Transnational and Cross-Border Criminal Law: Canadian Perspectives

Edited By Robert J Currie
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Reviewed by Gerry Ferguson[1]

Professor Robert J. Currie KC's book is a very welcome addition to Canadian legal literature. I say this for several reasons. First, the book is focused on the nature, scope and consequences of a number of rapidly growing, extremely serious and insidious crimes with tentacles stretching around the world. The transnational or cross-border nature of these crimes also render them less transparent and accordingly harder to suppress. Secondly, transnational and trans-border crimes collectively, compared to their domestic siblings, cause an unimagined amount of economic harm. Most experts now agree that it is impossible to make a reasonably precise estimate of the cost of transnational crimes. The best we can do is simply say that the economic harm is huge.[2] And harm calculated only on the basis of economic loss is just the beginning. These transnational crimes also have enormous costs to human life, dignity, and medical well being, to poverty and starvation, to education, to the health of our planet, and to the political stability of nations—whether by financing terrorism, propping up autocratic states or inciting sedition. Third, this book is very welcome because it brings a badly needed analysis of the Canadian context and approaches to transnational crime and the state of Canadian law and institutions that are designed to suppress it.

Considering the broad scope and immense harm caused by transnational crimes, Canadian legal literature is surprisingly skimpy on the subject—the legal cupboard is not entirely bare, but it is, with a few exceptions, nearly so! In light of the gaping hole in Canadian transnational criminal law, it is well worth applauding a book which has 22 discrete chapters, authored by leading academics and expert practitioners in the field, which chapters authoritatively analyze a plethora of topics at the centre and forefront of the field of transnational criminal law. Accordingly,

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1 Distinguished Professor Emeritus Gerry Ferguson, Faculty of Law, University of Victoria.

2 Gerry Ferguson, *Global Corruption: Its Regulation under International Conventions, US, UK, and Canadian Law and Practice*, 4th ed (Vancouver: University of Victoria, 2022) at 78–79. Professor Ferguson would like to thank Sienna Wishewan for her very helpful editing and other contributions to the preparation of this book review.

this book will not only be of great inspiration and assistance to current practitioners of transnational law, but also provides valuable guidance to the next wave of transnational academic spelunceans mapping some of the unexplored caves of transnational criminal law.

As already noted, Professor Currie's book is an edited collection of essays bound together by the title "Transnational and Cross-Border Criminal Law: Canadian Perspectives". It is not a textbook. Textbooks are often the work of one or two scholars examining their self-defined topic in search and explication of an organized, rational, intersecting set of principles and rules which unify the topic. Textbooks have their distinct value in this respect. Indeed, Professor Currie has already written a textbook in this field.[3] On the other hand, collections of essays imbued with one or more common connections like Professor Currie's edited book, are also uniquely valuable—they tend to show a multitude of insights and different perspectives on the general topic in a way which a textbook simply does not. In his edited collection of essays, Professor Currie has assembled a first class group of experts in the latter sense. Interestingly Professor Currie allowed his expert contributors to pick the topic of their choice—the only criteria being that their topic be in relation to a criminal aspect of a transnational or cross-border topic and that the authors include a Canadian perspective to their topic. Professor Currie subsequently shaped the contours of his book in a loose structure by separating the 22 chapters into six thematic sections which he readily acknowledges are overlapping, not airtight.

In a book of nearly 600 pages, I can not give a complete synopsis and/or commentary on each chapter. Instead, I will point to most of the topics covered in the book and to aspects of those topics which were of special interest to me and which are worthy of continuing scholarly inquiry. Section I of the book is appropriately entitled "Broad Scope of Transnational and Cross-Border Criminal Law in Canada". Chapter one ("Introduction: Locating Transnational and Cross-Border Criminal Law"), authored by Professor Currie, provides a succinct exposition of the breadth and rampant growth in the past three decades of the field of transnational and international criminal law. This growth has not been accompanied by a similar growth in the academic and judicial literature on transnational criminal law. This paucity is especially apparent in the Canadian transnational criminal law literature. In Chapter one Professor Currie also turns to the debate, of which he himself has been a participant in the past 20 years, in respect to the question of whether the topic under study in this book should be called international criminal law and policy,

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[3] Robert J. Currie & Joseph Rikhof, *International & Transnational Criminal Law*, 3rd ed (Toronto: Irwin Law Inc., 2020).

transnational criminal law or cross-border criminal law depending on the specific subject that is under study. Professor Currie's intent is to remind readers of the importance of this question, but he does not try to resolve this debate conclusively in this chapter, nor in this book.

