

Neoliberalism, Biopolitics, and the Governance of Transnational Crime¹

ABSTRACT

The paper argues that policies for controlling transnational crime are a crucial dimension for understanding neoliberal hegemony in global governance. It takes on the relation established by Foucault between biopolitics and neoliberalism, in order to reconstruct the discursive formation framing law enforcement and security strategies beyond the spatiality of the nation-state. The paper then turns to outlining the practical expressions of this discourse in the governance techniques deployed to control transnational crime. Overall, this study aims to show how neoliberal criticism of state power is not coupled with a reduction in governance but, on the contrary, implies many regulations and strategies for controlling the population.

KEYWORDS

Neoliberalism • biopolitics • transnational organized crime • global governance

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Neoliberalismo, biopolítica y gobernanza del crimen transnacional

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RESUMEN

El artículo sostiene que las políticas públicas desarrolladas para el control del crimen transnacional son una dimensión crucial para entender la hegemonía neoliberal en la gobernanza global. A través de la relación establecida por Foucault entre biopolítica y neoliberalismo, se reconstruye la formación discursiva que enmarca las estrategias de *law enforcement* y seguridad que operan más allá de la espacialidad del Estado-nación. Posteriormente, se da una mirada a la expresión práctica de este discurso en las técnicas de gobierno desplegadas para el control del crimen transnacional. En su conjunto, el estudio busca señalar cómo la crítica neoliberal al poder del Estado no va de la mano con la reducción del gobierno sino que, por el contrario, implica gran cantidad de formas de regulación y estrategias de control sobre la población.

PALABRAS CLAVE

Neoliberalismo • gubernamentalidad • biopolítica • control del crimen • relaciones transnacionales

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INTRODUCTION

Can we establish a relationship between the increase in forms of crime control at the transnational level and the rise of neoliberalism in the last few decades? I argue that there is an intrinsically productive relation between the development of forms of regulating crime at the global level and the establishment of neoliberalism as a hegemonic way to deal with questions of governance. Contrary to the common understanding of neoliberalism, in this article I aim to show how, despite neoliberalism's criticism of state intervention and the "excess of government," neoliberalism is closely connected with the securitization and re-regulation of society at the global level. Examining the issue of crime shows why and how there is an outright connection between the ideal of free-market economies and security as a global concern.

To show this, I first outline the methodological stance from which I engage with the questions of governance. Following Foucault, I consider that to understand the ways in which global governance emerges, it is better to start from the way political problems of governance are constituted, otherwise known as the problematizations of political life, and to follow their concretion in government practices.

In the second section, I pursue this methodological path to show how crime is part of the politics of the life of populations, that is, its *biopolitical* character. I also dispute the mainstream understanding of neoliberalism to establish its inherent relation with the particular way crime has been

governed over the last few decades. Drawing on Foucault's 1978-79 Lectures at the Collège de France, *The Birth of Biopolitics* (2008), I argue that we need to conceive of neoliberalism as a political rationality devised for governing populations—the central concern of biopolitics—rather than as an ideology or economic theory.

Once this analytical framework is defined, the third part of the article seeks to explain the interdependent relation of the issue of organized crime, neoliberalism, and the rise of transnational governance. This section shows the role that neoliberalism plays in “diagnosing the rational way to govern transnational crime.”

Finally, I argue that if neoliberalism frames our understanding of crime, neoliberalism also shapes the governance techniques developed to deal with crime. This part outlines the main policies, strategies, and programs that constitute the global “assemblage” of security and law enforcement measures. This part is the key to seeing how neoliberalism, far from reducing regulation over subjects, exercises various forms of power over the people of the world.

1. PROBLEMATIZATIONS AS A STARTING POINT

Affirming that nation-states face diverse challenges to their power due to the transformations experienced in the international arena is not as controversial as it once was. How to understand these transformations and the consequences for power relations in the international system is still, however, a matter of much debate.

My aim is to contribute to this debate through examining a specific problem in transnational politics: transnational crime. This, of course, is a methodological choice, and one I believe gives us a vantage point over other approaches to engage with global governance. I draw on Foucault's later works in which he suggested that to study government in modernity, we need to re-trace the *problematizations* of political issues that acquire wide recognition and authority about the ways to dispose and govern the life of populations (Foucault 1984, 79). That is, if we are to explain shifts in governance, we ought to start with the specific concerns, questions, and intended answers to political problems in particular moments in the history of a given society.

Thus, rather than privileging the role of the state or other actors in the international system, I see it as more appropriate to ask first how globalization has come to exist politically. This, in turn, obliges us to look at the issues and problems that demand new forms of political imagination to govern beyond the nation-state. Only then does it make sense to ask why and how they structure, in discourse and practice, transnational governance. In this sense, issues such as crime give us a concrete entry for understanding these transformations in contemporary forms of power and authority.

Moreover, in this way we will be able to see that transnational governance is not limited to changes in state power and the international system but that it is attached to longer trajectories and wider shifts in the forms of governance in modern times. In this regard, Foucault's notion of problematizations offers a key to make sense of these changes; problematizations give us a historical perspective on governance that combines its discursive framing and concrete expression in government practices and techniques.

