

POLICING FISCAL CORRUPTION: TAX CRIME AND LEGALLY CORRUPT INSTITUTIONS IN THE UNITED KINGDOM

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I

INTRODUCTION

The growing gap between the rich and the rest of society is associated with major economic inequalities. Much of the discussion regarding economic inequalities focuses on the inequality of opportunities.¹ Completing a university degree has become increasingly a function of family income rather than one's own abilities.² Individuals in equal need of health care often must overcome unequal access costs determined by their residency status or ethnicity.³ Inequalities in wealth and status are also associated with unequal access to policymaking processes, contributing to decisions and regulatory structures that benefit elites and legitimize further exacerbation of inequalities.⁴

The literature on corruption thoughtfully considers its correlation to inequality.⁵ One strand of the literature studies corruption as the *cause* of inequality,

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1. See generally JOHN RAWLS, *A THEORY OF JUSTICE* (1971) (focusing on the principle of fair equality of opportunity and the difference principle); Ronald Dworkin, *What Is Equality? Part 1: Equality of Welfare*, 10 PHIL. & PUB. AFFAIRS 185 (1981); Ronald Dworkin, *What Is Equality? Part 2: Equality of Resources*, 10 PHIL. & PUB. AFFAIRS 283 (1981); JOHN E. ROEMER, *EQUALITY OF OPPORTUNITY* (1998).

2. See ROBERT D. PUTNAM, CARL B. FREDERICK & KAISA SNELLMAN, *GROWING CLASS GAPS IN SOCIAL CONNECTEDNESS AMONG AMERICAN YOUTH 3–4* (2012) (examining studies indicating that family background is more predictive of “social capital” than ever before).

3. Rita Baeten et al., *Inequalities in Access to Healthcare: A Study of National Policies*, at 8 (Dec. 11, 2018), <https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8152&furtherPubs=yes> [<https://perma.cc/L8V2-P7AD>]; Antonio Abatemarco, Sergio Beraldo & Francesca Stroffolini, *Equality of Opportunity in Health Care: Access and Equal Access Revisited*, 67 INT. REV. ECON. 13, 19 (2020).

4. See KENT FLANNERY & JOYCE MARCUS, *THE CREATION OF INEQUALITY 191* (2012) (arguing that many of these equality gaps resulted from conscious manipulation of the unique social logic that lies at the core of every human group); see generally MICHAEL JOHNSTON, *SYNDROMES OF CORRUPTION: WEALTH, POWER, AND DEMOCRACY* (2010) (identifying four different syndromes of corruption and describing how these syndromes operate in different countries).

5. For the purposes of this research, corruption is defined broadly as the “abuse of power for private gain.” While this mainstream definition is contested, it captures the essence of what people generally understand by the term, which serves the purpose of the discussion in this article. See John D. Sullivan, *The Moral Compass of Companies: Business Ethics and Corporate Governance as Anti-Corruption Tools*,

while another studies corruption as the *consequence* of inequality.⁶ Scholars examining corruption as the cause of inequality demonstrate how corruption increases inequality by limiting sustainable development and distorting market competition.⁷ Scholars focusing on corruption as the consequence of inequality document how those in positions of power are often able to create and legitimize laws and institutions that promote the interests of elites and disproportionately disadvantage other groups,⁸ a phenomenon labeled “legal corruption.”⁹

A considerable portion of corruption-focused literature examines how elites create and exploit deficiencies in the governance systems¹⁰ and the poor quality of government,¹¹ rather than “corruption” *per se*.¹² From this perspective, many practices, processes, and institutions manifest corruption because they feature unequal access to policymaking processes and other inequalities that undermine

INT. FIN. CORP. 6 (2009) (defining corruption as “the abuse of entrusted power for private gain”).

6. For a useful overview see generally Nieves Zúñiga, *Correlation Between Corruption and Inequality* (July 6, 2017), <https://www.u4.no/publications/correlation-between-corruption-and-inequality> [<https://perma.cc/6LSU-QVMV>] (presenting an overview of the academic literature that analyzes the relationship between corruption and inequality).

7. See, e.g., Toke S. Aidt, *Corruption and Sustainable Development*, in INTERNATIONAL HANDBOOK ON THE ECONOMICS OF CORRUPTION 3, 3–51 (Susan Rose-Ackerman & Tina Søreide eds., 2011) (finding, among other things, that corruption is detrimental to sustainable development in their sample of 110 countries); Alberto Ades & Rafael Di Tella, *Rents, Competition, and Corruption*, 89 AM. ECO. R. 982, 982–92 (1999) (examining the effect of the cost of rents and a country’s market structure on the amount of corruption in a country’s economy).

8. See generally LAWRENCE R. JACOBS & THEDA SKOCPOL, *INEQUALITY AND AMERICAN DEMOCRACY: WHAT WE KNOW AND WHAT WE NEED TO LEARN* 1–14 (2005); Christina Pazzanese, *The Costs of Inequality: Increasingly, It’s the Rich and the Rest*, HARV. GAZETTE (Feb. 8, 2016), <https://news.harvard.edu/gazette/story/2016/02/the-costs-of-inequality-increasingly-its-the-rich-and-the-rest/> [<https://perma.cc/TY7L-B8C2>]; Lorenzo Pasculli, *Seeds of Systemic Corruption in the Post-Brexit UK*, 26 J. FIN. CRIME 705 (2019); Branislav Hock & Suren Gomtsian, *Private Order Building: The State in the Role of the Civil Society and the Case of FIFA*, 17 INT. SPORTS L.J. 186 (2018).

9. See Daniel Kaufmann & Pedro C. Vicente, *Legal Corruption*, 23 ECO. & POL. 195, 199 (2011) (defining legal corruption as a mode of corruption where the elite build a legal framework to protect against their own corruption).

10. The term “governance” refers to the process (act of governing) in which those with power exercise that power, formally and informally. While this is closely linked to how government institutions produce laws and provide public services, the term refers to a wider set of relationships between states and societies. *What is Governance*, UNITED NATIONS OFF. ON DRUGS AND CRIME, <https://www.unodc.org/e4j/en/anti-corruption/module-2/key-issues/what-is-governance.html> [<https://perma.cc/2EU4-MD4T>].

11. The term “government” primarily refers to government institutions that produce laws and provide public services. In the discussions about “the quality of government,” scholars focus on, for example, impartiality in the exercise of power, uncorrupted bureaucracy, the protection of property rights and the enforcement of contracts. See Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer & Robert Vishny, *The Quality of Government*, 15 J.L. ECON. & ORG. 222, 222 (1999) (assessing the quality of government across countries by measuring, for example, government intervention, public sector efficiency, public good provisions, and indicating that the government performance is in part determined by economic development and in part by historical context). See generally Victor Lapuente & Bo Rothstein, *Civil War Spain Versus Swedish Harmony: The Quality of Government Factor*, 47 COMP. POL. STUD. 1416 (2014) (stressing the importance of impartiality of bureaucracy).

12. See Paul M. Heywood, *Rethinking Corruption: Hocus-Pocus, Locus and Focus*, 95 SLAV. EAST EUR. REV. 21, 21–22 (2017) (arguing that research on corruption and how to combat it has been underpinned by social theories that offer solutions no longer matching the current world).

the public's faith in institutions and their inherent trustworthiness.¹³ History suggests that economic and political equalities are interlaced with the inclusivity of political institutions that are characterized by pluralism and political centralization, and economic institutions that are characterized by the security of property rights.¹⁴ As pluralism, political centralization, and the security of property rights are linked to the success of modern democratic societies, they should be supported.

The tax systems of many countries feature significant inequalities linked to deficiencies in the governance systems. One manifestation of such deficiencies is increasing levels of tax crime, including transnational tax evasion¹⁵ as well as simple domestic frauds such as false invoicing, manipulation of tax liabilities, and accounting abuses.¹⁶ Another manifestation can be found in the equality and integrity of underlying tax systems. Public demand for transparency in the tax system has been growing, in part prompted by illuminating reports revealing how rich and powerful individuals and organizations have been secretly transforming their wealth in secure jurisdictions.¹⁷ Leaks of financial information—such as the Panama Papers, Paradise Papers, and FinCEN—illustrate many forms of tax treatment that may be formally legal, yet feature important inequalities borne of deficiencies in the governance systems.¹⁸

These deficiencies in national tax systems have, at least until very recently, been neglected by the anti-corruption discourse. The existing scholarship has

13. See Lawrence Lessig, *Institutional Corruption Defined*, 41 J.L. MED. & ETHICS 553, 553–54 (2013) (discussing conceptual issues surrounding the notion of “institutional corruption”); Lawrence Lessig, *Corrupt and Unequal, Both*, 84 FORDHAM L. REV. 445, 445–52 (2015) (arguing that there is a difference between predicating corruption of an individual and predicating corruption of an entity, as the latter is corrupt because something has interfered with its ability to function as designed).

14. DARON ACEMOGLU & JAMES A. ROBINSON, WHY NATIONS FAIL 81–82 (2012); Daron Acemoglu & James A. Robinson, *Paths to Inclusive Political Institutions* 1–5 (Univ. of Chi., Working Paper, Jan. 19, 2016), https://thepearsoninstitute.org/sites/default/files/2017-02/39.%20Robinson_Paths%20to%20inclusive.pdf [<https://perma.cc/C7CE-EX7U>]. While much of this literature focuses on the internal architecture of given states, similar principles apply outside the state-centric legal and regulatory systems. See Hock & Gomtsian, *supra* note 8, at 192.

15. See generally Diane Ring, *International Tax Relations: Theory and Implications*, 60 TAX L. REV. 83 (2007) (exploring the tensions between the fact that the vast majority of tax rules are “domestic” and the inherently international nature of tax practices).

