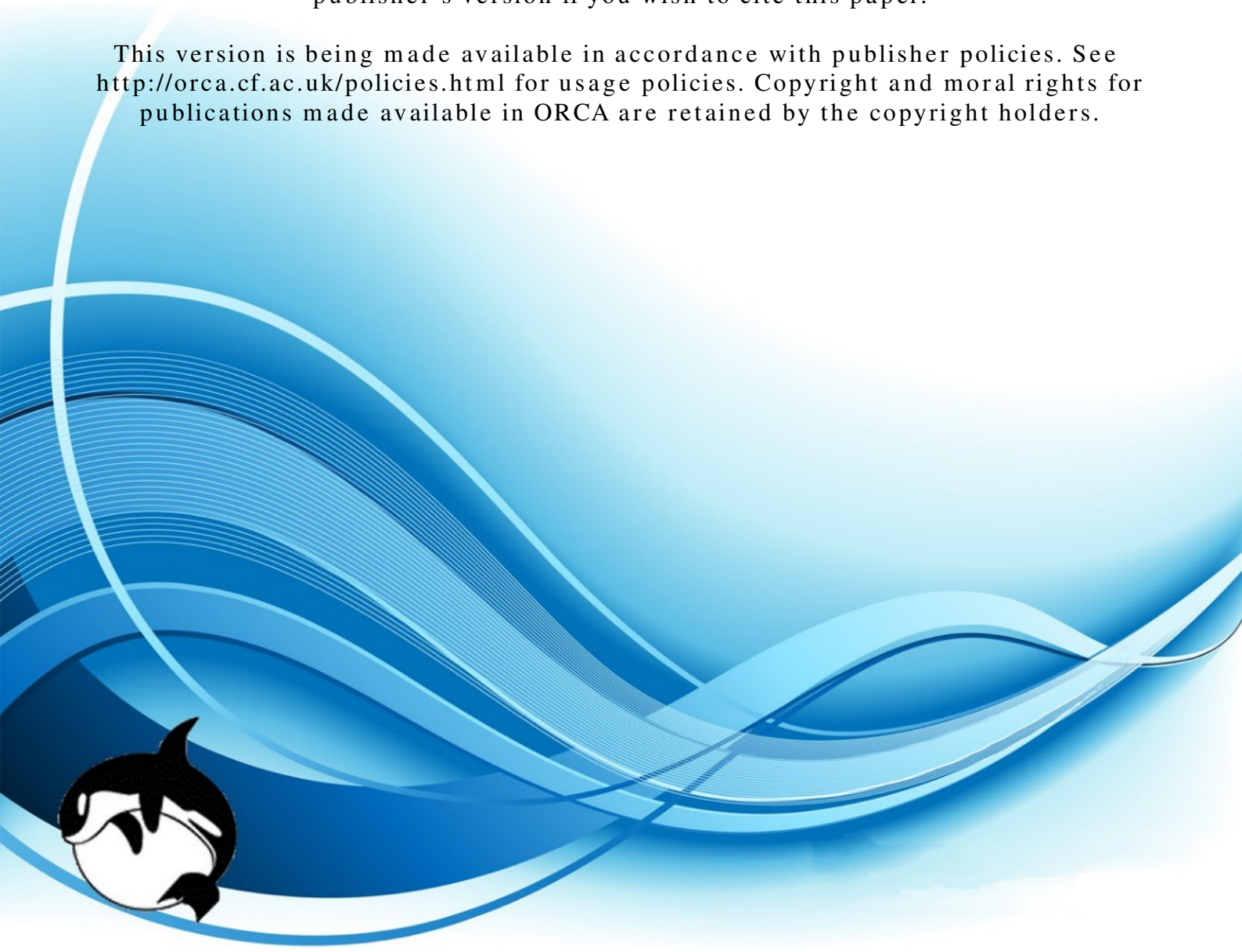

'Through a glass darkly':
Organised Crime and Money Laundering Policy Reflections -
An introduction to the special issue

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Abstract
This paper provides some reflections on the articles and the report excerpt included in the special issue of *Trends in Organised Crime* on organised crime and money laundering policy. The aim of this special issue to invite the reader to re-examine conventional wisdom in this issue area. The papers in this special issue emphasise the variation in policy measures, as they articulate the interplay between national and transnational controls, or focus on the national level but in a comparative way.

Keywords: organised crime; money laundering; AML; policy; regulation; professional enablers

Just as criminology has often been regarded as a 'rendez-vous' discipline, so too is this special issue of *Trends in Organised Crime* as it brings together research and reflections on organised crime and money laundering policy. One of the problems for scholarship in this arena is the need to keep an eye out for the dynamics of crime and crime control, and its variability in different jurisdictions (see Hobbs & Antonopoulos, 2014): sometimes the access to data and people, resources or motivation to regularly monitor these in the way the Dutch organised crime monitoring[1] works simply are not there. Taken as a whole, the articles in this issue invite readers to re-examine conventional wisdoms and emphasise the variation in crime control measures. Some of the papers articulate the interplay between national and transnational control attempts. Others focus on the national level but in a comparative way.

