


Please cite the Published Version

Grasso, Costantino  and Ring, Diane (2022) Foreword: Tax evasion, corruption and the distortion of justice. *Law and Contemporary Problems*, 85 (4). i-viii. ISSN 0023-9186

Publisher: Duke University School of Law

Version: Published Version

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FOREWORD: TAX EVASION, CORRUPTION AND THE DISTORTION OF JUSTICE

DIANE RING* & COSTANTINO GRASSO**

It has been estimated that every year governments around the world lose nearly \$500 billion in tax revenue through abusive tax practices perpetrated mostly by corporate entities.¹ Providing texture to that number, the ongoing disclosure of global tax scandals, including FinCEN Files (2020),² Paradise Papers (2017),³ Panama Papers (2016),⁴ SwissLeaks (2015),⁵ and Lux Leaks (2014)⁶

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This Article is also available online at <http://lcp.law.duke.edu/>.

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1. Sean McGoey, *Nearly \$500 Billion Lost Yearly To Global Tax Abuse Due Mostly To Corporations, New Analysis Says*, INT'L CONSORTIUM OF INVESTIGATIVE JOURNALISTS (Nov. 19, 2021), www.icij.org/inside-icij/2021/11/nearly-500-billion-lost-yearly-to-global-tax-abuse-due-mostly-to-corporations-new-analysis-says [<https://perma.cc/37FJ-72NZ>].

2. The Financial Crimes Enforcement Network (FinCEN) is an intelligence office within the U.S. Treasury Department, tasked with collecting and analyzing financial transactions information to combat financial crimes. See *Mission*, FINANCIAL CRIME ENFORCEMENT NETWORK, www.fincen.gov/about/mission [<https://perma.cc/JA7R-Y52Y>]. The FinCEN Files leak was a leak of more than 2,000 suspicious activity reports (SARs) filed by global banks with FinCEN. See Fergus Shiel & Dean Starkman, *About the FinCEN Files Investigation*, INT'L CONSORTIUM OF INVESTIGATIVE JOURNALISTS (Sept. 19, 2020), <https://www.icij.org/investigations/fincen-files/about-the-fincen-files-investigation/> [<https://perma.cc/HJ49-UMB2>].

3. The Paradise Papers, consisting of documents from legal services providers, corporate service providers, and business registries in nineteen jurisdictions, were leaked to two German reporters and a German newspaper and then shared through the ICIJ in 2017. See *Offshore Trove Exposes Trump-Russia links and Piggy Banks of the Wealthiest 1 Percent*, INT'L CONSORTIUM OF INVESTIGATIVE JOURNALISTS (Nov. 5, 2017), <https://www.icij.org/investigations/paradise-papers/paradise-papers-exposes-donald-trump-russia-links-and-piggy-banks-of-the-wealthiest-1-percent/> [<https://perma.cc/N8WQ-GZNL>].

4. The Panama Papers, a massive leak of over 11.5 million financial and legal records focused on a central law firm in Panama that facilitated the creation and use of shell corporations, were revealed through the ICIJ in 2016. See Will Fitzgibbon, *Panama Papers FAQ: All You Need to Know About the 2016 Investigation*, INT'L CONSORTIUM OF INVESTIGATIVE JOURNALISTS (Aug. 21, 2019), <https://www.icij.org/investigations/panama-papers/panama-papers-faq-all-you-need-to-know-about-the-2016-investigation/> [<https://perma.cc/8P9H-AP5H>]. The ICIJ was awarded the 2017 Pulitzer Prize in Explanatory Reporting for its series of stories on the Panama Papers.

5. The SwissLeaks files were obtained from a former HSBC employee who became a whistleblower and shared the materials, which revealed offshore accounts held by individual clients and corporations, with the French government in 2008 and then ultimately shared with the ICIJ and made public in 2015. See Gerald Ryle et al., *Swiss Leak: Murky Cash Sheltered by Bank Secrecy*, INT'L CONSORTIUM OF INVESTIGATIVE JOURNALISTS (Feb. 8, 2015), <https://www.icij.org/investigations/swiss-leaks/explore-swiss-leaks-data/> [<https://perma.cc/W3QL-HYRL>].

