

DTI CRIME FORESIGHT PANEL ESSAY, 2000

ORGANISED CRIME, THE ORGANISATION OF CRIME, AND THE ORGANISATION OF BUSINESS

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Introduction

1. There are two major components to this essay. One is the more structural and macro-economic question about how criminal behaviour is and will be organised, and what factors will influence -that organisation in the future; the second is the more micro-economic question of the extent to which business approaches and organisation will be mirrored in the criminal world. In approaching these issues, our position should be clear, since it makes this essay less neat and clear-cut than it would otherwise have been. Were we simply to describe the way in which Mafia-like groups operate and use the apparatus of modern technology, then our essay would be little different from the apocalyptic visions which litter the bookshelves of shops around the world because they sell so many copies. There is a paradoxical way in which it is more comfortable to believe that there are evil underground empires like SMERSH in the James Bond tales which, given the right explosives in the right place, can be smashed for ever (or until the next novel/film) than that what we speak of as 'organised crime' or, for preference, 'the organisation of crime' is a much more subtle, distributed form of network organisation. But our task is not to convey a paradoxical form of comfort by conforming to clear and popular 'The Godfather'-type imagery but to undertake some serious analysis, as much as can be accommodated in this short essay to a business and general audience.
2. Our argument is that although there have been and may continue to be Mafia-type criminal associations in some countries at some periods in history, the majority of crimes, even transnational crimes, have been and will continue to be organised in a more differentiated and subtle way by looser network structures which are harder to destroy. Within this broad framework, there are pockets of very major crime groups with transnational economic and criminal interests, which have hitherto eluded successful criminal justice interventions. However, given the illegality of what they do and the necessity for a certain level of secrecy (not least in senior management and control), dispersed crime networks in some respects represent the optimal mode for criminals of dealing with law enforcement and intelligence agencies. Criminal networks – like corporations - will use the latest technology, (when available and reasonably priced), and some will go to considerable lengths to obtain it. Whether or not they corrupt the authorities and/or have Blofeld-like retreats in some unknown location immune to observation from spy satellites or to the SAS, the most competent of them will use digital technology - including encrypted communications on the Internet - to share data, and will continue to use containers and other parts of the apparatus of modern transportation used by ordinary transnational business to move people and commodities to parts of the world where the suppliers and/or demanders want them to be. That is the nature of markets, and the fulfilment of these business functions is a necessary condition for products, legal or other, to be available. While similarities exist, the forms of business organisation optimal for the markets for *criminal* goods and services are crucially different from normal

business organisation because criminals require a certain level of secrecy, even if to sell illegal goods and services – drugs and vice – they need to be able to advertise their wares and expose them to willing buyers. Illegal things that one needs to ‘consume’ – some counterfeit products, drugs, live (as opposed to virtual) sex – present different criminal logistics from those one needs merely to see or download – counterfeit software, pornography, gambling in countries where this is all illegal - and from those products which are licit but evade tax – alcohol, gambling in countries where it is legal, and tobacco. The latter products in particular can be merged into legitimate businesses to conceal to some extent their tax-unpaid properties, a fact that applies also to some counterfeit products.

3. In accordance with the ‘routine activities’ model to which we broadly subscribe, the organisation of crime, and the long-term survival of such ‘organised crime’ groups as do exist, depends on what the authorities do about them. Since, in our view, the authorities have begun to do quite a lot about them in previously neglected areas by regulating offshore finance centre money-laundering capabilities, electronic surveillance (despite digital technology), and Sting operations, Mafia-type associations may not represent the most rational form of criminal organisation even in those places where they have operated in the past. Where freedom from enforcement cannot be guaranteed by corruption and/or traditional conceptions of sovereignty, size can be counter-productive, attracting serious enforcement interest. This enhancement of enforcement tools does not mean that we expect the supply of illegal goods and services to decrease – the generally falling price and ready availability of many forms of them is a good indicator that current enforcement strategies have major weaknesses – but that just as in many areas of ‘sunrise’ industries and their distribution and retail functions, flexible networks may represent the best prospects for survival. Criminal markets, being more covert, are unlikely to move as strongly towards a ‘winner takes all’ model as the legitimate business sector, where rapid technological change can generate the extremely rapid demise of long-established businesses with much higher cost bases and more sunk capital.
4. There is a temptation to insist that, since both legal and illegal businesses seek to make a profit, it is possible to use models and methods appropriate to legal business, to gain a better understanding of the illegal ones. More specifically it is argued by others that:
 - The underlying goals of both legitimate business and organised acquisitive crime are to maximise profits;
 - Criminal enterprise evolves in concert with legitimate to achieve this joint objective, something especially noticeable in ‘fencing’ goods obtained by crime and laundering the proceeds of crimes of all kinds;
 - The same objective factors (e.g. technological change, the rise of a knowledge-based “new” economy, globalisation etc.) that serve the legal marketplace facilitate the development of the illegal one; and
 - This propensity of organised crime to parallel the evolution of legitimate business makes it a particularly insidious threat to the integrity of the legal economy.
1. Are these propositions true? To give at least a preliminary answer to that question, this essay does the following:

- It subjects the concept of "organised crime" to critical scrutiny to see if it can really be assimilated with the concept of illegal business, a commonplace assumption that is rarely questioned by police, press or policy makers.
 - It considers the degree to which the very concept of illegal business may itself misunderstand and take for granted something that should be proven, namely that the main danger to the legal economy is from invasion by career criminals in search of illegal profit, rather than the result of the choice (only sometimes under pressure) to use illegal methods on the part of career businesspeople.
 - It examines the extent to which the very concept of the firm, the fundamental unit of analysis for legitimate business, is really appropriate to understanding the organisational basis of illegitimate behaviour.
 - It questions the notion that recent exogenous changes in the overall economic environment, including the geographic and technological context in which business operates, are necessarily criminogenic.
1. Then the paper concludes with a discussion of the implications of its argument for the future of crime control policy.

Preliminary Clarification

2. Before attempting any of those tasks, a preliminary clarification is necessary. It is often wrongly taken for granted that legitimate business and criminal enterprise share the search for profit as their primary and overriding objective.
3. Of course, business, whether legal or illegal, cannot long exist without generating a profit: that presumably is what differentiates business from activity motivated by charity or ideology. However, the notion that the goal of a legitimate corporation is simply to maximise profits is a serious over-simplification. Shareholder pressures and executive stock options may press companies towards continual step changes in *increasing* profitability, but the general aim in practice is not short-term profit maximisation but generating the stream of net revenues that will permit expansion over the long run.
4. It is true that the criminal firm may not have its motivations confused by the distinction between ownership and control typical of the legitimate firm; and its time horizon tends to be quite different, since it seldom contemplates lasting forever. Granted the career[ing] path of many dot.com firms leads to the question of whether they, too, intend to or plausibly can be expected to last forever; and in many legitimate firms the time horizons of management *personally* correspondingly may be low, in some cases restricted to flotation and a short period thereafter. Nonetheless, we know of no serious cases where criminal firms have been (knowingly) purchased by public offerings as a long-term venture; and the goodwill or discounted future income streams from drugs sales or extortion would be even harder to value than those from assets generated in cyberspace.
5. Criminals, like businesspeople, simply choose from options available to them. Some (a) think of more sophisticated options than others, and (b) have far more resources/internally generated financial and social capital than others. To take an easy contrast, if one starts from being a member of an international crime

