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Special Edition: Tribute to the late Professor John Tiley

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Exploring innovations in tax administration: a Foucauldian perspective on the history of the Australian Taxation Office's compliance model

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Abstract

At the turn of the century, the Australian Taxation Office (ATO) adopted the cooperative compliance model (CCM). This was regarded as a paradigm shift in tax administration and therefore a historically significant event, although its history has received little attention to date. Previous research has discussed the role of administrative equity and administrative efficiency in its history. This article reconsiders those themes in the light of the theoretical work of Michel Foucault and further sources. Such an analysis focuses attention on the ATO's realisation that a more strategic use of its power could achieve greater long-term compliance. It also focuses attention on the ATO's realisation that the observation of taxpayers alone can improve compliance. These conclusions have implications regarding the use of probability of detection, risk assessment and data gathering procedures to improve compliance which are discussed. Also discussed are implications for serious noncompliance.

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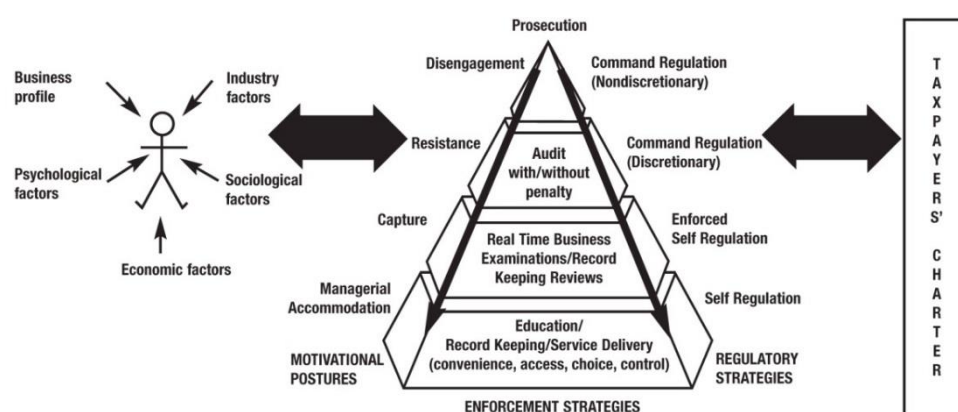
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1 INTRODUCTION

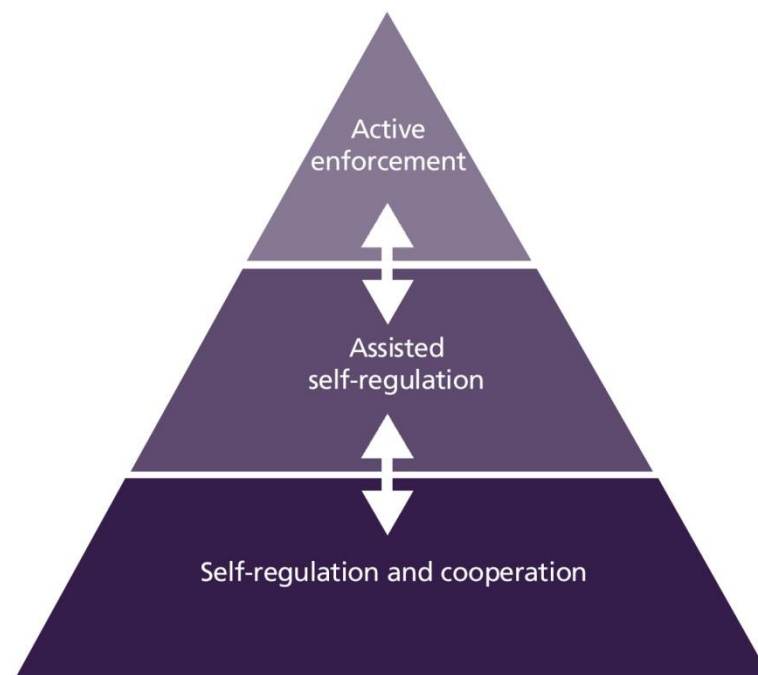
Taxation plays an important role in economic management and in the provision of public goods and services (Allan 1971). Consequently, improving voluntary compliance with tax systems is a goal of many governments and revenue authorities (OECD 1998; Tanzi 2000; D'Ascenzo 2010; Commonwealth of Australia 2010). Compliance has been traditionally achieved through deterrence methods such as the fear of audit and associated penalties based on the assumption that taxpayers will comply only when forced (Becker 1968; Allingham & Sandmo 1972; Braithwaite, V 2002a). In more contemporary times many revenue authorities have sought other approaches to improving voluntary compliance by taxpayers.

The Australian Taxation Office (ATO) adopted the cooperative compliance model (CCM; refer to Figure 2) in 2000 to improve voluntary compliance in its Large Business and International segment (Commonwealth of Australia 2000). This was adapted from Figure 1 which was developed for the cash economy by the Cash Economy Task Force (Commonwealth of Australia 1998). Since Figures 1 and 2 rely on the same underlying concepts and operate in a similar manner; this article will refer to both as the CCM. The BISEP (Business, Industry, Sociological, Economic and Psychological) model lies to the left in Figure 1. This model informs the pyramid's operation by capturing various environmental data that may impact on a taxpayer's compliance. While Figure 2 contains no BISEP equivalent, these factors are still important to its operation in Large Business and International (Commonwealth of Australia 2000). Consequently, the BISEP model is also regarded as part of the CCM. The *Taxpayers' Charter* situated to the right in Figure 1 is not part of the CCM. Figure 1 merely illustrates its relationship to the CCM.

Figure 1: The CCM for the cash economy



(Commonwealth of Australia 1998, p. 58)

Figure 2: The CCM for LBI

(Commonwealth of Australia 2000, p. 5)

The pyramid applies two regulation theories (responsive regulation and motivational posturing) with the aim of assisting the ATO to determine an appropriate response to the taxpayer's compliance or noncompliance. As its name suggests, a motivational posture attempts to combine a taxpayer's compliance attitude and behaviour into a single descriptor. There are four possible motivational postures: *commitment* (labelled as *managerial accommodation* in Figure 1), *capitulation* (labelled as *capture* in Figure 1), *resistant* and *disengaged* (Commonwealth of Australia 1998; Braithwaite, V 2002a).

The CCM assumes that most taxpayers have a commitment posture. The pyramid determines that the appropriate response to these taxpayers is self-regulation aided by education and service or any appropriate means to help them to comply. Taxpayers who capitulate are those who have some small motivation toward noncompliance. The ATO meets this posture with assisted or enforced self-regulation that is designed to persuade taxpayers to comply without resorting to penalties through the fair treatment and procedural justice that the taxpayer experiences (Braithwaite, V 2002a; Murphy 2004). The last two motivational postures are met with traditional deterrence strategies differing only in their intensity in the hope of enforcing compliance (Braithwaite & Braithwaite 2001; Braithwaite, V 2002a). Indeed, even for compliant postures, the threat of audit and penalties is ever present. Despite the unlikely event of achieving compliance from a disengaged taxpayer, it is recommended that all regulatory encounters begin with compliance strategies from the base of the pyramid with deterrence strategies used only once the compliance strategies have failed (Braithwaite & Braithwaite 2001).

This article builds on the prior work of Whait (2012) which showed that administrative equity and administrative efficiency were key drivers in the development and adoption

of the CCM. This article's objective is to use more sources to consolidate these drivers in the development and adoption of the CCM and interpret them through the critical theoretical work of Michel Foucault. Such research may not only help to inform future tax compliance approaches and policy directions, but it may also help improve the understanding of taxpayer compliance behaviour, a phenomenon which is poorly understood (Richardson & Sawyer 2001; McKerchar 2001; Niemiowski, Baldwin & Wearing 2001; McKerchar, Bloomquist & Pope 2012; Pope & McKerchar 2012). A theoretical perspective will also further the debate regarding responsive regulation and also help peer through tax's technical façade so that its social dimension can be understood (Haines 1997; Boden et al. 2010). A theory of power is used to inform this article since tax compliance has been regarded as a power struggle between the taxpayer and the revenue authority (Braithwaite, V 2002a).

The outline of this article is as follows: the next section (section 2) will briefly discuss the literature regarding the history of the CCM. It will then discuss the methodology in section 3 followed by a description of the theoretical framework in section 4. The article then discusses its findings and implications in section 5 after which it concludes briefly in section 6.