In Chapter two ("The Internationalization of Canadian Criminal Justice Policy"), Donald K. Piragoff, KC provides a detailed view of the depth of the field, particularly in respect to Canadian transnational law. That expansive view is laid out thoroughly, succinctly and with the vision of an expert having worked in the field at the Department of Justice for 40 years or more. He delivers a tour de force on the manner in which the federal government (largely Justice and Foreign Affairs) has fashioned domestic criminal law and transnational criminal law into a criminal law that meets and, in some cases, exceeds the current demands of national and international criminal law.

The next three chapters in Currie's book form the content of Section II entitled "Implementation and Influence". Those chapters demonstrate different degrees to which transnational criminal law and methods have been used to influence and implement domestic law on the same topic. Differences between transnational and national criminal law still arise because there is wisely no strict cookie-cutter approach or pattern to the adoption. In Chapter three ("Courting Transnational Criminal Law in Canada"), Professor Gillian MacNeil clearly demonstrates instances where the Supreme Court of Canada's analysis is inconsistent due to its varied interpretation of transnational conventions and principles. She concludes her chapter by stating:

> The Supreme Court has, as a matter of formal law, given clear direction as to the use Canadian courts must make of international treaties which underlie Canadian legislation. The practice of the courts, and the Supreme Court itself, has been inconsistent … I have suggested three reasons… the level of discretion that the suppression conventions leave to states. This combines with a Canadian interpretive approach requiring courts to give effect to the language chosen by the legislator. Together, these may help explain the lack of consistent engagement with relevant TLC conventions. These factors enable the accidental, or deliberate, minimalization of relevant international law. The inconsistency is, as I have argued, neither inevitable nor desirable. We have the tools to enable more consistent engagement, we need only put them to use.[4]

There are of course a large number of factors that play a role in the extent to which domestic criminal law is, and is not, closely shaped by

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[4] Robert J. Currie et al, *Transnational and Cross-Border Criminal Law: Canadian Perspectives*, (Toronto: Irwin Law Inc., 2023) at 91.

transnational criminal law. Piragoff's Chapter two is very helpful in that respect. In addition to the specific language chosen in international instruments, and the principles of interpretations applied (including recognition of Canada's federal-provincial nature), the transnational character of much of Canada's criminal law is effected by factors such as (1) the extent of Canada's participation at international transnational criminal justice fora (e.g. UNOCD, OECD, FATFA, etc.); (2) domestic priorities on Canada's domestic criminal justice policies (e.g. protection of women and children from sexual violence and abuse) may be given higher priority domestically than can be achieved in the negotiated conventions; (3) particularly overwhelming acts of terror (e.g. 7/11), or war crimes of an unspeakable nature; (4) the extent of compulsory or mandatory treaty provisions; (5) limits and requirements on the investigation and the prosecution of international crimes; and (6) comity and international mutual co-operation, and many other factors.

In Chapter four ("The Influence of Transnational Criminal Law on Refugee Law"), Dr. Joseph Rikhof continues the theme of examining the influence of transnational law on domestic law. His topic is refugee law and policy which occupies much international and domestic debate due to an almost continuous stream of world crises of war, famine, genocide, hatred and more. In this sense, many scholars argue that international humanitarian law plays an equal or greater part in transnational refugee law than transnational criminal law does. Notwithstanding these human rights characteristics and factors related to refugee law, Rikhof nonetheless, as requested, focuses on the intersection of transnational criminal law and criminal aspects of Canadian refugee law including of course exclusion law. Having done so, Rikhof ends his chapter with the following interesting conclusion and prediction:

> Interestingly, exclusion ground 1F(c), which was traditionally seen as the most restrictive of the three exclusion grounds, offers the most opportunity for TCL to play a role, both in the types of crimes that could fall within its parameters, and for extended liability via the term "guilty." Regarding the latter, it is already clear that inchoate offences are part of 1F(c), due to the influence of TCL treaties in terrorism, and this could be further developed for other TCL crimes …[5]

In Chapter five ("Formalism and Substance in the Domestic Implementation of Transnational Criminal Law in Canada's Anti-terrorism Criminal Regimes"), Professor Michael Nesbitt uses Canada's law on terrorism as an illustration of the manner in which transnational terrorism law and policy was used in developing Canada's law and policy. Before the events of 9/11, Canada had no distinct offence called terrorism.

