# Training the Watchdogs to Bark: A Theoretical Framework to Assist Public Sector Practitioners in Identifying, Reporting and Taking Action against State Crimes Against Democracy

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## Introduction

Democracy is habitually framed by various international bodies as a political system which is characterised by respect for human rights and fundamental freedoms, a form of government that is representative, where power is separated, and exercised in accordance with the rule of law, where the people practice their sovereignty in free and fair elections, and can access effective means to redress administrative decisions. Albeit ideas about what 'good governance' entails often conflict, there are ten principles around which there is some convergence within the academia (see Bell, 1997; Bossaert and Demmke 2005; Bowman, Berman and West, 2001; Cooper 1991; Cowell, Downe, and Morgan, 2011; Knight, 2007; Lewis 1991; Lewis and Gilman, 2005; Van Doeveren, 2011), as well as beyond (Institute of Democracy and Electoral Assistance [IDEA], 2008a; 2008b; 2009) – namely: i. accountability; ii. responsiveness to public needs, iii. efficiency and effectiveness; iv. openness and transparency; v. devolution; vi. participation; vii. rule of law; viii. wide public access to information; ix. high levels of ethics, competence and professionalism within the civil service; and x. lack of corruption.

Nevertheless, once one moves beyond academic theorising and global idealisations, one is bound to observe that there is no recipe for democracy, and such political systems generally tend to vary greatly. As the world has learned throughout the past century, democracy is a process which is never finalised; that cannot be achieved through elections alone, and whose practices cannot be prescribed (IDEA, 2008a; 2008b; 2009).We are yet to accept that, despite a few dozen centuries' worth of more or less successful variations of democracies, and United Nations' (UN) concurrent attempts to engage in democracy promotion, such political systems are bound to diverge from the utopic archetype, and will fairly regularly prove to not be democratic in the slightest (see Altemeyer, 1996; Arblaster, 2002; Axtmann, 2007; Dahl, 1971; Giraudy, 2015; Kaplan, 2015; Lasswell, 1977; Roth, 2009; Zakaria, 1997). The status quo proves that democracy cannot be sustained by democratic institutions alone, and that the essence of democracy may, in fact, rest in social processes, inter-relationships and the management of cultural associations (IDEA, 2008a).

Democracy's rapid advancements in the last two decades of the 20th century are now increasingly reversed by individual political actors who pursue own interests without meaningful constraints, bringing about a situation whereby the end of 2017 marked the twelfth consecutive year of decline in democratic liberties, when some 67 countries suffered – yet again – net regressions in political and civil rights (see Figure 1 below).
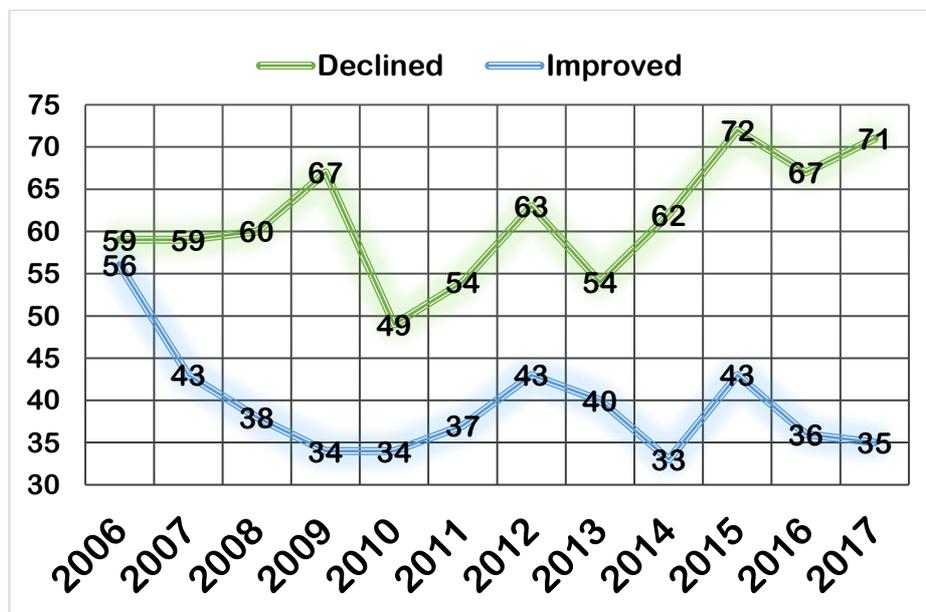


*Figure 1: Democratic advancements and setbacks (adapted from Freedom House [FH], 2018)*

Hardly surprisingly, public trust and confidence in government are at an all-time low (Menzel, 2015), and so is citizen satisfaction with the fruits of democracy (see Figure 2).
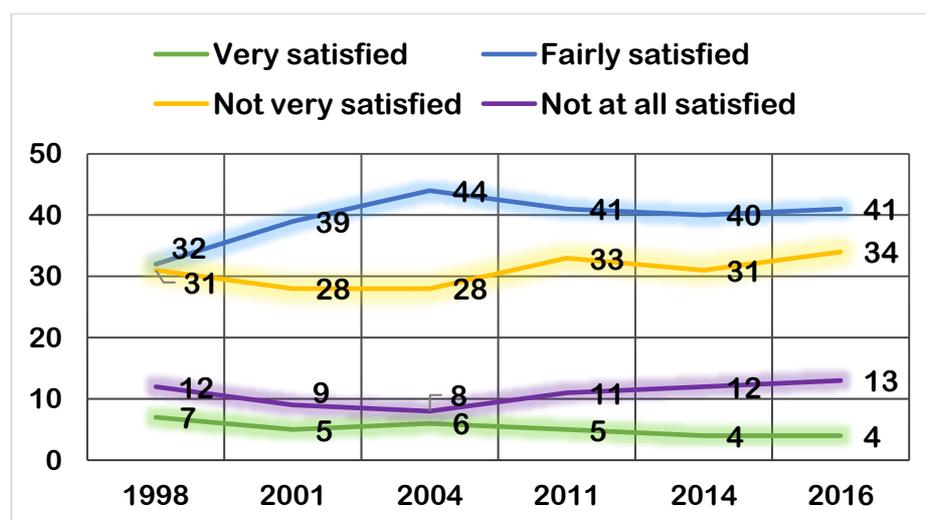


*Figure 2: Citizen satisfaction with democracy in the EU (adapted from Gesis, 2017)*

While Europeans generally – claim to – believe that engagement in participatory democracy is crucial, some 42% have never attempted to influence political decision-making, and 34% of respondents have only gone as far as signing a petition (European Economic and Social Council, 2013). Whereas citizen disillusionment with the fruits of democracy is the result of political decision-making and action that is not only irrelevant for the common good, but habitually counterproductive and harmful, "the actions of the apathetic do not escape politics; they merely leave things as they are" (Held, 2006, p. 269). Democracy requires that enough members of society are committed to the project of popular sovereignty to hold those who would undermine it to account (Gowder, 2015), yet

> lacking the dream of a perfect society, people settle for whatever particular constellation of miseries they find themselves in by becoming merely competitors, sycophants, or parasites (Turk, 1982, p. 11).

