Regulatory Styles, Motivational Postures and Nursing Home Compliance*

VALERIE BRAITHWAITE, JOHN BRAITHWAITE, DIANE GIBSON, and TONI MAKKAI

Using Kagan and Scholz' (1984) typology of regulatory noncompliance, this study examined the perceptions of regulators and of regulatees toward the regulatory encounter to predict subsequent compliance with nursing home quality of care standards. Appraisals of both regulators and regulatees were not driven by motivational analyses of each other's actions, but rather by assessments of performance and social group identity. The regulators saw nursing homes in terms of one evaluative dimension ranging from responsible and not in need of intervention through to irresponsible and needing intervention. The corresponding reactions of nursing home managers involved seeing the regulators as cooperative and sympathetic through to police-like and coercive. On both sides of the regulatory encounter, criticism and reactions to criticism swamped nuanced analyses of motivational underpinnings and rational decision models in explaining compliance. The motivational complexity underlying the Kagan and Scholz typology was, however, apparent in the self-reported motivational postures of managers toward the regulatory process. The postures of managerial accommodation and capture to the regulatory culture were associated with compliance. Over time, resisters to the new regulatory regime became more compliant, particularly those whom inspectors judged as best left alone to adjust. In contrast were managers whose response to the regulatory process was disengagement. Their organizations experienced deterioration in compliance. The study fails to find that certain kinds of regulatory strategies such as deterrence, education and persuasion work better than others across the sample or with specific groups. Extant models focus excessively on how to play the regulatory game without recognizing the potential for players dropping out of the game. Understanding reasons for disengagement and processes for reengagement are fundamental to the application of behavioral decision theory models to the regulatory context.

I. INTRODUCTION

In a bid to highlight the different orientations to compliance existing in the business and regulatory communities, Kagan and Scholz (1984) have proposed three images of corporations that fail to comply with the law. These

* This project has enjoyed the funding support of the Australian Department of Community Services and Health, the Australian Research Council, the American Bar Foundation and the Australian National University. The authors are indebted to the support of their colleagues on the Nursing Home Regulation in Action project, David Ermann and Miriam Landau.

Requests for reprints should be sent to Valerie Braithwaite, Research School of the Social Sciences, The Australian National University, Canberra, A.C.T., Australia, 0200.

LAW & POLICY, Vol. 16, No. 4, October 1994 ISSN 0265-8240
© Basil Blackwell Ltd. 1994, 108 Cowley Road, Oxford OX4 1JF, UK and 238 Main Street, Cambridge, MA 02142, USA.

HeinOnline -- 16 Law & Pol'y 363 1994

images not only offer different explanations for why noncompliance occurs but also carry with them their own regulatory enforcement strategy.

The image of the *amoral calculator* is of a business firm in which noncompliance is justified by economic opportunity and profit. Where law violation is expected to increase profits, a regulatory strategy of deterrence is required. The regulatory agency should adopt a police-like strategy, undertaking aggressive inspection and the prompt use of penalties, and showing indifference to excuses and extenuating circumstances.

The second image of the business firm is as a *political citizen*, generally complying with legislation, but being prepared to disobey in cases of principled disagreement or if the law appears arbitrary or unreasonable. Under these circumstances, the regulator must persuade the firm of the rationality of the regulation, but be prepared to bargain and compromise, adapting the law to genuine business problems. Firms that adopt the political citizen role need negotiating regulators.

The third image is of firms whose regulatory violations are unintended. The firm is seen to be *organizationally incompetent*. The enforcement strategy following from this type of noncompliance is to analyze informational gaps and organizational weaknesses so that the firm can be educated to ensure future compliance. According to Kagan and Scholz, in this case the regulator "should serve in large part as a consultant" (1984, 68).

The theory proposed by Kagan and Scholz (1984) is normative. Its contribution to date has been in recognizing multiple causes of noncompliance and the adoption of different regulatory strategies depending on the motivations of the noncompliant actor. Kagan and Scholz conclude that the implication of the model for regulatory practice is adaptability:

> Regulators should be alert to the possibility that violations may derive either from amoral calculation, principled disagreement, or incompetence. Inspectors should be prepared to shift from strict policemen, to politician, to consultant and back again according to their analysis of the particular case. (Ibid., 86)

If the model is to have practical application, a number of issues need to be addressed empirically. First, regulatory styles are more meaningfully taught to those who regulate if the conceptual schema bears some relationship to the categories that regulators use when they do their job. Do regulators actually consider reasons for noncompliance, classifying actors as having amoral or political motives, or as failing to comply because of incompetence? Secondly, if they do judge noncompliers according to such motives, do they tailor their regulatory strategy to what they believe the situation requires? As Lipsky (1980) and Day and Klein (1987) have observed, formal regulatory policy in central office frequently differs from the regulatory strategies used by "street level bureaucrats" out in the field. One explanation for departure from official policy is that regulators rely on their private interpretations of why noncompliance has occurred, and these interpretations shape the way they go about eliciting future compliance.

© Basil Blackwell Ltd. 1994

HeinOnline -- 16 Law & Pol'y 364 1994

A third issue for empirical scrutiny is the effectiveness of the approach that regulators use. The Kagan and Scholz (1984) model offers strong hypotheses about the strategy most suited to a particular type of noncompliance. The expectation is that deterrence will be an effective regulatory response for an amoral calculator, but not for an incompetent manager or a political citizen. Persuasion and compromise appear to be the appropriate tools for regulators facing noncompliance by political citizens, but are less likely to be useful with those who lack competence or who are evading the law to maximize profits. Those who fail to comply through incompetence are most likely to benefit from a consultant approach, a regulatory style that is unlikely to change the behavior of amoral calculators and political citizens who are asking, "Why do it?," rather than "How do I do it?."

Fourth, the question arises of whether diagnostic regulators can correctly identify amoral calculation, incompetent management, and political citizenship. If they mistake an incompetent manager for an amoral calculator, their efforts to increase compliance may seriously go awry.

Finally, in applying the Kagan and Scholz (1984) model to a specific regulatory context, the assumption is made that the concepts of amoral calculator, political citizen and incompetent manager adequately capture the motivational orientations that lead noncompliers to behave as they do. The motives have a high degree of face validity from the perspective of the regulator because they offer sensible explanations for noncompliance. It is an empirical question, however, whether noncompliers think of compliance and noncompliance in these terms. If they do not, attributing such motivations to them may be offensive and alienating, leading to a backlash against authority rather than motivation to comply with authority.

II. RESEARCH GOALS

The purpose of this article is to explore these issues within the regulatory context of improving compliance with government standards in the Australian nursing home industry. The research was designed to address the following six questions:

(a) Do regulators recognize organizations as amoral calculators, political citizens, or incompetent managers?
(b) Is the extent of the regulators' use of the enforcement strategies of deterrence, persuasion and education tied to the way in which they have classified the organization as, respectively, amoral, a political citizen, or incompetent?
(c) Do those on the receiving end of the inspection event (nursing home directors) perceive regulators as adopting police-like, negotiator-like, and consultant-like attitudes and actions?

© Basil Blackwell Ltd. 1994

HeinOnline -- 16 Law & Pol'y 365 1994

(d) What are the categories that those being regulated use to describe their orientation to the regulatory process? Do they think of themselves in terms of being profit-maximizers or political citizens or incompetent managers, or do they adopt different discourses to explain their performance vis-a-vis the regulatory requirements?
(e) Do the categories used by those being regulated to describe their own orientation to regulatory requirements bear a relationship to the way in which the regulator classifies them and behaves toward them? In other words, is (d) correlated with (a), (b), and (c) above, or is there a mismatch between discourses from the regulator's perspective and from the regulatee's perspective?
(f) Does correct matching of regulatory style by the regulator (a, b, and c above) with the motivational posture of the regulatee (d above) increase the likelihood of compliance?

The nursing home industry provided an ideal context in which to examine these propositions. Day and Klein (1987) studied the regulatory styles used in the United States and Britain by nursing home inspectors and concluded that, in spite of formal guidelines from central office, inspectors exercised considerable independence in the way they operated. They attributed this finding, in part, to the fact that most inspectors were nurses, whose professional socialization influenced the way in which they dealt with noncompliant nursing homes.

In Australia, where nurses also play a central role in the regulatory process, variability in style was documented through fieldwork observing fifty-nine inspection events and participating in courses for the training of inspectors.[1] The Australian regulatory system advocates the use of a plurality of regulatory strategies. In general, regulators are expected to use persuasion and education techniques. In exceptional circumstances, deterrence is regarded as being appropriate. Consultation is used in a particular form. Regulators are allowed to discuss options, but they are not to instruct nursing homes on how they should go about achieving compliance.

A. THE AUSTRALIAN NURSING HOME INDUSTRY

The responsibility for running a nursing home in Australia lies with the director of nursing. Responsibilities for administration, nursing, dietary matters, and social activities are not distributed across middle managers, as is the case in U.S. nursing homes. Directors of nursing are, therefore, the key actors in the Australian system for determining whether the nursing home is meeting the standards set by the Australian government. At the same time, it is important to acknowledge that directors of nursing are generally answerable to proprietors or boards of management that may play a significant role, particularly in setting budgetary constraints.

