

Money Laundering and the Proceeds of Crime

Economic Crime and Civil Remedies

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Edward Elgar

Cheltenham, UK • Northampton, MA, USA

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Published by
Edward Elgar Publishing Limited
Glensanda House
Montpellier Parade
Cheltenham
Glos GL50 1UA
UK

Edward Elgar Publishing, Inc.
136 West Street
Suite 202
Northampton
Massachusetts 01060
USA

A catalogue record for this book
is available from the British Library

Library of Congress Cataloguing in Publication Data

Gallant, Mary Michelle, 1964—

Money laundering and the proceeds of crime : economic crime and civil remedies / Mary Michelle Gallant.

p. cm.

Includes bibliographical references.

1. Money laundering—England. 2. Commercial crimes—England. 3. Forfeiture—England. 4. Remedies (Law)—England. I. Title.

KD1737.R43G35 2005
345.42'0268—dc22

2004061475

ISBN 1 84376 951 4

Printed and bound in Great Britain by MPG Books Ltd, Bodmin, Cornwall

Preface

An appreciation of the link between money and crime troubles the global community. Two contemporary crimes, the illegal drugs trade and terrorism, are the foremost sources of this apprehension. Amongst others, they are activities in which the economic undercurrents are significant, a significance which contributes to the realization of terrorist activity and to the spread of terror and of the drugs trade. Money and crime have become inextricably linked. An assault on the financial infrastructure has become a central defining characteristic of contemporary crime control.

Within this emerging assault on criminal finances, a dramatic transformation is occurring. Increasingly, states are choosing to implement their attack through civil proceedings. Rather than rely on traditional criminal legal processes, states are relying on civil proceedings. This transformation fuses crime control policy and civil legal processes.

This work critically examines this fusion. Some investigate this transformation from the perspective of the criminal law. This work broadens the inquiry. It draws on case law analysis from a range of contexts rather than exclusively the framework of criminal law.

The project begins with a survey of the age of the proceeds of crime, the era in which states became preoccupied with criminal money. In examining the emergence of the strategy, this chapter outlines the many contradictions and inconsistencies that animate the attempt to construct national regimes which give the assault on the financial element of crime its formal legal structure. And although international law has been instrumental in shaping the assault, it is within the confines of individual state-centred initiatives that the civil proceedings component begins to surface.

Chapter 2 considers the first incursions of the United Kingdom into the convergence of civil legal processes and economic crime. The UK, like many other jurisdictions, introduced an attribute of civil proceedings, the civil standard of proof, onto its confiscation processes. Confiscation laws, a central component of proceeds of crime strategies, target criminal finance.

This chapter examines the UK confiscation process and canvasses the main justifications for the incorporation the civil standard of proof.

An analysis of this approach framed by the parameters of criminal law is only partial. Civil actions have always conspired to divest economic entitlements linked to criminal activity. The mutation of criminal proceedings into civil actions represents, in species, the functional equivalent of the role that civil legal process have long played in tackling the financial element of crime. Chapter 3 offers this perspective. Drawing on a range of subject matter, this chapter examines various ways in which civil actions, quite apart from the current preoccupation, have sought to undermine the financial component of crime.

While various civil legal devices target criminal rewards, civil forfeiture actions figure prominently in contemporary strategies. America relies principally on civil forfeiture laws to marshal its assault. In its modern approach, new UK law contemplates modest reliance on this device. In both contexts, modern civil forfeiture laws reanimate an ancient instrument that had virtually disappeared from legal texts. Given its recent centrality to the control project, Chapter 4 traces the origins of civil forfeiture to its contemporary manifestations. This investigation reveals the confusion that occurs when an antiquated civil instrument is put into the service of contemporary crime control objectives.

American has no peer with respect to its tradition of incorporating civil devices into its proceeds of crime framework. A protracted 30 year battle with the global trade in illegal drugs and a new war against terrorism contributed to the creation of a comprehensive legal structure whose task is to track and enable the taking of criminal money. American use of civil actions to confront the financial element of crime generated, and continues to generate, copious constitutional challenges. Chapter 5 discusses the American civil model of control. The analysis of the constitutional jurisprudence discloses the many discrepancies that characterize the convergence of civil proceedings and the financial element of crime.

