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Ironies of controlling state crime[☆]

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Abstract

Control mechanisms and their effects are seldom analyzed in the subject matter of state crime. When what might be viewed as legitimate attempts to rectify a given situation occur, it happens all too often that well-intended individuals (i.e., advocates) and/or organizations can become additional victims of state crime. This truism has rarely been systematically reviewed. We aim to fill this gap by first identifying the government's most typical reactions to attempts of control, including the process of legitimatizing the state's efforts to frustrate the establishment of constraints on government agencies and actions. This paper examines the unintended consequences (i.e., things that they did not reasonably expect) that individuals and/or organizations may incur if and when they confront states that engage in criminal activity. The authors outline eight core reactions and then apply categories to recent actions by the US government in response to attempts of control against state criminality.

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The moth that comes too close to the flame is likely to get burnt.

Anonymous

1. Introduction

Over the past two decades, a growing body of literature on state crimes has focused on documenting and explaining the etiological factors of the worst atrocities known to humanity (Chambliss, 1989; Grabosky, 1989; Barak, 1991; Kauzlarich and Kramer, 1998,

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Kramer and Michalowski, 2005).¹ One can reasonably argue that the majority of this research on state crime has focused on description and less on issues of controls of state crime. In general, when criminologists do address these controls, their findings can typically be categorized as: (1) theoretically grounded and policy oriented with an international focus (Ross, 1995, 2000a, b; Mullins and Rothe, 2008; Rothe and Mullins, 2006a, b, 2007), and (2) embedded within an analysis of a particular institution (Ross, 1995, 2000a, b; Kauzlarich and Kramer, 1998). The field of state crime has also devoted a small, yet significant, amount of literature to state crime victimization (Kauzlarich et al., 2001). Specifically, this research has examined some of the major issues in victimology resulting from state crimes of commission and omission, including the variety of victims, their specific needs, and system-level structures and processes related to victims services. While an appropriate beginning, these areas of state crime research have yet to recognize that attempts to control crimes of the state may have contradictory or even ironic consequences beyond the initial attempt to solve or address the issue. In many cases, this has led to the (re)victimization of controllers.

In general, the process of control can be interpreted as a threat to an agency's, organization's, or country's power, survival, and autonomy. Thus, it will not be welcomed by those in power and, in many respects it will be countered through a variety of legal or illegal techniques. As Robert Merton (1936) stated in his classic article entitled "The Unanticipated Consequences of Social Action," that "Deliberate social action often produces alternative or additional results [usually negative] to those intended, because of ignorance, error, habit and the imperious immediacy of interest." Simply put, and in reference to the current subject matter, when what might be viewed as legitimate attempts to rectify a given situation occur, all too often well-intended policies, individuals and/or organizations can in turn become additional victims of state crime. This truism has rarely been systematically reviewed.

We aim to fill this gap by first identifying the government's most typical reactions to attempts of control, including the process of legitimatizing the state's efforts to frustrate the establishment of constraints on government agencies and actions. Moreover, this paper is an attempt to understand this process and place this phenomenon into a larger context. We recognize the vast catalysts of control can be directed against states domestically and internationally; as such, we limit our discussion here to the US reactions and attempts to control the controllers, as well as the subsequent potential victimization that can occur. We begin with a brief overview of the extant literature on state crime controls, followed by an explication of the different kinds of state responses to attempts to control it. We then provide examples of these responses that have led to additional cases of state victimization of those who seek (1) redress, (2) greater accountability, and/or (3) policy and procedural change.

2. Review of literature

By the late 1990s and early 21st century, researchers and writers had developed a significant amount of literature on crimes of the state (Ross, 1995, 2000a, b; Friedrichs,

¹We also recognize that the study of state crime has been involved in a quagmire for some time over common definitional issues, thus we use the term to refer to cover-ups, disinformation, unaccountability, corruption, violation of a domestic and/or international law, and includes those practices that although they fall short of being officially declared illegalities are perceived by the majority of the population as illegal or socially harmful. This definition, while broader than many scholars use, recognizes that legal systems are slow to enact legislation, highly normative, and often reflect elite, if not class, or nonpluralistic interests (Ross, 1995c, pp. 4–6).

