Abstract: January 2020 AML conference

The Data we have, and the Data we need, to Assess and More Effectively Suppress Financial Crimes

"And what rough beast, its hour come round at last, slouches towards Bethlehem to be born"

The Second Coming (WB Yeats)

This paper covers, with varying degrees of thoroughness:

a) Where can we use empirics in fighting financial crime?
   - What is the denotation of the problem we are supposed to be fighting – money laundering as an evil in itself and/or the underlying crimes which give rise to it?
   - Estimating the size of the problems, and identifying any improvements/emerging problems
   - Identifying potential problem customers and transactions
   - Assessing jurisdictional compliance and good/bad practices
   - Assessing policy effectiveness
   - Empirics of structured observation (such as FATF) vs. empirics of data.
b) What data do we have?
   - Massive data in banks/financial firms, but not organised in any research-useful way
   - Massive data in FIUs/police/courts, but not codified in a comparable and available/meaningful way
   - International compliance and effectiveness assessments: can they be relied upon?
c) What data do we need?
   - Data sources that are extant but currently unavailable to the research community
   - Data sources that need to be built from scratch or near-scratch
d) Where to from here? [to be presented orally and discussed at the conference!]
   - The utopian vision
   - More pragmatic first steps

Introduction

> *"Special sorts of conditions must exist for the creation of the special sort of criminal that he typified. I have tried to define those conditions–but unsuccessfully. All I do know is that while might is right, while chaos and anarchy masquerade as order and enlightenment, those conditions will obtain."*
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> Eric Ambler (1937) A Coffin for Dimitrios

In 1991, *Crime, Law and Social Change* published its longest ever single article, at just over 40,000 words: it was my review of the shaping of the anti-money laundering movement, at that time little more than a twinkle in Panopticon's eye. I began by observing[1]

> "The principal points of contact between police and bankers are in relation to (1) frauds (and other crimes such as robbery) against banks themselves, in which banks lose money, and (2) crimes or suspected crimes - involving dishonesty, import/export prohibitions (e.g. as I write [in 1990], arms to Iraq), narcotics, or terrorism - whose perpetrators and victims have individual or corporate bank accounts, even though in such cases, the banks themselves may not lose any money and may even make profits from handling the accounts. There are also further areas of state interest in banking transactions, such as the activities of arms dealers who may not be committing any offences in the U.K. or elsewhere, but who are of concern to the security services.
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> The movement in the direction of encouraging - and in an increasing range of cases, requiring - 'active citizenship' on the part of banks has as its objectives to prevent criminals from benefiting financially (a) from the offences for which they have been convicted, and (b) to the extent that monetary gain is the criminals' primary goal or is a crucial means to their other (e.g. political) goals, to deter or prevent them and others from committing crimes for gain in the future. These objectives are being pursued not only in Britain but also in the international arena.
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> Why should bankers co-operate with the police? Motives for co-operation can be placed on a continuum between positive - as when natural and/or corporate persons all hope to get something they want out of the relationship, even if the benefits are unequal - and negative - if the relationship arises solely out of fear or threat that something bad will happen to either or to both parties. Many non-banking professionals such as lawyers and accountants responded to my announcement of this research topic by asking, rhetorically, 'what relationships?' But in practice, police-bank relationships are characterized by a combination of both positive and negative elements."

Since that was written, the world has witnessed an extraordinary growth in efforts to control crime for economic and political gain (and, especially since '9/11', terrorism) via measures to identify, freeze and confiscate the proceeds of crime nationally and transnationally. Especially in Europe but in different ways throughout the globe, first bankers and then accountants, lawyers, notaries, real estate agents and even car dealers have been involuntarily co-opted into becoming unpaid agents of the state: identifying customers (individual and corporate) and, notwithstanding customer confidentiality, reporting both

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[1] Michael Levi, "Pecunia non olet: cleansing the money launderers from the Temple", *Crime, Law, and Social Change*, 16, (1991) 217-302, at p.217.

suspicions and large cash transactions to central bodies, though what happens afterwards to these reports is far less transparent.

One useful way of conceptualising the issue is as a global exercise in crime risk management which seeks to drag in as a conscript army those governments and those parts of 'the' private sector that seem unwilling to volunteer for transnational social responsibility. But what sorts of risks are they managing (and do they believe they are managing), and how politically coherent, serious and well considered has the attempt been? There is a temptation here to engage in 'motive-mongering' in which one looks into the oracle and sees the aims of nations (especially the original key movers - the US, UK and France) as prefigurations of the present and as nationally coherent. Interviews and documentation collected as part of a study funded by the UK Economic and Social Research Council suggest that there were national issues that gave rise to particular foci of control interest – sometimes, like 'drug abuse', independently in different countries – before any co-ordinated international activity was even contemplated. Thus prior to the UN Vienna Drugs Convention of 1988, the Swiss Banking Commission sought to regulate capital flight and (post-Watergate) the Americans criminalised the bribery of public officials overseas, while the Americans and British criminalised drugs money-laundering. These actions were prompted by concrete ambitions and sometimes by scandals. Even before 9/11 and corporate scandals of that decade, my interviews and participant observation suggest that the expressed alarm of the authorities was motivated by far more than institutional and personal self-interest and by ideological 'control freakery': that there is a genuine fear of loss of control over financial flows, which brings together a variety of themes and a variety of political positions including

1. financial regulators concerned about unmonitored 'off the books' (though often legal) transactions conducted by vast commodities hedging funds held in offshore finance centres;
2. law enforcement agencies and politicians bothered about 'transnational organised crime' and its ability to launder billions of what a senior civil servant termed in an interview 'mutant capital';
3. corporations (especially American-headquartered ones prohibited from paying bribes to foreign public officials by the Foreign Corrupt Practices Act 1977) campaigning for a legal 'level playing field' to that they can avoid losing tenders for contracts to bribe-payers;
4. overseas aid agencies troubled by the 'export' (aka theft) of funds by Third World potentates (Politically Exposed Persons, in the terminology of international private bankers) into covert individual and corporate accounts held in offshore finance centres (e.g. Sharman, 2017); and
5. corporations, intelligence and law enforcement agencies, and politicians concerned about terrorist finance both from proceeds of crime *and* from legal-source income.

A research visit by this author just prior to '9/11' discerned almost no interest in money laundering within the World Bank, and relatively little positive active interest in the IMF either, despite the strong general focus on anti-corruption and governance issues in World Bank literature. So it would be a mistake to 'back-read' the current confluence of interest in money laundering as a natural property of those specialised departmental interests: it took a determined effort to see the relevance of money laundering to the anti-corruption movement.

In the more general setting of the anti-money laundering movement, we can see the interplay of crime control, personal and institutional dynamics. Early Italian interest in the use of proceeds of bank robberies to fund the activities of the *Brigate Rossi* in the late 1970s drove *local* requirements on Italian banks to report large cash deposits and the realisation that this would make sense across borders and be applied to the Council of Europe generally. However at that time, there was insufficient political support for a binding Convention and the more modest Recommendation was made which in turn fed into the justification of the first general measure against money-laundering and asset confiscation in Europe – the Strasbourg Convention of 1990 – which went beyond the drugs-only focus of the 1988 UN Vienna Convention because it was already apparent to the Council of Europe Secretariat and to countries such as the UK that the drugs-only approach (so necessary to get agreement in the consensus atmosphere of the UN) was a theory failure: not only did it not go far enough for a serious measure of major crime control but also, it left too much room for 'launderers' and financial intermediaries such as banks to claim that they did not know that the funds were proceeds of drugs trafficking.