network or closely integrated organisation, one plainly has a different set of easy options compared with a poor, uneducated friendless individual. When applied both to criminals and businesspeople, the term 'rational' - though perhaps a desirable aspect of that choice - is grossly unilluminating as a description of the reasoning process. The financial press is littered with stories of egotistical directors who undertake or refuse mergers because of spats over who would control the business, or who ride roughshod over governance rules to commit fraud or just to show that they can break the rules with impunity. Likewise, the death of former London gangster Reggie Kray in 2000 and the sentimentality that accompanied it glossed over the degree of violence used against subordinates and competitors alike – that degree of violence indicates a lack of discipline that is remarkably unbusinesslike and would normally be a sign of inadequate organisational control. The 'selfish gene' model of co-operation rather than elimination (at least in initial steps) might work equally well for both business and organised crime, though misplaced trust is more likely to be physically fatal in an organised crime group, so gangsters and indeed all professional criminals have to display a certain level of risk aversion. The gap between stakeholders and senior managers may be greater in large legitimate business than in organised crime. Stakeholders may find it easier to remove directors from the scene by ballot than gang leaders by bullet. But enormous inertia is built into the corporate transparency and governance process, whereas in illegal business, the absence of proper succession planning methods requires the threat or use of violence to create the possibility of change. In the absence of lawsuits to control management oppression or unfair competition, criminal firms may have to appeal to powerful Trusted Third Parties such as the local Mafia-type chief. There, too, cross-border mergers may be inhibited or destroyed by cultural incompatibilities of organisations or personality conflicts between chiefs.

6. In understanding how and why the organisation of crime for economic gain (whatever the other motives may be) takes the form that it does, it is helpful to break crime down into a process, consisting of:
 - i. Obtaining start-up capital
 - ii. Staff recruitment
 - iii. Operational planning and training
 - iv. Obtaining inventory and working capital
 - v. Translating inventory (of goods or services) into stored value by resale
 - vi. Saving (perhaps) the net revenues that are not dissipated on easy living
 - vii. Depending on vigilance systems in society, (perhaps) transforming the savings so that their origins are disguised, i.e. laundering in the proper sense of the term. This may involve cross-border financial movements, and use of offshore finance centres.
1. Many of these functions are common to both licit and illicit business, but the need for secrecy from both law enforcement and, sometimes, other predatory offenders who might steal the proceeds of crime for themselves creates special difficulties for illegal businesses. This problem varies depending on what the firm is seeking to do and how much money it needs and makes (including how

'lumpy' income and expenditure flows need to be in purchasing or selling large consignments of drugs, arms or other illicit commodities).

2. Legitimate businesses may lobby for special tax or other regulatory concessions and, subject to European Commission and World Trade Organisation rules, receive them. Sometimes their path is smoothed by legal and overt campaign or party donations, shading in some contemporary European scandals into allowing corporate accounts to be used for covert financing of deniable government policies overseas. The equivalent for organised crime (or, preferably, in our view, enterprise crime - since 'organised crime' is such a broad yet vague term) is bribery of law enforcement and, in some jurisdictions, politicians. In some states outside the contemporary EU, it is more accurate to describe the system not as democracy but as a criminal kleptocracy - as a (shifting) coalition between businesspeople, gangsters and politicians. In such a context, it might be a mistake to think of gangsters as corrupting the state authorities and private sector: rather, this is an embrace in which all are what economists call 'rent-seekers', maximising private benefit at the expense of public duty. More commonly, in advanced Western economies, the enterprise criminals merely bribe those law enforcement and other regulatory officials with whom they come into adversarial contact: there may be some areas - credit card fraud, insolvency fraud, and fraud against the financial interests of the EU, for example - where official surveillance and motivation to intervene are sufficiently low to make corruption unnecessary, though the more often one commits *any* crime, especially those forms of illicit services like drugs, prostitution, and trafficking in people where one needs to find purchasers among the general public, the more one is likely to need to neutralise enforcement at some stage.

Why Criminals Enter the Legal Economy

3. There is a general presumption that the ability of criminals to make investments in or take over elements of the legal economy poses a major threat. Legal markets are corrupted; the financial system is undermined; the fiscal integrity of the state is eroded; the judicial and law enforcement apparatus is compromised; prosperity is threatened; and, in an extreme case, national security is subverted. Some or all of these things might actually be true to various degrees in various places at various points in time. But in general they should be proven, not assumed from the outset. And, at least in the major industrialised countries of the West, logic combined with what few reliable facts can be gathered, does not seem to support the alarmist view.
4. It is only when money resulting from explicitly illegal acts attempts to enter the legitimate economy - whether as savings or as investment of some kind - that there can be any presumption that it will potentially behave differently than legally earned (even if tax-evaded) income and therefore potentially pose a threat. To determine the degree of that threat requires answering a series of questions.
 - First, just how much illegal earned income actually exists? Although the media frequently cites some figures, to date there is no answer that has any empirical credibility.
 - Second, even if a plausible figure for the amount of illegally earned income could be obtained, it would be unilluminating unless it is compared to the amount of legally earned income. If the illegal to legal ratio is falling, then no matter how

alarmingly large the illegal number appears to be, there is much less cause for concern.

- Third, even if the amount of illegal income is rising relative to legal, the extent to which it poses a danger requires attention to be paid to its distribution. Huge amounts in a few hands pose potentially a greater threat in terms of the usurpation of economic power by malefactors than does equally large amounts spread over many.
 - Fourth, illegal income is only a threat if it represents profit. Virtually all illegal entrepreneurs face costs – possibly high and rising ones, as the costs of corruption and laundering rise when serious efforts are made at control. The amount of their illegal income dissipated as costs obviously is not available to take over and distort legal markets (unless it takes the form of corruption of bankers that also leads to other forms of misconduct).
 - Fifth, even if significant profits exist, how much is actually saved? Most observations of criminals point to their prodigal behaviour – their surpluses are quickly blown on gambling, drugs, entertainment and high living. Except for those at the top who have disciplined lifestyles and/or whose income is so great that they have large forced savings, most offenders have little left that would enable them actually to enter the legitimate economy.
 - Sixth, even of the part saved, threat potential depends on how it is saved. Only the part that is laundered is freely available to enter the legal economy (though even if laundered with only modest skill, it can be used for some areas where cash purchases will suffice, from fancy cars and yachts to small and medium-sized businesses, especially those in trouble).
 - Seventh, it is necessary to ask just why the criminal decides to enter the legal economy, just what his/her investment objectives might be, before it can be determined whether or not some threat is posed to the integrity of legal markets. There are several levels of market anyway: influence and prestige can be obtained from investment in the sports arena, even if the investment is not otherwise very profitable financially. Company and police investigators may be consciously or unconsciously deterred from investigating at a low evidential threshold if they foresee that the sports director is well connected and can summon up some high level social and media support against 'investigative oppression'.
1. There are several reasons why criminals would wish to invest in the legal economy, with radically different consequences.
 - First, some criminals, especially ageing ones, want to provide for the future. Not only is their reason for investing in the legitimate sector benign, but so too their methods. They will choose to work through bona fide investment houses to make passive investments in the form of portfolios of high-quality securities that convey no control over the issuing enterprise. There may be a moral objection to the principle of the criminal so securing his/her profits, as a form of unjust enrichment. But there is not the slightest reason to suspect that in so doing the criminal will be controlling or corrupting legal markets.
 - Second, a criminal may also decide that, in anticipation of death, arrest or

retirement, he/she wants to be able to transfer wealth to members of his/her biological rather than criminological family. Successful mobsters may not wish their offspring to follow their career choices. Ensuring an inheritance would require, first, moving assets into the legal economy. Although investments may be slightly different than those chosen to provide for the entrepreneur's own retirement, the reasons, the methods and the consequences are all perfectly harmless for the operation of the legal economy *provided that this is genuine retirement/inheritance planning, rather than a disguised money laundering operation.*

