

The integrity of a tax system as a governing tool

Victoria Plekhanova*

Abstract

Using an analytical frame informed by Michel Foucault's ideas of governmentality and disciplinary power, this article analyses the concept of the integrity of the tax system, as it is articulated in the *Tax Administration Act 1994* (NZ) and interpreted by the New Zealand tax authorities. The article identifies deficiencies in the concept and its current interpretation, and suggests recasting it as a balance between equity and efficiency principles, and supporting it by a concept of an integrity duty, which is defined as a combination of the shared and individual responsibilities of all of the participants in the taxation process. It also suggests using this concept as a moral framework only, thereby transforming it into an effective governing tool.

Keywords: integrity, taxation system, governance, compliance

* Senior Lecturer, Department of Commercial Law, Business School, University of Auckland. Email: victoria.plekhanova@auckland.ac.nz. The author is grateful to anonymous reviewers for valuable comments.

1. INTRODUCTION

Technological progress has been beneficial to many economic actors and in many ways, one of which has been equipping tax administrators with tools that allow them to collect more taxpayer data and analyse it more comprehensively. Given the current speed of automation, natural systems integration and artificial intelligence (AI) adoption by the New Zealand tax authorities, tax compliance will soon become automated rather than ‘voluntary’. This will make it more difficult for taxpayers to not comply, especially for individuals and standalone entities that cannot shift profits overseas or benefit from the low rates offered by some tax jurisdictions. As non-compliance with taxes becomes less of an issue, it would seem fair to assume that the integrity of New Zealand’s tax system will be better protected. However, this is questionable, given that such a view is predicated on the mistaken belief that the system’s integrity largely relies on voluntary tax compliance.

This article argues that, while in the 21st century we need to focus on the integrity of the tax system more than ever, this should be done from the perspective of the shared and individual responsibilities of all of the participants in the taxation process. Looked at from this angle, while the ‘digital transformation’ has empowered New Zealand’s tax authorities, it has yet to result in any enhanced protection of the rights of taxpayers and tax intermediaries.¹ To achieve this, more emphasis needs to be placed on the tax authorities and other government agencies complying with their obligations to respect the fundamental, constitutional and tax-specific rights of taxpayers.

Integrity is a quality and cannot therefore be the end in itself. Rather, the integrity of the tax system operates as a means – begging the question: to what end? This article goes towards answering this by examining the intended role and subsequent implementation of tax system integrity in New Zealand. For while it was originally introduced as a tool to govern both taxpayers and the tax authorities, in practice it has become a tool that not only largely governs taxpayers, but also prevents them from accessing information, thereby protecting the tax administration’s lack of transparency. This article suggests that the concept of integrity should return to its original focus and extend it to all of the participants in the taxation process, the legislature and judiciary, and uses Foucault’s ideas of governmentality and the interplay between sovereign power and disciplinary power to explain what needs to be done to make it an effective tool.

Foucault’s work is worth considering here, because it not only offers an explanation of the mechanics of governance, but, within this, shows how the promotion of integrity in a tax system can be an effective governing tool. As a historian and philosopher, Michel Foucault drew on historical examples in many of his influential works; in particular, examining the phenomenon of power and its operation in various institutional settings. Foucault did not develop a theory in the conventional sense, though. Instead, he offered unconventional ways of ‘approaching problems and ordering material’.² Foucault wished his work to be used as a ‘toolkit’,³ which is exactly how his ideas are employed

¹ Adrian Sawyer, ‘Enhancing Taxpayers’ Rights in New Zealand – An Opportunity Missed?’ (2020) 18(2) *eJournal of Tax Research* 441.

² Gibson Burrell, ‘Modernism, Post Modernism and Organizational Analysis 2: The Contribution of Michel Foucault’ (1988) 9(2) *Organization Studies* 221, 221.

³ See Michel Foucault, ‘Powers and Strategies’ in Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings 1972-1977*, ed Colin Gordon, tr Colin Gordon et al (Pantheon, 1980) 134, 145. See also Ben Golder and Peter Fitzpatrick, *Foucault’s Law* (Routledge, 2009) 5.

in this article. As '[i]t should not be assumed that Foucault's writings are fully coherent to the Anglo-American eye',⁴ appreciating his ideas involves a reliance on both Foucault's original writings and their interpretations by others.

The remainder of this article is structured as follows. An outline of the meanings of integrity in various contexts (section 2) is followed by a textual analysis of the concept of the integrity of the tax system as it is used in the *Tax Administration Act 1994* (NZ) and by New Zealand's tax authorities, and an explanation of how this use falls into Foucault's concept of governmentality (section 3). The governing potential of the concept of the integrity of the tax system is then explained from Foucault's perspective of power over people (section 4), before the meaning of the concept is reimagined to make it an effective governing tool (section 5), and suggestions for tax reform made (section 6).

2. INTEGRITY IN VARIOUS CONTEXTS

In his analysis of the concept 'integrity', as defined in the *Oxford English Dictionary* and its French equivalent, *Le Grand*, British philosopher Alan Montefiore has observed that, in addition to wholeness, this term refers to a certain original state of perfection or purity, an uncorrupted 'whole' with a moral value, which, when applied to a person, is also associated with honesty and probity.⁵

In institutional contexts, references to integrity are vast and various in meaning and applications. Common examples are the structural integrity of formal and informal organisations,⁶ integrity in public decision-making,⁷ integrity as a factor of organisational trustworthiness,⁸ and institutional integrity.⁹ In the socio-legal context, integrity is viewed a standard established in various spheres of social interaction.¹⁰ Scholars of international law refer to integrity as a quality of international public law,¹¹

⁴ Burrell, above n 2, 222.

⁵ Alan Montefiore, 'Integrity: A Philosopher's Introduction' in Alan Montefiore and David Vines (eds), *Integrity in the Public and Private Domains* (Routledge, 1999) 2, 6-7. See also Emmanuel K Narrey, 'Neurological Aspect of Ethics and Integrity: A Fundamental Compound Element of Law and Tax Compliance' (2023) 9(2) *Athens Journal of Law* 245, 252-253.

⁶ David Krackhardt, 'Assessing the Political Landscape: Structure, Cognition, and Power in Organizations' (1990) 35(2) *Administrative Science Quarterly* 342; James H Fowler, 'Connecting the Congress: A Study of Cosponsorship Networks' (2006) 14(4) *Political Analysis* 456; John T Scholz, Ramiro Berardo and Brad Kile, 'Do Networks Solve Collective Action Problems? Credibility, Search, and Collaboration' (2008) 70(2) *Journal of Politics* 393; Matt Grossmann and Casey BK Dominguez, 'Party Coalitions and Interest Group Networks' (2009) 37(5) *American Politics Research* 767; Philip Leifeld and Volker Schneider, 'Information Exchange in Policy Networks' (2012) 56(3) *American Journal of Political Science* 731.

⁷ Organisation for Economic Co-operation and Development (OECD), *Preventing Policy Capture: Integrity in Public Decision Making* (OECD Publishing, 2017).

⁸ This integrity is associated with legal compliance and procedural fairness. See Cam Caldwell and Stephen E Clapham, 'Organizational Trustworthiness: An International Perspective' (2003) 47(4) *Journal of Business Ethics* 349.

⁹ Institutional integrity together with minimum moral acceptability and comparative benefits are viewed as substantive criteria of normative legitimacy of international institutions. See Allen Buchanan and Robert O Keohane, 'The Legitimacy of Global Governance Institutions' (2006) 20(4) *Ethics and International Affairs* 405, 419-423.

¹⁰ Chris Thornhill, 'The Sociology of Constitutions' (2017) 13 *Annual Review of Law and Social Science* 493, 499.

¹¹ Sergio André Rocha, 'Countries' Aggressive Tax Treaty Planning: Brazil's Case' (2016) 44(4) *Intertax* 334, 338: 'The integrity of International Public Law rests on two main principles: *pacta sunt servanda* and good faith'.

‘procedural integrity’ in law as ‘an important source of authority and legitimacy for international law’,¹² systemic integrity as one of demands of the rule of law,¹³ or the integrity as a criterion of acting in ‘good faith’.¹⁴ All of these meanings and applications of integrity have several things in common. First, they all create positive connotations, either about integrity itself or about objects or subjects that have integrity. Second, they use the word ‘integrity’ to describe a quality of an object or a subject, or a standard for the evaluation of such a quality.

Tax scholarship has also embraced the concept of integrity and in the similar vein – as a positive quality that should be preserved and protected. With the exception of the unorthodox view of integrity as a basis for a state’s duty to cooperate in international tax issues,¹⁵ integrity is usually viewed as a quality of an object. The object, however, varies. In addition to the most common association of integrity with the national tax system, which is discussed later, in the tax context the objects that have integrity include, among others: the single market; personal income tax; corporate income tax; income tax generally; a national tax system (in the international context); the international tax system; the international order; a tax treaty; the system of residence-based taxation; tax policy; the tax dispute resolution process; and the private rulings system. In these contexts, references to integrity are invoked either to highlight a specific risk to an object’s integrity, or to promote a specific policy instrument or legal rule because of its positive impact on the object’s integrity.

