



# When finance met security: Back to the War on Drugs and the problem of dirty money

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## Abstract

When and how did the laundering of ‘dirty’ money become an object of public concern, debate, and ultimately policy at the intersection of finance and security? This article sheds light on the social construction of money laundering as a public problem in the context of the U.S. War on Drugs during the 1970s and 1980s. By doing so, the article also stresses the heuristic value of questioning the finance-security nexus through an analytics of public problems. Its aims are to: (1) avoid interdisciplinary debates around the finance-security nexus becoming trapped in a zero-sum game between the ‘securitization of finance’ and the ‘financialization of security’; and (2) understand better the emergence, re-configuration, and internal tensions of social spaces at the interface of finance and security.

## Keywords

Dirty money, finance, public problem, security, War on Drugs

## Introduction

From news on politics, financial scandals, and crime, to the literature and films inspired by it, references to the laundering of ‘dirty’ money have become so common that the existence, definition, and need to tackle the ‘problem’ all appear self-evident. Yet the conversion of money laundering into an object of public concern, debate, and ultimately policy, remains a relatively recent phenomenon, with the first legislation on money laundering only enacted in the United States in 1986. While almost every single social fact can in principle become a public problem, such a process cannot take place anywhere or at anytime (Best, 2016; Neveu, 2015). Previous national and international regulatory initiatives to police flows of money in relation to illicit activities, starting with tax evasion, had been largely ineffective, mainly due to opposition from proponents of bank secrecy (Helleiner, 1999). What prompted the change beginning in 1986? How might we analyze the framing of money laundering as a public

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problem? Who did this framing address, and with what consequences? These questions sit at the heart of the intersection of finance and security that this special issue seeks to address. Does the birth of anti-money laundering constitute a securitization of the financial system by rendering and governing banking activities as a security problem? Or, on the contrary, should it be interpreted as a financialization of security that empowers financial actors in the governance of security?

This article looks at what Foucault (1977: 76) once called “the singularity of events outside any monotonous finality”, in order to understand how ‘dirty money’ has been identified, framed, justified, and popularized as a critical public policy issue. Focusing on the social construction of dirty money that led to the invention of a new crime, ‘money laundering’, the article has a twofold purpose.<sup>1</sup> First, it aims to provide an original contribution to the research tradition on ‘social/public problems’ (Becker, 1963; Best, 2016; Cefaï, 1996; Gusfield, 1980; Spector and Kitsuse, 1977) by outlining what I call the ‘associational construction of public problems’. Second, in connection with interdisciplinary debates about the finance-security nexus (Aitken, 2011; Boy, 2015; de Goede, 2012; Epstein, 2005; Langley, 2008; 2013; Martin, 2002; 2007), it stresses the heuristic value of approaching this nexus through an analytics of public problems as an alternative to governmentality. Indeed, the finance-security literature is marked by a pervasive engagement with the governmentality literature, including the author of the present article (Amicelle, 2011). This literature has examined the “space[s] of the ‘conduct of conducts’, where technologies of government and technologies of the self intersect” (Walters, 2011: 15), applied in this instance at the interface of the fields of finance and security. Both fields “share a claim to universal applicability in (all) other social fields, resulting in various forms of financialization and securitization” (Boy et al., 2011: 115). The aim here is not to oppose the body of work informed by governmentality studies, but to complement it by asking how such in-between spaces can emerge or be re-configured by the social construction of public problems. In other words, the analytics of public problems makes it possible to better understand the genealogy of social spaces at the interface of finance and security, defined either as assemblages (de Goede, forthcoming) or configuration (Amicelle, 2017). As will be shown, a focus on public problems makes it possible to avoid debates on the finance-security nexus becoming trapped in a zero-sum game between the ‘securitization of finance’ and the ‘financialization of security’.

### **The social construction of public problems by association**

How the social facts covered by the notion of ‘money laundering’ became a public problem is not easy to understand using typical categories of analysis. First, it differs from processes associated with the extension or expansion of public problems (Becker, 1963; Nelson, 1984). The construction of public problems by extension or expansion can be thought of as the “integration of new issues into a family of ‘problems’ already being addressed, which often offers the advantage, especially for young administrations or new authorities, of consolidating the institution, justifying its reinforcement” (Neveu, 2015: 79). Becker (1963) provides an example of this process with the 1937 case in which the U.S. Federal Bureau of Narcotics added marijuana to the list of ‘problems’ it was addressing. By helping to identify marijuana as a public problem, leading to its criminalization, the American Bureau of Narcotics increased its power and authority. In this context, the social construction of marijuana as a public problem expanded a generic category – illicit drugs – by adding a new substance to that category. The idea of construction by association, however, is quite different. It focuses on the operations

that occur when a social fact or a former public problem is transformed into a new subject for debate and public action, while constantly being compared to one or more 'primary problems'. Construction by association with another 'problem' cannot be reduced to simply including a social fact in a generic category requiring public action, such as illicit drugs. Rather, it is a process that consists in elucidating a specific issue by systematically connecting it with another related, but different issue, which can be designated as the 'primary problem', or the problem of reference.