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5 *Ibid* at 114.

That does not of course mean that violent acts done for a terrorist purpose were not punished in Canada, but rather that they were punished as the distinct offence committed such as murder, sexual assault, kidnapping, etc. However after the events of 9/11, the Western world responded rapidly to terrorism. Canada enacted the *Anti-Terrorism Act* ("*ATA*"). The *ATA* was enacted in Parliament and was made Part II.1 of the *Criminal Code.* The *ATA* was followed soon after by three Regulations which listed terrorist organizations. A listed terrorist organization committed an *ATA* offence if they financed, assisted or aided a terrorist activity or purpose. Professor Nesbitt insightfully analyzes the process by which Canada worked through international anti-terrorism offences and the three Regulations in producing Canada's anti-terrorism criminal law regime. He also identifies difficulties that have arisen due to adopting some of the transnational elements, especially when compared with parts of Canada's anti-terrorism law that emanated from a more home-grown source. In Nesbitt's opinion:

> Overall, … Canada is better served by focussing on the spirit of its TLC obligations in creating a substantively robust domestic regime, rather than focusing on the specifics of an international legal regime and a direct line to a Canadian replica, as it did with the *Terrorism Regulations*. In still other cases, including in the example of terrorist financing, perhaps Canada would be well served simply by demonstrating the same commitment to enforcement as it did to ensuring that said offences were formally on the books.[6]

Section III of the book is entitled "The Problems of Jurisdiction". For those familiar with the field of international law, the use of the plural phrase "problems" of jurisdiction is no surprise. It was no accident that Professors Sharon Williams' and Jean Castel in their ground breaking 1981 book entitled "*Canadian Criminal Law: International and Transnational Aspects*" devoted one-third of their book to defining, discussing and exploring the meaning of jurisdiction and its related corollary principles of territoriality, sovereignty, nationality and protectivity. Likewise it is no surprise that Currie's book has four chapters dealing with jurisdictional problems. As Currie says, "jurisdiction, in its international law sense, is the heart, or perhaps the engine, of transnational and cross-border criminal law, and the issues are both interesting and immediate."[7] Hopefully, the titles of these four essays will be sufficient to wet your appetite to further investigate just how interesting and relevant they are. The four essays are Dr. Christopher Ram's Chapter six entitled "Making Sense of Exterritoriality Jurisprudence: Heuristic Pro-forum Biases and the Need for an Algorithmic Approach". The next chapter is also authored by Ram and is entitled "An Agenda for Jurisdictional Law Reform". Professor

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6 *Ibid* at 140.

7 *Ibid* at 17.

Leah West has authored Chapter eight entitled "Canadian ISIS Fighters and Supporters and the Irony of the Khadr Exception", and Robin Parker has authored Chapter nine entitled "What Side Do You Come From? Borders in *R v Desautel*".

Four of the five essays in the next section of Currie's book are directly or indirectly related to the laundering of the illegal proceeds of financial crimes. Anti-money laundering laws and programs are in general designed to prevent or lessen the amount of illegal crime proceeds that are successfully laundered and re-integrated into the economy as lawful. The theory of course is that robust, effective anti-money laundering schemes will significantly prevent crime. In short, the aim is to take the profit—or as much of the profit as possible—out of the predicate crimes that produce the money to be laundered, and thereby eliminate or lessen the criminals' motive to commit predicate offences if the profit from those crimes can be seized as it is being laundered. It is quite unfortunate that most of the chapters in Currie's book do not include any analysis of the key findings and recommendations in Justice Cullen's final Report of the Commission of Inquiry into Money Laundering in British Columbia. Most of the book chapters were submitted before or soon after the Cullen Report was released on June 15, 2022, and were not subsequently updated, with Chapter 11 being the one significant exception.