1995, 1998; Kauzlarich and Kramer, 1998, 1999; Kramer et al., 2005; Kramer and Michalowski, 2005; Mullins and Rothe, 2007, 2008; Rothe and Friedrichs, 2006; Rothe and Mullins, 2006a, 2007; Ross et al., 1999; Ross, 2003). This last decade has also been witness to a growing body of literature on state crime controls (Ross, 1995, 2000a, b; Rothe and Mullins, 2006b). While a significant portion of this work has focused on international and/or foreign domestic controls, here we focus on the literature most relevant to controls and/or constraints specifically addressing the United States.²

2.1. Controls/constraints

Although most crimes committed by the state go undetected, those that do come to the public's attention are often perceived as scandals and/or as crises of legitimation (Habermas, 1975). In the main, there are three principal outcomes to these periods of heightened public attention and agency scrutiny: (1) external control initiatives, (2) internal control initiatives, and (3) the ironies of controlling state crimes (in other words, the paradox that results from a series of reactions by state actors in response to attempts to control including additional state crime and/or further victimization) (Ross, 1995; Ross, 1998). The most desired outcome among those who seek change is control (Gibbs, 1989). Broadly, state crime scholars identify both internal and external controls on the behavior of states (see Ross, 1995, 2000a, b).

Internal controls are those created by the state to effectively govern itself. Generally, they are attempts to assuage public criticism over government and bureaucratic actions. They often are often limited to specific types of offenses that have already occurred (often taking the form of investigative commissions), quickly circumvented by new procedures or new depths of secrecy (i.e., the FOI acts in Japan's campaign finance laws), or left underfunded and/or understaffed (i.e., OSHA and the EPA) (Aulette and Michalowski, 1993; Ross, 2000a, b; Rothe and Mullins, 2006b). Internal controls such as domestic laws and self-regulation arise within the state and are directed against itself. These mechanisms can be tangible (i.e., the firing of an employee) or symbolic (i.e., an official statement of denial or a promise to investigate). Internal controls are broadly viewed as restrictions placed on state agencies by themselves or by other state agencies. The United Kingdom's 1977 establishment of a Royal Commission on Police Procedure and the establishment that same year of a Police Complaints Board in response to police brutality; the passage in 1984 of the Canadian Security Intelligence Service Act (Corrado and Davies, 2000); the Zorea, Blatman, and Karp Commissions in Israel (Miller, 2000); and campaign finance reform laws in Japan (Potter, 2000) are all examples of such internal controls. All of these mechanisms were established in the wake of publicity generated by various criminal state practices—most of which involved the abuse of power by state-run agencies against their own citizens (Ross, 2000a, b; Rothe and Mullins, 2006b).

External controls lie outside of the specific state apparatus (i.e., elected and appointed politicians and the bureaucracy) and are imposed on the state. To be effective, such controls actually have to exert some form of pressure and/or ability to penalize after the fact (i.e., in a political, economic, legal, or military way) on the state. External controls can

²We also acknowledge the vast controls and constraints that exist at the international and foreign domestic levels. As such, a succinct analysis of these various forms is far too large of a project for a journal article. Thus, we limit our discussion to those relevant within the United States.

be localized either within or outside of a state's own sovereign territory. External controls within the state have included: (1) media organizations, (2) interest groups, and (3) domestic nongovernmental organizations (NGOs). We refer to these external agencies as constraints versus controls. The core problem with the efficacy of these types of constraints is the fact that they are not expected to act as an after-the-fact, formal control in legal accountability or to fully block state or organizational criminogenic behaviors. Instead, by definition (Rothe and Mullins, 2006a, b, 2007), they serve as potential barriers during an act or in response to an incident.

Such pressures from these external constraints (e.g., media, citizenry, and interest groups) raise inherent contradictions within the United States. Simply put, while many reactions are supposedly citizen-driven, they operate in a more elite-orientated fashion (Bachrach and Baratz, 1962). As such, there is a contradiction between the ideal of modern democracy and the realpolitik of these types of constraints. When media or other agencies specifically address these contradictions in a public sphere, the state feels compelled to respond through actions that are typically symbolic in nature, and often involve the erection of new veils of secrecy (Edelman, 1971). Moreover, any constraints such as the media, the general population's opinion, and/or internal state obstacles can often be ignored or manipulated via hegemonic discourse, symbolic political gestures, or altering policy to immediately appease while continuing in a covert direction (i.e., Reagan's covert war on Nicaragua or Bush's buildup to the invasion of Iraq) (Rothe and Mullins, 2006b).