2 LITERATURE REVIEW

There are no formal histories of the CCM apart from the aforementioned article by Whait (2012). While other literature may describe the CCM and explain its mechanism of operation, details as to the process of its development and adoption are generally only mentioned in passing or by way of introduction.

The origins of the CCM are generally attributed to John Braithwaite's (1985) book, *To Punish or Persuade: Enforcement of Coal Mine Safety* or Ian Ayres and John Braithwaite's (1992) book, *Responsive Regulation: Transcending the Deregulation Debate* (Braithwaite 2011). These volumes attempted to work through the *punish versus persuade* debate by suggesting that regulation could be improved by using an appropriate mix of punishment and persuasion rather than using either alone. They are concerned with forging a more cooperative way of improving compliance through responsive regulation where the regulator would respond and act in accordance with the context of the situation (Ayres & Braithwaite 1992; Braithwaite 2011). Responsive regulation's development was a collective effort, but was initially influenced by the 'master practitioners of escalated enforcement of the late 1970s and early 1980s in the pharmaceutical industry' such as Bud Lofus and the 'practitioners of coal mine safety enforcement such as Ron Schell of the (then) Mine Safety and Health Administration' (Braithwaite 2011, p. 477).

By 1998, the CCM was developed by the Cash Economy Task Force which 'urged' (Braithwaite, V 2002a, p. 2) the ATO to better understand taxpayers using a BISEP perspective (see also Commonwealth of Australia 1998; Braithwaite & Job 2003). The ATO was also persuaded to adopt the pyramid that the Cash Economy Task Force developed but how, why or when that took place is not disclosed (Braithwaite & Braithwaite 2001). Interestingly, the CCM was adopted by the ATO without comprehensive empirical testing (Braithwaite 2011). After the Cash Economy Task Force made its recommendation, the CCM was adapted for Large Business and International but there was skepticism as to whether it could be successfully applied there due to it being based on research in other regulatory areas such as nursing homes (Braithwaite & Braithwaite 2001; Braithwaite, J 2002; Braithwaite, V 2002a;

Commonwealth of Australia 2000). Thus its application across the ATO was an intuitive leap of faith by senior ATO management (Braithwaite, V 2002a).

The late 1990s saw a number of contextual developments that are regarded as having some influence in the CCM's development and adoption. These include the level of aggressive tax planning by high wealth individuals, the introduction of the Goods and Services Tax as part of *A New Tax System* and concerns about the cash economy (Braithwaite 2007). The late 1990s also saw the adoption of the *Taxpayers' Charter* to communicate the public's rights and obligations with respect to tax compliance and administration (McLennan 2003; Commonwealth of Australia 2004). As Figure 1 suggests, the CCM was adopted, in part, to complement it (Commonwealth of Australia 1998; Braithwaite, V 2002a).

Despite these details, the following questions remain unanswered:

- What were the key change factors that prompted and shaped the emerging discourse regarding new approaches to compliance?
- What was the nature of the transition from the previous deterrence approach to the CCM?
- What influences shaped the emergence of the officially promulgated model?

This article addresses these questions through the methodology discussed in section 3. The lack of empirical testing of the CCM's effects on compliance before its adoption by the ATO is notable since taxpaying behaviour was poorly understood and in need of continued research at the time the CCM was adopted (Andreoni, Erard & Feinstein 1998; McKerchar 2001; Richardson & Sawyer 2001). By the late 1990s only the morality of the taxpayer, the probability of detection of noncompliance, penalties and the type of income (whether it is subject to a withholding tax or not) were regarded as having a definite positive influence on taxpayer compliance (Fischer, Wartick & Mark 1992; Andreoni, Erard & Feinstein 1998; Richardson & Sawyer 2001; McKerchar 2001). Despite this agreement, some remained unconvinced of the positive effect of probability of detection and associated penalties on compliance and these variables consequently had fallen out of favour with those hoping to develop new methods of improving compliance (Bardsley 1994; Braithwaite & Braithwaite 2001).

The article by Whait (2012) partly addresses the above questions by arguing that a desire to administer the taxation system equitably and efficiently led to the development and adoption of the CCM. The Cash Economy Task Force was established in the hope of levelling the playing field with respect to the cash economy, but those in the Cash Economy Task Force believed that it was important that the taxpayer's circumstances be taken into account by the ATO when it responds to noncompliance. Furthermore, the ATO realised that it needed to operate efficiently by focusing its limited resources on noncompliant taxpayers only. This led to the ATO developing many compliance improvement techniques that later found their way into the CCM. This article will interpret those findings, and others made through the analysis of more sources, with the aid of the theoretical work of Michel Foucault.

3 METHODOLOGY

Except for the application of a critical theoretical lens, this article has applied a similar methodology to Whait (2012) encompassing the assembly, organisation and analysis of evidence from a variety of written and oral sources. The written sources were searched and selected with reference to the above research questions as a guide (Miles & Huberman 1994). The selection process also included classifying the sources in terms of time and place and origin, primary or secondary characteristics, content and aim (Previts, Parker & Coffman 1990a). Some interviewees also provided written sources, particularly tax administration conference papers, submissions to government reviews and internal ATO presentations. Academic literature that was not written with the express purpose of providing a history of the CCM was also regarded as a source. Consequently, this research considered the following primary and secondary sources from the 1970s to 2000.

- Scholarly books;
- Journal articles;
- Working papers, conference papers and other unpublished research papers that were not written for the purpose of providing a history of the CCM;
- ATO publications;
- ATO PowerPoint presentations;
- Speeches given by Commissioners of Taxation, Deputy Commissioners and Assistant Commissioners;
- Speeches given by politicians;
- Hansard;
- Government taxation and finance reviews;
- Senate inquiry and other committee reports;
- Submissions to senate committees by interested parties;
- Miscellaneous government reports concerned with taxation or other relevant topics;
- Commentary from the professional accounting and taxation bodies;
- Newspaper articles.

Semi-structured interviews were also employed using a combination of open and closed questions that guided the interview as well as probing questions to draw out more information. Interviews represent a purposive rather than probabilistic data gathering technique being conducted until saturation is reached (Strauss & Corbin 1990 as cited in Bowen 2008; Morse 1995; Guest, Bunce & Johnson 2006; Glesne 2006; Marginson 2008). Here, saturation was reached after approximately 22 interviews; nevertheless 25 were conducted among the following three categories:

- Current and former ATO employees.
- Taxation academics.
- Other – comprising tax professionals or members of the Cash Economy Task Force who are not in any of the other categories above.

Table 1 provides details as to the numbers interviewed.

Table 1: Interviewee categories

Category of Interviewee	Number of interviews
ATO employees (former and current)	11
Academics	7
Other	7

Interviewees were chosen on the basis of their direct involvement in the development and adoption of the CCM and/or their experience with respect to the ATO's compliance approaches. Many interviewees, particularly within the ATO, held senior or middle management positions. Many of the interviewees had broad experience thus could be placed in more than one category. For example, an interviewee who was interviewed for their academic or professional experience may have also been previously employed by the ATO at some stage. Table 2 provides details of the richness of experience among the interviewees.

Table 2: Range of interviewee experience

Type of Experience	Number interviewed with such experience
ATO employee (former and current)	13
Academics	9
Cash Economy Task Force members	9
Interviewees with professional tax industry experience (ie non-academic and non-ATO experience)	6

Since the Enlightenment, historical scholarship has been influenced by three broad trends: historicism, social science and postmodernism (Appleby, Hunt & Jacob; Evans 1997; Budd 2009). This article regards the sources with the utmost importance since it is the mastery of the sources that is the hallmark of historical scholarship (Fleischman, Mills & Tyson 1996; Evans 1997; Tosh 2010). Therefore, in common with the historicists, this article seeks to produce an objective history where the sources are the keys to recounting the past (Evans 1997, Parker 1997; Budd 2009). This article also recognises the evolution in historiography since historicism and the weaknesses in that approach regarding a focus on political history and a consequent inability to consider broader ethical and moral issues surrounding historical events (Appleby, Hunt & Jacob 1994). Therefore this article is also influenced by social history and its associated utilisation of social science methods and theory in producing history (Appleby, Hunt & Jacob 1994; Parker 1999; Budd 2009). Finally, this article is influenced by postmodernism, which recognises the impact of the historian in producing the history (Appleby, Hunt & Jacob 1994; Evans 1997; Tosh 2010). This article, however, seeks to avoid the extremes of postmodernism, such as nihilism (Appleby, Hunt & Jacob 1994; Tosh 2010). Despite the influences of social science and the recognition of the historian's influence in producing history, sources remain vitally important since 'history is about evidence. It is also about other things: hunches, imagination, interpretation, guesswork. First and foremost, though, comes evidence: no evidence, no history' (Vincent 1995, p. 1).