16. See generally Rita de la Feria, *Tax Fraud and Selective Law Enforcement*, 47 J.L. & SOC'Y 240, 243–53 (2020).

17. See Delphine Nougayrede, *After the Panama Papers: A Private Law Critique of Shell Companies*, 52 INT'L L. 327, 338–55 (2019) (arguing that in addition to regulatory measures that are currently being implemented to tackle harmful effects of the misuse of corporate personality, attention also needs to be paid to the private law dimension); Christian Hodgson, *On the Effort to Discover and Eliminate Offshore Tax Abuse*, 4 BUS. ENTREPRENEURSHIP & TAX L. REV. 170, 176–80 (2020) (illustrating how the “Panama Papers” exposed the inner workings of how offshore tax shelters can work).

18. See Shu-Yi Oei & Diane Ring, *Leak-Driven Law*, 65 UCLA L. REV. 532, 545–64 (2018) (discussing how, over the past decade, a number of well-publicized data leaks have revealed the secret offshore holdings of high-net-worth individuals and multinational taxpayers).

largely centered on traditional tax crimes, with attention to the legality of underlying conduct and the policing response.¹⁹ Others in the anti-corruption scholarship study the role of offshore secrecy and key enablers in evading taxes and hiding beneficial ownership.²⁰ The equality associated with deficiencies in the governance systems, however, is largely unexplored. Of course, scholars examining tax systems have long discussed what constraints a particular theory of justice imposes on the tax system. Rawls suggests that inequalities must be justifiable on the ground that they benefit the least well-off—a measure, as one reading of Rawls suggests, largely determined by the general institutional structure of society and the operations of non-tax policies, rather than by the form of a tax system.²¹ Yet, the key focus of even this scholarship remains the configuration of the tax system, rather than the linkages between corruption and abusive tax practices.

To fill this gap, this article explores the phenomenological manifestations of fiscal corruption,²² including abusive tax practices such as tax evasion, tax avoidance, aggressive tax planning, and systemic inequalities.²³ Drawing on a collective action perspective, and adopting the United Kingdom for a case study, it sheds new light on applicable laws and regulations and identifies deficiencies in countering the practices of fiscal corruption. The article builds on the research that the author has carried out as a Leading National Expert within the project VIRTEU. In that project, the data were obtained inter alia through literature research, four brainstorming sessions with experts, and a workshop focused on the manifestations of abusive tax practices in the United Kingdom.²⁴ The United

19. See generally James Alm, Jorge Martinez-Vazquez & Chandler McClellan, *Corruption and Firm Tax Evasion*, 124 J. ECO. BEHAV. & ORG. 146 (2016); James Alm & Yongzheng Liu, *Corruption, Taxation, and Tax Evasion*, 15(2) E.J. TAX RSCH. 161 (2017); Leandra Lederman, *The Fraud Triangle and Tax Evasion*, 106 IOWA L. REV. 1153 (2021).

20. Michael G. Findley, Daniel L. Nielson & J.C. Sharman, *Using Field Experiments in International Relations: A Randomized Study of Anonymous Incorporation*, 67 INT'L ORG. 657, 657–93 (2013).

21. Linda Sugin, *Theories of Distributive Justice and Limitations on Taxation: What Rawls Demands from Tax Systems*, 72 FORDHAM L. REV. 1991, 1994–98 (2004).

22. Fiscal corruption is defined as “[a]n inequality, being it economic, legal, and political inequality, in society allowing for an improper tax advantage by bending the rules of the tax system, taking advantage of the technicalities of a tax system or mismatches between two or more tax systems, or deliberately and illegally reducing tax liability.” Branislav Hock, *The Interconnections Between Tax Crimes and Corruption in the United Kingdom*, at 31 (Sept. 14, 2021), https://www.corporate-crime.co.uk/_files/ugd/860044_569c92107c0b4b0baa42d9b9dd8459a2.pdf?index=true [<https://perma.cc/KXF6-4SDY>]. For relevant discussion on the notion of fiscal corruption, see Part III.A *infra*.

23. For relevant discussion on a collective action perspective and associated definitions, see Part IV *infra*.

24. VIRTEU (Vat fraud: Interdisciplinary Research on Tax crimes in the European Union) was a two-year international research project funded by the European Anti-Fraud Office (OLAF) of the European Commission (Grant Agreement No. 878619), which aimed at exploring the interconnections between tax crimes and corruption. All the documents produced as well as all the video recordings of the events organized over the course of the project are available online on the Corporate Crime Observatory, which serves as the long-term repository of the project outcomes. VIRTEU, CORP. CRIME OBSERVATORY, <https://www.corporatecrime.co.uk/virteu> [<https://perma.cc/F8TX-NT2W>].

Kingdom is one of the easiest places in the world to set up a company.²⁵ With its very large volume of business transactions, lack of transparency for owners of legal entities, and special relationship with Overseas Territories and Crown Dependencies,²⁶ the United Kingdom provides a globally relevant case-study of manifestations of fiscal corruption. Moreover, the collective action perspective can be applied to study deficiencies in countering fiscal corruption outside the country.

The remainder of this article is structured as follows. Part II critically examines key pieces of United Kingdom legislation related to tax crime. Part III then establishes the conceptual background of the article, discussing fiscal corruption and its major manifestations in the United Kingdom. Part IV introduces the collective action perspective as a framework for evaluating societal problems connected to fiscal corruption and as a lens for assessing deficiencies in the United Kingdom anti-fiscal corruption efforts. Part V provides a short conclusion.

II

UNITED KINGDOM LAW AGAINST TAX CRIME

The United Kingdom legal system provides a robust set of laws and regulations against tax crime and abusive tax practices. These include statutory and common law tax evasion offenses, measures against professionals facilitating tax evasion and tax avoidance, and more general anti-economic crime laws (such as anti-money laundering (AML) laws) crucial in policing tax crime. A preliminary review of these United Kingdom provisions will establish the legal context for a detailed inquiry into the manifestations of fiscal corruption.

A. Tax Evasion Offenses in the United Kingdom

Tax evasion includes deceiving or cheating tax authorities; the involved taxpayers deliberately do not declare and account for the taxes they owe, or they make claims for fraudulent tax refunds.²⁷ Tax fraud encompasses any situation in

25. Oliver Bullough, *How Britain Can Help You Get Away with Stealing Millions: A Five-Step Guide*, *GUARDIAN* (July 5, 2019), <https://www.theguardian.com/world/2019/jul/05/how-britain-can-help-you-get-away-with-stealing-millions-a-five-step-guide> [<https://perma.cc/9UQ5-FDQ4>].

26. FOREIGN AFFAIRS COMMITTEE, *GLOBAL BRITAIN AND THE BRITISH OVERSEAS TERRITORIES: RESETTling THE RELATIONSHIP*, 2017-2019, HC 1464 (UK), <https://publications.parliament.uk/pa/cm201719/cmselect/cmaff/1464/1464.pdf> [<https://perma.cc/NB2J-2GKF>].

27. See generally HM REVENUE & CUSTOMS, *TACKLING TAX AVOIDANCE, EVASION, AND OTHER FORMS OF NON-COMPLIANCE*, 2019, HC 6265, at 6 (UK), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/785551/tackling_tax_avoidance_evasion_and_other_forms_of_non-compliance_web.pdf [<https://perma.cc/J9AW-AQ48>]; HOUSE OF COMMONS LIBRARY, *TAX AVOIDANCE: A GENERAL ANTI-ABUSE RULE*, 2021, HC 6265, at 5–8 (UK), <https://researchbriefings.files.parliament.uk/documents/SN06265/SN06265.pdf> [<https://perma.cc/6BKD-XC52>]. In the United States, see similarly I.R.C. § 7201 (making it a crime to willfully attempt to evade or defeat the payment of taxes). See also generally Brian Carr & Alan Macnaughton, *Offshore Tax Evasion*, 65 *CAN. TAX J.* 633 (2017).

which taxpayers dishonestly make a false representation, fail to disclose information, or abuse their position.²⁸ In England and Wales, the criminal definition of fraud was codified with the passage of the Fraud Act 2006, but many other statutes covering specific types of fraud remain in force.²⁹ The following analysis uses the notion of tax evasion and tax fraud interchangeably and will analyze three key offenses:

1. Cheating the public revenue (common-law offense);
2. Fraudulent evasion of VAT³⁰ and income tax;³¹
3. Failure to prevent the facilitation of tax evasion.³²

1. Cheating the Public Revenue

The most serious tax evasion offenses in England and Wales are covered by the common law offense of cheating the public revenue. This includes, for example, a missing trader intra-community (MTIC) fraud consisting of the theft of VAT by organized crime groups. In one form of MTIC fraud—the so-called carousel fraud—a missing trader fraudulently charges VAT to a conspiring exporter without declaring and paying such tax. The conspiring exporter then claims the tax reimbursement of payments that never occurred. MTIC fraud has traditionally been one of the most significant tax-related crimes in Europe, resulting in €60 billion of tax losses annually.³³

Paralleling other fraud rules, prosecutors applying the cheating the public revenue offense must prove the dishonesty of an offender beyond any reasonable doubt. This might appear as a relatively easy task, as actual loss need not materialize and deception need not be proven for an offender to be held criminally liable.³⁴ Moreover, a test of dishonesty established by *Ivey v. Genting Casinos* rendered the subjective view of the defendant—regarding whether their behavior would be regarded as dishonest by ordinary people and whether they were acting dishonestly—irrelevant.³⁵ What matters is whether the defendant's conduct was dishonest as determined by objective standards of ordinary decent people. This threshold, in combination with the high criminal standard of proof (beyond any

28. See Fraud Act 2006, c. 35, §§ 2–4 (UK) (codifying the criminal definition of fraud).

29. MARK BUTTON, BRANISLAV HOCK, & DAVID SHEPHERD, ECONOMIC CRIME: FROM CONCEPTION TO RESPONSE 35–37 (2022). See also Dilpreet Dhanoa, Rachel Cook & Osita Mba, *National Workshop - United Kingdom, Session I*, CORP. CRIME OBSERVATORY, at 08:35 (July 23, 2021), www.corporatecrime.co.uk/virtue-workshop-uk (discussing how tax offenses are criminalized in the United Kingdom).

