On Principal-Agent Problems, Rogue Agencies and Systemic Government Failure: A Case Study

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Abstract

This article summarizes the US Congress Committee Investigation Report on abuses carried out by intelligence agents of the Department of Commerce (DOC) over 16 years (S. Rep. 2021). We follow a pragmatic approach to the study of this case, and focus on institutional contexts, principal-agent problems, and in providing an analysis of the nature of agents' actions. This analysis indicates that: (1) the agents actions took place because of concomitant failures in numerous government agencies likely triggered by the dismantling of government or its re-balancing towards national security issues, (2) the agents were motivated by white supremacist values and that well-known incentive structures could have prevented much of their destructive actions, and (3) their actions were totalitarian in nature. The issues raised in this article are still of concern since it is unclear if the similar issues are occurring in other parts of government.

In 2021, the US Congress produced a report on how the Investigations and Threat Management Services (ITMS), a small division of the Department of Commerce (DOC) covering basic security issues, evolved into an intelligence agency with police power (S. Rep. 2021[2]). This evolution occurred outside of established government operational procedures. Without sufficient oversight, considering the extent of its power, the ITMS scoured the lives of DOC employees, members of Congress, and US citizens. Its acts were not restricted to illegitimate investigations, but included the active sabotage of lives and careers of ordinary citizens who posed no threat to society. For over a decade, more than 24 ITMS agents, many of whom suffered retaliation for their actions, reported the division's abusive behavior to a variety of oversight agencies. Despite these efforts, effective actions against the unit were taken only after a Washington Post article (Boburg 2021) was published, culminating with the congressional report that led to the closure of the unit in 2022. The issues raised in S. Rep. (2021) are still of concern because it is unclear whether the ITMS mode of operation might have spread to other parts of the government.

What is the institutional context that enabled the ITMS, the motivation of the rogue agents, and the significance of their actions? This article addresses these questions following a pragmatic approach to the study of the US government power (see, e.g., Kaushik and Walsh 2019, and Novak 2008). That is, we consider the ITMS case to be a complex set of problems with many sides that are better analyzed not by a general theory but by focusing on a detailed investigation of power-in-action in everyday practices. Furthermore, following Cover (1986), we bear in mind that our legal and political analyses apply to issues that have real consequences. Along these lines, this article will cover the ITMS practices in detail, and analyze a complex situation based on concepts from a variety of sources including: (1) the literature regarding the US federal government to understand institutional shortcomings, (2) articles on incentive problems of security agencies and studies on white supremacy issues to place the motivations of the rogue agents in a broader context, and (3) works on authoritarian governments to interpret the very real and cruel consequences of the ITMS actions. For each field, we point to other concrete accounts of events relatable to the ITMS case.

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[1] The views expressed in this paper are from the author and do not necessarily represent the views of the IMF, its Executive Board, or IMF management. Much of this work was completed when the author was working at the Congressional Budget Office (CBO). The views expressed here should not be interpreted as CBO's.

[2] Senate Report. "Abuse and Misconduct at the Commerce Department." *U.S. Senate Committee on Commerce, Science, and Transportation.* Committee Investigation Report.
http://www.commerce.senate.gov/services/files/C4ABC46A-7CB0-4D51-B855-634C26E7CF70/.

There is a rich literature on the dismantling of the US bureaucracy. A large portion of it focuses on the serious issues caused by disputes between the presidency and the bureaucracy. Fukuyama (2023) and Moynihan (2023a; 2023b), for example, argue that the dismantling of the bureaucratic state for political reasons is the main point of concern for the proper operation of the US government. These references suggest empowering the bureaucracy as a policy proposal to ensure the well functioning of government. They further argue that the current system of checks-and-balances offers plenty of recourse to counter the actions of an overreaching bureaucracy. The broader literature offers many other reasons leading to govern malfunction including the plain neglect of the presidency to parts of the bureaucracy, and the privatization of core government activities. While this literature can be used to explain why several US government agencies failed to prevent the ITMS actions, it does not fully explain the case covered by the S. Rep. (2021) since it involves a fast expanding and overly empowered government unit. For that, we focus on the argument that another issue affecting the US government is an ongoing re-balancing within its agencies towards national security issues in detriment to other valid concerns (see, e.g., Greenberg 2019). This re-balancing brings new forms of government operations that can bypass established systems of checks-and-balances potentially leading to a multitude of principal-agent problems consisting of government workers (the agents) pursuing their interests rather than those of the public (the principals).

If the ITMS rogue agents were well attuned to the goals of the stakeholders they were representing, like the dozens of agents that reported their concerns about the ITMS to numerous oversight agencies, the underlining institutional shortcomings would not lead to the ITMS rogue actions. This brings to question the actual motivation of the rogue agents and the incentive structure they operated under. Based on S. Rep. (2021) these agents pursued career gains by growing the scope and scale of their operations as fast as possible, often targeting minorities, environment scientists, and those voicing concerns that the census was being used to influence elections. In particular, the viciousness with which the rogue agents pursued minorities shows that they were motivated by white supremacist values (Belew and Gutierrez eds. 2021, Section III). Like the case covered in Scharpf and Glassel (2020; 2022), the ITMS rogue agents did morally reprehensible work because they were underachievers, as evidenced by their poor training detailed below, seeking to acquire skill and status that would otherwise be inaccessible to them in the established parts of the US Intelligence Community (IC) that are hierarchical and meritocratic. It is hard to design an incentive structure for government workers to align their goals with the public interest to prevent principal-agent problems (Dixit 2002). We argue, however, that basic incentive mechanisms were not in place, such as the threat of audits on hard to verify work, leading to agents that were rewarded for work-volume on opaque work, a "body-count" measure. Similar to Acemoglu et al. (2020), the faulty incentive structure of the ITMS, coupled with a weak institutional framework, led to the further weakening of oversight agencies and to agents that were free to pursue private goals adversely affecting numerous innocent civilians.