6. The Lux Leaks, released by the ICIJ in 2014 with the aid of whistleblowers, revealed over 500 Luxembourg tax rulings secured by accounting firm PriceWaterhouseCoopers for clients' secret cross border structures. See Leslie Wayne et al., *Leaked Documents Expose Global Companies' Secret Tax*

reveals a profound interconnection between corrupt practices and tax evasion (and aggressive tax avoidance). Although research has considerably advanced our collective understanding of interconnections between different forms of financial crimes, the relationship between tax crimes and corruption is largely understudied and critical questions remain unanswered. Open issues include the exploration of how the combination of these two criminal phenomena—corruption and tax abuse—interferes with the activities of public and private institutions, affects society, and distorts justice.

This Symposium aims to begin filling the research and analytical gap by probing such intimate connections and their complex social, economic, political, and legal origins and implications. In analyzing how corruption and tax crime adversely affect society, the Symposium adopts a broad conception of justice in a liberal society. Reflecting the subject's complexity, the Symposium approaches the research questions not simply from the perspective of various lenses of legality (e.g., criminal law, criminal justice, tax law, business law), but also from a multidisciplinary perspective. This is achieved by building on the contributions of researchers with different backgrounds and expertise to more comprehensively encapsulate and contextualize these dynamic and sweeping issues. Through the integration of legal perspectives with socio-economic, criminological, ethical, and political ones, the Symposium offers innovative research findings and stimulates further discussion. Given the scope and scale of the interconnections between corruption and tax evasion, the articles in the symposium draw on global, regional, and national case studies—which collectively generate observations and approaches that can resonate across legal regimes.

By exploring the manifestations of tax offenses and corruption, the Symposium grounds a critical analysis of existing legal frameworks and deficiencies in enforcement strategies. This approach requires the identification of (1) relevant forms of corrupt practices as they apply to tax offenses, (2) the interdependence between these behaviors, and (3) the nexus at which they meet. Such an analysis enhances awareness of the ways in which corruption and tax crimes intersect, with the aim of inspiring future research and the development of innovative solutions to dealing with such criminal phenomena.

This issue of *Law and Contemporary Problems* also marks the culmination of a two-year international research project which specifically targeted tax crime and corruption with the goal of unraveling their profound connections and interactive dynamic. The Symposium participants all draw upon the original findings of the research project VIRTEU, which was funded by the European Commission.⁷

Dealings in Luxembourg, INT'L CONSORTIUM OF INVESTIGATIVE JOURNALISTS (Nov. 5, 2014), <https://www.icij.org/investigations/luxembourg-leaks/leaked-documents-expose-global-companies-secret-tax-deals-luxembourg/> [<https://perma.cc/V5U2-SBHX>].

7. 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

The VIRTEU methodology was characterized by a multifaceted strategy that brought together different expertise through a series of research collaborations and scientific events. These activities included the preparation of comprehensive technical reports⁸ from Leading Subject Experts (experts having specific expertise in the areas of Criminology, Business Ethics, Forensic Accounting, and European Criminal Law), Leading National Experts (experts having specific expertise in the European jurisdictions on which the project focused), and Research Associates (select experts invited to prepare tailored reports on specific topics). During the research activities, a series of four roundtable discussions brought together renowned guests and experts from academia and practice from all over the world. Roundtable topics included the connections between tax crimes and corruption,⁹ business ethics and human rights,¹⁰ auditing and whistleblowing,¹¹ and institutional corruption.¹² An international symposium devoted to exploring the role of professionals as enablers of economic crime allowed close inspection of this crucial link in the targeted behavior.¹³ High-level experts in the areas of anti-tax crime and anti-corruption discussed issues affecting the six European jurisdictions highlighted by the VIRTEU project: Bulgaria,¹⁴ Denmark,¹⁵ Greece,¹⁶ Italy,¹⁷ the Netherlands,¹⁸ and the United

European Commission (Grant Agreement no: 878619), which aimed at exploring the interconnections between tax crimes and corruption. All documents produced, as well as all the video recordings of the events organized over the course of the project, are available online at the Corporate Crime Observatory which serves as the long-term repository of the project outcomes: www.corporatecrime.co.uk/virtue [https://perma.cc/YS33-JLLN].