30. Value Added Tax Act 1994, c. 23, § 72 (UK).

31. Tax Management Act 1970, c. 9, § 106A (UK).

32. Criminal Finances Act 2017, c. 22, §§ 45–46 (UK).

33. *MTIC (Missing Trader Intra Community) Fraud*, EUROPOL, <https://www.europol.europa.eu/crime-areas-and-trends/crime-areas/economic-crime/mtic-missing-trader-intra-community-fraud> [<https://perma.cc/MZ9T-7SMB>] (last visited Sept. 7, 2022).

34. See, e.g., *R v. Mavji* [1987] 1 WLR 1388 at 1392 (Eng. & Wales) (establishing that failing to register for VAT with dishonest intent to evade tax constitutes an offense).

35. *Ivey v. Genting Casinos* [2017] UKSC 67 [74] (“There is no requirement that the defendant must appreciate that what they have done is, by those standards, dishonest.”).

reasonable doubt) and the use of non-expert United Kingdom juries, makes successful prosecution of tax fraud very challenging.³⁶

2. Fraudulent Evasion of Tax

Alongside the common law criminal offense of cheating the public revenue, United Kingdom law also provides a set of specific anti-tax evasion statutory offenses. These include tax offenses under Section 72 of the Value Added Tax Act 1994 (VAT Act) and Section 106A of the Taxes Management Act 1970.³⁷ Fundamental offenses established by these statutes include:

- a) Fraudulent evasion of income tax: Under Section 106A of the Tax Management Act 1970, it is a criminal offense for a person to be knowingly concerned in the fraudulent evasion of income tax by that or any other person.
- b) Fraudulent evasion of VAT: Under Section 72(1) of the VAT Act 1994, it is a criminal offense to be knowingly concerned with the fraudulent evasion of VAT. Here, fraudulent evasion exists if any amount is falsely
 - a) claimed by way of credit for input tax;
 - b) understated in the context of the output tax;
 - or c) claimed by way of refund or repayment.
- c) Furnishing false information: Under Section 72(3) of the VAT Act, it is a criminal offense if any person, with intent to deceive, produces, furnishes, sends, or otherwise makes use of any document which is false. It is also an offense if a person makes any statement that he or she knows to be false or recklessly makes a statement that is false.

For most offenses, the maximum penalty on conviction is seven years imprisonment, an unlimited fine, or both. An important feature of these specific laws is that the United Kingdom His Majesty's Revenue and Customs (HMRC)³⁸ is given the competence to impose penalties for all entities entering into transactions connected with the fraudulent evasion of tax who knew, or should have known, that such transactions were associated with fraud.³⁹ De La Feria views such legal liability as an example of the growing principle of third-party liability, whereby businesses are required to carry out due diligence to ensure that their business partners are not involved in fraud.⁴⁰ This HMRC competence has mainly been available for VAT tax fraud, but the introduction of two *failure to prevent*

36. BUTTON, HOCK & SHEPHERD, *supra* note 29, at 36. Note that under R v. Ghosh [1982] 1 QB 1053 (Eng.), the prosecutors had to prove that the defendant knew they were acting dishonestly.

37. Value Added Tax Act 1994, c. 72 (UK); Taxes Management Act 1970, c. 106A (UK). Tax evasion-related offenses are also present in a number of other statutes such as frauds related to the smuggling of goods under section 170 of the Customs and Excise Management Act 1979, c. 2 (UK). The analysis of these other statutes and specific offenses is beyond the scope of this article.

38. HMRC is a non-ministerial department established by the Commissioners for Revenue and Customs Act (CRCA) 2005, replacing the Inland Revenue and Customs and Excise. *HM Revenue & Customs – About Us*, GOV.UK, www.gov.uk/government/organisations/hm-revenue-customs/about [https://perma.cc/RBN3-5FPS]. HMRC is responsible, *inter alia*, for collection, compliance and enforcement activities related to taxation. *Id.*

39. Value Added Tax Act 1994, c. 23 § 69C (UK).

40. de la Feria, *supra* note 16, at 261–64.

the facilitation of tax evasion offenses, as discussed below, shows that similar principles apply more broadly to a wide range of tax evasion activities.

3. Failure to Prevent the Facilitation of Tax Evasion

Under Criminal Finance Act 2017 (CFA 2017), incorporated bodies and partnerships (further referred to as businesses) can be held liable if they fail to prevent the facilitation of tax evasion by their associated persons. The CFA 2017 establishes two offenses:

- 1) Tax evasion offense (section 45 of the CFA 2017);⁴¹
- 2) Foreign tax evasion offense (section 46 of the CFA 2017).⁴²

These tax evasion offenses include both the cheating of the public revenue offense and the fraudulent evasion of a tax.⁴³ Accordingly, the CFA does not introduce new substantive offenses. Rather, sections 45 and 46 of the CFA newly impose strict liability on United Kingdom businesses and foreign businesses. This model of strict liability consists of three steps:

- 1) There must be a criminal tax evasion offense committed by a taxpayer. A taxpayer can— for example, as a client of a business—be cheating the public revenue or fraudulently evading taxes.⁴⁴
- 2) The offense of the facilitation of tax evasion includes acts of an associated person who shall be “knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax by another person” or be aiding and abetting such evasion offense.⁴⁵ An “associated person” includes employees, agents, subsidiaries, contractors, and consultants who act in the capacity of a business.⁴⁶ This includes the performance of services for or on behalf of a business rather than acts performed in a personal capacity.⁴⁷
- 3) A business fails to prevent its associated person from facilitating tax evasion. However, even if the evasion occurs, a business has a defense to the charge if it can prove that it had implemented reasonable prevention procedures—or that it was not reasonable to be expected to have such procedures—when the facilitation of tax evasion offense was committed.⁴⁸

41. Criminal Finances Act 2017, c. 22, § 45 (UK).

42. *Id.* at § 46.

43. *Id.* at §§ 45(4), 46(5).

44. Note that the requirement of “dual criminality” must be present in the context of the foreign tax evasion offense under section 46(5). It means that if a foreign conduct is not criminal in the UK, section 46 does not apply. Moreover, a foreign tax evasion offense must be criminal under the foreign law in question.

45. *Id.* at § 45(5)(a)–(b).

46. *Id.* at § 44(4).

47. Criminal Finances Act 2017, c. 22, Explanatory Notes ¶ 289 (UK), <https://publications.parliament.uk/pa/bills/lbill/2016-2017/0104/17104en.pdf> [<https://perma.cc/3WU7-ATAQ>]. Note that the notion of associated person is identical to that of the Bribery Act. Bribery Act 2010, c. 23, § 8 (UK).

48. Criminal Finances Act 2017, c. 22, §§ 45(2), 46(3)–(4) (UK).

Adoption of “failure to prevent” offenses in the area of tax evasion reflects a general trend in the United Kingdom toward “private enforcement” and incentivizing organizations to pursue proactive self-policing of economic crimes. As will be seen in the following section, the introduction of offenses for the failure to prevent the facilitation of tax evasion follows the introduction of a similar corporate liability model in the foreign anti-bribery law.⁴⁹ Under the United Kingdom Bribery Act (the Bribery Act),⁵⁰ two steps are involved: bribery by an associated person and the failure to prevent it.⁵¹ This differs slightly from the liability for the two anti-evasion offenses, which are based on a three-stage process—tax evasion, facilitation of that tax evasion by an associated person, and the failure to prevent that associated person from facilitating tax evasion.

B. Substantive Legal Fragmentation and Fiscal Corruption

Many economic crimes, whether they relate to tax fraud, international bribery or money laundering, feature similar patterns. Perpetrators use complicated systems of corporate veils to hide the true identity of business owners, the source of funds, and the purpose of their business.⁵² Recognizing this overlap is important because major tax frauds will often feature other types of financial crime and regulatory violations. Measures adopted in the context of one crime type, such as money laundering, are also relevant for others such as tax evasion.⁵³

Consider, for example, the Proceeds of Crime Act 2002 (POCA). Although the POCA is a key legal instrument against money laundering, it reaches into other areas of economic crime. For example, tax evasion is associated with criminal property, and knowingly using, possessing, and transferring criminal property might constitute a money laundering offense, hence making POCA potential legal grounds for the criminal prosecution of offenders. Moreover, relevant authorities have both criminal and civil powers under POCA, allowing for recovery

49. This offense followed the introduction of the “failure of commercial organisations to prevent bribery” offense, as provided by section 7 of the Bribery Act 2010, which was adopted in order to ease the prosecutions of companies involved in transnational bribery cases that had faced major, and in many cases insurmountable, obstacles. See Costantino Grasso, *Peaks and Troughs of the English Deferred Prosecution Agreement: The Lesson Learned from the DPA Between the SFO and ICBC SB Plc*, 5 J. BUS. L. 388, 391 (2016) (chronicling the history giving rise to section 7 of the Bribery Act of 2010).

50. Bribery Act 2010, c. 23, § 7 (UK).

51. Stephen Copp & Alison Cronin, *New Models of Corporate Criminality: The Development and Relative Effectiveness of “Failure to Prevent” Offences*, 39 CO. L. 104, 110 (2018).

52. See Findley, Nielson & Sharman, *supra* note 20, at 681–82 (evidencing that service providers are willing to ignore international standards to conceal the identities of beneficial owners of shell corporations); see generally Paul M. Gilmour, *Lifting the Veil on Beneficial Ownership: Challenges of Implementing the UK’s Registers of Beneficial Owners*, 23 J. MONEY LAUNDERING CONTROL 717 (2020) (systematically reviewing the literature surrounding beneficial ownership transparency).