Having covered the institutional and incentive problems that led to the problems at the ITMS, we are left with interpreting this unit's actions. The ITMS routinely violated privacy rights, added several innocent people to lists of persons of interest, ran numerous sabotage operations, and used faulty accusations in attempts to send DOC and Office of Executive Support (OES) workers to jail. Given the volume and variety, we focus on only one case, that of a DOC worker that was spied at home for years to inform a degradation campaign at work to force her to quit. Similar "zersetzung" tactics were employed by the Stasi (MfS 1985[3], 464; Dennis and Laporte 2011). They are currently employed at other countries as well, as shown by the account of a The Guardian correspondent to Russia (Harding 2011). We use the line of argument of Arendt (1973, chapter 13) to conclude that the ITMS actions not only sought to isolate the individual, and hence were authoritarian, but also that, by invading her privacy and letting her know that she was being constantly watched, the ITMS actions were totalitarian since they were an attempt to destroy the inner life of the targeted person.

The remainder of this paper is structured as follows. The first section begins with a short description

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3 MfS (Ministry for Security and State). 1985. *Dictionary of Political and Operational Work*. Second edition. East Germany.

of the relevant government agencies. Subsequently, it explains the path the ITMS took to become an intelligence agency with police power, and how it organized itself and trained its agents to perform its new functions. It then covers specific cases of how the ITMS exerted its power. The second section covers the broader institutional context, the drivers of the principal-agent problems at the ITMS, and the nature of the ITMS actions, in this order. The final section draws conclusions.

The ITMS Case

The issues addressed by the S. Rep. (2021) mainly cover the actions of three government agencies: the ITMS of the DOC, the US Marshals Services (USMS) of the Justice Department, and the Office of the Director of National Intelligence (ODNI).

       The DOC was founded in 1903 to promote economic development in the United States. It currently has a large portfolio, which includes carrying out a census, producing the most essential macroeconomic and industrial production indicators, providing patent concession, promoting measurement standards, and analyzing climate and oceanic conditions. It has approximately 45 thousand employees and has the lowest budget of the current 15 government departments (USD 8 billion in 2021). The ITMS is a small division of DOC's Security Department that was created in 2000 with the mandate to protect DOC buildings and directors.

       The USMS is a federal policy force of the Justice Department which serves the judicial branch. It has approximately 4,000 employees and, among other police force activities, is responsible for safeguarding judiciary buildings and employees and arresting criminals at large. Created in 1789, it is the oldest US law-enforcement agency.

       The IC includes the operations of 16 government agencies, spread over six government departments, in addition to one agency that is not under any department (the Central Intelligence Agency [CIA]). Since the passage of the Intelligence Reform and Terrorism Prevention Act of 2004[4], IC agencies have been supervised by the ODNI, a function formerly attributed to the CIA, whose director was, by default, the Director of National Intelligence (DNI). IC's budget and number of workers are not made public. However, the number of people with security clearance that grants access to national security information is approximately 850,000, and by some estimates there are 260,000 intelligence workers employed by the US government in some capacity (Priest and Arkin 2010, Light 2018).

How the ITMS became an intelligence agency with police power

Initially, the scope of the ITMS was restricted to providing protective services. It had the specific mandate to protect the DOC director and departmental buildings and lacked police enforcement power or the right to conduct activities related to national security issues.

       To obtain police enforcement power, the ITMS used the USMS. Under specific circumstances, USMS agents can deputize people outside the agency, granting them police power. ITMS members were deputized by the USMS with a mandate to protect DOC's "critical infrastructure" (S. Rep. 2021, pages 4,5,10, and 17)[5]. The vague definition of this term, coupled with the ample array of activities conducted by the DOC, granted the ITMS a wide range of actions. After being deputized, ITMS agents began to conduct criminal investigations, make arrests, and carry weapons in public spaces (including on flights).

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  4 Pub. L. No. 108-458, 118 Stat. 3638 (2004).
  5 S. Rep. (2021) page 14 lists several problems with the USMS deputation program. It is worth noting that even the USMS ended up denouncing the actions of the ITMS agents to the Office of the Inspectors General (OIG), stating that they were biased against minorities (S. Rep. 2021, 35).

To obtain intelligence agency powers, the ITMS initially used the services of the Office of Executive Support (OES) to access the IC, the standard way in which a federal agency outside the IC can request its services. However, over time, the ITMS started viewing OES as a roadblock to the interaction with IC agencies and acted to obtain direct access to them. To this end, it used its police power to launch security violation investigations of all OES employees. The process included a mass interrogation of OES employees, three of which were referred to the DOJ for potential lawsuits; however, all cases were later dropped[6]. After this investigation, the ITMS received direct access to the IC under minimal supervision and began to act as if it had the authority to conduct counterintelligence activities (S. Rep. 2021, pages 4, 14 to 19, 30, 31 and 34). Indeed, the formal complaint of a special agent stated that the ITMS operated as the Federal Bureau of Investigation (FBI), CIA, and National Security Agency (NSA) rolled up together, with minimal supervision (S. Rep. 2021, 17). Seeking legitimacy, the ITMS reported its actions directly to the ODNI, the office created to supervise the entire IC. An ODNI assessment of ITMS activities concluded that it was important for the ITMS to be involved in counterintelligence operations, that its initiatives were excellent, and that they had the potential to be extended to other parts of the government (S. Rep. 2021, 16).

