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13 Integrating explanations of tax evasion and avoidance

VALERIE BRAITHWAITE AND MICHAEL WENZEL

Tax evasion and tax avoidance are forms of economic behaviour that dwell at the margins of scholarship, not because they are uncomplicated activities, but because they have ties to such different and conflicting fields of social action. Added to this uncertainty over where they belong is uncertainty over how they are best approached. The deterrence model has dominated explanations of evasion and avoidance (Allingham and Sandmo, 1972), but the approach has created a quandary for tax researchers, best summed up by the question: If this model is true, why aren't more people evading and avoiding tax? Given that the odds of detection and penalties are so low, it is mostly rational to cheat (Alm, McClelland and Schulze, 1992; Alm, Sanchez and de Juan, 1995). Slemrod's (1992) landmark collection, *Why People Pay Taxes*, produced a paradigm shift, moving attention away from what was proving to be a narrow exploration of why people don't pay tax to a quest for understanding how a much broader base of social science research might explain why they do. This change of direction, pioneered in the early years by Schmolders (1970), Schwartz and Orleans (1967), Lewis (1982), Smith and Kinsey (1987), Weigel, Hessing and Elffers (1987) and Roth, Scholz and Witte (1989) has offered a fusion of economic, psychological and social perspectives on tax evasion and avoidance.

This chapter continues in this tradition, presenting an integrated analysis of how taxpaying can be viewed from a consumer perspective (similar to Smith and Stalans, 1991) and a citizen perspective (Frey, 1997, 2003); and how the consumer-citizen role, while not precluding evasion and avoidance, leaves the individual 'psychologically open' to cooperating with tax authority demands.¹ Following others in the field, tax system design and management is assumed to

¹ Two limitations of the approach should be noted. First, the most costly forms of tax evasion and avoidance involve large corporations and the wealthy individuals who control them (Slemrod, 2000; Slemrod and Yitzhaki, 2002). The focus of this chapter is on the average taxpayer, not on these groups. Second, the account of taxpaying provided in this chapter is based on western understandings of the institution of taxation. Not only are non-western considerations omitted from the analysis but so too is consideration of international tax issues that increasingly are shaping the form that national tax systems take. (For discussion of global tax issues, see Avi-Yonah, 2000a, 2000b; Burgess and Stern, 1993; Genser, 2001; Mumford, 2002; Organization for Economic Cooperation and Development, 2001a; Ott, 1999; Stiglitz, 2002; Swank, 2002; Tanzi, 2000, 2001.)

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shape the individual's pro- or anti-tax behaviour (Frey and Feld, 2001; Lewis, 1982; Tomkins, Packman, Russell and Colville, 2001), as does the individual's social environment (Smith and Kinsey, 1987). A wheel of social alignments is proposed to show how a pro-taxpaying sentiment hinges on deliberation about assessment of benefits, acceptability of coercion, and perceptions of justice. The nature of the deliberations depends on how the tax system is designed and administered, how significant others interpret and make sense of its operation, and how responsive the system is to these deliberations. Governments and tax authorities must lead the process of pro-tax alignment, but once initiated, a combination of genuine deliberation and mutual responsiveness between community and government is presumed to move the wheel forward toward a sustainable and voluntary taxpaying culture.

13.1 Two different but not necessarily incompatible theoretical positions

Based on Becker's (1968) economic theory of crime, the deterrence model conceives taxpaying as a decision that individuals make through comparing the financial gain of not paying tax with the loss incurred should penalties be imposed. A pro-tax decision might be expected when the loss outweighs the gain. The model has been elaborated many times and in many ways over the years, but has stayed true to its basic economic cost-benefit calculus (see Andreoni, Erard and Feinstein, 1998 for a comprehensive review). Adherence to principles of rational decision-making is at the core of this approach, but the preferences that feed into the decision have proven to be negotiable. While self-interest remains at the heart of decision-making, the self may be satisfying social, psychological or economic needs.

Quite a different tradition of work has emerged from what might be called the socialization theories, socialization in this context meaning that behaviour is shaped by attachment and exposure to others. The explanations of taxpaying that nestle under this label are based on the common assumption that individuals are interdependent beings, with a boundary between self and other that is permeable and negotiable. This means that individuals look to others for a sense of belonging, social approval, self-affirmation and social truth (Allport, 1943; Asch, 1955; Steele, 1988; Tajfel, 1978). Individuals and their social infrastructure are intertwined in determining both identity and behaviour.

From this perspective, individuals may or may not act in their self-interest. They may act on an emotional whim that stems from group attachment that is totally counter to their self-interest (Massey, 2002). But then again, they may behave like rational economic actors, particularly if the social context calls for them to do so. Reconciling tensions between the economic and socialization traditions drives much current tax compliance research.

13.1.1 Defining concepts

In addition to reconciling theoretical approaches, tax compliance research faces the challenge of integrating explanations of tax avoidance and evasion. Much of the research over the past thirty years has had the effect of separating these concepts, spotlighting evasion, while avoidance occupies a dark corner. *Tax evasion* is defined as an illegal act of commission or omission that reduces or prevents tax liability that would otherwise be incurred (Webley, Robben, Elffers and Hessing, 1991). To put some flesh on the term, Tanzi and Shome (1994) offer, as examples, the non-declaration of income to an authority, the under-reporting of income, sales or wealth, the over-reporting of deductible expenses, smuggling activities and black market transactions. These are but a handful of what Tanzi and Shome describe as the 'truly remarkable' array of activities, continually being invented by those looking for ways of not paying tax (p. 328).

For the present purpose, evasion and non-compliance will be used interchangeably. Webley *et al.* (1991), however, note that it has become commonplace to reserve tax evasion for actions that are deliberately designed to circumvent the law, and to use the less stigmatizing term of *non-compliance* to refer to the unintentional failure to pay taxes correctly. The distinction is intuitively appealing, but in practice, it is extremely difficult to differentiate thoughtlessly illegal acts from intentionally illegal acts (Braithwaite, Braithwaite, Gibson and Makkai, 1994; Long and Swingen, 1991). Slippage between the two becomes even greater when law is so complex that accidental evasion is a highly plausible defence for deliberate evasion, and the two are difficult to disentangle even in a court of law (Salter, 2002). Complexity of tax law is an undisputed problem in most developed countries, giving rise to poor understanding of what the law means and widely varying interpretations among experts (Freedman, 2004; James, Lewis and Allison, 1987; Long and Swingen, 1988; Picciotto, 2007).