3. Continuum of strategies used on controllers of state crime

The notion of the negative effects of controls has a long history. Some authors have suggested that there are "limits of control" (Peters, 1989). According to Peters, "[A]side from the average, garden-variety problems of administrative accountability and control, there are a number of more specialized problems and considerations that also deserve attention. In these cases the conventional mechanisms for public control and accountability are strained to their limits and are often exceeded" (p. 276). In this context, he cites how the power of the professions, nationalized industries, unions, political structure, culture, and non-administration can frustrate the ability of control efforts. In 1981, Gary Marx wrote a much-cited and reprinted article entitled "Ironies of Social Control: Authorities As Contributors To Deviance Through Escalation, Nonenforcement and Covert Facilitation." Marx (1981) describes the process and contexts whereby "authorities may play a role in generating deviance" (p. 221). In particular, he outlined how law enforcement officers, as state agents, can frustrate legitimate attempts by citizens to fight for social justice by engaging in confrontation, failing to enforce the law, and by surreptitious methods to force state opponents to break the law and thus be subject to arrest or pacification. Similarly, Rothe and Mullins (2006a) noted that attempts to control or block state criminality can and have resulted in state actors finding illegitimate means to achieve their goals, thus sidestepping legitimate means of control. Indeed, efforts to control or confront government wrongdoing may not have the intended chilling effect one hoped for: all too often, controls on state criminogenic agencies and practices can have unintended and undesirable effects.

Nonetheless, few scholars have outlined what happens to those who confront state crime. Turk (1985), in the context of explaining political policing, for example, outlined a series of state efforts against individuals and organizations that the state perceives as

threatening to its stability: intelligence gathering, information control, and neutralization, and specific and general deterrence.³ Churchill and Wall (1990) also reviewed seven major outcomes to individuals and organizations that confronted the Federal Bureau of Investigation and the Chicago Police Department in their extralegal actions against the American Indian Movement and Black Panther Party activities. State agency's responses included: eavesdropping, bogus mail, black propaganda operations, disinformation or gray propaganda, harassment arrests, use of infiltrators and agents provocateurs, pseudo-gangs, black jacketing, fabrication of evidence, and assassinations. Although Turk, Churchill, and Vander Wall produce relevant categories, they are much too small in scope to provide a general framework for examining adverse effects of attempts to constrain or control government criminality, especially given the varieties of additional victimization that can occur.

Building on earlier research (Barak, 1991; Ross, 1995b, 2000a; Kauzlarich and Kramer, 1998; Rothe and Mullins, 2006b), we propose a continuum that explains the irony of controlling state crime and provides a model for contextualizing the forms of additional victimization that can intentionally or unintentionally occur. These practices are listed from least to most common in frequency: (1) censure, (2) scapegoating or obfuscation, (3) retaliation, (4) defiance/resistance, (5) plausible deniability or improving the agency's ability to hide and/or explain away crimes, (6) relying on self-righteousness, (7) redirection/misdirection, and (8) fear mongering. Along with discussing each of the contemporary actions by the US government agencies to these perceived threats or potential controls brief illustrations of case examples are included to show how attempts to control state crime can not only be circumvented, but also result in further victimization.

3.1. Censure

Censure of individuals and organizations, their inquiries, and public documents by powerful government forces has a chilling effect on the ability to reform practices and/or seek redress from government agencies. Censure can include the withdrawal of support from political leaders and parties or coerced condemnation through internal intelligence agencies that discover and publicize actual, plausible but certainly potentially damaging information on the complainants, whether they are citizens or elected politicians. Additionally, when governments produce reports of inquiries or are forced to release documents vis-a-vis a court order or Freedom of Information Act (FOIA) request, some portions may be considered to be too secret, thus preventing full exposure (e.g., Sharkansky, 1995). When they are disclosed to the public, they are often full of redactions, making them no longer intelligible or able to serve any real function other than a symbolic gesture of state compliance. Moreover, governments, specifically the Executive Branch, often have enabling legislation that can allow them to designate some of the proceedings as "classified," and/or protected to the level that disclosure is said to be an act of espionage.

For example, the landmark 1971 case *New York Times Company versus United States* addressed the publication of controversial governmental documents. This was the first effort by the federal government in contemporary times to control the publication of a newspaper. *The New York Times* received and published articles from a leaked copy of

³These actions can take place before and after a citizen actually engages in some sort of political action.

a Rand report (authored by Daniel Ellsberg and later known as the “Pentagon Papers”), on the military situation in Vietnam. The government brought a suit against *The New York Times*, requiring the paper to cease further publication of this story. The appellate courts’ indecisiveness brought the ultimate decision to the Supreme Court, which ruled that a prior control of publication would be allowed only in the most extraordinary cases that threatened grave and immediate danger to the security of the United States. Additionally, the court held that there was a heavy burden on the government in that prior restraint on publication would be unconstitutional under the First Amendment. This case was central to the March 2006 controversy surrounding *The New York Times*’ publication of leaked information exposing the National Security Agency’s secret surveillance program on the US citizens (Rothe, 2007). The above cases were taken to court using the 1917 Espionage Act. Moreover, it is possible, under the Espionage Act (Subsection 793, e) that anyone who leaks information to the press, a reporter that holds onto or possesses defense material, or a retired official that uses such information in his memoirs could all be committing a crime. This could mean that public speech; governmental monitoring by the media and whistle blowing could all potentially be treated as a serious criminal offense, thus, deterring exposure of state criminality. Regrettably, such responses have occurred with increasing frequency since 2001.

