

*Is reintegrative shaming relevant to tax evasion and avoidance?*

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When individuals engage in tax evasion and avoidance, they act against a legal obligation they have to obey the law. If their actions are detected by an authority, and/or by others in their social network, they are likely to be negatively sanctioned and this may happen at a number of levels in a number of different ways. The sanctions may be imposed by a formal authority (for example, a revenue authority, court) or may be delivered through an informal network (for example, tax adviser, employer, partner, employee, family member). The sanctioning may inflict an economic, social or psychological cost on the individual (Grasmick and Bursik, 1990). The target of the sanctioning may be the individual or the act, in other words, sanctioning may be directed toward “a tax cheat” or toward “an act of cheating.” Whatever the path of the sanctioning process, all have one thing in common: Sanctioning for cheating communicates disapproval.

These different paths to sanctioning are rarely mutually exclusive. In the case of tax evasion and avoidance, disapproval most commonly is communicated formally through the revenue authority imposing financial costs of fines and penalties. If the evasion or avoidance is serious enough, it may be made public, perhaps through media exposure of a court case. Then the sanctioning process incorporates additional reputational costs associated with being charged with cheating on tax. On a quite different level, sanctioning may come about through formal or informal counselling and dialogue that explains and persuades as to the irresponsibility of evasion or avoidance. Sanctioning does not disappear simply because the revenue authority does not know or chooses not to hold the individual accountable. Tax advisers, family and friends, if they find out about the activity, may either condemn or caution the person for what they have done. And even if no-one knows, individuals must reconcile

breaking the law with the image of being a law-abiding citizen, if not in their own eyes, at least in the eyes of someone close to them.

When tax evasion or avoidance leads individuals to feel uncomfortable about their own identity or how others see their identity, they are grappling with feelings of shame. The purpose of this paper is to analyse feelings of shame, identify causal pathways involving shame, and discuss the implications of this approach for the design of the tax system and its future sustainability. The paper has four objectives: (a) to draw a distinction between socially adaptive and socially non-adaptive forms of shame; (b) to examine how adaptive and non-adaptive shame management is associated with taxpaying enforcement practices; (c) to use reintegrative shaming theory to explain how a sanctioning system can facilitate or undermine adaptive shame management by taxpayers and thereby affect voluntary compliance; and (d) to draw on Australian data involving a sample of taxpayers sanctioned for their involvement in mass marketed schemes to demonstrate that revenue authorities have options for pursuing courses of action that enable taxpayers to manage shame adaptively or non-adaptively. Where the option chosen increases the likelihood of adaptive shame management, two desirable outcomes should occur: The moral obligation of the taxpaying community to pay their tax in the future should strengthen and the tax authority is provided with opportunity to build greater integrity into the tax system.

## **I. Socially adaptive and non-adaptive shame**

### *Defining shame*

Shame is an emotion that generally makes most of us feel like disappearing: We commonly associate it with public disgrace after being caught or exposed for acting in ways that society deems unacceptable. We may even feel some sense of resentment that anyone should have the right to judge us and force us to feel shame. But this is a populist understanding that ignores much of what we know about the shame emotions and the part they play in human behaviour.

Researchers who have followed Tomkin's (1987) affect theory argue that the family of shame emotions (embarrassment, shame and guilt) are always in play either as something we are anticipating, avoiding or managing. As such, they are primary regulators of our behaviour, sometimes without our even being aware of it. When we are forced to confront shame in a "shame showdown," we feel the emotion acutely and no-one questions the unpleasantness of the state of shame. It's little wonder that we don't like to think about it. But these shame showdowns are not necessarily public events, and they are not always full-blown personal debacles. We feel shame regularly and privately, when we reflect on our failure to achieve valued goals or when we realize we have behaved in ways that are inappropriate. Sometimes it's a niggling feeling that something is wrong, sometimes it is combined with other emotions such as sadness and disappointment, and sometimes it beds down in us with anger.

In the work of our research group on shame, distinctions between shame and guilt do not unlock analytic insight. We follow Nathan Harris (2001, 2003, forthcoming) who brings shame and guilt together as intertwined, powerful and mutually reinforcing emotions that are tied to our self-worth, and as such are distinct from the milder emotion of embarrassment. Harris debunks old distinctions between shame as an emotion that others impose upon us for breaking social norms and guilt as an emotion that we generate ourselves because we know we did not live up to our own standards.

Drawing on the work of philosopher, Bernard Williams (1993), and psychology's Henri Tajfel (1978) and John Turner (Turner, Hogg, Oakes, Reicher, and Wetherell, 1987), Harris points out that the evaluations we hold of ourselves and the evaluations that our significant others and reference groups hold of us are inextricably intertwined. Our values and standards are not peculiar to us, they are shared with our group; indeed they are acquired through our interactions with our group, and reinforced by them through our social exchanges. When we fail to live up to these values and standards, we need others to help us make sense of what we have done. "Did I really do that?" "Was it as bad as I think – or as bad as you think?" This social validation process is something that we all do, even if the other we are talking to is an imaginary figure in our head. In the process of deciding whether we have or have not done wrong, we need others to affirm our standards ("yes, you do hold that value, as do we") and validate our behaviour ("yes, you did act in a way that breached that standard"). If in the process we decide we fall short as the person that we and others think we are, we feel bad about ourselves, and we do so because we have failed in our own eyes (what many call guilt) and in the eyes of our reference group (what many call shame). Our eyes and our group's eyes are interconnected. If they are not, as

Bernard Williams put it, we are left with no alternative but to believe we are living in the midst of cranks!

