## **Chapter 5. What are the Perils of Voluntary Compliance?**

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Introduction:

This chapter will discuss some of the potential disadvantages of relying on voluntary compliance. For example, reliance on voluntary compliance, which involves only limited state monitoring and enforcement, may give rise to increased inequality between “good” and “bad” people, with some people complying and others not. This could create a widening gap between the formal law and social norms. Voluntary compliance and trust-enhancing regulatory approaches are associated with substantial changes in trust in society. However, as discussed in previous chapters, they can also prove harmful to society and the rule of law, as examined in this chapter. For example, if governments need to persuade people to obey laws, then this practice is counterproductive, as people come to expect states to be more intrusive. However, research on factors such as legitimacy and fairness suggests that when states behave in a trustworthy way, they need not change people’s attitudes towards the law by explaining its importance.[[1]](#footnote-1)

Since the population response can be expected to be heterogeneous, the main challenge for policymakers will be to address how the resulting gap in compliance affects trust levels among cooperators and non-cooperators, as well as the interaction between them. Furthermore, research on cooperation shows that many cooperators are, in fact, conditional cooperators.[[2]](#footnote-2) As a result, at a certain point, many may shift their behavioral patterns.

Estimating the proportion of the population that are conditional cooperators is difficult. In one of the most influential papers on this topic, Urs Fishbacher and colleagues argued that 50% of a given population within public good experiments are conditional cooperators. That is, people whose individual contribution increases when the average contribution of other group members increases. However, most studies on the topic tend to discuss a substantial proportion of the population without discussing the exact numbers. The exact numbers are somewhat less information because so many factors contribute to them.[[3]](#footnote-3)

A study by Francesco Falluchi and colleagues (2022) sought to distinguish between genuine conditional cooperation and confusion-driven behavior in public goods games. They found that most conditional cooperators match contributions to increase group earnings but adjust their behavior to avoid inefficient outcomes, suggesting their actions are influenced by financial incentives and social norms. The study revealed that 30% of participants exhibit sophisticated conditional cooperation, demonstrating a nuanced understanding of the social dilemmas presented.[[4]](#footnote-4)

This work was based on an often-replicated 2001 study by Urs Fischbacher and colleagues that found that 50% of participants in public goods experiments are conditional cooperators.[[5]](#footnote-5) Falluchi’s study found that authors, 62% of their subjects were conditional cooperators. They suggested that providing information about the presence of conditional cooperators may have two potential impacts: inducing more free-riding or transforming the experiment into a coordination problem. The authors found that conditional cooperators significantly increase their contributions when informed about the presence of other conditional cooperators. This is likely attributable to optimistic beliefs. The extent of increased cooperation depends on the proportion of existing conditional cooperators among the subject pool. However, the authors cautioned that stating a willingness to contribute more if others do so may reflect conditional cooperation or a general tendency to herd, highlighting the need to distinguish between these motivations.

To mitigate the negative consequences of an approach centered on intrinsic motivation and voluntary compliance, states may need to employ monitoring mechanisms in certain contexts to determine if they can continue with a “hands-off” approach. States will need to continue monitoring whether their trust-based regulation is being exploited. While trust-based regulation can be an effective approach, it is not without its flaws. This approach might not necessarily provide the benefits of pure trust-based regulation. Furthermore, voluntary compliance could create a “chilling effect,” where some people may not be sure what is expected of them and may therefore comply to a greater extent than is required.[[6]](#footnote-6) Alternatively, some people may enjoy or take advantage of the more lenient approach and may comply less, leading to a situation where more “good” law-abiding people will suffer more, while the fewer “bad” people will suffer less.

This shift may suggest that the gap between good and bad actors will widen if regulatory approaches that are primarily relevant to bad actors are reduced. From the simple schematic perspective of “good” and “bad” actors, reducing extrinsic measures and increasing intrinsic measures as part of the voluntary compliance approach leads to an unbalanced treatment of the population. Current research on the proportion of good and bad doers is quite limited, which contributes to the regulatory dilemma. It is challenging for policymakers to determine concrete numbers as to how many tax evaders there are even in well-studied, easy-to-quantify contexts such as tax evasion, where states could reasonably be expected to know how many people evade taxes.[[7]](#footnote-7) The benefit from any change in compliance approach is highly dependent on the ratio of good and bad doers in a given society. It is also dependent on the benefit of voluntary compliance relative to the cost of reduced enforcement. A regulation that relies on a sequential approach with increasingly severe enforcement actions is not a perfect solution. This is because it is difficult to know who will cooperate in each situation, and the information available can be misleading.

Another concern regarding voluntary compliance relates to aiming at achieving compliance based on intrinsic motivation. If the state wants people to intrinsically believe in the law, it may need to engage in a far more intrusive process of educating people and leading them to recognize the value of obeying. Thus, the state needs to cause people to change not only their behavior but also their belief systems, a far more problematic process from many points of view.

