

Compliance with Migration Law

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Executive Summary

1. Compliance cannot be effectively elicited from a population through relying on a simple system of making law and penalizing non-compliance, nor can it be effectively elicited through direct appeals to self interest, formulating policy so that costs of non-compliance outweigh benefits. Both the legal approach and the cost-benefit approach, however, are usefully used in conjunction with other strategies in a coordinated, multi-pronged and responsive compliance plan.
2. Three essential elements to eliciting compliance action from any individual without resorting to coercion are (a) ensuring they know and understand what is required; (b) ensuring they have the capacity, ability or can call on resources to comply; (c) ensuring they are willing at the very least to take the compliance path (commitment is best, but not always achievable).
3. The goal of ensuring that a compliance program with these elements has most chance of success is consolidated by using responsive regulatory pyramids. These pyramids are enforcement-based, ratcheting up intrusiveness and coercion as individuals fail to show a willingness to cooperate with the compliance objective; or they are strengths-based, providing opportunities to practice compliance at higher levels, going beyond the basic requirements and contributing positively to objectives.
4. Deterrence in the form of intrusiveness in and control over an individual's decision making increases incrementally in enforcement pyramids until compliance is achieved. Communities will tolerate and accept such action as

legitimate when they have given in-principle informed consent to the compliance program.

5. Not all will agree with the compliance plan. Such individuals need to abide by the principle of critical deference, meaning that they will voice their objections through agreed upon channels with the purpose of changing policy or legislation. In the meantime, they will comply with the authority's requests.
6. In-principle informed consent and critical deference are possible when the authority has earned its legitimacy in the eyes of the public.
7. Legitimacy is earned through Australian immigration policy and its purposes being shared with and understood by the public in spite of its complexity.
8. Legitimacy is earned through the public having opportunity to express resistance to the policy and its purposes and through the authority's acknowledgement of dissident voices to whom they will listen and reply.
9. Perceived legitimacy, not just legal legitimacy, is important if regulators are to be supported in using powers of coercion to enforce the law.
10. Perceived legitimacy also is important for regulators who seek cooperation from those they regulate and voluntary compliance with the law.
11. At the heart of a regulatory agency's influence is the capacity to offer respect for the identity of individuals. Compliance plans need to be monitored for the degree to which they offer respectful treatment and implement respectful procedures.
12. Whether or not treatment is being perceived as respectful is often reflected in motivational posturing. Motivational postures are the signals that individuals or groups send to an authority that reflect the degree to which the authority is liked and the degree to which the authority is considered worthy of deference.

Postures of commitment and capitulation send positive messages; resistance, disengagement and game playing negative messages.

13. Respectful engagement with individuals is made possible through understanding and communicating with individuals about their motivational posturing, the sources of the posturing, the solutions to the individual's compliance problems and through honouring principles of procedural justice.
14. Immigration officers work through, alongside of, and in competition with agencies that may be seen as "alternative authorities" by unlawful non-citizens or bridging visa holders. Alternative authorities are entities with resources and credibility. They may take action that undermines a government's approach to compliance, or they may work collaboratively with government to effectively improve compliance.
15. Government agencies such as the Department of Immigration and Citizenship operate in an environment with multiple authorities and sources of influence, and therefore need an approach to compliance that recognizes that governance takes place through networks. These networks provide knowledge, share information and understandings of events and consequences. The information and understandings that an individual has shapes the responses that seem attractive and sensible to them. In this way, networks exercise social control that may or may not support the government's approach to compliance.
16. The networked nature of the compliance activity of the Department points to the need for a set of compliance principles that bring consultation and coordination to the fore. With this in mind, this report concludes by offering guidelines in the form of 8 Ways Dialogue, 8 Regulatory Principles (8WD-8RP).

Introduction

The purpose of this paper is to locate compliance with migration law in the context of compliance with other kinds of law and rules, and to argue that while there may appear to be unique conditions operating while enforcing compliance with migration law, these differences are more of degree than of kind. The differences loom large in the thinking of regulators with responsibility for enforcing law. In the first place, different regulatory agencies use their powers to enforce different kinds of laws. Some agencies use their powers to employ administrative tools to generate orderliness and manage risks. The Department of Immigration and Citizenship, for example, regard the use of immigration detention as an administrative tool. In contrast, the police and courts in the criminal justice system have a different perception of their responsibilities. Imprisonment in this regulatory context often is not only about risk management, but also about punishment that is proportionate to the crime that has been committed. These differences occupy the minds of regulators because the basis on which they request and enforce compliance is so radically different across regulatory domains. An immigration official operates with a different basis for her authority as well as a different set of laws, rules and routines from a regulator in occupational health and safety, or a food safety inspector, or a tax auditor, or a child protection worker, or a quarantine officer. Moreover, these different kinds of regulators deal with very different kinds of people in carrying out their enforcement activities.

Yet, the challenge of getting people to cooperate and comply with authority has much in common across all of these domains. This paper looks at the question of

compliance from a behavioural perspective: how do people make sense of and respond to authorities that ask them to change the ways in which they do things, or make it impossible or costly for them to behave as they normally do, or sanction them for not obeying the law. Across these different compliance settings, compliers and non-compliers alike expect those placed in positions of authority to do their jobs and elicit compliance from those over whom they have authority. This does not mean that people like being told what to do. Generally they do not, and some may be quite sophisticated in finding ways of avoiding or defying authority. It is this psychological phenomenon of reacting to having one's liberty curtailed by authority that is common across regulatory domains and provides the basic rationale for adopting a cross-regulatory domain approach to understanding compliance. A cross-regulatory approach opens the door to new perspectives and ways of looking at compliance issues. Knowledge can be transferred from one domain to another and commonalities can be sought in how regulatory agencies elicit and enforce compliance with law in a society that subscribes to democratic values. A cross-regulatory approach gives rise to a question pertinent to all government agencies and departments – how does government in a democracy elicit systematically from a population certain actions, which the population may or may not have practiced previously, and may or may not want to practice now? The answers to these questions go to the heart of good governance.

Immigration is a particularly interesting context in which to ask these questions. The socialization processes that teach us what authority expects, how we are to comply, and what happens if we do not will be different across cultural groups and will vary with exposure and connection with dominant cultures. Yet the processes that need to

be set in train to elicit compliance are the same regardless of where a person comes from – first, an authority looking for compliance among those they govern needs to impart knowledge of what is expected in order to comply; second, the authority needs to check that people have capacity or resources to comply; and third, the authority needs to persuade people of the importance of complying, engendering willingness to comply (Kagan and Scholz 1984; Mitchell 1994). In the context of Immigration, setting up the processes admittedly is likely to be more resource intensive than it might be with a more culturally homogenous population. Immigration administrators must develop processes that are culturally appropriate for transferring knowledge, instilling capacity and eliciting willingness. To do so will require intermediaries who have a deeper knowledge of cultural backgrounds. While this makes compliance a more resource intensive process than it might otherwise be, there are other factors balancing the scales. Those who enter a country from foreign lands by their very nature have initiative, courage and in many cases, a proven robustness in dealing with new and strange systems over which they have little control. They may well be resource-rich in capacity to adapt to new situations.

These questions of compliance, how it comes about and how we can do better in building cooperation with authorities are addressed in this paper in four parts. First, a traditional approach to compliance is presented based on the idea that individuals should obey the law and be fearful of deterrence should they break the law. This model remains relevant today – it underpins most compliance systems. This legal conception of compliance has in time made room for an economic analysis of why people fail to comply. The economic model takes a somewhat broader view through focusing on costs and benefits rather than deterrence and obligation. Both models,

however, focus on a sliver of human behaviour, assuming that only these aspects are relevant to answering the big compliance questions. They miss some of the more important relational elements that are at the heart of social influence. To explain why this is the case, concepts from psychology, political science and sociology are introduced into the discussion: individualism, identity, reactance, coercion, legitimacy, compliance, obedience, conformity and regulation. The second section of the paper focuses on what is known about non-compliance. What are the obstacles that a regulator such as the Department of Immigration and Citizenship (DIAC) needs to overcome in order to shape human behaviour? Given the democratic framework in which they operate, what are the factors that regulators have working in their favour? Why would people willingly comply? The third section of the paper asks how do regulators have influence and why? Drawing on research and on various models of regulation designed to improve compliance, a set of principles are presented in Section 4 summarizing the ways in which regulators need to think and act if they are to bring about compliance in a democracy.

Section 1: A Traditional Way and a Dominant Way of Thinking about Compliance

Within a traditional framework, compliance describes behaviour that has been requested by an authority. If an authority requests that we stop what we are doing, we stop; if an authority asks us to use an alternative transport route, we do so; if an authority requests payment, we pay; if it requests we stay indoors, we stay indoors. Individuals may or may not understand the reasons for the request, they may agree or disagree with the request, they may or may not respect the person or authority making

the request. In a legal sense, none of these things matter, providing the individual does what is requested of them and complies. This is the essence of a command-and-control approach to compliance.

That said, no one would expect, or indeed advocate, that a person comply with every request blindly. An important part of children's political socialization involves differentiating those with legitimate authority who have a right to request compliance by virtue of their position from those who do not have such authority (Hess and Torney 1967). Even so, authority is not placed beyond question. An important part of every child's upbringing is hearing stories about and learning to be wary of those who might use their position of authority illegitimately. An educational objective in liberal democracies is to give children skills for independent and critical thinking (Fisher 2005; Sternberg 1985). They are taught to question authority and to respect their own views on what they believe is right and proper. At the same time, children learn that rules and laws must be obeyed and that punishment awaits those who flagrantly disregard them. Across cultures and geographical regions, these lessons are learnt within the family, through religious, leisure and sporting groups, in schools, in workplaces, in communities and in nation states (Hess and Torney 1967).

The result of these early socialization experiences is learning about social infrastructure – who are the people who can give us the information we need, who will support us and who can we trust (McGeer 2004). We also internalize a set of widely accepted values that collectively give us direction and meaning and help us make judgments about what we should be doing and what others should be doing (Braithwaite 2009a; Scott 1965). These values serve the dual functions of ensuring the

security of individuals and groups, as well as harmony between individuals and groups. Values tell us about how our society should be working. The values most relevant to the question of compliance with authority are law abidingness, responsibility, honesty, justice, freedom, tolerance of difference, and mutual respect. Such values are regarded as being universal (Rokeach 1968, 1973; Schwartz 1992); they may vary in relative importance across cultures and context, but they are not rejected because they are so fundamental to human existence and social life.

Most people make the transition into adulthood with the belief that they have a responsibility to obey the law, that is, act in ways that are consistent with the law, and show respect for the law and its intentions (Braithwaite and Scott 1991; see Karstedt and Farrall 2006 for a discussion of subversion of these norms particularly in economic transactions). Generally speaking, this sense of law abidingness extends across domains, that is, people who believe they should obey traffic laws also believe they should obey water restriction laws and immigration laws and any new laws that come into being. Law abidingness stems from a belief in the importance of rules for social stability and fear of the consequences of stepping outside of the rules, regardless of who makes them or how foreign they are. In light of Karstedt and Farrell's account of some loosening in law abidingness norms in western democracies, those entering Australia from more coercive regimes may have a more salient sense of the importance of law abidingness than do Australian citizens and arrive with a heightened awareness of the need to fit in. There is no reason to assume that a sense of law abidingness in people who come from overseas is lacking, although their perception of how seriously this attribute is valued in their host country may be challenged after their arrival. If government is not responsive to the actions of

new arrivals, then new arrivals may assume that they do not need to be responsive to government. For example, if feedback from government is poor, new arrivals may infer that government is ineffective and therefore can be ignored. The social nuances of engagement with authority in a host country may be difficult to comprehend.

The argument being made here is that we all learn to comply with law – *to act as requested by legitimate authority*. In cases where authority is not legitimate, we also have the capacity to comply should our futures depend on it. Such a capacity is necessary for our survival, regardless of our country of origin. But within a liberal democracy, it is not the case that we have to *believe* in the law with which we comply. In other words, we are not generally asked to conform. Conformity, unlike compliance, is reserved for situations where individuals adopt the authority's beliefs, values and attitudes – we become like those who are requesting our compliance (Aronson, Wilson and Akert 2007; Kelman 1958). Identification with authority leads to the kind of conformity that is regarded with a degree of scepticism by those who see democracy as a place where ideas should be openly contested and authority is held to account for its actions (Kelman and Hamilton 1989, see Milgram 1974 for an example of the human rights violations associated with conformity). If people believe that certain laws are bad, or if law is being implemented badly, the expectation is that resistance will be mobilized, and will be tolerated providing it is expressed in law-abiding ways (Turk 1982). Democratic societies have a range of mechanisms available for registering resistance and changing law, either through legal institutions or political institutions. In the meantime, we have an obligation to defer to the laws made by the democratically elected government and administered by the legal system.

For the Department of Immigration and Citizenship or its equivalent in other democracies, it is useful to place at the foreground of policy development that which other government departments take for granted: People defer to legitimate authority and at the same time mount protest through other means. This feature of living in a democracy is not necessarily readily grasped by those who come from countries without a democratic tradition. What is likely to be more explicitly understood by those coming from such countries is coercion and the belief that government is to be feared. That fear is not entirely unfounded, even in democracies. Fear of what government can do, the powers it can use if it chooses, serves an important function in ensuring stability and order in society.

In democratic societies such as Australia, part of cultural knowledge is knowing that failure to meet an obligation to comply with law may result in penalties or a negative sanction of some kind. A benevolent authority may give a reprimand first, but persistent failure to comply will be viewed more harshly. The purpose of penalties or negative sanctions of some kind is not so much to “hurt” an individual, but to define the boundaries for individuals so that they can avoid being hurt. The psychological usefulness of punishment, from society’s perspective, is not about exercising punitiveness or “dishing out just deserts”. Rather, punishment will generate fear and impose a cost on individuals that they will want to avoid. In this paper, the more general term, deterrence, is used to describe an institutional arrangement that discourages people from taking a certain course of action either through fear or doubt or anxiety. In considering requests from authority, individuals will think rationally and come to the view that it is in their interests to do what has been asked of them:

Through disobedience, they will inflict more harm on themselves than they would by obeying the rules.

In a practical sense, however, self-regulation or voluntary compliance of the kind described above breaks down, or simply will not be understood, if it is not clear where the boundary lies between acceptable and non-acceptable conduct, between compliance and non-compliance. As law becomes more complex and we enter a world where laws are contestable and sometimes even inconsistent, all government agencies with a regulatory function are struggling with the same challenge of defining boundaries. In the short term, government agencies have no option other than to clearly signal the terms of engagement for their own compliance programs. This may be done in terms of articulating and abiding by principles, guidelines and law, and continuing conversations to provide reasons for decisions.

While it is widely accepted that deterrence has a normative role to play in society – signaling to the population through sanction severity or negative consequences which actions are mildly inappropriate through to seriously unacceptable, there is less evidence that deterrence will always improve compliance (for example, J Braithwaite and Makkai 1991; Makkai and J Braithwaite 1994a). Sherman (1993) and Fagan and Meares (2008) have pointed out the alienating effects of deterrence among marginalized populations, making the prospects of crime reduction worse by fragmenting the legitimacy of formal social control and undermining informal systems of social control. In other cases, deterrence may serve an educative function with a twist – people learn about how the system works. When credible oversight is lacking, they then develop the skills required to avoid detection in the future (Roche

2006; Shover 2007). Deterrence is not the single solution to non-compliance. That said, a substantial proportion of the population comply when deterrence has their in-principle support and when detection of non-compliance is high.

While moral obligation and punishment for doing wrong underpins traditional conceptions of compliance, Becker (1968) suggested broadening the lens to take account of economic incentives and costs. He proposed what is now a highly influential approach to understanding and managing compliance, the economic model of criminality. Becker argued that criminals rationally come to the view that the benefits of their crime outweigh the costs, defined in terms of the probability of being caught and sanctioned and the likely severity of the sanction, as well as the opportunities presented through following a law-abiding path. This model sits comfortably with the traditional command-and-control model that assumes legal obligation wins out if deterrence is present. It adds an economic layer in the sense that where moral obligation is weak, economic costs will step into the void to push individuals back toward compliance.

Becker's cost-benefit model of crime and punishment has been applied by many different enforcement agencies, but it has not always produced the reductions in criminality expected (Garoupa 2003). Some of the problems have related to practical difficulties in applying the theory to real world problems. There have been difficulties with surveillance for instance: Surveillance is not always easily accomplished nor readily accepted in a democracy, given its costliness and its intrusiveness. Moreover, individuals differ in what they judge to be the likelihood that they will be caught and differ in their enjoyment of risk taking (Nagin and Paternoster 1993). If individuals do

not believe they will be caught for not obeying the law – or if they don't care or find the prospect exciting, there is no effective cost involved in non-compliance (Gobert and Punch 2007).

A second related problem is that the experience of receiving a penalty differs from one person to another. In order for a penalty to deter, it needs to be recognized and experienced as a cost that the individual wants to avoid. Not everyone finds the same penalty equally aversive. Being arrested or even sent to jail has different meanings for different people: The same *objective* punishment arouses different levels of *subjective* aversiveness within individuals (see Roche 2006; Sherman 1993).

A third practical challenge facing agencies using a cost-benefit approach to compliance is that costs and benefits are context specific. As the context changes, the ledger of costs and benefits changes: And individuals are far more nimble in manipulating the ledger than are regulatory agencies (see Shover 2007). This phenomenon is evident in the cat-and-mouse games played in financial circles: Financial scheme promoters develop products for reducing tax liabilities, tax authorities rule against their use and they disappear from the market, only to be replaced by new products that are purported to achieve the same objective – but this time in a way that has a better chance of being legal (J Braithwaite 2005). The more general point is that if costs are regarded as outweighing benefits for disobeying law x, entrepreneurs will find a different avenue for disobeying law x that is less likely to fail, and in so doing will tip the balance of costs and benefits the other way, before the authority realizes what has happened.

In the context of Australian migration, all three problems – surveillance, cost subjectivity and contextual manipulation of costs and benefits are present. It is demonstrably difficult to find unlawful non-citizens on land or sea, and perceptions of administrative processes to manage them are associated with very different cost assessments. In the past, for example, differences have been expressed over the costs experienced by those in detention centres, and by children of unlawful non-citizens separated from parents or detained with them. But arguably the most complex because of the legal challenges it presents to DIAC is the third, manipulating contexts to maximize benefits or minimize costs. The chances of obtaining residency in Australia may be higher if one path is followed rather than another, until policy changes, and then new pathways are sought to achieve the same end. Migration lawyers may change tack in the advice they give to clients as policies change and certain options become more difficult. Similarly, costs of entering Australia on an illegal boat may be quite different to the costs of entering on a visiting visa and overstaying. Depending on enforcement priorities, “specialists” in irregular migration may switch their operation from selling boats for illicit passage to selling fraudulent passports and travel documents or vice versa. As one avenue is tightened up or closed off by authorities in a cost-benefit model, entrepreneurs who operate in illicit markets will find alternative means for achieving their objective.

While these are practical difficulties encountered in compliance policy, there are two overarching theoretical issues that constrain the usefulness of the cost-benefit model and unnecessarily limit the problem solving capacities of regulatory agencies relying on it solely for compliance management. Both concern the assumptions they make about human behaviour – people are neither always rational nor always driven by

their “economic self”. The model presupposes that people think about their actions before they engage in them; that is they engage in some kind of rational analysis. The model does not provide a way for dealing with actions that occur spontaneously or ‘without thinking,’ or ‘on a whim,’ or ‘in desperation.’ Emotionally-based action as opposed to rationally-based action falls outside the scope of cost-benefit analyses for controlling illegal behaviour – and also for that matter outside the scope of traditional legal deterrence models (Massey 2002). For rationally based models to work, people need to think about the consequences of non-compliance, fear the costs and be deterred from pursuing this course of action. It is not beyond belief that serious criminals engage in this kind of analysis, confidence tricksters or people smugglers for instance. It is equally not beyond belief that people drift into illegal activity without thinking through the consequences of their actions. Human beings learn through modeling (Bandura 1977, 1986, 1989), and they are most likely to model people whom they admire or trust or who offer hope of a better future. They follow others into illicit territory without thinking for themselves and accepting responsibility for the consequences (Akers 1998; J Braithwaite 2005).

The second aspect of Becker’s cost-benefit model that limits its versatility is the degree to which it places “economic man” at the centre of the analysis. While economic gain is an important motivator, it is not alone nor does it necessarily dominate. As Spranger (1928, translated from original 1914) demonstrated almost 100 years ago, human beings have a plurality of interests, with different balances evident in different personalities. For Spranger, economic man was one of six human faces or interests, competing for ascendancy with selves that are social, theoretical, religious, political and aesthetic.

The social science literature that has grown around the idea that people hold different, sometimes competing, interests has important implications for compliance practitioners and challenges the basic assumptions of models based on legal deterrence or cost-benefit analyses. People often want to preserve their relationship with significant others, including their relationship with authority, their good name and sense of self-worth, and avoid economic loss simultaneously (see Braithwaite, Murphy and Reinhart 2007 for an example in imposing tax penalties). Different needs provide regulators with different avenues for approaching the resolution of compliance problems. Within regulatory contexts, many narratives are told to save face, to divert shame and embarrassment, and to highlight paths to compliance. Sometimes these conversations also uncover paths to non-compliance. These are called regulatory conversations (Black 2002) because they involve participants who are involved in regulating others or being regulated and both sides are actively constructing meanings about who is doing what to whom and why. Regulatory conversations play an important part in pursuit of compliance with potential to both raise standards and lower them, depending on the conversational content and the motivations triggered in participants.

In the migration context, social needs and cultural ties are as important factors in shaping compliance behaviour as legal and economic imperatives. Through taking on board a broader lens for communicating compliance expectations and discussing options, challenging compliance cases can be re-framed by regulators, in the process changing a person's view of their situation. A classic cost-benefit model does not make provision for such re-framing, nor does the traditional legal deterrence model.

Legal deterrence or cost-benefit models operate in a compliance bubble where the “signal of control” and “response” are segregated from other aspects of a person’s being. Individuals are known to be motivated to express their individuality and protect their identity. Individuals do not leave their identity outside the compliance bubble, even though some might try (J Braithwaite 2005; Wolfe 1988). This means that individuals are active and creative participants in the compliance process. The impact of legal and economic control mechanisms on them will vary; and the way in which they adapt to the control of authority – or fight back will also vary. A major driver of an individual’s response will be how the request to comply sits in relation to valued identities, particularly their ethical identity – that part of themselves in which individuals feel pride and from which they draw their sense of self-worth (Harris 2001, 2007, Braithwaite et al. 2007). For this reason, compliance systems need to be designed in such a way that they are responsive to possibilities framed by individual identities.

