

Tilburg University

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Published in:
Crime business and crime money in Europe

Publication date:
2007

[Link to publication in Tilburg University Research Portal](#)

Citation for published version (APA):
van Duyne, P. C. (2007). Virtue and reality: An introductory tale of two cities. In P. C. van Duyne, A. Maljevic, M. van Dijck, K. von Lampe, & J. Harvey (Eds.), *Crime business and crime money in Europe: The dirty linen of illegal enterprise* (pp. 1-16). (Cross-Border Crime Colloquium; No. 8). Wolf Legal Publishers (WLP).
<http://www.cross-border-crime.net>

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Virtue and Reality:

An introductory tale of two cities

Petrus C. van Duyne

The cities of Virtue and Entrepreneurship

Morality and money are usually considered as opposites like the idea of the Augustinian two cities: the godly city of Virtue and the worldly city of Sin. The first one is pure and does not know any compromise; the second one is doomed unless pure virtue reigns again. Nevertheless history knows episodes in which (corrupted) holiness and dirty monies appeared to enjoy a happy alliance, as happened during the reign of the Medici popes in the beginning of the 16th Century (Hibbert, 1979). The enlargement of St Peter's proved to be very expensive and the papal licensed brothels in the Holy City were therefore charged extra. This was not enough, and the Pope started to issue letters of indulgence which assumedly shortened the time in purgatory. This proved to be a successful scam, particularly in Germany where the letters were enthusiastically sold by the monk Johann Tetzler, in close cooperation with the Fugger bank. Another German monk, Martin Luther, felt deeply offended by this after-life insurance scam and in October 1517, legend has it, nailed 95 statements on the door of the castle church in Wittenberg. This unleashed the reformation which –among others– aimed to sever this corrupt relationship (Diwald, 1982: 102-103). Whether they succeeded is for historians to judge.¹

At present morality and (dirty) money are the focus of attention again – although this time less cosily connected. Since the Financial Action Task Force on money-laundering (FATF) sounded the alarm about the extent and threat of crime-money and the laundering thereof in 1990, a serious worldwide programme to clean the global 'financial city' of this evil has set in (Stessens, 2002; Reuter and Truman, 2004). Starting with drug money –an easy target no one could disagree with– the financial moral crusaders, united in the above mentioned FATF, developed recommendation after recommendation, gradually tightening the screws. No potential actor or financial temptation was omitted: a system of reporting was designed encompassing bankers and antique dealers, real estate agents and car dealers alike. This is no surprise: as with the anti-drug policy fanned by the US since the beginning of the last Century, a moral campaign against an evil is not a half-way enterprise (Van Duyne and Levi, 2005;

¹ At any rate this relationship had some longevity, as demonstrated by the story of the Banco Ambrosiano which ended with the demise of 'God's banker', Roberto Calvi, hanging under one of the bridges in London (Cornwell, 1983).

Courtwright, 1982).² The ideal 'financial city' has to be pure, like the Augustinian Godly City.

So what is the outcome after 17 years of purification, three FATF recommendations and an equal number of EU guidelines? What was the effect on the earthly city, the place of trade and industry, of real money (of whatever colour), the city of potential sinners as well as those who have to report potential sinful transactions? How does this place –with the laundered linen hanging around– relate to the constructed ideal city of legislators and policy makers? In this contraposition we are confronted with the usual strain between a 'should-be' world and the confusing state of reality. This is not only a matter of reality usually lagging behind in complying with the demands of rule makers. That has always been the case. The confusion concerns rather the ambiguous state of the threatening (and threatened) financial reality. On the one hand, the flow of threat assessment reports concerning 'organised crime' presents us an array of pictures full of 'transnational' crime-for-profit (Van Duyne, 2007). It conveys the image of a 'global city' (instead of a cosy 'village') of crime, crime-money and the laundering thereof. On the other hand, some critical researchers are still looking for the 'True Threat'. The fact that the real threatening examples must be scraped together sheds doubt on the validity of the claimed ubiquity of the dirty money threat. (Maybe it represents no more threat than the dirty money with which St. Peter –still admired today– has been built.) If it is so big, why does a simple hedge fund or a policy of bad mortgages have more capacity to create havoc on the financial and investment market than all the alleged trillions of crime-money? Consequently, if the moral 'financial city' and the related threat image of the FATF does not match with the 'earthly commercial city' of daily life, what about all the measures to stem the depicted threats? Are they really commensurate to reality or do they just follow from the orthodox purist legal principle of 100 % law coverage? This volume may provide some insights into this issue.