There is a difference between the state providing information on how tax revenue is used and the state attempting to explain the reasoning behind a certain law. The latter could raise concerns about a slippery slope from persuasion to brainwashing, where states feel compelled to shape public beliefs to align with government policies. However, if the state focuses solely on regulating behavior rather than attempting to influence attitudes, the fear of brainwashing is diminished. The government can avoid such overreach by not viewing itself as responsible for aligning public attitudes with state values.

Indeed, there would be no danger of such state overreach if the state aligned its laws to reflect society’s values, rather than the other way around.[[8]](#footnote-8) However, the argument regarding the fear of intrusive intervention focuses on the opposite: states choosing to change public values to align with their own. For example, during the COVID-19 period, many people preferred to move openly, engage in social interactions, and travel freely. States found themselves in the position of convincing people that such behavior would harm the public interest in preventing the spread of the pandemic. This process, which is only marginally addressed in some of the behavioral public policy literature, is crucial to some discussions, such as the Nudge Plus approach. Even the recognition that it is not enpugh merely to change behavior and that the state must also focus on deliberation and reflection does not address what will happen if not all people internalize values in a similar way. As a result, the gap between the different approaches and their accompanying processes is overlooked, thereby limiting consideration of their distributive effect across different groups.

It is worth noting that government attempts to appear trustworthy, even when they are not, can be viewed as problematic policy as the government may be disguising its negative behavior in order to deceptively gain the public’s trust. Therefore, a regime that needs to achieve public cooperation through the good will of the public may need to engage in both brainwashing and flattery in order to gain public support.

Finally, this chapter will also examine to what extent the reduction in states’ use of formal sanctions will result in their replacement by non-formal sanctions, which could, in some contexts, be more problematic than formal sanctions. For example, reliance on reputation might be more harmful to some people than to others. While most discussions on crowding out assume that extrinsic sanctions and intrinsic motivation interact, we argue that in many contexts, the opposite could be true, and formal sanctions could be replaced by informal ones. While those sanctions may be somewhat more effective and less costly to enforce, they could have far more problematic results in terms of procedure, evidentiary rules, and proportionality. Many discussions about the power of communities and social norms are limited in their ability to explain the control mechanisms at play. For example, the level of strictness in a community’s internal functioning can vary greatly. This can lead to variations in the level of monitoring that people experience in terms of how to behave. Second, communities and states may not always share the same interests. As a result, their enforcement efforts might not be targeted in the same direction. Third, certain behaviors may be easier to detect than others, and therefore, community enforcement may lack the ability to detect these behaviors. This is especially true given the rise of technological tools in law enforcement, which clearly outstrip the abilities of many communities.

## Variance in people’s responses to a request to cooperate voluntarily

As stated in the introduction, the main focus of this chapter is on the problem of heterogeneity in people’s reactions to law when sanctioning systems are not present.

It is clear that even applying current approaches, there is a wide range of reactions among people. Some people are much more likely to evade enforcement than others, due to their innate tendencies such as their attitude towards risk and the rule of law, and so on. Thus, it is arguable that the distributive justice argument in itself is not new.

Various theories of social preference compare people’s differing preferences regarding cooperation, free riding, and reciprocal cooperation (conditional cooperators).[[9]](#footnote-9) We argue that the absence of extrinsic motivation, such as sanctions, can leave more room for intrinsic motivation to influence cooperation. As mentioned above, there are different types of cooperators, including conditional ones, free-riders, and compliers. Intrinsic motivation is expected to have far greater variation between people based on their personalities,[[10]](#footnote-10) culture,[[11]](#footnote-11) and contextual factors.[[12]](#footnote-12) In contrast, price can affect compliance. Because it is external to the person, it is more likely[[13]](#footnote-13) to create an equalization between people, even though they clearly differ in their economic status.

This heterogeneity could create a few types of problems. First, a high proportion of wrongdoers might prove to exceed what the state could tolerate, depending on the costs to the public from this lack of cooperation.

Second, many cooperators are what are termed conditional cooperators,[[14]](#footnote-14) whose cooperation depends on that of others.[[15]](#footnote-15) In response to an increased number of wrongdoers who might exploit the trust given to them by the state, conditional cooperators might also stop cooperating.[[16]](#footnote-16)

Third, people may misinterpret the true content of social norms. This could happen due to false signals or an overestimation of wrongdoing. As a result, they may stop cooperating, not because of the lack of cooperation by others, but because they might believe that this is what others would probably do when there is less scrutiny from the authorities.[[17]](#footnote-17)

## Heterogeneity in honesty?

Besides differences in peoples’ levels of cooperation, there is also a significant variation in honesty that can affect the government’s ability to trust the public. In order to trust the general public, the government needs more information about the distribution of cooperators and honest people in a given population. In a chapter in my previous book,[[18]](#footnote-18) I examined the different accounts in the literature regarding honesty and cooperation, from those noting around 50% of liars among the public,[[19]](#footnote-19) to others finding much lower numbers.[[20]](#footnote-20)

As discussed in Chapters 1 and 2 here, it is important to understand the relationship between honesty and cooperation.[[21]](#footnote-21) Lucini Jacquemet and colleagues[[22]](#footnote-22) found that only those who lie partially are affected by a truth-telling oath, which is a non-price commitment device. Based on two experimental designs that used earned income and tax declarations, and drawing on response times data and the consistency of subjects when several compliance decisions were made in a row, the researchers found that partial lying is the result of weak preferences towards profitable honesty. Additionally, they discovered that the oath only affects people with weak preferences for lying, making them more committed to the truth.

