The Incumbency Advantage? How Post-Soviet kleptocrats and their UK Enablers Manipulate the International Anti-Money Laundering Regime

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ABSTRACT
The global Anti-Money Laundering (AML) system is supposed to prevent the laundering of wealth by domestic political actors from kleptocracies, but the fear remains that incumbent elites, particularly those of friendly states, are insulated from AML measures in rule of law settings. However, academic work assessing the relationship between the international AML system and the domestic politics of kleptocracies is very limited. This article is based on analysis of an original dataset of £2 Billion of domestic real estate in the UK owned by elites from post-Soviet states, where corruption is endemic, and detailed process tracing studies of three purposively chosen cases from the dataset. We find that, contrary to the purposes of the AML system, there is an incumbency advantage which suggests that these enforcement mechanisms may be manipulated by kleptocratic regimes. Where AML allegations succeed, they do so because the elite (an exile) has already lost office or good standing; where the elite (an incumbent) has retained their position, they are able to defend successfully against the action. Cases which appear to diverge from this rule may be explained by effective legal enabling which allows a small number of exiles to beat the odds.

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The phenomenon of 'transnational kleptocracy' is gaining increasingly scholarly and public attention. Indeed, there is an understanding in academic literature and among policymakers that the issue of grand corruption affecting developing countries cannot be addressed without considering the Western 'enablers' of corruption (Cooley et al., 2018; United Nations, 2020; Zucman, 2015). Kleptocrats looting their countries need the help of international firms and advisors to hide their money and prosper in the long run. To counter this phenomenon, a host of new Anti-Money Laundering (AML) Regulations, investigative tools and enforcement actions have been introduced in recent years, including Unexplained Wealth Orders (UWOs), introduced by the UK government in 2018 (Keen, 2017). The idea of such instruments is both to prevent money laundering in the destination country and also to have a 'boomerang effect' back to the home country, creating new opportunities for accountability, as envisaged in conceptions of transnational activism (Keck & Sikkink, 2014). Other international legislation, such as the U.S. Global Magnitsky Act and its imitations elsewhere, aims to have a similar effect on corrupt behaviours in the home country (Human Rights Watch, 2017).

However, academic work assessing the relationship between the international AML system and transnational kleptocracy is limited. The UK is a major financial and service centre used in transnational kleptocracy and deserves particular attention (Bullough, 2018; Burgis, 2020). This article examines the relationship between enforcement action in the UK against elites suspected of corruption and their political position in their home country. If a successful enforcement action leads to the demotion or removal from office of an incumbent elite in their home country this would demonstrate an effective *outside-in* relationship, in which AML enforcement had a demonstrable and positive effect on the internal politics of a kleptocracy. However, studies suggest that outside in improvements in governance are rare and require alignments between national elite interests and international norms (Krasner & Weinstein 2014) – something not forthcoming in kleptocracies. We therefore explore the reverse effect: an *inside-out* mechanism, in which these enforcement mechanisms are effectively manipulated by regimes as they are deployed against their political exiles – and defeated when used against incumbents. As the success/failure of enforcement is so closely linked to exile/incumbency an unintended consequence of AML rules is that efforts to fight kleptocracy may actually be strengthening kleptocrats. The important question arising from the inside-out finding is not whether it occurs but why. In this article we explore three hypotheses: (1) an *incumbency advantage*, where the incumbent is able to launder their reputation; (2) an *alliance effect*, where incumbents from allied or friendly states are less likely to be targeted by AML regimes; and (3) an *enabler effect*, where the preponderance of expert legal support makes the difference.

To assess these hypotheses, we adopt two methods. To address the first two, we employ a descriptive statistical and qualitative comparative analysis (QCA) of an original dataset of 99 known purchases worth £2 Billion of UK residential property by politically exposed persons and high-risk individuals from post-Soviet countries, 1998–2020 (ref to self). To explore these two further and address the third, we pursue three case studies of elites purchasing property in London. Overall, we find clear evidence of a general incumbency advantage where those who remain in or close to power keep their property and position while exiles most often lose theirs.

However, in apparently divergent cases – incumbents caught in legal processes and exiles who retain their property – we find that legal enabling makes the difference in rescuing these kleptocrats from their fate. Alliance between foreign states and the UK had no discernible effect. Overall, our findings suggest that international AML measures in the real estate sector, rather than either building a liberal international order or being subject to realpolitik, are corrupted by the phenomenon of transnational kleptocracy.

The paper proceeds as follows, across five sections. First, we identify the outside-in logic of anti-money laundering with special attention to efforts to prevent corrupt wealth entering the UK real estate market. In the second section, we outline the form and function of transnational kleptocracy and derive our three hypothesized effects: incumbency, alliance and enabling. In section three, we explain our sources and original dataset, present the basic findings from the descriptive statistics and QCA – including clear evidence of the incumbency advantage – and elaborate the process tracing method. In the fourth section, we look at two typical inside-out cases – namely the incumbent Leila and Arzu Aliyeva (Azerbaijan) and that of Mukhtar Ablyazov (Kazakhstan), who lost office – and find that incumbency matters to explain the difference in outcome. In the fifth, we look at an apparent exception – the exile Maxim Bakiyev (Kyrgyz Republic) – and trace the enabling processes that make the difference saving Bakiyev from the fate of most exiles. We conclude with some reflections on what these findings mean for how we understand international relations, specifically the role of transnational professionals in supplying services to kleptocrats.

Anti-Money Laundering: outside-in accountability?

Money laundering is the "processing of […] criminal proceeds to disguise their illegal origin" (FATF, 2021: 12, 22). Offshore financial centres and complex chains of anonymous companies allow suspect capital to be moved easily across borders to permit money-laundering. This link between "*onshore* corruption and *offshore* secrecy" has been well-established in the literature (Sharafutdinova & Lokshin, 2020, 13) (see also: Ledyaeva et al., 2015; Lord & Levi, 2016). A particular challenge is posed by states which have large or emerging extractive economies and suffer from kleptocratic regimes or dysfunctional political systems; they are sometimes labelled *kleptocracies* – "government[s] engaged in corruption and embezzlement to increase the personal wealth of government officials" which are "characterized by widespread misappropriation of public funds for the benefit of the ruling elite" (Black et al., 2017; see also: C. Walker & Aten, 2018). The UK's Financial Conduct Authority (FCA) indirectly provides a definition in its guidelines on countries with a high risk of corruption: "a political economy dominated by a small number of people/entities with close links to the state" (Financial Conduct Authority (FCA), 2017, p. 10). Under British AML rules, special scrutiny is given to state government officials (politically exposed persons or PEPs), their key associates, and close family members (UK Government, Regulation 35, 2017). The extension of the PEP to family members is crucial as the use of family members as formal beneficial owners is commonplace in suspicious transactions, corruption and, of course, tax avoidance. Extra scrutiny is also required in instances where there is a high risk of money laundering, which includes when the individual is from a country "identified by credible sources as having significant levels of corruption or other criminal activity" (UK Government, Regulation 33, 2017).