As a social practice, money laundering is the second in a series of actions: it follows an initial criminal activity in which the 'dirty' proceeds of crime that must be 'laundered' are first acquired. In this process, the dirtiness of money refers to other public problems. At first glance, it seems that the desire to disguise the illegal origin of money could be associated with a wide range of personal and property crimes, including trafficking and white-collar crimes. However, money laundering and the resulting state intervention against 'dirty' money were created and legitimized in the United States in association with only one 'problem': drug trafficking. While the immediate and exclusive association of dirty money with drug money has progressively faded and the problem of laundering has expanded, the early association with drugs has continued to shape the way financial policing agents think and act.

To understand the long-term effect of such 'constructive' association requires a focus on the configuration of actors and institutions, as well as the larger sociopolitical context, which can transform a social fact into an object of public concern and eventually of public policy. In the following sections, I first insist on a redefinition of the issue of organized crime that contributed to the extension of the 'War on Drugs' in the United States, starting in the 1970s. I then examine the opposition to efforts to further monitor and control flows of money during that same period. Lastly, I shed light on the events that constructed the problem of money laundering, and its acknowledgment in the banking industry, by associating it with America's 'folk devil' of the 1980s: drug traffickers. The last section shows how the penetration of such a security-related issue into the field of finance also reverberated throughout the field of security. The story told in these sections derives from a documentary analysis based on both academic works and official resources from Congress, presidential investigative committees on organized crime, the American Bankers Association, and federal agencies, such as the Drug Enforcement Agency (DEA).

## **America's security and its folk devils**

While the first half of the twentieth century had seen national conferences and international agreements on drugs, the focus on drug trafficking in the United States increased significantly towards the end of the 1960s.<sup>2</sup> Upon his inauguration in 1969, President Richard Nixon immediately employed war metaphors. "Drug traffic is public enemy number one domestically in the United States today", he declared, "and we must wage a total offensive, worldwide, nationwide, government-wide, and, if I might say so, media-wide" (quoted in Epstein, 1977: 174). During the era, the United States already considered dealing with this form of trafficking a priority in domestic and international politics. The commitment was especially apparent in the diplomatic agreement of political representatives on the Single Convention on Narcotic Drugs of 1953, continuing with the Convention on Psychotropic Substances of 1971, and the adoption of the 1972 Protocol amending the 1953 Single Convention on Narcotic Drugs. There had been clear support for these types of multilateral initiatives as early as the first opium conference in Shanghai in 1909, which led to the signing of the international convention at

The Hague in 1912. Friman (1996), examining the United States' constant involvement in this domain, points out, somewhat ironically, that the twentieth century ended the way it began, with the United States fighting drug trafficking. On the other hand, Andreas and Nadelmann (2006) argue that 'the modern era' for this fight dates back to the anti-drug campaign launched in the 1960s and 1970s. President Nixon's declaration was a widely accepted depiction of organized crime because it did not deviate from the ideas of former administrations.

Formed and popularized during highly publicized investigative commissions, the understanding most Americans had of 'organized crime', which had been developing since the 1920s, reflected an entrepreneurial image of a mafia-like organization.<sup>3</sup> Until the 1940s, the expression 'organized crime' could refer to any activity that was systemic, illegal and rooted in American social, economic, and political life.<sup>4</sup> In the context of the Cold War, the public problem harboured a parasitic vision of crime as an external threat to a society, without internal contradictions. The process of redefining organized crime obliterated the complexities of legal and illegal entanglements by allowing 'legitimate' actors, such as law enforcement officers and economic elites, to get away with nefarious practices, even though a significant chunk of white-collar crime is just as 'organized' as trafficking (Sutherland, 1949). The common meaning of organized crime, however, limited business and industry 'criminals' to the corrupt mafia auxiliary, involved only in the service of its activities. Linked to career 'gangsters' on the margins of society, the idea of organized crime was then constructed and presented as a foreign conspiracy against society, rather than an integral part of it (Woodiwiss, 2003).

The new parameters of the problem outlined a social, hierarchical, and relatively uniform space, tending to establish a clear-cut boundary between the 'criminal space' and the "sphere of legal companies and political institutions" (Briquet and Favarel-Garrigues, 2010: 2). The image was of a social, political, and economic order that is host to a parasitic external enemy: a mafia conspiracy that threatens national security through structured criminal organizations.<sup>5</sup> In 1960, less than a year before becoming Attorney General, Robert Kennedy, in his book *The Enemy Within*, claimed that "if we do not hold a nationwide attack on criminal organizations with weapons and techniques that are as effective as theirs, they will destroy us" (quoted in Woodiwiss, 2003: 22). Under President John Fitzgerald Kennedy (JFK), the American administration began to view crime as one of the federal government's main priorities, focusing many of its efforts on the problem of organized crime (Simon, 2008). JFK's successor, Lyndon B. Johnson, openly used war metaphors, talking about the 'War on Crime', although he employed this rhetoric more freely for the 'War on Poverty', which he initiated (Simon, 2008).

