax cheating scale (3 questions); and (d) a willingness to report and confront tax cheating scale (2 questions).

*Honest no-risk adviser as ideal choice:* Respondents were asked to imagine that they were choosing a tax adviser and to indicate the priority they would place on finding someone who was honest, no-risk and no-fuss (3 questions).

***Measures of the democratic collective self, expressed in terms of grievance***

*Disillusionment with the democracy:* Six questions assessed level of agreement with the view that democracy had lost much of its original meaning, the government was not allowing ordinary people opportunity for input, that the democracy, including the legal system, had been captured by those with resources and money, and that cynicism of all government processes was warranted.

*Feeling oppressed:* This measure was a composite of three measures of an individual's sense of victimization at the hands of the tax system: (a) economic disadvantage through taxation (3 questions); (b) self-rating on the dimension of paying more than one's fair share of tax (1 question); and (c) receiving unfavourable decisions from the tax office (2 questions).

***Measures of the status seeking self, expressed in terms of pursuit of economic and social aspirations***

*Status seeking values:* Values represent goal states and ways of behaving that we consider desirable and that we strive for. Of most relevance in the tax context are values associated with being financially well off, entrepreneurial and successful. A five-item value scale was used for the analyses below.

*Aggressive tax planning adviser as ideal choice:* Respondents were asked to imagine that they were choosing a tax adviser and to indicate the priority they would place on finding someone who was creative, well-networked and could deliver on aggressive tax planning (3 questions).

***Measure of integrity***

Integrity describes the degree to which the community regards an authority as acting with soundness of purpose, executing its operations competently, reasonably and fairly with awareness of and consideration for those affected by them. In the context of taxation, three measures were particularly relevant and were combined to form a composite integrity index: (a) an index of taxation's benefit to the community (2 questions); (b) a scale measuring commitment to the Taxpayers' Charter (12 questions); and (c) a scale measuring showing respect (6 questions, 4 drawn from Tyler's (1997) respect and trustworthiness scales and 2 representing consultation measures).

***Measures of motivational postures and defiance***

The motivational postures of commitment, capitulation, resistance, disengagement and game playing were measured through a set of scales that were first developed in the context of nursing home regulation and have been adapted for use in occupational health and safety, child protection, governance more generally and taxation. The tax version of the scales and descriptive statistics is given in Table 1 in the Appendix. The profile of postures for the sample followed the traditional pattern – very high endorsement for the system through commitment, high acknowledgment of a capitulation posture, over half acknowledging resistance, and a much smaller proportion (less than 20%) laying claim to the postures of disengagement and game playing. When the postures were factor analysed, two distinct dimensions emerged in the taxation context. The first, with one pole defined by commitment and capitulation and the other by resistance, represented a mindset that was highly critical but accepting of the existence of the power of the system – resistant defiance. The second defined by disengagement and game playing represented a mindset that was cynical and rejecting of the power of the system – dismissive defiance.

### ***Structural equation modelling***

The process of building models involved initially thinking about the variables in terms of being instigators or mediators. The term ‘instigator’ refers to variables measured in 2000 that represented a mental state that was envisaged as the beginning of a path to defiance. *Disillusionment with the democracy*, *perceived deterrence*, and *status seeking* were instigators in so far as they were variables that explained why some individuals might feel more threatened than most just by the thought of government taxation.

After a period of appraisal of how taxation was likely to impact on them personally, individuals were expected to come up with a coping style. *Thinking morally* and *feeling oppressed* were examples of such coping styles and were expected to prove useful in defending the moral and democratic collective selves. They were likely to be shaped by the instigators mentioned above – *status seeking*, *perceived deterrence* and *disillusionment with democracy*. *Thinking morally* and *feeling oppressed* were also measured in 2000.

The tax authority’s *perceived integrity* was measured in 2002, 18 months into the tax reform process. It was reasonable to suppose that by this time, Australians would have formed some view of how the tax authority was performing as it implemented the tax reform package. Individual predispositions (*status seeking* values, *disillusionment*, *feeling oppressed* and *thinking morally*) and perceptions of how the tax office operated (*perceived deterrence*) were assumed to function as a lens through which the tax authority’s efforts to improve its performance would be interpreted. Even so, perceptions of integrity were unlikely to be determined solely by perceptual bias. Interventions that affected integrity should have registered with the public and made a difference to how much defiance individuals felt.