- Third, the criminal entrepreneur might seek to reduce risk to his/her income stream by diversification into an active legitimate business. Legally derived income is much less vulnerable to disruption by criminal competition or regulatory pressure. Presumably the more insecure is the source of illegal income, the greater the strictly financial need for an independent source of legal income, and therefore the greater the incentive to create a legitimate alternative. But for this strategy to be truly effective, the business must be run in an impeccably clean manner - criminal methods would probably be avoided; and the business is unlikely to be used as a front for illegal operations or for laundering criminal money. (Though it still may not be safe from confiscation/forfeiture should the offender become a target.)
1. In all three of these cases, provided that the offender behaves in a disciplined way – which s/he may not be able to do by reason of habit and temperament - the integration of criminally earned assets into the legal economy does not threaten the integrity of legal markets. In all three cases, the acquired assets, financial or commercial, must be kept clean of association with their underworld origins. That poses a dilemma for crime control policy. If the objective is punishment of past acts committed by the criminal entrepreneur or to satisfy the public resentment against unjust enrichment, the logical policy is take away from the criminal all otherwise legitimate assets acquired through illegitimately earned income. These have represented the dominant tendencies of public policy to date, partly to reduce the potential of criminals to act like large corporations. However, if the objective is purely and narrowly to prevent recidivism, there is a case for leaving the criminal in possession of crime proceeds, to encourage a shift from illegal to legal activity (though it may not have that effect unless the offender wants to go straight). And if the objective is not to address this or that malefactor, but to attack the criminal marketplace as a whole, the correct policy might be to encourage the movement of criminal assets into the legal economy, to stop it being available for reinvestment in crime. These kinds of transfers represent a process of legitimisation, not merely of laundering. They simultaneously reduce the assets of the underworld economy, while raising those available to the legal one. However, the politics of such crime proceeds amnesties make the idea doubtless unattractive, and many people have a complex mix of sentencing principles which makes the logic expressed above too harsh to contemplate. We therefore consider it likely that criminal capital will remain in a poorly integrated, non-legitimated condition.
 2. On the other hand, some of the reasons criminals chose to shift their money to the legal parts of the economy are not so benign. A legitimate business might be used, for example, to support underworld operations. That, in turn, can take other and quite different forms.

- A fourth reason, the first of the three malign ones, is to provide laundry facilities. By running illegally earned income through the cover of a front company, the criminal entrepreneur gives that income an alibi. However, even though money laundering is treated in many criminal codes as an especially heinous offence, it is not a means of *earning* criminal profit (except by a professional launderer) but of redirecting profit after it has been earned. Once laundered, the money might be used to bribe a city councillor or hire a professional assassin. Or it might be used to make payments into the criminal's retirement account. Yet in actual crime control measures, no distinction is made.
 - A fifth, similar possibility is that a front business can provide the underworld entrepreneur with tax cover. Legitimate citizens take their total income, calculate taxes due, and then decide in what proportion to consume or save the remainder. Underworld entrepreneurs work in reverse - they estimate how much after-tax income they wish to have available to legally and visibly consume, save or invest, then calculate the level of pre-tax earnings of the front enterprise that would sustain the after-tax total. All criminals expecting to remain in business for any length of time must undertake some such exercise, however informal, unless they have exceptionally strong police or political connections or their incomes are so low that they have virtually no fiscal vulnerability. By itself this introduces no serious distortion into the operation of illegal markets. Indeed, at one level it is beneficial, since income that would otherwise remain untaxed becomes exposed to the grasp of the fiscal authorities.
 - Yet a sixth possibility is that a front operation directly supports underworld rackets. It might function as a place through which to sell stolen or smuggled, or from which to traffic drugs, sell child pornography or operate an illegal gambling enterprise. However, what is involved is not so much the corrupting of legal markets as the use of a veneer of legality to disguise continued illegality. Whether used for laundering, tax-cover or logistical support, the front company that appears to be part of the legal economy, operates in reality as part of the apparatus of enterprise crime. It can hardly be said to be 'corrupting' the legitimate economy, however important its role is in facilitating the smooth operations of enterprise crime. One would envisage that running a national chain of businesses with large cash operations, whether corner stores, massage parlours, or transportation facilities might serve as covers for large scale laundering from the proceeds of many crimes *quite independent of the main criminal enterprises*. In this context, there is considerable functional differentiation of 'added value' services, just as there is in the legitimate economy. (Though vertical integration in the production and distribution chain enables cross-subsidisation.)
1. Where the threshold is unambiguously crossed and criminal entry into the legitimate economy becomes unambiguously harmful is when the criminal decides to use investments in the legal economy not as cover for on-going enterprise crimes but as a direct source of criminal profit.
- Seventh, the first of the unequivocally malign reasons, the criminal might take into the legal economy, underworld techniques - a reputation for violence, a willingness to bribe regulators, the capacity to extort kickbacks and discounts from suppliers and the means to reduce through intimidation both labour costs and competition - in order to squeeze higher profits out of the legal business than

would be possible using strictly legitimate methods. Here (and only here) is it possible to say with absolute conviction that criminal assets corrupt a legal business. However, it also cannot be assumed *a priori* that criminals do more to undermine the integrity of legitimate markets than do legitimate business-people who decide to employ illegal means to achieve the same ends.

1. Therefore it is also important to understand why previously legitimate business people decide to turn to criminal means. It is important to ask whether, for example, a bar run by a career criminal sells more bootleg booze, skims more cash, fronts for more drug sales, hosts more prostitutes, bribes more municipal regulators and generally serves a lower quality of clientele than a bar run by a publicly respectable citizen. Indeed a previously legitimate entrepreneur facing a cost squeeze or the demands of a prodigal spouse or offspring might well be tempted over the line.
2. He/she could:
 - i. Make cash sales to cheat the excise and sales tax collector
 - ii. Skim cash to cheat the income tax collector
 - iii. Inflate costs to cheat creditors, partners or tax collectors
 - iv. Connive with others in the area to fix prices
 - v. Purchase and resell smuggled alcohol and cigarettes
 - vi. Accept cash from a career criminal to use the location for a racket
 - vii. Burn down another building owned by the entrepreneur for an insurance fraud
 - viii. Sell customer credit card numbers to a gang
 - ix. Hire bikers or other 'heavies' to break the legs of union organisers
 - x. Borrow from a loan shark and pay off by more skimmed cash
 - xi. Offer his transportation facilities to dump toxic waste more cheaply in unregulated areas
 - xii. Blackmail or simply induce financial services and secretarial level clients of his 'massage' and narcotics supply services into assisting in money-laundering and internal/collusive fraud.
1. Obviously the social harm comes from the act, not from the actor *per se*. Hence the artificiality of the distinction between a career criminal (who is often part-time) and the otherwise legitimate entrepreneur gone (temporarily?) bad. *When viewed as a collectivity or network*, greater harm may be caused by sets of people – whether sharing the same ethnicity and nationality or not – who are committed to antisocial values and who have a variety of skills to evade the law. But the concept of risk needs to be identified and refined, too, as must the circumstances of its application: we may need to shift our strategies from thinking about 'organised criminals' to thinking about the organisation of (different) crimes, which can take place in many different forms of organisational arrangement.