The conditioned loophole reflex and enlightenment

From the elaboration above as well as from the extensive literature (for example Reuter and Blum, 2004), the reader may already surmise that the international legal experts represented in the FATF have taken the money-laundering threat anything but light-heartedly. Whether one reads the first list of recommendations or the last one, they reflect a constant search to plug any hole through which even the smallest financial fish may try to swim. This drive has certainly been intensified by the terrorist attack of 11 September 2001, in the

² That was also the lesson of the reformation: Luther's righteousness was soon surpassed by the severe Calvin, who was himself surpassed by Scottish reformer John Knox.

aftermath of which the reach of the anti-laundering regime has been extended to the financing of terrorist activities (Levi, 2003). After the FATF issued new recommendations, the EU-commission was bound to follow suit with corresponding directives.

Designing directives for the EU is a meticulous legal labour, as can be admired in the contribution of *Joeb Rietrae*, economist and previous financial markets and AML/CTF expert at the Dutch Ministry of Finance. The author carefully discusses the third EU anti-money laundering Directive of December 2005. The Directive represents a tightly woven and broadly designed net covering a broad sample sheet of financial activities as well as commercial institutions and persons in the EU. As far as the scope of criminal activities are concerned, it covers all ‘serious’ offences which are defined as being those: ‘*punishable by deprivation of liberty or a detention order for a maximum of more than one year*’. This represents a very low threshold, though still a bit higher than those in jurisdictions like the Netherlands, which applies the anti-laundering clause to *all* criminal offences. As there are hardly crimes for profit which have a maximal prison term of less than one year, the practical coverage is virtually 100 %, though one may wonder what the qualification ‘serious’ still means. In this context it is just a formal threshold without any criminological meaning, stretching from petty shoplifting to ENRON-like fraud schemes.

Also in other aspects the coverage is broad as well as dense. This follows from the strict application of the transparency requirement and know-your-customer requirement: no entity or commercial market player which is engaged in activities likely to be used for money laundering or terrorist financing is allowed to remain out of reach. And no institution or obliged person is allowed *not* to know his customer. It is irrelevant whether such activities take place on internet or in real, ‘bricks and mortar’ enterprises. In all cases the know-your-customer principle applies and there is no slackening of the requirement of the customer due diligence (CDD). This entails that one is obliged to find out who the –thus far ephemeral– potential *beneficial owners* of any legal person really are. These are defined as those persons or entities which control 25 % plus one of the shares, votes or property of whatever entity. Given that it may sometimes be difficult to establish the identity of a customer, the obliged entity must proceed on a risk based approach or take every reasonable measure. If the identity cannot be determined, no business relation must be established or an occasional transaction be carried out. Predictably, anonymous bank accounts and bearer passbooks are prohibited, as well as (indirect) relationships with shell banks.

Leaving aside the multitude of other requirements imposed on the financial system or recommendations to the Member States, I would like to point at one particular pious wish: money-laundering statistics. Member states “shall . . . maintain comprehensive statistics”. If the financial system must be a perfect transparent city, the same standard should apply to the organs of the Member

States. However, here we arrive again at the 'earthly city', this time of real people staffing the agencies who have to do something themselves, other than interfering in someone else's financial job. I must defer the tale of that part of city. First comes an interesting description of a special group: lawyers, civil-law notaries and tax advisors.

