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Woodward, R

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## **UK governance: from overloading to freeloading**

**Richard Woodward**

The UK's ongoing political turbulence has prompted a reprise of debates from the 1970s when many concluded the country was ungovernable. Then the most influential diagnosis conceptualised the UK's governance problem as one of 'overloading' caused by the electorate's excessive expectations. This article argues that these accounts overlooked another phenomena besieging UK governance during this period. This phenomena was freeloading, the withering of government capacity deriving from the ability of actors to enjoy the benefits of citizenship without altogether contributing to the cost. In the interim these problems have become endemic, not least because of the unspoken but discernible policy of successive governments to turn the UK into a tax haven. High profile scandals involving prominent individuals and corporations plus the failure to clampdown on them have reinforced the perception that the UK's political system is geared towards the rich and the powerful at the expense of the marginalised majority.

**Keywords:** overload, tax havens, governance, fiscal crisis, austerity, offshore

The referendum result in favour of exiting the European Union (EU) and the inconclusive outcome of the 2017 General Election are the latest manifestations of a crisis of UK governance. Countless culprits have been implicated in the Brexit whodunit nevertheless the profound and widespread disaffection of many UK citizens with politics, politicians and political institutions is a chief suspect. The provenance of this alienation is contested but is frequently traced to the failure of the UK's political machinery to deliver on promises or to meet the electorate's expectations. In the last decade examples of this failure have been legion: the failure to deliver robust, balanced or inclusive economic growth, the failure to eliminate the budget deficit, the failure to meet homebuilding targets, the failure to control immigration, the failure to remedy the tribulations plaguing the National Health Service, the failure to address chronic

underinvestment in infrastructure, and the failure to adequately equip, prepare and protect services personnel in and for combat zones.

This has prompted a reprise of the debates from the 1970s when an equivalent epoch of anaemic economic expansion, public policy failure, and mounting cynicism about politics led many to conclude the UK was ungovernable.<sup>1</sup> Training their stethoscopes on the heart of the UK body politic the country's political scientists broached various diagnoses, the most influential of which deemed the patient to be displaying symptoms of overload.

The overload thesis held that faith in the UK's political institutions was being eroded by a perennially expanding gulf between the electorate's expectations of government and the government's capacity to fulfil them.<sup>2</sup> Adherents to the overload thesis apportioned the bulk of the blame for the expectations gap to excessive voter demands. This article argues that in downplaying the issue of government capacity these accounts overlooked the onset of another phenomenon besieging UK governance in the 1970s. This phenomenon was freeloading, the withering of government capacity deriving from the ability of actors to enjoy many of the benefits of citizenship without altogether contributing to the cost. This dilemma has been aggravated in the interim by the acceleration of the unstated but discernable policy of successive administrations to transform the UK into a tax haven. As a tax haven, the UK permits rich individuals and corporations to profit handsomely from the public goods paid for out of general taxation whilst simultaneously supplying them with subterfuges that allow them to curtail their UK tax liabilities. Irrespective of citizen demands, tax avoidance and evasion deprives the UK government of the revenue necessary to discharge its responsibilities. By worsening inequality tax avoidance and evasion have also damaged the UK's democratic institutions. Many citizens perceive that the UK's political institutions and processes are geared towards the interests of a wealthy elite but are unsympathetic to the preferences

of the majority. The seriousness of this predicament was finally acknowledged in the aftermath of the global financial crisis whereupon a crackdown on tax avoidance was pledged as part of the strategy to taper the UK's yawning budget deficit. Like previous endeavours however, the strength of the clampdown has been sapped by the hardwiring into the policymaking process of the interests favouring the perpetuation of Britain's tax haven status.

### **The 1970s – overloading and freeloading**

In the decades after the Second World War, the orbit of UK government obligations bloomed as a consequence of interventions intended to promote social justice by mitigating the excesses of capitalism. Unfortunately this coincided with the growing intractability of problems not least, anticipating later debates about globalisation, because intensifying international interdependence put the scale and complexity of issues beyond the compass of individual governments. By the 1970s, these divergent tendencies had left a seemingly unbridgeable chasm between the electorate's expectations and the government's propensity to deliver them.

