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Katie Benson, Colin King & Clive Walker (eds)— *Assets, Crimes and the State: Innovation in 21st Century Legal Responses*

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This new book from Routledge, which critically explores the contemporary (21st century) and innovative approaches adopted by states to counter financial crimes is a welcome addition to the Transnational Criminal Justice Series. By bringing together 17 emerging and established legal scholars, the book not only provides novel chapters on topics such as tax evasion and asset freezing, but also offers legal analysis of jurisdictions such as Kuwait, Qatar and Iran which have been given scant attention by the academia. The book provides critical inquiries mainly from distinctive criminal and international law perspectives yet at the same time offers insights which would complement other social science approaches on the current state of the policies and laws (law in books) and human or institutional factors, impacting law in action.

The book starts with a well-referenced introduction (chapter 1) by the editors which outlines the foci of the book and the chapters therein. In doing so, it also provides a summary of the evolution of the current international anti-money laundering (AML) and counter-terrorist financing (CTF) framework. Overall, the editors have cleverly knitted and harmoniously blended all 17 contributions that follow and provided a variety of complementary perspectives in three distinctive parts.

Part One, 'Innovative techniques and new perspectives on existing techniques', consists of six excellent chapters. Chapter 2 critiques the efficacy of the UK's *modus operandi* of tackling tax crime-driven money laundering and if and to what extent the Common Reporting Standard (CRS) of the Organisation for Economic Co-operation and Development (OECD) may yield the intended results. This is done by looking into AML intelligence gathering in the UK; cross-country assistance (exchange of information) as envisaged by the OECD; and critical examination of the CRS against the benchmarks of right to privacy and data protection

principles. The chapter concludes that, while AML rules and OECD principles have developed in tandem, they have failed to consider whether these provisions strike the balance between crime prevention, detection and revenue protection on the one hand and the right to privacy and data protection on the other.

Chapter 3 considers the ever-evolving and expanding roles and powers of financial intelligence units (FIUs) in the European Union (EU) and whether such expansion is conducive and/or proportionate to the protection of fundamental rights such as privacy rights and data protection. The chapter also identifies aptly the instances of contradiction between national measures and EU provisions, particularly in the context of information exchange, consent, loss of control of the data in question and joint analysis challenges pertaining to legal, information technology and operational elements in different jurisdictions.

Chapter 4 questions the current practices of 'risk-based approach' (RBA) to AML in the UK and explores whether the RBA has produced the desired results effectively. The concept of effectiveness is tested by looking at the optimization of effort and costs by the regulated entities as well as considering if and to what extent suspicious activity reports (SARs) are utilized by law enforcement agencies. In doing so, the chapter also previews the practical challenges faced by obliged (regulated) reporting entities. The analysis is generally confined to one type of regulated entity, namely banks, and it does not consider other regulated entities such as accountants, auditors, casinos, etc. While the chapter does not address effectiveness of SARs after they are submitted in detail, it is clear that future research ought to include empirical studies on what percentage of SARs actually lead to prosecution, successful convictions and asset recovery.

Chapter 5 considers the relatively new regime of unexplained wealth orders (UWOs) in the UK. Firstly, the chapter offers a summary of the mutual evaluation report on the UK by the Financial Action Task Force (FATF) and the new provisions that have been introduced as the AML regime has evolved. It does not, however, mention the requirement to establish beneficial ownership across the EU which is directly linked to UWOs and necessary for asset freezing and recovery. The chapter identifies the elements that must be present and the obstacles that may arise, *inter alia* burden of proof, self-incrimination and presumption of innocence in applying UWOs. It is not entirely clear if and to what extent the UWOs regime has been effective, hence a further empirical study on how many UWOs have been issued and what percentage of these have yielded the desired results would be welcome in the future.

Chapter 6 considers the impact of asset recovery, not only on suspects and actual criminals but also on their family members. In doing so, it critiques how the confiscation regime is conducted (e.g. calculations or miscalculations as the case may be) and questions whether the current post-conviction confiscation regime under Proceeds of Crime Act 2002 is excessive or disproportionate. What is most revealing and interesting (based on Bullock's empirical work in 2014) is how solicitors have misinformed clients when it comes to 'benefit figure' and the subsequent financial (e.g. accruing interest) and socio-economic consequences which hinder rehabilitation, re-entry into the labour market and impact negatively on mental health and family relations. The combination of these factors, it is argued, inflicts 'iatrogenic harm' upon people who are subject to confiscation orders, and such an oppressive regime is not conducive to human rights and legitimacy of state punishment.

