The Securitization of Society: On the Rise of Quasi-Criminal Law and Selective Exclusion

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The past 20 years have seen the rise of new actors in the delivery of security. The state, and consequently the police, is now only one of a motley collection of international and societal actors active in this area. Schools, housing associations, football clubs, retailers' associations, and citizens: it has become a matter of course that they, too—as contemporary jargon has it—"take responsibility" (Garland, 1996, 2001: 124–127) and develop and implement their own security programs. To a greater or lesser extent, they do so in collaboration with the police. Many terms have been used to define this "horizontalization" of the approach to security: "multilateralization" (Bayley and Shearing, 2001), "preventative partnerships" (Garland, 2001), "third party policing" (Mazerolle and Ransley, 2005), "nodal governance" (Johnston and Shearing, 2003), "pluralization" (Jones and Newburn, 2006), and so on. Although each of these terms has its own particular emphasis, they all converge on the realization that the performance of police-like tasks ("policing") is no longer the exclusive domain of the police. As such, it involves a shift from hierarchical administration (government) to horizontal administration (governance). New regulatory institutions, mentalities, and techniques have accompanied this shift (Crawford, 2003). Explanations for theses changes include a substantial increase in crime since the 1980s in Western countries and the limited opportunities available to governments to deal adequately with this crime.

To place these changes in a historical and philosophical context, I will focus on an article in Michel Foucault's lectures, *Sécurité, territoire, population* and *Naissance de la biopolitique*, which he delivered at the Collège de France between January 11, 1978, and April 4, 1979. In these lectures, Foucault explains the techniques and procedures of governance by using the neologism *"gouvernementalité"* ("governmentality"), a term first coined in his lecture of February 1, 1978.[1] In this context, he also introduces a new form of power, which he refers to as "*sécurité*" and which requires a different type of thinking about "governing" life and people's living conditions (*bios*), specifically in terms of prevention, population, regulation, and risk. Although the relationship between "security" and "criminality" is only of

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recent date (Zedner, 2009: 10), its development is compatible with the main thrust of Foucault's analysis of the emergence of the health issue, specifically the approach to controlling smallpox in the nineteenth century. This broadens the issue of security and Foucault's concept of power relations in a remarkable way. My interest in this article concerns Foucault's new form of power, "*sécurité*." I suggest that this concept offers a deeper and clearer understanding of the governance of security.

The essay is divided into three component parts. The first and largest part explores how *sécurité* has become increasingly relevant to society's social reality. I discuss the characteristics of the new concept introduced by Foucault in his series of lectures. In my view, Foucault's idea of securitization remains both theoretically and empirically underdeveloped in the current criminological literature. Remaining unclear are (1) the historical background of this process and (2) how it might address current shifts in criminal law. The second part explores a new phenomenon that I will call "quasi-criminal law": the penalization and enforcement of classical offenses through civil law agreements by parties other than the police and judicial authorities. I investigate the relation between Foucault's new form of power, *sécurité*, and quasi-criminal law by focusing upon the Netherlands and the prevention of antisocial behavior. Next, I illustrate the prevention of antisocial behavior by reference to a type of criminality—shoplifting—for which the Dutch state has sought power to combat. I concentrate on the "Collective Shop Ban," a new measure taken in the Netherlands to make shopkeepers co-responsible for maintaining security. This measure is highly suitable for investigating how the process of securitization enfolds in Dutch society. The third and final part of this article considers the unique juridical and ethical effects of quasi-criminal law. The question is whether this new instrument is indeed as legitimate and successful as the state seems to think.

The Fight Against Smallpox

The most striking aspect of Foucault's *Sécurité, territoire, population* and *Naissance de la biopolitique* lectures is that the term *sécurité* gives a different turn to his well-known analysis of power in *Surveiller et punir* (1975) and *La volonté de savoir* (1976). Although Foucault pays little attention to *sécurité* as a specific form of power in his lectures, we can already contend that the concept's attractiveness stems from the attention it draws to a series of important developments at the interface of state, society, and government tasks. Foucault finds concrete reference points to specify the new form of power, first and foremost in the fight against smallpox, which—contrary to the fight against leprosy and the plague—cannot be understood from a sovereign ("exclusion") or disciplinary exercise of power ("inclusion").