This last contention is what makes this approach distinct from other "constructivist" analyses. Even when sharing with them several epistemological and methodological premises, I consider they still give too much emphasis, either to the meanings and understandings actors give of problems in the international system or to how these discourses come to define their identities, behavior, interests, and rules of the game. In this way, not only is less attention being given to the concrete problematizations from which public policies take form, but also the examination of how they materialize in specific techniques of government has yet to be more deeply analyzed.²

The idea of starting from problematizations of political life demonstrates strengths in this respect. This approach does not limit itself to explaining the daily functioning, processes, and power exchanges between actors in the international arena. Neither does this approach consider it sufficient to analyze

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2 I must note that constructivism includes a great variety of studies and authors. Nevertheless, for the most part, I believe the limits exposed above are shared among them. Even those influenced by Foucault have yet to work more fully on the ideas he developed in his late writings on neoliberalism and biopolitics. An account of these various approaches can be found in Sanchez (2010) and Ruggie (1998; 2009).

the meanings and understandings that construct the world of these agents. When we direct our research to problematizations, this approach provides a different way of going about explaining governance: identify the role that *rationalities of government* such as neoliberalism play in the shifts of power relations and techniques of governance.

This implies that it is necessary to establish the relation between two interrelated and co-constituted domains: on the one hand, the convention-governed setting of controversies and struggles where the problems of political life emerge and reproduce (Stenson 1999, 55), and on the other hand, the rationalities of political action devised to govern these problems. The former provides with particularity and originality such rationalities, whereas the latter are understood in an instrumental sense, historical and not metaphysical; they are employed to see how discourses and practices of government emerge as a “necessary” solution for fulfilling the standards and objectives defined by these forms of rationalization of domains of life (Dreyfus and Rabinow 1982, 133-140).

These rationalities of government or *governmentalities* refer, therefore, to the general analytical grid of political ideas that give form to programs and strategies of governance. Hence, these rationalities are not only discourses in a strictly philosophical or ideological sense but are also constituted by practices and techniques of intervention, and strategies of policy formation and implementation (Rose and Miller 1992, 174). The study of these governmentalities and all the different dimensions entailed is what defines the methodological distinctiveness of our research.

2. BIOPOLITICS, CRIME, AND NEOLIBERALISM

I shall start first with the problematization of crime in modernity to show why its conceptualization falls within what Foucault calls the realm of biopolitics. Thus, we will see in which sense crime might be related to neoliberalism and transnational governance.

As said before, biopolitics stems from Foucault’s reconstruction of the emergence of the government of populations as a specific “art of government” in modernity. That means that government acquires a new way of thinking—a new rationality—about the exercise of power, characterized by an ensemble

of institutions, procedures, analyses and reflections, calculations, and tactics that have as its target populations, as its knowledge political economy, and as its technical means apparatuses of security (Foucault 1991, 99-101). This political administration of life—protecting and caring for the health of populations—is what constitutes *biopolitics*, that is, the constitution of an independent domain for exercising forms of political power, conceived as *biopower*, the power over life (Foucault 2004, 249-50).

Crime is a crucial phenomenon in biopolitics, for it deals with the type of conduct deemed harmful to society and the punishments that guarantee the reproduction and sustainability of biopolitics in time. From the concern with crime, a great deal of statistical and criminological developments emerge, as well as law enforcement institutions and security techniques to combat crime. In this manner, crime is a privileged place for exercising biopower, because it acts on subjects so they respect and practice life in law-abiding ways, and when this is not the case, defining the programs and strategies for dealing with the group of people who represent the criminals (Foucault 2008, 248).

Hence, crime is deeply involved in biopolitics in modern governance, but is it related to neoliberalism? Foucault moved forward in his lectures from 1978 to 1979 to argue that the study of this government of populations takes us inevitably to the study of *liberalism* as the general framework of biopolitics. Only with the emergence of liberal mentalities of government was it possible for the independent domain of “society” to appear and become the main target of political action (Foucault 2008, 20-2, 317). Only then the knowledge of the emergent social sciences, statistics, and demography became central and provided a way of representing the autonomous dynamics of society to assess whether they should or should not, as well as how they were going to be, an object of administration and regulation (Barry *et al.* 1996, 9-10).

Although far from being subsumed to it, *neoliberalism* is part of the trajectories developed from the liberal concerns with the problems of the life of populations, and in this sense, with crime. Neoliberalism is, above all, a technology of government, a way to conduct life, which in our case works through the knowledge of criminology and acts over subjects through security apparatuses. That is why crime control measures are such an important feature of biopolitics and neoliberalism; they represent some of the most

determinant elements of the securitization/protection of society through managing populations and their subjects.

Yet the particular characteristic of neoliberalism lies in that, as a technology of government, neoliberalism goes hand in hand with the globalization of politics, to the extent that it would be difficult to fully grasp one without the other. As I will show, one of neoliberalism's main characteristics is that it proposes itself as a rationality for governing *beyond the state*, for governance becomes a question that involves "inevitably" the way of living of the population of the world, and not only of those confined to the territoriality of the nation-state.

3. NEOLIBERALISM AND THE CONTROL OF CRIME: GOVERNANCE BEYOND THE STATE

What does it mean that neoliberalism proposes itself as a rationality for governing beyond the state? It means that neoliberalism has a way of imagining political problems that is not confined to the spatiality of the nation-state.