By 2005, individuals were able to look at the tax reform process with some distance and perspective. They were in a position to decide whether they were on side with the tax authority or not. The 2005 measures included attraction to *honest no-risk advisers*

or *aggressive tax planning advisers* and the measures of *resistant* and *dismissive defiance*.

### ***A structural equation model for resistance***

From Figure 1, resistant defiance was best explained through a pathway connecting disillusionment with the democracy to feeling oppressed. Feeling oppressed directly and indirectly influenced resistant defiance, indirectly through failing to see integrity in the tax authority. This pathway reflects grievance, a response to injustice when the democratic collective self is threatened. Such a threat raises doubts about government's good faith in honouring the contract of cooperation between state and citizen/taxpayer. Importantly, this pathway shows the performances of government and the tax authority connected in the minds of the public.

### INSERT FIGURE 1

Reining in resistant defiance in Figure 1 is law abidingness. The moral obligation pathway is not as strong as the grievance pathway, but nevertheless is significant and captures the way in which individuals are most likely to protect their moral self when it is under threat. Thinking morally strengthens a preference for an honest tax adviser. Perceived deterrence also strengthens a preference for an honest tax adviser. An honest tax adviser, in turn, lowers resistant defiance.

Contrary to expectations, perceived deterrence did not strengthen the coping style of thinking morally. Perceived deterrence, however, was important to both the grievance and moral obligation pathways. Perceived deterrence was connected to feeling oppressed, suggesting that it was a threat to the democratic collective self. Given that fear of deterrence and feeling oppressed were measured at the same time, it is probably not surprising that the measures correlated: Both could be interpreted as manifestations of victimization. More interesting is what happens over time. Perceived deterrence positively affected perceptions of tax integrity two years on and preference for an honest no-risk adviser five years on. Deterrence strengthens the morally obligated pathway in the long term and the grievance pathway in the short term. Deterrence may not be flavour of the month when one is struggling to find the money to pay a tax bill, but believing that a deterrence system is operating and that it is risky to cheat on tax appears to pay dividends for authorities in the long term.

Integrity, like deterrence, is of great interest because it is an institutional characteristic over which tax authorities have some control. Figure 1 also shows how pivotal the perceptual measure of integrity is in the expression of resistant defiance. Those thinking morally are more likely to have a positive view of tax office integrity two years later. The effects of integrity extend into 2005. High integrity protects against resistant defiance and increases prospects of wanting an honest adviser. Integrity therefore boosts the moral obligation pathway. By the same token, an authority's best efforts to practice integrity will not always be appreciated by the public. In Figure 1, those who feel oppressed by taxation have a more negative view of the tax authority's integrity.

The variance accounted for in resistant defiance was 58%. The model had satisfactory goodness of fit indices (see Tables 2 and 3 in Appendix). In developing a model for resistant defiance the variables associated with the status seeking self were not significant and therefore do not appear in the model in Figure 1. Of the other relationships appearing in Figure 1, those involving disillusionment are intriguing in what they reveal about individual adaptation to perceived institutional failure.

Disillusionment with the democracy mainly fuelled grievance, but it also was relevant to moral obligation. Faith in (as opposed to disillusionment with) the democracy was associated with thinking morally. The finding is important. Nurturance of the moral self was not sparked by fear of punishment but by pride in the democracy and pride in the democratic collective self. With this in mind, the next finding is an interesting adaptive strategy. At least some of those disappointed in the way the democracy functioned maintained good faith with the democracy through idealizing an honest no-risk adviser. They were willing to hand their citizenship responsibilities over to an agent who would ensure that tax obligations were properly met, thereby imposing constraints on any temptation they might have to be non-compliant.

#### *A structural equation model for dismissiveness*

In contrast to resistant defiance, the model for dismissive defiance did not include integrity. Various attempts to accommodate integrity in the dismissive defiant model failed. Integrity was neither directly nor indirectly related to dismissiveness. Instead, status seeking and preferring an aggressive tax adviser, variables that represented a challenge to the tax office and attraction to an alternative authority, emerged as significant predictors of dismissiveness.

#### INSERT FIGURE 2

In Figure 2, the moral obligation pathway shows thinking morally and perceived deterrence increasing preference for an honest adviser, which in turn, lowers dismissiveness. Feeling disillusioned with the democracy weakened the moral obligation pathway. It was negatively related to thinking morally.