For good reasons the author *André Tilleman* working at the Dutch Bureau of Financial Supervision devotes ample space to the legal professional groups. Indeed, its members are at great risk of being exposed to various aspects of criminal or at least hidden funds while having a statutory duty to professional secrecy. What their clients convey to them must remain as confidential as the confessions to a father confessor. Nevertheless, since 2003 also these professionals are obliged to report suspicious transactions related to money-laundering or terrorism. How to deal with this obvious tension?

The involvement of legal professionals did not come as a surprise. Since the mid 1990s there were already guidelines for civil-law notaries and lawyers to prevent their involvement in criminal activities by receiving illegally obtained money. Cash payments of more than € 10.000 were prohibited for civil-law notaries (€ 11.345 for lawyers). Now these professionals are within the orbit of the anti-laundering legislation, with the exception of 'typical' activities pertaining to their core business. These relate to "determining the legal position of a client, his representation at law, giving advice prior to, during or after legal proceedings, or giving advice about instituting or avoiding legal proceedings". They have to determine the identity of their clients too before rendering services which are subject to the Identification Act and they must not accept cash payments above the specified threshold (which would have to be reported). Unusual transactions which may relate to money-laundering and/or terrorist activities have to be reported as well.

Though these professional's secrecy is no longer sacrosanct, when lawyers and notaries perform their 'core function' of determining the legal position of their clients, client confidentiality and the right of non-disclosure are not waved. However, invoking these rights is no longer taken for granted and has been challenged in court, though not always successfully. The legal profession is aware now that their work is under supervision too.

The author provides an elaborate description of the supervisory bodies: the Dutch Central Bank, the Authority Financial Markets, the Fiscal Police and the Bureau Financial Supervision. The latter deals particularly with the legal and financial professions (e.g. accountants and tax advisors) and has extensive powers, such as inspecting also confidential client documents.

Of course, the brief sections above are only intended to give an initial impression of the thorough efforts of the authorities to fight money-laundering and to impose an impressive supervisory network. This is all about the regulation of various actors to safeguard the ideal of financial transparency to keep dirty money out. It is a legislators' reflex to mend the loopholes, not to balance

legal interests against the real threat posed by financial actors (Van Duyne *et al.*, 2005). But these actors (and their potentially murky clients) are not the only citizens. There is also the district of law enforcing agencies and agents, either supervising others or chasing the crime-monies and suppressing the laundering. What does it look like?

In his contribution *Petrus C. van Duyne*, professor of Penal Law at Tilburg University, makes an attempt to obtain material for this side of the story. His approach is simple: if the gruesome story about crime-money and laundering the authorities want us to believe is true, then they should have properly documented all statistical evidence about perpetrators and their deeds. All in all, this should represent the authorities' part of the transparency play.

Van Duyne's search through the available public data bases of four European Member States (Netherlands, Germany, Belgium and the UK) makes it clear that irrespective of the seriousness of the problem, the authorities do little more than shedding some flickering lights on a few stretches of their law enforcement tasks. The data are fragmentary, badly kept and from proper methodological standards shallowly justified (if at all) making it impossible to determine their reliability and validity. Above all, despite the repeatedly stated and generally recognized 'transnational' nature of the dirty money flows, the national statistics are actually incomparable. This is the more poignant as there are German and Dutch statistics concerning suspicious money flows going out of and into these countries, differentiated by country of origin and destination. However, in no way do they match: neither in format nor in content. It yields to all extent comparisons of apples and oranges. The lofty recommendation about 'comprehensive statistics' in the Member States, mentioned above, is telling for the lack of statistical expertise of the authors of the third EU directive. It is a pious wish from an alien legalistic city.