Historical analysis involves making sense of the evidence through an ordering or reconstruction of it using a creative mental effort (Elton 1967; Stanford 1986). This may include using analytical techniques to organise and describe qualitative data, identify patterns among the data, create explanations, develop theories and linking stories to others (Fleishman, Mills & Tyson 1996; Glesne 2006). This research used thematic analysis for this purpose (Glesne 2006; Neuman 2011). In broad terms this involved coding the data among categories that were determined through the researcher reading and re-reading the texts and transcriptions and through inductive reasoning (Neuman 2011).

Writing the history is an essential part of the process of conducting historical research as well as being essential in communicating its reconstruction (Stanford 1986; Marius & Page 2005). There are many different types of history that can be produced ranging from narrative to interpretive histories, but even narratives employ some form of explanation (Stanford 1986; Previts, Parker & Coffman 1990a, b; Parker 1997). Since this research aims to explain the existence of the CCM, it has adopted an interpretive approach. To aid in the interpretation, the data was analysed through a critical the theoretical lens provided by Michel Foucault. The following section describes this lens.

4 THEORETICAL FRAMEWORK

As introduced above, this article is informed by the theoretical work of Michel Foucault. He wrote extensively about power and his theory regarding it became particularly developed in *Discipline and Punish: The Birth of the Prison* (1977; '*Discipline and Punish*'), in *The History of Sexuality* (1978) and in his writings on governmentality (Foucault 1977, 1978, 1991; Rouse 1994; Smart 2002; Mills 2003; Gutting 2005).

4.1 From brutal to gentle punishments

Discipline and Punish may be regarded as a case study in how the operation of power evolved from the mid 18th Century. Prior to the French Revolution, punishment took the form of public torture followed by executions which had the purpose of deterring crime and restoring power to the sovereign. A criminal act was interpreted as an offence directly against the sovereign since his or her laws were an extension of his or her body. Therefore punishments were a political ritual where the sovereign took vengeance for the crime in addition to the judicial purpose of the punishment (Foucault 1977; Schwan & Shapiro 2011). There were some unintended consequences of these brutal punishments which undermined its purpose. The lower socioeconomic classes believed that they were being unjustly targeted for punishment compared to the wealthier classes leading to uprisings and rebellions that accompanied some executions. This led to the criminal becoming a folk hero among his or her social class. The punishment was generally considered so disproportionate to the crime that it was losing its effect. Consequently, the harsh punishments effectively transferred power from the sovereign to the people (Foucault 1977).

As the French Revolution gave way to the Industrial Revolution, the Enlightenment reformers believed that the best approach was not to punish more but to punish better with the aim of rehabilitating criminals to become contributing members in society in terms of producing economic output (Foucault 1977; Rouse 1994; Delanty 2003; Gutting 2005; Schwan & Shapiro 2011). The reformers regarded executions as a waste of the human body, therefore a new form of punishment that instilled a liking of work into the criminal needed to be developed (Foucault 1977; Schwan & Shapiro 2011). It was believed that the right amount of punishment must be used to deter crime and the punishment must diminish as it produces the desired effect. While it was recognised that similar crimes should be punished in similar ways, it was also recognised that the same punishment does not necessarily have the same effect on everyone (Foucault 1977; Schwan & Shapiro 2011). Therefore, characteristics of the criminal and the crime were taken into account in determining punishment with the aid of experts providing advice to the judiciary. Such broad input made it difficult to determine who was responsible for the punishment. Prisons also meant that punishments were meted out in private making it more abstract in the minds of the public unless leading to exaggeration in society's imagination thereby creating a stronger deterrent (Foucault 1977; Schwan & Shapiro 2011). These various abstractions of punishment, plus its focus on rehabilitation, resulted in it shifting focus away from the body to the soul (Foucault 1977; Schwan & Shapiro 2011).

One of Foucault's key arguments is that a change in punishment is indicative of a change in the operation of power and in power relationships (Foucault 1977). Thus the nature of power changed from *sovereign power* to *disciplinary power* as prisons replaced executions as the predominant form of punishment after the French Revolution. Foucault's theory of power is unique since he regards it not as something that is manifested within one entity to be held, used and controlled at that entity's discretion, but rather it is dispersed across the whole of society and is enacted through discursive systems (Foucault 1977; Rouse 1994; Delanty 2003). Therefore power is strategic in nature (Foucault 1977; Rouse 1994; Delanty 2003; Mills 2003). Even though Foucault used the prison system to explain his theory, he argued that disciplinary power had spread through the whole of society to be used in schools, hospitals and factories. Consequently, society has become a disciplinary society where punishment became a

way of enacting power with the goal of producing behaviour instead of oppressing it (Foucault 1977, 1978; Mills 2003). Society also became a confessing society offering up information for institutions to use for behavioural control (Foucault 1978; Rouse 1994).

Another of Foucault's key arguments is that the rise of the social sciences is commensurate with disciplinary power since it relies on the knowledge gained through the use of social science methods and theories in order to understand and control the behaviour of individuals and populations (Foucault 1977, 1978; O'Farrell 2005; Schwan & Shapiro 2011). Foucault uses the French word *savoir* to refer to 'empirical, quantitative, rule- or skill-based' knowledge used by institutions to control behaviour (Schwan & Shapiro 2011, p. 47). For Foucault, power and knowledge are inseparable and this is why his theory of power is often referred to as *power/knowledge* (Mills 2003; Rouse 1994). Also characteristic of Foucault's theory is that power and resistance to power are similarly inseparable (Smart 2002; Mills 2003). This line of argument continued in *The History of Sexuality* as sexual behaviour was studied and categorised by experts so that an appropriate punishment may be meted out for delinquency with the aim of changing the behaviour to a more appropriate one (Foucault 1978; Gutting 2005). Universities and government agencies that conduct social science research would be regarded as institutions within the ambit of Foucault's theory since they produce knowledge, or *savoir*. Through the disciplinary process, the individual becomes an object of knowledge and power (O'Farrell 2005). Power is necessarily linked to surveillance due to power being created through the knowledge gained through surveillance (Delanty 2003). Power therefore operates through and with the aid of social interaction, discourse and knowledge (Foucault 1977; Rouse 1994; Delanty 2003; Mills 2003).

The CCM was also preceded by similar discontent that salary and wage and small business taxpayers were singled out for the ATO's attention while large business and the wealthy were not. The CCM also has a desire to punish better by selecting it with reference to the circumstances of noncompliance for rehabilitation. These similarities suggest that the CCM utilises a more strategic form of power (disciplinary power) as it tries to improve the compliance behaviour of taxpayers with the aid of the social sciences providing the necessary knowledge. The next section will describe the operation of disciplinary power.

4.2 Operation of disciplinary power

According to Foucault, disciplinary power rehabilitates through the creation of *docile bodies* which are defined as bodies that 'may be subjected, used, transformed and improved' (Foucault 1977, p. 138). He described various techniques of discipline that act to create docile bodies through controlling prisoners in terms of space and time. The first of these is the *enclosure*, a place or a space where people are physically confined (Foucault 1977; O'Farrell 2005; Schwan & Shapiro 2011). Schools, factories and hospitals are examples of enclosures in addition to prisons (Foucault 1977; O'Farrell 2005; Schwan & Shapiro 2011). Enclosures are further divided into *partitions*, such as prison cells, classrooms and the like (Foucault 1977; O'Farrell 2005; Schwan & Shapiro 2011). Enclosures and partitions had the purpose of controlling the movement of individuals, aiding observation and preventing rebellion (O'Farrell 2005; Schwan & Shapiro 2011).