Interestingly, working together with Eyal Pe’er, we found an interesting reverse effect, wherein even brazen liars are affected by the pledge. Additionally, a pledge reduces dishonesty considerably compared to fines. We found this repeatedly across different times and consistently across different extents of cheating and different individuals.[[23]](#footnote-23)

## What percentage of the population cheats?

The literature on this question varies between different meta-analyses and more field-oriented studies. Some of these studies indicate that in certain contexts, a large proportion of the population can be dishonest.[[24]](#footnote-24)

Catrine Jacobsen and colleagues have presented six main theories for why people cheat:[[25]](#footnote-25)

1. **The economic model—**People will cheat when doing so is efficient and profitable.
2. **The moral balance model—**People want to maintain a moral balance. Therefore, to maintain that balance and a positive moral identity, they may cheat if they have not cheated much in the past or if they have just done something good by comparing themselves to others.
3. **The self-maintenance model—**People will cheat as long as it does not require them to think differently about themselves and does not undermine their identity as good and honest people.
4. **Self-justification—**People will cheat if they can justify it, even after the fact.
5. **Disconnecting morality—**People are able to exempt themselves from the moral standards they expect from other people.
6. **Limited morality and moral blindness—**There are people who are not aware of certain norms or who simply do not examine their own behavior to see if it is moral, even though the act may contravene their moral compass.

The authors of this important paper concluded that people often engage in dishonest behavior. However, this behavior is highly influenced by various factors such as decision contexts, the behavior of others, state of mind, and depletion. In other words, a change in the regulatory culture or an industry could result in cutting corners quickly becoming a norm. While the concept of conditional cooperators has been heavily studied, the same cannot be said for the concept of conditional cheaters. However, the similarities between the two bodies of literature allow us to speculate that such an effect would also affect the prevalence of dishonesty.[[26]](#footnote-26)

Regarding the prevalence of dishonesty in society, a 2004 poll by the popular magazine Reader’s Digest reported on the daily behavior of 2,624 people. The poll found that 93% of respondents admitted to engaging in one or more kinds of dishonesty at work or school. Examples of dishonest behavior included calling in sick when not feeling ill (63%), taking office supplies from work (63%), and lying on their resumes (18%).

Johanes Abler and colleagues have shown that, in fact, people lie surprisingly little, despite common perspective that unethicality is prevalent and contagious among normative people. Combining data from 90 experimental studies in economics, psychology, and sociology, their research suggests that a preference for being seen as honest is the main motivations for truth-telling. [[27]](#footnote-28)

Similarly, among Elinor Ostrom’s key insights in her comprehensive overview of research in the field is that not all individuals are purely rational egoists and that social norms can evolve to support cooperation.[[28]](#footnote-30) For example, she noted that in a prisoner’s dilemma experiment, 40% of the subjects ranked the cooperative outcome higher than the outcome if they defected while the other cooperated, and 27% were indifferent between these outcomes, even though their individual payoff was substantially higher in the latter outcome. Ostrom’s finding confirms that not all players enter a collective action situation as pure forward-looking rational egoists who make decisions based solely on individual outcomes. Some bring with them a set of norms and values that can support cooperation. Furthermore, Ostrom’s research indicates that a significant percentage of the population are conditional cooperators, with rates ranging from 40 to 60 percent.

In another important paper on the context of preference for truthfulness, the authors argue that: “Furthermore, we offer empirical substantiation of the inseparability of truthfulness preferences from both intrinsic values and economic incentives. In essence, our findings underscore the presence of substantial heterogeneity in individuals’ truthfulness preferences, both across and within individuals themselves.”[[29]](#footnote-32) More specifically, they argue that there are not two types of categories of people, ethical people and unethical people. Instead, they believe, in line with the argument made by Uri Gneezy[[30]](#footnote-33) that there is a comprehensive spectrum of preference for honesty that is not stable but is dependent upon the context. Similarly, Rajna Gibson’s empirical findings[[31]](#footnote-34) reject a categorical model positing the existence of solely two distinct archetypes: “the ethical” individuals, characterized by a steadfast commitment to ethical principles, resulting in unwavering truth-telling, and “the economic” individuals, driven solely by material gain and thus inclined to dishonesty when financially advantageous. Instead, Gibson’s research reveals that individuals balance ethical considerations and pragmatic consequences in many nuanced ways and are influenced by both intrinsic values and economic incentives. In his study, people functioned as CEOs of companies and had to report the company’s profits. They were told that they could lie and present themselves as profitable without any repercussions. It was expected that even the so-called “ethical” individuals would lie, since their lies had no consequences, and they knew it. In practice, the study found that 32 percent of people did not lie at all. Gibson cited research that tested how people would behave in situations where they could lie but were unsure of the potential gain. That study found that 84% of people will tell the truth even when they don’t know what they will gain from it, and will also not check what the potential gain is, if any. Gibson’s findings emphasize that people’s attitudes towards honesty are complex and heterogenous and vary significantly both across and within individuals themselves.