The shame-guilt that is felt when we fail to live up to a standard of competence or moral conduct that we have internalised and that others expect of us is theorized by Harris as an emotional response to the perception that our ethical identity is under threat. Ethical identity, according to Harris, is the link between us and the group, between shame and guilt. Our ethical identity is that part of us that sets standards for how we should behave and what we should be able to do, and as such is shaped both by ourselves and significant others. One reinforces the other. Feeling we have let ourselves down is validated by seeing that others think so too. Seeing others disapprove of us makes us consider the possibility that we have failed to live up to our ethical identity. When we become aware that we have not lived up to our ethical identity, we experience shame. Shame is the signal for us to confront and acknowledge our failing; and if possible do something about it.

Shame is therefore our moral and competence sensor. It tells us when we are going off-course in that we are not behaving in accordance with our ethical identity; although the circumstances have to be such that we are prepared to listen to our sensor and reflect on our behaviour so that we understand how we have failed ourselves. This is not always easy because shame is such a personally threatening emotion and we are such self-protective creatures. But there is little doubt that we can learn to manage shame well, if we have the role models (see Bandura, 1986 on social learning), and if we have the kind of environment where we can learn from acknowledging our mistakes (see Braithwaite, 2002 on restorative justice and responsive regulation).

### *Managing shame well*

Most times we deal with shame responsively and adaptively by recognizing our mistakes, backtracking to make things right, perhaps smoothing things over with a joke against ourselves, or if another is involved and has been hurt by our action, apologizing for any offence we may have caused. We learn to recognize the shame signal and move quickly to deal with it and put it behind us. Some may see this as the use of high-level social skills. So it is. But they are social skills that come into play in a particular situation – a situation where our personal identity, the person whom we know ourselves to be, or at least, whom we like to think of ourselves as being, comes into question. More is needed than social skills; we need the courage to take stock of our intentions and behaviour, and deal with our identity threatening experiences.

When we do, we may face up to some things that we can do better or that we should not have done. Having taken a good look at ourselves and worked through our failings, we are then in a position to engage with the world more openly and honestly, to do things better next time, unhindered by the weight of our parcel of identity threats. It is neither desirable nor necessary to drown in a sense of personal failing or inadequacy. Shadd Maruna's (2001) empirical work on how criminals "make good" after serving their sentences demonstrates the benefits of moving past shame in a way that is not personally destructive. Instead of dwelling endlessly on their parcel of identity threats, they come to identify a "real self," a self that did not make the mistakes of the past, and that can become the new dominant identity that dictates the path of the future. In this way, they can separate themselves from the old identity that got them into trouble with the law. Either way, whether the parcel of identity threats



has been undone and examined in detail, or fleetingly examined and boxed as a remnant of the past, the individual has at some level come to terms with his or her demons. There is no pretence that nothing happened.

### *Managing shame badly*

The “nothing happened,” “I’m not at fault,” “it doesn’t matter” response is the most damaging when we experience a threat to our identity. Intuitively, we know we must protect ourselves from these identity threats because they make us feel so ill at ease with our lot in the world. Our energy is directed toward self-protection – we need to stay clear of reminders of our failings and of people who might expose us for who we are. It does not occur to us that we need to do something constructive to deal directly with that parcel of identity threats that we live with inside us, tightly wrapped, ready to explode as one threat piles on top of another. Instead we become intent on buttressing reasons for not dealing with them: The problem belongs to others, not to us, or it didn’t happen. By not being prepared to admit that the problems exist and by not entertaining the possibility that we are part of these problems, we are denied the opportunity to learn from our mistakes. Our chances of getting it right next time are reduced because we don’t fully understand why we got it wrong last time. Our defensiveness about our shame becomes a handicap. And we miss the opportunity of learning the art of adaptive shame management.

### *Shame acknowledgment and shame displacement*

Eliza Ahmed (2001), who has been responsible for the development of shame management theory, summarizes our responses to the challenge of unwrapping our

parcel of threatened identities in terms of two separate dimensions. The first is a dimension of shame acknowledgment where we recognize that we have caused harm, we feel sorry for what we have done, accept responsibility, and try to make amends. The second dimension is shame displacement. When we become overwhelmed by the horribleness of our actions, we re-seal our parcel of identity threats and look elsewhere, outside ourselves. We blame the person we hurt, the place where it happened, the onlookers, anything to move the focus away from ourselves.