Enclosures and partitions are supported by *functional sites*: multi-purpose architectural forms within prisons, schools, factories or hospitals (Foucault 1977; O'Farrell 2005). These are also designed to aid in observation but also to help make the individual produce output efficiently (Schwan & Shapiro 2011). Numerous sites exist within a factory since many small processes are carried on as part of the production of a complete product (Schwan & Shapiro 2011). Within these sites, individuals are classified and *ranked* according to various attributes (Foucault 1977; O'Farrell 2005). The rankings allowed for further partitioning so that each individual may be treated differently in accordance with his or her rank (Foucault 1977; Gutting 2005).

A key tool that emerged to control the distribution of individuals is the *table*. Foucault described this as a diagrammatic representation of the distributions of prisoners in space including the rankings (Foucault 1977; Schwan & Shapiro 2011). Indeed, Foucault (1977, p. 148) describes tables as a 'technique of power and a procedure of knowledge. It was a question of organizing [*sic*] the multiple, of providing oneself with an instrument to cover it, to master it; it was a question of imposing on it an "order"'. Individuals and their behaviour can therefore be ordered and understood through the drawing of a table to classify and impose order on observations.

It is possible to observe similar elements with respect to tax administration via the CCM. Taxpayers may not be able to be divided into specific physical spaces as Foucault suggested, instead the ATO organises taxpayers into notional spaces such as market segments. The CCM also ranks taxpayers in accordance with their motivational posture and thus are classified and ordered into a tabular like structure. These similarities suggest that the CCM incorporates disciplinary power.

Discipline also involves the control of the individual's activity in time with respect to when a task is done and how long it takes using strict time-tables (Foucault 1977; O'Farrell 2005; Schwan & Shapiro 2011). To control how long a task takes, activities were organised into specific steps or movements and given timeframes to complete the movements, like soldiers marching to a beat. The body was trained to move in an efficient manner with respect to itself and also with respect to any particular object that it uses, for example, a rifle or a pen (Foucault 1977; O'Farrell 2005; Schwan & Shapiro 2011). Such discipline trains the body to act like an efficient machine (Foucault 1977; Schwan & Shapiro 2011). It was also considered important that the body improves or develops over time (Foucault 1977; Schwan & Shapiro 2011). These various techniques serve to achieve discipline's aim of producing desirable behaviour rather than suppressing undesirable behaviour. All desirable behaviour must be performed as efficiently as possible with continuous improvement (Foucault 1977; Mills 2003; Schwan & Shapiro 2011).

In addition to the techniques of discipline, a mechanism of generalised surveillance is required to support discipline. This consists of three 'simple instruments', namely, hierarchical observation, the normalising gaze or judgement and the examination (Foucault 1977, p. 170; Gutting 2005; O'Farrell 2005; Schwan & Shapiro 2011). The examination is a combination of the other two (Foucault 1977; O'Farrell 2005). Each instrument will now be briefly discussed in turn.

4.2.1 *Hierarchical observation*

Hierarchical observation is a single gaze that is able to see everything constantly (Foucault 1977; Gutting 2005; Schwan & Shapiro 2011). Since it is not possible to observe a prisoner or other individual constantly, intermittent observation is used instead with the prisoner being unaware as to when they are being observed and when they are not. Thus intermittent observation creates a behaviour equivalent to being constantly observed since individuals subject to it must assume that they are being observed at all times (Gutting 2005). Hierarchical observation thus induces, 'in the inmate a state of consciousness and permanent visibility that assures the automatic functioning of power' (Foucault 1977, p. 201).

4.2.2 *Normalising judgement or gaze*

Normalising judgement, as might be expected, involves the use of norms to judge the behaviour of those being observed. Norms define what behaviour is abnormal and the threat of being considered abnormal steers or coerces individuals into behaving normally (Foucault 1977, 1978; Gutting 2005; Schwan & Shapiro 2011). The norms are internalised within the individual such that once it becomes clear to an individual that he or she strays from the norm, he or she will spontaneously take corrective action, or self-regulate, to comply with it (Foucault 1977, 1978; Gutting 2005; Schwan & Shapiro 2011). Many aspects of behaviour can be normalised once knowledge about that behaviour has been collected, usually in quantitative form (Foucault 1977, 1978; Schwan & Shapiro 2011). This means that disciplinary power has the ability to target areas not directly specified in the law (Foucault 1977; Gutting 2005; Schwan & Shapiro 2011). It also means that disciplinary power can make an inability to carry out a task an offense in itself (Foucault 1977, 1978; Mills 2003; Schwan & Shapiro 2011). When Foucault became concerned with the governing of populations in western neo-liberal democracies and in doing so formed his theory of governmentality, he believed that he had overemphasised the role of disciplinary power as a form of domination (Smart 2002; Delanty 2003; McKinlay et al. 2010). Consequently, he began to focus on the role of self-regulation in the governing of populations. Thus in governmentality, disciplinary power combines with sovereign power to align the behaviour of individuals within that population with the socio-economic goals of government, such as reduced crime, in a cost effective manner (Rose & Miller 1992; McKinlay et al. 2010). Governments use various technologies to achieve alignment, including the techniques of discipline and the mechanisms of generalised surveillance discussed herein.

4.2.3 *The examination*

Hierarchical observation and normalising judgment are combined in the examination (Foucault 1977; O'Farrell 2005). Examination brings observation and judgment down to the individual level so that each individual becomes a *case* with various characteristics being measured and compared against other cases (Gutting 2005; O'Farrell 2005). This occurs through three methods, the observation itself, documentation of the observations and the apparatus of writing that enables the documentation to be recorded (Foucault 1977; Schwan & Shapiro 2011).

At first instance, it is possible to see the mechanisms of generalised surveillance present in the CCM with its observation or surveillance of taxpayers and use of knowledge gained by application of BISEP to determine the appropriate response to noncompliance. In the process, taxpayers are regarded as cases to be examined for their

potential noncompliance with reference to norms and standards determined through the use of knowledge of a similar nature to BISEP. With Foucault's theoretical framework and its potential relevance to tax administration under the CCM outlined, the article will now discuss the history of the CCM with respect to administrative equity and administrative efficiency through a Foucauldian lens.

5 DISCUSSION

5.1 Perceptions of unfair treatment and harsh punishments

As discussed in Whait (2012), one of the drivers of the development and adoption of the CCM was a desire to create a more administratively equitable tax system. Further evidence can be produced to illustrate how a desire to achieve this was influential. This evidence revealed that the ATO was often inequitable in numerous ways when it came to audit conduct, collection of tax debts and in the manner that it applied penalties. Generally, the perception of certain taxpayers, some in the tax profession, those conducting inquiries into the ATO and the Commonwealth Ombudsman throughout the period under study was that some within ATO favoured the wealthy over the poor with the latter being subject to undue attention or unfavourable treatment. It must be noted that such practices were the result of only a small minority (Commonwealth of Australia 1993; Senate Economics References Committee 2000). Enough was made of these practices, however, that the ATO had to change. This section illustrates how this occurred, how this may be regarded as an inappropriate and ineffective use of power and how it led to the development and adoption of the CCM.

In 1992 the Senate Estimates References Committee, at which senior ATO officers including Commissioner Carmody were present, discussed instances of alleged poor treatment of taxpayers through auditor misconduct (Senate Estimates Committee 1992, p. 305). While the Committee did not believe that audit misconduct was a widespread problem, it recommended that the ATO do more to curb it (Senate Estimates Committee 1992, p. 305). The discussion continued in the Joint Committee of Public Accounts report *An Assessment of Tax* (Commonwealth of Australia 1993; McLennan 2003). This report was a result of the first major inquiry into the administration of Australia's tax system. Perceptions of inequitable treatment were also investigated by the Senate Economics References Committee during its extensive inquiry into the operation of Australia's tax system at the end of the 1990s (Senate Economics References Committee 2000). The latter inquiry concluded that the ATO 'treats small taxpayers unfairly and inequitably while it goes soft on the "big end of town"' (Senate Economics References Committee 2000, p. ix). With respect to audit conduct, the Senate Economics References Committee referred to instances of heavy-handed behaviour on the part of some ATO officers or sections. The Senate Economics References Committee also referred to a statement made by the accounting firm Arthur Anderson who believed that a minority of ATO officers appeared to view taxpayers 'almost by definition [as] [sic] dishonest cheats' (Senate Economics References Committee 2000, p. 21). Such poor conduct tended to manifest itself with respect to the application of tax penalties and the recovery of tax debts.