© Basil Blackwell Ltd. 1994

HeinOnline -- 16 Law & Pol'y 366 1994

The current regulatory system has been in place since 1987 and involves inspection teams, usually comprising two to three members, visiting each nursing home on a two-year cycle. The monitoring process is based on thirty-one outcome standards which have been grouped under seven broad objectives: (1) health care, (2) social independence, (3) freedom of choice, (4) homelike environment, (5) privacy and dignity, (6) variety of experience, and (7) safety. On each standard, nursing homes are given a grading of "met," "action required," or "urgent action required." These standards and their assessment have been discussed in detail elsewhere (Braithwaite et al. 1990, 1991, 1993). On completion of the visit, inspection teams return to their offices to deliberate on what compliance ratings they should give and what sort of report they should write. This report is given to the nursing home (verbally in the first instance) and is the basis for dialogue between the inspection teams and the director of nursing. Follow-up visits and further dialogue usually occur to ensure that problems identified in the report are rectified.

The key players in the Australian nursing home regulatory context, therefore, are the director of nursing and the inspection team. This paper is centered around the responses of these actors to each other and to the regulatory process, and examines the subsequent effect on compliance with the thirty-one standards.

B. MEASURING COMPLIANCE

Compliance was operationalized as the extent to which each home met the thirty-one regulatory standards. For each nursing home in the sample, scores on the standards were summed. Homes were given a score of 1 if the standard was met, .5 if action was required, and 0 if urgent action was required. In theory, scores could range from 0 to 31 with 31 representing full compliance. As expected, the distribution of scores was skewed, the median being 27.5. It is of note, however, that only 8 percent of homes were in compliance with the legislation. The development of the compliance measure has been discussed in detail elsewhere (Braithwaite et al. 1990, 1993).

C. THE DATA BASE

Quantitative data were collected on a sample of 410 nursing homes from four sources. In addition to inspectors' ratings on the thirty-one standards, inspection teams completed a research questionnaire in which they were asked to provide us with a confidential assessment of their visit to each of the sampled homes. Research interviews were also conducted with the directors of nursing after the inspection was completed to obtain their perspective on the regulatory requirements and their experience with the team. The fourth source of data, obtained some eighteen to twenty months

© Basil Blackwell Ltd. 1994

HeinOnline -- 16 Law & Pol'y 367 1994

later, comprised a second set of compliance ratings on the thirty-one standards for the sampled homes on their next full inspection visit. The data were collected between May 1988 and December 1991.

D. THE SAMPLE

The nursing homes surveyed were located in four geographical regions surrounding Brisbane (QLD), Sydney (NSW), Melbourne (VIC), and Adelaide (SA). The 410 homes were selected in two ways. Two hundred and forty-two homes represented a proportionate random sample, stratified by number of beds, type of ownership, and the level of disability of residents. The Australian government agreed to visit the randomly selected homes by the end of 1989. The response rate was 96 percent. The remaining 168 nursing homes were within the sampling regions, being all the other cooperating nursing homes visited by inspection teams within the time frame. These homes had not been chosen as part of the random sample. Preliminary analyses have shown that the random sample and the supplementary sample do not differ on a range of important variables (Braithwaite et al. 1990). Thus, the present analyses are based on two samples combined.

III. PRESENTATION OF RESEARCH FINDINGS

The results of the data analyses used to address the major questions outlined above will be presented in six sections. In section A, data from the inspection teams are analyzed to examine the way in which nursing homes are classified and preferences for enforcement strategies are derived. In section B, data from the directors of nursing are analyzed to investigate their perceptions of the team's behavior and their interpretations of the way in which the team treated them. Section C then examines the link between data presented in sections A and B. In section D, the focus changes from the regulatory style of the inspection team to the motivational posture of the regulatee. Section E looks at the degree to which the regulatory discourse of regulators regarding noncompliance is compatible with the discourse of the regulatees. Finally, section F uses multiple linear regression analysis to test for the effects that the regulatory styles of the regulators and the motivational postures of the regulatees have on future compliance.

A. THE REGULATOR'S PERSPECTIVE

1. *Do Regulators Recognize Nursing Home Directors as Amoral Calculators, Political Citizens, or Incompetent Managers?*

The measurement technique used to assess the inspection teams' tendency to regard the nursing home director as an amoral calculator, a political citizen

© Basil Blackwell Ltd. 1994

HeinOnline -- 16 Law & Pol'y 368 1994

or an incompetent manager was a modified form of Osgood, Suci, and Tannenbaum's (1957) semantic differential.[2] Teams were asked to rate the nursing home director on a set of seven-point rating scales. Each scale was bipolar with a descriptor used to define each pole. Rather than use the generalized adjectives traditionally adopted with the semantic differential, descriptors were collected from conversations with inspectors in training sessions and in the field. Our qualitative fieldwork suggested that inspectors expressed sentiments about nursing home directors that echoed the motivational orientations described by Kagan and Scholz (1984).

For instance, the image of the amoral calculator was best represented in the discourse of inspectors by such judgments as "all she wants is to make money" and "she doesn't care what's happening to the residents, she doesn't want to know." Thus, the amoral calculator scale was constructed from ratings on two items: (a) concerned about others / self-interested and (b) caring / uncaring. The team's perception of nursing home directors as amoral calculators[3] was assessed through adding these ratings.

The image of the political citizen was captured through comments on the way in which nursing home directors dealt with the new regulatory process: whether they were perceived to cooperate with the teams, whether they were reasonable when differences in perspective emerged, and whether they were prepared to find a compromise solution to problems that arose. The political citizen scale, therefore, contained three items: (a) adversarial / cooperative, (b) unreasonable / reasonable, and (c) uncompromising / compromising.

The incompetent manager scale comprised the summation of another three items that reflected management problems with which inspectors were familiar: (a) strong management skills / weak management skills, (b) effectively setting action plans with clear attainable goals / only vague intentions to improve quality of care, and (c) competence of the director of nursing supports compliance / competence of director of nursing makes compliance difficult.

Because items were designed specifically to represent inspection teams' conceptions of amoral calculators, political citizens, and incompetent managers, the construct validity of the measures was first examined through an analysis of the internal consistency of the scales. The alpha reliability coefficient for the amoral calculator scale was .77; for the political citizen scale, .78; and for the incompetent manager scale, .88. To facilitate comparison of the mean scores on the amoral calculator, political citizen, and incompetent manager indices, ratings for each index were summed and divided by the number of items in the scale. The higher the score, the greater was the team's assessment of the nursing home director as conforming to the image. The teams perceived directors of nursing overall as political citizens ($M = 5.47$, $SD = 1.06$), ready to cooperate with government, and only rarely as amoral calculators ($M = 2.39$, $SD = 1.18$) or incompetent managers ($M = 2.86$, $SD = 1.40$). In percentage terms, 88 percent of direc-

© Basil Blackwell Ltd. 1994

HeinOnline -- 16 Law & Pol'y 369 1994

tors of nursing were scored on the responsible side, of the seven-point political citizen scale, while only 7 percent fell on the amoral calculator side and 17 per cent on the incompetent manager side. These findings were consistent with observations from our qualitative fieldwork.[4]

Of some surprise, however, was the strength of the correlations among the scales. Most important, inspectors did not differentiate incompetent managers from amoral calculators. The Pearson product moment correlation coefficient between perceptions of nursing home directors as amoral calculators and as incompetent managers was a high .64 ($p<.01$). Both these types were distinguishable from the political citizens. Identifying nursing home directors as amoral calculators correlated $-.73$ ($p<.01$) with typing them as political citizens. The incompetent manager label correlated $-.61$ ($p<.01$) with the image of political citizen.

2. *Do Regulators Associate Different Enforcement Strategies with Different Images?*

In addition to measuring a team's image of the nursing home's regulatory motivations, we measured the enforcement strategies that a team thought should be used in each home. The hypothesis was that deterrence strategies would be considered appropriate with directors of nursing thought to be amoral calculators, persuasion strategies with political citizens, and educational and advice-giving strategies would be offered to those classified as poor managers. Thus, for each nursing home, the team rated on a seven-point scale the extent to which there was a need to adopt the following enforcement strategies:

(a) get tough, to wave or use the big stick (amoral calculator);
(b) do a lot of persuading that the standards were in the best interests of residents (political citizen);
(c) do a lot of educating as to what the standards meant (incompetent management); and
(d) give a lot of management advice on what options it could pursue to improve its compliance ratings (incompetent management).

The most commonly recommended strategies were giving management advice ($M=3.37$, $SD=1.84$) and educating as to what the standards meant ($M=3.10$, $SD=1.85$). Considered less necessary were persuading that the standards were in the best interests of residents ($M=2.70$, $SD=1.84$) and getting tough ($M=2.78$, $SD=1.92$).

