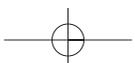
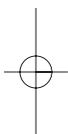




# Global Finance in the New Century



*Also by Libby Assassi and Duncan Wigan*

GLOBAL REGULATION: Managing Crises after the Imperial Turn  
(co-editors with K. van-der-Pijl)

# Global Finance in the New Century

## Beyond Deregulation

Edited by Libby Assassi, Duncan Wigan and  
Anastasia Nesvetailova

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**CGPE**  
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## Financial Regulation and the War on Terror

*Marieke de Goede*

### Introduction

It is possible to argue that September 11 2001 spelt the end of financial globalisation as we know it. In the context of the war on terror, far-reaching new regulation of financial institutions and transactions is being put in place in order to detect and prevent the financing of terrorism and money laundering more generally. This new regulation, enacted by national governments and international institutions alike, could be seen to run counter to the course of financial globalisation and liberalisation that dominated the 1980s and 1990s (Langley 2002; Germain 1997). Only days after 9/11, Stephen Roach (2001) argued in the *Financial Times* that the 9/11 attacks could spell the end of globalisation: 'Terrorism puts sand in the gears of cross-border connectivity and the result threatens the increasingly frictionless world of globalisation. The events of 11 September have, in effect, levied a new tax and such flows. The security of national borders will now have to be tightened'. Some, like Thomas J. Biersteker, cautiously welcomed unexpected political will to financial reregulation. According to Biersteker (2002: 83), 'the window of opportunity is...open' for multilateral coordinated global action against terrorist finance as well as tax havens and offshore finance more generally (see also Biersteker 2004).

This chapter reflects upon the meaning and form of financial regulation in the 21<sup>st</sup> century as it is taking shape through the war on terror. The chapter demonstrates a particular regulatory regime to be emerging that is intending to reconcile new regulation with continuing globalising markets, through a risk-based approach. This does not mean that I argue that neo-liberalism continues unhampered and is the main, totalising force in financial governance. Neither does it mean that I observe an unequivocal move 'back to borders' in post-9/11 financial practice. Instead, I argue that a complex set of laws and practices is contingently emerging through the risk-based approach, that has effects on financial exclusion and economic citizenship. This complex set of laws and practices is best understood

through the lens of *biopolitics*, a diffuse form of power, conceptualised by Michel Foucault, that operates through definitions of normality and deviance. The effects of the war on terrorist finance on financial exclusion and economic citizenship suggest that it needs to be approached critically, and that the reregulation emerging in its name – while clearly drawing on earlier initiatives – is particular to the 21<sup>st</sup> century.

### **A window of opportunity?**

The war on terrorist finance includes far-reaching domestic and international financial regulation. As early as 24 September 2001, the White House issued the 'Executive Order on Terrorist Financing' that dramatically enhances government powers to freeze assets of suspected terrorist individuals and organisations and that issues a blacklist of terrorist suspects. In the accompanying press release, President Bush said: 'We will starve the terrorists of funding, turn them against each other, rout them out of their safe hiding places, and bring them to justice'.<sup>1</sup> Title III of the USA Patriot Act that was signed one month later is called the 'International Counter-Money Laundering and Financial Anti-Terrorism Act,' and significantly strengthens existing Anti-Money Laundering (AML) legislation in the US and beyond. For example, the Act extends suspicious transactions reporting requirements to securities and derivatives brokers, including mutual funds and hedge funds. Title III prohibits US banks to maintain accounts with 'shell banks' and sharpens customer due diligence procedures in offshore jurisdictions. It moreover strengthens customer identification procedures for both new and existing customers of US banks and brokers, and requires customer identities to be checked against Treasury's terrorist blacklist.