Despite having only a tenuous mandate to carry out police or intelligence agency work, the ITMS cemented its activities in these directions. By 2017, the DOC budget submitted to Congress described the ITMS as a division that fulfilled the national strategic needs of counterintelligence, transnational crime, and counter-terrorism by investigating grave national security threats[7].

How the ITMS trained its agents

The manner in which the ITMS trained its agents indicated how it generally operated. Overall, S. Rep. (2021) concludes that ITMS managers were not qualified to run a police force unit or an intelligence agency and that the training they provided to employees was focused on how to carry out clandestine operations (see, e.g., page 25).

Specifically, several agents stated to the Committee Investigation that the training they received while working at the ITMS diverged from the expected federal government standards and included chasing the ITMS director's car at high speeds, being confronted by actors while the agents were placed armed in banks or federal government buildings without knowing that it was a training exercise, and taking forensic analysis courses provided by the ITMS director, who did not have qualifications in the field. The ITMS director himself did not complete the basic training required for criminal investigators and failed to obtain the required USMS qualifications for deputized agents.

The ITMS mode of operation reflects its disregard for basic training. In particular, there were no established internal guidelines. For instance, although the division conducted police investigations, it either did not document them, or it did not follow guidelines on how to handle the collected evidence (S. Rep. 2021, 22). Furthermore, untrained ITMS agents interviewed and interrogated people without informing them of their constitutional rights. The agency also opened up a large number of weak cases that it never closed.

Specific ITMS Actions

Acting as a police force and a national security agency without much oversight, the ITMS disrupted the lives of innocent people, sabotaged the careers DOC workers, invaded the privacy of members of congress and the public, and retaliated against agents that tried to correct its mode of operation. ITMS actions demonstrate the destructive power of a small number of poorly trained public servants who have access to modern

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6 See S. Rep. (2021, 15) for the initial interaction between the ITMS and the OES. See page 32 of the same document for how the ITMS acted against the OES to get direct access to the IC.
7 The DOC 2011 budget already had a similar description the ITMS function (S. Rep 2021, 15).

surveillance tools and employ abusive police tactics. In particular, the ITMS referred many cases for prosecution, but the DOJ regularly declined to bring them forward (S. Rep. 2021, 4). Of these, the most salient are those of Sherry Chen and Chunzai Wang (S. Rep. 2021, pages 12 and 13).

Sherry Chen is an award-winning hydrologist with the National Oceanic and Atmospheric Administration (NOOA), who was investigated and interrogated by the ITMS under the suspicion that she was a Chinese spy. A case against her was brought to court based on public-domain material that she had forwarded to a foreign national. In 2014, she was arrested while waiting for trial, but all charges against her were dropped at the beginning of the it. The defendant pointed to potentially gross misconduct on part of the ITMS, including being pressured by ITMS agents to sign a document stating that she was guilty, and being advised by them not to seek legal counsel. Chen continues to be on DOC's payroll but was put on administrative leave since the end of her trial. In 2022, she settled with the DOC over malicious prosecutions and false arrest lawsuits (Yam 2022a and 2022b).

Chunzai Wang is a top scientist working on the impact of climate change on the ocean at NOAA. His participation in a Chinese talent development program triggered an ITMS investigation. Wang was interrogated by the ITMS, his house was searched for evidence, and he spent a day in jail waiting for trial. Initially, the prosecutors sought a 5-year jail sentence, but all criminal charges against him were subsequently dropped.

The ITMS acts of sabotage against DOC workers apparently began after it became clear that it could hardly win the judicial cases it brought forward. Employing clandestine operation tactics, the ITMS regularly searched the office spaces of DOC workers that it considered suspect (S. Rep. 2021, 12)[8]. These investigations were performed by agents wearing balaclava and shoe nets after they turned off the internal circuit cameras to leave no trace and keep the investigations off record. The agents searched employees' computers, email accounts, and cell phone data. S. Rep. (2021) states that the ITMS scoured the lives of many DOC employees, including accessing their information on intelligence agency databases (which presumably carry detailed real-time information such as their geolocation, financial transactions, cell phone app usage and communication logs) because their names differed from standard white American names (S. Rep. 2021, pages 18 and 19). A whistle-blower stated that xenophobia was the main motivator of ITMS actions and that these actions were focused on ethnic minorities, foreign visitors, and people with connections to these types of people. The report also stated that, once a case was opened against a DOC employee, it was unlikely to ever be closed and that many were classified as "related to terrorist acts."

The extreme surveillance of DOC employees employed by the ITMS was used to inform its acts of sabotage. In one case (S. Rep. 2021, 18), a worker from an ethnic minority group was investigated by the ITMS for over 4 years, without a clear case against her. No supporting evidence of criminal activity was found, although she was put under surveillance at work and at home. An ITMS agent quoted by S. Rep. (2021) stated that the aim was to isolate employees and force them to quit their jobs due to the enormous pressure.

The ITMS investigated many US citizens and members of Congress. At least one member of the Congress was investigated by the ITMS after sending a letter to the DOC director with questions on the US census process. The ITMS used mass-surveillance tools to track comments made on social media platforms regarding the DOC (S. Rep. 2021, 19). A case covered in S. Rep. (2021) details how an elderly man with few followers on Facebook was investigated by the ITMS after criticizing the US Census on that platform. Among other similar cases, this case was sent to the FBI for further investigation. The FBI invariably dropped these criminal investigations, claiming that the people being investigated were exercising their freedom of speech rights through conversations that did not pose a threat to national security. However, the ITMS did not close in any of these cases. Another case began when a group of middle school students sent a letter to the DOC asking for whale species to be included on the list of endangered species. This prompted the ITMS to open a case on these students and conduct a detailed investigation of the letter's main author, a middle school student (S. Rep. 2021, 33).