Clearly, the research on heterogeneity is diverse and many models of human cooperation account for the fact that different people have different motivations. However**, not only individual differences are important in this context. It is no less critical to consider the distributive effect that might result if trust is placed in people who should not be trusted.**

Supporting the idea that simple dichotomies of honesty are too simplistic and that lying is a complex behavior that can vary widely among people, a recent study by David Pascual-Ezama has found there are more diverse types of liars than previously assumed in the literature.[[32]](#footnote-36) The participants in the experiment were asked to roll a die and were told that they would receive a financial reward based on the result. The higher the number they rolled, the greater the reward. The only condition was that the die could be thrown only once. However, participants were aware that they could lie without consequences. The results showed that there was a fixed group of completely honest people, but that the liars were divided into several types. The first, those who cheated by throwing more than once but did not lie, reported the first result even though it was less profitable. The second, who did not cheat, throwing only once, but lied regarding the result. The third group were those who both cheated by throwing more than once and lied about their result. The researchers identified a spectrum of behaviors among the participants. For example, some cheaters who were not liars repeatedly rolled the dice up to the maximum result, while others stopped at less. The researchers tried to determine the motivations of those who threw more than once even though they could have lied, as well as of those who threw only once but lied by misreporting. They were faced with the question of how a hypothetical lie resulting from throwing twice versus an actual lie about the amount affects an individual’s self-image. The study’s results indicate that the profiles of liars and cheaters are consistent, regardless of the populations being tested. The study notes that honesty is not a one-dimensional trait. In many contexts, people break rules and still feel honest. The variation in people’s honesty levels, which has so far been presented as a problem in voluntary compliance, should also be taken into consideration when designing the solution in Chapter 11. In this chapter, we will analyze the different options that policy makers face when dealing with such heterogeneity.

## Heterogeneity in compliance?

In the previous sections, we discussed heterogeneity in prosocial behavior as well as dishonesty. In this section, we discuss compliance, which not only involves the combination of prosocial behavior and dishonesty but is also related to perceptions of the relationship between people and the duty to obey the law. In Chapter 2, we covered the work of Van Rooij and colleagues[[33]](#footnote-37) in the context of compliance motivation, which is also an important factor in heterogeneity. In that context, we examined variations in people’s sense of the obligation to obey the law (OOL). The OOL plays a vital role in people’s responses to the legal system and their compliance decision-making. Most studies to date have linked the OOL to people’s experiences and views of the legal system.[[34]](#footnote-38) In this section, we will expand our understanding of the OOL by analyzing how such variation relates to personal and moral differences, differences in socialization in higher education, and differences in political preferences. After conducting a series of four studies with a total of 5085 participants, we found that the OOL is not dictated solely by experiences with and perceptions of the legal system. Rather, personal and political differences have a comparatively greater impact on OOL. Indeed, an important source of variation between people is related to political orientation. For example, conservative moral values, such as loyalty, authority, and purity,¹ may lead to a preference for obedience,² stricter punishment,³ and more trust in law enforcement.⁴ In addition, research consistently links political affiliation with perceptions of the law and law enforcement,⁴⁻⁶ with Republicans being more “tough on crime” than Democrats. Therefore, it is reasonable to assume that such variation will have a considerable impact on heterogeneity in compliance, which could further increase the gap between the different political groups. Such an increase may help account for the rise of polarization in many countries around the world.[[35]](#footnote-39)

1. Frimer, Gaucher, and Schaefer 2014
2. Gerber and Jackson 2016
3. Fine, Rowan, and Simmons 2019
4. Pickett 2019
5. Roche, Pickett, and Gertz 2016
6. Johnson 2009
7. Unnever and Cullen 2005
8. Matsueda and Drakulich 2009
9. Moule Jr, Fox, and Parry 2019

## Heterogeneity in moral reasoning

The propensity to morally disengage refers to an individual’s tendency to use cognitive mechanisms that allow them to distance themselves from their own unethical actions. It involves a set of cognitive processes that enable individuals to justify or rationalize their unethical behavior, thereby reducing feelings of guilt or responsibility.[[36]](#footnote-40)

Moral disengagement is a common phenomenon that can be found in all segments of society. Albert Bandura has conducted research on moral disengagement in a variety of settings, including schools, businesses, and prisons. Bandura and his colleagues found that 85% of college students engaged in at least one form of moral disengagement when justifying their cheating on an exam, and that 90% of inmates engaged in at least one form of moral disengagement when justifying their violent behavior.[[37]](#footnote-41) Another study found that 70% of business executives engaged in at least one form of moral disengagement when justifying their unethical business practices.[[38]](#footnote-43)

Celia Moore and her colleagues conducted a seminal study that examined the influence of individuals' propensity to morally disengage in relation to a broad range of unethical organizational behaviors. They concluded that taking an individual’s propensity to morally disengage into account can enhance understanding and help anticipate a broad range of undesirable behaviors. Naturally, this variation is another predictor of the likelihood that, without enforcement, we will see a much greater gap between people.