With respect to debt collection, the Commonwealth Ombudsman was critical of the ATO's wealth bias in his 1994/95 annual report and accused it of treating taxpayer's who owed it large sums of money differently compared to those who owed it small amounts (Lampe 1995). 'The big fish appear to be treated with kid gloves while the small ones are hit with a sledgehammer' (Lampe 1995). The Ombudsman also raised

concerns over mechanical treatment given to small debtors while the Joint Committee of Public Accounts and some in the profession commented that ATO audit officers at times placed too much emphasis on following procedure rather than achieving the appropriate outcome (Commonwealth of Australia 1993; Lampe 1995; Williams 1996). Criticisms of the ATO's treatment of debtors were raised at the Senate Economics References Committee a few years later (Senate Economics References Committee 2000). The criticism toward the ATO arising from its treatment of vulnerable people illustrates the political risks associated with taking unjustifiable action against them.

[if] we [are] perceived to prosecute little old ladies that were doing the wrong thing, we are in big trouble (ATO employee).

With respect to the ATO's power to penalise, some were of the view that the ATO applied penalties in an inflexible manner without consideration of the circumstances of the taxpayer (Wallschutzky & Gibson 1993 cited in Bird 1994; Oats 1996; Williams 1996). A new penalty regime adopted from the year ended 30 June 1993 expected taxpayers to take reasonable care with respect to their tax affairs and were penalised when they did not, but there was confusion regarding what constituted taking reasonable care leading to difficulties regarding the application of penalties (Coleman & Freeman 1994; Nethercott 1994; Pearson 1994). This confusion often led to penalties being automatically applied without reference to the circumstances of the taxpayer.

The administration of the provisions will likely lead to most taxpayers being subject to a 'standard' 25% penalty, whether they exercised reasonable care or not – because it is not worth the effort of finding out, and they are probably unaware of their rights to do so (Pearson 1994).

Similar concerns were also raised at the Senate Economics References Committee in the late 1990s which concluded that the unfairness of the ATO's penalty system was 'the most common issue of aggravation for taxpayers' which was poorly understood and inconsistently applied' (Senate Economics References Committee 2000, p. x).

The application of penalties by the ATO bears some resemblance to events just prior to the French Revolution (Foucault 1977) where not only did the lower social classes perceive that they were being singled out for punishment, but that the penalties applied were considered to be disproportionate to the offence. The Joint Committee of Public Accounts, the Senate Economics References Committee and the Commonwealth Ombudsman revealed the public's dissatisfaction with the treatment. As power was transferred to the lower social classes by extreme punishments just prior to the French Revolution (Foucault 1977; Schwan & Shapiro 2011), the ATO's penalties also transferred power to salary and wage and small business taxpayers. While these taxpayers did not engage in uprisings, they were able to respond via the Joint Committee of Public Accounts, the Senate Economics References Committee, the Commonwealth Ombudsman and associated discourse. Such events illustrate the political risks evident in some aspects of the ATO's administration of the tax system and that the nature of power and punishment needed to change. Indeed, the inquiries were largely concerned with how the ATO used its powers. To reduce the political risk and transfer power back to itself, the ATO needed to adopt a different, gentler, more strategic form of punishment.

The Joint Committee of Public Accounts noted that the ATO had been given 'exceptional powers' to administer the system and emphasised the importance of

‘establishing an administration which is fair, equitable and sufficiently flexible to manage the individuality of taxpayers’ (Commonwealth of Australia 1993, p. vii). The Joint Committee of Public Accounts sought to restore balance to the ATO’s administration that had ‘grown to ignore the people that it serves’ (Commonwealth of Australia 1993, p. vii). Thus the Joint Committee of Public Accounts emphasised the importance of an equitable tax administration and that the ATO had to improve its performance in that regard by using its powers more appropriately (Williams 1996; McLennan 2003). Similar concerns were raised at the Senate Economics References Committee (2000) that government agencies invested with wide powers ought to discharge those powers properly and fairly. Therefore the political risk for the ATO lay in the potential loss of power yet having to perform the same duties and achieve the same, or better, outcomes. This was implicit in the Joint Committee of Public Accounts report *An Assessment of Tax* (Commonwealth of Australia 1993).

There is a veiled threat in the attention drawn both to the ‘exceptional powers’ given to the ATO for its collection of tax and to the people who are ignored by the ATO. The inference is that it is open to parliament to curtail those ‘exceptional powers’ if they are used with an arrogant disregard or unless there is reform to redress the balance of power between the agency and taxpayers (McLennan 2003, p. 23 commenting on the Joint Committee of Public Accounts report).

It was never suggested in the inquiries that the whole of the ATO was using its power inappropriately. As the Senate Economics References Committee (2000, p. x) noted, however, ‘it only takes a minority of officers to act prejudicially and improperly for the organisation’s public reputation to be marred’. It also noted that:

Most ATO staff have succeeded in managing the challenge of balancing the interests of the revenue with interests of individuals. However, the evidence shows that some individual officers and local work areas have concentrated solely on the goal of revenue collection, contravening clear ATO corporate guidelines (Senate Economics References Committee 2000, p. x).

Thus two contrasting views of the ATO developed. One view regarded the ATO as a progressive organisation devoted to service improvement and professional conduct. Another view regarded the ATO as a harsh and inflexible organisation driven by procedure (Senate Economics References Committee 2000). The ATO needed to change the latter perception so that the majority saw the ATO as the former. The challenge for the ATO therefore lay in utilising its powers in a more effective and appropriate manner to maintain its legitimacy over tax administration. The Senate Economics References Committee’s comments show that many in the ATO were doing this, but the activities and approach of these ATO officers needed to become more widespread. The next section will discuss how the ATO saw the CCM as a means to change the nature of punishment and in doing so alter the power relations in order to reduce the political risks described above. The key to this change was in recognising that power is strategic in nature rather than a possession to be used at will.

5.2 The ATO’s response to its criticisms

Foucault informed this research, in part, by suggesting that the ATO’s response to the perceived inequity would entail a gentler form of punishment that would ‘achieve greater effectivity, regularity, constancy and detail’ (Smart 2002, p. 83). With respect

to the introduction of the prison system, such a punishment was determined with the aim of rehabilitating the criminal. Similar observations can be made in the development and adoption of the CCM. The first response that the ATO made in response to the above criticisms was essentially forced upon it by the Joint Committee of Public Accounts.

The Joint Committee of Public Accounts argued that ensuring proper conduct was the ATO's responsibility on an organisational level (Commonwealth of Australia 1993; Williams 1996). Therefore it recommended that the ATO adopt a *Taxpayers' Charter* to redress the balance of power between it and taxpayers (Commonwealth of Australia 1993; McLennan 2003). It was important for the tax system to be fair and seen to be fair and the *Taxpayers' Charter* was to help achieve that (Bentley 1995). Upon releasing the draft *Taxpayers' Charter* on 30 October 1995, Commissioner Carmody acknowledged that the ATO had wide-ranging powers and that a sense of balance between these and the rights of people in the community was required (Australian Taxation Office media release 95/46 as cited in Williams 1996; Edmonds 2010). After its adoption on 1 July 1997, the *Taxpayers' Charter* appeared not to gain widespread acceptance within the ATO, a development that Commissioner Carmody was disappointed about (Burgess 1995; Williams 1996; Senate Economics References Committee 2000; McLennan 2003; Commonwealth of Australia 2004).

He had been upset at the time that Taxpayers' Charter, a lot of work had gone into and it ... and it was like 'yeah beauty' and everyone just stuck it on their shelf. No one was using it or thinking about it or bringing it to life, and that concerned him, because that's about our obligations towards each other, us to the taxpayer, taxpayer to the ATO (ATO employee).

The Senate Economics References Committee blamed the lack of improvement with respect to the inequities discussed above on its lack of acceptance within the ATO.

Pockets remain among ATO staff that are resistant to the spirit and approach exemplified in the *Taxpayers' Charter* (Senate Economics References Committee 2000, p. x).

The CCM was specifically developed with the *Taxpayers' Charter* in mind to give it effect.

So then I used the Taxpayer [sic] Charter man and stuck that in the middle, and again if you look at the first report and you look at the Taxpayers' Charter you will see that there was a Charter man and that had been introduced one year before. So I put him in the middle of the BISEP, so this is what we were trying to understand and this is like the two way street that we're working with. The Commissioner took one look at it and he said, 'I love it – this is the way of bringing the Taxpayers' Charter to life' (ATO employee).