Crime became a serious national issue in the 1964 presidential campaign, following the Kefauver and McClellan investigative commissions, after which controlling it came to be seen as the responsibility of the United States federal government (Andreas and Nadelmann, 2006). During this period of partisan competition and public debate, Johnson responded to his Republican adversary, Senator Barry Goldwater, by making crime reduction and prevention one of the federal government's top priorities. The growing concern with crime led to the creation of the President's Commission on Law Enforcement and Administration of Justice in July 1965 (also known as the Johnson Committee). An 'organized crime' working group, as well as scientists such as economist Thomas Schelling and sociologist/criminologist Donald Cressey, worked to help define the nature of criminal enterprises. The government's use of scientists to demonstrate the reality and gravity of the problem contributed directly to the identification, justification, and media coverage of the actions taken against organized crime. The controversial conclusions of the 1967 report submitted by members of the committee and

the working group (Hawkins, 1969; Morselli and Kazemian, 2004; Naylor, 1997; Reuter, 1983) confirmed both the meaning given to the expression 'organized crime', as well as the sense of urgency surrounding it. As relayed in a message by President Johnson to Congress in February 1968, the conclusions were that:

Organized crime is a society that seeks to operate outside the control of the American people and their governments. It involves thousands of criminals, working within structures as complex as those of any large corporation, subject to laws more rigidly enforced than those of legitimate governments. Its actions are not impulsive but rather the result of intricate conspiracies, carried on over many years and aimed at gaining control over whole fields of activity in order to amass huge profits. (Johnson, 1970: 192)

Hawkins (1969) compares this type of statement to a myth, with one of its strengths being its ability to resonate with popular beliefs that are maintained, even reinforced, by the media and cultural productions of the period. This type of statement was so dominant that many social figures (elected politicians, industrialists, lawyers of the ruling elites, law enforcement officers, and so on) were able to use it to justify their failures, clear their names of potential accusations, and gain additional resources (Woodiwiss, 2003). The next administration, under Nixon, followed the previous administration in advocating for greater involvement of the federal government in fighting criminal activity in general, and drug trafficking in particular. Now considered to be the ultimate symbol of organized crime, drug traffickers were the main target in the 'War' declared by the new president in the name of national security. To successfully win this war, the president looked first to his Bureau of Narcotics and Dangerous Drugs (BNDD) and then turned to the Drug Enforcement Agency (DEA) in 1973.

The BNDD, which had been placed under the authority of the Department of Justice on President Johnson's recommendation, had been created in 1968 as the result of the fusion of the Bureau of Drug Abuse Control (previously part of the Department of Health, Education, and Welfare) and the Federal Bureau of Narcotics (part of the Department of the Treasury since 1930). Before the restructuring in 1968, which was meant to diminish institutional rivalries, officials from these two federal agencies were among the main entrepreneurs of anti-drug norms in the United States, both creating and implementing such norms (Becker, 1963). The efforts of the Federal Bureau of Narcotics, in particular, went beyond the strict application and defense of the law prohibiting the use of opium for which it had been created. Becker (1963) demonstrates how, with a group of allies, the heads of the Bureau campaigned for the adoption of new federal legislation, this time prohibiting the use of marijuana. While marijuana use had been declining as a social practice, in 1937 it became something different: a public problem subject to punitive action. Guided by moral conviction and institutional opportunity in a period of fiscal austerity, the Bureau's officials actively contributed to the success of the "crusade for moral reform" launched to spread a prohibitionist ideology (Becker, 1963: 171). They accompanied state leaders in promoting a prescriptive movement to influence public opinion through an information campaign relayed by the media and amplified emotionally in films such as the 1936 *Reefer Madness*. The Bureau also provided many of the statistics and other objections that appeared in the conclusions of the investigative commissions on organized crime over the next three decades.

A new 'super agency', the DEA, was created in 1973 to replace the ailing BNDD, which was grappling with internal tensions. DEA officers worked alongside the FBI and collaborated with border security agents and officers from two other bodies established in 1972, the Office of Drug Abuse Law Enforcement and the Office of National Narcotics Intelligence. These successive restructuring operations, which were marked by an unprecedented increase in



resources, illustrate the status given trafficking, traffickers, and drug users – America’s ‘folk devils’ – in the early 1970s. As conceptualized by Cohen (1972), the notion of ‘folk devil’ has since been used “to evoke the image of a scapegoat that symbolically opposes a society ... a social construct that symbolizes evil and instills fear in society” (Sheptycki, 2005: 26).

### **American finance and the resistance to capital movements regulation**

Despite receiving much less media attention, in the early 1970s another set of social practices, associated with the financial field, began to be formally subject to a new form of state intervention that was as controversial as it was novel. The Bank Secrecy Act (BSA), adopted by Congress in 1970, gave the U.S. Department of the Treasury the authority to see that banks and their customers met the requirements of a series of laws concerning the declaration and conservation of financial information. Banks had to provide a currency transaction report (CTR) for any transaction greater than \$10,000, and keep records of such transactions for six years so that they could answer questions in any investigation by the federal authorities. Financial institutions also had to provide a currency or monetary instrument report (CMIR) for any transaction in or out of the country greater than \$5,000, and notify the authorities about any customer holding a foreign account with a foreign bank account report (FBAR). The last two situations also had to be reported to the Internal Revenue Service (IRS) by the relevant clients, who had to keep a record of this data. Unlike what its name suggests, the BSA was not aimed at protecting the principle of bank secrecy but instead diminishing it (Cuellar, 2003).

In line with its ‘regulatory’ thrust, the BSA criminalized the failure to report transactions. The BSA was aimed primarily at the use of foreign banks to conceal the proceeds of illegal activity and to evade federal income taxes (Villa, 1988). Though passed at the beginning of the federal government campaign against the American mafia (Jacobs and Gouldin, 1999), the BSA appears not to have been motivated by that effort (Levi and Reuter, 2005: 296). It was not designed, at least primarily, to fight organized crime but, more generally, to curb international tax evasion. “The BSA requires businesses to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters” (Internal Revenue Service, 2017: 1). The financial provisions in the Racketeer Influenced and Corrupt Organizations Act (RICO), also enacted in 1970 as part of the Organized Crime Control Act, were specifically designed to give law enforcement authorities more power to seize assets associated with organized crime. At first officials made relatively little use of this additional power (Blakey, 1994; Hugues, 2000). But there was an even greater lack of enforcement of the BSA, which was very negatively received in the financial sector. Bankers claimed it unfairly interfered with their professional activities and it took a decade before the legislation was implemented.