Among the most important international initiatives concerning terrorist finance is UN Security Council Resolution 1373 adopted in September 2001, which criminalises financial support of terrorism, obliges signatories to take measures against terrorist financing, and in effect globalises the US government's terrorist blacklist.<sup>2</sup> The resolution establishes reporting requirements for individual countries, which have to keep the UN updated on their implementation of anti-terror law and the (legal) steps they are taking to detect and prevent terrorist financing. UN Resolution 1377 moreover invites states to seek technical assistance in the implementation of anti-terror laws, thus giving the UN a considerable role in domestic legal practice (Biersteker 2004: 60–3). Another important international initiative is the list of Eight Special Recommendations on Terrorist Financing issued by the Financial Action Task Force (FATF), the OECD's anti-money laundering organisation, in October 2001 to supplement its 40 recommendations on money laundering.<sup>3</sup> The special recommendations include stipulations on suspicious transactions reporting, guidelines for regulating informal

money transmitters, and, in cooperation with the World Bank, assessment procedures for non-compliant countries. Furthermore, the EU has developed the Third Money Laundering Directive that explicitly includes terrorist financing.<sup>4</sup> This directive extends customer identification procedures for all financial institutions and introduces regulatory requirements for money wiring businesses. It was approved by European Parliament in June 2005 and is expected to come into force in 2007. Finally, most governments have included financial provisions in their national anti-terrorism legislation, and best-practice guidelines on detecting terrorist financing are forthcoming from industry self-regulating bodies including the Wolfsberg Group<sup>5</sup> and the Bank for International Settlements.<sup>6</sup>

The Bush administration certainly made a remarkable turnaround with regard to financial regulation and money laundering policy. Before 9/11, it halted or hampered domestic and international initiatives in this area, including policy changes set in motion by the Clinton administration. For example, Phil Gramm, chairman of the Senate Banking Committee, early in 2001 'boasted that [he] killed the Clinton administration's anti-money laundering legislation' (*The Economist* 2001: 10). Moreover, only one month before the attacks, William Wechsler (2001: 55), advisor to the US Treasury under Clinton, expressed worry at the 'Bush backtrack' on multilateral anti-money laundering coordination. At the time, the US opposed OECD policy on the prevention of harmful tax competition, on the grounds that it is an 'affront to the sovereignty of jurisdictions and a form of regulatory "overreach" that has dire consequences for sovereignty at home' (Maurer 2005: 478). In contrast, in October 2001 Bush's Secretary of the Treasury Paul O'Neill delivered a fervent plea for the development of special anti-terrorist finance recommendations and stringent compliance monitoring before the extraordinary FATF session on terrorist finance. O'Neill (2001) said: 'Our goal must be nothing less than the disruption and elimination of the financial frameworks that support terrorism and its abhorrent acts. To achieve this end, we must commit to employing every influence both within FATF membership and throughout the world'.<sup>7</sup> Since 9/11, intervention in other countries' sovereignty in financial regulation seems no longer problematic to O'Neill, and countries are under great diplomatic pressure to comply with FATF and UN regulation.

Plenty of reason, then, to concur with Biersteker (2002: 83) that it is possible to welcome a 'sea change' in political will to fight terrorist financing as well as offshore finance more broadly. May 9/11 have offered a window of opportunity for significant financial reregulation, something that has been appealed for in the literature on global finance since the breakdown of Bretton Woods (for example, in Strange 1986; Helleiner 1994; Palan 2003)? May this be an unintended upside of the otherwise problematic return to borders since 9/11 (Andreas and Biersteker 2003)?

## Regulation and risk

It is important, in this light, to examine the particular shape that post-9/11 financial regulation is taking, as well as the ways in which it is being implemented in practice. There are two main differences between pre-9/11 anti-money laundering policy and the current war on terrorist finance (c.f. Aninat, Hardy and Johnston 2002). First is the desire in the war on terrorist finance to trace transactions that are not in themselves illegal, but that may at some point in the *future* be used for illegal purposes. Second is its relevance for retail finance: because of the relatively small amounts of money used by the 9/11 hijackers, monitoring of everyday financial transactions for markers of suspicion is becoming a central feature of the war on terrorist finance. What is emerging at the heart of the policy constellation pursuing the war on terrorist finance to address these issues is a *risk-based approach* – which offers common ground to (inter)national public regulators and industry self-regulating bodies. This means that monitoring for suspicious (risky) transactions and customers is being required by regulation, but *also* that there is considerable flexibility in the ways in which banks implement these regulatory requirements. A 2003 discussion paper by British financial regulator Financial Services Authority (FSA) (2003: 7) sets out the centrality of the risk-based approach to current anti-money laundering regulation: ‘A risk-based approach is not a soft option. It puts the responsibility on firms...to identify, assess, mitigate and monitor their money laundering risks on a considered and continuing basis’. The risk-based approach is not *new* to financial practice, but already existed, for example, in relation to the new Basle Capital Accord on reserve requirements (Basle II) that is based on banks’ own risk-modelling. In the case of Basle II, the risk-based approach arguably leads to larger exposure and smaller reserves than percentage-based reserve requirements (de Goede 2004: 209; see also Izquierdo 2001; Tickell 2000).