Heavily influenced by American developments, the UK recently fully endorsed the civil legal approach in 2002. Part V of the Proceeds of Crime Act creates three new civil powers with which to tackle criminal earnings: civil recovery actions, civil forfeiture actions and the taxation of criminal benefits. Chapter 6 critiques the structure of the modern UK civil legal structure and compares the UK approach with the American model.

A rights-based analysis informs all parts of this work. Chapter 7 contains a detailed account of the intersection of civil approaches to crime control and European human rights law.

The intent of this project is to bring a balance and reflection to the civilizing of crime control, the reliance on civil legal processes, as opposed to conventional criminal prosecutions, to target the financial element of

crime. In a debate marked by polarization, it offers a critical account which negotiates the competing perspectives. It is written with the legal practitioner, the policy-maker, the legal draftsman and the scholar in mind. Some parts of this work offer explanations of the mechanics of legal systems which, to one particular jurisdictional audience, may appear redundant. They are included to accommodate the knowledge of different jurisdictions.

This work would not have been realized without the support of several key people and institutions: Luke Adams, the Levin College of Law; University of Florida, Robin Morse; Kings' College London, Barry Rider; the Institute of Advanced Legal Studies, the New Brunswick Law Foundation, the University of Manitoba, in particular colleagues at the Faculty of Law, Mahmood Bagheri, Meera Singh, Muriel St John and Peter, Kim, Raymond, Paul, Barney and Kathy Gallant. Deirdre M. McCann is owed a huge debt. Gabriel Thomas deserves a very special thank you for his dedication and patience. And thank you to Ilya and Gabby Thomas.

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1. The Financial Element of Crime

A new crime control strategy surfaced in the 1980s. It is designed to confront the phenomenon of the proceeds of crime. The framework of this strategy originates principally in international law with national actors shaping the global model to suit national legal imperatives. In responding to the international call, many states have begun to shift from a criminal legal strategy to a civil model: the national architecture assumes the shape of civil actions as opposed to criminal prosecutions.

This chapter explores the age of the proceeds of crime and the rationales that underpin a new crime control methodology. It looks to the global dimensions of the new era and the evolution of the twin centrepieces of modern initiatives: anti-money laundering laws and confiscation regimes. It concludes by setting out the emerging trend towards the civilizing of crime control, the central organizing theme of this project.

THE AGE OF THE PROCEEDS IN CRIME

In the latter part of the twentieth century, the proceeds of crime emerged as a modern evil, a plague of malevolence which is spreading through civil society. A raft of international and national strategies swiftly arose to neutralize its propagation. Its most common association is with the illegal drugs trade and the enormous revenues this trade produces. It constantly recurs in discussions of corruption, illegal arms dealing and organized crime. The 2001 attacks in the United States gave the affiliation between terrorism and proceeds of crime global prominence. In the immediate aftermath of the destruction, the United Nations Security Council authorized an attack on proceeds linked to terrorism.¹

¹ Security Council Resolution 1373, UN SCOR, 2001, UN Doc. S/RES/137.

Proceeds or Profits of Crime

Despite its currency in contemporary crime control dialogues, the term 'proceeds' lacks precision. Politicians and crime control experts regularly refer to the proceeds of crime but are reluctant to offer any definition of its parameters. Anecdotally, the proceeds of crime might contemplate any revenue derived from crime. This ranges from the modest sums received for the sale of a stolen bicycle to the copious rewards gleaned from the global trade in illegal drugs. However the phrase tends to figure more regularly in narratives about crimes that have a marked financial component to them. The 'proceeds' of crime is notorious where the gains are measured in thousands of pounds, crimes which might also be identified by their underlying profit motivations.

Whether the host of counter-initiatives does, or ought to, contemplate an attack on criminal proceeds or criminal profits are matters of debate. In defining the limits of the strategy, the international model and most national laws define proceeds as any benefit, financial or otherwise, tangible or intangible, derived from, or traceable to, a criminal offence.² If proceeds equalled profits, then presumably the word 'profit' would figure in the definition. Some acknowledge a need to distinguish 'proceeds' and 'profits'. The strategy should target the net profits of crime, with profits defined as the gross revenues of illegal activity minus any demonstrable expenses.³ The modern plague appears as a plague of criminal profits rather than an affliction of 'proceeds'.