The ITMS also routinely retaliated against agents, including decorate soldiers or agents from other agencies, who raised internal or external complaints about the division's mode of operation. S. Rep. (2021)

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8 S. Rep. (2021) concludes that many of the ITMS investigations of DOC employees were based on limited evidence.

covers several cases in which the ITMS sought to lower the security clearance of these agents, (see, e.g., page 27). Such actions can derail or end the career of a security agent. The courage displayed by these agents was notable. Although they were probably well aware of the retaliation they would face, which could end their careers or send them to jail, they still denounced the ITMS to several government agencies. Their accounts seem to form the core of S. Rep. (2021).

Broader context

It could be that the idiosyncratic and temporary mismanagement of several US government agencies failed to prevent ITMS's abusive behavior; that is, it was a tail event, namely, a random, albeit very unlikely, occurrence. S. Rep. (2021, 21) concludes that the ITMS was chronically mismanaged, and that it had a culture of rampant disregard for government norms. However, for its extreme abusive behavior to happen, the ITMS mismanagement had to be aligned with failures in other parts of government such as:

- The USMS deputation program (S. Rep. 2021, 14);

- The DOC upper management, which was informed of the actions of the ITMS, investigated them and concluded that the division did not have the authority to employ broad police power (S. Rep. 2021, pages 20 and 21) but did not act to prevent it[9]. Indeed, it sought to increase the ITMS's budget over the years;

- The OIGs, whose mandate is to investigate the abuse and misconduct of government agencies before they become the subject of a congressional investigation, but it did nothing to prevent the ITMS's violations of civil liberties and constitutional rights after investigating it (S. Rep. 2021, pages 5, and 33 to 36);

- The DOJ which received many trial cases from the ITMS based on weak evidence, some of which were dropped during trial, but these cases did not lead to an audit of the ITMS;

- The ODNI which allowed and encouraged a small division outside the IC to act as an intelligence agency under minimal supervision, and potentially spread the ITMS mode of operation to other government units (S. Rep. 2021, 16).

If the random alignment of the failures of US government agencies allowed ITMS's actions to take hold, preventing similar misconduct would involve reducing their probability and duration. Reinforcing the role of agencies that provide formal ways for government divisions to interact, such as the OES, should decrease the chance of mismanaged divisions collaborating. Strengthening the role of the OIGs should not only deter agency misconduct but also quickly end the abusive behavior of an agency because it has a mandate to investigate and redress issues.
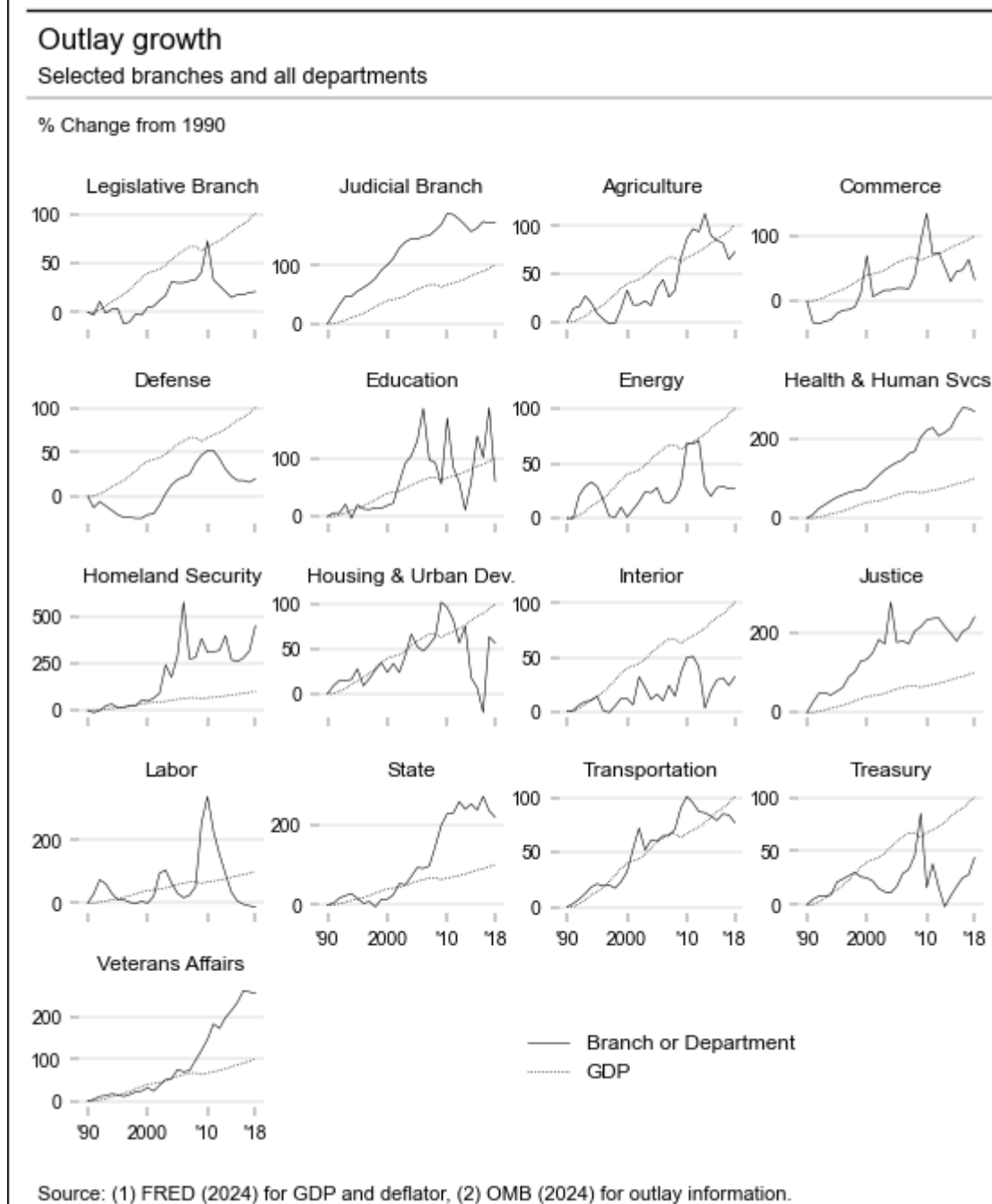
The dismantling of government institutions, which we take to mean that basic expected outcomes fail to materialize, could provide a more systemic explanation for the failure of several government agencies to prevent ITMS's misconduct. At face value, it seems hard to argue that the US federal government is being dismantled, or, going further, that it is "weak" (Novak 2008). Based on labor data[10] from Light (2018) and budget data from OMB (2023), there is little evidence that the US bureaucracy is under attack both in terms of

