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## Bringing Formal Business Laws to Cameroon's Informal Sector: Lessons and Cautions from the Tax Law Example

Claire Moore Dickerson

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# BRINGING FORMAL BUSINESS LAWS TO CAMEROON'S INFORMAL SECTOR: LESSONS AND CAUTIONS FROM THE TAX LAW EXAMPLE

CLAIRE MOORE DICKERSON\*

## ABSTRACT

*A substantial majority of non-agricultural workers in a developing country such as Cameroon engage in legal businesses below the governmental radar, that is, in the informal sector. Because that segment of the Sub-Saharan economy is critical to subsistence within the region, and because the financial crisis has expanded the informal sector in the Global North, developing economies' experience with the informal sector is of world-wide relevance.*

*Formal business laws do exist in the formal sector; however, trying to move informal-sector workers to the formal sector where these laws already offer some protection can disrupt the entrepreneurs' ability to sustain themselves, and to contribute to the national economy. A pilot study in five Cameroonian markets is thus of general interest when it reveals that entrepreneurs there do not benefit from formal business laws, which in turn limits their ability to borrow and their willingness to lend. The same study also suggests that tax literature has interesting, non-coercive strategies to improve tax compliance in ways that may be applicable to facilitating the introduction of formal business laws to the informal sector, instead of forcing informal-sector workers into the formal sector. The tax-morale literature recommends deploying strategies of reciprocity, in addition to providing public goods and services—strategies that encourage compliance—instead of using governmental power to extract tax payments. Similarly, tax-based strategies can apply to business*

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\* LL.M. in Taxation, New York University School of Law; J.D., Columbia University School of Law; A.B., Wellesley College. My thanks to the Tulane Law School workshop, and especially to my colleagues Professors Adam Feibelman, Marjorie Kornhauser, Shuyi Oei, and Amy Stein for their thoughtful and detailed suggestions. Further I need to thank very particularly Professor Emmanuel Yenshu Vubo, sociologist and Associate Dean at the University of Buea's School of Social and Management Sciences for his advice and support, and to extend my thanks also to the following, without whose help the interviews would not have been possible: Prof. Martha Simo Tumnde, Ph.D., Dean and Professor, Faculty of Social and Management Sciences, University of Buea; Sone Patience, Ph.D., Lecturer, Department of Law, University of Buea; Roland Djieufack, DEA, Assistant Lecturer, Department of Law, University of Buea; and Ms. Juliet Yongbang.

laws while informal-sector workers remain in the informal sector, even though the government's posture vis-à-vis commercial actors is less direct than vis-à-vis taxpayers.

The experience of Cameroon's informal sector with formal tax law thus provides important insights on steps within the government's control that would not only improve tax compliance, but would also bring formal business laws and their transaction-cost-reducing potential to the informal sector. The pro-business strategy is to apply tax-morale learning, which calls for government authorities to enter into a reciprocal relationship—respectful and communicative—with private parties and to focus on investing in basic infrastructure.

#### TABLE OF CONTENTS

INTRODUCTION.....	267
I. THE INFRASTRUCTURE OF BUSINESS LAWS IS UNAVAILABLE TO THE INFORMAL SECTOR .....	271
A. <i>The Context</i> .....	271
1. <i>The Informal Sector, Defined</i> .....	271
2. <i>Pilot-Study Participants</i> .....	273
B. <i>In Cameroon's Informal Sector, Formal Business Laws Do Not Apply Reliably</i> .....	275
1. <i>Formal Business Laws Technically Applicable in Cameroon</i> .....	276
2. <i>How the Participants Conducted Business in the Informal Sector</i> .....	281
a. <i>Extension of Credit</i> .....	282
b. <i>Quality and Warranties</i> .....	286
II. FORMAL TAX LAW AS THE LABORATORY FOR FORMAL BUSINESS LAW'S IMPLEMENTATION IN THE INFORMAL SECTOR ...	286
A. <i>Formal Tax Law Regime and Actual Tax Collection Experienced by the Informal Sector: The Signs of Success</i> .....	287
1. <i>Formal Tax Laws</i> .....	287
2. <i>Actual Tax Collection</i> .....	291
B. <i>Tax Collection Is Deceptive Evidence of Formal Tax Law's Implementation in the Informal Sector</i> .....	293
1. <i>Formal Tax Laws Are Violated Through the Tax Administration's Illegal Behavior, and Tax Workers' Leakage</i> .....	294
2. <i>From the Taxpayers' Perspective: The Money Engine, Not Formal Tax Laws, Drives Tax Collection</i> .....	296

III. THE LEARNING FROM TAX LAW CONCERNING THE GOVERNMENT'S ROLE IN INTRODUCING FORMAL BUSINESS LAW TO THE INFORMAL SECTOR.....	299
A. <i>The Tax Model: How to Obtain Compliance with Formal Tax Laws in the Informal Sector</i> .....	300
1. <i>Literature: Tax Morale and Compliance</i> .....	300
2. <i>Reality: Tax Morale Is Not a Significant Driver of Taxpayer Informal-Sector Compliance</i> .....	306
a. <i>Compliance-Watching: How Taxpayers Perceive the Compliance Of Others</i> .....	307
b. <i>Respectful Reciprocity: Tax Authorities' Relationship with Taxpayers</i> .....	308
c. <i>Public Goods and Services: Communication About Their Presence or Absence</i> .....	310
B. <i>Translating Tax Morale to Other Formal Laws: The Role of Government</i> .....	313
C. <i>Lessons for Government, from Formal Tax Law, for Formal Business Law in the Informal Sector</i> .....	317
CONCLUSION.....	320

## INTRODUCTION

In Sub-Saharan Africa generally, and Cameroon in particular, formal business laws exist. For the relationship between a supplier of goods and a retail seller, the “OHADA Uniform Acts”<sup>1</sup> are the business laws applicable in Cameroon and sixteen other West and Central African countries. For the relationship between a retail seller and a consumer, Cameroon’s domestic consumer and contract laws apply.<sup>2</sup> A pilot study of twenty entrepreneurs in five markets of Cameroon, conducted in late 2010 with the University of Buea’s Dr. Emmanuel Yenshu Vubo, is uniform in showing that these formal laws do not have a significant impact on entrepreneurs in the recesses of Cameroon’s economy.<sup>3</sup>

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1. “OHADA” stands for *l’Organisation pour l’Harmonisation du Droit des Affaires en Afrique* (as usually translated into English, the “Organization for the Harmonization of Business Laws in Africa”). See generally *Traité relatif à l’Harmonisation du Droit des Affaires en Afrique*, Oct. 17, 1993, last revised Oct. 17, 2008, 4 *Journal Officiel de l’Organisation pour l’Harmonisation du Droit des Affaires en Afrique* [J.O. OHADA] 1 [hereinafter OHADA Treaty], available at <http://www.ohada.org/traites-et-conventions.html>.

2. See generally *infra* Part I.B.1.

3. On file with author.

As we will see, these recesses are in the informal sector,<sup>4</sup> which is a significant portion of the Sub-Saharan economy. Indeed, it is the business home of the vast majority of non-agricultural workers, and it is an important means of survival. The entrepreneurs targeted here by the study are workers who operated in the informal sector of Sub-Saharan Africa, that is, the people who work largely under the governmental radar. They were selling everything from shoes, to durables, to produce.

Various business-law scholars, such as Stuart Macaulay, Lisa Bernstein, and Donald Langevoort have underscored the effectiveness of extralegal controls over business, in particular where the parties are in an iterative relationship. In the Global North—that is, in the developed world—those extralegal controls exist within a construct of formal business laws: even if these laws are never used by members of a tightly knit group, they cast a shadow of predictability. This shadow, the pilot study suggests, does not exist in Cameroon’s informal-sector niches under study here. This is particularly important, because the study further indicates that there is less repeat business in the studied markets than I had expected: many are described as one-off, arm’s length transactions.<sup>5</sup> In turn, this means that businesspeople in an important part of the local economy cannot benefit from the transaction-cost-reducing effects of extra-legal constraints or of law-induced predictability. The consequences are as expected: because of the very limited extension of credit, an entrepreneur’s ability to raise capital on the one hand, and to extend the market to new buyers on the other, is reduced. Each of these effects will be examined in turn, with a focus on enhancing the shadow cast by the formal laws.

Despite this apparently limited impact of formal business law in Cameroon’s informal sector, the country’s formal tax law, at least at first blush, does appear to have a direct impact on the informal sector. Cameroon’s tax code is sophisticated, and even the study’s interviewees, untouched by formal business laws, reported paying at least some tax imposed by the formal tax law. This Article argues that the success of formal tax is at best superficial and does not reflect actual compliance with formal tax laws. The formidable literature on tax compliance, however, explains why taxpayers tend to pay more than would a wholly rational *homo economicus*. This scholarship thus provides, in the arena of business

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4. More fully discussed *infra* Part I.A.

5. See STÉPHANIE KWEMO, L’OHADA ET LE SECTEUR INFORMEL : L’EXEMPLE DU CAMEROUN 170 (2012) (Belg.) (making the same observation).

laws, directly applicable guidance to a government that wishes to enhance the success of entrepreneurs in its informal sector.

The World Bank, among others, has sought to enhance and implement business laws in the region. Once national governments have modernized the formal business laws, the World Bank and other donors have worked with the governments to help apply these laws-on-the-books (the formal laws) by focusing on improving the enforcement procedures of the judicial branch. A complementary goal has been to bring more entrepreneurs into that part of the economy where the government is able to apply formal business laws relatively predictably and effectively. In effect, the goal is to “beef up” the formal sector and to move entrepreneurs from the informal economy to the formal sector. As an example, the International Finance Corporation supported a project to simplify the OHADA laws’ legally mandated filings imposed even on very small commercial operators. Nevertheless, the requirements remain quite complex and, in the event of continued non-filing, the loss of rights remains significant.<sup>6</sup> The revision thus wields a stick to urge more informal-sector entrepreneurs to acquire the registered, formal status.<sup>7</sup>

This Article focuses on the opposite. The workers in the informal sector are hardworking and effective under what often are harsh circumstances and the entire Sub-Saharan economy and countless families depend on these entrepreneurs’ continuing success, year after year, despite the difficult commercial environment. Instead of bringing informal-sector entrepreneurs to the formal business laws, it could be less disruptive, and thus less dangerous to people and economies already at risk, to bring the formal business laws to the informal-sector workers. The focus should thus be on bringing the transaction-cost-reducing benefits of formal business law to informal-sector entrepreneurs even before they formalize their status.

This Article explores the possible interplay of formal tax laws and formal business laws by studying the government’s apparent success in

6. See *infra* Part III.C (discussing the use of a less favorable statute of limitations period for certain commercial operators who have failed to comply with the filing requirements of the OHADA statute relating to certain commercial acts). Given Part I.B’s evidence that formal business laws do not, as a practical matter, penetrate into the informal commercial environments, this effort to punish non-compliance may not matter.

7. See, e.g., Lionel Yondo Black, *Les enjeux de la réforme : une volonté de favoriser la création d’entreprises, les échanges commerciaux et la confiance dans la zone OHADA*, 201 DROIT ET PATRIMOINE 42, 44 (Mar. 2011) (Fr.) (“The OHADA legislature sought to adopt provisions that would ease the passage of commercial operators from the informal sector to the formal sector,” translated from “[L]e législateur communautaire a notamment souhaité adopter des dispositions facilitant le passage des opérateurs du secteur informel au secteur formel . . .”).

collecting taxes. On close inspection, it is a cautionary tale, not to be emulated as it does not depend on compliance with formal law—formal tax law in this case. Nevertheless, techniques to improve both the government's and taxpayers' tax compliance also offer an alternate strategy for inserting business laws into those informal commercial environments where it does not currently function. This conclusion is somewhat counterintuitive, because the posture of government in tax law is very different from its posture in business law. In tax law, the government is the party directly opposite the taxpayer; in business law, the classic template has only the private parties opposite each other, with the government as part of the backdrop. Nevertheless, the pilot study suggests that the same governmental strategies that increase tax compliance, including a government that takes the stance of respectful reciprocity and communicates effectively its contributions to its populace, will increase businesspeople's willingness to learn about and comply with formal laws. In the context of business, this would bring formal business laws' transaction-cost-reducing predictability to the informal sector, instead of wrenching creative and hard-working entrepreneurs out of an already difficult but familiar environment into a new and differently harsh environment. Because the current financial crisis has expanded the informal sectors of formerly developed countries, Sub-Saharan Africa's experience with formal laws in the informal sector is relevant well beyond that part of the world.

Part I describes the informal sector and who the pilot-project participants are, and how formal business laws fail to provide informal-sector entrepreneurs the benefits of those laws. Part II opens with a discussion of formal tax laws and describes how tax collection actually occurs. Using information provided by the project's interviewees, this Article underscores that tax collection in the informal sector is an exercise of government power over vulnerable constituents. Indeed, the fact of tax collection is not proof that either the government or the taxpayers actually respect the formal tax laws. The existing tax regime is based on governmental coercion; this Article rejects extending this practice of coercion to imposing on informal-sector entrepreneurs the systematic adoption of formal business laws. Part III discusses strategies that demonstrably increase voluntary compliance with formal tax laws, and then considers how to translate these concepts to the application of formal business laws in the informal sector. Using evidence from the tax context as a laboratory, this Part then acknowledges that the translation of tax-morale concepts into the business context is complicated by the very different roles of government in the tax and business arenas. It also

explains how a tax-compliance strategy applied to formal business laws encourages the government to focus on communication with informal-sector entrepreneurs and on the development of at least embryonic structures designed to reinforce the formal judicial system. The same actions that would improve the tax regime would also enhance the likelihood of formal business laws entering the informal sector, and of gaining traction with informal-sector entrepreneurs.

#### I. THE INFRASTRUCTURE OF BUSINESS LAWS IS UNAVAILABLE TO THE INFORMAL SECTOR

After describing more fully the informal sector and the study participants, this Part focuses on the formal business laws that are technically applicable to the participants, and on the participants' descriptions of their own business practices. These practices reveal no practical impact from formal business laws.

##### A. *The Context*

###### 1. *The Informal Sector, Defined*

The informal sector is important to Sub-Saharan Africa. Much of this region's economy, including that of the seventeen OHADA member-states,<sup>8</sup> is part of the informal sector. The informal sector produces 30% of worldwide GDP,<sup>9</sup> and conservatively between 40% and 60% of the Sub-Saharan economy.<sup>10</sup> In Cameroon, it is estimated that the informal sector generated approximately 42% of GDP in 1995–96.<sup>11</sup> Further, the Sub-

8. The members of OHADA are Benin, Burkina Faso, Central African Republic, Chad, Cameroon, Comoros, Congo, Côte d'Ivoire, Democratic Republic of Congo, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Niger, Senegal, and Togo. All are Francophone except for Cameroon (English and French), Equatorial Guinea (Spanish and French), and Guinea-Bissau (Portuguese).

9. U.N. DEV. PROGRAMME, COMM'N ON LEGAL EMPOWERMENT OF THE POOR, 1 MAKING THE LAW WORK FOR EVERYONE 15 (2008), available at [http://der.oas.org/Institutional\\_relations/Final%20Report\\_English.pdf](http://der.oas.org/Institutional_relations/Final%20Report_English.pdf).

10. See Friedrich Schneider & Dominik H. Enste, *Shadow Economies: Size, Causes, and Consequences*, 38 J. ECON. LIT. 77, 78–79 (2000) [hereinafter Schneider & Enste 2000] (describing “shadow economy” as unregistered); FRIEDRICH SCHNEIDER & DOMINIK H. ENSTE, *THE SHADOW ECONOMY: AN INTERNATIONAL SURVEY* (2002). See generally ERICH KIRCHLER, *THE ECONOMIC PSYCHOLOGY OF TAX BEHAVIOUR* 13–16 (2007) (discussing the definition of the “shadow economy” and using, *inter alia*, the Schneider analysis based on GDP).

11. ILO, *WOMEN AND MEN IN THE INFORMAL ECONOMY: A STATISTICAL PICTURE* 19 (2002), available at <http://www.ilo.org/dyn/infoecon/docs/441/F596332090/women%20and%20men%20stat%20picture.pdf>.

Saharan informal sector employs between 51% (South Africa) and 93% (OHADA-member Benin) of all non-agricultural workers.<sup>12</sup> In the urban settings of Cameroon, such as that of the markets where the interviewees were located, the figure was estimated at 70% in 2010.<sup>13</sup>

The informal sector is sometimes defined as the part of a national economy that is not represented in the GDP.<sup>14</sup> Although informal-sector activity is not necessarily illegal, this definition includes tax evasion, as well as the operation of illegal businesses.<sup>15</sup> Overall, it appears that the references to “tax evasion” in this context refer to evasion of income or value added taxes. For example, while Friedrich Schneider defines what he calls the “shadow economy” as including activity “deliberately concealed from public authorities . . . to avoid payment of income, value added or other taxes,”<sup>16</sup> a good portion of the interior references relate to the taxes typically salient in the Global North, namely those income and value added taxes.<sup>17</sup> As described below in Part I.A.2, the twenty participants in the pilot study did pay taxes, but their businesses were too small to owe income or value added taxes.<sup>18</sup>

12. *Id.* In 2012, in Cameroon, 52.7% of the population was estimated to live in urban areas. U.N. Statistics Div., *Cameroon*, UN DATA, <http://data.un.org/CountryProfile.aspx?crName=CAMEROON> (last updated 2013).