The key Council of Europe Secretariat member Hans Nilsson then joined the Secretariat of the Council of the European Union (at that time a tiny activity long before the recent development of the Justice, Liberty and Security functions) and brought with him a batch of ambitions to develop not just laundering and proceeds of crime but the entire range of Mutual Legal Assistance provisions, plus the monitoring of compliance that was a key component of the Financial Action Task Force. At that time, however, the EC had no competence in criminal matters, so controls of money laundering had to be smuggled in under the (still largely unexamined) guise that variations in Member State provisions against laundering were a threat to the integrity of and free flow of funds within the internal market. This was a fiction that most Member States were happy to go along with (though many did not see it as a fiction), since the Treasury officials of the larger States had already been led by the FATF into thinking that AML was part of their role, and it was difficult politically to be seen to support money laundering, particularly when the measures of control were not obviously severe.

Also important in the evolution of anti money laundering activities were more modest elements, well below the threshold of grand social movements or international diplomacy. Prior to the Treaty of Amsterdam, the European Commission had no formal policy development and initiation role in crime control issues. However, the encouragement by funding from the European Commission and the Presidency's Multi-Disciplinary Group (MDG) of OISIN, Falcone, Stop II, AGIS and other mutual assistance programmes under the principle of information exchange, combined with sharing of experiences by members of FATF (now a permanent body) and Egmont – a global semi-official organisation of Financial Intelligence Units whose secretariat is in Toronto, which has grown from 12 members in 1995 when it began to 101 in July 2005 and 164 in 2020 - generates a level of mutual knowledge at a personal and perhaps legal system level that encourages interpenetration, though this is easier to do within common law and within civil code systems than between them. The increased 'traffic' between countries forces them at an operational level to seek solutions to their interface problems (though these do not always succeed, nor are they always intended to). Thus Egmont was generated by the need of the American and Belgian administrative type financial intelligence units (FIUs) to both obtain information from and transmit information to police-type FIUs that existed elsewhere in the world. (Today, this issue still causes difficulties, for example in Germany, at a domestic as well as international level.) So it would be a mistake to see these policy and practice transfers as coming either from above or from below: rather they come from both, though given the financial cost of many exchanges in the money trail arena, some senior sanction and positive support is often needed before the exchanges are allowed to develop. In this sense, international is different from local partnership policing, where few marginal costs are involved: mid-week plane fares, hotels, and time off work are considerably more expensive and generally cannot be found from routine or training budgets. Note, however, that these tend to be available only for activities related to 'organised crime' as commonly understood.

In more recent years, the European Commission has been involved in supporting action against organised crime and payment fraud, and to sponsor private-public partnerships in organised crime and terrorism prevention, as well as manifold legal measures. The other key role of the EU has been in relation to the *acquis communautaire*, which has enabled them to engage in pressurised policy transfer of AML, anti-corruption, and mutual legal assistance legislation and programmes to candidate countries. This has involved self-assessment questionnaires, mutual evaluations (also making use of the MONEYVAL evaluations within the Council of Europe framework), and some technical assistance programmes. The US has exerted its own pressures unilaterally and multi-laterally, and this is not the place to review its efforts.

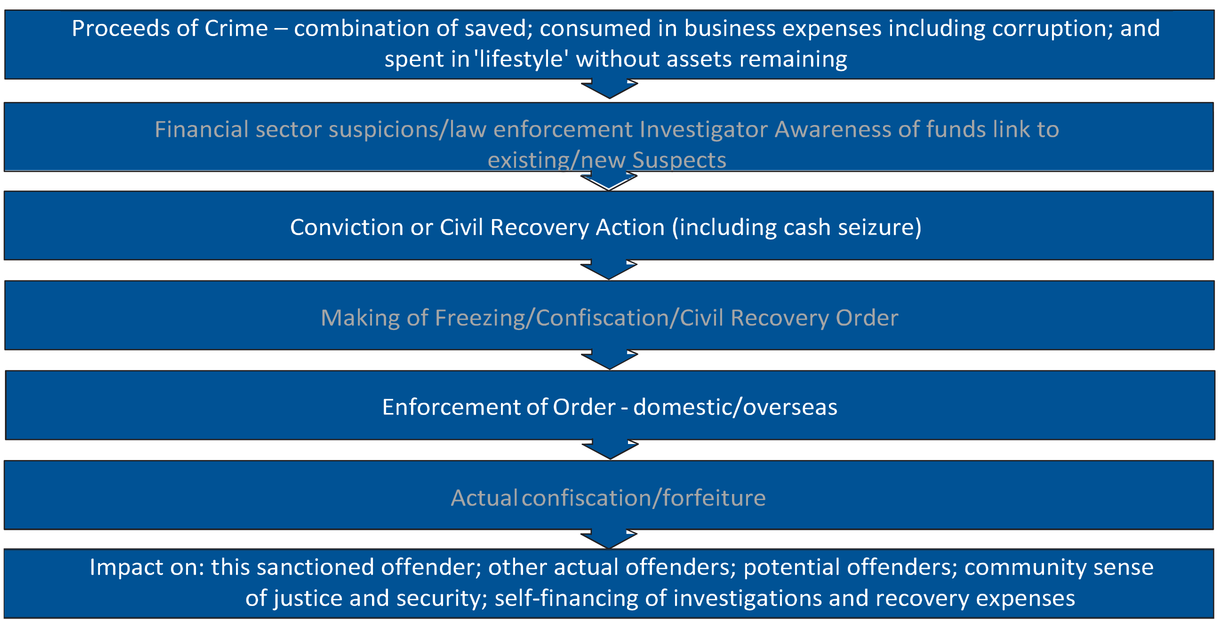
The history of money laundering and its control has until recently been subjected to very little *intellectual* debate, nor does it have any major theoretical drivers beyond a commonsense appreciation that without 'fences' there would be few thieves, and without the ability to hide, re-invest and safely use proceeds of crime, there would be less crime (or perhaps the same amount of crime committed by a larger number of criminals, since storing large amounts of criminal wealth would be too difficult. Most of the drivers began in the US, with efforts by the (Reagan) Presidential Commission on Organized Crime to get investigators to 'follow the money', and lawyers like Robert Blakey and James Jacobs gave the activities some technical expertise and help, but there was almost no input from criminologists or economists into the anti-money laundering movement, whatever modest input some individuals may have had on shaping the struggle against organised crime. Since then, there has been little cross-disciplinary work, beyond those present at this conference and others such as Tom Naylor. This is partly a question of domain expertise and professional advancement requiring publications in subject-specialist professional journals, whatever may be the rhetoric of inter-disciplinarity in Research Councils. And there has been very little empirical research (or conceptual) funding compared with 'mainstream' areas of crime and crime control. Much work is statistical and requires good datasets to play with and perhaps create. These do not exist in the public sphere, and academics have sought to do so laboriously at the national level, though within the UK, data are not routinely accessible. Private bodies like Refinitiv and Lexis-Nexis do have datasets, at least on cases, which in principle feed into their risk assessments. So this conference is a significant step in encouraging public-private collaborations and a broader community of scholars.

a) Where can we use empirics in fighting financial crime?