## **2. Managing shame well - not just about us, but our social infrastructure**

While courage is one element in managing our shame well, it would be a mistake to place all the responsibility on the individual. Kurt Lewin (1951), one of the founding fathers of social psychology, introduced the idea that what we do and who we are at any point in time cannot be understood by focusing on the individual alone, we must also examine that person's "life space." Life space is psychological in the sense that it captures all the forces that converge on a person in a particular situation with the potential for shaping thoughts, feelings and actions.

The importance of this way of thinking for psychologists in the 1930s and 1940s was profound. Instead of viewing an individual as the product of a long developmental history that made them a unique individual ready to choose one path and shun another, Lewin (1951) demonstrated that we are what our situation tells us we should be. Importantly, Lewin placed the spotlight on social interaction, demonstrating to us that while individuals may have a unique history, they are also social beings, who are responsive to the social expectations, social truths and social rewards in their environment. Modern social psychology rests on these principles of definition of self

in terms of group membership and group processes, with behaviour understood as part of how we perceive and make sense of our life space at any particular time.

The work of Lewin (1951) when placed alongside that of micro-sociologists such as Goffman (1969) raises the question of what kind of social infrastructure enables us to adopt a “self” that can manage shame well. The simple answer is a ‘safe’ space (see Ahmed et al., 2001 for discussion of this concept), one that removes the threat to our ethical identity. Such an option is institutionally challenging when the law has been broken or when harm is done. The act that has already occurred cannot be “taken back.” The social infrastructure must allow for the harm to be recognized by self and other so that an outcome can be achieved that involves “making good.” As is seen below, authorities often fail in their mission to provide social infrastructure that is both censorious of wrongdoing and that enables opportunities for “making good.”

#### *How regulation can undermine adaptive shame management*

Authorities, with the best of intentions for regulating unlawful behaviours, often are leaders in the creation of life space that is counterproductive for adaptive shame management. Ian Ayres and John Braithwaite (1992) have been critics of overly intrusive regulatory measures, pointing out that it can be counterproductive to “use a sledgehammer to swat a fly.” If a person is prepared to admit to a mistake and make amends, why introduce punitive tactics that make them psychologically close down? The field of taxation is replete with examples of how tax authorities have used overly punitive responses to tax non-compliance and abused their powers. For the purposes of this paper, consideration of two of the flow-on effects of the many complaints and horror stories will suffice, made more remarkable because they are not unique to any

particular tax jurisdiction but are relevant to all. The point being made through these examples is that while the moral high ground is held by critics of the tax authority and while the public see the tax authority as acting like a bully, the social infrastructure is beautifully positioned, not for shame acknowledgment as is desirable, but rather for shame displacement by individual taxpayers,

First, in most fields of regulation, it is accepted that people fail to comply, sometimes because they don't want to, but sometimes because they don't know how to, or they misunderstand what is being asked of them (Kagan and Scholz, 1984). Tax authorities have been particularly slow to incorporate this into their regulatory thinking. A substantial body of research in the tax field has been necessary to prove that tax law is so complex that people make mistakes in tax payments by accident (Long and Swingen, 1991). Indeed, the term non-compliance is preferred by many in preference to evasion (Webley, Robbins, Elffers, and Hessing, 1991) to impress upon tax authorities that mistakes do happen and taxpayers who make innocent mistakes should not be sanctioned with the same level of severity as those who are deliberate and persistent law breakers. In other words, this research has been oriented to showing that every non-compliant taxpayer is not a tax cheat; and that taxpayers may need help in order to understand complex demands from tax authorities and comply with their expectations.

The second example is a more direct indicator of a tax culture of poor shame management. Tax authorities across the democratic world have been scrutinized by government committees for their heavy handed and unreasonable style in dealings with taxpayers (Joint Committee of Public Accounts Report, 1993; National Commission on Restructuring the Internal Revenue Service, 1997; Senate Economics

References Committee, 2002). The introduction of Taxpayers' Bills of Rights and Charters, supported by the United Nations (Organisation for Economic Co-operation and Development, 2001), is the upshot of widespread discontent about the way in which tax authorities have gone about the collection of taxes from the general population. While tax authorities have tried and continue to try to moderate their style to be more client-focused (Job, this volume), the public pressure is on-going. Most governments have set up special purpose advocacy units with powers to investigate the decisions and actions of tax authorities on behalf of taxpayers who feel unfairly treated.

These criticisms of punitiveness and heavy-handedness as a hindrance to building a culture of shame acknowledgment does not imply that rules are unnecessary and that disapproval is inappropriate in the regulatory context. Organizational rules and sanctions serve the important function of communicating seriousness of unacceptable behaviour. The rule is not the problem, rather the way it is enforced, that is, either through imposing overly harsh penalties or applying penalties in circumstances that are destructive of the likelihood of future compliance. There is limited social value in rules being enforced in ways that make it very difficult for people to deal with their shortcomings and learn to regulate themselves effectively. By taking control of the situation through inflicting outside punishment, we can take away the individual's capacity to search their soul and judge for themselves how their behaviour may have been at odds with theirs and others' expectations. Bruno Frey (1997) refers to this as using regulation to "crowd out" our moral self. I would say that regulation can frighten us into making sure that our parcel of threatened identities is wrapped more tightly than ever before. Otherwise, our shame may increase to the point of being unbearable.