Within the social sciences, identity is an umbrella term for the kind of person we think we are, we would like to be and that others think we are. Identity is not a static phenomenon nor is it singular. People have multiple identities and multiple selves often tied to the various roles they perform in social contexts (Goffman 1983; Tajfel 1978). A person may be an illegal worker in a country town, a provider for a family in a foreign country, a person who wants to be regarded by government as a hardworking and an honest immigrant deserving of a new home. As we move into different groups our identity changes (Tajfel 1978; Turner et al. 1987). Our search for groups answers a number of needs – a need for knowledge and information or perhaps

just a reality check, a need for meaningful social relationships, and a need for affirmation that we are a person of worth (Cialdini and Goldstein 2004). If such needs are not met, we look elsewhere, and as we form new relationships, our identities evolve – we develop and change. Importantly, from the perspective of agencies whose job it is to elicit compliance, identities that are not nurtured or recognized take a back seat to those that are. Identities need affirmation. A person who sees him/herself as law abiding complies in order to have affirmation of that identity from authority – they do what other good law-abiding people do. Or that person may identify with the authority and conform, embracing the values and beliefs of the authority, becoming committed to the goals that the authority is wishing to pursue. These identities, even if they do not persist past the interaction with the authority, need to be acknowledged and appreciated. Otherwise they will be abandoned for other identities, not necessarily so cooperative.

If authorities do not affirm identity they threaten by virtue of their power. Threat to an individual's identity occurs through showing lack of regard for something a person values about her/himself, or through criticizing an identity by disapproval of what an individual has done. In the pursuit of compliance, disapproval of non-compliant actions is unavoidable. A compliance officer can go to great lengths to separate the illegal act from the whole person (for example, she might say “You are not that kind of person, I know, but you have done something illegal here”) (see J Braithwaite 1989 on reintegrative shaming), but the distinction is not always made and not always understood. It is therefore reasonable to assert that authorities that are actively pursuing compliance are a potential threat to any individual's identity (Braithwaite 2009b).

When individuals defend their identity and refuse to comply, authorities can assert their power and use coercion to elicit compliance. The use of coercion, although at times necessary, can create for the authority new difficulties. Although coercion, if intensified, is likely to eventually elicit compliance in an individual who has refused to comply, there is risk that initially it will make non-compliance worse. Brehm and Brehm (1981) coined the term reactance to describe an individual's defense of his/her freedom and identity. When forced to do something they do not want to do, individuals will reject an authority's pressure by doing exactly the opposite. If pressure to comply is escalated, however, the individual eventually caves in to this pressure. The point at which this occurs may be the threat of arrest or prosecution. For a minority of individuals, the point of capitulation may be much higher, may be above that considered as acceptable coercion in democratic societies.

The reactance described above is counterproductive to achieving compliance. The attitudes of resistance that accompany reactance can be even more counterproductive. While individuals may eventually fold under pressure from the authority and comply, their attitudes of resistance to the actions of the authority may endure. Moreover, the resistance manifests in surprising ways. Nadler (2005) has described how people unfairly treated in relation to one law will flout another unrelated law. Braithwaite and Ahmed (2005) looked at the responses of graduates repaying tertiary educational loans who had these payments extracted by employers on behalf of the government. Those opposing the government's fee-paying policy were more likely than others to cheat on paying tax.

It should be acknowledged that not all retaliate. For certain individuals, their forced compliance at the hands of authority serves as a “signal” event (Innes 2004) – never again will they be forced to confront that authority. They will work tirelessly to stay below the authority’s radar, either through complying or keeping their non-compliance well hidden.

When individuals who have been coerced into compliance find each other, a new challenge to authority may emerge. Depending on the context of non-compliance and the narratives that individuals can share with each other about coerciveness, socially organized resistance against authority may emerge. Negative attitudes become entrenched through being reinforced by others. Given sufficient resources and persistence, resistance may spread through the legal and political system, ultimately undermining the legitimacy of the authority (Turk 1982; see Murphy 2003, 2004, 2005 for an account of how taxpayers accused of cheating formed fighting funds and successfully challenged the Australian Taxation Office). It therefore becomes important for authorities, when they use coercion, to be accountable for their actions. This means consistently working in support of their legitimacy as an authority with justifiable powers that are wisely used. More specifically, authorities need to convince the public of the importance of their purpose, explain why enforcement of the law is reasonable and fair, and show willingness to listen to different views from the community. Through a process of dialogue and contestation, regulatory authorities have opportunity to demonstrate integrity in their operations (Selznick 1992). This is the first step toward building trust and establishing legitimacy; legitimacy, not in the sense of having the legal right to engage in certain actions, but rather the legitimacy

that comes with people believing that the actions of the authority are desirable and reflect the values, beliefs and norms of the community (Suchman 1995).

Summary

Authorities that wish to safeguard their legitimacy cannot afford to fall back on a traditional old-style command-and-control model of ‘do as I say because I am the authority’; or at a distance, manipulate costs and benefits to make people fall into line. For those at a safe distance, law can be forgotten and costs and benefits can be of little interest. Authorities that seek to regulate people’s behaviour have to reach out to educate the population about their policies, laws and rules, and persuade the public of the importance of giving support to their regulatory efforts.

That said, the public is not homogeneous. Policy and practice messages need to be communicated to many different groups, and while the message needs to maintain coherence and integrity, it may be tailored to the various constituencies who are trying to make sense of DIAC’s policies and practices. There are political divisions between citizens who prioritize security and those who prioritize international obligations and human rights. There are economic divisions between those wanting to increase migration to provide skilled labour and those concerned about an increased labour supply lowering wages, even denying Australians jobs. Within the population of authorized entrants, there are also different groups who bring with them different concerns – family reunification programs competing with humanitarian refugee programs, refugees waiting offshore to be processed by UNHCR competing with refugees entering Australia through people smugglers. Each group needs to have the

same understanding of policy, practices and processes, but that understanding needs to be acquired through different channels and networks.

Regulatory conversations of the kind described above may take time and consume resources. They will invariably raise issues that are contentious. But such conversations are necessary in democracies. In democracies, authorities need the vast majority of the public to cooperate with them; to rely too heavily or too frequently on coercion is even more costly in terms of time, money and reputation. Cooperation furthermore often involves thoughtful decision making, individually and in groups, not just rule following. Simple obedience without understanding why and how, and without believing that the authority's request has merit in and of itself, is not going to produce the kind of informed polity that can engage in meaningful and mature debate. In a rapidly changing world, governments alone rarely have the answer to society's problems. They need the full range of publics engaging with them, all in an informed and constructively critical manner.

Is this a recipe for instability? Not necessarily. Authorities that act with integrity can establish their legitimacy on a mass-scale. From their position of power, they require and can generally count on in-principle informed consent or critical deference to their compliance systems. In-principle informed consent means that individuals understand what is expected of them and why the request is being made, and agree to cooperate with the authority in the public interest – or else accept punishment. Critical deference means that individuals have objections to what has been asked of them but they comply while pursuing other avenues to bring about legislative or policy change.

Section 1 has outlined the rationale behind the traditional model for eliciting compliance. The model assumes a world where the state makes a direct request of the public, the public regards the request as legitimate, acts accordingly, and if not, eventually folds to pressure, as deterrence and costs of non-compliance wear down an individual's defiance. The weakness of the model is that it fails to take account of an individual's commitment to protect his/her identity. It also fails to take account of the capacity of individuals to mobilize resistance in a democracy, and in the process delegitimize the authority. As individuals lose confidence in the state and distance themselves from its activities, they look for groups that will affirm their identity and help them achieve the outcomes they desire. The social infrastructure they find is not always singing from the same song-book as the state's regulatory agencies. Thus, the state finds itself in competition with other powerful nodes of governance, often with considerable resources and high credibility in the community – the competition is for the hearts and minds of the public as well as those not complying with the law.

This networked understanding of regulation means that there are multiple regulatory spaces in which immigration officers are required to work. The regulatory space surrounding immigration officers working with employers will be different from the regulatory space surrounding immigration officers working with students, both of which will be different from the regulatory space surrounding unlawful non-citizens approaching DIAC in the hope of obtaining a bridging visa and ultimately more permanent visa. All of these spaces cannot be described here. Suffice to say that associated with any compliance problem will be a regulatory space in which influential entities and networks need to be mapped and understood before compliance initiatives are introduced.

Before describing the content of Figure 1, it is useful to provide a working definition of regulation. Regulation means “steering the flow of events” (Parker and J Braithwaite 2003) and there are many actors engaged in steering unlawful non-citizens (or those at risk of becoming unlawful non-citizens) in the field of immigration. The more important players in the regulatory community of the unlawful non-citizen (UNC) or bridging visa holder (BVE) are represented in boxes surrounding the individual expected to listen to DIAC and comply. Some of these entities are acting as part of the Department of Immigration and Citizenship (DIAC) (for example, Community Status Resolution Service (CSRS), Case Management Service (CMS), Office of the Migration Agents Registration Authority (MARA), Ministerial Interventions (MI)), some are part of the legal system (review tribunals), some are contracted to provide services (Red Cross and International Organization for Migration (IOM)), some are in partnership with DIAC (employers) and others operate independently of government (refugee support organizations, peers, family and friends). All provide information, advice and services. Sometimes the knowledge that is shared is reliable, sometimes it is rumour or myth. Sometimes the information is nothing more than reports of what everyone else is doing, without any sense making or thoughtful analysis behind it. Regardless of the veracity or soundness of the information, it has the potential for influencing unlawful non-citizens or people at risk of falling into this category when visas expire or when visa conditions are overlooked. Figure 1 is a reminder of how complex and unstable the messages on legal obligation and deterrence and costs and benefits of non-compliance may be from the perspective of an UNC or BVE holder. Information and understandings are shared through conversations in this regulatory space and individuals take on board subsets of the

communications to which they are exposed, forming an understanding of their situation and options.

The focus in Figure 1 is on the individual entering the migration system, being influenced by many different groups of actors with different stories to tell and advice to give. It should be also recognized that these various groups influence each other, and all are aware of broader sources of influence – the media and its knowledge and opinion networks, the elected government, its various agencies and international organizations, and the Australian public. These forces that frame the way in which people think and feel about migration law are represented in the outer ring around the regulatory space.

Where people turn for support and what information and advice they take on board in Figure 1 depends on their needs and networks, and their identities. Part of identity for most people is a desire to be lawful, another part is a desire for fair and respectful treatment, and another is the desire to find a way to fulfill ambitions and aspirations. The strength of these different selves will differ from one person to the next. All can be expected to be present (Braithwaite 2009b), and all will be implicated in how individuals respond to the requests of authority.

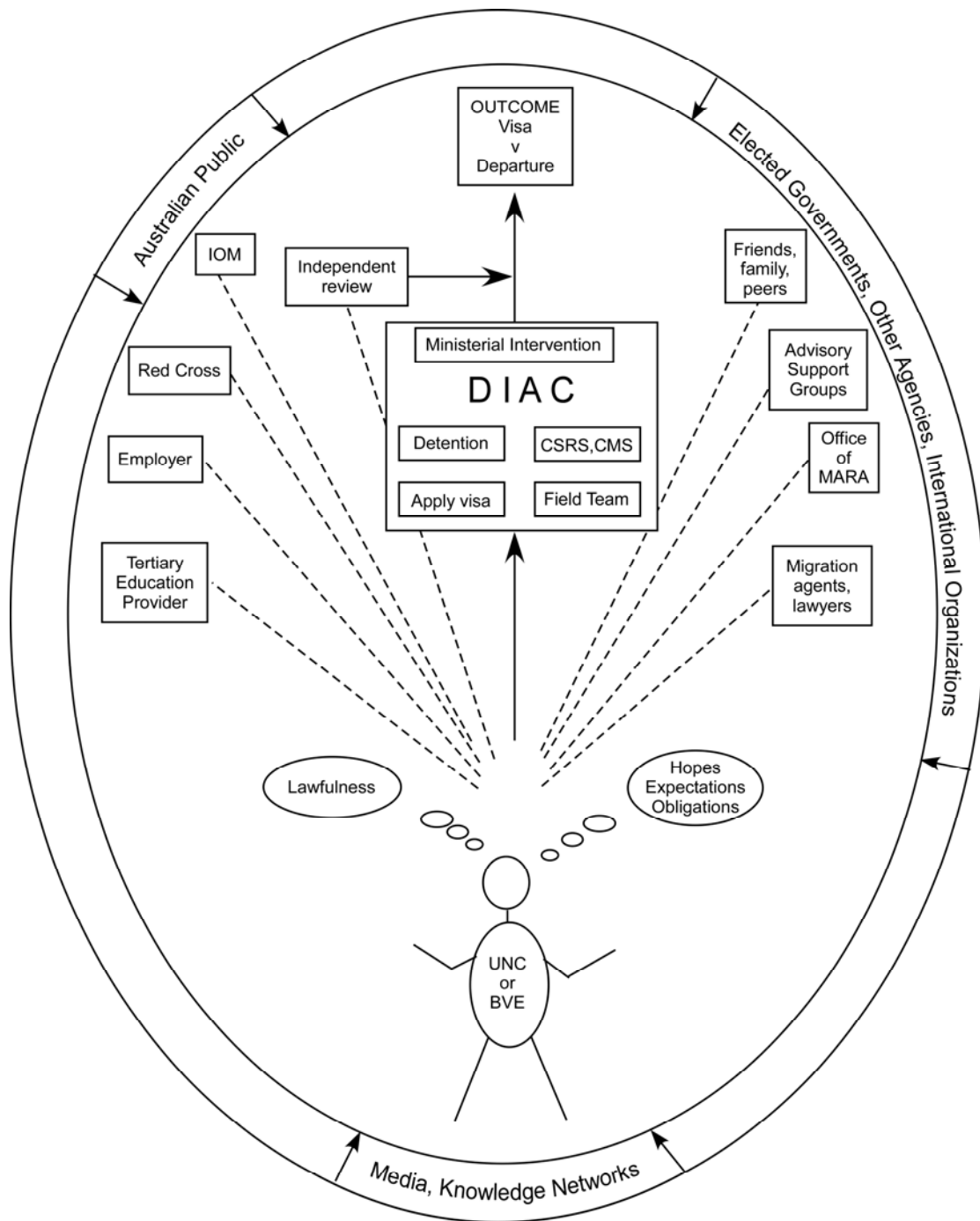


Figure 1: Regulatory System surrounding the Department of Immigration and Citizenship (DIAC) and the Unlawful Non-Citizen (UNC)/Bridging Visa E Holder (BVE)

Section 2: Understanding non-compliance

Non-compliance with regulatory systems has been extensively researched and produced empirical findings that point to two relatively robust conclusions. First, capacity to predict who will be compliant and who will not is usually disappointingly low. The implication of this finding is that a population cannot be divided neatly with compliant people in one category and non-compliant people in the other. People and organizations who are mostly compliant can be non-compliant if the circumstances are right. Context plays an extremely important part in determining compliance (Kirchler 2007). A person may routinely obey speed limits on the road, but on occasion act non-compliantly through missing a speed sign or running late for an appointment. Non-compliance may be purposeful or completely unintentional – reasons for non-compliance vary and are not always attributable to the same source.

While most people will be compliant or move into and out of compliance at one time or another, a small proportion of people are prone to serial non-compliance. The second robust empirical finding is that non-compliant behaviour in the future is generally best predicted from the same non-compliant behaviour in the past (Ahmed 2006; Makkai and J Braithwaite 1994a; Wenzel 2005a). But from a practical point of view, it must be remembered that this prediction is very far from perfect. If we take one individual at any point in time, we cannot reliably determine if their non-compliance will continue or be turned around. There are many situational factors that come into play to disrupt continuity in non-compliance.¹

¹ In regulatory practice, repeated non-compliance is generally greeted with greater sanctioning. This is also clear in the Australian Government's detention values: mandatory detention will be used for unlawful non-citizens who repeatedly refuse to comply with their visa conditions. The logic here is that repeated non-compliance is taken to mean that non-compliance is intentional - it is not an accident or

That said, there are risk factors that increase people's likelihood of becoming non-compliant. It is useful to take such factors into account in designing regulatory systems. Authorities can develop procedures for prevention and thereby avoid later costs of compliance management. The source of these risk factors is mixed – they may pertain to individuals, informal groups, formal organizations and structures, regulatory institutions, and political systems. The way in which they manifest as risks in different regulatory systems will depend on that system. It is rarely the case that one single factor causes non-compliance. Compliance generally has to be leveraged through a range of mechanisms that address different risks but nevertheless are mutually reinforcing. This means that care is required in managing non-compliance. Through controlling one risk factor there is a chance of unleashing another in a way that is counterproductive to achieving the intended outcome. Grabosky (1995a) has warned of the unintended consequences that can flow from regulatory interventions.

Risk factors for non-compliance

Not all factors will be present in all situations, but the risk factors discussed in this section have been found relevant across a range of contexts and are worthy of examination in any new situation. Some of these factors have been identified through models that start from the premise that individual agency is a crucial element in people's compliance. Knowledge of what is required, efficacy or ability to do what is required and willingness to comply are three elements that have found their way into the regulatory literature (Kagan and Scholz 1984; Mitchell 1994) and have been

an anomaly, and therefore a tougher penalty is warranted. It does not mean that the person is incorrigibly non-compliant.

extensively investigated within the framework of social learning theory (Bandura 1986) and self-regulation (Carver and Scheier 1998).

But an individual's sense of agency to comply is not the only consideration. At times, compliance is made very easy for us – it is non-compliance that is difficult. The system is designed such that we are herded in the direction of compliance.

Architectural regulation ensures that we wait in cues for services, slow down at speed bumps, or follow computerized instructions to withdraw money from our bank account. Sometimes this kind of regulatory architecture is even accompanied by technological surveillance to ensure that we don't miss the compliance cues set out before us (see Shearing and Stenning 1984 on the panopticon that is Disneyworld). In these situations, there is more agency involved in non-compliance than compliance. Findings ways around systems points to another set of risk factors – an individual's propensity for risk taking, talent for spotting opportunities, or having a keen eye for what others are doing to avoid regulatory controls.

Related to both learning how to comply and avoiding the need to comply are features of the system – the way in which it is designed along with its laws and rules. Also important is the community on whom the system is more often than not imposed. How people respond to regulatory systems depends in part on their community's social norms and how that community helps define the individual's relationship with the authority that is regulating them. These relational elements – with peers, other members of the regulatory community and government play a significant role in shaping compliance. Understanding the ways in which social norms and understandings of authority differ across community groups is critical for assessing

non-compliance risks. Community groups take many different forms, for example, refugees from a particular region, workers, belonging to a particular industry, even as small a community as residents in a particular hostel.

Individual knowledge

The knowledge required to comply with rules and regulations is invariably set out in manuals, information sheets and on websites by regulatory agencies. If the requirements are complex, public seminars may be provided, television advertisements, help desks and telephone hot-lines set up, or interactive websites used to answer questions. Government regulatory agencies are generally sophisticated and diligent in how they distribute information to the public about compliance demands.

Providing such information, however, does not always mean that individuals know what they must do to comply. Sometimes interpreting standards becomes a sticking point (for example, see Braithwaite, J Braithwaite, Gibson and Makkai 1992 for a discussion of nursing home standards and Edelman, Petterson, Chambliss and Erlanger 1991, for affirmative action implementation), other times system complexity means that individuals are not clear as to what applies to them and what does not (see Long and Swingen 1988 and Burton 2007 for a discussion of the complexity of taxation law). In such situations where individuals feel overwhelmed by information, confused by its meaning, or too lazy or time poor to read the compliance guidelines, social networks become an important source for finding out what must be done.

Information transferred through social networks takes on different and not always expected meanings (Huckfeldt et al 1998; see Sakurai and Braithwaite 2003 on the

role of tax agents). Requests for compliance become shrouded in commentary that creates sensibilities about whether the compliance request is reasonable or fair, will be beneficial for the collective, or damaging and inefficient (for example, see child protection sensibilities in Ivec, Braithwaite and Harris 2009). The process of interpreting requests for compliance means that it is unrealistic to assume that individuals receive an unadulterated message from government. This means that non-compliance due to inadequate or incorrect knowledge is always a potential risk factor for non-compliance.

Efficacy

People may have a fairly good idea about what is required of them by a regulatory agency, but they may lack confidence in their capacity to meet these requirements. They lack personal efficacy (for example, see reports of some Indigenous parents in Ivec, Braithwaite and Harris 2009). Low efficacy can be experienced when people can't meet demands in the specified time, when they don't have the skills required to comply (language or numeracy, legal or accountancy skills), or when resources can't be accessed to meet required standards.

A sense of poor efficacy – or perhaps the belief that others have greater efficacy, has created a market in the provision of migration advice. The services of migration advisers can be provided by the Department or purchased privately. The client-adviser relationship is not always unproblematic if levels of efficacy between the two are highly imbalanced. Low efficacy is related to a sense of helplessness. Clients who are feeling helpless and unable to control their destiny may too willingly relinquish responsibility to others, who advise them or act on their behalf. When responsibility is

‘outsourced’ in this way, it is easier for people to distance themselves from the need to comply – or at least to deflect blame to others for non-compliance.

It is worthwhile to observe at this point that sources of migration advice may be informal (family, friends, acquaintances, talk back radio, blogs, places of worship, community organizations) as well as formal (migration agents, lawyers and migrant advisory services). How these third parties affect compliance will vary. These different sources may not even be providing the same client with consistent advice, thereby adding to confusion and possibly an inability to act. The advice given by third parties – non-compliant or compliant, and the degree to which they take control of another person’s decision making will depend upon how they see their incentive structures, the nature of their personal hopes and needs, their professional and personal identities, and their commitment to abide by the spirit of the legislation.

Within this frame of influence and counter-influence, DIAC has introduced both the Community Status Resolution Service and the Case Management Service. These services address the efficacy question and the knowledge question for those who accept and are given the opportunity to use them.