When Pearson product moment correlation coefficients were calculated between the enforcement strategies recommended and the image the team had of the nursing home, the hypothesized relationships did not emerge (see Table 1). The pattern of findings, however, was consistent with the notion emerging from the above analysis, that is, that regulators perceive the noncompliance of nursing homes as presenting regulatory difficulties

© Basil Blackwell Ltd. 1994

HeinOnline -- 16 Law & Pol'y 370 1994

Table 1. Pearson Product-Moment Correlation Coefficients Between the Team's Image of the Nursing Home Director and the Enforcement Strategies Recommended (partial correlation coefficients controlling for compliance appear in parentheses)[a]

Inspection team's strategy	Inspection team's perception of nursing home director		
	Amoral calculator	Political citizen	Incompetent manager
Getting tough	.46 (.34)	−.46 (−.40)	.63 (.48)
Being persuasive	.57 (.48)	−.58 (−.53)	.71 (.60)
Educating on standards	.49 (.37)	−.53 (−.47)	.76 (.66)
Giving management advice	.42 (.31)	−.43 (−.36)	.70 (.59)

[a] All correlations are significant at the .001 level.

(through either incompetence or amoral calculation) or as not presenting regulatory difficulties (through political citizenship). If the inspectors regarded the director of nursing as an amoral calculator or as an incompetent manager, they were highly likely to recommend that all the strategies be used (see first and third columns of Table 1). When directors of nursing were judged to be political citizens, none of the enforcement strategies were recommended.

One obvious explanation for these findings is that the level of compliance that different nursing home directors achieved affects the nature of the relationships among our variables. Political citizens may be higher compliers and, therefore, not in need of enforcement strategies. This explanation can be examined empirically through partialling out the effect of compliance in the correlations in Table 1.

In parentheses in Table 1 are the coefficients obtained when the effect of compliance was partialled out of the correlations between images of nursing home directors and recommended enforcement strategies. The strength of all the relationships weakened slightly, but none changed in sign. Thus, while political citizens were more likely to have higher compliance with the regulations than others, the association was not sufficiently strong to explain the low recommended usage of enforcement strategies with this group. The interpretation of these findings, supported by our qualitative fieldwork, was that homes that were judged to be political citizens were seen not to need cajoling and pushing into compliance: when political citizens understood the nature of their noncompliance, they accepted responsibility for fixing the problem without prodding from the team. To use enforcement strategies in such circumstances would be "rubbing the DON's[5] nose in it" or "humiliating the DON unnecessarily."

Although judgments that inspectors made about nursing home directors and about the enforcement strategies that were appropriate did not conform

© Basil Blackwell Ltd. 1994

HeinOnline -- 16 Law & Pol'y 371 1994

to our original expectations, the relationships could not be readily dismissed. They were too strong and too consistent across measures to be due to random fluctuations or error in the methods of measurement. The enforcement strategy data mirrored the data on the team's image or stereotype of the nursing home, suggesting that there was considerable structure in the way in which teams evaluated the homes that they were inspecting. In order to uncover the structure underlying the way in which inspectors construed the behavior of those whom they were regulating, the stereotype measures and the enforcement measures were subjected to a principal components analysis.[6]

The principal components analysis extracted only one factor that was labelled as the team's assessment of the *need for intervention*. One end of this dimension was defined by the inspection team's negative evaluation of the director of nursing and by the belief that all compliance strategies should be used in this situation. The specific factor loadings were .74 for the amoral calculator scale, .88 for the incompetent manager scale, .78 for a tough enforcement strategy, .88 for a persuasive strategy, .89 for an educational strategy, and .82 for a managing strategy. At the other end of the dimension were the political citizens for whom intervention was not warranted. The factor loading for the political citizen scale was −.74. This one factor accounted for 68 percent of the variance in the data set. When the analysis was repeated for low compliers (those who scored below the median on compliance), the same pattern of results was obtained.

B. HOW REGULATEES SEE REGULATORS

Nursing Home Directors' Perceptions of the Inspection Team's Use of Police-Like, Persuasive-Like, and Consultant-Like Attitudes and Behaviors

The measures analyzed in section A provide us with the inspectors' assessment of the nursing home director and of how they thought noncompliance could be turned around into compliance. The data showed inspectors not consciously discriminating between incompetence and amoral calculation. Either judgment meant there was a problem and all possible enforcement strategies were considered relevant to finding a solution. Political citizens were the opposite of amoral calculators and incompetent managers; inspectors did not believe they needed anything more than explanations as to why the home was rated out of compliance.

The psychological literature, however, alerts us to the fact that people do not always act in a way that is consistent with what they say. Specifically, in this situation, an inspector may sincerely believe a director of nursing to be a political citizen, but may not communicate this evaluation to that person. Instead, the director of nursing may gain the impression that the team regards her as an amoral calculator and may be less willing to comply as a result. Thus, an argument can be made that in the applied regulatory con-

© Basil Blackwell Ltd. 1994

HeinOnline -- 16 Law & Pol'y 372 1994

text, the important variable in the implementation of models such as that of Kagan and Scholz (1984) is not what the inspector thinks, but rather what the director of nursing *thinks the inspector is thinking* about her.

The director of nursing's perceptions of how the team treated her were measured during the research interview after the inspection had been completed. Seventeen attitudinal questions were asked of the director of nursing to represent the Kagan and Scholz-derived constructs of a police-like, a negotiator-like, or a consultant-like attitudes (see Table 2 for the items representing each concept). Because the metric for the different items varied, scores were standardized before summation. The standardized alpha reliability coefficients for the six-item police-like attitude scale and the six-item negotiator-like attitude scale were high, .82 and .81 respectively. The five item consultant-like attitude scale had a lower, although still acceptable, alpha reliability coefficient of .62. An analysis of item means prior to standardizing scores showed that inspection teams were perceived to adopt a negotiating attitude overall, to be somewhat consultant-like, and not police-like in their orientation. Again, our qualitative fieldwork supports the quantitative picture of the way in which inspection teams presented themselves to directors of nursing.

Apart from perceptions of the team's general *attitude* to them, directors of nursing were asked whether the teams engaged in certain *actions* that had been defined as police, negotiating, or consultant-like. For six of the seven action items, the director of nursing rated the team's behavior on a seven point scale from "did not use" through "used a lot." Police-like behavior was measured by the director of nursing's report on how much use the team made of two types of threats to convince nursing homes to improve their standards: loss of federal funding ($M = 1.21$, $SD = .88$) and legal action ($M = 1.16$, $SD = .73$). Negotiating actions were defined in terms of appeals to concern for residents ($M = 2.77$, $SD = 2.09$), appeals to professional standards ($M = 2.51$, $SD = 1.97$), and reasoning on why standards were important ($M = 2.62$, $SD = 2.07$). Consulting actions were represented by the item, explaining what the standards mean ($M = 3.32$, $SD = 2.17$). A second consulting item asked directors of nursing whether inspection teams had:

(a) mostly told the nursing homes what changes had to be made to improve performance (20 percent responded yes);
(b) suggested options for improving performance while insisting it was the home's responsibility to decide on the changes (56 percent responded yes);
(c) said it was the nursing home's responsibility to make changes without offering suggestions (22 percent responded yes); and
(d) had not discussed changes (2 percent responded yes).

This item was rescored as a dichotomous variable, depending on whether the team had provided options for improving performance (that is, (b) versus (a), (c), and (d)).

© Basil Blackwell Ltd. 1994

HeinOnline -- 16 Law & Pol'y 373 1994

Table 2. Scale Items for Nursing Home Directors' Perceptions of Their Inspection Team as Police-Like, Negotiator-Like, and Consultant-Like

Police-like attitude (alpha = .82)

(a) Not like a policeman/like a policeman[a]
(b) Sympathetic/anti the nursing home industry[a]
(c) Not authoritarian/authoritarian[a]
(d) The team treated me as someone who would only do the right thing when forced to[bd]
(e) The team treated me as a person who could be trusted to do the right thing[b]
(f) Standards monitoring teams are more interested in catching you for doing the wrong thing than in helping you[bd]

Negotiator-like attitude (alpha = .81)

(a) Not understanding and unsympathetic/understanding and sympathetic[a]
(b) Unreasonable/reasonable[a]
(c) Adversarial/cooperative[a]
(d) Uncompromising/compromising[a]
(e) If you admit your mistakes, the team will respect you in the long run[bd]
(f) The team treated me as a person who could be trusted to do the right thing[bd]

Consultant-like attitude (alpha = .62)

(a) On resident care, the nursing home got no good ideas, a few good ideas, a lot of good ideas from the team[c]
(b) On management systems and practices, the nursing home got no good ideas, a few good ideas, a lot of good ideas from the team[c]
(c) How clearly did the team explain the compliance ratings for the home[a]
(d) In their understanding of how a nursing home works, the team was unsophisticated/sophisticated[a]
(e) I was unhappy with the amount of information I got from the team at the end of the day of the visit[b]

[a] Exact wording of question was "Now I am going to give you a number of 1–7 rating scales for your opinions of the standards monitoring team that recently visited your home. On a 7 point scale do you think the team was. . . ."
[b] Exact wording of question was "We would like you to tell us how strongly you agree or disagree with a number of statements by circling a number on this sheet. Circle 1 if you strongly agree with the statement, 2 if you agree, 3 if you neither agree nor disagree, 4 if you disagree and 5 if you strongly disagree."
[c] Item was scored 1 (no good ideas), 2 (a few good ideas), 3 (a lot of good ideas).
[d] Item was reverse scored.

The actions most likely to be reported were those of a consultant, with punitive measures being the least likely to occur.