If some environments can be hostile to shame acknowledgment and increase the prospects of shame displacement, what kind of environment can reverse this process and make it easier for us to face up to what we have done? And is that possible in a regulatory situation where authority's disapproval needs to be built into the social infrastructure?

### *Reintegrative shaming environments*

Reintegrative shaming theory (Braithwaite, 1989) spells out for us the characteristics of a regulatory environment that facilitates adaptive shame management. One element is interdependence. Individuals who are dependent on each other for the exchange of goods or for accomplishing a goal through the execution of a chain of tasks have good reasons for making it easier for one of their number to face up to their threatened identities. This is not likely to happen, however, unless the psychological space is right, that is, people feel assured that they are a valued member of the group; and they, in turn, value other members of the group.

Interdependence, therefore, is not always going to make its presence felt so that individuals feel accountable. Moreover, with multiple identities and segregated networks, we can hide an "unacceptable" identity, share it only with tolerant others, and assume quite another more socially appropriate identity as our social infrastructure changes its form. Not infrequently, these are the circumstances in which law is used, evidence collected, and individuals are held accountable for their actions. According to reintegrative shaming theory, in order for shame to be acknowledged and resolved in these situations, those who have been caught behaving illegally need

to not only face their accusers and the evidence against them, but also be given the support necessary to repair the damage and change their future behaviour.

John Braithwaite (1989) describes sanctioning systems that recognize the need to offer hope for a better future while re-affirming normative principles of right and wrong as systems of reintegrative shaming. This means that we don't refrain from disapproval, but that we put clear boundaries around it, and as the person unravels their parcel of threatened identities, we go the extra mile to reaffirm the value of the person and the hope we have for the future. We assure them that they need not face this shame again, they can connect with another identity of which they can be proud, and that we will be there to help them realize their ambitions. Reintegrative shaming is contrasted with stigmatizing shaming which condemns the whole person and offers little hope for being accepted into the community in the future. When we brand people as "evil" or as "cheats," we are communicating disrespect and rejection of the whole person. The door is not left open for anyone – either the labeller or the labelled – to manage shame well.

The use of reintegrative shaming in the taxation context is not far-fetched and is not too large a step forward from the kind of dialogue that occurs now, particularly with tax practitioners and advisers. The next section begins with an account taken from Braithwaite and Braithwaite (2007) of how such an encounter might proceed.

### **III. What reintegrative shaming theory has to offer?**

*A possible restorative justice response to a real tax event*

A major accounting firm partner got one of their wealthy clients into a lot of trouble for tax non-compliance. A more senior partner then visited the senior ATO officer handling the matter and said: “This is a rogue partner and we are going to get rid of him. We would hate the ATO to think that other partners condone what he did.”

Such an encounter creates the opportunity the tax authority needs to tackle the ethical climate in the major accounting firms and investment banks. The senior ATO officers could have replied:

“That’s good that your other partners do not condone this and I’m pleased to hear it because we at the ATO were disturbed by the non-compliance that occurred here and are always concerned with something of this gravity that it might reflect a culture of non-compliance in your firm. Could we have a meeting to discuss this with all your partners?”

When they agree to this, as regulatory experience with restorative justice elsewhere suggests they would, a request would be made for a restorative justice practitioner to facilitate the meeting. This facilitator would insist that the “rogue” partner who was about to be moved out also attend. He would be the first person asked to speak by the facilitator. He would be asked to tell in his own words how the incident that had got him into hot water had occurred. It might turn out that the “rogue” partner was not a rogue partner at all, but a fall-guy who was actually following the culture of the firm. The conversation would conclude by focusing on the harm done by the incident, with everyone being asked to contribute ideas for preventive action to ensure the problem did not arise again. If the suggestion had not already been made, the Tax Officer could propose an audit of the firm’s systems for compliance with ethical standards. An independent evaluation of compliance systems would be conducted by an external consultant whose independence enjoyed the confidence of both the firm and the Tax



Office. Its recommendations would be reported back to a reconvened meeting of the group, which would discuss whether they went far enough. A year later the group might meet again to receive a report from the accounting firm and the independent consultant on how thoroughly the reforms to the compliance culture had been implemented.

*What does adaptive and non-adaptive shame management mean for ordinary taxpayers?*

At this point, the more practically minded might ask: How can this be applied to tax jurisdictions which incorporate millions of taxpayers many of whom are cheating the system of tax dollars in different ways and to different degrees? Obviously, automated procedures are essential for processing the volumes of documents and data that flow into such systems, identifying cases requiring investigation, and initiating procedures to amend tax assessments. In such cases, the principles of reintegrative shaming cannot be practiced routinely one-on-one but need to be abstracted and implemented in a fashion that engages with the masses.