The appropriateness of a strategy depends on where we want to get to, and on how (if at all) we can get there from where we are now. Beyond activities and hopes, it has never been clear at any stage of its development where the loose-coupled AML 'system' – a terminology that merits more careful analysis than it has typically received - has wanted to get to (beyond 'more of what we have been doing'), or what empirics have been either desirable or feasible to help it reach 'its' goals. This does not appear to have inhibited its appeal to policy makers, enforcement agencies, or – arguably – the various publics. Indeed, its very lack of clarity of objectives may be part of its sustained appeal. AML appeals to many interests on the political left and right; and there has never been any serious attempt to examine what it would cost – and to whom – to satisfy or even to satis*fice* these varied constituencies.[2]

The data that are relevant to system goals are ill-expressed, and goal under-conceptualisation has not assisted. Data have several components, including laundering the proceeds of domestic crimes and crimes committed elsewhere, and evidence that links the process of AML to changes in these predicate crimes and/or their organisation. These have different patterns, and knowledge about where the money passes through and where it ends up are very patchy (Levi and Soudijn, forthcoming).

In addition to the rejection of potential customers and the 'de-risking' of current customers (which themselves are seldom linked explicitly to crime reduction), a process map of Counter Criminal Finance measures (beyond front end prevention such as de-risking) might look like this:



Some components of the above are matters upon which data can be collected retrospectively or, more pragmatically, prospectively, though data reviews would require a longitudinal flow rather than an annualized method of accounting, since the process may often take place over longer than a pre-

[2] To be fair to the FATF, this lack of costing of global policy ambitions is common to many international initiatives.

defined or an elapsed time year: a fact that has received comparatively little attention to date. Life-course criminology has paid attention to some features of organized and white-collar crime careers, but not yet in the context of the impact of AML measures. As we shall see, it is far easier to critique the data that exist than it is to work out and to create the empirics that illuminate effectiveness, and one question should be whether (as in drugs policy) governments individually or collectively really *want* to evaluate effectiveness and to adjust their policies in the light of it. 'Crime control' is often a matter of expressing values or signalling virtue rather than reflecting evidence from science (or even from pseudo-science).[3] Signal crimes (Innes, 2014) are more salient than data to most politicians and priority-setters.

First, however, we need to look at what is meant by financial crime and the harms that it brings. These are treated quite casually both conceptually and in practice in in the international money laundering literature, though Illicit Financial Flows have become a popular theme among economists in recent years.

Definitions and a typology of financial crime harms

'Financial crime' is normally not a legal but rather an administratively defined category. Its use has been growing in the Global North, though in continental Europe and parts of Africa, 'economic crime' is more commonly used and overlaps extensively. Almost two decades ago, an IMF (2001: 3) paper defined it very broadly, co-extensively with what would now be money laundering:

> "Financial crime, which is a subset of financial abuse, can refer to any non-violent crime that generally results in a financial loss, including financial fraud. It also includes a range of illegal activities such as money laundering and tax evasion. Money laundering refers to activities involving the processing of criminal proceeds to disguise their association with criminal activities."

So too did the UNODC (2005: 1) at the 11th UN Crime Congress:

> "'[E]conomic and financial crime' refers broadly to any non-violent crime that results in a financial loss….The category of 'economic crime' is hard to define and its exact conceptualization remains a challenge."[4]

Though in some government bodies (e.g. in the UK), the departmental header is 'Illicit Finance' or 'Threat Finance', the growth of 'financial crime' as a term reflects the extension of the crime control functions of states internationally under the pressures of 'mutual evaluation' (Levi and Gilmore, 2003), a key part of which is the legally mandated superintending (or as criminologist David Garland termed it, 'responsibilisation') of the private sector against 'crimes of globalisation'. One can read too much into titles, but the expansionist tendency may be reflected in the US Treasury's naming in 1990 of the Financial Crimes Enforcement Network (FinCEN).

'Financial crime' now includes

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[3] The traditional UK mantra of evidence-led policy is less often heard in the UK or the US at the time of writing, but precautionary policies rest on *predictions* of harm which should use the best evidence from past events but unlike controlled trials in physical medicine or some policing experiments, the conditions under which they operate are not always replications thereof. This is a broader issue that is outside scope for this paper.

[4] Note that taken literally, this would include all thefts and arguably burglaries.

1. frauds of different types with different victims, sometimes badged under the category of 'vulnerable' (which can be tautological);
2. 'market abuse' such as insider dealing/trading;
3. money laundering (of all crimes);
4. financing of terrorism (mostly since 2001) and (since 2008) of Proliferation Financing, including Weapons of Mass Destruction; and
5. transnational bribery (usually, but not necessarily, from OECD country corporations to public officials in the Global South).

Lawyers brought up with constructs such as *mala in se* and *mala prohibita* might find some difficulties in adapting to these changes, because these taken-for-granted labels often are taken to equate to old crimes and new crimes: yet quite apart from the compliance costs, lengthy sentences and huge financial penalties are imposed for violations thereof, at least on the relatively rare occasions when formal action is taken. It may be useful to regard 'financial crime' and two of its sub-sets - 'money laundering' and 'corruption' - as floating signifiers, a category of illicit capitalism which reflects the pressure group politics of criminalization and of functionally equivalent methods of control. An almost universal core component of this is the passage of criminal laws and regulatory processes that meet evolving Financial Action Task Force (FATF) criteria.

Historically, there have been varied global estimates of the size of what used to be called 'the hidden economy' and latterly illicit financial flows, from the early work of Tanzi for the IMF onwards, with the Global Financial Initiative, the Center for Global Development, and scholars such as Masciandaro, Schneider and Unger being the most prominent.[5] The EU requires member states to provide estimates because of the implications for 'true' GDP and national contributions to the EU Budget. Reuter (2013) has expressed strong scepticism about both the feasibility and the value of such money laundering estimates, and it may be worth adding that *in practice,* the main significance of such figures is to signal that this is a big problem and more needs to be done about 'the problem'. The moral claims of the AML entrepreneurs also made it culturally and reputationally challenging for the financial sector in any country to explicitly attack controls: hence the curious death of 'customer confidentiality' as a discourse. There is no evidence that any of the global figures generated are used operationally as a baseline for assessing the effectiveness of AML or of any other policy: if it was, as with the various forms of 'wars on drugs', the policy framework might have to be abandoned or seriously modified.