The Role of Globalisation and Technological Change

2. Among the exogenous changes in the general business environment that are most widely cited as dangerously criminogenic are the dramatic increase in international commercial and financial exchanges and the stunning speed of modern communications and transportation that go with them. It is taken as given that criminals are on top of these developments, exploiting the resulting weakness to commit more and worse crimes, then avoid detection, while secreting the spoils (and themselves when necessary) in far-away places.
3. "Globalisation" is, like "organised crime," more a slogan than an analytical category: it seems to be simply a modern term for a process that began at least as far back as the time of Marco Polo by which information about trade and financial opportunities spreads across national and/or regional frontiers, and goods and money shortly follow. Obviously modern communications and transportation technology have a major impact on economic exchanges (illegal as well as legal), and the rate of cross-border trade in physical and finance capital has grown rapidly. But the marginal effects *on crime for economic gain* of electronic communication and mass-based, cheap and rapid international transport of goods and people today may be no greater than the effects of the railway, steamship and telegraph in the first half of the 19th Century. For that matter, they probably pale compared to the impact of the advent of the automobile, the passenger plane, the telephone and the radio in the early decades of the 20th Century.
4. All the fuss made today about electronic funds transfers, for example, can be put into perspective with a simple comparison. On the one side, calculate the time required to send a bill of exchange or purse of silver coin by sailing ship across the Atlantic in the period up to the early 19th Century, and compare it to the time required to make a telegraphic transfer once the first trans-oceanic line was laid by mid 19th Century. Then calculate the relative time saving from the switch from telegraphic (electrical) funds transfer to electronic funds transfer in the latter half of the 20th Century. In the first case the difference was truly revolutionary; in the second it was relatively modest, though we may not see it as so, and though it has certainly transformed the ownership and organisation of the financial services business.
5. "Computer crime" certainly enables harms like viruses and unlawful access to formerly secret areas to take place, and to be disseminated very much more rapidly than by previous technology. Nevertheless, the purpose of this essay is not to discuss threats to national security by cyber-warfare, whether that is intentional or just playful, albeit with serious consequences. We will set aside these issues, except for the risk that crime groups (or individuals) may decide to threaten techno-Armageddon as a form of extortion. This would be a very risky thing for an established crime group to do, since it would bring the full resources of powerful states to bear on it as a core threat, thereby imperilling its other operations. However, techno-extortion is a genuine risk. This has allegedly already happened in the case of a mathematician who claimed to have broken the cryptography in the French PIN accompanying the *Carte Bleu* and threatened to publish details on the Internet: a sting operation was set up and he was arrested for fraud, though he claimed he was simply demonstrating his technique. However, in the area of crime for gain committed by organised groups rather than by a few project criminals coming together for a specific purpose, the effects of the Internet are much more limited and are in essence old forms of

crime committed by new means.

Electrical versus Electronic Crime?

6. Going back a century and a half, for example, the advent of the telegraph was particularly important – revolutionising politics and diplomacy, commerce and finance. It was the telegraph that permitted the creation of a genuine world market in which all traders had access to the same price information at almost the same time, therefore transcending the constraints of location. Shortly after the telegraph first came on stream, problems of its use for fraud followed quickly. Brokers used the fast access to data to trade on privileged and insider information; scam artists and commodity traders alike used it to rig markets. From the start, too, telegraph companies worried about hackers and about the security for telegraphic funds transfers in a manner little different in its essentials than the concerns about Internet commerce and finance today, except that modern commerce is more dependent on technology than was the case at any period prior to the 1990s.
7. So what has digitisation changed in the arena of organised crime and criminal organisation? Encrypted and anonymously purchased mobile phone communications between offenders make both them and their content difficult to trace, with consequences for smuggling of goods and people. Containerisation, the availability of non-governmental delivery services such as DHL and TNT, and the ability to track the movement of products on the Internet all enable the distancing of offenders from their illegal goods and services. On the fraud front, clearly devices like telephone and fax call-forwarding can be used to confuse potential targets in fraud operations, for example making them believe they are dealing with a banker in Cayman when in fact they are dealing with a bar in Lagos or a living room in Boca Raton, USA. All manner of techniques exist to disguise the origins of electronic messages, and to route them through devious channels. New electronic technologies, too, permit multiple iterations of certain acts that, in the past would have been extremely time consuming, perhaps impossible. Electronic technologies have certainly been important recently in counterfeiting, of cheques, credit cards, securities, and currency. They enable, for example, the skimming of magnetic stripe credit card details by retailers and their staff, which can be sent by e-mail to colleagues in China, Italy, Russia, Sri Lanka (and, theoretically, any other moderately skilled people anywhere in the globe), where they can encode the details onto counterfeit plastic and use the same cards in multiple sites simultaneously (provided that there are no checks in place to identify such physical impossibilities). In earlier times, the number and range of outlets would have been much smaller and it would have taken more time and rarer skills to produce counterfeits adequate for convincing retailers. Alternatively, though this *could* have been done by telephone or mail order, the Internet offers a method of ordering goods such as computers from far away, using other people's or artificial numbers, which goods can then be resold on the criminal and near-criminal markets. But though these are phenomena of the digital age and they have to be confronted in their own terms, they represent just the latest stage in an on-going struggle between issuers of financial instruments and would-be fraudsters that dates back to the onset of modern credit instruments.

Old Crime in New Bottles?

8. This is well illustrated by the history of currency counterfeiting. Since the advent of paper money as the principal medium of exchange in the West, counterfeiting has gone through three distinct stages, each dictated by the state of technology. Throughout most of the 19th Century, when individual banks printed their own currency-notes, counterfeiting was largely entrepreneurial in nature. A crime of opportunity, it attracted every species of artisan from professional printers to snake oil salesmen. The lithographic printing techniques were inexpensive and relatively easy to use (though obviously a more skilled printer produced a better product); security measures in general were simple to break; and distribution was no great problem. The batches of notes tended to be small and, in some cases, counterfeiting was so endemic, merchants actually preferred good counterfeits of notes of sound and well-known banks to real notes issued by small and relatively unknown banks – the fakes were easier to pass!
9. When governments took over and monopolised the business of printing paper money, the craft shifted. The very uniformity of national currencies was itself an impediment to opportunistic counterfeiting. The more familiar the populace was with the notes, the harder to pass fakes; and the better any successful fakes had to be. Governments also introduced more sophisticated security measures. And since counterfeiting now threatened the financial integrity of countries, rather than just of this or that financial institution, the effort put into detection was accordingly much enhanced.
10. The result was very high capital costs to counterfeiters. As a result, they required long print runs to cover those costs. Furthermore the skills required to mimic official notes were difficult to find. And techniques for passing large batches of newly minted paper had to be much more sophisticated, and usually much more long-distance in nature, to evade detection. Therefore, although some "organised crime" groups tended to avoid counterfeiting because of the amount of law enforcement attention it generated, success in counterfeiting usually required the efforts of groups with the capital and skills to make, and the connections to pass the product. That remained true until the 1980s.
11. With the generalisation of new digital technologies during the last two decades, counterfeiting has shifted again. Though the quality of the end product is highly variable, use of scanners, colour printers and colour copiers has meant that counterfeiting is once more a crime of opportunity and has fairly low criminal start-up costs, affecting the number of possible new entrants into the criminal market as well as reducing dependence on highly capitalised criminal organisations or dishonest businesspeople. Of course sophisticated groups still do get involved from time to time. As before, they use expensive equipment to simulate intaglio printing, and employ long-distance wholesale distribution networks to move large batches of bills away from the point of production. But more and more instances of counterfeiting are the work of amateurs who print small sums using easy-to-access technology, and directly distribute them into retail trade. Though so far not sufficient to threaten the integrity of national currencies, at least of the major countries, opportunistic counterfeiting is enough of a problem to force governments to engage in an ever-more expensive technological arms race against counterfeiters.
12. Still, far from creating a new crime, technology simply determines the method by which the basic crime is committed. In addition, in more recent years it has

democratised the art and science of currency counterfeiting, along with such things as cheque and plastic card fraud, without altering their fundamental nature.