In the meantime, elected politicians, appointed public officials and state contractors often overstep the boundaries in which they are permitted – both by law and shared norms – to act, and use the thin line parting political negligence and administrative criminality as a jumping rope (Dixon, Spehr and Burke, 2013).

The term State Crimes Against Democracy (SCADs) represents the first – and only – academic attempt to acknowledge that state crimes do not necessarily entail abuses of human rights, nor do they happen solely on territories which can be hardly described as functioning states (Barak, 1990; 1991; Doig, 2011). SCADs represent all sustained efforts by public officials to circumvent the constitutional system of checks and balances, the rule of law and/or popular control of government (deHaven-Smith, 2006), as well as other attempts by the state, state agencies and institutions, or agents acting in the name of the state, undertaken for the purposes of preserving the state's influence and legitimacy (Dixon, Spehr and Burke, 2013).

If state crimes are controversial, then one could potentially argue SCADs are even more so. SCADs are attacks on 'democracy' – that is, a vague, controversial attempt to define a political system that has no one form – which may, or may not have a distinct, easily identifiable actor behind them; and which may, or may not result in harms that are immediately perceptible by the concerned citizens (Dixon, Spehr and Burke, 2013). Academia presents little agreement as to where and why the SCAD takes place; whether the process through which it happens is one of

omission or commission, or whether the deviance is initiated or facilitated by the state; and present no guidelines for what appropriate responses to SCADs should entail. Furthermore, since the academic thought on SCADs is solely grounded in the empirical examination of a handful of USA-based cases of state criminality, and has attempted neither to incorporate the voice of practitioners, nor to traverse the North American borders, the author deems these definitions limited at best.

While scholars appear keen to point out governments' vulnerability to insider corruption (see, for example, deHaven-Smith, 2006; deHaven-Smith and Witt, 2009), but appear uneager to break the cycle, the failure to respond appropriately to SCADs diminishes government trust by creating a separate standard of justice for high-ranking government officials (Hinson, 2013). In the meantime, growing tensions between the highly promoted democratic ideal and the somewhat liberal, yet also authoritarian reality undermine the stability of regimes, increasing the pressures for political reforms in established democracies, and hindering the consolidation process in new and transitional democracies.

The following paper projects a theoretical framework intended at helping public sector practitioners detect and respond to SCADs at every level of government, by:

i. identifying, comparing and contextualising the diverse conceptualisations of democracy and SCADs which are employed by international non-governmental organisations (INGOs) working in the field;

ii. identifying the methods which can be implemented for the detection of, and encourage the reporting of SCADs in the public sector; and

iii. compiling a conceptual framework to aid agents in public institutions improve their detection of, and response to practices which threaten the quality of democracy.

## Methodology

The researcher had employed a critical-constructivist grounded theory methodology (GTM), whereby details of data collection remained flexible throughout the study and were dynamically updated as data was received from participants during in-depth, Skype-based interviews. The GTM process, as employed by the researcher, is pictured in Figure 3 below, and comprises a concurrent, iterative and integrative methodology, where data collection, analysis and conceptual theorising occur in parallel and from the outset of the research process (McGhee, Marland and Atkinson, 2007).
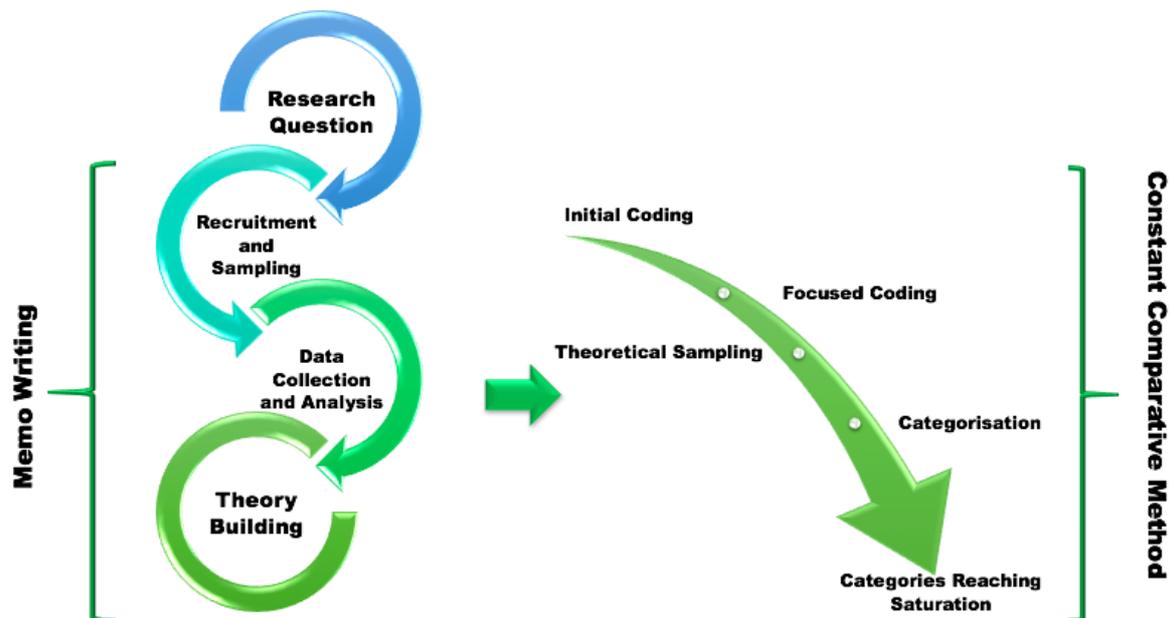


*Figure 3: The grounded theory process*

## Sampling

In order to effectively identify prospective INGOs, the researcher had made use of publicly available civil society organisation (CSO) databases (see Table 1) and had employed purposive sampling techniques to locate organisations that:

    i.       had the promotion of democratic practices as one of their aims;

    ii.      were international in scope;

iii.         matched the UN criteria for the recognition of non-governmental organisations (NGOs) (see Economic and Social Council [ECOSOC], 1996), in the sense that they:

    a. were not sponsored by a government body;

    b. were non-profit;

    c. were not criminal in scope;

    d. were not a political party, guerrilla group, or any other formation that threatens or aims to destabilise the ruling government in a nation state;

    e. did not employ violent means for the purposes of achieving their objectives; and

iv.         did not expressly specify a wish to not be contacted by researchers for participation purposes.