The distinction between these two terms is more than mere semantics. A persistent tenet of the modern era is that no one should be permitted to profit from crime. This is persuasive rhetoric to which few would object. A broad definition of the boundaries of countermeasures such as the targeting of any and all assets linked to offences drastically alters a strategy's scope. If assets of legitimate origin, for example, fall within the meaning of criminal proceeds then the strategy exceeds the rationale of ensuring that no one profits from crime. If the strategy is not about criminal profits but about something else, its legitimacy, particularly from a human rights perspective, becomes suspect. This failure to attend to the precise limits of the proceeds era recurs throughout contemporary crime control dialogues.

² The international model, American law and United Kingdom law all use this broad definition: *Convention Against the Illicit Traffic in Narcotics Drugs and Psychotropic Substances*, Vienna, 20 December, 1988, article 1 (p); 21 USC s. 881 (k); Drugs Trafficking Act 1994 (UK), c. 37, s. 2 and s. 4.

³ None of the jurisdictions studied in this work use this definition. However, it was recommended in the first inquiry in the United Kingdom into the problem of profitable crime: Hodgson Committee Report (1984), *The Profits of Crime and Their Recovery*, London: Heinemann, at p. 151.

Terrorism put a new twist on the preoccupation with criminal proceeds. Much of the proceeds of crime counter-initiatives are organized around the concept of criminal businesses and the idea that an attack on business finances will reduce the enterprises' viability. Typically this refers to illegal activity conducted with a view to generating profits. Trafficking in prohibited drugs readily fits into a business framework, an enterprise pursued in the interest of generating enormous sums of money. Acts of terrorism require some financial investments. Revenue accumulation, however, is not generally thought to be its primary motivation. In dealing with this crime, the focus tends to shift from proceeds derived from crime to moneys destined for crime. Further, any reference to the proceeds or the profits of crime does not entirely capture the financial nature of terrorist activity. Terrorist activity may be fuelled by contributions of revenues derived from unlawful and lawful activities. A preoccupation with criminal proceeds fails to concede that supporters of terrorism may contribute their own legitimately acquired assets to the terrorist cause. Strategies designed to take account of moneys derived from crime may be unsuitable to the task of intercepting lawfully acquired financial resources destined for use in terrorist activity.

It is more accurate to describe the current fervour as a concern with the financial or economic element of crime, and with any and all assets linked to criminal activity whether derived from, or destined for, crime. The distinction between proceeds and the profits of crime remains important for the purposes of clarity in circumscribing the scope of many modern initiatives.

The Rationales of the Strategy

Several discrete and interconnected factors contribute to the trepidation engendered by the link between money and crime. Firstly, the enormity of revenues derived from crime diminishes the deterrence capacity of traditional criminal sanctions. Incarceration or fines fail to deter when the potential rewards of criminal pursuits are substantial. Applying a business analogy, criminal sanctions become a cost of doing business, an expense that is easily absorbed by the revenues. So too a loss of liberty through a term in prison becomes an acceptable cost given the financial stores to be obtained upon release.⁴ When potential revenues are balanced against the potential costs, the rational economic actor engages in crime and any deterrence value afforded by traditional criminal sanctions is lost.

⁴ International Narcotics Control Board (1996), *Report of the International Narcotics Control Board*, UN Doc. E/INCB/1996/1 at para. 23. The statement of Bruce Cornwell, sentenced to 14 years for his criminal activities, typifies the concerns: 'I don't give a f*** what they do to me as long as we keep safe all that we have worked for': I. Tremblay (1989), 'The Proceeds of Crime: One Year's Experience', 13 *Criminal Law Journal* p. 24 at p. 30.

The circulation of the proceeds of crime, as opposed to their derivation, sounds alarms on a different front. The recycling or movement of criminal moneys are thought detrimental to financial institutions and to the stability of the financial system.⁵ Through the process known as money laundering, criminal money filters through the financial network, deposited in financial institutions, transferred to foreign destinations, transformed into different financial products. The fusion of criminal money and financial institutions undermines public confidence in the financial system, creating the perception that legitimate institutions are contaminated by the presence of dirty money. Knowledge of this penetration tarnishes the reputation of the institution and jeopardizes its financial stability. The hint that criminal money pollutes its institutional vaults portends the demise of a financial institution, causing losses to shareholders and to depositors alike.

By the same token, financial institutions benefit from the monetary transactions, whether the origins of the moneys are lawful or unlawful. Transaction fees and the ability to lend and invest financial resources generate wealth. The collapse of the Bank of Commerce and Credit International in the early 1990s is commonly cited as an example of the dangers caused by criminal earnings, its status as an international laundromat the cause of its demise. The cause of the failure may well have been a loss of political support for its services, rather than the presence of dirty funds.⁶ It did not fail because of criminal proceeds: it failed because its investors, directors and clients were all engaged in criminal activity.