9 Even the DOC upper management was likely powerless against the ITMS. One of the secretaries of commerce built a Faraday cage in his office to prevent eavesdropping. See S. Rep. (2021, 26) on how the ITMS did not have an internal supervisor over many years and how it investigated a person hired to oversee their actions.
10 See Light (2023) for more current labor data. We exclude the years affected by COVID-19 in the analysis to avoid years with exceptionally high government expenditures.

the number of workers and budget. As shown in Figure 1, all departments had a budget increase from 1990 to 2018, most with rates above the growth of real GDP. The number of federal employees dropped from a peak of about 2.1 million workers in 1990 to a trough of about 1.7 million workers in 2002 and it grew back to about 2 million workers by 2017. The roughly 5% drop in workforce size from 1990 to 2017 is large, but a more detailed workforce analysis and the department budgets tell a different story. First, the number of federal workers historically fluctuated around 2 million workers (the "Whitten's cap"), and, since the 1970s, this number only went below 2 million from 1996 to 2006. Second, we focus on non-defense federal workers in our arguments on the dismantling of the bureaucracy, and the number of these workers grew from about 1.1 million in 1990 to roughly 1.3 million in 2017 (a 16% growth) which is lower than the labor force growth during the same period (xxx). However, to get a full picture, we should include contract and grant workers to this analysis since they form the majority of the people working for the federal government. Unfortunately, we do not have number of non-defense grant workers before 2005, but the number of non-defense contractors and federal workers went from 2.8 million in 1990 to 2.9 million in 2017 (a 4% growth). The government department budgets tell a similar growth story. Almost all of them increased in real terms from 1990 or 2000 to 2019, many of them at a pace faster than that of the real GDP. Furthermore, the above metrics track the change in government scale, but they miss the change in the scope of government operations (Higgs 1991), which experienced a large increase from 1990 to 2017, as argued, for example, in Coyne and Hall (2018, 9).

Figure 1.

Outlay growth
Selected branches and all departments

Source: (1) FRED (2024) for GDP and deflator, (2) OMB (2024) for outlay information.

Still, works covering concrete cases of bureaucratic dismantling show that the issue is critical. See, for example, Favole (2013) for the neglect of the OIG offices; Eisinger (2017) for issues at the DOJ; Lewis (2018) for the dismantling of the bureaucracy under Trump; Covid Crisis Group (2023) and Lewis (2021) for broad failures of the US health system, specially during the Covid Crisis; and, Farrow (2018) for the case of the State Department. The robust literature on the dismantling of the US bureaucracy views it as the main threat to the proper functioning of the US government (see, e.g., Fukuyama 2014 and 2023; Kovacs 2020 and 2021; Freeman and Jacobs 2021; Noll 2022; Moynihan 2023a and 2023b). Much of this literature focuses on actions of the presidency against the bureaucracy as the mechanism behind the dismantling of the administrative state, but the literature also consider many other mechanisms such as: the neglect of parts of the bureaucracy by presidencies that are mainly focused on their own policy goals (Bednar and Lewis 2023); the contracting out of essential government functionalities that is eroding government capacity (Verkuil 2017, Light 2018); and, the piling up of layers of managerial bureaucracy that is halting proper government work (Light 2008). See also Skowronek, Dearborn, and King (2021) for a reference that places the dismantling of the bureaucratic state on the broader context of a fight between an entrenched bureaucracy versus an overly empowered presidency.

The dismantling of the bureaucratic state likely played a role in enabling the ITMS. For example, as detailed in the previous section, the position meant to directly oversee the ITMS remained vacant over many years; the ITMS actively eroded the OES; and the OIG failed to act on numerous complaints on ITMS actions, including those raised by ITMS agents. The dismantling of the bureaucratic state provides an alternative theory to the tail event introduced used above to explain the aligned failure at several government units. The ITMS case serves as a warning that, as the dismantling of the bureaucratic state progresses, it may lead to systemic government failures that are difficult to understand or fully resolve. The literature on this topic considers many policies to fix this issue, and Light (2008) offers a comprehensive set of proposals, such as: (1) limiting the number of political appointees, (2) reducing the layers of government management, (3) reducing the size of government, (4) revitalizing the federal government career, and (5) reducing the heavy outsourcing of federal work.