Commitment

Commitment refers to the individual’s belief that the goals of the compliance system are worthwhile and desirable and that the individual will assist the regulatory agency in achieving these goals. One way of interpreting commitment is to say that the individual would want to pursue this course of action anyway, regardless of whether or not it is the law. In relation to the distinction made in Section 1 between

compliance and conformity, a person who is committed to the system is conforming to the goals and standards that underpin the system and is not just superficially complying to stay out of trouble with the authority. Such a person has been persuaded or socialized into a way of thinking that is consistent with that of the authority. Commitment to regulatory standards in areas like occupational health and safety, health, human rights, aged care and environmental protection means that those being regulated will often perform at a level that goes beyond the minimum standards for compliance (J Braithwaite et al. 2007; Braithwaite 1993; Gunningham and Sinclair 2002). This is not always going to be the case however. In areas such as taxation, immigration, criminal sentencing and quarantine regulation, doing more than is legally required does not reap obvious benefits. In such circumstances, willingness to comply may be a more apt description than commitment to comply.

But the idea of commitment should not be abandoned too readily. It is after all connected to law, and law for many people is a touchstone for what should be, not just what is. So how might commitment manifest itself with clients of immigration? It's difficult to envisage unlawful non-citizens or those at risk of becoming so expressing commitment to Australia's immigration goals. By the same token, it is just as unlikely that they would openly oppose the Department's purpose: "Building Australia's future through the well managed entry and settlement of people" (DIAC Strategic Plan 2009-2012).² The Department of Immigration and Citizenship's statement of purpose is abstract and umbrellas a range of policies and implementation strategies, which may or may not meet with popular approval. For this reason the purpose of the Department may disconnect from the purpose of its clients. Macro and

² <http://www.immi.gov.au/about/department/diac-plan/diac-strategic-plan-2009-12.pdf>

micro interests often disconnect, but providing macro and micro interests are not in direct opposition, dialogue and negotiation are always possible to build some level of cooperation within the regulatory community.

In the immigration context a client would not be expected to reflect on his/her efforts to obtain a visa or remain as an unlawful non-citizen in the same terms as DIAC does in the law that it administers – to uphold compliance to ensure the orderly entry of immigrants to Australia. Collective interests or shared public goals take time to develop. The interests of the country will be meaningless to newly arrived clients. Yet, most may be able to present a case that they are deserving and can make a positive contribution if allowed to stay – and if the means that they are using are opportunistic or unlawful, they are likely to justify the means in terms of the end-state of being worthy of legal status. In other words, fair processes of entry and the laws that safeguard this objective are unlikely to be foremost in the minds of those wanting entry to or residency in Australia.

But fair processes of entry are likely to be more salient and important for non-government migration advisers. Migration advisers, particularly those operating in a commercial market, need order and predictability in the system to operate successfully. They are attuned to the fact that the responsibility of the Department of Immigration and Citizenship is to moderate orderly, fair and reasonable processes of entry. What is more, the legitimacy of the Department in the eyes of the public, if not the migration industry itself, depends on their success in this regard. While clients may not be motivated themselves to see adherence to process as part of their responsibility, their agents and other third parties who have ongoing engagement with

the Department can be so motivated. There is room for the Department and migration agents to have the conversations necessary so that they share commitment to Departmental goals.

Commitment is a reasonable expectation of registered migration agents whose livelihood depends on their meeting their legal and professional obligations, but clearly not all third parties will be supportive. Critical deference is probably not uncommon among some refugee and migrant support groups. If critical deference is the best that can be achieved, then commitment may have to give way to ambivalent acceptance. If individuals and groups can be encouraged to see themselves accruing other benefits through complying, then an unwilling attitude may move toward being more positive and accepting. Negotiations become a critical part of the process of providing benefits to create willingness to comply. Employers, for example, may not be pleased with their compliance responsibilities under migration law, but they will follow them while lobbying hard for the improvements they want to see in the system. Unlawful non-citizens may not be pleased with what is expected of them, and possibly do not have a clear understanding of the immigration system. Yet they are dependent on others, who like employers, have vested interests in the system working and who encourage compliance, while working for change and something better. In such instances, commitment in the form of willingness to comply is present, in exchange for benefits further down the track.

The above risk factors are discussed in the literature with a presumption that people are in a system that either is reasonable and fair or can be made reasonable and fair. The compliance narrative that underlies work on these risk factors is that “I would

comply with the system if I knew what I had to do, if I were able to do it properly, and if I could see the benefits and felt it was a good thing.” Not everyone, however, has a sense of being part of a system in which they are expected to play a constructive role. As Merton (1938) described retreatists, some people are “*in the society, but not of it.*” (p. 677)

Not being “of a society” means being oblivious to its presence or being intent upon transcending it. The kind of defiance that is associated with this attitude has been termed “dismissive defiance,” in contrast to “resistant defiance” in which people object to what is happening and are demanding reform (Braithwaite 2009b). Those who are dismissively defiant challenge the system and are more likely to be non-compliant in their actions. Interestingly, those who are resistant in their defiance are not necessarily likely to follow through by being non-compliant. A good many will fall into the category of being critical but deferential to the demands of regulators. There is no reason to assume that unlawful non-citizens or BVE holders typify one kind of defiance or the other. Probably they experience both at different times, the balance depending on the degree to which they are welcomed into a community that accepts compliance with immigration laws as a desirable outcome. The weaker the social ties, the greater the likelihood of dismissive defiance.

Risk taking, opportunism and personal advancement

Where commitment to a regulatory system is lacking and where propensity for dismissive defiance is high, there is greater scope for the expression of individualistic and competitive characteristics such as risk taking, opportunistic entrepreneurship, and personal advancement (Braithwaite 2009b). Merton’s (1968) strain theory

provides an account of how these concepts are interrelated and explain non-compliance. Through shared values and socialization experiences, people aspire to similar goals that reflect success and status. For some, however, the legitimate pathways to achieving these goals are blocked. Where legitimate means are not available, people will resort to alternative means to achieve their goals. One might anticipate such a response when immigration policy changes and pathways to residency are changed. For example, recent changes may dash the hopes for residency among many overseas students. It is not uncommon for macro policy to filter down to trigger peaks in non-compliance among groups who are caught off-guard by a change in the rules.

When pathways are blocked, the alternative means that some people find to achieve their goals are legal and innovative, but in other cases they are likely to be illegitimate. Opportunists see creative ways forward that are not obvious to those who follow more conventional and well-used pathways. Opportunists take risks, but for sophisticated players the risks are not taken without a plan in mind. There is a possibility that they will be caught and judged non-compliant, but they are prepared to take a chance and defend themselves if need be against such accusations. Others, however, are not inclined to think about their actions too much. They model the opportunistic entrepreneurs, take cognitive shortcuts (Tversky and Kahneman 1974; Kahneman 2003), pick up tips from others or act out to alleviate their frustrations. For them it is more of a “if others are giving it a go, I will too” or “why not if no-one is stopping me” or “I’ve got nothing to lose.”

This kind of risk-taking has been evident in recent times in the financial planning industry. People rush into investment schemes with something of a herd mentality and rush out again as soon as there is a whiff of danger. Financial markets rise and fall on the basis of contagion, arising from uncertainty and the prospect of financial rewards for the astute punter. The same phenomenon has been identified in the field of tax compliance, fuelled by complex legislation open to multiple interpretations and supported by an industry that flourishes through legal challenge to the system. Other systems that involve complex rules that may be ambiguous or in conflict with each other or undermine some higher order legal principle are open similarly to legitimate challenge as well as game playing. Immigration law and policy is such a domain: It prioritizes some immigrant groups over others (in response to needs for skilled labour or political pressures). There are human rights issues that need to be defended and where government decisions are rightly challenged. But the migration market is lucrative and cannot avoid also attracting a degree of opportunistic game playing, carried out with or without the full consent of clients.

For the most part, compliance problems in immigration relate to visa over-stayers or visa holders breaching conditions of their visa, including through working illegally. Implicated in these problems are those who support them – employers, education providers and sponsors, all of whom also have compliance responsibilities under Australian migration law. Refugees seeking asylum in Australia through irregular or authorized entry fluctuate with external pressures in foreign countries. All of these groups have people – generally a small number on the periphery in a well regulated system, who will at times connect with serious criminality – people smuggling, drug trafficking, human trafficking, sexual exploitation, and money laundering. Theories of

criminality, many of which have been extensively tested, provide further insights into how criminal networks form and operate and how they can be disrupted or disbanded.

System complexity

Within the context of immigration, the complexity of the visa system becomes a challenge for those wishing to enter or stay in Australia. There are different classes of visa with specific eligibility criteria; for each visa there are special conditions for what can and cannot be done while holding that particular visa; and there are a further set of rules determining which transitions from one visa to another are possible and which are forbidden.

Complexity creates conditions that are not conducive to generating compliance.

Complexity leads to non-compliance among clients who “never get around to it”, “try to ignore it”, or “deny needing to do anything because they didn’t understand” or they “thought no one cared.” Anecdotally such responses are known to counter and field staff and documented in Departmental research reports (The Open Mind Research Group 2008).

While complexity creates compliance problems, it is also used as a socially acceptable excuse for non-compliance – to excuse inaction by those without a valid visa, to excuse visa breaches, to excuse errors of administration, to excuse poor migration advice, and to excuse delays in case resolution. Complexity leaves the door open for plausible excuse making which gives clients an easy way out and staff a difficult decision making task if they want to call someone to account.

Despite its association with compliance problems, complexity may be the result of wanting to introduce reasonableness and fairness into migration processes. Within democratic societies, reasonableness and fairness are important design features in systems that are accepted by the population (Braithwaite 2009b). As such, non-compliance rooted in complexity may be a cost willingly borne by government.

Social norms

As research has accumulated showing that non-compliance cannot be satisfactorily explained as a character or personality deficit, interest has shifted to social relationships. In particular, theories of social identity have demonstrated how easily people adapt their behaviour when they are motivated to be part of a new group (Hogg and Abrams 1988). One of the key concepts is the adoption of social norms. Social norms are sets of rules and practices that are rooted in value systems and cultural understandings and shared by members of a group. Social norms may be conducive to having an authority's request accepted by the government; or they may be at variance with the request. A social norm of filial duty may lead students to breach their visa conditions. Avoiding disappointment to the family may be a stronger motivator than complying with government regulations, particularly when others in the person's reference group share the same priority.

Norms have been differentiated in terms of whether they are personal (one's own) or social (shared with a reference group), prescriptive (should do) or proscriptive (must not do), descriptive (what a reference group actually does) or normative (what a reference group should do) –referred to as an injunctive norm. All of these different

kinds of norms have been implicated in explaining non-compliance and compliance (Cialdini and Goldstein 2004; Wenzel 2004a, 2004b, 2005b).

In the context of immigration, social norms are likely to be significant determinants of compliance and non-compliance. Moreover, social norms are likely to vary from one group to another – employers, students and refugees, for example, will have different social norms; and within these groups, differences are likely to emerge based on country of origin, age, economic status, geographical location and various other social-demographic indicators. Understanding the social norms to which individuals feel allegiance is a challenging goal for those administering immigration compliance systems.

Grievance and distancing

Depending on identity, social norms and values, individuals may find that the request of an authority is little more than an inconvenience, or if there is history of tensions, a persistent irritant. But the authority's request may resonate more deeply, offending customs and ways of being or re-igniting feelings of disrespect from the past. When an authority's request threatens and cannot be reconciled with beliefs and lifestyle, individuals may feel resentful toward the authority and its laws and distance themselves socially and psychologically. Through distancing – which can verge on denial (Cohen 2001), individuals resolve the threat and cognitive dissonance they feel when authority requests something that conflicts with their beliefs and values.

Maintaining distance from an authority that threatens to disrupt an individual's way of life is not conducive to compliance. Distancing means being less knowledgeable

about an authority's expectations, it allows an individual to plead ignorance or inability to fulfill compliance requirements, and it puts up a wall between the authority and the individual so that dialogue and persuasion can be avoided. Distancing also allows subcultures to form in the regulatory community in defiance of government authority (Meidinger 1987a). Defiance and distancing are reflected in what have been referred to as motivational postures. Motivational postures are signals that individuals send to authority concerning their readiness to listen to and/or submit to the will of the authority. Distance is reflected in the postures of resistance – protesting against authority to bring about change; disengagement – cutting oneself off from authority and refusing to take on board the authority's concerns; and game playing – taking on board the law and rules with the purpose of finding loopholes and ways around the intent of the legislation. The distance closes when individuals become more receptive to the authority's message. The postures that show receptiveness and least social distance are capitulation and commitment. These postures to some degree reflect individuals' past experiences with authority. The postures also are a response to how authority in the here and now is treating them.

When authority confronts individuals who have distanced themselves, psychological ambivalence, perhaps even shame comes to the fore. Individuals may vacillate between postures of capitulation to authority or resistance, as they try to decide who is in the right and who is in the wrong. Or they may opt out psychologically from the confrontation, placing their self outside the authority's power, adopting postures of disengagement or game playing (Braithwaite, J Braithwaite, Gibson and Makkai 1994; Braithwaite 1995, 2003, 2009b). Postures change in this way in response to the actions and attitudes of the authority, in particular, the posture of resistance can be

supplanted by capitulation in the hands of a skilled regulator. Disengagement and game playing, on the other hand, are postures that appear to be most impervious to the authority's influence.

Mitigating these risk factors

Two approaches to mitigation have received considerable empirical support. The first has already been discussed at some length in Section 1 – a moral obligation to obey the law (even if the law is not to one's liking). All the evidence suggests that most people believe in obeying the law and feel uncomfortable about being caught for breaking the law (Braithwaite, Reinhart, Mearns and Graham 2001; Maguire, Reinhart, Mearns and Braithwaite 2007). Research suggests that fear of deterrence and moral obligation are closely related (Grasmick and Bursik 1990). In other words, those who fear deterrence the most are those who believe it is important to obey the law. Deterrence and moral obligation most probably are mutually reinforcing, penalties to deter strengthen moral obligation and moral obligation strengthens the deterrence value of penalties. It is of note, however, that moral obligation can be surprisingly resilient. Simpson and Piquero (2002) have shown that even in unethical corporate environments, those who believe a course of action is highly immoral will be unwilling to pursue it. There is no reason to assume that unlawful non-citizens and BVE holders operate predominantly in unethical communities, nor is there evidence that unlawful non-citizens and BVE holders are distinctive in being particularly reckless and fearless about breaking the law.

Neither deterrence nor moral obligation will always win out over temptation to break the law, yet when working meaningfully together they appear to be an important

restraining factor. Braithwaite (2009b) has argued that grievance, the source of much resistant defiance, can be reined in by moral obligation supported by reasonable deterrence (deterrence that is not reasonable will fuel grievance). Similarly, the pathway to dismissive defiance through competitive entrepreneurship and through challenges to law can also be reined in by moral obligation and deterrence, if clarity of and justification for law and punishment can be established.

Clarifying and justifying law can increase observance of the law, and at an even more fundamental level, respect for the law. Equally important, however, is how authorities implement the law. One of the most important findings to emerge from the work of Tom Tyler and his colleagues (Tyler 1988, 1989, 1990, 1997, 2001; Tyler and Blader 2000; Tyler, Degoey and Smith 1996; Tyler and Fagan 2008) over the past two decades is that when authorities treat individuals with procedural justice, individuals are more likely to regard the authority as legitimate, to cooperate with authority and to accept a decision that is contrary to their interests.

Procedural justice focuses on how people evaluate their treatment at the hand of authority. It extends beyond the rights that are afforded to individuals within the legal system. In accord with these ideas, procedural justice is concerned with processes that ensure that power is exercised with respect for individuals regardless of the context. But procedural justice, as used in the Tyler tradition, goes beyond the formal procedures that set out how authority treats individuals, and has as its main focus how individuals perceive the authority treating them. Thus, an authority may commit to listening to the story of an unlawful non-citizen and commit to impartiality in decision making, but if that unlawful non-citizen does not perceive these things to be

happening, then procedural justice has not been delivered. Procedural justice addresses the quality of the relationship that an authority has with the public. Most notably, regulatory authorities can go by the book in observing the rights of those they are regulating, but if they are unable or unwilling to communicate respect for these individuals as people, those being regulated are likely to report that procedural justice has not been practiced. Procedural justice is important as argued below. But it is also easily compromised, particularly in crisis situations. Perhaps the most obvious examples of breaches in procedural justice are seen when law enforcement officers meet with resistance and respond forcefully in an effort to regain control.

To treat people in a procedurally fair way means to treat them with respect, as being trustworthy and exercising one's powers in an impartial way. Principles of procedural justice are commonly observed in service charters.³ One of the key themes in Tyler's work is that through procedural justice, authorities communicate to individuals that they deserve to be treated with respect and dignity, without prejudice and with due concern. Through this treatment, one's position as a full and valued member of the community is validated. Such affirmation of identity that occurs through procedurally just interactions results in greater openness to cooperation, even when the outcome of the authority's decision-making process is not to a person's liking. In contexts where the decisions of an authority or court can have significant ramifications for people's lives, it is of enormous significance that fairness of process, in particular respectful treatment, assists individuals come to terms with negative outcomes.

³ DIAC has such a charter although it is noteworthy that the most important dimension of procedural justice, respect, is not included in it.

How people are treated by authority is particularly important when dealing with non-compliers or even more serious offenders. John Braithwaite's (1989) reintegrative shaming theory has provided an important framework for understanding how it might be that legal or compliance systems inadvertently promote worse offending; and how they might change their operations to produce the maximum chance of future compliance in an offender. The critique that reintegrative shaming theory makes of traditional legal institutions in the western world is that they practice stigmatization, condemning the offender as a bad person who deserves to be treated as too unworthy to be part of society, reflected in the saying "lock them up and throw away the key." This kind of social exclusion, at its worst expulsion of a person from society, can engender grievance and hatred, giving rise to a desire to seek retribution against the society that has been rejecting and scornful. In such circumstances, offending is likely to increase not decrease.

Stigmatizing shaming contrasts with reintegrative shaming – a preferred way for institutions to deal with wrongdoing. Reintegrative shaming involves disapproval of the actions that an individual has undertaken in breach of the law, thereby upholding community standards and expectations of lawfulness (the shaming component). There may even be some penalty that is attached to the unlawful activity. But in the process of hearing the case and issuing disapproval and penalties, the worthiness of the individual as a person is affirmed and the expectation that the person will respect the law in the future is brought to the fore. Others may be co-opted from the person's support network – families, friends, work colleagues to ensure a law-abiding self is recognized, encouraged and rewarded. In this way, the individual remains part of the society, even when given some form of punishment. The expectation is that having

made amends for wrongdoing, the person remains a fully-fledged and valued member of the society.

In other words, an individual becomes reintegrated, not segregated from others after having committed an illegal act. Reintegration sets up social conditions that reduce the risk of further breaches (see empirical support in Makkai and J Braithwaite 1994b). The institutional procedures based on reintegrative shaming are known broadly as restorative justice. Such procedures are being used in a number of countries throughout the world, but less so in Australia, a surprising outcome given that much of the developmental research has been undertaken here.

Section 3: Regulatory models to improve compliance and principles for their implementation

Understanding why non-compliance occurs does not necessarily translate into knowing how to manage non-compliance successfully. The problem of compliance management exists at the level of dealing with persons and groups, and at the broader level of devising models that regulatory agencies can follow as they undertake programs for mass compliance – relevant, for example, when policy changes or new laws are introduced.

One of the major challenges for regulatory authorities is individual differences. What is appropriate for dealing with one person's non-compliance may not be appropriate for another. Moreover, the basic reason for non-compliance in one case may have no causal significance in another – it may be just a good story to provide a plausible justification for inaction. Ignorance of what is required or what has been done, for

example, can be a genuine reason, or it can be a self-protective excuse after deliberate non-compliance has occurred. Knowing how to deal with non-compliance can therefore be a serious problem for many regulatory agencies, particularly when they realize that “going by the book” does not work (Bardach and Kagan 1982) and when the economic model of increasing costs and reducing benefits strikes its limitations of applicability. In searching for alternatives, authorities run up against a number of barriers, some practical, some principle based. Arguably the most common principle based barrier that regulators struggle with is consistency when it is defined as “administering the *same* treatment to everyone who breaches the *same* law in the *same* way.”

The regulatory crisis of consistency

The reason for gravitating toward standardizing decision-making⁴ is understandable, though for reasons outlined in this paper concerning the individuality of human beings, it is not a productive course of action to follow. Those being regulated want to see regulatory objectives discussed with them, confirmed by them, pursued with fairness and reasonableness, and most importantly with respect (for example, see Ivec et al. 2009). Communities want to see their regulators able to act with integrity, which involves sound judgment and trustworthiness (Selznick 1992). This is not the equivalent of treating everyone according to the same formula or going by the rulebook.

Bureaucracies, on the other hand, struggle to maintain comparability across cases. They operate in environments that are complex, where tasks are broken down into

⁴ This push is particularly evident in child protection (see Braithwaite, Harris and Ivec 2009).

components, where expertise and decision-making become siloed, and where risks of inconsistent decision-making can be high. These common difficulties for bureaucrats magnify when outsiders seize upon administrative cracks in the system and take advantage of them. The cracks are manifested in public discourse about the Department as “giving different stories”, “moving the goal posts”, “having different agendas”, and according to Departmental research (The Open Mind Research Group 2008), as being “*inconsistent*” in decision-making.

Inconsistency in a regulatory context may mean arbitrariness in the way people are treated, or on the other hand, it may mean systemic discrimination against particular groups. Inconsistency of either kind reflects the improper use of power and is rightly criticized and challenged through formal appeal channels. Concerns of this kind, however, have led to an over-reaction of assuming that the gold standard for government decision-makers is rule-bound consistency, defined as strict adherence to rules combined with a script to deal with every possible situation (for example, see Waller 2007).

This way of thinking leaves open the risk of developing a culture of regulatory ritualism in which procedures are followed religiously, even though they are not useful to achieving regulatory goals (J Braithwaite et al. 2007). A recent example of rule-bound consistency and ritualism in the public arena involved emergency call centres: Call centre staff’s insistence on a precise address from a teenager calling on a

mobile phone and lost in the Blue Mountains meant that the call for help was ignored with tragic results⁵.

Advocates of rule-bound consistency perpetrate different kinds of injustice in a regulatory context – the injustice of fuelling false hopes in some cases, and not being responsive to human needs and extraordinary circumstances in others. Being consistent in a regulatory context requires more than just applying a rule in a particular way at every turn. To do so generates the kind of resentment and resistance described earlier and is harmful to a culture of compliance and cooperation. In order to change people’s behaviour, their circumstances must be appreciated and taken on board in considering options for regulatory intervention. Thus, it may well be that a harsher penalty will be given to a person knowingly working illegally than to another person who drifted into working illegally while remaining committed to their primary purpose for entry (for example, study). Allegations of inconsistency carry most weight with the public when cases are compared and stripped of context. Attitudes of disapproval often change, however, when the details of cases are made known.⁶ People make their own judgments of deservingness on the basis of a host of factors (Feather 1999). There is therefore little justification for a regulatory agency to seek protection from public accountability through hiding behind a rulebook culture.