In 2001, for example, former Attorney General John Ashcroft commissioned a group of top intelligence professionals to examine the legal authority to charge government agents that leak unauthorized classified information under the Espionage Act. The committee concluded the statute was adequate for prosecution. In a letter to Congress, Ashcroft stated the government needed to “entertain new approaches to deter, identify, and punish those who engage in the practice of unauthorized disclosure of classified information” (2005, p. 1). Subsequently, several investigations ensued, including inquiries into the secret war plans leaked to *The New York Times* and *The Washington Post* and the leak of a letter written by Secretary of State Colin Powell to the Pentagon objecting to the Syria Accountability Act. On December 30, 2005, authorities undertook an additional criminal investigation into the circumstances surrounding the disclosed information exposing the National Security Agency’s secret eavesdropping program. This case is highly controversial, as it tests the contradiction between the media’s ability to report on national security issues of public interest, improperly classified material, and as a constraint against unwarranted government secrecy and/or illegal activities against governmental claims of national defense and issues of security. If the government’s unbounded interpretation of the espionage statutes prevails through these notable cases, research and publication activity that receives communication from internal state sources could arguably be considered illegal. Additionally, conversations revealing unauthorized information could also be considered illegal, significantly reducing the rights historically granted under the First Amendment (Rothe, 2007).

Even the media, originally understood by most Western democratic countries to be a formidable government watchdog and sometimes called the Fourth Branch of government, has engaged in self-censorship and self-righteousness in an attempt to navigate future censure or repercussions. These corporate entities can also aid governments in censoring potential controllers or whistleblowers. Take, for example, the case of Gary Webb. In 1996, he wrote a series of articles for the *San Jose Mercury News* called “Dark Alliance” that documented what he believed was a conspiracy between the CIA and the gangs in the impoverished neighborhood of Watts in Los Angeles to sell crack cocaine and to redirect

profits to the Nicaraguan contras. Despite the damaging evidence he marshaled, he was censored by his superiors, and ultimately forced to resign.

3.2. *Scapegoating or obfuscation*

Occasionally, the laying of criminal charges, imposition of fines, trials, and convictions of state criminals are “widely criticized [for] deflecting attention from the far more substantial crimes of those higher in the chain of command” (Friedrichs, 1995). Those complicitous in state crimes are sometimes not above sending their subordinates to the wolves in exchange for leniency or as a smokescreen while they engage in spin-control efforts. As such, subordinates are often punished while supervisors avoid prosecution, and/or criminal sanctions through arguments of plausible deniability, etc.

Take, for example, the case of the torture and abuse of prisoners at Abu Ghraib (April 2004). A ‘few bad apples’ were said to be responsible for the mistreatment of prisoners at Abu Ghraib prison (Hersh, 2004). The projection that these horrendous acts were the result of atomistic rogue actions, along with the publicized trials of the few low-ranking soldiers, obscured the wide-spread systematic abuses that were occurring in Afghanistan, Guantanamo, and Abu Ghraib that were, in fact, the result of the administration’s policies on interrogation and classification of enemy combatants (for more details, see Rothe, 2006; Ross, 2007). Furthermore, while several internal investigations were undertaken to examine the cases of abuse and torture, including the Taguba Report (March 2004); the Mikolashek Report (July 2004); the Schlesinger Report (August 2004); and the Fay-Jones Report (August 2004), the realpolitik of the situation remained hidden. A key problem with these investigations is that of the familiar phrase *Quis custodiet ipsos custodes* or *who will watch the watchman?* Simply, here public officials were in charge of and monitored their own behavior. As such, it should come as no surprise that the reports promoted the politically tolerable view that the abuses and torture were, in effect, the result of individual misbehavior and sadism. The acts remain an aberration of a few individuals from the ranks of the military police. A few low-ranking soldiers were used as sacrificial lambs. While indeed, personally, ethically, and legally responsible under the Federal UMC #18, the legal responsibility did not stop with them, nor did the moral and ethical, however, those higher in ranks of command were able to avoid further scrutiny and/or prosecution (for a more detailed analysis see Rothe, 2006). Additionally, the much wider and systematic practice of abuse and torture of Afghani and Iraqi prisoners in the war on terror was able to be hidden with the focus on the ‘caught and held accountable bad apples.’ Beyond censure and sacrificial lambing, retaliation is often used as a response to controllers.