Even in those countries where evidence-based policing is not a mantra, however, *some* performance data are called for, though countries struggle to utilise sensibly their analytical value as proxies for effectiveness. The FATF and FATF-style evaluations ask countries to show evidence of performance in AML by, e.g. the number of SARs, criminal laundering prosecutions (including standalone ones), asset freezing and confiscation, etc., but preventative activities and their impacts are assumed rather than measured. The easiest way to please the evaluators is to prosecute more self-laundering cases and thus increase *recorded* 'money laundering' and 'financial crimes', accompanied by a narrative of how this

[5] These financial flow estimates will not be reviewed here. It is a very busy space for IGOs, NGOs and Think Tanks.

reflects their greater efforts against laundering. Halliday et al. (2014) were rather critical of the earlier Third Round FATF evaluation process, likening it at times to the Tsarist Potemkin Villages in which an appearance of compliance and formal structures were often sufficient to impress. It remains an open question to what extent this has changed and will change further in the formally more outcome-focused Fourth Round using the significantly revised FATF (2013) Methodology. What is clear is that the majority of countries have begun already to experiment with National Risk Assessments based around this evaluation process, aided by consultants with experience of using (or in some cases, gaming) the system to gain better marks.

There have been few attempts to develop a coherent policy for all the disparate acts that fall under the umbrella term 'financial crime', nor is there any obvious prioritisation outside activities regarded as important for 'national security' and business interests, such as protection from (primarily Iranian and North Korean) financing of nuclear proliferation and from broader state-sponsored attacks on corporate/national infrastructure cybersecurity. The control of at least some of the offences in the five sub-categories above has become the responsibility of national regulators of financial services and of the professions, often termed 'gatekeepers'. Curiously, this regulatory remit excludes most frauds by volume, since in the UK, for example, only those frauds committed against *or by* regulated firms that achieve the FCA-undefined category of 'significant' are in scope, and even there, nothing is known about the follow up to such reports. However UK Finance has representation on the Economic Crime Board of the UK government, both for its AML/Sanctions roles and for its anti-fraud role because identity fraud and payment card fraud are the most visible parts of the economic crime spectrum, and affect directly the largest number of people. The criminalisation of transnational (and sometimes national) bribery affects banks directly via risks (should they fail to report any suspicions they may have) of money laundering charges (a) against their own individual Money Laundering Reporting Officers and (b) perhaps against the banks themselves. It also affects banks indirectly because of the risks (however remote in practice) that companies to whom they have lent money might be damaged by severe penalties should *they* be convicted of corruption. The implications of these developments are important.[6]

As used in different countries, 'financial crime' and 'economic crime' comprise crimes with different categories and levels of harm, committed by and impacting upon highly diverse sectors of the population. Their sub-components are investigated (and investigat*able*) by very different policing and regulatory methodologies both before and after 'crime' commission. As a legal category, 'laundering' does not enable us to distinguish between licensed professionals who launder, professional (i.e. regular) knowing money launderers, people who launder money from their own crimes (like burglars putting money into their own bank accounts in their own names), and banks who intentionally or recklessly ignore their obligations to report suspected money laundering or who turn a wilfully blind eye to 'smurfing' by customers who fall below the reporting threshold. Note that the term 'banks' here is an anthropomorphic construct of entities of varied complexity and transnational integration that range

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[6] When senior staff on the best-selling UK tabloid newspapers *The Sun* and the (now closed) *News of the World* were arrested/charged with (and later acquitted of) bribing the police and other public officials, this created potential global risk for the Murdoch *News International* corporation in the US under the extra-territorial provisions of the Foreign Corrupt Practices Act 1977 (FCPA) in ways that were doubtless not envisaged by the media staff if and when they directly or indirectly 'bought' the information for the stories. As it turned out, there were no formal consequences for *News International*.

from relatively small to HSBC, which in 2018 had 238,000 employees in 65 countries and territories, and Citigroup, which had 214,000 employees in 160 countries. Banks generally counter that any laundering is the result of rotten apple rather than institutionally supported misconduct, and without smoking gun emails/recorded conversations, or verified whistle-blower accounts, or some 'market testing' exercise as conducted by Findlay et al. (2014), it is difficult to test this or validly falsify such claims. What is certain, however, is that violations by institutions great and small continue, despite occasional regulatory and rare criminal institutional sanctions. Some more subtle thinking is needed on metrics of reoffending. Given their size, is a violation at HSBC 'the same' as one at a much smaller institution.

The hunting of the snark: searching for appropriate crime data

In this era of globalisation, problems also arise for crime statisticians – and note that jurisdictions are mandated to conduct *National* Risk Assessments, presumably with their own country's risks as the central organising concept. (See Ferwerda and Reuter, 2019, for an early review.) There are also EU *supra*national risk assessments in 2017 and 2019.[7] Normally, when we think of risk, we think of harms that can be plausibly or potentially done to a natural person or an organisation/legal person (and perhaps to a sector). This has commonly been extended to 'reputational risk' with its implications for individuals and businesses' future capabilities and profits. This is a measure of expected and/or actual reactions to behaviour, and planning for it depends on whether those in charge are aware of the possibilities that they may be taking on risky counterparties/committing offences and if so, on whether the 'crime' or 'violation' is/is expected to be detected and how others actually will/are expected to react if it is detected (or 'convincingly' alleged). There is thus an element of anticipatory labelling in such risk assessments, though the invocations of risk-based AML ignore them, focusing on the onboarding and monitoring of customers. Apart from summing up these at a national level, sanctions against jurisdictions for their deemed failures to meet AML/tax transparency standards need to be factored in.

We normally conceive of victim-offender or consensual crime (e.g. illegal drugs and sex) relationships – whether violent or for financial gain - as occurring *within* countries. However, many significant financial crimes (not *just* the often problematic and over-homogenised category 'cybercrimes' – see Levi, 2017) occur between people in *different* legal jurisdictions, at least at some stages in the criminal supply chain, from production/ planning to money laundering. An improvement in laundering statistics therefore needs more breakdown of sub-types to make sense of these acts, which also are problematic to capture in *national* crime and justice statistics. This is so even if we do not follow the more profound proposals of Sellin and Wolfgang (1984), who argued that we needed a crime seriousness index of 'crimes times seriousness'[8] to judge whether the moral state of the nation was deteriorating or improving. Arguably, if we followed Wilkins (1965), who considered that it might be fruitful to conceive of (recorded) 'crime'

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[7] For the 2019 EU reports, see https://ec.europa.eu/info/sites/info/files/supranational_risk_assessment_of_the_money_laundering_and_terrorist_financing_risks_affecting_the_union.pdf; https://ec.europa.eu/info/sites/info/files/supranational_risk_assessment_of_the_money_laundering_and_terrorist_financing_risks_affecting_the_union_-_annex.pdf.

[8] In the original, developed before modern social surveys into experiences of crime which are patchily used in mostly G7 countries, recorded crime rates were the crime measures, and (selected) public opinion crime seriousness surveys were the seriousness measures, replaced more recently and contentiously by sentencing levels in the Cambridge Crime Harm Index (Sherman et al., 2016), which is being proselytised internationally. This solves some political problems but does not solve many analytical or philosophical problems.

as more like complaints about which the public thought that 'something should be done',[9] then there might be no money laundering offences at all. (TI or Global Witness reports might be treated as equivalent to such bystander complaints, though only in the context of bribery and corruption which constitute a tiny proportion by volume of SARs.)