13. WORLD BANK, CAMEROON COUNTRY OFFICE, UNLOCKING THE LABOR FORCE: AN ECONOMIC UPDATE ON CAMEROON WITH A FOCUS ON EMPLOYMENT, CAMEROON ECONOMIC UPDATE 17 (2012), available at [http://siteresources.worldbank.org/INTCAMEROON/Resources/CMR\\_Economic\\_update.January.2012.pdf](http://siteresources.worldbank.org/INTCAMEROON/Resources/CMR_Economic_update.January.2012.pdf).

14. See Friedrich Schneider, *The Shadow Economy and Work in the Shadow: What Do We (Not) Know?*, (Inst. for the Study of Labor, Discussion Paper No. 6423, 2012) (Ger.) [hereinafter Schneider, *Work*], available at <http://ftp.iza.org/dp6423.pdf>. But see KWEMO, *supra* note 5, at 99 (describing the usual operational definition of Cameroon’s informal sector as depending on non-registration plus lack of written accounts). The latter definition makes sense when the goal is to assess the effectiveness of provisions in the formal law; the former definition is more generally applied. See, e.g., Richard M. Bird & Eric M. Zolt, *Redistribution Via Taxation: The Limited Role of the Personal Income Tax in Developing Countries*, 52 UCLA L. REV. 1627, 1645 (2005) (referring to Friedrich Schneider’s analysis). See generally Claire Moore Dickerson, *Informal-Sector Entrepreneurs, Development and Formal Law: A Functional Understanding of Business Law*, 59 AM. J. COMP. L. 179, 185 (2011) (discussing different definitions of the informal sector, including Friedrich Schneider’s) [hereinafter Dickerson, *Entrepreneurs*].

15. See, e.g., Schneider & Enste 2000, *supra* note 10, at 79 (referring, *inter alia*, to tax evasion, the drug trade, prostitution, and gambling, as well as unreported legal activities); Schneider, *Work*, *supra* note 14, at 4–6.

16. Schneider, *Work*, *supra* note 14, at 6.

17. See, e.g., KIRCHLER, *supra* note 10, at 34, 46 (referring to marginal rates and income declaration).

18. See *infra* Part II.A.

The economic and legal literature defining the informal sector tends to concern businesses that are larger and better-established.<sup>19</sup> Every one of our twenty pilot-project interviewees described perfectly legal commercial enterprises, and while they did not obtain business licenses, they were generally not required to do so.<sup>20</sup> Importantly, they reported paying, or even overpaying, most of the formal taxes due.

Thus, the interviewees appeared to have conformed substantially to their legal obligations vis-à-vis the government. For purposes of this Article, the businesses are nevertheless deemed to be in the informal sector, in part because they are so modest and precarious that they are hard for the government to trace and, given the endemically haphazard record-keeping, may or may not have had their activities included in the GDP.

The definition of the informal sector is complicated by the permeable nature of its border with the formal sector. Many workers in the formal sector also work in the informal sector. For example, a fully licensed restaurant owner may operate a dress-and-accessories shop out of a back room. A hairdresser may have an official shop, but also cut and style hair from home or go to clients' homes. A dress-shop owner may well have a second, unofficial location at home. Indeed, a tailor who works exclusively in a particular shop may still have a part of the business in the informal sector. Because the border is so porous, it is difficult to identify which activities are in that sector. Nevertheless, the small size of the interviewees' businesses and the relatively mechanical types of taxes they paid together increased their ability to fly under the government's information-gathering radar. This helps characterize them as informal-sector entrepreneurs.

## 2. *Pilot-Study Participants*

With Dr. Yenshu's advice and assistance, and with the help of other colleagues and of graduate students at the University of Buea,<sup>21</sup> I

19. WORLD BANK GROUP, DOING BUSINESS IN A MORE TRANSPARENT WORLD 16 (2012) [hereinafter WORLD BANK, DOING BUSINESS 2012] (discussing its methodology, including that data are limited to the formal sector), available at <http://www.doingbusiness.org/~media/GIAWB/Doing%20Business/Documents/Annual-Reports/English/DB12-FullReport.pdf>.

20. See General Tax Code, § C.11(15) (Cameroon) ("persons liable to the discharge tax") [hereinafter Gen. Tax Code], available at <http://www.impots.cm/uploads/pdf/code/cgi2010/CGI%202010,%20version%20anglaise.pdf>. See *infra* Part II.A.1, assuming that at least most of the interviewees are subject to the discharge tax. Gen. Tax Code, § C.47(12) (a taxpayer with annual sales in excess of fifteen million FCFA is subject to the business license, not the discharge tax).

21. See *supra* note \*. The markets selected included the most sophisticated informal-sector market in Cameroon's commercial capital, plus a more local but still sophisticated market in that same

conducted a pilot study in the fall of 2010. The study consisted of twenty interviews with vendors in, or at the very edge of, five markets in Cameroon. Of these twenty vendors, seven sold produce. Ten other vendors sold non-perishable goods. The remaining three were service providers: a tailor, a hairdresser, and a restaurant owner. The vendors interviewed all purchased from suppliers for the purpose of reselling goods; even the service providers sold substantial amounts of goods in their businesses. The vendors sold to some purchasers who resold at retail, but most purchasers bought for their own use and thus were, by definition, consumers.<sup>22</sup> All the interviewees were knowledgeable about their business niches and were operating in a very difficult, unforgiving business environment.

The following six vendors had fully enclosed stores of various levels of sophistication: the hairdresser, restaurant owner, tailor, and three sellers of clothing. Among the sellers of produce, two sold through so-called “groceries” that were essentially lean-tos, while the five other produce-vendors sold from tables or from a canvas spread on the ground. The vendors of clothes or shoes sold “seconds” shipped from the developed world and resold in the markets as so-called “second-hand goods.”<sup>23</sup> For the most part, these vendors operated from an *étagère* (sometimes referred to as a “stand” in English), not even a lean-to. Most of the interviewees, even those in the heart of the markets, rented their premises from private landlords. Five of the twenty vendors rented their business premises from the local government (the “Council”).<sup>24</sup>

Within the informal sector, entrepreneurs varied in size and sophistication. Our interviewees were essentially exclusively in the informal sector and included persons who appeared, based on the size of their inventory and the location and aspect of their place of sale, to be financially vulnerable. Their engagement in trade preserved them from full

city. The other markets were all in the purely Anglophone region; one was in a regional commercial center; while two others were smaller. The interviewees were selected through accidental sampling, plus, especially in the most sophisticated market of the commercial capital, and in the relatively sophisticated market within the Anglophone region, some snowball sampling, where one interviewee recommended another—or where another vendor insisted on being interviewed.

22. See *infra* Part I.B.2.

23. *Friperies* in French; the sellers of these goods were in a market in the port city of Douala, also Cameroon’s commercial capital.

24. Twelve rented from private individuals; of the remaining three, one had no fixed place of business in Cameroon, and the other two were unclear as to whether they rented from the Council or a private person. The rental arrangements are the subject of a separate study; although the boundaries are difficult to maintain, for the current Article the focus is on the sales transactions and consequences directly related to them.

unemployment and at minimum allowed them to contribute to the family's income, including for the children's school fees. These entrepreneurs included people with little education, but also, by way of example, a woman with a university degree in agronomy who was selling produce from a canvas spread on the ground, and a man with a university degree in transport logistics who sold second-hand goods from a lean-to stall.<sup>25</sup>

*B. In Cameroon's Informal Sector, Formal Business Laws Do Not Apply Reliably*

Formal business laws are important. They do exist in Cameroon, but they are not in evidence in the informal sector, let alone predictably enforced there. To remedy this void, the first step is to assess the business-law reality in the informal sector before considering how to rectify any lapse.

Businesses in the Global North benefit from predictably enforced, traditional business laws such as contracts, business organizations, and commercial law, including secured transactions. These reduce transaction costs by providing a framework for agreements and a structure for relatively reliable enforcement. However, businesses also benefit from other laws not generally considered under the rubric of "business laws." These include real property law, employment and labor law, and insurance law. Personal security is critical, too; thus laws that organize an appropriately constrained police force and protect the rights of citizens against abuse also support business.<sup>26</sup>

When considering how to provide the benefits of formal business law to informal-sector entrepreneurs, we will ask in Part II below whether the experience of formal tax law is a good template. In order to focus the discussion, this current subpart will first sketch out the formal, classic business laws technically applicable to extension of credit and repayment of debt in Cameroon, including its informal sector, and then describe how our interviewees actually acquired their supplies and how they actually sold them to their customers.

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25. Again, in French, *friperies*; despite the English term, these products often are previously unworn, but are recycled from the developed world because of irregularities or changes in fashion.

26. See Dickerson, *Entrepreneurs*, *supra* note 14, at 187–89 (describing formal laws other than classic business laws, and other even non-legal institutions, that support business in the Global North).

### 1. Formal Business Laws Technically Applicable in Cameroon

The formal business laws in Cameroon, which for purposes of this discussion are limited to the laws governing an interviewee's purchase of goods from a supplier and the interviewee's resale to a customer, do technically and officially cover transactions within the informal sector.<sup>27</sup>

The discussion starts with OHADA because one of its laws applies to transactions between the supplier and the retail seller. The OHADA Treaty has created a series of institutions, including principally a Council of Heads of State and of Government, a Council of Ministers (legislature), a Permanent Secretariat (executive), a supranational Common Court of Justice and Arbitration, and a center for training legal professionals in OHADA laws (ERSUMA).<sup>28</sup> Pursuant to that treaty, the institutions have adopted and are helping to implement nine business laws that already provide substantial coverage of business transactions and relationships.<sup>29</sup> These laws are called "Uniform Acts" because, once adopted according to the procedures set out in the OHADA Treaty, the laws automatically and without modification become part of the internal domestic law of each of the OHADA member states, including Cameroon.<sup>30</sup> Furthermore, these Uniform Acts preempt and supersede any existing or future laws on the

27. See generally Claire Moore Dickerson, *Promises of Future Performance and Informal-Sector Transfers of Personal Property: The Example of Anglophone Cameroon*, 2011 ACTA JURIDICA 285, 288–94 (S. Afr.) [hereinafter Dickerson, *Future Performance*] (discussing formal laws applicable to consumer-retail seller, and supplier-retail seller transactions in Anglophone Cameroon).

28. OHADA Treaty, *supra* note 1, arts. 27–41 (describing OHADA institutions). See generally Mohammed Baba Idris, *Harmonization of Business Laws in Africa—An Insight into the Laws, Issues, Problems and Prospects*, in UNIFIED BUSINESS LAWS FOR AFRICA: COMMON LAW PERSPECTIVES ON OHADA 29, 35–37 (Claire Moore Dickerson ed., 2d ed. 2012) [hereinafter UNIFIED BUSINESS LAWS FOR AFRICA] (discussing the OHADA institutions).

29. Acte Uniforme relatif au Droit des Sociétés Commerciales et du Groupement d'Intérêt Economique, art. 908, Apr. 17, 1997, 2 J.O. OHADA 1, *revision adopted* Jan. 30, 2014, J.O. OHADA 1 (Special Edition, Feb. 4, 2014); Acte Uniforme portant sur le Droit Commercial Général, Apr. 17, 1997, 1 J.O. OHADA 1, *revision adopted* Dec. 15, 2010, 23 J.O. OHADA 1 [hereinafter GCL (the acronym for the usual translation, "General Commercial Law")]; Acte Uniforme portant Organisation des Sûretés, Apr. 17, 1997, 3 J.O. OHADA 1, *revision adopted* Dec. 15, 2010, 22 J.O. OHADA 1; Acte Uniforme portant Organisation des Procédures Simplifiées de Recouvrement et des Voies d'Exécution, Apr. 10, 1998, 6 J.O. OHADA 1; Acte Uniforme portant Organisation des Procédures Collectives d'Apurement du Passif, Apr. 10, 1998, 7 J.O. OHADA 1; Acte Uniforme relatif au Droit de l'Arbitrage, Mar. 11, 1999, 8 J.O. OHADA 1; Acte Uniforme portant Organisation et Harmonisation des Compatibilités des Entreprises, Feb. 22, 2000, 10 J.O. OHADA 1 [hereinafter UA Accounting]; Acte Uniforme relatif aux Contrats de Transport de Marchandises par Route, Mar. 22, 2003, 13 J.O. OHADA 3; Acte Uniforme relatif au Droit des Sociétés Coopératives, Dec. 15, 2010, 23 J.O. OHADA 1.

30. OHADA Treaty, *supra* note 1, art. 10 (referring to the supremacy of the Uniform Acts).

same subject throughout all member states.<sup>31</sup> The laws are enforced through the national judicial regimes, except when the cause of action would be appealed to the national supreme court. When a cause of action applying OHADA laws would otherwise be appealed to Cameroon's Supreme Court, it is instead appealed to OHADA's Common Court of Justice and Arbitration,<sup>32</sup> located in Abidjan, Côte d'Ivoire.

One of the Uniform Acts, commonly referred to as the General Commercial Law ("GCL"),<sup>33</sup> covers contracts relating to transactions between the suppliers and the interviewees, since the latter are not purchasing for their own consumption.<sup>34</sup> The GCL was amended in 2011, after the interviews occurred. The discussion below uses the numbering of the revised text with the former numbering in parentheses. It also indicates how the application of the new text differs from that of the former text.<sup>35</sup>

By its terms, the GCL controls transactions between *commerçants*.<sup>36</sup> It almost certainly controls, as well, transactions between *entreprenants*,<sup>37</sup> a new category introduced by the 2011 revisions and aimed at smaller entrepreneurs.<sup>38</sup> Thus it also controls relationships between *commerçants* and *entreprenants*. Because "*entreprenant*" is a neologism, the English translation sometimes used is "enterpriser." The retail sellers and at least some of the suppliers are probably enterprisers; alternatively, they are *commerçants*, sometimes translated as "economic operators." An economic operator is required to register with the government,<sup>39</sup> while an enterpriser must file a declaration.<sup>40</sup> While the text is somewhat opaque, it appears that a person who meets the "enterpriser" criteria but does not file a declaration resolves back into an "economic operator" even though the

31. *Id.* Uniformity of interpretation is protected by the Common Court of Justice and Arbitration, to which is appealed any litigation that would otherwise have been appealed to the national supreme court of a member state. *Id.* arts. 14–15.

32. *Id.* arts. 13–16.

33. See GCL, *supra* note 29.

34. *Id.* art. 234 (formerly art. 202).

35. See generally Dickerson, *Future Performance*, *supra* note 27, at 291–94 (discussing the GCL's application to the supplier relationship with the retail seller).

36. GCL, *supra* note 29, art. 234 (former art. 202) *et seq.*

37. *Id.* arts. 30, 234 (formerly art. 202).

38. *Id.* art. 30 (describing the *entreprenant* as having a low enough turnover to be within the OHADA accounting regime's category having the most simplified accounting responsibilities). The OHADA Uniform Act on Accounting is described *supra* note 29. The UA Accounting provides that the most simplified regime applies to companies whose annual turnover is up to 30 million FCFA (c. USD 60,000) for businesses engaged in trade, 20 million FCFA (c. USD 40,000) for artisanal businesses, and 10 million FCFA (c. USD 20,000) for service providers. UA Accounting, *supra* note 29, art. 30.

39. GCL, *supra* note 29, arts. 35 (formerly art. 19), 13–14 (substantially unchanged).

40. *Id.* art. 30 (new).

filings required of an economic operator have not been satisfied.<sup>41</sup> The GCL, a formal business law, by its terms governs sales transactions between or amongst economic operators, whether or not registered, and whether or not the status as economic operator results from failure to declare as an enterpriser. Thus this law governs the relationship between and among the interviewees and their suppliers. For the same reason, the GCL applies to sales transactions between the interviewees and those of their customers who themselves purchase for resale.

The GCL requires buyers, including interviewees purchasing from their suppliers, to pay the purchase price as the parties have agreed.<sup>42</sup> The contract determines the terms: if it allows the buyer to pay thirty days after delivery, with or without a stipulated interest component, that describes the interviewee's obligation.<sup>43</sup>

Further, the GCL creates implied warranties imposed on sellers.<sup>44</sup> Therefore, even if the interviewees did not borrow from their suppliers and thus had no credit obligations, they might have rights against the suppliers. If the contract were silent, the quality of the goods must be in conformity with samples or models if there were any, and otherwise the goods must be as expected in the trade.<sup>45</sup>

Sales by interviewees to customers for resale were governed by the GCL just as were the supplier-to-interviewee sales, except that the interviewees became the sellers. Almost all of the interviewees' sales were to consumers purchasing for their own use and not to customers purchasing for resale.<sup>46</sup> In that context, the interviewees remained either economic operators or enterprisers, but their customers, being consumers, were neither.<sup>47</sup> Thus, the GCL was not the formal law that applied to the vast majority of the interviewees' sales. Instead, non-OHADA national law applied to these transactions.

Where OHADA law does not apply, Cameroon, being formally bijural for historical reasons, has different non-OHADA law depending on the

41. Dickerson, *Future Performance*, *supra* note 27, at 288–94 (discussing effect of failure to register as economic operators or declare as enterprisers).

42. GCL, *supra* note 29, arts. 262–68 (formerly arts. 234–39) (setting out payment obligations).

43. *Id.* art. 268 (formerly art. 239) (“L’acheteur doit payer le prix à la date convenue et ne peut subordonner son paiement à une démarche du vendeur”).

44. *Id.* art. 255 (formerly art. 224) (imposing warranties).

45. *Id.*

46. *See supra* Part I.A.2 (describing the participants) and Part I.B.2 (describing how the interviewees in fact did business).