| | |
|---|---|
| Database of Archives of Non-Governmental Organisations | http://www.dango.bham.ac.uk/Dango.NGOArchivesHelpKit.htm |
| United Nations Department of Economic and Social Affairs, Non-Governmental Organisations Branch | http://esango.un.org/civilsociety/ |
| Global Development Research Center | http://www.gdrc.org/ngo/ngo-databases.html |
| Non-Governmental Organisations Portal | http://www.ngoportal.org |
| United Nations Office on Drugs and Crime | https://www.unodc.org/ngo/list.jsp#l |
| United Nations Office at Geneva | http://www.unog.ch/ |
| World Association of Non-Governmental Organisations | http://www.wango.org/resources.aspx?section=ngodir |

*Table 1: (I)NGO databases*

Upon undertaking the search using the criteria presented above, some 67 INGOs – operating, to different degrees, in all sovereign states recognised by the UN – have been identified as matching all requirements.
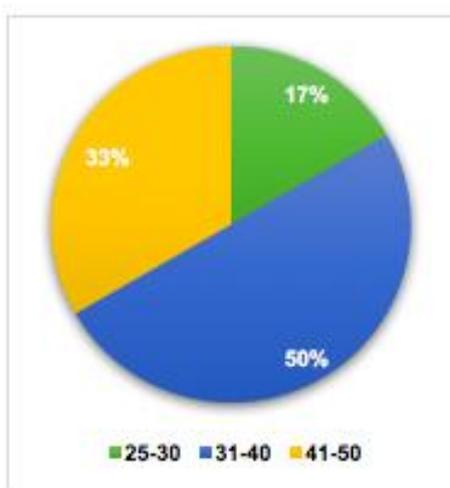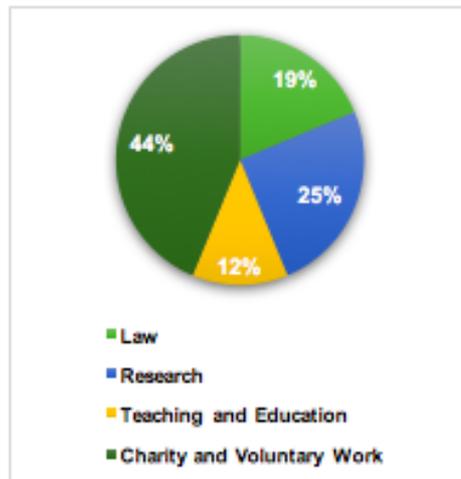
*Figure 4: Age*



*Figure 5: Country of residence*
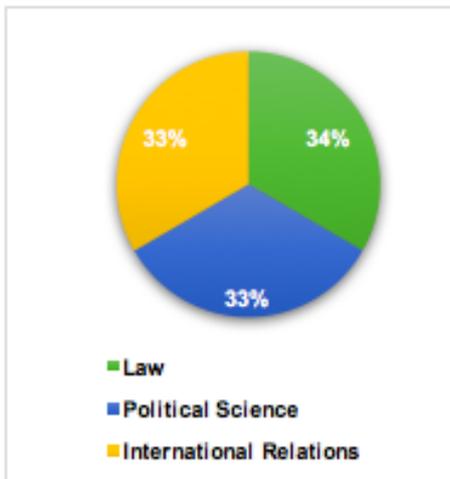


*Figure 6: Subjects studied*



*Figure 7: Previous work sector*

A total of nine (self-identified) males, aged 25-50 (see Figure 4), living in India, Italy, the United Kingdom or the United States of America (see Figure 5), having completed some form of post-graduate education in International Relations, Law or Politics (see Figure 6), and having operated in work sectors relating to charity work, law, research and teaching (see Figure 7), have been interviewed in six interviews.

**The Coding Process**

As portrayed in Figure 3, the GTM requires that data is coded and re-coded in a cyclical process, where the researcher reflects deeply on the meaning of each and every datum, thus leading to total immersion in the data. In the initial phase, open codes have been attached to the interview transcripts line by line, for the purposes of sorting, synthesising and conceptualising the initial data resulting from the interviews, and discovering new leads to be explored through further data gathering

(Auerbach and Silverstein, 2003; Charmaz, 2011; Holloway, 2008; Kelle, 2007; Schwandt, 1997; Urquhart, 2013).
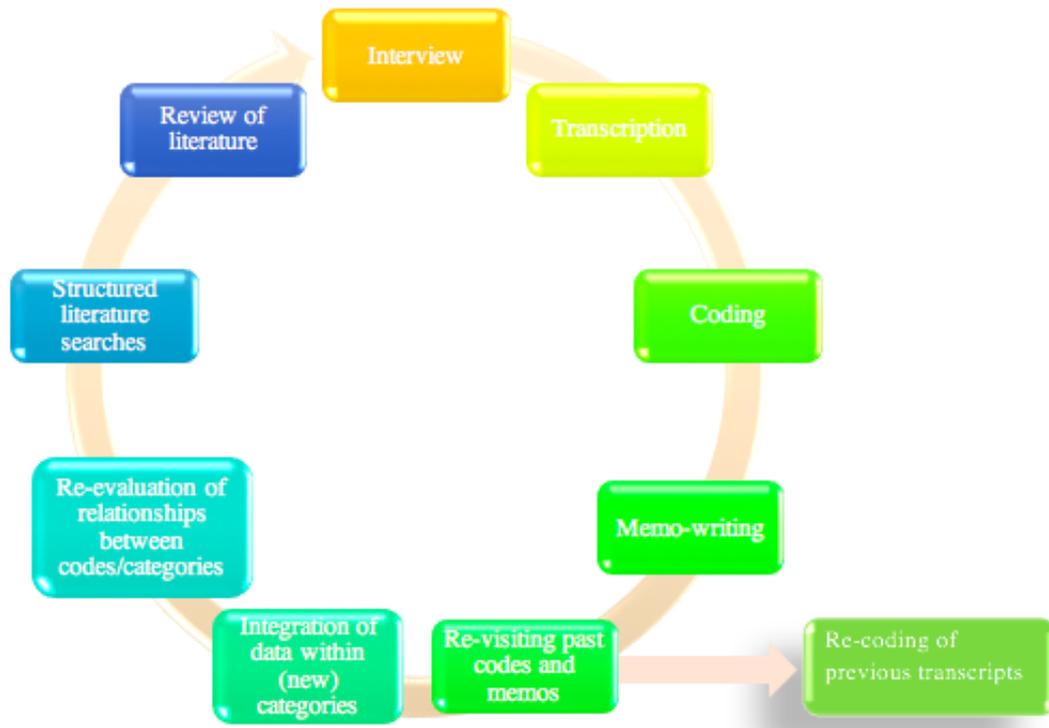


*Figure 8: The data analysis process*

The author conceded that the use of a sole method of coding would have limited the data analysis process, and thus had employed a combination of *in vivo, process*, and *concept coding,* and used *descriptive* coding for the purposes of categorising the data in larger themes, and aiding the mapping of the ways in which categories are related. The author trusts that the mixture of codes helped capture not only the meanings inherent to participants' experiences, but also a sense of how events originate, evolve, and relate to broader conceptual constructions in today's society.