Despite the flickering lights of the law enforcement documentation (FIUs, police and Public Prosecution Office), some glimmering evidence can be gleaned. In the first place, there is the traditional fear about the drug money. The Belgian statistics, allowing a breakdown of the reported suspicious money volume and the predicate crime, shows that compared to (tax) fraud and (organised) economic crime drug money is just a fraction of the whole at 5%. This is somewhat in line with the findings of Levi and Reuter (2006) and the German annual money laundering reports in which drug offences rank well below commercial crimes like deceit and swindling. Despite the weakness of the data it can be taken as a serious refutation of the drug money scare, even if no one would deny that there is a lot of drug money around.

A more detailed analysis of the Dutch money-laundering database reveals in the first place how careful one must be in interpreting the laundering data. This was the case with a few mega-transactions with (Russian) oil money, which distorted the picture of 2003 or the 'revolving door launderers' who carry out a large number of suspicious transactions (particularly money transfers). The

analysis also demonstrates patterns of money flows into and out of the country which should have caused the authorities to raise questions. For example: the traditional 'criminal payment deficit' of the UK (particularly Scotland) with the Netherlands, paying either for dope or cigarettes; and the large incoming flow of suspicious money from Italy. No such questions were raised, however.

The same can be said about the outcome of the fight against crime-money: the confiscated assets or the 'fruits of crime', which are also the 'fruits' of enforcement. No questions were asked about what the composition of the confiscated assets actually meant in terms of criminal economy. Or whether the conviction success rate of a mere 6 % is not a bit meagre. The information management of the law enforcement agencies proved to defy almost any question, if raised in the first place. The author concludes that the present anti-laundering approach is rather based on a firmly established belief system than on a sober statistical analysis of what happens in the 'real city'. It is a tale of a city whose policy makers still live in the intellectual stage of the 'pre-Enlightenment' era, formulating its policies in an empirical *camera obscura* without feeling uneasy about it.

The criminal inhabitants

The contribution of Van Duyne demonstrates that attempts to get a view on the (finances of the) criminal inhabitants of the city –for whom all the regulations have been drafted– foundered on the information mismanagement of the law enforcement agencies. Fortunately the contributions following this sad conclusion do show light on who we meet in the 'criminal down town'.

Human traders

In their contribution *Kauko Aromaa*, director of HEUNI and *Martii Lehti*, director of National Research Institute of Legal Policy, give an account of the market of human beings. Granted, they too have to start with a warning about the 'data full of gaps', particularly concerning non-sex related human trafficking. For example, victims of trafficking may be counted every time she/he has been observed in various countries: each country counting one but the same victim. Briefly and critically they scanned a few sources (with a probable common but unknown source), reaching a total of 500.000 trafficked persons to the 'old' EU, with spooky turnovers of 100 million to 'several billions of Euros'. Equally indeterminate are the number of purportedly identified victims of prostitution related trafficking, sometimes with estimated ranges of more than 500 %.

Despite decades of policy making, implementing, defining and redefining human trafficking, the authors make clear that there is still little clarity in this

field. Human trafficking is not necessarily a cross-border trade, though most identified cases concern international movements (or those cases get prime law enforcement attention). Many trafficked women come from far and wide, which attracts most attention because such displaced victims seem to be more harmed. However, more accurate estimates for the Northern European countries shows that a substantial part of the forced (or voluntary) commercial prostitutes' mobility is still very much a regional affair between adjacent countries. Though a large number of women from poorer Russian districts, like Kalinin-grad, are working in the Baltic and Scandinavian countries, the number of reported victims is not large, according to the authors. Or are there more cases of *voluntary* trafficking (with perhaps subsequent abuse) than conventional wisdom admits?