This already is occurring to a limited extent and I will use as an example the Australian Taxation Office's Compliance Model (Job, this volume). In order to ensure that the processes of disapproval or shaming are reasonable, the Compliance Model recommends a series of "probes" to ascertain the likely risk to revenue that non-compliance of a particular kind is imposing. Taxpayers are encouraged to volunteer corrections and amendments. This is not to say that penalties won't be imposed, but penalties are monitored for their appropriateness and it is not unheard of for fines to be waived with only an interest charge when taxpayers are cooperative. The objective

is to settle most problems with the minimum level of intrusiveness. If cooperation is not forthcoming from the taxpayer, enforcement activity increases in its intrusiveness in graduated steps until the matter is settled.

Reintegration comes into the use of the Model on a mass scale at two levels. First, when a taxpayer signals a willingness to be cooperative, the tax authority responds positively and de-escalates intrusiveness (but does not lose interest in the outcome!). If the cooperative posturing by the taxpayer proves not to be genuine, escalation, at a more accelerated pace than before, is the immediate response. Second, reintegration has two components: (a) respecting the person (while disapproving of the act of wrongdoing); and (b) finding a path of repair and restoration of relationships. The first component has been institutionalised on a mass scale already in many tax jurisdictions through Taxpayers' Bills of Rights and Charters. Admittedly the intellectual framework behind these developments has been that of human rights. But part of the reason why rights are so important in the tax context is the belief that tax authorities should not have the power to shame inappropriately. Rights discourse may not explicitly refer to reintegrative processes, but it places limits on the damage that can be inflicted on individuals in the name of law and order. Respecting the individual, respecting their right to privacy and confidentiality, providing taxpayers with explanations for tax authority decisions, and opportunities to contest assessments and reach agreements are therefore ways in which improvements have been made in the direction of recognizing the importance of reintegration in the context of law breaking behaviour.

Admittedly these are only baby steps in working out how reintegrative shaming can be implemented on a grand scale in tax jurisdictions. Much needs to be done in

learning how to implement such processes, and undoubtedly many mistakes will be made before we get it right. If it is so difficult, a good question to ask is, should we bother? I will conclude this paper by giving reasons for why we should persevere with this challenge.

First, it should be noted that interdependence between taxpayers and revenue authorities is high in democratic societies, particularly in those with a tax system that relies heavily on self-assessment. Tax authorities need the cooperation of taxpayers, and usually taxpayers are keen to hear back from tax authorities, particularly if the tax authority owes them money. Voluntary taxpaying is at the heart of effective tax systems in many countries and has been explained through a number of different lenses, sometimes separately, sometimes in combination. Willingness to pay tax has been linked to perceived benefits, a desire to conform to social norms, lack of other options (or coercion), fear, and obligation or duty. Of these, arguably the most consistent predictor of tax evasion among individuals and across countries has been obligation (see reviews by Andreoni et al., 1998, Richardson and Sawyer, 2001 and Webley et al., 1991) or what is commonly referred to as “tax morale” (Feld and Frey, 2002, 2005; Frey, 2003; Frey and Feld, 2001).

Tax morale is not to be taken for granted. Building and protecting tax morale needs to be a purposeful activity of tax authorities, and implementing principles of reintegrative shaming is one way of ensuring this outcome is achieved (for another, see the work on direct democracy by Feld and Frey, 2005 and Frey and Feld, 2001). To explain how this occurs, we turn to motivational posturing theory (Braithwaite, Braithwaite, Gibson and Makkai, 1994; Braithwaite 1995, 2003).

Individual taxpayers control the social distance they place between themselves and the tax authority. When tax morale is high, the social distance that taxpayers place between themselves and the authority should be relatively low. In contrast, when tax morale is low and taxpayers feel uncomfortable, they will move away from the authority to avoid engagement and protect themselves from any threat that the authority might direct their way. Socially distant postures include (a) resistance, or opposing the position taken by the authority, (b) disengagement, or cutting oneself off from the authority psychologically, and (c) game playing, or contesting the power of the authority through finding loopholes in the law. The more cooperative postures that enable the tax authority to influence and persuade taxpayers to do the right thing are believing in the system (commitment) and accepting that the authority knows what is best (capitulation).

Motivational posturing theory offers three important insights to tax officials. First, taxpayers choose how distant they want to be from an authority. Second, the greater the distance, the less control the authority has to influence behaviour. Third, the psychological basis of social distance can be of two kinds. The first aspect of distancing is related to disliking or being unsympathetic to the authority, and is best represented by the resistance posture. The second aspect has little to do with how favourably one regards authority, and more to do with how seriously one takes authority. This second dimension, defined by disengagement and game playing, has been called dismissiveness. It amounts to lacking respect for authority, possibly regarding the authority as weak. Resistance and dismissiveness are two different forms of defiance that require different responses from authorities. It follows from these three propositions that if tax authorities want to continue relying on a voluntary

taxpaying culture, they must manage postures, containing the defiant postures and building the cooperative postures.