Despite reflecting on the UK government's deteriorating capacity the overload thesis concluded that the foremost quandary was a self-reinforcing escalation in the demands on government. The broadening of UK government responsibilities engendered new constituencies with vested interests in expanding the state's largesse. Rather than risk a backlash at the ballot box governments opted to appease these sectional demands with extra resources. The effects of this were most pronounced in the economic sphere where higher public expenditure outstripped tax revenues eventually precipitating a fiscal crisis that left the UK at the mercy of the International Monetary Fund.

Most advocates of the overload thesis asserted that to quell voter demands state responsibilities should be devolved to private and market actors. This thinking chimed with the incipient New Right who believed the post-war settlement had fostered a dependency culture. They supposed that rolling back the frontiers of the state would break the cycle of dependency by placing greater onus on individuals and corporations to satisfy their demands in the market place. In practice, the policies of liberalisation, privatisation and deregulation championed by the New Right, and that have been the hallmark of UK policymaking since, augmented rather than attenuated the problems of overload.

First, these policies inspired new demands of the UK government. The UK's exposure to market forces stimulated petitions for state intervention from those contending with the consequences, not least a clamour of corporate constituents who implored governments to safeguard the UK's reputation as an attractive place to do business and to grant dispensations that gave UK industries a competitive edge in global markets. It was likewise recognised that the durability of freer markets was critically dependent on a strong state to devise and enforce a framework of rules to regulate the competitive forces that had been uncorked. Second, these policies have heightened the complexity of UK governance, further weakening government control of the country's destiny. For example, during the last four decades the pursuit of economic objectives has regularly been derailed by a mercurial global economy, the intransigence of major economic partners or the necessity of complying with the welter of international rules and treaties by which the UK was bound.

The self-defeating nature of these remedies reflected the overload thesis' partial diagnosis. The excessive spending spawned by electoral demands unequivocally contributed to the UK's fiscal plight in the 1970s. Nevertheless this posture distracts

from another aspect of these fiscal imbalances, namely the mounting difficulties of raising sufficient tax revenue.

Tax revenues are an essential component of the social contract whereby citizens forgo a portion of their income in return for the state supplying the physical, human and legal infrastructure needed to fortify freedom and the market economy. After 1945, the state's ability to underwrite this contract was bolstered by an international economic order predicated on ensuring finance was subject to national structures of democratic governance. Under the supervision of the Bretton Woods system of economic management, strict controls were maintained on short-term capital movements. These restrictions stifled attempts to move money overseas to shelter it from the privations of the tax inspector. By the 1970s however, the UK had acquiesced in developments that had emaciated these controls releasing an army of fiscal termites that were gnawing away at the ship of state's revenue raising power.

Beginning in the late 1950s, the UK played a pivotal role in the crippling of capital controls and the growth and consolidation of tax havens and the wider offshore world. Most famously in 1957 the Bank of England tacitly sanctioned the premise that business executed by UK banks on behalf of non-resident counterparties in foreign currencies were not subject to UK regulation. This stimulated the development of the Euromarkets, markets in currencies mediated outside and beyond the regulatory control of their territory of issue, which provided a conduit for money to circumvent exchange controls. Concurrently elements within the UK government were agitating for the creation of tax havens amongst their network of Crown Dependencies and Overseas Territories. The leading protagonists were the Bank of England, who viewed these centres as a way of buoying the fortunes of British banks and funnelling money to the City of London, and the Ministry of Overseas Development, who saw financial services as a way of securing the economic wellbeing of the UK's island outposts.

Although the definition is disputed, tax havens are generally regarded as jurisdictions that specialise in financial transactions for foreigners whom they seduce through indulgent fiscal, regulatory and legal frameworks. Detailed expositions of the services offered by tax havens and their allure are available elsewhere<sup>3</sup> but their primary attraction lies in reducing or eradicating their client's obligations in their native jurisdiction. For individuals, the paramount advantage of tax havens is secrecy. The UK tax system operates on a residence principle under which UK residents are liable for tax on their worldwide income. Tax havens uphold stringent privacy laws that prohibit, in most circumstances, financial institutions from sharing information about customers with domestic and international tax authorities. Likewise they offer opaque financial structures that camouflage the beneficiaries of assets. Unless money located in a tax haven is declared it is highly improbable that tax officials will detect it. For multinational corporations (MNCs) the main advantage of tax havens lies in decoupling the substance of economic activity from the place it is recorded for tax purposes. By their very nature MNCs possess affiliates and entities in multiple jurisdictions. For tax purposes each affiliate is treated as a separate entity. The combination of capital mobility and the convenience of tax havens made it easier for MNCs to establish artificial entities undertaking transactions orchestrated to make it appear as though their profits are generated in the more permissive tax environment.