In Chapter ten of this section, Dr. Peter M. German KC deals with one of the primary techniques for preventing money laundering. His chapter is entitled "Gatekeepers—The Lawyer Enigma". It may be a surprise to many that lawyers can and do participate in money laundering, sometimes unwittingly and sometimes wittingly. German explains how this happens in respect to lawyers. To do so, German provides a brief primer on what money laundering is and how it can occur. The key aspect in this context is what are known as gatekeepers—persons or organizations that control entry and exit of money into and out of the national and international global financial system. This includes a long list of financial agencies and various business facilitators depending on the type of business transaction. When lawyers facilitate financial transactions (e.g., purchase of a house or a business) for clients, they act as a gatekeeper of the finances flowing through the lawyer's office. The primary international action to control gatekeepers from intentionally allowing suspicious funds into the financial system has been to set up a regulatory system for monitoring their financial transactions. Globally this has been developed through the Financial Action Task Force ("FATF") which has established 40 Recommendations in that respect. Lawyers are required under FATF to report financial activities that exceed a specified sum of money (in Canada, $10,000 or are otherwise suspicious funds). Canada created a financial reporting system based largely on the FATF 40 Recommendations. Under

the Canadian reporting system, lawyers like other financial gatekeepers were initially required to report to Canada's financial agency called FINTRAC. However, many readers may be surprised to learn that soon thereafter Canadian lawyers were exempted by the Supreme Court of Canada from the Canadian law requiring lawyers to report to FINTRAC on financial transactions conducted for their clients. The Supreme Court justified the exemption for lawyers on the deeply rooted principle of lawyer confidentiality and other principles in regard to conversations and transactions between a lawyer and their client.[8] Despite both national and global criticism of the exemption for Canadian lawyers, that exemption is still in effect[9], notwithstanding the government's promises to do something about it.

In Chapter 11 ("Tackling Money Laundering in Canada Through Beneficial Ownership Transparency"), James Cohen tackles another current challenge in efforts to terminate or lessen money laundering. As the title indicates, beneficial ownership transparency is advocated by many as another promising tool to trace investment of illegal proceeds of crime. The goal is to seize, prosecute and forfeit laundered proceeds. Cohen addresses the question of what is meant by beneficial ownership, why it must be transparent and what constitutes an effective transparent system. Again, it may surprise many readers that our legal system—through its corporate laws—in effect provides money launderers with "a get away car" or a "secret hiding place". In other words, our corporate laws allow for the creation of private, anonymous, shell companies. These shell companies can conduct financial transactions with illicit money without revealing the name of the beneficial (actual) owners whose names remain anonymous. In tracing stolen or otherwise illegally obtained assets, the trail will hit a dead end at the lawyer's door to the anonymous, private company. To prevent this, there have been numerous recommendations, including FATF Recommendations 24 and 25, for an open, public, accessible registry of the beneficial owners of assets held by a private anonymous company. Cohen does a good job of reviewing the transnational roots (e.g., FAFT) of the call for a public registry of beneficial ownership and the Canadian efforts to include a transparent beneficial ownership registry in Canada, federally and provincially. Cohen sets out the type of registry system that is required to be successful, namely one that is publicly accessible, not limited to law enforcement agencies, and substantively fulsome. However in my opinion, Cohen is overly optimistic that effective transparency registries in Canada will soon be in effective operation. On the other hand, I may be unduly pessimistic in suggesting that effective transparency registries are not close at hand (especially in several provinces) and those that do

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8 *Ibid* at 230–234, 240–245.

9 Ferguson, *supra* note 2.

arrive will be absent components that are essential to making transparent beneficial ownership registries an effective law enforcement tool.

I found the next essay by Professor Sanaa Ahmed in Chapter 12 ("Harmonious Coexistence: Law and Laundering in Canada") to be detailed and fascinating. She effectively expresses the thesis that "Canada's laws actively encourage certain forms of laundering, despite Ottawa's avowedly anti-laundering stance."[10] Having experienced the failure of far too many "apparently good" law reforms over the past 50 years, it is hard for me to resist the thought that there is a largely unforeseen and unacknowledged subterfuge at work in the political implementation of these reforms. In any event, Ahmed starts her essay on money laundering by providing a very good current overview of just how frequent, how diverse, how powerful, how wealthy, how politically connected and sophisticated the major money launders are. She then describes the transnational regulatory framework (e.g. FATF, etc.) which has been developed over the past 20 years and notes two or three fundamental flaws in its framework and operation. Ahmed then turns to the Anti-Money Laundering framework in Canada and ably points out that on paper it looks like (and other countries believe that) Canada has a strong, independent regime based on best models. But based on the amount of money laundering occurring in Canada, Ahmed suggests there are strong reasons to believe Canada's system of countering money laundering is not strong; indeed it is quite weak.[11] Ahmed points to five important flaws and gaps in the system. Ahmed then concludes her essay with these words:

> In the popular imagination, money laundering is often classified as a crime of opportunity where criminals exploit "loopholes" in regulations and laws. As the above shows, these "loopholes" are not accidental or inadvertent mistakes; they reflect the deliberated yet unarticulated policy of the state on money laundering. As with other vibrant onshore havens (including the United States and the United Kingdom), Canada relies on a strategic mix of active and torpid public policy to facilitate laundering while making appropriate noises about cracking down on launderers. Current Canadian immigration and taxation policies thus continue to encourage the influx of illicit funds even as Ottawa signs up for tighter global regulation and various provincial governments commission reports and surveys to check laundering. As I have argued elsewhere in more detail, the laundering industry does not flourish because laundering regulation is weak; regulation is weak *because* the industry is strong. The political and economic benefits accruing from laundering obviate state desire to extinguish the phenomenon. And so,

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10 Currie et al, *supra* note 4 at 283.

11 See "Implementing the OECD Anti-Bribery Convention in Canada: Phase 4 report" (19 October 2023), online (pdf): <https://tinyurl.com/mf4daxk2> [perma.cc/VR4H-NWL7].

> while laundering regulation is ostensibly strengthened in line with global trends, its efficacy is undercut by, first, what the state chooses to see as laundering, and second, by the network of other laws and regulations within the jurisdiction. For the Canadians hoping otherwise, the bad news is that snow washing is as Canadian as Beaver Tails and poutine, and as likely to persist.[12]

Chapter 13 ("Transnational Crime, Tainted Property, and Civil Forfeiture") by Professor Michelle Gallant does not deal in particular with money laundering (although the tainted property she addresses may have been laundered) but rather a different approach to suppressing crime and its illicit proceeds. Civil forfeiture is a legal procedure designed to forfeit property to the Crown if that property has been purchased or acquired by the unlawful proceeds of crime. In Canada that procedure is referred to as civil forfeiture and falls within provincial rather than federal powers. While the use of civil forfeiture has slowly increased in volume in Western countries as a transnational crime tool, it still represents a relatively small portion of enforcement efforts compared to other criminal enforcement techniques. Gallant traces the historic development and current usage of civil forfeiture in civil law, transnational law and criminal law systems. She also points to the manner in which civil forfeiture is different and sits uncomfortably with the fundamental principles of criminal law and forfeiture as a criminal law, rather than a civil law, remedy. Nonetheless, many people see civil forfeiture as an important tool in the array of criminal and civil tools that can be used to "take the profit" out of crime.

In Chapter 14 ("Negotiating Transnational Corporate Criminality"), Professor Joanna Harrington introduces the current and potential use of "corporate criminal liability" into the analysis of combatting white collar crime and organized global crime. The existence and use of corporate criminal liability has been a source of significant debate in common law systems beginning in the 20th century systems and in more recent decades in civil law countries as well. Corporate criminal liability is a seminal, complex, and pervasive issue in domestic and transnational law and policy; its use (and non-use) in large scale financial and corruption offences create very challenging issues.[13]

Harrington does a skilful job of explaining the difficulties that are evident in trying to place a corporation (or other organization) in the shoes of human criminal offenders, whether that is a question of how

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12 Currie et al, *supra* note 4 at 302.

13 Ferguson, *supra* note 2 at 45–54, 114–134, 262–296; Mark Ferwick, "The Multiple Uncertainties of the Corporate Criminal Law" (2016) Springer Singapore 147, cited in Ferguson, *supra* note 2 at 262, n 92; See "Liability of Legal Persons for Foreign Bribery: A Stocktaking Report" (9 December 2016), online (pdf): <https://tinyurl.com/4dte8aew> [perma.cc/N95E-PKHZ], cited in Ferguson, *supra* note 2 at 266, n 106.

to determine who commits the *actus reus* and *mens rea* of the domestic or transnational crime, what defences if any exist or what penalties (punishment) can be imposed beyond a fine and what countries in what circumstances have jurisdiction to prosecute a corporation. Much of the discourse in the past 10–20 years has been on the question of what sort of transnational sanctions should be encouraged and enacted by nation states beyond standard monetary punishment,[14] e.g., diversion to other civil processes, or negotiated corporate offers to plead to lower corporate guilt when the original individual guilty corporate officials have all been fired. Harrington's discussion of these issues and more in the context of the SNC prosecution and the Meng Wanzhou detention are clearly navigated in a way which demonstrates the complexity that such issues can raise.