In the opposite direction, one can argue that the problem is not the dismantling of government institutions, but their expansion. Indeed, several agents related to Congress that the ITMS's main goal was to expand its power as fast as possible (S. Rep. 2021, 29), and the ITMS became an intelligence agency with police power under minimal supervision at a rapid pace. Hence, the dismantling of the bureaucratic state does not explain, by itself, the whole of the ITMS case; we also need to consider the current re-balancing within the US bureaucracy in favor of security issues. There is ample evidence of this, see for example the account of Brooks (2016) of how the Department of Defense (DOD) has been overtaking the mandate of other agencies, becoming one of the few efficient departments; the account of Farrow (2018) and Stuart (2009) of how the State Department lost ground to the Pentagon and intelligence agencies; the work of Farrell and Newman (2023) on how the Treasury Department is now an agency capable of conducting economic warfare[11]; the work of Balko (2021) on the militarization of the police force; the historical account of Coyne and Hall (2018) of how the numerous US foreign interventions led to the accumulation of knowledge and capital on social control and surveillance that were brought back home in a myriad of different ways; the evidence collected by Golden (2018) on the growing influence of intelligence agencies on academic institutions; and the detailed analysis of Zuboff (2019; 2022), and Schneier (2015), on the profound social transformation taking place with the rise of tech companies behaving as mass surveillance agencies.

There is a large literature on the reasons driving the US government re-balancing towards security issues usually focusing on long-term trends (starting from the US occupation of the Philippines or the Truman administration) or on more recent post 9/11 events (see, for example, Coyne and Hall 2018; Glennon 2014; Greenberg 2019, 2021; Hogan 2000; and Stuart 2009). Here, we focus on post 9/11 policies, in particular we

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11 See also Mulder (2022) for a historical perspective of tools in use. In summary, if we follow Slobodian (2018, 271) and consider the neoliberal world economy as centered around institutions, such as the World Trade Organization (WTO), built to prevent the interference of states on the (global) economy, then we are moving away from this order towards a paradigm where other national and security interests prevail over economic ones.

interpret the ITMS actions in light of the new government operational procedures described by Greenberg (2021). This reference argues that, since the 9/11 terrorist attacks, the US government crafted three "subtle tools," that is, the US federal government began to: (1) forgo established procedures and started to act without internal institutional constraints, (2) write new laws in a vague manner that provided the executive branch with an ample field of action, and (3) avoid the scrutiny of its actions, including internally, such as by creating new tribunals inside the executive branch to avoid the oversight of the judiciary branch or by restricting access to information to only a few members of congressional oversight committees. The ITMS case aligns well with Greenberg's (2021) analysis of new forms of government operations. Overall, the ITMS was a division of the executive branch that eschewed the established guidelines of American intelligence agencies or police forces to obtain a vague mandate allowing it to act without meaningful oversight of its actions or public acknowledgment. Indeed, the general public seems unaware that individual government agencies (e.g., the DOC census in the example previously covered) can investigate them if they complain about their services on social media platforms. If Greenberg's (2021) subtle tools allowed for the emergence of the ITMS, it should be difficult to prevent, detect, or fix the recurrence of problems caused by it since it could be done by agencies or private firms operating without effective oversight from the IC. Given the size of the US federal government, it is likely that a number of civil servants and contractors are already operating under vague mandates, without institutional constraints, and with little oversight; hence, some of them might be already running ITMS like operations. In this scenario, it is important for the government to proactively identify such cases and for the IC to reassert the ownership of its mandate. Overall, the main issue of concern here is the potential for states that over emphasize security concerns to become totalitarian to some extent. Following Arendt (1973, chapter 13), what characterizes a totalitarian state is not the fact that it is powerful but that it blurs the distinction between public and private lives. The actions of the ITMS clearly blurred that distinction in a variety of ways. Replacing the subtle tools with a better designed institutional mode of operation for security related agencies and private firms is perhaps the safest way to preserve federal government functioning.

Drivers of the principal-agent problems

To better understand the ITMS actions, we need to consider the main drivers of its managers, and the incentive structure they operated under, independent from the institutional shortcomings that enabled its occurrence. Anecdotal accounts of faulty incentive structures, and related principal-agent problems, of security and intelligence agents seeking personal gain from their positions abound and works of fiction capture their essence well[12]. Unlike most of these accounts, there is no indication that the ITMS managers were after extracting financial rewards from their victims, but that they were rather centered on broader career gains, and used their ideological preferences to justify their actions.

If we follow Belew and Gutierrez eds. (2021, xi) and define white supremacy to mean both the belief in the superiority of white people and the broad systems of inequality that ensure racial disparity, even without individual belief, then, in view of the extreme actions they employed against minority workers as detailed in the previous section, the ITMS actions were white supremacist in nature. This type of problem is already known to exist in law enforcement agencies (see, for example, Belew 2019; FBI 2006[13]; and Speri 2017). The account of ITMS actions would add to the above literature concrete evidence that not even high-level and well-accomplished US government workers are immune to the actions of white supremacists, indicating that these values are pervasive, and that intelligence units also have white supremacist problems.

As reported by the S. Rep. (2021) the ITMS rogue agents sought to increase the scope and scale of their unit as fast as possible. Yet, they mostly worked on a fabricated caseload, and the training they offered, as well as their overall mode of operation, shows that they were ill prepared to perform intelligence or police