We do not know: it is the same old song of raising the alarm about a threatening harmful phenomenon and neglecting the basics: getting it known in a disciplined way.³ This neglect is not unrelated to the association of 'the illicit movement of people across borders' and the 'organised crime' imagery, as set out in the following contribution by *Jon Spencer*, Director of the Criminal Justice Research Unit of the University of Manchester. Does an association with the dreaded phenomenon of 'organised crime' lower the need for precise quantitative analysis? Actually the author broadens the focus, not only by including sex related trafficking as a subset of the illegal cross-border movement of people, but also by projecting it against those actors who determine the way it is defined. Defining things is certainly not an academic semantic exercise. Depending who does the defining it determines the very concrete way persons involved may be treated by the authorities. A foreign prostitute 'with a good victim story' may be promoted to a protection programme, while a less smart colleague may find herself confined for deportation. Nor is it this matter of defining an activity which determines 'only' the (bad) luck of an illegally migrating individual. More important, it permeates the media coverage and subsequently the whole political debate (and politicians rarely dare to deviate from the created media imagery). Defining is language which makes a whole world.

Hence, overgrowing the 'victim imagery' is the picture of 'organised crime', in whatever meaning, which is of less importance as long as the words are not questioned. This 'organised crime' is responsible for smuggling hundreds of thousand people into the UK – unseen! That is quite a feat, so it must be 'organised crime'. Discussion closed and subsequently law enforcement can move to a justified degree of penal law toughness. To guarantee a tough law enforcement appearance one needs commensurate organisations, like the densely staffed SOCA (Serious and Organised Crime Agency).

Meanwhile the personal narratives of 'victims' and perpetrators alike look more often than not very different. There is much organisational fragmenta-

³ An exception to this repeated state of affairs are the annual reports of the Dutch Rapporteur of Human Trafficking during the last five years.

tion; local support for the cross-border illegal passage with only short term loose organisations; many females trying their luck as sex worker to return home with extra money. Indeed, an unruly collection of mobile (illegal) entrepreneurial inhabitants conveniently ordered and grouped together under the organised crime emblem. But what is really overarching is not a criminal organisation, but its law enforcement imagery.

No smoke without fire and booze to quench it

If the criminal city would be just as populated with social and political constructions as seems to be the case with the 'ideal city', we could just wait until the public and political opinion get saturated or a few more terrorist attacks overwhelms all attention. However, the criminal city is no fantasy, but as *Klaus von Lampe*, senior researcher at the Freie Universität Berlin, describes, a real place in which criminals live and interact with a lot of fellow criminals as well as ordinary people. This does not only apply to small time thieves who sell their stolen laptops to 'law abiding' bargain hunters, but certainly also to more skilled, commercially operating offenders like wholesale cigarette traders. Like any (illegal) commercial operator they are functionally embedded in a microcosm encompassing legal bystanders or (silent) supporters as well as fellow crime-entrepreneurs. Fellow criminals are not only the close accomplices but also those who provide temporary or merely moral support. A broader social perimeter may imply the required social embeddedness, which may provide a criminal surrounding of trust but also less criminally intended (unwitting) information or just 'normal' infrastructural support to the crime-business. A third important, also broader aspect concerns the interaction with the licit surroundings: the societal and business infrastructure with all kinds of players who might be of relevance for the crime-enterprise. In this respect one may think of corruption and infiltration. However, of equal importance are the unwitting and neutral interactions with the upperworld.

The author underlines the importance of this broad criminal microcosm with his findings of the illegal cigarette market, though he recognizes that this may not be representative of other crime-markets. After duly warning the reader of other methodological caveats, the author designs a typology based on the size of the discovered smuggling schemes. This is not merely a quantitative division, but a functional one entailing specific forms of 'criminal mimicry' (Van Duyne, 2006). *Small-scale* operations are usually carried out by non-hierarchically operating partners whose main criminal mimicry is stealth and blending in the normal cross-border flow of persons. Such schemes do not demand much of their surroundings. This is different with the *medium-scale* smuggling operations. The increasing volume requires not only more cooperating fellow criminals, but also more upperworld facilities, which have to be paid for in a normal way. For example storage facilities have to be rented under the disguise of other merchandise, like 'foodstuff'. The criminal mimicry becomes

more complicated while the social interaction with the upperworld increases. With the outgrowth of the crime-business we see a real *wholesale* enterprise emerging. This type of contraband trade requires a fuller use of facilities and techniques of the normal business life, like licit front firms. Front firms and transport documents are required in addition to other tools to pretend a licit business life. Non-structured co-offending has been replaced with a division of labour and hierarchic command lines. The author discerns critical volume thresholds above which other executive principles come into play, like one million cigarette shipments in wholesale business.