Figure 2 features the grievance pathway in its early stages with the variables, disillusionment with the democracy and feeling oppressed by taxation. They combine with other variables to define an alternative pathway, a way of overcoming a victimized state. Status seeking values work through perceived oppression to increase preference for an aggressive adviser and dismissiveness. This competitive pathway serves the interests of the status seeking self. It also attracts interest from those who feel aggrieved about treatment of the democratic collective self.

As was the case with the resistant defiance model, some variables linked the moral obligation and grievance-cum-competitive pathways. Thinking morally made it unlikely that a person would look to aggressive tax planning. Perceived deterrence once again had a complex set of relationships, strengthening both the moral obligation pathway and the grievance-cum-competitive pathway. Notably, perceived deterrence in 2000 was directly linked to lower dismissiveness 5 years later in 2005, albeit weakly.

Finally, disillusionment with the democracy worsened dismissive defiance along some pathways and guarded against it along others. Disillusionment dampened the moral obligation pathway while strengthening grievance. In this sense it exacerbated dismissiveness. But for some, disillusionment placed constraints on the pathway to dismissiveness by leaving them with a distaste for aggressive tax planning. Disillusionment in 2000 was negatively related to holding as an ideal an aggressive tax adviser in 2005. If not open to the possibilities of aggressive tax planning, it would be difficult for most individuals to successfully pursue a pathway to dismissiveness.

The structural equation model depicted in Figure 2 explained 50% of the variance in dismissive defiance. The data fitted the model well producing satisfactory goodness of fit indices (see Tables 2 and 3 in the Appendix).

### **Implications of findings**

The most important contribution of this paper is to demonstrate why regulation is a costly and difficult business when carried out without appreciation for how adept individuals are in protecting their freedom. Studying defiance shows individuals as capable of choosing their social distance from the regulator. This determines how much cooperation they will offer and are capable of offering. It is true that cooperation is not synonymous with compliance. Often regulators focus on key performance indicators of “outcomes,” and mistakenly conclude that a tick in a series of compliance boxes is good enough. Increasingly, this approach is found to be wanting (see Gunningham and Sinclair’s (2002) leaders-to-laggards typology and Braithwaite, Makkai and Braithwaite (2007) on the dangers of ritualism). Individuals can meet basic legal requirements to comply without agreeing with the rules (Kagan and Scholz’s (1984) political citizen) or having respect for them (McBarnet’s (2003) creative compliance) or appreciating their purpose (Braithwaite et al’s (2007) ritualism). In many domains, minimal compliance of this kind does not make a regulatory system effective. The reality is that in order to fulfil the purposes of the regulation, cooperation and effort from regulator, regulatee and other third parties is required. Sometimes such cooperation is even necessary to understand what the law means (see Picciotto 2007 on the difficulties surrounding tax law). Recent high profile examples where law abounds, but cooperation does not, include financial regulation, environmental regulation, intellectual property regulation, child protection, and sanctioning of nation states for violation of international law.

Once cooperation is accepted as an important goal of regulation, we are in a better position to understand how regulatory regimes can fail, in spite of being backed up by law and enforcement capability. Importantly, there is no one best way for a regulatory body to manage defiance. Resistant defiance will respond best to being given a fair hearing, dialogue and reform. Deterrence can make matters worse for those whose resistance should be resolved through addressing grievances and respectful treatment; but at the same time, it may be necessary to communicate to people that compliance is important and for nudging those sitting on the fence over to the right side. Dismissive defiance is far harder to break down with persuasive strategies or even through the use of power. The authority may have become an irrelevancy to be ignored, or exploited should any sign of weakness in the system be exposed. In such

circumstances, seeing an authority with credible deterrence capability becomes imperative.

In yet other circumstances, the use of, as opposed to the threat of, deterrence may be essential (Braithwaite J. 2009). When authorities are trying to curb dismissiveness that is being led by an alternative authority (in this case the financial planning industry), authorities sometimes need to intercede to call a halt to contagious outbreaks of defiance through high profile prosecutions. At the same time, deterrence may be counterproductive if the so-called legitimate authority does not hold the higher moral ground in the minds of the public. In such situations, if democratic debate, deliberation and due process through the legal system do not deliver moral legitimacy to the authority, a settlement of some kind will have to be reached, essentially involving power sharing. The alternative authority will have earned its place at the table to decide on future governance arrangements when it is supported by the democracy and the courts.