When attention turns from evasion to avoidance, the practical problems do not disappear. Differentiating accidental or deliberate evasion from legitimate tax minimization is no simple matter. In theory, *tax avoidance* refers to effort within the law to minimize tax payments, whereas tax evasion refers to effort outside the law to minimize tax payments (Seldon, 1979). When tax law is as complex as it is, however, opportunities arise for finding loopholes and ambiguities, so that 'the arrangement of one's affairs, within the law, to reduce one's tax liability' becomes possible (James and Nobes, 2000, p. 300), in circumstances where such action is 'contrary to the spirit of the law and . . . accomplishes the pre-tax objective' (James and Nobes, 2000, p. 100).

Seldon (1979) coined the term 'avoision' to indicate 'the blurring between tax avoidance and evasion that arises from the looser connection between the legal and the moral: . . . practised by the taxpayer who has difficulty equating the legal with the moral and the illegal with the immoral' (p. 4).

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Recent legislative changes in some countries that have introduced general anti-avoidance rules (principles) have sought to bring avoidance under the control of the legal system (see Braithwaite, 2005; Freedman, 2004; Jones, 1996). These general tax principles make it illegal to act in ways that are counter to the spirit of the law for no other purpose than to minimize tax.

13.2 Moving from an individual to a social frame of reference: the pro-tax imperative

Paying tax to a revenue authority is different from most other economic transactions that we engage in regularly as individuals. As with all economic transactions, money is exchanged for benefits. But we lack choice about how much we pay and for what (van de Braak, 1983); and if we refuse to buy what is on offer, we are punished. The situation would be absurd, if it were not for the fact that we have a social role ascribed to us in the tax system that overlays our individual consumer role. That role involves being a collectively minded and responsible citizen, acting in ways that contribute to keeping the community secure, harmonious and prosperous.²

Justifications and reasons are a necessary part of moving our thinking from that of an encapsulated individual to that of a socially interdependent taxpayer. Cullis and Lewis (1997) and Tanzi (2001) have observed the points around which conflicts for individuals are likely to occur as they make this transition: (1) benefits accrued from contributions; (2) coercion to make contributions; and (3) justice in collecting contributions. If a tax system is to be sustainable and honour democratic principles of governance, these conflicts must be resolved by most people most of the time in ways that are sympathetic rather than antagonistic to taxpaying.

First, in order to resolve the benefit conflict, taxpayers must have the ability to downplay the benefits that would be best for them in favour of the benefits that would be best for the community and for the smooth functioning of the democratic system. Presumably, they must also have hope that their turn will come as beneficiaries of democratic decision-making. Without hope, support for taxation seems unlikely.

Second, in order to move past the coercion conflict, taxpayers must be able to forgo personal freedom by submitting to a legal authority, and accepting the obligation to pay tax. They may accept coercion in the background, if obligation is in the foreground. Within a democracy, coercion without adequate justification is unlikely to be sustainable.

Third, in order to resolve the justice conflict, taxpayers must give up their perceived 'right' to have their sense of justice prevail. Tolerance may come with

² Taxpayers are not always citizens and citizens are not always taxpayers. The sustainability of voluntary taxpaying systems as the degree of overlap in these roles diminishes poses a challenge for governments that rely on cooperation rather than coercion in the collection of taxes.

being part and parcel of a democracy. But if the mismatch between expectations of justice and what is delivered is too extreme, support for taxation is unlikely to be forthcoming. Each of these 'sticking points' for voluntary compliance is reviewed below.

13.2.1 Lack of choice of benefits

When we pay tax, control over what is purchased is at best indirect and is exercised only intermittently by citizens at the ballot box when the democratically elected government puts itself up for re-election on the basis of its record in office and its plans for the future.³ Taxes support the democratic process and the machinery of government. Some of the decisions and activities of government will meet with our approval, others will not. Issues of contention include the amount of tax that should be spent on public infrastructure, on welfare for those in need, as incentives for big business, and as investments in trading and defence. Paying tax, therefore, is a special kind of economic transaction in that it does not guarantee that we receive anything that we want: paying tax is an expression of hope that the democracy and the government of the day, on balance, will deliver a set of benefits that would be denied without a tax system. Taxpaying challenges us to consider the democratic will, whether it incorporates our private hopes for a better life; and if it does not, whether we will still support it.

Empirical evidence on whether valuing the democratic will protects against evasion and avoidance is at best partial and indirect. Andreoni *et al.* (1998) have reviewed the research on satisfaction with government and conclude that taxpayers who feel that their tax dollars are not spent well may refuse to pay their full tax liability. Richardson and Sawyer (2001) are more circumspect, however, warning against generalizations because of variations in what is meant and measured when considering satisfaction with government. Exacerbating the problem raised by Richardson and Sawyer (2001) is the absence of research that differentiates satisfaction with government expenditure for the common good from satisfaction with government spending for the self.

Western democracies are experiencing high levels of disillusionment with government (Braithwaite, Reinhart, Mearns and Graham, 2001; Dean, Keenan and Kenney, 1980; LaFree, 1998), and some studies have linked this general form of alienation with tax evasion (Webley *et al.*, 1991). Braithwaite, Schneider, Reinhart and Murphy (2003) linked discontent with public goods and services received, and dissatisfaction with government spending more generally, to resistance among taxpayers. However, they were unable to establish a link with evasion through cash economy activity. Mason and Calvin (1984) have disputed the claim that individuals who are dissatisfied with government will engage in tax evasion, but they suggest indirect effects may occur, involving a watering down of the legitimacy of government authority. Ahmed's work on government loans for tertiary education exemplifies how perceptions of unjust government policy can indirectly impinge on tax compliance through

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generating a 'don't care' attitude (Ahmed and Braithwaite, 2005). In this instance, personal loss brought about through government education policy contributed to strained citizen-state relations in the tax domain. An accompanying study, however, suggested that loss of cooperation was offset in part by commitment to collective values favouring social harmony (Ahmed and Braithwaite, 2007). These findings suggest that individuals can find a way of supporting the democratic will through paying tax, even if, at a particular point in time, they do not see themselves as beneficiaries of government policy.