Criminals do not stand alone, certainly when their businesses grow which generates more critical and dangerous contact points. Apart from the inevitable custom officers, trucks and storage room have to be rented from licit entrepreneurs who should not be alerted by unusual transactions. This does not mean that crime-entrepreneurs will penetrate their environment by means of corruption or intimidation. Preferably not: though criminals do not stand alone, their embeddedness may last longer and more successfully if they succeed in remaining 'existentially (and criminally) alone' by restricting the sharing of knowledge.

From a commercial perspective criminals are never alone, as long as they offer something of interest for a reasonable price to many eager buyers. As a rule, the (fiscal) authorities see to it that this requirement is fulfilled by taxing harmful consumer products. In the opinion of the consumers this is most unreasonable and consequently they are motivated to buy their coveted products 'extra-legally' (Hornsby and Hobbs, 2007). The social and commercial platform of an illegal market stands on fiscal poles, as is accurately described by *Maarten van Dijke*, previously senior researcher at the University of Tilburg, in his quantitative analysis of the Dutch illegal cigarette market. However, also this Dutch market 'does not stand alone', as it is mainly a transit place for the flow of contraband to the UK, where the authorities have established the most perfect market condition by imposing draconian taxes. Consequently 44 % of the contraband intercepted in the Netherlands was heading for the UK, of which an increasing part consists of counterfeited cigarettes. The master counterfeiters are (also in this market) the Chinese.

Apart from such and other interesting market parameters, it is again of interest to take a closer look at the market players, the 'criminal citizens'. Who are they? Granted, every individual is different, but there are some common characteristics. The modal market player in the cigarette market is around 40 years old, (self) employed, without criminal record, non-violent and 'married with children'. In brief, 'petit bourgeois', attracted by reasonable profits on a 'not-so-criminal' market and mainly operating within small networks and in more than half of the cases able to operate by means of a front firm. The threshold of entry is low and one is not frightened off by gruesome stories of violent sinister figures inhabiting a world of crime. Nevertheless, bigger organi-

sations with more than 20 co-offenders and a strict hierarchic line of command also occur.

To what extent are these findings specific for the Netherlands and Germany? Should the criminal inhabitants from another jurisdiction not be differentiated because of other populations or market characteristics? The contribution of *Anna Markina*, senior researcher at the University of Tartu, in which the Estonian market is described, makes clear that this is hardly the case. Only the geographical proximity to Russia as a cheap source country and Sweden and Finland as expensive buyer countries add some local colour, like corruption within the customs at the Russian border. Whether corruption was a really important determiner of the Estonian underground cigarette market remains uncertain: the Estonian market is rather characterised by a high degree of stability. Since 2002, the share of smuggled cigarettes in the Estonian market has remained at the level of around 25 %. The same stability is to be observed concerning the price of illegal cigarettes, despite the increased excises. Hence, in relative terms the smuggled cigarettes became cheaper!

In another respect Estonia has remained true to her reputation: it is still one of the links in the Northern Trade Belt stretching from the Baltic countries to the British Isles. However, its importance has declined somewhat, particularly as far as Sweden is concerned.

The organisational aspects are comparable to the findings in Germany and the Netherlands: apart from a few bigger cases the organisation of this contraband is a matter of small groups. The contraband is taxed (low) in the source country and retailed in the streets and sometimes shops.

If the cigarette smugglers population shares so many features within a relatively stable market, how does the population of another popular crime-market look like? For example, the market of smuggled booze in Norway as lively set out by *Per Ole Johansen*, professor of criminology at the University of Oslo and a pioneer researcher of the illegal alcohol history of this country. The author addresses an aspect which has not so very often been a point of attention: why do some crime-entrepreneurs succeed. This is an interesting perspective, abstracting from the usual moral approach to the wickedness of 'organised crime', mainly uncovered because of its failures.

