Mitigated nonsense

How the anti-money laundering system harms ordinary people, businesses, and economies

The problem

1. A vast global network of anti-money laundering laws is monumentally ineffective:

   (a) Despite prodigious endeavour, huge compliance costs, and big fines for non-compliance, the 'success rate' of money laundering controls (the proportion of illicit funds intercepted, according to the United Nations) is around 0.1 percent. When criminal enterprises keep up to 99.9 percent of illicit proceeds, anti-money laundering efforts have scarcely the impact of a rounding error on criminal accounts. Many criminals are profoundly affected, but the laws have little material impact on '*Criminals, Inc*'. Nor on the social and economic harms from serious profit-motivated crime and other serious crime with financial indicators, like terrorism, drug-, human-, and arms-trafficking, corruption, fraud and tax evasion on a global scale.

   (b) Moreover, new 'solutions' in the 'war on money laundering' are typically framed in a standardised 'compliance with laws based on standards' operating model developed over a few months in 1989-1990, and which remains unchanged and seldom questioned. The result is that such 'solutions' do much the same thing, better and faster, constantly 'sweating' the 0.1 percent impact on crime already done well. Worse, the design and operation of the anti-money laundering system, as a form of 'governance without government' at the heart of global capitalism, also harms some nation states, economies and citizens that it claims to 'protect'.

2. However, academic warnings, and even the findings of 'in-group' actors like the United Nations (p131), Europol (p4) and parliamentarians (p5&7) bluntly exposing the scale of policy failure, repeatedly fall on deaf ears. Likewise, unheeded, the destructive consequences on some countries and their businesses and citizens of what is, in effect, a global legal system pushing a Westernised agenda outside traditional international institutions and treaty-based laws.

   > "Ongoing failure to connect anti-money laundering practice with public policy principles tends to support arguments that the so-called 'effectiveness' methodology may be nonsense mitigated by well-meaning intentions. However, even good intent may be 'bad' if it conspicuously overlooks evidence of policy failure and perpetuates a form of groupthink founded on misperceptions and assumptions."

Statement of aims

3. **Main objectives**. This book charts a new course to help spark realization of the need for a new direction. If successful, it may contribute towards outcome-oriented laws with the prospect of substantially and demonstrably better outcomes, significantly fewer costs, and less harm.

4. **New trajectories**. The book addresses both strands of the *New Trajectories in Law* series. It explores a contemporary issue in new ways, beyond narrow conventions of a standardised syllabus, by taking up a "less conventional, but increasingly pressing, [theme] of legal interest and importance." It also seeks to "reframe and reconfigure" the contemporary significance of more orthodox legal issues. For example, rather than teach compliance with anti-money laundering regulations, it encourages thinking about the system's underpinning assumptions, the results (and consequences) of a major globalisation control system, and its impact on rights and sovereignty.

Abstract, including main themes

Governments must implement anti-money laundering regulations and consent to international ratings in return for access to international financial markets. Mounting evidence reveals the global anti-money laundering legal framework as strikingly ineffective, and the rating system may be fundamentally flawed, yet ratings have a profound impact on bank viability, a corrosive effect on economies, and adversely affect equality and social justice. Low ratings also disproportionately affect smaller, poorer countries, and the 82 percent of jurisdictions with no representation on the peak standard-setting body.

With the anti-money laundering industry focused on legal and regulatory compliance, this book charts a new course. It uses official data from Caribbean nations as an empirical microcosm of inequities at the heart of the anti-money laundering movement. Adverse effects are manifestly insidious when net benefits are 'taken for granted' and little attention is paid to unintended systemic costs imposed by a globally networked legal system that harms businesses, communities, economies and financial systems that it claims to 'protect'.

A multidisciplinary approach integrates law with policy effectiveness and a socio-legal perspective on the impact of global legal frameworks, foreshadowing a new normative approach in legal and financial ethics.

This book is a must-read for students and professionals in law, finance, and compliance, and for policymakers and regulators concerned with the impact of financial regulations on crime, economies, and society.

What's different and innovative about this book?

5. **Innovative**. The main innovation lies in three interlinked areas. This book:

   (a) Uses the anti-money laundering industry's <u>own data</u> to expose systemic flaws.

   'Inside' data is more difficult to dismiss, and more viscerally discordant, than independent assessments and evidence from other sources. This new approach may help break the logjam between evidence of policy failure, and its recognition, potentially enabling remedial action.