Risk-focused arguments, in particular, refer to the following risks and their integrity-related impacts: 1) deteriorating compliance puts the integrity of corporate income tax at risk;¹⁶ 2) cross-border profit shifting puts at risk both the integrity of corporate income tax¹⁷ and the integrity of the international tax system;¹⁸ 3) harmful tax competition undermines taxpayer confidence in the integrity of national tax systems;¹⁹ 4) tax havens undermine the integrity of tax policy,²⁰ and 5) the challenges of the digitalisation of the global economy put the integrity of the international order at risk.²¹

References to integrity are invoked in tax contexts to promote: 1) the common system of a digital services tax in the European Union because it protects the integrity of the

¹² David A Wirth, ‘Reexamining Decision-Making Processes in International Environmental Law’ (1994) 79(4) *Iowa Law Review* 769, 798 (footnote omitted).

¹³ Jeremy Waldron, ‘The Concept and the Rule of Law’ (2008) 43(1) *Georgia Law Review* 1.

¹⁴ Helmut Becker and Felix Würm, ‘Double-Taxation Conventions and the Conflict between International Agreements and Subsequent Domestic Laws’ (1988) 16(8/9) *Intertax* 257, 261, 262-263.

¹⁵ Allison Christians and Tarcisio Diniz Magalhães, ‘17 Ways to Regulate BigTech with Tax’ (2024) 78(1) *The Tax Lawyer* 1.

¹⁶ Thomas G Vitez, ‘Information Reporting and Withholding as Stimulants of Voluntary Compliance’ in Phillip Sawicki (ed), *Income Tax Compliance: A Report of the ABA Section of Taxation Invitational Conference on Income Tax Compliance* (American Bar Association, 1983) 191. Michael Webb, ‘Defining the Boundaries of Legitimate State Practice: Norms, Transnational Actors and the OECD’s Project on Harmful Tax Competition’ (2004) 11(4) *Review of International Political Economy* 787, 808.

¹⁷ OECD, *Addressing Base Erosion and Profit Shifting* (OECD Publishing, 2013) 10.

¹⁸ Chris Evans and Sally-Ann Joseph, ‘General Report’ in Chris Evans, Michael Lang, Alexander Rust, Josef Schuch, Claus Staringer and Pasquale Pistone (eds), *Improving Tax Compliance in a Globalized World* (IBFD Publications, 2018) 3, 39.

¹⁹ OECD, *Harmful Tax Competition: An Emerging Global Issue* (OECD Publishing, 1998) 8, [4].

²⁰ Wolfgang Schön, ‘Neutrality and Territoriality – Competing or Converging Concepts in European Tax Law?’ (2015) 69(4/5) *Bulletin for International Taxation* 271.

²¹ Julien Chaisse and Irma Mosquera, ‘Public International Law, International Taxation and Tax Dispute Resolution’ (2023) 31(1) *Asia Pacific Law Review* 192, 192.

single market;²² 2) a destination-based cash-flow tax because of its potential to protect the integrity of personal income tax;²³ 3) ‘the inclusion [by a residence state] in the tax base of all income earned abroad by its residents and subjection of that income to national standards of tax equity’ because it protects income tax integrity generally;²⁴ 4) ‘the existing system of double tax relief’ because it allows the maintenance of the ‘territorial integrity of differing national tax systems’;²⁵ 5) an effective application of the mutual agreement procedure that maintains the integrity of tax treaties because it ensures ‘that any disputes concerning the application of anti-abuse rules will be resolved according to internationally accepted principles’;²⁶ and 6) the sharing of relevant tax information by nation states ‘to maintain the integrity of residence-based taxation’.²⁷

By highlighting these risks or benefits, those who use references to the integrity in tax contexts are seeking, in more or less direct ways, to facilitate or discourage a specific action or behaviour. The examples given above are only a fraction of the arguments where integrity is used for instrumental purposes in tax contexts.

References to the integrity of the tax system also abound, and their contexts are similarly wide-ranging and diverse. However, these references are also structured either along the ‘risk line’ or the ‘benefits line’. For instance, some mention integrity in the context of tax competition for foreign direct investment;²⁸ others express concerns that the integrity of the tax system could be undermined by the non-complying tax behaviour of high-net-worth individuals,²⁹ or suggest that the difference between top marginal tax rates for individuals and the corporate income tax rate ‘could endanger tax integrity by encouraging wealthy individuals to shift income to corporate entities to reduce their tax liabilities’;³⁰ or emphasise that opportunities for tax avoidance or minimisation may arise as a result of ‘the interaction of the systems for taxing companies, trusts, and individuals’, or, more precisely, because of the tax-driven choices of business entities.³¹ Conversely, it has also been suggested that using digital delivery will ‘enhance the integrity of tax systems’,³² or, more generally, that the effective use of technology can

²² European Commission, *Commission Staff Working Document: Impact Assessment Accompanying the Document Proposal for a Council Directive Laying Down Rules Relating to the Corporate Taxation of a Significant Digital Presence and Proposal for a Council Directive on the Common System of a Digital Services Tax on Revenues Resulting from the Provision of Certain Digital Services*, SWD(2018) 81 final/2 (21 March 2018) 22, 44, 48, 80-81 and 98.

²³ Wei Cui, ‘Destination-Based Cash-Flow Taxation: A Critical Appraisal’ (2017) 67(3) *University of Toronto Law Journal* 301.

²⁴ Peggy B Musgrave, ‘Combining Fiscal Sovereignty and Coordination: National Taxation in a Globalizing World’ in Inge Kaul and Pedro Conceição (eds), *The New Public Finance: Responding to Global Challenges* (Oxford University Press for the United Nations Development Programme, 2006) 167, 170-171.

²⁵ Michael J Graetz, *Foundations of International Income Taxation* (Foundation Press, 2003) 217-219.

²⁶ United Nations, *United Nations Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries 2019* (2019) [791].

²⁷ Allison Christians, ‘A Global Perspective on Citizenship-Based Taxation’ (2017) 38(2) *Michigan Journal of International Law* 193, 234.

²⁸ Thomas Rixen, ‘Bilateralism or Multilateralism? The Political Economy of Avoiding International Double Taxation’ (2010) 16(4) *European Journal of International Relations* 589.

²⁹ OECD, *Engaging with High Net Worth Individuals on Tax Compliance* (OECD Publishing, 2009) 9 and 16.

³⁰ OECD, *OECD Economic Surveys: New Zealand 2022* (OECD Publishing, 2022) 53.

³¹ Tax Working Group, ‘Terms of Reference: Tax Working Group’ (23 November 2017) <<https://taxworkinggroup.govt.nz/resources/terms-reference-tax-working-group>>.

³² OECD, *Tax Administration 2017: Comparative Information on OECD and Other Advanced and Emerging Economies* (OECD Publishing, 2017) 163-168.

create ‘greater taxpayer confidence in the integrity of the tax system’,³³ ‘simplify the process of paying taxes and help increase the integrity of the tax system by reducing opportunities for corruption’.³⁴ Similarly, it is mooted that a standard for the Automatic Exchange of Financial Account Information in Tax Matters will help in the ‘fight against tax evasion and in protecting the integrity of tax systems’.³⁵

From the examples discussed in this section, it follows that a tax system that has integrity is more valuable than one that does not have integrity. Integrity is viewed as a valuable quality that needs to be maintained, enhanced and protected. There is, however, no policy or scholarship explanation of the merits and the meaning of such integrity. The next section explains how these general observations play out in the New Zealand tax context.

3. THE INTEGRITY OF THE TAX SYSTEM: NEW ZEALAND’S APPROACH

In the New Zealand tax context, references to the integrity of the tax system fall into three domains: 1) a moral framework guiding behaviour; 2) the purpose of collection of revenue information, and 3) a reason that relieves the Commissioner of Inland Revenue from the legal requirement to disclose an item of revenue information. These references are part of the process termed ‘governmentality’.

3.1 The integrity of the tax system as a moral framework

Under the *Tax Administration Act 1994* (NZ), every member of a government agency that is involved in the collection of tax and performs other functions under the Inland Revenue Acts ‘must at all times use their best endeavours to protect the integrity of the tax system’.³⁶ This statement is clearly structured along the ‘risk line’.

The meaning of the ‘integrity of the tax system’ includes:³⁷

- ‘(a) the public perception of that integrity; and
- (b) the rights of persons to have their liability determined fairly, impartially, and according to law; and
- (c) the rights of persons to have their individual affairs kept confidential and treated with no greater or lesser favour than the tax affairs of other persons; and
- (d) the responsibilities of persons to comply with the law;

³³ OECD, *The Changing Tax Compliance Environment and the Role of Audit* (OECD Publishing, 2017) 43.

³⁴ OECD, *Tax Morale: What Drives People and Businesses to Pay Tax?* (OECD Publishing, 2019) 22 (‘*Tax Morale*’), citing Richard M Bird and Eric M Zolt, ‘Technology and Taxation in Developing Countries: From Hand to Mouse’ (UCLA School of Law, Law-Econ Research Paper No 08-07, 2008).

³⁵ OECD, *Standard for Automatic Exchange of Financial Account Information in Tax Matters* (2nd ed, OECD Publishing, 2017) 9 and 315. Along this line is the discussion of ‘tax integrity risks’ of clients of financial institutions, ie, their likelihood of engagement in tax avoidance and evasion IFA, Summary of Proceedings of the 2019 London Congress. Seminar I: Recent developments in international taxation, at 60-61.

³⁶ *Tax Administration Act 1994* (NZ) s 6(1).

³⁷ *Ibid* s 6(2).

- (e) the responsibilities of those administering the law to maintain the confidentiality of the affairs of persons; and
- (f) the responsibilities of those administering the law to do so fairly, impartially, and according to law.’

This definition sets a moral framework, but in an unclear way. The integrity of the tax system is a quality of the system, and yet, instead of outlining the criteria of the system, the existing legal definition refers to public perception, the rights and responsibilities of persons, and the responsibilities of tax administrators.