13.2.2 Coercion to pay

For the average individual, the price of the tax that is paid for governance is not negotiable.³ The rules determining the amount of tax an individual pays are set down by the legislature and are legally binding on taxpayers (for example, percentage of income). Each individual is expected to accept his or her legal obligation to comply. If a cooperative response is not forthcoming, coercion makes its presence felt through the revenue authority's enforcement powers (legal sanctions, social stigma and/or conscience, see Grasmick and Bursik, 1990). Enforcement regimes are formalized, involving fines and penalties, and less often, legal proceedings and jail terms.

Needless to say, the cost of enforcement can be high, so methods that take away the choice of taxpayers to resist have proven popular. Withholding tax, for example, is used to extract tax payments automatically at source from an employee's salary, so that individuals have no choice as to how much they pay and when they pay it. Loss of freedom and personal agency in the payment of tax is psychologically disempowering for individuals (Brehm and Brehm, 1981; Kirchler, 1999; Taylor, 2003), however, breeding resentment. When freedom can only be achieved through breaking the law, the individual's much-prized world of personal agency is likely to clash with regulatory and legal institutions. Without taking on board taxpaying as a legal obligation, individuals are likely to have difficulty accepting sanctioning as anything other than coercion that infringes on individual rights.

Moving away from models of coercion is normatively desirable in a democracy. Coercion never disappears, however. Within a democratic system, the best that can be hoped for is that citizens consent to government using coercive powers against people (including themselves) who break the law. Within democracies, consent to the policy of law enforcement meets with little resistance. Greater variation surrounds the related construct of taking sanctions seriously.

Fear of sanctioning (particularly being caught) has emerged as a significant predictor of tax compliance in some studies (Braithwaite *et al.*, 2003; Grasmick and Bursik, 1990; Mason and Calvin, 1978; Smith, 1992), but not

³ This may not be the case in transitional economies (Tanzi, 2001), nor in the developed world for the very wealthy (Braithwaite, 2005).

others (Hessing, Elffers, Robben and Webley, 1992). In explaining their non-significant effects for deterrence, Hessing *et al.* (1992) concluded that different taxpayers respond differently to deterrence: some need a little bit of deterrence to keep on the compliance path, others need none at all, and yet others are totally dismissive, perhaps because they don't care or perhaps because they are pre-occupied with how to recover their losses. Wenzel (2004a), Scholz and Pinney (1993, cited in Andreoni *et al.*, 1998), and Slemrod, Blumenthal and Christian (cited in Slemrod and Yitzhaki, 2002), all report findings that show that the effectiveness of deterrence varies depending on how the individual engages with the tax system. Wenzel found deterrence was associated with less tax evasion when personal ethical norms were weak and when social norms were perceived to be supportive of the sanctions.

Field studies suggest that legal sanctions may be less important than anticipated feelings of shame and guilt in containing evasion (Grasmick and Bursik, 1990; Grasmick and Scott, 1982; Porcano and Price, 1993; Schwartz and Orleans, 1967). Orviska and Hudson (2002) distinguish the externally motivated 'I have to contribute' and the internally motivated 'I would like to contribute.' An internally motivated responsibility to contribute is variously referred to in the literature as tax ethics, a personal norm to pay tax, a moral obligation or tax morale. The degree to which individuals espouse this commitment to honesty in meeting a tax obligation, or guilt or shame over not paying tax, has been one of the most consistent predictors of tax evasion (see Andreoni *et al.*, 1998 and Richardson and Sawyer, 2001 for reviews).

When it comes to making a decision about accepting government coercion to pay tax, the key milestones appear to be believing that paying tax is a moral obligation, with acceptance of deterrence in the background as a means of maintaining social order and ensuring that others pay their tax too (Mason and Calvin, 1984; Schwartz and Orleans, 1967). The critical element that is required to bring acceptance and commitment together to produce a pro-taxpaying frame of reference is legitimacy and credibility of the law that ultimately is based on stable and effective democratic governance. Mason and Calvin have pointed out the interdependencies among obligations, sanctions, and legitimate and credible law. They have argued that when compliance norms are allowed to weaken in the society, particularly as a result of perceptions of unfairness, the shared sense of moral obligation and the accompanying guilt feelings also weaken. Coercive efforts to reverse this downward compliance spiral will not necessarily lift moral obligation: they may increase perceptions of unfairness and crowd out feelings of moral obligation (Frey, 1997).

13.2.3 Imposition of justice

The third aspect of the taxpaying role that sets it apart from other individual consumer transactions is the tensions it creates around different expectations and understandings of justice. A pro-taxpaying frame involves interest not only

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in the justice of paying the same as similar others in exchange for comparable benefits, but also in broader justice issues such as the acceptance of a system that is progressive or regressive. In many western countries, progressivity is widely endorsed: in principle, each should pay according to capacity; in practice, the rich pay more in tax than the poor (Braithwaite *et al.*, 2001; Edlund, 2003). Roberts, Hite and Bradley (1994), however, have observed less support for progressivity when it is contextualized, a finding that has led to a questioning of how deeply held and how stable this preference actually is.

The evidence for the importance of progressivity is historical. Tax systems have had periods of being both regressive and progressive. In the Middle Ages and the early Renaissance, the nobility in England and Europe presided over systems of tax collection that were highly regressive, resulting in a series of uprisings by peasants who were paying the most taxes, and suffering the most. In 1381, the Peasants' Revolt in England led to the burning of buildings that housed tax registers as a protest against the nobility imposing a poll tax (each lay person had to pay the same amount, regardless of their circumstances) to raise money for the Hundred Years War. In Germany, the Peasants' Revolt of 1525 brought together an array of commoners seeking economic justice in response to increasing food prices, falling incomes, heavy burdens of taxation and rents, including the death tax, whereby families were forced to surrender their best horse or cow to the landlord on a peasant's death, leaving widows and children without an inheritance. The French Revolution in 1789 also saw the clergy and nobility living lavishly, as the third estate carried the brunt of the tax burden and struggled to provide basic necessities for themselves and their families. The imposition of excessive taxation by the ruling classes also loomed large in the American Revolution (1775–81) and Australia's far more modest rebellion, the Eureka Stockade in 1852.