Elsewhere I have argued that the risk-based approach to the war on terrorist finance entails a significant change of previous anti-money laundering regulation because of its emphasis on *prevention* and not just prosecution (Amoore and de Goede 2005: 151–3). Here, it is important to repeat the centrality of terrorist finance to the war on terror more broadly which is illustrated by this turn to prevention. As Robert O’Harrow (2005: 260) puts it in his critical assessment of electronic surveillance in the war on terror:

There is no overstating the value government investigators place on financial activity. It’s considered almost like a fuel for their intelligence engine. Bank transfers, the ties among customers, the use of automated teller machines. Such records also contain a wealth of identity information. The FBI...believe that these details, coupled with data mining, amount to a new kind of weapon in the amorphous war on terrorism.

It is clear that the risk-based approach intends to reconcile these difficult demands of fighting terrorist financing and unearthing terrorist networks with the continuing existence of globalising financial markets. As Aufhauser (2003: 302) puts it, 'The world economy is a deliberately open and porous one, designed to encourage the free flow of capital, investment and economic development. To elect rules that intrude on that dynamic is to hand victory to the enemy'. Indeed, the question of the resurrection of state (regulatory) power in the midst of a globalising world post-9/11 is of central concern to scholars of IPE, who, according to Martin Coward, 'are...faced with reconciling the territorially based sovereignty evinced by American statecraft or the borders hardened to fight terrorism with the de-territorialising transversal forces that have shaped the post-Cold War era' (Coward 2006: 63). In other words, the war on terror is often regarded as entailing the return of sovereign power in a globalising world (for example, Cox 2001, 2004). However, as Coward (2006: 63) argues, 'neither American statecraft under George W. Bush, nor the borderless jihad envisioned...by al-Qaeda cells has undermined the various deterritorialising forces of capital'.

One way of understanding these seemingly contradictory developments is to analyse the invigorated (financial) sovereign power as a biopolitical mode of governing that operates through definitions of normality and deviance, and that entails complex networks of public/private authority. According to Jenny Edkins and Véronique Pin-Fat, 'the notion of sovereign power as opposed to sovereignty is crucial here'. So, although Edkins and Pin-Fat argue that 'sovereign power is far from dead', this should not be taken to mean that they observe 'the survival...of sovereign statehood' (2004: 3). Instead, it is important to explore the continuing grammars and relations of disciplinary and biopolitical power that use 'sovereignty' as their rationale, and how these are productive of 'particular forms of life (or lives lived)' (Edkins and Pin-Fat 2004: 4).

In IPE literature, much has been written about the increasing salience of private authority global governance, for example, through the operation of commercial law, credit rating and auditing, at the expense of state regulatory capacity (Cutler *et al.* 1999; Hall and Biersteker 2003; Sinclair 2005). The war on terrorist finance, however, does not simply entail a shift back from private to public authority – as the 'back to borders' thesis would suggest – but entails more precisely the enduring and even enhanced power of particular state agencies, in close cooperation with industry self-regulating bodies and private risk assessment firms. In other words, the public-private distinction *itself* is becoming blurred through the risk-based practice of the war on terrorist finance. In the US context for example, private outsourcing of terrorist-related surveillance is sometimes seen as a way to *enhance* policy legitimacy, as US citizens are thought to be afraid of nothing as much as a 'big brother' government. As documented by

O'Harrow, governmental officials of the Transportation Security Administration (TSA) actively encourage private outsourcing in order to foster legitimacy. 'Instead of bringing massive amounts of information to the government,' O'Harrow (2005: 239) writes of TSA's air passenger risk management program, 'they would rely on subcontractors, companies that would verify individuals' identities by sifting through storehouses of commercial and public record information.'