In general terms, Foucault always thought of power as something that was to be studied "beyond" the state, while working always within the nation-state as a space of reflection. In the case of neoliberalism, for its particular feature of being what we could call a sort of transnational governmentality (devised to operate beyond the state), we need to extend our research to the issues that have allowed questions of transnational and global governance to come into existence as a particular technology of rule (Larner and Walters 2004, 4).

In the final analysis then, *transnational governance* is understood as a particular form of political imagination specifically conceived to regulate, control, and exercise forms of power not only from, between, and over states, but more importantly, to deal with the issues and practices in terms of which biopolitical power is exercised over and through the territories and populations living in spaces beyond the nation-state (Larner and Walters 2004, 16).

I argue that in recent years transnational organized crime (TOC) has become an issue that serves as a starting point for a political imagining of the transnational. The aim is that through examining TOC we will be able to show how it shapes the constitution of a transnational governance of neoliberal signature.

a. The constitution of organized crime as a threat to global society

The first point we need to deal with is the extension of the neoliberal rationality of government to transnational spaces through the problem of transnational crime. This is an important element we need to address, if we consider it paradoxical to affirm that neoliberalism could call for deploying regulations and interventions given its criticism of the excess of state's interference (Foucault 2008, 317-23).

The explanation of this paradox lies in the connection between crime and biopolitics. The concern with the consequences of new forms of crime drives the deployment of security apparatuses in neoliberalism. How are they justified if neoliberalism seeks to enhance freedom and protect society from excessive state intervention? To exercise power, it is necessary to define crime as a *biopolitical threat* to the life of the people governments must protect.

As Foucault suggests, "it is at this point that racism intervenes...It is at this moment that racism is inscribed as the basic mechanism of power, as it is exercised in modern States." But what is in fact this modern discourse on racism? "It is a way of fragmenting the field of the biological that power controls. *It is a way of separating out the groups that exist within a population...*This will allow power to treat the population as a mixture of races, or to be more accurate, to subdivide the species it controls" to make possible the exercise of power within the population itself (my emphasis, Foucault 2004, 255).

Thus, in this discourse "the enemies who have to be done away with are not adversaries in the political sense of the term; *they are threats, either external or internal, to the population and for the population*". In the biopower system, "the imperative to kill is acceptable only if it results not in a victory over political adversaries, but in the elimination of the biological threat to the improvement of the species and race" (my emphasis, Foucault 2004, 255).

We should notice that crime can very often turn into this kind of threat that supports security and defensive actions by governments. Indeed, as Foucault says, "the same could be said of criminality. Once the mechanism of biocriminal was called upon to make it possible to execute or banish criminals, criminality was conceptualized in racist terms" (Foucault 2004, 257).

My contention is precisely that crime acquired this status in world politics over the last few decades. Elsewhere, I have provided evidence of this claim

through a genealogical reconstruction of the hegemonic discourse of TOC. The idea that organized crime constitutes a challenge to the stability of society is found in mid-twentieth-century America. Interestingly, examining this discourse illustrates how organized crime is conceptualized in racist terms, as *an enemy that threatened the life of American society* (Nieto 2012).

This seminal conception of organized crime was established in its original form in the 1950s by criminologist Donald Cressey, who described organized crime as “a well-knitted, hierarchical and centralized organization acting as an international conspiracy, seeking profit and power, and bound together by ethnic or some other form of cultural kinship” (Cressey 1969, x). This picture was closely replicated through the following decades, becoming the dominant official representation governing criminal policies against organized crime ever since (Nieto 2012, 27-29).

This definition of organized crime as an *alien threatening conspiracy* against American society is a typical definition of the problem of crime as a biopolitical threat. Whether people face it daily or not, a *threat* originates from organizational structures with power and wealth of a degree strong enough to challenge the basic structures of society. The existence of these powerful enemies becomes an incontrovertible fact that requires urgent measures in order to *protect it* (Edwards and Gill 2002a, 252).

These are, however, “alien-enemies” closely tied to *exterior* forces and interests, but who operate *within* American society. If a danger exists, it is not product of the American fabric; the danger comes as a conspiracy from external forces that threaten the “respectable society” from within and outside at the same time (Edwards and Gill 2003, 268). Therefore, to fight the threat, it is necessary to act over the American population itself. However, in this discourse it is clear that the targets of biopower will not be Americans themselves, but the exterior conspirators identified as threats: first Italians, and eventually, Chinese, Colombians, Mexicans, Japanese, Irish, etc. (Nieto 2012, 29).

In this context, the problem of *drug trafficking* emerges and acquires unprecedented significance, because it became the missing link to explain the transformation and strengthening of organized criminality into huge criminal enterprises with international reach. As soon as crimes related to the drug trade are defined as a threat to society from international syndicates

of drug traffickers, they turn the analysis of political action to a problem beyond the nation-state territoriality, making it possible to conceive the now infamous war on drugs (Nieto 2012, 30).

In the war on drugs, started by Nixon and supported later by Reagan, security apparatuses are deployed beyond the nation-state, not to wage war in the classical sense of the term but in biopolitical terms, to defend the life of populations. Waging war against something like drugs, and not against the classic military state-bound enemy, is an expression of the significance that organized crime has to understand contemporary structures of transnational governance and global security. Nevertheless, only framed in biopolitics, it is possible to make sense of their purposes and justification. The war on drugs is, for this reason, one of the best examples to show the biopolitical character of current transnational governance.