The seven actions were correlated with the three attitudinal scales, being police-like, negotiator-like, and consultant-like. From Table 3, a police-like attitude was most likely to accompany threats of funding loss and legal action. A consultant-like attitude was most likely to accompany assistance in the form of explaining the standards and suggesting options for bringing about compliance. The adoption of a negotiator-like attitude, however, did not accompany the behavioral interventions anticipated. Furthermore, unexpected, significant correlations appeared in Table 3. As a result, a prin-

© Basil Blackwell Ltd. 1994

HeinOnline -- 16 Law & Pol'y 374 1994

Table 3. Pearson Product-Moment Correlation Coefficients Between the Nursing Home Directors' Perceptions of their Team's Attitude and their Enforcement Behavior[a]

	Perceived attitude of team		
Perceived behavior of team	Police-Like	Negotiator-Like	Consultant-Like
Loss of federal funding threat	.25***	−.19***	−.05
Legal action threat	.29***	−.26***	−.12**
Concern for residents appeal	.14**	−.10*	.06
Professional standards appeal	.09*	−.07	.03
Reasoning on standards	.10*	−.11*	.06
Explaining standards	.04	−.06	.19***
Suggesting options	−.22***	.25***	.32**

* $p<.05$; ** $p<.01$; *** $p<.001$

[a] A high score on a measure indicates endorsement of the scale or item.

cipal components analysis was used to unravel any patterns in the way in which nursing home directors perceived the attitudes and behaviors of their regulators.

The majority of the variation in the measures (64 percent) was accounted for by three factors that were rotated using the varimax procedure[7] (see Table 4). The solution showed attitudes separating from actions, as well as deterrence separating from persuasive, educative tactics.

Table 4. Factor Loadings for Nursing Home Directors' Perceptions of their Team's Attitude and Enforcement Strategies

	Factor		
Variables	1 Persuasive & educative actions	2 Cooperative versus coercive attitude	3 Deterrence actions
Loss of federal funding threat	.13	−.04	**.82**
Legal action threat	.01	−.13	**.82**
Concern for residents appeal	**.77**	−.02	.08
Professional standards appeal	**.78**	−.04	.01
Reasoning on standards	**.79**	−.02	.04
Explaining standards	**.77**	.12	.07
Suggesting options	.09	**.53**	.09
Police-like attitude	.13	**−.83**	.29
Negotiator-like attitude	−.12	**.84**	−.23
Consultant-like attitude	.12	**.83**	.00
Percentage variance	28	24	12

© Basil Blackwell Ltd. 1994

The first factor was labelled *persuasive and educative actions* and was defined by nursing home directors being aware that teams were using these types of techniques in a bid to gain their compliance. The second factor was defined by the nursing home director's description of the attitude of the team in its interaction with her and her staff. The dimension was bipolar with one end defined by the adoption of a police-like stance, the other defined by a negotiating and consulting stance. Factor 2 was defined as the *cooperative versus coercive attitude* of the regulator. The third factor was defined by the teams taking *deterrence actions* in their interaction with the director of nursing. Deterrence action involved the threat of legal action and the loss of federal funding for the nursing home.

C. LINKING SECTION A (REGULATOR'S PERCEPTIONS) WITH SECTION B (REGULATEE'S PERCEPTIONS)

How Good is the Match Between the Perceptions of Actors From Different Sides of the Regulatory Encounter?

The analyses of the team's appraisal of the nursing home and the analyses of the director of nursing's appraisal of the team did not support the typology that we hoped we would find based on the Kagan and Scholz (1984) model. Inspectors perceived nursing home directors and their homes in terms of a "good one – bad one" continuum. At one extreme, the home was a problem needing their attention and active intervention. At the opposite extreme, compliance was thought to be achievable without such interference. All that was needed was to explain to the director of nursing that there was a problem that needed to be fixed.

Directors of nursing, on the other hand, reported greater complexity in the attitudes and behaviors they observed in the inspection team. Perceived attitudes and behaviors defined separate factors. The attitude factor, *cooperative versus coercive*, parallelled the team's appraisal of the home as having a *need for intervention*. The Pearson product moment correlation coefficient between factor scores representing these two concepts was $-.46$ ($p<.001$), with directors of nursing perceiving a coercive attitude when teams believed intervention was required.

The factors representing the nursing home director's perception of their team taking *persuasive and educative actions* or *deterrence actions* to gain compliance were significantly, although only weakly, correlated with the team's assessment that this was a home in which there was a *need for intervention* ($r=.13$, $p<.05$ and $r=.16$, $p<.01$ respectively).

In order to ascertain the degree of overlap in the way in which inspection teams and nursing home directors perceived the regulatory encounter, a multiple R was calculated between the team's assessment of *need for intervention* on the one hand and the director of nursing's perception of what actually happened in the regulatory encounter on the other (*cooperative*

© Basil Blackwell Ltd. 1994

HeinOnline -- 16 Law & Pol'y 376 1994

versus coercive, persuasive and educative actions, deterrence actions). The multiple R was .50 ($p < .001$).

These findings provide some support for the assertion that inspectors are able to communicate their message effectively to those being regulated. At the same time, the finding that 75 percent of the variance was not common draws attention to the qualifications that one must build into any model of regulatory strategy: diagnosing the problem and arriving at corrective strategies provides only half the picture of the regulatory encounter. Those being regulated may have a different interpretation of the inspector's message and this interpretation may be the more salient factor in shaping future compliance.

D. MOTIVATIONAL POSTURES OF REGULATEES

A Different World View of the Regulatory Process: The Attitudes and Motivations of Directors of Nursing

So far in this paper, the regulatory stance of nursing home directors has been conceptualized in terms of constructs derived from the Kagan and Scholz (1984) model. These concepts have been recognized in the regulatory literature as providing rich heuristics for understanding compliance. In early qualitative fieldwork with inspectors, the typology appeared to have sufficient face validity to justify a study such as this. One criticism that must be levelled at the Kagan and Scholz typology, however, is that it depends for its explanatory power upon a regulator's perspective on what the causes of noncompliance are.

The approach is justifiable to a point. Motives are not readily accessible. Actors are not always aware of their deeper motivations, particularly those that are not socially acceptable; and if they are, they are unlikely to verbalize them to others. It would be naive to expect directors of nursing to confess to being either amoral calculators or incompetent. For this reason, the inferences that regulators make about motives are useful measures to have. They also have practical significance in that attributions of motivation are most likely to shape the behavior of the regulators, and subsequently, the form the regulatory encounter takes. They are not the only indirect measures, however, of the motivational levers that explain compliance and noncompliance.

The Kagan and Scholz model focuses on the strategies that actors use to deal with regulation. Actors may decide to maximize their profit margin at the expense of regulatory compliance, or they may decide to listen, discuss, and negotiate, or they may simply fail to apply themselves to regulatory objectives through lack of attention, ability, or knowledge. These regulatory postures are behavioral and are unlikely to exist without an underlying set of cognitions to buttress them (Payne & Bettman 1992). Underlying each of these postures one would expect to find a set of beliefs about

© Basil Blackwell Ltd. 1994

HeinOnline -- 16 Law & Pol'y 377 1994

Table 5. Motivational Posturing Scales for Nursing Home Directors[ab]

Resistance (alpha = .72, M = 20.24, SD = 4.25)

(a) The nursing home industry needs more people willing to stand up against the Department of Community Services and Health[c]
(b) My friends in the industry often say to me that it is important not to let the Department of Community Services and Health push you around[c]
(c) The nursing home industry should get organized to resist unreasonable demands by teams[c]
(d) It is impossible for nursing homes like mine to meet the standards unless the level of Commonwealth funding is increased[c]
(e) Once the Commonwealth has you branded as a bad nursing home, they never change their mind[c]
(f) Standards monitoring teams are more interested in catching you for doing the wrong thing than in helping you[c]
(g) If my nursing home is uncooperative with the team they will get tough with us

Disengagement (alpha = .56, M = 8.13, SD = 2.28)

(a) No matter how cooperative or uncooperative the team is with me, the best policy for me is to give them only as much cooperation as the law requires[c]
(b) My own feelings generally are not affected much one way or the other by how well I do on this job[cd]
(c) Because the Director of Nursing cannot be everywhere in the home at the same time, it is impossible for her to ensure that the standards are met[c]
(d) There is not much I can do if standards are not met as a result of my staff doing the wrong thing[c]

Managerial accommodation (alpha = .64, M = 26.97, SD = 3.63)

(a) I will never pass the blame onto others when government standards are not met because I am personally responsible in the end[c]
(b) Our plans to improve our performance on the standards are not just general intentions to do our best: we have a definite management strategy for improvement[c]
(c) I enjoy the responsibility of being a Director of Nursing[cd]
(d) The proprietor, not me, must take ultimate responsibility when standards are not met
(e) My proprietor has the attitude that the government standards and regulations must be met no matter what the costs[c]
(f) My proprietor sets me goals that can only be met by breaching the standards
(g) My proprietor sometimes puts me under a financial squeeze that makes it impossible to meet the standards

Capture (alpha = .50, M = 17.42, SD = 2.70)

(a) If my nursing home is cooperative with the team, they will be cooperative with us[c]
(b) Even though the team will strongly disapprove of my failings to meet any standard, they will still respect me as a responsible professional[c]
(c) No matter how cooperative or uncooperative the team is with me, the best policy for me is to always be cooperative with them[c]
(d) The nursing home industry agrees with nearly all of the Commonwealth outcome standards[c]
(e) If you admit your mistakes, the team will respect you in the long run[c]

[a] Exact wording of question was "We would like you to tell us how strongly you agree or disagree with a number of statements by circling a number on this sheet. Circle 1 if you strongly agree with the statement, 2 if you agree, 3 if you neither agree nor disagree, 4 if you disagree and 5 if you strongly disagree."
[b] Responses to individual items were summed to provide total scale scores. A high score on each scale indicates adoption of the regulatory posture being measured.
[c] Item was reverse scored.
[d] This item was included, in spite of its generality, because it tapped the nursing home director's attitude or reaction to being the one responsible for the nursing home's performance on the regulatory standards.