All descriptive codes have been firstly defined by the researcher through a central feature, and re-defined as they have evolved (Gibson and Brown, 2009). As changes were made to a code's definition, the researcher had revisited all data that had previously been indexed at the aforementioned code in order to examine the impact of the newly conceived definition, excluded pieces of text which ceased to be integrated in a certain code due to a change in the definition, and re-coded them (Gibson and Brown, 2009).

The constant comparison method[1] had often instigated subsequent changes in author's efforts to theoretically integrate the emerging model within the wider literature. Emerging codes within a previously defined category have rendered some of the initial codes associated with a category inappropriate, thus leading the researcher to revisit previously analysed interview transcripts, re-code the data, re-integrate the codes within categories, re-define the categories, re-evaluate the relationships between them, and undertake further literature searches, in a cyclical process shown in Figure 8 above.

## The Semi-Structured Literature Review

A semi-structured literature review was carried out upon each cycle of data analysis, whereby its content was dictated by the codes and themes emerging from participants' experience and knowledge of state crimes (against democracy). Ultimately, the content of the literature review was dynamically updated, where emerging codes generated new literature searches[2] (by making appeal to the databases listed in Table 2 below), and where the data discounted the available literature as conflicting with individuals' conceptualisations of democracy and state criminality.

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[1] The *constant comparison method* signifies the process of constantly comparing one's analysis to the whole of data which has been previously labelled as belonging to a said category, with other instances of data in the same category, for the purposes of ensuring that all data can be related (Glaser and Strauss, 1967).

[2] In English, French, Romanian and Spanish.

| Database | Website |
|---|---|
| Academia | www.academia.edu |
| EBSCOhost Academic Search | www.ebscohost.com/academic |
| Directory of Open Access Journals | www.doaj.org |
| Google Scholar | www.scholar.google.co.uk |
| JSTOR | www.jstor.org |
| JURN | www.jurn.org |
| Microsoft Academic Search | www.academic.microsoft.com |
| National Criminal Justice Reference | www.ncjrs.gov |
| OAIster | www.oclc.org/oaister.en.html |
| Open Edition | www.openedition.org |
| Project Muse | www.muse.jhu.edu |
| ProQuest | www.proquest.com |
| Research Gate | www.researchgate.com |
| Science Open | www.scienceopen.com |
| Social Science Research Network | www.ssrn.com/en/ |
| Socolar | www.socolar.com |

*Table 2: Academic databases*

## Pinpointing the 'State' in 'SCADs'

Respondents consider that SCADs occur when at least one of the offenders is a state principal (who has the legal authority to act in the name of the state), or a state agent, whether appointed or elected, who has been authorised by a state principal to issue authoritative instructions that constitute an abuse of power, or to tolerate, permit, or encourage the development of shared values that legitimise unauthorised actions which amount to crimes against democracy (see also Dixon, Spehr and Burke, 2013; Doig, 2011; Huberts, van Montfort and Doig, 2006). Nevertheless, one should not assume that the above imply an *individual* criminal responsibility. Much in accordance with Kauzlarich and Kramer (1998), interviewee

MT2411 argues that "[state crime is] definitely organisational deviance… the bad apple argument doesn't hold in most cases" (see also Chambliss, 1989; Green and Ward, 2004). In other words, the centre of state criminality is the state, not the individual; and while the individual may come to commit the said crime, it is the combination of structural and organisational conditions with personal predilections, which generates these offences, rather than the individual's intrinsic conditions. It is argued that, should one consider the aforementioned to be true, then one must accept that because the most powerful motivations for the commission of a state crime arise within the state, and not within its representatives, a state will simply not be deterred from criminal action

> if it can merely sacrifice individual agents to the court as it can sacrifice individual soldiers and units on a battlefield (Rothe, 2009, p. 18).

## Pinpointing the 'Democracy' in 'SCADs'

Participants' conceptualisation of democracy takes place on three discrete linguistic spectrums as a *value,* a *form of governance*, and an *ensemble of institutions* operating within a geographically-delineated politically sovereign territory, as follows. As a value, democracy ought to be based upon human dignity, and foster social, political and economic equality, respect for human rights and the rule of law, and – some degree of – liberty. As a form of governance, democracy entails a competitive multi-party system, whereby state representatives are elected in periodic, free and fair elections, with real consequences, and whereby those in power are responsible for the well-being of, and held accountable by, the citizenry. Ultimately, as an ensemble of institutions, democracy requires the existence of three separate entities: *the state*, defined as geographically delineated juridical abstraction, represented by the range of actors who, on the basis of their political status, have the legal authority to act on their behalf; *the civil society,* defined as the public space between the state, the market and the ordinary household, in which people can deliberate and tackle action; and *the market,* or the economic realm whereby commercial dealings take place. Ideally, the aforementioned cooperate for, and operate within a socio-political order that is delineated by legal and moral norms

which remain open to debate when they no longer effectively serve the achievement of fundamental democratic principles.

Democracies ought, in principle, to differentiate themselves from all other political regimes by allowing for individuals – acting alone or collectively – to re-configure their relationships with the state, express, militate for, and negotiate their interests, and control those in authority outside organised electoral processes. In turn, governments are expected to respond to pressures for change in a way that is congruent with the aforementioned democratic principles, and most likely to achieve the greatest good, for the greater number of people, by amending all realms of social life, including the market and the public sphere (see also Gutmann and Thompson, 1998; Schmitter and Karl, 1991).

Nevertheless, interviewees unanimously contend that contemporary democratic governments not only habitually ignore their duties of protecting and promoting democratic principles, but also undermine popular preferences in their struggle to integrate within a competitive global economy, whereby the interests of increasingly powerful state contractors are favoured over those of the wider community. In a context whereby the neoliberal market rationality is promoted and taught above all else, and new cultural standards and individualistic moralities are enforced upon a democratically paralysed population, the citizenry moves away from the shared commitment democracy requires. The state concomitantly strips itself of its main duty to ensure the security and welfare of its citizens, which become individual problem and concerns, with temporary market solutions.

Consequently, as the domain of the state is appropriated by private actors, people's ability to effect change by engaging in democratic processes – even if done effectively, in the presence of receptive political actors – is considerably diminished, for the government's capacity to respond appropriately to such requests depends largely on its ability to negotiate the conditions for change with market actors who are rarely interested in conceding own interests for the sake of utilitarianism (Vasquez-Arroyo, 2008). For example, interviewees MT2411 and DU1601 argue that, in a context whereby the governance system is no longer representative, nor responsive to the requests of a disappointed citizenry, many have renounced political action, thus permitting governments to act largely unsupervised in their

pursuit of capital and power, which often culminate in the abrogation of fundamental, civil and political rights. The newly re-discovered state monopoly over what is to be regarded as lawful action and over the means of 'legitimate' – or otherwise acceptable – violence (Monaghan and Prideaux, 2016) unlocks new realms towards the achievement of state, governmental, and state-institutional deviant goals which often amount to SCADs.