Furthermore, when the diagnoses and practices of government devised to deal with organized crime and the drug traffic problem in America were replicated and reached worldwide through the concept of Transnational Organized Crime during the 1990s, the presence of biopolitics in transnational governance became even wider and more profound. TOC was defined as the “new threat” by American security experts after the end of the Cold War, part of the unintended consequences of globalization. Thus conceived, TOC has exactly the same biopolitical character of organized crime and drug trafficking, although the particularity of TOC lies in that it threatens not only American people but also the entire population of the world as Clinton argued in 1995 before the United Nations General Assembly (Nieto 2012, 31).³

TOC as a biopolitical threat to international society elevated the objectives of securitization and crime control beyond identifying it with particular national interests. As is evident in Kofi Annan’s discourses at the time, TOC was identified as the reason for deploying security strategies, law

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3 Naturally, I am not alone in this assertion that the American conception of organized crime has been the dominant representation in governments and popular imaginary alike. Many criminologists and researchers on the history of organized crime have found the connection between this view and the definition of security threats to America and the world in the 1980s and 1990s (cf. Smith 1991; Naylor 1995; Albin 1997; Levi 1998; Woodiwiss 2001, 2003a, 2003b).

enforcement tactics, and crime control measures *over the population of the world* (Nieto 2012, 32). This “challenge from globalization” became a *transnational government concern*, and demanded a form of political imagination to create crime-control measures and security apparatuses beyond the state.

b. Neoliberalism and the transnational as place of governance: competence and collective enrichment

Even though criminologists and historians of organized crime have consistently pointed out this American hegemonic discourse, they have reflected less frequently on its connection to the arrival of neoliberalism in government. The question then is to define if there is a relation between the rise of neoliberal governance in world politics and changes in crime control measures around the world.

In this sense, I argue that once organized crime was conceived as a biopolitical threat to global society, organized crime became an object of reflection from the neoliberal way of governance. Thus, we can see how these two discourses work together, the first establishing the threat and legitimizing the deployment of security apparatuses, with the second explaining how crime functions, defines its targets, and provides the best measures for its control. Let us see, in this sense, how and why neoliberalism *problematizes* the question of the security of the world.

Foucault argues that the central concern of liberalism in terms of international spaces is collective enrichment and progress, which is realized by ensuring that mutual commerce and competence take place under the best conditions. Commerce and competence are the only guarantors of unlimited economic growth, liberalism’s fundamental societal policy (Foucault 2008, 54-5). This idea is certainly also present in neoliberalism, not only as it appeals for economic liberalization policies but also, more significantly, through the deployment of numerous “environmental regulations and controls” on the conditions and factors that guarantee maximization of *the game of competition*.

Indeed, the distinctiveness of neoliberalism, and perhaps one of the main difference from classical economic liberalism, is that “competition becomes a historical objective of governmental art and not a natural given that must be respected...the market, or rather, pure competition, which is the essence of

the market, can only appear if it is produced, and if it is produced by an active governmentality” (Foucault 2008, 121). Thus, quite contrary to the common view, “neoliberalism should not be identified with *laissez-faire*, but rather with permanent vigilance, activity, and intervention” (Foucault 2008, 132).

The “retreat from the state” proper of the neoliberal age is also in itself a positive government technique, because the “degovernmentalization of the state” does not mean “de-governmentalization of life *per se*” (Barry et al. 1996, 10–11). Neoliberalism aims to actively create the conditions within which economic freedom might be practiced in the form of entrepreneurial and competitive conduct: first, via a critique of the consequences of the intrusion of the state and, second, with a whole array of organizational forms and technical methods to extend this field of economic freedom (Foucault 2008, 65, 147).

Striving for a perfect game of competition is the main reason that in the end requires the active vigilance, control, and regulation of spaces beyond the state. Identifying TOC as a dislocating phenomenon in this game is what makes transnational spaces the object of neoliberal reflection, to ensure the reduction to a minimum of detrimental repercussions over the ideal of a society of competition and entrepreneurs.

c. The neoliberal analysis of crime: rational criminals and risk environments

The consequences of these principles are evident in the neoliberal analysis of crime. One of the predominant characteristics of neoliberalism as a mentality of government is that neoliberalism seeks to understand the social by extending “the rationality of the market...to domains which are not exclusively or not primarily economic” (Foucault 2008, 323). In this sense, we can argue that the neoliberal analysis of crime translates problems of the criminal field into economic calculation models. The economic models of supply and demand and of investment-cost-profit explain social relationships and individual behavior, epitomized in the figure of the *homo economicus* or entrepreneurial subject (Foucault 2008, 243).