One might take SARs or STRs as a comparable indicator to the Wilkins model, since they are alerts to *possible* malefaction: but it would be reasonable to conclude that rather than reflecting reporters' own normative beliefs that action *ought to* follow, SARs reflect regulated persons' blind obedience to rules and/or fluctuating terror at being punished for *not* seeing that transactions are acts about which 'something should be done', by regulators or criminal courts exercising hindsight.[10] The analogy could be criticised on the grounds that (except for lawyers, whose beliefs that funds are proceeds of crime need to be 'reasonable' before overriding client confidentiality in the UK) SARs are only *suspicions* about predicate offences. But racially motivated offending/hate crime also involves a subjective judgment about motivation rather than an objective fact.[11] However to my knowledge, no government or statistical office has yet taken seriously the task of creating criminal statistics for money laundering beyond prosecutions or convictions, which may be set out in Justice statistics rather than in Crime statistics. Indeed, a word search of UK Home Office and Ministry of Justice statistics (5 December 2019) yielded zero for money laundering.[12]

The UK government response to criticisms from the Treasury Select Committee asserted (https://publications.parliament.uk/pa/cm201719/cmselect/cmtreasy/2187/218703.htm):

> "Other types of economic crime, such as money laundering, are inherently clandestine, making measurement highly challenging…. In light of this, the government considers that further attempts to measure the size and scale of economic crime would require considerable resource and are unlikely to improve our overall picture of the scale and threat of economic crime, due to its inherently clandestine nature. While the government recognises the merit in improving our estimates of the size and scale of economic crime, we should therefore only pursue this where further improvements in our estimates are both possible and practicable. Further, this needs to

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[9] a view radically different from the now conventional individual or business crime survey which seeks to depersonalise the 'desired action' part of the judgment when measuring the 'true' levels of crime.

[10] If MLROs are *expecting* action on their reports, then apart from numerically relatively low-reporting countries like Switzerland, they had better find another job! Many who report SARs (and other financial crimes) do want something to be done as a consequence, since otherwise it is not obvious what the value of the system is, except in providing employment.

[11] Many other offences – e.g. fraud, rape - in which victims genuinely *feel* harmed may turn out not to be offences in which the requisite level of criminal intent is judged to exist. But this is beyond the scope of this paper.

[12] Though https://homeofficemedia.blog.gov.uk/2017/12/11/economic-crime-factsheet/ states: "The scale of money laundering impacting the UK is likely to exceed £90 billion a year – this represents the proceeds of a range of exploitative and violent crimes, including large scale drug dealing and people trafficking. In 2016, 1,435 people were convicted of money laundering in England and Wales. The Government established the Joint Money Laundering Intelligence Taskforce in 2015 to tackle the issue. Between May 2016 and March 2017 they contributed to over 1000 bank-led investigations into suspect customers, the closure of more than 450 suspicious bank accounts, and the freezing of £7 million in suspected criminal funds."

> be balanced against other key evidence gaps around understanding the impacts, enablers and drivers, and future trends of economic crime.
>
> The government will prioritise reforms that will deliver the highest impact in combatting economic crime. Further work to improve our understanding of the size and scale, and broader understanding, of economic crime, will be an important part of the Economic Crime Plan the government will publish later this year. That in turn will help ensure resources are allocated towards identifying the threat as effectively as possible."

This appears to be somewhat contradictory – it is impossible properly to evaluate the impact if there are no before and after data - but although the UK government has commissioned a series of 'gap filling' studies on serious and organised crime, they appear to have (perhaps reasonably) concluded that a lightly funded RUSI survey and seminar was sufficient to write off the possibility of 'a figure' for money laundering (Moisienko and Keatinge, 2019). This author has had many conversations over decades with bankers and lawyers who are looking for a precise figure without large error margins: such an objective is naïve, especially looked at through a national lens. How in practice do we separate temporary resting places flows from 'final destinations' of money? Given the range of predicate crimes of poor estimatability and our ignorance about the savings ratios of offenders, even working out an order-of-magnitude figure with a large range raises the question of what is our motivation or perception of value for performing such an exercise (see Reuter, 2013).

Looking beyond the UK, which normally has the most adventurous approach to crime statistics,[13] Eurostat (2013) conducted some preliminary analysis of European data but stopped after its second edition, which asserted (p.12):

> "This publication has four aims. They are: - to clearly identify obstacles to comparing data between Member States; - to bring clarity and transparency to a complex issue; - to encourage Member States to improve their statistical expertise by collecting data more rigorously, in particular in the judicial phase of money laundering cases; - to encourage Member States to develop a cost/benefit analysis of their anti-money laundering scheme."

Its tables are almost all about process; its Figures (p.4) are: Declarations made in application to the EU Cash Control Regulation; Incorrect cash declarations or findings as a result of customs controls in the EU at external borders; Total number cases brought to prosecution originating from STRs, CTRs or ILEI; Number of persons/legal entities convicted for ML offences. It is not clear what improvements, if any, have been made since this report to money laundering data gathering within the EU. It does not seem to have been an active priority for any national or international body. But the data are not even particularly useful for assessing efficiency, let alone effectiveness. The Report (p.12) explains their rationale:

> "At this stage of the development of European statistical work on money laundering, the Commission is endeavouring to obtain a linear view of the anti-money laundering chain. Ideally, this would track a suspicious transaction report from its filing to criminal conviction, allowing rates of progression between each successive stage to be calculated. While determining such rates would offer some indication of the efficiency of the anti-money laundering regime, one

[13] I should declare an interest as a member of the (now de facto defunct) Crime Statistics Advisory Committee

has also to recognise their limitations. Trying to put a simple figure on how many filed suspicious transaction reports led to criminal conviction has proved challenging due to the complex and fragmented (i.e. "non-linear") nature of the anti-money laundering chain. This is one of the conclusions of the second data collection exercise, as presented in this report. However, comparison based on the current indicators over time (trends) may provide a clearer indication of the performance within a Member State and in the EU as a whole. It should also be noted that one indicator of the collection takes account of the number of investigations opened without suspicious transaction reports - without the contribution of the Financial Intelligence Unit (FIU) - with the aim of trying to determine the role of the prudential regime in the fight against money laundering.

> With regard to the figures for unrecorded money laundering, the difference between the real and known figures can only be approximated and indirectly estimated. The weaker the correlation, the cruder the estimate, to the extent that the very point of having an estimate is questionable, as with the United Nations Office for Drugs and Crime (UNODC) estimate of $1.6 trillion, amounting to around 2.7% of global GDP.
>
> At this stage, whilst Article 33(1) of the Third Anti-Money Laundering Directive states that Member States must review the effectiveness of their systems to combat money laundering, Article 33(2) gives guidance on the type of statistics necessary to carry out this review. This non-exhaustive list must be regarded as a minimum requirement. However, some Member States have continued to encounter difficulties in providing data in a reliable way, or simply in communicating that data. This is particularly true with regard to the number of persons prosecuted and the number of confiscations, which indicates a need to improve the collection and consolidation of statistical data at national level. Article 33(2) makes reference to the activity of law enforcement services and their relations with reporting entities (banks, casinos, notaries, lawyers etc.) whereas these statistical data should also be compared with the threat of money laundering itself."