International financial centres such as the UK have adopted an array of new instruments to tackle transnational corruption. These are designed to have a positive impact on third countries – an 'outside-in' effect that reduces the incentives for corruption in developing countries by making it harder to launder the proceeds of crime in Western financial centres. The efforts are a belated recognition that one of the main issues regarding corrupt cross-border money flows is the central role played by major banks and other key enablers located in a small number of developed countries, not, as conventional wisdom presupposes, offshore jurisdictions. This misconception feeds into the commonly held belief that it is developing countries that have serious corruption problems, whereas developed countries are regarded as largely corruption-free. Such portrayals, according to a United Nations-commissioned review of AML processes, "ignore the transnational nature of a great deal of corruption, tax evasion, and money laundering, and the symbiotic relationship in which developed state havens receive flows of criminal and tax avoidance money from the developing world" (Findley et al., 2020, pp. 16–18). It is in this context that new legislation is being introduced in the UK, US and EU countries: a) to prevent the initial flow of corrupt money, and b) to streamline the recovery procedure when illicit assets are suspected.

In the UK, a push to clean up the real estate market was announced by then Prime Minister David Cameron in 2015 in a speech which promised to "stop corrupt officials or organised criminals using anonymous shell companies to invest their ill-gotten gains in London property" (Cameron, 2015). Cameron cited London – routinely in the Top 3 of the Christie's Luxury Real estate ranking (Christie's International Real Estate, 2018) – as a hot spot for property purchases made with "plundered or laundered cash", but pledged that the capital would not be a place for "foreign fraudsters" to stash [their] dodgy cash." In 2018 the UK introduced the Unexplained Wealth Order (UWO). UWOs are targeted at individuals linked to serious crime and/or to PEPs from foreign countries. According to the House of Commons library, UWOs "allow law enforcement to apply for a court order requiring someone to explain their interest in property and how they obtained it" (Shalchi, 2021). In theory, therefore, they "provide an opportunity to confiscate assets without ever having to prove that the property was obtained from criminal activity" (Shalchi, 2021). For an order to be issued, there does not even have to be a link to serious crime (although that is one criterion): if the known income of the PEP is insufficient to acquire the property in question, then a UWO can be issued. In short, the onus is on the respondent to prove that the source of funds is clean, rather than law enforcement proving that the source is criminal.

Such measures aim to complement the UK's existing anti-money laundering regulations. Under the Proceeds of Crime Act (POCA) 2002, it is a criminal offence for a professional in a regulated industry to fail to report suspicions or knowledge of money laundering to the National Crime Agency. Key to the prevention of money laundering by corrupt foreign officials is the earlier provision, first introduced in 2007, of mandatory enhanced due diligence on PEPs. This provision was widened to include those from high-risk countries as part of a series of measures in the "The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017". The system thus relies on the investigative capabilities of professionals in regulated industries (banks, accountants, real estate agents, lawyers, and others) and their willingness to report suspicions. However, evidence suggests that such professionals

rarely face meaningful sanctions even when there is strong evidence of their complicity (Findley et al., 2014, pp. 18–19).

Transnational Kleptocracy: inside-out manipulation?

These AML initiatives were introduced to tackle the growing influence of a new class of politically connected business leaders with global reach. Recent literature has highlighted the critical link between the national and the transnational in corruption research. These transactions and the conditions which sustain them are undoubtedly global in that no region in the world is free from their nodes and transactions. As such, research on kleptocracy "requires a shift in the unit of analysis, to transnational networks, rather than just states" (Cooley & Sharman, 2017, p. 746). This is 'global' or 'transnational kleptocracy' (Alicante, 2019). These individuals typically emerge from national kleptocracies but "kleptocracy almost always involves a cross-border aspect, as funds stolen by leaders of one country are transferred via intermediaries and hidden abroad" (Cooley & Sharman, 2017, p. 733). Cooley and Sharman (2017, p. 733) derive three points of significance from this transnational aspect of kleptocracy. First, as outlined above, corruption is not merely a problem of the 'developing world'. Second, it is often professionals in countries where the rule of law is supposedly active which facilitate money laundering, rather than criminal figures, indicating "the merging of the licit and illicit economies". Finally, we can see that "wealthy individuals are globalizing through acquiring multiple nationalities via investor citizenship programs, and diversifying their sites of physical, legal, and tax residence, once again with the assistance of a specialized industry of professional intermediaries" (Cooley & Sharman, 2017, p. 733).

If the AML regimes in the UK and other jurisdictions were effective, they would make it more difficult for individuals to extract resources from their home countries and invest them in property markets and businesses overseas. But we advance here the alternative hypothesis, that those closer to power in a kleptocracy are not merely less likely to be targeted overseas agencies, but also better able to defend themselves. If this hypothesis is correct, it has major ramifications for both the study of kleptocracy and the practice of anti-corruption. If kleptocratic regimes can offer protection abroad as well as at home, these extra-territorial effects of their power should be considered as part of the scope of a new transnational uncivil society (Cooley & Heathershaw 2017, p.42). Equally, if anti-corruption measures overseas, such as UWOs, are more likely to pursue and dispossess the opponents of regimes, their net effect is not to increase accountability, but decrease it. This 'inside-out' hypothesis suggests that kleptocratic regimes can use a network of transnational enablers and instrumentalise AML legislation – alongside transnational policing mechanisms such as Interpol and bilateral extradition procedures – to pursue political opponents. They are also able to use the same network of enablers to block the use of AML against regime insiders.