In this order, neoliberalism defines crime in a way that is not qualitative or moral. In its terms, crime corresponds to any action that makes an individual *run the risk* of being condemned to a penalty (Foucault 2008, 251). If we

focus on the side of the perpetrator, the criminal is just one more *homo economicus* in the market environment: a moderately rational and self-interested individual, unfettered by any moral compass, a consumer who is alert to criminal opportunities and responsive to situational inducements when they are cost-effective. In this way, the criminal is stripped of his sociological and psychological layers, and re-framed in a sort of pseudo-economic analysis. The criminal is not “abnormal” or the one to be corrected, but a rational actor who chooses a course of action when faced with an environment of crime (Garland 1999, 18-9; Foucault 2008, 250-3).⁴

These risk environments or *criminogenic situations*, as Garland calls them (i.e., unsupervised car parks, deserted neighborhoods, subway stations, electronic financial transactions, etc.), become the privileged target of crime control under neoliberalism. Crime is viewed as a routine phenomenon, part of the everyday conduct of economic and social life, where countless opportunities for illegal transactions emerge. Therefore, the criminal system does not deal with criminals directly, but rather reacts to patterns of illegal exchanges in a particular environment of crime (Foucault 2008, 253-6; Garland 1999, 18; Edwards and Gill 2003, 267).

Government action depends on analyzing the environment of gains and losses—the well-known cost-benefit calculation—to which the individual responds committing a criminal act. Government must aim to channel him away by modifying situational controls and manipulating incentives and risks within it, while making sure not to disturb the structural dynamics of the market, that is, not limiting other individuals’ free preferences in it (Foucault 2008, 255-6).

d. From the economics of narcotraffic to transnational organized crime

We mentioned above that the drug-traffic problem was essential to make crime a transnational issue. Similarly, drug trafficking played a central role in the development of transnational mechanisms of crime control, policing,

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4 In this case, as with most rational choice approaches, this “situational man” is not a preferred form of subjectivity, but quite simply an assumption about the real subjectivity, although one with quite important implications in terms of policy measures as we shall see.

and security (see particularly, Andreas and Nadelmann 2006, 5; Sheptycki 2000, 201). Therefore, looking more closely at the way in which through the neoliberal analysis of the drug trade regulating transnational spaces becomes a government concern is essential.

O'Malley's analysis of neoliberal discourses on drug use has shown that the inherent liberal precepts of "free will," "individual choice", and "risk" provide a rationale for designing policies to control drug traffic. In this discourse, "choice and risk" appear as complimentary terms, where the choice-making drug-user is perceived as a normal subject who seeks pleasure through consuming drugs. His choices are possible due to an *environment* of risks and opportunities in which he is neither totally free nor compelled to consume, but where he calculates his choices among risk-bearing options (O'Malley 1999, 193). The government's duty is to reduce the risks opened to populations through cost-effective controls in the market *milieu*.

Thus, policies against the drug trade have as their fundamental aim reducing the opportunities for making wrong decisions—production, trade, or consumption. The market as a structure of human interactions is never the problem in itself; the market is only the environment where rational actors seek to fulfill their preferences (Foucault 2008, 257; O'Malley 1999, 208).

Nevertheless, it is very striking that the *supply chain of drugs* is targeted as the main place of intervention. Indeed, these standards decided to punish drug producers and traders much more strongly than consumers. Against drug producers and traders, moralization is retained to maintain the stringent punitiveness of such actions of creating risk for others. Moral responsibility was refocused on those defined as the creators of harm, the risk producers, and significantly removed from consumers (O'Malley 1999, 209).⁵

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5 Focusing on the side of the consumer, O'Malley has referred to the idea of a *homo prudens* or the responsabilized, security-conscious, crime-preventing subject. This second set of processes in crime control would act more determinately on increasing the promotion of "prudentialism" and the "responsible individual." These aspects help to make sense of the expansion of demand for private security, but also of the increasing role played by community and private crime prevention, as well as community-based policing movements (O'Malley 1996). For my purposes, the side of the producer and trader is the one that provides the key elements of analysis to understand controlling populations through crime control measures at the transnational level.

The purpose is to regulate this risk environment for the free consumer by reducing the opportunities to incur in such behavior. This has pointed toward curtailing the supply of drugs, that is, the producing and trading countries. The American narration of organized crime as an alien threat serves this purpose very effectively as has been described above. Those involved in the supply chain are identified as cartels organized in the form of reckless international enterprises conspiring against the prosperity of global society.

In this way, the alien character of organized crime is coupled with the analysis of a criminogenic risk situation that directs its targets toward *those people who represent the supply chain function*: the alien-enemies within the global population. This decision can be explained only by the racist discourse that defines who *within the population* of the world will be the object of bio-power. This is the point at which the assemblage of the politics of the biocriminal and the neoliberal analysis of crime meet most clearly for the first time. Here, when it was necessary to banish international criminals, governing crime entails military activities beyond borders in the war on drugs.

e. Neoliberal analysis of TOC: the global risk situation

Precisely because of this, a dominant narrative in the official problematization of transnational organized crime emerges with the end of the Cold War. It warns that TOC is menacing democratic institutions, the global economy, and the stability of the international system (Bigo 2000, 87-90; Andreas and Nadelmann 2006, 7).⁶ Underlying this statement we find the idea that, as globalization becomes a reality, a new *transnational risk environment* emerges with its corresponding set of increased opportunities for crime. This dominant narrative amounts then to the representation of a new global criminogenic situation.

As seen with the drug trade, cross-border criminal activities are mainly market phenomena themselves. They are problematic because they directly affect the transnational market structure of competition and its rules of the game (Foucault 2008, 257). Under neoliberal rule, cross-border criminal

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6 Academic and "expert" accounts in which this narrative is expressed are not difficult to find either (see as some examples: Williams 1994; 2002a; 2002b; Lupsha 1996; Shelley 1995; 1997; 2005; Sterling 1995).

activities become a political concern, not so much because of moral reasons but for the market-distorting consequences, for putting at risk the dynamics of transparent competence within the market (Foucault 2008, 250-3).