In stating that it is Inland Revenue’s obligation to protect the integrity of the tax system and manage public perception, the focus is shifted from responsibilities being shared by taxpayers and tax administrators to Inland Revenue having power over taxpayers. This is antagonising and counterproductive, as it by default puts all taxpayers under suspicion of potentially violating the integrity of the tax system and falsely assumes that Inland Revenue can manage people’s perceptions. While perceptions can certainly be influenced, the degree of this influence and the role of each influencing factor and their combination are unknown and difficult to predict.

In its most common usage, a perception is ‘becoming aware of physical objects, phenomena, etc, through the senses’ or ‘an intuitive insight; an understanding’.³⁸ It is therefore a product of consciousness, which, in turn, is influenced by many factors and through many senses. Inland Revenue can contribute to this influence. By communicating its expectations about what is right and what is wrong, including reporting cases of prosecution, Inland Revenue creates information that can pass through humans’ senses. However, the extent to which this information passes and affects the perceptions of individual people is unknown, and cannot be measured. Therefore, a belief that Inland Revenue can *manage* perceptions is misleading.

In its Statement of Intent 2021-25, Inland Revenue refers to its role as a steward of the integrity of the revenue system and links it to voluntary tax compliance, which it seeks to encourage by creating and maintaining positive beliefs among taxpayers about tax liability and Inland Revenue.³⁹ Inland Revenue protects the integrity of the revenue system by ‘helping customers get things right as well as correcting them when they get it wrong’, and to do this it looks ‘at everything from policy settings, the design of products and services, the advice and education we provide, through to how and when

³⁸ *Oxford English Dictionary* (online)

<https://www.oed.com/dictionary/perception_n?tab=meaning_and_use> (accessed 26 November 2025).

³⁹ Inland Revenue, ‘Statement of Intent 2021-25’ (last updated 25 November 2021)

<<https://www.ird.govt.nz/about-us/publications/annual-corporate-reports/statement-of-intent/statement-of-intent-2021-25/what-we-want-to-achieve/our-strategic-intentions/ensuring-trust-in-and-the-integrity-of-the-revenue-system>> (‘Statement of Intent 2021-25’):

‘So that New Zealanders continue to provide us with accurate information, pay their taxes, and claim only what they are entitled to, it’s important they believe:

- When I pay my tax, I’m doing a good thing (and that’s what people like me do).
- When I’m trying to do the right things, Inland Revenue will help me.
- When someone else is trying to do the wrong thing, Inland Revenue will find them’.

we enforce the law'.⁴⁰ The same sentiment is expressed in Inland Revenue Statement of Intent 2024-28.⁴¹

The effectiveness of Inland Revenue's management of the public's perception of the integrity of the tax system is measured by instruments that make little sense.⁴² Inland Revenue refers to 'integrity indicators' that show how it is protecting the integrity of the tax and social policy system.⁴³ However, instead of clearly establishing exactly what these indicators are, it outlines the results of the Customer Satisfaction and Perceptions Survey, and refers to the Public Sector Reputation Index. None of these criteria is related to the integrity of the tax system, nor to how people perceive it. Certainly it is possible to suggest that the satisfactory experience of taxpayers from their interactions with tax authorities may contribute to their positive perceptions of (and trust in) these tax authorities. However, it may or may not affect their perception of, and the trust in, the actual tax system or the government. According to the OECD, 'perceptions about public service delivery, and integrity ... account for about 40% of differences in trust in government, but there are significant variations between countries'.⁴⁴ Despite high trust in public services, trust in the government is low in New Zealand. But while the possibility of accurately measuring public perceptions of the tax system should not be ruled out,⁴⁵ whether it will be measuring the system's integrity or Inland Revenue's actions to protect its integrity remains open for discussion.

Also, the *Tax Administration Act 1994* mentions the integrity of the *tax system*, whereas Inland Revenue refers to the integrity of the *tax and social policy system*⁴⁶ as well as the integrity of the *revenue system*.⁴⁷ There is also 'revenue integrity',⁴⁸ but the line between all of these concepts is far from clear. Revenue integrity has been recently conceptualised as 'the extent to which the tax system is coherent and sustainable over time and minimises opportunities for tax avoidance and tax evasion',⁴⁹ a definition that

⁴⁰ Ibid.

⁴¹ Inland Revenue, 'Statement of Intent 2024-28' (2024) 11 <<https://www.ird.govt.nz/-/media/project/ir/home/documents/about-us/publications/annual-and-corporate-reports/statement-of-intent/statement-of-intent-2024---2028.pdf?modified=20250114000956>>.

⁴² Jeremy Beckham, 'Inland Revenue's Strategic and Regulatory Management of Tax System Integrity and Taxpayer Perceptions' (2018) 33(4) *Australian Tax Forum* 701, 743-745. See also, on performance measurement, Victoria Plekhanova, 'Transparency, Trust, Transnationality, and Tax Compliance: Lessons from Google's Financial Reporting Practices in New Zealand' (2025) 73(2) *Canadian Tax Journal* 269, 279-280 ('Transparency, Trust, Transnationality, and Tax Compliance').

⁴³ Inland Revenue, 'Our Integrity – Protecting the Integrity of the Tax and Social Policy System' (last updated 2 November 2021) <<https://www.ird.govt.nz/about-us/publications/annual-corporate-reports/annual-report/annual-report-2021/our-performance/our-integrity>> ('Our Integrity').

⁴⁴ OECD, *Tax Morale*, above n 34, 31, citing F Murtin et al, 'Trust and Its Determinants: Evidence from the Trustlab Experiment' (OECD Statistics Working Paper No 2018/2, 2018).

⁴⁵ Lin Mei Tan, 'Taxpayers' Perceptions of Fairness of the Tax System – A Preliminary Study' (1998) 4 *New Zealand Journal of Taxation Law and Policy* 59.

⁴⁶ Inland Revenue, 'Our Integrity', above n 43. Inland Revenue, 'Statement of Intent 2024-28', above n 41, 8 and 10.

⁴⁷ Inland Revenue, 'Statement of Intent 2021-25', above n 39; Inland Revenue, 'Addressing Integrity Risks' <<https://www.ird.govt.nz/about-us/publications/annual-corporate-reports/statement-of-intent/statement-of-intent-2024-28/what-we-want-to-achieve/addressing-integrity-risks>> ('Addressing Integrity Risks').

⁴⁸ Victoria University of Wellington Tax Working Group (Professor Bob Buckle, chair), *A Tax System for New Zealand's Future: Report of the Victoria University of Wellington Tax Working Group* (Centre for Accounting, Governance and Taxation Research, Victoria University of Wellington, January 2010) 15 <<http://www.victoria.ac.nz/sacl/cagtr/twg/report>>.

⁴⁹ *Taxation Principles Reporting Act 2023* (NZ): repealed, on 23 December 2023, by section 4 of the *Taxation Principles Reporting Act Repeal Act 2023* (NZ) (2023 No 70) sch 1, s 2. See also Inland Revenue,

mixes revenue integrity and tax system integrity. One would assume that revenue integrity is about a non-eroded tax base, whereas tax system integrity is about the coherence of its structure.

According to Inland Revenue, the integrity of the *revenue system* is maintained ‘through encouraging high levels of voluntary compliance’.⁵⁰ However, this narrow focus has been criticised by tax scholars⁵¹ because of its misalignment with the Richardson Committee report of 1994 – the document that drew attention to taxpayer perceptions of the integrity of the tax system and provided a normative basis for tax administration reform. The report acknowledged the link between voluntary compliance and taxpayer perceptions of the integrity of the tax system, but also emphasised that such perceptions ‘are tightly linked to the impartial application of the law and the exercise of the administration’s coercive powers and decision making powers with respect to the affairs of individual taxpayers’, and suggested that in is in the interest of tax administrators to ‘protect the constitutional rights of taxpayers as individuals’.⁵² In other words, the integrity of a tax system in its original meaning was aimed at governing not only taxpayers but also tax administrators.

3.2 Instrumental references to the integrity of the tax system

In addition to a legal definition of the integrity of the tax system, which sets a moral framework for expected behaviour, the *Tax Administration Act 1994* contains two references to the integrity of the tax system that appear to be instrumental and separate from the moral framework. Namely, protecting the integrity of New Zealand’s tax system is one of the purposes of collecting revenue information,⁵³ and also operating as a rationale for the Commissioner of Inland Revenue maintaining the confidentiality of revenue information even when such information does not fall within the scope of sensitive revenue information⁵⁴ that should therefore be protected.⁵⁵ The Commissioner of Inland Revenue is not required to disclose any item of revenue information if the release of the information would adversely affect the integrity of the tax system or prejudice the maintenance of the law.⁵⁶

Generally, the disclosure of sensitive revenue information that is made in carrying into effect revenue laws should meet two criteria.⁵⁷ First, the disclosure is required to carry out or support a function lawfully conferred on the Commissioner to administer the tax system, to implement the tax system, or to improve, research or reform the tax system.⁵⁸

‘Regulatory Impact Statement: A Reporting Framework Informed by Tax Principles. Coversheet’ (26 April 2023) [36] <<https://www.taxpolicy.ird.govt.nz/-/media/project/ir/tp/publications/2023/2023-ria-pack-tax-principles-bill/2023-ria-pack-tax-principles-bill-pdf.pdf?modified=20240312033222&modified=20240312033222>>.

