

## A Tale of Two Cities revisited

“It was the best of times, it was the worst of times [. . .]” to write an editorial on a topical theme. The outcome of the US election, the impact on the economy and organised crime of COVID-19, the impact on the movement of dirty money of Brexit and the so-called “FinCen revelations” all add up to a period of unpredictability with which 2020 will end and 2021 commence. It is a great time for journalists to wallow in possible crises and confuse the public with cries of doom and gloom, but it is a terrible time for experts who are supposed to make sense of all this complexity, whereas the snake-oil salesforce peddles unlikely conspiracy theories to help sell bogus products, both political and pharmaceutical.

The FinCen leak actually does not tell us much that we did not already know. SARs have become a method of back-covering. Banks simply report and wait to see if anybody opens an investigation. As this is unlikely, they carry on moving the money involved as they have fulfilled their reporting requirements. There are simply not enough investigators or prosecutors available to deal with the number of suspicious activities reported. Even if an investigation takes place, it will only result in a deferred prosecution agreement for the bank, which does not seem very successful at preventing repeat behaviour. This also exposes the meaninglessness of the sanctions response to Western displeasure with the activities of non-Western governments. Sanctions evasion has been a lucrative business ever since the idea of sanctions was introduced, and big players such as oligarchs find it fairly easy to evade them. Governments have had more problems.

International relations have entered the theatre of anti-money laundering policy. Sanctions evasion, terrorist financing, tax evasion and the laundering of the profits of criminal enterprises, especially fraudsters and financial criminals, are different phenomena and are not appropriate for a one size fits all approach. Investigators are having too many tasks thrown at them without adequate resources following. Policing has never been adequately resourced and perhaps in a democracy never should be. Policing the market is anathema to the neoliberals that purport to be followers of Milton Friedman, but maybe it is time they actually read the words of their guru:

“I used to be asked a lot: ‘What do these ex-communist states have to do in order to become market economies?’ And I used to say: ‘You can describe that in three words: privatize, privatize, privatize.’ But, I was wrong. That wasn’t enough. The example of Russia shows that. Russia privatized but in a way that created private monopolies-private centralized economic controls that replaced government’s centralized controls. It turns out that the rule of law is probably more basic than privatization. Privatization is meaningless if you don’t have the rule of law.”

Today, it is not just the Russians who have to privatise. It has also become the gospel of the OECD. But no global institution is driving the rule of law alongside or ahead of privatisation. In fact, the political class in power is attacking the impartiality of judges and thus the courts themselves. The new authoritarianism is turning Aristotle upside down as we return to the rule of demagogues and undermine the rule of laws. The new privatisation is creating private monopolies and oligarchs even in relatively new economic areas. They can choose where to headquarter their companies and even the jurisdiction of which they will be citizens. Those choices thus include where and whether they pay their taxes. The once exclusive club of Westerners has been joined by Chinese, Russian, Indian and even other unknown oligarchs. They laugh at sanctions. Sanctions are a badge of honour, just as an antisocial behaviour order is for a juvenile gang member.



As we know, we have no international criminal law, no accepted courts and no enforcement agencies. We have a network of investigators, and again, it is a matter of international relations. The Treaty of Vienna gives diplomats extraterritorial status, and the Treaty of Naples does the same for customs officers. We need a new Treaty, defining a series of predicate offences and giving a designated category of investigator, prosecutor supervised, of course, extraterritorial status to follow the money. We have a model in embryo in Europol and Eurojust. Europol has no policing powers but can facilitate and support a joint investigative team to investigate, and Eurojust can provide legal support, identifying legal problems and discussing legal solutions. Oh, sorry, I forgot. That is why the UK is leaving the European Union with effect from 1 January. Do not mention Brexit!

It is crazy that organised criminality not only finds borders no obstacle but actually profits from their existence. They are an obstacle only to prosecutors and investigators. Cyberspace takes this actuality even further. The money is moving through an imaginary void and is there to be stolen by cybercriminals. How could cyberplod patrol cyberspace? The answer is, of course, by networking in a manner similar to criminal networks. But there needs to be a legal basis for this. COVID-19 by accelerating the process of driving shopping and banking online has increased the urgency for this.

Sanctions on wealthy individuals are not going to work. Dealing with actions by other states of which you do not approve is a political matter, as is terrorism. These matters can only be solved by changes in policy and by negotiation. Police work and even military action can only buy time for politicians to change their approach. The world is changing. The super-rich are getting richer and thus more powerful, the age of the US unipolarity is passing, and governments around the world are becoming increasingly indebted. At the end of the Napoleonic Wars, the great powers created the Congress system, sitting down together every four years to agree a list of problems and see if they could sort any of them out. We are coming to the end of a period of war, and we need a new system to resolve conflicts other than overthrowing governments by force. Then maybe we can turn against organised criminality and get to grips with its money laundering techniques. Until then, it will take advantage of cracks in the existing system. It is rubbing its hands at the prospect of the bill for COVID-19. Cash flow is going to be a major problem, and the drug dealer, the people trafficker and the cyberfraudster have that cash. We need to tighten our definition of money laundering once again to make investigation feasible and concentrate on contract enforcement in this age of cross-border cyber trading. It would be “a far far better thing than I (we) have ever done [ . . . ]”.

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