According to Foucault, "two different strategies to exercise power over people" and to prevent further contamination underlie the fight against leprosy and the plague (1975: 200; 2003: 43–48; 2009: 9–10). Leprosy leads to exclusion (Foucault speaks of a "religious model"), whereas the plague leads to inclusion

(a "military model") (2000a: 146; 2003: 47). In Foucault's account of measures taken against these diseases, we learn that the fight against the plague took place in the disciplinary society of the seventeenth and eighteenth centuries, while the approach to controlling leprosy is exemplary for the preceding sovereign society. It is precisely these two areas—forms of power and society—that have seen major changes in the last few decades. These changes, as the series of *Sécurité, territoire, population* lectures demonstrates, are particularly noticeable in the controlling and regulating techniques used in the fight against smallpox. Smallpox has been controlled through a policy of mass vaccinations and medical campaigns. This involved preparing elaborate reports on a variety of diseases with the potential to develop into epidemics, as Foucault writes (2000a: 154), as well as identifying and, if necessary, destroying a city's unhealthy areas.

The systematic and successful way in which smallpox was brought under control would not raise many questions these days, but, according to Foucault, such an approach was unthinkable from the perspective of the medical theory and reality prevailing at the time. What makes this approach to controlling smallpox so remarkable? First, Foucault mentions its "preventive character" (2009: 58). The only effective treatment against smallpox is preventive vaccination, a discovery made by Edward Jenner, an English physician (1749–1823) who successfully used a strain of the cowpox virus to vaccinate people who had contracted cowpox. Although the Frenchman Louis Pasteur realized the general applicability of the vaccination approach in 1881, its name goes back to Jenner's discovery, with "*vaccinia*" stemming from the Latin word for "cow" ("*vacca*"). The great success achieved by the early preventive vaccination of people is remarkable. Within a few years, the method was being applied in Paris, Vienna, and Geneva. Soon afterward, it was also extended to cities such as Constantinople, Berlin, and Boston in North America. Smallpox was "officially" eradicated worldwide in 1977.

Second, this technique targets the entire "population" of a country. The way in which the measure is applied makes no distinction between "the diseased" and "the healthy," or between "the abnormals" and "the normals." Specifically, there is no underlying dichotomy or antithesis of "good and evil." Characteristically, all inhabitants are regarded as a whole. Following from this, Foucault points out that people's living conditions and the manner in which their bodies function as carriers of biological processes (public health, birth, death, average life expectancy) become part of a national policy drawing on sciences such as statistics—the etymological meaning of which refers to "the knowledge of the state, of the forces and resources that characterize a state at a given moment" (2009: 274). By the same token, the population gradually becomes an independent object of knowledge and power. As Foucault puts it, it becomes an "object of surveillance, analysis, intervention, modifications, and so on" (2000b: 95).

Third, it allows for a "normal" mortality rate to be applied to the disease. Not only did "the statistics in the 18th century agree that the rate of mortality from

smallpox was 1 in 7,782" (2009: 58, 62), but different kinds of "normalities" can also be compared with each other since mortality rates can be calculated for each age or profession, for separate regions or cities, or for different parts of a country. It can be inferred from two graphs, for example, that children under the age of three seem to have a greater chance of succumbing to the disease than other age groups do. The first graph shows the average mortality rate, while the second shows the risks for each category. The discovery of "the normal," Foucault writes (2009: 57), does not have its basis in the "vague area of non-conformity" (1975: 181), as is the case with discipline, in which various techniques are used to reach a "normation" of a socio-cultural field.[2] On the contrary, it distances itself from the disciplinary discourse, where this is linked to "the power of the norm" (1975: 186). While the norm manifests itself as an obligatory principle within disciplinary facilities such as schools, prisons, factories, and barracks, "the normal" is of prime importance in *sécurité*. This normalization is not exercised through discipline techniques and the internal ordering of certain practices. Rather, its effect lies in deriving a norm from statistical data that is subsequently applied to the population to identify persons, groups, or areas that form a potential risk to the social order.