A biopolitical understanding of this exercise of power in which subcontracting is actively sought and private (risk-assessment) firms acquire jurisdiction over (financial) access and opportunity is thus helpful. Biopolitics is a term developed by Michel Foucault to denote sovereign power over life itself, through the identification, compilation and statistical analysis of populations that can be seen to emerge in the second half of the 18<sup>th</sup> century in Western Europe.<sup>8</sup> Foucault posits that with the modern Western state and the imagination of its population as a coherent entity that undergoes periodic transformation through rates of fertility, mortality and disaster, a new form of power emerges: the power to monitor, regulate and manipulate the properties of the population. That power comes to be called biopower: 'a technology which brings together the mass effects characteristic of a population, which tries to control the series of random events that occur in a living mass, [and]...which tries to predict the probability of those events' (Foucault 2003: 249; see also Foucault 1991). Statistics and the normalising power of statistical regularities are at the heart of biopower and 'define its power's field of intervention in terms of the birth rate, the mortality rate, various biological disabilities' (Foucault 2003: 245).

Biopower, then, is to be understood as a technique of rule that does not emanate from a clear sovereign centre, but that is managed by state as well as non-state bodies and that operates through the imagination of statistical normalities and abnormalities in diverse areas of life. According to Michael Shapiro (2002, §10), 'the biopolitical aspect of war and peace arises in connection with an understanding of sovereignty that *exceeds its juridical dimensions*' (emphasis added). In other words, biopolitical power fights war in the name of the population, extending its power through the privatised practices of military subcontracting, airport security, and, most relevant to this chapter, financial middle-management (see also Butler 2004). It operates through the creation of subjectivities of the healthy, active and (financially) responsible citizen (for example, Amoore 2004; Dean 1999; O'Malley 2004).

While operating in the name of the general health and well-being of the population, Foucault forcefully demonstrates that biopower entails a logic of exclusion, political expulsion and racism, by 'creating caesuras within the biological continuum' (Foucault 2003: 255). It is precisely the statistical technique that necessarily introduces 'a *break* into the domain of life that is

under power's control: the break between what must live and what must die' (Foucault 2003: 254, emphasis added). Making clear that he does not (just) mean this latter reference to death literally, but to include 'political death, expulsion, rejection' (p. 256), Foucault's point is to analyse statistical power as a way in which groups of the population are being separated out into normal and abnormal, viable and non-viable, legitimate and illegitimate. These seemingly technical decisions have vast political consequences, and suggest that close scrutiny of *what it is* that is deemed financially suspicious and devious is warranted.

Before I go on, in the next section, to look more closely at the risk models that are being developed to mine for suspicious financial behaviour, it is important to see that the analysis of the regularities and deviancies of given populations through computerised risk-assessment is becoming a central strategy of the war on terror more broadly (Lyon 2003). Initiatives by the Bush administration in the war on terror have included several versions of intensive datamining programmes that propose preventative screening to separate out the normal from the suspicious. For example, the US-VISIT programme, run by consulting firm Accenture, uses risk management techniques in order to police America's external borders. Accenture's 'smart border solution' collects and analyses traveller data in order to sort people into categories of riskiness (Amoore 2006). A logic of prevention and proactive intervention characterises this embrace of risk-management, according to Rens van Munster (2004: 147), which 'operates on the basis of permanent feelings of fear, anxiety and unease.'

