

# **Ethics, Public Values and Market-Based Government**

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*A state that privatizes most of its functions by law will inevitably defend itself by employing its own people as mercenaries – with profound strategic consequences* (Bobbitt, 2002: xxvii).

Market-based government, in the form of contracting, outsourcing, competitive sourcing, privatization, and public-private partnerships has become ubiquitous in public sectors around the world. A considerable body of research has emerged that examines the efficacy of market-based service delivery and the principles for successful management of contracts and outsourcing (Kettl, 1993; Reich, 2007). Less attention has been given, however, to the ethical dimensions and public values basis of market-based government (Maesschalck, 2004; however, see Dicke and Ott, 1999; Gilmour and Jensen, 1999; Lawther, 2004; James, 2003; and Zifcak, 2001). Our paper discusses the range of ethical issues in market-based government and the degree to which contracting enhances or diminishes public service ethics and public values, such as lawfulness, transparency, and accountability (Bozeman, 2007; Jorgensen and Bozeman, 2007).

We begin by discussing the configuration of public service ethics in the nation-state era. Next, we explore the emergence and ascendancy of the market state over the last quarter century. We examine in particular how the market state has reshaped both the expectations and functions of the public service. Next, after a brief overview of ethics and public service ethics, we explore how they have been captured by the cultural context of the modern age, namely, technical rationality. We then turn to the challenges presented to public service ethics by the new conditions imposed by the market state-- conditions which place both public values and ethics at considerable risk.

Because some of these challenges can best be addressed at the organizational level, we propose a typology of organizational ethics in matrix form, according to the organization's relative standing on the two dimensions of compliance and social responsibility. We then turn to a case study of an organization—Blackwater-- that appears to rank low as an ethical organization under this scheme. The case of Blackwater illustrates well the considerable challenges to be faced (at least in the U.S.) in achieving ethical organizations—ones that foster public values and ethics. First, however, we turn to the public service ethics that characterized much of the last fifty years.

### **Public Service Ethics in the Nation State**

For much of the 20<sup>th</sup> century, the public service and its ethical regime were wedded with the values of the nation state, a mode of governance that derived its legitimacy and dominance from the expectation that the government (and corporations) would promote and provide for the welfare of the nation (Bobbitt, 2002; Reich, 2007). Whether in its fascist, communist, or liberal democratic form, the nation state sought to advance the interests of its people (which had distinct and sometimes deadly differences in how “the people” were defined) through the application of technical rationality and public policies to social, economic, and political problems, with each system promising its own version of prosperity and national greatness.

Public service in the U.S. in the last century conceived of the public bureaucracy as an instrument of democratic rule. The goals of the nation were formulated within the democratic process, but the efficient and effective achievement of those goals depended upon a bureaucratic command structure rooted in technical rationality and professionalism (specialization and expertise). This approach to governance produced

unprecedented innovations, organizations, and programs: reformed city governments, the New Deal, a reorganized and expanded federal government, a “military-industrial complex,” the Great Society, the war on poverty, the social and economic “safety net”-- the very infrastructure of 20<sup>th</sup> century industrial society. Large and powerful bureaucracies, both public and private, provided the structure of the nation state and the means for achieving its goals.

Despite many accomplishments, public service ethics in the nation state offered a mixed picture at best, contributing perhaps to both the rise and fall of the nation state. On the one hand, there were many successes. The insulation of administration from (corrupt) politics and the proliferation of bureaucratic and professional norms and procedures helped to reduce corruption and establish reliable and responsive organizations at all levels of government and industry. Professions and their standards for performance and conduct became the norm for ethical behavior and for translating scientific discoveries into practical means for solving societal problems and producing wealth (Schon, 1983). On the other hand, these same organizations and professions were often blind to the limitations and destructive consequences of their actions, even as they pursued lofty goals and ambitious programs in the name of the public interest and economic prosperity (Adams, 2001).

### **New Governance in the 21<sup>st</sup> Century: The Emergence of the Market State**

By the closing decade of the 20<sup>th</sup> century, the world was changing in ways that began to transcend the limitations of the nation state. A new world order emerged (for discussions, see Reich, 2007; Bobbitt, 2002; Friedman, 1999; Farazmand, 1999; Bauman, 1999; Sassen, 1998; Huntington, 1996; Fukuyama, 1992) that made new demands on

states and institutions based upon the dynamics of a global political economy. Where once a few great nation-states defined the parameters of the world's political and economic systems, we now find instead a constantly shifting balance of powers in the relationships between states, between these states and super-markets (such as NAFTA and the European Union), and between states, super-markets, and super-empowered corporations and individuals (Friedman, 1999). Old boundaries – organizational, regional, and national – matter less as the world moves towards greater integration of markets, labor, states, and technology. These developments have created phenomenal opportunities to create wealth and prosperity, but have also opened the doors to new conflicts and to deepening poverty and deprivation among the multitudes who lack access to these new opportunities, or whose fortunes are tied to the “old” economy. And there is considerable worldwide backlash to the spread of economic rationalism; much of this backlash is fueled by various versions of tribal or religious fundamentalism.