8. The VIRTEU technical reports are available at the following link: www.corporatecrime.co.uk/virtue-reports.

9. See generally VIRTEU Roundtable, *Exploring the Interconnections Between Tax Crimes and Corruption*, CORP. CRIME OBSERVATORY (Jan. 29, 2021), <https://www.corporatecrime.co.uk/virtue-roundtable-taxcrimes> [https://perma.cc/PZW6-PP5S].

10. See generally VIRTEU Roundtable, *CSR, Business Ethics, and Human Rights in the Area of Taxation*, CORP. CRIME OBSERVATORY (Feb. 12, 2021), <https://www.corporatecrime.co.uk/virtue-csr-business-ethics> [https://perma.cc/QP6C-L8ZT].

11. See generally VIRTEU Roundtable, *Whistleblowing, Reporting, and Auditing in the area of Taxation*, CORP. CRIME OBSERVATORY (Feb. 26, 2021), www.corporatecrime.co.uk/virtue-whistleblowing [https://perma.cc/2KQ8-HQA2].

12. See generally VIRTEU Roundtable, *Institutional Corruption and Avoidance of Taxation*, CORP. CRIME OBSERVATORY (March 12, 2021), www.corporatecrime.co.uk/virtue-institutional-corruption [https://perma.cc/ZGM2-2LJC].

13. See generally VIRTEU International Symposium, *The Professionals: Dealing with the Enablers of Economic Crime*, CORP. CRIME OBSERVATORY (July 21, 2021), www.corporatecrime.co.uk/virtue-symposium-the-professionals [https://perma.cc/5WU2-U88A].

14. See generally VIRTEU National Workshop – Bulgaria, CORP. CRIME OBSERVATORY (June 29, 2021), www.corporatecrime.co.uk/virtue-workshop-bulgaria [https://perma.cc/W588-92AE].

15. See generally VIRTEU National Workshop – Denmark, CORP. CRIME OBSERVATORY (March 28, 2022), www.corporatecrime.co.uk/virtue-workshop-denmark [https://perma.cc/PG5D-GW5Y].

16. See generally VIRTEU National Workshop – Greece, CORP. CRIME OBSERVATORY (July 16, 2021), www.corporatecrime.co.uk/virtue-national-workshop-greece [https://perma.cc/CCW5-ZA9G].

17. See generally VIRTEU National Workshop – Italy, CORP. CRIME OBSERVATORY (April 29, 2021), www.corporatecrime.co.uk/virtue-national-workshop-italy [https://perma.cc/MLY9-SKV2].

18. See generally VIRTEU National Workshop – The Netherlands, CORP. CRIME OBSERVATORY (Oct. 19, 2021), www.corporatecrime.co.uk/virtue-workshop-netherlands [https://perma.cc/83K8-6546].

Kingdom.¹⁹ An anonymous Expert Survey (on the interconnections between tax crimes and corruption) collected observations and assessments of the phenomena as they emerged from the responses of twenty-nine experts, including members of tax enforcement agencies and prosecuting or judicial authorities, from ten different jurisdictions: Croatia, Estonia, Finland, Greece, Italy, Latvia, The Netherlands, Portugal, the United Kingdom, and the United States of America. The survey supplied the research team with valuable data that have been analyzed and published in a technical report.²⁰ Lastly, a two-day international conference provided an important opportunity to reflect on the critical issues that had been considered during the project's research activities.²¹

The initial set of articles in this symposium document the expansive reach and scope of tax crime and corruption. The first argues for expanded definitions for both tax crime and corruption, the second confronts the symbiotic relationship between taxpayers and government officials, and the third explores the international dimension of the two phenomena.