47. GCL, *supra* note 29, arts. 2–4 (numbering unchanged) (definition of *commerçant*, “economic operator”), 30 (new) (definition of *entreprenant*, “enterpriser”).

transaction's geographic location.<sup>48</sup> The formal law that did apply to these transactions in the regions of Cameroon that had been under British colonial rule prior to their 1961 independence was the British common law of contracts as applied prior to independence,<sup>49</sup> except as superseded by Cameroon's post-independence laws and regulations.<sup>50</sup> With the same caveat about the effect of supervening domestic law in the regions that had been under French colonial rule prior to their 1960 independence,<sup>51</sup> the basic formal law applicable to transactions between the retail seller and consumer was the law of obligations contained in Cameroon's Civil Code.<sup>52</sup>

For purposes of sales between the interviewees and consumers, the formal law that modified common law or the Civil Code, as appropriate, is Cameroon's consumer law (Cameroon Consumer Law).<sup>53</sup> While this consumer law has provisions concerning labeling, and a general provision obligating the commercial seller to focus on satisfying the consumer expectations on price and quality,<sup>54</sup> the common law and Civil Code continued to govern the basic contractual relationship between the parties, including recovery in the event that the retail seller has extended credit. This combination of Cameroon Consumer Law together with, in the Anglophone regions of Cameroon, common law applied to all sales by the interviewees to consumers.

48. See Ordinance No. 72/4, Aug. 26, 1972, organizing the judiciary system in Cameroon. *See also* CONSTITUTION OF THE REPUBLIC OF CAMEROON, Jan. 18, 1996, art. 68 (laws of the preceding, federated state continue as long as they are not repugnant and not amended). *See generally* Charles M. Fombad, *An Experiment in Legal Pluralism: The Cameroonian Bi-Jural/Uni-Jural Imbroglio*, 16 U. TASMANIA L. REV. 209, 216 (1997) (explaining the limitations of the argument that bijuralism has the constitution's protection through its art. 68). On the other hand, the country undeniably is bilingual. CONSTITUTION OF THE REPUBLIC OF CAMEROON art. 1(3). *See generally* Dickerson, *Future Performance*, *supra* note 27, at 288 n.7 (discussing Cameroonian bilingualism and bijuralism).

49. Jean Alain Penda Matipé, *The History of the Harmonization of Laws in Africa*, in UNIFIED BUSINESS LAWS FOR AFRICA, *supra* note 28, at 7, 16 (discussing Cameroonian legal history).

50. *See generally* Dickerson, *Future Performance*, *supra* note 27, at 289 (discussing pre- and post-independence Cameroonian law, other than the GCL, applicable to contracts).

51. Penda, *supra* note 49, at 16 (discussing Cameroon history).

52. For an example of the French-influenced Cameroonian domestic law applicable to a transaction not governed by the GCL, *see* Cameroon Civil Code, Title VI "de la vente", Ch. I "de la nature et de la forme de la vente," Ch. V "des obligations de l'acheteur", arts. 1582–1657 (containing the law of obligations). *See also* GCL, *supra* note 29, art. 237 (new) (stating explicitly that commercial sales remain subject to domestic law not contrary to the GCL articles on commercial sale).

53. Loi 90/031 du 10 août 1990 Régissant l'activité commerciale au Cameroun [hereinafter Cameroon Consumer Law]. This was the law in effect during the interview, but since that time it has been replaced by Loi-Cadre 2011/012 du 6 mai 2011 portant protection du consommateur au Cameroun.

54. Cameroon Consumer Law, *supra* note 53, arts. 20–21, 3, respectively.

Inevitably, a supplier's willingness to extend credit to an interviewee who was a reseller, and the interviewee's willingness to extend credit to any customer, whether or not a consumer, would depend in part on whether the formal law was perceived by the lender to protect a creditor's rights with some reliability. A purchaser's willingness to buy might similarly depend on the effectiveness of warranties, whether contractually provided, implied at law, or directly imposed by statute. If the purchaser wanted the warranties, the willingness to buy would in turn depend on the purchaser's expectation that the warranties would be respected. No matter how elegantly drafted the applicable formal laws were, they would be perceived as reliable only if they were predictably enforced. Because the GCL, the common law of contracts, the Civil Code, and the Cameroon Consumer Law are formal laws, the formal enforcement method was and remains through Cameroon's national judicial system.<sup>55</sup>

If no borrowing occurred, there was again no credit-related right or obligation on the part of the interviewees or their counterparties. Nevertheless, the retail-seller might not only have rights against the supplier under an implied warranty of quality, as provided by the GCL, but also might have a similar obligation under the Cameroon Consumer Law to a purchaser who was a consumer.

The next subpart considers how the interviewees in fact transacted business. If they tended not to receive or extend credit, and if, when they did extend credit, they tended not to use the formal courts to enforce broken promises, these behaviors cannot prove, but would provide a good indication that formal business law was not in fact applied in those circumstances. Similarly, buyers' insistence on warranties concerning quality would indicate the viability of the laws creating those rights. For its part, buyers' uniform failure to insist on such rights would not prove that the formal laws failed to provide protection; there could be market reasons, such as the preference for lower prices, that would induce buyers to refuse the benefit of warranties. Nevertheless, buyers' consistent neglect to demand a warranty could provide further indication that they did not perceive the laws as reliable.

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55. See *supra* Part I.B.1 (describing how OHADA Uniform Acts, including the GCL, are first considered by national courts and pass to the Common Court of Justice and Arbitration, if at all, only upon final appeal).

## 2. *How the Participants Conducted Business in the Informal Sector*

Only one of the participants had registered as an economic operator. Because, at the time, the option of the “enterpriser” status did not yet exist, every seller was technically an economic operator and obligated to register as such.<sup>56</sup> Nevertheless, when the factual criteria of the economic-operator status were met, the rights and obligations under the GCL still applied to the sellers, including the requirements concerning contracts of commercial sale,<sup>57</sup> as did basic contract law, the Civil Code, and consumer law.<sup>58</sup> As a general matter, the interviewees reported neither benefiting from nor being constrained by the provisions of formal business law. In fact, formal business law appears to have been irrelevant to the interviewees’ daily operations.

As is typical in business, none of the interviewees produced all the items sold.<sup>59</sup> This was true even for the service providers: the tailor acquired cloth from as far as China; the hairdresser purchased hair extensions (“*meches*”)<sup>60</sup> and other accessories principally from the main commercial town, Douala, ninety minutes away by private car and far longer by local jitney; and the restaurateur obtained most of the raw material from local markets. A vendor of goods reported going to Dubai, Turkey, and Europe to procure supplies, another went to China, and yet another traveled to Ghana, Benin, and Mali. The sellers of “second-hand goods” purchased their inventory at an informal auction, straight from the palettes. Three vendors of produce purchased their goods in a larger market in the same South-West Region of Cameroon, or in Douala.<sup>61</sup>

Two types of issues are particularly salient when considering the application of formal laws in a business context, especially concerning sales: first, the ability to borrow and the willingness to lend, and second,

56. GCL, *supra* note 29, arts. 35 (formerly art. 19), 13, 14 (substantially unchanged). *See generally supra* Part I.B.1 (discussing formal laws applicable in OHADA countries, including Cameroon).

57. GCL, *supra* note 29, art. 234 (formerly art. 202) (describing commercial contracts). *See generally supra* Part I.B.1 (discussing the obligation to register and the applicability of the GCL commercial-sales-contract provisions to transactions between and among any combination of economic operators and enterprisers, even absent registration or declaration, as appropriate).

58. *See generally supra* Part I.B.1 (discussing common law contract law and the Cameroon Consumer Law).

59. For further descriptions of the interviewees at work, from different perspectives, *see generally* Dickerson, *Entrepreneurs*, *supra* note 14; Dickerson, *Future Performance*, *supra* note 27.

60. From the French for a lock of hair (*la mèche*); appears to mean a hair extension in Cameroon’s Anglophone regions.

61. Douala is in the Littoral Region, not in the Anglophone South-West and North-West Regions.

the obligation to meet standards of quality specified in express or implied warranties.

*a. Extension of Credit*

With respect to loans, for retail sellers like the interviewees, loans can be part of the transaction and either received from the supplier or extended to the customer. Concerning loans from suppliers, all the interviewees initially reported that they paid cash to their suppliers for all supplies, despite the great diversity of inventory and experience. When pressed, two said that they sometimes borrowed inventory from their suppliers. Of these, one sold produce and repaid the loan out of the proceeds from the sale of that inventory, after the market day. The other had a lean-to well-stocked in dry goods, essentially non-perishables, and apparently repaid the supplier-provided loan out of general revenues. Essentially, the suppliers had an account receivable from the interviewees, who had an account payable to the suppliers.

Only those two vendors who borrowed in kind were able to draw capital from their commercial transactions through the use of trade payables. It was only these two who were able to use the commercial transactions the way a purchaser with credit can in the Global North. Of course, conversely, none of the other vendors owed obligations to their suppliers for which legal redress could be required.<sup>62</sup>

Before considering whether an interviewee as seller would extend credit, we will first consider the nature of the customer. The interviewed vendors were inevitably sandwiched between their supplier and the customer,<sup>63</sup> and that customer might be intending to resell or might be a consumer purchasing for own use. It is hard to distinguish between the two because even a relatively modest purchase—four pairs of shoes for example—could be for resale. The interviewees surmised that most of

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62. More broadly in connection with their business activities, the vendors did have obligations. One vendor expressly reported borrowing from a Ngangi, or tontine, volunteering that it was a privilege; in other words, there was very high incentive to repay timely. However, this borrowing was not directly related to the sales transaction. To further complicate the legal picture, a borrowing from a tontine appears not to be a commercial act but, rather, a “civil” act under the civil rather than commercial regime. See Anne Marie Fone, née Mdontsa, *Le Secteur Informel Camerounais au regard du Droit Commercial*, in 2 ANNALES DE LA FACULTÉ DES SCIENCES JURIDIQUES ET POLITIQUES 119, 120–21 (Presses Universitaires d’Afrique 1998) (asserting that tontines are closer to associations, which are non-commercial, than to banks, which are commercial). This borrowing thus is not a commercial act for purposes of GCL articles 2 and 3.

63. This is not surprising, as it is definitionally the case for any retail seller who does not manufacture or otherwise produce the inventory.

their customers were consumers buying for their own use, but conceptually both a customer for resale and a consumer could request an extension of credit.

Considering the relationship between the interviewee as retail seller and the seller's client, the seller might be willing to extend credit in order to increase the pool of potential purchasers, or to deepen the relationship with a particular customer by using credit to signal trust. Upon initial discussion, all sixteen interviewees who responded to the question as to whether they ever extended credit said at first that they always demanded cash payment from their customers. When pressed, however, all sixteen respondents admitted to extending some loans to their customers.

Three sellers reported protecting themselves by using a layaway arrangement: the buyer received the goods only upon full payment, and, as one seller noted expressly, even this well-protected credit was extended only if the interviewee trusted the buyer. One of these sellers lent for up to one month; this interviewee was among the most formally established vendors and sold non-perishable goods on the installment plan. Another vendor, a tailor, asked for payment before delivery of the completed garment, though sometimes extended credit if the customer was trusted. Three other interviewees also emphasized that they extended credit only if they trusted the customer (one adding that the customer also had to be polite). Among the remaining nine interviewees, some would lend for one or two days, while others lent until the next market day or even for a week.

Of all the retail sellers who extended credit, only two claimed to offset at times the credit by a slight increase in the price. One seller, who sold second-hand goods, said that the goods have no price, and that if the vendor thought the item was pretty, the price was higher.<sup>64</sup> This vendor, who had a university degree and was particularly sophisticated and articulate, emphasized that the vendor demanded whatever the market would bear, and that the concept of separating out an interest component to cover the time-value of money and any risk was irrelevant in that context.

In terms of enforcement, not one of the interviewees reported going to the formal court if unpaid. When vendors of goods were asked what they did when a customer who had borrowed failed to repay, five of the seven sellers of perishable goods said that they did nothing. The remaining two reported going to the police or to an informal court within the market.

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64. « Prix n'est pas fixé à l'avance ; la friperie n'a pas de prix : je paie pas cher, mais je vends cher si je trouve joli. » (“The price isn't fixed in advance [of the potential sale]; second-hand goods have no price: I get them cheap, but I sell high if I think them pretty.”).

Similarly, seven of the ten sellers of non-perishable goods said that they did nothing when a customer defaulted,<sup>65</sup> while two reported that they would go to the police. One of these two noted that this step had been required only twice in eight years of operation. A third seller of non-perishables would go instead to the *gendarmierie*, a paramilitary organization within the Ministry of Defense,<sup>66</sup> because it was closer to that vendor's business establishment than were the police. Having the police or paramilitary act as judge, jury, and sheriff-bailiff is not formal enforcement of the formal law; rather, it is an ad hoc reinforcement of a basic norm to repay obligations and is highly irregular from a formal-law perspective.<sup>67</sup>

The vendors provided other examples of ex-post resolutions in the event of unpaid debt, but these resolutions did not depend on authorities of any kind. Two of the seven sellers of non-perishables who said they did nothing when a customer defaulted, added that the clients would come back and that the vendor would get repayment at that time. One of these sellers, a tailor who advanced credit as reluctantly as the rest of the vendors, deployed not only the ex-ante tactic of typically holding back the goods until fully paid, but also used ex-post self-help. This vendor noted that if a client to whom credit had been extended did not pay, the vendor would wait until the client returned in search of a new garment, at which point the client would "fall into [the seller's] hands." In other words, the client would then be eager to settle the pre-existing obligation in order to obtain the new item.

These references to returning clients were interesting because the vendors tended to say that there were very few repeat-play relationships. This was true even for the five vendors who explicitly mentioned "trust" as an important factor in any decision to extend credit.<sup>68</sup> Interestingly, the

65. Seventeen vendors responded to this question, although only sixteen admitted to extending credit.

66. David K. Chiabi, *Cameroon*, in *ENCYCLOPEDIA OF LAW ENFORCEMENT* (2004), available at <http://knowledge.sagepub.com/view/lawenforcement/n416.xml>.

67. For violations of OHADA law, for example, the OHADA Treaty is clear that the national judicial system, up to the level of the Supreme Court, is responsible for settling disputes. See OHADA Treaty, *supra* note 1, arts. 13–14; see generally *supra* Part I.B.1 (discussing, *inter alia*, the OHADA regime).

68. The tailor was using market force, of course, but also more generally a relationship with clients. The importance of the relationship is central to the other vendors' reference to trust. The literature concerning the impact of interactive relationships touches on the concepts of cooperation and the prisoners' dilemma. Iconic writings in the area include those of Stewart Macaulay and Lisa Bernstein. Stewart Macaulay, *Non-Contractual Relations in Business: A Preliminary Study*, 28 AM. SOC. REV. 55 (1963) (discussing businesspeople in apparently iterative relationships, who behave to a standard higher than the minimum required by contract law); Lisa Bernstein, *Opting Out of the Legal*

vendors emphasized not only that they changed suppliers depending on availability of goods, but also that they benefited from very little customer loyalty. Sellers of second-hand goods were particularly clear that repeat business was not part of their experience. Thus, at least as between the vendor and customers, the overall reality appears to be that while established iterative relationships did exist between interviewees and some customers, that kind of repeat relationship was not the norm. If anything, the relationship between the interviewees and their suppliers tended to be even more arms-length than with customers. Both of these observations are consistent with the interviewees' general reluctance to extend credit, and the suppliers' general refusal to extend it, especially in an environment where formal business laws do not provide these business transactions with an exoskeleton of predictability and enforcement.

In summary, very few interviewees—only two of twenty—were able to use the transaction with their suppliers to increase capital, because almost all suppliers demanded cash payment. On the other side, the interviewees struggled to extend their market and reported that, where forced by the exigencies of the market to extend credit, they did so reluctantly. Law as an enforcement mechanism was not directly mentioned. Indeed, not one vendor mentioned going to the formal courts.

As is clear, the formal business laws that are designed to increase businesspeople's ability to do business effectively and that technically do apply to all businesses in Cameroon, whether in the formal or informal sector, do not—in practice—apply to the interviewees. Despite the formal business laws, the vast majority of interviewees did not find suppliers willing to extend credit and they themselves remained reluctant to provide credit to their own customers. Unlike a retail seller in the Global North, formal business laws neither helped these vendors to draw capital from their suppliers through the use of trade payables derived from their purchases, nor did it protect the vendors when they extended credit to customers as a strategy to increase their markets.

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*System: Extralegal Contractual Relations in the Diamond Industry*, 11 J. LEGAL STUD. 115 (1992) (discussing the closed, iterative world of diamond merchants). For application of the concept in the context of the informal sector, see Claire Moore Dickerson, *OHADA's Proposed Uniform Act on Contract Law*, 13 EUR. J. L. REFORM 462, 475 (2011). *But see supra* note 5 and accompanying text (reporting that the vendors in the pilot study, and informal-sector workers in general, typically do not have iterative relationships).

*b. Quality and Warranties*

Even if interviewees did not lend or borrow, they could still have rights and obligations legally enforceable under formal law. Even in the absence of loans, these vendors have a cause of action against suppliers pursuant to the GCL on warranties, and obligations to customers as to the goods' quality. Depending on whether the interviewees sell to resellers or to consumers, these obligations are pursuant either to the GCL, or to the applicable common law or Civil Code, plus the Cameroon Consumer Law.<sup>69</sup> Not one interviewee described bringing a proceeding against a supplier, or being subject to a suit for reasons of inadequate quality.

Interviewees reported relatively arm's length relationships with both suppliers and customers. The interviewees focused neither on their rights against suppliers, nor on their obligations to customers. That silence may be at least in part because the products were chiefly clothing and produce, and these are susceptible to inspection. The interviewees as buyers, like their customers, could inspect before purchasing. Only one vendor sold closed containers, such as cans and packages of food. In the case of the clothing, some of it was clearly understood to be "seconds," making assertions of inadequate quality difficult in any event.