This discussion of consistency should not be interpreted as discounting the seriousness of allegations of inconsistency. Rather it is to make the point that the appropriate response by a regulator to inconsistency allegations is to be *accountable*

⁵ <http://www.smh.com.au/national/lost-in-the-blue-mountains-triple0-operator-uncaring-20090416-a84z.html>

⁶ Privacy laws often make it difficult for bureaucracies to defend their actions by providing details of the case. It is possible, however, to have a portfolio of types of cases and explain how agencies deal with and are responsive to special circumstances and events in a manner that is fair and reasonable.

for the decisions that have been made. This may involve engaging in the kind of story telling about decision-making that explains why it is responsible for authority to take account of the whole picture and make different responses to cases that are substantively different, even if in terms of specific rule violation they are identical. Police culture where difficult decisions have to be made often in crisis situations and in a matter of seconds have a rich tradition of educating young officers through storytelling (Shearing and Erickson 1991). It is a form of holistic context sensitive learning about how law can be implemented with fairness and reasonableness, drawing on those with considerably more experience in bringing coherence and meaning to what could be seen as conflicting regulatory demands.

In the Immigration context, the operations of the Community Status Resolution Service and the Case Management Service provide examples of how responsiveness to the needs of individuals can be accommodated within a complex system of rules and regulations. Communication and exchange of information between members of Status Resolution teams, enforcement teams and counter staff, facilitated by co-location and joint operations, provides opportunity for learning of the kind described above. Information is shared and outcomes observed as part of the daily routine and in the process all staff are given opportunity to appreciate the challenge of applying a set of rules to people whose lives are far more complex than any rule system could possibly recognize. Immigration officers rely on the professional knowledge and experience of each other to make decisions that are in the best interest of clients within the boundaries of the law. In time, this is likely to create a culture rich in stories and cases that illustrate responsive and innovative ways of dealing with the more common compliance problems. Capturing such learnings and sharing them with

others can then be facilitated through the training workshops and meetings that are part of DIAC's national coordination policy.

Influencing what people do and think

Engagement in improving explanations and seeking feedback on regulatory measures is one option for building compliance with regulatory authorities, but it is not the only approach in use. In an era of free markets and smaller government, globalization and individualism (Inglehart 1997; Karstedt and LaFree 2006; Stiglitz 2002), which has seen declining confidence in the state's capacity to look after citizens, regulatory bodies have taken a step back from inspection (presumably to cut cost and avoid controversy) and have focused instead on education and persuasion campaigns with self-regulation the desired outcome. Psychological models of attitude change and influence have been used extensively in this context, often through marketing and advertising paradigms. Fishbein and Ajzen's theories of reasoned action and planned behaviour drew attention to the link between intention to act in a certain way and subsequently executing that action (Ajzen 1985; Fishbein and Ajzen 1975). For compliance practitioners, the over-riding message was to show people exactly what they are to do and help them rehearse the action with intention to follow through in their behaviour. Fishbein and Ajzen also drew attention to the importance of concepts related to identity – beliefs and attitudes surrounding the request for compliance, the personal and social norms that might affect the performance of compliant behaviour, and a person's sense of control or efficacy – could they do what is required if they so chose? Promotion campaigns for government or agencies selling a message address subsets or all of these issues, depending on where focus groups indicate the stumbling blocks are to compliance.

A second highly influential psychological model picked by those wishing to sell a message of compliance to the mass public is that of Cialdini (2001). Cialdini and his colleagues have identified strategies for eliciting desired responses from the public through tapping into automatic human processes. These strategies include some that are readily recognized as part of government promotion and advertising campaigns as well as being part of political campaigns. A significant body of empirical research has shown that if you want someone to do something for you, best to do something for them first, the principle of reciprocation. A second principle is to build commitment and consistency around the desired response – people like to think of themselves as being consistent and as someone who can be relied upon to act on their convictions and do what they say they will do. A third principle outlined by Cialdini is to have a message of compliance delivered by someone who is likeable and to whom people can relate. A fourth principle is to provide social proof that others are complying and are already supporting the authority's request. A fifth principle is to establish the authoritativeness of the authority, convincing the public that the request for compliance comes from people who know what is best and are acting in the public interest: The authority has integrity. The sixth principle for getting compliance is to associate the desired action with a scarce resource. Amnesties have a quality of scarcity about them, and according to Cialdini's theory should be attractive to the public because special consideration is only available for a limited time (Cialdini 2001).

The strategies articulated by Cialdini (2001) are widely used in marketing. As people become more sophisticated and learn about how these strategies can affect their

behaviour without their knowing, there may be a backlash against regulatory authorities that use them. Or there may be acceptance that regulations are like products available through the market place. The consumer ultimately chooses whether or not to comply, and government chooses whether or not they wish to pursue the issue.

The attitude change and influence literature when applied to regulation has a “hands-off command-and-control” character; “hands-off” in the sense that the regulatory agency is manipulating rather than coercing compliance and “command-and-control” because the authority is using its power and resources to subjugate an unsuspecting public. In contrast to this approach that treats those being regulated as consumers is an approach that engages with those being regulated as possible future citizens potentially entering into a social contract with the state.

Democratic theories of engagement

This approach draws on understandings of citizenship and the obligations that the state and citizens owe each other. The approach is an interesting one to apply to the immigration context. Those who will be granted a visa to stay will be expected to take on board the social norms and obligations of Australian society. Citizenship responsibilities need to be learnt and internalized. One way of approaching compliance with migration law is to prepare new arrivals for the possibility that they will become Australian citizens from their first encounter with DIAC. Some, however, will not be looking for long-term residency. Those on working or tourist visas may not be interested in investing in establishing a shared identity with other Australians. The problem facing an immigration authority is that it is not always clear

who will seek to stay and who will not. Perhaps even more importantly, we have seen throughout this paper that people's behaviour is influenced by the networks within which they move. Such networks are not going to be exclusively comprised of people on the citizenship trajectory or people on the temporary trajectory. Whatever the composition, it is desirable that the dominant norms are compatible with those of citizens as described below.

In order to be effective, regulatory authorities need to establish a psychological contract with the public that communicates mutual respect, commitment to the collective good and responsibility to engage constructively in the deliberative process (Feld and Frey 2007). Empirical support for this approach can be found in the tax literature. The U.S. research of Kinsey and Grasmick (1993) and Scholz, McGraw and Steenbergen (1992) on tax reform provides evidence of how changes to the tax system can create a far better climate of compliance when the changes are championed through deliberative fora. Bruno Frey and his colleagues have shown that among the Swiss cantons, tax jurisdictions where direct democracy is practiced have higher compliance; and more generally, that deliberative processes and inclusiveness lower prospects of tax evasion (Feld and Kirchgässner 2000; Feld and Frey 2002, 2005; Frey 2003; Frey and Feld 2001; Pommerehne, Hart, and Frey 1994; Torgler 2003).

When authorities manipulate, at a distance, attitudes, costs and benefits, or, at close range, use deterrence and coercion, they assign individuals to the role of having things done to them. Engaging communities in deliberation about regulatory goals and procedures is quite the opposite. Involvement of communities, providing it is genuine,

is expected to increase allegiance to the program and increase prospects for people engaging voluntarily in the compliance process.

Loss of hope that authorities will listen to communities and take account of different interests has been at the heart of much of the recent loss of legitimacy of governments (Braithwaite 2004; LaFree 1998). In a study of a rural tobacco growing community, Cartwright (2010) described the way in which the Australian government alienated growers through withdrawing support, imposing a hefty excise tax on their industry and favouring the anti-tobacco lobby. Growers' feelings of desperation led some to sell tobacco leaf illegally as chop-chop. Government increased its enforcement activity and surveillance, flooding the community with officials. They were greeted by a stony silence.

Cutting the public out of deliberation may also be a key factor in escalating what many depict as a cat-and-mouse game of law invention that leads eventually to loss of respect for law (McBarnet 2003). When demands for compliance are made in a "bubble" where the context of why the law exists is unclear or unspecified and where no relationship has been established to build a climate of cooperation, it is easy for individuals to enter a game of trying to beat the law. A few clever individuals adopt a black letter law mindset, combing the legislation to find loopholes or ambiguities to exploit. If a significant number of people catch on and use the loophole, legislation will be modified to close it off. The effect, however, is not necessarily the desired one and does little to dampen the competitive spirit. Instead, closing the loophole is an invitation for a new game of searching for new loopholes to exploit. The game

playing becomes more intense and extensive as loopholes are sold to those who are willing to pay for a creative way of achieving their objectives.

Inclusive deliberation may not directly rein in those who are having wins through game playing opportunities, but it may enlighten the public more broadly so that they become less tolerant of those who game the system for their personal gain. The objective is to prevent game playing from becoming the norm. In recent research on game playing with government by a random sample of the Australian community, the phenomenon appears to be a minority rather than majority interest. It is most likely to be found among those who have lost confidence in government, are suspicious of its motives and cynical about future improvement (Braithwaite 2009b).

Reinvigorating the democratic voice is an objective of the deliberative democracy movement (Dryzek 1990). In the context of regulation, the wheel of social alignments has been developed to help authorities engage more constructively with deliberative objectives (Braithwaite 2009c; see Figure 2). The wheel reminds policy makers to consider the design of their systems in the context of three principles that guide community acceptance and rejection. Drawing on the work of Cullis and Lewis (1997) and Tanzi (2001) on taxation compliance, Braithwaite has postulated that acceptance of a regulatory system by communities requires deliberation in relation to: (1) benefits accrued through the regulatory system; (2) justice in the design and administration of the system; and (3) consent to accept a moral obligation to comply and consent to accept coercion (in principle) should individuals be non-compliant.

The individual may, at this point, acquiesce with the authority, but they may also act with defiance, aligning themselves with alternative authorities dedicated to changing or dismantling the regulatory system (included as part of ‘the other’ in Figure 2). For this reason regulatory systems need to attend not only to the percentage of the population complying, but also be part of conversations in the regulatory community and be attuned to facets of the regulatory system that may be sources of discontent. In the immigration context, different conversations need to take place with the many different groups involved in compliance issues. It is of note, however, that ‘the other’ in Figure 2 is not necessarily antagonistic to the system. This circle of the diagram may also contain influential others who are opinion leaders and supporters of the regulatory system, or could be if they were included in regulatory conversations about the system.

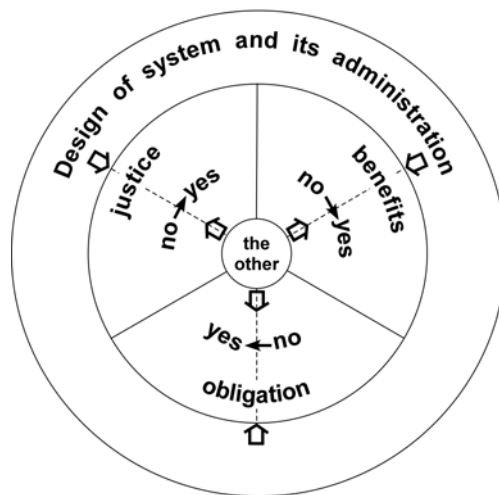


Figure 2: Wheel of Social Alignments

Market models and regulatory theory for flipping vice into virtue

Regulation does not always require engagement with the public. Governments may play a role in regulating activities through markets, providing incentives for some, removing incentives for others. Consumer demand creates a market in which suppliers compete to offer the most cost-effective service. Markets may emerge and competition may unfold in such a way as to produce outcomes of vice (labour exploitation of unlawful immigrants) or outcomes of virtue (a proper process for obtaining a series of visas that keep people lawful) (J Braithwaite 2005). John Braithwaite's regulatory theory of cyclical markets in vice and virtue starts from the premise that markets themselves are not intrinsically bad or good. In searching for the competitive advantage, however, sellers may operate in ways that produce harm. Through understanding how a market is operating and the drivers that are leading to damaging outcomes, regulators can flip markets from vice to virtue, just as other competitive pressures beyond government control flip them from virtue to vice.

In the immigration context, a market in immigration advice and advocacy operates to assist those seeking a visa and more broadly assistance in formulating a plan so that they can remain in Australia. The services offered by migration agents serve an important need and the market can be thought of as virtuous in so far as it safeguards human rights and ensures people have opportunity to present their best possible case for a visa to the Department of Immigration and Citizenship at an affordable price. While the market advances a fair go for most, it also harbours exploitation through some agents peddling false hopes, gaming law, misleading the Department and

charging high rates for their services. Flipping a market in vice depends on controlling rogue agents and moving the competitive advantage toward those migration agents who are acting professionally and responsibly.

Australia also has seen a market emerge in educational services that provide a valued skilled workforce and a pathway to residency. While the majority of providers have offered legitimate educational opportunities, some have been a sham. Demand for these services, because they offered a pathway to obtaining a visa, remained strong and their non-legitimacy undetected. Their purpose was supplying a pathway to a visa – the quality of the educational training they offered was irrelevant. As policy changes close off these pathways, the educational market in vice loses its value and the demand for these services drops off.

Responsive regulation

Responsive regulation theory provides an account of how a regulator should go about regulating a person or entity to achieve certain outcomes. The seeds for its development were sown in the 1980s while observing and interviewing coal mine inspectors (J Braithwaite 1985) in a study which, like others of its time, drew attention to the extraordinary skills and discretion that regulators [similar to Lipsky's (1980) street level bureaucrats] used to elicit compliance and cooperation from the public (Hawkins 1984; Kagan 1978). Effective regulators were competent and astute in detecting and pointing to evidence of breaches, but how they used these data to further the pursuit of compliance proved even more interesting. They acted in ways that confirmed many of the scientific principles outlined above. They respected the person, they offered help in exchange for compliance, and they did not routinely go

by the book and administer penalties. Rather they focused on understanding the context in which the non-compliant individual or company was operating – how was their business running, were there reasons for non-compliance that could be addressed, were there strategies and tips of advice that could be passed on to avoid future problems? Effective regulators knew the business of those they were regulating and could empathize where appropriate with the difficulties they were having. Their focus was future oriented – making things right through understanding problems and sharing solutions, they were not satisfied to tick boxes and administer fines.

The tension between establishing a supportive relationship with non-compliers and using sanctions to indicate disapproval and reduce reoffending provided the motivation for developing the theory of responsive regulation (J Braithwaite 1985, Ayres and Braithwaite 1992). The question was how to balance persuasion and punishment. How could the right balance be found, given that individuals and groups will differ in their tipping point for, on the one hand, cutting themselves off from influence by the regulator because of heavy handed treatment, or on the other hand, not taking seriously advice and suggestions for change because the regulator did not think the problem was big enough to warrant a fine?

Responsive regulation answers this question through first setting in place a basic building block of compliance. For most people in a democratic society, self-regulation is respectful and is both practicable and desirable. Furthermore, in a democracy, “following the rules” can be and should be morally grounded in the regulatory community and in the general population. As a result, most people recognize within themselves some interest in doing the right thing and are responsive to a regulatory

authority that moves them in this direction. This normative base represents shared social standards as well as the desire to be law abiding and to act in the spirit of the law.

Good intentions aside, none are beyond temptation. A regulatory pyramid of sanctions therefore comes to the regulator's aid, gradually increasing the level of intrusiveness of sanctions until compliance is obtained. For example, in a context where regulators are concerned about a small business not paying its taxes, a responsive regulatory strategy might be organized as follows. The first steps might be gentle – largely educative and persuasive, suggesting systematic ways of keeping track of income and expenses and organizing time so that the book keeping is done properly and regularly. If education and persuasion is not achieving the compliance required, pressure may escalate through intermediate levels (perhaps closer auditing, increased surveillance, imposing penalties). If these strategies don't work, highly intrusive interventions will be called into play (for example, incapacitation through imprisonment, removing a license to practice).

The Community Status Resolution Service employs a methodology that is suited to a responsive regulatory model. Migration officers can offer advice, assistance and encouragement to comply, organize bridging visas where appropriate, and make increasing demands and place restrictions on an individual's choices if compliance is not forthcoming. Application of the model is most suited to unlawful non-citizens for whom illegality is not a desirable option: For those who don't worry about lawfulness, absconding is likely to beckon as a way to avoid penalties. Identifying such persons remains relatively uncharted territory, although experienced officers

draw on and pool their knowledge to make the best estimates they can as to the likely success of the CSRS process for any particular case.

For purposes of illustrating responsive regulatory thinking further, Figure 3a presents a hypothetical example of how Immigration regulators might respond to unlawful non-citizens. Let us assume that in this hypothetical scenario, migration officers have an array of options they can use and that it is highly likely that the unlawful non-citizen will ultimately have to depart the country. While awaiting a decision, how might an authority apply a responsive regulatory approach? Cooperative engagement with the process by the unlawful non-citizen means that remaining in the community with a bridging visa is the preferred option. Only if the individual is not complying with the steps undertaken to resolve their immigration status would there be a reason for increasing intrusiveness, in this hypothetical context perhaps by increasing levels of surveillance. This might be done “gently” at first through using voluntary support services, but would be ratcheted up if risk of disengagement were suspected. Government oversight would come into play upon evidence of withdrawal from the process. If the individual escalated their opposition to the point of threatening harm to self or others, more intrusive surveillance would be required, with detention a possibility where no other method of control was possible.

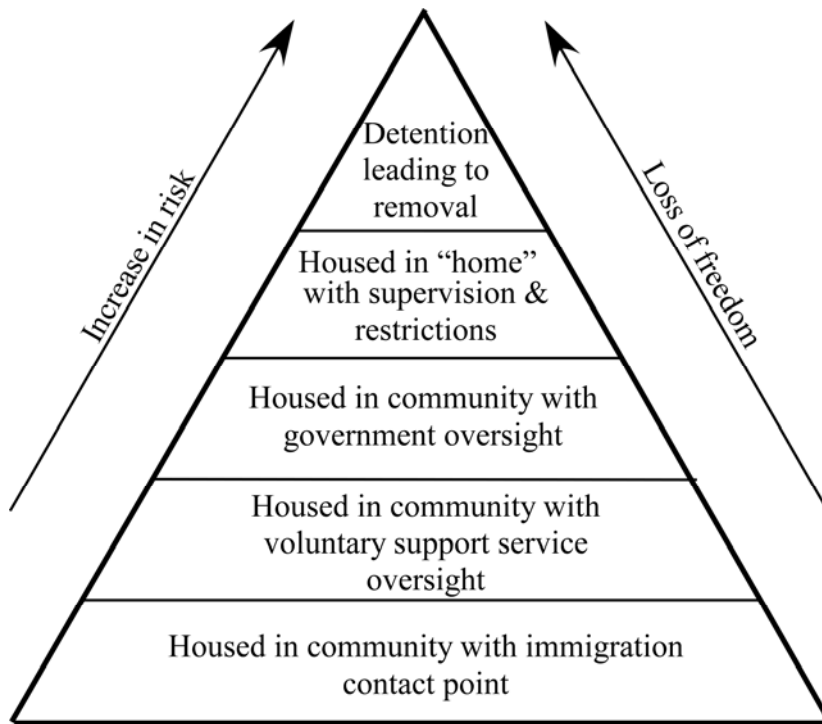


Figure 3a: Possible enforcement regulatory pyramid with unsuccessful applicants

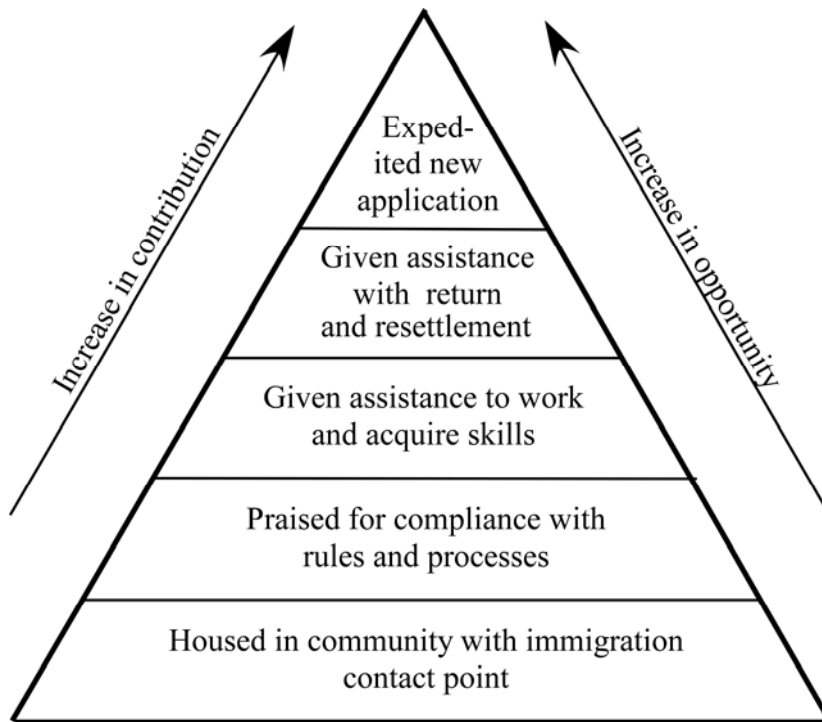


Figure 3b: Possible strengths-based regulatory pyramid with unsuccessful applicants

The light touch interventions at the bottom of the pyramid are used when the act of non-compliance is not serious, when it is accidental or based on sloppy practices, when the past compliance record has been good, where there is genuine remorse for the mistake, and clear willingness and capacity to make things right. The regulator will monitor the situation to make sure corrections are made, but the non-complier is trusted to get on and do the right thing. The intervention takes the form of enforced self-regulation where commitment to the compliance system is sound and the person motivated to comply. Heavy handedness is wasted in such a situation.

But if the regulator does not see evidence that the problem will be rectified and the risks to the community persist, a greater level of intrusiveness and sanctioning is introduced. The severity of the intervention will increase until non-compliance gives way to compliance. The logic of responsive regulation is that most people will comply with small levels of intervention if they see that the regulator has a strategy in place for escalating punishment in response to continued non-compliance (Ayres and Braithwaite 1992). For this reason, regulatory pyramids are not hidden devices, but are shared with the regulatory community, even in some cases negotiated before they are used to deal with a problem of non-compliance. The regulatory strategy must be seen to be fair in that it is clear to everyone that escalation will occur if compliance standards are not met. The message of the regulatory process is – “if you fail to cooperate, we will escalate the costs (social and/or economic) of non-compliance and if you cooperate we will deescalate the costs.”