## Pinpointing the 'Crime' in 'SCADs'

Much in accordance to public administration theorists (see deHaven-Smith, 2006; deHaven-Smith and Witt, 2012), participants contend that electoral fraud, political unaccountability, lack of government transparency, media censorship, and other attempts to manipulate the electorate for the purposes of either preserving the political status quo, determining a political shift that would in some way be detrimental to the public interest, or simply causing a change in the power structure that is not desired by the electoral majority in a polity, all amount to crimes against democracy.

Interviewees' construction of the SCADs implies:

i.      a state principal or a state agent, appointed or elected, who issues authoritative instructions in the name of the state, that constitute an abuse of power, or who tolerates, permits, and encourages unauthorised actions as defined below;

ii.     an act of commission or omission, whereby the state (agent) either:
   a. acts in a way which is congruent with an abuse of power, whereby individuals are systematically deprived of their rights;
   b. fails to adhere to its primary responsibility to protect the physical security, material wealth, and life of its citizens; or in other ways attempts to re-allocate the aforementioned responsibilities to third parties.

By following a similar model of conceptualisation, SCADs come to be defined as:

i.      actions by state agents, as previously outlined, if they amount to:
   a. efforts to manipulate the electorate;

        b.   attempts to undermine popular sovereignty;

        c.   a change in the political status quo that is, in some way, detrimental to the collective well-being; and

  ii.    inactions by the aforementioned actors, if the inaction threatens to leave unchanged a situation which results:

        a.   in a lack of governmental transparency;

        b.   in a social group's incapacity to effectively participate in democratic politics;

        c.   in the deterioration of principles characteristic of, and fundamental to a democracy – such as egalitarianism, universalism, and representation.

These last two points appear to be of most importance to participants. Interviewees DU1601, MT2411 and AA2903 argue that, should one's desire truly be that of improving responses to all governmental practices which threaten to undermine citizen sovereignty, one should also include state practices which lead to the direct or indirect exclusion of citizens from democratic processes based on their appertaining to a social or biological group. Participants quote systematic state practices of marginalisation and segregation which are enduring in all societies – be they democratic or otherwise – and which impede effective engagement in democratic dialogue, debate, and voting, for they reinforce the idea that the members of a minority group are 'lesser citizens' and are, thus, in some way undeserving of the benefits offered by a democratic community. By undermining marginal groups in a society, the state ensures the tyranny of the majority, and secures legitimacy by bolstering a sense of unreasonable trust in government, based largely on citizens' belief that the state is needed as a protector against members of the out-group. In turn, the divided communities fuelled by social distrust are considerably less likely to assemble as a whole, functional, and competent civil society, and cooperate for the purposes of achieving the common good, as defined by reference to democratic principles. Nor is a divided civil society likely to succeed in overseeing the actions of its political representatives, and demand accountability and redress when this fails to meet expectations.

Interviewees stress that, in the absence of a citizenry that is committed to the democratic project, unsupervised political elites are bound to perpetuate the vicious

cycle of SCADs, whereby popular discontent with democracy translates in apathy and disengagement, and threatens to continue the process of re-victimisation (see Figure 9).
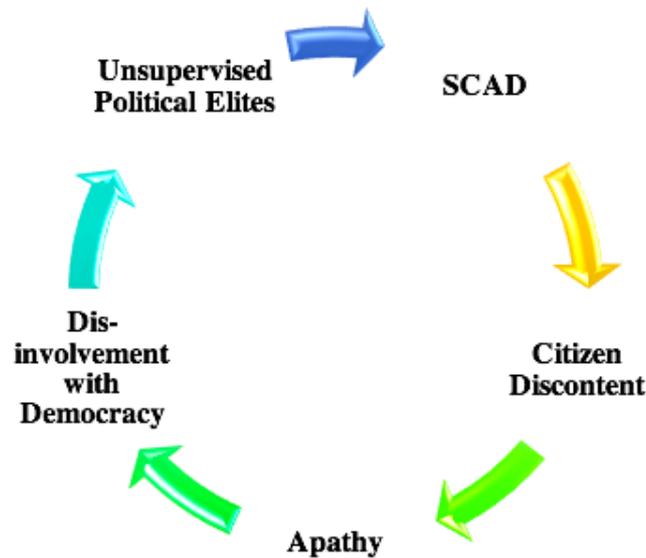


*Figure 9: The re-victimisation cycle*

In turn, authorities' lenient stance towards political criminality builds apathy towards democratic processes, which come to be seen as mere means of empowering various autocrats (Bowler, Brunell, Donovan and Granke, 2015; Bowman and Williams, 1997). SCADs (in)directly impede the citizenry from making informed and meaningful democratic choices, thus curtailing their economic, political and social rights, inflicting harm on its members; threaten the life and liberty of a polity's members, restrict voters' capacity to hold their elected representatives and appointed public officials accountable for their decisions and actions; and otherwise limit citizens' ability to engage in the political life of their democratic society. Alienation with the regime is likely to further affect protest politics through fostering unconventional activism and support for anti-state extremist movements, and promote various other types of criminality (Norris, 1999).

## Responsible Who?

It is in the domain of control and retribution that the differences between crimes of the state and crimes of the state *against democracy* are most apparent. State crimes are – at least in theory – regulated by the laws of war, laws of the air and seas, and human rights law, which (albeit they do not hold the same justiciability status) are enforceable in various modalities in virtually all democratic states. Crimes against humanity, genocides, torture, state-sponsored terrorism and assassinations, enforced disappearances of persons, enslavement, war crimes and crimes of aggression have all been banned through multiple venues in international law, and are tried by international and national institutions of judicial control, such as the International Court of Justice, the International Criminal Court, the International Criminal Tribunals[3], and – at times – *ad hoc* national tribunals[4] (see Jorgensen, 2000).

Nevertheless, in the domain of SCADs, polities quote the principle of state sovereignty to justify the lack of international legal provisions for their punishment. While there are, indeed, some international protocols, frameworks and guidelines prescribing democratic political rights, and some watchdogs meant to *observe* their application by (some) nation states, there is no mechanism to ensure that the undermining, breach, and abuse of these rights are punished. Rather, we are faced with a dubious situation, whereby the international community expects not only that the state will regulate itself, but also that after committing a crime against itself, it will turn against – and punish – itself.