In November 1996, just prior to the adoption of the *Taxpayers' Charter*, Commissioner Carmody established a Cash Economy Task Force in an attempt to deal with increasing concerns about the cash economy (Australia, House of Representatives, *Questions Without Notice*, 1997, p. 4661). Some members of the Cash Economy Task Force expressed the view that penalties did not achieve compliance but only resulted in a taxpayer exiting the system altogether. The CCM gave the ATO a framework to become more flexible with respect to how it meted out penalties and this was a key reason why

the CCM became popular within the ATO (Commonwealth of Australia 1998). Applying penalties to taxpayers who genuinely found it difficult to comply was regarded as inequitable in the eyes of the Cash Economy Task Force members.

So if you knew your industry was really struggling and you're meeting with resistance you wouldn't go 'you bastard we'd give you a huge fine' you'd go 'look I know you're struggling I know this is happening and that's happening I've talked to others' so that you can actually show your understanding of the situation and then you say to them 'you're breaking the law we need to find some way of working this out we need to get this problem sorted' (Former Cash Economy Task Force member).

The CCM therefore allowed the ATO to move away from a one-size-fits-all approach to tax administration (Australian Taxation Office 1999). This was consistent with the principles of responsive regulation and made a clear distinction between those who were noncompliant due to various mitigating circumstances versus those who made a deliberate decision to be noncompliant. The Cash Economy Task Force, and those within the ATO behind the development of the CCM, were of the view that those two groups of taxpayers ought to be treated very differently. Through BISEP, the CCM thus took into account the social causes of noncompliance in a similar manner to which criminologists were advocating during that period (Brown 1990). The CCM allowed for a hierarchy of punishments based on compliance behaviour and attitude but also attempted to tailor any punishment to the circumstances of the taxpayer and his or her noncompliance. Foucault (1977) argued that some criminal behaviour became regarded as less serious after the French Revolution and a similar phenomenon occurred with respect to inadvertent noncompliance. He also argued (Foucault 1977; 1978) that different degrees of guilt ought to have different levels of punishment, although this ought to be influenced by whether the criminal ought to have been aware of the wrongness of his or her actions and the associated circumstances of those actions. As discussed above, the same punishment does not necessarily have the same effect on everyone; therefore it needs to be tailored to the circumstances of the criminal and the crime. Furthermore, punishment ought to diminish as it achieves its effect. Foucault also observed that experts advised the judiciary regarding the appropriate punishment (Foucault 1977; Schwan & Shapiro 2011). In a similar manner, criminologists and psychologists act as experts advising on the appropriate punishment for tax noncompliance via the compliance pyramid after gaining knowledge through the application of BISEP and its associated social sciences.

The ATO responded to concerns about inconsistent application of penalties raised at the Senate Economics References Committee by promising to update its information technology systems to track a taxpayer's past compliance behaviour and to support new approaches which allow for greater individualised treatment of taxpayers (Senate Economics References Committee 2000). The new approach adopted to achieve this was the CCM (Commonwealth of Australia 1998; Senate Economics References Committee 2000). The CCM was regarded as a tool to assist administration of the penalty regime.

And I think probably the compliance model was developed as a tool to assist, a genuine tool to administer, to help administer the penalty regime because they recognised under self-assessment that the onus ... is on taxpayers to get it right (Academic).

Foucault argued that the method of choosing the punishment advocated by the reformers had the advantage of diluting responsibility of the punishment making it difficult to determine who decided it. The CCM works in a similar manner since the ATO could deflect criticism of its approach by appealing to the CCM and its balanced method of dealing with taxpayers. The experiences of previous Commissioners of Taxation may have influenced a desire to adopt an apparently balanced approach to tax administration to deflect criticism.

And I think that was a context where ... Michael Carmody had seen Bill O'Reilly vilified for sitting on his hands and not being tough enough [on tax avoidance and bottom of the harbor schemes] and then he saw Bill O'Reilly's successor [Commissioner Boucher] being vilified for enforcement excess in Bronwyn Bishop's [MP] eyes at least and so how do we just not do this see saw back and forth (Academic).

Foucault (1977) argued that the changing nature of punishment reflected a shift in power relationships, specifically a shift from sovereign power to disciplinary power. This change was to bring about a more effective and strategic use of power. Therefore, the change in the nature of punishment that the CCM facilitated may also be interpreted as a change in power relationships between the ATO and taxpayers through the use of disciplinary power, although the CCM allows for sovereign power to be used if required in a manner consistent with Foucault's theory of governmentality (Foucault 1991). The ATO could then avoid the type of criticism that it had been subject to during the 1990s, reduce its exposure to political risk, take power back from taxpayers and continue to carry out its responsibilities. The CCM was adopted since it supported the *Taxpayers' Charter* and since stronger enforcement action is justifiable once cooperative measures have been trialled but failed (Commonwealth of Australia 1998). Throughout the development and adoption of the CCM, questions were being raised regarding the efficacy and appropriateness of compliance enforcement measures.

Is prosecution the best hammer we've got? (ATO employee).

I think the Task Force was also echoing some of that, you know, appropriate use of power can mean also you know – and also smart use of your powers and being clever about how you do your job, you know? (ATO employee).

It was also necessary that the new form of punishment and power be efficient (Foucault 1977; Smart 2002). The rest of this article will illustrate how the need for efficiency influenced the ATO to adopt disciplinary power within the CCM.

5.3 Disciplinary Power

As discussed in Whait (2012) the need for an efficient tax administration was one key driver that led to the development and adoption of the CCM. These pressures are likely to have come from New Public Management, a type of management that swept the world's public sector agencies from the 1970s onwards (Hood 1991, 1995; Wanna, Forster & Graham 1996; Olson, Guthrie & Humphrey 1998). New Public Management created an impetus for public sector agencies to become 'more efficient, more effective, more accountable, performance driven, orientated toward quality, best practice, client responsive, and commercially focused' (Wanna, Forster & Graham 1996, p. 1; see also Boucher 1996). Briefly, the ATO was expected to improve its performance and outcomes over time with progressively fewer resources. Self-assessment and risk

management were important steps toward that aim as they allowed the ATO to focus its resources on the risks to the revenue (Wickerson 1994a, 1995, 1996). Project Based Auditing was developed to support risk management by performing the initial risk assessment of taxpayers and ranking them in accordance with their risk to the revenue (Donoghue & Barry 1993). The broad influence of New Public Management can be seen in the ATO's expression of its primary goal of collecting the tax due at the least cost (Grabosky & Braithwaite 1986; Sutton 1992; Donoghue & Barry 1993; Saavé-Fairley & Sharma 1993; Wickerson 1994b). As alluded to above, disciplinary power was developed in the post Revolution period to enact an efficient form of punishment aimed at rehabilitation (Foucault 1977; Rouse 1994; Smart 2002). Such an interest in efficiency remained present in governmentality (Rose & Miller 1992). Therefore, on face value, there are a number of similarities between the post Revolution era and the 1990s tax administration in Australia which led to the ATO adopting disciplinary power within the CCM. It will be shown that this was a relatively slow process taking almost a decade to complete.

5.3.1 *Techniques of discipline*

When Public Based Auditing was adopted in 1989, the ATO realised that 'solutions to noncompliance are often not audit based' (Donoghue & Barry 1993, p. 16). Instead, education, service and cooperation were regarded as tools that could achieve long-term compliance (Sutton 1992, 1995; Sutton & Donohoe 1993; Donoghue & Barry 1993; Bird 1994; Wickerson 1993, 1994b, 1995). To facilitate the provision of services and education in an efficient manner, from 1991 the ATO sought to apply market segmentation principles by dividing taxpayers into segments based on size and type, for example, 'non-business individuals' and 'large/medium business' (Sutton 1992; Boucher 1993). The ATO's operations were streamlined into those segments over the next few years so that it could develop 'an appropriate service, enforcement, systems and collection mix for each of these markets' (Boucher 1993, p. 231). In the small and medium business segment, where Public Based Auditing was most utilised, taxpayers were further divided into 350 to 370 industries (Wickerson 1994b; Goss 1995). Industries in which Public Based Auditing was conducted were ranked in accordance with their risk to the revenue on a scale from the highest to lowest with taxpayers in the highest three risk categories becoming subject to further attention (Donoghue & Barry 1993).