A New Form of Power

These fundamental changes within the sphere of health, according to Foucault, paved the way for a form of power that he calls *sécurité*. It is further concretized through modalities such as prevention, population, regulation, and risk. The modalities of this medical framework that "makes life" (2004: 241, 247) or "preserves life" (1976: 136), as we will see below, are closely related to shifts in criminal law and the governance of antisocial behavior in the Netherlands. The meaning of the term *sécurité*, however, presents a number of problems in an analysis of how this type of power functions today. Besides meaning "safety," the French word *sécurité* is also etymologically linked to "security"—the Latin *securitas*—which in Roman law is used in combination with *pax* (peace) and *libertas* (liberty). It expressed the protection of life and property within the national state, specifically the square, the street, and the marketplace. In these places, state protection against "evil-intending" citizens was needed. Yet *securitas* also meant the "safety" of a certain community, akin to what we now call "defense": the protection of a city, state, or country against outside forces.

In English, the words "safety" and "security" contain both meanings of the word. While "safety" refers to protection against danger in ordinary, daily life, "security" refers traditionally to a country or other community being protected against attacks or threats that jeopardize the functioning of society itself (Zedner, 2009: 9). Bauman gives a more general definition of the terms (1999: 17; 2000: 160–161), arguing that "safety" involves protecting a person's body and immediate environment (property, home, community), while "security" relates to a person's position and living conditions (accomplishments and entitlements). Bauman,

however, links these terms to the term "certainty," which, as he puts it, is about the difference between "reasonable and silly, trustworthy and treacherous, useful and useless, proper and improper, profitable and harmful" (1999: 17), i.e., all the distinctions we make in everyday life and which help us to make decisions we will not regret. In other words, "certainty" is about achieving a degree of predictability in preventing or removing the uncertainty of the unknown.[3]

Although it is extremely difficult to delineate the concepts of safety, security, and certainty in concrete cases, the combined use of these three concepts forms the core of what I would like to refer to as the "securitization of society." By this I mean the increasing use in different *milieus* of society since the nineteenth century of a variety of techniques designed to manage the future or, to phrase it better, to ensure a safe and secure future. As a consequence, different areas are not only "defined" by *sécurité* as a form of power, security techniques are also more widely applied in our society. These techniques are distinct from the disciplinary techniques described by Foucault as the methods to transform individuals into productive, efficient, and obedient entities, and which were used in prisons, convents, schools, and workshops (1975: 139). The reason is that, because of their reflexive nature, these techniques point to the future, making it possible to "predict" and thus "prevent" events. This follows from well-known notions such as "actuarial justice" and "the new penology" (Feeley and Simon, 1992, 1994; Ericson and Haggerty, 1997), where the objective is no longer to facilitate a convicted perpetrator's return to society through resocialization, but to identify and classify—and de facto "diffuse"—acts or conduct that could pose a threat to the social order. Feeley and Simon, in my estimation, grant too much autonomy in their analysis to the control systems of the national state, and they argue that actuarial justice has its roots in the twentieth-century extension of insurance-based risk calculations of probability (see also Simon, 1987; 1988). Insurance techniques are then used to generate reliable risk factors from aggregated data.[4] Securitization, however, is a broader and more appropriate concept in this context, because the pursuit of safety and security is not limited to reducing the problem of criminality by the state, but has been extended from the very start to include a multitude of practices and environments, with its most remarkable point of reference being a medical model in which politics is intertwined with all kinds of "soft" measures from the health sphere.

Although in *Sécurité, territoire, population* Foucault speaks of a "society of *sécurité*" (2009: 11), he does not suggest that the sovereign or disciplinary exercise of power has disappeared. According to Foucault, it is more appropriate to speak of a triangle: "sovereignty, discipline, and governmental management, which has population as its main target and apparatuses of *sécurité* as its essential mechanism" (2009: 107–108, 353). Although it is intellectually tempting to elaborate further on the differences between sovereignty, discipline, and *sécurité*, it makes more sense to focus on a way of regulating. Namely, Foucault's view constitutes a break with the traditional liberal-democratic definition in that it shifts the focus

from the "rule of law" and the "rule of the people" as the framework within which political decisions are made to a framework in which a modern government de facto manages and regulates.