Chapter 15, the last chapter in Section IV, is written by W. Michael G. Osborne and is entitled "The Long Arm of Canadian Price-Fixing Law? Canadian Jurisdiction Over Foreign Price-Fixing Conspiracies". As the title suggests, this chapter is not dealing with money laundering itself or methods of forfeiture, or corporate criminal liability per se. Instead, it deals with jurisdiction over the anti-combines, anti-monopoly offence of price fixing, and circumstances in which the conspiracy to price-fix originated outside of Canadian territory, but the effects of the conspiracy effect Canadian persons or interests. Currie notes that this chapter "could just as easily have been placed in Section III"[15] with the other chapters on jurisdiction. Indeed, I think it would fit more logically there. In any event, Osborne provides a succinct exposition of the jurisdiction issues when dealing with the inchoate offence of conspiracy and the competing approaches of "effects-based" theory and the "real and substantial connection" test. Osborne also examines two of the half-dozen or so *Bribery of Foreign Corrupt Officials Act* offences in Canada. Interestingly he explains that even though the Ontario courts showed an apparent willingness to take jurisdiction (probably wrongly so) over these offences committed outside Canada, in fact they did not.[16]

Section V of the book contains two chapters on trafficking in commodities which are stolen, forged, illegally obtained or otherwise banned or forbidden goods. The nature and extent of commodities that can be trafficked is immense. The circumstances of the trafficking will often alter with the specific commodity. Chapter 16 ("International Trafficking of Cultural Property: An Overview and the Canadian Perspective"), written by Kathryn Zedde, is a detailed account of a historically longstanding offence but one that has also grown greatly in

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14 Ferguson, *supra* note 2 at ch 7.

15 Currie et al, *supra* note 4 at 21.

16 *Ibid* at 362.

recent years in magnitude and significance as a popular object for money laundering and terrorist financing. Zedde sets out clearly the international Conventions, Agreements, Protocols, Guidelines and criminal and civil law measures that have been adopted to eradicate or at least lessen trafficking in cultural property. Zedde's chapter opens a window on a specialist area of transnational law that many of us are only vaguely conversant with. In Chapter 17 ("From Opium to Fentanyl: Drug Smuggling, Canada, and Enforcement Challenges"), Professor Stephen Schneider, a well known scholar and criminologist on illicit drugs and drug trafficking, has written an informed and insightful chapter on the continued failure of "suppression" as the primary prevention strategy of drug production, drug smuggling and trafficking since the end of World War II. The failure is a continuing story of little or no enforcement due to inadequate commitment to mutual legal assistance and cooperation, insufficient personnel and anti-money laundering training and improved focus on innovation and technology, and so on. Schneider concludes his chapter with a call for more sustained and intelligent emphasis on "demand side" proliferation of drug use. He notes that as long as Canadians demand illicit drugs, there will be a supply from both domestic and international sources.[17]

Section VI entitled "Inter-State Cooperation and Enforcement" is the last section in the book. It has five quite disparate topics, but they can be drawn together as examples of transnational crime topics where enforcement of the transnational topic is difficult or nearly impossible. Why? Amongst other things, enforcement is poor to pitiful because of inadequate law enforcement resources and the very low level of mutual law enforcement cooperation that exists between most nations. That lack of cooperation seriously lessens investigation information sharing, search and arrest, extradition, prosecution assistance, double jeopardy agreements, and joint sentencing and sanctions agreements. While the degree and scope of the mandatory and optional mutual assistance that is set out in international documents may appear sufficient on paper, the parties involved in mutual assistance efforts generally report nothing but bureaucracy, frustration and ultimately failure.