⁵⁰ Inland Revenue, ‘Addressing Integrity Risks’, above n 47.

⁵¹ Beckham, above n 42. See also Valerie Braithwaite, ‘Tax System Integrity and Compliance: The Democratic Management of the Tax System’ in Valerie Braithwaite (ed), *Taxing Democracy: Understanding Tax Avoidance and Evasion* (Ashgate Publishing, 2003) 271, 276.

⁵² Organisational Review Committee (Sir Ivor Richardson, chair), *Organisational Review of the Inland Revenue Department: Report to the Minister of Revenue (and on tax policy, also to the Minister of Finance)* (1994) [15.1.4], Appendix D, [22]–[24].

⁵³ *Tax Administration Act 1994*, s 16B(1)(a).

⁵⁴ *Ibid* ss 18D to 18J and sch 7.

⁵⁵ *Ibid* s 18(3).

⁵⁶ *Ibid*.

⁵⁷ *Ibid* s 18D(1)(a).

⁵⁸ *Ibid* s 18D(1)(b).

Secondly, from the Commissioner's perspective the disclosure should be reasonable.⁵⁹ One criterion of this reasonableness is the connection between the revenue information and the Commissioner's obligation at all times to use best endeavours to protect the integrity of the tax system.⁶⁰

The *Tax Administration Act 1994* allows the sharing of sensitive revenue information and other information among public and private agencies under approved agreements, and for international tax cooperation purposes.⁶¹ This sharing is subject to the same general rule that authorises the Commissioner of Inland Revenue not to disclose any item of revenue information if its release would adversely affect the integrity of the tax system or prejudice the maintenance of the law.⁶² However, this rule does not apply to other public or private agencies who share information with the Commissioner under sharing agreements. In other words, these agencies cannot refuse to share revenue information because doing so may undermine the integrity of the tax system.

Effectively, the reference to the integrity of the tax system is employed to justify an action (the sharing of information) which interferes with an individual's legal rights (the right to privacy and the right to confidentiality).

4. INTEGRITY THROUGH FOUCAULT'S LENS

The concept of the integrity of the tax system has much greater governing potential than is currently envisioned by the tax authorities and legislators in New Zealand. Foucault's ideas of power help to explain how this concept could govern all of the participants in the taxation process.

4.1 The governing potential of the concept of the integrity of the tax system

The integrity of a tax system can be a governing tool because it has a potential to persuade the audience to behave in a specific way. The mechanisms of such persuasion vary, as does the legal and non-legal 'technology' that is necessary for their success. Effective governance implies the compliance of those who are governed. An appreciation of the psychology of compliance and the mechanisms of power exercised over people will help in understanding how adherence to the integrity of a tax system can be effectively employed to govern all participants in the taxation process.

4.2 Psychology of compliance

At a very general level compliance is an act of obedience. As has been argued elsewhere, compliance is a social behaviour, and is driven by the desire to get a reward or avoid a punishment,⁶³ based, of course, on the assumption that the behaviour is rational. Rewards and punishment do not need to be material. Pure satisfaction with one's own actions or inactions can be rewarding; actions or inactions can also be rewarded by elevation in social status, or punished by exclusion from a social group.

In tax contexts, compliance is not always voluntary because a complying person does not always control the actions of third parties who, by way of law, can impact the

⁵⁹ Ibid s 18D(1)(a) and (b).

⁶⁰ Ibid s 18D(1)(b)(i).

⁶¹ Ibid ss 18E, 18F, and 18I.

⁶² Ibid s 18(3).

⁶³ Plekhanova, 'Transparency, Trust, Transnationality, and Tax Compliance', above n 42.

complying person and this person's complying status. Examples of such 'involuntary compliance' include the use of withholding mechanisms for the collection of taxes or automated data collection that makes non-compliance difficult if not impossible.

Compliance also depends on transparency. If others can observe a person's behaviour, this transparency creates conditions for a social response, which could be a reward or a punishment, and makes it easy to invoke legal rules that penalise non-compliance. In the tax field, such transparency is limited by various legal rules or their absence, and it applies differently to different participants in the taxation process.⁶⁴ Lack of transparency is a factor contributing to the ineffectiveness of governing tools. This problem has been discussed elsewhere, along with some suggestions for addressing it.⁶⁵ This article's focus, however, is on issues that have not hitherto been discussed – the mechanics of government's power over people in a domestic tax context.⁶⁶

In addition to clarity about the rule and its legal status, and some understanding of the accompanying potential rewards and punishments, compliance depends on the ability of the rule of law to reflect social values that are common in the political community where the rule is enacted and applied. It can therefore be argued that compliance is conditional on the ability of the legislature to follow social values, or at least stay in line with them. This alignment gives legal rules their 'sociological legitimacy', which in turn leads to obedience and compliance arising from respect for the rule (and the associated rewards for this respect or punishments for disrespect).⁶⁷ It is sociological legitimacy, rather than, as some have suggested, integrity, that 'gives individual value and confidence in decision making' and helps to 'mitigate cognitive biases'.⁶⁸

Without this broader view on compliance, and understanding its links to social and moral values, and without a respect for the laws and principles upon which the tax system is based, this system will become corrupt. If the system's 'wholeness' is lost, trust in the system will erode, and the tax system will be unable to operate in accordance with its principles and achieve its purpose in the way it was intended. Trust encourages conditional cooperation,⁶⁹ which, at its deep social level, is what is known as 'positive reciprocity'.⁷⁰ The current tax system's existing measurement of trust falls short in assessing the various types of trust⁷¹ and their effects on voluntary tax compliance or compliance with the rule of law generally. Nonetheless, it is clear that mutual trust is fundamental for the successful operation of a taxation process which relies on the cooperation of all participants. Although the role of trust in a system based on multi-

⁶⁴ Ibid 279-280.

⁶⁵ Ibid 274-276, 286-301, and 312-314.

⁶⁶ For a discussion of power to tax in cross-border tax contexts see Victoria Plekhanova, 'On Benefits of New Legal Realism for International Tax Scholarship' (2023) 14(3) *Transnational Legal Theory* 307.

⁶⁷ Victoria Plekhanova, 'The Legitimizing Effects of the OECD's Fairness-Based Narratives' (2022) 70(4) *Canadian Tax Journal* 785, 795 and 798 ('The Legitimizing Effects of the OECD's Fairness-Based Narratives').

⁶⁸ Nartey, above n 5, 260-261.

⁶⁹ Nartey has referred to laboratory experiments analysing public games that have recognised reciprocity as an important driver of behaviour and condition cooperation as a 'relatively stable type of social preference' and concluded that participants in a taxation process 'might conditionally be cooperative if they expect their peers to cooperate'. See Nartey, above n 5, 262.

⁷⁰ Victoria Plekhanova, 'Taxes Through the Reciprocity Lens' (2022) 70(2) *Canadian Tax Journal* 303, 310-312.

⁷¹ Plekhanova, 'Transparency, Trust, Transnationality, and Tax Compliance', above n 42.

dimensional compliance needs to be thoroughly examined, this falls outside the scope of this article.

4.3 Government's power over people in a domestic tax context

Governing strategies as means of the exercising of power over people can be divided into coercive and persuasive, or a combination of both. Coercive strategies rely on enforcement mechanisms, whereas persuasive strategies employ de facto management techniques. Integrity, like many other morally loaded concepts, is foundational to a governing strategy that seeks to 'govern through freedom' or by creating a perception of a free choice. Such a strategy is persuasive and can be explained based on Foucault's views on power over people as it is exercised by government.

According to Foucault, government, at least in the Western world, permeates the whole of a society and operates through dispersed mechanisms of power, comprising both sovereign powers and disciplinary powers.⁷²

From the nineteenth century until the present day, we have then in modern societies, on the one hand, a legislation, a discourse, and an organization of public right articulated around the principle of the sovereignty of the social body and the delegation of individual sovereignty to the State; and we also have a tight grid of disciplinary coercions that actually guarantees the cohesion of that social body.

Now that grid cannot in any way be transcribed in right, even though the two necessarily go together. A right of sovereignty and a mechanics of discipline. It is, I think, between these two limits that power is exercised.⁷³

Sovereign power is a power of command; it is possessed, flows from the top to the bottom, and is 'primarily [coercive and] repressive'.⁷⁴ This is in line with Thomas Hobbes's views about law as a command of the sovereign and an expression of sovereign power.⁷⁵

In contrast, disciplinary power is a power of training and self-control;⁷⁶ it is exercised rather than possessed, can flow from the bottom upwards, is conditioned by the discourse, and is productive,⁷⁷ as it 'produces the subjects who submitted to their own

⁷² Michel Foucault, *'Society Must Be Defended': Lectures at the Collège de France 1975-1976*, ed Mauro Bertani and Alessandro Fontana, tr David Macey (Picador, 2003) 181 (*'Society Must Be Defended'*). See also Burrell, above n 2, 225.

⁷³ Foucault, *'Society Must Be Defended'*, above n 72, 37.

⁷⁴ Jana Sawicki, 'Foucault and Feminism: Toward a Politics of Difference' (1986) 1(2) *Hypatia* 23, 26. See also Michael Kelly, 'Foucault, Habermas, and the Self-Referentiality of Critique' in Michael Kelly (ed), *Critique and Power: Recasting the Foucault/Habermas Debate* (MIT Press, 1994) 365, 374.

⁷⁵ Hans Gribnau and Carl Dijkstra, 'Contractualism and Tax Governance: Hobbes and Hume' in Peter Harris and Dominic de Cogan (eds), *Studies in the History of Tax Law: Vol 9* (Hart Publishing, 2019) 17.