   (b) Unlocks the industry's data 'hidden in plain sight'.

   Curiously for an industry that trades on calls for transparency, anti-money laundering ratings are designed and operated in ways that restrict transparency and comparability. Unlike ratings in other fields, anti-money laundering rating data is not collected, collated or presented in ways easily enabling standard analytical tasks like comparing countries' ratings or assessing differences between individual rating measures.

   This book unpacks official rating data to make empirical evidence more accessible for all anti-money laundering evaluations in the current round (since 2014), for both rating categories:

   - **Effectiveness compliance**. A new method facilitates comparison between jurisdictions, and between rating measures, across all evaluations or any relevant grouping.
   - **Technical compliance**. A methodology developed by an Australian researcher and IMF economist in the previous round of evaluations is revitalised. Although claimed 'redundant' after FATF compressed 49 metrics into 40, the core methodology remains relevant.

   (c) With evidence newly uncovered from the official rating system, this book exposes the poorly validated basis of harms inflicted on nation states. It complements earlier scholarship on 'financial exclusion' harms on vulnerable people (de Koker), the 'voluntary coercion' and 'democracy deficit' effects of the global policy diffusion of anti-money laundering norms (Sharman, Oliveira), and the 'public policy/evaluation' gap (Levi/Reuter/Halliday).

6. **Different**. Arguably innovative but, more accurately, merely different, this book also:

   (a) Applies a multidisciplinary approach, joining law with policy effectiveness/outcomes.

More common elsewhere, this sort of multidisciplinary perspective is surprisingly rare in the anti-money laundering realm. In practical terms, a singular focus on legal compliance might ask 'Do we have laws?' 'Do they meet standards?' or 'Do firms and governments comply?' The integrated approach in this book instead frames discussion with 'Does it work?' foremost.

(b) Draws evidence from Caribbean nations as an empirical microcosm illustrating stark differences between 'received' wisdom and the system's own evidence base. Most of the book's findings are relevant elsewhere, but the Caribbean best illustrates social justice inequities:

- The region includes many small, poor countries disproportionately affected by ratings. (For which the force of asserted justification may ebb with evidence of poorly validated ratings).
- No Caribbean nation is represented on the peak standard-setting body responsible for setting and monitoring rating methodologies.
- The region includes some of the 'worst' jurisdictions, according to official 'name and shame' lists and 'white sand and palm trees' imagery associated with money laundering, thus highlighting the dissonance between strongly held beliefs created by the current system and evidence from the system's *own* primary evidence base.
- Stark power imbalances, the imposition of Western-style rules by 'strong on weak' nations, and their disproportionate impact, foreshadow disturbing neo-colonial markers. Rich, powerful ('white') nations, including all historical Caribbean colonisers (Britain, Spain, Netherlands, France and the US), are members of the global standard-setter, yet none is harmed by ratings that damage weaker nations with no representation, despite the US State Department identifying four of the big powers as major money laundering jurisdictions.

7. Overall, having demonstrated the current AML/CFT system as almost wholly ineffective, with an 'effectiveness' methodology incapable of assessing effectiveness, this book uses the system's *own data* to illustrate official perceptions conspicuously inconsistent with official data, to help prompt recognition of policy failure and harms imposed, and the need for outcome-oriented legal solutions.

Structure and contents

Mitigated nonsense

Exposed by its own data: How the anti-money laundering system harms ordinary people, businesses, and economies

Prologue: The honest politician's guide to crime control
1. Does the anti-money laundering system work?
2. Empirical evidence: Hidden in plain sight
3. Improving rating transparency: Effectiveness compliance
4. Improving rating transparency: Technical compliance
5. 'Strategically deficient' yet largely compliant?
6. Metrics assess effort and activity, not outcomes
    Implications of universal standards and 'more compliance'
    Empirical observations in Caribbean evaluations
    What outcomes really matter here?
    Doubling enforcement results reveals effort and activity focus
    'Methodological nationalism'
7. Limited and superficial empirical evidence: Troubling indicators
8. Practical implications: Red flags and opportunities
    Global implications: Two conditions for success, one is met
    Rating agency implications: Lessons from the sub-prime crisis
    Country-level implications: Unintended effects
    Opportunity knocks: Better ratings without rocking the boat
9. Conclusion: Empirical evidence a useful start
10. Postscript: A new beginning?
Appendices

More detail, with chapter extracts: https://bit.ly/2ktyNKA

Target market

8. **International appeal**. The book will have international interest, especially in Caribbean nations, and in many of the 205 jurisdictions with anti-money laundering laws.