The objective of regulators in using enforcement pyramids is to use persuasion, moral

appeal and deterrence to talk those who are non-compliant down to the bottom of the pyramid because here cooperation is possible and sustained compliance is most likely to be achieved. In most cases the regulatory authority will succeed if the base is strong in so far as there is a reasonable consensus around the desirability of the regulations and what they are trying to achieve. If not, another challenge emerges for regulatory authorities – they need to build credibility and justification around their activities within the regulatory community.

Responsive regulation is a theory that relates to the management of acts of non-compliance through a flexible set of options that demand change in behaviour without unnecessarily resorting to interventions that may damage good will and intentions to comply. The theory takes into account the psychological readiness of non-compliers to comply, in the belief that people won't do what is expected of them unless they can grasp the message and are convinced it is possible and in their best interest to act. The psychological readiness of individuals, research suggests, depends at least in part on the integrity of authorities and their treatment of non-compliance. That said, there are also external factors that shape perceptions of those being regulated and those doing the regulating. External factors frame the regulatory options that are possible and viable.

When the Australian Taxation Office adopted their Compliance Model based on responsive regulation, it was keen to emphasize to staff the need to appreciate and understand specific drivers of non-compliance (Cash Economy Task Force 1998). The ATO Compliance Model introduced the concept of drivers of non-compliance (e.g. opportunity, ignorance, financial hardship, compliance costs, political opposition to

paying tax) through the BISEP profile. The BISEP profile captures what is known from academic and field settings about who engages in acts of tax non-compliance and who does not. The BISEP profile enabled Tax Office staff to engage with taxpayers about their non-compliance in a knowledgeable, holistic and understanding way – looking at business factors (B), industry pressures (I), sociological drivers such as networks and culture (S), economic opportunities (E) and psychological propensities (P). Through reminding staff to understand the context of non-compliance, strategies for dealing with it (e.g. knowing the right steps for escalation and de-escalation of sanctions) are likely to become more effective over time. The importance of understanding non-compliance and the risk of having this drop off the responsive regulatory agenda has been reinforced by Black and Baldwin (2010) who have coined the phrase, a “really responsive” approach for risk based regulation, as a reminder of why more flexible regulatory arrangements came onto the agenda after the seminal work of the 1970s and 80s.

Responsive regulation brings together many of the ideas that have been discussed earlier in this paper. It accommodates the reality of individuals having subjective appraisals of the severity of sanctions be they legal, social or moral. Working out the sanctioning steps that apply to any situation requires in-depth knowledge of context and inevitably involves discussions with managers and other field staff, as well as with those being regulated and other actors in the regulatory community. The steps must be responsive to the problem and therefore demand conversation with all relevant parties if the problem is to be properly understood. As such, responsive regulation is a means of keeping an authority listening to its regulatory community and taking issues to the community for deliberation.

Responsive regulation reminds us to avoid one of the most common errors in enforcement practices. Too often repeated non-compliance is dealt with ineffectively through regulators repeating the same response to the non-compliant act, or nagging without decisive action. Then after a period of silence, a highly punitive sanction may be imposed by an agency, out of the blue – or so it seems to observers. Such enforcement activity is not likely to build confidence in the system and does little to turn sanctioning into a useful strategy for eliciting compliance. Authorities that maintain control and achieve their objectives have an aura of invincibility about them while being responsive to the democratic will. Responsive regulation helps regulators enact this approach. Responsive regulation signals the need to abide by standards early and then escalate through a hierarchy of sanctions that are known to the regulated community: for example, non-compliance by an unlawful non-citizen with regard to a request for a departure date might be followed by insistence on a follow-up-visit with a plan in place, which might be followed by a meeting with a support group who could help arrive at a departure plan, which might be followed by referral to specialist services in preparation for removal, which might be followed by threat of detention if no ticket is produced, which might be followed by detention until removal is arranged.

Responsive regulation assigns a place to both traditional and relational models of compliance. The costs associated with non-compliance are explicitly recognized in the model. The regulator can and will continue escalating the costs until the problem is resolved. The escalating costs encourage the non-compliant to resume dialogue at a lower level of the regulatory pyramid, the reason being that from a self-interested

perspective, it is too costly to escalate the conflict to a higher level.

Also playing a part in the responsive regulatory approach are relational models of compliance. From the theoretical perspective of procedural justice, reintegrative shaming and motivational posturing theories, compliance and future self-regulation are most likely to occur if the relationship between the regulator and the non-compliant remains respectful and communication channels remain open. Within DIAC, the Community Status Resolution Service provides opportunity for building positive relationships that offer and honour trust and give cooperation the best chance to prosper. If principles of respect and procedural justice are not observed, however, and if warning of the sanctioning process is not made public, those who are not complying are more likely to turn their anger toward the regulator, cut themselves off from attempts by the regulator to change them, increase their social distance and seek alliances with others opposed to the regulator.

Transparency in how the regulatory pyramid in Figure 3a operates provides the public with a clear understanding of the stages of regulatory enforcement and gives those being regulated control over how to engage with immigration authorities and the costs associated with the choices they make. Just as regulators engage with warnings and actions of escalation in response to the behaviour of the regulated, they also must be ready to engage in de-escalation in response to more cooperative behaviour.

Enforcement pyramids have been used in a variety of settings and are constructed to deal with specific instances of non-compliance that pose a problem for regulators. They may be used not only for visa applicants, but also for employers, migration

agents, and educational providers providing DIAC is able to identify the specific nature and causes of the compliance problems they have with these groups.

Focusing on specific problems and being flexible in how they might be solved have given rise to several new approaches to managing compliance. Before describing these approaches briefly, a more recent body of work associated with strengths-based regulatory pyramids is sketched below.

Strengths-based pyramids may exist alongside enforcement pyramids and help regulators who may be concerned that their image is too negative or overly threatening. More importantly, strengths-based pyramids steer the flow of events not through threat but rather through praise for doing things well, and empirical research shows that praise works (J Braithwaite et al. 2007; Makkai and J Braithwaite 1993). Compliance improves through recognizing people's achievements and initiatives (Makkai and J Braithwaite 1993), their identity is affirmed. In a study of nursing home regulation, those nursing home directors who saw inspectors recognizing and praising good things that were being done in the facility were more likely to address their non-compliant standards than those who did not receive praise. The idea of rewarding virtue has been central to the work of Frey and colleagues on taxation for more than a decade (Feld and Frey 2007). A systematic approach for building praise into a regulatory strategy thereby encouraging further productive and cooperative practices is through a strengths-based pyramid (as illustrated earlier in Figure 3b). Those who work at being compliant are rewarded for their law abidingness and their commitment through various concessions and opportunities.

This approach of using positive incentives is not out of the question even in cases where the application for a visa to stay in Australia is not strong and return to country of origin is the likely outcome of the visa application process. Simple acts of appreciation and recognition of compliance represent the first level of the strengths-based pyramid in Figure 3b. Assistance with work or training may then be offered to those who have a good history of compliance and cooperation; even if it is only short-term as the visa application is being considered. If the application is rejected, return can be facilitated by the Department at an agreed time, again with recognition of contributions and cooperation. In addition, the way might be paved for a new visa application after they have returned home which may be treated sympathetically. A strengths-based pyramid of this kind is consistent with the objective of migration policies – to attract immigrants who will be respectful of the country’s laws and who, if granted a visa to stay, will become productive, law-abiding citizens.

The development of strengths-based pyramids requires consultation with immigration staff and visa applicants, as well as the various support groups. As a first step, positive incentives can be used in more modest ways. For example, those who have been given a visa to work in a particular industry (for example, fruit picking) may be given another visa with greater job opportunities if they abide by the conditions of their first visa and keep the department informed of any changes in their status.

Other approaches to managing compliance through a focus on specific problems and flexible responses

The many sources of influence for the unlawful non-citizen or bridging visa holder in Figure 1 provide insight into how individuals become enmeshed in webs. Figure 1 also is a reminder to consider a further question – what about interconnections among

the organizations, how are they networked with each other, are they a part of other webs that may overlap or work in opposition to each other? Meidinger (1987a, 1987b) more than 20 years ago recognized subcultures in regulatory communities, but more recently these subcultures have been seen as having capacity to harness resources, to be connected to other resource-rich communities, and to be nodes of governance in their own right. Whether the term, 'webs' is used to refer to networks that cooperate or compete in wielding their influence (J Braithwaite and Drahos 2000) or whether 'nodal governance' is used to describe the ways in which resource-rich entities emerge and shape future directions (Burris, Drahos and Shearing 2005; Shearing and Wood 2003), the central point is that the state, instead of being at the centre of regulation and governance, is seen as one of many players that steer the flow of events. This inevitably makes enforcement for state agencies such as DIAC a complex task. By the same token, it also means that work that once was done within DIAC can be transferred to other agencies, for example, travel agents accredited to issue eVisas. As these changes take place, DIAC is moving along a trajectory where its role will increasingly be one of coordinating the decision making of disparate parts, ensuring that one part understands another, and that all contribute to the integrity of the system as a whole.

With regulatory activity taking place around different nodes and via different webs of control and influence, it is not so surprising to find government taking a step back, while industries come forward to self-regulate, agreeing that government have oversight of their self-regulatory activity. Meta-regulation means regulated self-regulation. Commonly meta-regulation is employed in highly complex regulatory contexts, financial regulation being a prime example. In the immigration context, this

is not the case. An example involves the issuing of e Visas for tourists and visitors online. The process is managed on behalf of the government by registered travel agents. These visas are uncomplicated, providing entry on single or multiple occasions, each entry for up to 3 months. The visa is valid for 12 months.

Sometimes governments use the rich resources of regulatory communities in less hierarchical ways. Third parties may be trusted to take on regulatory responsibilities, or are recruited by government in the co-production of regulatory activity (Grabosky 1990, 1995b, 1997). Regulation by third parties is a particularly attractive option in contexts where government doesn't have the necessary expertise and/or where the government's capacity to influence those being regulated is limited. The idea is that a third party might be more successful in eliciting cooperation and compliance with agreed standards than the government. Third party regulation and co-production are used by the Department of Immigration and Citizenship through partnering with the Red Cross who assist in the care of asylum seekers and refugees experiencing trauma or with the International Organization for Migration in preparing people for return to their home country.

Considerable regulatory power resides outside the state. In some instances the networks that steer the flow of events can be global. Moreover, they are not necessarily sympathetic to government. International human rights networks or refugee diasporas or criminal networks may be recognizable sources of influence that do not necessarily support the policies of states, and may work to undermine them. Government regulators have to be open to truces or partnerships with such alternative authorities to provide some predictability and order to governance arrangements (J

Braithwaite 2008). Irregular arrivals and illegal workers may all be manifestations of sophisticated networks of influence that extend across national boundaries, having a profound impact on state-led regulation.

While meta-regulation and nodal governance recognize the multiple influential players in the regulatory field, other researchers have focused on the nature of the regulatory problem and how resources should be mobilized to deal with it. Sparrow (2000) has advocated an analytic approach to “picking important problems and fixing them.” The objective is to systematize the process of regulation from policy to on the ground action, breaking down broad objectives into more do-able and well-defined projects. At the project level of analysis, data might be collected and examined for patterns in non-compliant activity, the risks associated with projects assessed using intelligence from a variety of sources, connections between projects spotted and priorities set for finding solutions. Sparrow’s strategies for analysis revolve around assembling the knowledge that regulatory actors need to arrive at informed priorities, then going to work, creatively re-organizing work groups into task forces if need be, to develop solutions. Sparrow’s approach to problem definition may well lead to the development of responsive regulatory pyramids to deal with a particular compliance problem.

Criminologists such as Sherman and his collaborators (Sherman and Berk 1984; Sherman, Gartin and Buerger 1989; Sherman and Strang 2007) have followed a similar track of selecting problems, proposing solutions, and most importantly, actioning and evaluating them. They have set about analyzing contexts and using theory to identify particular interventions that they have reason to believe will

produce specifiable outcomes (for example, reduce a particular kind of crime) and then experimentally test the intervention's effectiveness. Among the issues Sherman has examined in collaboration with police forces internationally are domestic violence, intensive patrolling of crime hot spots, and restorative justice.

Following Sparrow's advice on defining problems and Sherman's approach on testing solutions, the regulator can develop a 'short-list' of what works and another list of what does not. Sometimes, however, capacities and resources mean that regulators can't get a handle on the basis or solution to their regulatory problem.

A useful approach in such circumstances, one that might be described as back-to-basics action, has been proposed by Gunningham (1993). Gunningham started from the position that there is no one solution to a regulatory problem and that if a regulator were to use a number of different strategies that at the very least were not incompatible with each other, the chances of effectively controlling the compliance problem would be increased. Regulatory mix does not necessarily involve sequencing in terms of seriousness of the compliance problem or the application of sophisticated combinations in response to various actions by those being regulated. The idea is more simple from the point of view of implementation: The regulator needs to simultaneously attack the compliance problem from a number of different angles, the only condition being that the strategies that are actioned need to reinforce or complement each other, not undermine each other.

Subsequently, a more fine-grained account of regulatory mix was developed by Gunningham and Grabosky (1998). Termed 'smart regulation', this update of

regulatory mix sets out a number of propositions for how and when regulatory strategies should be used. As with regulatory mix, the central idea behind the smart regulation model is that rarely is a compliance problem solved through a single intervention. By the same token, they warn against a smorgasbord approach or using strategies that are incompatible with each other, possibly creating a worse situation than before as one strategy undermines the other's small gains. Smart regulation requires targeted complementary mechanisms that achieve the desired outcome; and consistent with a responsive regulatory approach, these mechanisms should intrude only as much as is required to elicit compliance. A set of principles have been set out for evaluating options to produce smart regulatory practice: (a) mix regulatory instruments and approaches in complementary ways; (b) prefer less interventionist measures in the spirit of parsimony; (c) escalate up an enforcement pyramid to achieve objectives; (d) consider sequencing of measures to send a message of future dependability (for example, emission targets to be achieved by a certain date, after which time fines will be imposed; or if an unlawful non-citizen does not purchase a ticket and arrange for departure, DIAC will make the arrangements and restrict the options and movement of the person); (e) empower third parties as surrogate regulators; and (f) maximize opportunities for win-win outcomes, wherever possible providing incentives to going beyond compliance.

Smart regulation, responsive regulation and Sparrow's (2000) analytic approach to the regulatory craft all move away from traditional models and a cookbook approach to finding regulatory solutions. Instead, regulatory problems today can be met by an array of approaches with solutions only limited by the imagination. Each context, as Sparrow would argue, needs to be analysed so that we fully understand the risks that

need to be managed, have evidence of the drivers of non-compliance, have some understanding of possible causes of the problem, and have some ideas of possible solutions that can be systematically tested. With awareness that there will be no ‘one size fits all’ and no big problem that is likely to be solved through a single solution, we can mix and match options using enforcement regulatory pyramids and smart regulation combinations, even strengths-based regulatory pyramids. The only golden rule it seems is that for solutions to be sustainable in a democratically respectful way, regulation must earn integrity credentials with the public and treat the public with respect.

Section 4: How regulatory analysis can improve compliance with migration laws

Building a culture that fosters compliance involves strengthening those facets of the system that connect with feelings of obligation in people or that trigger the idea that “I had better do this, or worse could happen.” In a democracy, governments are expected to enforce the law, using coercive powers when necessary, but only when necessary. The proviso is important. There are strong social norms that underpin the use of coercion in a democracy. These are based on arguments of human rights primarily, but the argument can also be grounded in economic efficiency. Coercion is an extraordinarily expensive form of regulation.

Coercion in the sense of denying an individual choice and forcing a person to act in a certain way is an option available to all regulatory regimes, but there is no doubt that it jars universally with the concept of human dignity. None of us like to be forced to

do things. People prize living in a democracy because it is a free society where people make a contribution to the collective. The social expectation is that in return for this privilege, one does not drain the collective of its resources. Coercion of individuals becomes acceptable when it is clear that there is no other means of preventing that “draining” from taking place. It is therefore incumbent on any government agency to give priority to eliciting compliance through fair and reasonable measures and to have these measures known to all. Then coercion sits in the background, readily mobilized, but understood as the safety net should all else fail. In the context of migration laws, where compliance is expected from Australian citizens and residents as well as from new arrivals to the country, multiple and iterative processes may be required to successfully put into effect these fair and reasonable measures. Different groups need the compliance plan articulated in different ways so that the plan is accessible and meaningful to all. Conversation, communication and networking therefore become important features of a compliance plan for immigration. It is against this background that coercive measures, a necessary part of any compliance program, can be justified and made accountable.

These ideas, argued in detail throughout the paper, lead to the following conclusions and recommendations:

1. The purpose of Australian immigration policy should be shared with and understood by the public in spite of its complexity.
2. The legitimacy of the Department of Immigration and Citizenship, in the public eye, depends on the public understanding the Department’s purpose and having opportunity to express resistance to that purpose if necessary.

3. Perceived legitimacy brings about prospects of in-principle informed consent and critical deference. In-principle informed consent means that individuals understand what is expected of them and why the request is being made, and agree to cooperate with the authority in the public interest – or else accept punishment. Critical deference means that individuals who have objections to what has been asked of them will comply while being given opportunity to pursue other avenues to bring about legislative or policy change.
4. Perceived legitimacy, not just legal legitimacy, is important if regulators are to be supported in using powers of coercion to enforce the law.
5. Perceived legitimacy also is important for regulators who seek cooperation from those they regulate and voluntary compliance with the law.
6. At the heart of a regulatory agency's influence is the capacity to offer respect for the identity of individuals. Respectful treatment, in part, involves ensuring that individuals know what they must do to comply, have the capacity or resources to comply, and are given the choice to express their willingness to comply through in-principle informed consent.
7. Responsive regulatory pyramids allow regulatory agencies to offer respectful treatment to individuals while “legitimately”⁷ being able to use coercive measures if necessary.
8. Immigration officers work through, alongside of, and in competition with agencies that may be seen as “alternative authorities” by unlawful non-citizens or bridging visa holders. Alternative authorities are entities with resources and credibility. They are positioned to offer guidance on how to progress compliance.

⁷ Legitimately here refers to perceived legitimacy in the public eye. The Department of Immigration and Citizenship may have the legal right to use coercion, but the public may view its use of coercion as inappropriate and as an abuse of human rights.

9. Government agencies that enforce compliance often feel at a disadvantage in managing their relationships with the public respectfully compared to those that offer assistance. Enforcement-focused agencies can manage their “less popular” status in two ways. In the first instance, enforcement agencies need to separate disapproval of actions from respect for a person, in particular, that person’s desire to be law abiding. In the second instance, enforcement agencies must earn the respect of other actors in the regulatory community and keep communication channels open with and through these “alternative authorities.”

The emphasis on consultation and dialogue to be undertaken in conjunction with enforcement activity can be summarized as 8 Ways Dialogue to implement 8 Regulatory Principles (8WD-8RP).

8 Ways Dialogue to implement 8 Regulatory Principles

8 Ways Dialogue is a prompt for engaging a set of principles when the task involves organizing a regulatory community to cooperate and support a regulatory program. Importantly, regulation does not just involve the regulator and regulatee. As Figure 1 demonstrated, those being regulated are being influenced by many different parties – and so too is the regulator, in this case DIAC.

The implementation of a regulatory program developed to achieve policy objectives brings into dialogue at least 8 parties: (a) the elected government and elected representatives (in the case of Immigration this may involve federal, state and local

representatives depending on the objectives to be achieved), (b) the public (for Immigration this will involve citizens and lawful non-citizens or visa holders), (c) the responsible government department (DIAC), (d) other government authorities (for Immigration including the police, customs, corrections, the Department of Education, Employment and Workplace Relations, Attorney General's Department) (e) non-government organizations (for Immigration spanning a broad spectrum from employer groups to migrant and refugee support groups), (f) international organizations (for Immigration the UN refugee Agency (UNHCR) and those involved in monitoring compliance with UN human rights treaties, IOM and others), (g) the informal network supporting the target of compliance (in Immigration there are a number of targets apart from the obvious target, the visa holder), and (h) the target of compliance (for example, the visa holder or sponsor).

Dialogue is essential to making regulatory programs work. Dialogue serves 8 functions: (a) clarifies purpose and objectives; (b) identifies where ambiguities, tensions and differences lie; (c) allows thoughtful deliberation and problem solving that brings together knowledge from diverse sources; (d) creates routines and norms in which people have confidence; (e) provides safe space for trust building to balance fora for adversarialism where decisions are challenged; (f) allows different players in the regulatory community to develop an appreciation of each other's agenda and difficulties; (g) allows long range planning within the regulatory community that is respectful of these agendas; and (h) creates an island of civility (Kaldor 1999) where knowledge, expertise and wisdom coalesce and from which a more informed debate about immigration in the Australian community can be led.

With players assembled and functions of dialogue in place, what knowledge matters for purposes of advancing a regulatory agenda?

Below are 8 regulatory principles that should be applied in any regulatory context. Accompanying them are the questions that need to be asked and answered in conversation with the regulatory community.

Principle 1 is to systematically gather data on patterns of non-compliance from different sources and initiate regulatory conversations among different actors in the regulatory space around what these patterns mean and the risks they pose.

The first principle addresses the basic question of which problems are a priority for regulatory agencies, in this case DIAC. In order to answer this question, a number of dimensions are analysed. Compliance problems require definition. They require evaluation in terms of which pose the greatest risk to the “well-managed entry and settlement of people” now and in the future. They require a fine-grained analysis of the patterning from various data sources – are the compliance problems connected and do they vary in severity across place and time?

Principle 2 is to engage the regulatory community in an analysis of non-compliance to contest different explanations for how a particular problem has emerged as a priority – is the system working as it should, are there competing nodes of influence fuelling non-compliance?

Once non-compliance is detected, defined and labelled as a serious risk that must be addressed, the knowledge of the regulatory community may be pooled to uncover how the intentions of the law have become sidelined or circumvented. In any regulatory system there will always be individuals who fail to comply, but when a problem spikes and the incidence of non-compliance exceeds the regulatory agency's capacity to handle it, questions need to be asked about possible causes related to the perceived desirability and practicability of the system. Features of the system that need to be examined include complexity, inconsistency, unreasonableness, injustice, poor communication and rule ambiguity; along with nodes of influence in the regulatory community that might be serving as alternative authorities fostering non-compliance.