Thus, an array of dissimilar criminal activities comes under the eye of transnational governance: migration, the drug trade, financial transactions, and in general all activities that affect the processes of life and the basic neoliberal objective of economic growth.⁷ Similarly, within this risk situation it is possible to identify the existence of rational criminals as well, the *homo economicus* of transnational crime, so to speak, the *transnational enterprises of crime*. They are not different from any other enterprise in the global market that invests in an action, expects a profit from it, and accepts the risks of a loss—a punishment. They take advantage of the possibility of profiting from all the actual and possible market-illegal activities now embodied in the elusive term Transnational Organized Crime.

The bottom line is that the transnational becomes a “real” space of government intervention, an object of action for transnational security apparatuses through the representation of this global criminogenic situation and of organized crime as a transnational enterprise. At this stage, neoliberalism appears to provide the intellectual tools under which the issues of crime demand a “transnationalization” of governance.

4. THE ASSEMBLAGE OF TRANSNATIONAL CRIME CONTROL

I have tried to highlight how the dominant problematizations of crime are deeply enmeshed in neoliberal thought. The materialization of this neoliberal art of government in what we could call the assemblage of apparatuses that constitute the real expression of power in contemporary global governance remains to be exposed.

Perhaps it is too much to ask this assessment for an in-depth analysis of all the mechanisms and programs that give form to the practical

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7 There is no room to go in depth about this specific issue here, but the remarkable quick growth of the regulations regarding money laundering is clear proof that the distortion of the market is what matters most in terms of the global governance of crime (see Beare, 2003).

consequences of the neoliberal governance of crime. Thus, my main aim is to characterize how some of the most significant ones respond to the neoliberal rationalization of life.⁸ However, before we analyze them, we must highlight an important feature in neoliberal techniques of governance.

In neoliberal analysis, precisely because crime occurs during the course of routine transactions, any crime-reducing intervention must seek to preserve “normal life” and “business as usual.” Regulations should not involve intrusive controls in the situation itself, or modification of the interests and incentives of the actors involved (Garland 1999, 19). As Foucault says, to maintain the market in the order of the law, you must consider everyone as a player and only intervene in an environment still loose enough for him to be able to play (Foucault 2008, 259).

Thus, one of the main features of neoliberal techniques of government is what has been termed *government at a distance*: in the sense that its objectives are seen to be best achieved with a “responsibilization strategy,” in which authorities enlist other agencies and individuals to form a *chain of coordinated actions* that reach into risk environments. These actions prompt crime-control conduct on the part of selected actors and create conditions to make possible a field of self-regulated spheres of life without direct state intervention. As we shall see in the following sections, through light but effective indirect controls, neoliberalism seeks to harmonize collective goals such as global security and fair competition (Garland 1999, 20; Foucault 2008, 241, 323; Stenson 1999, 52).

a. Homogenization of criminal law and state reform

In this order, the first, and perhaps the most prominent strategy in terms of the governance of transnational spaces, is the homogenization of regimes of prohibition. This is what Foucault calls the “juridification of the world in terms of the organization of a market” (Foucault 2008, 56). This, clearly, is an aspect that has affected governance in a general sense, but it is important to see its specificity in the case of crime.

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8 This account is not definitive, and seeks to serve more as a framework for analyzing the current tendencies in policing and crime control. Therefore, they constitute, for now, guidance for further comparative and case study research.

As stated at the outset, in the context of biopolitics prohibition regimes are mainly a mechanism, a technique for deploying security strategies (Foucault 1978, 190). Crime is a legal concept, at least in the sense that what counts as crime is defined by the law, as are the measures and penalties accordingly devised. Therefore, law ought to be the first mechanism governing all the others; it is the basic tool of action and deployment of tactics.

Recent research in crime control and law enforcement has made evident the move toward the American model around the world. Criminal justice priorities, as well as models of criminalization and criminal investigation, are exported to foreign governments as a result of the increased homogenization of criminal law. The growth of international pressures cannot be underestimated either: the ratification of the United Nations Convention Against Transnational Organized Crime, and before that, the Conventions against Drug Traffic – Single Convention on Narcotic Drugs (1961), the Convention on Psychotropic Substances (1971), and the Convention Against Illicit Traffic in Drugs and Psychotropic Substances (1988) have all pressed toward the homogenization of action against transnational crime (cf. Nadelmann 1990; 1993; Andreas and Nadelmann 2006).

Along these lines, we have also witnessed an important move toward policies for “improving” state institutions. Certainly, sustained in the idea that the explosion of trade and investment across borders has weakened some states’ capacity to control, monitor, and regulate their respective frontiers, one of the most important programs has been improving central institutions of crime control in these places. These programs target, especially, regions considered unprepared to live up to the task of retaining the undesired effects of globalization.