While the 1945 UN Conference on International Organization acknowledged that the new global order should be built on a foundation of human rights, in which governments are made responsible for the ways in which they treat their own citizens through international law (Bachmann, 2007; Schaffer, Føllesdal and Ülfstein, 2014; Vincent, 2010), the leading powers assembled at the San Francisco Conference were more concerned with the struggle for supremacy than with inspiring

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[3] See, for example, the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda.

[4] See, for example, the *ad hoc* tribunals for Cambodia, East Timor, Kosovo and Sierra Leone.

fundamental rights. *De facto*, they were all responsible for grave violations of the freedoms proclaimed by the Universal Declaration of Human Rights (UDHR) (Fasulo, 2009). The First Protocol of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1953, the UN International Covenant on Civil and Political Rights 1966, and the CSCE Copenhagen Document 1990 all set international standards for the conduct of democratic processes[5]. Conveniently, nonetheless, the documents carried no legally binding repercussions for their signatories, and thus freed the USA to bolster racial segregation, both the UK and France to sustain the perpetration of atrocious abuses in their colonies, and the USSR to embrace forced labour camps housing political prisoners as a fair approach for economic recovery in the post-war period (Freeman, 2011; Gareis and Varwick, 2005; Mann, 2005; Ramcharan, 2008 a,b).

Largely unchanged, the contemporary mode of controlling SCADs at an international level is bound to fail precisely because it leaves intact the basic structures that guarantee relative immunity to powerful states (Michalowski, 2013). Not only do powerful UN member states – with the most at risk economically, politically, and ideologically – refuse to compromise their sovereignty to an international legal authority, but the same polities also happen to sit on, or have allies on, the Security Council, allowing them to utilise their veto power in accordance with their political, economic and ideological interests.

While International Governmental Organisations may engage in an array of initiatives intended to reduce a government's likelihood of committing SCADs, ranging from special supervision of certain democratic processes or institutions[6], to the drafting of democratic standards signatory states are expected to adhere to, and

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[5] The documents have been since supplemented by democratic benchmarks set by the IDEA (2008a; 2008b), the Association of Central and Eastern European Election Officials (2017), the European Commission for Democracy through Law (2002), and numerous documents produced by various inter-governmental bodies that do not necessarily have the promotion of democratic ideals as their primary purpose (see, for example, Commonwealth Parliamentary Association, 2006; 2017; National Centre for Competence in Research, 2007), which all offer member states comprehensive models of what democratic governance entails, and a framework for achieving such standards.

[6] See, for example, European Union's decision to place Bulgaria and Romania under a 'Cooperation and Verification Mechanism' meant to ensure that, after accession, the two states do not backslide, and continue to work towards the improvement of national living standards (European Commission, 2017), and the Parliamentary Assembly of the Council of Europe's (2017) election monitoring missions.

to the condemnation of illegal state actions, powerful nations remain relatively free to ignore such condemnations, for governments are welcome to make their own juridical adjustments between the "demands of universal legal standards and local procedural traditions" (Roberts and Hunter, 2012, p. 5). It is in such a context that participants' hope for the detection of, and action against SCADs lays largely within the civil society – in both the 'principled' public service, which is the first to witness (un)democratic practice, and (I)NGOs, which are often the ones to take action in those areas of life where the state fails.


## The Watchdogs

While citizens are not necessarily well educated – or interested – in democratic principles and government administration, and may otherwise accept SCADs as "politics-as-usual", or "a necessary evil" (Hinson, 2013, p. 27; see also MacLachlan, 2010; 2014; 2015), the responsibility to detect and report such offences rests largely on public administration practitioners (deHaven-Smith, 2011). Furthermore, given that a defining role of the public service is the primacy of the public interest (Brehm and Gates, 1997; Preston, Sampford and Connors, 2000), and that integrity in public administration is an important condition for the effective functioning of the state, for ensuring public trust in the government, and for creating conditions for sustainable social and economic development (Viorescu and Nemtoi, 2015), it has been argued that public servants should operate strategically in ensuring that governmental attempts to undermine democracy are reported effectively (Aberbach and Rockman, 1997; Clarke and Newman, 1997; de Graaf, 2010 a,b; Denhardt and Denhardt, 2000; Light, 1999; Maesschalck, 2004; Pollitt and Bouckaert, 2000).

Research suggests that public administration practitioners are most likely to blow the whistle on governmental attempts to undermine democracy due to their proximity (deHaven-Smith, 2011), knowledge of democratic processes (Denhardt and Denhardt, 2000), and public service motivation (Box 1999; Boyne 2002; Cho and Song, 2015; Houston, 2000; 2006; Jurkiewicz, Massey, and Brown, 1998; Perry, 1996; 2000; Perry and Wise, 1990), which enables them to surpass psychological processes which would normally discourage such practices, in the name of public

interest (de Graaf, 2010a; 2010b; Maesschalck, 2004). Nonetheless, since the practice of whistleblowing itself is regarded as inappropriate in most democratic institutions and societies, intentions to blow the whistle often fail to materialise (Transparency International Secretariat, 2013).Participants appear to be particularly concerned with the fate of witnesses of SCADs. Interviewees' experience suggests that those who do make themselves known to the relevant authorities or the media by reporting such political deviances place themselves at great risk, since retaliation against them will often originate at the very highest levels of government, whereby officials are fearless in the pursuit of vengeance.

While in an attempt to produce a cultural shift in societies' outlook on whistleblowing (G20 Anti-Corruption Plan, 2012; Parliamentary Assembly of Council of Europe, 2009; 2015; World Bank, 1997), the Council of Europe (CoE) Criminal Law Convention against Corruption 1999 (Art. 22) and the UN Convention against Corruption 2003 (Art. 33) both encourage states to provide effective and appropriate protection against "any unjustified treatment to whistleblowers", as of 2017 only five countries – namely, the US, the UK, Luxembourg, Slovenia and Romania – had implemented "advanced whistleblower protection laws" (Transparency International's Secretariat, 2013, p. 8; see also Worth 2015a; 2015b). Upon examination, it is seen that relevant legislation is generally inadequate in at least two respects.

Firstly, it is unclear where the obligation to defend democracy stands in relation to other administrative, legal and ethical responsibilities, especially with respect to the secrecy oath, which prohibits government employees from disclosing information identified as safeguarded, secret, or classified to any person not specifically authorised to receive it, without making exceptions for evidence against official deception, illegal wars, treaty violations, and other attacks on the constitutional order (deHaven-Smith, 2011; Delmas, 2015). Should a public administration practitioner exhibiting strong service ethics witness a SCAD (Austen and Zacny, 2015; Box, 1999; Boyne, 2002; Brewer, 2003; Brewer and Selden, 2000; Callender, 1998; Frederickson, 1997; O'Toole and Meier, 2003; Perry, 2000; Perry and Wise, 1990; Wright, 2001), and manage to surpass all social and psychological mechanisms which preserve the contemporary power arrangements, the individual would then be faced with contemplating the ethics of the act of whistleblowing itself (Appelbaum, Grewal and Mousseau, 2006). Breaching one's moral obligation of

confidentiality to the state would not only result in strong cognitive dissonance, but is also likely to attract the label of 'enemy of the state' (deHaven-Smith, 2011; Delmas, 2015).