More specifically, the five peer-reviewed articles (three on organised crime and two on money laundering) and the excerpt from a report on criminal assets recovery focus more on control systems rather than the patterns and organisation of crime. The three organised crime articles focus our attention towards international control attempts (*Sappho Xenakis*), Japanese organised crime control (*Martina Baradel*), and the impact of justice reforms and homicide in Mexico (*Erin Terese Huebert*). Xenakis' scholarly historically grounded account of organised crime policy tries to tease out the tensions between the as yet unsatisfied demand and supply of good comparative data on organised crime, and the apparently uninhibited rise of organised crime powers up the national security agenda, mostly in the US and Europe with which this article is concerned. Xenakis examines the different sociological strands in accounting for these developments and argues that it suits states to allow near-monopoly of evidence to their enforcement agencies, permitting less scope for counter-factuals (though the powerlessness of the international agencies requesting more and better data is not explored fully). The argument is sound, although it may underestimate national variations in empirical scholarship traditions and the variable cultural prestige of academic analysis. However, the question remains (as it does also for money laundering) that if countries and international bodies were truly concerned about the 'underlying realities' of organised crime, they might well have made greater efforts to encourage such analysis of threats and capabilities. Germany, Italy, the Netherlands, Sweden and the UK remain the central planks in empirical research on organised crime in Europe, but solid comparative data are very difficult to conceptualise and to actualise, and that plays a part too. The mechanics of how to get official bodies to generate better data and what data are needed may be added to the account; but Xenakis' article is a very welcome addition to the literature.

Baradel uses the famously isolated case of Yakuza in Japan as a lens through which to assess the adequacy of the reintegrative shaming model of Japanese crime control developed by Braithwaite,

[1] See https://english.wodc.nl/Figures-and-forecasts/organized-crime-monitor/

and finds it wanting. Rather, Baradel argues, anti-Yakuza controls illustrate a punitive turn in Japanese government, with little effort made to reintegrate Yakuza members. This arguably is a severe test of Braithwaite's hypothesis, since there are indeed very few countries around the world who seek to reintegrate 'gangsters'. Thus, Yakuza repression is only a partial falsification, though Baradel also cites other work on more 'ordinary' crime that calls the reintegration model into question. In a careful analysis of the numbers of Yakuza members and other features, Baradel shows that in some respects the system 'works' but because of 'shaming paternalism'; a system in which the subject's autonomy is invaded by the state, and the criminal does not get lenient sentencing but remains subject to stigmatising regulations which prevents reintegration.

Huebert focuses upon homicide in Mexico – an admittedly important social problem (see, for example, Medel & Thoumi, 2014)– and discusses the impact of justice reforms on the level and nature of homicide. Essentially, where there is little citizen engagement and cooperation with the authorities, the prosecution is less equipped to investigate, prosecute, and solve crime, resulting in impunity and little deterrence. On the other hand, where the state maintains its monopoly of violence (sadly, mostly in areas where there is less organised crime), reform is associated with less homicide. The conclusion Huebert comes to is that we need different strategies for handling justice reforms, if the aim is to control homicide better. What is more difficult is to work out how we get there from where we are now, but the level of data-rich nuance that Huebert brings to the discussion is important for simplistic reformers who take the 'one size fits all' approach all too easily.

One *leitmotif* running through the literature on anti-money laundering and other organised crime controls is the whiff of contradictions and even hypocrisy (see Naylor, 2011). Our relationship with organised crime is, as Facebook might put it, 'complicated'. The article by *Young* and *Woodiwiss* is a stimulating exposition of the light thrown by recently released public records on the tensions between the UK and US over American attempts to ensure that foreign banks did not frustrate their efforts to get information from banks within the UK's sphere of influence. The authors aptly subtitle their article 'the Atlantic alliance's undermining of organised crime control'. What we learn from the article is that banks have the power to frustrate anti-money laundering efforts via their influence on the UK government, and their rejection of Interpol's efforts to support the US and what was believed to be Interpol's hype in emphasising the epidemic of fraud against financial institutions. We could draw some additional conclusions, namely that this reflects stronger British power in 1987 than today, and also the symbiosis of the UK government under Mrs. Thatcher and finance capital. However, it also suggests that finance capital had either less power over the Reagan administration than did their UK equivalents, or a lot of power but the American banks were engaged in a competitive battle with British banks and/or British overseas territories to generate a more level playing field, even at the expense of banking secrecy. (We note that at the relevant time, Interpol had an American President and a British Secretary-General.) Also, arguably, both drugs and 'organised crime' (as understood by American elites) were a greater problem for the Americans than for the British, so their perception of the relative threats would have been different. On the other hand, a British Parliamentary group had visited the US in 1985 and passed the Drug Trafficking Offences Act in 1986 (the year before the authors' 1987 focus), criminalising drugs money laundering.