⁷⁶ 'Governmentality' in *Oxford Reference* (online)

<<https://www.oxfordreference.com/view/10.1093/oi/authority.20110803095901877>>.

⁷⁷ Sawicki, above n 74, 26.

subjectivity’⁷⁸ or ‘disciplined’. Such ‘disciplining’ concerns ‘the formation of motives, desires, and character in individuals through techniques of the self’.⁷⁹

The interaction between sovereign power and disciplinary power is complex, and this is reflected in the operation of laws and soft law instruments such as ‘the techniques of discipline and discourses born of discipline’.⁸⁰ As Foucault himself put it:

In our day, it is the fact that power is exercised through both [sovereign] right and disciplines, that the techniques of discipline and discourses born of discipline are invading [sovereign] right, and that normalizing procedures are increasingly colonizing the procedures of the law, that might explain the overall workings of what I would call a ‘normalizing society’.⁸¹

Discipline, in Foucault’s terms, comprises ‘a whole set of instruments, techniques, procedures, levels of application, targets; it is a “physics” or an “anatomy” of power, a technology’.⁸² He also refers to discipline as a ‘specific technology of power’ which ‘produces reality’, ‘domains of objects and rituals of truth’.⁸³ ‘The individual and the knowledge that may be gained of him belong to this production’.⁸⁴

Disciplined individuals have acquired the ‘habits, capacities, and skills that allow them to act in socially appropriate ways without the need for any exercise of external, coercive power’.⁸⁵ Disciplinary power is not individually possessed,⁸⁶ but can emerge as a result of discourse, history, norms and culture;⁸⁷ this power is ‘floating in between the agents in the context’.⁸⁸ Disciplinary power reflects David Hume’s philosophy where ‘the role of the government is in the background’ and a ‘sense of the common good creates an unwritten convention’ that should drive people and justify government’s actions.⁸⁹

The discourse of discipline is alien to that of the law; it is alien to the discourse that makes rules a product of the will of the sovereign. The discourse of disciplines is about a rule: not a juridical rule derived from sovereignty, but a discourse about a natural rule, or in other words a norm. Disciplines will define not a code of law, but a code of normalization, and they will necessarily refer to a theoretical horizon that is not the edifice of law, but the field of the human sciences.⁹⁰

⁷⁸ Gerd Christensen, ‘Three Concepts of Power: Foucault, Bourdieu, and Habermas’ (2023) 16(2) *Power and Education* 182, 187, citing Kelly, above n 74, 374.

⁷⁹ ‘Governmentality’, above n 76.

⁸⁰ Foucault, ‘*Society Must Be Defended*’, above n 72, 38-39.

⁸¹ *Ibid.*

⁸² Michel Foucault, *Discipline and Punish: The Birth of the Prison*, tr Alan Sheridan) (2nd ed, Vintage Books, 1995) 215.

⁸³ *Ibid* 194.

⁸⁴ *Ibid.*

⁸⁵ ‘Governmentality’, above n 76.

⁸⁶ Foucault, ‘*Society Must Be Defended*’, above n 72, 29.

⁸⁷ Christensen, above n 78, 193.

⁸⁸ *Ibid* 194.

⁸⁹ Gribnau and Dijkstra, above n 75, 53.

⁹⁰ Foucault, ‘*Society Must Be Defended*’, above n 72, 38.

In other words, normalisation can be done by way of a narrative that seeks to resonate with the social or moral values shared by individuals.

Foucault conceptualises disciplinary power as ‘located in the “micro-physics” of social life in the “depths” of society. Here, minute and diffuse power relations exist, always in tension, always in action’.⁹¹ Disciplinary power ‘is exercised through networks, and individuals do not simply circulate in those networks; they are in a position to both submit to and exercise this power’.⁹² The individual is both a ‘power-effect’ and is a relay as ‘power passes through the individuals it has constituted’.⁹³ As sociologist and organisational theorist Gibson Burrell explains:

For Foucault, power does not reside in things, but in a network of relationships which are systematically interconnected. Disciplinary power should not be viewed as negative power. It is not a series of prohibitions delimiting, proscribing and discouraging activities of lower-order organizational members. Power should be seen in a positive sense as actively directed towards the body and its possibilities, converting it into something both useful and docile.⁹⁴

Disciplinary power has four objectives: selection, normalisation, hierarchicalisation and centralisation.⁹⁵ These objectives could also be viewed as ‘techniques of constraint’ that are different to those that law or sovereign power generally implements.⁹⁶ Also, from Foucault’s perspective ‘organizational superordinates do not create discipline through their actions or strategies. On the contrary, they are as much disciplined as their subordinates’.⁹⁷

4.4 The integrity of a tax system through Foucault’s lens

As follows from section 3 of this article, in New Zealand the conceptual multi-functionality of the integrity of the tax system – along with flaws in both the definition of the concept and the one-sided approach to protecting the integrity of the tax system – undermines the effectiveness of the concept as a governing tool. Therefore, for this concept to be able to govern, it should be reimagined to remove the flaws and extend an appeal to the integrity of the tax system to all participants in the taxation process. Every participant of the taxation process should be expected to respect this integrity and protect it from the misbehaviour of other participants. This means that every participant can and should act in the name of integrity, thereby establishing or maintaining a robust system of checks and balances that keeps everyone accountable for their actions and inactions in relation to the integrity of the tax system. At a more general level, this proposition fits into an argument that all of the participants in a domestic taxation process should be expected to share responsibility for the system functioning well.⁹⁸

Foucault’s approach to power helps to identify two additional flaws to those identified in section 3 of this article. First, the integrity of a tax system is not a legal or moral right,

⁹¹ Burrell, above n 2, 228.

⁹² Foucault, ‘*Society Must Be Defended*’, above n 72, 29.

⁹³ Ibid 30.

⁹⁴ Burrell, above n 2, 227.

⁹⁵ Foucault, ‘*Society Must Be Defended*’, above n 72, 181.

⁹⁶ Ibid 266.

⁹⁷ Burrell, above n 2, 227.

⁹⁸ This is in line with Gribnau’s argument in Hans Gribnau, ‘The Integrity of the Tax System after BEPS: A Shared Responsibility’ (2017) 10(1) *Erasmus Law Review* 12.

nor is it a value in itself. The integrity of a tax system is a morally loaded concept that was selected by tax policymakers and normalised by way of law. The outcome of that process is the integrity of a tax system being presented as a ‘norm’. This legal construct has attached a moral quality (integrity) to an object (a tax system). In so doing, tax policymakers and lawmakers have set a normative objective (the integrity of the tax system) to orient some actions and prevent other actions of taxpayers, or, in broader terms, to manage taxpayers and their expectations – or, in Foucault’s terms, ‘discipline’ them. However, there is no explanation about the importance of the integrity of the tax system generally and its benefits to individual taxpayers. There is also no link between such integrity and the behaviour of the participants in the taxation process. In New Zealand, adherence to integrity as it is articulated now is likely to be unhelpful in disciplining anyone.

Second, as explained in section 3.1, currently the integrity of the tax system is conceptualised in New Zealand along what was defined in section 2 of this article as the ‘risk line’. From the disciplinary power perspective, framing the integrity of the tax system along the ‘risk line’ may mobilise those people who believe that paying taxes is a good thing. In contrast, to encourage those who do not pay taxes to change their mind, it could be more effective to frame the integrity of the tax system along both risk lines and benefits lines. This would imply a clear explanation of the benefits of a tax system that has integrity, and the risks that a lack of integrity might entail.

Foucault’s views also allow a ‘governmentality’ approach to the management of people, including the participants in the taxation process. The term ‘governmentality’ describes a mentality that has underlain political thought and action from the 18th century, and is based on the idea that different populations of humans have their own characteristics⁹⁹ and are ‘to be understood by specific knowledges and governed through techniques attuned to their condition’.¹⁰⁰ The concepts and methodologies that have subsequently been developed in studies of governmentality are flexible and open-ended, and have been implemented in many fields and by many institutions.¹⁰¹

As legal academic Paul McHugh explains:¹⁰²

Governmentality is concerned with more than law, which it sees as a key part of the suite of technologies and strategies by which rationalizations occurred, that is to say the replacement of traditions, values, and emotions as motivators for behaviour within a population with rational, calculated ones. Governmentality describes the constructing, contesting, and managing of juridical space(s) through networks, authorities, groups, individuals, and institutions thinking, talking, and acting in ways that construct, validate, and change that space. This is activity governmental in its reach (albeit not necessarily always legal in character) by which the subject is co-opted into an

⁹⁹ Michel Foucault, *Security, Territory, Population: Lectures at the Collège de France 1977-78*, ed Michel Senellart, tr Graham Burchell (Palgrave Macmillan, 2009) 108-110.

¹⁰⁰ Paul G McHugh, ‘Imperial Law: The Legal Historian and the Trials and Tribulations of an Imperial Past’ in Markus D Dubber and Christopher Tomlins (eds), *The Oxford Handbook of Legal History* (Oxford University Press, 2018) 883, 892. For detailed explanation of what Foucault calls ‘new governmentality’ see Foucault, *Security, Territory, Population*, above n 99, 449-454.

¹⁰¹ See examples in Nikolas Rose, Pat O’Malley and Mariana Valverde, ‘Governmentality’ (2006) 2 *Annual Review of Law and Social Science* 83, 92-97.

¹⁰² McHugh, above n 100, 892.

ever-configuring mesh of relations situating them by reference to the freedom given them.