In the context of western history, the twentieth century seemed to be oddly out of place in its support for progressivity. In the words of Professor Christopher Hood in 2000, the twentieth century was 'a great century for tax collection by Western governments'.⁴ From the perspective of understanding the causes of evasion and avoidance, it is important to recognize that our database tends to be historically narrow, collected at a time when the wealthy paid more tax than the poor and when income redistribution was occurring through the Keynesian welfare state. The twenty-first century may be far less progressive.

Acceptance or rejection of progressivity goes to the heart of a society and engages its core values. Should individuals who are prepared to be single minded in the pursuit of wealth and status be rewarded for their entrepreneurship, unencumbered by obligations to society? Or should those who have prospered be required to pay proportionately more in tax than the poor on the grounds that they have benefited most through what the society has had to

⁴ This quote was taken from discussions with Professor Hood from Oxford University during a visit to the Research School of Social Sciences at ANU in 2000.

offer? Or should everyone pay the same amount of tax, regardless of the fact that for some a tax contribution is hardly noticeable, while for others it could drive them into poverty and despair? Revenue authorities and governments hear, and respond as best they can to, the multiple voices telling them what constitutes appropriate vertical equity for their tax system.

Less politically contentious than vertical equity is horizontal equity, although horizontal equity poses a different set of problems. The principle underlying horizontal equity is that the same tax is paid by members of groups of comparable taxpaying capacity, both in terms of what the tax designers expect and what the tax authority actually collects (Dean, Keenan and Kenney, 1980; Wenzel, 2003). Complex tax law and weaknesses in tax administration make horizontal equity an ideal that tax authorities strive for rather than something they achieve.

Taxpaying may be private, but its meaning is socially constructed and depends on how we see ourselves in relation to others in the society. When we consider comparisons between self and other, we inevitably consider the fairness of the system, both vertically and horizontally. Taxation, therefore, calls into play notions of both justice as perceived by individuals and justice as imposed by the state, justice as we personally wish to define it and as the state has defined it through the tax system and its administration. As part of a democratic society, individuals assess the magnitude of the mismatch between their views and those of the state. If the mismatch is too great, and they see the system as unfair with no hope of improvement, they may find it difficult to opt for a pro-tax frame of reference.

While there is evidence that injustice is an important correlate of tax evasion at a general level (Smith, 1992; Spicer and Becker, 1980), there is little consistency in the literature on which aspects of injustice precipitate evasion in contemporary western democracies. Empirical findings are mixed on these issues (Andreoni *et al.*, 1998; Richardson and Sawyer, 2001; Wenzel, 2003). Hite (1997) was successful in experimentally demonstrating improved compliance when a vertical equity message was given on the amount of tax the wealthy pay. Wenzel (2005) had similar success with a message that others were paying their fair share of tax. Wenzel (2002), however, has produced evidence that justice concerns are associated with tax compliance only when individuals are able to identify with the broader Australian community. If this collective self is not salient in the taxation context, their concerns remain predominantly self-interested.

Scholz and Lubell's (1998b) work also suggests that the absence of consistent findings may be due to too much contextual variation, and Hite (1997) adds support to this argument, suggesting that attitude salience in the situation is critical. Scholz and Lubell (1998a, 1998b) opt for a measure of trust in tax governance. Their measure covers trust in government and trust in other citizens, and therefore, subsumes both acceptance of the government's notion of a fair tax system and the democratic will on benefits. Scholz and Lubell

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13.3 Social alignments and the pro-tax imperative

Consideration of taxpaying benefits, acceptance of coercion and belief in the justice of the system have been identified as separate turning points in the decision to view taxpaying as a worthy investment. A psychological need for cognitive consistency (Festinger, 1957) is likely to push these considerations toward alignment under normal circumstances. The alignment of the three sets of beliefs could be uniformly pro- or anti-tax. The alignment may change depending on the degree to which the designers and managers of the tax system are sensitive to public perceptions of benefits, coercion and justice, and the extent to which others in the community can mount a credible challenge to the tax authority's claims.

Two research studies illustrate how easy it is for tax administrations to fail in the creation of alignments, and instead to become locked onto a collision course with those they seek to regulate. In a study of Chicago immigrant street vendors, Morales (1998) observed the commonly shared belief that paying taxes is a good thing in so far as it provides public infrastructure such as quality schooling. At the same time, these immigrants expressed little hope that their poor neighbourhoods would benefit from their taxpaying: they saw a discrepancy between what they and the government considered a fair allocation of tax dollars. Thus, in order for their children to make good, they chose to evade some tax and put the money away, so that they could move out of their poor neighbourhood into a wealthier one, or pay privately for their children's education.

Crush (1985) provides a fascinating account of how the imposition of a coercive colonial tax system in Swaziland at the beginning of the twentieth century came to be resisted by Swazi peasants, in spite of acceptance initially by their chiefs. The British authorities were intent on forcing the Swazi into wage labour through imposing a tax system on them. The Swazi could not see the benefits. Moreover, the system offended the Swazi's sense of justice and did nothing to elicit a legal obligation to pay. As a result they chose tax evasion with devastating results for the British authority: 'The police were spread too thin on the ground, defaulters invariably elected to serve prison sentences rather than pay fines . . . additional revenue was not collected . . . the new element of naked force led to still greater dissatisfaction in the country, and the assault largely failed . . . [to move] labour migrants out of the country' (p. 186).

How authorities design and collect tax matters to the choices that individuals make regarding their taxpaying (Hite, 1989; Smith and Stalans, 1991). It is therefore ironic that revenue authorities in western democracies have allowed

themselves to get into the position of being criticized for being remote and unsympathetic in their relationship with the public (Joint Committee of Public Accounts, 1993; National Commission on Restructuring the Internal Revenue Service, 1997; Senate Economics References Committee, 2002). In the next section, these issues are brought together through adapting Lewin's (1951) notion of life space to construct a wheel of social alignments for the taxpayer.