53. This phenomenon is analysed in the context of collective action challenges in Part IV below. In another jurisdiction, see, e.g., Nikos Passas, Ioannis Morozinis, Ioannis Blatsos & Antonis Baltas, VIRTEU, *National Workshop - Greece, Session I*, CORP. CRIME OBSERVATORY, at 19:28 (July 16, 2021), www.corporatecrime.co.uk/virteu-national-workshop-greece (discussing the interconnections between tax offenses and money laundering in Greece).

of property obtained through criminal conduct where no conviction has been possible.⁵⁴ Although civil enforcement and civil recovery orders are widely used by the United Kingdom enforcement authorities, it is often to the detriment of appropriate punishment and deterrence via criminal prosecution.⁵⁵

III

MANIFESTATIONS OF FISCAL CORRUPTION IN THE UNITED KINGDOM

A notion of fiscal corruption is important because once established, it facilitates the examination of not only the substantive manifestations—such as tax evasion— but also its institutional manifestations, such as the misuse of positions of power to implement and legitimize laws, regulations, and policymaking practices that are detrimental to society more broadly.⁵⁶ Thus, a clear articulation of fiscal corruption helps paint a more complete picture of both the improper economic transactions impacting taxation and the systemic inequalities imbedded in the underlying governance systems.

A. Fiscal Corruption

Although tax abusive practices and corruption place serious burdens on society, many of the underlying practices remain legal under national law. For example, tax avoidance schemes are legal, yet raise serious questions about whether they create any legitimate economic value. In the United Kingdom, tax returns of foreign multinationals report taxable income half that of comparable domestic corporations. That is a result aided by profit shifting, which can bring multinationals' reported taxable profits to zero, and it prompts questions about corruption in the underlying system.⁵⁷ Answers here are important as states grapple with notions of equality and the adequate provision of public goods.⁵⁸

In this discussion about corruption and abusive tax practices, the concept of fiscal corruption highlights both substantive crimes and wrongs, such as tax evasion, as well as inherent economic and political inequalities associated with the collection and payment of taxes.⁵⁹ Fiscal corruption can be further defined as:

54. Proceeds of Crime Act 2002, c 29, Part 5 (UK).

55. See BUTTON, HOCK & SHEPHERD, *supra* note 29, at 229–30 (explaining that the lower penalties associated with civil cases hinder the deterrent effect of the punishment); Michael Levi, *Money for Crime and Money from Crime: Financing Crime and Laundering Crime Proceeds*, 21 EUR. J. CRIM. POL'Y RES. 275, 291–92 (2015) (highlighting the importance of high criminal sanctions in successful AML controls).

56. See JACOBS & SKOCPOL, *supra* note 8, at 1–14 (arguing that economic inequality appears to have stalled and, in some areas, reversed progress towards realizing American ideals of democracy); see generally Kaufmann & Vicente, *supra* note 9.

57. Katarzyna A. Bilicka, *Comparing UK Tax Returns of Foreign Multinationals to Matched Domestic Firms*, 109 AM. ECON. REV. 2921, 2921 (2019).

58. In economic terms, public goods are characterized by non-rivalry and non-excludability in consumption. For further discussion see Part IV.A *infra*.

59. Hock, *supra* note 22, at 2.

An inequality, being it economic, legal, and political inequality, in society allowing for an improper tax advantage by bending the rules of the tax system, taking advantage of the technicalities of a tax system or mismatches between two or more tax systems, or deliberately and illegally reducing tax liability.⁶⁰

This type of corruption reflects weaknesses in underlying tax laws and regulations intended to support the provision of public goods.⁶¹ Moreover, it focuses on whether the meaning of public good is fairly constructed so that underlying tax laws and regulations do not promote the interests of elites and disproportionately disadvantage other groups.⁶²

This broader view of corruption has faced resistance in the courts. Consider, for example, the ruling issued by the US Supreme Court in *Citizens United v. Federal Election Commission*,⁶³ which confirmed the right of corporations to provide unlimited contributions to outside groups to influence elections in the United States (US). A five to four majority of the Supreme Court established that corporations enjoy the same right to spend on elections as natural persons, effectively restricting the notion of corruption to quid pro quo arrangements between donors and candidates.⁶⁴ This ruling increases the prospect of powerful economic support of political parties and actors, and the concomitant consequences and dependencies associated with such support.⁶⁵ Differently from this view of corruption, the notion of fiscal corruption includes systemic inequalities related to the ability of elites to create and exploit deficiencies in the governance systems and disproportionately disadvantage other groups, even if it is so by legal means.⁶⁶

Although some forms of deliberate and illegal reduction of tax liability are criminalized under national laws,⁶⁷ fiscal corruption includes a gray zone between tax evasion and tax avoidance. Tax avoidance structures, for example, can be driven by a multinational corporation rearranging its business in a way that reduces taxation and formally complies with the letter of the law, while arguably

60. *Id.* at 31.

61. See WILLIAM D. FERGUSON, *COLLECTIVE ACTION AND EXCHANGE: A GAME-THEORETIC APPROACH TO CONTEMPORARY POLITICAL ECONOMY* 24–27 (2013) (explaining that collective action problems are associated with providing public goods such as institutions establishing a sense of trust that facilitate exchange within a community).

62. See FLANNERY & MARCUS, *supra* note 4, at 191 (arguing that many of these equality gaps resulted from conscious manipulation of the unique social logic that lies at the core of every human group).

63. *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 365 (2010).

64. Richard Briffault, *Corporations, Corruption, and Complexity: Campaign Finance after Citizens United*, 20 CORNELL J.L. & PUB. POL'Y 643, 661 (2011).

65. See Zephyr Teachout, *Facts in Exile: Corruption and Abstraction in Citizens United v. Federal Election Commission*, 42 LOY. U. CHI. L.J. 295, 297 (2011) (arguing that the ruling is the “culmination of a series of failed efforts by the Supreme Court to find a way to describe corruption in grounded, narrative terms”); ZEPHYR TEACHOUT, *CORRUPTION IN AMERICA: FROM BENJAMIN FRANKLIN’S SNUFFBOX TO CITIZENS UNITED* 232 (2014) (harshly criticizing the decision).

66. See Kaufmann & Vicente, *supra* note 9, at 24–25 (discussing a three-equilibrium pattern world where elites dictate whether there will be illegal corruption, legal corruption, or no corruption).

67. This includes paying too little tax as well as various types of fraudulent tax refund claims. For example, consider the common law offense of “cheating the public revenue” and the failure to prevent the facilitation of tax evasion offense under the Criminal Finances Act 2017, c. 22 (UK).

acting in contravention of its spirit.⁶⁸ In pursuit of this tax reduction, these taxpayers not only rearrange their legitimate business activities, but may also establish entities, processes and transactions whose sole purpose is to help avoid tax.⁶⁹ In this context, Table 1 provides working definitions of key terms associated with tax planning.

| Table 1: Degrees of Tax Planning | |
|---|--|
| Tax planning and mitigation | This involves legal responses to tax legislation and acting in compliance with the purpose of legislation. For example, using tax reliefs for the purpose intended by the legislator. |
| Tax avoidance | Tax avoidance involves “bending the rules of the tax system to gain a tax advantage that Parliament never intended.” ⁷⁰ |
| Aggressive tax planning | Such planning consists “in taking advantage of the technicalities of a tax system or of mismatches between two or more tax systems for the purpose of reducing tax liability.” ⁷¹ The term overlaps with the term tax avoidance. The term is criticized by academics for its ambiguity. ⁷² |
| Tax evasion | This is always illegal. It is a deliberate and illegal reduction of tax liability. |

While the notion of fiscal corruption is particularly important for policy assessment and evaluation, constructing and implementing a legal concept of fiscal corruption might fall short given the struggle to define corruption in criminal law.

68. Ave-Geidi Jallai, *Good Tax Governance: International Corporate Tax Planning and Corporate Social Responsibility – Does One Exclude the Other?* 66–74 (Sept. 23, 2020) (Ph.D. dissertation, Tilbury University), https://pure.uvt.nl/ws/portalfiles/portal/42989090/Jallai_Good_23_09_2020.pdf [<https://perma.cc/7N56-PU6H>].

69. The term “aggressive tax planning” is used as a principle that facilitates a policy change. *Id.* at 71–74.

70. HM REVENUE & CUSTOMS, *TACKLING TAX EVASION AND AVOIDANCE*, 2015, Cm. 9047, at 5 (UK), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/413931/Tax_evasion_FINAL__with_covers_and_right_sig_.pdf [<https://perma.cc/D8WV-Z5TV>].

71. Commission Recommendation of 6 December 2012 on Aggressive Tax Planning, 2012 O.J. (L 338) 41, <https://op.europa.eu/en/publication-detail/-/publication/fff0ff5a-4451-11e2-9b3b-01aa75ed71a1> [<https://perma.cc/X3YL-8KE2>].

72. Jallai, *supra* note 68, at 71–74.

The mainstream legal approach has been to establish offenses for a range of corruption behavior.⁷³ Consider, for example, the United Nations Convention against Corruption (UNCAC), which avoids defining the term corruption, preferring instead to rely on a set of specific types of corruption offenses such as bribery, embezzlement, and trading in influence.⁷⁴

Similar approaches could be applied in the context of fiscal corruption, establishing the offenses associated with tax crime for a range of corrupt acts, including tax evasion, money laundering and bribery. Embracing the conception of fiscal corruption and criminalizing corruption based on the UNCAC strategy may bolster a holistic approach to disrupting patterns of corruption. Fiscal corruption captures different corrupt tax schemes and informs a policy discussion about both the loopholes associated with tax-related laws and regulations, and the enforcement practices regarding complex economic crimes.