### Datamining and suspicious transactions

In the war on terrorist finance, a vision is projected of a secure world in which 'legitimate' global financial markets continue to operate unhampered, as 'illegitimate' transactions are automatically and painlessly filtered out through continuous and computerised transactions monitoring. This vision entails, in the words of Mariana Valverde and Michael Mopas (2004: 239), a 'dream [of a] "smart," specific, side-effects-free, information driven utopia of governance'. According to Aufhauser (2003: 304–5), these techniques have the ability to prevent terrorist acts through 'the real time production of electronic commerce to a central storage facility.' Says Aufhauser:

If all such information was joined together and challenged with formulas intended to detect anomalies, it is conceivable that the two wire transfers to Dubai from a small town in the USA in Maryland by Mohammed Atta days before the 11<sup>th</sup> September attacks *would have set off a blinking yellow light* that said something is amiss – to be checked out before people lose their lives. (emphasis added)

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Identifying risky and suspicious transactions relies on the prior construction of 'normal financial transactions', in order to identify those transactions that deviate from the norm which is believed to indicate terrorist behaviour. In this way, however, terrorist finance becomes classified as a problem particularly associated with migrants and the poor, and it may lead to financial exclusion of these groups. For example, US Treasury's *Terrorist Financing Rewards Program*, which offers rewards of up to US\$5 million for information leading to the dismantling of terrorist organisations, implies quite clearly that terrorist money is *foreign* money. As Treasury Undersecretary Jimmy Gurulé (2002) stated at the inauguration of the program: 'Our strategy is simple: international terrorism is financed by money sent to terrorists *from sources around the world*; thus, we must disrupt and stop that flow of money. This program will help us gain new information and insights into how terrorist financiers are moving money for deadly purposes' (emphasis added). The rewards program has distributed posters and flyers with indications of 'what to look for', accompanied by images of Osama bin Laden, the falling World Trade Towers, and pictures of *foreign* cash (that is, no US dollars). Suspicious transactions include 'transactions involving a high volume of incoming or outgoing wire transfers', as well as 'transactions with no logical economic purpose'.<sup>9</sup>

By comparison, FATF's (2002: 7) identification of 'characteristics of financial transactions that may be a cause for increased scrutiny' moreover, seems to include almost any use of banking accounts that does *not* involve a regular income and expenditure (salary and mortgage, for example). FATF (2002: 7) regards as suspicious 'accounts that receive relevant periodical deposits and are dormant at other periods' and 'a dormant account containing a minimal sum [which] suddenly receives a deposit or series of deposits followed by daily cash withdrawals'. FATF further encourages banks to scrutinise cases where the 'stated occupation of the transactor is not commensurate with the level or type of activity' and regards as suspicious more specifically cases where 'a student or an unemployed individual...receives or sends large numbers of wire transfers'.

In banking practice, the new regulatory requirements issued by Treasury, FATF and other bodies partly materialise as investments into sophisticated technology for the detection of money laundering risk and suspicious behaviour, as well as increased requirements for documentation concerning the customer's identity (Garcia 2004: 332). Software providers that promise compliance through automated surveillance and algorithmic analysis of banking transactions are multiplying. For example, software company Mantas offers behaviour-detecting software as well as specialised Anti-Money Laundering Programmes which aim to fulfill regulatory requirements through 'the ability to automatically monitor and analyse customer, account, and transaction information across the entire organisation for a

complete and accurate picture of behaviors of interest'.<sup>10</sup> Mantas (2002: 1–2) promises the ability to 'detect suspicious activity, money laundering schemes or customers *prior* to an event' through the monitoring of 'each and every transaction' (original emphases). By comparison, financial datamining company Searchspace advises financial institutions to take a proactive approach, not so much in tracking terrorist finance, as in the demonstration of regulatory compliance, and has developed stringent account opening procedures that are 'customised to fit individual lines of business'. Thus it is possible to establish an account profile at the time of account opening, which includes 'expected activity; frequency of cash deposits and withdrawals; funds transfer activity and international activity' (Everhardt undated: 4). Searchspace technology claims to be able to discover, map, compare and predict patterns of account use and test them against a representative peer group. Clearly, these strategies depend upon prior modelling of 'financial normality' and good financial citizenship: anyone deviating from norms of regular income and expenditure becomes suspect in these classifications.