Securitization and the State

Even though Foucault always distanced himself in his work from a biased relationship of power with regard to the state and the totality of state institutions, it cannot be concluded from this that the state plays no role in the process of securitization. Such a role logically follows from Foucault's new analysis of power relations, of which the fight against smallpox is illustrative. The systematic approach to this disease focused on improving the conditions in which people lived and the way their bodies functioned as carriers of biological processes. Governing, therefore, is defined in terms of people in relation to their living conditions. Substantively, then, it refers to life (*bios*) itself. There is little to be gained, however, by viewing the securitization of society as a return to the sovereign power of the state, as if *sécurité* as a form of power were based on the state and situated in a state apparatus. According to Foucault, the modern state is "not a universal nor in itself an autonomous source of power" (2008: 77). Furthermore, the state is never the source of all relationships. It will never be able to cover the whole spectrum of current power relations within a society. Deleuze emphasizes this in his monograph about Foucault's work: "If the State-form, in our historical formations, has captured so many power relations, this is not because they are derived from it" (1986: 76). The state must rather be regarded in the plural, in other words not as "a household, a church or an empire," but in the meaning of "states" (Foucault, 2008: 5). What this comes down to is that continuous securitization, which can operate quite differently in each individual case, is specifically produced in different practices and environments. Moreover, this encourages an overall integration at the level of the state.

What does this mean for the role of the state? It does allow a more subtle conclusion than analyses that point toward the reduced influence of the state on daily life or Hayekian demands for a minimal state. Apart from the state monopoly on violence and political decision-making, there is the view that the state as a whole has become weaker since the 1980s, in response to the impact of recent forms of political and economic neoliberalism. For instance, Bayley and Shearing (1996) speak of the "breaking up of the state's monopoly on policing," while McLaughlin and Murji (1995) predict "the end of public policing." These authors are certainly correct in saying that there is a growing fragmentation of the police function. But an altogether different perspective can counter the view that the power of the state is likely to decrease and that of the private sector to increase. The state's involvement in daily life actually seems to be growing (albeit more indirectly), both because the process of securitization is linked to problems of a different nature (social, economic, legal, familial, and so on) and because the state takes a position in the numerous environments in which those problems are governed. Not

only do some practices prove impossible without government involvement, but the prevailing norms within the boundaries of those practices are also reinvented, newly established, and legitimized, often in collaboration with the state. This is obviously not a homogeneous and uniform development as the role and influence of the state differ greatly in each environment. A sense of moderation, however, is appropriate when it comes to perspectives that speak of an erosion of the function of the state under the impact of neoliberal economics and politics.

Various authors have discussed the thesis that securitization is slowly but surely taking possession of multiple social environments, including Slama (2003), Ericson (2007), and, most recently, Simon in *Governing Through Crime* (2007). Simon describes how the approach to the issue of crime is governed by the interaction between various parties, of which the state is one (albeit a very influential one), as well as how practices such as housing, welfare work, education, and health are being restructured according to the logic of the securitization principle. For example, efforts to counter growing crime among young people lead schools, in collaboration with municipalities, the police, and judicial authorities, to draw up regulations that allow teachers to physically search students who are suspected of carrying weapons. In short, not only is the notion of "security" used to justify all sorts of measures that have other intentions, but the technologies, practices, and metaphors of the criminal law system are also more evidently present than ever before in diverse domains (2007: 4–5).

It is also important to add that the securitization signaled here is contractually reflected in local alliances between government and other players, where the involvement and responsibilities of the participants are reinvented, formulated, and legitimized. This is called "contractual governance" (Crawford, 2003). These contracts are characterized by a system of reciprocity or communality since the parties have to agree on what to do and what not to do, as well as the way in which the resources they create will be used. In addition, as Crawford (2003: 490) puts it, they reflect "a desire to control the uncertainty of the future" by introducing all sorts of measures designed to prevent assumed future behavior. A good example of this in the Netherlands is the collaboration between retailers, municipal authorities, the police, and the Public Prosecution Service to prevent crime and disorder in inner cities. Retailers themselves have devised measures to ban from shops people who cause a nuisance, such as by excluding them from the entire inner city. In this way, private parties, namely retailers, take on partial responsibility for tracking down and punishing classical criminal offenses such as theft, insults, threats, and vandalism. In the next part, I will discuss this initiative to prevent crime and disorder, which is also referred to as the "Collective Shops Ban," in more detail to explain the rationale prevailing in this measure, including the nature and background of the problems to be tackled and the approach to be followed. As such, the Collective Shops Ban is closely connected to the ascribed characteristics of the much larger framework of securitization.