3.3. *Retaliation*

Launching complaints with official bodies, utilizing the services of a labor union or professional association, or capturing the attention of the media are alternative and oft-recommended actions for those seeking redress. Follow-ups by these institutions, however, may have undesirable consequences. Some of these effects include punishing the wrong person, unjustly singling out an individual, and/or damaging a person’s reputation and/or career. This can have disastrous effects on an individual’s health (physical and psychological) and family life (e.g., Cabrera, 1995). Those who complain may be singled out for increased state abuses.

A case in point was the administration's retaliation against Joseph C. Wilson IV, a former senior director for Africa at the National Security Council under President Bill Clinton and the former US ambassador to Gabon, São Tomé, and Príncipe under President George H.W. Bush. Keen observers believe that Wilson was targeted because of his public opposition to the administration's insistence that Iraq was hiding nuclear weapons and that this country was a large potential threat to the United States. In July 2003, Wilson wrote an op-ed piece in *The New York Times*, countering a key claim by President Bush about Saddam's intentions to produce weapons of mass destruction. Recall that in Bush's 2003 State of the Union address, he claimed that Hussein had sought large quantities of uranium from Africa. Countering this claim, Wilson wrote an op-ed piece in the widely read *Times* stating that he had been dispatched to Nigeria by the CIA in 2002 and had found no evidence of Bush's claim. Within one week, Wilson's wife, Valerie Plame, was unexpectedly "outed" as a CIA employee. Her identity had been leaked to Washington insider Robert Novak, a well-known conservative political journalist, for the purposes of public disclosure and as a direct form of retaliation against her husband's outspoken opposition to the administration's claim. As noted in the case filed, *United States District Court for the District of Columbia*, the "Plaintiffs allege that defendants [Libby, Rove, Cheney, and Armitage] undertook a concerted effort to reveal this information to reporters in order to retaliate against and discredit Mr. Wilson for his public criticism of the Bush Administration's handling of foreign intelligence prior to this country's military involvement in Iraq (Civil Action No. 06-1258 (JDB): 1). Beyond the direct use of retaliation, the administration also attempted to censure Plame from disclosing any information regarding her role in the CIA or her history of employment through court orders. This has been noted as an attempt to minimize the negative counter-reactions to the administration's leak, especially given the sensitive and legal nature of disclosing an active covert agent's identity.

3.4. *Defiance/resistance*

As a result of attempts to control state crime, the government may consciously or unconsciously block demands to change policies and practices. Government organizations facing a crisis may respond defensively or rigidly and experience increased internal conflict (Fink et al., 1971; Ripley and Franklin, 1980, pp. 227–228; Watson, 1967). An example of defiance/resistance might include a situation in which one of the senior government executives communicates with other governmental agencies or the media explaining why s/he will ignore certain mandates or recommendations. Consider the infamous quote by Alberto Gonzales, in his role as counselor to the president, in which he suggests the Geneva Conditions were 'quaint and obsolete.' Specifically, in a memo dated January 25, 2002, he advised President G.W. Bush to declare the prisoners in the war on terrorism outside of the protections of the Geneva Conventions with this declaration:

As you have said, the war against terrorism is a new kind of war. The nature of the new war places a high premium on other factors, such as the ability to quickly obtain information from captured terrorists and their sponsors in order to avoid further atrocities against American civilians ... This new situation renders obsolete Geneva's strict limitations on questioning of enemy prisoners and renders quaint some of its provisions (Quoted in Rothe, 2006, p. 96).

In many instances, heads of government agencies may outrightly disregard the calls for internal inquiries, investigations, or the dismissal of employees. At the national level, rejection of “judgments of an international judiciary concerning [a country’s] military actions, even if it supports an international court with more limited jurisdiction” is another unintended effect (Friedrichs, 1995, pp. 67–68). This was the frequently cited frustration with international law exemplified in 1986 when the United States was accused of placing mines in the Managuan (Nicaragua) harbor. Defiance and resistance can both be seen with the United States’ official withdrawal from the International Court of Justice on January 18, 1985. This was certainly the case brought forth by Nicaragua against the United States for its actions and support of the Contras. The outcome was a favorable ruling for Nicaragua: the United States’ actions and support of the Contras violated customary laws and the 1956 Nicaraguan/US friendship treaty. The following laws were charged against the United States; Article 2(4) of the UN Charter, Article 18 of the OAS Charter; Article 8 of the Convention and Rights of States; and, breaches of obligation under general and customary international law (including the Hague 1907 Peaceful Maritime Laws), Acts contrary to general principles of humanitarian law by using the 1983 CIA manual “Operaciones sicologicas en Guerra de guerrillas” (International Court of Justice Order, 1984, p. 4). The monetary compensation awarded to Nicaragua totaled \$17.8 billion. Nevertheless, the United States denied the court’s authority, refuted its ability to have jurisdiction over the states, and refused to abide by its decision. Unfortunately, this type of action has a way of bolstering a state’s authority and feeling that it can repeat a similar action without fear of sanctioning.