Why might kleptocratic elites be able to evade anti-money laundering rules with respect to their property? We derive three hypotheses from the existing literature. First, we hypothesize that there is an *incumbency advantage* where elites who remain on the inside of kleptocratic states might leverage public power for private gain. In kleptocracies, the rule of law and even foreign policy is subject to the private and business interests of the kleptocrats themselves. This much is

well-established in the literature on post-Soviet states (Hale 2014, Dawisha 2015, Cooley & Heathershaw 2017). What is less clear is the capacity of such states, often small states, to manipulate the international money laundering regime. However, small states can resist new global standards against tax avoidance by techniques from foot-dragging to rejection (Crasnic 2014). Just as multinational firms have "networked liabilities" when their affiliates are subject to legalized theft or extra-legal influence by kleptocrats (Crasnic et al 2017), courts adjudicating on transnational money laundering may be vulnerable to non-cooperation or selective cooperation by kleptocracies. In our hypothesis, we expect to see non-cooperation or selective cooperation in favour of the defendant in the case of incumbents, and cooperation or selective cooperation against exiles. Our proxy for this effect is the evidence from the home country which is made available to the investigators and the court. Where this evidence helps establish the legitimate sources of wealth and business practices of an incumbent elite defendant, we see an incumbency advantage.

Our second hypothesis is of an *alliance effect*. While the first hypothesis is of a transnational mechanism, our second explanation is international where the rule of law in the UK is subject to cooperation with international partners. We postulate that national courts are more likely to accept the evidence submitted by and judgments of the courts and regulators of an established partner than those of a non-partner. Given the politicized nature of legal judgments in kleptocracies, this suggests that cooperation between states makes legal accountability for corrupt friends less likely. The literature suggests that, "as the politics of different national systems become more intertwined, we may expect that collective actors in one state will increasingly have strong incentives to work together with actors in others" (Farrell & Newman 2014: 350). Great powers with large markets and high regulatory capacity deploy a mixture of coercion and concession to achieve regulatory compliance and exchanges of financial information from their allies (Hakelberg 2020). The UK, as a former great power in long-term economic decline and with poor enforcement of its rules, is not such a state. Indeed, an alliance effect with respect to anti-corruption is more likely to work in the opposite direction as an inside-out effect. For example, following the al-Yammah deal, British Prime Minister Tony Blair intervened in 2006 to stop a UK Serious Fraud Office investigation into bribery at the request of the Saudi government who were threatening to withdraw security cooperation. Our hypothesis is that incumbent elites from UK partners are more likely to retain their property and position than incumbent elites from non-partners. We may observe indirect (probabilistic) evidence for an alliance effect from comparing across a large number of cases. However, direct (mechanistic) evidence of such an alliance is highly unlikely to be uncovered outside the rare occasions of high-level political involvement, as seen in the al-Yammah case.

Third, we hypothesize that there is an *enabling effect*. Such an effect is thoroughly transnational, relating to networks which cross borders, rather than being a matter of politics inside or outside the country. Money laundering entails "the process of creating a veil of legal cleanliness" while its techniques are "minor variations on methods used routinely by legitimate businesses" (Al-Suwaidi & Nobanee, 2020: 398; Blum et al, 1999: 69). A legal defence against money laundering is partly that of defending a legitimate set of business methods and thereby keeping the sources of wealth hidden or at least uncertain. Therefore, professional intermediaries, specifically lawyers, are potentially a key factor explaining successful money laundering. Although legal professionals are all regulated and are therefore required to support investigations

against their clients, they clearly have other primary goals which they see as conflicting with their regulatory duties (Amicelle 2011; Helgesson & Mörth 2018). Moreover, as private authorities and big international law firms play an increasing role in setting regulatory standards, they possess insider knowledge on how those standards may be evaded by their clients (Buthe & Mattli 2011; Tsingou 2015). With respect to wealth managers, Brooke Harrington (2017: 1) uses the term "inside outsiders". Transnational professionals, including those in law and high-value real estate, have arguably "transcended both public- and private-sector bureaucracies" (Harrington and Seabrooke 2020: 400). Previous studies of AML in the UK have found that regulation encouraged a box-ticking exercise where lawyers "resorted to their own professional competence and knowledge of clients and their businesses" (Helgesson & Mörth 2016: 1226). This achieves the worst of both worlds where lawyers face a conflict of interest in exercising judgment while providing information which is of little use to the authorities and finding "ways to keep clients informed" (Helgesson & Mörth 2016: 1227-1228). Professionals, especially legal professionals, are crucial in both the detection and avoidance of money laundering charges. Our hypothesis is that incumbent and exile elites facing a *prima facie* case of money laundering are more likely to retain their property and position if they contract elite legal assistance which exceeds the expertise available to the public authorities taking action against them.

Data, Method, and Initial Findings

Our research has built an open-source dataset of residential real estate purchases in democracies by elites from states regarded as kleptocracies according to our definition. While 'open source', this data is often hard to come by as it requires the piecing together of different findings from offshore data dumps, investigative journalists, and civil society often over many years and in several different languages. Identifying properties is hard: the dataset analysed here and published elsewhere (ref to self) is the product of years of open-source intelligence work via court records, land registry and company registrations, journalistic investigations, and other records in both the English and Russian languages. There is thus an element of partiality as to which cases appear in our database and which do not. While this list is not exhaustive, our scope criteria are clear and variation among cases sufficient for us to analyse these cases qualitatively and comparatively. While the larger dataset we hold is global with multiple global real estate markets for African and Eurasian elites, for the purpose of this analysis we have narrowed our scope criteria down to real estate purchases by elites from post-Soviet states in the UK market.

Our Dataset: a Qualitative Comparative Analysis

In order to assess property loss/retention, we gathered all publicly available material to populate our database of 99 known purchases of UK residential property by politically exposed persons and high-risk individuals from post-Soviet kleptocracies, 1998–2020. This list was composed with respect to significant contextual factors for money laundering and kleptocracy. These include regional scholarship on the nature of political economy (Ledeneva, 2013), whether it is resource-dependent (Kurronen, 2015), and whether the character of their economy is consistent with the legal definition of a 'high risk third country' (Redhead, 2019). Although they are often

not named on international lists for reasons that appear to be both technical and political (see below), all the post-Soviet nations (with the exception of the Baltic countries) clearly fit the UK's own definition of high-risk (FCA 2017). They all perform poorly in such indices as the World Bank's Control of Corruption or Transparency International's Corruption Perceptions Index.