The necessity of managing motivational postures explains why tax administrations need to mainstream reintegrative shaming into their enforcement strategies, that is mainstream ethically based disapproval as well as reintegration. Ethically based disapproval is considered particularly important for curbing dismissiveness, reintegration is particularly important for curbing resistance.

Through disapproving or creating shame over tax evasion, tax authorities are able to legitimate the ethical identity of being an honest taxpayer and affirm the value they place on high tax morale. This is not necessarily an easy task, particularly when dealing with those who reject a moral base for taxpaying on ideological grounds. Dismissiveness is just such a posture. It has been associated with the choice of not valuing public benefits, not accepting the government's view of justice, and rejecting a moral obligation to pay tax. Regulating dismissiveness of this kind presents a challenge for authorities in a democratic society because the legitimacy of the system, the effectiveness of the law and the capability to enforce the law are all brought into question.

While recognizing the threat this poses to the tax system, it is important to acknowledge that dismissiveness serves an important function in a democracy. Dismissive defiance signals that for at least a proportion of the population, well-entrenched institutions are not necessarily considered valuable or necessary. The principles of taxation and the design of the tax system need to be debated, not swept under the carpet. And opposition should certainly not be blindly crushed out of

existence. This is where reintegrative shaming has a role. Reintegrative shaming offers prospects of deliberation and dialogue about what is “right.” Success at managing dismissiveness in a sustainable way involves openness, dialogue, persuasion, listening to different points of view, and perhaps even changing the tax system.

Reintegration, on the other hand, is important for curbing the displacement of shame and the resistance that taxpayers express when they are forced to confront their wrongdoing. It is concern about the stress and strain in the relationship with the authority that pushes people toward resistant defiance. Reintegration or taking steps to treat the person with respect and communicate hope and expectation for a law-abiding future provides the means for repairing damaged relationships and re-invigorating voluntary compliance. This latter process overlaps substantially with the work of Tyler (1990) on procedural justice. In keeping with the work of Tyler (1990), resistant defiance among taxpayers who have felt the ire of the Australian Taxation Office responds favourably to procedural fairness and to evidence that the tax authority can be trusted to serve the public interest (Murphy, 2004, 2005). But procedural justice alone is not enough when objectives and rules are contentious. Reintegrative shaming offers prospects of addressing both processes and ends.

Reintegrative shaming provides a framework for both those involved in evasion and avoidance and those involved in enforcing tax law to have their say, to exchange their views on the harms that each creates in the society, and ultimately to identify points of difference and points of agreement. There is no suggestion here that the tax authority should compromise on its enforcement activities. But it has a responsibility to explain why tax laws take the form they do, why enforcement is important and why it is done

a certain way. Through listening and learning, taxpayers may come to appreciate the tax system more, and tax officials may come to understand how they might improve the integrity of their own system so that it gains greater respect from taxpayers.

#### **IV. A case study of the psychology of the sanctioned taxpayer**

In presenting an argument for how reintegrative shaming can benefit tax authorities, an issue that lingers and remains unaddressed is why would taxpayers accused of evasion or avoidance feel ashamed? If they object to taxation in principle, they may feel proud of their defiance. While undoubtedly true for some, our data suggest that for most disapproval from a legitimate authority is threatening, even if the taxpayer has the lowest regard for the institution that the authority oversees.

Between 2000 and 2002, the Centre for Tax System Integrity collected data from taxpayers from the general population (N = 3253 from two random samples) and from a random sample of 2292 taxpayers who had been involved in mass marketed aggressive tax planning schemes that the Australian Taxation Office had ruled as tax avoidance schemes (see Murphy, 2003). The ruling covered the last 6 years of tax lodgements in some cases. Many taxpayers had large repayments to make to the tax authority, as well as fines and penalties. Taxpayers claimed that promoters had assured them that the schemes were legal and that the actions of the tax authority were unfair. The tensions erupted in a very public conflict between this group of taxpayers and the Australian Taxation Office, resulting in a government enquiry (Murphy, 2003; Senate Economics References Committee, 2002). The episode ended with the tax authority making considerable compromises to reach a settlement and end the dispute. Penalties and interest were waived and generous terms of payment for back tax were offered to those who were unknowing consumers of the schemes.



A study comparing the attitudes of the general population sample and the investor sample just after settlement produced some interesting results (Braithwaite, Murphy and Reinhart, 2007). The investor group showed higher levels of resistant defiance than the general population group, but they showed lower levels of dismissive defiance. In other words, they expressed adversarial attitudes toward the tax authority and much antipathy. They were angry that the Tax Office would not approve their investments and had treated them as if they were tax cheats. At the same time, these investors were disinclined to dismiss the office's authority as irrelevant. The tax authority's enforcement action made it unpopular, but it also placed constraints on what taxpayers felt they could do without any adverse consequences.