It is important to consider the significance, or at least symbolic effect, of the BSA. Prior to 1970, banks were not obligated to inquire about customers’ cash deposits or other transactions. Although they would probably have had to participate in any ex-post investigation, the consequences would have been minor. After 1970, financial institutions that refused to comply with the BSA could be prosecuted, as the act made such neglect punishable by law. Because this new legislative directive affected bank secrecy, it was met with considerable resistance, especially since tax evasion had nowhere near the same public status as drug trafficking, which remained public enemy number one.

Bank secrecy was deeply entrenched and one concern was that even the slightest infringement of this principle would lead to stigmatization of state action with regard to flows of money rather than mobilizing people in its favour. Bankers claimed that their customers' right to privacy from the state were being violated (Levi, 1991), and the partial infringement of banking customers' confidentiality led to a great deal of criticism. Banks voiced their concern over customers' uneasiness with the situation as well as the bureaucratic burden of the record and reporting system inherent in the BSA. One of the recurring themes following the law's enactment and the debates associated with it was the increased work associated with the new responsibilities that banks had to take on. Members of the U.S. Congress tried to reassure concerned individuals by reminding them that the government was committed to avoiding any measures concerning financial activities or other elements that could disrupt international trade (American Bankers Association, 2008). The officer in charge of the case at the Department of Justice, Will Wilson, offered similar support when he declared that the objective of the act was "to detect and prosecute crime, not build a mountain of paper" (quoted in American Bankers Association, 2008: 54). Tensions emerged between those wanting to keep the existing banking practices and those who felt it was important to impose new regulatory requirements on financial flows. These tensions continued even after the adoption of the BSA, with bank representatives supporting and initiating legal challenges.

In 1974 the California Bankers Association and several other groups of plaintiffs challenged the constitutional validity of the BSA. They argued that its requirements were too demanding and that it infringed their customers' privacy. In 1976 the U.S. Supreme Court rejected the California association's appeal, which had been backed by the American Civil Liberties Union. However, on the same day, the Court concluded that customers had been stripped of several privacy rights pertaining to information held by their banks. In response to this Supreme Court ruling, as well as several other judgments, in June 1977, several members of Congress introduced the Right to Financial Privacy Act, which was adopted a year later. The act had three main provisions intended to end the protests against infringement of privacy rights in the financial industry. First, law enforcement inquiries had to be justifiable and the customer had to be notified by the federal agency before the inquiry was conducted. Second, the customer could contest any request for information by public authorities. Third, federal agencies had to keep a written record of any customer data consulted and document any information they shared with other agencies. This policy reversal angered some, who saw it as an obstacle to their investigations (Electronic Privacy Information Center, 2003).

The Right to Financial Privacy Act became important when DEA agents and their colleagues from other departments started to show a growing interest in strengthening measures to crack down on crime proceeds (Levi, 1991), repeatedly arguing that it was important to follow the money trail in order to disrupt what they saw as organized crime pyramids. Guided by a parasitic and entrepreneurial vision of criminal organizations, the strategic approach of targeting money flows was gradually implemented to help defeat drug lords, as simply arresting them would be insufficient to deal with drug trafficking. This was the claim made by the former administrator of the DEA, Peter B. Bensiger, before the U.S. Congress in 1978:

We recognize that the conviction and incarceration of top-level traffickers does not necessarily disrupt trafficking organizations; the acquisition of vast capital permits regrouping and the incarcerated trafficker can continue to direct operations. Therefore, it is essential to attack the finances that are the backbone of organized drug trafficking. (quoted in Naylor, 2004: 162)

Operation Greenback, launched in Miami in 1980, was the first anti-drug initiative to bring together officers from several federal institutions (Customs, Department of Justice, Department of the Treasury, and the IRS) to take advantage of the opportunities provided by the BSA (President's Commission on Organized Crime, 2001). In addition to its ability to disrupt operational efficiency, customs agents identified provisions in the law that offered a way back into the 'game' in the fight against drugs and made it possible to intervene in other types of inquiries. Following the money trail also allowed tax authorities to reaffirm their place in large-scale criminal investigations, linking them symbolically with the celebrated 'Patron Saint of the IRS', Elmer Lincoln Irey, and his 'T-Men', who, among other things, had helped bring down Al Capone for tax evasion in 1931 (Irey and Slocum, 1949; Smith, 2013).<sup>6</sup> An alliance, beyond the moral position of preventing criminals from profiting from their wrongdoings, slowly began to form around a policy focused on making money the target in the War on Drugs. The key to success would reside in locating, tracking, confiscating, and seizing crime proceeds. From the ideological perspective of the rational actor (Schelling, 1971), disrupting the flow of illicit capital places a burden on any 'criminal enterprise' as it targets its primary motivation – money. This deterrent was reinforced by the belief that, without working capital, setting up new criminal operations becomes much more difficult, sometimes even impossible. Indeed, "the motivation appeared to be partly fear of what the money might fund and partly a belief that stripping criminals financially might deter them" (Levi and van Duyne, 2005: 16).