Market segmentation was part of the ATO's risk management strategy since it recognised that different taxpayers posed different risks that ought to be treated with different levels of service and education (Sutton 1992; Sutton & Donohoe 1993; Bird 1994). It was also regarded as an efficient strategy since the ATO believed that future compliance was more likely to be forthcoming without ATO intervention if it could help taxpayers to comply through education and service allowing resources to be allocated elsewhere (Sutton 1992; Sutton & Donohoe 1993; Bird 1994).

In order to continuously improve, the ATO refined this approach throughout the early to mid 1990s by seeking to achieve a greater understanding of taxpayers' needs for the purpose of providing more tailored education, service and enforcement and to also allocate resources more efficiently (Sutton 1992, Baldry 1993; Saavé-Fairley & Sharma 1993; Sutton & Donohoe 1993; Bird 1994; Wickerson 1994b). The provision of service and education to help taxpayers comply is essentially identical to what the CCM advocates at its base.

The ATO's compliance strategy as described above appears to arrange taxpayers in space, albeit notional, and time in accordance with the techniques of discipline (Foucault 1977). As Foucault described in *Discipline and Punish*, the enclosure was described as a clearly defined space such as a prison or a hospital where the group being regulated is clearly defined as prisoners or patients. Although the ATO pays more attention to some taxpayers than others, it nevertheless regulates all taxpayers and thus the entire taxpaying population may be regarded as the enclosure. The ATO has no jurisdictional authority over citizens who are not taxpayers in a similar fashion to prison guards having no authority over free citizens. The market segments just described may represent partitions within the enclosure. Within these partitions, the ATO further divides taxpayers into functional sites that comprise the industries or occupations of each taxpayer. These may be further divided based on the taxpayer's location. These industries and occupations are ranked by their risk to the revenue. Through these processes the taxpayer became a case in the Foucauldian sense so that the ATO could assess the taxpayer's risk to the revenue and develop a treatment for noncompliance if required. Later, the BISEP model was also used to rank taxpayers in accordance with their propensity toward noncompliance and the compliance pyramid was used to determine the appropriate response to that propensity. Thus, rather than using tables to order and understand those being regulated as Foucault describes, the ATO instead uses information technology, statistical and financial analysis and the CCM to assess and control taxpaying behaviour (Donoghue & Barry 1993; Wickerson 1994b; Braithwaite & Braithwaite 2001; Braithwaite, V 2002a). Foucault argues that the techniques of discipline are established for the purposes of observation and control; therefore it is arguable that the CCM is performing the same function since it appears to use many techniques of discipline.

Discipline also controls a taxpayer's behaviour in time with the aim of making the taxpayer more efficient (Foucault 1977). As the Joint Committee of Public Accounts noted, the ATO 'plays a vitally important role in the efficiency of the Australian Economy' (Commonwealth of Australia 1993, p. vii) and its method of administration may have a substantial effect on it. A more cooperative approach is likely to increase productivity in business due to it not having to undergo intrusive and costly audits. It has been discussed above how the ATO sought to provide customer service to taxpayers with the reasoning that if taxpayers have their queries dealt with efficiently then the ATO also becomes more efficient (Sutton 1992; Sutton & Donohoe 1993; Bird 1994). Taxpayer compliance costs may therefore be regarded as a proxy for ATO efficiency (Gibson & Wallschutzsky 1993; Bird 1994; Richter 1995). For example, both the ATO and the taxpayer will benefit if the time taken to finalise a dispute is reduced (Bird 1994). Another important aspect of controlling a taxpayer's time efficiency was with respect to deadlines for various lodgements and other responsibilities such as information requests. These were regarded as a measure of compliance in addition to the payment of the appropriate amount of tax and the ATO regards failure to lodge or provide other materials on time as a potential indicator of more serious noncompliance.

Thus the CCM can be interpreted from the Foucauldian perspective as a means to control taxpayer behaviour through disciplinary power rather than sovereign power, although sovereign power remains an option for those determined to not comply. Since Foucault's view of power seeks to encourage behaviour rather than oppress it, the CCM can be regarded as a positive means of controlling behaviour rather than a negative one. Consequently, Foucault's theory of power/knowledge may be regarded as a carrot rather

than a stick where the carrot is used to encourage taxpayers to comply in contrast to the stick which is used to punish or oppress undesirable behaviour.

For Foucault, knowledge, or *savoir*, and power are inseparable (Foucault 1977; Schwan & Shapiro 2011). This suggests that the ATO relies on knowledge to give it power. The next section will show how the ATO gains that knowledge through surveillance and in doing so was able to gain more power of a disciplinary kind and gradually shift the emphasis away from sole reliance on sovereign power that it had traditionally used.

5.3.2 Mechanisms of generalised surveillance

The techniques of discipline are supported by a mechanism of general surveillance encompassing hierarchical observation, the normalising gaze and the examination (Foucault 1977; Schwan & Shapiro 2011). The ATO developed methods to achieve surveillance in a number of ways in a progressive fashion after adopting self-assessment. These included data matching (Jungwirth 1995) and financial ratio analysis (Donoghue & Barry 1993). The ATO implemented these methods as part of its risk management system to locate the risks to the revenue but over time it realised these techniques could be used to alter compliance behaviour when the taxpayer became aware of the observation.

A desire to deal with compliance issues in the small business segment was influential in the ATO adapting its approach and undertaking more active and public surveillance of taxpayers. Studies indicated that the small business segment was the least compliant and that small business did not engage with the education and services provided by the ATO due to having more pressing business concerns (McKerchar 1993; Bird 1994; Mitchell 1995). Furthermore, the small business segment was quite diverse making the tailoring of solutions difficult to develop (Mitchell 1995; Hite 1997). The ATO believed that the answer to this issue was to gain a deeper understanding of the various small business segments (Bird 1994). One segment that became a focus was the cash economy (Commonwealth of Australia 1998). The ATO specifically sought to understand why the community considered it acceptable to not pay tax on cash income (Australian Taxation Office 1997). Up to this point, in 1997, the ATO had developed numerous responses to noncompliance that were later to become part of the CCM. Such techniques included using letters to publicise the results of Project Based Auditing among the relevant industries (Donoghue & Barry 1993). Another technique that was not apparently practiced widely until after the CCM was adopted, was to gain cooperation of the relevant industry body that was regarded as a risk. This occurred with respect to the taxi industry where the ATO was able to gain special knowledge through such cooperation and use it to improve compliance (Findlay & Steele 1995). For example, since taxi drivers kept very good records of the kilometres they travelled for their tyre warranty, the ATO was able to calculate how many kilometres a taxi travelled per year. The ATO learned from the taxi industry what a taxi ought to earn per kilometre travelled.

And we went along to this big conference in Canberra and I presented this whole thing and when we actually gave out to everybody, all our research on the taxi industry and the next tax year everyone's compliance went up dramatically. I forget the exact numbers, but it was over 20 million dollars in additional revenue above what we expected, from just publicising and taking that information out (ATO employee).

Similar types of data was used in the paint industry and the fish and chip shop industry with respect to the amount of paint required to paint a room or the amount of fish required for a serve of fish and chips. This knowledge was used to assess the likely noncompliance of the taxpayer in those industries. These examples illustrate how society became a confessing society in accordance with Foucauldian theory.

Some techniques were newly developed during the Cash Economy Task Force. One technique was the real time review (Commonwealth of Australia 1998). These reviews differed from an audit since they simply involved observation of the business. In a similar fashion to what occurred in the taxi industry, a business was chosen on the basis of its deviation from an industry norm where businesses, say restaurants, in the same location were compared to each other. Instead of auditing all the outliers, the ATO decided to visit one explaining that a review would be preferable to an invasive and costly audit. Thus the ATO achieved a certain level of cooperation immediately. Through the review, the ATO proceeded to check various details such as the wages paid compared to turnover or the number of staff present, or the number of tablecloths washed compared to the laundry bill. Such checks helped tackle the cash economy since some employees were being paid cash and were not officially on the books. The real time reviews were successful in achieving the long-term compliance with respect to a number of measures such as the number of on-time lodgments and taxes paid.