Principle 3 is to undertake a behavioural analysis of non-compliance, identifying “deficit”, “opportunistic” and “mindless” explanations of non-compliance through stories of field staff, dialogue with others in the regulatory community, and research, pooling ideas for turning behaviour in a compliant direction.

This principle addresses the question, why is non-compliance occurring among some individuals or entities and not others? Multiple reasons can be expected and they will differ across cases. Broadly speaking, explanations for non-compliance can be broken down into three categories. Non-compliance may stem from (a) ignorance, lack of capacity to comply and unwillingness to comply; (b) a desire to beat the system and preparedness to engage in opportunism and illicit activity to do so; and (c) mindlessness associated with modelling others and/or knee-jerk reactions of an

emotional kind. These possible reasons are not mutually exclusive and may be overlapping in any particular case.

Principle 4 is to focus on those who are complying with the law and consider ways of strengthening, respecting and expressing gratitude for law abidingness and positive and productive engagement (including appreciation for constructive criticism).

This principle addresses the question of who is complying and why. Moral obligation or law abidingness is a powerful motivator for compliance and is particularly influential when grievance is absent and when it is not juxtaposed against the prospect of survival or success. Regulatory systems are most sustainable when people are committed to making a system work and are motivated to self-regulate.

Principle 5 is to consider gradations of deterrence as part of an enforcement regulatory pyramid in which persuasion and education are institutionalized in the regulatory community. Deterrence may be escalated when those who know what to do to comply instead choose non-compliance, but the general principle is to use only as much deterrence as is required to achieve a regulatory outcome and to use deterrence only when persuasion and education have failed.

Deterrence is an important part of ensuring that laws are respected and followed, but the question arises of when should deterrence be used. Deterrence is most likely to be effective when it carries the mental note of “This is the wrong thing to do.” For this to

occur, people must know what the right thing to do is, be comfortable with the arguments for why it is the right thing to do, and be able to do it. Education, persuasion and strengthening of informal social control mechanisms are important precursors to the use of deterrence.

Principle 6 is to build and maintain relationships of trust and openness with the regulatory community. This involves understanding prevailing social norms, reading the motivational posturing of those being regulated, being interested in others' points of view, guarding against actions that may be interpreted as excluding parts of the regulatory community, being conscientious about disseminating quality information, being honest in dealings with others, and being willing to work in partnership with third parties to achieve the desired outcomes.

Regulation takes place within contexts where social norms shape perceptions of what is a fair and reasonable intervention to achieve compliance. For interventions to be accepted, respected and taken note of, regulators need to manage motivational postures of commitment, capitulation, resistance, disengagement and game playing, wherever possible moving most people most of the time toward the positive engagement postures of commitment and capitulation. For this to occur, the authority must earn respect for its high integrity, openness and trustworthiness. The question that underlies Principle 6 therefore is how does an authority regulate from within a regulatory community as opposed to “from on high” or “from the margins” where its influence is limited.

Principle 7 is to treat others in a procedurally fair way – treat others with respect, assume people are trustworthy until proven otherwise, and make decisions about people impartially, regardless of whether the person is compliant or non-compliant, cooperative or uncooperative.

Those with responsibility for administering law and regulations pose a threat to the communities they govern because they exercise control over people and may use coercion to achieve compliance. The control that authorities have by virtue of their position places an obligation on them to observe the tenets of procedural justice while performing their duties – most importantly, to treat people with respect, to assume they are trustworthy until evidence arises to the contrary, and to administer the law with impartiality, not allowing prejudice or discrimination to affect decision-making. Principle 7 answers the regulator’s question of what to do when dealing with people who are compliant and people who are non-compliant – do we engage with them differently? Both the compliant and the non-compliant are worthy of respectful and procedurally fair treatment. Moreover, their future cooperation depends on fair treatment in the past.

Principle 8 is that regulatory authorities need to have presence in the sense that they are held as legitimate authorities that exude authoritativeness and invincibility.

This principle addresses a fundamental question posed about regulatory authorities, where should their presence be felt? The answer is everywhere, and where they

cannot have credible oversight, the community is reconciled to the fact that third parties (for example, police and even communities through dob-ins) have capacity to find out about non-compliance and direct the information to the regulator who follows through with action.

References and bibliography

- Ahmed, Eliza (2006) 'Understanding bullying from a shame management perspective: Findings from a three-year follow-up study,' *Educational & Child Psychology*, 23(2), 25-29 [file://localhost/. http://www.bps.org.uk/document-download-area:document-download\\$.cfm%3Ffile_uuid=0288DBAA-1143-DFD0-7E98-7F4213EFDE59](http://localhost/.http://www.bps.org.uk/document-download-area:document-download$.cfm%3Ffile_uuid=0288DBAA-1143-DFD0-7E98-7F4213EFDE59)
- Ahmed, Eliza, Nathan Harris, John Braithwaite and Valerie Braithwaite (2001) *Shame Management through Reintegration*, Cambridge: Cambridge University Press.
- Ajzen, Icek (1985) 'From intentions to actions: A theory of planned behavior,' in J. Kuhl and J. Beckmann (eds), *Action-Control: From Cognition to Behavior*, Heidelberg: Springer-Verlag, pp. 11-39.
<http://trove.nla.gov.au/work/19425149?q=ActionControl%3A+From+Cognition+to+Behavior&c=book>
- Ajzen, Icek and Martin Fishbein (1980) *Understanding Attitudes and Predicting Social Behaviour*, Englewood Cliffs: Prentice Hall.
- Akers, Ronald L. (1998) *Social Learning and Social Structure: A General Theory of Crime and Deviance*, Boston, MA: Northeastern University Press.
<http://trove.nla.gov.au/work/22725265?q=Social+learning+and+social+structure&c=book>
- Allport, G.W. (1943) 'The ego in contemporary psychology,' *Psychological Review*, 50(5), 451-478.
- Aronson, Elliot, Wilson, Timothy D. and Robin M. Akert (2007) *Social Psychology*, 6th edition, Pearson Higher Education.
<http://trove.nla.gov.au/work/8472029?q=Social+Psychology+++aronson&c=book>
- Armitage, C.J., and M. Conner (2001) 'Efficacy of the theory of planned behavior: a meta-analytic review,' *British Journal of Social Psychology*, 40, 471-499.
- Australian Taxation Office (2003) *Making It Easier to Comply*, Canberra: Australian Taxation Office.
- Ayres, Ian and John Braithwaite (1992) *Responsive Regulation: Transcending the Deregulation Debate*, New York: Oxford University Press.
http://books.google.com.au/books?id=83XTEGB2mx4C&printsec=frontcover&dq=Responsive+Regulation:+Transcending+the+Deregulation+Debate&ei=MPPsS4_HKaqEkATQq9CaDA&cd=1 - v=onepage&q&f=false
- Bandura, Albert (1977) *Social Learning Theory*, Englewood Cliffs, NJ: Prentice-Hall.
<http://trove.nla.gov.au/work/10986290?q=Social+Learning+Theory&c=book>

- Bandura, Albert (1986) *Social Foundations of Thought and Action: A Social Cognitive Theory*, Englewood Cliffs, NJ: Prentice-Hall.
<http://trove.nla.gov.au/work/18915756?q=Social+Foundations+of+Thought+and+Action&c=book>
- Bandura, A. (1989) 'Human agency in social cognitive theory,' *American Psychologist*, 44(9), 1175-1184. <http://psycnet.apa.org/journals/amp/44/9/>
- Bandura, A., Barbaranelli, C., Caprara, G. and C. Pastorelli (1996) 'Mechanisms of moral disengagement in the exercise of moral agency,' *Journal of Personality and Social Psychology*, 71(2), 364-374.
- Bardach, Eugene and Robert A. Kagan (1982) *Going by the Book: The Problem of Regulatory Unreasonableness*, Philadelphia: Temple University Press.
<http://books.google.com.au/books?id=VnJmf1PE-i8C&printsec=frontcover&dq=Going+by+the+Book:+The+Problem+of+Regulatory+Unreasonableness&ei=oPTsS-j2C42SkASEo4yMDA&cd=1 - v=onepage&q&f=false>
- Becker, Gary (1968) 'Crime and punishment: an economic approach,' *The Journal of Political Economy*, 76, 169-217. <http://www.journals.uchicago.edu/toc/jpe/1968/76/2>
- Berman, E.M. (1997) 'Dealing with cynical citizens,' *Public Administration Review*, 57(2), 105-112.
- Bernstein, Marver H. (1955) *Regulating Business by Independent Commission*, Princeton, NJ: Princeton University Press.
- Bevir, M. (2006) 'Democratic governance: systems and radical perspectives,' *Public Administration Review*, 66(3), 426-436.
- Bikhchandani, S. and S. Sharma (2000) 'Herd behavior in financial markets - a review', IMF Working Papers 00/48, International Monetary Fund.
- Black, Julia (2002) 'Regulatory conversations', *Journal of Law and Society*, 29(1), 166-196.
- Black, Julia and Robert Baldwin (2010) 'Really responsive risk-based regulation,' *Law and Policy*, 32(2), 181-213. <http://www3.interscience.wiley.com/cgi-bin/fulltext/123321248/PDFSTART>
- Bloomfield, D., Collins, K., Fry, C. and R. Munton (2001), 'Deliberation and inclusion: Vehicles for increasing trust in UK public governance?' *Environment and Planning C: Government and Policy*, 19(4), 501-513.
- Braithwaite, John (1985) *To Punish or Persuade: Enforcement of Coal Mine Safety*, Albany, NY: State University of New York Press.
http://books.google.com.au/books?id=Cil5_1Drw2sC&printsec=frontcover&dq=to+punish+or+persuade&ei=TvXsS9jMD4u2kwTZzt3WDA&cd=1 - v=onepage&q&f=false

Braithwaite, John (1989) *Crime, Shame and Reintegration*, Cambridge: Cambridge University Press. http://books.google.com.au/books?id=UutOv-VPONwC&printsec=frontcover&dq=crime,+shame+and+reintegration&ei=cfXsS_2mC4SWIASiz-29DA&cd=1 - v=onepage&q&f=false

Braithwaite, John (2002) *Restorative Justice and Responsive Regulation*, New York: Oxford University Press. http://books.google.com.au/books?id=Tu3m_jTV5P4C&printsec=frontcover&dq=Restorative+Justice+and+Responsive+Regulation&ei=h_XsS9SeD42GkATAj4ylDA&cd=1 - v=onepage&q&f=false

Braithwaite, John (2005) *Markets in Vice, Markets in Virtue*, Sydney: The Federation Press. <http://books.google.com.au/books?id=VRvvc4vro0MC&printsec=frontcover&dq=Markets+in+Vice,+Markets+in+Virtue&ei=lvXsS6GCM42SkASEo4yMDA&cd=1 - v=onepage&q&f=false>

Braithwaite, John (2008) *Regulatory capitalism: how it works, ideas for making it work better*, Cheltenham, UK: Edward Elgar. http://books.google.com.au/books?id=FbuOxcAuNyAC&printsec=frontcover&dq=regulatory+capitalism&source=bl&ots=dd44qGSAnc&sig=RY03CYm5y74BmOGPwrE--348vIA&hl=en&ei=yx0oTIWMDcXBce3R6KcC&sa=X&oi=book_result&ct=result&resnum=2&ved=0CB0Q6AEwAQ#v=onepage&q&f=false

Braithwaite, John and Peter Drahos (2000) *Global Business Regulation*, Cambridge: Cambridge University Press. <http://books.google.com.au/books?id=XXII-9NpvAgC&printsec=frontcover&dq=Global+Business+Regulation&ei=tvXsS7emAqeCkATwv-GADA&cd=1 - v=onepage&q&f=false>

Braithwaite, J. and T. Makkai (1991) 'Testing an expected utility model of corporate deterrence,' *Law and Society Review*, 25(1), 7-39. [http://jn8sf5hk5v.search.serialssolutions.com/directLink?&atitle=Testing an Expected Utility Model of Corporate Deterrence&author=Braithwaite, John%3B Makkai, Toni&issn=00239216&title=Law %26 Society Review&volume=25&issue=1&date=19910101&spage=7&id=doi:&](http://jn8sf5hk5v.search.serialssolutions.com/directLink?&atitle=Testing+an+Expected+Utility+Model+of+Corporate+Deterrence&author=Braithwaite,+John%3B+Makkai,+Toni&issn=00239216&title=Law+%26+Society+Review&volume=25&issue=1&date=19910101&spage=7&id=doi:&)

Braithwaite, J. and T. Makkai (1994), 'Trust and compliance', *Policing and Society*, 4(1), 1-12.

Braithwaite, John, Makkai, Toni and Valerie Braithwaite (2007) *Regulating Aged Care: Ritualism and the New Pyramid*, Cheltenham, UK and Northampton, MA, US: Edward Elgar. http://books.google.com.au/books?id=PK6hh_Rp7bYC&printsec=frontcover&dq=Regulating+Aged+Care:+Ritualism+and+the+New+Pyramid&ei=r_bsS_3FF53ykwTk6JTmDA&cd=1 - v=onepage&q&f=false

Braithwaite, John, Makkai, Toni, Braithwaite, Valerie and Diane Gibson (1993) *Raising the Standard: Resident Centred Nursing Home Regulation in Australia*, Canberra, Australia: Australian Government Publishing Service.

Braithwaite, Valerie (1993) 'The Australian government's affirmative action legislation: achieving social change through human resource management,' *Law and Policy*, 15(4), 327-354. <http://www3.interscience.wiley.com/journal/119838778/issue>

Braithwaite, Valerie (1995) 'Games of engagement: postures within the regulatory community,' *Law and Policy*, 17(3), 225-255.
<http://heinonline.org/HOL/Page?handle=hein.journals/lawpol17&id=1&size=2&collection=journals&index=journals/lawpol> - 1

Braithwaite, Valerie (2003) 'Dancing with Tax Authorities: Motivational Postures and Non-Compliant Actions,' in Valerie Braithwaite (ed), *Taxing Democracy: Understanding Tax Avoidance and Evasion*, Aldershot, UK: Ashgate, pp. 15-40.
http://books.google.com.au/books?id=GmlqCkYaBGUC&printsec=frontcover&dq=%29,+Taxing+Democracy:+Understanding+Tax+Avoidance+and+Evasion&ei=ffrsS4uTAY_slQTPyNTLDA&cd=1-v=onepage&q&f=false

Braithwaite, Valerie (2004) 'Collective Hope,' *Annals of the American Academy of Political and Social Science*, 592, 6-15.
<http://ann.sagepub.com/content/vol592/issue1/>

Braithwaite, Valerie (2009a) 'The value balance model and democratic governance,' *Psychological Inquiry*, 20(2/3), 87-97.
<http://www.informaworld.com/smpp/title~db=all~content=g913738684>

Braithwaite, Valerie (2009b) *Defiance in Taxation and Governance: Resisting and Dismissing Authority in a Democracy*, Cheltenham, UK and Northampton, USA: Edward Elgar.
<http://books.google.com.au/books?id=JG00ChM1AUQC&printsec=frontcover&dq=%29+Defiance+in+Taxation+and+Governance:+Resisting+and+Dismissing+Authority+in+a+Democracy&ei=1PvsS4exAYKCIQSL36y8DA&cd=1-v=onepage&q&f=false>

Braithwaite, Valerie (2009c) 'Tax evasion,' in M. Tonry (ed), *Handbook on Crime and Public Policy*, Oxford: Oxford University Press, pp. 381- 405.
http://books.google.com.au/books?id=sCJ0v5QjqiwC&printsec=frontcover&dq=Handbook+on+Crime+and+Public+Policy&ei=6fvS_rZLJeUkATNrvDeCw&cd=2-v=onepage&q&f=false

Braithwaite, Valerie and Eliza Ahmed (2005) 'A threat to tax morale: the case of Australia's higher education policy,' *Journal of Economic Psychology*, 26, 523-540.
http://www.sciencedirect.com/science?_ob=PublicationURL&_tockey=%23TOC%235871%232005%23999739995%23600587%23FLA%23&_cdi=5871&_pubType=J&_auth=y&_acct=C000028338&_version=1&_urlVersion=0&_userid=554534&md5=1cc3a14901123a3f0ac3744c5854e7f1

Braithwaite, Valerie and Monika Reinhart (2005a) 'Preliminary Findings and Codebook for the Australian Tax System – Fair or Not Survey', Centre for Tax System Integrity Working Paper 79, Australian National University,
<<http://ctsi.anu.edu.au/publications/WP/WPlist.html>>

Braithwaite, Valerie and Monika Reinhart (2005b) 'Preliminary Findings and Codebook for the How Fair, How Effective Survey: The Collection and Use of Taxation in Australia,' Centre for Tax System Integrity Working Paper 84, Australian National University, <<http://ctsi.anu.edu.au/publications/WP/WPlist.html>>

Braithwaite, Valerie and William A. Scott (1991) 'Values,' in J.P. Robinson, P. Shaver and L. Wrightsman (eds), *Measures of personality and social psychological attitudes*, New York: Academic Press, pp. 661-753.

Braithwaite, Valerie and Michael Wenzel (2008) 'Integrating Explanations of Tax Evasion and Avoidance,' in Alan Lewis (ed), *Cambridge Handbook of Psychology and Economic Behaviour*, Cambridge, UK: Cambridge University Press, pp. 304-331.

Braithwaite, Valerie, Harris, Nathan and Mary Ivec (2009) 'Seeking to clarify child protection's regulatory principles,' *Communities, Children and Families Australia*, 4(1), 5-21.

<http://trove.nla.gov.au/work/20938813?q=Communities,+Children+and+Families+Australia&c=book>

Braithwaite, Valerie, Hodges, Tony, and Beth Lyons (2006) Trust, Hope and Democracy Project, Progress Report No. 1, Australian National University, <http://demgov/publications/reports/ProgressReportNo1Dec2006VersionForWeb01.5.07.pdf>

Braithwaite, V., Murphy, K., and M. Reinhart (2007) 'Taxation threat, motivational postures, and responsive regulation,' *Law and Policy*, 29(1), 137-158.

<http://www3.interscience.wiley.com/journal/117963084/issue>

Braithwaite, Valerie, Braithwaite, John, Gibson, Diane and Toni Makkai (1992) 'Progress in assessing the quality of Australian nursing home care,' *Australian Journal of Public Health*, 16, 89-97.

<http://trove.nla.gov.au/work/19770620?q=australian+journal+of+public+health&c=book>

Braithwaite, V., Braithwaite, J., Gibson, D. and T. Makkai (1994) 'Regulatory styles, motivational postures and nursing home compliance,' *Law and Policy*, 16(4), 363-394.

<http://heinonline.org/HOL/Page?handle=hein.journals/lawpol16&id=1&size=2&collection=journals&index=journals/lawpol - 375>

Braithwaite, Valerie, Reinhart, Monika, Mearns, Malcolm and Rochelle Graham (2001) 'Preliminary Findings from the Community Hopes, Fears, and Actions Survey,' Centre for Tax System Integrity Working Paper No 3, Australian National University. <http://ctsi/publications/WP/3.pdf>

Brand, P. (1996) 'Compliance: a 21st century approach,' *National Tax Journal*, 49(3), 413-419.

Brehm, Sharon S. and Jack W. Brehm (1981) *Psychological Reactance: A Theory of Freedom and Control*, New York: Academic Press.

<http://trove.nla.gov.au/work/25236709?q=Psychological+Reactance%3A+A+Theory+of+Freedom+and+Control&c=book>

Burgess, R.L. and R.L. Akers (1966) 'A differential association-reinforcement theory of criminal behavior,' *Social Problems*, 14(2), 128-147.

Burris, S., Drahos, P. and C. Shearing (2005) 'Nodal governance,' *Australian Journal of Legal Philosophy*, 30, 30-58. <http://trove.nla.gov.au/work/8643215?q=Australian+journal+of+legal+philosophy+&c=book>

Burton, Mark (2007) 'Chaos, Rhetoric and the Legitimation of "Democratic" Government – a Critical Review of Australia's Tax Legislative Process', paper presented at the RegNet Seminar Series, Regulatory Institutions Network, Australian National University, 10 April.

<http://www.google.com.au/search?q=Chaos,+Rhetoric+and+the+Legitimation+of+“Democratic”+Government+-+a+Critical+Review+of+Australia%27s+Tax+Legislative+Process&ie=utf-8&oe=utf-8&aq=t&rls=org.mozilla:en-US:official&client=firefox-a>

Cartwright Sophie (2010) *Policy, obligation and justice in Australia's tobacco growing industry*, PhD thesis, Regulatory Institutions Network, Australian National University, Canberra (forthcoming).

Carver, Charles S. and Michael F. Scheier (1998) *On the Self-Regulation of Behavior*, Cambridge: Cambridge University Press.

http://books.google.com.au/books?id=U9xi8wlfWccC&printsec=frontcover&dq=On+the+Self-Regulation+of+Behavior&ei=4_s7bhOoWOlQSBri2fDA&cd=1-v=onepage&q&f=false

Cash Economy Task Force (1998) *Improving Tax Compliance in the Cash Economy*, Canberra: Australian Taxation Office.

Centre for Tax Policy and Administration (2001) Principles for Good Tax Administration, Practice Note GAP001, OECD Tax Guidance Series, Paris: Organisation for Economic Cooperation and Development, <http://www.oecd.org/LongAbstract/0,3425,en_2649_34897_1907911_1_1_1_1,00.html>

Centre for Tax Policy and Administration (2003) Taxpayers' Rights and Obligations, Practice Note GAP002, OECD Tax Guidance Series, Paris: Organisation for Economic Cooperation and Development, <<http://www.oecd.org/dataoecd/24/52/17851176.pdf>>

Cialdini, Robert B. (2001) *Influence: Science and Practice*, 4th edition, Boston, MA: Allyn & Bacon.