## Heterogeneity in social value orientation

Within the big five personality dimensions, social value orientation is the most recent addition to the model and it seems to be the most relevant to the behaviors with which we are concerned. Honesty-humility, the sixth personality dimension in the HEXACO model of personality,[[39]](#footnote-44) is defined as the tendency to be fair, genuine, and sincere in dealing with others. People who are high in honesty-humility are honest, trustworthy, and modest[[40]](#footnote-45).

For example, Benjamin Hilbig and Ingo Zittler[[41]](#footnote-46) investigated the ability of the honesty-humility personality trait to predict economic and cooperative behavior. They hypothesized that this trait would explain how people allocate a valuable resource between themselves and others in two different scenarios in which players need to allocate a sum of money between themselves: the dictator game and the ultimatum game. Furthermore, they predicted that honesty-humility would account for the differences in behavior between these two games, in which the recipient’s power to retaliate varies.

Their study involved 134 participants and yielded results supporting both hypotheses. Participants who scored low in honesty-humility made more self-centered decisions. They shifted towards a more equitable distribution only when the other party had the power to punish uncooperative behavior. In contrast, those who scored high in honesty-humility consistently chose a fairer allocation, even when they could have acted selfishly without fear of repercussions.

Finally, the study found that social value orientations played a partial role in mediating the observed effects. This suggests that an individual’s preference for certain social outcomes is a factor in the relationship between honesty-humility and economic decision-making.

A further study by Olga Lainidi and her colleagues found that individuals with high levels of honesty-humility in a prisoner's dilemma scenario were more likely to collaborate with their partner, despite the knowledge that they could receive a greater reward by betraying them. This suggests that people who are high in honesty-humility are more likely to cooperate with others, even when it is not in their best interests to do so.[[42]](#footnote-47)

In a meta-analysis of studies on the relationship between honesty-humility and prosocial behavior, Yuan Fang and colleagues found that honesty-humility is positively correlated with prosocial behavior, such as helping others in need, cooperating with others, and donating to charity.[[43]](#footnote-48)

## Heterogeneity in honesty

Gibson and colleagues[[44]](#footnote-49) sought to answer the question of whether the world is populated by exactly two fixed types: economic types and ethical types, or, as Gneezy suggested, whether there is heterogeneity in the preferences of the people to lie or to tell the truth, under different circumstances. The type-based model and the model with heterogeneous preferences for truthfulness have very different implications. Therefore, it is important to determine which of these two models offers a more accurate description of reality.

To address this question, they conducted the decision-theoretic laboratory experiment described above in which each participant was placed in the situation of a CEO who had to announce their firm’s earnings to a passive market. The participants were informed of the true level of earnings. They were also told that falsely reporting higher earnings was legal and would lead to higher actual payoffs than honestly announcing the lower earnings. It was expected that economic types would always lie in our experiment because truthfulness was designed to be economically costly; also, it was expected that ethical types would always tell the truth.

They observed that in a situation where the standard economic model predicts that everyone will lie, 32 percent of the participants chose to tell the truth and forgo a larger variable compensation. It is important to note that the percentage of people who told the truth decreased as the cost of truthfulness increased. That implies that the more it costs to tell the truth, the less likely someone is to do it. This effect is significant, even when controlling for various demographic and psychological factors. These results are inconsistent with the type-based model, but they are consistent with a model that suggests that people have varying preferences for truthfulness. Therefore, the primary contribution of this study is to provide evidence that people have a range of preferences for truthfulness, rather than only two opposing positions.

## Heterogeneity of social norms

In other studies, such as those conducted with Netta Barak-Coren and Noam Gidron,[[45]](#footnote-50) we demonstrated that the effect of norms on different parts of society is pluralistic and non-homogenous. From the perspective of voluntary compliance, this suggests an important caveat to consider in terms of how much we can actually rely on social norms, even if they are very strong within certain communities.