This study demonstrates how the triggers for defiance, which are to some degree controlled by the authority – in this case, disillusionment in the democracy, tax integrity, and deterrence, are interconnected through people's interpretation of events and storytelling. Authority's control, however, is seriously limited by the fact that the context for sense making is personal: Individuals are trying to manage the threat they feel to their freedom when faced with an authority's demands. Doubts about the authority's authenticity (Selznick 1992) be they sown by the authority, other community leaders, self or significant others, can acquire traction and weaken moral obligation pathways, while consolidating grievance and competitive pathways. These psychological processes are comforting, particularly when individuals need justification or rationalization for their non-cooperative stance. Convincing oneself that the moral self should not be engaged and that the collective democratic self and status seeking self has been treated badly by the authority is a satisfying outcome for regaining a sense of moral superiority and freedom from control.

Regulatory authorities, mindful of their coercive powers, understandably have a vested interest in projecting an image of being in control. Recognizing limitations, however, also has survival value institutionally. One of the most confronting findings for a tax authority is that as disillusionment with government goes up, many other elements contributing to cooperation with the tax system go off the rails. The findings are consistent with work that has come out of the area of crime control. LaFree (1998) has linked crime rates in the US to loss of trust in political institutions and to the use of law to impose change from the top to the detriment of community social capital and equal opportunity. Efforts to regulate that fail to connect with people's moral compass and that create grievance give rise to a culture of suspicion and wariness where individual propensity for dismissive defiance has a comfortable home. This psychological state of readiness to dismissively defy is related to what Hagan et al. (1998) describe as anomic amorality and Sampson and Bartusch (1998) as legal cynicism (Braithwaite 2009).

Integrity and the acceptable use of deterrence might be considered measures that will fix these problems. For some yes, for others no. Institutional integrity is something that authorities can and should pledge and deliver. In the context of this research, the aspect of institutional integrity that did most of the work was Tyler's (1989, 1990,

1997) procedural justice. This is likely to be the case in most settings in mature democracies where institutional soundness of purpose is not under a cloud. But as this research shows, people are capable of putting themselves at such distance from authority that they can deflect procedural justice or worse still take advantage of it. This is not to say procedural justice is a negotiable quality in a regulatory system. It is not. The findings of Tyler and his colleagues are compelling in this regard. Without everyone being assured of and receiving procedural justice, a regulatory authority will be in even more strife, providing ready ammunition for the grievance and competitive pathways and for silencing any remnants of a moral obligation pathway. This research affirms the pivotal role that integrity (an expanded conception of procedural justice) plays in managing defiance.

Nevertheless, for the regulator at the coal-face doing his or her job, the cases where procedural justice does not produce the desired benefits are not easy. As we see from Figure 2, this may occur when individuals are seeing authority blocking their hopes and aspirations for improving the quality of their lives. Or from Figure 1, procedural justice may not register when people are so aggrieved over what they see as the authority's unsound purpose that they are unable to see anything positive in the authority's actions. These regulators need other strategies. This may include restorative justice conferencing that brings in third parties, and where the soundness of purpose can be scrutinized as well as procedures. Equally important are a range of credible deterrence measures. In short, regulators need to be responsive. How and when these various options should be introduced depends on context, and as this paper argues, context includes the sense making of those being regulated.

Regulatory fora that allow for exchange of views and sharing of goals seem paramount to overcoming problems of non-cooperation. Both responsive regulation and restorative justice provide opportunity for this kind of meaningful dialogue between those who enforce law and those expected to obey it. Unless these conversations take place, it is difficult to see how the key elements in defiance pathways will be ameliorated. Perceptions of low integrity, disillusionment with the democracy and grievance over deterrence depend, for their resolution, on sharing understandings, agreeing on goals and processes, and airing misunderstandings.

In discussions with regulatees, appropriate regulatory pyramids can be designed to not only enforce compliance but also build cooperation and social capital through recognizing strengths (Braithwaite et al. 2007). Providing there are institutional opportunities for regulatees to understand regulators and regulators to understand regulatees, prospects for building cooperation remain high. Moreover, in arriving at mutual understanding, defiance will come to be seen not as a nuisance, but rather as an adaptive resource, as a way of protecting the self that we all should be able to relate to. Through the insights gained through connecting with these selves, it should be possible to reap benefits all round, including designing a better regulatory system that attracts consent. Consenting to a regulatory system that is explained and accessible provides the best possible platform for building compliance and legitimacy.