The emphasis placed on drug money and criticism of the Right to Financial Privacy Act intensified and increasingly resonated within the government after Ronald Reagan took office 1981. As we will see below, the process of reconstructing the problem of illicit money through its association/reduction to drug trafficking evolved quickly and became explicit following a media scandal at the intersection of disparate professional representations and interests. This process ultimately led to the emergence of a new crime – money laundering – in which money sheds its ontological neutrality and 'odorless' character, coming out as officially 'dirty' in court cases and media coverage (Mitsilegas, 2003).

### **The associational construction of money laundering as a crime**

According to Gilmore (2005), the phrase 'money laundering' was first used by the police in the early 1970s. It received a great deal of attention during the Nixon Watergate scandal, with its related financial crimes. The phrase was clearly not used for drug trafficking alone, but was employed by the press to evoke "a veritable catalogue of illegal activities and abuses conceived and directed by the President and his men" (Bernstein and Woodward, 1974: 5). It was first mentioned in court cases and official reports only in 1982. The Money Laundering Control Act of 1986 made 'money laundering' an official object of public policy as a crime, and was the first U.S. legislation to specifically refer to the recycling of crime proceeds. This legislation is therefore fundamental in understanding the meaning attributed to the notion of dirty money.

Many years before 'money laundering' became police jargon, a term used by the media, and an activity introduced into the criminal code, it referred to a set of older techniques (Naylor, 2004). The phrase may have emerged in the 1970s but it was inspired by myths dating back to the Prohibition era in United States, between 1919 and 1933. One of the most famous stories in mafia folklore is that Al Capone and other gangsters invested their illegal profits in laundrettes so it would look 'cleaner'. More generally, many individuals and organizations, seen as legitimate, have been able to devise ways, whether only once or



systematically, to hide capital generated by transgressing political, economic, commercial, or fiscal laws. If there was anything new in 1986, it was government officials deciding that these various money laundering techniques were a problem. This novelty was, however, based on a selective principle, as the only money targeted was proceeds from drug trafficking.

The Money Laundering Control Act went hand in hand with the Anti-Drug Abuse Act, a product of Reagan's 1983 President's Commission on Organized Crime, and was signed into law almost 20 years after Johnson's commission. The commission focused on the U.S.'s interests in Latin America (Friman, 1996), and its final report presented the laundering of drug money as a significant problem and provided recommendations for dealing with it. Beyond identifying the problem and explaining how to intervene, there was also a clear attempt to frame the problem. As Entman (1993: 52) explains, "To frame is to select some aspects of perceived reality and make them more salient in the communicating text, in such a way as to promote a particular problem definition, causal interpretation, moral evaluation and/or treatment recommendation for the item described". The Reagan Commission report highlighted systematically the dynamics of laundering associated with 'drug money', suggesting that traffickers had both mastered the art of controlling and disguising illicit money and monopolized the technique. Limiting the characterization of the dirty money problem to America's folk devils conflicted with the scope and variety of issues potentially covered by the Bank Secrecy Act of 1970. The final report of the Reagan Commission included the conclusions of a preliminary report from 1984, which had examined only the financial aspects of money laundering, and was entitled 'The Cash Connection: Organized Crime, Financial Institutions, and Money Laundering' (President's Commission on Organized Crime, 2001).

A few months before the publication of the Commission's last report, Reagan declared drug trafficking an existential security threat to the United States, reviving the War on Drugs rhetoric that the two previous administrations, those of Presidents Gerald Ford and Jimmy Carter, had ignored. Simon (2008) highlights the importance of Reagan's use of the war metaphor, which hearkened back to Franklin Delano Roosevelt's term as president from 1933 to 1945. Whether dealing with cancer, poverty, crime, drugs, and later terrorism, several of Roosevelt's successors in turn described a supposed existential threat to the nation-state that came from a monstrous, abnormal enemy capable of penetrating to the very heart of the ordinary American's life. At the same time, they called for centralizing government resources and mobilizing them against the declared enemy, which they portrayed as defeatable only through coordinated and complex strategies integrated on a federal level (Simon, 2008).

President Reagan employed Roosevelt's evocation of this 'enemy' during his two terms in office, declaring the War on Drugs a 'national security' issue (Helleiner, 1999). This led to deliberations about the status of bank secrecy, seen on one hand as a professional duty, including a right to privacy, and on the other as interfering with the War on Drugs (Levi, 2002). These deliberations eventually resulted in the invention of a new crime – money laundering – and new regulatory intervention of the state in banking practices. However, this state interventionism occurred in a hostile context. Following the collapse of the Bretton Woods system during Nixon's administration, Reagan's presidency saw the development of a policy, and even a general sense of a movement, often qualified as 'neoliberal', towards financial liberalization and an international surge in flows of capital due to the dismantling of national controls. At first glance, the demonstrated desire for increased federal regulation of flows of capital did not align with Reagan's position, presented in one of his more famous quotes: 'Government is not the solution to our problem; government is the problem'. There was also a legal context created by the Right to Financial Privacy Act, and some banks refused to consider financial activities in terms of security and fighting crime. However, increasing recognition of

the efficacy of the 'follow-the-money' strategy eventually led to the creation of another area of legitimization that contributed to an acknowledgement of the problem of money laundering in the financial industry and, to a lesser degree, the need to provide solutions to it.