Secondly, laws aimed at protecting government whistleblowers habitually fail to take into account that the instigators of alleged state crimes are, generally, officials at the highest levels of government, who hold a great deal of power, can – and do – access a vast array of resources which can be successfully employed in retaliating against informants, witnesses and defendants (deHaven-Smith, 2011; Elias, 2015). It appears that the body of legislation which applies to whistleblowers is dual in nature, and leaves the fate of individuals who blow the whistle on SCADs in the hands of the very criminal governments, thus exposing them to perils which originate at the highest levels of the political food chain (Cortina and Magley, 2003; Dussuyer, Armstrong and Smith, 2015; Heuman, Friedes, Cassak, Wright and Joshi, 2014; McGlynn and Richardson, 2014; Rehg, Near, Miceli and Van Scotter, 2008; Smith, 2014; Solas, 2015).

Participants universally quote "the lack of protections for whistleblowers… and a lack of incentives for whistleblowers" (BA1711) as the main two reasons why whistleblowing generally fails, and claim that the contemporary mode of treating those who blow the whistle is principally "used to deter future whistleblowers" (DU1601). In short,

> people don't report instances of political criminality because of fear of losing their job, fear of being disciplined, fear of causing [political] uncertainty… and basically, most people in these positions are replaceable and they are reminders of that. …that kind of thing should be cut out immediately (MT2411).

Participants consequently call for information campaigns, the undertaking of compulsory training for civil servants working in public institutions, and the creation of incentives for whistleblowing, all meant to eliminate the risks and stigma associated with whistleblowing, and generate a wider, cultural shift. The short term solution should be, in accordance to participants, "creating anonymous channels that would protect people from legal prosecution" (DU1601).

## Another Kind of Watchdog

The (global) civil society (Baker and Chandler, 2005; Falk, 2005) plays a crucial role in legitimising a democratic state, and in ensuring that administrations do not trespass the boundaries in which they are permitted to act. CSOs define state actions as illegitimate when these contravene legal rules and shared moral customs (Green and Ward, 2004), draft norms meant to ensure – if respected – good governance, and oversight democratic practices. Participants think in unanimity that, out of all domestic controls against crimes of the state,

> civil society is best in place to hold a state to account and to sanction state crime and state-corporate crime… states may have oversight institutions but civil society has a role to keep in that, and check in a balance (MT2411).

A dense network of civil associations is more likely to promote the stability and effectiveness of democratic polity through its ability to mobilise citizens on behalf of public causes and the mutual benefit (Foley and Edwards, 1996). Participants contend that because

> we are a very apathetic, scandal-hardened public now… and we accept a lot before we actually get involved (AA2903),

> in order to deal with [state crime], you should inform the general public (DU1601).

Nonetheless, because the civil society provides networks for civic engagement within which patterns of collective action are facilitated (Foley and Edwards, 1996), it is often that governments find (I)NGOs to be a threat to their interests (Paul, 2000), with political representatives often expressing hostile attitudes towards, and taking action against, the CSOs (Walton, Davies, Thrandardøttir and Keating, 2016; Willetts, 2006). One participant declared that

> [t]he [Colombian] government is singling out the NGOs and saying that they are enemies of the state, and enemies of the people, when actually they are trying to document human rights (MT2411).

In such a hostile environment, participants contend that, in order to operate effectively, CSOs must have support from the judiciary,

> [b]ecause what we see every time, is that when the state tries to shut down an organisation and pass laws that will make it more difficult for civil society to operate, and organise, and all that… Like we have in my country. You can't just come together and start doing stuff, they must

give you permission first, or you will go to jail for two years. You can't receive international funding, or any money from abroad, because you will also go to jail for that. So any restrictions put in place, and there was nobody to challenge that… people went to court, but the courts are not independent. In my country, the judiciary is in the President's back pocket, so of course… they threw those cases out. So the civil society may not be able to do that in such a state… If we can design a different state, with a new constitutional order, then maybe yes… but as things stand right now, I think that without support from one of the three branches of government (and usually, it is the judiciary), they won't be capable to do that in my opinion (DU1601).

Article 71 of the 1945 UN Charter provided that the ECOSOC could establish "suitable arrangements for consultation" with (some) (I)NGOs. Subsequently, the UN General Assembly Resolution 228B (1950), and ECOSOC Resolutions 1296 (1968) and 31(1996) have laid out the framework that regulates the relationship between the aforementioned bodies, and provided CSOs with the opportunity to participate actively in the drafting of norms that lay the basis of good governance, and that should be adhered to by governments worldwide, for the purposes of ensuring optimal conditions for their citizens' political, social and economic development (Global Policy Forum, 2006; Paul, 1999; Ritchie and Rice, 1995). Consequently, (I)NGOs often take over the role of state and IGOs in providing oversight for democratic processes[7] in young and transitional democracies, and in reporting democratic (mal)practice[8].  It appears, then, that effective control and oversight require mechanisms and cooperation at each level, whereby

> different structures balance each other out. Because if you give the power to one body to define what state crimes against democracy are, and investigate, and apply the definitions… it may open new doors for witch hunt (DU1601).

Participants are, nevertheless, aware of the potential pitfalls of democratic action even when protections are accorded to whistleblowers and when CSOs mobilise and are empowered to take appropriate against deviant state agents. It is

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[7] See, for example, the work of the Pro-Democracy Association, whose members observed the organisation of the 2014 Presidential elections in various locations in Romania, for the purposes of reducing the risk of electoral fraud. Previously, elections in Romania have been observed by the Organisation for Cooperation and Security in Europe (OSCE).

[8] Country Watch, Democracy Reporting International, FH and Sustainable Governance Indicators all produce annual reports on countries' individual and collective performance in upholding human rights, and political and civil liberties.

largely believed that, in the absence of a critical citizenry motivated to alter the very cultures which propagate such crimes, the future of SCAD-control looks bleak. And since existing psychological mechanisms developed through democratic socialisation ensure that individuals habitually accept the self-serving accounts of the officeholders which defend the prevailing status quo (Friedrichs, 2000; Harmon-Jones and Harmon-Jones, 2008; Jost, Banaji and Nosek, 2004; Jost and Hunyady, 2002; Jost, Nosek and Gosling, 2008; Lerner and Montada, 2008; Manwell, 2010), it is pertinent to assume that the current status quo is unlikely to offer much space for disturbing comfortable power relations.