Collective Shops Ban

The Collective Shop Ban is a Dutch example of how private parties develop their own security programs with the support of the state and set the rules for visitors in the public domain. In 2004, shopkeepers developed their own measures to keep individuals exhibiting antisocial behavior from entering their shops throughout the downtown area. The Shop Ban emerged in response to growing general concern about security in the Netherlands and over the plight of shopping areas that were experiencing falling user numbers and poor local reputations. As a reaction to rising crime figures and a growing fear of violence, efforts were made to enhance the quality of the urban environment by making parties other than the state co-responsible for solving security problems. Also, a wide range of new tools and instruments were introduced, such as video monitoring, preventive frisking, loitering prohibitions, and the use of new legislation against suspicious businessmen and businesses (Vedder et al., 2007).

In keeping with an "anti-social behavior agenda" (Crawford, 2009), the measure is a preventive instrument to combat "undesirable conduct," which includes behavior that is not yet criminal, but is deemed to be an indicator of potential future criminal conduct. Depending on the severity of the conduct, a warning is first issued or a denial of entrance is immediately imposed. The shopkeeper himself can decide whether to issue a warning or deny entrance. A warning can only be turned into a denial of entrance if the antisocial behavior is repeated. The severity of the conduct determines how long entrance is to be denied. Denials of entrance can be imposed for six months or a year. During this period, the individual is not allowed to enter the particular shop or any of the other 454 shops that belong to the Downtown Federation of Shopkeepers. So shoplifting at a supermarket can mean an individual can no longer go to the local pharmacy. If the order is violated, the individual is guilty of entering the premises illegally, which is punishable under Section 138 of the Dutch Penal Code. In a case of entering the premises illegally, usually a new Collective Shop Ban is imposed and the period of time is extended. There is no maximum number of times a ban can be imposed (*www.bof-denhaag.nl/cwo*).

In The Hague, three categories of conduct are viewed as warranting a Collective Shop Ban. The first pertains to petty offenses. Petty offenses include antisocial behavior, attempted fraud or forgery, attempted shoplifting, stealing an amount up to €50.00, insulting or threatening salespeople and/or shoppers without violence, destruction of property with damages under €100.00, and vandalism with damages under €100.00. The second category of conduct entails greater damages and can lead to a denial of entrance for six months. It includes fraud or forgery involving an amount up to €250.00, theft of an amount up to €250.00, destruction of property with damages up to €200.00, and vandalism with damages up to €200.00. The most serious category of conduct, which can also include violence, usually leads immediately to a denial of entrance for a period of a year. This category includes

fraud and forgery involving an amount above €250.00, theft of an amount above €250.00, insulting or threatening salespeople or shoppers using violence, manhandling personnel and/or shoppers, and destruction of property with damages above €200.00 (*www.bof-denhaag.nl/cwo*).

If a security guard, salesperson, or shopper witnesses a punishable act, it is possible to search in an online database to see whether a warning or a Collective Shop Ban has been issued in the past to the individual in question. The security guard or shop manager can decide whether to issue a denial of entrance. In addition, if a punishable act is committed, charges can be filed with the police. This is done in the event of a first offense or entering the premises illegally. In the framework of the project, the Public Prosecutor has expressed the intention to prosecute every charge of shoplifting or disturbing the peace. At an organizational level, policymakers claim the success of the Collective Shop Ban on the basis of evaluations and the number of denials of entrance imposed. Last year, for example, the Main Retail Trade Association announced that "shoplifting can be reduced to 60% as a result of the measure" (Schuilenburg and Van Calster, 2009: 155). Also, the shopkeepers of The Hague have imposed more than 1,500 denials of entrance. As a result of the reputed success, more and more cities are introducing the measure, as well as original expansions on it such as cinema and tram bans. Nowadays, Amsterdam, Apeldoorn, Arnhem, Beverwijk, Den Helder, Deventer, Eindhoven, Gouda, Heerlen, Helmond, Leeuwarden, Leiden, Leidschendam, Rotterdam, and Utrecht have either introduced this policy or have advanced-stage plans to do so (Wesselink et al., 2009).