The first article, leading off this issue, is authored by Diane M. Ring and Costantino Grasso. Professor Ring serves as Interim Dean of Faculty, Professor of Law and the Dr. Thomas F. Carney Distinguished Scholar at Boston College Law. Her research and writing is primarily focused in the fields of international taxation, corporate taxation, and ethical issues in tax practice. Dr. Grasso is an Associate Professor in Business and Law at Manchester Metropolitan University, an international expert for the European Commission and the Council of Europe in the area of corruption and good governance, and the Editor-in-Chief of the Corporate Crime Observatory.²² His research interests lie in the areas of corporate and financial crime, corporate governance, corporate social responsibility, and business ethics. In their article for this volume, entitled *Beyond Bribery: Exploring the Intimate Interconnections Between Corruption and Tax Crimes*, Ring and Grasso probe the manifold interconnections between tax crimes and corruption, identifying and documenting questionable practices beyond blatant tax evasion and simple bribery. Through analysis of the adverse consequences that phenomena such as tax sweetheart deals, unethical lobbying, conflicts of interest, and revolving doors wreak on society, they emphasize the

19. See generally VIRTEU National Workshop – The United Kingdom, CORP. CRIME OBSERVATORY (July 23, 2021), www.corporatecrime.co.uk/virteu-workshop-uk [https://perma.cc/SS3X-AS6W].

20. Costantino Grasso & Stephen Holden, *Expert Survey Report: The Interconnections between Tax Crime and Corruption*, CORP. CRIME OBSERVATORY (Sept. 2, 2022), www.corporatecrime.co.uk/virteu-expert-survey [https://perma.cc/P7QN-2E6W].

21. VIRTEU International Final Conference, CORP. CRIME OBSERVATORY (June 24, 2022), www.corporatecrime.co.uk/virteu-international-final-conference [https://perma.cc/7WEZ-4BH8].

22. The Corporate Crime Observatory is an international platform established by independent academics and experts from different countries and backgrounds devoted to promoting the analysis and discussion of corporate and economic crime issues as well as other forms of corporate irresponsible behavior around the world. See *About Us*, CORP. CRIME OBSERVATORY, <http://www.corporatecrime.co.uk/about-us> [https://perma.cc/ZYU2-MMAW].

compelling need for adoption of an expanded definition of both tax crimes and corruption in order to stimulate adequate responses to these harmful practices.²³

Daniel T. Ostas, who holds the James G. Harlow, Jr., Chair in Business Ethics at the University of Oklahoma, authored the second paper of this issue. His research addresses the economics of marketplace ethics and the ethics of corporate legal strategy. Ostas's contribution to this symposium, *Endogenous Tax Law: Regulatory Capture and the Ethics of Political Obligation*, studies the symbiosis between taxpayers and government officials that allows unethical or illegal practices for reducing tax liabilities to persist. His work challenges the unethical mindset that both encourages taxpayers to pursue overly aggressive tax strategies, including tax evasion, and encourages government authorities to facilitate such actions.²⁴

Lorena Bachmaier Winter and Donato Voza have together contributed their article, *Corruption, Tax Evasion, and the Distortion of Justice: Global Challenges and International Responses*. Bachmaier Winter is a Professor of Criminal Justice at the Complutense University in Madrid and has published numerous scientific papers and books in different languages in her areas of expertise, which include criminal procedure and human rights. Voza is a Lecturer in Law at the University of Roehampton in London and Co-Founder of the Corporate Crime Observatory. He has expertise in European and transnational criminal law, and his research currently covers corporate crime and business integrity aspects. Their article highlights the international dimension of tax abuse, compares tax crime and corruption as global problems, explores the asymmetries in transnational criminal policies against these phenomena, and the option of introducing a Convention Against Tax Evasion (CATE) to fill the existing legal gap at the international level.²⁵

The next set of articles explores features of the environment in which tax abuse and corrupt practices are perpetrated; the first considers elements of the general legal framework, and the second underscores the impact of the tax advisory world.

Lorenzo Pasculli is the Principal Research Fellow and Deputy Director of the Dawes Centre for Future Crime at University College London. His main research interests revolve around the implications of global developments such as social, scientific, and technological change for crime and criminal justice. Stuart MacLennan is an Associate Professor of Law and Associate Member of the Centre for Financial and Corporate Integrity at Coventry University. His research principally considers tax avoidance and tax evasion, particularly through the abuse of jurisdictional rules and the use of tax havens. He has published

23. Diane Ring & Costantino Grasso, *Beyond Bribery: Exploring the Intimate Interconnections Between Corruption and Tax Crimes*, 85 LAW & CONTEMP. PROBS., no. 4, 2022, at 1.

24. Daniel T. Ostas, *Endogenous Tax Law: Regulatory Capture and the Ethics of Political Obligation*, 85 LAW & CONTEMP. PROBS., no. 4, 2022, at 49.