An appeal to the integrity of the tax system in the *Tax Administration Act 1994* and policy documents can (but fail) to create a ‘sense of the common good’ that the tax authorities in New Zealand can use to justify their actions and manage taxpayers and their expectations. One of the reasons for this failure is a disconnect between taxpayers and tax authorities that arises from a view that only the former could and should be governed, and only the latter could and should govern the former. Foucault’s views help to explain governance and the role of law and soft instruments in it from a broader perspective, where government agents are not only the subjects of sovereign and disciplinary powers, but also of these powers’ ‘effects’ and ‘relays’ — they are constituted by power and help this power to pass through.¹⁰³ This perspective, when applied for the conceptualisation of integrity of the tax system, has a potential to make this reimagined concept an effective governing tool, a tool that could (and, as it is argued in this section, should) govern all participants in the taxation process.

5. REIMAGINING INTEGRITY

Following on from the previous section, using the integrity of a tax system as a governing tool is ineffective for several reasons, all of which are ‘design failures’. This section addresses a conceptual failure – the lack of clarity about ‘the integrity of the tax system’ concept, its importance generally, and as a rationale for people’s behaviour – and explains how this failure could be fixed. Specifically, this section explains what the integrity of the tax system should mean, and how adherence to integrity as part of a governing strategy can be operationalised in terms of ‘integrity duty’.

5.1 The meaning of the integrity of the tax system

Understanding the meaning of such a morally loaded concept as the integrity of the tax system enables an explanation of why this concept matters or should matter. This understanding, in turn, helps to connect the morally loaded concept to the moral values of people, and, through this concept’s resonance in people’s minds, encourage the desired behaviour.

Viewing the concept of the integrity of the tax system as a part of a strategy governing all of the participants in the taxation process provides a frame for the formulation of the concept’s policy-specific meaning, which, in turn, should be aligned with a more general meaning of the concept. In a broader sense, ‘integrity is about the ethics of conduct and the behaviour of a person in society’.¹⁰⁴ The policy-specific meaning of integrity should therefore reflect a ‘composition of moral values in society’,¹⁰⁵ which, in the tax context, should guide the behaviour of the participants in the taxation process individually and collectively. The emphasis is not on values as such, but on their *composition*.

When applying this broad meaning of integrity to the tax system, it is possible to conclude that the integrity of the tax system is the system’s moral foundation. If the integrity of the tax system is essentially a moral concept, it can only be used as a moral

¹⁰³ Foucault, ‘*Society Must Be Defended*’, above n 72, 30.

¹⁰⁴ Nartey, above n 5, 254.

¹⁰⁵ *Ibid* 253.

framework for guiding the behaviour of the participants in the taxation process, and so should reflect and shape the moral values of these participants. A moral concept does not need to be legislated, but it does need to be clearly communicated in tax policy documents so that every participant in the taxation process can understand the concept's meaning and effects.

Moral values or norms are clusters of moral judgments that, together with social norms (clusters of normative attitudes), operate as legitimising or delegitimising tools,¹⁰⁶ and, therefore, can be a basis for tax cooperation and compliance.¹⁰⁷ The moral values that comprise the integrity of New Zealand's tax system can be derived from the established principles of a good tax system. These principles are, in effect, the moral norms that guide tax policymakers and inform any domestic tax discourse in a political community. There is a general consensus manifested in many tax policy documents that New Zealand's tax system should be premised on principles of equity and efficiency. This consensus is universal across Western countries, due to the wide adoption of Adam Smith's canons of 'good tax'.¹⁰⁸ From an integrity perspective, there should be a balance between these principles in order to minimise inefficiencies and to avoid the regressivity that a prevalence of one over another principle creates.

A balance between the equity and the efficiency of the tax system would mean that the system benefits everyone. But while this balance is important, finding it is no easy task. According to economist and activist Joseph Stiglitz, if the market economy is to operate efficiently, it needs a certain level of income inequality to motivate individuals.¹⁰⁹ However, inequality, despite its positive effects on the market outcome, generates positive welfare effects for only a few people.¹¹⁰ As another economist, Vito Tanzi, has noted, favouring efficiency is one of the factors contributing to the growth of inequality in income distribution.¹¹¹ This inequality, in turn, requires more spending on the maintenance of the social order.¹¹² There is also increasing evidence that high levels of income inequality are detrimental to the pace and sustainability of economic growth.¹¹³

The balance between equity and efficiency, among other things, means a balanced approach to this system's administration. In the era of artificial intelligence (AI) and the widespread availability of personal data, this balance, in particular, means the importance of having a human presence in the process of tax assessment and tax-related decision-making. Generative AI systems allow Inland Revenue to automate these

¹⁰⁶ For more detail see Plekhanova, 'The Legitimizing Effects of the OECD's Fairness-Based Narratives', above n 67, 795.

¹⁰⁷ Ibid 808.

¹⁰⁸ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (Strahan, 1776) Bk V, ch II, 423-425.

¹⁰⁹ Joseph E Stiglitz, *Freefall: America, Free Markets, and the Sinking of the World Economy* (W W Norton, 2010) 110.

¹¹⁰ For instance, see Charles MA Clark, 'Promoting Economic Equity: The Basic Income Approach' in Marc R Tool and Paul Dale Bush (eds), *Institutional Analysis and Economic Policy* (Kluwer Academic Publishers, 2003) 133, 138.

¹¹¹ Vito Tanzi, *Termites of the State: Why Complexity Leads to Inequity* (Cambridge University Press, 2018) 342-344.

¹¹² Samuel Bowles and Arjun Jayadev, 'The Enforcement-Equality Tradeoff' in Lilia Costabile (ed), *Institutions for Social Well-Being: Alternatives for Europe* (Palgrave Macmillan, 2008) 74.

¹¹³ For more detail see Bert Brys, Sarah Perret, Alastair Thomas and Pierce O'Reilly, 'Tax Design for Inclusive Economic Growth' (OECD Taxation Working Paper No 26, 2016) 10. See also Clark, above n 110, 139 and 143.

processes and make them very efficient. Whether or not this automation could guarantee equity in decision-making will very much depend on the design of the AI systems and the quality of their oversight by humans.

The interplay between the equity and the efficiency of the tax system is not static and depends on many factors, which makes tax policymaking and tax lawmaking a ‘balancing act’. This act’s outcome can only be controlled to some extent, and may require some policies and legal provisions to be more ‘efficiency-oriented’ or more ‘equity-oriented’. Nevertheless, the dual equity–efficiency objective should be in the background of any decision about tax policies and tax statutes, their interpretation and administration.

5.2 The integrity duty

The integrity duty of the tax system can be formulated as a combination of a shared responsibility in maintaining a balance of the socially and morally acceptable principles upon which the system is based, and an individual responsibility for honesty with oneself in evaluating the effects of one’s own actions (or inactions) on this balance and on society.

Based on the suggested definition of the integrity of the tax system as a balance between its equity and efficiency, adherence to this integrity therefore should imply a responsibility to develop, maintain and protect this balance through one’s own actions, whether these actions imply designing a tax system, its administration, or compliance with ethical and professional standards, tax liabilities, or the rule of law generally. In other words, the integrity duty extends to all participants in the taxation process, the legislator and the judiciary.

In the reimagining the integrity concept as a governing tool would require making a distinction between creating and maintaining the tax system’s integrity. An integrity duty can therefore be either substantive – a duty to set up a system that is coherent and principle-based – or procedural – a duty to maintain or protect the system’s integrity, including through the interpretation and application of tax laws. This means that not only tax administrators, but also tax adjudicators, taxpayers and tax intermediaries, and the legislature should be responsible for the integrity of New Zealand’s tax system. This procedural duty is closely linked to procedural fairness, to the extent that it focuses not only on a single person but on how the fair or unfair treatment of one person may impact the entire community.

The substantive and procedural aspects of the integrity duty are interdependent and linked to compliance. If the tax system lacks integrity, it invites rule-abusing behaviour from participants in the taxation process. Conversely, when the tax system exhibits integrity, it encourages compliance from these participants.

The integrity duty comprises a ‘collective element’ (a duty to contribute to a collective action or ‘shared responsibility’) and a ‘personal’ element (a duty to be honest to oneself or ‘personal responsibility’). Both elements are also linked to compliance, albeit in different ways. It could be argued that the integrity duty, as a personal responsibility, encourages meaningful compliance, honesty and acting in good faith. The meaning of the integrity duty, as a shared responsibility, varies, and its link to compliance depends on how the integrity of the tax system is defined and to what group of participants in the taxation process it is applied.

Assuming that the idea of the balance between the equity and efficiency principles upon which the New Zealand's tax system is based, or should be based, is aligned with the moral values of most New Zealanders, we can tailor the compliance expected from every group participating in the taxation process to these principles. For instance, the compliance of taxpayers, when it is linked to the equity principle, would mean 'it is fair to pay taxes and it is unfair not to pay them', 'it is fair to be subject to the same rules as other taxpayers in similar circumstances and it is unfair to circumvent these rules'. The compliance of tax administrators, if linked to the efficiency principle, would translate as an expectation not to create unnecessary compliance costs for taxpayers. Integrity requires a comprehensive approach to compliance because its focus is not on values as such, but on the balance that gives the composition value and makes it distinct from each individual value. This would require moving beyond the traditional approach to compliance in tax contexts. At its deepest level the mechanics of New Zealand's current approach to tax governance is based on encouraging the voluntary compliance of taxpayers. From a shared responsibility perspective, 'compliance' has a much broader meaning: namely, 'compliance with the rule of law', where 'law' encompasses formal rules and the social and moral values that underpin them.