... and what we ended up was creating something called a real-time review which is basically an opportunity to visit a business, explain what we are doing and almost give an option to, 'look we have got reasons to suspect that we might need to do an audit, that is going to be quite intrusive and costly. You would have to get an accountant, or you can just agree for us to drop in unannounced over the next few months, just once or twice or three times over that period and we will just do a few things like check your wages book and see how things are going.' And lo and behold, it was amazing. I think on average there was an 8 percent increase in the number of employees, there was like a 15 percent increase in the turnover of visited businesses and you think well that's interesting isn't it? Just the presence, just the watch, just the attention is having this effect; and I guess that was a shock to some of the auditors who didn't want to be just turning up to make sure all the employees on the premises are in the wages book ... (ATO employee).

For the aforementioned strategies under the CCM to be successful, the ATO had to demonstrate to taxpayers that it possessed relevant knowledge and that it was prepared to act on it if required. Such knowledge could arise from normative ratio analysis, data matching, or from its interaction with taxpayers to show that the taxpayer was a potential risk to the revenue. The ATO could therefore demonstrate that its audits were not random but targeted. Constant observation was not required, since, for example, the ATO could drop in at any time unannounced during the review. Such attention from the ATO would send ripples through the industry such that if one taxpayer had a visit from an ATO officer, others within the industry may wonder if they would be next to be visited and change their behaviour in preparation for it. A Foucauldian perspective suggests that there may also have been some abstraction of the punishment in the minds of taxpayers yet to be reviewed which might have also influenced them to comply. Overall, the new approach to compliance generally produced the desired behaviour, namely, increased voluntary compliance, at least in the short-term.

While many approaches to improve compliance discussed above were being used by the ATO before the CCM was adopted, they all became formalised in the hierarchical pyramidal structure of the CCM. Education and service to make it easy for taxpayers to comply can be found at the base of the CCM whereas more persuasive techniques such as real time reviews and utilisation of information gained through risk assessment are within the ambit of the CCM's second level. The next two levels of the CCM consist of traditional deterrence strategies. Foucault informs this history by highlighting how the CCM may be regarded as a formalised system of disciplinary power. This is because the CCM appears to contain many of the techniques of discipline and methods of generalised surveillance encompassing hierarchical observation and a normalising judgment combined together in some form of examination such as a real time review. This interpretation appears to be particularly valid when it is considered that the goal of the CCM is to produce compliant behaviour rather than suppress noncompliant behaviour. Only Foucault's view of power has such a productive quality (Foucault 1977, 1978; Mills 2003; Schwan & Shapiro 2011). The relationship between power and knowledge is particularly evident from the ATO's use of knowledge to encourage compliance. Consequently, the CCM may be considered, at least with respect to the bottom two levels, as a form of disciplinary power. Foucault (1977) argued that disciplinary power had dispersed throughout society and was not simply a domain of the prison system. It is perhaps not surprising to see that the ATO uses it in addition to schools, hospitals and the military.

5.4 Implications

There are a few of implications that can be gained from the history presented herein. The Foucauldian lens applied reveals the powerful ability of the probability of detection to positively influence compliance behaviour providing that taxpayers are aware of such a probability. This is because under the CCM, audits are not random, but targeted based on knowledge or *savoir*. Furthermore, the above discussion illustrates the use of probability of detection within a compliance or cooperative setting rather than its traditional deterrence setting. Thus probability of detection may be regarded as a technique of persuasion meaning that the distinction between deterrence and compliance methods or variables may be artificial. Indeed, Foucauldian thought re-establishes the influence of probability of detection on voluntary compliance after a period where it was somewhat discredited (Bardsley 1994; Braithwaite & Braithwaite 2001). Since it can be used in a deterrence or compliance setting, it is a potentially powerful factor in improving compliance over which the ATO has a great deal of control.

Related to this implication is that risk management strategies themselves are an effective method of achieving compliance since they may increase the probability of detection. Consequently, improving methods of determining the risks to the revenue have a dual effect in guiding the allocation of scarce resources as well as improving compliance. Continuing to refine these techniques is therefore paramount to the success of future compliance activity. Qualitative information is generally more difficult to analyse than quantitative. While the BISEP model tries to include more qualitative information than has been traditionally used, it is likely that quantitative information takes precedence in any analysis. If this is the case, then intelligent solutions to collect, manage and interpret qualitative information ought to be developed especially since a great deal of information used today is in qualitative form. Foucault regarded the knowledge, or *savoir*, on which disciplinary power relies as knowledge that is officiated by institutions

and emerges from them (Foucault 1977). This implies that *savoir* goes through a process within each institution before it is used. The ATO will need to be careful that whatever process it uses to officiate its knowledge does not lead to its corruption and that there are no bias in its selection.

While the CCM takes into account and attempts to deal with the social causes of noncompliance, it continues to use deterrence measures for those who are determined to remain noncompliant. The noncompliance of these taxpayers may not be due to his or her circumstances, but rather due to some attribute within him or herself themselves that creates a desire to be noncompliant. This means that any BISEP analysis and associated response may be ineffective against taxpayers that are determined not to comply. Such a possibility was raised in an interview with Michel Foucault where the interviewee noted that:

In discourses about crime, the straightforward condemnation of the nineteenth century: “He steals because he is evil”, has given way to explanation: “He steals because he is poor”, and also to the attitude that it is worse to steal when one is rich than when one is poor (Gordon 1980, p. 44).

As this article has shown, such a change in view took place during the development and adoption of the CCM and in the preceding decade. Foucault agreed with the interviewer’s comment, but added (Gordon 1980, p. 44):

If that were all, perhaps one could feel confident and hopeful. But along with that, isn’t there any explanatory discourse that involves a number of dangers? He steals because he is poor, certainly, but we all know that all poor people don’t steal. So for this individual to steal there has to be something wrong with him, and this is his character, his psyche, his upbringing, his unconsciousness, his desires.

Foucault (1967) had previously made the connection between the penal system and medicine in *Madness and Civilisation* where psychiatry was used to treat criminality as if it were a disease. Therefore, there appears to be two prevailing views regarding criminality; that it is due to social causes and/or due to the criminal’s psyche. The ethics and morals of the taxpayer have been shown to be important in tax compliance but determining what influences a taxpayer’s ethics and morals has been problematic (McKerchar, Bloomquist & Pope 2012; Pope & McKerchar 2012).

So far, tax administration has been considered from economic and psychological viewpoint. Foucault (1967) illustrated the link between delinquent behaviour and medicine, but perhaps it is time to consider whether the disciplines of ethics and philosophy can contribute. Insights from the field of neuroscience have begun to inform research in finance decision-making giving rise to the new discipline of neuroeconomics which may also prove fruitful with respect to understanding tax compliance decision-making (Camerer, Loewenstein & Prelec 2005; Peterson 2007; Bossaerts 2009; Howard 2012). Therefore, further engagement with academic discourse in that discipline may be required if further improvements in tax compliance are to be made.

6 CONCLUSION

This research has considered the role of the ATO’s desire to understand taxpayer compliance behaviour in the development and adoption of the CCM. In order for the ATO to administer the tax system in an administrative equitable and efficient manner,

it had to learn about taxpayer behaviour to detect noncompliance and to respond to it. Through this process, the ATO realised that a subtler use of power would improve compliance. It also realised that observation and surveillance combined with appropriate knowledge and communication of it could improve compliance. From a Foucauldian perspective, it is arguable that the CCM utilises many techniques of discipline and the mechanisms of generalised surveillance that are characteristic of disciplinary power. This perspective produced some implications that have been discussed above.

This research has considered the history of the CCM from a Foucauldian perspective, but it has not revealed how the responses to noncompliance came to be formed within the hierarchical structure of the CCM, nor has it discussed how motivational posturing theory came to be combined with responsive regulation theory in the CCM. Neither has it discussed how the BISEP model was developed. Future research will address these aspects of the CCM's history. It is suggested that Foucault's theory of discourse will be useful for this purpose due to the ability of discourse to produce knowledge.

Also not explored in depth in this research are the difficulties raised by Smart (2002) and Mills (2003) regarding the relationship between power and resistance. These scholars discussed the gap in Foucault's writings regarding how resistance and power operate and why some choose to acquiesce while others resist. The data on which this article is based as well as more contemporary data may be used to further understand the relationship between power and resistance more completely. Understanding why some resist and others acquiesce may be vitally important in improving voluntary compliance.

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