In brief, purchasers deep in the informal sector did not appear to make use of the rights the formal law provided regarding quality. Similarly, the informal-sector entrepreneurs failed, both as buyers and as sellers, to extract from formal law the protection of credit that increases credit's availability.

## II. FORMAL TAX LAW AS THE LABORATORY FOR FORMAL BUSINESS LAW'S IMPLEMENTATION IN THE INFORMAL SECTOR

Just as formal business law exists in Cameroon, so does formal tax law. At first, the fact of tax collection in the informal sector suggests that formal tax law is being enforced there. If that were true, formal tax law could offer a template for the introduction of other formal laws into the informal sector. It could demonstrate how formal business laws, for example, can be introduced into the informal sector to enhance, rather than disrupt, the informal-sector entrepreneurs' contributions to their families and the economy.

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69. *See supra* Part I.B.1 (discussing quality obligations and warranties under Cameroon's formal law: GCL between economic operators or enterprisers; common law as modified by the Cameroon Consumer Law for relationships between economic operators or enterprisers, and consumers).

However, formal tax law is not implemented in the informal sector: the tax authorities obtain payment from taxpayers that formal tax law does not permit. Taxpayers, too, fail to comply with formal tax law even though they do make payments to the government. These payments are not an example of voluntary compliance with formal law. Instead, and as is further discussed in the next section, culminating in the discussion at Part II.B.2, they are the result of an exercise of raw government power made easier by the inevitable presence of money in any context concerning taxes.

*A. Formal Tax Law Regime and Actual Tax Collection Experienced by the Informal Sector: The Signs of Success*

While some taxpayers may fear leaving the informal sector for the formal sector because of tax exposure, the reality is that even those deep in the informal sector do pay taxes. In fact, as we will see, they may well be paying all taxes due, and then some. Taxation is thus a primary location for the interaction of informal-sector workers with government and its formal laws, and is experienced by all the vendors.<sup>70</sup>

*1. Formal Tax Laws*

Although the amount of vendors' annual sales is important to understanding their tax exposure, we did not ask our interviewees for that figure because prior efforts were met with laughter and mistrust. Further, it is difficult to assess the accuracy of a vendor's statement about turnover just by looking at the vendor's establishment. For example, one interviewee claimed not to have any permanent location at all, but explained that supplies obtained in Cameroon were destined for a store the vendor owns in the Republic of Congo. Yet another vendor who sold second-hand goods from a lean-to reported supplying purchasers in the

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70. See generally INTERNATIONAL FINANCE GROUP, WORLD BANK, DESIGNING A TAX SYSTEM FOR MICRO AND SMALL BUSINESSES, GUIDE FOR PRACTITIONERS (2007), available at [http://rru.worldbank.org/Documents/Designing\\_Tax\\_Systems.pdf](http://rru.worldbank.org/Documents/Designing_Tax_Systems.pdf). There is an argument that Cameroon is undertaxed. See, e.g., Benjamin Fomba Kamga & Claude Mvolo Bessala, *Taxation of Goods and Services of the Informal Sector in Cameroon* (Centre for the Study of African Economies Annual Conference: Economic Development in Africa, Paper No. 489, 2010), available at <http://www.csae.ox.ac.uk/conferences/2010-EDiA/papers/489-FombaKamga.pdf>. If that is so, the pilot study suggests that the problem of paying less in taxes than legally obliged may be at the higher levels of income, and not among the smaller entrepreneurs of the informal sector.

entire CEMAC<sup>71</sup> region. A visual assessment of the interviewee's premises could not help substantiate either claim, although there was no basis on which to challenge the assertions either.

Thus, we cannot know the actual or even alleged revenues of the interviewees. On the other hand, Cameroon's Institute of Statistics reports that in the period 2005–10, average and median monthly revenues in urban areas, such as where the pilot study's markets were located, were 70,400 Central African Francs (FCFA) and 37,700 FCFA, respectively.<sup>72</sup> For Cameroon as a whole, the figures were 39,400 FCFA and 15,000 FCFA.<sup>73</sup> Given those figures, average annualized revenues in urban areas were roughly 845,000 FCFA and the median revenues in urban areas were roughly half that, while across Cameroon the annualized figures were 473,000 FCFA and 180,000 FCFA, respectively.<sup>74</sup>

There are four relevant types of income- or sales-related taxes potentially applicable to petty traders: income tax, the value added tax,<sup>75</sup> the “discharge tax” (*impôt libérateur*),<sup>76</sup> and the “business license” (*patente*).<sup>77</sup>

71. *Communauté Economique et Monétaire de l'Afrique Centrale* (CEMAC; in English, “Economic and Monetary Community of Central Africa”), whose members are Cameroon, Central African Republic, Chad, Republic of Congo, Equatorial Guinea, and Gabon. *Commaître la CEMAC*, CEMAC, <http://www.cemac.int/apropos> (last visited Sept. 29, 2013).

72. Roughly USD 140.80 and USD 75.40, respectively. INSTITUT NATIONAL DE LA STATISTIQUE, DEUXIÈME ENQUÊTE SUR L'EMPLOI ET LE SECTEUR INFORMEL AU CAMEROUN (EESI 2) 78 (2011) [hereinafter EESI 2], available at [http://www.statistics-cameroon.org/downloads/EESI2/Rapport\\_Principal\\_de\\_la\\_phase\\_1\\_EESI\\_2\\_du\\_20\\_03\\_2012.pdf](http://www.statistics-cameroon.org/downloads/EESI2/Rapport_Principal_de_la_phase_1_EESI_2_du_20_03_2012.pdf) at 78. Central African Francs (*Franc de la Coopération Financière en Afrique Centrale*) is the currency issued, in this case, by the Banque des Etats de l'Afrique Centrale (BEAC) within the CEMAC countries See *Histoire de l'Emission Monétaire en Afrique Centrale*, BEAC, <https://www.beac.int/index.php/component/content/article/49-billets-a-pieces/185-histoire-de-lemission-monetaire-en-afrique-centrale> (last updated 2011).

73. Roughly USD 78.80 and USD 30.00, respectively. EESI2, *supra* note 72, at 78. See generally Fomba Kamga & Bessala, *supra* note 70, at 7 (the statistics appear to include in *revenus* the gross amount received by independent workers and the salaries of salaried workers, and that is how the figures are used here; if that is not correct, then the sales figures for the informal sector must be increased using an assumption concerning what percentage of sales is reflected in the *revenus*).

74. Annualized average income of 845,000 FCFA or 473,000 FCFA in Cameroon would equal roughly USD 1700 and USD 950, respectively, for informal-sector workers. That is significantly below the per-capita GDP for all Cameroon, estimated in 2010 at USD 2300. CIA, *World Factbook, Cameroon*, <https://www.cia.gov/library/publications/the-world-factbook/geos/cm.html> (last visited Dec. 15, 2011). On the other hand, households whose primary source of income is an independently employed person in the formal sector on average earned FCFA 212,000 (roughly USD 424) monthly, or more than twice as much as households where the primary source is in the informal sector, being over 2.5 FCFA million per year, or roughly USD 5100. See EESI2, *supra* note 72, at 59.

75. See, e.g., Gen. Tax Code, *supra* note 20, § 125.

76. See, e.g., *id.* § C 45.

77. See, e.g., *id.* § C 8 (business license and *patente*).

The most sophisticated tier applicable to small businesses is the basic income tax. A taxpayer with annual sales below fifteen million FCFA,<sup>78</sup> which likely includes all but one of our vendors,<sup>79</sup> pays the discharge tax instead.<sup>80</sup> A taxpayer under the latter regime is not subject to the value added tax either.<sup>81</sup> The taxpayer's remaining major obligation is to obtain a business license if that is applicable: as a basic concept, all natural persons involved in a business activity<sup>82</sup> are required to apply for a business license.<sup>83</sup> A person subject to the discharge tax, however, is also exempt from the business license,<sup>84</sup> and the threshold for passage from discharge tax to business license is attained when revenues exceed fifteen million FCFA.<sup>85</sup> Thus, any person who has revenues below fifteen million FCFA, even if otherwise subject to income tax, need comply only with the requirements of the discharge tax.<sup>86</sup> Because the statistical reports from

78. Roughly USD 30,000.

79. This vendor, who sells from a well-appointed, enclosed store within Cameroon's largest market, proudly indicated that the discharge tax is for the petty traders ("*les petits*," a term also used to describe children, but used here in a condescending way), while the business license, applicable to this vendor's business, was for the big operators ("*les grands*," a term that also means adult).

80. Gen. Tax Code, *supra* note 20, § 27(2) (natural persons subject to the discharge tax are exempt from income tax), § C.47(12) (a taxpayer subject to the discharge tax becomes subject to the business license when sales exceed fifteen million FCFA). The analysis in the rest of this paragraph explains why this Article assumes, for purposes of discussion, that the interviewees are subject to discharge tax and not even the business license.

81. Taxpayers with sales under fifteen million FCFA are also exempt from value added tax. *See id.* § 125(3) (« Les personnes physiques ne sont assujetties [à la Taxe sur la Valeur Ajoutée (TVA)] qu'à condition qu'elles réalisent un chiffre d'affaires annuel minimum de 15 millions de francs [cfa]. »). Of course, a taxpayer who is also a consumer of an end product pays as part of the purchase price any value added tax embedded in that price; however, the value added tax is not applicable to our interviewees as commercial operators assumedly with annual sales below fifteen million FCFA.

82. Not relevant to our pilot sample, none of whom are juridical persons, the more sophisticated accounting requirements apply to the latter as well. *Id.* § 73(1) (relative to accounting obligations of individuals and companies).

83. *Id.* §§ C 8, C 9 (requirement to get a business license, sometimes referred to as a "*patente*" even by Anglophones). Taxpayers with sales in excess of fifteen million FCFA do have to obtain a business license, although whatever they have paid towards the discharge tax is credited towards the business license. *Id.* §§ C 47(12) (« Lorsque pour un contribuable soumis à l'Impôt Libérateur, des éléments positifs permettent de déterminer un chiffre d'affaires supérieur à 15 millions, . . . »), (13) (« Dans ce cas l'Impôt Libérateur acquitté constitue un acompte à valoir sur le principal de la contribution des patentes. »).

84. *Id.* § C 11(15) (exclusion for those obligated to obtain a business license; the text, if not the spirit, seems to protect also the taxpayer who is obligated to obtain that permit but fails to do so, as it excludes "persons liable to the discharge tax," i.e., "les personnes assujetties à l'impôt libérateur" (emphasis added)).

85. *Id.* § C.47 (15) (the business license becomes applicable when there is positive evidence that revenues exceed fifteen million FCFA).

86. Plus, with respect to income tax, possibly those who have sales of exactly fifteen million FCFA. There is a discontinuity at sales of exactly fifteen million FCFA, since General Tax Code § 132(4) stipulates that the more sophisticated "basic [income] taxation system" applies at sales of exactly fifteen million FCFA, while sections 61(1) & 132(3) say that this regime applies between

Cameroon indicate that most commercial operators are well below the fifteen million FCFA threshold, as are the vast majority of our pilot sample, the discussion that follows assumes that the discharge tax is applicable.

The discharge tax is fundamentally progressive and based on the taxpayer's profession. The local government (the Council) determines the actual amount of tax (from the interviewees' comments, it is frequently the tax collectors who in fact do so) within brackets established by the Code. Thus, for example, a hairdresser with up to three employees is in Category A and is taxed up to 20,000 FCFA per year.<sup>87</sup> A seller of beverages is in Category C, unless alcohol is included, or unless the trader's annual turnover is between ten million FCFA and fifteen million FCFA, in which case the taxpayer is in Category D. The Category C taxpayer is taxed between 20,001 FCFA and 40,000 FCFA per annum, while the Category D taxpayer is taxed at between 50,001 FCFA and 100,000 FCFA per annum.<sup>88</sup>

In addition to the four basic types of taxes, which are the most prominent taxes, there are multiple other taxes and fees. Supplemental to the discharge tax or, in some cases, the business license, both of which are Council taxes,<sup>89</sup> Cameroon's General Tax Code imposes another twenty-seven taxes, fees or levies, depending on how one counts. They include a fee for occupying the public way.<sup>90</sup> There are also surcharges for "local development,"<sup>91</sup> levies relating to the possession or slaughter of cattle,<sup>92</sup> and a tax for sanitation.<sup>93</sup> There are even charges supplemental to the cost of the basic ticket, for the privilege of boarding a bus.<sup>94</sup>

Although there are many Council fees, the ones most relevant to this project are those directly applicable to selling in a market.<sup>95</sup> These fees are

(*entre*) fifteen million and fifty million, suggesting that "*entre*" includes both fifteen million and fifty million. If that is the case, a taxpayer at exactly fifteen million FCFA of revenues would have an argument that the ultrasimplified discharge tax (*Impôt Libérateur*) applies.

87. Gen. Tax Code, *supra* note 20, § C 46, roughly USD 40. Also in Category A are "[t]ailors or dressmakers with less [sic] than five machines, apprentices or employees, or working alone," providing an incentive to hide sewing machines from the inspectors.

88. *Id.* (roughly USD 40–80 for Category C, and USD 100–200 for Category D; there are many more subcategories within each category than those included here).

89. They are in the Gen. Tax Code, *supra* note 20, Book Three: *Local Fiscal Systems*.

90. Gen. Tax Code, *supra* note 20, §§ C 91–C 93.

91. *Id.* §§ C 57–C 60.

92. *Id.* §§ C 63–C 67.

93. *Id.* § C 77.

94. *Id.* § C 99.

95. *Id.* §§ C 80–C 90. The very next section, § C 91, is related as well, as it covers the "temporary occupation fees of the public thoroughfare" (*occupation temporaire de la voie publique*).

essentially a head tax and thus are divided between fixed fees, generally applicable to relatively stable traders,<sup>96</sup> and the daily fees applicable to occasional vendors.<sup>97</sup> The occasional vendors and those without a “permanent place in the market” pay a daily fee set by the municipal Council within a statutorily mandated range, in this case, between 100 FCFA and 500 FCFA.<sup>98</sup> The interviewees with the most impermanent locations chiefly described payments of 100 FCFA, although one mentioned 200 FCFA and another 500 FCFA.<sup>99</sup> These head taxes are described by our interviewees, both in English and in French, as “tickets,” a term the Code also uses but does not define.<sup>100</sup>

## 2. Actual Tax Collection

All these fees, together with the discharge tax, are formal taxes enshrined in Cameroon's General Tax Code,<sup>101</sup> and are applicable to our interviewees so long as their annual sales are below fifteen million FCFA. These are the formal taxes that the sellers must pay, and they report paying them. The formal tax system created pursuant to formal law is carefully designed to collect even from people primarily in the informal sector. Indeed, vendors can hide items of inventory in order to appear to be below that fifteen million FCFA threshold, and thus subject to discharge tax

96. *Id.* §§ C 81–C 83.

97. *Id.* §§ C 84–C 86.

98. *Id.* § C 84(1). Roughly USD 0.20 and USD 1.00, respectively.

99. Roughly USD 0.20, USD 0.40, and USD 1.00, respectively.

100. *Id.* § C 86(1).

101. Especially in rural areas, there are also informal taxes. The payments in cash or service are taxes in the sense that they are organized by public officials, but informal in the sense that they are not explicitly authorized or enforced by the government. Instead, local social pressure is applied to force conformity. These informal taxes fund, through classic and sweat equity, informal investments in infrastructure and other public goods. See Benjamin A. Olken & Monica Singhal, *Informal Taxation*, 3 AM. ECON. J. APPLIED ECON. 1, 3, 11 (Oct. 2011) (describing, *inter alia*, an informal tax system, especially in rural areas, and rates comparable to subnational units' formal tax in developed countries). The interviewees, who all spoke from non-rural, urban markets, described payments that they made for security, for trash pick-up, and for sanitary facilities. Some, especially for the sanitary facilities, appeared to be fully entrepreneurial efforts by private parties. Some of the trash pick-up and security seem to have been organized at least in part by market officials who were described as having at least a semi-official capacity. The definition of “official” is complicated by the role of tribal leaders. See AMBE J. NJOH, SELF-HELP WATER SUPPLY IN CAMEROON—LESSONS ON COMMUNITY PARTICIPATION IN PUBLIC WORKS PROJECTS (2003) (describing a water project in Anglophone Cameroon, and emphasizing the role of tribal as well as regional governmental officials). This Article discusses the private and semi-private payments only to describe failures of the formal system, as the focus of this discussion is on the fully formal tax regime enshrined in Cameroon's General Tax Code. The extent of voluntariness of formal and informal tax payments are, of course, closely related. See *infra* Part III.A (discussing tax morale, concerning the voluntariness of formal-tax payments).

instead.<sup>102</sup> The same general strategy applies to efforts to be placed in a lower “category” of discharge tax. For example, a tailor could hide sewing machines to have fewer than five and thus be in the lowest taxable category, “A.”<sup>103</sup> One vendor explicitly described hiding much of the tools of the trade during the two periods each year when the tax inspectors were expected, in order to suggest a more modest operation, but even those businesspeople pay some taxes. The smallest traders in the markets reported that tax collectors came by regularly to collect the 100 FCFA daily fees.

Whether the vendors represented their tax payments accurately or not, many in our small sample apparently believed that they were paying taxes that were not in fact owed. As an example, one of the vendors was perfectly aware that the tax authorities were not permitted by the code both to collect the discharge tax and to require a business license.<sup>104</sup> This vendor, accompanied by others claiming to have been subjected to the same unauthorized collection of taxes, brought a complaint to the local government, the Council. The taxpayer reported that the entire group was unceremoniously ushered out of the building, without having their concerns addressed.