Unsurprisingly individuals and companies rushed to exploit these newfound opportunities. By the late 1960s, Jersey's banking sector had attracted deposits worth almost £300m with the City's banks using these offshore satellites as booking centres to obtain more sympathetic tax treatment for their Euromarket transactions. This period also marked the embryonic phase in the development of an organised tax planning industry devoted to conceiving and commercially marketing schemes to utilise tax loopholes. Throughout the 1960s and 1970s the Inland Revenue became increasingly

exasperated about dwindling revenues ensuing from UK residents and companies using offshore ruses to circumvent taxes.<sup>4</sup> Indeed in his evidence to the House of Commons Expenditure Committee in 1975, the Inland Revenue's Chairman, Sir Norman Price, went as far as to describe tax avoidance as 'a national habit'<sup>5</sup>. In short, UK governance was not simply encountering overloading from steeping demand it was simultaneously confronting freeloading by those whose wealth and business empires thrived upon the privileges and protections provided out of the public purse yet which could, through the use of tax havens, relinquish a substantial part of their duty to pay for them.

### **Tax haven UK**

Forty years on the fondness for freeloading amongst famous figures and firms has forced the topic to the forefront of debates about UK governance. Hardly a week now passes without some fresh revelation of tax avoidance committed by a prominent corporation or celebrity. Amazon, Barclays, Boots, Caffè Nero, Facebook, Google, Ikea, Starbucks, and Vodafone are amongst dozens of firms that have attracted censure for paying minimal UK corporation tax despite sustaining extensive business activity in the country. Meanwhile leading stars including Jimmy Carr, Michael Caine, Gary Barlow, George Michael, Bradley Wiggins, and Chris Moyles are known to have capitalised on schemes contrived to diminish their tax liabilities. Stories embroiling eminent individuals or paragons of the high street understandably hog the headlines but are just the tip of the iceberg. Jimmy Carr, for instance, was just one of 1100 people using the Jersey-based K2 tax scheme that put annual earnings of £168m beyond the clutches of what was now Her Majesty's Revenue and Customs (HMRC). Moreover, these arrangements are typical of thousands of others. In 2012, the National Audit Office found that HMRC was probing 41000 tax avoidance schemes marketed to small businesses and individuals. It is also

illuminating that HMRC has the tax affairs of approximately two-thirds of the UK's 800 largest companies under investigation at any given time. Far from a fringe activity undertaken by a handful of maverick accountants or corporate treasurers tax avoidance is rife.

Before turning to the governance issues arising from freeloading it is worth pausing to consider why it has intensified. Paradoxically conditions conducive to tax avoidance and evasion are principally the result of the brands of policies touted to deal with overload. For example, galvanised by an ideological predisposition to promote individual liberty the Thatcher administration extinguished capital controls. Inevitably rich individuals and corporations used this newfound freedom to siphon money and profits into tax havens. Equally the statutes governing the taxation of financial instruments and transactions were rendered anachronistic by the wave of innovations, such as derivatives and securitisation, which flourished following the deregulation of the City. Furthermore, as the salutary tale of Public Finance Initiative (PFI) told below testifies, offshore has become an intrinsic ingredient of the strategies deployed to span the gap between tax receipts and public spending commitments.