Differences with Criminal Law

Theft and serious forms of antisocial behavior have been traditionally dealt with via classic criminal law founded on notions of repression. The roots of classic criminal law go back to the French Revolution. Two important features of this classic system of criminal law can be distinguished. First, criminal law enables the state to exercise control and guarantees the legal position of citizens *vis-à-vis* the state. It is precisely this conflict of interest between the state and the citizen, Peters (1972) emphasizes, that is the structural principle of the criminal trial. In the distance between the state and the citizen, i.e., the space of this conflict, the legitimacy of the actions of the state can be tested on the basis of procedural norms and legal principles such as the legality principle (no act is punishable except according to the law) and the reasonable assumption of guilt. Second, criminal law is focused on the protection of individual legal goods such as life and property. Protection as an aim of criminal law fits into a punishment mentality (Johnston and Shearing, 2003: 38–55), in which the state guarantees the safety of the citizen by enforcing a legally stipulated punishment for each offense. This occurs afterwards, and on the basis of the exclusive responsibility of the state. On a number of points, however, the instrument of the Collective Shop Ban diverges from the classic instruments

of criminal law and is a good example of, as Foucault would say, the discourse of knowledge and power that characterizes the process of securitization.

First, the Collective Shop Ban is a civil law measure and is separate from the criminal law system. Powers granted by the shops ban are not set out in the legal code, but instead are found in a covenant entered into between the participating parties at a local level. Therefore, it is possible to deny a person entrance to a shop on the grounds of local rules and regulations (Wesselink et al., 2009). This means that shopkeepers are responsible for imposing a denial of entrance to their shops. The decision to deny someone entrance is made by the shopkeeper or a private security guard employed by him. A criminal law suspicion in the sense of a reasonable assumption of guilt is not required. It is true, though, that criminal law remains the *ultimum remedium* in the sense that it can always be determined in a court of law whether a person has actually committed a punishable act. By enforcing a Collective Shop Ban, the court of law is skipped. In incidental cases, the police are involved or there are consultations between witnesses and the person issuing the Collective Shop Ban.

Second, an indictment does not accompany a Collective Shop Ban. The individual is not charged with any punishable acts. It says on the Collective Shop Ban form what he has done. The form specifies a number of categories of conduct that can be ticked. There is no need to say which acts on the part of the individual led to this categorization. In imposing a Collective Shop Ban, it is sufficient to state the category of conduct without exactly describing the act itself (*www.bof-denhaag.nl/cwo*). In criminal law, however, the charge must describe precisely what action took place for a punishable act to be deemed to have been committed. In addition, criminal law takes more account of the offender's background.

Third, less evidence is required for imposing a Collective Shop Ban than for a criminal law settlement modality. In Dutch criminal law, the minimum evidence rule states that two pieces of evidence are always required for a conviction. One piece of evidence is enough if a criminal investigator has caught the offender in the act (Section 344, Part 2 of the Penal Code). For a Collective Shop Ban, all that is required to impose an official sanction is for a witness—a salesperson or a private security guard (neither of whom is an official criminal investigator)—and the offender to sign a specific form. A second witness is only needed if the offender refuses to sign the Collective Shop Ban form. So the offender signs the form voluntarily. As soon as the Collective Shop Ban is signed, the individual acquires the status of perpetrator. After the signing, the denial of entrance to *all* the shops associated with the measure goes into effect immediately (*www.bof-denhaag.nl/cwo*).

Fourth, the measure can no longer simply be contested via criminal law. A special complaint procedure has been drawn up. If there are objections to a Collective Shop Ban, a complaint can be submitted to the Board of the Downtown Federation of Shopkeepers (*www.bof-denhaag.nl/cwo*). However, the Federation actively supports the implementation of the denial of entrance measure and can

hardly be referred to as an independent agency. In the event of a complaint, the Board examines the contents of the case and if they want, the parties involved can be heard. If the individual cannot accept the decision of the Board, then he can also submit an objection to the Personal Information Protection Board. However, that Board cannot make a binding decision in the case. The Personal Information Protection Board can only start a mediation procedure between the parties involved.