The proceeds of crime also receive the blame for causing corruption. Control of substantial resources furnishes the holder with the financial resources needed to infiltrate and pervert law enforcement agencies and political and judicial institutions.⁷ Money can be used to discourage law enforcement from pursuing criminal investigations, used to purchase politicians favourable to a more liberal crime control climate and used to influence judicial decision-making when alleged criminals are brought before the courts. The distortion of allegiance to public obligations frustrates crime control initiatives. Countering crime becomes an exercise

⁵ W. Gilmore (1995), *Dirty Money: The Evolution of Money Laundering Counter-Measures*, Strasbourg; Council of Europe Publishing, at p. 16.

⁶ N. Patmos (1996), 'The Genesis of the BCCI Scandal', 23 *Law and Society Review*, p. 57.

⁷ Corruption is acute where revenues from criminal activity match or exceed the resources under the control of legitimate institutions. Thoumi found that Colombian drug lords had the control of financial resources which were equivalent to the entire Colombian private sector economy: F. Thoumi (1993), *The Size of the Illegal Drugs Industry in Columbia*, Miami: North-South Centre, pp. 13-14. The media regularly report on the links between public figures and the drugs trade: see, for example, *The Economist*, 29 March - 4 April 1997, pp. 19 and 59 (reporting that General Gutierrez, the Narcotics Co-ordinator for the Mexican government accepted bribes from narcotic traffickers).

in futility when the institutions charged with the task of devising and enforcing crime control policy are intrinsically corrupt.

But corruption is not always a by-product of criminal proceeds. Money of lawful origin can also be used to pervert institutional structures.⁸ And whether criminal revenues cause corruption or whether political and economic conditions create a social climate that is ripe for corruptive exploitation is unclear. A great deal of global assistance moneys disappeared when used to bolster a faltering USSR economy in the 1990s. Corruption allegedly proved systemic but its cause was less a surfeit of criminal earnings than the existence of an unstable economic and social framework.

Organized crime is a fourth factor that is interwoven into all of the above. A concept originally equated with the Mafia groups of Italy and with American criminal syndicates, organized crime is a difficult phenomenon to define or to study. The unlawful nature of its businesses, the secrecy and anonymity required to sustain it, mean that it is difficult to know the extent to which any criminal activity might be systematically organized or operated in any collectivist manner. Inevitably the term 'organized crime' is associated with profitable criminal ventures – arms trading, drugs trading and the trade in pornographic materials.⁹ An apt definition refers to some of its central features rather than to any formal attributes.¹⁰ Organized crime consists of some kind of group activity, possessed of some degree of structure, whose primary purpose is to generate profits by unlawful means.¹¹

It is this facet of criminal syndicates, the perception that they are the principal beneficiaries of profitable exploitations, rather than their structure that is perhaps more important. If it is true that criminal syndicates are the prime beneficiaries – and this is difficult to assess given that there are no formal records of the profits made by criminal groups – a number of consequences flow. It suggests that criminal revenues may be concentrated in small groups, rather than diffused amongst the broader populace. Any corruptive capability, a function of the consolidation of criminal rewards, increases. Equally, if groups are the main benefactor of profitable crime, it becomes more difficult to dismantle the criminal enterprise. When multiple parties are engaged in criminal businesses, the business acquires a

⁸ Cities vying for the opportunity to host the Olympics paid bribes to the members of the International Olympic Committee to secure support their support: *The Times*, 17 March 1999 p. 14.

⁹ M. Kleiman (1985), 'Drug Enforcement and Organised Crime', in H. Alexander and G. Caiden (eds) *The Politics and Economics of Organised Crime*, Washington: Lexington Books, pp. 67–87. See generally, P. Ryan and G. Bush (1997), *Understanding Organised Crime in a Global Perspective*, California: Sage Publications.

¹⁰ Home Affairs Committee (1994), *Report on Organised Crime*, HMSO (UK) 77 (hereinafter *Organised Crime*) at p. 77.