Our dataset includes known purchases by elites from eight of the post-Soviet states, each of which is assessed as a kleptocracy during the period in which the property purchase was made. The absence of a clear kleptocracy, Belarus, from the list is merely because we could not find any known cases where the property could be pinpointed. For individuals, the criteria for inclusion on the list were: (i) the individual at the point of purchase was a politically exposed person, a close relative or associate – as defined by Regulation 35 of the UK's Anti-Money Laundering Regulations – or someone from, or earned money in, a country that possesses a high level of corruption (thus posing a higher risk of money laundering), as defined by Regulation 33 (UK Government, 2017), and (ii) they purchased property in the UK whose value is known or estimated to be over £1 million. Inclusion on this list does not mean that the funds used in these transactions was criminal, but all of these transactions would be designated as 'high risk' according to the current version of the UK's Money Laundering and Terrorist Financing Regulations and guidance (UK Government, 2017; FCA 2017).

Our published database contains 99 cases of property purchases more than £2 Billion (ref to self, 2021: 50-54). Many of the cases hold important further conditions of similarity. All have completed residential real estate transactions in the UK (London and south-east England), many which use complex offshore structures, which can be used to conceal beneficial ownership or dubious sources of wealth. The 99 cases also have important but limited conditions of difference. Some are government officials, heads of state companies, or their close relatives – including many close relatives of sitting presidents; we designated these as *incumbents*. By contrast, a smaller number are out of favour – either under house arrest (e.g. Gulnara Karimova), an exile with asylum or residency in the UK (e.g. Maxim Bakiyev), an exiled relative or associate of an imprisoned former senior official (e.g. Zamira Hajiyeva); we denote all these as *exiles*. With investigations and prosecutions occurring over the period there are also differences of regulation, particularly regarding the changes in the UK's Anti-Money Laundering Regulations, and the introduction of UWOs in 2018, although this affects just two cases (Hajiyeva and Nazarbayeva/Aliyev) which we have discussed in detail elsewhere (ref to self).

Only for 88 of the 99 cases do we have information on the outcome which is necessary to make the assessment. We subject this medium-n of cases to basic descriptive statistical and qualitative comparative analysis. In this method, we test the first of our two hypothesised outcomes: the loss/retention of property. Findings indicate a strong relationship between i) incumbency and the retention of property and position, and ii) exiles and the loss of property and position. A very clear correlation emerges where 85 of 88 cases correspond to the inside-out hypotheses where incumbents retain property and exiles lose it. In fact, no incumbents (0/73) lose their property. Just three of the cases conform to the outside-in hypothesis. They are both of exiles (3/15). Overall, these results suggest that incumbency is sufficient to retain property, but exile is not enough to lose it as there are exceptions to that general pattern. These findings are illustrated in table 1.

Table 1: findings with respect to incumbency advantage on loss/retention of property

	Effect	Non-effect
Incumbents	100% (73/73) retain property	0% (0/73) lose property
Exiles	80% (12/15) lose property	20% (3/15) retain property
Overall	97% (85/88)	3% (3/88)

After these descriptive statistics, we subjected the 88 cases to crisp-set qualitative comparative analysis which enables us to test conjunctions in variables and do a basis analysis of their configurations using a set-theoretic truth table (see annex 1). Crisp-set QCA assesses three conditions (derived from our three hypotheses) on a simple binary basis. First, we categorise cases as either those of exile/incumbent (condition A), where incumbent refers to any political elite, their relatives, or business persons who retains political position or business interests in the country. Second, to measure the alliance effect, we ask whether the country of origin of person is a UK partner/ UK non-partner (condition B). UK partners were defined as states with an EU association agreement, or EU Enhanced Partnership and Cooperation agreement signed or 'in negotiation'. Third, to assess the effect of enabling we ask whether the person had access to elite legal assistance (condition C). Condition C proved to be both very difficult to measure and, where it could be measured, a constant, as all the wealthy persons able to buy UK property of a value more than £1 million also had elite legal assistance at the point of sale (conveyancing) and/or point of legal action against the property. We thus tested conjunctions between just the first two variables and observed several patterns where, according to the QCA, contradictory conjunctions were absent. Of the 76 cases of retention of property, 54 were of incumbents from UK partner states (71% consistency). Of the 12 cases of the loss of property, all but one were of exiles from UK partner states Azerbaijan, Kazakhstan, and Uzbekistan (92% consistency). These data suggest a very strong incumbency advantage and provide some evidence of an interaction between incumbency advantage and alliance effect. Those cases at the margins – exiles that retained property – require further explanation.

Process Tracing Through Small-n Cases

Having identified a strong incumbency advantage through this medium-n statistical inference, we are however limited in understanding what causes it – i.e., *why* this pattern is found – by the nature of this method. This is because cross-case analysis results in the black-boxing of causal links; in order to establish causation, we must engage in "tracing the process as it played out within a case" (Beach and Pedersen: 2020, 3). To open the 'black box' of causality, we thus turn to in-depth qualitative analysis through process tracing and set out to explore the incumbency advantage's causal mechanisms, including those related to international political allegiances and transnational professional enabling. We do so via a close reading of the legal documents made

available to us and the public reporting of each case. We also deploy our area expertise to decipher the politics of the countries involved and how far its domestic dynamics provided the resources for the effective defences of incumbents. We consider the nature of relations between incumbents/exiles and the authority of their home countries. We also look at the relationship between the UK and the home state.

Our expectation is that the specific mechanism which generates the incumbency advantage is the availability of evidence, that is favourable to the defendant, to be submitted to the UK courts. We hypothesize that this happens because incumbents can rely on politicised power structures in home countries that will certify their good standing, whereas the opposite will be true for exiles. Two further hypothesized mechanisms are: a political intervention by the UK government in the courts on behalf of an ally[1]; a greater volume and quality of legal assistance. Alternative mechanisms include: 'self-censorship' by regulators and prosecutors who, of their own volition, and perhaps due to concern for their own careers, are unlikely to pursue cases against incumbents from partner states; the weight evidence establishing money laundering in the case. The first of these alternatives is impossible to assess while the second requires detailed case knowledge.

In accordance with our theory and hypotheses, we identify six key steps of the process. Only if each step is found is the process established.