13. Perhaps the one important difference between electrical and electronic communication is the growing possibility of disintermediation. This is particularly true with financial flow technology, the advent of e-money and e-purses which threatens to render irrelevant so much of the anti-money laundering apparatus currently being put in place across borders.
14. However, this, too, must be put in a historical perspective. Once money consisted solely of specie (gold and silver coin) issued by the sovereign power. Then came some official paper, similarly issued as a fiat currency. It was quickly swamped in the 19th Century by fiduciary paper issued by private institutions. As they evolved, checkable demand deposits replaced bank notes for most transactions, while control of the issue of fiat currency reverted to the state. Then came the credit and charge card, followed by the debit card. In short, the means of payment is constantly evolving. At each stage it is possible to point to dramatic differences, and at each stage the methods by which crimes could be committed had to adjust.
15. For example, one of the profound changes brought about by credit and charge cards, was precisely that it had to be guaranteed globally: that indeed was the its point, since otherwise people would have had to carry large amounts of cash or (forgeable and stealable) travellers' cheques. Obviously, this created enormous opportunities for teams of plastic fraudsters to copy cards or even just to use the numbers for Card Not Present transactions over telephone or Internet, as described earlier. The scale of the crime could therefore increase more rapidly, but counterfeiting only really took off when low-cost technology for manufacturing and embossing plastic became available, while Card Not Present fraud took off when the purchase of goods over the phone, fax or Internet became 'normalised'. Thus, on one level, there is a new crime – credit card fraud. On another level it can be seen as a sub-variant of an old one. A similar argument could be made in relation to Nigerian based advance fee fraud letters, millions of which are sent out annually. It is quicker and cheaper, if slightly less credible, to send these *en masse* by e-mail.

Predicting the Impact of Globalisation and Technology

16. This suggests that modern technology and its impact must be placed in the context of a longer-term trend. In addition, three other factors must be taken into account.
17. First, according to the evidence of myriad cases, the bulk of *existing* criminals are scarcely techno-wizards. Such individuals certainly exist, but they appear to be the exceptions. The great bulk of crimes are committed using old-fashioned techniques. Even with money laundering, the use of e-money for laundering appears currently to be more theoretical than real, while there is ample evidence that criminals still cart large amounts of currency notes across borders or hide them in large drums in their gardens.
18. Second, the very success of the state in using the new technologies for information exchange and surveillance has driven many amateurs out of the

market, forcing criminals to use those techniques to survive. In other words, criminal use of technology is partly a reaction to enforcement, not an innovation per se. Apart from 'early adopters' who like to experiment – whether in hacking for fun or acting for more directly material gain – even organised criminals tend not to use anything more technologically difficult than they need to in order to stay in business.

19. Third, and ironically, while the alarmist scenario speaks of technology increasing the opportunities for traditional crime groups to wreak havoc by moving into white-collar offences, the truth has been the opposite – the technological changes have tended, at least in some instances, to render larger organisations uncompetitive and unnecessary. We anticipate more boutique-style functional specialisation, with money-launderers and shippers acting for a variety of offence types and crime networks, instead of vertical integration within criminal organisations. (Nevertheless, some larger and more stable crime organisations will be created or continue, for example by means of some extortionate control: the 'winner takes all' characteristic of so many modern e-business disintermediation efforts which drive out the old-fashioned Leviathans in the legitimate economy, does not apply so readily in the more imperfect market of the criminal economy.)
20. None of the above is intended to suggest that the broader economic context in which crime occurs is no different today than, say, at the end of World War II. Clearly there are real differences. They are two-fold.
21. One is scale – more people, more goods and more income. This, though, is a long-term trend dating at least back to the early 19th Century. It is hard to see how it translates into a *qualitative* change in the current criminal threat. Certainly there is more economic crime today, but there is also much more legal economic activity, and there is no proof the first is growing faster than the second. Thus, while plastic card fraud losses undoubtedly accelerated at the end of the 1990s (as they had done at the end of the 1980s), the ratio of fraud to plastic card turnover remained roughly constant in the UK between 1992 and 2000, and indeed was a quarter of that at the beginning of the 1990s.
22. The second difference is complexity of economic interrelations – the fact that more and more economic activity takes place in a market-driven context. But this, too, is a long-term historical trend, and it is just as true inside countries as outside.
23. The real issue is not a (non-existent) borderless world or the (genuine) growing ease of international travel, but the ability to enforce law across borders – which is scarcely a new problem. What keeps Ronald Biggs safe from the UK authorities is hardly his ability to hide. Indeed his presence in Brazil is so open that he is now a feature on the tourist circuit – some visitors are willing to pay to have dinner and drinks with the last surviving Great Train Robber. Far from his resistance to arrest being proof of the ability of clever operators to stay aloof from justice in a modern borderless world, what protects him is a local law of the most old-fashioned sort, one that prohibits the extradition of fathers of Brazilian children. Indeed, the officially pre-globalised nineteenth and twentieth centuries are littered with runaway fraudsters and 'phantom capitalists', a term that was used in the nineteenth century.

24. In short, the ability to originate crime and execute it from an overseas jurisdiction, then to send funds to other and multiple jurisdictions, *is* important. Though they are diminishing due to geo-political pressures, the priorities of Offshore Finance Centre police forces and the barriers that may have to be gone through before information is obtained do create important obstructions to smooth law enforcement. (This is also true at a domestic level.) Funds may have disappeared untraceably before the multiple sites have given their permission to be told about account ownership and movement and, despite the best efforts of international organisations, there may continue to be 'pirate jurisdictions' (from the perspective of law enforcement) where such details are unknowable. Furthermore, the form taken by international and e-commerce creates many new opportunities and contexts to defraud, from the fake European Union Bank established in Antigua to fleece depositors (and tax evaders) from all over the world, to the e-mailing of rumours in order to shift the prices of stock one wishes to buy or sell, assisted by business information firms so keen to be the first to convey the information to market that they do not check whether the information is true or not. E-tailers – especially those selling morally discreditable services such as pornography – can load extra charges onto large numbers of customers and either escape uncensored (if they are disciplined enough and the charges are modest) or disappear when the card processor seeks to recover their payments from them.
25. However, increasingly this can be done not just by organised crime groups but also by well-organised individual criminals or small networks that need neither violence nor corruption to prosper. In this sense, many economic crimes can be committed in parallel organisational settings.

The Special Importance of E-Business

26. How will crime relate to changes in e-commerce? Charles Leadbeater notes that "an organisation that wants to generate more knowledge has to generate better failures than in the past". The otherwise valuable Foresight E-Commerce Task Force consultation paper undervalues security and does not discuss crime – whether organised or unorganised. It does note, however, that "risks are easier to take if the cost of failure is lowered. 'Serial entrepreneurs', who are able to develop their own companies and advise others are disproportionately valuable to the economy. A more tolerant attitude towards failure yields a more entrepreneurial culture." Planned bankruptcy fraudsters have long demonstrated that their serial failures are not quite so beneficial for society. Whether the tolerance of failure is an approach that illegal entrepreneurs will wish to take remains open at the present time, but we suspect that commodities with a low purchase cost – such as narcotics and trafficked people (the latter being no cost at all since they usually pay to be trafficked) – will continue to be sacrificed as a price of doing business, provided that the losses are construed as being genuine and not as 'skimming off the top'. The paper adds that "the use of electronic communications reinforces the need for personal contact, to initiate trust or to reinforce it. The development of business through electronic channels will increasingly need effective transport links between capitals and financial centres in Britain, Europe, and the United States, and between regional centres within the UK." Applying this to crime, crime entrepreneurs already have such links, and meetings may be necessary to begin or cement relationships, but their frequency and openness are regulated by the fear of surveillance by the new technology:

yet another respect in which crime has to adapt to a different set of constraints.