Given that there have been three Directives and two supranational risk assessments since then, it cannot be said that the lack of improvement in the money laundering evidence base has inhibited EU action or policy-making.

In its review of data on the national income implications of illegal activities in Europe, Eurostat (2018: 72) notes

> " For the purposes of this Handbook, money laundering is defined as a process transferring illegally obtained money or investment from illegal economic activities — those identified by the GNI Committee (i.e. production and trafficking of drugs, prostitution, and smuggling of alcohol and tobacco, based on transactions mutually agreed between consenting parties) and those discussed in Part II — through an outside party to conceal their true source, and make them (appear) legal. *The difference between the value of the illegal money and the legalised money should be understood as the value of the provision of money laundering services (PMLS*)." [Italics not in the original].

This does not explicitly distinguish between the price of laundering (i.e. what criminals are charged) and its value to offenders, but it is highly plausible that except for appreciating real estate and commodities, this difference might well be negative. What criminals are paying for is the usability of the proceeds of crime in licit markets and relative freedom from confiscation. There follows discussion of how money laundering data should be treated in national accounts, concluding with a somewhat optimistic reliance on evidence from project ECOLEF (Unger et al., 2013) which examined the attractiveness of EU countries to money laundering (or 'risk' in official language, perhaps 'opportunity' from a deviant perspective). Its Annexes use the 2009 data from the ECOLEF study, without considering any changes in attractiveness or scope in the intervening decade, relying on the Walker gravity model, a construct that has been more attractive to policy-makers than to economic or criminological analysts. This risk of assuming stasis is a common problem with episodic studies that are not built into the routines of data collection and analysis, nor is there any awareness displayed that (as with some fraud), legal and social definition of activities as falling within or outside the definition of money laundering can be a highly contested decision, especially in large cases. However despite use of some dated material and a curious selection of references, it contains some interesting (to economists) material on how to integrate money laundering into national economic statistics, and represents a decent starting point.

There have been more modest data-gathering exercises on particular dimensions of money laundering. One that held promise was the Pak and Zdanowicz attempt to develop price discrepancy analysis for testing over and under-invoicing of physical goods.[14] At a national income level, this can be important in countries which are entrepots for smuggling wholly illegal, counterfeit or tax-evaded products, from drugs to wildlife. Publicly this has not been verified or falsified as a model, and given the secrecy of tax bodies, it is difficult to infer whether their proposals were impractical or whether the political economy pressures (of a kind highlighted by the Tax Justice Network) or bureaucratic ones have inhibited take up. There has been little clamour for evidence-led or even evidence-influenced policy in AML.

The Harms of Money Laundering

Another contested area, often taken for granted in public rhetoric about money laundering, is the assessment of harm. Let us briefly set out the interests affected by different sorts of financial crime in the context of reactions to them. It is difficult to place money laundering here. What is the marginal harm arising from the laundering of the proceeds of domestic crimes that is not also a harm of the crimes themselves? Bribery and/or blackmail of financial service staff, regulators and law enforcement may occur. But as with Prohibition, some of that may be an artefact of the criminalisation of laundering rather than of the laundering itself: in the 'good old days', such funds might simply have been accepted and used, so there was no need to bribe or pressurise staff, and bank regulators might have been interested in the loan book and internal theft risks but not in customer integrity. Al Capone and Meyer Lansky were laundering the proceeds of gambling, extortion and drinks trafficking before laundering was criminalised, presumably in order to make it more difficult for the authorities to link their proclaimed assets and themselves to crimes (and maybe also to evade taxes): did this type of laundering cause extra harms beyond the harms of covertly manufactured illegal booze, labour racketeering, extortion and gambling, in which they were engaged, and beyond the police/political corrupt 'protection' connected to what we would now label predicate crimes? Some fraudsters will seek havens where they

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[14] de Boyrie, M., Pak, S. and Zdanowicz, J. (2004), "Money laundering and income tax evasion: the determination of optimal audits and inspections to detect abnormal prices in international trade", *Journal of Financial Crime*, Vol. 12 No. 2, pp. 123-130. https://doi.org/10.1108/13590790510624972

will be protected from which to launch their scams, but this protection often accompanies crime commission as well as laundering.

Laundering of crimes committed elsewhere might be regarded as socially harmful in the laundering country only if it undermines democratic controls and legitimacy and/or if it leads to grey-listing or black-listing if detected *and* reacted to by international bodies and rating agencies. In other words, it is harmful if it leads to a ‘control wave’ rather than because it is part of a ‘crime wave’. We might consider in that context contemporary cases such as Malta, and slightly older cases such as Cyprus (which had a positive Moneyval review in 2011 before its crisis in 2012-13) and Panama which, prior to the Mossack Fonseca leak in 2016,[15] enjoyed the afterglow of a somewhat generous IMF country evaluation conducted in 2012 and published in 2014. Neither third nor fourth round evaluations are exercises in investigative journalism, but *past* ‘adverse media’ is a factor in customer onboarding and monitoring risk assessments by regulated persons, though except for those who decide to conduct ‘market intelligence’ as part of Enhanced Due Diligence on natural or legal persons, *future* adverse media *predictions* are not commonly done to jurisdictions as a whole unless sanctioned by private sector rating agencies.[16]

Box 1 Harms of Financial Crimes and Interests Affected

1. Harm government/taxpayer interests domestically (and/or overseas?) e.g. large scale tax evasion, procurement corruption
2. Harm *all* corporate as well as social interests. E.g. frauds that undermine public confidence in the financial system as a whole (‘systemic risk’); domestic, motor and maritime insurance frauds; payment card and other credit frauds; pyramid selling of money schemes; high-yield investment and ‘boiler room’ frauds
3. Harm social & some corporate interests but benefit other ‘mainly legitimate’ ones. E.g. some cartels, transnational corruption (by companies with business interests in the country paying the bribe); corporate espionage; some consumer frauds, e.g. adulteration of food and drink for humans and other animals, and arguably, VW ‘dieselgate’ and similar offences.
4. Harm corporate interests but benefit mostly *il*legitimate ones, at least at the consumer level. E.g. several forms of Intellectual Property violation – sometimes called ‘piracy’ or ‘theft’ – such as copying higher quality digital media. Beyond the retail consumer level, there is an unknown but probably significant level of inter-corporate espionage and serious disputes about patent violations, which may be placed here if they are not committed at the behest of otherwise legitimate businesses.

[15] See https://www.icij.org/investigations/panama-papers/ for subsequent follow ups. The counterfactual, i.e. what would have happened to regulation and prosecution absent the leak, is not fully knowable.