As a general matter, allergy to taxation is a common theme. Only one vendor was calm and uncomplaining about taxes, while another paid no Cameroonian taxes and claimed not to owe any because allegedly the vendor was doing business only in and paying taxes to the Republic of Congo. All eighteen of the remaining vendors in our study were very precise about their concerns: they bemoaned the lack of transparency as to how their exposure was calculated, the tax collectors’ failure to offer legally mandated receipts in exchange for payments,<sup>105</sup> and other irregularities including being charged by the government auditors for audits, and being compelled to pay bribes.<sup>106</sup>

102. Gen. Tax Code, *supra* note 20, § C.15. Note that if sales are to be determined, for example to establish the business license, an exemption from that obligation and the application of the discharge tax, or the applicability, for example, of the discharge tax’s highest category (category D), and if the tax authorities cannot ascertain what are the sales, these are deemed to be ten times the inventory at its sales price. *Id.*

103. *See supra* note 87 (discussing the provision relating to sewing machines). Category A includes “[t]ailors or dressmakers with less [sic] than five machines . . .” Gen. Tax Code, *supra* note 20, § C.46(a) (Discharge tax, Category A).

104. *See supra* note 84.

105. Gen. Tax Code, *supra* note 20, §§ C.47(6), C.128(3) (respectively, the obligation of tax-authority representatives to issue receipts for the discharge tax, and for Council levies including the market tax).

106. In the study, two interviewees admitted paying bribes, another said that controllers would borrow, yet another reported that the controllers would demand 200 FCFA for having come to do the

Another common complaint was the lack of services received in exchange for the taxes. The interviewees reported that some of the security and even of the trash pick-up were provided through privately organized payments to privately contracted workers. It is possible that the taxpayers were confused as to whether they were paying a private contractor or the Council via a separate fee. As noted above, the sanitation fee, for example, is part of the Council's "local development tax."

Indeed, at least some of the complexity and concomitant lack of transparency may be due to the many ways that the government interacts with business people. The municipal Council plays many roles including that of the landlord to some vendors, thus charging rent as well as collecting taxes. When the same authority demands payment for two purposes, confusion is possible. Conceptually, the government, too, has a problem distinguishing the two payments as it is the tax code that forbids the Council's tenants from subleasing the premises, thus conflating rents and taxes.<sup>107</sup> In other words, the tax code discusses rents as well as taxes. Under these circumstances, it is easy to see how a vendor could be confused as to whether a payment is for tax or for rent; in that case a tenant-taxpayer could easily believe that taxes are too high.

Thus, problems of transparency may be unfair both to the taxpayer and to the government. As further described below,<sup>108</sup> these problems increase a taxpayer's lack of confidence in formal law and in the government, as the taxpayers learn to know their government through a morass of superimposed fiscal obligations. The problem is compounded in Cameroon by the administrative regime, which centralizes collections before redistributing them.<sup>109</sup> This has the effect of diminishing accountability by severing the connection between the local government and the taxpayers.

#### *B. Tax Collection Is Deceptive Evidence of Formal Tax Law's Implementation in the Informal Sector*

Based on responses we gleaned from interviewees, it appears at first that formal tax law has a direct impact even in the informal sector. Taxes mandated by formal law are actually imposed and paid—at least to some

mandated "control" (audit), six complained of confusion, and another three said never to argue. Two of the vendors showed up in more than one category.

107. Gen. Tax Code, *supra* note 20, § C 82(3). *See also supra* Part I.A.2 (discussing Council, i.e., the local government, as landlord).

108. *See infra* Part III.A (discussing, *inter alia*, tax morale).

109. Gen. Tax Code, *supra* note 20, § C 114–C 119.

degree. The question is whether the payment and collection of formal taxes is in fact due to formal law, and therefore, the extent to which formal tax law can be a template to ease other formal laws into the informal sector. If formal tax law is effective in the informal sector, the question is the extent to which formal business law, for example, can follow the same path.

*1. Formal Tax Laws Are Violated Through the Tax Administration's Illegal Behavior, and Tax Workers' Leakage*

The interviewees did report paying formal taxes, but they also demonstrated confusion as to what they were paying for and to whom they were ultimately paying. Some interviewees even knowingly made payments in excess of those formally required, asserting that the tax authorities compelled them to do so. This is inconsistent with behavior that would normally result from full implementation of the formal laws.<sup>110</sup>

Although taxes are paid even by those at the bottom of the economic spectrum, the interviewees reported significant failure on the part of the government and its tax collecting agents to respect the formal law as contained in the Code. We have seen a taxpayer forced to pay both the license and the discharge tax, although these are mutually exclusive,<sup>111</sup> and other taxpayers were denied receipts mandated by the formal law. Even in these cases, the government's failure to respect the law was in the context of the formal law and due to many causes, including a refusal to recognize either that formal law exists, or the substance of that law. The only way to know that a taxpayer's payment was for the business license or for the discharge tax was by reference to formal law, even if they were mutually exclusive taxes. The only way that the tickets of 100 FCFA were generated was by reference to formal law, even if no receipts were delivered. Thus, formal tax law does have an impact even in the informal sector.

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110. Elsewhere, I have argued that formal tax law does penetrate into the informal sector. Claire Moore Dickerson, *Fairness and Formal Laws in the Informal Sector: The Example of Cameroon*, in AN EXPLORATION OF FAIRNESS: INTERDISCIPLINARY INQUIRIES IN LAW, SCIENCE AND THE HUMANITIES 33, 43, 45 (Janis P. Sarra ed., 2013) (discussing fairness and the exercise of government power, including through application of tax laws in the informal sector). The focus there was on the impact of the exercise of power. Here we are focusing directly on whether it is the formal law that is at the heart of that exercise of power.

111. See *supra* Part II.A.2 (concerning mutually exclusive taxes). See also Gen. Tax Code, *supra* note 20, § 11(15) (stipulating that payment of the discharge tax is an exemption from any obligation to obtain a business license).

On the other hand, the impact of formal tax law in the informal sector is unpredictable because the law is not applied consistently, and thus is not the same as full implementation. Law can of course be flouted in a predictable way, but that does not seem to be the case here. Of the taxpayers who spoke about receipts, four said they received a receipt for each tax payment. However, one received a receipt only “sometimes,” another taxpayer never received one, and a third claimed to have received a receipt for 10,500 FCFA against a 35,000 FCFA payment.<sup>112</sup>

Two other indications of unpredictability—in fact of arbitrariness—concern the actual amounts paid. Two interviewees described tax collectors who demanded a supplemental payment because they had to come to the taxpayer in person. I found no ground for such a payment in the formal law, and the amounts charged were inexplicably different. In one case, an interviewee was charged 200 FCFA per collector-visit to an enclosed store at the edge of a large, well-established market in Douala, the commercial capital; in the other, a different interviewee was charged 5000 FCFA per visit to a much less permanent outdoor stand from which items of apparel were sold in Douala’s largest market.<sup>113</sup> Another instance of unpredictability concerns the one taxpayer out of the twenty, who described being subjected to a mutually exclusive, double tax burden.<sup>114</sup>

Thus, formal tax law is present to some degree: it informs the characterization and some of the amounts of tax. Nevertheless, the myriad ways in which the government and its representatives bend or frankly contravene the law, present a picture not consistent with fully implemented formal law. Similarly, we have seen that at least some taxpayers were sufficiently informed of the formal statute to use it as a shield by hiding some of the tools of the trade in order to be given a lower category of discharge tax.<sup>115</sup> However, even this behavior is practical opportunism rather than the confident application of formal law as protection against unauthorized demands for tax payments. Meanwhile, others knowledgeable in the law simply recognized that the government was compelling payments unauthorized by formal law. Taxes are collected in the informal sector, but this is not evidence that the tax authorities have implemented formal tax law in the informal sector.

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112. Roughly a receipt for USD 21 against a payment of USD 70.

113. Approximately USD 0.40 and USD 10.00, respectively.

114. See *supra* Part II.A.2 (interviewee described paying both the discharge tax and the business license despite Gen. Tax Code, *supra* note 20, § C.11(15), that makes these mutually exclusive).

115. See *supra* Part II.A (interviewee reporting the hiding of tools of the trade).

2. *From the Taxpayers' Perspective: The Money Engine, Not Formal Tax Laws, Drives Tax Collection*

Of all twenty interviewees, only one suggested that paying taxes is a natural obligation in exchange for services from the government, citing trash pickup as an example of a government service. This interviewee, as a former civil servant, may have had a relatively good opinion of the government, especially as the vendor's spouse remained in government employ. These government posts are very much sought-after.<sup>116</sup>

In general, not only did the interviewees discuss the tax authorities' failure to act predictably, transparently, or even in compliance with formal law, but they also reported a significant awareness of government power. Two taxpayers mentioned that the collectors who came to their places of business to audit also requested to borrow money—a request the interviewees evidently felt unable to refuse. Other evidence of coercion included paying taxes without a receipt, although formal law required such receipts.<sup>117</sup> Three interviewees explained that they received no receipts, and another claimed to have been handed a receipt for less than a third of the actual payment.<sup>118</sup> The interviewees may be poor, but they have been in business a long time; given their long experience, acquiescence to the lack of receipt implies some degree of duress.

In another case an interviewee stated that the tax collectors who had come to the store had insisted that the sum they requested be paid or the store would be “sealed” (closed).<sup>119</sup> A visit to the assessor brought no

116. See Vie Publique, *L'Etat employeur*, VIE PUBLIQUE (May 30, 2006), <http://www.vie-publique.fr/decouverte-institutions/finances-publiques/approfondissements/etat-employeur.html> (these French government figures report that, in 2000, 15% of people actively employed and 18% of all salaried employees were working for the government, whether local or central, whether indirectly through a parastatal or directly). Cameroon's civil service being a successor to the French, pre-colonial structure, the prominence of civil service in France is at least an indication of its importance in a former colony. The figures for the proportion of the Cameroonian population that is in the civil service are notoriously unreliable. See, e.g., Agendia Aloysius, *Participating in Positive Change: The Cameroon Civil Service and the War of Figures*, PARTICIPATING IN POSITIVE CHANGE (Apr. 9, 2010), <http://agendia.jigsy.com/entries/economy/the-cameroon-civil-service-and-the-war-of-figures> (discussing successive and imprecise government pronouncements about the quantity of so-called ghost workers—people being paid as civil servants without doing work).

117. Gen. Tax Code, *supra* note 20, §§ C.25 (license certificate from Chief of Taxation Center, to which are annexed “payment receipts”), C.47(6) (“The payment of the discharge tax shall give entitlement to the issuance of a tax ticket signed by the taxation service”), C. 86(1) (for, *inter alia*, daily fees: “The shop rents and proceeds from the sale of tickets shall be collected . . . against a receipt . . . hearing [sic] a printed facial value equal to a term of the monthly rent or cost of the ticket.”).

118. Referenced *supra* Part II.B.1 (reporting missing receipts, and a receipt for 10,500 FCFA against a tax payment of 35,000 FCFA).

119. “[S]ealing” is a penalty for non-payment of the business license. Gen. Tax Code, *supra* note 20, § C.31(2). It is likely that the interviewees are subject to the discharge tax, not the business license,

relief, and the payment had to be made. This interviewee explained that the computation of the discharge tax was on capital, referring to the tools of the trade, and expressed a preference for revenue-based taxation. In fact, for that interviewee's profession, the formal tax law determined the category of discharge tax based on the number of employees, not the amount of capital, so neither the tax collectors nor the interviewee correctly understood the formal law. After the taxpayer unsuccessfully sought relief from the collector-demanded improper tax calculated using improper inputs, the taxpayer succumbed to the threat of closure and paid the requested amount. Unable to pay both the tax collector and the private landlord, the interviewee paid only the first.

Not all efforts to obtain accountability were unavailing, however. An interviewee reported that some years ago, the local Council demanded vendors selling particular goods in a market to pay a fee imposed on each unit of product rather than the daily fee of 100 FCFA. The Tax Code does not provide for imposition based on that unit of product: assuming that other criteria are met, a daily fee of between 100 FCFA and 500 FCFA is the appropriate measure of tax.<sup>120</sup> When all the similarly situated vendors refused to sell their goods in that market, the local tax authorities capitulated after a month. On balance, the cost to the vendors must have been deemed too high, as the interviewee indicated no desire to participate in such a job action ever again; this is a measure of the taxpayers' perception of government power.

Interviewees used other ways, too, of responding to government power. Two interviewees expressly stated that they bribed tax collectors to reduce payments. The group of six other interviewees who, as mentioned above, had sought relief from an illegal simultaneous imposition of both the business license and a discharge tax, resorted to self-help as well, and began to pay bribes after the authorities at the city hall refused their request for relief.<sup>121</sup>

There was even one reported successful attempt to obtain increased services from the local government.<sup>122</sup> A group of fifteen from the same

as noted *supra* Part II.A.1 (discussing application of formal laws). “[T]he automatic and immediate closure of the establishment(s)” is a consequence of non-payment of the discharge tax. Gen. Tax Code, *supra* note 20, § C.47(11).

120. See *supra* Part II.A.1 (discussing formal tax laws in Cameroon); see also Gen. Tax Code, *supra* note 20, § C.84 (daily fees).

121. See *supra* Part II.B.1; *infra* Part III.A.2.b (taxpayers without relief when charged for a business license and a discharge tax simultaneously).

122. This success can increase tax compliance, according to the tax morale literature. See *infra* Part III.A.2.c (discussing the tax morale literature concerning public goods and services).

market had gone to city hall to request a service, namely a weekly pick-up of trash for which they said they had paid through their taxes,<sup>123</sup> and obtained satisfaction. Arguably, the positive impact of receiving the public-goods benefit overcomes the negative of having to fight for what is rightfully theirs. On the whole, however, the tax-collection machine uses government power as the tool for obtaining tax payments.

This tax-based money-generating engine has a characteristic that encourages its deployment by a government that has an imperfect structure and a clear hunger for revenues: it collects its own fuel. Not only does the process have the power of the government behind it—a government that needs the tax revenues—but the tax collectors, too, as individual representatives of the government, operate in an environment where they share their employer’s incentive to perform at a high level of efficiency.<sup>124</sup> Indeed, through bribery and failure to issue receipts, the tax collectors can divert more money to their own pockets by being arbitrary but effective in extracting payments—so long as the government does not catch them and punish them.

There are tax administrators who express a desire to see more rigor.<sup>125</sup> According to the interviewees, however, the individual tax-workers exercised governmental power to collect more than what formal law allows, and to do so with impunity. As three interviewees emphasized, and another five hinted through resignation, the taxpayer has no realistic opportunity of recourse. When asked how a taxpayer would know how much to offer as a bribe, one interviewee replied that there are points of reference,<sup>126</sup> suggesting a norm well embedded in the system.

123. Gen. Tax Code, *supra* note 20, § C.57 (“Local development tax” which “shall be collected for the basic facilities and services . . . notably . . . sanitation, refuse collection.”).

124. This method of creating incentive in the workers is limited neither to government action, nor to the Global South. Recovery audit contractors are outsourced auditors for Medicare, who “get no up-front fees, but instead are paid a percentage of the money they retrieve. They eat what they kill.” *See, e.g.,* Steven Brill, *Bitter Pill: How Outrageous Pricing and Egregious Profits Are Destroying Our Health Care*, TIME MAG. SPECIAL REP., Mar. 4, 2013, at 16, 49 (describing “private ‘recovery audit contractors’” as being paid 9–12.5% of the funds they retrieve). I am not suggesting that these recovery audit contractors skim off the top, as the interviewees reported that some tax collectors did, but the incentive is there. As described by the interviewees, tax collectors can, and thus have a structurally provided incentive to, pocket tax payments by giving incorrectly low receipts or by encouraging the taxpayer to offer gifts in exchange for a lower tax payment to the government. In the case of the audit contractors, the structural incentives for these auditors and for the Medicare provider are to replace the provider’s 100% correction of an error by the provider’s payment to the auditors of an amount in excess of 9–12.5% of that amount, but less than the full amount that the provider would otherwise have to pay in correction.

125. *See, e.g., infra* Part III.A.2.b (describing a mid-level tax administrator lamenting the general laxity).

126. In French, “*Il y a un barème, mais après ça il faut deviner.*” (There is a scale, but after that,

This corrosive normality likely exists in part because of governmental inability to contain its employees, and in part because skimming by these employees is a form of self-help compensation actually useful to the government.<sup>127</sup> The defalcation by the tax collectors is of course a violation of formal tax laws, but it is an inherent component of the money engine's power.

Tax collection is indeed a money engine based on power. The government has every incentive to create a formal system that will collect taxes in the informal sector. Through the business license, and especially the discharge tax and multiple fees, the formal Tax Code does provide for payments by people who earn modestly even by local standards. The government deploys collectors throughout the informal sector, and the interviewees report paying those taxes.<sup>128</sup> Nevertheless, not only is the government not reliably implementing formal tax law,<sup>129</sup> but the evidence suggests that the interviewees do not perceive themselves as *stricto sensu* complying with formal tax law either. From the interviewees' perspective, they must "allow" the government to collect from them payments that, while couched as "tax," are substantively or procedurally inappropriate under formal law. Those payments, far from being in compliance with formal tax law, are the result of exercise of raw power by the government and its agents.

The money engine effectively removes governmental incentive to animate a structure that will encourage systematic respect of formal tax laws, even though it has itself made those laws. When the government expends funds to allow its collectors to fan out in the population, it is as a practical matter also winking at leakage. This is a poor template to encourage application of formal tax law, let alone for the introduction of other formal laws into the informal sector.

### III. THE LEARNING FROM TAX LAW CONCERNING THE GOVERNMENT'S ROLE IN INTRODUCING FORMAL BUSINESS LAW TO THE INFORMAL SECTOR

The interviewees did reflect hostility to the tax regime, with one or two exceptions. There is an argument that formal tax laws are favorable to

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it's guesswork.)