Since these differences seem to go further than the similarities to classic criminal law, if only because the rules are not fixed in a universal code of laws that regulates all cases and all situations no matter what, and the police and courts are not in charge of investigating the offenses, the Collective Shop Ban would seem to be an excellent example of what can be called "quasi-criminal law" (Schuilenburg and Van Calster, 2009). This brings me to the final section, namely, whether this new instrument is indeed as legitimate and successful as the state seems to think.

Quasi-Criminal Law

Quasi-criminal law does not operate entirely outside common or classical criminal law.[5] In a certain sense, it even operates within the regime of criminal law since exercising it assumes a system in which the police and the Public Prosecution Service participate and have given their approval. Quasi-criminal law cannot, therefore, be viewed as totally separate from the traditional methods of prosecution pursued by police and judicial authorities. In that sense, it supplements rather than replaces the manner of tackling disorder in classical criminal law. Insofar as quasi-criminal law introduces an extension and fixation of meaning *vis-à-vis* criminal law, it would appear to serve as a "supplement." That term is derived from the French verb *suppléer*, which means "to add" as well as "to replace." As such, a supplement is not a random appendage, but a necessary addition to the already existing reality or legal sphere (Derrida, 1994).

Here, the supplement does not have a neutral meaning in the sense that the offender is subject only to the applicable Dutch criminal law. In fact, however, a new set of instruments and techniques is being created, alongside the criminal law system, and this is intended to maintain a grip on the public and moral structure of different domains in society. One consequence is the exclusion of people from certain facilities (collective goods and public services) and areas (Young, 1999). Although exclusion always takes place on the basis of the rules that are valid at that place, two exclusion techniques are remarkably conspicuous here (*cf*. von Hirsch and Shearing, 2000). The first is based on the profiles of certain people. It is assumed that certain individuals possess specific characteristics that indicate a heightened risk of criminal behavior (for instance: "man," "young," "black," "hoodie," "cap"). Whereas no criminal behavior has actually taken place, the risk that it might occur is estimated to be so high that these people are refused access to the facilities in concrete areas and the social life that takes place there. A well-known example is the exclusion of groups of young people from shopping malls

who are "mouthy and wear baseball hats" (Flint, 2006: 60). A second form of exclusion can be distinguished, again oriented toward people or groups instead of toward the crimes committed. In contrast to the first form of exclusion, this form involves the refusal of people who have been found guilty of violating certain rules in the past. Despite this difference in gradation, the similarity between both forms of exclusion is evident. Both are directed toward the identification of "Evil" in the form of potential threats or possible security risks in a demarcated space (Schuilenburg, 2008).

As a mode of governing the future, the Collective Shops Ban functions as a form of "selective exclusion." As such, it impairs the very core of the protective function of criminal law, as elaborated during the Enlightenment in the reformation philosophy of thinkers such as Montesquieu (the legalization of power in the *trias politica*) and Beccaria (the theory of the *social contract*). The Collective Shop Ban measure challenges established assumptions about due process, proportionality, and the threshold for intervention. In fact, for the offender of the Collective Shop Ban, the same type of offense results in a different legal course, with fewer legal safeguards, namely, only the opportunity to submit a written complaint to the local business association. In this way, the parallel existence of quasi-criminal law and criminal law impairs the legal protection that is associated with classical criminal law, since the protective rights provided for in criminal law are instrumentalized in the hands of a single, central, and indivisible sovereign agency: the retailers.

From this perspective, the danger is not that the introduction of quasi-criminal law will contribute to the further regulation or control of the social order, but that it will increasingly operate as a perfecting of criminal law. A possible threat, then, is that criminal law will disappear into quasi-criminal law and that any mediation between the concrete exercising of power and the social order will thereby disappear. Down this route is the possibility of an earlier deployment of investigation methods and techniques and an increase in the number of controls performed in the name of securitization, without court supervision—what Zedner terms "pre-crime" (2007).[6] In this way, investigations spread to include people who are not under suspicion in any way and they are not even aware of it. The instrumental way in which this "informal" or "proactive" enforcement is being performed has far-reaching consequences for citizens' freedom since the formal reality of criminal law seems hardly to have altered in response to all these changes. In that respect, the distinction between citizen and suspect is also becoming ever less clear. The attendant danger is that everyone has become a "risk citizen" (Schuilenburg, 2009).