9. **Legal education**. Although widely taught, the teaching environment is unusual. Unlike most disciplines, including law, with university degrees supplemented by private sector skills providers, anti-money laundering education is dominated by a few global, private-sector, short-course providers. The predominance of skill-based diplomas tends to inculcate an industry narrative, not test its underpinning assumptions. This means that a book challenging the narrative does not easily fit a private-sector 'credentialing' market, and speaking only to a specialised anti-money laundering academic audience will likely remain in that silo, with little impact on the trajectory of law. However, many disciplines include courses on money laundering, financial crime, terror financing, financial services compliance, tax havens, etc. Therefore, the primary intended market is:

- Students and academics in law, finance, tax, political science, and law enforcement disciplines.
- Policymakers, central banks and regulators in the more than two dozen Caribbean territories.
- Policymakers, regulatory and enforcement agencies and compliance professionals elsewhere.
- Businesses affected by money laundering controls, including banks and other financial institutions, legal and accounting firms and other regulated businesses.

10. The book will also be relevant for students in specialist university programs, eg:

- Master of Fraud and Financial Crime, Graduate Diplomas in AML/CFT, Fraud and Financial Crime, etc (Charles Sturt U, Australia)
- LLM in Financial Crimes and Money Laundering (Dubai U, College of Law)
- MSc Financial investigation, MSc Counter terrorism (U of Central Lancashire)
- MSc Law, Governance/Risk/Compliance, MSc Law/Financial Crime Compliance (U of Law)
- Master in European Economic and Financial Criminal Law (U of Luxembourg)
- MBA with a concentration in Compliance, Risk, and AML, Certificate in Compliance, Risk, and Anti-Money Laundering (U of South Florida)
- Master of Science in Economic Crime Management (HELP U, Malaysia)
- Master of Science in Investigations: Financial Crimes (U of New Haven)

11. **Other relevant organisations to which the book might appeal**. Eighty global and regional organisations have a direct stake in the anti-money laundering regime, including the Paris-based Financial Action Task Force (**FATF**) and its nine regional bodies, the OECD, IMF, World Bank, United Nations, Interpol, Europol, European Commission, European Central Bank, Asian Development Bank, Egmont Group of Financial Intelligence Units, Basel Committee on Banking Supervision, Gulf Cooperation Council, International Organisation of Securities Commissions and World Customs Organisation. Hundreds of policymaking, regulatory and enforcement agencies in each of 205 countries, including US Treasury, US State Department, FinCEN, AUSTRAC. Also, Financial Intelligence Units in each of 158 jurisdictions, IBA, ABA, etc.

12. Those organisations and agencies are also key influencers. For many, the book speaks to known but unresolved concerns (eg United Nations, p131 and Europol, p4). For others, the book will help crystallise what may only be a nagging doubt, and may trigger debate. Some will oppose the book's messages, including the unintended effects on countries many genuinely believe they are 'helping'. Such debate is useful, and necessary, to overcome 'already thinking' and help nudge a $300 billion a year anti-money laundering juggernaut onto a new, more effective, less harmful, trajectory.

13. **Cross-promotion**. Within Routledge, the book will appeal across complementary areas: **Law** (Socio-legal studies, Regulation, Banking & Finance, Public law, Policing, and Commonwealth Caribbean law); **Criminology** (Organized crime, White collar crime, Crime prevention, Police); and **Politics and International Relations** (Regulatory policy, International relations).

14. **Media**. The book should appeal to industry journals (eg ABA Banking Journal, American Banker, Regulatory Intelligence/Thomson Reuters, ACAMS, etc) and mainstream financial media (eg Bloomberg, Reuters, Financial Times, The Guardian, Washington Post, NY Times, etc). I also have a good *LinkedIn* presence, with thousands of senior decision-makers in many scores of countries.

Main competing titles

15. Most books in this area are compliance guides (eg Nigel Morris-Cotterill (2011) *How not to be a money launderer*, Susan Grossey (2009-2017), *Anti-money laundering: A guide for* [series for various roles], *What you need to know* [series for various roles] & *Money laundering officer's practical guide*). The following titles, however, touch on similar effectiveness concepts in the book ('does it work?'), in broadly descending order. Several also address socio-legal issues, or social-cultural effects on nations implementing money laundering controls, and one (Mackenzie) applies a cross-disciplinary perspective.