The mythos of democracy inculcates a generous degree of public trust in government representatives, with the general public being socialised to think that popular control of government and the rule of law are effectively secured by periodic competitive elections and institutional checks and balances alone (deHaven-Smith, 2011; Turk, 1982; Warren, 1999). Democratic citizens are taught that elected representation restrains the corrupting influence of governmental power by pitting the powerful against one another and periodically subjecting them to electoral evaluation; and that through selection and socialisation, the decision-making procedures and electoral mechanisms of representative government generally produce a class of officials who are largely honest, law-abiding and devoted to public service (deHaven-Smith, 2011). By drawing upon the System Justification Theory (Jost et al., 2004), the Just-World Hypothesis (Lerner and Montada, 1998), and the Cognitive Dissonance Theory (Harmon-Jones and Harmon-Jones, 2008; Manwell, 2010), even reasonable suspicions concerning political elites' involvement in actions that imperil basic democratic principles can be dismissed as mere conspiracy theories so as to protect the collective identity. In times of inequality, injustice and exploitation, people often find themselves unconsciously bolstering, defending and justifying the dominant social, political and economic arrangements to their own disadvantage, and thus fail to invoke collective action for change (Jost, 2015; Jost et al., 2004). It is in this sense that participants contend that, in order to effectively punish criminal governments, individual citizens, civil society groups and academics must cooperate in contesting state power, and in 'opening doors' towards the blocking of imperial policies, the development of progressive alternatives, and the creation of structural changes in the capitalist political economy.

## Discussion & Conclusions

Notwithstanding its limitations which extend in both scholarly realms of theoretical and methodological expertise, the present study is the first research project to establish the foundations of SCAD theory, and the first to engage with relevant publics who support, promote, and militate for appropriate, accountable and transparent democratic governance worldwide. The study goes beyond declaring that modes of responding to SCADs are simply inappropriate, and shows that, while democracies vary greatly, modes of political manipulation remain largely consistent. The current political climate suggests that the survival of modern democracies may depend on the capacity of their public officials, scholars, and civil society representatives to engage in meaningful dialogue and liaise for the advancement of *truly* democratic politics.

While the existence of a democratic state may, arguably, bring about some sense of security in some (since the polity secures its legitimacy on the assurance that it will improve the life of those born and living under its geographical jurisdiction), nations are rarely fully-functional (Altemeyer, 1996; Arblaster, 2002; Axtmann, 2007; Dahl, 1971; Giraudy, 2015; Kaplan, 2015; Mann, 2005). The very social contract which allegedly encapsulates the substance of contemporary democracies recites claims to equality, universalism and the rule of law, whilst subsequently fostering disparate standards of living and justice for groups and classes of individuals, based on their social status and potential to control capital (Monbiot, 2016). Not only do polities fail to uphold the very standards that authorised their rule, but states have, historically, committed the most atrocious crimes, with the greatest numbers of casualties, and the gravest of human, political, and civil rights abuses (Krimerman and Perry, 1986). Whilst much of the deviant state behaviour is entrenched in the political culture of a nation to the point of implied legality, the past decade has revealed a general spur in state criminality that translates to a decay of democracy worldwide, manifested on multiple strata of the social life (FH, 2015; 2016; 2017; 2018), whereby the interactions between the three key influencers – namely, the state, the market, and the civil society – appear to erode the fundamental principles of such regimes.

The concept of SCADs has been coined in an attempt to sensitise both the

general public and the judiciary to the perils of such illegitimate state actions, and stands as a call for appropriate responses that go beyond merely discounting such deviances as "politics as usual" (Hinson, 2013, p. 27). Participants unanimously agree that state criminality (against democracy) is not indigenous or symptomatic of any particular socio-economic formation[9], and is highly dependent on the social, political and historical contexts which shape the nature, form and goals of the state, and state agencies[10]. SCADs are, generally, the product of, and reinforce the inequitable distribution of economic wealth and legal-juridical privileges[11]. Finally, participants' conceptualisation of SCADs entails politically and ideologically motivated breaches of assigned and implied trusts and duties of the government, by organisational units of the state and by individual officials acting in the name of the state, as well as failures by states to act in relation to something that poses a threat to the citizenry; which generally lead to the production of other forms of criminality [12].

In a context in which a global justice system designed and controlled by powerful neoliberal states is unlikely to be effective in punishing those states, all interviewees place their hope for appropriate response to SCADs in the (global) civil society and the academia, and unanimously agree that responses stemming from outside political authority are the most effective weapons against state criminality. Participants universally contend that the achievement of effective control over the punishment of SCADs is not possible unless both the aforementioned parties cooperate towards, and take an active stance in re-framing cultural images of the 'criminal', and in attacking the democratic propaganda which inculcates public trust in the elected. It is, arguably, also time that the scholars who have failed to acknowledge state crime, do so; and that those who have already done so become "relevant to the 'real world'" (Clear, 2010, p. 721), "invest time in translating their own research" (Uggen and Inderbitzin, 2010, p. 738) and in sharing their findings with the larger public, for the benefits of the wider community. In turn, it is the state itself which must introduce appropriate provisions in national law to encourage a

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[9] See also Doig (2011), Green and Ward (2004) and Ross (2000).

[10] See also Kauzlarich, Matthews and Miller (2001) and Turk (1982).

[11] See also Barak (1990; 1991), Green and Ward (2000; 2004), Kramer (1994) and Quinney (1977).

[12] See also Friedrichs (1998a) and Norris, (1999).

differentiation between those illegalities that entail individual political abuses of power, and those crimes which amount to SCADs.


## Ways Forward

There is, nonetheless, much left to research in the area of SCADs. Collectively, we know too little to assess the boundaries of our comprehension of such crimes, and so the gaps in knowledge remain bottomless for the time being. The author contends, however, that while *all* research on SCADs should be encouraged, scholars ought to be urged to approach the topic from a pragmatic perspective, that goes beyond raising awareness, whereby current societal needs are assessed, and responses to them are sought.

One must also acknowledge that no research would be able to assess (and address) SCADs effectively unless it is inter-disciplinary in nature, and mindful that types of SCADs are largely dependent on their 'crime scene'. In other words, research on SCADs must recognise that the interplay between history, culture, society and economy facilitates different types of crimes against democracy, in different regions of the world, and that research outputs are unlikely to be of any real use unless they refrain from following the academic tradition of long-shot generalisations and inadequate claims to knowledge. Furthermore, academic research ought to shift its focus from offering largely descriptive accounts of the ways in which such crimes are executed, towards assessing *how* SCADs (and authorities' responses to them) impact on societies, more generally, and on citizen participation in particular; *what* can be done to enable democratic governance post-victimisation in general, and to discover the ways in which states can be held accountable for SCADs for the purposes of securing post-victimisation citizen participation in democratic politics in particular.

## Acknowledgements

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