3.5. *Plausible deniability*

The desire for controls may force a government to provide more or better training (e.g., ethics) for government actors (especially the coercive agents) so they can avoid engaging in transgressions (e.g., Menzies, 1995). Then again the state may simply better conceal its controversial actions, in effect, attempting to create plausible deniability. This may include the establishment of internal investigation processes (i.e., in the form of teams or divisions) that have the power to circumvent or frustrate external inquiries (e.g., CIA or special ops, known as OGA or Other Governmental Agents). The government may also use covert means and proxies to carry out the direct criminal activities. Perhaps the most current and poignant example of the United States attempting to hide or explain away crimes that resulted in further cases of victimization—in this case, victims of torture—is the practice of renditions, using secret prison facilities beyond the scope of the International Red Cross, and creating a system for ghost detainees. The Special Access Programs (SAP) operations called Black Special Access and Copper Green included CIA personnel hiding ghost detainees during interims between interrogations and/or renditions to other countries for harsher forms of interrogation. The Taguba report states:

The detention facilities operated by the 800th MP Brigade routinely held persons brought to them by Other Government Agencies (OGAs, including the CIA) without accounting for them, knowing their identities, or even being aware of the reason for their detention. The Joint Interrogation and Debriefing Center (JIDC) at Abu Ghraib called these detainees “ghost detainees.” On at least one occasion, the 320th MP Battalion at Abu Ghraib held a handful of “ghost detainees” for OGAs that they

moved around within the facility to hide them from a visiting International Committee of the Red Cross (ICRC) survey team ([Taguba Report: Findings and Recommendations, Part II, No. 33](#)).

While not explaining away their crimes, the use of renditions and ghost detentions is an example of hiding away the crimes at hand. Regretfully, such practices by the United States and other countries have resulted in the cover up of torture and/or deaths of detainees.

Another instance of governmental agencies explaining away crimes includes the US Senate Intelligence Committee's decision that the Bush administration and participating telecom corporations should not be held accountability for their illegal domestic spying collusion. By a vote of 13-2, a bill was passed that would grant immunity to telecom companies that had assisted in the illegal wiretapping conducted by the Administration as well as hand over customers' private information without a warrant to the federal government. Under this bill, meant to replace the 'Protect America Act' and update the Foreign Intelligence Surveillance Act (FISA), the companies would escape accountability by any citizens and the opportunity for civil suits would cease. Alternatively, professionalism (in terms of pressures for higher or specialized education and training, the development of professional organizations/associations, etc.) is advocated by many pro-government organizations and state actors themselves, but this mechanism is criticized as investing the police, military, or national security agencies with too much power to identify what they define as the important factors for the mission of their organization and the policing of breaches of conduct. Unfortunately, professionalism can isolate the criminogenic organization from public control. Similar to public relations measures, this option can involve the employment of symbols and myths to counter or delay control initiatives.

3.6. Relying on self-righteousness

Government agencies that are criticized or attacked for their actions often retreat into self-righteousness. This includes continued posturing, such as the introduction of vague policies and practices, minimizing or making light of the severity of the events, blaming the victims, 'otherizing' the controller, appealing to a higher authority, or gaining favorable media attention for the successes of their respective agency or policies. They often reinvigorate messages about their ability to fight crime, protect national security, or protect the rights of individuals. This justification or reinvigoration of organizational mission and stance does not end with state agencies. Questioning those who question the integrity of the individual or organization is sometimes used to intimidate the accusers.

A potent example of relying on self-righteousness can be seen in George W. Bush's claim that "God has chosen [him] for the task of bringing democracy and freedom to the Middle East and to be the defender of human rights." Self-righteousness can also be claimed as the moral higher ground of a country. For example, in the 2003 State of the Union address, Bush stated the United States' goal as ensuring "respect for women, private property, free speech, equal justice, and religious tolerance. America will take the side of the brave men and women who advocate these values around the world, including the Islamic world, because we have a greater objective than eliminating threats and containing resentment. We seek a just and peaceful world beyond the war on terror" (State of the Union address,

2002). More broadly, the mechanism of self-righteousness is used in political propaganda to garner public support for a policy that, at best, is unethical, yet often illegal.