It should be understood that regulation issued in the war on terrorist finance is not so much *constraining* markets, as it is enabling and shaping them, and providing business opportunities (MacKenzie 2005a, b, c: 569; de Goede 2005: 121–5). According to financial consultant Virginia Garcia, banks and financial institutions should see compliance not as a necessary and expensive evil, but as a *competitive strategy* that enhances an institution's reputation and reduces its risk of legal costs and fines. In this way, compliance and business opportunity blend into each other seamlessly. Writes Garcia (2004: 334) in relation to the USA PATRIOT Act: 'consider intelligent systems for detecting suspicious behaviour. This technology will also be useful for furthering institutions' objective of getting to know their customers better for increasing cross-sell ratios and customer retention rates'. In other words, suspicious transactions mining may yield sales opportunities, and Know-Your-Customer requirements may be used to identify more and less desirable groups of customers to a bank or insurance company.

As in the war on terror more broadly then, where private subcontracting in military logistics and prison management are completely normalised (Avant 2005), commerce and compliance in the war on terrorist finance go hand-in-hand. This intimacy between governmental regulation and commercial data-mining *cannot* be properly understood through identifying a reassertion of sovereign regulatory power in the field of finance. According to Julian Reid (2005: 243), 'critiques of the war on terror that buy into the regime's own account of it as a return to imperialism ignore the vital roles played in its conduct by agencies, practices and discourses of biopolitical form'. What is needed then, is a grasp of how in the war on terrorist finance biopower operates as a diffuse power which

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regulates and intervenes in the everyday life of global finance in the name of the health and well-being of the population while simultaneously creating caesuras and exclusions (Langley 2002).

### **Economic citizenship and financial exclusion**

What is particularly problematic of the operation of biopower in the war on terror is the lack of transparency and accountability of decisions concerning access and opportunity by immigration officials, bureaucrats, financial middle-managers and *inside* software. I have argued that typologies used in the war on terrorist finance define and depend upon normalities of good financial citizenship and proper account use. A 2004 report by the US Technology and Privacy Advisory Committee (TPAC) outlines quite a number of problems associated with datamining programs, especially those in which private contractors were involved, including the frequent occurrence of data inaccuracies, the pressing problem of data security and false positives. The report expresses particular concern at what it calls the 'chilling effect', or the fact that 'people are likely to act differently if they know their conduct *could be* observed' (TPAC 2004: 35). The committee (2004: 35) concludes: 'The risk is not only that commercial and social activities are chilled, but that protected rights of expression, protest, association, and political participation are affected as well'. Similar fears are being expressed by the European civil liberties organisation Statewatch which points out that electronic monitoring enabled by anti-terrorist policy measures may also be used to target popular protest (for example, Bunyan 2002).

In order to produce the appearance of a continuing secure and legitimate world of global finance, risk is displaced and reallocated onto vulnerable populations, who experience increased surveillance and financial exclusion, and who may have money frozen. Evidence is emerging that financial exclusion is increasing since 9/11, particularly of migrants. For example, in Britain the 'Fighting Crime and Terrorism: We Need Your Help' campaign launched in mid-2003, requires high-street banks to step up security checks not just of new retail customers, but also of existing ones. The campaign leaflets compel banking clients to comply with the new identification requirements under the banner 'You can make life harder for terrorists', and lists the acceptable identification documents, including passport and proof of residency.<sup>11</sup> However, as a critical investigation in *The Guardian* points out, it is not uncommon for poorer population groups to have neither passport nor driver's licence, while tenants do not always have proof of residency in the form of utility or council tax bill. *The Guardian* reports:

Many bank interpretations of the rules encourage financial exclusion because the poor cannot produce correct pieces of paper...Coming from

abroad also makes establishing identity tricky. It is difficult for someone living in bed and breakfast, or other temporary accommodation, to satisfy the residence rules. They will not have utility bills as they are either paying through a slot meter or an all-in amount with their rent (Levene 2003: 3).

Research of the London charity Services Against Financial Exclusion (SAFE) corroborates these findings and notes that AML identification requirements are the biggest barrier for low-income clients opening bank accounts (SAFE 2005: 43–4). The FSA is aware of this problem and in June 2005 FSA chairman Callum McCarthy said in a speech to the financial inclusion forum: ‘A problem for the financially excluded is having few or none of the normal tokens for identity required for account opening...At a time when anti-terrorist concerns have led to an emphasis on documents for account opening...this has become a particularly acute obstacle’. McCarthy (2005) concludes that the FSA should encourage banks to be flexible on identity requirements. However, precisely the rigidity of software models as well as fear of financial institutions and counter staff for disciplinary action, makes flexible interpretation of rules difficult in practice.