B. Manifestations of Fiscal Corruption in the United Kingdom

Fiscal corruption does not just reduce tax collection and economic growth—it also generates negative externalities,⁷⁵ such as increases in alternative taxes and misallocation of resources.⁷⁶ Many forms of fiscal corruption systematically divert public institutions away from their core purposes, damaging the public’s trust in those institutions.⁷⁷ These departures from core purpose can create gaps in equality and other negative socioeconomic effects, such as distortion of market competition and under-resourcing of public services.⁷⁸ This subpart will first detail

73. Org. for Econ. Coop. and Dev. [OECD], *Corruption: A Glossary of International Criminal Standards*, at 19 (2007), <https://www.oecd.org/corruption/anti-bribery/39532693.pdf> [<https://perma.cc/Q9XM-EJXV>].

74. United Nations Convention Against Corruption, arts. 15–25, *adopted* Oct. 31, 2003, 2349 U.N.T.S. 41 (entered into force Dec. 14, 2005), https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf [<https://perma.cc/52YP-9CRL>]; see BRANISLAV HOCK, MARK BUTTON & DAVID SHEPHERD, *Corruption, Bribery, and Corporate Crime: Victims and Perpetrators*, in THE HANDBOOK OF SECURITY 307, 308 (Martin Gill ed., 2022) (suggesting that the term “corruption” can be viewed as a “taxonomic name for a group of economic crimes”).

75. According to economists, negative externalities are the source of market failure. This is because the costs of an economic exchange may spill over onto third parties. Consider the water and air pollution produced by a factory. While a factory produces private goods, it also produces costs to others. In the absence of regulation, however, such a factory does not have to pay for harming others. ROBERT COOTER & THOMAS ULEN, *LAW AND ECONOMICS* 39–40 (6th ed. 2016).

76. Benno Torgler, *What Do We Know About Tax Fraud? An Overview of Recent Developments*, 75 SOC. RSCH. 1239, 1239 (2008). For an expansive conception of corruption and its relationship to tax crimes, see generally Diane M. Ring & Costantino Grasso, *Beyond Bribery: Exploring the Intimate Interconnections Between Corruption and Tax Crimes*, 85 LAW & CONTEMP. PROBS., no. 4, 2022.

77. *Institutional Corruption Defined*, *supra* note 13, at 553; see also *Corrupt and Unequal*, *Both*, *supra* note 13, at 446 (finding that a corrupt institution is one that has been interfered with and as a result loses its ability to function as designed); see Elinor Amit, Jonathan Koralnik, Ann-Christin Posten, Miriam Muethel, & Lawrence Lessig, *Institutional Corruption Revisited: Exploring Open Questions Within the Institutional Corruption Literature*, 26 S. CAL. INTERDISC. L.J. 447, 451–53 (2017) (discussing how institutional corruption occurs when an institution is diverted from its purpose regardless of whether the institution’s purpose serves the public good).

78. See ACEMOGLU & ROBINSON, *supra* note 14, at 81–82; Acemoglu & Robinson, *supra* note 14, at 1–5. In addition, consider the effects of tax evasion discussed in James Alm & Matthias Kasper, *Tax*

substantive manifestations of fiscal corruption in the United Kingdom, with attention to the scale of tax evasion and similar acts of fiscal corruption. Second, it will explore institutional manifestations of that fiscal corruption, such as the adoption of legal instruments favorable to tax evaders.

1. The Scale of Tax Evasion and Similar Acts of Fiscal Corruption

The notion of fiscal corruption is associated with various forms of substantive tax crimes and undesirable tax practices. According to an official statistic of the United Kingdom HMRC⁷⁹ released in June 2022, the tax gap was estimated to be £32bn (5.1% of total theoretical tax liabilities) in 2020–21, an increase from £31bn (4.7%) in 2018–19.⁸⁰ The tax gap associated with personal income taxes constitutes £12.7bn (39.5% of the total tax gap) and the VAT tax gap represents £9bn (28% of the total tax gap).⁸¹ The estimated 2020–21 tax gap associated with tax avoidance was £1.2bn, which is a significant decrease as compared to the £1.7bn loss in 2018–19. However, the 2020–21 loss due to tax evasion was £4.8bn (15%), an increase over £4.6bn in 2018–19.⁸²

Measuring the extent of the aggregated harmful consequences and costs of fiscal corruption is fraught with challenges.⁸³ When making the tax gap estimates, HMRC operates with a narrow definition of tax avoidance and understates the sum of tax evasion.⁸⁴ HMRC, for example, excludes various types of tax frauds from its estimates of the loss associated with tax evasion. If one includes both the reduction of tax liabilities and criminal fraud in the calculation of tax gap, the loss

Evasion, Market Adjustments, and Income Distribution, IZA WORLD LAB. (Feb. 2020), <https://wol.iza.org/articles/tax-evasion-labor-market-effects-and-income-distribution> [<https://perma.cc/5CX2-H8FR>]. For literature on the effects of corruption, see generally Andrei Shleifer & Robert W. Vishny, *Corruption*, 108 *Q.J. ECON.* 599, 599 (1993) (discussing how the illegality of corruption makes it more costly and more prevalent in less developed countries); CLARE FLETCHER & DANIELA HERRMANN, *THE INTERNATIONALISATION OF CORRUPTION: SCALE, IMPACT AND COUNTERMEASURES* (2012).

79. See *HM Revenue & Customs – About Us*, *supra* note 38.

80. The tax gap is the difference between the amount of tax that should be collected against what is collected by the HMRC. *Measuring Tax Gaps 2022 Edition*, GOV.UK (June 23, 2022), <https://www.gov.uk/government/statistics/measuring-tax-gaps> [<https://perma.cc/VQ9Z-V6KA>] (last visited Sept. 15, 2022); HM REVENUE & CUSTOMS, *MEASURING TAX GAPS 2020 EDITION 3* (2020), <https://webarchive.nationalarchives.gov.uk/ukgwa/20210831200552/https://www.gov.uk/government/statistics/measuring-tax-gaps> [<https://perma.cc/FTJ4-TRJ8>] (last visited Sept. 15, 2022).

81. *Measuring Tax Gaps 2022 Edition*, *supra* note 80.

82. HM REVENUE & CUSTOMS, *supra* note 80; *Tax Gaps: Illustrative Tax Gaps by Behaviour*, GOV.UK (June 23, 2022), <https://www.gov.uk/government/statistics/measuring-tax-gaps/7-tax-gaps-illustrative-tax-gap-by-behaviour> [<https://perma.cc/4RDM-9P7E>]. Note that the tax gap consists of a range of behaviours such as non-payment, tax avoidance, failure to take reasonable care, tax evasion, and participating in the hidden economy.

83. See generally CHARLES SAMPFORD, ARTHUR SHACKLOCK & CARMEL CONNORS, *MEASURING CORRUPTION 19* (2006) (acknowledging that the major risks associated with measuring corruption include gathering inaccurate data and the possibility of misrepresentation).

84. Richard Murphy, *The UK Tax Gap Is £90 Billion a Year*, TAX RSCH. UK (June 19, 2019), <https://www.taxresearch.org.uk/Blog/2019/06/19/the-uk-tax-gap-is-90-billion-a-year/> [<https://perma.cc/S3CF-PCCF>].

from tax evasion is much higher. Moreover, many high-level aggressive tax avoidance schemes are not reflected in the estimate because HMRC considers them legal.⁸⁵

Other estimates suggest that the loss associated with tax avoidance and tax evasion is much higher than the HMRC estimates.⁸⁶ Murphy, for example, estimates that the cost of evasion is more than £70bn and the cost of tax avoidance £11bn.⁸⁷ The notion of fiscal corruption includes not only classic tax frauds and evasion, but also a wide range of systemic issues linked to aggressive tax planning and tax avoidance—which collectively risk significant negative economic impact.⁸⁸

2. Institutional Manifestations of Fiscal Corruption

Beyond the tax violations, fiscal corruption marks itself as a weakness in the institutional setup and functioning of public agencies in the tax space. Such weaknesses manifest in the undue influence that private actors have on the creation and enforcement of legislation and regulation. The VIRTEU project has identified multiple important institutional manifestations of fiscal corruption in the United Kingdom. The primary examples—limiting the scope of the criminalization of abusive tax practices, the reluctance to adopt effective transparency regimes, deregulation, and revolving door practices—are reviewed below.⁸⁹

According to the Crime Survey for England and Wales (CSEW), a regular government survey that asks questions about fraud victimization, fraud is one of the most common crimes.⁹⁰ Despite approximately 4.5 million incidents of fraud in 2020, a fundamental challenge in the United Kingdom is that economic crime in general and tax fraud in particular have historically been perceived as victimless crimes. Accordingly, they have not been prioritized by enforcement authorities, academics, or practitioners.⁹¹ The media, too, displays noted apathy to economic crime unless a story is sensational.⁹²

This apathy can explain a high level of tolerance of aggressive tax planning practices and tax avoidance. Consider the case of General Electric, which illus-

85. For example, the tax gap excludes profit shifting.

86. Murphy, *supra* note 84.

87. *Id.*

88. For the purposes of this work, the term tax evasion includes tax fraud.

89. See generally *VIRTEU National Workshop – United Kingdom*, *supra* note 29; Hock, *supra* note 22, at 20–24 (discussing deregulation in relation to tax avoidance and corruption); VIRTEU, *The Professionals: Dealing with the Enablers of Economic Crime - Session I (The Phenomenon)*, CORP. CRIME OBSERVATORY (July 21, 2021), www.corporatecrime.co.uk/virteu-symposium-the-professionals; Ring & Grasso, *supra* note 76.