In the tax context, compliance with the rule of law would mean different behaviours for different participants in the taxation process. For taxpayers, it would be compliance with tax obligations as set up in tax law, or what is known as 'voluntary tax compliance'.¹¹⁴ For tax intermediaries, it is compliance with their own obligations as defined by laws and professional ethical standards, or 'ethical and professional behaviour'. For tax administrators, it is an obligation to apply the law correctly. These meanings are implicit in the statutory definition of 'the integrity of the tax system' and its reference to 'the responsibilities of people to comply with the law'¹¹⁵ and to the responsibilities of tax administrators to act 'according to law'.¹¹⁶

Tax administrators, and government agents generally, are expected to comply with various laws and standards of good governance. In democratic societies these expectations revolve around respect for fundamental rights, constitutional principles and taxpayer's rights. In New Zealand this means acting in accordance with the *Public Service Act 2020*, the *New Zealand Bill of Rights Act 1990*, the *Human Rights Act 1993*, the *Privacy Act 2020*, the principles of the *Treaty of Waitangi*, and the *Tax Administration Act 1994*.

Specifically, the *Public Service Act 2020* sets criteria for evaluating the legality of decisions made by tax administrators.¹¹⁷ The statutory concept of the integrity of the tax system also refers to the right to have one's liability determined fairly, impartially and according to law,¹¹⁸ which works in combination with the general responsibility to administer the law fairly, impartially and according to law.¹¹⁹

¹¹⁴ Gribnau refers to corporate taxpayers; however, it could be said that any taxpayer who is required to assess their own tax liability and pay tax is responsible for the integrity of the tax system. See Gribnau, above n 98.

¹¹⁵ *Tax Administration Act 1994*, s 6(2)(d).

¹¹⁶ *Ibid* s 6(2)(b) and (f).

¹¹⁷ *Public Service Act 2020* (NZ) s 11.

¹¹⁸ *Tax Administration Act 1994*, s 6(2)(d).

¹¹⁹ *Ibid* s 6(2)(f).

Tax authorities and other government agents must also meet the legitimate expectations of taxpayers as defined by case law.¹²⁰ This is done through formal mechanisms like binding rulings, which are official interpretations of tax law applicable to specific facts that the Commissioner of Inland Revenue is obligated to follow,¹²¹ and which are supported by informal general guidance. Tax authorities must also obey the principle of equality, which means that any decision they make should not result in prohibited discrimination, as defined by *New Zealand Bill of Rights Act 1990*¹²² and the *Human Rights Act 1993*.¹²³ The non-discrimination requirements are binding on government actions under the *Human Rights Act 1993*.¹²⁴ This is reinforced by the statutory concept of the integrity of the tax system, which also refers to a person's right to be treated with no greater or lesser favour than other persons in their tax affairs.¹²⁵

When collecting, using and sharing the private data of individuals, the tax authorities must comply with the *Privacy Act 2020*, which sets out information privacy principles and codes of practice that govern how agencies collect, use, store and disclose personal information.¹²⁶ The Māori Data Sovereignty Principles — a set of values specific to Māori people, language, culture, resources and/or environments¹²⁷ — may affect how New Zealand's tax authorities collect, use and share the data of Māori people.

In line with the principles of the *Treaty of Waitangi* — which guide the relationship between the Crown (the Government of New Zealand) and Māori people — the tax authorities may also be expected to adopt a Te Ao Māori perspective in some decision-making. For instance, as a signatory of the Algorithm Charter,¹²⁸ Inland Revenue is committed to embedding the Te Ao Māori perspective in the development and use of algorithms in tax administration.¹²⁹

The *Tax Administration Act 1994* contains strict provisions on the confidentiality of taxpayer information. As has been discussed in section 2.2, any sensitive revenue data that Inland Revenue holds on taxpayers is confidential and can only be used for lawful tax administration purposes or disclosed where specifically permitted by law. The collection and non-disclosure of revenue information are examples of actions that protect the integrity of New Zealand's tax system. Compliance with tax obligations or ethical standards are means to the same end, which means that the statutory definition of 'the integrity of the tax system' should be broad enough to accommodate the contributions of all participants in the taxation process.

¹²⁰ *Northern Roller Milling Co Ltd v Commerce Commission* [1994] 2 NZLR 747, 750-753 and 755.

¹²¹ *Tax Administration Act 1994*, s 91A.

¹²² *New Zealand Bill of Rights Act 1990* (NZ) s 19(1).

¹²³ *Human Rights Act 1993* (NZ) s 21.

¹²⁴ *Ibid* s 20J(1).

¹²⁵ *Tax Administration Act 1994*, s 6(2)(c).

¹²⁶ *Privacy Act 2020* (NZ) Pt 3.

¹²⁷ Te Mana Raraunga Māori Data Sovereignty Network, *Māori Data Sovereignty Principles* (Brief No 1, October 2018)

<<https://cdn.auckland.ac.nz/assets/psych/about/our-research/documents/TMR%2BM%C4%81ori%2BData%2BSovereignty%2BPrinciples%2BOct%2B2018.pdf>>.

¹²⁸ New Zealand Government, *Algorithm Charter for Aotearoa New Zealand* (2020).

¹²⁹ Inland Revenue, *Algorithm Charter for Aotearoa New Zealand: Annual Report* (2023) <<https://www.ird.govt.nz/about-us/publications/annual-corporate-reports/annual-report/annual-report-2023/additional-information/algorithm-charter-for-aotearoa-new-zealand>>. See also Inland Revenue, 'Our Use of Artificial Intelligence (AI)' <<https://www.ird.govt.nz/about-us/our-use-of-ai>>.

In broader terms, the tax authorities and other government agents are required to be fair; this is also a part of their integrity obligation.¹³⁰ ‘Fairness’ in this context is encapsulated in the long-established concept of “natural justice”¹³¹ or ‘fair play in action’,¹³² and its two key principles: the affected parties should be given adequate notice and an opportunity to be heard, and the decision-maker should be disinterested and unbiased.¹³³ Natural justice is guaranteed under the *New Zealand Bill of Rights Act 1990*,¹³⁴ and comprises a broader right to justice, which includes the right to appeal a decision, the right to bring civil proceedings against the Crown, and the right to defend any civil proceedings brought by the Crown.¹³⁵ These rights should be respected not only by judicial and quasi-judicial bodies, but also by governing actors more generally.¹³⁶ In the tax context it means that taxpayers should be able to appeal decisions made by the tax authorities, and that the tax authorities should not be biased when making such decisions. There is therefore a link with the principle of equality and the non-discrimination provisions in the *New Zealand Bill of Rights Act 1990*¹³⁷ and the *Human Rights Act 1993*¹³⁸ that protect this principle.

Under New Zealand’s common law, ‘there is no general obligation on public decision-makers to provide reasons’ for any decisions they make.¹³⁹ Nevertheless, under some conditions fairness may require an administrative body to give reasons for its decisions.¹⁴⁰ One of these conditions is the existence of a statute that explicitly or implicitly requires governing agents to provide reasons for their decisions¹⁴¹ or that awards a person the right to seek an explanation from governing agents. For instance, the *Official Information Act 1982*¹⁴² allows an individual to request the reasons for a decision or recommendation that affects them.¹⁴³ In the tax context it means that the tax authorities should provide reasons for their decisions when it is directly required by law,¹⁴⁴ or when requested by an individual in accordance with the *Official Information Act 1982*. The tax authorities should not refer to the integrity of the tax system when they refuse to provide reasons or information requested under the *Official Information Act 1982*. Such a reference is at odds with the principles underpinning the system’s integrity. This is because in this context the reference is used for instrumental purposes;

¹³⁰ *Tax Administration Act 1994*, s 6(2)(f).

¹³¹ *Daganayasi v Minister of Immigration* [1980] 2 NZLR 130, 141 (CA) per Cooke J.

¹³² *Furnell v Whangarei High Schools Board* [1973] 2 NZLR 705, 718 (PC) per Lord Morris of Borth-y-Gest.

¹³³ Justice Susan Glazebrook, ‘To the Lighthouse: Judicial Review and Immigration in New Zealand’ (Paper written for the Supreme Court and Federal Court Judges’ Conference held in Hobart from 24 to 28 January 2009) 5.

¹³⁴ *New Zealand Bill of Rights Act 1990*, Long Title and s 27(1).

¹³⁵ *Ibid* s 27.

¹³⁶ Glazebrook, above n 133, 5.

¹³⁷ *New Zealand Bill of Rights Act 1990*, s 19(1).

¹³⁸ *Human Rights Act 1993*, s 21.

¹³⁹ Tim Cochrane, ‘A General Public Law Duty to Provide Reasons: Why New Zealand Should Follow the Irish Supreme Court’ (2013) 11(3) *New Zealand Journal of Public International Law* 517, 528. See also Jessica Palairt, ‘Reason-Giving in the Age of Algorithms’ (2020) 26 *Auckland University Law Review* 92, 101-113.

¹⁴⁰ Paul Paterson, ‘Administrative Decision-Making and the Duty to Give Reasons: Can and Must Dissenters Explain Themselves?’ (2006) 12 *Auckland University Law Review* 1, 3.

¹⁴¹ *Ibid* 5. According to Paterson an implicit reasons requirement ‘is most frequently found where there is a statutory right of appeal’ (*ibid*).

¹⁴² See also the *Local Government Official Information and Meetings Act 1987* (NZ) s 22.