¹¹ Memorandum Submitted by the National Criminal Intelligence Service in *Organised Crime*, *supra*, pp. 141–2.

continuity that is independent of the acts of the individual participants. On the one hand, the reinvestment of profits into the underlying activity fuels its growth, enriched by its own success. On the other, the removal of individual agents through prosecution and imprisonment has little impact on the underlying business. If the rest of the pack remains viable, the organization can replenish itself through the recruitment of new partners.

A fifth factor has recently come to feature in the proceeds of crime dialogue. This factor achieves notoriety in the context of terrorism. While the proceeds of crime era was largely born of concern with criminal revenues and the underlying crime that produces those revenues, the fifth factor is the connection amongst and between crimes, that the proceeds of one illegal activity facilitate the commission of another. These links have always figured in crime control, based on the assumption that groups or individuals operate multifaceted criminal businesses. All of these commercial ventures have financial motivations. Terrorism evokes the connection between the proceeds of crime and the ideologically-driven and singularly destructive crimes rather than profit-oriented crime. Apart from the hired assassin, crimes of terrorism have, in part, ideological motivations, not profit motivations. The link between terrorism and criminal proceeds introduces a terrifying element of randomness to criminal activity. Any false sense of security, the identification of crime with certain social groups or certain regions of cities or certain countries, disappears with terrorism. If the victims of money laundering are thought to be financial institutions, the victims of terror are indiscriminate and arbitrary. For North Americans, if international terror was once perceived as the misery of foreign countries, with the destruction of 11 September 2001, there is no longer any doubt of terrorism's capricious global character.

The failure of traditional sanctions, financial instability, corruption, organized crime and terror contribute to the construction of the proceeds of crime as a modern pestilence, a demon that must be purged. Most of these factors are not without their controversial elements. Anyone with sufficient financial resources, whether part of a criminal organization or not, may be tempted to use their power to further their own interests. The pursuit of economic rewards and the assessing of potential benefits against the risks and costs of commercial activities is an attribute of the lawful and unlawful entrepreneur alike.¹² Most societies cherish the notion of risk-taking to

¹² Fraser draws a lucid analogy between the activities of organised crime and the activities of lawful entrepreneurs: D. Fraser (1992), 'Lawyers, Guns and Money: Economics and Ideology on the Money Trail' in B. Fisse, D. Fraser and G. Coss (eds), *The Money Trail: Confiscation of Proceeds of Crime, Money Laundering and Cash Transactions Reporting*, Sydney: The Law Book Company, p. 49. Schelling's typography of organised crime illustrates the similarities between the legitimate and illegitimate market structures: T. Schelling (1980) 'Economics and Criminal Enterprises' in *The Economics of Crime*, New York: Halsted Press, p. 377.

produce wealth. The demon that must be pursued possesses many lauded attributes. This invites numerous questions about the true rationales for the proceeds of crime era. Not that the demon need not be contained, but that the identification of its presence and the treatment of the disease can, at times, be selective and political.

THE EVOLUTION OF GLOBAL CONTROLS

With the evil clearly identified, countermeasures began to take shape. Much of the press for strategies of containment comes from international law. In this, the need for global harmonization springs largely from the global character of crimes with significant financial undercurrents as well as the increased mobility of capital and commodities brought about by globalization. The trade in illegal drugs ignores national boundaries, with drugs produced in one country and sold in another. Terrorist plots conceived in one jurisdiction may be realized in another. Globalization encourages the free movement of capital and commodities. Increased integration of global marketplaces facilitates the cross-border movement of lawful and unlawful activity alike. Global regimes, harmonized through international law, allow countermeasures to replicate the global character of the conduct they seek to suppress.

Recent global initiatives indicate the solidification of international consensus on a new proceeds-oriented approach to crime control. The illegal drugs industry precipitated the first deliberate global attack on criminal financial resources.¹³ Since the inauguration of the attack against drug moneys in 1988, several other international evils joined the fold of evils to be submitted to an assault on their finances: corruption, organized