The author distinguishes between the 'A' teams and 'B' teams. Part of the differentiation between the two consists of a list of "don't do" principles, which are obvious over time and place. Nevertheless, they are regularly not heeded, sometimes even by veterans who should know better. The most important principle is: "Do not create your own evidence". This can range from not leaving notes behind; not living a conspicuous life; to not cheating your fellow offenders. The 'A' team members operate in a more prepared manner, which reflects in the first place in the way they manage information. This concerns the police and potential competitors as well as their own co-offenders, who operate, like the police, on a 'need to know' basis. What 'A' team mem-

bers also know is that 'violence is bad for business'. And that is the general picture, as is the case with the illegal cigarette market. Nevertheless, even veterans sometimes surprisingly resort to violence. But on the other hand they also realise that supporting relatives of those who happened to be caught is another way of managing information and maintaining morale.

As is the case with cigarette smugglers, booze smugglers 'do not stand alone', but are fairly socially embedded. They know they sell to a willing, non-criminal public, mildly chased by the police who do not see them as the 'evil incarnated'. Much white money changes hands against the coveted illegal alcohol. That white money having become black is turned again into white money by some form of laundering despite the financial Puritanism of FATF adherents and the Norwegian FIU. As Norwegians are a modestly living people the author observes also modest forms of laundering or rather, investment into licit firms and some pleasure outlets abroad. He depicts the smugglers as very mainstream Norwegians, caring for a house, a car and a nice boat on the fiord. Preferably nothing flashy. Of course, they are criminal citizens of our metaphoric city. But if you want a bottle of good and not too expensive wine, you would not mind if they were your neighbours. Neither would you be worried by the illegal cigarette seller round the corner.

The 'genetics of corruption'

If one's neat booze (or cigarettes) providing neighbours may even be too bourgeois or careful to facilitate their business by resorting to (risky) corruption, other districts of our metaphoric city are rife with corruption. Reading Cambridge lecturer *Anna Markovska's* contribution about Ukraine, one may wonder whether in this regard citizens in some districts may have the wrong ancestors. For the Ukrainian district this seems to be a plausible explanation for a historically deeply engrained public illness. Granted, the Ukrainians can argue that basically corruption is a Russian disease and heritage: did not Tsar Peter the Great impose the obligation to report corruption, thereby introducing a kind of FATF-like reporting system?⁴ Next came Potemkin of the proverbial 'Potemkin villages', the edifice-houses in the newly conquered and 'rebuilt' Ukraine with which he cheated Catherina the Great and got her into bed (Alexander, 1989). Yes, these were defective forefathers, upped by the bad dream of the socialist era. But is this the whole explanation?

What had gone wrong with the body politic of the Ukraine? At any rate not the legislative medication: the Ukraine has the highest density of anti-corruption laws in the Eurasian continent. This reminds us of the anti-money laundering legislation: a tightly woven net through which no vile financial fish

⁴ Successful reporting was rewarded from the confiscated possessions of the reported person (comparable to asset sharing today); failure to report was punished (Holm, 2003; 95-98). Peter the Great might have been a source of inspiration to the FATF.

is supposed to swim. Nevertheless, most of the money schools splash cheerfully at the other side of the legal net, which is the case with the Ukrainian laws as well. Besides, corruption has become materially embedded. In the Soviet times a rich man 'stood alone': one had to hide one's wealth against the jealous eyes of his neighbours. At present, one can be *seen* to be rich, irrespective of the origin of the monies. This different view on each other's richness does make a difference.