27. The E-commerce paper notes (p.11) that "the most valuable market asset a company can have is active, engaged, informed consumers who are ready to make themselves heard. They make businesses aware of their shortcomings and more able to improve their products, services, delivery, and overall performance. Consumers are more articulate when they can benchmark performance. We expect that the online culture will encourage the emergence of communities of consumers who will be able to command both market power and political influence." Similar considerations can be expected to apply to illegitimate commerce. Assisted by well encrypted communications, we expect to see a continuation of existing trends in drugs supplies, whereby internet and digital mobile phone technology broadens consumer choice, enabling people to order from a range of suppliers, creating market pressures for quality standards and fairly stable prices. Interdiction has not had and will not be expected to have a sufficiently large impact to affect dramatically drug availability or price. Debate will continue in the light of this over what to do about regulating these illegal goods and services in popular demand, if they remain illegal: likewise, there will continue to be tensions over how to deal with international variations in sales taxes of various types, in the light of the smuggling they give rise to.
28. As for trust, which (p.11) is "essential to success in the online world. Increasingly it will be underpinned not by governments but by commercial organisations... Trust will be exported in the online world as it has been in the offline world," this is an important but under-explored aspect of transnational crime, which has difficulties in accommodating trust as a generalised expectation, since a mistaken confidence can lead to a long jail sentence and asset confiscation. We know that internal distrust and violence as method of assuring loyalty and performance are characteristics of some crime groups, though the Mafia provided trust services as well as extortion for a trust-less society as Italy used to be. A principal aim of anti-crime policies is to create distrust within criminal groups, and of anti-laundering/crime proceeds confiscation policies to make it harder to develop trusting relationships between criminals and bankers. However, social capital (credit), bartering, and internal reinvestment of crime proceeds can partially compensate, provided that the risk of capital loss does not become 'unacceptably' high.
29. The E-commerce consultation paper expresses the view (p.25) that
- "Looking back from the future, there are 'bettable trends' which can be identified.
 - The internet will be everywhere—as an underlying enabling technology which is taken for granted
 - It will connect users to products and services through a multiplicity of devices which will fall rapidly in price as the cost of processing power and memory tumbles
 - Everything which can become digital will be; everything which can be produced digitally will be
 - The impact of the internet on existing physical distribution structures will be profound

- Trust, identity, and privacy will become critical issues, both for businesses and also for social policy.
 - By 2010, it is likely that voice and data calls across telephone networks, whether fixed or mobile, will cost more to bill than they will to provide.
 - Software will be all but free, the value in it being the value of supporting it."
1. The paper's vision of the business future approximates to where crime networks are already (including the free software, which tends to be globally counterfeited when not stolen). It states (p.25): "We expect that the mature market will be characterised by fluid business environments in which companies are more partnership-based and project-based. Agreements for getting things done will work on more flexible timescales than before—from days to years. Contracts and affiliations will be more informal: one's word may assume a new importance. As transaction costs fall, the value chain will fragment. As with Hollywood, and other creative industry models, there will be room for the one-off project deal, the longer-term financing agreement, the distribution partnership, the development deal, and so on. Business styles will diverge, and there will be multiple overlapping business relationships." As with legitimate business, so too with crime. However, there is nothing *a priori* to suggest that, *relative to the total volume of business done in e-form*, the explicitly criminal component will increase faster. The existence of criminal opportunity should never be confounded with the existence of criminality. Furthermore, even to the extent e-business expands the opportunity for crime, it also encourages disintermediation and downsizing, so there is nothing here that requires traditional "organized crime" to dominate the criminal activities. In short, we expect both organised and 'unorganised' criminals to play a role in modern techno-crime, and by definition, this could be regarded as 'new crime' and a 'new threat'. However, it is also proper to place these crime levels in context and review them as a ratio of the level of activity, as we did with plastic card fraud earlier.

Markets and crime

2. There really is not anything that can properly be called an illegal market, in the sense that a legal market exists, with free information flows across an ever expanding commercial space and a set of more or less objective prices against which transactions can be assessed. (Though drug prices may be available on the Internet, translating them into one's need *today* is not so easy.) Rather, given the nature of crime, what exists is a set of highly segregated sub-markets. The effects of enforcement on the organisation and level of crime vary depending on whether the crimes are predatory (like theft and fraud) or market-based (like drugs). To the extent that law enforcement also targets the fences of stolen goods, they will start discounting the risk by offering lower prices to the thieves or get out of the business before they got to jail or lose all their accumulated assets. Nonetheless, whether returns to the thieves per incident stay the same or fall – they will not rise as a result of enforcement - the net effect of successful law enforcement is that the number of offences, and possibly the number of perpetrators, will decrease; and so too will the *total* value of illegal property transfers.
3. However, with enterprise offences, the opposite is true. As enforcement becomes more effective, the number of participants might well rise rather than, as

conventional deterrence theory suggests, fall. The neophytes will be attracted by the extra profit to be gained. (Those offenders caught might well be deterred effectively or incapacitated well beyond the period when they would have stopped committing crime anyway: but this might not deter new entrants.) Criminal entrepreneurs respond to the threat from law enforcement by increasing the number of defensive layers of intermediation between themselves and their customers. In effect, to reduce risks, they are forced to reduce their *personal* profits, diffusing earnings among a large number of other firms and simultaneously reducing the danger of being caught with large accumulations of criminal capital. At the same time the physical quantities involved in each transaction should fall – more participants each handling smaller quantities. Yet prices should *rise* in response to greater risk. Since presumably the demand for criminal goods and services is somewhat "inelastic," the value of goods and services traded actually *increases* in the face of successful law enforcement. Since the profits are distributed across more participants, there is no way of determining *a priori* if the net income of each participant should rise or fall, but it is paradoxical that successful enforcement can *stimulate* the criminal market for goods, whether or not the market demand is met by 'organised crime'. In the case of tax arbitrage between countries, the smugglers of alcohol, tobacco and other legal but tax-differentiated products may continue to use whatever devices they can to hide the origins and destinations of goods, though producer corporations may be deterred if they find themselves being targeted as conspirators.

Legal and Illegal Firms Compared

4. While there is always danger in broad generalizations, still, as a first approximation, one could suggest the following distinction between firms/entrepreneurs operating in legal and illegal markets respectively.
 - If the predominant objective of the legal firm is profit maximization (subject to all the qualifications noted above), arguably the corresponding objective of the illegal one is risk minimization, subject to making sufficient funds to make crime worthwhile.
 - In keeping with those objectives, organizationally the legal firm will seek to minimize layers of intermediation separating the supplier from the ultimate customer. In that way profits formerly external to the firm can be internalised. Indeed, that is one of the more important, perhaps the most important, reasons why legal firms exist – the cost-reducing, profit-enhancing incentive to convert external market decisions into internal administrative ones. Internet advertising has clearly shown the profits to be made from B2P disintermediation of wholesalers and retailers in standardised areas such as computer supplies. On the other hand, the illegal firm will seek to raise if not to maximize those layers of intermediation, to assure as many levels of insulation as possible between the entrepreneur and the regulatory authorities who usually strike first at the client level, the point of greatest vulnerability. To the illegal entrepreneur, the optimum strategy is to reduce internal decisions and increase the number of arms-length commercial transactions between independent actors. This is so especially for the multi-activity crime entrepreneur who risks a great deal from exposure, especially if there is a tough reverse burden of proof forfeiture or tax regime in place. (Where otherwise legitimate businesses are involved in complex

arrangements to ensure that it is their commodities – arms or tobacco – rather than a competitor's that are bought in the grey/black market, they may simulate some of the techniques of the illegal firm.)