Part Two, 'Innovative assemblages of government', consists of 5 chapters. Chapter 7 considers the legal profession's stance in response to being designated as gatekeepers and/or as obliged entities to report suspicious activities to relevant authorities under AML/CTF legal instruments. In doing so, the chapter firstly posits that there has been a 'fierce resistance' from the legal profession in terms of due diligence and reporting duties under AML laws. Secondly, the chapter explores the 'institutional consciousness' or institutional concerns which derive the rationale behind such resistance by legal professionals who see themselves as public interest actors; and thirdly it contrasts the legal sector's with that of the banking sector. It is argued that the resistance from the legal profession is mainly driven by fundamental rights and principles which underpin democracy and freedom, such as the independence of lawyers from the state their clients' rights to a lawyer (including client confidentiality), a fair trial, privacy and family life.

Chapter 8 seamlessly follows the previous chapter by considering how legal professionals as enablers can aid high-end money laundering. The conclusions are informed by the analysis of cases in which solicitors were convicted of money laundering offences in the UK. The rights and principles, such as confidentiality between lawyers and their clients and legal professional privilege (e.g. autonomy and independence), which have been argued (in the previous chapter) to underpin the resistance by the legal profession, are aptly demonstrated to form a barrier to scrutiny and effective investigations on suspected activities.

Chapter 9 critiques the UK's CTF regime pertaining to new payment systems (NPSs) against the international standards (namely the United

Nations legal instruments and FATF Recommendations). In addition, it considers whether the UK's CTF regime corresponds to the risks that NPSs pose. In doing so, three NPSs (pre-paid cards, mobile payment systems and internet-based payment systems), which are deemed relevant and risky or vulnerable in the context of terrorist financing, are examined. It is concluded that the UK has adopted a sound CTF policy in relation to NPSs.

Chapter 10 focuses on another enabler, estate agents, and the risks and challenges associated with the increased use of crypto-currencies in the property market. For instance, establishing the source and legitimacy of the crypto-currency funds can be particularly problematic owing to the anonymity and the difficulty in tracing crypto-currency transactions. Given the fact that crypto-currency transactions may not involve formal financial institutions (e.g. banks), establishing identity of persons and conducting due diligence on them would be an onerous task. This is yet another empirical study informed by interviews with the end-user stakeholders—estate agents. The chapter concludes with recommendations for future action and reform, *inter alia* policies that do not hinder technological development and positive aspects of crypto-currencies; training of estate agents; and better cooperation and partnership between obliged entities and national agencies (the shared governance model).

Chapter 11 looks at the legal implications of the AML framework for the art market, which has been proven to be an exploitable commodity by criminals. The chapter also offers a number of suggestions as to how current policing and governance can be improved. One of the suggestions put forward is the use of open-source data and intelligence so as to improve investigations. Another suggestion refers to fragmented governance and legal frameworks whereby not only open access data can be made user-friendly across many jurisdictions to aid policing (e.g. by translation of local evidence and knowledge and data sharing) but also by the utilization of private experts in the form of public–private partnership. These suggestions are informed by a number of actual examples of illicit art trade.

Part Three, 'Country-specific insights or rebellion', is composed of 7 chapters. Chapter 12 questions how corporate corruption and proceeds deriving from it may be best addressed, and whether the present self-regulatory regime is fit for anti-corruption purposes. It is opined that more proactive policy and enforcement responses are necessary because the current self-regulatory regime has not yielded the desired results, such as controlling or deterring corporate criminality in the context of

corruption and bribery. This is yet another chapter that focuses on the UK legal regime (examining mainly the Bribery Act 2010), which can be treated as a pivotal inquiry model for other jurisdictions in future research.

Chapter 13 focuses on 'failure to prevent offences' (FTPs), which are currently confined to bribery and tax evasion in the UK, and explores whether FTPs or omissions-based offences can be expanded to include FTP money laundering offences in order to curtail corporate criminality. Informed by relevant jurisprudence on establishing *mens rea* of companies, one of the critical insights offered by the chapter is how the identification principle can be exploited by large multinational companies (with complex management structures) to escape criminal liability. At the same time, the said principle can result in different treatment of small and medium-sized enterprises to their detriment. It is clearly demonstrated that the identification principle in the context of countering financial crime is inadequate. It is not convincing, however, if the deferred prosecution agreements (DPAs) secured under the Bribery Act 2010 can be considered as success stories as the companies which were subjected to DPAs seem to have escaped the full force of the law. Another valuable insight is the identification of how the Criminal Finances Act 2017 (CFA) differs in its approach to its benchmark for failing to prevent; while the Bribery Act 2010 utilizes the term 'adequate' preventative measures, the CFA employs the term 'reasonable'. It is concluded that if the opportunity to include FTPs under the Sanctions and Anti-Money Laundering Bill 2018 had materialized, such a provision would have provided a significant advantage in countering financial crime.