Simultaneously the tax policymaking process was permeated by the tax planning industry. Conventional wisdom about UK tax avoidance and evasion portrays the problem as a game of cat and mouse in which the cunning tax-abusing rodents routinely outwit the hapless feline revenue inspectors. In reality rather than being the passive victim of provisions to shrink tax liabilities the state has, through its connivance with the tax planning industry, been their primary architect.<sup>6</sup> The Treasury's creation in 2010 of a liaison committee populated exclusively by executives from multinational enterprises to 'provide strategic oversight of the development of corporate tax policy' was typical of the revolving door between Whitehall's mandarins and the tax planners. As Richard Brooks' evidence supplied to the Treasury Select Committee in 2011 noted, the result is that

swathes of the corporate tax code are being written by ‘policy-makers.....in conjunction with the very vested interests that stand to gain the most from their decisions’.

Corporations and their armadas of tax planners no longer had to concoct elaborate schemes to minimise taxes, the state was designing the schemes for them. Put another way the cats were sabotaging their own mousetraps.

This sabotage has been abetted by the vitiation of HMRC. Since 2005 the number of HMRC staff has plunged from 105,000 to 58,000 and its budget from £4.4bn to £3.2bn. The purging of the organisation has denuded it of expertise, especially in units dealing with High Net Worth Individuals (HNWIs) and large corporations, leaving it prostrate before those whose tax affairs it is supposed to oversee. Powerless to properly police the tax rules HMRC has increasingly resorted to offering ‘sweetheart deals’ with terms highly favourable to tax avoiders. In January 2016, following a six year investigation, Google reached a settlement with HMRC to pay £130m in back taxes. The government’s jubilation over the deal stood in stark contrast to the House of Commons Public Accounts Committee, which observed ‘the sum paid by Google seems disproportionately small when compared with the size of Google’s business in the UK’.<sup>7</sup> Even including this supplementary payment Google is reported to have paid just £200m in UK corporation tax since 2005 on estimated UK profits of £7.2bn, an effective rate of 2.77%. The absence of a penalty and the fact that Google has license to perpetuate its tax structure will only embolden potential emulators.

The wholesale privatisation of the tax policymaking process and the emasculation of enforcement in the name of what the Treasury euphemistically refers to as an ‘internationally competitive tax environment’ has legitimised freeloading and has serious repercussions for UK governance. The most obvious manifestation of freeloading are shortfalls in tax revenues, which undermines the government’s ability to undertake the tasks upon which its legitimacy depends. Its clandestine character and the absence of

agreed classifications make quantifying the fiscal leakages from tax avoidance and evasion difficult and controversial. HMRC reckoned that in 2014-15 tax evasion (of all hues not just that involving offshore structures) amounted to £5.2bn and tax avoidance £2.2bn. These calculations however rest on preposterously narrow definitions. They exclude the kinds of profit shifting machinations exemplified by Google and which are commonplace amongst the tax strategies of large multinational enterprises. Likewise, myriad individual avoidance packages are discounted by virtue of the debilitated HMRC's propensity to identify them. Most commentators submit that the true scale of tax avoidance and evasion in the UK is considerably higher. One analysis determined that tax avoidance by US corporations alone costs the UK roughly as much as the figure printed by HMRC while another declared that UK individuals have assets worth US\$284bn (£170bn) stashed offshore denying the exchequer another \$8bn (£5bn) per annum.<sup>8</sup> Irrespective of the precise amount, the essential point is that rampant freeloading is ultimately incompatible with the government's commitment to the proper funding of public goods.

Incongruously some of the most notorious perpetrators of tax avoidance are also amongst the most prodigious consumers of public goods and recipients of government gratuity. The most egregious examples come from the banking sector. As the taxpayer was writing a blank cheque to bail out the financial system it was revealed that the big four high street banks were operating a network of 1,649 tax haven subsidiaries. Nearly 700 of these entities belonged to the Royal Bank of Scotland and the Lloyds Banking Group, institutions in which the taxpayer had invested £65bn and was now the biggest shareholder. Similarly governments continue to award procurement contracts to scores of pharmaceutical, information technology, healthcare, utility and infrastructure companies that maintain tax haven companies as a core component of their corporate structure.