- Achieving those objectives also suggests a different strategy with respect to information. To service a legal market, a firm must maximize the flow of (certain kinds of) information to would-be clients. A firm servicing an illegal market must be extremely cautious about what kind of information to permit to circulate, and among whom it circulates. It may attract business away from competitors – it may, in a violent market-place, attract those very competitors. And it will always attract the regulators, at least as it expands, though those regulators might be neutralised by threat and/or corruption. One of the historic advantages of organised crime groups was their control over law enforcement and regulators, sometimes via their political heads. In the US in the 1920s and 1930s, 'the fix' was an independent who would sell his corrupt control over the police either on a regular fee or at a (higher) on-demand figure, usually post-arrest. This is a key feature inhibiting not just domestic enforcement but also international mutual legal assistance from criminal kleptocracies where oligarchs or powerful underworld figures determine the level of co-operation that will inhibit the successful prosecution of themselves or their collaborators. They do not need to be members of a tight criminal group: looser, network associates can take advantage of these power asymmetries and present in some respects fewer threats to the others.
- That in turn makes for another dramatic difference. Assuming that the ultimate objective of the illegal firm is the sale of a 'moderate amount' of a banned good or service (that is the sector where, logic suggests the greatest value-added in the criminal economy exists as well as where enforcement is likely to be weakest, being too low for organised crime task forces and too high for devolved local policing), it is unable to use the most basic tools available to a legal firm to attract and hold customers. Apart from restrictions on advertising, there are no product guarantees beyond simple trust earned between final sellers. While that seems to make at least for stability, even if it is a possible barrier to serious growth, nonetheless the rule of maximizing intermediation assures that the benefits go to the final seller who is usually someone other than the illegal entrepreneur. There is no brand loyalty in the illegal economy – loyalties are purely personal. In this respect, intriguingly, the illegal economy is closer in form and function to the legal retail economy of a century ago, when local merchants had direct and personal connections to customers, extended personal credit lines and themselves stood behind the products which were sold on their inherent merits, not on the basis of advertising illusion. Equally interesting, that was a form and function that economic "progress" and the requirements of economic growth and development swept away.
- To the extent that profit growth is contingent upon access to the financial wherewithal to produce and distribute a good or service, a legal firm has the advantage of access to the legal capital market. Indeed, the bigger the firm, the easier the terms of access – creating a positive feedback loop that, in the absence of other constraints, might lead to monopolization. On the other hand, the illegal firm has no such access to the legal capital market – it must rely at best on underground sources of financing that are inherently more limited and are available, if at all, on harsher terms. The only way round this is simply to

reinvest its internal profits (which has the advantage of eliminating and/or deferring laundering costs. Furthermore even if adequate financing is available, for the illegal firm size per se is a disadvantage – it increased visibility and attracts additional scrutiny from the regulators.

- The time horizons of the two types of firms are quite different, though they may be converging. Historically, a legal firm works on the premise that it has a long, perhaps indefinite time horizon, even if that of the particular sets of executives at some point in time, is shorter. On the other hand, most (though not all) illegal enterprise has a time horizon equal to that of the illegal entrepreneur. Short to begin with, it is always in danger of being abruptly terminated. This, of course, suggests a completely different attitude towards market exploitation – the search for a quick kill, so to speak, before regulators, competitors, cheated suppliers or angry customers close in. (Though like their legitimate counterparts, drugs suppliers are likely to absorb temporary rises in costs in the interests of offering stable prices to retain regular customers.) To the extent that e-business has altered the face of commerce, granting greater opportunities to challengers with less ‘sunk capital’, but creating much faster growth and decline rates, then it may be becoming closer to the de-layered model of most illicit B2B and B2P business criminals.
- The spatial horizon of the two types of firms is also quite different. Normally a legal firm has ambitions to expand, and has access to the communication technology and legal infrastructure necessary to ensure at least a modicum of control over considerable geographic distances. An illegal firm, except under extraordinary conditions, will react in the opposite way – its main concern is to keep control of its immediate turf, since expansion into alien territory holds so many obvious dangers. To some extent, smuggling operations may have to be transnational, but this can be achieved by network contracting as well as by horizontal integration.
- That also means there is for any legal firm a distinction between a firm and those who run it. That distinction between corporate and personal time horizons will temper decisions. On the other hand, with an illegal one, the firm and the entrepreneur are synonymous. That may in some degree facilitate decision making, but it also personalizes it. Passing on assets to criminological heirs is more difficult than doing so to licit heirs, and if the funds are demonstrated to be proceeds of crime at some stage, then it may be that the legal instruments – even trusts – can be set aside on public policy grounds.
- Costs for any firm are usually divided into fixed and variable. For a legal firm, fixed costs are largely capital cost, while labour costs are, for the most part, variable. But for an illegal firm, labour costs are more in the nature of payments for loyalty or silence, than payments for productive services rendered. They are therefore at least partially a component of fixed costs, reducing the capacity of the firm to respond to market fluctuations.
- For a legal firm, it is easy to define property rights and there is a well-known, objectively functioning disputes settlement mechanism that can ease relations with suppliers, competitors and customers. Cost for using that mechanism are usually incurred on a once-for-all basis, as well as being tax deductible. For an illegal firm, property rights are determined not by law but by tradition or force. To

the extent a disputes settlement mechanism exists, it is subjective, usually the domain of the more powerful criminal elements in the immediate area – the traditional Mafia role in the US and Italy and can easily lead to the loss of at least partial control, along with part of the flow of revenues.

- On the other hand, it would seem at first glance that the legal firm suffers a clear disadvantage compared to the illegal one to the extent part of the legal firm's net revenues are taken away in taxes. However firms, as opposed to individuals, should be seen, not as tax payers, but tax farmers – the net result of corporate taxes is often more to raise prices to consumers of the final product than to reduce corporate net revenues. Yet illegal firms might have to pay their own forms of taxes – tribute payments to a local crime boss, corruption payments to regulators and, certainly not least, the fees demanded by money launderers and legal advisors. And, if the firm is relatively small, there is less chance of recouping from the customers.
 - To be sure, the criminal entrepreneur might have other advantages in terms of an ability to use violence or its threat to enforce contracts, intimidate customers, cheat suppliers and scare off regulators. But the reality is that, except under circumstances of almost complete social breakdown, those actions are sharply constrained, and when they occur it is as much a sign of the weakness of the criminal entrepreneur as a mark of success. Ultimately most criminal entrepreneurs seem to rely on trust, and lack the ability to use a legitimate dispute settlement mechanism when trust fails to assure the contracts are met.
1. Problems are just as intractable when the analysis passes from the level of the firm to the level of the industry. The operating rule of the underworld is to reduce risk by downsizing, by increasing layers of intermediation and therefore simultaneously reduce direct control over the various stages in either the input-output chain of production or the distribution chain of final product. Simultaneously underground entrepreneurs do attempt to "organize" across firms, there is an obvious problem of enforcing conformity. True, otherwise legitimate firms engaged in illegal price fixing or similar practices also face such difficulties – perhaps even greater ones. A legitimate business organization, like an illegal one, cannot employ legal means to enforce illegal contracts, and the legitimate one is also more constrained in using illegal means to do the same. But the logic of legal firms organizing is to constantly increase the number represented in the association so as to raise their degree of monopoly. The logic of illegal firms organizing is to reduce the number of participants to simultaneously reduce the dangers of betrayal. As a result, most observed attempts by illegal firms to transcend their inherent size constraints and create industry-wide regulatory bodies fall apart quite quickly. Needless to add, this is a phenomenon accentuated by the fact that illegal entrepreneurs, unlike legal ones, are by disposition rule breakers (rather than merely rule benders).
 2. When illegal firms do attempt to organize on a market or sub market wide basis, they can follow a number of different "models." (The names we have used here are illustrative only: we are not suggesting that any of the people or firms have been engaged in criminal activities.)
 3. The first one, corresponding most closely to the police and public stereotype is what might be called the (Russian) Gosplan/Gazprom Model, premised on the principle of absolute monopoly. At the top is an individual or set of individuals

with absolute power to set the terms on which participants interact. Orders go down to the lower ranks to carry out specific economic functions. Earnings flow from bottom up to top, and payment for services determined by those at the top flow back down again. The firm and the industry precisely coincide. Price setting power is absolute, along with complete control by those at the top of the hierarchy over the distribution of the earnings. It is reasonable to say that nowhere in the criminal marketplace can anything even approximating this popular stereotype actually be found.