1. Elite loses/retains power at home and acquires property abroad
2. Elite is subject/not subject to official/unofficial investigation of property abroad
3. Evidence connecting laundered money to the property is/is not submitted to the court
4. UK courts rely/are not able to rely on evidence from a kleptocracy (elite's home country) that is favourable to the defendant
5. Elite loses/retains property abroad – Hypothesised outcome (a)
6. Elite becomes excluded/remains included at home/abroad – Hypothesised outcome (b)

We design our process tracing around the incumbency advantage (hypothesis 1) to be able to consider the effect of enabling (hypothesis 3), which was invisible in the dataset itself. We expect the 'incumbency advantage' mechanism to be at its clearest between steps 3 and 4 of the process tracing chain. We also expect enabling to make a difference in the divergent cases which do not appear to fully conform to the incumbency advantage.

For incumbents, step 1 is the starting position with respect to the acquisition or property and retention or non-retention of power at home. The acquisition of residency, second citizenship or asylum may be part of this step. Step 2 is being subject to a public investigation. All our cases are subject to public investigation but there is important variation here in the form of the investigation (juridical or non-juridical) and the investigating party (the official authorities or an unofficial investigation by press or civil society). For most incumbents, the investigation is non-juridical and the investigating party non-official. Step 3 involves the provision of evidence, and step 4 involves the use of the submitted evidence by western courts. It is between these two steps where we may see the incumbent effect most clearly. For exiles, evidence of laundered money is

[1] This has happened before in international corruption cases, most famously in the Serious Fraud Office's case against British Aerospace where the Prime Minister intervened in 2006 on 'national security grounds' (Mills & Jarrett 2010).

more likely to be presented, whereas for incumbents it may be withheld, while evidence of the purported legal origins of the money – favourable to the defendant – may be presented. Thus, for incumbents, an investigation which may have been non-juridical and unofficial fails to proceed due to limited or hidden evidence; or a favourable judgment is given on the basis of evidence submitted that is favourable to the defendant. In step 5, the incumbent retains the property while the exile is more likely to lose it. Finally, in step 6, the incumbent remains included at home and abroad while the exile becomes excluded overseas as well as at home. In cases which diverge from this incumbency advantage we would expect to see that enabling makes the difference, both to protect incumbents who are in the unusual position of facing juridical investigation at step 2 and to protect exiles who typically face such an investigation and public and extensive evidence of their wrongdoing at steps 3 and 4.

Table 2: Hypothesized processes for incumbents and exiles

STEP	Incumbents	Exiles
1	Incumbent retains power at home and acquires property abroad	Exile loses power at home and acquires property abroad
2	Incumbent is subject to unofficial investigation of property abroad	Exile is subject to juridical investigation of property abroad
3	Evidence connecting laundered money to the property *remains hidden or limited* while favourable evidence (such as politicised judgments) *becomes available.*	Evidence connecting laundered money to the property *becomes public and extensive*
4	Courts rely on the evidence submitted, returning a judgment that is *favourable* to the incumbent	Courts rely on the evidence submitted, returning a judgment that is *not favourable* to the exile
5	Incumbent *retains* property abroad	Exile *loses* property abroad
6	Incumbent remains *included* at home and abroad	Exile becomes *excluded* abroad

These hypothesized processes are stylised for the purpose of clarity. In actual cases, the steps may involve incumbents at risk of becoming exiles (step 1), both juridical and unofficial investigations (step 2), both some evidence which is public and some which is hidden (steps 3 and 4), the temporary freezing but non-confiscation of property (step 5), and a partial or temporary exclusion of the person at home and/or abroad (step 6). In each in-depth case study analysed below, we acknowledge this complexity and uncertainty while testing our hypothesis with process-tracing-relevant evidence, in the form of Causal Process Observation (CPOs) (Collier et al., 2004). The CPOs are extracted from our close reading of court documents and

other official reports. It is important to note that, in most cases, process tracing relies not on conclusive evidence, but on gathering several strong CPOs that, cumulatively, either confirm or disprove the process tracing chain's step (and therefore the hypothesis). We also explicitly consider rival explanations (Checkel, 2013, pp. 20–21), including the fact that the evidence of money laundering may be greater in some cases. This provides a form of validation which is widely and successfully deployed in qualitative comparative work (Bennett, 2013, p. 212; Bennett & Checkel, 2014).

In the analysis below we consider three cases: two cases which have the typical outcome and one which diverges. Our two comparators are incumbent family members Leyla and Arzu Aliyeva who retained their position in Azerbaijan and avoided juridical investigation and Mukhtar Ablyazov, an exiled former banker and government minister who lost property and status in the UK after his home government took action. Our divergent cases is Maxim Bakiyev, an exile from Kyrgyz Republic who retained his property. These cases are purposively chosen to allow us to assess hypothesized incumbency and enabling mechanisms alongside rival explanations. Is the incumbency advantage the predominant causal mechanism explaining why the Aliyevas retained their property while Ablayzov lost his property and status? Was legal enabling crucial in protecting Maxim Bakiyev's property and in him avoiding the fate of Ablyazov?

Two Typical Cases

Of the 85 cases which conform to theoretical expectation we have selected on incumbent and one exile to purposively demonstrate the power of the incumbency advantage.

Leyla and Arzu Aliyeva: incumbents with advantages?

Leyla and Arzu Aliyeva are the daughters of the president of Azerbaijan, Ilham Aliyev. In a leaked diplomatic cable from 2010, the US government spoke of "a handful of well-connected families [that] control certain geographic areas, as well as certain sectors of the economy. […] As a result, an economy already burgeoning with oil and gas revenues produces enormous opportunity and wealth for a small handful of players that form Azerbaijan's elite." (The Guardian, 2010). Much of the Aliyev family's business is concentrated in the hands of Leyla and Arzu Aliyeva (step 1), whose holdings appear to be mostly outside of a formal structure with the widespread use of offshore companies.

For example, in 2007, following a presidential decree, the government of Azerbaijan issued a license for the development of five gold fields to a recently incorporated company named Azerbaijan International Mineral Resources Operating Company (AIMROC). In 2011, a government estimate put the value of the silver in gold held by just one of the fields at around $2.5 billion (Fatullayeva & Ismayilova, 2012). AIMROC consisted of four companies, one of which was co-owned by three Panamanian companies, all of which listed Leyla and Arzu Aliyeva as senior managers in their corporate filings (Fatullayeva & Ismayilova, 2012). Prior to this, neither of the daughters had known experience in mining.