There is also a puzzlement that if AML was motivated by the desire to control tax evasion overseas, why was tax evasion not until recently a predicate crime for money laundering in the US? (see Comisky, 2020). There may be a dispute over the conflation of tax evasion with the 'war on organised crime', but there was no space in Young and Woodiwiss' article to pursue the complexities of the UK's relationship with Crown dependencies and overseas territories. However, the authors were right to stress the contradictions between banking secrecy and drug control, whether or not the abolition of banking secrecy would actually 'solve' illegal drugs problems. The nuances of AML policy development are ongoing, including a present review of the evaluation mechanisms: but readers may also want to consult the special issue 69(2) of *Crime, Law & Social Change* for a discussion of the evolving role of the Financial Action Task Force (FATF) (Nance, 2018).

In the second money laundering article in this special issue*, Michael Levi* explores the demonology of 'money laundering enablers', focusing on the anathematisation of the legal profession and the profession's AML regulatory responses which long preceded it in the UK, noting the complexity of the evidence about the extent of such knowing, innocent and 'in denial' assistance. Levi explores the range of responses by legal professions in different countries, resulting from their relative prestige, and their and their governments' willingness and ability to defy the pressures from the FATF. He is sceptical of the proposition that the primary goal of AML pressures on the legal profession is to de-legitimate lawyers, but criticisms of their role in enabling major crime may reflect not just actual involvement of lawyers in crime but also the cynical perspective of Al Capone that they are part of 'the legitimate rackets'. Levi is critical of the use of the number of Suspicious Transaction Reports filed by lawyers as a performance indicator of regime effectiveness, noting that unless law enforcement do more with reports from lawyers than they are known to have done in the past, these are largely symbolic struggles that have modest identifiable impact. The evidence that links the regulation of lawyers to levels of crime and their organisation is quite weak, beyond kleptocracies. In the latter case, lawyers and others are being asked to refuse highly profitable business in order to perform controls on bribery that nation states are unwilling or unable to do.

The empirical study of proceeds of crime investigation and prosecution involving interviews with 96 staff, originally published in 2009 by the *Swedish Council for Crime Prevention (Brå)*, authored by *Daniel Vesterhav, Malin Forman* and *Lars Korsell*, and excerpted for this special issue, shows the importance of culture and inter-agency meetings/seminars as well as law in organised crime control. Investigative and prosecution agencies have to be motivated to use the powers; they have to have the skills and be confident that they (and the judges) have them: the study shows that the new powers have to be translated organisationally into work methods and goals. In the Swedish case, prosecutors like to leave to the tax agency or the Economic Crime Authority the effort of getting the money from the offender. It is usually a matter of personal interest whether people have the skills or training to use the powers, and rather than any institutional strategy, it is the *"investigation group's structure that decides how complete the recovery of criminal assets will be"* (Brå, this issue). There was a lack of communication between the agencies about the policies and practices, and law enforcement wanted a restraining power for assets, and a broader offence that included self-laundering (implemented later to comply with the EU Directive and FATF demands) and made easier confiscation of assets that could not be proven to be linked to particular crimes. The sensitive qualitative interviews show the different time horizons of different agencies and the way these inhibit cooperation unless planned for. The interplay between legal powers and the realities of investigations are teased out, and the low take up rate of asset recovery expertise on offer is accounted for, so practical familiarity is not built up. Although this report could be viewed as a specimen of 'administrative criminology', as Jock Young would put it, it nevertheless generates cultural insights into why so many schemes to enhance control in organised crime cases fail to achieve even their output let alone outcome objectives. One necessity – still not achieved in many jurisdictions – is to build up operational statistics that measure the work, though there remain problems in specifying the link between these and outcomes like reduced crime(s) (Levi *et al*., 2018; van Duyne *et al.,* 2018).

This special issue is, of course, not exhaustive of the issues relating to organised crime and money laundering policy. Still we hope that the readers enjoy the articles in the collection and that further discussion on the topic will be stimulated. We would like to thank the contributors for their timely delivery of drafts, the reviewers and Georgios Papanicolaou for their valuable comments and constructive criticism, as well as Lars Korsell for his permission to use parts of the Swedish National Council for Crime Prevention report. We are also heavily indebted to Karen Corpuz and Arlie Cataylo from Springer for their assistance with production-related issues.

Compliance with ethical standards

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