¹³ *Convention Against the Illicit Traffic in Narcotics Drugs and Psychotropic Substances*, 1988. International law had long sought to suppress international drugs trafficking: *International Opium Convention*, The Hague, 23 January 1912; *Agreement Concerning the Suppression of the Manufacture of, Internal Trade in and Use of, Prepared Opium*, Geneva, 11 February 1925; *International Opium Convention (2)*, Geneva, 19 February 1925; *Protocol to the International Opium Convention*, Geneva, 19 February 1925; *Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs*, Geneva, 13 July 1931; *Agreement Concerning the Suppression of Opium Smoking*, Bangkok, 27 November 1931; *Convention for the Suppression of Illicit Traffic in Dangerous Drugs*, Geneva, 26 June 1936; *Protocol Amending the Agreements, Conventions and Protocols on Narcotics Drugs Concluded at The Hague on 23 January 1912, at Geneva 11 February 1925 and on 19 February 1925, and on 31 July 1931, at Bangkok on 27 November 1931 and at Geneva on 26 June 1936*, Lake Success New York, 11 December 1946; *Protocol Bringing Under International Control Drugs Outside the Scope of the Convention of 13 July 1931 for Limiting the Manufacture and Regulating the Distribution of Narcotics Drugs, as amended by the Protocol of 11 December 1946*, Paris, 19 November 1948; *Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium*, New York, 23 June 1942.

crime and transnational criminal activity. Each international agreement countenances an attack on the financial element of each sphere of activity. A categorical directive from the United Nations Security Council directs that action be taken against terrorist financing. And the year 2000 statute establishing the Permanent International Criminal Court confers onto it the power to order the seizure of property linked to offences that come within the institution's mandate.

Despite the explicit expressions found in international law, at the national level the consensus on a new approach to crime control is somewhat fragmented. States appear reluctant to implement the international strategy when it conflicts with particular national interests. That conflict appears to influence a state's willingness to adopt proceeds of crime strategies.

This tension between global initiatives and national interest is graphically illustrated by the considerations which factor into the construction of the global illegal drugs control mechanism. The need to harmonize international regulatory frameworks stems from the symbiotic relationship between drugs supply (trafficking) and drugs demand (consumption). Both contribute to the problem: consumption fosters supply while supply encourages consumption. Consequently it is difficult to reduce demand if supply is not similarly reduced. Alternatively, it is hard to eliminate supply if consumption continues.¹⁴

For individual state actors, the dilemma is that one part of the problem, supply or demand, originates beyond their national boundaries. Certain regions of the globe, characterised as producer regions, produce enormous quantities of illegal drugs. While a portion of the product is consumed domestically, the bulk is exported to foreign markets. South America, parts of the Middle East and East and Central Asia are typically described as drugs production regions. Other regions - the United Kingdom, North America and Australia - are commonly characterized as consumption jurisdictions.¹⁵ In truth, no one region is exclusively either a consumer or a producer of illicit drugs. Rather, production or consumption is more concentrated in certain regions than in others. This concentration is important because whether states experience drugs as predominately problems of 'supply' or problems of 'consumption' informs their response to the drugs problem. Early on, Chinese national interest favoured a

¹⁴ Repression of supply in one region or another commonly leads to relocation, rather than the elimination, of drugs production and drugs distribution centres: UN Doc. E/CN.7/1996/12, p. 3. In his empirical study of this relationship, Toro concludes that an increase in the Mexican drugs market was due to a relocation of drugs markets from Turkey and France when the Turkish and French markets were disrupted: M. Toro (1995), *Mexico's "War" on Drugs: Causes and Consequences*, Boulder, Colorado: L. Rienner Publications, pp. 15-16.

¹⁵ P. Stares (1996), *Global Habit: The Drugs Problem in a Borderless World*, Washington, DC: Brookings Institution Press, pp. 1-46.

prohibition on the use of opium because the local consumption destroyed Chinese human capital. British national interest, the British traders' financial interest in delivering the opium to Chinese shores, initially silenced any domestic response.¹⁶ Presently, the United States experiences problems of drug consumption. Its national interest in the control of illegal drugs lies in preventing the depletion of its human capital through drug use and in preventing the export of US dollars through traffic in an illegal trade.

For drug supply jurisdictions, the interests differ. Often, supply-oriented economies emerge in regions where other economic resources are in short supply.¹⁷ The illegal drugs trade provides necessary financial resources. While a state may have an underlying interest in suppressing an illegal trade, other national interests tend to intercede. It may lack resources to implement and enforce an effective drugs-control policy, reluctant to put national funds into crime control when other public concerns – health care, schools, food – are more pressing. Not surprisingly, the international drugs control apparatus implemented over the course of many years evinces a subtle preference for the economic interests of wealthier nations, the primary producers of lawful (medical) drugs. The current system imposes a more stringent regulatory regime on narcotic drugs, drugs of predominantly organic origin, than on manufactured, or synthetic, drugs.¹⁸ Accordingly the existence of the two parallel systems results from an apparent unwillingness on the part of developed countries, the primary producers of psychotropic substances, to impose the same restrictions on themselves as those imposed on Third World and developing countries, the principal producers of narcotic drugs.¹⁹

It is not only in the context of the control of the global trade that national interest obstructs global harmonization. America exhibits a keen interest in the harmonization of national laws respecting terrorism, firmly supporting

¹⁶ S. Stein (1985), *International Diplomacy, State Administrators and Narcotics Control: the Origins of a Social Problem*, New York: Gower Publications, pp. 6–26.