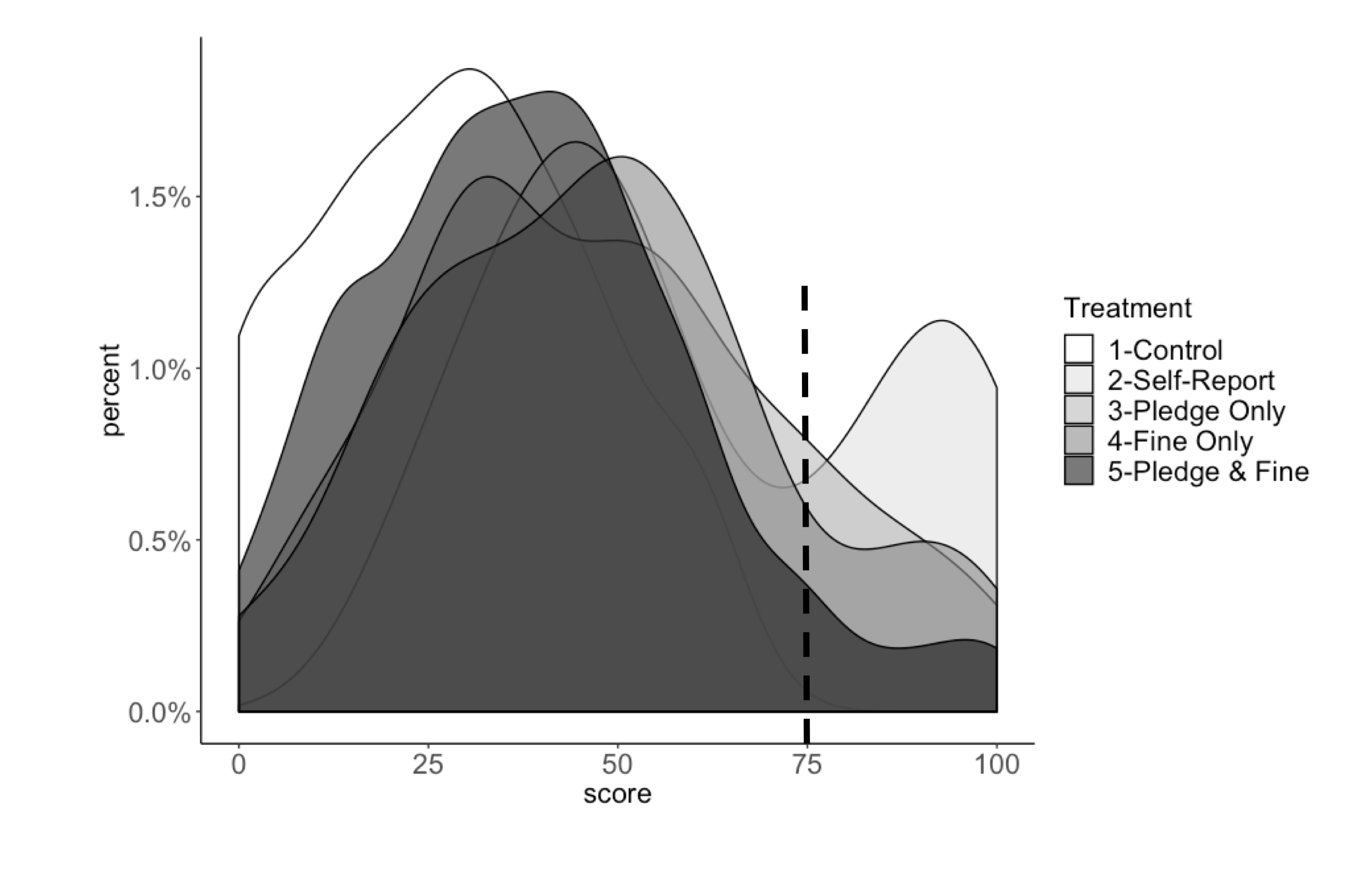
Many have argued that religious mandates in Israel have led to a decline in the public support for the religion and have caused people to react negatively to attempts to dictate religious behavior from above.[[46]](#footnote-51)

This argument suggests that there is no need for laws in certain areas such as circumcision, Passover seders, and not driving on Yom Kippur. The social norms surrounding these practices are strong enough to lead to observant behavior, without the need for legal intervention. But in areas where there law intervenes, such as the prohibition against eating bread during Passover, we see many people who violate the law.

Returning to the Yom Kippur example, there is a strong norm even among secular Jews not to drive their cars during Yom Kippur. Without any cars, this holy day has become a bicycle holiday, with masses of children riding their bicycles and scooters in the middle of the road. Israel, as many other societies, consists of people from different groups who hold different beliefs. In order for norms to be effective in changing behavior, it is important for the norm to be widely accepted. One issue with relying on voluntary compliance based on social values is that society is not as homogenous as one might expect. Thus in recent years, although only a small fraction has used their cars, a few children have been injured by those driving, and there has been at least one fatal case[[47]](#footnote-52) Therefore, relying on values and social norms as the basis for regulating and enforcing certain behavior could be seen as having only a limited effect. The problem with the Yom Kippur example is related to the taxonomy discussed in Chapter 11, “The Law of Good People.” Here we compare legal contexts in which the cooperation of everyone is needed, such as trade secrets, to those in which only the cooperation of a few is needed, such as whistleblowing, and to those where “the more the merrier,” such as tax compliance. In the Yom Kippur context, the cooperation of everyone is making the ability to rely on intrinsic motivation as being very limited. Moreover, based on social reactance theory, if a law is passed without a consensus among people who are motivated by their social values to behave in a certain way, much of it will be lost.[[48]](#footnote-53)