4. A somewhat more moderate version is the Rockefeller Model, premised on the principle of the trust. A group of previously autonomous firms agree to subordinate their decisions to a central body representing some or all of them. That board of trustees allocates market shares which the individual firms then attempt to service, and receives all profits, which it redistributes back down to individual firms in proportions corresponding to their centrally determined market share. Such a model might approximate the actual operation of criminal firms - but no one has yet found an instance where it fits.
5. A third, even more decentralized pattern might be termed the Offshore Finance Centre Model. Here each firm/country is autonomous, each makes its own production and distribution decisions, and each controls completely the flows of funds resulting from its decisions. But all firms present a common front in confronting threats, principally from the regulatory agencies, and all engage in lobbying to alter the regulatory environment, sometimes with political funding being offered or withheld. In the case of illicit enterprise, it takes the form of bribery and/or coercion. This model seems a little more likely to have real-life counterparts, though the political success in global anti-laundering efforts appears to have led to considerable market differentiation, which in turn has made it harder for the enterprise criminals.
6. A fourth possibility is what might be called the Rotary Club Model. Here, rather than any overriding conspiracy, what is involved is a collection of independent but like-minded souls, who band together for mutual support, who may engage in business deals together but generally in small partnerships and purely on an ad hoc basis. This model seems to come closer to the reality of the criminal marketplace for most types of crime and criminal groupings.
7. Curiously enough, none of the above captures the essence of an "organized crime" group, as typified by the Italian-American "mafia family" on which the stereotype was based. For the reality was the "family" was not a business organization at all, but rather a form of underground government. Business (and the public) needs government, and where it does not exist, it will be invented especially where, as in Sicily and Southern Italy, absentee landlords failed to supply the local public with adequate governance services. Since illegal enterprises cannot use normal channels of regulation and dispute resolution, they often create their own. Thus the "family" serves to arbitrate disputes, divide up property rights, regulate the use of corruption and violence, and provide social security for dependents of members killed or imprisoned. But it is in no way a business association, and has no role in dividing up the market or allocating profit. In short, the notion of hierarchical, illegal business organizations transcending the constraints of the criminal marketplace to control the provision of illegal goods and services and extort monopoly profits from its customer-

victims is largely Hollywood fiction and, where it does exist, may not account for a large percentage of the criminal market.

8. In short, there are three fundamental mistakes in the stereotypical view. The criminal "firm" is not identical to the criminal industry; an association of criminals is not the same as a criminal association; and a military-political hierarchy is not the same as a business organization.
9. It is dubious whether the concept of the firm or the enterprise should be used at all with respect to illegal markets where typically decisions are largely personalized, information flows constricted, objective price data lacking, and both the horizon and the very existence of the enterprise are coterminous with those of the entrepreneur. This, we believe, will be the shape of the future as well as the present, and though the dramatic changes in technology may offer opportunities for both criminal and legal entrepreneurs to run their operations at a distance, the supply of illegal goods and services makes it harder to disintermediate existing middlemen than is the case in the legal world, for the essential problem for such suppliers is the risk of interception and disruption of business supply, and if they advertise openly their services, despite digital technology and encryption-generated privacy, mass supply from producer to final consumer is hard to organise over a long term. If they are over-ambitious and seek to expand into new markets too quickly, they may find it counter-productive and for them, 'Just in Time' may become the far less rewarding and efficient 'Just Serving "Time"'.

Conclusion

10. At the outset four common beliefs were highlighted, namely that:

- The underlying goals of both legitimate business and organised acquisitive crime are to maximise profits;
 - Criminal enterprise evolves in concert with legitimate to achieve this joint objective, something especially noticeable in 'fencing' goods obtained by crime and laundering the proceeds of crimes of all kinds;
 - The same objective factors (e.g. technological change, the rise of a knowledge-based "new" economy, globalisation etc.) that serve the legal marketplace facilitate the development of the illegal one; and
 - This propensity of organised crime to parallel the evolution of legitimate business makes it a particularly insidious threat to the integrity of the legal economy.
1. While not in any way discounting the threat profit-driven crime poses and will likely continue to pose to society, the analysis presented in this paper suggests, at a minimum, that these concerns should be nuanced.
 2. First, the analogy between legal and illegal business, while occasionally permitting some useful insights, very quickly becomes quite forced. Simple profit maximizing as a goal really explains little for either legal or illegal business, and with illegal it must be modified with all manner of additional objectives, not least important of which is simply surviving the scrutiny of the criminal justice system. Criminal "firms" share few if any of the features of legal ones, and behavioural predictions based on models of legal firms therefore are of little use in predicting

what illegal ones will do.

3. Second, the notion that criminal entrepreneurs evolve in line with legal ones, and exploit the same structural trends and market opportunities, is either a tautology or an exaggeration. It is a tautology in the sense that whatever trends occur in the economy, there will always be someone prepared to bend or break the rules to get an extra advantage from those changes. However, the notion that *traditional* "organized crime" groups are in a position to do so is an exaggeration. The evidence is that they are far from dominant in terms of modern crime trends in the UK, and their historical importance is in decline even in the marginal industries in which they used to be prominent. True, the Italian-American and Russian organised crime groups and networks allegedly have been involved in major securities frauds in North America, but overall, they are minority players compared with 'unconnected' white-collar criminals. This does NOT mean that crime is decreasing. It simply suggests that the propensity to blame it on old crime groups instead of seeing it as an opportunistic phenomenon in which all manner of entrepreneurs with or without previous criminal association or record can get involved is misleading both in terms of analysis and policy formulation. We expect that people without prior criminal records will play an increasing role, not just as 'front men' but also as principals in crime.
4. Third, technology and globalisation are indeed matters of concern, but – like youthful unruliness - the concern is not as new as is believed. While technology creates new forms in which old crimes are committed, it also can make detection and prevention more difficult – provided those involved in detection and prevention continue to use old technologies! The struggle for comparative advantage between law enforcement agencies and crime entrepreneurs has been a constant refrain since the era of the safecracker. As to globalisation, the notion of criminals running and hiding is hardly new. Indeed, absent very high-level corruption, arguably the opportunities to do so are diminishing, not growing, even if the global availability of human comforts has raised the number of possible retreats.
5. Fourth, crime is always a threat to legitimate business. But the criminalisation of legitimate business by insiders may be as great a threat as the corruption of legitimate business by the infiltration of career criminals, and not only in the former Soviet Union. To be sure, career criminals will always want to infiltrate, and they have plenty of resources, including not just money but also blackmail potential arising from their involvement as suppliers (and City financier involvement as consumers) in the drugs and pornography trades. If anything, the anti-laundering efforts may make them strive harder than before to hide their identities and their money in the legitimate economy. If the criminalisation of legitimate business by insiders is also growing, that suggests something much more profound is amiss than can be addressed by the traditional criminal justice system alone.
6. These issues are more complex than those normally addressed by situational crime prevention, but although we do not expect all readers to agree with our analysis, we hope that we have provided some controversial and at times counter-intuitive thoughts to stimulate thinking about policy and practice in containing some aspects of crime and criminality in the future.

Endnotes