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12 See, for example, Von Trier (2000), D*ancer in the Dark*, and Von Donnersmarck (2006), *The Life of Others*, for works of fiction depicting principal agent problems where the principal agents recourse to authoritarian and totalitarian techniques, respectively.
13 FBI (Federal Bureau of Investigations). 2006. "White Supremacist Infiltration of Law Enforcement." *FBI Intelligence Assessment.*

work. As such, they would be better of pursuing a career in the more established parts of the IC to attain proficiency in their selected field of work. These parts of the IC, however, are hierarchical and meritocratic (see, for example, Figliuzzi 2021 for an internal account of the FBI case), indicating that the rogue agents would have limited career prospects there. It is easy to regard them as fringe actors, "buffoons agents", that were bound to eventually fail. The amount of time the ITMS operated, almost two decades, and the effort needed to stop it indicate, however, that they were driven workers. The problem here is not so much the skill set of the rogue agents, or their overall capacity, but the incentive structure they operated under; the limited prospects they had for career advancement furnished a strong incentive that underlined the drive and duration of their actions. This incentive structure is close to that of secrete police forces of authoritarian governments (Scharpf and Glassel 2020 and 2022). Namely, both the ITMS case and the ones covered in these references are of underachievers without good career prospects in the established intelligence agencies carrying morally reprehensible acts to acquire skill and status they could not attain otherwise. Indeed, the architects of secrete police services of authoritarian regimes, from the Nazi Germany to Latin American dictatorships, seem well aware of the power of this incentive structure and actively selected underachievers for morally reprehensible jobs[14] (Scharpf and Glassel 2020 and 2022).

The ITMS rogue agents' incentive structure had basic contract theory problems as well. Government workers perform several tasks over a prolonged period of time while representing multiple stakeholders. This makes them respond weakly to incentives. Hence, it is hard to find strategies that properly incentivize and oversee their activities (Dixit 1997 and 2002). However, in the ITMS case, even well known incentive and oversight structures were not put in place. Part of the ITMS actions consisted of producing of trial cases against DOC and OES workers. In these cases, the quality the ITMS agents' work was hard to observe externally but the quality of their output was still observable by checking if the cases were accepted by prosecutors, or analyzing the trial results (namely, this is a "moral hazard" problem). The usual strategy employed to fix a moral hazard problem is to devise a reward structure (a "payment schedule") based on the observable part of their work, the final outcome of their services. Fortunately, such an incentive structure was in place for the ITMS. That is, DOC managers could only use the ITMS trial work to justifiably request a bigger budget or authority from Congress for the ITMS only if cases were ultimately successful (in contract theory terms, they were under a tight "step function" payment schedule). This seems, however, to be the sole proper reward structure incentivizing the ITMS agents. This type of incentive may be a sufficient for prosecutors, since trail results, or at least using respectable legal practices, define their career standing, but this is not enough for agents with recourse to alternative reward structures, a common case for government workers, since they can switch away from non-profitable incentives (Dixit 2002). Unfortunately, the ITMS agents could still justify the need for broader power and budget by performing tasks with opaque outputs, as evidenced by the number of cases they opened but never closed, or their drive to investigate all DOC workers without standard white names. The basic strategy to prevent abuse when outputs are costly to verify is to increase the probability of an audit as the number of claimed successful outputs increases (Dixit 2002). Else, agents are rewarded by "body-count", the number of self reported successful outputs, an incentive structure widely regarded as flawed. Given the power police and intelligence agencies have, faulty but highly rewarding incentive structures can lead to broader government failures since such agents can use their power to intimidate other parts of government, like the ITMS did to OES workers, internal DOC supervisors, and the ITMS agents that reported on the unit's actions. This case is similar to Acemoglu et al. (2020), covering the effects of a high powered incentive to a security force in Colombia that lead to the death of numerous innocents, and the erosion of local judicial authority. In both the ITMS and Colombia cases, either dropping the body-count reward incentive, or credibly auditing large work volumes, would have prevented the damaged caused to innocent civilians. Furthermore, in the ITMS case, the failed court trials should have by themselves lead to an audit of the unit, since payment schedules only address information asymmetry problems that are of a pure moral hazard nature, which is seldom the case in government activities.

14 As stated by one of them: "We don't want clever people. We want mediocrities." (Scharpf and Glassel 2020).

Unfortunately, S. Rep. (2021) falls short on providing the financial details of the ITMS, which could uncover further cases of principal-agent problems, specially if private intelligence companies were hired by the ITMS, nor does it cover revolving door issues, which might be relevant for finding out if the rogue agents were ultimately interested in acquiring job experiences relevant for more lucrative private-sector positions. There is evidence that private agencies are employed throughout government (Light 2018; Priest and Arkin 2010; and Shorrock 2007), that they operate under minimal oversight (Light 2018; and Verkuil 2017), and that they are running out of control (Farrow 2020; Priest and Arkin 2010; Richard and Rigaud 2023; and Shorrock 2007). These agencies have strenuously defended objectionable clients, as evidenced by the underhanded tactics they used in defense of a sexual predator (Farrow 2020), or by the actions they employed against journalists reporting on organized crime (Richard and Rigaud 2023). No issue seems to be too small for these agencies; they were even used to influence the election of a small-town hospital-board in California in favor of a corrupt official, with DC law firms playing an intermediary role connecting their clients with intelligence companies (Entous and Farrow 2019). The incentive structure in this case is different from the one faced by the ITMS rogue agents; the cited references indicate that these private companies hire from leading government intelligence agencies, and they operate on poorly regulated markets without meaningful oversight. The incentive here is for these companies to act as aggressively as possible to satisfy their clients, or develop a market reputation to secure further contracts. Hence, they operate under an incentive to spread ITMS-like practices to other parts of government. One of the proposed polices of Light (2008), ending the outsourcing of essential federal work, would fix this particular threat to proper government functioning; whereas strong market regulation is needed to end the problems they are causing to society as a whole.