13.4 The life space of the taxpayer

The purpose in proposing a life space model is to place the focus on how the individual sees his or her taxpaying world. The outer circle of figure 13.1 represents the design of the tax system and its administration. The literature on best practice in design and administration will be reviewed below, but the value of looking at this system through figure 13.1 is to remind us that while the system objectively makes its presence felt on the individual, the system designers have less control over meanings that individuals give to their experience. Moreover, tax authorities cannot control how these meanings become consolidated into narratives that taxpayers share with each other. In the process, significant others become influential actors in shaping the imperatives that the taxpayer sees as operating in his or her life space. Thus, the taxpayer experiences and interprets the demands and operations of the tax authority (the outer circle in figure 13.1), as well as the stories, opinions and actions of significant others that may be in accord with the authority or in opposition to the authority (the inner circle in figure 13.1). The individual may, at this point, blindly follow the lead of the authority or of others, without giving much thought to why these actions should be followed (McAdam and Nadler, 2005; Tajfel, 1978). Alternatively, they may take on the role of a consumer-citizen and reflect on the wisdom of endorsing taxation as a good investment. The middle circle of figure 13.1 represents this reflective process in which individuals decide whether or not to throw their lot in with others in the democracy: to value the benefits offered in the name of the democratic will, to accept sanctions as a legitimate form of coercion to make sure everyone pays, and to endorse the system as one that is sufficiently fair, all things considered. This process, influenced as it is by the outer and inner circle, does not have an end point. It continues, with revisions constantly being made as new information becomes available and new experiences are given meaning. As cognitions, feelings and behaviours associated with taxation bed down over time, a degree of stability is likely. If the overall sensibility is pro-tax and this sentiment is widely shared in the community, tax authorities have a cooperative momentum they can harness to sustain voluntary taxpaying. If the sentiment is overwhelmingly negative across the community, the wheel will be locked, with tax authorities seriously hampered in their efforts to influence the flow of events within a regulatory framework that respects democratic rights. In the next section, we review the design features that are purported

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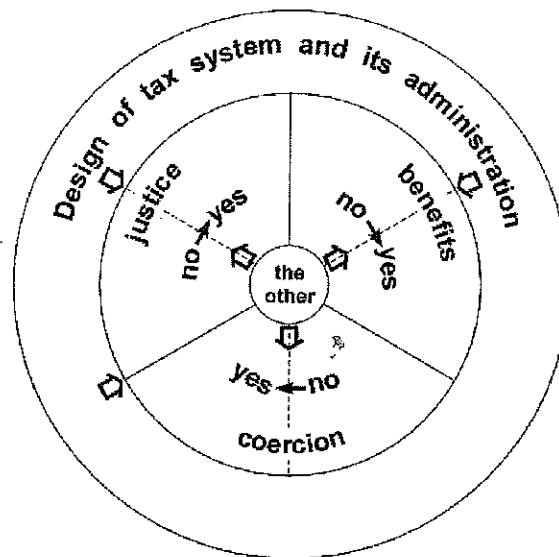


Figure 13.1 The wheel of social alignment of taxpayers

to create sustainable tax systems within western democracies (see Andreoni *et al.*, 1998; Brand, 1996; Forest and Sheffrin, 2002; Organization for Economic Cooperation and Development, 2001a; Tanzi, 2001; Tanzi and Shome, 1994).

13.5 Tax design

Drawing on Adam Smith's four canons of taxation – equity, certainty, convenience and economy – tax experts such as Tanzi (2001), Tanzi and Shome (1994) and Brand (1996) converge in their views on what the gold standards of tax design are and maintain that evasion and avoidance will be lower when good design principles are followed.

Brand (1996) places simplicity at the top of his list. There is intuitive appeal in the argument. People make honest mistakes when they misunderstand what is required, when the forms are too complicated, when they make computational or record-keeping errors, and when they are given incorrect advice (Long and Swingen, 1988). The legal framework for taxation should not be complex and the rules should be clear, without needing the interpretative guidance of experts (Tanzi and Shome, 1994).

But there is another side to this argument. Complexity reflects the highly individualized nature of the tax code and this has been introduced into the system, sometimes to promote certain policies, but often to make the system more palatable to interest groups (Carroll, 1992). Complexity is often the cost of governments pleasing their constituents (Slemrod and Yitzhaki, 2002;

Warskett, Winer and Hettich, 1998), or, to put it more positively, trying to be fair.

While less complexity continues to be hailed as best practice, and for good reasons, it is of note that taxpayers' perceptions of complexity have not always been linked directly with taxpayer non-compliance in empirical research (Forrest and Sheffrin, 2002). This is probably not surprising. Perceptions of complexity drive up evasion through taxpayer mistakes and simultaneously drive down evasion through creating opportunity for less risky tax avoidance (Long and Swingen, 1988).

As well as being simple, tax systems should be cost effective, from the perspective of both those who administer them and taxpayers who must comply. Where taxpayer compliance costs are high, compliance is believed to suffer; but Richardson and Sawyer (2001) point to a paucity of hard evidence on this matter. Those who are most concerned about cost appear to find a tax adviser to relieve their burden. In a diary study of how compliance costs affect taxpayers' behaviour, Carroll (1992) observed a willingness to place limits on the amount of time devoted to doing tax; the philosophy was one of cutting corners, not so much to lower tax liability, but rather to save time. Carroll notes that this creates scope for tax evasion.

Compliance costs are generally interpreted to mean loss of time and money. Psychological costs are also relevant, however, including feeling anxious and bothered by one's financial situation. In this respect, prospect theory has attracted some support in the tax domain, showing that non-compliance is more likely when individuals face the prospect of 'paying out' to the revenue authority as opposed to 'claiming back' money that has already been collected through, for example, a withholding system (Hasseldine, 1998; White, Harrison and Harrell, 1993). The explanation offered by prospect theory (Kahneman and Tversky, 1979) is that taxpayers are more likely to take risks when they face loss than when they face gain. Smith and Stalans (1991) have made an interesting contribution to the compliance cost debate through suggesting that a simplified tax system would create more comfort for taxpayers (that is, reduce emotional costs), and in this way serve as a positive incentive for compliance.