## Lessons on regulating heterogenous populations from pledge research on brazen liars

In addition to researching the factors that predict the likelihood of cooperation among individuals, I have worked with Eyal Pe'er to examine the effect of pledges on brazen liars. Trust-based regulations, such as pledges, may not be expected to have an effect on liars, but our work has shown that they can be effective. Analyzing whether pledges work primarily for honest people or also for brazen liars, we hypothesized that pledges, which raise awareness of honesty’s morality, might be effective only for those with a strong commitment to ethics. Previous research suggested that pledges might affect only minor cheaters.[[49]](#footnote-54) However, we found that pledges significantly influenced behavior across individual differences in rule-following tendencies and cheating extents. This suggests that trust-based regulation could be as effective for people who are not committed to following the law. The overall reduction in the number of people who lied was similar, and there was no interaction found between individual differences in commitment to obey the law. The percentage of “high extent cheaters” (defined as 75% or higher) was largest in the self-report group, considerably smaller in the group with a pledge or fine, and smallest in the group with both. Even when the threshold for “high extent cheater” was set between 60% and 90%, the differences between the groups remained significant. This suggests that pledges and fines have an effect even on those who cheat to a high degree. This contradicts the idea that trust-based regulation might widen the gap between ethical and non-ethical people.



## Social punishment as a replacement to state punishment

Above we raise the problem of voluntary compliance without punishment and monitoring by the state in a heterogeneous society, where not all members are equally committed to cooperating with the requests of the state. One possible solution is social punishment, which could serve as a substitute for state enforcement.

Social punishment is widely discussed in the field of behavioral game theory. One idea that has been developed is that of altruistic punishment,[[50]](#footnote-55) which arguable leads to stable cooperation.[[51]](#footnote-56) Other studies have explored the use of shaming as an alternative to state enforcement in various domains.[[52]](#footnote-57) However, the question remains whether such altruistic punishment can truly ensure voluntary compliance given the complexity of many forms of compliance, especially with regard to corporations.[[53]](#footnote-58) It should be noted that this approach has been subject to considerable criticism for not always being accurate and proportional[[54]](#footnote-59)

## Undesirable outcomes of heterogeneity in voluntary compliance

Bad actors lacking intrinsic motivation to do good may be more likely to engage in bad behavior. Under a voluntary compliance regime, we might see a decline in the proportion of conditional cooperators. Once they see that bad actors are free-riding or engaging in actual misconduct, their willingness to cooperate will decline. Over time, this process could lead to an increase in the perception of a lack of distributive justice, which might be on the rise due to increasing gaps in compliance levels among people. This effect is not likely to have a similar impact on people, as it is expected to be stronger in certain areas, such as taxation, where the sucker effect is more prevalent. On the other hand, areas such as the environment may not require as much cooperation from others; consequently, people may feel less inclined to comply voluntarily.

In situations where cooperation is crucial, gaps in the level of cooperation among members of society can harm the benefits of voluntary compliance. In order for the government to address the gaps in cooperation between people, it may be necessary to infringe on people’s privacy. This topic will be discussed in Chapter 8, where we will explore the importance of understanding people’s backgrounds.

## The fear of brainwashing

When researching nudges, there is always a concern that they may harm autonomy. However, when it comes to voluntary compliance, the concern may be even greater for various reasons, such as overreliance on intrinsic motivation. When many people need to be intrinsically committed, they are more likely to engage in social enforcement, cooperation, and compliance. The government might need to resort to various techniques in order to cause as many people as possible to be committed to the purposes of the state. When the government focuses on sanctioning and monitoring, such shifts might be less necessary.

## The fear of moral conviction

Continuing the preceding discussion about the problematic nature of living in a regulatory regime, governments need to win the public hearts. Research on moral conviction[[55]](#footnote-60) provides another way of understanding why it may not be effective to try to have people intrinsically motivated to obey. At some point, there may be a problem with overzealousness and lack of support for the rule of law, rather than support for compliance with the law. Presumably, the likelihood of people becoming too zealous to pay taxes might seems farfetched. In contrast, it is very possible for people to be intrinsically motivated to protect the environment. In such cases, they may sanction firms that do not follow the law. However, it is also possible that people would become overly enthusiastic about their organizations, which could lead them to reject all corporate governance. Similarly, even being too loyal to their country could cause them to break international law clauses or even international taxation treaties. Consequently, there is a delicate balance between wanting people to be committed and avoiding situations of over compliance that could create a problematic imbalance with other values.

## The potential risk of overreliance on morality and fairness-based compliance

Among the several models reviewed, the focus should be on those that are less likely to interfere with other models and have unintended effects, as demonstrated by the negative effects of sanctions and incentives. For example, the concept of procedural justice, which has been widely studied by scholars such as Tom Tyler and others, is likely to increase the legitimacy and compliance of the legal system. This is done with less likelihood of interfering with the effectiveness of deterrence. Similarly, it may be relevant to inform people of the harm associated with their behavior without inducing resentment toward the law. Nevertheless, even with these approaches, some scholars suggest that emphasizing morality could backfire by giving people the impression that the state is unable to enforce the law.[[56]](#footnote-61) Therefore, regulators should aim to identify policies that target as many motivations as possible, while acknowledging the challenge of achieving complete success in this mission.

