

Changing Paradigms on Money Laundering

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The term **money laundering** was first used at the beginning of the 20th Century to label the operations that in some way intended to legalize the income derived from illicit activity, thus facilitating their entry into the monetary flow of the economy. As a result, the surveillance, control and inspection entities were forced to establish priorities and to develop measures to prevent the *laundering* of illicit income through the financial sector and the legitimate sector of the economy. The practice of disguising income derived from illicit activities dates back to the Middle Ages when usury was declared a crime. Merchants and money lenders evaded the laws that punished usury and covered it up through ingenious mechanisms.

The beginning of piracy and the concealment of the plunder by those who practiced piracy goes back even further. In the year 67 A.D., Pompey undertook an expedition against the pirates in the Mediterranean that deprived Rome of its supplies. Cilici was then the traditional guard of the pirates. Financial refuges, a modern version of those hide-outs, are the essential complements to doubtful or openly fraudulent practices that are taking place as money laundering progresses. The pirates were pioneers in the practice of laundering gold, and their target was the European commercial vessels that crossed the Atlantic Ocean during the 16th and 18th Centuries. The buccaneers and the filibusterers added their own practices to classic piracy, which would not have been possible without the hidden help of the British, French and Dutch governments. The case of the British pirate Sir Francis Drake is famous. He was knighted on his vessel by Queen Elisabeth I as a reward for his successful assaults on Spanish ports and vessels. In 1612, England offered all pirates who abandoned their profession, unconditional pardon and the right to keep the product of their treacheries. Three and a half centuries later society has witnessed similar attempts to grant some kind of amnesty to the so-called *drug lords*.

There is no certain science to tell us when some form of money was used for the first time. It is known that money was born out of the need to settle some of the inconveniences of the mechanism of barter, and that many other objects were used as a mean of exchange. The striking of metallic coins was initiated around the year 580 A.D. in Greece, and they were made of thick silver imprinted on one face and with no epigraph. They had two seals, one hollow and one in relief, very well calculated to prevent falsification, which was already taking place by using thin sheets of silver and placing them over a coin made of a lesser metal. This notwithstanding, when in 1529 the sons of King Francisco I of France were taken hostage in Spain, he paid 12 million escudos for their ransom, and had to wait 4 months while the kidnappers counted the money and verified the authenticity of

the coins. They rejected 40,000 coins because they did not meet the specified requirements.

Confiscation of goods is not just a modern policy. In the beginning it was a punishment for political crimes. With time, it was extended to crimes of particular severity. Today it is evident in the application of customs regulations that the objective is dual: dissuasion for the one who commits the infringement, and income for the treasury.

The categorization of money laundering as a crime itself or in connection with the attempt to launder the products of crime, is indeed recent. Traditionally, attention was centered on the crime that gave origin to the money. The seizure of goods, when applied to crimes with economic motivation, was considered a punishment against the underlying crime. Recently, there has been a radical change. The tendency to punish the act of laundering money and establishing this as a crime in and of itself, emerged in the United States in 1986, and has quickly spread throughout the world. It is considered a separate crime because it is an independent complement of the underlying crime, and thus considered a motive for the confiscation of goods. In fact, in some countries, the punishment for laundering the product of the crime can be more severe than the punishment of the underlying crime.

This evolution has provoked considerable controversy. The problem is rooted in the atypical nature of money laundering. Considering its differences with the underlying crime, be it drug trafficking, armed robbery, extortion, or dumping of toxic waste, money laundering consists of a series of acts that separately can be free of crime, but that taken together become an attempt to hide the product of a crime. The difficulty of acquiring a convincing demonstration of the harm that money laundering causes has produced delays and doubts at the moment of its categorization as a crime. In fact, many countries have not been able to do it, even though the tendency is to make money laundering a crime.

There are several reasons that support this tendency. First of all, it is of generalized acceptance that there is little gain from attacking the offenders if their profit is not attacked. The net benefit or personal gain constitutes the motivation for the underlying crime and provides the economic means required to continue with criminal activities. In the past, delinquents were punished, but the people who administered the product of the crime were not.

Furthermore, one can consider other reasons. The laws against money laundering offer a practical tool, not only to extend the extent of surveillance on the previously exempt categories of participants in criminal acts, but also to create the basis to permit the imposition of more severe punishments on those who commit the underlying crime. In this way, the threat of severe sentences can help persuade the alleged criminals to cooperate with the law. Of no less

importance is the tendency to use the asset seizure laws as possible sources of financing the system that carries out the fight against laundering.

Pecuniary crimes, both falsification and laundering, are not new crimes nor crimes that spring solely from drug trafficking. These crimes have existed, paradoxically, since before the existence of money as we know it, and are connected to many other crimes such as falsification, extortive kidnapping, the taking of hostages, illicit enrichment, tax evasion, terrorism and much more.

For this reason, the fight against money laundering has to be complex, dynamic, and proactive. Authorities must constantly change their paradigm, just as criminal organizations constantly change their *modus operandi* to launder money.

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