



*Three turning
points in the
growth of the AML
industry*

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William Blake's
watercolor of
Dante and Virgil

Three schools of historical explanation

1. Individual Agency – the ‘Great man’ theory – Carlyle, "The history of the world is but the biography of great men"
2. Predictable outcome of identifiable social and economic forces, including the operation of bureaucracies and other organisations, operating independently of individual agency (Marx, Weber).
3. It just happened (unpredictable events with unmanageably many or no discoverable cause.)

I War on drugs

Declared (Nixon) 1971

Effects –

Raised revenue, enhanced lifestyles for drug dealers,
Anger, envy, concern for rule of law

Responses - Attempts to seize property of dealers

(in UK) Drug Trafficking Offences Act 1986 &c

International implementation - Vienna Convention (1988)

Results?

- Higher drug prices
- Greater available profits following 'crime tariff' and absence of regulation
- People with dark glasses, BMWs, gold jewellery and protection buy waterfront property
- Further raised revenue, enhanced lifestyles for drug dealers,
- More anger, envy, concern for Rule of Law

Results?

- Higher drug prices
- Greater available profit and absence of regulation
- People with dangerous diseases and no protection buy all the waterfront
- Further raised revenue, for drug dealers,
- More anger, envy, concern for Rule of Law

FAILURE

Consequences of Failure??

Either

This isn't working. It was a bad idea. We need to pursue a different approach. Back to square one.

Or

It's a good idea but it isn't working because the net wasn't cast sufficiently wide, the powers granted to the law enforcement are insufficiently extensive and the outcomes insufficiently punitive.

II Equivocation over harm in laundering

Is laundering bad (and if so, how bad is it) because:

(i) it is a form of complicity in the predicate offence; or

(ii) for reasons to do with the deleterious effect it is supposed to have upon the institutions which are the conduits or the financial system as a whole; or

(iii) what?

FATF

‘ ... to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.’

Decision-making process? Karaoke?

(Chairman’s summaries)

Successive (1st – 5th) EU MLDs

Successive Directives are expressed to be

‘... on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing ...’.

(Preamble to 4th MLD)

‘ ... [T]he misuse of the financial system to channel illicit or even lawful money into terrorist purposes poses a clear risk to the integrity, proper functioning, reputation and stability of the financial system.’

(either empirically incorrect or circular).

Consequences

Expansion –

- Geographical

- By markets regulated

- By professions forced to act, and over any privileges attaching to them (and efforts by them to mitigate).

Outsourcing of policing

Creation of huge, largely uncosted, compliance industry

(Levi, Michael, Peter Reuter, and Terence Halliday. "Can the AML system be evaluated without better data?." *Crime, Law and Social Change* 69, no. 2 (2018): 307-328)

III The Extension of Laundering/AML to proceeds of tax evasion

FATF change

Analytical issues

Is the tax still owed?

What (exactly) has the evader gained?

Problems of quantification and identification of 'profit/proceeds'

Alldrige and Mumford, 'Tax Evasion and the Proceeds of Crime Act 2002' (2005) 25 Legal Studies 353-373

Anna Maugeri, 'Self-Laundering of the Proceeds of Tax Evasion in Comparative Law: Between Effectiveness and Safeguards' (2018) 9 New J. Eur. Crim. L. 83

Foo, Kenny Foo. 'Does tax evasion generate criminal proceeds?' [online]. (2019) 31 Singapore Academy of Law Journal 845-874.

Why might tax have been different?

Practical differences (from other debts)

Enforcement powers of tax collection agency give alternatives to prosecution

Revenue-raising might be a higher priorities of tax collection agencies than prosecution or non conviction-based approaches.

Burden of proof at tribunal (on taxpayer) and other procedural difference favour tax collection agency as against other claimants.

Consequences of extension of AML regime to tax evasion

Individual confiscation orders increase/are easier to obtain

Dangers of multiple counting

Increase in estimates of sums laundered per sector, per jurisdiction or worldwide.

AML net is cast wider, more reporting, greater costs.

(violation of currency controls?)

Metrics of success?

Tax revenue?

Taxpayer compliance?

Conclusions

Like Brexit, we wandered into this position. We didn't have:

1. A fully articulated idea of what the wrong in laundering was, and in particular why that wrong justified the use of the criminal sanction.
2. A fully articulated idea of what the 'war on drugs' involved, or an exit strategy.
3. An appreciation of the significance of the change when it moved beyond drugs.
4. An appreciation of the significance of the change when it moved into tax.

Like Brexit, AML will look for new markets (real estate, fine art, digital currencies &c). It will ask for greater transparency (identification of beneficial owners &c).