¹⁷ S. George (1992), *The Debt Boomerang: How Third World Debt Harms Us All*, London: Pluto Press, pp. 34–62.

¹⁸ *Single Convention on Narcotic Drugs*, 1961, New York, 30 March 1961 (as amended by the *Protocol Amending the Single Convention on Narcotic Drugs*, 1961, Geneva, 25 March 1972; *Convention on Psychotropic Substances* (hereinafter *Psychotropic Convention*) Vienna, 21 February 1971. The first regime imposes an estimates system on narcotic drugs, a system which is not imposed on synthetic drugs: see, M. Gallant (2000) 'The Profits of Crime and the Civil Law', doctoral dissertation, Kings' College London.

¹⁹ M. Bassiouni (1989), 'Critical Reflections on International and National Control of Drugs', 18 *Denver Journal of International Law* p. 311, pp. 314–15. Others explain the dual systems as a reflection of the differences in the nature of the control problems presented by the different types of drugs. Enormous profits are also derived from the lawful trade in drugs. Some argue that the financial interests of multinational pharmaceutical companies, rather than the public health interest, drives the expansion of the legal drugs industry: J. Lexchin (1984), *The Real Pushers: A Critical Analysis of the Canadian Drug Industry*, Vancouver, BC: New Star Books.

the United Nations Security Council's resolution calling upon states to take steps to track and forfeit terrorist assets. At the same time, it has been hesitant to endorse the creation of a global institution, a permanent international criminal court, whose mandate includes recovering the proceeds of crime.²⁰ There is also the claim that US foreign policy fosters international terrorism but that national politicians are reluctant to take this perspective into account in pushing for the formation of global anti-terrorism norms.²¹

This same tension between the global effort and national welfare appears in other aspects of the international proceeds of crime project. Switzerland is known for its international banking industry and built much of its reputation on the bedrock of privacy and client confidentiality. Anti-money laundering laws, a central component of the money-centred strategy, erode bank secrecy and confidentiality by pulling back the veils that shield financial activity from public scrutiny. Such erosion strikes at the heart of Swiss international prowess. Swiss national interest and the revenues the banking industry contributes to the local economy favour a less vigorous pursuit of criminal proceeds. The City of London constitutes a financial centre of international repute. Financial services are its lifeblood, its execution of these the height of excellence. Despite the United Kingdom's membership in the G-7 and its approval of the charging of a G-7 task force with the project of overseeing global implementation of anti-money laundering laws, a French report concluded that the City of London as well as Switzerland continued to be havens for money laundering.²² The expressed global interest in tackling proceeds had not translated into effective national counter-initiatives.

This is a stark indictment of the conflict between global and national interest. In light of the rationale that the circulation of criminal moneys perverts the financial system, jurisdictions with healthy financial services sectors ought to actively encourage the development and implementation of anti-money laundering mechanisms. It is, after all, the stability and integrity of their financial institutions that face the greatest risk of collapse. Jurisdictions such as Switzerland, the United Kingdom (City of London) and Liechtenstein, all renowned for their banking and financial services, presumably share an interest in tracking criminal proceeds. But the pace of their implementation does not reflect that shared interest.

The intersection of international pressures to erect global proceeds of crime structures and the speed of, or disinterest in, national implementation,

²⁰ B. Broomhall (2001), 'Towards US Acceptance of an International Criminal Court', *Law and Contemporary Problems*, p. 141.

²¹ N. Chomsky (1994), *The Culture of Terrorism*, Cambridge, MA: South End Press.

²² V. Peillon and A. Montebourg, *Delinquance Financiere et Blanchiment des Capitaux* (2001), Mission d'Information Commune sur les Obstacles au Controle de la Repression de la Delinquance Financiere et du Blanchiment des Capitaux en Europe, V. 4.