127. Kim Lane Scheppelle, *The Inevitable Corruption of Transition*, 14 CONN. J. INT'L L. 509, 526-28 (1999) (describing Hungarian police's self-help "taxation" through demanding bribes at traffic stops).

128. See *supra* Part I.A.1 ("tickets").

129. See *supra* Part II.B.1 (focusing on the government's violation of its own laws).

business because they generate revenue that enables the government to provide an infrastructure that supports business. The pro-business infrastructure includes the roads and security whose lack the interviewees bemoaned, as well as other services that may offer a more indirect support to business, such as medical care, water, and the like.<sup>130</sup>

With regard to formal business laws, organizations such as the World Bank consider them to be pro-business if fully implemented and thus to be essential to development.<sup>131</sup> While the interviewees were not directly asked their opinion about the formal business laws, they demonstrated more ignorance and skepticism about than enthusiasm for these laws. All but one had failed to comply with the formal laws' registration requirement applicable to all economic operators, some explicitly questioning the benefit.<sup>132</sup>

Assuming that formal business laws are pro-business, they should be available in the informal, as well as formal sectors. When considering how to accomplish this goal, we have already seen that formal tax law is not respected by either the government or the informal sector taxpayers. Hence, it is an anti-template for introducing other formal laws, such as business laws, into the informal sector. Now we turn to the positive lessons the formal tax law can teach about introducing formal business laws into the informal sector.

#### A. *The Tax Model: How to Obtain Compliance with Formal Tax Laws in the Informal Sector*

##### 1. *Literature: Tax Morale and Compliance*

Part II has emphasized a significant failure of compliance with formal tax laws in the informal sector in general, and by the group of interviewees in particular. Nevertheless, the surprising reality about formal tax laws outside this sector is that most taxpayers, even when not being watched,

130. See *infra* Part III.A.2.c (discussing public goods and services experienced by the interviewees).

131. See generally World Bank's "Doing Business Reports", e.g., WORLD BANK GROUP, DOING BUSINESS IN OHADA 2012, available at <http://www.doingbusiness.org/reports/regional-reports/ohada>; see also WORLD BANK, DOING BUSINESS 2012, *supra* note 19 (discussing various regulations affecting businesses, including analyzing the OHADA business laws, and reporting that in the prior six years all OHADA member countries had increased the ease of doing business).

132. See *supra* Part I.B.1–2 (discussing, respectively, the obligation to register under the GCL, and the fact that all but one of the twenty interviewees had failed to do so); see also GCL, *supra* note 29, arts. 35 (formerly art. 19), 13–14 (substantially unchanged).

do, in fact, comply with tax laws.<sup>133</sup> The utility-based literature on compliance cannot explain this outcome. This literature's perspective, even on basic concepts such as the impact on compliance of audit probability and of fines, is insufficient to explain the actual rate of taxpayer compliance. Intuition about utility and deterrence does suggest that as the audit probability or fines increase, tax evasion decreases.<sup>134</sup> As noted below, however, empirical research reveals a level of compliance even higher than would be expected from a pure deterrence model. After explaining this outcome in, for example, the Global North's formal sector, the focus turns to implementing the same outcome in the Global South's informal sector.

Utility analysis predicts that an increase in tax rate, even assuming that audit probability and frequency of fines remain constant, will increase the value to the taxpayer of tax evasion. Thus, when the amount of tax is greater, so is the value of the benefit from not paying the tax. This, in turn, should increase non-compliance as the tax rate rises. In a progressive-tax environment where higher rates generally apply to people with higher income, and thus assumedly to richer taxpayers, the utility theory explains the inverse relationship between tax rates and the level of compliance. It does so by suggesting that wealthier persons are more risk-seeking than poorer ones. Nevertheless, even if the empirical results generally support the prediction that richer taxpayers evade more, the results are mixed as some studies show higher-rate taxpayers evading less.<sup>135</sup> This latter result can be explained in part because, instead of seeing the increased value of evasion, a taxpayer at a higher rate may feel less wealthy and thus more risk-averse, thus reducing the likelihood of tax evasion.<sup>136</sup> Persons who see themselves as less rich, whether because they are relatively poor or because they feel impoverished by a higher tax rate, are more risk-averse and thus are less likely to evade taxes.<sup>137</sup>

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133. See, e.g., Sanjit Dhami & Ali Al-Nowaihi, *Optimal Taxation in the Presence of Tax Evasion: Expected Utility Versus Prospect Theory*, 75 J. ECON. BEHAV. & ORG. 313, 314 (2010) (finding that taxpayer behavior is better explained by prospect theory than by expected utility theory).

134. Erich Kirchler, Stephen Muehlbacher, Barbara Kastlunger & Ingrid Wahl, *Why Pay Taxes? A Review of Tax Compliance Decisions*, in DEVELOPING ALTERNATIVE FRAMEWORKS FOR EXPLAINING TAX COMPLIANCE 15, 20–24 (James Alm et al. eds., 2010) [hereinafter Kirchler et al., *Why Pay?*] (analyzing audit probability and fines). See also KIRCHLER, *ECONOMIC PSYCHOLOGY*, *supra* note 10, at 168 (importance of audits and fines to obtain compliance from “rational, utility-maximizing taxpayers”).

135. Kirchler et al., *Why Pay?*, *supra* note 134, at 18–19 (tax rate).

136. *Id.* at 19 (tax rate & income level).

137. Michael G. Allingham & Agnar Sandmo, *Income Tax Evasion: A Theoretical Analysis*, 1 J. PUB. ECON. 323, 329 (1972) (a classic study of the effects of income levels on compliance); Kirchler et al., *Why Pay?*, *supra* note 134, at 16–18 (discussing the impact of income level); *but see* KIRCHLER,

Whether the observed outcome is that the absolutely more wealthy evade more or that they evade less, the explanation in both cases is that persons who perceive themselves as wealthy are risk-seeking and tend to evade taxes. In contrast, those who do not see themselves as wealthy are relatively risk-averse. However, even this basic premise is itself the object of conflicting studies. Some of the unexpectedly high levels of non-compliance may well have been due to considerations not fully accounted for, such as the multiple reasons for differing risk profiles, including the fact that certain higher-income taxpayers may have more ways of hiding income.<sup>138</sup> Most important, utility theory has not explained the mixed empirical results and has had difficulty predicting both the direction and extent of tax compliance.<sup>139</sup>

The concept of tax morale seeks to address the excess compliance that classical utility theory has not explained adequately.<sup>140</sup> The fundamental intuition behind the tax-morale concept is the Kahneman and Tversky prospect theory, which asserts that losses are more salient than gains.<sup>141</sup> Credit card companies requested that retailers offer cash discounts rather than impose card-use surcharges. Because customers viewed the “loss” in paying a surcharge as more salient than the avoided “gain” inherent in foregoing a discount, they were more willing to use credit cards when forgoing a discount rather than paying a surcharge.<sup>142</sup>

In the tax context, the usual discussion is in terms of risk aversion: a person (here, a taxpayer) will seek relatively more risk to avoid a potential

ECONOMIC PSYCHOLOGY, *supra* note 10, at 24 (reporting more compliance from higher-income taxpayers).

138. Kirchler et al., *Why Pay?*, *supra* note 134, at 17–18 (concerning levels of income).

139. Jonathan Skinner & Joel Slemrod, *An Economic Perspective on Tax Evasion*, 38 NAT'L TAX J. 345, 347 (1985) (noting that economic rationality does not explain the relatively high compliance rates). *See generally* Simon James & Clinton Alley, *Tax Compliance, Self-Assessment and Tax Administration*, 2 J. FIN. & MGMT. IN PUB. SERVICES 27 (2002) (noting, contrary to the assumptions of economic rationality, that it is not the case that most taxpayers evade taxes); KIRCHLER, ECONOMIC PSYCHOLOGY, *supra* note 10, at 26; Kirchler et al., *Why Pay?*, *supra* note 134, at 16–24 (concerning the effects of income level, tax rate, audit probability, and fines). *See also* Dhami & al-Nowaihi, *supra* note 133, at 175 (2007) (noting that the predictions of expected utility theory do not conform with observations even if the stigma of discovered tax evasion is included).

140. For an accessible and sophisticated introduction to tax morale, *see* Marjorie E. Kornhauser, *A Tax Morale Approach to Compliance: Recommendations for the IRS*, 8 FLA. TAX REV. 599, 603 (2007) (recommending strategies to the U.S. Treasury Department).

141. *Id.* at 609 (referring to the prospect theory as a means of enhancing tax morale). Amos Tversky & Daniel Kahneman, *The Framing of Decisions and the Psychology of Choice*, 211 SCI. 453, 454 (1981) (summarizing studies); KIRCHLER, ECONOMIC PSYCHOLOGY, *supra* note 10, at 139 (summarizing studies tying prospect theory to taxation). *See generally* Daniel Kahneman & Amos Tversky, *Prospect Theory: An Analysis of Decision Under Risk*, 47 ECONOMETRICA 263 (1979).

142. Tversky & Kahneman, *The Framing of Decisions*, *supra* note 141, at 456.

loss than to obtain a potential gain.<sup>143</sup> Assuming that paying a tax is a loss, it will be relatively salient. In addition, a risk-seeking taxpayer (a person who feels richer) is more likely to evade taxes than is the rational *homo economicus*, and a risk-avoiding taxpayer (one who feels poorer) is similarly more likely to pay taxes than a narrowly rational counterpart.<sup>144</sup>

This analysis offers tax authorities strategies to obtain compliance at a higher level than utility theory predicts. One approach would be for the government to avoid encouraging taxpayers to feel rich and about to sustain, through taxation, a loss. Withholding tax is a partial solution: it leads to relatively high compliance at least in part because instrumentally the taxpayer cannot avoid the withholding payment, and thus, the loss part of the equation is moot.<sup>145</sup> In addition, a taxpayer perceives over-withholding as a benefit—indeed, as a gain in the form of a refund. That perception persists even though a refund is merely a return of the taxpayer's own money: the taxpayer sees a windfall and thus is less reluctant to submit to the tax than if the taxpayer had to make a new payment.<sup>146</sup>

However, there is more to tax morale than the prospect theory. Here, the analysis moves not only beyond utility's neo-classical economic approach and cognitive psychology, into the realm of social influence and culture.<sup>147</sup> This even thicker explanation focuses on the forms of social influence and applies a concept of reciprocity in two ways. First, there is reciprocity based on perceptions of compliance: whether the taxpayer sees other taxpayers meeting their obligations.<sup>148</sup> Second is a type of reciprocity

143. Kahneman & Tversky, *Prospect Theory*, *supra* note 141, at 273, 277–80 (analyzing the impact of risk, focusing on perceived change in value—gain or loss).

144. *See, e.g.*, James & Alley, *supra* note 139; KIRCHLER, *ECONOMIC PSYCHOLOGY*, *supra* note 10, at 26. This prospect theory is closely related to another concept from cognitive psychology, the endowment theory, which focuses on the higher value that a person attributes to an object owned as distinguished from the same object not yet obtained. Daniel Kahneman, Jack L. Knetsch & Richard H. Thaler, *Anomalies: The Endowment Effect, Loss Aversion, and Status Quo Bias*, 5 J. ECON. PERSP. 193 (1991) (discussing the endowment theory). *See also* John Cullis, Philip Jones & Alan Lewis, *Tax Compliance: Social Norms, Culture, and Endogeneity*, in *DEVELOPING ALTERNATIVE FRAMEWORKS*, *supra* note 134, at 35, 37–38 (discussing newer explanations for tax compliance and categorizing them as “tinkering”, “cognitive” and “social”, and placing prospect theory in the “cognitive” category).

145. *See, e.g.*, James Alm, *Tax Compliance and Administration*, in *HANDBOOK ON TAXATION* 741 (W. Bartley Hildreth & James A. Richardson eds., 1999) (noting that the effectiveness of “[s]ource withholding has been universally found to increase tax compliance.”).

146. KIRCHLER, *ECONOMIC PSYCHOLOGY*, *supra* note 10, at 135–36 (refund potentially framed as a gain).

147. Cullis et al., *supra* note 144, at 38 (discussing the “social” category).

148. *Id.* at 38–39 (discussing social influence in the context of tax compliance). *See also* Kent W. Smith & Loretta J. Stalans, *Encouraging Tax Compliance with Positive Incentives: A Conceptual Framework and Research Directions*, 13 L. & POL'Y 35, 40–41 (1991) (discussing the positive effects

manifested by the tax authorities when they treat the taxpayers with respect. This version of reciprocity is focused more on taxpayers being heard,<sup>149</sup> although compliance-watching reciprocity and respect are closely allied.<sup>150</sup>

Reciprocity is a complex concept that suggests that the overall climate of compliance or lack thereof is relevant to individual taxpayers' levels of compliance. The version of reciprocity that is compliance-watching reciprocity occurs among taxpayers. Empirical evidence reveals that taxpayers who see others complying with formal law are more likely to comply, whether because of a specific sense of fairness to the community, or a more generalized sense of fairness towards society at large.<sup>151</sup> Evasion follows the same pattern: if some taxpayers perceptibly evade, other taxpayers will tend to do so as well, with a strong push towards benefiting themselves whatever the social consequences.<sup>152</sup> Overall, taxpayers prefer not to be the sole chump who is paying taxes when non-paying free riders enjoy the same resultant services.<sup>153</sup>

Admittedly, this kind of compliance-watching reciprocity is negative: a taxpayer evades because others are evading. Further, it is more salient than the positive reciprocity of complying because others are complying.<sup>154</sup> Nevertheless, classic positive reinforcement from the tax authorities, too, does encourage compliance. A crude rewards system such as a specific reward for a specific compliant behavior may, however, be counterproductive. The quid-pro-quo reward may instead only raise the taxpayers' suspicions and will in any event require expensive monitoring to ensure that the desired behavior has occurred.<sup>155</sup> Further, to the extent that the taxpayer has internal motivation to pay, that motivation may be crowded out by the outside motivation.<sup>156</sup>

of reciprocity, including references to tit-for-tat studies, such as that of Robert M. Axelrod).

149. Smith & Stalans, *supra* note 148, at 45–46 (focusing on respect).

150. *Id.* at 43, 45–46 (conflating “respectful” and “responsive”).

151. Jan Schnellenbach, *Vertical and Horizontal Reciprocity in a Theory of Taxpayer Compliance*, in DEVELOPING ALTERNATE FRAMEWORKS, *supra* note 134 at 56, 58–61 (discussing reciprocity).

152. *Id.* at 59 (noting “that reciprocity and a concern for equality” are not the same).

153. Cullis et al., *supra* note 144, at 39 (discussing tax morale decreasing when taxpayers perceive non-compliance).

154. Gary Charness & Martin Rabin, *Understanding Social Preferences with Simple Tests*, 117 Q. J. ECON. 817, 841–47 (2002) (stating that reciprocity is an important variable, but with negative reciprocity having a greater impact than positive reciprocity).

155. Smith & Stalans, *supra* note 148, at 38 (noting that positive effects of tying approved behavior to reward may not be more persuasive than classic deterrence and are as costly in monitoring).

156. Bruno S. Frey & Reto Jegen, *Motivation Crowding Theory*, 15 J. ECON. SURV. 589, 593–95

Conversely, if, for example, the tax authorities are more subtle and reward by generating positive feelings through respectful treatment of taxpayers, the need to monitor in order to reward each specific compliant behavior disappears, and there is evidence that taxpayers become more compliant.<sup>157</sup> The goal of the government when seeking to harness the power of respectful reciprocity is to have the taxpayers believe that they have a positive, iterative relationship with the tax authorities.<sup>158</sup>

Relatedly, if taxpayers see their taxes generate public goods and services,<sup>159</sup> they may be more willing to comply voluntarily.<sup>160</sup> True, individuals' contribution to obtaining public goods and services creates an opportunity for free riding.<sup>161</sup> Nevertheless, individuals may voluntarily pay taxes if they (a) value public goods and services, (b) determine that their taxes will provide such goods and services, and (c) believe that their efforts will encourage others to contribute to public goods and services—even when there is zero possibility that the tax authorities will detect evasion.<sup>162</sup> Something more than mere altruism appears to be at work here because taxpayers displayed increased compliance if their taxes were spent to provide public goods or services sourced locally or regionally,

(2001) (discussing extrinsic motivation crowding out intrinsic motivation).

157. Smith & Stalans, *supra* note 148, at 39–40, 45–46 (discussing “peripheral cues,” including respectful treatment of taxpayers, as a method of influence, and reciprocity). *See also* Lars P. Feld & Bruno S. Frey, *Tax Compliance As the Result of a Psychological Tax Contract: The Role of Incentives and Responsive Regulation*, 29 L & POL’Y 102, 106–07, 115 (2007) (discussing the tax authorities’ respectful behavior towards taxpayers as a form of reward).

158. Smith & Stalans, *supra* note 148, at 42 (discussing a sense of “allegiance” with the authorities).

159. While the phrase “public good” is sometimes used, the principle appears to reach beyond the classic public good. In his seminal article, Paul Samuelson explicitly discussed classic public goods. Paul A. Samuelson, *The Pure Theory of Public Expenditure*, 36 REV. ECON. & STAT. 387, 387 (1954). Others, however, who cite to Samuelson refer more broadly to, for example, “government services” or “a return . . . (or a public good),” suggesting application of a more capacious concept. *See* James M. Alm, Gary H. McClelland & William D. Schulze, *Why Do People Pay Taxes?*, 48 J. PUB. ECON. 21, 23 (1992) (citing Samuelson). *See also* Feld & Frey, *supra* note 157, at 111 (listing “public goods” along with government services and government-provided infrastructure, as though the latter two were not public goods). “[A] public good . . . is one that is non-excludable (no one can be excluded from the good’s consumption) and non-rivalrous (the good’s consumption does not reduce its availability to others).” Gregory Shaffer, *International Law and Global Public Goods in a Legal Pluralist World*, 23 EUR. J. INT’L L. 669, 673 (2012); *see also id.* at 682 (stating “international trade law . . . has public good attributes”).