The principle of efficiency and equity involves keeping taxes as low as possible and spreading the burden as widely as possible. The evidence on the empirical relationship between tax rates and compliance is mixed (Andreoni *et al.*, 1998; compare Feinstein, 1991 and Clotfelter, 1983), although Besley, Preston and Ridge (1997) took advantage of the relative simplicity of the UK poll tax to show that jurisdictions with higher taxes had larger non-payment problems. This result held up after controlling for attempts at enforcement, economic hardship and the perceived non-compliance of neighbouring jurisdictions, all of which were also significant in predicting evasion.

Finally, the revenue agency must be designed in such a way that it can prove itself as a credible enforcer. The traditional way of interpreting this

principle is that penalties should be sufficiently high as to deter potential evaders and avoiders. In the experimental tax literature, the probability of audit and of penalties has been associated with less tax evasion (Andreoni *et al.*, 1998; Slemrod and Yitzhaki, 2002). The effects of audit and penalties from a deterrence perspective are complex, as noted previously, but some basic principles for design appear to merit serious consideration. While penalties must be sufficiently high to signal that non-compliance is unacceptable, they should not be so high that enforcement capability is actually undermined because penalties are applied sparingly by the authority; or because, when they are applied, lengthy appeals ensue that undercut the credibility of the revenue agency as an enforcer (Tanzi and Shome, 1994).

Brand (1996) expresses the design principle of gaining credibility as an enforcer somewhat differently. His argument is that the revenue agency must have 'a presence across the spectrum', being everywhere in the public eye from education through persuasion to sanctioning. There is considerable empirical evidence to support this principle, more often couched in terms of how opportunity to avoid detection encourages non-compliance (Andreoni *et al.*, 1998; Long and Swingen, 1988; Richardson and Sawyer, 2001; Smith, 1992; Taylor and Wenzel, 2001; Wärneryd and Walerud, 1982; Witte and Woodbury, 1985).

13.6 Making tax design work

As Tanzi (2001) points out, the technical design of a tax system is one thing, effective implementation is another. Sometimes the technical design requires human competencies and machine capabilities beyond those available. At other times, administrative realities steer the tax structure in particular directions (Alt, 1983; Slemrod and Yitzhaki, 2002). As model mongering (Braithwaite, 1994) becomes a common feature of a globalized world, it is important to remember that systems, no matter how elegant, rely on people to work, and if the assumptions made about people, either those who work as tax collectors or those who pay taxes, are incorrect, there is no reason for expecting that tax design by the gold standards will achieve the desired outcomes.

The 'people' obstacle to reaping the benefits of an elegant tax system has increasingly been recognized as important. A striking example of a gap emerging in assessments of the gold standard of design between tax experts and taxpayers involves withholding taxes. Few would question the attraction of withholding tax as a highly cost-effective method of tax or loan collection (Tanzi and Shome, 1994). But concerns have been expressed about how this method affects tax behaviour in other parts of the system (Yaniv, 1992). Evasion and avoidance activities move 'sideways', presumably to accommodate individuals' perceptions of what are fair and reasonable expectations of taxpayers. Ahmed's work has extended appreciation of the sideways movement that can

accompany withholding systems: individuals whose employers are required by law to extract higher education debt repayments (along with income tax) from salary at source are more likely to overclaim deductions and not report additional sources of income when they lodge their annual tax return (Ahmed and Braithwaite, 2004).

The secret to successful design in practice depends on how individuals construe their life space and the interactions between components. Ultimately, taxpayers peruse the forces that are being exerted on them and ask, 'Is this reasonable? Is this fair?' (Bardach and Kagan, 1982). Forest and Sheffrin (2002) found empirically that fairness overshadowed complexity in the prediction of evasion. Tax design is likely to have to meet the standards of being viewed as fair by taxpayers before it can live up to experts' expectations.

13.7 Hearing the voice of taxpayers

Tax authorities often miss out on valuable information about how the design of a tax system affects taxpaying because they do not hear the voice of taxpayers. Authorities assume (to some extent rightly) that their vastly superior power will enable them to control and manipulate taxpayers into acting appropriately, either through command and control strategies or through the soft sell of product marketing. Being deaf to the voice of taxpayers and refraining from dialogue with community critics and supporters alike on tax issues bears costs, however. Socio-legal scholars (McBarnet, 1992, 2003; Nadler, 2005) have demonstrated that individuals can be highly creative in responding to law that is regarded as unjust or a hindrance. They may flout a host of laws, or they may game play with them where they see opportunity. As Tanzi and Shome (1994) observed, there are always new ideas for evading or avoiding tax. Theoretical frameworks for 'listening' to taxpayers, or rather understanding how they make sense of and engage with the tax system, are among the more recent developments in tax research. In this section two approaches are reviewed that provide insight into how taxpayers express personal agency and send messages to the tax authority about how well they are running the tax system.

The concept of motivational postures describes how individuals voice their discontent with tax authorities (Braithwaite, 1995, 2003b; Braithwaite *et al.*, 1994; Braithwaite, Murphy and Reinhart, 2007). Individuals manipulate the social distance between themselves and a tax authority to reduce the stress they feel as a result of the authority's attention and judgement. If they find the policies, the demeanour or the mission of the tax authority and its officers distasteful, individuals move away psychologically from the authority until they find a motivational posture with which they are comfortable. Five motivational postures have been identified: (a) commitment, involving belief in the tax system and acceptance of responsibility for ensuring that taxes are paid; (b) capitulation, meaning deference to tax office authority and openness to

doing what is asked to stay out of trouble; (c) resistance, entailing opposition to the tax authority and lack of confidence in its capacity to use its power wisely or fairly; (d) disengagement, meaning not caring or not bothering about tax office demands or threats; and (e) game playing, involving a sophisticated understanding of the limits of tax authority and enthusiasm for pushing these limits in order to beat the authority at its own game.