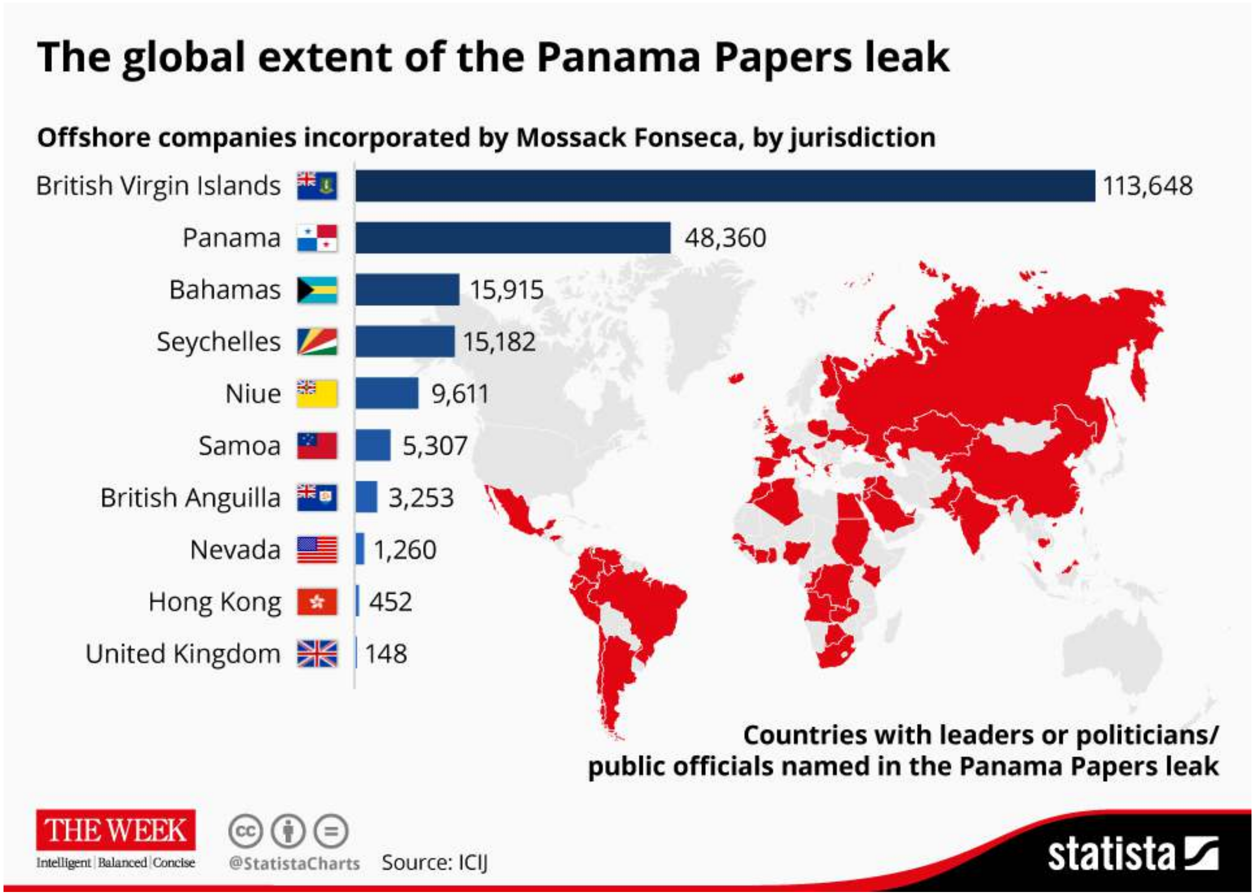
[16] One could, for example, predict higher and more critical scrutiny for Lebanese AML efforts in the aftermath of the Carlos Ghosn flight there, as there has already been in the context of Hezbollah organised crime and terror finance activities.

Alternative 'takes' on 'the problem'

Money laundering is often (mis?)taken as a coherent problem, and this paper has addressed some of the difficulties that this gives rise to. Instead of treating one report as a total authority statement of the subject, we might take the approach of Kurosawa in his film about a rape in medieval Japan, *Rashomon:* take different cuts of the phenomenon in order to illuminate a multiplicity of perspectives. And then, to the extent analytically appropriate, put these together. Such an approach might also reflect the range of interests in AML as a 'solution' to the social problems they are highlighting.

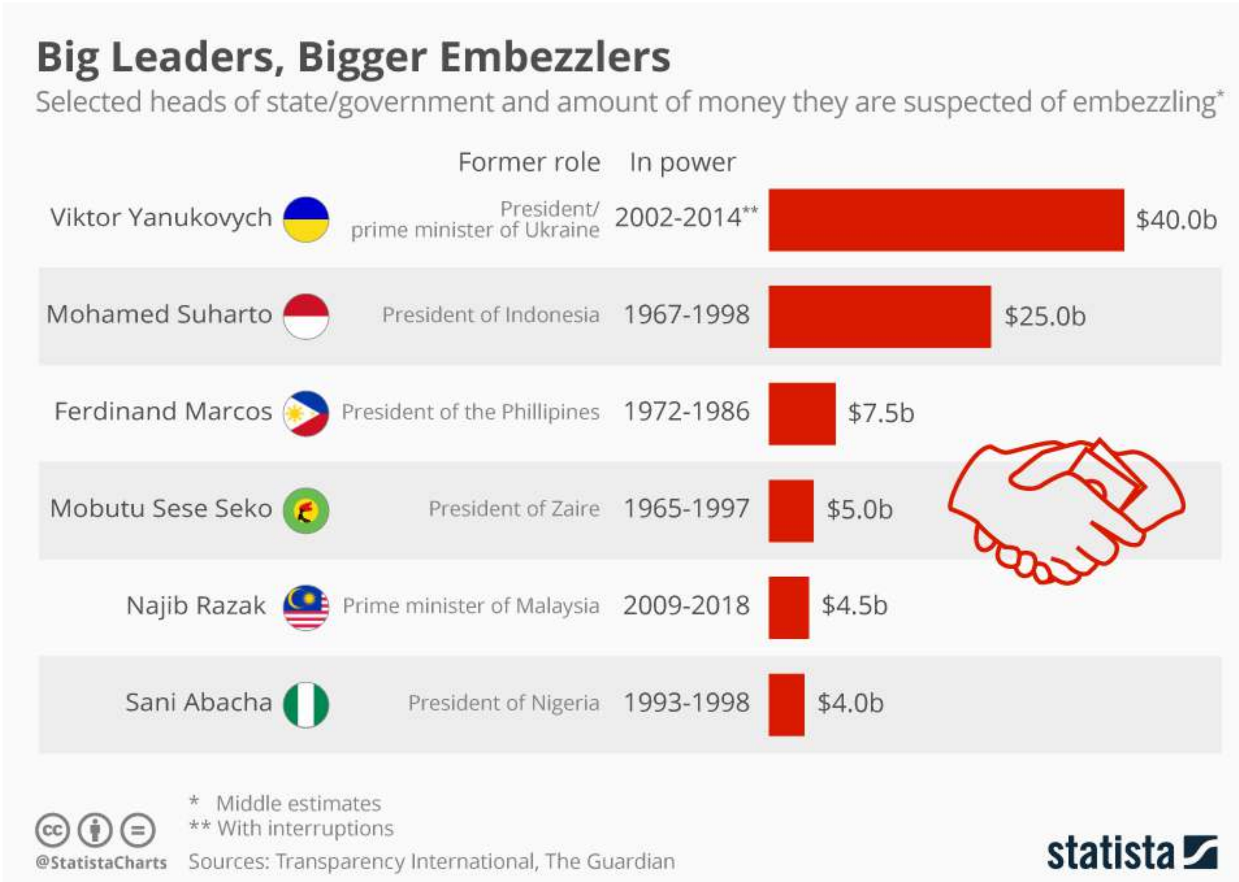
One way of visualizing money laundering statistics on a global basis is to take leaks such as the Panama Papers and what issues they illuminate.[17] It is not self-evident what inferences about money laundering could be drawn from this snapshot of incorporations data: licit tax advantages or convenience could dictate an unknown portion of them, and it is not known (by me or, I suspect, by anyone else) what proportion of the companies were used for illegal purposes. (Most tax authorities' actions remain secret, but the public face of post-leak interventions globally is barely noticeable.) Intriguingly, this chart highlights the entire country if *any* public official therein is named, but apart from the UK, the 'Five Eyes' countries' politicians appear clean!