### **The Bank of Boston scandal: Cross-colonization of finance and security**

During the 15 years that followed the adoption of the Bank Secrecy Act in 1970, elected politicians and law enforcement officials condemned the constant lack of cooperation from banks and the financial industry. Their frustration was clearly articulated in the congressional report that accompanied the Money Laundering Control Act. Its authors expressed regret that

... unfortunately, the hearings on money laundering, beginning with the Bank of Boston hearing in April 1985, have shown that a major law enforcement tool [the BSA] has been rendered a virtual nullity by an industry that didn't seem to care and by a regulatory structure that proved to be ineffective. (American Bankers Association, 2008: C11)

To remedy this situation, non-compliance sanctions were made more severe and bankers were constantly reminded of the moral impossibility of acting as intermediaries, rather than enemies of America's 'folk devils'. Although the scope of the BSA's provisions extend well beyond drug trafficking, in the 1980s, the consequences of not applying the law were interpreted only through the prism of this 'primary problem'. Financial institutions that attempted to maintain a hardline attitude towards bank secrecy and a lax attitude towards organized crime ran the risk of appearing to contravene measures being promoted against lawbreakers. The ethical argument was supported by a narrative based on the devastating repercussions, in both image and reputation, for banks if they did not comply with the law or were considered non-cooperative with criminal investigations. The Bank of Boston case is a good example of this. In 1985, bank executives pleaded guilty to failing to report a total of \$1.22 billions worth of transactions with foreign banks of more than \$10,000 between 1980 and 1984 to the IRS. The bank was fined \$500,000 for violating the Bank Secrecy Act, a meager sum compared to the billions that had not been declared, but the legal issue also, and more importantly, attracted a great deal of negative media attention. There had been relatively little media coverage of this problem up to this point, especially in print media (Nichols, 1997), but the Bank of Boston case brought public attention to money laundering issues.

Nichols (1997) demonstrates that the Bank of Boston scandal, rather than simply one of many examples, became a landmark case that contributed to justifying money laundering legislation. Legally, the bank had been accused only of failing to declare transactions over \$10,000 under the BSA. However, the failure to report was quickly portrayed by the American media as synonymous with money laundering. It was associated with organized crime and with drug trafficking – although without any proof – rather than with international tax evasion. The emotions raised by the case also contributed to framing, justifying, and the popularizing the problem of dirty money. The rhetorical exercise of taking one of many cases of undeclared transactions and turning it into a national money laundering scandal was based on statements made by federal experts and relayed by the media. These individuals, whether part of the Treasury or Justice Departments or Reagan's administration in general, possessed the institutional authority that allowed them to frame the situation as problematic. In addition, in conclusions to the President's Commission on Organized Crime (1984), prosecutor William Weld and Assistant Secretary of the Treasury John Walker once again declared that they clearly supported the idea of a logical link between violation of the BSA and the problem of

organized crime and drug trafficking. According to Nichols (1997), from this point on journalists who reported the Bank of Boston's failures established a direct relationship between missing documents and violent crimes, making the reporting of financial transactions a question of life or death. In this selective narrative about the Bank of Boston scandal, media professionals assumed the role of intermediaries, accelerators, even co-producers of the process of construction by association of the public problem of laundering dirty money.

Fifteen years after the adoption of the BSA, the offenses committed by the sanctioned financial institution were far from exceptional among banks and could also be attributed to negligence, or even to the absence of federal authorities to enforce the law. The financial policies Reagan promoted when he first took office and the cuts made to regulatory agencies certainly did not reverse the trend. In this context, why did the Bank of Boston case become such a unique scandal "heard more or less around the world" (Palmer, 1985: 25)? Nichols (1997: 333) argues that this case "served basic goals of law enforcement and mass media". On the one hand, the timing and nature of the case were opportune for law enforcement to send and spread a new message about dirty money and follow-the-money methods. On the other hand, the combination of transactions reporting failures with issues of corporate non-compliance, organized crime and drug trafficking was seen as a critical story by newswriters. "In other words, although the construction of the case as a landmark narrative was in a sense arbitrary, the particulars of the case were well suited to presumed interests of majors claimmaker groups" (Nichols, 1997: 333).

Indeed, the political context played a major role in the naming and shaming of the Bank of Boston, while other establishments had slipped through the cracks while committing similar practices in the past. 1985 was when members of the federal administration formally decided to crack down on the financial side of organized crime. Furthermore, political activities during the period leading up to the mid-term elections for the Congress and Senate in 1986 also helped make drug trafficking and everything associated with it a public problem and a priority for elected officials as well as in the media and public opinion polls (Reinarman and Levine, 2003). The prosecution of the Bank of Boston was a warning to all banks that liberalization in the financial sector no longer excluded them from having to adhere to reporting requirements.