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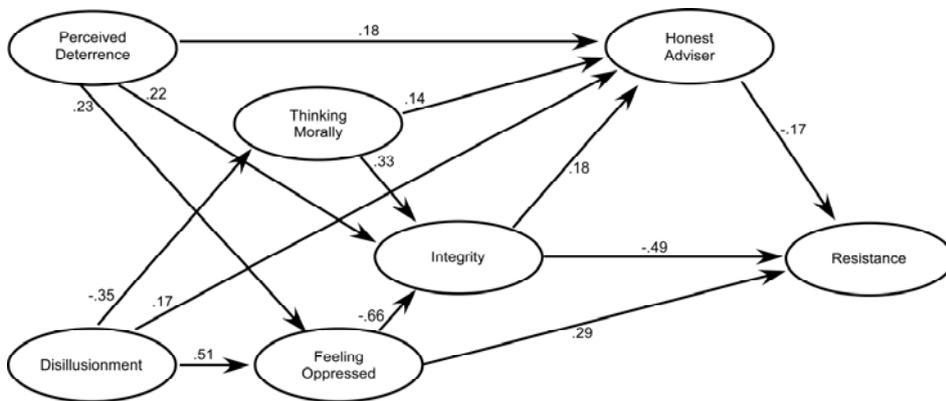


Figure 1: A composite structural equation model predicting resistance

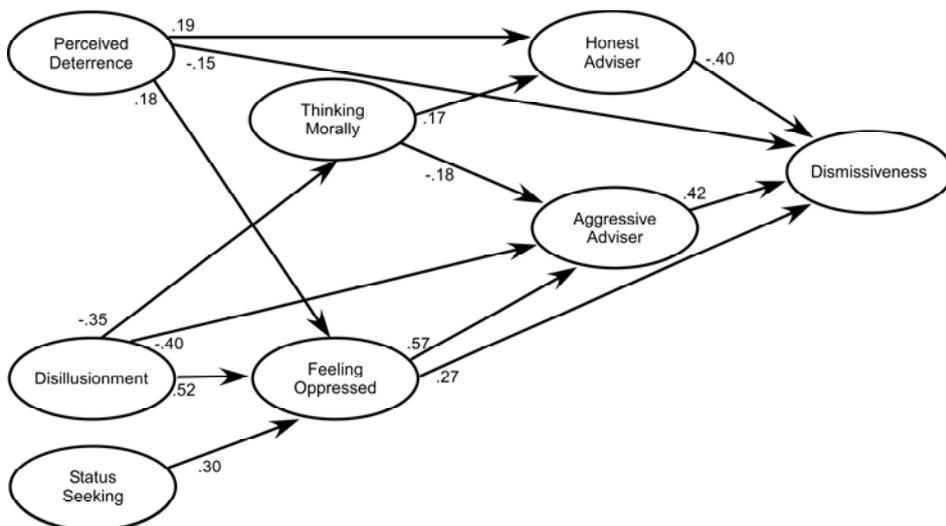
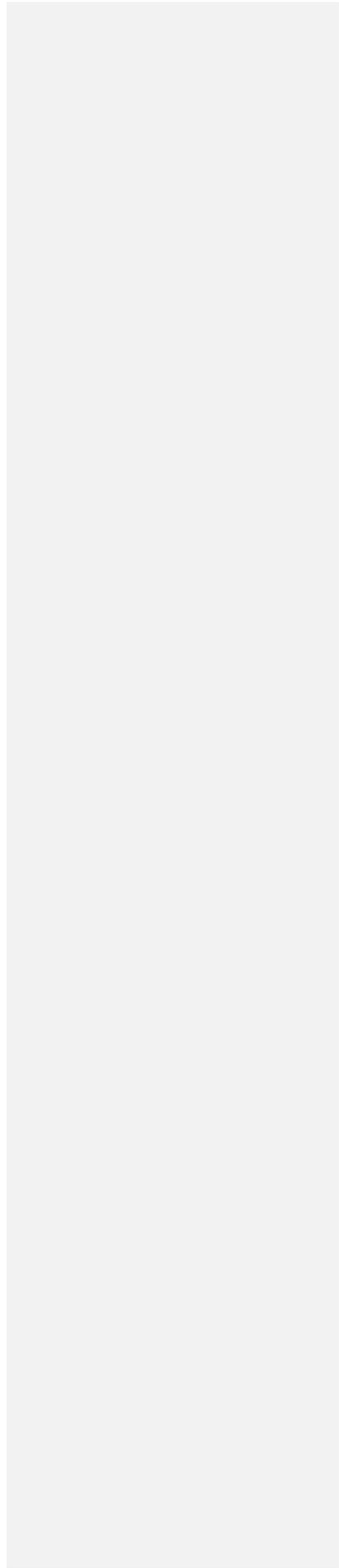