160. *See, e.g.*, Feld & Frey, *supra* note 157, at 104 (describing experiments).

161. *Id.* at 105 (noting aversion to paying taxes for public goods and services because of the “incentives to free ride”); James M. Alm et al., *supra* note 159, at 23 (referring to the incentive to free ride).

162. James M. Alm et al., *supra* note 159, at 23–24 (describing private provision of public goods and services, as applied to voluntary tax payments for public goods and services).

suggesting some relatively direct benefit to those taxpayers.<sup>163</sup> Because there does seem to be some opportunity for positive reinforcement, the appropriate government strategy is to communicate effectively to its taxpayers that all will receive more of the public goods and services they prefer if they comply with the formal tax laws.<sup>164</sup>

To summarize, the literature suggests that taxpayers comply more than would a purely rational, utility-seeking person. More specifically, the tax-morale literature shows that the self-perceived poor are less likely to evade taxes, and that the prospect theory recommends over-withholding. It also shows that, pursuant to the cognitive perspective, the following encourage compliance: watching other taxpayers comply, tax authorities' respectful relationship with taxpayers, and perceiving the availability of desired public goods and services as a result of taxes paid—but not a promise of more crudely quid-pro-quo rewards. Withholding is less likely to be a fruitful approach as it is tied to income taxes, which are not relevant to this Article, and the government will have little control over how relatively rich or poor a taxpayer feels.<sup>165</sup> Two of the three cognitive perspectives, in contrast, do lend themselves to government influence: respectful reciprocity and communication about public goods and services are much more susceptible to direct government action than is compliance-watching reciprocity because this last directly concerns the various taxpayers.

## 2. *Reality: Tax Morale Is Not a Significant Driver of Taxpayer Informal-Sector Compliance*

As we saw in Part II.A describing formal tax law and the actual tax-collection process, the interviewees are not taxed through withholding, let alone over-withholding. Instead, as Part II.B notes, the taxpayers succumb to the tax authorities' strategy based on straight enforcement. This money-engine strategy is shaped by the financial needs of the tax authorities and their workers, without full compliance with formal tax law. To the extent

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163. Feld & Frey, *supra* note 157, at 114 (describing a positive relationship between regional/local public goods and services, and voluntary tax compliance); *but see* Piers Fleming & Daniel John Zizzo, *Social Desirability, Approval and Public Good Contribution*, 51 PERSONALITY & INDIVIDUAL DIFFERENCES 258, 262 (2011) (asserting that the level of compliance driven by availability of public goods will depend on the degree of the taxpayers' social desirability personality).

164. Alm et al., *Why Do People Pay?*, *supra* note 161, at 34, 36 (based on experiments, positing increased compliance if the taxpayers expect in return more of the public goods and services they prefer).

165. Except to the extent that a taxpayer suddenly relieved of an obligation to pay taxes may feel richer—and thus even more willing to take tax-avoidance risks—while a taxpayer forced to shoulder a new or at least more credible tax burden may feel poorer, and thus more willing to comply.

that the taxpayers were complying with formal tax law, they were doing so even though the indicia of tax morale appeared absent. Utility theory, in the form of seeking to avoid punishment that the government imposes to deter non-compliance, will thus continue to explain the existing, limited compliance. The taxpayer at minimum will consider the probability of getting caught and investigated, and will be influenced by the likely consequences, including penalties.<sup>166</sup> In other words, we are essentially looking at the direct effects of the government's direct power to constrain.

Recollect that the three remaining compliance-enhancing strategies recommended by the literature in social psychology are compliance-watching (already identified in the previous subpart as the least susceptible to governmental influence), respectful reciprocity, and the provision of public goods and services. Here we will consider the extent to which they are deployed even against an otherwise unfavorable backdrop of tax-authority non-compliance with formal law. These three strategies depend on the taxpayers' perceptions, and in particular their perceptions of other taxpayers' compliance, the quality of the relationship with the tax authorities, and the presence or absence of public goods and services.

*a. Compliance-Watching: How Taxpayers Perceive the Compliance of Others*

When questioning the interviewees, we did not explicitly ask them about their perception of others' compliance with the formal tax obligations. First, focusing on this issue would not necessarily provide much opportunity to propose new governmental intervention; second, various means of evasion in any event appeared to be public knowledge. One interviewee was responding to questions with another person from the same market sitting nearby, and when the first talked about tax payments and how a bribe was paid to reduce the tax payment, the other person laughed and confirmed a similar experience. Another interviewee mentioned that a half-dozen had gone to the city hall to complain that controllers were demanding taxes that were not legally due; having received no relief, they now just pay bribes. Yet another mentioned matter-of-factly that during the two months when the controllers were expected, the interviewee hid some capital assets in order to maintain a lower category of discharge tax and thus reduce tax payments.<sup>167</sup>

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166. See, e.g., Allingham & Sandmo, *supra* note 137 (discussing the basic utility theory of deterrence).

167. Gen. Tax Code, *supra* note 20, § C.46 (creating the categories); see generally *supra* Part

In assessing how normal the taxpayers perceive tax evasion, the issue of the interviewees' understanding of their payments is relevant. As we have seen in Part II.A.2 describing how taxes were in fact collected from the participants, taxpayers did appear to confuse other payment obligations, including rent owed to the Council, with tax obligations. Obviously, it is hard to determine taxpayer perceptions of the rate of others' actual tax compliance if these perceptions are based on non-tax as well as tax payments. From the perspective of assessing the impact of the perceptions, however, errors in understanding the nature of the payment may not be fatal. If an interviewee sees a neighbor failing to make what the interviewee believes to be a required tax payment, tax morale and in particular cognitive psychology suggest that this observation of non-compliance will serve to validate the interviewee's own tax evasion even if the observed non-payment actually is of rent and not tax.<sup>168</sup>

Given this learning, the government can seek to increase the likelihood of tax compliance by causing more taxpayers to comply, so that more taxpayers would see other taxpayers complying. Besides assuming the conclusion, this analysis provides no guidance because we have already seen that pure brute force will not succeed. However, other measures might contribute to a tax-compliance outcome.

*b. Respectful Reciprocity: Tax Authorities' Relationship with Taxpayers*

The interviewees' comments indicate a perception that the taxing authority and their representatives are disrespectful and arbitrary. When a half-dozen vendors complained at the city hall that collectors were imposing on them both for a business license and the discharge tax, which these vendors knew to be mutually exclusive,<sup>169</sup> they reported being unceremoniously tossed out. A couple of other interviewees noted that the controllers who came to assess taxes also demanded that the interviewees lend them money, and another two reported that the controllers charged extra to come to the location to collect, with no explanation other than that leaving the office generated a charge. Yet another seller said that representatives of the local government collected 200 FCFA every day,

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II.A.2.

168. See *supra* Part III.A.1 (discussing cognitive psychology as a basis for a broad conception of tax morale, and its focus on observed behavior).

169. Gen. Tax Code, *supra* note 20, § C.11(15) (exempt from the business license are "persons liable to the discharge tax"). See *generally supra* Part II.A.1.

that no receipt was offered, and that the interviewee did not know what the payment was for; in fact, the tax code authorizes a daily fee of between 100 FCFA and 500 FCFA, the exact amount to be determined by the local government.<sup>170</sup> To summarize the reported experience with receipts, three interviewees expressly mentioned a lack of receipts, and two others, grossly incorrect receipts, the most egregious example being a receipt of 10,500 FCFA against a 35,000 FCFA payment.<sup>171</sup>

There are also indications that the communications from and between the tax authorities and taxpayers fail to consider the taxpayers' needs, a form of disrespectful failure to listen.<sup>172</sup> Interviewees do not describe having received from the tax authorities a clear understanding of what are their obligations. As evidence, they frequently conflated the business license and discharge tax: virtually everything other than the daily fees was described as a business license, or *patente* in French, even when the amounts described were below the business-license threshold.<sup>173</sup> One interviewee, when pressed to explain a particular apparently illegally demanded tax payment, simply noted that it is not wise to get into disagreements with the authorities.<sup>174</sup>

Communication from the tax authorities to taxpayers was thus at best negligent, and at worst contemptuous and systematically incorrect. This is not designed to generate a perception of respectful reciprocity. All is not unrelievedly dark, however. The interviewees at the two businesses that appeared to be the best established ran their commerce from enclosed shops and appeared to have a relatively high-quality level of inventory. These vendors also were the most matter-of-fact about their tax obligations, were among the most knowledgeable of formal tax law, and

170. Gen. Tax Code, *supra* note 20, § C.84 (costing 100–500 FCFA daily fees for occasional vendors); *see generally supra* Part II.A.1 (discussing formal tax law).

171. Roughly USD 21 and USD 70, respectively. *See supra* Part II.B.1.

172. *See* Smith & Stalans, *supra* note 148, at 45–46 (referring to respect as being respectful and responsive listening).

173. Gen. Tax Code, *supra* note 20, § C.47(12) (the taxpayer is subject to business license and not discharge tax when revenues exceed fifteen million FCFA). In the context of a 1000 FCFA monthly payment for market maintenance that the tax collector apparently demanded, the interviewee reported not knowing the basis for the amount. The formal General Tax Code sections C.57 & C.58 do provide for a Council-level tax for market maintenance. However, in order for that obligation to reach 12,000 FCFA per annum, the underlying discharge tax would have to be between 60,001 and 100,000 FCFA per annum, which in turn puts the taxpayer into Category D of the discharge tax, meaning a turnover of at least 10 million FCFA per annum. *Id.* §§ C.58, C.46. Interviewee was one of the most knowledgeable and said the rent was FCFA 20,000 per month, i.e., 240,000 FCFA per year; while more successful than many traders, it seems unlikely that this vendor from an open stand generated ten million FCFA per year, let alone the fifteen million FCFA which is the threshold for the business tax.

174. The comment in French: “*Il ne faut pas s’entre-déranger avec les autorités,*” said by the interviewee compelled to pay both the business license and the discharge tax.

expressed no animus towards the taxing authorities. In the course of my conversations with legal professionals, I also spoke with a well-placed person in the tax authority who emphasized the need for rigor throughout the entire system of tax administration. Nevertheless, the systematic respect for taxpayers that enhances tax compliance according to tax morale's cognitive psychology literature<sup>175</sup> was not much in evidence.

Since government-to-taxpayer communication is at the heart of respectful reciprocity, it is worth noting that some of the more general expressions of strained relationships between the interviewees and the government may well be based on non-tax issues. One vendor recalled a rumor that the Council intended to raze the entire market to put up new shops, and asked only for transparency, to be told in advance and in detail what the Council's plans entailed. More directly related to taxes and as noted above,<sup>176</sup> the interviewees did not always know whether a particular payment to the local government was for rent or for taxes. This complicates an assessment of the relationship between taxpayers and the tax-collecting government. The previous subpart emphasizes, however, that a payment perceived to be tax compliant will have the effect of perceived tax compliance for purposes of tax morale. Similarly, so long as the interviewees put the various payments to government in a single mental pot, the tax-morale literature suggests that taxpayers will make tax payments more voluntarily and at a higher rate if the government has treated them with respect as regards any obligation the taxpayers perceive to be a tax obligation. In the case of the interviewees, the concept applies to rent paid to the Council just as much as to actual tax payments, especially if the taxpayers experience both payments as tax.

*c. Public Goods and Services: Communication About Their Presence or Absence*

Tax-morale literature also suggests that tax compliance will tend to increase when the government provides the public goods and services that taxpayers desire.<sup>177</sup> In brief, the interviewees' comments suggest that they perceived an uneven return on their tax investment. Only eight of the twenty interviewees answered the question asking them to identify the support the government had provided; for seven the answer was a null set,

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175. See *supra* Part III.A.1 (discussing the tax morale literature).

176. Part II.A.2 (describing actual tax collection).

177. *Id.* (discussing the tax morale literature); see also *supra* note 159 (discussing the definition of public goods).

and the eighth surmised that the government used taxes only to pay its workers, including the collectors.<sup>178</sup> On the other hand, specific questions concerning utilities generated compliments from the two vendors in the smaller of the two Douala markets, concerning the security that the Council appeared to provide. The other vendors expressed frustration at the lack of services. Three of the five in the larger Douala market complained explicitly about lack of security for themselves and their goods. All the vendors said that they had to buy their own water, and most of the vendors had to use public toilets that appeared to be run by private parties who charged by the use and allowed the toilets to become dirty.

When asked about other services they received, the vendors were uniform in their opinion that no medical services or childcare was available other than as offered by private parties. As a practical matter, women often had small children around them as they sold, but in at least one market the private childcare provider took children as young as two weeks. Again, this was privately organized.

If the interviewees thus perceived their government, including in particular the local government, to be providing very limited benefits, their description of what additional help the government could offer focused on support to grow their businesses.<sup>179</sup> Nine of the twenty interviewees would have liked to see government make capital available to them at reasonable cost and of those, two were also looking, one each, for better security and better maintenance of the markets. Along with those two concerned about the quality of the market's environment, four others deplored the general condition of the markets, focusing on the roads and drainage. One market seemed particularly bad because water was apparently rushing into and through the market-area during the rainy season.

Actual premises, as distinguished from the overall ambiance of the market, were another topic of complaint. Two vendors thought that the government should help locate enclosed shops and nighttime storage facilities. According to the interviewees, a shop vacancy became known by accident; there was no general posting. The storage issue was one shared by all the vendors who did not have enclosed shops. Every night, they took everything down and, typically, stored the inventory in a space

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178. The spouse of the civil servant allowed as how, even though the government did not help the vendor directly, the spouse's governmental salary was an indirect benefit.

179. *But see* SIMEON DJANKOV, A RESPONSE TO "IS DOING BUSINESS DAMAGING BUSINESS?" (2008) (arguing that businesspeople do not necessarily know what is the best business environment), available at [http://www.doingbusiness.org/documents/Response\\_to\\_Arrunada\\_JCE.pdf](http://www.doingbusiness.org/documents/Response_to_Arrunada_JCE.pdf).

rented to them, for a separate fee, by neighboring enclosed shops. Every morning, they put everything back up.

Finally, of the twenty interviewees, three had no answer at all when asked what additional services the government could provide. These three had also failed to respond to the earlier question concerning what the government was in fact providing them. Thus in the main the interviewees were unsure how their taxes were spent for public goods and services, and some were even unable to articulate, or perhaps to imagine, how government could support them other than by easing access to capital.

The interviewees' perception of little return on their tax investment may be in part because losses, perceived or real, are more salient than gains,<sup>180</sup> where tax payments are losses and benefits received are gains. As the tax morale literature maintains, the perception of benefit for taxes is crucial to taxpayers' voluntary compliance with tax laws.<sup>181</sup>

Part of the problem may have been communication. Five vendors interacted with the local Council not just as taxpayers but also as tenants.<sup>182</sup> This is again the problem of identifying what is a true tax payment, and when the government is acting as landlord instead of tax collector. Nevertheless, at times it seemed that the government did not receive credit for benefits that it did offer. Even those who rented from the Council did not mention that rents were below market, as they almost certainly were, given that the market enabled tenants to sublet for a higher rent than the rent they paid to the Council.<sup>183</sup> No interviewee mentioned this government-provided gift, although it would support an entrepreneur's ability to do business. Instead, when the vendors were asked about their perception of government, they described a tax collector rather than a supplier of capital or a purveyor of public goods and services. Here, the government could increase tax morale by effective communication of the services it does provide with its tax revenues.

180. Tversky & Kahneman, *The Framing of Decisions*, *supra* note 141 (summarizing studies). *See generally* Kahneman & Tversky, *Prospect Theory*, *supra* note 141.

181. The Kahneman & Tversky prospect theory is included within tax morale. *See, e.g.*, Kornhauser, *supra* note 140, at 601-02, 609 (including the prospect theory and more generally summarizing tax morale).

182. Twelve rented from private individuals; of the remaining three, one had no fixed place of business in Cameroon, and the other two were unclear as to whether they rented from the Council or a private person. The rental arrangements are the subject of a separate study; although the boundaries are difficult to maintain, for the current Article the focus is on the sales transactions and consequences directly related to them.

183. This gift from the Council to local businesses is demonstrated by lessees' subsequent sublease of Council-provided spaces at substantially higher prices, although any sublet is strictly forbidden by state law. Gen. Tax Code, *supra* note 20, § C.82(3).

In summary, there is little evidence of tax morale that would encourage the interviewees to pay their taxes. They were not confronted by others systematically complying with formal tax law and thus could not engage in monitoring compliance. There was little respectful reciprocity as the tax authorities' relationship to taxpayers was seen as distant and imperious. The government was ineffective in counteracting the interviewees' perception that their taxes generated few public goods or services. Where tax morale is absent, it is not surprising that the tax authorities resort to coercion, as was described in Part II.B.2's discussion of the money engine.

*B. Translating Tax Morale to Other Formal Laws: The Role of Government*

The tax-morale literature teaches us that there are motivations more effective than pure deterrence and more effective than the government-run money engine. Applying the analysis of tax morale to the business context should be easy, as obtaining support for the business laws would seem simpler and more direct than for tax laws. After all, businesspeople may well be more favorably disposed to business laws than to tax laws, as the former are supposed to benefit businesspeople, not extract property from them, as tax law does.<sup>184</sup>

Businesspeople's possible greater hostility to tax laws than to business laws is a small part of the difference between these regimes. More fundamentally, the relationship between citizen and government presents differently in tax as opposed to business. The tax picture pits the taxpayer against the government even where the taxpayer is aware of fellow taxpayers' conduct. In contrast, the business picture pits the interviewee against the supplier or the customer, with the government providing, or not, a backdrop of business laws that, if present, encourages performance under the contract. While the government is inevitably directly involved in taxation, that is not the case for contractual obligations.