This social distancing process, if not noticed or addressed by authority, produces two forms of defiance within motivational posturing theory: resistance and dismissiveness (Braithwaite *et al.*, 2007). Individuals may embrace neither, one or both types. In keeping with the work of Tyler (1990) and his followers, resistant defiance responds favourably to procedural fairness and to evidence that the tax authority can be trusted to serve the public interest. Dismissiveness, on the other hand, is not so easily turned around because it empowers the taxpayer to feel confident and beyond the reach of the system. As such, dismissiveness poses the greatest threat to the tax systems of western democracies.

Dismissiveness in the tax domain has been associated with tax avoidance and evasion, the choice of not valuing public benefits, not accepting the government's view of justice, and rejecting a moral obligation to pay tax (Ahmed and Braithwaite, 2005; Braithwaite, 2004; Braithwaite *et al.*, 2003, 2007). Regulating dismissiveness within a democracy demands a listening response from tax authorities because it signals that, for at least a proportion of the population, well-entrenched institutions are not considered valuable or necessary. The principles of taxation and the design of the tax system require public debate, and criticism met with either a public defence or reform.

As with all aspects of governance, when authority is not listening, individuals assess their situation, accept the realities of their world, and try to do the best they can with what they have. Adaptation to the tax climate is a central driver in how ordinary taxpayers become involved in aggressive tax planning (Braithwaite, 2005). Braithwaite has shown that while the wealthy elite engage in aggressive tax planning with very clever, highly innovative and well-thought-out game plans, ordinary taxpayers experience something that is quite different. Schemes that have met with some success at elite levels are repackaged, often losing the niceties that protect against challenges from tax authorities, and are marketed to an unsuspecting public eager to jump on the next financial planning bandwagon and save tax. Often it is not until the mass-marketing stage that tax authorities feel confident that they have the ammunition to challenge the schemes and act to close them down. By this time, promoters have made their financial killing, and small investors are left to their own devices to fight their case against the tax authority.

This sequence of elite marketing, mass marketing and tax authority challenge means that growth of the aggressive tax planning market comes in cycles, with greatest risk occurring at the end of the cycle when smaller players join the stampede. As schemes acquire acceptability as safe and smart investments,

and knowledge of them spreads, people become increasingly attracted to them, often unwittingly. Braithwaite starts with the proposition that markets per se are not the problem, but draws a distinction between markets that promote vice and markets that promote virtue. Governments have responsibility for intervening in markets that threaten the well-being of the community. He therefore has argued for tax authorities making it their business to be informed and warning the public, anticipating stampedes and taking responsibility for flipping the market much earlier in the cycle before ordinary taxpayers become their prey. Principle-based tax law, quicker and more effective enforcement of promoters, and restorative justice processes are proposed as strategies that bring a halt to the stampede and generate dialogue among the parties to build knowledge and understanding of acceptable and unacceptable tax-minimizing strategies. This research highlights how open taxpayers are to social influence from a variety of sources outside the tax authority. If tax authorities will not listen to taxpayers and engage them in regulatory conversations, other players in the marketplace will. And their objective may not be to strengthen pro-tax sensibilities.

13.8 The role of the other

The role of the 'other' is depicted in figure 13.1 as the inner circle. The other in the life space of the taxpayer comprises tax advisers, friends, family, work colleagues, celebrities or newspaper columnists. The other may constitute the taxpayer's reference group in so far as the taxpayer is prepared to listen to them, take advice and model their behaviours. But the other may also represent actors or groups who exercise power over the taxpayer without consent, such as the employer who makes it impossible for an employee to pay tax through operating in the black economy.

The influence of the other may be pro-tax or anti-tax. Most of us most of the time take our cue as to what we should do by watching how others observe rules, a form of behavioural modelling that McAdam and Nadler (2005) refer to as the coordinating function of law. For this reason, while people pay taxes, the predominant role of the other is assumed to be positive. The negative role is nevertheless present. Wenzel (2005) found that tax evasion could be reduced simply through informing participants that their perception of the proportion of people engaging in tax evasion was inflated.

The influence of the other in tax research is most commonly investigated in terms of the role of tax advisers, tax agents or tax practitioners in 'leading' taxpayers into and out of compliance; and of taxpayers demanding aggressive tactics from their agents who then feel pressured into supplying riskier advice than they would otherwise give (see, for example, Klepper and Nagin 1989; Klepper, Mazur and Nagin, 1991). While most taxpayers want a tax adviser who is honest and will keep them out of trouble with the authorities, there is

clearly a market in aggressive tax planning. High-risk-takers find tax advisers who specialize in aggressive advice and creative compliance, while cautious, no-fuss taxpayers find advisers who deliver a competent and honest service (Karlinsky and Bankman, 2002; Sakurai and Braithwaite, 2003; Tan, 1999).

Advisers, however, are but one source of influence. Informally, taxpayers are influenced by the groups to which they belong, from intimate social circles of friends and colleagues, to wider interest groups as defined by their profession or income level, and the nation as a whole (Wenzel, 2007). Importantly, taxpaying cultures, or more specifically the norms and beliefs shared within them, do not affect group members uniformly. Psychologists have been particularly interested in self-categorization theory (Turner, Hogg, Oakes, Reicher and Wetherell, 1987) to explain how social identities associated with taxpaying come into being (Sigala, Burgoyne and Webley, 1999; Wenzel, 2002, 2004b). Social identities assume prominence through identification with groups. If identification is weak, the likelihood of the individual assuming the taxpaying identity of that group will be relatively small. Identities change as individuals move into and out of groups with different taxpaying cultures (for example, lawyers may be different from teachers, and both of the taxpaying identities of these occupational groups may be different from that associated with citizens).