## The problem of biased morality

One issue with intrinsic motivation and moral conviction is that we allow people to rely on mechanisms like moral reasoning to determine what to do and how to behave. It is often assumed that everyone agrees on what is the moral thing to do. This is indeed very clear when it comes to straight forward issues like whether to pay to not to pay taxes. However, in many situations the dilemma is more complex. We must understand how people would use their morality in the right way.

As I suggested in my previous book, *The Law of Good People*, people are often motivated to avoid viewing themselves in a negative light. This motivation can lead to various biases in cognitive processes related to reasoning, memory, and perception. I outline various biases which could explain the distortion of people’s evaluation of what is moral.[[57]](#footnote-62) Leigh Thompson and George Loewenstein have shown that people were more likely to remember information that is related to their own position. As a result, their opinion of what is fair aligns with their interest in the outcome of a settlement.[[58]](#footnote-63) The fact that these biases operate without awareness makes it difficult for people to notice the process. Moore and Loewenstein were among the first to show that self-interest and concern for others affect behavior through different cognitive systems. They found that self-interest, unlike concern for others, is automatic, viscerally compelling, and often unconscious, which concerns for others is not.[[59]](#footnote-64) Comparing people’s private beliefs and public behavior, Moore demonstrated that people truly believed their own biased judgments, not recognizing any problems in their responses.[[60]](#footnote-65)

As the above review reveals, there is a growing recognition that many ethical decisions are made implicitly rather than explicitly.[[61]](#footnote-66) Since unethical behavior is often a result of limited and distorted self-awareness, in the context of employment law, in particular, it is important to focus on legal violations committed by otherwise ethical employers. Indeed, this book demonstrates that many mechanisms that increase the likelihood of good people behaving with limited awareness of the full legal and ethical meaning of their actions are particularly problematic in the context of employment. In the relationship between employer and employee, issues such as ambiguity, repeated minor violations, and the strong effect of workplace norms, which may not necessarily align with those of the employees, are likely to have a significant impact on employee conduct.[[62]](#footnote-67)

## Cost of mistakes to the general public regulation; attempts at protection

Another important factor that should be considered when discussing voluntary compliance, which was also discussed in Chapter 4, is the interaction between regulation and trust. One of the biggest concerns in regulation research is that when businesses are trusted, they may end up harming the public because it might allow regulatees to use the greater leverage received by regulators to harm the public.[[63]](#footnote-68) This is consistent with the previous discussion about heterogeneity. In any situation, where the government trusts regulatees who don’t really deserve the trust of the public, it not only harms the public, whose safety regulators supposed to protect, but it also undermines the motivation of the public to engage in economic activities

## The limits of fairness and altruism

Another possible criticism of relying on voluntary compliance is that studies have shown that it is unreliable to focus on fairness in costly decisions. How likely are people to behave based on intrinsic motivation when what is being requested from them is very costly and requires a sacrifice? Is it the case that voluntary compliance focuses primarily on a motivation that regulators currently don’t believe is truly reliable? While the research on honesty usually shows that the amount of money is not crucial, is it enough to show that costs don’t matter? Other lines of research for example, those developed in economics and behavioral economics on fairness as a constraint on profit seeking, do tend to recognize the tension between profit and fairness.[[64]](#footnote-69) Furthermore, there is an obvious problem with the fact that experimental lab studies are limited in their ability to measure high prices.[[65]](#footnote-70)

## Possible mitigations to the risk of heterogeneity

Finally, it is important to note, as will be developed in more detail in Chapter 11, that there are various mitigations to many of the concerns discussed thus far. Without focusing on people’s backgrounds, it will be very difficult for governments to know who they can trust and work with. The work of Lobel and Aronson, which is discussed in more detail in Chapter 7, is one approach that could help governments deal with the difficulty of not knowing who to trust. In that chapter, we deal with identifying who are the people we can trust more. In our joint work with Lobel and Aronson, that work, we examined various ways to determine which people are more likely to be cooperative and receptive to voluntary compliance initiatives. However, it is not clear whether it is realistic for governments to treat people based on personality traits, given privacy concerns.

An alternative approach to deciding who to trust was developed in a joint work with Kaplan.[[66]](#footnote-71) There we argued that it is preferable to take a differentiated approach that compares situations rather than an approach that compares people based on their past behavior. In Chapter 7, we also focus on technological approaches to voluntary compliance. In our joint work with Yotam Kaplan, we discuss the ability to create a more sensitive approach to voluntary cooperation. We suggest that different situations may be riskier than others for voluntary compliance, and that this may offer a possible mitigation to the risks we have identified. In situations where there is a greater gap between voluntary and non-voluntary compliance, it may be more effective to use alternative enforcement strategies rather than focusing on voluntary compliance. Therefore, understanding the contexts in which people are less likely to participate in cooperation with the government voluntarily may be a partial approach to reducing the gaps discussed at the beginning of the chapter.

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