To alleviate the strain on the nation's finances, governments struck upon the idea of funding public goods with private capital through PFI. In this way schools, hospitals, roads and other infrastructure could be constructed without hurting the government's fiscal position. Sadly PFI has provided rich pickings for those determined to plunder the public coffers. Most PFI companies borrow the money to endow their projects. Despite the risks being mitigated by government backed income streams and wheezes that virtually guarantee the project's profitability, PFI companies are curiously inept at borrowing cheaply. Conveniently their exorbitant borrowing costs yield tax-deductible interest expenses that eradicate years of tax liabilities. The PFI companies then recoup their investment through charging fees to the end users. Invariably these payments are routed to tax haven hosted companies. The absurdity plumbed new depths when it was divulged that in 2001 the then Inland Revenue had signed a PFI deal surrendering the 'ownership and management' of its 600 building estate to a Bermudan based company with the result that today's HMRC cannot tax its landlord's capital gains.

### **Freeloading, inequality and democracy**

Defenders of the status quo point out that corporations and rich individuals make sizable contributions to the UK exchequer. In 2015-16, 27.5% of the UK's income tax revenues were paid by the top 1% of earners whilst PwC's '100 group' of large companies ponied up 13.3% (£82.3bn) of government tax receipts.<sup>9</sup> That this is the case when, as the Google episode demonstrated, HNWI's and corporations are able to structure their financial affairs in a way that results in them paying tax at a fraction of the headline rate bears witness to the stratospheric levels of inequality in the contemporary UK. These inequalities, which freeloading has magnified, are feeding a sense of injustice that is poisoning the UK's democratic institutions.

Despite four decades of subservience to free-market nostrums the UK's tax take as a percentage of GDP has scarcely altered. To counteract the revenues haemorrhaged by a regime that countenances widespread tax abuse by the richest groups in British society, UK governments have opted to raise indirect taxes (such as value added tax and alcohol, tobacco and fuel duties). The Office for National Statistics notes that 'indirect taxes in the UK have been regressive throughout the period' since 1977.<sup>10</sup> What currently has the moniker of austerity is simply the compounding of a forty year long programme to square the freeloading circle by moderating spending and levying taxes that disproportionately distress the poorer segments of society. During this time, the UK went from being one of the most equal OECD countries to one of the most unequal.<sup>11</sup> To quote the Association of Revenue and Customs, the union representing senior HMRC staff, 'the country cannot afford this madness. The Government is acting like an unhinged Robin Hood – taking from the poor and giving to the rich'<sup>12</sup>.

Soaring inequality has brought into sharp relief the well-documented tension between the egalitarian tendencies of democracy and the wealth (and hence power) concentrating propensities of capitalism. Assisted by the Bretton Woods settlement, the UK's post-war governments were able to legitimise capitalism and stabilise democracy through widely shared increases in real incomes. Conversely the subsequent economic polarization has bred a perception that the UK's democracy is mutating into a plutocracy where a self-serving elite receives special treatment and wields outsize influence on the political system at the expense of the marginalised majority.

The UK's 'non-domiciled' residents are illustrative in this regard. 'Non-doms' are UK residents whose permanent home or domicile is elsewhere. They are spared tax on foreign income unless it is remitted to the UK. Theoretically non-doms cannot enjoy the proceeds of their foreign wealth in the UK without handing over their pound of flesh to the exchequer. In practice there are untold loopholes, not least that after being resident

for seven years non-doms can, instead of paying tax on a remittance basis, pay an annual charge of £30,000 (rising to £90,000 for those who have been UK resident for at least 17 of the last 20 years). Predictably the UK is home to a veritable international jet-set of oligarchs, shipping magnates, corporate executives, hedge fund managers and sports stars who are delighted to discover they can enjoy their millions in exchange for a payment miniscule in comparison to prevailing income tax rates. Most of the UK's 115,000 non-doms are not intimately connected with politics. Amongst their ranks however are press barons and major donors to political parties. During the 2015 General Election campaign it was divulged that non-doms had donated over £27m to the three main political parties since the turn of the century.

Whether non-doms exert a disproportionate political influence is an open question. Nonetheless, the prominence of non-doms and other freeloading donors imperil the UK's democratic integrity by imparting 'an ingrained sense that the political process is rigged in favour of the rich, the powerful and the well-connected'.<sup>13</sup> Revelations that David Cameron had earned £31,500 from selling shares in a Panamanian based trust established by his late father served only to entrench this impression. Democratic governance requires that everyone has the opportunity for an equal say in collective decision making. This does not mean that everyone has equal sway but the outcome ought to reflect the most persuasive argument around which people could be mobilised rather than who has the most resources to set the political agenda. The standing of the UK's governing institutions has been damaged in the eyes of many citizens by their inkling that they are insensitive to the inclinations of the majority and that outcomes are systematically slanted in favour of individuals and groups who, by virtue of their wealth, dominate the political process.