25. Lorena Bachmaier Winter & Donato Voza, *Corruption, Tax Evasion, and the Distortion of Justice: Global Challenges and International Responses*, 85 LAW & CONTEMP. PROBS., no. 4, 2022, at 75.

extensively in the field of tax law and policy. In their article, “*The Producers*” of *Tax Abuse: The Corrupting Effects of Tax Law and Tax Reliefs in the U.K. Film Industry*, Pasculli and MacLennan examine tax laws and tax reliefs in the UK film industry as a case study to understand how the legal system can inadvertently create motivations, rationalizations, and opportunities for systemic tax abuse. The analysis leads them to conceptualize specific “juridical enablers” of tax abuse and identify their complex relationships and corrupting effects.²⁶

Elaine Doyle is an Associate Professor of Taxation at the Department of Accounting and Finance of the University of Limerick’s Kemmy Business School. Her research interests include tax compliance, “tax aggression,” ethics and risk management in tax practice, and tax policy making; she has published extensively in these areas. Doyle’s contribution, entitled *Encouraging Ethical Tax Compliance Behavior: The Role of the Tax Practitioner in Enhancing Tax Justice*, examines the role that tax practitioners play as critical actors in the tax compliance process, through the lens of international and domestic tax justice. The article mines tax practitioner research that the author previously conducted in order to produce new insights and recommendations for enhancing tax justice both nationally and internationally. Relatedly, the article incorporates work on whistleblowing and corruption in the context of tax practitioners to flesh out promising options for supporting tax justice.²⁷

The second set of articles explores the notion of fiscal corruption, a concept that attempts to merge elements of both tax crime and corruption in order to identify their interconnections and their most relevant characteristics. The development of such a notion may also provide policymakers and law enforcement officials an innovative perspective to counter tax abuse and corrupt practices in the area of taxation.

Branislav Hock is an Associate Professor in Economic Crime & Compliance and the Lead of the Economic Crime Research Group at the School of Criminology and Criminal Justice of the University of Portsmouth. Dr. Hock’s research interests center on transnational economic crime and compliance. Hock’s article for this symposium, *Policing Fiscal Corruption: Tax Crime and Legally Corrupt Institutions in the United Kingdom*, explores the phenomenological manifestations of fiscal corruption, including abusive tax practices (such as tax evasion, tax avoidance, and aggressive tax planning) and systemic inequalities favoring the powerful. Also, through the analysis of a United Kingdom case study and the adoption of a collective action perspective, Hock sheds new light on applicable laws and regulations and identifies deficiencies in countering the practices of fiscal corruption.²⁸

26. Lorenzo Pasculli & Stuart MacLennan, “*The Producers*” of *Tax Abuse: The Corrupting Effects of Tax Law and Tax Reliefs in the U.K. Film Industry*, 85 LAW & CONTEMP. PROBS., no. 4, 2022, at 101.

27. Elaine Doyle, *Encouraging Ethical Tax Compliance Behaviour: The Role of the Tax Practitioner in Enhancing Tax Justice*, 85 LAW & CONTEMP. PROBS., no. 4, 2022, at 137.

28. Branislav Hock, *Policing Fiscal Corruption: Tax Crime and Legally Corrupt Institutions in the United Kingdom*, 85 LAW & CONTEMP. PROBS., no. 4, 2022, at 159.

Pietro Sorbello is a Colonel of the *Guardia di Finanza* (Italian Tax Police) and an Adjunct Professor in Criminal Law at Teramo University. His research activities are primarily focused on individual and corporate criminal liability for tax offenses and financial crimes, in addition to cyberterrorism and hate crimes. Stephen Holden is a Ph.D. candidate and Associate Lecturer in Law at Manchester Metropolitan University. His research examines the role of whistleblowers in environments of enhanced secrecy, and the potential for whistleblowing to provide democratic accountability by unveiling state criminality and wrongdoing. In their article, entitled *Developing a Working Model to Fight Fiscal Corruption: The Nexus at Which Tax Crimes and Corruption Meet*, Sorbello and Holden consider how tax crimes and corrupt practices intersect and how they may be better understood as fiscal corruption; they then develop investigatory and enforcement models to fight these forms of conduct. Informed by the Italian experience, the article examines what has come to be known as the “Milan Model,” whereby the Milanese authorities work in concert to address fiscal corruption as unified conduct as opposed to two separate criminal behaviors—tax offenses and corruption. The article identifies the key legislative and judicial developments that have shaped the implementation of the model, before exploring it as a potential success story and proposing it as a possible blueprint for other tax enforcement systems.²⁹