The nature of the ITMS actions

Having covered the institutional and incentive structure that enabled the ITMS, we are left with providing an interpretation to the nature of their actions. For that, we focus in one particular instance, the case of an unnamed worker who was put under surveillance for years, including at her house, to make her feel like she was under constant surveillance to force her to quit. This case displays a close resemblance to the zersetzung operations carried out by the Stasi to isolate and undermine targeted people while keeping a veil of normalcy and averting formal judicial procedures, as covered by Dennis and Laporte (2011). Specifically, the Stasi Manual (MfS 1985, 464) says that zersetzung amounts first to the accumulation of detailed information on the target and then to the systemic degradation of reputation, image, and prestige through the engineering of social and professional failures to undermine the self-confidence of individuals to switch them off, whereas the ITMS agents mentioned that they spied on the private life of the targeted person over many years and then proceeded to place an enormous amount of pressure on the individual to isolate them at work (e.g., to make one "radioactive" in their words) and force them to quit their current position. Both the Stasi and the ITMS applied their methods to individuals they knew to be innocent but belonged to "undesirable" groups. These actions can lead to lasting changes in the lives of target individuals, as covered by Funder (2003). See also Harding (2011) for a more current personal account of how the Russian government used zersetzung against a foreign correspondent.

We recourse to Arendt (1973, chapter 13), which details the differences between authoritarian and totalitarian forms of government, to get a proper perspective on zersetzung, interpreting it as a totalitarian form of coercion. Authoritarian actions are based on the isolation of individuals, that is, on rendering then incapable of pursuing a common concern. Although a very aggressive form of coercion, it leaves private life intact and hence the ability to still enjoy personal life experiences, the option of doing technical work, and the capacity of meaningful thought. To the extent that technical work requires a degree of isolation, as stressed in the cited reference, PhD scientists at technical institutions, such as the NOAA, facing an aggressive form of isolation may cope by focusing on the technical parts of their work. Totalitarian forms of control are more aggressive than authoritarian ones since they go a step further and attack private life. The aim is to produce

loneliness, a situation where individuals feel superfluous, deserted by human companionship, and not belonging to society; a situation Arendt (1973, 475) deems to be one of the most radical and desperate circumstances for humans to endure. Totalitarian undertones can be seen in other cases covered by S. Rep. (2021) as, for example, when the ITMS started to scour the work-spaces of DOC employees, or as the DOC keeps Sherry Chen on its payroll but refuses to re-instate her, making her capacity for work superfluous leading her to feel that her life efforts were in vain (Yam 2022a).

Zersetsung, or other forms of authoritarian attacks on individuals also lead to potentially broader negative political and economic outcomes, even if the country itself is not under an authoritarian regime. In the past, underhanded maneuvers of intelligence agencies were used to remove a number of progressive workers from the federal government (see, e.g., Stors 2012) in a manner that pushed away an even larger number of like-minded people from government jobs. Similarly, the ITMS used underhanded tactics to remove several minority workers from the government, and potentially decrease their desire to join in or interact with the government once their story became public. Ultimately, this curtails the views of a plural society inside the federal government. The economic impact of ITMS is not necessarily constrained by the forgone income of the affected workers. Ultimately, the economy is not only based on enforceable contracts but also on mutual trust, as proposed by Arrow (1972). Acts like those perpetrated by the ITMS, when viewed as part of a broader context of white supremacist actions undertaken by the government, may undermine the trust minorities have in society in general, leading to a persistent economic impact, similar to the one due to the actions of the Stasi, as analyzed by Lichter, Loffler, and Siegloch (2021).

Conclusion

This article summarizes S. Rep. (2021), a report on abuse and misconduct in the DOC. The report covers the actions of a division of the Department of Commerce, the ITMS, which evolved from a security group with a mandate to protect the department's buildings and director to an intelligence agency with police power operating under minimal oversight. This development has led to a principal–agent problem; that is, the division's workers acted in accordance with their preferences and interests to the detriment of the public interest they were hired to represent. The abuse and misconduct of this division were not limited to the misuse of funds but included sabotage acts against people the division knew to be innocent, as well as clandestine operations that violated fundamental rights, such as the right to privacy. Ultimately, they seem to be motivated by white supremacist values.

The ITMS misconduct only occurred and lasted almost two decades because of concomitant failures at a number of government agencies either empowered rogue agents in the pursuit of a white supremacist agenda or denied the basic rights of numerous victims. Ultimately, the inaction of numerous government agencies, and the tacit consent granted by the silence of numerous federal government workers, normalized the use of degrading practices usually associated with authoritarian, or even totalitarian, governments. Whether this was a systemic failure or a happenstance is still unclear. This paper considers potential mechanisms such as tail event; the rapid expansion or dismantling of federal government agencies; and new government operational procedures, the "subtle tools" of Greenberg (2021), triggered by the 9/11 terrorist attacks. Some proposals to counter these potential underlying issues, specially the ones proposed in Light (2018), have been considered. Comparing to the current literature on issues facing the US bureaucracy, we diverge from Fukuyama (2023) and Moynihan (2023a; 2023b), references that focus on the dismantling of the bureaucratic state for political reasons, and defend that the strengthening of government workers is the preferred policy. In this paper, we focus on a re-balancing of the federal government towards security issues. As shown by the examples covered previously, this re-balancing brings new forms of government operations that can bypass established systems of checks-and-balances potentially leading to a multitude of principal-agent problems and the loss of government legitimacy.

In summary, this article tries to find an overall set of explanations, at the institutional and principal-agent levels, for a case where the US federal government, with an unparalleled legal and investigative structure, ended up employing coarse totalitarian tactics claiming national security issues as an excuse. Given its general take, this article serves as a broad analysis of a problem of concern that can be used to guide more pointed quantitative studies. Since it is unclear whether the ITMS rogue mode of operation was adopted by other government agencies, or if they are now offered by private companies, the development of policies and guidelines to prevent or mitigate it is not just an interesting academic topic but a timely research agenda in support of the government's functioning. Furthermore, if this problem is not addressed, it will tend to spread to other countries, most of which with much weaker press and systems of checks-and-balances than in the US, leading to an overall more authoritarian world.

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