Chapter 20 in Section VI, by Amélie Aubut, ("Operation CARIBBE: A Case Study in Combatting Drug Trafficking on the High Seas") provides a very informative essay on the threats that marine drug trafficking puts on international stability and security on the high seas and how it requires increasing international cooperation to thwart the rise in marine drug smuggling, which criminal organizations are using as a hugely profitable alternative to law enforcement's focus on land routes. You may find it interesting to compare the enforcement challenges in opium/fentanyl

17 *Ibid* at 421.

trafficking in Schneider's Chapter 17 with the enforcement challenges in respect to drug trafficking on the high seas.

The next two chapters deal with two very different but important developments in extradition law and practice. Those who have been criminal law or extradition practitioners for 30–40 years will likely remember the blunt legal rule operating at that time that a court had jurisdiction over a person as long as that person was present before the judge. How the individual got there—by ruse, by trickery or by force (kidnapping)—were not the court's concern at that particular extradition hearing. Professor Frédéric Mégret's chapter discusses how that legal position and many practices have changed since the human rights embedded in the *Charter* began to shine beyond criminal law issues and reflect on significant human rights abuses in the extradition process.

Jeffrey G. Johnston's Chapter 19 ("Disguised Extradition through Deportation as an Abuse of Process"), like Mégret's Chapter nine, demonstrates how and why a detaining nation may want to more readily deport a suspected person than proceed through the much more lengthy and "rights-vested" procedure in the immigration system. Johnston gives a detailed and fascinating account of disguised extradition historically and in detail through English, US, and Canadian case law. After his analysis above, Johnston concludes:

> As this paper has attempted to elucidate, there are sound legal and policy reasons for Canadian courts not sanctioning immigration proceedings initiated to achieve the objectives of extradition. At the end of the day, for this conduct to amount to an abuse of process justifying a stay of related extradition proceedings, a court must be satisfied on a balance of probabilities that the immigration proceedings were a sham and were initiated in bad faith to accomplish the purposes of extradition, as in *Tollman*. That immigration proceedings having a legitimate purpose complement the objectives of extradition will not rise to this level.[18]

The last two chapters in the book may not be considered by some transnational criminal law followers to be at the centre of transnational criminal law topics, say for example, the way drug or human trafficking, corruption of foreign public officials or money laundering are. Nonetheless they are within the larger umbrella of transnational criminal law. Chapter 21, ("The International Transfer of Sentenced Individuals to Canada: Procedure and Issues") by Professor Adelina Iftene and Olivia Genge is the first of these chapters. Sentenced prisoner transfers usually occur when there are bilateral agreements between one country and another. For example, Canada has 12 bilateral agreements and three multinational

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18 *Ibid* at 470.

agreements. After a detailed and enlightened explanation of this area of transnational sentencing law, the authors conclude, for many good reasons:

> It is perhaps time to revisit the *ITOA* and reframe the process and the powers granted to the minister such that they accord with the goals of the legislation, with the best public safety practices, and with Canada's international and national human rights obligations to its nationals.[19]

In Chapter 22, Fraser Kelly in the title of his chapter ("Canadian Orders Can Compel Production of Data Controlled by US Companies") sets out in effect both the question he plans to explore and his answer to that question (with of course qualifications and limitations). In that regard, Currie succinctly summarises Kelly's chapter as follows:

> Focusing on the unsettled Canadian position, Kelly argues forcefully in the affirmative, outlining how production orders issued under Canada's *Criminal Code* may lawfully issue despite the extraterritorial aspects— and that, in fact, this was precisely Parliament's intention in creating the production order provisions in the first place. He actively refutes arguments to the contrary, noting the dubiousness of separate corporate personalities for large transnational data firms. He concludes by expressing skepticism regarding current efforts to create treaty arrangements that would smooth out the situation, proposing Canadian data sovereignty laws and the bolstering of enforcement ability as a better solution.[20]

Hopefully, the breadth and depth of the 22 chapters in Currie's book has left you with the distinct sense of the growing significance of transnational law and its impact, both good and bad, on our domestic criminal law. This growth and significance should alert legal educators within law schools, the legal profession and the judiciary to speed up plans to fully integrate the critical study of transnational criminal law into their respective educational programs. In the meantime, we owe Currie and his superb team of authors a huge thank you for an excellent job in enhancing our interest and knowledge in transnational criminal law.

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19 *Ibid* at 518.

20 *Ibid* at 23–24.