Figure 2: A composite structural equation model predicting dismissiveness



## Appendix

Table 1: Statements representing the motivational postures of commitment, capitulation, resistance, disengagement and game playing

<p><i>Commitment (M = 3.85, SD = .54, alpha reliability coefficient = .82, homogeneity ratio = .43)</i></p> <p>Paying tax is the right thing to do.  Paying tax is a responsibility that should be willingly accepted by all Australians.  I feel a moral obligation to pay my tax.  Paying my tax ultimately advantages everyone.  I think of tax paying as helping the government do worthwhile things.  Overall, I pay my tax with good will.  I resent paying tax. (reversed)  I accept responsibility for paying my fair share of tax.</p>
<p><i>Capitulation (M = 3.40, SD = .54, alpha reliability coefficient = .63, homogeneity ratio = .27)</i></p> <p>No matter how cooperative or uncooperative the Tax Office is, the best policy is to always be cooperative with them.  If you cooperate with the Tax Office, they are likely to be cooperative with you.  Even if the Tax office finds that I am doing something wrong, they will respect me in the long run as long as I admit my mistakes.  The Tax Office is encouraging to those who have difficulty meeting their obligations through no fault of their own.  The tax system may not be perfect, but it works well enough for most of us.</p>
<p><i>Resistance (M = 3.18, SD = .54, alpha reliability coefficient = .68, homogeneity ratio = .31)</i></p> <p>As a society, we need more people willing to take a stand against the Tax Office.  It's important not to let the Tax Office push you around.  The Tax Office is more interested in catching you for doing the wrong thing, than helping you do the right thing.  It's impossible to satisfy the Tax Office completely.  Once the Tax Office has you branded as a non-compliant taxpayer, they will never change their mind.  If you don't cooperate with the Tax Office, they will get tough with you.</p>
<p><i>Disengagement (M = 2.31, SD = .52, alpha reliability coefficient = .64, homogeneity ratio = .27)</i></p> <p>I don't really know what the Tax Office expects of me and I'm not about to ask.  I don't care if I am not doing the right thing by the Tax Office.  If I find out that I am not doing what the Tax Office wants, I'm not going to lose any sleep over it.  I personally don't think that there is much the Tax Office can do to me to make me pay tax if I don't want to.  If the Tax Office gets tough with me, I will become uncooperative with them.</p>
<p><i>Game playing (M = 2.42, SD = .62, alpha reliability coefficient = .69, homogeneity ratio = .32)</i></p> <p>I enjoy talking to friends about loopholes in the tax system.  I like the game of finding the grey area of tax law.  I enjoy the challenge of minimizing the tax I have to pay.</p>

I enjoy spending time working out how changes in the tax system will affect me.  
The Tax Office respects taxpayers who can give them a run for their money.

*Note:* Respondents were asked to rate each statement on a five-point scale from strongly disagree (1) to strongly agree (5).

Table 2: Indicators of fit for models predicting *Resistance* and *Dismissiveness*

<i>Model for Resistance</i>	
Chi-square ( $\chi^2$ ) = 6.164, <i>df</i> = 5, <i>p</i> < .291	
Goodness-of-Fit Index (GFI) = .997	
Adjusted Goodness-of-Fit Index (AGFI) = .981	
Root Mean-Square Error of Approximation (RMSEA) = .021	
<i>Model for Dismissiveness</i>	
Chi-square ( $\chi^2$ ) = 12.220, <i>df</i> = 10, <i>p</i> < .271	
Goodness-of-Fit Index (GFI) = .994	
Adjusted Goodness-of-Fit Index (AGFI) = .978	
Root Mean-Square Error of Approximation (RMSEA) = .021	

Table 3: Squared Multiple Correlations for the latent variables in the SEM models predicting *Resistance* and *Dismissiveness*

	Estimate	
	Predicting Resistance	Predicting Dismissiveness
Thinking Morally	.123	.123
Feeling Oppressed	.306	.412
Integrity	.613	NA
Honest no-risk adviser	.096	.065
Aggressive Adviser	NA	.274
Resistance	.576	NA
Dismissiveness	NA	.503