Since the financial crisis every UK government has given assurances that it will take action to subdue tax avoidance and evasion. As well as providing a lucrative source

of revenue to staunch the bloodletting on the public balance sheet such clampdowns would also respond to resentment fuelled by stories juxtaposing the apparent ease with which corporate behemoths could sidestep their taxes with the spending cuts and tax rises inflicted on the preponderance of citizens. In fact post-crises governments were perfecting the Janus-faced attitude to freeloading inherited from their predecessors, publicly denouncing tax abuses whilst unobtrusively advertising and extending the UK's tax haven credentials. For instance in the 2011 Budget, which George Osborne claimed, was 'doing more to clamp down on tax avoidance than any in recent years' the government announced changes to the Controlled Foreign Corporation rules that renounced the exchequer's right to tax profits repatriated from the foreign subsidiaries of UK headquartered enterprises. The upshot was that companies could keep their tax-deductible costs at home but had huge incentives to funnel their profits via a tax haven subsidiary. The introduction in 2013 of a General Anti Abuse Rule (GAAR) to strike down tax practices that, whilst legal, undermine the intention of the tax laws plus a public register of UK companies' beneficial owners to make it more difficult for proprietors to hide their identity behind the anonymous 'shell' companies offered by many tax havens, likewise suggested a tough line. Regrettably the beneficial ownership registry is riddled with escape clauses and exclusions and before HMRC can pursue enquiries via the GAAR it must first seek approval from a panel composed mainly of businesspeople. To date no cases against big business have commenced. Even if they were it is doubtful whether the HMRC, whose staff numbers may fall as low as 41,000 by 2020, would have the resources to prosecute them.

At the international level Cameron's coalition government used its G8 Presidency to foment support for OECD standards to promote the automatic exchange of information between tax authorities and its Base Erosion and Profit Shifting (BEPS) project designed to counteract aggressive tax planning by multinational enterprises. The

coalition and the Conservative majority government also signed up to various EU ventures on corporate tax transparency culminating in the Anti-Tax Avoidance Package of 2016. The UK government has nonetheless been a ‘difficult friend’<sup>14</sup> of the OECD and EU processes, frustrating breakthroughs on key issues and even instigating policies that run contrary to the aims of the initiatives. This policy schizophrenia has continued under the May governments. The Prime Minister has repeatedly highlighted the civic virtue of paying taxes and averred her determination to tackle tax avoidance and evasion. Yet in a speech in January 2017 May made a veiled threat that if the EU failed to offer satisfactory Brexit terms the UK would redouble its tax haven strategy in order to remain competitive. Overall the supposed suppression of tax avoidance and evasion in the post-crisis period has been little more than a façade behind which freeloaders can perpetuate their parasitic activities with almost complete immunity.

## **Conclusion**

The UK’s is suffering its worst crisis of governance since the 1970s. Just as in the 1970s, lacklustre economic growth, the failure to reflect citizen preferences, and ostensible impotence in the face of external developments are battering the legitimacy of the UK’s political institutions. Whilst the conventional wisdom ascribes the governance crises of the 1970s and the present to overload this article has suggested that freeloading is also a common denominator. The ability of HNWI’s and multinational corporations to legally avoid and illegally evade taxes while voraciously consuming the public goods for which those tax revenues pay has blown gaping holes in the UK’s public finances. The economic inequality fostered by freeloading has also tarnished the democratic credentials of the UK’s political institutions. Citizens feel disenfranchised by institutions that they judge, rightly or otherwise, are only responding to and lavishing exceptional treatment

upon a wealthy minority. Alone serious and sustained action to quash freeloading is no panacea to the multifaceted challenges facing UK governance but it may at least tranquillise the grievances of those who feel that the rich increasingly have representation without taxation.

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