The contradiction was apparent only because these requirements were considered a direct consequence of financial deregulation. The aim was not to make drastic changes in how the existing banking system functioned, nor to take on all of the illicit flows of money, but to target the folk devils' money. The Reagan administration presented their actions as a way to limit the access of crime organizations, especially to financial institutions. In this context, the so-called neoliberal turn of the 1980s did not entail a regulatory retreat. The redeployment of state intervention was aimed at accompanying and facilitating the liberalization of capital controls while reserving its benefits to 'legitimate' capitalist actors and excluding the 'undesirables' (Helleiner, 1999). The Bank of Boston scandal erupted one year after the Reagan presidential commission on money laundering published its mid-term report on the 'cash connection'. The authors of this report recommended making money laundering a crime and ending the current complacency in enforcing the BSA that had led to prosecuting only failures to report and keep records (President's Commission on Organized Crime, 2001). Using the same criticism that had been used against the Right to Financial Privacy Act of 1978, their final report in 1985 also emphasized that officials from the DEA, FBI, IRS, Customs, and the Departments of Justice and the Treasury supported the criminalization of this social practice, which was akin to extending federal powers in the financial sector (Nichols, 1997). Coincidentally, these bureaucratic considerations aligned with how the media was presenting a story that was seen as having exceptional news and commercial potential. As a result, many

print publications relayed comments from official sources and dramatized the relatively trivial Bank of Boston case as an unprecedented scandal, while highlighting the passing of the Money Laundering Control Act of 1986.

By making money laundering a federal crime in a stronger legislative weapon against drug trafficking, the 1986 act emphasized the obligations of industry players and penalized any actor offering financial services that facilitated the integration of money from an illegal origin into the legal economy. As a result, this type of operation became riskier and there was a greater willingness to cooperate with the appropriate authorities. The legislation also amended provisions in the Right to Financial Privacy Act by authorizing the postponement of notification of bank customers who were being monitored as part of an investigation into drug trafficking or espionage. In light of these changes and the links made between the Bank of Boston scandal, regulatory non-compliance, and drug money, many banks began working more closely with regulatory agencies, and 'oversight' was acknowledged in order to avoid being the next legal, political, and media target. From 1985 to 1986, the number of monthly declarations made as part of the BSA rose from 68,000 to 270,000 (Nichols, 1997). "Fear of crime ha[d] been converted into fear of not reporting a fellow citizen" (Levi and van Duyne, 2005: 17).

While continuing to criticize legislative developments and policing practices, banks became concerned about the consequences of this type of bad publicity. In 1986, Eugene Rossides, former Assistant Secretary of the Treasury (1969-1973) and now a business lawyer for a major law firm, sent a written statement to Congress outlining the banking industry's stance on the issue.

First, while money laundering is a serious problem that must be vigorously addressed, it does not necessarily follow that imposing broad new requirements upon banks will solve the problem. Second, I become concerned when I see the law enforcement community shifting its focus away from drug traffickers and others in organized criminal groups and preoccupying itself with reporting failures by banks. (quoted in American Bankers Association, 2008: C11).

Despite its defensive tone, this two-point argument highlights the results of the process of reconstruction by association of the public problem of dirty money. While the solutions to the problem remained hotly debated, the problem itself was now seen in the banking world as limited to only one 'primary problem' (drug trafficking), rather than the international tax evasion that was so broadly targeted by the BSA. From this perspective, since money laundering was now part of public policy, banks needed to embrace the War on Drugs to avoid being questioned and associated with tax evasion issues.

At the same time, the parameters of the drug money problem were changing. It was no longer associated only with a general threat to the nation-state. It was now also a specific threat to the financial system through issues such as financial integrity and financial stability. While financial integrity refers to the capacity of the financial system to be protected from criminal misuse, particularly from a reputational point of view, financial stability refers to the protection of the financial system from stress, turmoil, and shocks (Amicelle and Jacobsen, 2016; Boy, 2015).

Liberals recognize that money laundering can pose a potentially serious threat to financial stability. When financial institutions or markets are found to have close links to individuals in these kinds of serious crimes, the public confidence on which financial systems depend can be rapidly undermined ... Financial institutions, thus, have a self-interest in complying with money laundering regulations in order to preserve their 'reputation' for trust and security in the marketplace for noncriminal financial business. (Helleiner, 1999: 59).



Because of the sums infiltrating the legal economy through these institutions, drug money was seen as compromising public confidence in the financial system, as well as customers' trust in their banks. However, this argument has been strongly criticized, starting with van Duynes (2003: 101-102), for whom "One of the dogmas fuelling the fight against laundering is the frequently repeated claim concerning the corruptive impact of crime-money and laundering on the integrity of the financial system ... If it applies to the financial system it also applies to the automobile industry, real estate, tourist offices..." In a similar vein, Levi (2002) notes that bankers laundered money for centuries from numerous crimes and countries without apparent prejudice for them or the financial systems and national economies. Ultimately, van Duynes (2003: 101-102) suggests the impact of dirty money on both financial integrity and stability is an untested 'metaphysical dogma', "behind which one can discern a heavy dose of opportunism" to stifle potential doubts across the financial industry. Following Hülse (2007), this metaphysical dogma takes the form of a self-fulfilling prophecy. In this respect, it is less money laundering practices as such that may have a negative impact on banks and the financial system than the social construction of money laundering as a public problem. By the mid-1980s, dirty money may really impact any bank (Hülse, 2009: 186).