90. OFF. FOR NAT'L STAT., CRIME IN ENGLAND AND WALES: YEAR ENDING MARCH 2022 7 (2022), <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandandwales/yearendingmarch2022> [https://perma.cc/89W6-MJ3Y].

91. BUTTON, HOCK, & SHEPHERD, *supra* note 29, at 1, 47.

92. Judith van Erp, *Messy Business: Media Representations of Administrative Sanctions for Corporate Offenders*, 35 L. & POL'Y 109, 116 (2013).

trates how large multinational corporations have transformed their tax departments into money-making machines operated by thousands of tax lawyers. In reality, many corporations not only pay little or no tax, but often book positive tax benefits.⁹³ General Electric was accused in 2020 of fraudulent misrepresentation in order to gain a tax advantage in the United Kingdom worth \$1 billion and the matter ultimately resolved through an out-of-court settlement worth \$112 million.⁹⁴ Although some observers might contend that HMRC has become more active in tackling aggressive tax avoidance and tax evasion, many have criticized the General Electric settlement. The All Party Parliamentary Group on Anti-Corruption & Responsible Tax censured HMRC by stating that “sweetheart deals like this one see the taxpayer lose out on millions in lost tax revenue.”⁹⁵

The use of complex corporate structures and anonymous shell companies has been a major enabler of economic crime.⁹⁶ Following a series of scandals, including the Panama Papers and the Paradise Papers, civil society has been confronted by the ease with which entrepreneurs, celebrities and politicians engage in dubious offshore business activities to secure tax advantages that ordinary citizens are unable to enjoy.⁹⁷ In response, many states around the world have adopted new legislative measures designed to make it more difficult for criminals and elites to use complex corporate structures and shell corporations for questionable financial activities and tax evasion.

Although the United Kingdom has shown strong commitment in this area, for example by implementing a corporate transparency requirement under the EU AML Directives, concerns continue⁹⁸ given that the country arguably operates

93. See Tabby Kinder & Emma Agyemang, *It's a Matter of Fairness: Squeezing More Tax from Multinationals*, FIN. TIMES (July 8, 2020), <https://www.ft.com/content/40cffe27-4126-43f7-9c0e-a7a24b44b9bc> [<https://perma.cc/935Q-2UFR>] (discussing how General Electric's Tax Department offset large tax liabilities and generated 1.3 billion dollars in positive tax benefits between 2008 and 2015).

94. Emma Agyemang, *MPs Accuse HMRC of 'Sweetheart' Tax Settlement with GE*, FIN. TIMES (Sept. 16, 2021), <https://www.ft.com/content/31e01fdd-7a10-4985-9b37-3793662bda47> [<https://perma.cc/F59K-U2YC>].

95. APPG on Anti-Corruption & Responsible Tax (@taxinparliament), TWITTER (Sept. 16, 2021, 6:53 AM), <https://twitter.com/taxinparliament/status/1438456102417571846?s=20&t=3eaY19I11IXz69nged5kA> [<https://perma.cc/NE85-Q4HV>] (the criticism was published by the All Party Parliamentary Group on Anti-Corruption & Responsible Tax via Twitter).

96. See Findley, Nielson & Sharman, *supra* note 20, at 658 (detailing how the use of shell corporations facilitated a wide variety of economic crimes from illicit gambling to the sale of controlled narcotics); Gilmour, *supra* note 52, at 719 (distinguishing between permissible and illicit uses for shell corporations).

97. See Nougayrede, *supra* note 17, at 330–32 (offering a private law criticism of shell companies); Hodgson, *supra* note 17, at 180–81 (providing potential solutions to collect sheltered off-shore tax revenues); Oei & Ring, *supra* note 18, at 572–81 (examining the risks and benefits of tax leaks).

98. See e.g., COSTANTINO GRASSO, WRITTEN EVIDENCE SUBMITTED BY COSTANTINO GRASSO TO THE HOUSE OF COMMONS TREASURY COMMITTEE 1–2 (2020), <https://committees.parliament.uk/writtenevidence/17591/pdf> [<https://perma.cc/9CWR-9ZBF>] (discussing issues relating to the attribution of corporate liability, the use of settlement agreements, and the role of whistleblowers in uncovering misconduct within the UK's anti-money laundering regime).

the world's most sophisticated and secretive offshore center.⁹⁹ The United Kingdom operates in close connection with the British Overseas Territories and Crown Dependencies.¹⁰⁰ The United Kingdom—together with its Overseas Territories and Crown Dependencies—ranks first in the Tax Justice Networks Financial Secrecy Index, which ranks countries according to the level of secrecy and the scale of their offshore financial activities.¹⁰¹ Moreover, according to the Tax Justice Network, the United Kingdom has increased the supply of financial secrecy at home, being responsible for “costing the rest of the world \$87.9 billion in lost tax per year by enabling non-residents to hide their finances and evade tax.”¹⁰²

Other manifestations of fiscal corruption include extensive deregulation and revolving doors.¹⁰³ Following the United Kingdom's departure from the European Union (EU), protection of the internal market and protection of EU's financial interests from tax fraud have ceased to be a priority for the country. With the re-introduction of free trade ports to boost post-Brexit trade, a United Kingdom policy shift illustrates that the fight against tax fraud is a policy choice, which includes costs and benefits. For example, free trade ports may indeed boost the economy, but there is also strong evidence of illicit activities likely accompanied by money laundering and tax evasion.¹⁰⁴

99. Elena Blanco & Miguel J. Arjona-Sánchez, *‘Following the Money’ Ten Years On: Transparency and the Fight Against Banking Secrecy*, in CORRUPTION, INTEGRITY AND THE LAW: GLOBAL REGULATORY CHALLENGES 190–93 (Nicholas Ryder & Lorenzo Pasculli eds., 2020).

100. While Crown Dependencies are self-governing entities with their own legal systems, the United Kingdom Parliament has unlimited authority to enact legislation in order to ensure their “good government.” MINISTRY OF JUST., FACT SHEET ON THE UK'S RELATIONSHIP WITH THE CROWN DEPENDENCIES 1–2 (2020), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/863381/crown-dependencies-factsheet-february-2020.pdf [<https://perma.cc/ZZK5-Z5Y9>].

101. *UK Network Remains Biggest Financial Secrecy Supplier Despite Reining in*, TAX JUST. NETWORK (May 22, 2022), <https://taxjustice.net/press/uk-network-remains-biggest-financial-secrecy-supplier-despite-reining-in/#:~:text=The%20UK%20government%20enforced%20a,and%20the%20UN%20Convention%20against.in/#:~:text=The%20UK%20government%20enforced%20a,and%20the%20UN%20Convention%20against> [<https://perma.cc/BJ4B-LQEY>].

102. *Id.*

103. The issue of the “revolving door” is associated with the movement among legal, regulatory and corporate positions. This movement features a high risk of undue influence on the governance processes and the potential conflict of interest. See generally Transparency Int'l UK, *Cabs for Hire? Fixing the Revolving Door between Government and Business* (Apr. 2014), <https://www.transparency.org.uk/publications/cabs-hire-fixing-revolving-door-between-government-and-business> [<https://perma.cc/P2HD-VVP3>].

104. See generally Paul M. Gilmour, *Freeports: Innovative Trading Hubs or Centres for Money Laundering and Tax Evasion?*, 25 J. MON. LAUND. 62 (2020); Anton Moiseienko, Alexandria Reid & Isabella Chase, *Free Ports, Not Safe Havens: Preventing Crime in the UK's Future Freeports* (Apr. 27, 2020), <https://rusi.org/explore-our-research/publications/briefing-papers/free-ports-not-safe-havens-preventing-crime-uks-future-freeports> [<https://perma.cc/J3PD-XS24>].

IV

COLLECTIVE ACTION AND FISCAL CORRUPTION IN THE UNITED KINGDOM

This part introduces the collective action perspective as a frame for discussing the policing of fiscal corruption in the United Kingdom, and then considers three examples: the tolerance of corporate secrecy, domestic law enforcement, and private policing.

A. The Collective Action Perspective

The collective action perspective is premised on the notion that rational actors with common interests often act against those common interests. In other words, individual incentives often conflict with collective incentives, which, as Olson famously explained, makes everyone worse off.¹⁰⁵ More specifically, the collective action perspective is associated with the provision of public goods. In economic terms, public goods are characterized by non-rivalry and non-excludability in consumption:¹⁰⁶ everyone can freely consume public goods without leaving fewer public goods to others (non-rivalrous consumption) and the investors in the provision of public goods cannot exclude others from enjoying the benefits of public goods (non-excludability).¹⁰⁷

Consider, for example, neighbors who will all benefit if everyone contributes to the maintenance of an access road to their properties. Collectively, all neighbors have an interest in having access to their property via a well-maintained road. In this scenario, however, an individually rational behavior might be to let others invest their time and resources to maintain the road and freely enjoy the benefits of a well-maintained road. If all neighbors act economically rationally, no one will invest resources and the road will not be maintained.

Similar logic can be applied to the enforcement of laws against transnational economic crime. For example, international bribery constitutes a global problem. Arguably, robust enforcement of national laws against international bribery is the provision of public goods.¹⁰⁸ If an enforcement agency of one state decides to apply its powers and police multinational corporations for their international bribery activities, many other countries will enjoy benefits associated with less bribery in international business transactions.¹⁰⁹ In this scenario, however, those

105. MANCUR OLSON, *THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GROUPS* 34–35 (1971).

106. COOTER & ULEN, *supra* note 75, at 40–41. It should be noted that there are various types of public goods such as pure public goods and local public goods. Patrick McNutt, *Public Goods and Club Goods*, in *ENCYCLOPEDIA OF LAW AND ECONOMICS* 927–28 (Boudewijn Bouckaert & Gerrit de Geest eds., 2000).