<http://trove.nla.gov.au/work/7055762?q=Influence%3A+Science+and+Practice&c=book>

- Cialdini, Robert B. and Noah J. Goldstein (2004) Social influence: Compliance and conformity, *Annual Review of Psychology*, 55, 591–621.
<http://arjournals.annualreviews.org/toc/psych/55/1>
- Cohen, Albert K. (1955) *Delinquent Boys: The Culture of the Gang*, Glencoe, Ill: Free Press.
- Cohen, Albert K. (1965) ‘The sociology of the deviant act: anomie theory and beyond,’ *American Sociological Review*, 30(1), 5-14.
- Cohen, Albert K. (1966) *Deviance and Control*, Englewood Cliffs, NJ: Prentice-Hall.
- Cohen, Stanley (2001) *States of Denial: Knowing About Atrocities and Suffering*, Cambridge, UK: Polity. <http://books.google.com.au/books?id=WB-jD13rTX0C&printsec=frontcover&dq=States+of+Denial:+Knowing+About+Atrocities+and+Suffering&ei=oQDtS6ubJYT-lASD9Z27DA&cd=1 - v=onepage&q&f=false>
- Cohen, D. and R.E. Nisbett (1997) ‘Field experiments examining the culture of honour: the role of institutions in perpetuating norms about violence,’ *Personality and Social Psychology Bulletin*, 23(11), 1188-1199.
- Cressey, Donald R. (1953) *Other People's Money: A Study in the Social Psychology of Embezzlement*, Glencoe, Ill: The Free Press.
- Cullis, J.G. and A. Lewis (1997) ‘Why people pay taxes: from a conventional economic model to a model of social convention,’ *Journal of Economic Psychology*, 18(2/3), 305-321.
http://www.sciencedirect.com/science?_ob=PublicationURL&_toctype=%23TOC%235871%231997%23999819997%2312536%23FLP%23&_cdi=5871&_pubType=J&_auth=y&_acct=C000028338&_version=1&_urlVersion=0&_userid=554534&md5=28941feceb67ded33b08552e6272ef0f
- Dahl, Robert A. (1990) *Democracy and Its Critics*, New Haven: Yale University Press.
- DiMaggio, P.J. and W.W. Powell (1983) ‘The iron cage revisited: institutional isomorphism and collective rationality in organizational fields,’ *American Sociological Review*, 48(2), 147-160.
- Douglas, Mary (1986) *How Institutions Think*, Syracuse, NY: Syracuse University Press.
- Dryzek, John S. (1990) *Discursive Democracy: Politics, Policy, and Political Science*, Cambridge: Cambridge University Press.
<http://books.google.com.au/books?id=uX3s8Mo2OMgC&printsec=frontcover&dq=Discursive+Democracy:+Politics,+Policy,+and+Political+Science&ei=ywHtS86vCZeOkASB1JzZCw&cd=1 - v=onepage&q&f=false>
- Dryzek, John S. and J. Berejikan (1993) ‘Reconstructive democratic theory,’ *American Political Science Review*, 87(1), 48-60.

Dryzek, John S. and Valerie A. Braithwaite (2000), 'On the prospects for democratic deliberation: values analysis applied to Australian politics,' *Political Psychology*, 21(2), 241-266.

Edelmann, L.B., S. Petterson, E. Chambliss and H.S. Erlanger (1991) 'Legal ambiguity and the politics of compliance: affirmative action officer's dilemma,' *Law and Policy*, 13(1), 73-97.

<http://www3.interscience.wiley.com/journal/119842786/issue>

Fagan, Jeffrey and Tracey L. Meares (2008) 'Punishment, deterrence and social control: The paradox of punishment in minority communities,' *Ohio State Journal of Criminal Law*, 6, 173-229. <http://moritzlaw.osu.edu/osjcl/issues.php?ID=21>

Feather, Norman T. (1999) *Values, Achievement, and Justice: Studies in the Psychology of Deservingness*, New York: Kluwer Academic/Plenum Press.
http://books.google.com.au/books?id=yLnaDKXRaVsC&printsec=frontcover&dq=Values,+Achievement,+and+Justice:+Studies+in+the+Psychology+of+Deservingness&ei=9y_yS-T3CpHAKwSwsOT8Cg&cd=1 - v=onepage&q&f=false

Feld, L. and G. Kirchgässner (2000) 'Direct democracy, political culture, and the outcome of economic policy: A report on the Swiss experience,' *European Journal of Political Economy*, 16, 287-306.

http://www.sciencedirect.com/science?_ob=PublicationURL&_toctype=%23TOC%235891%232000%23999839997%23194952%23FLA%23&_cdi=5891&_pubType=J&_auth=y&_acct=C000028338&_version=1&_urlVersion=0&_userid=554534&md5=51b1f42ae9b0e3164bd271a1c6919c41

Feld, L.P. and B.S. Frey (2002) Trust breeds trust: How taxpayers are treated, Working Paper No. 32. Canberra: Centre for Tax System Integrity, Australian National University . <http://ctsi.anu.edu.au/publications/WP/WPlist.html>

Feld, Lars P. and Bruno S. 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, Canberra: Australian National University. . <http://ctsi.anu.edu.au/publications/WP/WPlist.html>

Feld, L.P. and B.S. Frey (2007) 'Tax compliance as the result of a psychological tax contract: the role of incentives and responsive regulation,' *Law and Policy*, 29(1), 102-120. <http://www3.interscience.wiley.com/journal/117963084/issue>

Fishbein, Martin and Icek Ajzen (1975) *Belief, Attitude, Intention, and Behavior*, Reading, MA: Addison-Wesley.
http://trove.nla.gov.au/work/14275432?q=belief+attitude+intention+and+behavior&_cdi=book

Fisher, Robert (2005) *Teaching Children to Think* (2nd edition), Cheltenham: Nelson Thornes.
[http://books.google.com.au/books?id=0az0JYM_pHMC&printsec=frontcover&dq="t](http://books.google.com.au/books?id=0az0JYM_pHMC&printsec=frontcover&dq=)

[eaching+children+to+think"&source=bl&ots=UjrCNjliDt&sig=E9bR_g_WFAOB-VuotGnNXjM7pWg&hl=en&ei=KAwbTISoOc-8cdGr8fUJ&sa=X&oi=book_result&ct=result&resnum=1&ved=0CUBUQ6AEwAA-](http://www.google.com.au/search?q=eaching+children+to+think)

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

Frey, Bruno S. (2003) The Role of Deterrence and Tax Morale in Taxation in the European Union, Paper presented at the Jelle Zijlstra Lecture, Netherlands Institute for Advanced Study in the Humanities and Social Sciences (NIAS), 29 November 2002. http://www.nias.knaw.nl/en/new_3/new_1/new_12

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.

<http://www.google.com.au/search?q=The+Tax+Authority+and+the+Taxpayer%3A+An+Exploratory+Analysis,&ie=utf-8&oe=utf-8&aq=t&rls=org.mozilla:en-US:official&client=firefox-a>

Garoupa, Nuno (2003) 'Behavioral economic analysis of crime: A critical review,' *European Journal of Law and Economics*, 15(1), 5-15.

<http://trove.nla.gov.au/work/21456275?q=european+journal+of+law+and+economics&c=book>

Geertz, Clifford (1973) *The Interpretation of Cultures*, New York: Basic Books.

Geis, Gilbert (1967) 'The Heavy Electrical Equipment Antitrust Cases of 1961,' in Marshall B. Clinard and Richard Quinney (eds), *Criminal Behavior Systems: A Typology*, New York: Holt, Rinehart & Winston, pp. 139-150.

Glaser, Daniel (1978) *Crime in Our Changing Society*, New York: Holt, Rinehart, & Winston.

Gobert, James and Maurice Punch (2007), 'Because they can: Motivations and intent of white-collar criminals,' in Henry N. Pontell and Gilbert Geis (eds), *International Handbook of White-Collar and Corporate Crime*, New York: Springer, pp. 98-122.

<http://books.google.com.au/books?id=H5PLm3pUHeYC&printsec=frontcover&dq=International+Handbook+of+White-Collar+and+Corporate+Crime&ei=ZzXyS5-WHZvSkjSij5mACw&cd=1-v=onepage&q&f=false>

Goffman, E. (1956) 'Embarrassment and social organization,' *The American Journal of Sociology*, 62(3), 264-271.

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

Goffman, E. (1983) 'The interaction order: American Sociological Association, 1982 Presidential Address,' *American Sociological Review*, 48(1), 1-17.

<http://trove.nla.gov.au/work/7615088?q=American+Sociological++Review&c=book>

- Goleman, Daniel (1995) *Emotional Intelligence*, New York: Bantam Books.
- Gorsuch, R.L. and J. Ortberg (1983) 'Moral obligation and attitudes: their relation to behavioral intentions,' *Journal of Personality and Social Psychology*, 44(5), 1025-1028.
- Gottfredson, Michael and Travis Hirschi (1990) *A General Theory of Crime*, Stanford: Stanford University Press.
- Grabosky, Peter N. (1990) 'Citizen co-production and corruption control,' *Corruption and Reform*, 5, 125-51.
<http://trove.nla.gov.au/work/11993559?q=journal+of+corruption+and+reform&c=book>
- Grabosky, P. (1995a) 'Counterproductive regulation,' *International Journal of the Sociology of Law*, 23(4), 347-369.
<http://www.sciencedirect.com/science/journal/01946595>
- Grabosky, P.N. (1995b), 'Using non-governmental resources to foster regulatory compliance,' *Governance*, 8(4), 527-550.
<http://trove.nla.gov.au/work/19244968?q=governance&c=book>
- Grabosky, P.N. (1997) 'Inside the pyramid: towards a conceptual framework for the analysis of regulatory systems,' *International Journal of the Sociology of Law*, 25(3), 195-201. <http://www.sciencedirect.com/science/journal/01946595>
- Grabosky, Peter and John Braithwaite (1986) *Of Manners Gentle: Enforcement Strategies of Australian Business Regulatory Agencies*, Melbourne, Australia: Oxford University Press.
- Grasmick, H.G. and R.J. Bursik Jr (1990) 'Conscience, significant others, and rational choice: extending the deterrence model,' *Law and Society Review*, 24(3), 837-861.
<http://trove.nla.gov.au/work/6115927?q=law+and+society+review&c=book>
- Gunningham, Neil (1993) 'Thinking about regulatory mix: Regulating occupational health and safety, futures markets and environmental law,' in Peter Grabosky and John Braithwaite (eds), *Business Regulation and Australia's Future*, Canberra, Australia: Australian Institute of Criminology, pp. 133-149.
- Gunningham, Neil and Peter Grabosky (1998) *Smart Regulation: Designing Environmental Policy*, New York: Oxford University Press.
http://books.google.com.au/books?id=jle5SaNN6t8C&printsec=frontcover&dq=Smart+Regulation:+Designing+Environmental+Policy,&ei=PT_yS6-2GZTukgSI94n9Cg&cd=1-v=onepage&q&f=false
- Gunningham, Neil and Darren Sinclair (2002) *Leaders and Laggards: Next Generation Environmental Regulation*, Sheffield: Greenleaf Publishing.
http://books.google.com.au/books?id=9084NmLnlsC&printsec=frontcover&dq=Leaders+and+Laggards:+Next+Generation+Environmental+Regulation&ei=Vj_yS52fG6bukwT49Mn-Cg&cd=1-v=onepage&q&f=false

Harris, Nathan (2001), 'Shaming and shame: Regulating drink driving,' in Eliza Ahmed, Nathan Harris, John Braithwaite and Valerie Braithwaite (eds), *Shame Management through Reintegration*, Cambridge: Cambridge University Press, pp. 73-207. http://books.google.com.au/books?id=rA-lf4VUjPMC&printsec=frontcover&dq=Shame+Management+through+Reintegration&ei=bT_yS_7rCZ2ekgSjyLD8Cg&cd=1 - v=onepage&q&f=false

Harris, Nathan (2007) 'Shame, ethical identity and conformity: lessons from research on the psychology of social influence,' Regulatory Institutions Network Occasional Paper 12, Australian National University. <http://ctsi.anu.edu.au/publications/OccPaper12.pdf>

Harris, Nathan, Braithwaite, Valerie and Mary Ivec (2009) 'Rejoinder: A responsive approach to child protection,' *Communities, Children and Families Australia*, 4(1), 69-75.

Hawkins, Keith (1984) *Environment and Enforcement: Regulation and the Social Definition of Pollution*, Oxford: Clarendon Press. <http://trove.nla.gov.au/work/21322666?q=Environment+and+Enforcement%3A+Regulation+and+the+Social+Definition+of+Pollution&c=book>

Hawkins, Keith (2002) *Law as Last Resort: Prosecution Decision-Making in a Regulatory Agency*, Oxford: Oxford University Press.

Hess, R.D. and J.V. Torney (1967) *The development of political attitudes in children*, Chicago: Aldine Press. <http://trove.nla.gov.au/work/8724974?q=The+development+of+political+attitudes+in+children&c=book>

Hobson, K. (2002) "'Say No to the ATO": The Cultural Politics of Protest against the Australian Taxation Office', Centre for Tax System Integrity Working Paper No. 37, Australian National University, <<http://ctsi/publications/WP/37.pdf>>

Hogg, Michael A. and Dominic Abrams (1988) *Social Identifications: A Social Psychology of Intergroup Relations and Group Processes*, London: Routledge. http://books.google.com.au/books?id=M1m8RmoippEC&printsec=frontcover&dq=Social+Identifications:+A+Social+Psychology+of+Intergroup+Relations+and+Group+Processes&ei=Iz_yS_nPO5XakQTB_Jn9Cg&cd=1 - v=onepage&q&f=false

Huckfeldt, R, Beck, P.A., Dalton, R.J., Levine, J. and W. Morgan (1998) "Ambiguity, Distorted Messages, and Nested Environmental Effects on Political Communication", *The Journal of Politics*, 60(4), 996-1030. <http://trove.nla.gov.au/work/5697695?q=Journal+of+Politics&c=book>

Inglehart, Ronald (1997) *Modernization and Postmodernization: Cultural, Economic, and Political Change in 43 Societies*, Princeton: Princeton University Press. <http://books.google.com.au/books?id=uERHzCu6l9EC&printsec=frontcover&dq=Modernization+and+Postmodernization:+Cultural,+Economic,+and+Political+Change+in+43+Societies&ei=ASbzS8vpAoPglQsfub2ACw&cd=1 - v=onepage&q&f=false>

- Innes, Martin (2004) 'Crime as a signal, crime as a memory', *Journal for Crime, Conflict and the Media* 1(2), 15-22. <http://www.jc2m.co.uk/Issue2/Innes.pdf>
- Irvin, R.A. and J. Stansbury (2004) 'Citizen participation in decision making: is it worth the effort?' *Public Administration Review*, 64(1), 55-65.
- Ivec, Mary, Braithwaite, Valerie and Nathan Harris (2009) "Resetting the relationship" in Indigenous child protection: public hope and private reality,' Regulatory Institutions Network Occasional Paper 14, Australian National University. http://demgov.anu.edu.au/regnet/ivec_op14.pdf
- Johnston, Les and Clifford Shearing (2003) *Governing Security: Explorations in Policing and Justice*, London: Routledge.
- Kagan, Robert A. (1978) *Regulatory Justice: Implementing a Wage Freeze Policy*, New York: Russell Sage Foundation.
<http://library.anu.edu.au/search~S1/?tRegulatory+Justice%3A+Implementing+a+Wage+Freeze+Policy/tregulatory+justice+implementing+a+wage+freeze+policy/-3,0,0,B/frameset&FF=tregulatory+justice+implementing+a+wage+price+freeze&1,1./indexsort=->
- Kagan, R.A. (1989) 'Editor's introduction: understanding regulatory enforcement,' *Law and Policy*, 11(2), 89-120.
- Kagan, Robert A. and John T. Scholz (1984) 'The "Criminology of the Corporation" And Regulatory Enforcement Strategies,' in Keith Hawkins and John M. Thomas (eds), *Enforcing Regulation*, The Hague: Kluwer-Nijhoff Publishing, pp. 67-95.
<http://trove.nla.gov.au/work/14330010?q=-Enforcing+Regulation&c=book>
- Kahneman, D. (2003) 'A perspective on judgment and choice: Mapping bounded rationality,' *American Psychologist*, 58, 697-720.
<http://trove.nla.gov.au/work/10051481?q=American+Psychologist&c=book>
- Kaldor, Mary (1999) *New and Old Wars: Organized Violence in a Global Era*, Cambridge, Polity.
<http://books.google.com.au/books?id=XVgVstFi0XUC&pg=PP1&dq=New+and+Old+Wars:+Organized+Violence+in+a+Global+Era&ei=dSbzS9jzN6SgkASR7ZX9Cg&cd=1 - v=onepage&q&f=false>
- Karstedt, Susanne (2006) 'Democracy, values, and violence: paradoxes, tensions, and comparative advantages of liberal inclusion,' *Annals of the American Academy of Political and Social Science*, 605(n/a), 50-81.
- Karstedt Susanne and Stephen Farrall (2006) 'The moral economy of everyday crime: markets, consumers and citizens,' *The British Journal of Criminology*, 46, 1011-1036.
<http://bjc.oxfordjournals.org/content/vol46/issue6/index.dtl>

Karstedt, Susanne and Gary LaFree (2006) 'Democracy, crime and justice,' *Annals of the American Academy of Political and Social Science*, 605(n/a), 6-23.
<http://ann.sagepub.com/content/vol605/issue1/>

Kelman, H.C. (1958) 'Compliance, identification, and internalization: three processes of attitude change,' *Journal of Conflict Resolution*, 2(1), 51-60.
<http://jcr.sagepub.com/content/vol2/issue1/>

Kelman, Herbert C. and V. Lee Hamilton (1989) *Crimes of Obedience*, New Haven: Yale University Press.
<http://trove.nla.gov.au/work/19369518?q=Crimes+of+Obedience&c=book>

Kettl, D.F. (2000), 'The transformation of governance: globalization, devolution, and the role of government,' *Public Administration Review*, 60(6), 488-497.

King, Roger (2007) *The Regulatory State in an Age of Governance: Soft Words and Big Sticks*, Basingstoke, New York: Palgrave MacMillan.

Kinsey, K.A. and H.G. Grasmick (1993) 'Did the tax reform act of 1986 improve compliance? Three studies of pre- and post- TRA compliance attitudes,' *Law and Policy*, 15(4), 293-325. <http://www3.interscience.wiley.com/journal/119838778/issue>

Kirchler, Erich (2007) *The Economic Psychology of Tax Behaviour*, New York: Cambridge University Press.
<http://books.google.com.au/books?id=dh0qhqTOtb0C&printsec=frontcover&dq=The+Economic+Psychology+of+Tax+Behaviour&ei=ULT0S5i7NoXclQTW7cytCQ&cd=1-v=onepage&q&f=false>

LaFree, Gary (1998) *Losing Legitimacy: Street Crime and the Decline of Social Institutions in America*, Boulder, Colorado: Westview Press.
<http://trove.nla.gov.au/result?q=Losing+Legitimacy%3A+Street+Crime+and+the+Decline+of+Social+Institutions+in+America>

Lipsky, Michael (1980) *Street-level bureaucracy: dilemmas of the individual in public services*, New York: Russell Sage Foundation.
http://books.google.com.au/books?id=3bT-1nKceeUC&dq=Lipsky+1980+book+on+street+level+bureaucracy&printsec=frontcover&source=bn&hl=en&ei=eB4oTJXwJILRcYWriPEC&sa=X&oi=book_result&ct=result&resnum=4&ved=0CCMQ6AEwAw#v=onepage&q=Lipsky%201980%20book%20on%20street%20level%20bureaucracy&f=false

Long, Susan B. and Judyth A. Swingen (1988) 'The Role of Legal Complexity in Shaping Taxpayer Compliance,' in Peter J. van Koppen (ed), *Lawyers on Psychology and Psychologists on Law. Series on Law and Psychology, No. 1*, Lisse, Netherlands: Swets & Zeitlinger, pp. 127-146.
<http://trove.nla.gov.au/work/19036413?q=Lawyers+on+Psychology+and+Psychologists+on+Law.+Series+on+Law+and+Psychology.&c=book>

McAdams, R.H. (2000) 'A focal point theory of expressive law,' *Virginia Law Review*, 86(8), 1649-1730.

McAdams, R.H. and J. Nadler (2005) 'Testing the focal point theory of legal compliance: the effect of third-party expression in an experimental hawk/dove game', *Journal of Empirical Legal Studies*, 2(1), 87-123.

McBarnet, D. (1988) 'Law, policy and legal avoidance: can law effectively implement egalitarian policies?' *Journal of Law and Society*, 15(1), 113-121.

McBarnet, D. (1991) 'Whiter than white collar crime: tax, fraud insurance and the management of stigma,' *British Journal of Sociology*, 42(3), 323-344.

McBarnet, Doreen (2003) 'When compliance is not the solution but the problem: From changes in the law to changes in attitude,' in Valerie Braithwaite (ed), *Taxing Democracy: Understanding Tax Avoidance and Evasion*, Aldershot: Ashgate, pp. 229-244.

<http://books.google.com.au/books?id=GmlqCkYaBGUC&printsec=frontcover&dq=Taxing+Democracy:+Understanding+Tax+Avoidance+and+Evasion&ei=1bT0S4vgH4nclQSk64mtCQ&cd=1 - v=onepage&q&f=false>

McBarnet, Doreen and Christopher Whelan (1999) *Creative Accounting and the Cross-Eyed Javelin Thrower*, Chichester: John Wiley.

McGeer, V. (2004) 'The art of good hope,' *Annals of the American Academy of Political and Social Science*, 592, 100-127.

<http://ann.sagepub.com/content/vol592/issue1/>

McGraw, K.M. and J.T. Scholz (1991) 'Appeals to civic virtue versus attention to self-interest: effects on tax compliance,' *Law and Society Review*, 25(3), 471-498.

Maguire, Peter, Reinhart, Monika, Mearns, Malcolm and Valerie Braithwaite (2007) *Trust, Hope and Democracy Project, Progress Report No. 2*, Canberra: Regulatory Institutions Network, Australian National University.

<http://ctsi.anu.edu.au/publications/nontaxpubs/ReportToRespondents.pdf>

Makkai, Toni and John Braithwaite (1993) 'Praise, pride and corporate compliance,' *International Journal of the Sociology of Law*, 21(1), 73-92.

<http://trove.nla.gov.au/work/24265128?q=+International+Journal+of+the+Sociology+of+Law+++&c=book>

Makkai, Toni and John Braithwaite (1994a) 'The dialectics of corporate deterrence,' *Journal of Research in Crime and Delinquency*, 31(4), 347-373.

<http://jrc.sagepub.com/content/vol31/issue4/>

Makkai, Toni and John Braithwaite (1994b) 'Reintegrative shaming and compliance with regulatory standards,' *Criminology*, 32(3), 361-383.

<http://trove.nla.gov.au/work/10055429?q=criminology&c=book>

Massey, D.S. (2002) 'A brief history of human society: the origin and role of emotion in social life: 2001 Presidential Address,' *American Sociological Review*, 67(1), 1-29.