In addition to measuring motivational postures and the degree to which taxpayers were resistant and dismissive, the general population and investor groups were compared on how they coped with taxation as a threat to material well-being. Coping responses were conceptualised in three ways. Individuals could "feel oppressed" by the taxation experience, or they could "take control," challenging the tax authority's decisions, or they could "think morally," accepting that they had a duty or obligation to pay tax. All three reactions were much stronger in the investor group than in the general population group. The investors who had been in conflict with the Tax Office felt more oppressed overall; they also favoured actions to take control of their situation to challenge the tax authority; and surprisingly, they also thought morally about themselves as having an honest taxpaying identity. This mixture of heightened coping reactions to the tax threat creates a highly volatile population for the tax authority to manage, particularly considering that the group regarded the procedural justice they were afforded as poor (Murphy, 2005).

Australia's mass marketed schemes episode did not show the tax authority in the best possible light. The hope for resolving this conflict without jeopardizing the integrity of the Tax Office in the public eye arguably lay in a different direction to that taken in the heat of the contest. Firming up investors' pride in being an honest taxpayer so that they would not want to become involved in such schemes in the future should have been the prime objective, while simultaneously sending a message that involvement in mass marketed schemes of these kinds was not acceptable. Australia's tax administrators deemed the investors' actions dishonest, and they were not about to change their decision on this point. But they failed in finding a way of leading taxpayers through what was a very unpleasant and unacceptable tax situation. The emphasis was on punishing people who were depicted as foolhardy and should have known better. It was not until the public enquiry that attention turned to clarifying the law and warning taxpayers early of ATO concerns. These practices have now been adopted by the Australian Taxation Office. This change provides a positive message to the community that says "we will work with you to prevent this situation from occurring again." It expresses confidence that the ATO expects far fewer Australians to venture down the mass marketed scheme path, once they have been informed that such schemes are under investigation as possibly unlawful.

What the Australian Taxation Office had failed to do in dealing with the scheme investors early on was to recognize that when confronted with the full force of the law, most people don't want to be labelled as tax cheats, and are looking for ways to restore their reputation in their own eyes, if not in others. Australia's mass marketed schemes debacle involved the management of shame on all sides, with far more

displacement being aired than acknowledgment. It is possible that it could have been managed much better if the institutional infrastructure for the resolution of the conflict had provided opportunities for respectful dialogue at an early stage. It should be possible for taxpayers and tax officials to share their views and move conflict more quickly to a fair and reasonable resolution within a restorative justice and responsive regulation framework (Braithwaite, 2002).

## **V. Conclusion**

When we consider the power of shame and our attempts to manage it adaptively, particularly when authority deems it necessary to punish us, it is important to recognize that people's narratives about themselves are complex. There is no blanket treatment from a regulator that can effectively cast these narratives out of existence. But narratives can be reconstructed (Maruna, 2001). Tax authorities would be wise to broaden their remit of law enforcement. They need to understand the narratives of their regulatory communities, put down their big sticks, roll up their sleeves and engage in dialogue about what tax law means and whose interests it serves. Persuade people that while it is a nuisance to pay, it is fair. Understanding the principles of reintegrative shaming is a first step to embarking on this road of discovery.

## References

- Ahmed, Eliza (2001) Shame management: Regulating bullying. In Eliza Ahmed, Nathan Harris, John Braithwaite, and Valerie Braithwaite, *Shame management through reintegration* (pp. 211-314). Cambridge, UK: Cambridge University Press.
- Eliza Ahmed, Nathan Harris, John Braithwaite, and Valerie Braithwaite (2001) *Shame management through reintegration* Cambridge, UK: Cambridge University Press.
- Andreoni, James, Brian Erard, and Jonathan Feinstein (1998) Tax compliance *Journal of Economic Literature* 36, 818-860.
- Ayres, Ian and John Braithwaite (1992) *Responsive Regulation: Transcending the Deregulation Debate* Oxford: Oxford University Press.
- Bandura, Albert (1986) *Social Foundations of Thought and Action: A Social Cognitive Theory* Englewood Cliffs, NJ: Prentice Hall.
- Braithwaite, John (1989) *Crime, Shame and Reintegration* Cambridge: Cambridge University Press.
- Braithwaite, John (2002) *Restorative Justice and Responsive Regulation* New York: Oxford University Press.
- Braithwaite, John (2005) *Markets in Vice, Markets in Virtue*. New York and Sydney: Oxford University Press and Federation Press.
- Braithwaite, Valerie (1995) Games of engagement: postures within the regulatory community *Law and Policy* 17, 225-55.
- Braithwaite, Valerie (2003) Dancing with tax authorities: motivational postures and non-compliant actions. In Valerie Braithwaite (ed), *Taxing Democracy: Understanding Tax Avoidance and Evasion* (pp. 15-39) Aldershot, UK: Ashgate.
- Braithwaite, Valerie and John Braithwaite (2007) Democratic sentiment and cyclical markets in vice *British Journal of Criminology* (forthcoming).
- Braithwaite, Valerie, John Braithwaite, Diane Gibson, and Toni Makkai (1994) Regulatory styles, motivational postures and nursing home compliance, *Law and Policy* 16, 363-94.
- Braithwaite, Valerie, Kristina Murphy, and Monika Reinhart (2007) Taxation threat, motivational postures, and responsive regulation *Law and Policy* (forthcoming)
- Feld, Lars and Bruno Frey (2002) Trust breeds trust: How taxpayers are treated *Economics of Governance* 3, 87-99.
- Feld, Lars and Bruno Frey (2005) *Tax compliance as the result of a psychological contract: The role of incentives and responsive regulation* Centre for Tax System Integrity Working Paper 76, Australian National University, Canberra.