Another way in which financial exclusion worsens under the war on terrorist finance is through the assumption that *cash itself* is suspect, which may hurt (undocumented) migrant workers and others who have no choice but to rely on cash for their daily lives.<sup>12</sup> The faith in technology displayed in the risk-based approach relies on ‘the proposition that each movement or transaction...leaves a trail of electronic traces, which means that individuals cannot easily disappear’ (Levi and Wall 2004: 206). In other words, money in electronic form – credit cards, account debits, ATM transactions – is registered and traceable, and thus police-able. However, this assumption criminalises cash use, and ignores the growth of the informal economy that is not associated with criminal activity but with neoliberal regimes of labour flexibility. If a sizeable informal economy was once seen as a sign of underdevelopment, it is now widely acknowledged that with neoliberal regimes of global competition and labour flexibility, the informal economy has grown in the centres of global capitalism. According to Sassen (1991: 286) the growth of the informal economy in New York, London and Tokyo ‘represent[s] a downgrading of work connected to the dynamics of growth in leading sectors of the economy’, and is inextricably connected to the exploitation of migrant labour (see also Peterson 2003: 84–112). A recent study of the US economy estimates that in California around 8 million illegal migrants work in the cash economy, and that in LA County about 28% of farm workers are paid in cash (Campbell 2003). Migrant labour and informal employment are at the core – not the margin – of the contemporary global economy, and criminalising the cash economy implicates migrant labour in money laundering and terrorist financing.<sup>13</sup>

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The central issue in the politics of the risk society, according to Beck (2002: 41) is '*how to feign control over the uncontrollable*' (original emphasis). It is possible to argue that targeting vulnerable financial constituencies is one way in which control over terrorist financing is feigned, as relevant authorities are keen to be seen to tackle the problem. However, these policies rest upon problematic dichotomies between the licit and the illicit in finance, and do not recognise the complexity of the task of fighting money laundering (de Goede 2003; see also Amoores and Langley 2004: 108–10). At the same time, evidence of success in the war on terrorist finance is mixed at best. Although the US government maintains that the war on terrorist finance is having significant impact on the ability of terrorists to raise funds, a 2002 UN report concludes that al-Qaeda 'continues to have access to considerable financial and other economic resources' (UN Monitoring Group 2002; c.f. Levi 2003).

### **Conclusion: closing the window of opportunity?**

If there was a window of opportunity in the wake of September 11 for significant financial reregulation, I argue that it is being closed down through the practical manifestation of the war on terrorist finance in the form of suspicious transactions datamining and intensified customer identification procedures. Biersteker (2004: 73) is certainly right that there is a 'sea change in the tolerance of financial reregulation across the globe'. However, the particular form of regulation that is emerging leads to large-scale transactions monitoring that attempts to weed out suspicious transactions on the basis of problematic definitions of financial normality and deviance, which disproportionately targets vulnerable financial constituencies. While migrant's remittances and individual client's identification documents have come to be at the forefront of the war on terrorist finance, targeting tax evasion and white collar crime seem to be much less so.

At the same time, the war on terrorist finance offers considerable business opportunity and leads to a booming industry of anti-money laundering education. International conferences such as the Annual International Anti-Money Laundering Conference in Miami, or the Annual European Money Laundering Conference that was held for the first time in Vienna in September 2004, are specifically designed for government officials and representatives of smaller financial institutions, and cost thousands of Euros to attend.<sup>14</sup> Still, this does not mean that neoliberalism continues to be the main totalising force in shaping the war on terrorist finance (c.f. Larner 2006). On the contrary, the financial industry is generally unhappy about new reporting requirements, and clearly there are business losers as well as winners in this new regulatory environment (Bailes 2004). Instead, what is emerging is a complex set of laws, practices and agencies through which biopolitical power is exercised over everyday financial life, by separating

groups into normal and abnormal, viable and non-viable, legitimate and illegitimate. This set of practices emerged through contingent political struggle: in other words, there was no fixed or logical form that the war on terrorist finance should take under neoliberal capitalism.