Much of the wealth generated by the Aliyev daughters appears to have been placed in real estate.

In 2018 it was reported that the daughters, together with their brother, owned a luxury hotel and villas on the Jumeirah islands in Dubai worth over $100 million, in deals dating back to 2004 (Jardine, 2018; Patrucic et al., 2018). OCCRP list a dacha near Moscow worth at least $37 million, a $1.1 million villa in the Czech spa town of Karlovy Vary, a $7.3 million house in Bucharest (Roxana Jipa et al., 2015) and several properties in London, including a $25 million London mansion, an estimated $26 million penthouse in Knightsbridge and a flat valued at up to $8 million overlooking Hyde Park (step 2). Further investigations revealed that these properties were part of a $700 million UK property empire owned by the Aliyev family and close associates (Patrucic, Lozovsky, Bloss & Stocks, 2021).

In 2015, Leyla and Arzu attempted to buy two further luxury Knightsbridge flats for £59.5 million via another BVI company, Exaltation Ltd. Leyla and Arzu were represented in this deal by a solicitor, Khalid Sharif of Child & Child. Sharif failed to identify the two women as PEPs, a requirement of the relevant UK money laundering legislation active at the time (Harding, 2018b). Sharif was referred to the solicitors' disciplinary tribunal for not detecting "a significant risk of money-laundering" (Harding, 2018a). A deal involving Mirjalal Pashayev (a member of President Aliyev's wife's family) was also scrutinised as it posed "warnings signs", i.e. the property was a high-value gift that was transferred between foreign-owned entities in an offshore jurisdiction (Harding, 2018a; Rose, 2019). Sharif admitted that he failed to conduct ongoing monitoring of his business relationship with an associate of the Azerbaijani president who was involved in the dealing circumstances which again "disclosed a significant risk that money laundering was taking place". He was fined £45,000 and charged a further £40,000 in costs (The Times, 2019).

Ultimately, the Leyla/Arzu transaction was not completed but the Pashayev transaction was. These outcomes are consistent with our theory, that even though the disciplinary tribunal had identified that both transactions posed a significant risk for money laundering, no criminal investigation appears to have been launched on the Aliyevas or Pashayev. This suggests that evidence connecting laundered money to the property remains hidden or limited or that the UK authorities did not wish to pursue a case against the daughters of the head of state of a UK partner (step 3). In accordance with our model, furthermore, no enforcement action has taken place (step 4). Pashayev retains his property in the UK (step 5), and both he and the Aliyeva sisters maintain their business positions in Azerbaijan (step 6).

However, even though this case study fits the pattern, it is difficult to assess whether the 'incumbency advantage' was the key factor in the UK authorities not launching a criminal investigation. The Leyla/Arzu transaction was not completed, so no crime was committed. The Pashayev transaction was completed, though it is arguable that the limited availability of evidence was due to the actions of the solicitor himself. Solicitors are required to maintain records of their transactions for at least five years, though in this case enhanced due diligence was not performed on the transactions, so information regarding source of funds collected by Sharif may have been limited. In short, even though the transaction posed a high risk for money laundering, it is possible that vital information regarding the source of funds was not collected and thus not available to law enforcement. This is arguably a version of the 'enabler effect' –the solicitor resolved the problem by asking no questions and failing to fulfil basic AML duties.

Mukhtar Ablyazov: an exile succumbing to the incumbency advantage

From 1991-1997, Mukhtar Ablyazov ran two businesses, Medina and Astana Holding, which supplied the various regions of Kazakhstan with food products and electronic equipment. He was then appointed the head of KEGOC, a state-owned company in Kazakhstan that ran the country's electricity grid. From April 1998 to October 1999, he acted as Minister for Energy, Industry, and Trade (Peoples.ru, 2011). In 1998, as a part of a consortium of Kazakh investors, Ablyazov acquired Bank Turan Alem (later BTA) in a privatization auction for $72 million. At this point, his net worth was already $300 million, making him one of the richest people in Kazakhstan (Burgis, 2017). Soon after leaving government, Ablyazov formed an opposition party, Democratic Choice of Kazakhstan, with other colleagues in November 2001. In July 2002, Ablyazov was convicted of "abusing official powers as a minister" and sentenced to six years in prison in a trial widely seen as politically motivated due to his opposition activities. He was released after only serving ten months, with many believing it was on the condition that he renounce politics (Beketova, 2005).

Ablyazov relocated to Moscow in 2003 and in 2005 became the chairman of the bank he was a shareholder in, BTA. It is during this period that Ablyazov started to acquire various properties in the United Kingdom, including Oaklands Park, a mansion with four cottages and a 100-acre estate in Surrey, which he bought via a Seychelles company in 2006 for £18.15 million (Glanfield, 2015), a £20 million house in The Bishops Avenue ("Billionaire's Row") and a £1 million apartment in St John's Wood (Landen, 2013). However, in February 2009, Ablyazov was dismissed from his chairmanship for not acting in the bank's interests, and he claimed asylum in the UK (step 1).

The Kazakh government accused Ablyazov of embezzling $10 billion from BTA (UK Supreme Court, 2015) and he faced a $6 billion fraud claim (Ridley, 2013) (step 2). Efforts were made by BTA – now majority owned by the Kazakh state (Kase.kz, 2009) – to recover the assets allegedly stolen by Ablyazov, including his property (step 3). In total, BTA pursued Ablyazov in the UK High Court over eleven separate claims in a bid to recover its funds (Obrien, 2013). Considerable evidence against Ablyazov appears to have been provided to the court at this time (step 3). The UK High Court ruled against Ablyazov (step 5), with one judge calling him "devious", and another adding: "It is difficult to imagine a party to commercial litigation who has acted with more cynicism, opportunism and deviousness towards court orders than Mr Ablyazov" (Ridley, 2012). In total judgements against him made by UK courts alone totalled $4.9 billion (step 5) (Bland, 2018), but by that time Ablyazov had fled the UK to France and was stripped of his UK asylum status (step 6). Other court hearings related to Ablyazov/BTA have been heard in the USA and Russia (Astana Times, 2022; Intellinews, 2020).