Frey, Bruno S. (1997) *Not Just for the Money: An Economic Theory of Personal Motivation* Cheltenham, UK: Edward Elgar.

Frey, Bruno S. (2003) The Role of Deterrence and Tax Morale in Taxation in the European Union, Jelle Zijlstra Lecture, Netherlands Institute for Advanced Study in the Humanities and Social Sciences (NIAS).

Frey, Bruno S. and Lars P. Feld (2001) The Tax Authority and the Taxpayer: An Exploratory Analysis. Paper presented at the Second International Conference on Taxation, Centre for Tax System Integrity, Australian National University, Canberra 10-11 December.

Goffman, Erving (1969) *Where the Action Is: Three Essays* London: Penguin Press.

Grasmick, Harold G. and Robert J. Bursik Jr, (1990) Conscience, significant others, and rational choice: Extending the deterrence model *Law and Society Review* 24, 837-861.

Harris, Nathan (2001) Shaming and shame: Regulating drink-driving. In Eliza Ahmed, Nathan Harris, John Braithwaite, and Valerie Braithwaite. *Shame management through reintegration* (pp. 73-210) Cambridge, UK: Cambridge University Press.

Harris, Nathan (2003) Reassessing the dimensionality of the moral emotions *British Journal of Psychology* 94, 457-473.

Harris, Nathan (forthcoming) Shame, ethical identity and justice interventions: Lessons from research on the psychology of influence. In Susanne Karstedt, Ian Loader, and Heather Strang (eds), *Emotions, Crime and Justice*. Hart Publishing.

Job, Jenny and David Honaker (2003) Short-term experience with responsive regulation in the Australian Taxation Office. In Valerie Braithwaite (ed), *Taxing Democracy: Understanding Tax Avoidance and Evasion* (pp. 111-130) Ashgate, Aldershot.

Job, Jenny (this volume)

Joint Committee of Public Accounts (1993) An Assessment of Tax: A Report on an Enquiry into the Australian Taxation Office. JCPA Report No 326. Canberra: Australian Government Publishing Service.

Kagan, Robert, and John T. Scholz (1984) The criminology of the corporation and regulatory enforcement strategies. In K. Hawkins and J. Thomas (eds), *Enforcing Regulation* Boston: Kluwer-Nijhoff.

Lewin, Kurt (1951) *Field Theory in Social Science: Selected Theoretical Papers* (D. Cartwright ed) New York: Harper and Row.

Maruna, Shadd (2001) *Making Good: How Ex-convicts Reform and Rebuild their Lives* Washington, DC: American Psychological Association.

- Murphy, Kristina (2003) An examination of taxpayers' attitudes towards the Australian tax system: Findings from a survey of tax scheme investors *Australian Tax Forum* 18, 209-42.
- Murphy, Kristina (2004) The role of trust in nurturing compliance: A study of accused tax avoiders *Law and Human Behavior* 28, 187-209.
- Murphy, Kristina (2005) Regulating more effectively: The relationship between procedural justice, legitimacy and tax non-compliance *Journal of Law Society* 32, 562-589.
- National Commission on Restructuring the Internal Revenue Service (1997) A Vision for a New IRS. Washington DC: National Commission on Restructuring the Internal Revenue Service.
- Organisation for Economic Co-operation and Development (2001) *Taxpayer rights and obligations - practice note GAP002*, Centre for Tax Policy and Administration.
- Richardson, Maryann and Adrian J. Sawyer (2001) A taxonomy of the tax compliance literature: Further findings, problems and prospects *Australian Taxation Forum* 16, 137-320.
- Senate Economics References Committee (2002) *Inquiry into Mass Marketed Tax Effective Schemes and Investor Protection: Final Report* Canberra: Parliament of Australia.
- Tajfel, Henri (ed) (1978) *Differentiation Between Social Groups: Studies in the Social Psychology of Intergroup Relations* London: Academic Press.
- Tomkins, S. S. (1987) Shame. In D. L. Nathanson (ed), *The Many Faces of Shame* (pp. 133-161) New York: Guilford.
- Turner, John C., Michael A. Hogg, Penelope J. Oakes, Stephen J. Reicher, and Margaret S. Wetherell (1987) *Rediscovering the Social Group: A self-categorization Theory* Oxford: Blackwell.
- Tyler, Tom (1990) *Why People Obey the Law* New Haven, CT: Yale University Press.
- Webley, Paul, Henry Robben, Henk Elffers and Dick Hessing (1991) *Tax Evasion: An Experimental Approach* Cambridge: Cambridge University Press.
- Williams, Bernard (1993) *Shame and Necessity* Berkely, CA: University of California Press.