In particular, we see the emergence of mechanisms of cooperation and aid to “improve” these states’ capacity to enforce prohibition regimes, as well as others aimed at reforming the states’ criminal systems. Certification processes as well as requirements to fulfill certain institutional and law enforcement standards to obtain monetary and infrastructure aid and training are some of the most significant instances. As we have seen, these countries are not to be defined as political enemies, as when communism was around; rather, these are *ill regions, dangerous, weak or “failed” states*,

whose populations and institutions, given certain historical circumstances, have a certain proclivity to fall prey to criminal structures, and therefore to become a risk to global society.

Nation-states are not seen in terms of *realpolitik*, in a zero-sum game of military power, but rather in their ability to perform a sort of “governmental redistribution” over populations upward to international institutions and downward to regional and local organizations. In this case, the nation-state acts not only as an apparatus but also as a symbolic spatiality that retains a coordination and redistribution role (Stenson 1999, 46). For instance, the issue of corruption has conveniently been linked to poor economic growth and low political stability. In response, forms of actuarial and economic justice, liberalization, and privatization have been offered as the preferred policies from such important transnational institutions such as the International Monetary Fund (IMF) and the World Bank (Beare 2003, 119).

These measures are accompanied by the extended use of management, auditing, and accounting techniques that fulfill the neoliberal aim of enabling a “market for public services to be established autonomous from central control” (Barry et al. 1996, 14). These developments support the claim that instead of the so-called retreat of the state, what we experience is a strengthening of the faculties of the international system to enforce the laws prescribed by the global frame of regulations and prohibitions.

b. Risk prevention and intelligence-led police

Another set of techniques we find refer more directly to the type of interventions that an analysis of crime as an environmental risk would imply. Here, using securitization and surveillance mechanisms demands the systematic gathering of information and statistics of the targets singled out as causes of crime rates. These targets, as could be expected from the economic grid of analysis, are akin to the factors in the market economy: network transactions, customers and suppliers, the proceeds and assets of crime, successful criminals and enterprises of crime, and the absence of effective guardians or situational controls.

Thus, first, we have some of the basic investigative methods that rely on the use of identification and information-gathering techniques related to

1) *targeting career criminals and enterprises of crime*, or the suppliers of crime such as kingpins and mafia bosses. These techniques are now widely applied around the world, and take the form of undercover and sting operations, the cultivation of informants, wiretapping, and conversation monitoring, for example. Second, we find another strategy aimed at putting these “cartels” out of business by confiscating and seizing 2) *the assets and proceeds of crime*, clearly the same extension of the economic grid, only this time applied to the commodities sustaining global enterprises.

The fundamental rationale underlying these two practices is constructing personal dossiers and profiles of suspected populations and career criminals. These practices are meant to feed police intelligence strategies to reduce risk figures through preventive measures. Similarly, it builds on the idea that information and intelligence gathering should not be the exclusive competence of police forces, either, and even less of the state, but mainly that civil society must take responsibility itself, specifically through collaborating and coordinating efforts with financial, health, and welfare institutions (Naylor 2003, 267).

Another very significant environmental form of control acts on 3) *the movement of populations* around the globe. Liberalization policies have been accompanied by techniques and programs associated with controlling migration and airport activities tightening border controls. Although these practices would not normally be associated with free-market neoliberalism, it should be clear by now that they are widely compatible with this rationality.

The processing of visa applications, for instance, a requisite for citizens of some countries to travel to specific parts of the world, derives from the idea of systematically targeting suspected populations. They also serve to gather as much information as possible to reduce and prevent possible risks from these movements. This, of course, includes a similar constitution of databases by traveling agencies and airlines, as well as biometric and financial profiling by migration offices across the world.

Undoubtedly, the extended use of *communication technologies* to increase the quantity and rapidity of the *flow of information* between spatially dispersed points is the backbone of the whole dispositive. It allows the existence of many regulations without the need to put this system of surveillance

under the direct control of the international state-system (Barry et al. 1996, 14). This “optimization” of gathering and classifying information is what has been described as the move toward an 4) *intelligence-led* policing paradigm that constitutes a central tool in transnational policing.

Significantly, this paradigm presents itself in the “depoliticized” and managerial language proper for actuarial logic. It defines its tasks according to pro-active and risk-based effective interventions in targeted suspect populations. Intelligence lies in local police statistics, victim surveys, and crime pattern analysis that classify places and situations as “hot spots” of crime or low-rate secure areas. Environmental risk indexes are created to calculate degrees of vulnerability in all these places. It is commonplace now to use extensive electronic surveillance, special security software, database matching, closed-circuit television (CCTV) cameras, and many other technologies (Garland 1999, 20; see also: Haggerty and Ericson 1997; 2000; Gill 2000; Sheptycki 2000a).

c. A community of knowledge: cooperation and training initiatives

The arguments discussed thus far imply that expertise plays a fundamental part in translating society into an object of government. This is the famous power-knowledge thesis that Foucault elaborated in all his works. Indeed, one of the domains where the issue of “action-at-a-distance” expresses itself more clearly is in the process of constituting a *community of expertise* (Barry et al. 1996, 13). They are a key element for explaining how the micro and local level is reconnected with strategies of power at a molar-macro level, in “centres of calculation of risk” such as the commissions for studying crime, inter-governmental planning institutions, and INTERPOL.

This community of knowledge is built from two fundamental strategies in the case of transnational crime. First, we have *training initiatives* that discipline a community of experts regarding a set of policing practices. In this case, transnational law enforcement has slowly grown a community of knowledge by following on the American efforts to export shared expertise by setting up information centers, as well as providing scholarships to law enforcement officials from many countries around the world.