While the evidence against Ablyazov is considerable, there is also abundant evidence that this evidence was provided due to the fact that he was an enemy of the government of Kazakhstan. Ablyazov says that the case was politically motivated due to his continued opposition to the rule of Nazarbayev, and that BTA's financial problems were exaggerated in order to fulfil the Kazakh president's long-held aim to seize the bank (Burgis, 2013), because it threatened to dominate the other Kazakh banks that Nazarbayev's family controlled (Mukhtar-ablyazov.com, n.d.). In 2009, Nurbank was owned by Nazarbayev's eldest daughter, Dariga, and Halyk Bank by his second

daughter, Dinara, and her husband, Timur Kulibayev. While in the UK, Ablyazov funded Kazakh opposition media, including the broadcaster K+ and the newspapers Vzglyad and Golos Respubliki (Sindelar, 2013).

In the Ablyazov case, the incumbency advantage and enabling effect work together. The operation to find their man and his assets was funded by BTA's largest shareholder – the Kazakh state, through its powerful sovereign wealth fund Samruk-Kazyna. One company alone, Arcanum Global, charged Kazakhstan $3.7 million for work up to the end of 2012 (Burgis, 2013). Investigators hired by BTA trailed Ablyazov's lover to Nice and Cannes (Bland, 2018; Burgis, 2013); they alerted French police, who sent in an armed unit and arrested Ablyazov in July 2013. Ablyazov's various London properties were successfully seized (step 5). In 2019, the UK High Court renewed its arrest warrant for Ablyazov (Astana Times, 2019) and legal debate is ongoing in France as to whether Ablyazov should retain his asylum status (step 6) (EU Reporter, 2022).

As with the Aliyeva case, a whole host of enablers helped Ablyazov construct an offshore empire which allowed him to bring millions of pounds into the UK property market, seemingly with few questions asked. However, once Ablyazov was declared a criminal in Kazakhstan for the second time, he lost 'the incumbency advantage' and thus himself the target of unlimited resources of the Kazakh state which would have provided the evidence to the UK courts on Ablyazov's alleged crimes. While the Aliyeva action was limited to a solicitor's tribunal with no repercussions for the property and status of the incumbents, for the exile Ablyazov both were lost. In accordance with our theory, the primary difference appears to be that of incumbency.

The Divergent Cases – an enabling effect?

While 85 of our 88 cases affirm the incumbency advantage, there are three exceptions. Two of these relate to the [Person X], an exile who has retained his property in the UK, and his wife [Person Y]. [Person X] has used the law effectively to suppress reporting about his conviction for a money laundering offence in Russia (ref removed). He has also sought to launder his reputation through philanthropic and political donations and the placing of paid-for content in UK newspapers (ref removed). He, therefore, appears to be the case of an exile who has protected his property and status through the enabling effect. However, [Person X's] exile status is contested given that he was not involved in politics in Russia, had his conviction for money laundering there 'struck off' by the courts, and has been accused by a British MP of being 'absolutely dependent' on the Russian security services (ref removed). [Person X] has denied this claim and insists that his original conviction in Russia was a miscarriage of justice. He is therefore a disputed case of an exile defeating the incumbency effect. There is thus one remaining and truly exceptional example of an exile retaining property: Maxim Bakiyev.

Maxim Bakiyev: an exile overcoming the incumbency advantage?

Kurmanbek Bakiyev served as the second President of Kyrgyz Republic from 2005 to 2010. In April 2010, large groups of opposition protesters stormed the Kyrgyz White House, forcing Bakiyev to flee the country, and an interim government was put in his place. At the time of

Bakiyev's ousting, much concern had been raised regarding the influence over the Kyrgyz economy by his younger son, Maxim Bakiyev (hereafter Maxim). In late October 2009, Maxim had become the head of TSARII, the Central Agency for Development, Innovation and Investment, which put him in a managerial role over important state funds, such as the Development Fund, which held a $300m loan from Russia (Global Witness, 2012, p. 49). At the same time, Maxim also exerted malign influence over much private business in the country. According to a leaked US diplomatic cable: "various sources have alleged to [US embassy officials] that [Maxim] Bakiyev's associates have extorted money from them or forced the sale of their business" (Wikileaks, 2009). According to a major investigation by anti-corruption NGO Global Witness, key to both Maxim's business empire and the general corruption in Kyrgyz Republic was its largest bank, AsiaUniversalBank (AUB) (Global Witness, 2012). Indeed, a Wall Street Journal article alleged that businessmen in Kyrgyz Republic complained that before his father was ousted from power, Maxim Bakiyev used tax police and prosecutors to seize their businesses, whose cash flows were then diverted to AUB (Cullison & Toktogulov, 2010).

Maxim was not in the Kyrgyz Republic when the transfer of power occurred. He spent some time in Latvia and possibly also Germany, but eventually claimed asylum in the United Kingdom (Global Witness, 2012, p. 51). The new authorities in his home country charged Maxim with a variety of financial crime charges, embezzlement of state money – including the loan from Russia (Tynan, 2010), fomenting ethnic tension in the Kyrgyz Republic (Harding & Tran, 2010) and even the attempted murder of a British citizen (Armitage, 2015). Despite these charges, he was granted asylum in the UK and thereby had his exile confirmed (step 1).

The attempted murder charge was the basis of a later personal injury civil claim which was lost by the claimant, a British businessman, who accused Maxim of orchestrating his shooting in Kyrgyz Republic (Hickman & Rose Solicitors, 2016). Maxim bought a £3.5m house in Surrey using a company registered in Belize. According to Global Witness, this linked the purchase to the money laundering scheme at AUB, as the Belize company was registered at the same address and by the same agent as many of the shell companies that held accounts at AUB and were involved in apparently fraudulent activity (step 2) (Global Witness, 2015). In 2020, an article alleged that Maxim had in 2011 used money stolen from the state social fund of Kyrgyz Republic to buy a footballer for Blackpool FC (Rosthorn, 2020), which was at that time owned by his business partner Valeri Belokon (Conn, 2018). Despite these allegations in the UK and elsewhere, Maxim has faced no known official investigation or enforcement action by the British authorities (step 3 and thus step 4). He has retained his property in Surrey (step 5), his freedom and his position of refugee (step 6).