- Sharman, J (2011) *The money laundry: Regulating criminal finance in the global economy*. Cornell University Press.
- Findley, M, et al (2014) *Global shell games: Experiments in transnational relations, crime, and terrorism*. Cambridge University Press.
- Zoppei, V (2017) *Anti-money laundering law: Socio-legal perspectives on the effectiveness of German practices*. Springer.
- Alldridge, P (2016) *What went wrong with money laundering law?* Palgrave Macmillan.
- Unger, B, et al (2014) *The economic & legal effectiveness of the European Union's anti-money laundering policy* & (2013) *Research handbook on money laundering*. Edward Elgar.
- King, C, et al (eds) (2018), *The Palgrave Handbook of Criminal and Terrorism Financing Law*, Palgrave Macmillan.
- Ryder, N (2012) *Money Laundering - An Endless Cycle?* Routledge, & (2018) *White collar crime and risk: Financial crime, corruption and the financial crisis*. Palgrave Macmillan.
- Mackenzie, S, et al (2020). *Trafficking Culture: New directions in researching the global market in illicit antiquities*. Routledge.

Timeline, and timely

16. **Timeline**. The manuscript is nearly completed, likely 25,000 words. If I can commit serious time to it, the book might be ready for editorial oversight within a month or so of (conditional) approval.

17. **Timely: 30 year anniversary**. A 2019/2020 release would be timely, with the 30 year anniversary of FATF (1989) or the modern 'compliance with laws based on standards' operating model of FATF recommendations (1990). With only a temporary mandate, repeatedly extended, FATF's mandate was only made permanent in 2019. By one reckoning, that represents a coming of age for FATF. By another, it signals the prospect of policy failure in perpetuity. With growing realisation of policy failure and harms caused by the anti-money laundering product of globalisation, by scholars, practitioners, and even some regulators, the book would be especially timely.

18. **Timely: Marketing platform**. The book's core concept was sparked by a paper I was invited to submit for a conference in early 2020, which I subsequently extended. If invited to present, I will ask the organisers (led by a Caribbean central bank) to present the book as my paper. The inaugural AML/CFT empirical research conference, with world-leading speakers, is well suited for Routledge, and presents opportunity for widespread Caribbean media coverage to start with. Complementing Routledge's marketing, I would be happy to help promote the book more widely with hundreds of financial journalist and other media contacts.

About the author

19. **Overview**. A former lawyer with degrees in political science, law, and economics, I specialize in outcomes. Beyond day-to-day focus on activities, processes, and outputs, outcomes are the results that matter. Troubled by evidence that the 'war' on money laundering may be the least effective policy, regulatory and enforcement measure ever, anywhere (and quoted for it in US Senate testimony), I sought out some of the best legal and policy thinkers to help test root causes and new concepts with the rigor of a PhD.

20. The field of research is immense and complicated, but at its core, simple, and the problem is clear. Despite three decades of prodigious effort and a vast global anti-money laundering compliance industry, the current policy prescription is astonishingly ineffective in disrupting criminal finances.

21. After the PhD was awarded (with academic excellence, a perfect score from all examiners), I continued the quest for solutions enabling better outcomes, with tightly focused articles:

    (a) A constructive assessment of money laundering controls found that the regulations scarcely have the impact of a rounding error in criminal accounts.

    (b) The first independent assessment of the global AML/CFT 'effectiveness' methodology found that it is incapable of assessing outcomes as it purports.

    Emerald Publishing later released both articles free for three months, with a tweet "let's improve the capacity to disrupt serious profit-motivated crime." The latter piece also recently received an Emerald Literati commendation, and is now free for six months.

    (c) Another three forthcoming articles (two accepted, one pending):

    - Critique as likely ineffective the European Union's expansion of money laundering controls in response to a series of bank scandals.
    - Generate information-rich visualizations of under-utilized industry data, enabling better cut-through for actionable insights.
    - Extend the findings in (a) above, by introducing compliance costs into the effectiveness equation and refining an earlier 0.2 percent 'success rate' as 0.1 percent.

Qualifications. PhD (Pol Sci, ML), LLB (Hons), BCom (Econ)

Curriculum vitae, with publications list: https://bit.ly/2JCim9D

Academic referees. World-leading professors familiar with how this work fits into current debates:

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