Of course, if the heritage was already miserable, there is the aggravating problem of transition, though the frequent invoking of this explanation has made me a bit wary. The 'transition' seems to have become a steady epoch itself, while the collapse of the Soviet system mainly brought the socialist edifice down bringing the already existing corruption into the open. The lack of proper judicial institutions allowed it subsequently to expand to which were added the effects of the globalisation. The latter, a dynamic mixture of mobility, commercial opportunities and pressures, exerted its influence in the Ukraine too.

As an amoral phenomenon being 'beyond good and evil' (*Jenseits von Gut und Böse*) globalisation can also reinforce existing negative trends like corruption. In Ukraine this could be observed in the pharmaceutical industry, as elaborated by the author. With a population of 50 million inhabitants and a rapidly developing pharmaceutical industry western firms exploited the opportunity to gain a solid foothold. They brought with them the same corrupt practices as can be found in the western medical world. Ukrainian civil servants of the health departments as well as doctors were lured by 'extras' to do the 'right prescriptions'. Given the low salaries of the medical staff, the surrounding corrupt landscape and inherited tradition, one hardly notices it as coming from abroad, except for the hard 'white' currency flowing into dark Ukrainian coffers. Corrupt citizens use to speak the same language.

The sirens of virtue and drafting a moderate city rule

This volume set out with the aim of presenting the tight regulations of the 'city of (financial) virtue', designed to fend off the threats of the fruits of sin: crime-money. On the other hand, (part of) the sinners prove to be rather Mr. and Mrs. Average, spending their ill-gotten profits with little financial and economic fantasy. This is of course not the image legislators and policy makers feel they should to react to: a tough legislation, the 100 % penal dose, requires tough villains, not Mr. Averages. So the latter is upgraded to the required threat level of 'organised crime', as described by Jon Spencer.

Of course, unfortunately there are tough villains who are also good organisers, there are also pretty dangerous terrorists. How to respond to these? If the national policy maker's tendency is already to open all the legislative and law enforcement portholes, a shocking event like the terrorist attack on 11 September 2001 will evoke an even stronger response. In their contribution the authors *Katja Šugman*, researcher at the Slovenian Institute of Criminology and *Mitjaž Jager*, Director of the same institute, point at this tendency to respond roughly and compare it with another, alternative mode of conduct: self-knowledge of this 'weakness of will' and taking measures not to be lured to such a response. The authors cite the story from Homer's Ulysses, who faced the temptations of Sirens by having himself bound to the mast of his ship because he knew he could not resist. According to the authors such a self-knowledge cannot be discerned with the European legislators. Though they do not mention the European directive on money-laundering, much of their remarks may apply also to the topic of the first chapters of our volume.

In general they deplore the way penal legislation is drafted, whereby the principles of proportionality and *ultimo ratio* are neglected. What human rights, what privacy, what double criminality, what other safeguards against overzealous authorities? No, the authorities are for our common good: trust them! And the measures which are proposed are only intended for 'serious' cases, real exceptions. But as soon as one turns around they have been extended and have become the rule. This was the case with data retention, but also with the dense control system of money-laundering. "No", said the Dutch Minister of Justice once, "this is only for serious and organised crime and big money". Soon the majority of the cases involved illegal profits of less than € 6.000 (Vruggink, 2001).

What about the watchdog of the executive, the national and European parliaments? Unfortunately, the wave of concern following the terrorist attacks eroded their will to resist the non-proportionate measures. After some tokens of resistance they gave away. Against this weakness of will the authors evoke the *ultima ratio* principle: criminal law is a measure of the last resort, and must be applied with restraint to rule the 'city' with moderation. However, the authors are also realistic enough to be aware of another tendency: the conditioned reflex of the legislative Pavlov-dog to react to any criminal mischief with a full 100 % penal dose, lest one might be considered weak. Though I agree with the authors' appeal to moderation, it is more realistic to expect that the tale of the 'city of virtue' will rather be based on that conditioned reflex, which with hindsight will be dressed as 'evidence based' policy making. Then the tale of the city of law-breakers must logically correspond in content and tenor. Both tales cannot stand alone.

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