Whether valid or not, the financial integrity/stability argument has had performative effects in two ways. On the one hand, it was hard for financial actors to maintain a victim image following the 1986 law, because banks now appeared to be more and more like accomplices in money laundering (rather than victims who had been deceived into offering up their services). It was therefore better for them to condemn all business relationships with the 'folk devils' and accept that financial activities should also be managed as security problems. Banks therefore started to admit that anti-money laundering initiatives were, in one way or another, not only justifiable but necessary and even in their self-interest. It is here that a specific finance-security space of the 'conduct of conducts' has taken shape, "where technologies of government and technologies of the self intersect" against the problem of dirty money (Walters, 2011: 15). On the other hand, it was also at this moment that the financial integrity/stability argument began to fragment the referent object of security, specifically by introducing the protection of financial order next to the protection of public order and the Nation-State. While the new 1986 legislation was still not fully accepted, its integration across the banking industry was facilitated because the Department of the Treasury was responsible for implementing it. The cross-colonization of the fields of finance and security was underway.

## Conclusion

What brought the understanding of money laundering in the United States to the point that an array of social actors, starting with players from the security and financial fields, rallied behind public actions that justified transgressing the principle of bank secrecy? In what context and from what angle did this relatively old social practice, which has occurred at various levels in society – including the head of state, as seen in the Watergate scandal, for example – become the crossroads for a range of public, private, political, bureaucratic, media, security, and financial interests? Ultimately, the answer to both questions can be found in the associational construction of the dirty money problem.<sup>7</sup>

In 1970, the BSA restricted bank secrecy, a policy deemed unacceptable by banks, which resisted its implementation and even challenged its legal provisions in court. This opposition, which had been tolerated for 15 years and even occasionally backed by the American Civil Liberties Union in the name of privacy, lost its support when it began to be interpreted as a



form of cooperation with America's folk devils. The gradual acknowledgment of the problem, which relied on beliefs and representations about organized crime, and increased action in dealing with it through the criminalization of money laundering, arose from its symbiotic relationship with drug trafficking. While this acknowledgment occurred through the almost exclusive association of money laundering with the politically motivated War on Drugs, it can also be explained by the dissociation of laundering from other financial crime issues. Justification for the infringement of bank secrecy, which combined moral and political convictions with various professional interests, was all the more acceptable because it was limited to only one type of customer and one kind of illicit flow of money, unlike the provisions of the BSA. Only the category associated with drug trafficking was targeted by unprecedented financial policing. This process of associational construction undoubtedly spurred the continuous expansion of money laundering into other categories, both in the United States and internationally, which has taken place since the end of the 1980s. As a nod to the BSA, the last category of social actors added to the international anti-money laundering framework was tax evasion in 2012. Nevertheless, current research on the application of the anti-money laundering framework still tends to show that the focus is in line with current national security priorities – that is, on money made from drug trafficking as well as terrorism and terrorist-related money.

In theoretical terms, analyzing dirty money as a public problem helps us avoid becoming trapped in a zero-sum game between securitisation and financialisation. Instead of a linear and one-way process of colonization of one field over the other ('securitization of finance' or 'financialization of security'), it is possible to appreciate the cross-colonization of finance and security logics in the policing of financial activities. Since 1986, the problem of dirty money and the orientation toward financial policing have emerged through a plurality of intersecting intentions, stances, and representations, resulting from a series of collaborations and confrontations between interdependent actors from the fields of finance and security. The evocative power attached to the malleable notion of 'dirty money' resides in the fact that it remains the meeting point of a constellation of interests; the term's unclear boundaries allow each group's priorities to fit within the confines of policing. Aside from specific influences from one politician or another, or from a specific national context, the configuration of financial policing depends largely on this tension between finance and security. As Helleiner (1999: 69) remind us,

... this pattern of regulatory action has been pursued in order to enable states to curtail illicit financial movements effectively without undermining their commitment to financial liberalism. In fact, the tension between financial liberalism and the prohibition of illicit financial activity has not been entirely eliminated.

Following de Goede's (2010: 106) third avenue for studying finance and security, both domains demonstrate a "profound conceptual [and political] entanglement" in face of the problematization of dirty money. As a result, it is impossible now to disentangle financial security from (inter)national or societal security. At the same time, the dynamic tension between protecting the financial system and repressing any kind of financial crime seems difficult, if not impossible, to resolve. While the 'securitization of finance' and the 'financialization of security' overlap and reinforce each other, this does not mean that in practice the protection of the current financial order goes hand-in-hand with the policing of illicit money flows.

## Notes

1. On the historical link between money and dirtiness, see Peebles (2012).
2. The most significant international agreements from the early twentieth century are the International Opium Commission of 1909 in Shanghai; the International Opium Convention of 1912; the Second Opium Conference of 1925 in Geneva; the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs of 1931; the Agreement concerning the Suppression of Opium Smoking of 1931; and the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs of 1936.
3. The main investigative commissions prior to Richard Nixon's presidency were the Wickersham Commission in 1931; the Kefauver committee in 1951; the McClellan committee in 1963; and the Johnson committee in 1965. For more on this topic, see Scherrer (2009).
4. For a history of organized crime in the United States, see Woodiwiss (2005).
5. For a critique of this parasitic vision, see Chambliss (1978). The 'organized' character of crime has also been moderated by research demonstrating that the size and extent of criminal associations have frequently been overestimated. For more on this topic, see Reuter (1983).
6. Before the IRS's intelligence unit had to compete with other agencies in its fight against the mafia, the IRS had been one of the pillars in the fight against organized crime, as dramatically depicted in American propaganda films from the 1940s. See Caporossi (2007).
7. Developed to explicate the social construction of the dirty money problem at the interface of finance and security, the idea of 'associational construction' could also be beneficial in other fields of research and other subjects of study in the social sciences.

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