

Editorial: It's not about the property, it's about the process

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The fortieth international symposium on economic crime at Jesus College, Cambridge, offers an opportunity to consider how economic crime in general and anti-money laundering (AML) in particular has fared in terms of tangible achievement over these four decades. Certainly, if success is measured in terms of edicts pronounced, regulations imposed, laws passed (if not necessarily enforced), policy initiatives proposed, committees established, position papers published, initiatives developed and good intentions expressed (ignoring what we all know the road to Hell is paved with), this has been a period of Renaissance level significance in the world of financial compliance.

But what has actually been achieved? It is clear, trying not to be too facetious about it, that a lot of economic crime is still being committed, although trying to quantify it takes us quickly into “think a number and multiply it” territory. To give an example (there are so many to choose from), the United Nations Office on Drugs and Crime estimates that between 2% and 5% of global GDP – up to 1.87 trillion Euros – is laundered each year. Allowing for the likelihood that this is really no more than an educated guess, this translates as a huge and chronic global problem. All of our combined efforts in AML have yielded, so far, this result. No wonder there are critical voices calling into question the whole enterprise.

There is indeed no shortage of academic commentators willing to ask whether AML is worth the time and money that is expended on it. In the introduction to their comprehensive and authoritative survey of the effectiveness of international AML efforts, *The Critical Handbook of Money Laundering – Policy, Analysis and Myths*, Petrus Van Duyne and Jackie Harvey reference Plato in their assessment of the relationship between the findings of FATF's Mutual Evaluation Reviews of AML effectiveness and the underlying reality. Like shadows in a cave cast on a wall, only a sense of what is happening is actually being captured.

But this kind of scepticism can be taken too far. The last few years have actually provided much hard evidence about the levels of criminal investment involved in the crime most associated with high-end money laundering and drug trafficking. A succession of recent big wins by international law enforcement agencies, featuring large-scale commodity seizures and interceptions of encrypted communications, shows that the scale of profits earned is certainly not a myth. A sizeable proportion of that money may be recycled into further drug deals, but the reason the trade exists is the size of the returns that can be earned. The extent of the associated laundering, and the effects of that money wherever it is deployed in legitimate places, is a tangible force in local, national and international markets.

It is the human cost of this that is most relevant. All of the big issues affecting international geopolitics are made worse by the huge amounts of criminal profits circulating in the world's financial and business systems. Improving inequalities of wealth and opportunity, curtailing corruption, securing social welfare provision to the needy, delivering adequate food provision to the hungry, curbing illegal migration and human trafficking and tackling the problems of global warming and environmental pollution are all undermined and hindered by the impact of money laundering. It is not a victimless crime.

But there remains a big gap between performance and expectations in the AML field. Efforts to close it are not assisted by continuing agnosticism about money laundering's status as a crime and what that crime consists of. This is partly due to the persistence of the



tradition that the offence should rely on the existence of a predicate offence. In many jurisdictions, there is still a reluctance, or even a bar, on embracing the crime as a stand-alone offence, capable of being proven to criminal standard on the basis of evidence relating solely to processes and contextual circumstances. Even in places where the legislation has been designed to specifically enable this, such as the UK, it has taken years since the enactment of the relevant money laundering offences to cut through the tumbleweed of scepticism so the offence is prosecuted to the extent its prevalence and seriousness demands.

Criminal money is usually only identified as such well down the line from the criminality from which it was generated (e.g. through suspicious transaction reporting). It is therefore through identifying, unravelling and exposing money laundering process, as much as identifying the source of criminal monies or their ultimate use or destination, that major game-changing impacts will be achieved.

The illicit drugs market diverts funds from often restricted incomes at the bottom end of the supply chain at the same time as causing direct harm to the health of its victims. An international consensus is developing that the social and human problem this entails may be best addressed through the treatment of users as patients rather than criminals. But dealing with the beneficiaries of this activity, those in a position to harvest its immense profits, is another kind of problem, often referred to as a wicked problem given the apparent inability of governments and law enforcement agencies to do anything to stop it. This encourages some to advocate legalisation of harmful drugs as a way of removing, or at least reducing, the profits earned. It is delusional, however, to think this will remove the ability of bad actors to control and profit from these markets. Advocates for legalisation typically fail to account for the adaptability of illicit markets that enables them to persist after the traded commodities become legal: their ability to promote new illicit routes to market and also vary product strength, mix and price to protect their revenue streams. Arguments for legalisation also tend to ignore that as much harm is caused by the money as the drugs. The sheer difficulty of the AML challenge is not a good reason to turn away from it.

High end money launderers now seek to avoid the expensively tooled up compliance of conventional banks and financial institutions wherever possible. Criminal money is increasingly hidden in the settlement of licit trade transactions, with value transfers to ultimate recipients achieved through the use of increasingly diverse crypto currency channels. Despite this, high-end organised crime players are actually becoming more and more vulnerable to high-quality, intelligence-led, technology-enhanced policing. Criminal business models are being disrupted and dislocated with the help of adaptive technologies capable of trapping and cornering illicit activity in those areas of activity previously considered impenetrable, such as dark web black market trading and trade-based laundering. It is not delusional to contemplate a future where, though technological advances and more co-ordinated effort across all relevant national and international agencies, the ability of money launderers to infiltrate legitimate payment systems could become increasingly restricted.

And there is another underutilised weapon available too. The use of taxation as a punitive measure through the use of estimated assessments could also be more actively deployed to target companies and individuals unwilling or unable to demonstrate the legitimate sources of their income and wealth. Capturing and controlling illicit funds so they can be applied to human benefit can be the means of translating AML aspiration to actual measurable performance. That requires governments themselves of course to stay committed and also to provide the necessary funding and legislative support, but there is ample scope to improve international co-operation in this area in ways which can have material and measurable impact.

Despite the many pessimistic voices that may be heard at this year's symposium, these kinds of initiatives constitute an established direction of travel. It may have taken a decade or more for the UK POCA money laundering provisions to obtain proper traction in the courts, but the argument for AML's primacy as a stand-alone crime has been won. What is required now is the summoning of collective will across agencies and governments to deliver measures that will build on current successes and provide transformative results that can be appreciated, gauged and measured in terms of benefit to the human condition – in Platonic terms, the common good. Plato himself would surely have approved. It is the poor and vulnerable who continue to suffer most directly and disproportionately from the ills sponsored by money laundering.

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