Second, there is the constitution of broader networks of information sharing through regularizing forms of *informal cooperation* between policing bodies. Andreas and Nadelmann (2006) argue that “a transnational criminal law enforcement community based on expanding cross-borders governmental networks with shared technical and investigative expertise has become an increasingly important –though often overlooked and poorly understood–dimension of global governance” (9). Similarly, Sheptycki (2003a) claims that we witness the conformation of an “international of technocratic experts” whose strategic analysis “affects the framing of police priorities in local communities” around the world (47).

We could even say that the whole concept of national jurisdictions suffers an important transformation, as the proliferation of *Extradition Treaties* and *Mutual Legal Assistance Treaties* (MLAT) makes the claims of states to extraterritorial jurisdiction a much more frequent practice that does not need to undergo regular diplomatic channels once accepted by the parties involved.

d. Global security: police-military assemblages in the “wars on drugs and terror”

Finally, but not less important, there is much historical evidence in recent years to support the claim that the move toward an intelligence-led policing has also meant more extensive use of military hardware, personnel, and strategies for law enforcement tasks, as well as the rising status of policing issues in diplomacy and security discourses (Andreas and Nadelmann 2006, 15; Haggerty and Ericson 1997; 2000; Sheptycki 2000).

As Beare argues, these blurring of the frontiers between national security and criminal intelligence cannot be separated from the connection established between criminal organizations, money-laundering activities, drug trafficking, and terrorism, especially after September 11 (Beare 2003, xvii). Techniques and strategies for waging war acquire great political prominence when crime is considered the main form of financing political violence and terrorism. Activities such as drug trafficking and money laundering link terrorism and organized crime, and thus bring together crime control strategies with military techniques to fight them.

Atypical enterprises of war, such as those against drugs and terror, involve policing as much as conventional soldiering and strategies for waging war. Indeed, the paradoxical use of techniques of war in so many fields which were normally the competence of law enforcement authorities, and vice versa, has become even more explicit in the “age of terror.” This is the constitution of what I call *the transnational police-law enforcement/military-security* assemblage, which in many fields has displaced the *military-diplomatic* apparatus that used to regulate the relations between states and guarantee the establishment of the equilibrium and security of the international arena in modernity.

This complex topic is difficult to tackle properly here. Suffice to say that it has drawn the attention of many authors working within Foucault’s framework; for instance, Michael Dillon and other commentators have interpreted this phenomenon as the assemblage between forms of actuarial and self-regulatory technologies with those of despotic rule and coercive sovereign power, that is, between the biopower of fostering and preserving life and the sovereign power to kill (cf. Dean 1999; Hindess 2000; Dillon and Neal 2008; Dillon 2009; Dillon and Reid 2009; Reid 2008).

CONCLUSION: SECURITY BEYOND NEOLIBERALISM

In the context of biopolitics, crime has a significant place to make sense of what is at stake in global governance. Crime discloses at least two very important dimensions: first, how the idea of a transnational governmentality is thought of through defining threats to the global society; and second, that power over subjects is exercised through various mechanisms derived from these “racist” discourses of criminal threats.

Many of us have experienced these mechanisms of control exposed in the last part of the article, where the “fear” of terror and crime—typical biopolitical discourses—triggers forms of regulations and surveillance that go well beyond the fight against organized crime and terrorism itself. These mechanisms discipline subjects and control populations, devise policies targeting and classifying “dangerous” places and people, and in the end divide the world between the “respectable” and the outlaw and reckless populations.

This last point is critical, and the place of neoliberalism in this discourse cannot be underestimated. Neoliberalism has a very specific definition of the ethos of the respectable individual, and therefore, of the valuable ways of enjoying freedom. For all neoliberalism's defense of individual freedom, it is significant to see how, whereas entrepreneurs and millionaires are welcomed to enjoy the "benefits" of globalization (and accordingly policing mechanisms are designed), the vast majority of the population suffers all these controls and the severe consequences of diffuse wars such as those on drugs and terror.

This is the great paradox of biopolitical power in neoliberal politics: to enhance individual freedom, neoliberalism must deploy many forms of power over subjects. As Foucault says about the interplay in liberalism between freedom and apparatuses of security: "The problems of what I shall call the economy of power peculiar to liberalism are internally sustained, as it were, by this interplay of freedom and security... the horsemen of the Apocalypse disappear and in their place everyday dangers appear, emerge, and spread everywhere... there is no liberalism without a culture of danger" (Foucault 2008, 65, 67).

The neoliberal rationality of crime control epitomizes this paradox, illustrating how the *homo economicus* has become the grid and interface between the individual and the technologies of power designed for governing the population. In this way, thanks to this fundamental connection between the problems of the market and the problems of security and crime, a re-territorialization of forms of power takes place. The global assemblage for governing crime constitutes the extension of a political imagination of freedom to the production of subjects and populations through security apparatuses.

My contention is that if we consider there is something questionable, normatively and in the practical consequences brought about by the mechanisms of policing and securitization developed over the last few decades (let alone the wars on drugs and terror), we cannot separate our criticism from a profound examination of the neoliberal rationality underlying them. This also demands we must re-imagine the interplay between freedom and security beyond neoliberalism.

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