© Basil Blackwell Ltd. 1994

HeinOnline -- 16 Law & Pol'y 378 1994

motives, beliefs about self, values, or attitudes that are used to justify the stance to others and to self (Rokeach 1973). While it may be difficult to measure socially unacceptable regulatory postures directly through self-report, it is not unreasonable to attempt to capture the attitudes and beliefs that are brought into play to justify noncompliance to oneself and others. It is to this domain of enquiry that attention is now turned.

Measures of regulatory stance were derived from a principal components analysis of thirty-one attitude items. These items represented the director of nursing's beliefs, attitudes, and goals regarding the new standards and the standards monitoring process; they did not focus on specific aspects of the recent inspection event. Responses were made on a five-point rating scale from strongly agree to strongly disagree. Five factors were extracted accounting for 38 percent of the variance. Upon rotation, using the varimax procedure, four of the five factors were interpretable. They were the basis for the development of four scales representing the posture of directors of nursing to the regulatory process: *resistance*, *disengagement*, *managerial accommodation*, and *capture*. The items in the scales and their descriptive statistics are given in Table 5.

Those with high scores on the *resistance* scale saw the regulators as belonging to the opposite team and as not having their best interests at heart. The regulators were there to make life difficult and their influence was to be resisted at all costs. The posture was confrontational.

High scorers on the *disengagement* scale also adopted a negative posture in relation to the regulatory process in that they were highly mistrustful of government, offering them minimal cooperation. While resisters adopted the view that "the problem is the government," disengagers were more self-focused, running with the line that "it is not our fault if things are wrong." They adopted a rhetoric that was highly self-protective, expressing the view that they were unable to ensure implementation; that they could not control the wrong doing of staff, nor could they even be expected to know about it.

Managerial accommodation, on the other hand, represented homes where the proprietor and the director of nursing had a management plan for implementing the standards. Their posture was cooperative and the director of nursing accepted responsibility for implementation.

The fourth scale, labelled *capture*, represented high identification with the standards monitoring process. High scorers on capture failed to see tension of any enduring kind between regulators and the regulated. The posture was cooperative to the point of regarding oneself as part of one cohesive family where misdemeanors would always be forgiven, even when noticed.

These four orientations were not totally unrelated to each other. The *resistance* and *disengagement* scales were positively related using a Pearson product moment correlation coefficient ($r = .31$, $p < .001$). *Managerial accommodation* was inversely related to *disengagement* ($r = -.30$, $p < .001$). The other significant intercorrelations were lower. *Managerial accommo-*

© Basil Blackwell Ltd. 1994

HeinOnline -- 16 Law & Pol'y 379 1994

dation was negatively related to *resistance* ($r = -.16$, $p < .01$). *Capture* was positively associated with *managerial accommodation* ($r = .14$, $p < .01$) and negatively with *resistance* ($r = -.14$, $p < .01$).

From the mean statistics for the scales in Table 5, the most popular motivational postures were being managerial accommodaters or being agreeable captives. In other words, a cooperative attitude was dominant. The minority favored resistance and disengagement as responses to the regulatory process. Motivational postures such as resistance and disengagement, however, may well be ones that create problems for regulators.

E. LINKING THE MOTIVATIONAL POSTURES OF REGULATEES WITH THE REGULATORY STYLES OF REGULATORS

Theories of regulatory practice rest on the assumption that the regulators have gripped the right levers when they try to affect compliance. In this section, we examine the extent to which the concepts that emerged from using the Kagan and Scholz (1984) model as a starting point overlap with the empirically derived concepts that emerged from factor analyzing the beliefs and attitudes of nursing home directors toward the regulatory process. While the data from regulatees do not represent motivation directly, they do represent the cognitions that should intercede between deep seated motives and decision heuristics. If inspectors understand the psychology of those whom they are regulating, one would expect to find some overlap in these two domains of discourse.

Inspectors identified those with high scores on resistance and disengagement as homes where there was a need for intervention ($r = .29$, $p < .001$ and $r = .17$, $p < .001$ respectively) and these directors of nursing reported that the inspectors adopted a coercive attitude toward them ($r = -.60$, $p < .001$ and $r = -.21$, $p < .001$ respectively). Directors of nursing who scored high on managerial accommodation and capture came from homes that were not perceived by teams as needing intervention ($r = -.18$, $p < .001$ and $r = -.16$, $p < .01$ respectively), although the team's behavior was not always perceived as cooperative by managerial accommodaters ($r = .05$, *ns*). Captives, on the other hand, perceived the team as adopting a cooperative attitude in their dealings with them ($r = .28$, $p < .001$).

With regard to the actions that nursing home directors saw the teams as taking, resisters reported both persuasive ($r = .13$, $p < .05$) and deterrent actions ($r = .16$, $p < .01$) being used with them, disengagers reported only persuasive actions ($r = .20$, $p < .001$), and managerial accommodaters did not report greater or lesser use of either strategy ($r = -.09$, *ns* and $r = -.08$, *ns*). Captives were distinguished by their insistence that regulators did not use deterrence strategies with them ($r = -.15$, $p < .01$).

The picture that is emerging from these analyses is that the regulatory encounter is dominated by social interaction variables and not by the regulator's motivational analysis of the regulatee. Inspectors make an

© Basil Blackwell Ltd. 1994

HeinOnline -- 16 Law & Pol'y 380 1994

Table 6. Pearson Product-Moment Correlation Coefficients of the Regulatory Styles of the Regulators and the Motivational Postures of the Nursing Home Directors with Compliance at Wave 1 (n = 410) and Wave 2 (n = 341)

Predicting variables	Compliance	
	Wave 1	Wave 2
1. Resistance	−.23***	−.04
2. Disengagement	−.11*	−.17***
3. Managerial accommodation	.25***	.20***
4. Capture	.21***	.11*
5. Intervention recommended by inspectors	−.58***	−.35***
6. Cooperative attitude observed by home	.36***	.17***
7. Persuasive and educative actions observed	−.14**	−.15**
8. Deterrent actions observed	−.20***	−.10*

* $p<.05$; ** $p<.01$; *** $p<.001$

assessment of whether or not the home requires team intervention. This assessment is related, in part, to the degree to which nursing home directors present a cooperative or uncooperative regulatory posture. If they are uncooperative, inspectors are selective in the intervention they choose. Choice of intervention appears to be shaped by the social persona they present to the team. Those who express personal hopelessness are more likely to be treated with persuasion and education. Those who blame the government are more likely to be the recipients of both deterrent and persuasive strategies. For nursing homes that profess a more cooperative stance (captives and managerial accommodaters), strategies varied markedly.

F. THE RELATIONSHIP WITH COMPLIANCE

The final empirical question to be addressed in this paper is how all of these variables affect compliance. Does the inspection team's private assessment that the home needs intervention play a role in compliance – is it important that the inspectors adopt a certain demeanor and certain strategies to bring about compliance? Are the various postures of the nursing home directors important determinants of whether compliance occurs or not? Most importantly, if we consider the fundamental message from the Kagan and Scholz (1984) model, we must ask the question: do certain strategies work with certain types of people, but not with others?

First of all, the compliance measures taken concurrently (wave 1) and eighteen to twenty months later (wave 2) were correlated with the following variables (see Table 6): the director of nursing's postures toward the regulatory program, the inspection team's private assessment of the need for intervention, the director of nursing's perception of a coercive attitude

© Basil Blackwell Ltd. 1994

HeinOnline -- 16 Law & Pol'y 381 1994

by the team, and the team's use of persuasive-educative and deterrence strategies.

From Table 6, all these variables were significantly related to compliance. As expected, those low in compliance were more likely to be identified as problem homes, to adopt uncooperative postures, to perceive the team as coercive, and to report the team as taking persuasive, educative, and deterrent actions to ensure compliance in the future.

The findings immediately raise the question of whether any of these variables, singly or in combination, bring about an improvement in compliance over time. Such positive effects cannot be ascertained at the bivariate level. Such relationships of regulatory styles and motivational postures with compliance at wave 2 are likely to be masked by their association with compliance at wave 1 and by the association between compliance ratings over the two inspection events ($r = .37$, $p < .001$). To answer the two questions – are some regulatory styles more effective than others, and are some regulatory postures more troublesome than others – ordinary least squares regression analysis will be used.