3.7. *Redirection and misdirection*

Sometimes investigations or inquiries often have “narrow terms of reference” that prevents the revelation of contentious issues that the general populace may consider to be state crimes or alleviates those found culpable to ultimately be held responsible (e.g., Gill, 1995). This can be handled by a simultaneous process of misdirection or redirection. Both governmental commissions and the reports they produce give critics (e.g., activists) and victims of state crimes the impression that the government is taking their complaints seriously, but these actions are frequently interpreted simply as symbolic gestures if the whole report cannot be released—which can then imply a cover-up (e.g., Lipsky, 1968; Platt, 1970). This was one of the interpretations of the 9/11 Commission to the George W. Bush Administrations’ follow-up to the Commission’s recommendations (Shenan, 2008). Alternatively, governments may engage in obstruction of justice. They may also invest in strategic public relations campaigns. This often consists of the agency publicizing its ability to combat certain types of crimes and protect national security. In this context, the agency under question may solicit and receive the support of various pro-agency constituencies. Redirection and misdirection can also involve state attempts to alter or redefine existing controls, making it appear as if their actions or intended actions are legitimate endeavors.

This was the case when the Bush administration redefined both the definition of torture and its obligations under international law regarding captured civilians and insurgents (prisoner of war status). On January 19, 2002, nearly a month before President Bush’s executive order denying Taliban the rights afforded by the Geneva Conventions, the US Department of Justice, under Attorney General John Ashcroft, proposed that the Geneva Convention III on the Treatment of Prisoners of War “does not apply to the conflict with Al Qaeda ... (or) with the Taliban” (Gonzales, Memo 7, 2002, p. 1). Based on this, Secretary Rumsfeld sent a memo declaring “Army regulations on the interrogation of prisoners would not be observed,” leading to many detainees being held incommunicado and without an independent review mechanism (Internal Memo 5). The DOD discussed extending the executive order by creating several pre-interrogation and interrogation techniques designed to “soften up” detainees (Jehl et al., 2004). Memos continued among agencies such as the CIA, Bush’s legal counsel, the DOD, and the DOJ. These memos discussed not only the expansion of interrogation techniques, but also how laws and precedence could be reinterpreted to allow the state to use such methods without the worry of legal blameworthiness. As Weisberg (2004, p. 301) stated, “the rationalizers of torture micromanaged it by bringing our exquisitely refined lawyer-like skills to justify some part of it.” The state (in this case, the DOJ and the Office of the Legal Counsel) was in a position to “reinterpret” the rules of war, treatment and classification of detainees, and the definition of torture previously provided by the US Criminal Statute and international precedent (Harbury, 2005).

3.8. *Fear mongering*

A key mechanism used to legitimate and/or overshadow illegal or illegitimate governmental action is fear mongering. Moreover, heightening general levels of fear can

be combined with other reactive measures (i.e., silence, redirection, misdirection, censure, hiding, or explaining away) to ensure the success of mechanisms in overshadowing the controllers' actions or simply as a stand-alone technique to gain compliance from perceived attempts to control. Throughout the US history, there have been numerous periods during which massive, perpetual, and strategic governmental communications have created ubiquitous fear to ensure citizens' compliance, to defend themselves against potential or perceived constraints on an administration's policy, and/or as a tool to control the controllers (e.g., the McCarthy era and the fear of communism or the current Bush regime's use of fear in the war on terrorism). As such, the use of fear mongering to garner public support and compliance and/or to overshadow coercive mechanisms employed by the state in an effort to legitimize its actions is not new.

Nonetheless, to make the case at hand, we rely on examples that have taken place since September 11. Whether that is the political references (or more appropriately rhetoric) to great smoking billows out of Iraq and Iran, or the imminent danger Saddam posed, these remarks were, more often than not, mechanisms to ensure compliance to a desired or current policy through the generation of fear (Rothe and Muzzatti, 2004). Simply, danger to an existing evil is rampant and omnipresent. Along with the use of statements to generate fear is the dichotomizing of 'good' versus 'evil,' with the United States being on the side of good and, as such, citizens or potential controllers must support these ideas or risk becoming one of them. For example, recall the dichotomous, "[e]ither you are with us or you are with the terrorists" speech by President Bush, which became a typical mantra in the pre-Iraq invasion and occupation. Also recall the words of John Ashcroft, when he addressed the Senate Judiciary Committee in December 2001 by saying, "To those who scare peace loving people with phantoms of lost liberty, my message is this: Your tactics only aid terrorists, for they erode our national unity and diminish our resolve. They give ammunition to America's enemies" (Ashcroft, 2001 quoted in Rothe and Muzzatti, 2004). Any public dissent that contradicted the propaganda was met with political repression. Furthermore, the state used this fear to pass restrictive legislations and to expand executive power in ways that reduced the chances of controlling or governing the state's actions (e.g., Patriot Act, expansions of what constituted classified material and the Warrentless Eavesdropping Program).