[17] Armstrong, M. (2016). *The global extent of the Panama Papers leak*. *Statista*. Statista Inc.. Accessed: December 05, 2019. https://www.statista.com/chart/4606/the-global-extent-of-the-panama-papers-leak/)



A different 'take' might involve a snapshot of the largest alleged embezzlers, though the data would have to be annualised, and adjusted for inflation and currency fluctuations, which does not appear to have been done here.[18] Again, the evidential basis for these suspected or claimed kleptocratic totals is hard to test. Like many estimates coming from NGOs, especially in the earlier days, their main impact is that they are big and therefore generate an action imperative and a claim on our moral consciences.

[18] Buchholz, K. (2019). *The Most Notorious Embezzlers Among State Leaders*. *Statista*. Statista Inc.. Accessed: December 05, 2019. https://www.statista.com/chart/19265/most-notorious-embezzlers-among-state-leaders/


Big Leaders, Bigger Embezzlers
Selected heads of state/government and amount of money they are suspected of embezzling*
Former role
In power
Viktor Yanukovych
President/ prime minister of Ukraine
2002-2014**
$40.0b
Mohamed Suharto
President of Indonesia
1967-1998
$25.0b
Ferdinand Marcos
President of the Phillipines
1972-1986
$7.5b
Mobutu Sese Seko
President of Zaire
1965-1997
$5.0b
Najib Razak
Prime minister of Malaysia
2009-2018
$4.5b
Sani Abacha
President of Nigeria
1993-1998
$4.0b
* Middle estimates
** With interruptions
@StatistaCharts
Sources: Transparency International, The Guardian
statista

Reflections on Effectiveness

Effectiveness is a term that is readily banded about in policy circles, for understandable reasons. It often entails a confusion between activity – legislating or arresting or seizing or 'doing something' about a problem – and outcomes. To a populist politician, the popularity of a display of effort against something may be sufficient as an outcome, though few are brave enough to declaim that as their only goal. But there are few criminal justice policies whose impact on *crime* can be so easily and quickly judged. And the more complicated and broad the target offences are, the longer is likely to be the time taken for evaluation. Furthermore, whereas we might measure economic transfers (e.g. burglary, robbery, theft, some frauds) by crime/victim surveys of the general population or sub-populations, service crimes (illegal drugs, sex, gambling) are harder to measure accurately, though they can be measured by anonymous self-report general population surveys. And the involvement of a range of actors in money laundering is harder still, since these may include mainly legitimate players whose intentional wrong-doing would be deeply contested even if there were prima facie evidence. Almost 30 years ago, I had discussions with financial investigators in the UK, suggesting that they look for law firms, individual professionals and financial institutions as a common factor in their cases (just as we look for 'points of compromise' when investigating the role of individuals and merchants in payment card fraud and identity theft). To my knowledge, nothing was ever done systematically about that. Whatever the rhetoric of organised crime, the logic has seldom been carried through of treating money laundering as a *system*, beyond individual investigations of 'core nominals', 'Mr. Bigs', Designated Drug Trafficking Organizations, or individual targets. The closest to this systematic approach is the US Geographic Targeting Orders.[19] Beyond media headlines, long prison sentences for individuals, or the direct economic costs of large financial penalties and monitorships against financial intermediaries, the impacts of such approaches are unclear, except on employment and profits in the AML sector, which benefit substantially. 'Policing for profit' asset confiscation obviously stimulates investigative activity, but the positive and negative effects of that are only partially understood.

The elimination of serious and organised crime, of corruption and/or money laundering is too severe a test against which to judge policy effectiveness, and the collateral damage from high effectiveness would be likely to be intolerable (as it is for some other offending also). Crime *reduction* or reduction in the threats offered by concentrated 'organised crime groups' is a more sensible and to some extent measurable policy goal, though the metrics for that measurement are currently underdeveloped. (The distinction is that even if the number of crimes remains the same, a reduction in the social threat posed by some combinations of criminals may be a positive move: though given that criminal monopolies/oligopolies at least in the short run, this can lead to more violence as friction between

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[1919] On November 8, 2019, the Financial Crimes Enforcement Network reissued its Geographic Targeting Orders requiring U.S. title insurance companies to identify the natural persons behind legal entities used in purchases of residential real estate performed without a bank loan or similar form of external financing. The monetary threshold remains at $300,000, and the nine districts remain the same. The GTOs cover purchases involving virtual currency as well as "fiat" currency, wires, personal or business checks, cashier's checks, certified checks, traveller's checks, a money order in any form, or a funds transfer. https://www.fincen.gov/sites/default/files/shared/Real%20Estate%20GTO%20GENERIC_111518_FINAL%20508.pdf. For a discussion, see McPherson, Gary. "Floating on Sea of Funny Money: An Analysis of Money Laundering through Miami Real Estate and the Federal Government's Attempt to Stop It." *U. Miami Bus. L. Rev.* 26 (2017): 159.

offenders is increased.) But it is not currently viable to conclude that any type of crime has been substantially *reduced* let alone eliminated by AML/CFT. It is also important to be clear about what *component* has plausibly impacted on which crimes (as we noted earlier when teasing out the differences between the harms of predicate crimes and the harms of laundering). The bombing of trucks at ISIS-managed wellheads certainly impacted ISIS capabilities, but though this was via its finances, it could hardly be properly ascribed to *CFT* except inasmuch as this represents a way of thinking about terrorism capabilities beyond damaging munitions and other kinetic action. It is plausible that individual planned terror attacks or logistics components of them have been inhibited by CFT, if only by stimulating/pressurising financial institutions and charities to cooperate with intelligence and law enforcement. But this is a secret intelligence issue that is not readily demonstrable (or falsifiable) using open sources. It might be feasible to examine the role of CFT in identified terror plots prevented or whose scale was reduced – the UK Security Service do produce a periodic total of attacks prevented, though it seems implausible that they would produce an unclassified list of this with finances that anyone external could check. But such a list this might understate any chilling effect on businesspeople, charities or governments who might otherwise have funded terror plots.

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