1. *Ordinary Least Squares Regression Analysis*

(a) *Control Variables*

Compliance at wave 1 was controlled to ascertain the effects of regulatory styles and motivational postures in bringing about change in performance. An important consequence of using this model was that through controlling for compliance at wave 1, we were able to control for a set of stable characteristics that had accounted for differences in compliance scores in the past. Previous work (Braithwaite & Makkai 1991) demonstrated that compliance was related to characteristics both of the nursing home (age, number of beds, profit/nonprofit) and of the residents (disability level, male/female).

The remaining control variables were geographic region and time between wave 1 and wave 2 visits. While geographic region was a constant from wave 1 to wave 2, its relationship with the outcome variable changed over time, due to policy changes occurring at different times in different states. Controlling for the four different states involved the use of three dummy variables – Queensland, New South Wales and Victoria. Ratings from South Australia, the omitted category, were substantially lower than those given to homes in Queensland and New South Wales (for detailed discussion, see Braithwaite et al. 1992). Time between visits was considered to be theoretically important since the motivational and social interaction effects of the regulatory encounter may weaken as time increases.

(b) *Predictor Variables*

The eight predictor variables subsequently added to the regression model were the motivational postures of the directors of nursing: (a) resistance,

© Basil Blackwell Ltd. 1994

HeinOnline -- 16 Law & Pol'y 382 1994

Table 7. Beta Coefficients and Adjusted R^2 for the Prediction of Compliance at Wave 2 from the Regulatory Styles of the Inspectors and the Motivational Postures of the Directors of Nursing

Predictors	Beta coefficients
Controls	
Queensland	.28***
New South Wales	.40***
Victoria	.01
time between 1st and 2nd wave visits	−.05
compliance at wave 1	.24**
Regulatory styles	
need for intervention	−.16*
a cooperative attitude	.02
use of persuasion and education	−.04
use of deterrence	−.02
Motivational postures	
resistance	.17*
disengagement	−.12*
managerial accommodation	.06
capture	−.04
Adjusted R^2	.33***

* $p<.05$; *** $p<.01$; *** $p<.001$

(b) disengagement, (c) managerial accommodation, and (d) capture – and the regulatory styles of the inspectors – (e) the need for intervention, (f) an attitude of cooperation, (g) the use of persuasive and educative inducements, and (h) the use of deterrence strategies.

2. *Resisters Wax, Disengagers Wane*

The results for this main effects regression analysis appear in Table 7. From the beta coefficients in Table 7, neither the cooperative attitude of the team, nor its use of strategies of persuasion, education, or deterrence predict improvements in compliance for the sample as a whole. The major predictors were the motivational postures of resistance and disengagement, and the inspection team's assessment of the need for intervention in the home.

The compliance of disengagers was more likely to have worsened over the eighteen-month period. They had a lower probability of complying with the regulations at wave 1 and were even less likely to comply at wave 2. High scorers on resistance, on the other hand, had improved their compliance scores when other variables were controlled. While their compliance ratings

© Basil Blackwell Ltd. 1994

HeinOnline -- 16 Law & Pol'y 383 1994

at wave 1 were lower than others, they represented the group where positive gains were most likely to be achieved by wave 2.

The third variable that was important in predicting poorer compliance performance in the future was the team's private assessment of whether or not the nursing home was in need of regulatory intervention. Inspectors could identify the homes that would be in trouble at their next inspection, over and above the prediction one could make on the basis of wave 1 compliance ratings.

Improvements in compliance scores among resisters immediately raise questions about interactions between regulatory styles and motivational postures and their effects on compliance. That is, which are the regulatory styles that teams use when resisters improve in their compliance ratings?

The interaction effects between motivational posture (resistance, disengagement, managerial accommodation, capture) and regulatory style (need for intervention, cooperative attitude, persuasive and educative actions, deterrent actions) were tested through four regression models. Each model tested four interaction terms representing one motivational posture by each of the four regulatory styles (the cross-products of need for intervention x posture, cooperative attitude x posture, persuasive and educative actions x posture, and deterrent actions x posture). This strategy was adopted because of problems of multicollinearity when all sixteen interaction terms were included in the equation. The interaction terms added significantly to the variance accounted for in only one regression model. For resisters, the R^2 changed from .29 to .32 ($p<.01$). Two interactions were significant: need for intervention x resistance, and adopting a cooperative attitude x resistance.

To understand these effects more fully, the sample was divided at the mean on the need for intervention scale firstly, and secondly, on the cooperative versus coercive attitude scale. Four separate ordinary least squares regression analyses were run for cases where teams favored intervention and where they did not, and where teams were seen to be cooperative and where they were not. Two of these regression models produced findings in which resistance had a significant effect on compliance (see Table 8). Improved compliance scores were associated with resistance only when intervention was not judged to be necessary or when the nursing home director perceived the attitude of the team as cooperative. No significant effect for resistance was obtained when intervention was recommended and when the team's strategy was seen to be coercive by the director of nursing.

IV. DISCUSSION

This paper focuses on the regulatory encounter: the way in which inspectors judge and act toward regulatees, the way in which regulatees judge and act toward inspectors, and the way in which the communication of these

© Basil Blackwell Ltd. 1994

HeinOnline -- 16 Law & Pol'y 384 1994

Table 8. Beta Coefficients and Adjusted R^2 for the Prediction of Compliance at Wave 2 for Homes Where the Teams Recommend Intervention and for Homes Where the Team Adopted a Cooperative Attitude

Predictors	Low intervention subsample	High cooperation subsample
Controls		
Queensland	.17	.35**
New South Wales	.44***	.47***
Victoria	−.03	.09
Time between 1st and 2nd wave visits	−.08	−.04
Compliance at wave 1	.37***	.22**
Regulatory styles		
Need for intervention	na	−.24**
A cooperative attitude	.06	na
Use of persuasion and education	.05	−.05
Use of deterrence	−.12	−.02
Motivational postures		
Resistance	.18*	.21**
Disengagement	−.09	−.10
Managerial accommodation	.07	.03
Capture	−.12	−.05
Adjusted R^2	.30***	.37***

* $p<.05$; ** $p<.01$; *** $p<.001$
na not applicable, used to select subsample

messages affects future compliance. The starting point for the paper was the model proposed by Kagan and Scholz (1984) emphasizing the importance of understanding motivations for noncompliance if one is to change non-compliant actions into compliant actions. While this paper strongly supports the proposition that noncompliers adopt different motivational postures toward the regulatory process, our data demonstrate that the regulatory objective of understanding motivations fades into insignificance when noncompliers define themselves as being outside the regulatory culture (Meidinger 1987). The social dynamics associated with whether the regulatee is onside or can be brought onside is the main preoccupation of nursing home inspectors in the field.

The major findings of this study are that:

1. Inspectors use a single dimension to decide whether intervention is warranted, and this evaluation has power to predict subsequent compliance over and above that obtained from the organization's prior compliance score.

© Basil Blackwell Ltd. 1994

HeinOnline -- 16 Law & Pol'y 385 1994

2. Inspectors' beliefs about what should be done do not correspond with what nursing home directors perceive the inspectors as doing when they visit the home. Consistent with this result, our qualitative fieldwork suggests that regulatory strategy is greatly shaped by the social nuances of the regulatory encounter.
3. The enforcement actions of persuasion, education, and deterrence observed by directors of nursing have no direct effect on their future compliance, nor do they interact in any simple way with other variables to improve future compliance.
4. Directors of nursing adopt a variety of postures toward the regulatory program: resistance, disengagement, managerial accommodation, and capture. We argue that these postures are the consciously expressed and personally acceptable face of underlying motives, priorities, and goals. As such they are worth understanding because they are the basis for common discourse, and therefore, meaningful regulatory dialogue.
5. The motivational postures of disengagement and resistance were more likely to be found among low compliers, while the regulatory postures of managerial accommodation and capture were more likely to be found among high compliers.
6. Changes in compliance over time were found for the postures of disengagement and resistance. Disengagers performed more poorly at wave 2, while resisters improved.
7. Regulatory strategies explained the change in compliance in one case, that of resistance. Resisters improved when they perceived the inspection team as cooperative rather than coercive and when the inspection team made the decision that intervention was not necessary.

A. INSPECTORS AND THEIR SINGLE EVALUATIVE DIMENSION

The finding that regulators work on a single evaluative dimension representing the degree to which the home needed intervention is important and goes against both methodological and theoretical expectations. Semantic differential ratings invariably produce three dimensions, and it seemed highly plausible, particularly in the light of the Kagan and Scholz (1984) model, that inspectors would differentiate between capacity to comply, willingness to comply, and persuadability. The data show that across a large set of observations, regulators do not distinguish these motivational types.

Regulators saw incompetence and profit seeking as going together when they were called upon to make an overall evaluation. While regulators failed to distinguish incompetence from deliberate law violation, they did distinguish those who were basically onside from those who were not. At the opposite pole to being unable or unwilling to comply were the good citizens who did not need to be pressured into compliance. Intervention was reserved for the problem homes. Private assessment of the need for intervention was a strong predictor of future compliance. This finding confirms

© Basil Blackwell Ltd. 1994

HeinOnline -- 16 Law & Pol'y 386 1994

an often cited comment in the field of nursing home regulation. Inspectors in England, Australia, and the U.S. will confidently declare that they know a problem-ridden nursing home when they see one or a nursing home headed for trouble.