According to Mark Pieth (2002: 375) 'money laundering' as a criminal concept is at risk of becoming an '*empty concept*, that is arbitrarily adapted' (emphasis added). In other words, potentially unlimited power may be exercised in the name of fighting terrorist financing, and 'conceptual technology gives the fight against money laundering a distinct emancipatory ring' (Pieth 2002: 375). However, the war on terrorist finance includes some of the most depoliticised but far-reaching measures of the war on terror more broadly. Financial regulation in the 21<sup>st</sup> century, then, is not to be unconditionally welcomed but should be subject to critical scrutiny of its democratic legitimacy, cultural assumptions and effects on financial exclusion.

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### Notes

1. See, Fact Sheet on Terrorist Finance Executive Order, 24 September 2001, <http://www.whitehouse.gov/news/releases/2001/09/20010924-2.html>
2. Security Council, Press Release SC/7158, 'Security Council Adopts Wide-Ranging Anti-Terrorism Resolution,' <http://www.un.org/News/Press/docs/2001/sc7158.doc.htm>
3. In October 2004 a ninth recommendation was added. For the nine recommendations, see: [http://www.fatf-gafi.org/document/9/0,2340,en\\_32250379\\_32236920\\_34032073\\_1\\_1\\_1\\_1,00.html](http://www.fatf-gafi.org/document/9/0,2340,en_32250379_32236920_34032073_1_1_1_1,00.html)
4. The provisional text of the Third Money Laundering Directive is available at [http://europa.eu.int/comm/internal\\_market/company/docs/financial-crime/unofficial3dir\\_en.pdf](http://europa.eu.int/comm/internal_market/company/docs/financial-crime/unofficial3dir_en.pdf)
5. Wolfsberg Statement on the Suppression of the Financing of Terrorism, <http://www.wolfsberg-principles.com/financing-terrorism.html>
6. 'Initiatives by the BCBS, IAIS and IOSCO to Combat Money Laundering and the Financing of Terrorism,' <http://www.bis.org/publ/joint05.htm>. For overviews of anti-terrorist financing regulation implemented see: Navias (2002), Biersteker (2004) and Pieth (2002).
7. 'Remarks by Paul H. O'Neill before the Extraordinary Plenary Meeting of the Financial Action Task Force, 29 October 2001, <http://www.ustreas.gov/press/releases/po735.htm>
8. On the emergence of statistics and governmentality, see also de Goede (2005: 90–5). On biopolitics and the war on terror see, for example, Edkins, Pin-Fat and Shapiro (eds) (2004), Reid (2005), Coward (2006).
9. Download the posters at: <http://www.ustreas.gov/rewards/>. See also de Goede (2003: 525–6).
10. Mantas, 'Overview', <http://www.mantas.com/Products/Index.html>

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11. Find the leaflet online at the British Banking Organisation's website: <http://www.bba.org.uk/pdf/awareness2.pdf>
12. The objective of reducing cash use is not new, and the FATF's 40 Anti-Money Laundering Recommendations, published in 1990, include the stipulation that 'Countries should...encourage...the development of modern and secure techniques of money management, including increased use of checks, payment cards, direct deposit of salary checks, and book entry recording of securities, as a means to encourage the replacement of cash transfers' (Recommendation 25, Forty Recommendations, FATF I, [http://www.fatf-gafi.org/pdf/40Rec-1990\\_en.pdf](http://www.fatf-gafi.org/pdf/40Rec-1990_en.pdf)). But the faith in technology displayed in the war on terrorist finance means that this targeted reduction of cash-use intensifies.
13. Another way in which migrant workers feel the consequences of the war on terrorist finance is through the targeting of informal remittance networks, which since 9/11 have made remittances more costly. See, for example, de Goede (2003), Horst and van Hear (2002), Passas (2005).
14. For the Miami conference, which costs US\$1,985 to attend (excluding accommodation), see <http://www.moneylaunderingconference.com/2006/default.aspx>. For the European conference, which costs €1745 (excluding accommodation), see: <http://www.moneylaundering.com/conferences/europe05/default.aspx>