3.9. Summary

Based on our previous research, that of other state crime scholars, and the examples included here, we believe the following figure demonstrates the most common path of responses based on the continuum we have suggested. Additionally, we highlight here how these responses to perceived or real attempts to control or constrain criminogenic conditions or behaviors often result in additional victimization. We suggest that once a state crime is being pursued and/or enacted there may or may not be an attempt to control the act and/or thwart ongoing efforts by the state to engage in criminal activities. If there is an effort to control the state from its intended or past actions the controller(s) will decide to take some action. Based upon the type and form of action taken by the controller, the state may either cease or desist any plans or actions deemed state crime or may respond by utilizing the catalysts listed within the proposed continuum. The states use of these tools may result in additional state criminality and/or victimization or be used in conjunction with the end of the state's criminal action. As the figure illustrates, it is not linear and as

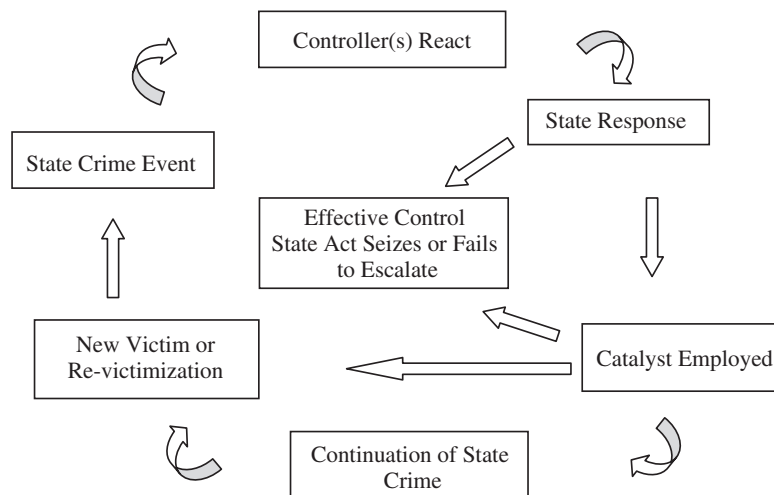


Fig. 1. Paths of action.

such the cycle can continue even if the original state crime is the only one committed at that time. In other words, the figure is meant to illustrate that after a catalyst is used and there is further victimization, the state may well use other means to obscure any additional accountability, ensuring impunity (Fig. 1).

As the figure suggests, we do not claim that all responses by the state to attempts of control will result in additional criminality or the (re)victimization of a controller. However, as the examples above have indicated the continuum of responses by the state can and have led to many examples wherein the state finds alternative means for criminality or a means to defy the perceived or real control, thus leading to additional criminality and/or victimization.

4. Conclusion

We have argued that while social controls against state criminality are important, the results often lead to unintended consequences for the attempted controllers. Additionally, we have highlighted the fact that the victimization of state crime may well be more than the result of primary crimes of omission or commission. Victimization can occur as a secondary factor that results in state responses to attempts of control. The above discussion clarified eight proposed catalysts used to negate attempts by controller(s) of a state crime. More importantly, we have attempted to draw a path wherein the controller can become an additional victim or be re-victimized through the most common catalysts: (1) censure, (2) scapegoating or obfuscation, (3) retaliation, (4) defiance/resistance, (5) plausible deniability or improving the agency's ability to hide and/or explain away crimes, and (6) and relying on self-righteousness, (7) redirection/misdirection, and (8) fear mongering.

By implication, it is prudent for those intent upon controlling state crime to acknowledge that we must recognize that attempts to control state criminality may have consequences that are unintended and actually frustrate our ability to control state crime or result in additional victimization. This should not imply that they should be immobilized from controlling state crime, but rather that caution must be exercised in the strategies chosen and that the state should not be viewed as a passive agent. Additionally, knowing that such a continuum of typical responses are used by the state,

and have resulted in additional forms of state crime and/or victimization, it is important then to consider alternative means for accountability and control that can navigate beyond these response or lead to results that do not further victimize. As we have suggested here, however, alternative forms of control that navigate these types of typical state responses may also have unintended consequences. As such, caution should be used when promoting such policy changes.

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