Conclusion

In rewriting Foucault's lectures on *Sécurité, territoire, population* and *Naissance de la biopolitique* into a process of securitization, I have tried to build three bridges. The first bridge runs from a medical model to other risks pertaining to the lives and living conditions of people, such as nuisance and crime. Whereas the fight against

smallpox was originally a medical issue, it became generalized, as it were, with its framework replaced by a much more encompassing way of "governing people." The way in which crime has been dealt with since the 1980s certainly does focus less on resocialization and clinical treatment of offenders. Yet the expansion of the theme of human behavior implies that the problem of crime is being included in a medical discourse of prevention, population, regulation, and risk. The second bridge is that between *sécurité* and quasi-criminal law. Even though criminal law's sphere of influence (severity of sentences, number of offenses, broader and stricter police action) has manifestly increased during the past 20 years, it should be noted that new methods and techniques are being added to reinforce norms. It is not surprising, therefore, that private and commercial parties such as local retailers and instruments like the Collective Shop Ban have acquired an important place in the securitization of the society. The third bridge links *sécurité* and protective rights. Quasi-criminal law is a supplement to the legal set of instruments available in criminal law. The rules in quasi-criminal law are not as such contained in a universal law that *a priori* covers all cases and situations, and the investigation of violations is not assigned to public authorities such as the police and judicial authorities. Instead, the offender is subjected to a complaints procedure that offers fewer legal safeguards than the common criminal law does.

With respect to the delivery of security, this evokes various new questions. How, for example, do we find a new balance between freedom and security? How can democratic control be structured so as to cope with the many new actors participating in the process of securitization?

NOTES

1. This lecture was already included in *The Foucault Effect* (Burchell et al., 1991: 87–104). Compared to the updated version in *Sécurité, territoire, population* (*cf*. 2009: 101), however, a section appears to have been omitted from the text, while another piece, which was not on the audio recording of the lecture or in the original manuscript on which Foucault's lecture was based, was added. This lecture had already prompted renewed interest in his work, especially among authors in the Anglo-Saxon world such as Rose (1999) and O'Malley (1996). The same lecture forms an important reference point for Wood and Shearing's "nodal governance" perspective (2007: 19, 27, 147–148) when they speak of "a set of possibilities to govern people's behavior." They loosely base this on Foucault's analysis of power, which, in the words of Wood and Shearing (2007: 9), shows that "rather than being located at a centre, power comes from everywhere." It is noteworthy that these authors make no reference to the *Sécurité, territoire, population* and *Naissance de la biopolitique* series of lectures. Unlike authors such as Rose and O'Malley, Wood and Shearing did have access to the posthumous publications of Foucault's series of lectures at the Collège de France and his new form of power, *sécurité*.

2. Foucault shows in *Surveiller et punir* that disciplinary punishment is directed at everybody who does not conform to the norm, for the purpose of limiting the deviation. More specifically, the most important characteristics of punishment are that it "compares, differentiates, hierarchizes, homogenizes, or excludes" (1975: 185).

3. In *L'État providence* (1986), Ewald describes how, since the nineteenth century, a system of collective insurance has emerged. It is designed to protect citizens against an uncertain future and plays an increasingly important ordering role in society. In Ewald's analysis, this system functions as a new technology to govern society.

4. O'Malley and Hutchinson's "Reinventing Prevention: Why Did 'Crime Prevention' Develop So Late?" (2007) shows that thinking in terms of prevention and risk followed in the United Kingdom and the United States in the nineteenth century with regard to firefighting and the prevention of fire hazards. For an overview of the dispute about the historical roots of actuarial justice, see Kemshall (2003: 28–29).

5. In the case of discipline's relationship to the law, Foucault speaks of a "counter-law" (1975: 224–225). According to Foucault, discipline creates a "private," compulsory relationship between individuals that differs fundamentally from a contractual obligation. As such, the law qualifies legal subjects according to universal norms, whereas discipline characterizes, classifies, and specializes. However universal discipline may be, Foucault writes (1975: 224) that in its mechanisms, it remains a counter-law.

6. A well-known example is the use of biometric schemes in airports that were set up to improve security after September 11.

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