The third and final set of articles focuses on the corporate dimension. Due to their immense power and wealth, as well as their transnational nature, corporations represent one of the most problematic categories of actors engaging in tax abuses. The magnitude of harm that may be caused by evasive or aggressive tax strategies pursued by multinational firms, combined with the undue influence that such entities may exert on the political decision-making process, renders corporate involvement in tax abuse one of the most pressing contemporary problems.

Nicholas Ryder is a Professor of Law at Cardiff University. He has gained an international reputation for excellence in policy-oriented research in the area of financial crime and has published extensively in economic crime. Sam Bourton serves as a Lecturer in Law at the University of the West of England. Her research interests lie in the law relating to financial crime; she has authored several publications and conference papers on these topics with special attention to tax evasion and money laundering. Ryder and Bourton together contribute an article entitled *Corrupt Corporations and the Facilitation of Tax Crimes: A Review of the United Kingdom’s Enforcement Mechanisms*. The article, which provides an overview of several tax scandals to illustrate the involvement of corporate actors in tax evasion schemes, discusses the influence and application of the Organization for Economic Co-operation and Development’s (OECD) Ten Global Principles in Fighting Tax Crime, which require the attribution of liability to corporations that commit tax crimes. It then reviews the significance

29. Pietro Sorbello & Stephen Holden, *Developing a Working Model to Fight Fiscal Corruption: The Nexus at Which Tax Crimes and Corruption Meet*, 85 LAW & CONTEMP. PROBS., no. 4, 2022, at 185.

of the criteria used for attribution of corporate criminal liability by spotlighting the English experience and positing a comparison with the United States.³⁰

Florencio Lopez-de-Silanes is a Professor of Finance and Law and Head of the Fund Governance Research Programme at the Risk and Asset Management Research Centre of the EDHEC Business School in France. His research interests and main publications concentrate in international corporate finance and financial markets, legal reform, and privatization. Joseph A. McCahery is a Professor of International Economic Law and Financial Market Regulation at Tilburg University in The Netherlands. Paul C. Pudschedl is a University Lecturer at the University of Applied Sciences Wiener Neustadt and an External Ph.D. at Tilburg University Law School. His research interests lie in corporate governance and his publications assess share value preservation and the role of institutional investors. The article by Lopez-de-Silanes, McCahery, and Pudschedl, entitled *Corporate Governance and Value Preservation: The Effect of the FINCEN Leak on Banks*, is based on an empirical study of market reactions to the FinCEN leaks and the announcement of regulatory penalties for financial and banking-related offenses. In particular, it explores the interactions between the imposition of fines and the most relevant governance characteristics of firms, such as directorship, executive compensation, ownership characteristics, and third-party rankings of firm governance. The research also covers the relationship between fines and institutional ownership and risk-taking behavior of banks. The article looks to corporate governance measures as promising possibilities for mitigating market reactions and reputational costs incurred by firms, and tracks their effects on the risk-taking behavior of financial institutions.³¹

We are grateful to the student staff of *Law & Contemporary Problems* for their efforts in bringing this symposium volume to completion. We are particularly indebted to them for their careful and thoughtful engagement on the expansive scope of issues and literatures covered by the various articles in this symposium.

30. Sam Bourton & Nicholas Ryder, *Corrupt Corporations and the Facilitation of Tax Crimes: A Review of the United Kingdom's Enforcement Mechanisms*, 85 LAW & CONTEMP. PROBS., no. 4, 2022, at 213.

31. Florencio Lopez-de-Silanes, Joseph A. McCahery, & Paul C. Pudschedl, *Corporate Governance and Value Preservation: The Effect of the FINCEN Leak on Banks*, 85 LAW & CONTEMP. PROBS., no. 4, 2022, at 247.