The finding that regulators use a single evaluative dimension that will predict future compliance sits paradoxically alongside arguments urging regulators to be more multidimensional in their thinking about noncompliance. These positions can be reconciled, however, using the qualitative data on what happened during fifty-nine inspection events.

Inspectors' perceptions are driven by the scope of the problems they encounter. They have time pressures. They show no signs of systematically dwelling on the motivations of the directors of nursing and logically devising strategies for manipulating noncompliant directors on the basis of such deliberations. From their perspective, the nursing home needs attention or it does not, and attention takes the form of offering assistance, advice, and threats in a range of forms.

The qualitative data provided many illustrations of the ways in which teams tried to obtain compliance from their problem homes. As noted previously, when inspection teams regarded intervention as necessary, directors of nursing were likely to resent "interference," especially when the regulatory program was new. The situation demanded skills in containing and resolving conflict. Inspection teams did not have time or interest in understanding the motivations of directors of nursing. Their experience alerted them to individual differences in how people responded to criticism and this was where their attention was focused. They entered the regulatory encounter with an armory of strategies, knowing that the name of the game for effective negotiation was flexibility. They kept their minds open to a range of possibilities, changing tactics, and strategies as the game unfolded in a bid to gain cooperation and compliance.

B. THE ENFORCEMENT STRATEGIES IMPLEMENTED

Given this description of the regulatory encounter, it comes as no surprise that regulatees do not always see regulators acting in a way that was consistent with the team's private assessment of how they should deal with the home. It was certainly the case that if inspectors believed the home needed intervention, nursing home directors were more likely to report a more coercive than cooperative attitude being adopted by the team. Their perception of the use of deterrence and persuasive-educative strategies, however, only bore a small resemblance to what the team said should happen in relation to the home.

The enforcement actions observed by nursing home directors clustered into two groups, those directed toward education and persuasion and those directed toward deterrence. The strategies were positively correlated, not negatively, supporting the view that inspectors took their full armament of

© Basil Blackwell Ltd. 1994

HeinOnline -- 16 Law & Pol'y 387 1994

strategies with them into the negotiation session when they believed regulatory intervention was required. Nevertheless, deterrence was used less frequently than negotiation and consultation in this regulatory context as well as being used in a targeted way. Deterrence was linked with the posture of resistance, but not disengagement. Clearly, inspectors are making some judgments about when deterrence is useful and when it is not. Yet, in the analyses conducted in this paper, we could find no evidence of use of one enforcement strategy rather than another bringing a favorable outcome for compliance.

At the same time, the qualitative data warn that this story on the effectiveness of different enforcement strategies is not complete. Although the research design of the quantitative study had a dynamic component, it was insufficiently dynamic to capture the switching back and forth among multiple strategies. Furthermore, the quantitative model was insufficiently differentiated to capture the fact that the game was being played with different strategies at different levels of the organization: the nursing assistant observed ignoring infection control procedures is given an educative message on the spot; at the same time, the money-hungry proprietor is having some messages about coercive powers communicated to him; and an incompetent director of nursing is given help in developing management plans. To argue on the basis of the quantitative data that such intricacies in the regulatory encounter are unrelated to compliance is vastly premature. We need to adopt a multi-perspective approach, be prepared to engage in micro analysis, and take into account the dynamic nature of human interaction.

C. MOTIVATIONAL POSTURING

While teams were not stereotyping nursing homes in a manner consistent with the Kagan and Scholz (1984) model, the self-reported regulatory postures of directors of nursing testified to the variability posited by Kagan and Scholz. We identified four dimensions of motivational posturing. Two were blatantly antagonistic to the regulatory regime, one pleading helplessness (disengagement), the other offense at government intrusion and lack of funds (resistance). In contrast were the two dimensions that represented willingness to play the regulatory game. One represented corporate acceptance that the law had to be obeyed and every effort had to be made to bring the nursing home into compliance (managerial accommodation). The other represented identification with the regulators and the attitude that "we are all on the one team anyhow" (capture). This outlook, in particular, exemplified Meidinger's (1987) notion of a shared regulatory culture.

In important respects these postures capture some of the elements of the Kagan and Scholz model. Managerial accommodators might be expected to be best persuaded by negotiation and explanation as to why the standards were important; resisters might be expected to respond only to deterrence;

© Basil Blackwell Ltd. 1994

HeinOnline -- 16 Law & Pol'y 388 1994

while disengagers might be expected to need assistance and guidance to bring about compliance. None of these simple interactions were supported by the data, however. The only interaction effect that achieved significance involved resisters and showed that those who were neither judged nor treated harshly by the team improved by wave 2.

The explanation here could be that some homes had teething problems and were antagonistic to the regulatory system that had caused them. At the same time, regulators may have been astute enough to recognize homes that were capable of sorting out their problems in the fullness of time, adopting a cooperative rather than interventionist approach with them. As one sage regulator noted during the fieldwork: "they need some time to get used to this new level of government intervention." The evidence reported in this paper suggests that teams are surprisingly competent at selecting which nursing home can be trusted to improve without intervention.

The question of what strategy is effective in what context is one that we have not succeeded in answering given our conceptual and methodological starting point. The methodological concerns have already been acknowledged. The major contribution of this paper, however, is in the conceptual issues it raises. Our data signal the need to broaden the conceptual base for work on regulatory styles. Through highlighting the importance of the social relationship between the regulatee and the regulator, our findings suggest that models based on behavioral decision theory have little practical utility when adequate recognition is not given to social context.

The Kagan and Scholz (1984) model is built on the following premise: to fail to comply means that there is a good reason for noncompliance. The reason may be that it is lucrative not to comply in financial or in other terms, or it may be the case that the law violator does not know how to comply, or the law violator may object to complying on grounds of principle. Following a behavioral decision theory line, one might expect compliance to be achieved once the reasons for noncompliance are nullified. The data from the nursing home study suggest that regulatory interpretations and behaviors can be shaped by a different set of considerations that can best be understood by taking the perspective of those who are expected to comply, rather than the perspective of the law enforcers.

An important finding to emerge from the present study is that people can place themselves outside the regulatory community, in the sense that Meidinger (1987) uses the phrase. Understanding motives for noncompliance, even if practically possible, is not going to give regulators leverage for change when regulatees can cut themselves off from the influence of regulators through erecting a social barricade. It is in this sense that the present work highlights the limitations of the Kagan and Scholz conceptualization. Regulatees can interpret their actions to make themselves heroes (resisters) or victims (disengagers), a social construction of reality that protects them from assaults based on regulatory models, such as that of Kagan and Scholz.

© Basil Blackwell Ltd. 1994

HeinOnline -- 16 Law & Pol'y 389 1994

D. IDENTITIVE MEMBERSHIP

A dominant theme in the responses of regulatees is identitive membership of the regulatory system. Regulatees saw the team in terms of a dimension ranging from coercive and non-trusting to respectful and cooperative. This "against us" and "with us" construction paralleled the regulators' assessments of the nursing home directors. The importance of being "ingroup" or "outgroup" in the regulatory system was further reinforced by the ways in which directors of nursing described their own motivations toward compliance.

The managerial accommodator adopted the role of one who was responsive to the demands of the system, of appearing to be committed, goal-directed and law-abiding. Managerial accommodators enunciate the essential features of the game in the way they know it should be played, in the way it is expected to be played.

Totally oblivious to any game being played were the captives. Capture has traditionally been used to refer to the way in which inspectors fail to meet their regulatory responsibilities because they become too closely aligned with industry. In this situation, those being regulated fail to see themselves in any sort of conflict with the regulators. They perceive the regulatory context as one in which individual actors get together in a spirit of cooperation and mutual support.

Openly rejecting or withdrawing from the system were the resisters and the disengagers. The resisters opposed the government's intrusion and were in favor of actively undermining the regulatory process. They were more likely than anyone else to regard the team as coercive, even after taking account of the compliance score they were given. By the second visit, resisters had improved in their compliance scores to perform as well as their peers.

This finding is consistent with the conclusions reached on the basis of the qualitative data collected between 1987 and 1992 (Braithwaite et al. 1993). Regulatory demands that were considered by many to be unreasonable in 1987 were generally regarded as fair and appropriate by 1992. In part, this was simply a matter of inspectors standing their ground, insisting that the standards could be met without great cost so long as nursing homes applied themselves to finding creative solutions. It was also a matter of the outcome standards becoming integral to conceptions of professional competence. Through these and other routes, there is no doubt that many of the resisters of the later 1980s became compliers of the 1990s.

The group at risk of reduced compliance at wave 2 were the disengagers. They preferred to avoid the system. They expressed neither faith nor hope in it. They were somewhat more likely to be seen as needing "regulatory attention" and somewhat more likely to see this attention as coercive, but these relationships were not strong. Whereas resisters erected a social barrier based on political differences that wore down with time, disengagers

© Basil Blackwell Ltd. 1994

HeinOnline -- 16 Law & Pol'y 390 1994

erected a personal barrier that was more resistant and more damaging to compliance.