Consider how this difference plays out in the monitoring portion of tax morale's reciprocity criterion. Obtaining compliance through perceptions that others comply is in some ways roughly similar in the tax and business contexts. In tax, watching others comply reduces embarrassment from compliance: it allows the taxpayer to comply without feeling foolish to do so.<sup>185</sup> Applied to business laws, watching another comply could create

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184. Kahneman & Tversky, *Prospect Theory*, *supra* note 141, at 273, 277–80 (in the context of prospect theory, discussing perceived change in value—gain or loss).

185. *See supra* Parts III.A.1 & III.A.2.a (concerning the compliance-watching part of reciprocity).

influence for cooperation and reduce the impetus to defect.<sup>186</sup> Thus, with regard to formal laws of both the tax and business varieties, the interviewee will be more likely to comply if others do. In the tax context, however, the commercial actor's cooperation is with the government in the form of tax compliance, while in the case of business law the cooperation is among counterparties, where a norm of compliance would increase the likelihood that the interviewee's counterparty would respond to the social influence and comply as well.

Concerning respectful reciprocity in the tax context, a taxpayer will be more likely to comply with formal tax laws if the government's tax authorities listen and otherwise evidence respect.<sup>187</sup> In the context of business laws, this kind of reciprocity is again a form of cooperation, but it again applies between contracting parties, not with the government. It includes all of the literature on extra-legal constraints made relevant by the interviewees' references to trust, and the five interviewees' express statements that they extended credit only if they trusted the customer.<sup>188</sup> To emphasize: in the business context, the relationship is between the contracting parties with the government's role very much in the background.

In the context of public goods and services, tax morale claims that to increase the interviewees' compliance qua taxpayers, they must be able to look to government for infrastructure in exchange for their payments of tax.<sup>189</sup> For users of business laws, infrastructure is important, but most critically in the form of a reliable, transparent, and fair judicial system capable of deciding disputes and enforcing awards.<sup>190</sup> Such a government institution provides a framework within which the extra-legal constraints can operate more predictably, an observation that applies with equal force

186. See generally ROBERT AXELROD, *THE EVOLUTION OF COOPERATION* 173–74 (1984) (discussing cooperation in multi-party arrangements of indefinite duration).

187. See *supra* Parts III.A.1 & III.A.2.b (concerning the respect part of reciprocity).

188. See *supra* Part I.B.2.a (discussing three of the interviewees' willingness to extend credit explicitly dependent on trust). See generally Macaulay, *supra* note 68, and Bernstein, *supra* note 68.

189. See *supra* Parts III.A.1 & III.A.2.c (concerning the taxpayer's increased likelihood of compliance and the government's provision of public goods and services).

190. There is a difference between Macaulay's example of businesspeople who make arrangements amongst themselves when a formal contract law is an existing and meaningful backdrop, and businesspeople who have only extra-legal constraints with no meaningful formal law as a safety net. Marc Galanter, *Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law*, 19 J. LEGAL PLURALISM 1, 27 (1981) (“[T]he social landscape is covered by layers and centers of indigenous law.”); Macaulay, *supra* note 68, at 64 (“Sellers who do not satisfy their customers become the subject of discussion . . . at country clubs or social gatherings where members of top management meet.”), as quoted in Barak D. Richman, *Norms and Law: Putting the Horse Before the Cart*, 62 DUKE L.J. 739, 741 n.3, 744 n.14 (2012).

to the enhancement of cooperation under the two forms of reciprocity (compliance watching and respectful reciprocity).

For a business lawyer, this discussion has now come full circle. The business literature has been discussing extra-legal constraints since at least the early 1960s,<sup>191</sup> and prospect theory since the early-mid 1980s.<sup>192</sup> Applying the tax morale literature to formal business law thus is an argument on an already well-worn path.<sup>193</sup> What this tax morale discussion highlights, however, is that even if the ingredients for tax morale existed in the informal sector, the aspects of tax morale that encourage rather than coerce compliance may have analogues in the business-law context, but do not translate directly. In the business context, government cannot mimic tax morale: government cannot encourage contracting parties' desire to comply by merely relating directly with contracting parties in a fair and respectful manner, and by supplying classic infrastructure. Thus conceptually, formal tax law is not a good template for business law's introduction into the informal sector.

Worse, formal tax law's penetration into that sector is not through tax morale in any event.<sup>194</sup> First, tax laws are not being introduced in a meaningful way as government is not actually enforcing the formal laws predictably; it merely is collecting taxes.<sup>195</sup> Second, the government's efforts to introduce the effects of formal law are based on taxation's unique access to cash and are inherently coercive. Thus, they are both inapplicable to business law and undesirable as corrosive of tax morale.

Third, even if tax law's penetration into the informal sector were occurring, and even if the method of introducing tax law were not corrosive, whatever incentives exist with respect to tax collection, the self-fueling aspect in particular,<sup>196</sup> do not apply to business law anyway. I acknowledge that, if formal business laws really would help development, they would be a source of increased revenues for the government: more businesses would mean at minimum more fees and discharge taxes or

191. See Macaulay, *supra* note 68.

192. See, e.g., Victor Brudney, *Equal Treatment of Shareholders in Corporate Distributions and Reorganizations*, 71 CAL. L. REV. 1072, 1088 n.39 (1983) (citing to Tversky & Kahneman on prospect theory); John C. Coffee, Jr., *Shareholders Versus Managers: The Strain in the Corporate Web*, 85 MICH. L. REV. 1, 64–66 (1986) (referring to the prospect theory).

193. The earliest tax article found that explicitly used prospect theory in its argument is from 1987. Kent W. Smith & Karyl A. Kinsey, *Understanding Taxpaying Behavior: A Conceptual Framework with Implications for Research*, 21 L. & SOC'Y REV. 639, 646 (1987) (discussing the prospect theory).

194. Parts II.B.2 & III.A.2 (discussing the use of coercion, not tax morale, for tax collections).

195. See *supra* Part II.B.1.

196. See *supra* Part II.B.2 (discussing the money engine).

business licenses, and, if the businesses became successful, eventually more income and value added taxes.<sup>197</sup> Ultimately, however, the effectiveness of the business laws and this increase in revenues would depend on many factors, including in particular on government expenditures to reinforce the judicial system's regime for deciding cases, and for executing on judgments, swiftly and reliably.<sup>198</sup> Here, the infrastructure is a judicial system, not roads, and this judicial system is itself the public good that, in the business context, must be in place in order to enhance respectful reciprocity; plus, if this abstract infrastructure is effective, it may be a particularly salient example of direct government involvement that does lead, ultimately, to compliance watching. While the government can build roads with taxes collected as they are paid, a judicial infrastructure is the condition precedent to predictable application of business laws. Thus, for formal business laws to apply effectively in the informal sector, the government must spend before it sees resultant increases in revenues.

To have the formal business laws apply in the informal sector, the government is more likely to resort to naked coercion, perhaps only in a relatively passive manner by, for example, withdrawing from unregistered economic operators whatever judicial support already exists.<sup>199</sup> More actively, the government could impose fines on entrepreneurs, even those in the informal sector, for failure to conform to formal business laws. The first option could reduce governmental expenses, and the second would give the advantage to the government of generating fees, assuming that the informal-sector entrepreneurs have the means to pay the fines. In effect, this kind of deterrence is at least as much an effort to coerce the informal-

197. See *supra* Part II.A.1 (describing Cameroon's Tax Code).

198. See Dickerson, *Entrepreneurs*, *supra* note 14, at 189 (discussing the importance of enforcement). OHADA, for example, provides formal laws focused on enforcement exist. See, e.g., Acte Uniforme portant Organisation des Procédures Simplifiées de Recouvrement et des Voies d'Exécution, *supra* note 29. Actual adjudication and enforcement, however, are not adequately swift or predictable. See, e.g., WORLD BANK, DOING BUSINESS 2012, *supra* note 19, at 86 (Cameroon is ranked 174 of 183 for enforcing contracts).

199. Qualification-to-do-business laws of states in the United States also "punish" corporations not formed in the state who do business but fail to qualify. See, e.g., NY BUS. CORP. LAW § 1312 (McKinney 2003) (specifying that a corporation that should qualify to do business in New York but has not done so cannot institute or maintain a suit in New York until qualified). The GCL already removes from an unregistered economic operator the special conditions available to a registered economic operator. See generally GCL, *supra* note 29, art. 60. One specific example is the briefer, five-year statute of limitations. *Id.* arts. 16 (formerly art. 18), 33 (discussing the statute of limitations for economic operators and enterprisers, respectively). See also AKUÉTÉ PEDRO SANTOS & JEAN YADO TOÉ, OHADA: DROIT COMMERCIAL GÉNÉRAL 131–132, § 122 (2002) (discussing generally the effects of an economic operator's failure to register; analysis is under the pre-revision GCL, but there is no reason for the outcome to have changed).

sector entrepreneurs into the formal sector as it is to bring formal laws to the informal sector.

*C. Lessons for Government, from Formal Tax Law, for Formal Business Law in the Informal Sector*

First, the government could instead consider what aspects of its formal tax-collection system are inconsistent with tax-morale recommendations and could work to remedy them. They could then analyze how these remedial methods can translate to other formal laws. In the tax context, the compliance-watching part of reciprocity is the least susceptible to immediate government action and, in an environment where non-compliance is deeply embedded in the norms, may have to wait for the rest of the tax-collection regime to catch up.<sup>200</sup>

On the other hand, the government could take affirmative steps to improve its relationship with the taxpaying public, which includes the interviewees and similar informal-sector entrepreneurs.<sup>201</sup> Expenses will be involved, including monitoring the collectors, providing reliable systems of redress and even raising the collectors' salaries in order to modify their own calculation of risk in connection with defalcation; however, these steps are in government control. This respectful reciprocity aspect is at least in part a communications issue: government agents should be trained to be respectful of taxpayers.

The government could also be more effective communicating the public goods and services it provides based on tax and other revenues.<sup>202</sup> While the country certainly needs more roads, clean water, and myriad other infrastructural services, the interviewees' apparent lack of understanding as to the local government's positive role presents an opportunity for communication.<sup>203</sup> The government should continue to strive to do more, but it should also make sure that taxpayers understand what it is in fact already providing.

The latter two conceptual approaches, respectful reciprocity and provision of public goods and services, do not translate directly from the experience of formal tax law to formal business law, as explained in the prior subpart. The role of government is too different. Nevertheless, tax morale concepts can help bring formal business law to the informal sector,

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200. *See supra* Part III.A.2.a (compliance watching).

201. *See supra* Part III.A.2.b (relational reciprocity).

202. *See supra* Part III.A.2.c (public goods and services).

203. *Id.* (discussing below-market rents in the context of public goods and services).

even though respectful reciprocity in the business context is between the counterparties, and even though complete overhaul of the national judicial system, the immediately relevant infrastructure required by business laws, is a very expensive condition precedent to truly reliable application of formal business laws in the informal sector. Despite these obstacles, the government can model the tax-morale approach through smaller steps that nonetheless enhance the likelihood of cooperation among counterparties and ultimately of reliable enforcement of formal laws.

As mentioned, the first step is communication, to signal respectful reciprocity. Not communication in the form of vacuous public relations, but serious communication of options currently available to the informal-sector entrepreneurs.

This same communication can inform the informal-sector entrepreneurs of actions that the government is taking to build the infrastructure that formal business laws need in order to be effective, namely a judicial system that reliably protects these entrepreneurs' commercial rights. Even though the government cannot credibly point to measurable improvements in the full judicial system,<sup>204</sup> and even though enforcement of formal laws is difficult and is expensive in time and treasure,<sup>205</sup> there already exist clear and accessible business laws such as the OHADA laws, which are themselves at least the beginnings of an infrastructure.

With a relatively small outlay of funds, the government could also take steps that would demonstrate provision of public goods and services in the context of business laws without engaging the full expense of reforming the entire judicial system. There is evidence of significant oversupply of lawyers.<sup>206</sup> Specially trained paralegals and underutilized law graduates, preferably supervised by local bar associations, too, can provide both services and information.<sup>207</sup> Given the surplus of lawyers in Cameroon,<sup>208</sup>

204. WORLD BANK, DOING BUSINESS 2011 154 (no improvement in enforcement of contracts 2009–2010), available at <http://www.doingbusiness.org/reports/global-reports/doing-business-2011/>; WORLD BANK, DOING BUSINESS 2012, *supra* note 19, at 86 (Cameroon is ranked 174 of 183 for enforcing contracts, and was not found to have engaged in reforms through June 2011 that improved that performance).

205. Litigants and their attorneys report having to go to court multiple times because, upon arrival on the appointed date, the judge is absent.

206. *See, e.g.*, U.N. DEVELOPMENT PROGRAMME, COMM'N ON LEGAL EMPOWERMENT OF THE POOR, 2 MAKING THE LAW WORK FOR EVERYONE 29 (2008) (discussing oversupply of lawyers, not all of whom, of course, will be either competent or honest), available at <http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/Lep/making-the-law-work-for-everyone---vol-i---english.html>.

207. *Id.* at 23–40 (discussing use of underutilized members of the bar, as well as specially trained paralegals and law students). In my experience with local bar associations, setting up workshops

the local government could, for example, make available a space within the markets, and the bar associations could dispense legal advice on location. The bar could do so through full-fledged lawyers or through so-called “pupil” lawyers, that is, law graduates who, in preparation for taking the bar, work under the supervision of a member of the bar. The interviewees demonstrated that taxes are their salient interface with government (when asked about business they spoke about taxes); properly supervised pupil lawyers would be an additional and non-tax interface. This point of exchange between the government and the informal-sector entrepreneurs satisfies the direct tax-morale objective of showing what public goods and services the government is making available, while applying the tax-morale concept to improving the legal infrastructure generally. The use of the non-tax interface thus is enlisting tax morale to reinforce the reliable application of formal business laws.

The steps that the government takes towards tax morale’s respectful reciprocity, and the development of and communication about infrastructure improvements, even if both do not immediately result in the compliance-watching form of reciprocity, are positive in themselves. They are also consistent with efforts to bring formal business laws into the informal sector. The government will ultimately have to provide the fully transparent, reliable, and timely enforcement that formal business laws need in order to be effective. However, the initial steps towards tax morale can be merely to include demonstrable first steps towards providing legal support for commercial rights, accompanied by effective communication about formal laws. Those first efforts at formal business laws’ implementation are the beginnings of respectful reciprocity and provision of public goods and services in a business context. As norms start to shift from perceiving the government as an adversary to seeing it as a support for business, compliance-watching will neatly translate from the tax arena to the business arena, to reinforce a norm of compliance.

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together with the University of Buea in the Anglophone region of Cameroon during the fall of 2005, these associations are remarkably active within their communities.

208. A Cameroonian lawyer in November 2005 estimated that there were 1500 lawyers in Cameroon to serve 16 million people, and that only 20% of these lawyers could earn their living by exercising their profession. Interview in Douala, Cameroon (Nov. 7, 2005). In 2005, that was a roughly accurate estimate of Cameroon’s population given information publicly available at that time. The population in 2005 actually was closer to 17.4 million, but the results of the 2005 census, the first since 1987, were not made public until 2010. *See, e.g.*, BUREAU CENTRAL DES RECENSEMENTS ET DES ETUDES DE POPULATION, RAPPORT DE PRÉSENTATION DES RÉSULTATS DÉFINITIFS (Apr. 22, 2010) (discussing the results of the 2005 census at the moment of the report’s publication in 2010), available at [http://www.statistics-cameroon.org/downloads/Rapport\\_de\\_presentation\\_3\\_RGPH.pdf](http://www.statistics-cameroon.org/downloads/Rapport_de_presentation_3_RGPH.pdf).

## CONCLUSION

This Article started with the assumption that forcing informal-sector entrepreneurs from the environment in which they are functioning effectively into the formal sector is counterproductive, especially considering both the fragility of many informal-sector businesses, and the importance of these businesses to the overall success of developing economies.<sup>209</sup> An alternate option, advanced in this Article, proposes bringing formal business laws to the informal-sector entrepreneurs.

The experience of formal tax laws suggests useful strategies for bringing other formal laws into the informal sector, although there are two principal ways in which formal tax laws are not implemented effectively in Cameroon's informal sector. First, the interviewees' experience in the Cameroon markets show that formal tax laws are neither enforced by the government nor respected by the taxpayers. Second, the tax authorities are not taking the pro-tax-morale steps of enhancing the likelihood of compliance; instead, the collection regime depends on a self-fueled money engine—a pyramid structure backed by coercion. Finally, even if formal tax laws were applied consistently in the informal sector, the tax-morale strategies to enhance compliance translate with difficulty to the business arena because the role of government is much less direct in the business context.

Nevertheless, the government, together with local bar associations, could start unveiling the twin tax-morale strategies of respectful reciprocity, and provision of public goods and services. The strategy would involve deploying legal professionals within the informal sector to begin communicating relevant information about the formal legal regime applicable to business, while taking the first steps to implement those laws in the informal sector, through those same professionals. This process carries the formal business laws to the informal-sector entrepreneurs rather than the reverse. It is consistent with a do-no-harm approach that improves the informal-sector entrepreneurs' environment without disrupting their ability to sustain themselves and to contribute to the entire national economy.

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209. See *supra* Introduction.