¹⁴³ *Official Information Act 1982* (NZ) s 23. See also Paterson, above n 140, 10.

¹⁴⁴ See *Tax Administration Act 1994*, ss 23G(2); 34B; 91AAM3(a) and (b)(ii); and 91AAM(5).

namely, to justify the actions or inactions of the tax authorities. This reference has nothing to do with the specific composition of moral values, which is a balance between equity and efficiency, upon which New Zealand's tax system is based and which comprises this system's integrity.

5.3 Why the suggested conceptualisation makes sense in New Zealand

Suggested concepts of the integrity of the tax system and the integrity duty set clear expectations for the desirable and acceptable behaviour of participants in the taxation process, the legislature and the judiciary, and allow any defects in this behaviour (eg, non-compliance with the rule of law or dishonesty) or any defects in the tax system (the lack of wholeness that arises from imbalance between the principles upon which the system is based) to be revealed.¹⁴⁵ This exposure, or the risk of such exposure, will most likely result in better behaviours and improvements of the system.

References to the integrity duty, as a governing tool, will likely operate in different ways in individualistic societies when compared to collectivist ones.¹⁴⁶ In individualistic societies, the emphasis on individual 'completeness' will prevail, and the difference between personal integrity and the integrity of a politician or a statesperson will be clear.¹⁴⁷ In contrast, collectivist societies will accentuate the integration of the individual into the nation (or nation-state).¹⁴⁸ New Zealand society is very interesting in this regard. Individualism is at the core of its education system and other institutional structures. However, the country's demographic¹⁴⁹ suggests that the majority of people living in New Zealand have been brought up in countries or communities where the collective prevails over the individual. The approach to the integrity duty suggested in this article combines individual and collective responsibility, which makes it a good fit for New Zealand's diverse society.

6. TRANSFORMING THE INTEGRITY INTO AN EFFECTIVE GOVERNING TOOL

This section explains how to make integrity become a tool governing all participants in the taxation process, and the legislature and the judiciary.

The concept of the integrity of a tax system sets a moral framework, but behaviours that fit into this framework need to be conceptualised in terms of 'duty' or responsibility. The integrity duty was suggested for this reason. As has been explained in section 5, in some contexts the integrity duty comprises or is linked to specific duties defined by law. Many of these specific duties can be enforced. In these limited situations, the 'power of command' in Foucault's terms will encourage the integrity-oriented behaviour.

Some duties are legal responsibilities and therefore can be supported by coercive mechanisms of a 'sovereign', whereas other duties are moral responsibilities. This dictates a need to rely on the disciplinary power. Disciplinary power, as a power of

¹⁴⁵ This is in line with the argument on the aim of the principles of ethics and integrity and the aim of enforcement in Nartey, above n 5, 260-267.

¹⁴⁶ For illuminating analysis of individualistic societies and their origin see Joseph Henrich, *The WEIRDest People in the World: How the West Became Psychologically Peculiar and Particularly Prosperous* (Penguin Books, 2020).

¹⁴⁷ Montefiore, above n 5, 12-13.

¹⁴⁸ Ibid.

¹⁴⁹ Paul Spoonley, *The New New Zealand: Facing Demographic Disruption* (Massey University Press, 2020).

training and self-control, is conditioned by the discourse. Therefore, the discourse, or policy narrative, is important to the effective operation of the governing strategy that deploys the integrity of the tax system and the integrity duty and seeks to encourage specific behaviour.

This narrative, in particular, can explain in more detail how the various responsibilities of different groups of participants in the taxation process affect the integrity of the taxation system and why the performance of these responsibilities is beneficial to both society and each of its individual members. Ideas for such an explanation can be drawn from section 5 of this article.

Policy narratives ‘normalise’ ideas. As a result of such ‘normalisation’, desired behaviours become habitual and self-reinforcing. In the context of this article’s discussion, two ideas need to be normalised. First, integrity as a specific composition of values regarding an object (the tax system). Second, this specific composition must be created and maintained through collective and individual efforts. The changes in mindsets and approaches to tax law and policymaking that will follow from such a normalisation will more closely align the tax system and its administration with the social and moral norms shared by New Zealanders.

Drawing on the conclusions of sections 3, 4 and 5, the following steps for tax reform can be suggested. First, references to the integrity of the tax system (or any tax-related concept) should be removed from all legal rules where this concept is invoked for instrumental purposes.

For the concept of ‘the integrity of the tax system’ to be a part of an effective governing strategy, it should only be used as a moral framework to guide the behaviour of all of the participants in the taxation process. The concept should not be used for any other purposes, as doing so undermines its effectiveness as a governing tool. Currently, Inland Revenue can use ‘the integrity of the tax system’ as a shield from information transparency. In some situations there may be a very good reason for secrecy, but when one group of participants in the taxation process is allowed to not disclose certain information whereas another group does not have such a privilege, the idea of shared responsibility and cooperation will inevitably be undermined. So while the tax authorities should be able to keep some information secret, this right to secrecy should not be linked to the integrity of the tax system. In other words, references to this integrity as a rationale for the non-disclosure of revenue information by tax authorities should be removed from the *Tax Administration Act 1994* to allow the integrity concept to perform its governing role.

Specific changes should, first of all, include the replacement of the current version of section 6 of the *Tax Administration Act 1994* with the following new version:

‘6 Integrity duty

Meaning of integrity of tax system

(1)

The integrity of the tax system is a balance between equity and efficiency – two main principles upon which New Zealand’s tax system is based.

Meaning of the integrity duty

(2)

The integrity duty is a responsibility to develop, maintain and protect the integrity of the tax system through one's own actions, whether these actions imply designing a tax system, its administration or compliance with ethical and professional standards, tax liabilities, or the rule of law generally.

(3)

The integrity duty is not limited to legal obligations defined in various Acts but it also includes a personal responsibility for honesty with oneself in evaluating the effects of one's own actions (or inactions) on the integrity of the tax system and on society.'

Second, the rights and responsibilities that are currently listed in paragraphs (b)–(f) of section 6 of the *Tax Administration Act 1994* can be included in a separate section entitled 'Rights and Responsibilities in Relation to the Administration of Tax Laws'.¹⁵⁰

Third, references to integrity as a rationale for collecting revenue information,¹⁵¹ and for the non-disclosure of revenue information, by the tax authorities¹⁵² should be removed from the *Tax Administration Act 1994* to allow the integrity concept to perform its governing role effectively. The Commissioner of Inland Revenue's right to collect revenue information and the right to non-disclosure can be included in the section 'Rights and Responsibilities in Relation to the Administration of Tax Laws', but without reference to the integrity of the tax system.

Finally, Inland Revenue should issue a policy document that, in particular, explains: 1) why the integrity of the tax system should be defined as a balance between this system's equity and efficiency, whereas the integrity duty should be formulated as a combination of a shared responsibility in maintaining a balance of the socially and morally acceptable principles upon which the system is based, and an individual responsibility for honesty with oneself in evaluating the effects of one's own actions (or inactions) on this balance and on society; 2) how the adherence to the integrity of New Zealand's tax system benefits society and each of its members; 3) how the Commissioner of Inland Revenue and every person acting on the Commissioner's behalf performs their integrity duty, and 4) how this performance is measured.

¹⁵⁰ *Tax Administration Act 1994*, s 6(2):

'(b)

the rights of persons to have their liability determined fairly, impartially, and according to law; and

(c)

the rights of persons to have their individual affairs kept confidential and treated with no greater or lesser favour than the tax affairs of other persons; and

(d)

the responsibilities of persons to comply with the law; and

(e)

the responsibilities of those administering the law to maintain the confidentiality of the affairs of persons; and

(f)

the responsibilities of those administering the law to do so fairly, impartially, and according to law'.

¹⁵¹ *Ibid* s 16B(1)(a).

¹⁵² *Ibid* s 18(3).

7. CONCLUSION

It has been suggested that the tax system ‘should be based on an impartial balancing of the different interests involved’.¹⁵³ The difficulty with this is that such a balance would be more an aspiration than an achievable objective. Tax rules tend to be a trade-off between conflicting principles and objectives. Some rules will meet only some principles while also breaching others. Therefore, as Hans Gribnau explains, tax law will ‘inevitably appear to be imperfect, ambiguous, lagging behind societal, economic and technical developments and taxpayers’ undesirable use of legislation, and so on. The letter of the law may diverge from the spirit of the law’.¹⁵⁴ This is where integrity could come into play to encourage morally sound behaviour that benefits society as a whole despite the imperfections of some of its domestic laws.

The integrity of the tax system is not the end in itself, and the purpose of using it as a reference point is not to protect flaws in the tax system or justify actions, but rather to deliver a socially and morally acceptable outcome in spite of the flaws in laws.

Information empowers. In the 21st century, rapidly advancing technological developments will soon automate tax compliance and tax administration, thereby further increasing the power imbalance between tax authorities and taxpayers. This will necessitate our adhering more closely to the integrity of the tax system, but in a way that creates a well-functioning system of checks and balances. If the concept of the integrity of the tax system is formulated as a balance between this system’s equity and efficiency, and is supported by the concept of integrity duty as a combination of a shared responsibility in maintaining a balance of socially acceptable principles upon which the system is based, and an individual responsibility for honesty with oneself in evaluating the effects of one’s own actions (or inactions) on this balance and the society, it could well form the foundation of such a system of checks and balances.

¹⁵³ Gribnau, above n 98, 15.

¹⁵⁴ Ibid (footnotes omitted).