The narratives of the other and the extent of identification with the other play an important role in how consumer-citizens deliberate on benefits, legitimacy of coercion and justice (see figure 13.1). Identifying with a certain subgroup of taxpayers (for example, an occupational group) gives rise to perceptions of benefits that differ and are likely to be more 'local' than the benefits that come to mind when we identify with the nation as a whole (Wenzel, 2002, 2007). Peers influence perceptions of formal deterrence; that is, it is through perceptions of the honesty of peers that we can arrive at an understanding of how bad it looks if we are caught for tax evasion (Wenzel, 2004a). Perceptions of justice too are greatly influenced by group identification. A strong identification with a group that is inclusive of all taxpayers (for example, one's nation) is likely to increase taxpayers' concerns for justice for all (Wenzel, 2002). Identification with a more narrowly defined taxpayer group (for example, an occupational group) gives rise to differences in perceptions of whose just treatment is most important (Wenzel, 2004b). The other is thus the indeterminate element in explaining tax evasion and tax avoidance, because the other, if it is an object of identification, can change the alignment of the wheel in figure 13.1 completely.

In principle, there is no limit to the identities that one can adopt as a taxpayer, but in reality, the structure of the system and the discourse and activities one is exposed to place constraints on the options available. Even so, it is impossible to predict in each single case the identity that taxpayers will adopt at a particular moment. In order for a pro-taxpaying identity to be salient, the life space model of taxpaying in figure 13.1 must incorporate a collective social process that enables consumer-citizens to make an informed, thoughtful transition to

see benefits, legitimacy in coercion and justice in the tax system. The responsibility for institutionalizing this social process lies with tax authorities and their governments. It is a process designed to demonstrate integrity on the part of government; the presumption is that consumer-citizens respond with pro-tax sentiments and cooperation (Braithwaite, 2003a; Scholz and Lubell, 1998a, 1998b).

13.9 Processes of procedural justice and dialogue

A high-integrity tax system is not only well designed, but is also respectful of and responsive to the democratic will (Braithwaite, 2003a). Empirical support has been found for two approaches to showing respect and responsiveness: (a) treating taxpayers with procedural justice (in practical terms, abiding by taxpayers' charters or bills of rights, see Organization for Economic Cooperation and Development, 2001b), and (b) engaging in dialogue with the public.

Tyler (1990) has pioneered a strong intellectual movement on the importance of authorities ensuring that their processes and, more particularly, the way they deal with people, are transparent, impartial, respectful and inclusive of others' interests and concerns. The important message from this work for tax research is that authorities develop trust and build their legitimacy, not through giving people the outcomes they want, which is often impossible, but rather through observing their right to a fair hearing and respectful treatment.

Kristina Murphy's (2003a, 2003b, 2004, 2005) work with Australians who became caught up in mass-marketed aggressive tax planning schemes has provided a telling story of how law that is complex and like 'Swiss cheese' can cause a political storm when combined with a timid and indecisive tax administration. Investors in these schemes had been claiming tax benefits that the tax office eventually ruled as illegal on grounds that their primary purpose was tax avoidance. Penalties and interest, for several years in some cases, increased the sizeable 'payback' that the tax authority demanded of investors. As the storm clouds brewed, and even after concessions were gained to wipe penalties and interest for supposedly naïve investors, the absence of procedural justice was the factor that continued to fuel anger and resistance.

The importance of procedural justice is linked to another development that has found its way into best practice guidelines (see guidelines provided by the Organization for Economic Cooperation and Development, 2001a), democratic deliberation and consultation (Braithwaite, 2003a; Dryzek, 1990). The democratic voice seems to have been lost, partly because of the complexity of tax systems (Picciotto, 2007), partly because of the common view that people don't want to pay tax (Alm, 1999), and therefore, cannot deliberate on the matter constructively. Loss of hope that authorities will listen and consider different interests has been at the heart of much of the recent loss of legitimacy of governments (Braithwaite, 2004; LaFree, 1998). Cutting the public out of

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deliberation about the rights and wrongs of tax evasion and avoidance 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). The US research of Kinsey and Grasmick (1993) and Scholz, McGraw and Steenbergen (1992) on the Tax Reform Act of 1986 provides evidence of how changes to the tax system can create a far better climate of compliance when the changes are championed through deliberative forums. Tax design needs not only to be responsive to administrative capabilities, it also needs the endorsement of the people.

Bruno Frey and his colleagues have shown that in tax jurisdictions where democratic deliberation is regularly practised and inclusive, compliance is likely to be high (Feld and Kirchgässner, 2000; Feld and Frey, 2002, 2005; Frey, 2003; Frey and Feld, 2001; Pommerehne, Hart and Frey, 1994; Torgler, 2003). Using panel data collected from tax authorities that represent twenty-five Swiss cantons, empirical evidence was produced to show that in cantons where direct democracy was strong (citizens voting in referenda on political and economic issues), tax evasion was relatively low (Frey and Feld, 2001).

The theoretical account that frames these findings is that when tax authorities and taxpayers have a psychological contract that communicates mutual respect, loyalty and commitment to the deliberative process, the individual takes on the persona of citizen who is engaged in the democratic process and accepts responsibility for contributing to the collective good (Feld and Frey, 2007). Tolerance for minor infringements is high, but if there is evidence of the psychological contract being broken by a taxpayer, penalties are substantial. The system prioritizes promotion of trust between citizens and the state above a sense of fear.

13.10 Conclusion

Individuals have the right to deliberate on the benefits taxation brings to themselves and their community, the acceptability of coercion to ensure that everyone shares responsibility for paying tax, and the justice of the rules that are put in place for the collection of taxes. Individuals may blindly follow others into compliance, but unthinking compliance on a mass scale does not augur well for democratic governance. The work of Frey and his colleagues provides insight into how the wheel of social alignments can move toward a voluntary taxpaying culture. Sustainable progress is made, not through appeals to self-interest or slick marketing or blind rule following, but rather through deliberation as consumer-citizens. Not all of the people will be satisfied all of the time, but the process of delivering respect through procedural justice and opening the doors to dialogue means that taxpayers are nudged out of the identity of the encapsulated individual and toward the identity of a socially interdependent taxpayer who sees benefits, obligations and justice from a collective perspective. Not all

taxpayers will decide to adopt the consumer-citizen frame: encapsulated individuals from time to time will show their defiance through putting a spoke in the wheel. Consumer-citizens may well reserve the right to say to government, 'no, that is not good enough', even when government cannot do better. But the problem this creates for tax administrations does not detract from the more fundamental message: contestation about tax is to be embraced and encouraged as an essential part of building better tax systems and healthier democracies.

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