V. CONCLUSION

By going beyond reasons for noncompliance and encompassing notions of social relationships between regulators and regulatees, we have identified motivational postures that bear on another classic social science typology, Merton's (1968, 194) modes of adaptation. Kagan (1978) used Merton's typology to describe the behavior of the regulator, but here it is applied to the regulatee. Merton identified the five types of adaptation to a normative order outlined in Table 9, where (+) signifies acceptance of goals and institutionalized means, (−) signifies rejection, and (±) signifies rejection of prevailing values and substitution of new values.

Table 9. Merton's Typology of Modes of Adaptation

Modes of adaptation		Goals	Institutionalized means
I.	Conformity	+	+
II.	Innovation	+	−
III.	Ritualism	−	+
IV.	Retreatism	−	−
V.	Rebellion	±	±

Captives fit the conformist category well, identifying themselves as being in total harmony with regulatory goals and the accepted means for achieving these goals. Disengagers, on the other hand, fit the retreatism category, rejecting both goals and means as hopeless and a waste of time. Resisters can be likened to Merton's rebellion category. They were not opting out of the system but rather were intent on changing it. The remaining motivational posture of managerial accommodation appeared to coincide most closely with innovation, although the comparison is weakened by the fact that innovation is institutionally approved in the Australian nursing home regulatory culture (Braithwaite et al. 1991). Nevertheless, managerial accommodators prided themselves on having their own management strategies in place for achieving compliance, a factor that distinguished them from the other groups. Merton's category of ritualism had no counterpart among the motivational postures identified in this study. By the same token, we know that ritualism exists. Qualitative fieldwork uncovered instances of nursing home directors agreeing to a perfunctory plan of

© Basil Blackwell Ltd. 1994

HeinOnline -- 16 Law & Pol'y 391 1994

correction when noncompliance was detected, but failing to address regulatory goals and the underlying problems that prevented their attainment.[8]

What is particularly interesting about our Australian results is that it is being a disengager that predicts deteriorating compliance. It is not rational resisters who decide that the costs of compliance exceed its benefits. Previous studies published from these data show that subjective expected utility or deterrence variables do not predict compliance across the sample (Braithwaite & Makkai 1991) and that expected costs of compliance have limited predictive power. In Merton's terms, the economically rational corporate fraudster provides a less adequate model of the nursing home noncomplier than the drug addict. The paradigmatic retreatists for Merton are drug addicts, vagrants, and tramps. "People who adapt (or maladapt) in this fashion are, strictly speaking, *in* the society but not *of* it." (Merton 1968, 207). Similarly, our disengagers are in the regulatory game but not of it. They are drop-outs from what Meidinger (1987) calls the regulatory culture or regulatory community.

Our findings, therefore, cause us to think about the problem of regulatory noncompliance in a rather different way from a rational choice model. The challenge becomes not so much how to make it economically rational for the organization to comply, but how to sustain the emotional commitment to working to achieve the regulatory goals within the regulatory system. Our findings suggest a better future research agenda may involve a change in the question we have been asking. This study demonstrates that it is not sufficient to ask "why don't regulatees play the game properly?" We must also ask the question "why do regulatees drop out of the game?" Why does disengagement from the regulatory culture occur and how can it be reversed?

VALERIE BRAITHWAITE *is a Fellow in the Administration, Compliance and Governability Program in the Research School of Social Sciences at the Australian National University. She is the author of a book on the responsibilities of family caregivers entitled* Bound to Care *and has more recently been working on issues of compliance, political decision making and trust in government.*

JOHN BRAITHWAITE *is a Professor in the Research School of Social Sciences at the Australian National University. His most recent books are* Responsive Regulation: Transcending the Deregulation Debate *with Ian Ayres (Oxford University Press, 1992) and* Corporations, Crime and Accountability *with Brent Fisse (Cambridge University Press, 1993).*

DIANE GIBSON *is a Senior Research Fellow and Head of the Aged Care Unit at the Australian Institute of Health and Welfare. She is co-author of* Double Take: The Links between Paid and Unpaid Work *with Janeen Baxter and her research interests include social gerontology, social policy analysis and gender and work.*

© Basil Blackwell Ltd. 1994

HeinOnline -- 16 Law & Pol'y 392 1994

TONI MAKKAI *is a Fellow in the Research School of Social Sciences at the Australian National University. Her research interests are in regulation and compliance, sociology of the professions and the sociology of drug use. She is co-author with Ian McAllister and Rhonda Moore of* Drugs in Australian Society: Patterns, Attitudes and Policy *(Longman Cheshire, 1991).*

NOTES

1. For details on the qualitative fieldwork, see Braithwaite, Makkai, Braithwaite, and Gibson (1993).
2. The semantic differential traditionally is used to evaluate persons or objects in terms of a set of bipolar adjectives that tend to scale in terms of the dimensions of regard, power, and activity.
3. Inspectors did not draw a distinction between nursing home directors being amoral in their approach to the law and amoral in their approach to their professional responsibilities. The law and professional responsibilities were seen to be synonymous in this particular regulatory context.
4. For details on the qualitative fieldwork, see Braithwaite, Makkai, Braithwaite, and Gibson (1993).
5. DON is used to refer to the director of nursing within the industry.
6. A justification for using this type of analysis to infer cognitive structures is provided by Cattell (1973). The analysis was performed on the three stereotyping scales and the four enforcement strategies because they provided the most reliable measures of the concepts of interest (Comrey 1961). The analysis was repeated on the individual items of the stereotyping scales and the four enforcement strategies. The same substantive findings emerged from both analyses.
7. The results of the principal components analysis remained substantively unaffected by substituting individual items for scale scores and by restricting the sample to only those with low compliance.
8. One director of nursing who did not wish to oppose a team that "made a big heap out of ethnic diet" under the standard requiring sensitivity to cultural preferences for different foods adopted the following solution: "So we bought ethnic diet books – a ragout, goulash is a stew – give it a different name and they'll be happy."

REFERENCES

BRAITHWAITE, JOHN, VALERIE BRAITHWAITE, DIANE GIBSON, MIRIAM LANDAU, and TONI MAKKAI (1991) *The Reliability of Nursing Home Standards.* Aged and Community Care Service Development and Evaluation Reports, no. 4, Aged and Community Care Division, Department of Health, Housing and Community Services. Canberra: Australian Government Publishing Service.

BRAITHWAITE, JOHN, and TONI MAKKAI (1991) "Testing an Expected Utility Model of Corporate Deterrence," *Law & Society Review* 25: 7–39.

BRAITHWAITE, JOHN, TONI MAKKAI, VALERIE BRAITHWAITE, DIANE GIBSON, and DAVID ERMANN (1990) *The Contribution of the Standards Monitoring Process to the Quality of Nursing Home Life: A Preliminary Report.* Canberra: Department of Community Services and Health.

BRAITHWAITE, JOHN, TONI MAKKAI, VALERIE BRAITHWAITE, and DIANE GIBSON (1992) *Raising the Standard: Resident Centred Nursing Home Regulation in Australia.* Aged and Community Care Service Development and Evaluation Reports, no. 10, Aged and Community Care Division, Department of Health, Housing and Community Services. Canberra: Australian Government Publishing Service.

© Basil Blackwell Ltd. 1994

HeinOnline -- 16 Law & Pol'y 393 1994

CATTELL, R.B. (1973) *Personality and Mood By Questionnaire.* San Francisco: Jossey-Bass.

COMREY, ANDREW L. (1961) "Factored Homogeneous Item Dimensions in Personality Research," *Educational and Psychological Measurement* 21: 417–31.

COMREY, ANDREW L., and JOHN A. NEWMEYER (1965) "Measurement of Radicalism-Conservatism," *Journal of Social Psychology* 67: 357–69.

DAY, PATRICIA, and RUDOLF KLEIN (1987) "The Regulation of Nursing Homes: A Comparative Perspective," *Milbank Quarterly* 65: 303–47.

KAGAN, ROBERT A. (1978) *Regulatory Justice: Implementing a Wage-Price Freeze.* New York: Russell Sage Foundation.

KAGAN, ROBERT A., and JOHN T. SCHOLZ (1984) "Criminology of the Corporation and Regulatory Enforcement Strategies." In *Enforcing Regulation*, edited by K. Hawkins and J. Thomas. Boston: Kluwer Nijhoff.

LIPSKY, MICHAEL (1980) *Towards a Theory of Street-Level Bureaucracy.* New York: Russell Sage.

MEIDINGER, ERROL (1987) "Regulatory Culture: A Theoretical Outline," *Law & Policy* 9: 355–86.

MERTON, ROBERT K. (1968) *Social Theory and Social Structure.* New York: Free Press.

OSGOOD, C.E., G.J. SUCI, and P.H. TANNENBAUM (1957) *The Measurement of Meaning.* Urbana: Univ. of Illinois Press.

PAYNE, JOHN W., and JAMES R. BETTMAN (1992) "Behavioral Decision Research: A Constructive Processing Perspective," *Annual Review of Psychology* 43: 87–131.

ROKEACH, MILTON (1973) *The Nature of Human Values.* New York: The Free Press.

© Basil Blackwell Ltd. 1994

HeinOnline -- 16 Law & Pol'y 394 1994