107. COOTER & ULEN, *supra* note 75, at 40–41.

108. See BRANISLAV HOCK, *EXTRATERRITORIALITY AND INTERNATIONAL BRIBERY: A COLLECTIVE ACTION PERSPECTIVE* 31–35 (2020) (explaining how the robust enforcement of national laws against international bribery effectively serves as a public good to the international community).

109. *Id.*

that invest resources in law enforcement cannot exclude others enjoying the benefits of a less corrupt international business environment.¹¹⁰ Many national governments will have strong incentives to free-ride and refrain from bearing any costs associated with proactive policing of international bribery while enjoying benefits provided by other countries.¹¹¹ Until the United States stepped up its extraterritorial anti-bribery enforcement in the late 2000s,¹¹² international anti-bribery laws were rarely enforced by any country in the world.¹¹³ This exemplifies a classic collective action problem, when individually rational behavior results in collectively undesirable outcomes characterized by a non-provision of public goods.¹¹⁴

The collective action perspective is relevant as it provides tools to conceptualize difficulties that actors face in a wide range of shared environments, whether maintaining a road, policing economic crime, or dealing with climate change and waste accumulation. Furthermore, the collective action frame reveals how laws, social norms, and institutions can help, or not, overcome these difficulties. For example, economic governance scholars report how group size, material incentives, and trust determine the optimal system of governance¹¹⁵, and how a clearly defined group identity, the rewarding of members' contribution to the provision of public goods, and the imposition of sanctions for non-compliance help sustain cooperation.¹¹⁶ As many problems associated with fiscal corruption are collective action problems, these insights can be utilized to reveal something new about the nature of fiscal corruption and how it can be disrupted.

B. Fiscal Corruption and Collective Action Problems

The logic of collective action applies to the problem of fiscal corruption. Fiscal corruption is associated with equality gaps and other negative socio-economic effects that can be, from the collective action perspective, understood as limits to

110. See COOTER & ULEN, *supra* note 75 at 40–41 (explaining that difficulty of exclusion is a hallmark of a public good).

111. See generally HOCK, *supra* note 108.

112. See Rachel Brewster & Samuel W. Buell, *The Market For Global Anticorruption Enforcement*, 80 LAW & CONTEMP. PROBS., no. 1, 2017, at 193, 193 (2017) (discussing how America's enforcement of its Foreign Corrupt Practices Act has gone from practically nonexistent to one of the largest and busiest fields of corporate crime practice in the world).

113. See HOCK, *supra* note 108, at 195–196.

114. See generally OLSON, *supra* note 105. Note that many forms of freeriding feature a more general problem of opportunism, rather than being collective action problems. In this article, these terms are used interchangeably.

115. See Avinash Dixit, *Trade Expansion and Contract Enforcement*, 111 J. POL. ECON. 1293, 1295 (2003) (finding that global governance as modeled through trust in trading relationships is strongly influenced by distance, community size, and incentives for dishonesty); Scott E. Masten & Jens Prufer, *On the Evolution of Collective Enforcement Institutions: Communities and Courts*, 43 J. LEGAL STUD. 359, 389–90 (2014) (finding that increasing differences between modeled traders diminished incentives to cooperate).

116. See ELINOR OSTROM, GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION 90 (1990) (suggesting design principles, such as a clearly defined identity of a group, have historically contributed to a sustained cooperation and avoided freeriding).

the provision of public goods.¹¹⁷ Because of those negative effects, relevant actors have cooperated and attempted to mitigate certain forms of fiscal corruption via various international agreements and initiatives.¹¹⁸ Yet, consistent with the expectations of the collective action frame, fiscal corruption can persist because opportunism and free-riding are ever-present, and states, public authorities, businesses, and community members fail to act collectively. The United Kingdom's own problems associated with policing fiscal corruption illustrate these tensions.

1. Corporate Secrecy as an Alternative to Public Goods

The problem of fiscal corruption is not limited to the harmful conduct itself, but also manifests as a complex institutional problem.¹¹⁹ More generally, such institutional problems are associated with the notion of institutional corruption, a subject of extensive scholarly discussion.¹²⁰ According to Amit et al., “[i]nstitutional corruption occurs when an institution deviates from its institutional purpose.”¹²¹ In this article, the key focus is how institutions deviate from legislative and other institutional purposes associated with tax laws, regulations, and policing processes.

The United Kingdom presents a powerful example of how a state can promote an agenda of corporate transparency and fight against the misuse of corporate entities for tax fraud and other economic crimes, while simultaneously maintaining an important network of offshore centers. Through its imperial territorial network and the flexibility of common law, the United Kingdom has been enjoying significant benefits from the existence of complex corporate vehicles and secret trusts in its Overseas Territories and Crown Dependencies.¹²² Corporate secrecy and offshore arrangements are important symptoms of fiscal corruption.¹²³

The existence of national benefits associated with some symptoms of fiscal corruption indicates that the fight against abusive tax practices and other economic crimes is a policy choice and a moral dilemma.¹²⁴ From the collective action

117. See generally ACEMOGLU & ROBINSON, *supra* note 14; Acemoglu & Robinson, *supra* note 14. In addition, consider the effects of tax evasion in Alm & Kasper, *supra* note 78. See also more general literature on the effects of corruption such as Shleifer & Vishny, *supra* note 78; FLETCHER & HERRMANN, *supra* note 78.

118. See, e.g., *Global Forum on Transparency and Exchange of Information for Tax Purposes*, OECD, <https://www.oecd.org/tax/transparency/> [<https://perma.cc/VUP2-5LZ3>] (the leading international body working on the implementation of global transparency and exchange of informational standards with 165 members).

119. See Part III.B, *supra*.

120. See Lessig, *Institutional Corruption Defined*, *supra* note 13 (discussing conceptual issues surrounding the notion of “institutional corruption”); *Corrupt and Unequal, Both*, *supra* note 13 (arguing that there is a difference between predicating corruption of an individual and predicating corruption of an entity as the latter is corrupt because something has interfered with its ability to function as designed).

121. Amit, Koralnik, Posten, Muethel & Lessig, *supra* note 77, at 449.

122. See Blanco & Arjona-Sánchez, *supra* note 99, at 193 (arguing that these entities have only paper sovereignty and are dependent on the City of London).

123. See Part III.B *supra*.

124. See generally SAMUEL P. HUNTINGTON, *POLITICAL ORDER IN CHANGING SOCIETIES* (1968)

perspective, an essential issue is the fact that fiscal corruption is harmful insofar as it facilitates abusive tax practices and other types of economic crime. However, the example of how the United Kingdom benefits from the existence of complex corporate vehicles and secret trusts illustrates how fiscal corruption might be beneficial for some countries.¹²⁵ This dilemma can be seen beyond fiscal corruption. Consider, for example, the adoption and enforcement of the US Foreign Corrupt Practices Act (FCPA), which prohibits bribery of foreign public officials in international business transactions. At the time of adoption, the dilemma US corporations faced was how to remain competitive in international business without using bribery. The playing field with non-domestic corporations was leveled by enforcement authorities enforcing the FCPA extraterritorially, and by other countries consequently implementing and enforcing their own domestic anti-bribery laws against their corporations.¹²⁶

From the collective action perspective, fiscal corruption should be primarily seen in creating transparency gaps related to the standard of public interest, and in unequal access to policymaking processes. What makes the system corrupt has more to do with the lack of credibility in pursuing official policy and the lack of clarity of what are considered public goods than simply promoting free-ports and other types of deregulation. These are complex institutional problems in which the discussion about the inequality of opportunities,¹²⁷ fiscal corruption,¹²⁸ and collective action meet and complement each other.

2. Legal and Institutional Fragmentation as Collective Action Problems

The problem of fiscal corruption is also associated with various forms of substantive tax crimes and undesirable tax practices.¹²⁹ The regulation of these practices by competent public authorities is an important aspect of crime control. Although many observers might see the primary response to tax crime in the work of the criminal justice system and the laws specific to tax crime, many norms that influence these responses operate beyond the remit of tax-specific criminal laws. Consider, for example, a scenario in which a United Kingdom-based corporation

(considering certain forms of corruption as being able to correct some inefficiencies in public administration). A similar dilemma has been extensively discussed in more general research on the consequences of corruption, generally concluding that such efficiencies do not justify a policy tolerating, or even endorsing, corruption. See HOCK, BUTTON & SHEPHERD, *supra* note 74, at 311–12 (showing that some earlier scholars saw corruption as a tool to get things done and ignored the long-term harm caused).

125. See Adrian Kay, *A Critique of Using Path Dependency in Policy Studies*, 83 PUB. ADMIN. 553, 558–59 (2005) (explaining certain costs associated with path dependency of national institutions).

126. See generally Andrew B. Spalding, *Unwitting Sanctions: Understanding Anti-Bribery Legislation as Economic Sanctions against Emerging Markets*, 62 FLA. L. REV. 351 (2010); Kevin E. Davis, *Why Does the United States Regulate Foreign Bribery: Moralism, Self-Interest, or Altruism*, 67 N.Y.U. ANN. SURV. AM. L. 497 (2012); Branislav Hock, *Transnational Bribery: When Is Extraterritoriality Appropriate*, 11 CHARLESTON L. REV. 305 (2017).

127. See generally Rawls, *supra* note 1.

128. See Part III.A *supra*.

129. See Part III.B *supra*.

engages in the bribery of foreign government officials to obtain or retain business. This conduct constitutes a crime under the Bribery Act. Yet, when bribing, the corporation will likely have to compromise its books and records in order to hide bribes to foreign government officials, actions potentially constituting a tax offense. Moreover, proceeds of bribery and the bribe itself are the proceeds of crime, and can be subject to various forms of ancillary orders such as freezing and civil recovery orders under the POCA.