Maxim's case apparently belies the incumbency advantage. However, it is not a case of effective anti-money laundering prosecution but one where those rules have been circumvented. The evidence against Maxim regarding his involvement in his father's kleptocratic regime is overwhelming: in 2019, the U.S. authorities returned $6m to the Kyrgyz Republic that had been stolen by Maxim and his associates (Rubenfeld, 2019). Yet, it is not just his home country that has been thwarted. The U.S. authorities tried to extradite Maxim from the UK in relation to insider trading charges. However, the case fell apart due to sabotage by his former colleague in Kyrgyz Republic, Eugene Gourevitch (a former board member of AUB), which resulted in a prison sentence for Gourevitch (AKIpress, 2014; LaPorta, 2016). Rather than the rule of law

having proved Maxim innocent, it is more likely that this is 'the enabler effect' working for once for an exile, his acquired wealth allowing him to procure effective legal services from the company Hickman & Rose, services that were not available to the Kyrgyz Republic, one of the poorest countries in Asia. The Kyrgyz government relied on U.S. law firm Akin Gump, working on a *pro bono* basis, to try and recover some of the money that Maxim had stolen (Akin Gump, 2019), but lacked the kind of funds invested by the Kazakh government in trying to bring Mukhtar Ablyazov to justice (Sindelar, 2013). Unlike in the Ablayzov case, where the home state deployed enormous legal resource against their target exile, in the Bakiyev case no case was submitted to the courts by Kyrgyzstan or the UK authorities, despite considerable evidence of economic crime.

There are several possible explanations why the exile's typical disadvantage was overcome in this case. The Kyrgyz Republic was more politically plural than Kazakhstan, and Bakiyev had once formed part of the opposition movement that removed the country's first president, Askar Akayev. It is also of note that Maxim kept a low profile in the UK and was not – at least publicly – involved in Kyrgyz politics following his exile, whereas Ablyazov continued to agitate from abroad, funding opposition media and producing YouTube videos about Nazarbayev's corruption. Thus, it may be that the appetite – as well as the capital – to bring Maxim to justice in Kyrgyz Republic was not as keen as in Kazakhstan regarding Ablyazov. Yet Maxim remained a target for Kyrgyz politicians. The UK's granting of asylum for Maxim, coupled with its apparent lack of investigation into him, led to the next elected Kyrgyz president, Almazbek Atambayev, to rail against the UK: "You're hosting a guy who robbed us. […] I didn't know that behind the beautiful words of democracy are very dirty lies. That's terrible. Britain is one of the founders of democracy and it's impossible to understand its actions against us. I am ashamed for Great Britain and didn't expect politics to be this cynical and corrupt" (M. Walker, 2013). Thus, the UK's civil recovery powers and judicial system 'worked' in the interests of a family kleptocracy, Nazarabyev's Kazakhstan, but against a country that had made some small steps towards unshackling itself from kleptocratic rule.

Conclusions

Transnational kleptocracy is a phenomenon which disturbs many of our assumptions about the power relations between East and West in global politics. Our first conclusion is that incumbent elites from post-Soviet states are able use their political connections at home to thwart investigations abroad. At the same time outsiders and exiles suffer from compromising materials being released against them by state actors, leading to prosecution overseas. This is indicated both by the strong incumbency/exile effect in the descriptive statistics and QCA truth table and by the causal mechanisms identified in the cases. Ablyazov, the foremost political enemy of the Kazakh president, lost his property in the UK and was subject to various criminal and civil sanctions, while the Leila and Arzuu Aliyeva, daughters of Azerbaijan's president, faced no action despite the failure of process identified at the solicitor's tribunal. Where the cases have diverged from the theory, the enabling effect helps explain how and why departures from the norm occur. Maxim had the resources to hire elite legal assistance which was apparently much more effective than that of his relatively poor and weak home country government.

Other cases from our database bear out these conclusions. The two UK UWO cases are especially instructive. The exile Zamira Hajiyeva, whose husband Jahangir Hajiyev was jailed in Azerbaijan, was subject to a successful unexplained wealth order in 2019 and faces ongoing asset recovery. Meanwhile, Dariga Nazarbayeva and Nurali Aliyev, daughter and grandson of Kazakhstan's former president Nazarabyev, defeated the UWO in 2020 and retained their property. Whereas in the first UWO case, Hajiyeva could only refer to vague details of her husband's general wealth, detailed documentation showed how Nazarbayeva had acquired properties through assets she acquired, either directly or indirectly, through the divorce from her husband. Whereas in the first case, the banker Hajiyev was convicted of misappropriating funds from his bank in Azerbaijan, in the second, the incumbent Nurali Aliyev was able to make loans to himself to buy one of the London properties and yet still defeat the UWO (ref to self). Incumbency is a primary explanation for the difference in outcomes, given the extraordinary similarity between the two cases. A secondary explanation is that of legal enabling as Mishcon de Reya appear to have applied lessons from the first UWO case to successfully defend their clients in the second case (ref to self).

A second conclusion relates to policy. New innovations in AML, such as the UWO, add to a panoply of new regulation and law enforcement instruments that are designed to tackle illicit finance in major Western financial centres; they are also imagined as having a transnational activism effect on countries with high levels of grand corruption (Keck & Sikkink 2014). But the evidence from our data suggests these policy goals and aspirations are not only unrealised but may be overcome by an opposing effect: their manipulation by kleptocratic states and their professional enablers in democracies. In practice, elites who retain political power in their home countries can use domestic legal rulings and documentation to forestall completely or at least raise the costs and risks of any legal challenges abroad. Where criminal liability is lacking, we cannot expect professionals to put ethics before business (LeBaron & Rühmkorf 2017). Such unintended consequences are not unusual with new international instruments (Daase & Friesendorf, 2010).

Further research is required to assess whether the UK is a special case due to weak regulations and/or its professional services. Kleptocrats have access to an extensive network of enablers in the UK and other jurisdictions – lawyers, accountants, and reputation managers – to legitimise their illicit wealth and challenge any investigations. Questions of resources and the uncertain legal basis abound. Targeting ruling elites, whether those of allies or non-allies, raises political challenges for the British authorities. Even though the courts are independent, there are major disincentives for investigators with career aspirations to pursue these difficult cases. Exiles, including former insiders, are often the low-hanging fruit of counter-kleptocracy initiatives. Consequently, there is a serious risk that current AML mechanisms are only effective against those marginalised or persecuted by incumbent regimes and have therefore become creatures of the very power relations they putatively seek to challenge.

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