Chapter 14 considers whether the recent anti-corruption measures (namely the Anti-Corruption Law No 2 2016) in Kuwait may be viewed as innovative. In doing so, the chapter provides an overview of the development of anti-corruption legal regimes and compares Kuwaiti law with international legal instruments pertaining to anti-corruption. Furthermore, the chapter analyses the extent to which the offence of illicit enrichment has been enforced, mainly against public officials. The analysis includes consideration of important and contemporary issues pertaining to fundamental rights, *inter alia* fair trial, self-incrimination and burden of proof.

Chapter 15 also focuses on Kuwait and critically examines how the law has responded to corruption offences, namely public money offences, illicit enrichment offences and money laundering in grand corruption cases. The author opines that the current legal powers conferred on law

enforcement agencies are adequate. Furthermore, it is suggested that civil forfeiture (rather than criminal legal process) and unexplained wealth orders can be effective tools if introduced in the Kuwaiti legal regime.

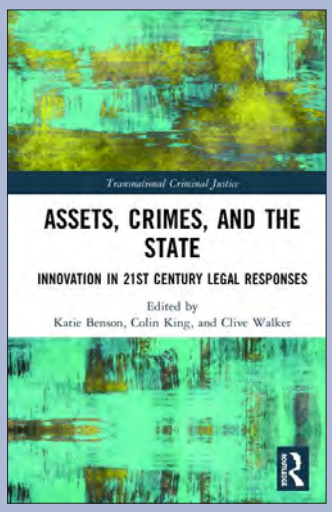
Chapter 16 focuses on Nigeria, another jurisdiction where the gap between law in books and the law in practice is vast, and corruption is endemic. The chapter examines the Nigerian AML/CTF legal regime against the benchmarks provided by international instruments (e.g. FATF Recommendations and Egmont Group standards). It is concluded that the country suffers from ineffective implementation and enforcement of law, as well as political interference and lack of political will. The key observation which should receive the most attention is the fact that developed countries and/or the financial institution therein either knowingly or unintentionally enable the flow and laundering of illicit assets generated by corrupt practices in countries such as Nigeria. This needs to be addressed in order that global efforts to counter financial crime can be more effective.

Chapter 17 returns the focus to the Middle East whereby the legitimacy and legality of the sanctions imposed on Qatar's alleged shortcomings in terms of meeting its international obligations to counter terrorism are examined. Readers are reminded and cautioned about the fact that such arbitrary and seemingly unilateral actions in the form of isolation and sanctions (which are often practised by Western states) may be applied in other jurisdictions (this time by a coalition-led by Saudi Arabia) where safeguards, such as and effective human rights protection regime, are weak. It is concluded that these targeted sanctions did not deliver the desired results. Finally, the chapter puts forward a number of recommendations for ensuring such a sanctions regime is legitimate and in line with the fundamental principles of international law in general and international human rights law in particular.

Chapter 18 is the final chapter of this book. It explains the CTF measures taken by Iran following the UN Security Council Resolutions in the aftermath of the 9/11 terrorist attacks. This is done against the background that Iran has been considered both as a victim and sponsor of terrorism, with its open support for terrorist organizations such as Hizballah, Hamas and the Palestinian Islamic Jihad. In addition, the explanation offered for the Iranian stance is based on the definition of terrorism in Iran whereby the support it provides to these organizations is seen as a legitimate effort to further self-determination and self-defence against Israeli occupation. Therefore, such entities are designated as National Liberation Movements not terrorist organizations. This is

identified as the crux of the matter when it comes to Iran's uneasy relationship with the international CTF framework, *inter alia* the relevant UN Conventions, Resolutions and FATF Recommendations. Despite the fact that the majority of states in the world are parties to key CTF legal instruments, it is argued that these legal instruments fail to articulate CTF expectations in a way that they can be perceived normatively and politically as universal. Despite the recent efforts to bring the Iranian CTF regime in line with international standards, the unique position driven by the Shariah law and the Iranian Constitution make it impossible for Iran to overcome the current impasse over its compliance with the international CTF framework.

Each chapter of the book is well written and outlines its respective aim and objectives clearly at the outset. While confined to a particular jurisdiction, the areas of inquiry and analysis within each chapter offer numerous novel insights which can be treated as seeds for future research in other jurisdictions. Despite the wide spectrum of topics and perspectives covered, the book is thematically coherent. It is a unique contribution to the AML/CTF literature, providing excellent and detailed inquiries into distinctive legal, political and policy considerations by fresh analyses and insights. It is a must-read for scholars and students of law and other social sciences. It is also an excellent reference point for professionals, commentators, policy-makers and law enforcement agencies.



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