Furthermore, the case of international bribery also provides an example of significant institutional fragmentation to the extent multiple competing national enforcement authorities find themselves competent to deal with the case. Traditionally, the Serious Fraud Office has been competent to deal with large transnational corporate cases. HMRC might manage the case from the tax evasion perspective. Crown Prosecution Service is generally responsible for the prosecution of criminal cases. National Crime Agency is targeting individuals and focusing on both criminal recovery and the civil recovery of crime proceeds. If the corporate target is a regulated entity, Financial Conduct Authority or Gambling Commission would have significant powers over the case, as would twenty-two professional supervisory authorities if legal or accountancy professionals are involved.

This legal and institutional complexity indicates the multiplicity of avenues that the policing of abusive tax practices and of other conduct associated with fiscal corruption can take. From the collective action perspective, however, any advantages associated with this multiplicity of policing avenues can be secured only if these authorities are able to overcome cooperation and coordination problems. Tax investigation, for example, offers an opportunity to detect associated economic crime, including corruption, bribery, and cartels.¹³⁰ The lack of internal cooperation and coordination among United Kingdom law enforcement authorities, however, remains a major problem. One expert indicated:

[...] the conduit between law enforcement agencies is effective and probably more effective now than ever before, but historically was always slightly problematic, that you know sharing data and information intelligence between agencies and probably to a degree now, it is not what perhaps the public might expect to be, so you know sharing intelligence databases, there are still separate databases, still separate investigative processes and each agency works in a different way.¹³¹

The institutional challenges in policing fiscal corruption and related crimes clearly requires further research, and the collective action perspective can help identify underlying barriers to effective cooperation and coordination of public authorities.

130. Org. for Econ. Coop. and Dev. [OECD], *The Detection of Foreign Bribery* (2017), https://www.oecd-ilibrary.org/governance/the-detection-of-foreign-bribery_8ab65bd4-en [<https://perma.cc/V5HT-N5N9>].

131. Hock, *supra* note 22, at 37.

3. Collective Action Problems and Private Policing

Criminal law enforcement has been a dominant focus of recent discussions of economic crime policing, but historically governments have preferred non-criminal responses to corporate crimes and sought to engage with private sector actors through negotiation, persuasion, and compliance.¹³² Governments have introduced laws that allow enforcement authorities to utilize negotiated settlements, responsabilization strategies,¹³³ and other similar tools.¹³⁴ For example, two crimes within the scope of fiscal corruption—the failure to prevent the facilitation of tax evasion under the Criminal Finance Act 2017 and the failure to prevent bribery under the Bribery Act—both require organizations to implement adequate corporate compliance programs, including internal corporate policies and processes.¹³⁵ One of the rationales behind the adoption of the Bribery Act was to ease the prosecution of corporations involved in corrupt practices. The failure to prevent bribery offense was introduced as a result of the considerable difficulties encountered in England and in Wales in securing convictions for legal entities in financial crime trials.¹³⁶ The introduction of the failure to prevent bribery offenses has further facilitated the implementation of corporate compliance programs, a process initiated much earlier in the United States.¹³⁷

Although settlements, responsabilization strategies, and other similar tools offer certain advantages, they have been subject to harsh criticism. For example, out-of-court settlements help overcome evidentiary challenges and provide relatively immediate revenue gains, but they also promote the perception of tax fraud and corruption as non-serious crimes. Moreover, the adoption and use of Deferred Prosecution Agreements and civil settlements in the United Kingdom appears problematic on other grounds including lack of transparency, vagueness in the concept of the “interest of justice,” and structural lack of focus on corporate criminal prosecutions and individual criminal liability of corporate executives.¹³⁸

132. See generally MARK BUTTON, *PRIVATE POLICING* (2d ed. 2019); Nicholas Lord & Michael Levi, *Determining the Adequate Enforcement of White-Collar and Corporate Crimes in Europe*, in *THE ROUTLEDGE HANDBOOK OF WHITE-COLLAR AND CORPORATE CRIME IN EUROPE* 39 (Judith Van Erp ed., 2015).

133. See Pat O'Malley, “Responsibilization”, in *THE SAGE DICTIONARY OF POLICING* 276 (Alison Wakefield & Jenny Fleming eds., 2009) (defining the term ‘responsibilization’ as referring to “the process whereby subjects are rendered individually responsible for a task which previously would have been the duty of another—usually a state agency—or would not have been recognized as a responsibility at all”).

134. See Lorenzo Pasculli, *The Responsibilization Paradox: The Legal Route from Deresponsibilization to Systemic Corruption in the Australian Financial Sector*, 15 *POLICING: J. POL'Y & PRAC.* 2114, 2118–22 (2021) (explaining how the law failed to responsabilize corporations and enabled the systematization of corruption). See generally Donato Voza, *Exploring Voluntary and Mandatory Compliance Programmes in the Field of Anti-Corruption*, in *CORPORATE COMPLIANCE ON A GLOBAL SCALE* 313 (Stafano Manacorda & Francesco Centonze eds., 2022).

135. See Part II.A *supra*.

136. See generally Grasso, *supra* note 49.

137. See generally James Weber & David M. Wasieleski, *Corporate Ethics and Compliance Programs: A Report, Analysis and Critique*, 112 *J. BUS. ETHICS* 609 (2013).

138. See Grasso, *supra* note 49, at 405 (stressing that some corporations might perceived settlement sanctions as a mere costs of doing business); GRASSO, *supra* note 98, at 1–2; COLIN KING & NICHOLAS

Furthermore, although an academic literature indicates that compliance programs may be having a positive effect on corporate behavior, there is often a considerable gap between internal policy and practice.¹³⁹

From the collective action perspective, an essential issue is the fact that both the United States and the United Kingdom systems largely rely on cooperation between businesses and public authorities.¹⁴⁰ The precondition of collective action, however, is a common interest. Businesses are primarily driven by profit and are often reluctant to take on genuine responsibility in relation to corporate compliance.¹⁴¹ For example, there is empirical evidence that United Kingdom and Swedish lawyers may resist their legal obligation to undertake adequate due diligence on clients even in cases of pressing national security risks.¹⁴² Thus, major public interest issues often strongly conflict with business interests, proving a significant barrier to the provision of public goods.

These critiques do not mean that private policing and responsabilization strategies do not work at all. Yet, the collective action perspective suggests that although states are increasingly transferring policing tasks to private actors, significant risks remain over the proper involvement of the private sector in policing fiscal corruption. A collective action analysis helps map these risks, and further research should indicate which types of private policing arrangements have a high potential to provide public goods, and which arrangements might have only limited potential to deliver public goods because of collective action problems.

LORD, NEGOTIATED JUSTICE AND CORPORATE CRIME: THE LEGITIMACY OF CIVIL RECOVERY ORDERS AND DEFERRED PROSECUTION AGREEMENTS 127 (2018) (arguing that corporate criminal liability is important to communicate wrong, hold wrongdoers accountable, and express societal condemnation for the activity in question); Branislav Hock, *Policing Corporate Bribery: Negotiated Settlements and Bundling*, 31 POL. & SOC. 950, 957 (2021) (explaining how negotiated settlements often favour corporations because of penalty discounts); Nicholas Ryder, “*Too Scared to Prosecute and Too Scared to Jail?*” *A Critical and Comparative Analysis of Enforcement of Financial Crime Legislation Against Corporations in the USA and the UK*, 82 J. CRIM. L. 245, 263 (2018) (arguing that “DPAs must be used in conjunction with criminal proceedings against employees and/or agents of corporations if they are to have a deterrent effect to reduce future misconduct.”).

139. See, e.g., Elizabeth Dávid-Barrett, *A Bitter Pill? Institutional Corruption and the Challenge of Antibribery Compliance in the Pharmaceutical Sector*, 26 J. MGMT. INQUIRY 326, 327–28 (2011) (discussing how many major pharmaceutical companies have adopted high standards and commitments to prevent bribery and corruption from occurring in their organizations, and yet violations of antibribery laws continue to emerge frequently in this sector).

140. See BRANDON L. GARRETT, *TOO BIG TO JAIL: HOW PROSECUTORS COMPROMISE WITH CORPORATIONS* 9 (2016) (asserting that settlements often include complex interactions and backdoor deals).

141. See Antoinette Verhage, *Great Expectations but Little Evidence: Policing Money Laundering*, 37 INT’L J. SOC. POL’Y 477, 481 (2017) (revealing dilemmas faced by actors in the area of AML compliance).

142. Karin S. Helgesson & Ulrika Mörth, *Involuntary Public Policy-Making by For-Profit Professionals: European Lawyers on Anti-Money Laundering and Terrorism Financing*, 54 J. COMMON MKT. STUD. 1216, 1227–28 (2016).

V

CONCLUSION

Inequality gaps permeate the national tax system—both in terms of the proliferation of abusive tax practices and the unequal access to policymaking processes that ultimately establish the boundaries of legitimate tax planning. Here, the notion of fiscal corruption helps explain not only various forms of illegal conduct but also the limits of underlying laws, regulations, and governance systems. From this perspective, as the United Kingdom case study illustrates, fiscal corruption often features legal conduct, especially when those in positions of power create and legitimize laws and institutions that promote the interests of elites and disproportionately disadvantage other groups. The collective action perspective, which generally explains when and how relevant actors sustain the cooperation needed to provide public goods, offers important analytical insights to explain opportunism and free-riding by government agencies and businesses in the policing of fiscal corruption and related crimes (the substantive manifestations of fiscal corruption). The same collective action challenges are in play with government agencies and businesses as they confront the institutional problems associated with credibility and clarity over what constitutes public goods in the area of tax. Examination of equality of opportunities, abusive tax practices, and collective action will not provide ready answers to long-standing dilemmas of crime control and the inclusivity of laws and social norms, but it invites a dialogue that can break down barriers among those focused on separate topics of corruption, economic governance, criminology, and legal system design.