<http://trove.nla.gov.au/work/7615088?q=American+Sociological++Review&c=book>

Mathiesen, Thomas (2004) *Silently Silenced: Essays on the Creation of Acquiescence in Modern Society*, Winchester, UK: Waterside Press.

Matza, David (1964) *Becoming Deviant*, Englewood Cliffs, NJ: Prentice-Hall.

Meidinger, E. (1987a) 'Regulatory culture: a theoretical outline,' *Law and Policy*, 9(4), 355-386. <http://www3.interscience.wiley.com/journal/119849195/issue>

Meidinger, E. (1987b) Regulatory culture and democratic theory, Baldy Center for Law and Social Policy Working Paper, State University of New York, Buffalo.

Merton, Robert K. (1938) *Social Theory and Social Structure*, New York: Free Press.

Merton, Robert K. (1938) 'Social Structure and Anomie,' *American Sociological Review*, 3(5), 672-682.
<http://trove.nla.gov.au/work/7615088?q=American+Sociological++Review&c=book>

Milgram, Stanley (1974) *Obedience to Authority: An Experimental View*, New York: Harper and Row.
[http://trove.nla.gov.au/work/8474830?q="obedience+to+authority%3A+an+experimental+view"&c=book](http://trove.nla.gov.au/work/8474830?q=)

Miller, D.T. (2001) 'Disrespect and the experience of injustice,' *Annual Review of Psychology*, 52(n/a), 527-553.

Mills, C.W. (1940) 'Situating actions and vocabularies of motive,' *American Sociological Review*, 5(6), 904-913.

Mitchell, Ronald B. (1994) *Intentional Oil Pollution at Sea: Environmental Policy and Treaty Compliance*, Cambridge, Mass.: The MIT Press.
http://books.google.com.au/books?id=7cl_xvzAP30C&printsec=frontcover&dq=Intentional+Oil+Pollution+at+Sea:+Environmental+Policy+and+Treaty+Compliance&ei=D7n0S4SWIZLKkATDt9y_CQ&cd=1 - v=onepage&q&f=false

Moscovici, Serge (1976) *Social Influence and Social Change*, London: Academic Press.

Murphy, K. (2003) 'An examination of taxpayers' attitudes towards the Australian tax system: findings from a survey of tax scheme investors,' *Australian Tax Forum*, 18(2), 209-424.
<http://trove.nla.gov.au/work/17428798?q=australia+tax+forum+&c=book>

Murphy, K. (2004) 'The role of trust in nurturing compliance: a study of accused tax avoiders,' *Law and Human Behavior*, 28(2), 187-209.
<http://trove.nla.gov.au/work/11422457?q=Law+and+Human+Behavior&c=book>

Murphy, K. (2005) 'Regulating more effectively: the relationship between procedural justice, legitimacy and tax non-compliance,' *Journal of Law and Society*, 32(4), 562-589. <http://www3.interscience.wiley.com/journal/118651822/issue>

- Nadler, J. (2005) 'Flouting the law,' *Texas Law Review*, 83(5), 1399-1441.
<http://trove.nla.gov.au/work/8714511?q=texas+law+review&c=book>
- Nagin, Daniel S. and Raymond Paternoster (1993) 'Enduring individual differences and rational choice theories of crime,' *Law & Society Review*, 27(3), 467-496.
<http://trove.nla.gov.au/work/6115927?q=law+and+society+review&c=book>
- Neal, Cathy, Quester, Pascale and Del I. Hawkins (2004) *Consumer Behaviour: Implications for Marketing Strategy*, North Ryde: McGraw-Hill.
- Nye, Joseph S., Zelikow, Philip D. and David C. King (1997) *Why People Don't Trust Government*, Cambridge, MA: Harvard University Press.
- Parker, Christine and John Braithwaite (2003) 'Regulation,' in Peter Cane and Mark Tushnet (eds), *The Oxford Handbook of Legal Studies*, Oxford: Oxford University Press, pp. 119-145.
<http://trove.nla.gov.au/work/17982891?q=The+Oxford+Handbook+of+Legal+Studies&c=book>
- Pharr, Susan J. and Robert D. Putnam (eds) (2000) *Disaffected Democracies: What's Troubling the Trilateral Countries*, Princeton, NJ: Princeton University Press.
- Pommerehne, W. W., Hart, A. and B.S. Frey (1994) 'Tax morale, tax evasion, and the choice of policy instruments in different political systems,' *Public Finance*, 49(Supplement), 52-69.
- Rawlings, G. (2003) 'Cultural narratives of taxation and citizenship: fairness, groups and globalization,' *Australian Journal of Social Issues*, 38(3), 269-306.
- Rees, Joseph V. (1994) *Hostages of Each Other: The Transformation of Nuclear Safety since Three Mile Island*, Chicago and London: University of Chicago Press.
- Reus-Smit, C. (2007) 'International crises of legitimacy,' *International Politics*, 44(2/3), 157-174.
- Roche, Declan (2006) Firm and fair regulatory enforcement? RegNet Occasional Paper No. 9, Australian National University, Canberra.
<http://ctsi.anu.edu.au/research/serious.html>
- Rokeach, Milton (1968) *Beliefs, Attitudes and Values: A Theory of Organization and Change*, San Francisco: Jossey-Bass.
<http://trove.nla.gov.au/work/9032561?q=Beliefs,+Attitudes+and+Values%3A+A+Theory+of+Organization+and+Change,+&c=book>
- Rokeach, Milton (1973) *The Nature of Human Values*, New York: Free Press.
<http://trove.nla.gov.au/work/10842714?q=The+Nature+of+Human+Values,+&c=book>

- Rotter, Julian B. (1954) *Social Learning and Clinical Psychology*, New York: Prentice-Hall.
- Sakurai, Yuka and Valerie Braithwaite (2003) 'Taxpayers' perceptions of practitioners: Finding one who is effective and does the right thing?' *Journal of Business Ethics*, 46, 375-387.
<http://trove.nla.gov.au/work/9908630?q=journal+of+business+ethics&c=book>
- Scheff, Thomas J. (1990) *Microsociology: Discourse, Emotion and Social Structures*, Chicago, IL: University of Chicago Press.
- Scholz, J.T. and M. Lubell (1998a) 'Trust and taxpaying: testing the heuristic approach to collective action,' *American Journal of Political Science*, 42(2), 398-417.
- Scholz, J.T. and M. Lubell (1998b) 'Adaptive political attitudes: duty, trust, and fear as monitors of tax policy,' *American Journal of Political Science*, 42(3), 903-920.
- Scholz, J.T., McGraw, K.M. and M.R. Steenbergen (1992) 'Will taxpayers ever like taxes? Responses to the U. S. Tax Reform Act of 1986,' *Journal of Economic Psychology*, 13(4), 625-656.
<http://trove.nla.gov.au/work/7598307?q=journal+of+economic+psychology&c=book>
- Scholz, J.T. and N. Pinney (1995) 'Duty, fear and tax compliance - the heuristic basis of citizenship behaviour,' *American Journal of Political Science*, 39(2), 490-512.
- Schwartz, R. and S. Orleans (1967) 'On legal sanctions,' *University of Chicago Law Review*, 34(2), 274-300.
- Schwartz, S. H. (1992) 'Universals in the content and structure of values: Theory and empirical tests in 20 countries,' in M. Zanna (ed), *Advances in Experimental Social Psychology* (Vol. 25), New York: Academic Press, pp. 1-65.
<http://library.anu.edu.au/search~S1?/tAdvances+in+Experimental+Social+Psychology+25/tadvances+in+experimental+social+psychology+++25/-3,0,0,B/frameset&FF=tadvances+in+experimental+social+psychology&1,1./indexsort>
 ≡
- Scott, Richard (2001) *Institutions and Organizations*, Thousand Oaks: Sage.
- Scott, William A. (1965) *Values and Organizations: A Study of Fraternities and Sororities*, Chicago: Rand McNally.
<http://trove.nla.gov.au/work/17224524?q=Values+and+Organizations%3A+A+Study+of+Fraternities+and+Sororities,+&c=book>
- Selznick, Philip (1992) *The Moral Commonwealth: Social Theory and the Promise of Community*, Berkeley: University of California Press.
<http://books.google.com.au/books?id=cRpmAL3Ni44C&printsec=frontcover&dq=The+Moral+Commonwealth:+Social+Theory+and+the+Promise+of+Community,&ei=Sct0S4XYFoKOIQTU8YXSCQ&cd=1 - v=onepage&q&f=false>

Shearing, Clifford D and Richard V Erickson (1991) 'Culture as figurative action,' *British Journal of Sociology*, 42(4), 481-506.

<http://trove.nla.gov.au/work/17549801?q=british+journal+of+sociology&c=book>

Shearing, Clifford and Phillip C. Stenning (1984) 'From the Panopticon to Disney World: The Development of Discipline,' in Anthony N. Doob and Edward L. Greenspan QC (eds), *Perspectives in Criminal Law: Essays in Honour of John L. J. Edwards*, Aurora, Ontario: Canada Law Book Inc, pp. 335-349.

<http://trove.nla.gov.au/work/18241903?q=%29,+Perspectives+in+Criminal+Law%3A+Essays+in+Honour+of+John+L.+J.+Edwards&c=book>

Shearing, C. and J. Wood (2003) 'Nodal governance, democracy, and the new "denizens,"' *Journal of Law and Society*, 30(3), 400-419.

<http://www3.interscience.wiley.com/journal/120854650/issue>

Sherman, Lawrence W. (1993) 'Defiance, deterrence, and irrelevance: a theory of the criminal sanction,' *Journal of Research in Crime and Delinquency*, 30(4), 445-473.

<http://jrc.sagepub.com/content/vol30/issue4/>

Sherman, L.W. (2003) 'Reason for emotion: reinventing justice with theories, innovations, and research – the American Society of Criminology 2002 presidential address,' *Criminology*, 41(1), 1-37.

Sherman, Lawrence W., and Richard A. Berk (1984) 'The specific deterrent effects of arrest for domestic assault,' *American Sociological Review*, 49(2), 261-272.

<http://www.jstor.org/stable/2095575>

Sherman, Lawrence W., Patrick R. Gartin, and Michael E. Buerger (1989) 'Hot spots of predatory crime: Routine activities and the criminology of place,' *Criminology*, 27, 27-55.

Sherman, Lawrence and Heather Strang (2007) *Restorative Justice: The Evidence*, London: Smith Institute. http://www.sas.upenn.edu/jerrylee/RJ_full_report.pdf

Sherman, Lawrence W., David P. Farrington, Brandon Welsh and Doris MacKenzie (eds) (2002) *Evidence-Based Crime Prevention*. London: Routledge.

Sherman, Lawrence W. et al. (1997) *Preventing Crime: What Works, What Doesn't, What's Promising. Report to the U.S. Congress*, Washington, D.C.: U.S. Dept. of Justice.

Sherman, Lawrence W. (1992) *Policing Domestic Violence: Experiments and Dilemmas*, N.Y.: Free Press.

Shover, Neal (2007) 'Generative worlds of white-collar crime,' in Henry N. Pontell and Gilbert Geis (eds), *International Handbook of White-Collar and Corporate Crime*, New York: Springer, pp. 81-97.

<http://trove.nla.gov.au/work/26044552?q=International+Handbook+of+White-Collar+and+Corporate+Crime&c=book>

Shover, Neal, Jenny Job and Anne Carroll (2003), 'The ATO Compliance Model in Action: A Case Study of Building and Construction', in Valerie Braithwaite (ed), *Taxing Democracy: Understanding Tax Avoidance and Evasion*, Aldershot, UK: Ashgate Publishing Company, pp. 159-176.

Simpson, S.S. and N.L. Piquero (2002) 'Low self-control, organizational theory, and corporate crime,' *Law and Society*, 36(3), 509-548.
<http://www.jstor.org/stable/1512161>

Smith, K.W. (1992) 'Reciprocity and fairness: positive incentives for tax compliance,' in Joel Slemrod (ed), *Why People Pay Taxes. Tax Compliance and Enforcement*, Ann Arbor, MI: University of Michigan Press, pp. 223-250.

Smith, K.W. and K.A. Kinsey (1987) 'Understanding taxpayer behavior: a conceptual framework with implications for research,' *Law and Society Review*, 21(4), 639-663.

Smith, K.W. and L.J. Stalans (1991) 'Encouraging tax compliance with positive incentives: a conceptual framework and research directions,' *Law and Policy*, 13(1), 35-53.

Sparrow, Malcolm K. (2000) *The Regulatory Craft: Controlling Risks, Solving Problems, and Managing Compliance*, Washington, D.C.: Brookings Institution Press.
<http://trove.nla.gov.au/work/6936132?q=The+Regulatory+Craft%3A+Controlling+Risks,+Solving+Problems,+and+Managing+Compliance&c=book>

Spranger, Eduard (1928) *Types of Men*, New York: G. E. Stechert.
<http://trove.nla.gov.au/work/16286967?q=Types+of+Men&c=book>

Steele, Claude M. (1988) 'The psychology of self-affirmation: sustaining the integrity of the self,' in Leonard Berkowitz (ed), *Advances in Experimental Social Psychology*, 21, New York: Academic Press, pp. 261-302.

Stern, Paul C. and Harvey V. Fineberg (eds) (1996) *Understanding Risk: Informing Decisions in a Democratic Society*, Washington, D.C.: National Academy Press.

Sternberg, Robert J. (1985) 'Teaching critical thinking, Part 1: Are we making critical mistakes,' *Phi Delta Kappan*, 67(3), 194-198. <http://www.jstor.org/stable/20387579>

Stiglitz, Joseph (2002) *Globalization and its Discontents*, New York and London: Norton.
<http://trove.nla.gov.au/work/10615876?q=Globalization+and+its+Discontents&c=book>

Stoker, G. (2005) 'Public value management: a new narrative for networked governance?' *American Review of Public Administration*, 36(1), 41-57.

Suchman, M.C. (1995) 'Managing legitimacy: strategic and institutional approaches,' *Academy of Management Review*, 20(3), 571-610.

<http://trove.nla.gov.au/work/7711113?q=Academy+of+Management+Review&c=book>

Sykes, G.M. and D. Matza (1957) 'Techniques of neutralization: a theory of delinquency,' *American Sociological Review*, 22(6), 664-670.

Tajfel, Henri (ed) (1978) *Differentiation between Social Groups: Studies in the Social Psychology of Intergroup Relations*, London: Academic Press.

<http://trove.nla.gov.au/work/8826289?q=Differentiation+between+Social+Groups%3A+Studies+in+the+Social+Psychology+of+Intergroup+Relations&c=book>

Tanzi, V. (2001) 'Creating effective tax administrations: The experience of Russia and Georgia,' in J. Kornai, S. Haggard & R. R. Kaufman (eds), *Reforming the State: Fiscal and Welfare Reform in Post-Socialist Countries*, Cambridge: Cambridge University Press, pp. 53-74.

<http://books.google.com.au/books?id=ExQeOHtLXT4C&printsec=frontcover&dq=%29,+Reforming+the+State:+Fiscal+and+Welfare+Reform+in+Post-Socialist+Countries&ei=v9T1S-KOBpaslASA7KjYcQ&cd=1-v=onepage&q&f=false>

Tanzi, V. and P. Shome (1994) 'A primer on tax evasion,' *International Bureau of Fiscal Documentation*, 48, 328-337.

The Open Mind (2008) 'Status Resolution Project - Qualitative Research,' Canberra: Department of Immigration and Citizenship, Australian Government.

Torgler, Benno (2003) Tax Morale and Institutions, CREMA Working Paper No. 2003-09, Basel. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=663686

Turk, Austin (1982) *Political Criminality: The Defiance and Defense of Authority*, Beverly Hills: Sage Publications.

<http://trove.nla.gov.au/work/25613169?q=%29+Political+Criminality%3A+The+Defiance+and+Defense+of+Authority,+&c=book>

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. <http://books.google.com.au/books?id=Fx-PQAAACAAJ&dq=%29+Rediscovering+the+Social+Group:+A+Self-Categorization+Theory&ei=MtX1S7rZAZeqlATj78XMCQ&cd=1>

Tversky, A. and D. Kahneman (1974) 'Judgement under uncertainty: heuristics and bias,' *Science*, 185(4157), 1124-1131.

<http://library.anu.edu.au/search~S1?/tscience/tscience/1,1599,3729,B/frameset&FF=tscience&12,,13>

Tyler, T.R. (1988) 'What is procedural justice?: criteria used by citizens to assess the fairness of legal procedures,' *Law and Society Review*, 22(1), 103-135.

<http://trove.nla.gov.au/work/6115927?q=Law+and+Society+Review&c=book>

Tyler, T.R. (1989) 'The psychology of procedural justice: a test of the group-value model,' *Journal of Personality and Social Psychology*, 57(5), 830-838.
<http://trove.nla.gov.au/work/5813251?q=journal+of+personality+and+social&c=book>

Tyler, Tom R. (1990) *Why People Obey the Law*, New Haven, CT: Yale University Press.
<http://trove.nla.gov.au/work/17016295?q=Why+People+Obey+the+Law&c=book>

Tyler, T.R. (1997) 'The psychology of legitimacy: a relational perspective on voluntary deference to authorities,' *Personality and Social Psychology Review*, 1(4), 323-345. <http://psr.sagepub.com/content/vol1/issue4/>

Tyler, T.R. (2001) 'Trust and law abidingness: a proactive model of social regulation,' *Boston University Law Review*, 81(2), 361-406.
<http://trove.nla.gov.au/work/13095965?q=Boston+University+Law+Review&c=book>

Tyler, T.R. and R.J. Bies (1990) 'Beyond formal procedures: The interpersonal context of procedural justice,' in J.S. Carroll (ed), *Applied Social Psychology and Organizational Settings*, Hillsdale, NJ: Erlbaum, pp. 77-98.

Tyler, Tom R. and Steven L. Blader (2000) *Cooperation in Groups: Procedural Justice, Social Identity, and Behavioral Engagement*, Philadelphia, PA: Psychology Press.
<http://trove.nla.gov.au/work/35245670?q=Cooperation+in+Groups%3A+Procedural+Justice,+Social+Identity,&c=book>

Tyler, Tom R. and Robyn M. Dawes (1993) 'Fairness in groups: comparing the self-interest and social identity perspectives,' in Jonathan Baron and Barbara Mellers (eds), *Psychological Perspectives on Justice: Theory and Application*, Cambridge: Cambridge University Press, pp. 87-108.

Tyler, Tom R. and Jeffrey Fagan (2008) 'Legitimacy and cooperation: Why do people help the police fight crime in their communities?' *Ohio State Journal of Criminal Law*, 6, 231-275.
<http://trove.nla.gov.au/work/29051419?q=Ohio+State+Journal+of+Criminal+Law&c=book>

Tyler, Tom R. and E. Allan Lind (1992) 'A Relational Model of Authority in Groups,' in M. Zanna (ed), *Advances in Experimental Social Psychology*, New York: Academic Press, 25, pp. 115-191.

Tyler, T., P. Degoey and H. Smith (1996) 'Understanding why the justice of group procedures matters: a test of the psychological dynamics of the group-value model,' *Journal of Personality and Social Psychology*, 70(5), 913-930.
<http://trove.nla.gov.au/work/5813251?q=journal+of+personality+and+social&c=book>

Tyler, T., E.A. Lind, K.-I. Ohbuchi, I. Sugawara and Y.J. Huo (1998) 'Conflict with outsiders: disputing within and across cultural boundaries,' *Personality and Social Psychology Bulletin*, 24(2), 137-146.

- Waller, V. (2007) 'The challenge of institutional integrity in responsive regulation: field inspections by the Australian Taxation Office', *Law and Policy*, 29(1), 67-83.
<http://www3.interscience.wiley.com/journal/117963084/issue>
- Weigel, R.H., D.J. Hessing and H. Elffers (1987) 'Tax evasion research: a critical appraisal and theoretical model,' *Journal of Economic Psychology*, 8(2), 215-235.
- Wenzel, M. (2002) 'The impact of outcome orientation and justice concerns on tax compliance: the role of taxpayers' identity,' *Journal of Applied Psychology*, 87(4), 629-645.
- Wenzel, M. (2004a) 'The social side of sanctions: personal and social norms as moderators of deterrence,' *Law and Human Behavior*, 28(5), 547-567.
<http://trove.nla.gov.au/work/11422457?q=Law+and+Human+Behavior&c=book>
- Wenzel, M. (2004b) 'An analysis of norm processes in tax compliance,' *Journal of Economic Psychology*, 25, 213-228.
<http://trove.nla.gov.au/work/7598307?q=Journal+of+Economic+Psychology,&c=book>
- Wenzel, M. (2005a) 'Motivation or rationalisation? Causal relations between ethics, norms and tax compliance,' *Journal of Economic Psychology*, 26, 491-508.
<http://trove.nla.gov.au/work/7598307?q=Journal+of+Economic+Psychology,&c=book>
- Wenzel, M. (2005b) 'Misperceptions of social norms about tax compliance: From theory to intervention,' *Journal of Economic Psychology*, 26, 862-883.
<http://trove.nla.gov.au/work/7598307?q=Journal+of+Economic+Psychology,&c=book>
- Wenzel, M. (2007) 'The multiplicity of taxpayer identities and their implications for tax ethics,' *Law and Policy*, 29(1), 31-50.
- Wikström, Per-Olof H. (2004) 'Crime as alternative: towards a cross-level situational action theory of crime causation,' in J. McCord (ed), *Beyond Empiricism*, New Brunswick: Transaction Publishers, pp. 1-37.
- Wolfe, Donald M. (1988) 'Is there integrity in the bottom line: managing obstacles in executive integrity,' in S. Srivastva (ed), *Executive Integrity: The Search for High Human Values in Organizational Life*, San Francisco: Jossey-Bass, pp. 140-171.
<http://trove.nla.gov.au/work/13728959?q=Executive+Integrity%3A+The+Search+for+High+Human+Values+in+Organizational+Life&c=book>
- Wood, Jennifer and Clifford Shearing (2007) *Imagining Security*, Cullompton Devon: Willan.
- Young, Iris Marion (2000) *Inclusion and Democracy*, Oxford: Oxford University Press.

Zelditch Jr, Morris (2001) 'Theories of legitimacy,' in John Jost and Brenda Major (eds), *The Psychology of Legitimacy*, Cambridge: Cambridge University Press, pp. 33-53.