The waves of change and reform in the public service—new governance-- during this same time frame were a direct response to the undermined credibility of the state as a means for assuring continuous improvement in the welfare of its people. The end of the Cold War and of the era of nation states was hastened by innovations in rapid computation, international travel and communication, and their integration and application to markets and organizations (Friedman, 2007). The expansion of markets across national boundaries in a global system increasingly limited governments' ability to effectively promote the welfare of citizens or to effectively limit the purview of international corporations. At the organizational level, these developments have made it very difficult for even the most capable managers to create the “lean” and “nimble”

organizations demanded by the global marketplace while basing their legitimacy on promoting the welfare of their communities (Bobbitt, 2002). Cutbacks in the labor force and in the benefits offered by employers have been accepted as normal—and necessary—operating procedures in the global economy of the 21<sup>st</sup> century.

A key consequence of the new market state and globalization is that individuals are less and less tied to the traditional moorings of organization, community, and nation that once nurtured and protected them, although these moorings had already loosened considerably in the last century (Balfour and Grubbs, 2000). For some, this has brought a great opportunity to explore new horizons and possibilities. Many others, however, have found themselves adrift in a world that offers no safe haven in which to land and settle into a stable life. At the extreme end of this spectrum are millions of refugees-- surplus populations (Rubenstein, 1975). The dimensions of this problem are such that no nation or community remains untouched by it (Fritz, 1999, 5):

An estimated 50 million people were either driven from their countries or uprooted within them by the mid-1990s, roughly one out of every hundred people on earth. Counting those who emigrated for what were viewed as dire economic reasons, the figure more than doubles. The impact of this great migration has been enormous. It has compelled U.S.-led armies to intervene in faraway wars. It has led to a reactionary wave of restrictive immigration laws around the world. And it has planted the seeds of countless future conflicts.

These trends have obviously only escalated in the years since Fritz originally wrote. Each new refugee crisis challenges already over-stressed nation-states and non-governmental organizations to find ways to absorb and care for these people with limited resources within an increasingly unsupportive political and social environment, as is evident most recently by the one million Iraqis internally displaced within their country, and the two million more Iraqis living outside of their country, driven from their homes

first by the vicious dictator, Saddam Hussein, and then by the subsequent American occupation (Brookings, 2008).

On another level, millions more individuals feel threatened by the forces of globalization, fearful that they too will be uprooted and left hanging without a safety net—the so-called anxious class (Reich, 2007). People feel threatened by terrorism and by the rapid changes and painful dislocations caused by unseen and poorly understood global forces (Sennett, 2005). They fear that their jobs, communities, or workplace can be changed or even taken away at any moment by anonymous and turbulent economic, political, and technological forces. A new technology can transform an industry in a matter of months, making an individual's skills obsolete, or one's organization can disappear overnight in a new wave of mergers or relocation to another country. The mass of refugees and of the “anxious class” throughout the world serve as a constant reminder of how individuals, communities, regions and even nation states can be made superfluous by the dynamics of globalization.

Organizations themselves are changing in many instances under the pressures of globalization. Some of these changes can have great impact on individual workers (Sennett, 1998; 2005). Workers, and even successful entrepreneurs, who achieve success in this new market environment, may also suffer from deep anxieties about the future and the quality of their lives—anxieties which have turned all too real for many thousands of people like them in the successive waves of market “rationalization.” One result of this dramatic alteration of the “psychological contract” between workers and organizations is declining levels of trust and commitment (Rousseau, 1995). Individuals are often whipsawed between valuing the independence of the new economy, but also feeling

adrift, with no strong bonds of commitment or trust. For managers and policy makers, individual employees are increasingly considered expendable. The notion that organizations should care for their employees, or make long-term commitments to them, is seen as an anachronism. Translated to the individual level, the short-term orientation of the new market state tends to undermine further character, especially those qualities that bind people to each other and furnish the individual with a stable sense of self. Callahan notes three shifts over the last decade in particular in the U.S. that, taken together, undermine the possibilities for ethical action (2004: 107): individualism has shifted to a hard-edged selfishness, money has become more important (well-being is understood as financial), and harsher norms of competition have emerged. All three are consistent with globalization and the rise of the market state. Before we turn to what the development of the market state means for public service ethics, we offer a baseline discussion of ethics, public service ethics and its place and functionality in the nation-state.

### **Ethics and Public Service Ethics**

Ethics is of course the subfield within philosophy devoted to systematic thought about values, character, morals, and "right action." Until relatively recently, two general approaches dominated Anglo-American philosophical thinking about ethics, namely *teleological* (or consequentialist) ethics and *deontological* ethics (Frankena 1973). Both approaches share an interest in determining the rules that should govern human action. Based on utilitarianism (Bentham, 1989, orig. 1789), teleological ethics offers the overarching principle of the greatest good for the greatest number. Looking to the results or consequences of actions, teleological ethics tends to elevate the ends over the means

used to achieve those ends. Deontological ethics (Kant, 1959, orig. 1786) reverses this emphasis, holding that the lower order rules governing means are essential for the higher order rules which concern the ends to be achieved. More recently, there has been a revival of virtue ethics (MacIntyre, 1984), which focuses on moral character and has its roots in Plato and especially Aristotle (and a parallel, even older history within Chinese philosophy). For our purposes, it is important that all of these traditions have focused on the individual as the relevant unit of analysis, as might be expected within the cultural context of individualism, stemming from the tradition of classical liberalism in the United States.

Public service ethics—as well as professional ethics more generally-- in the technical-rational tradition draw upon both consequentialist and deontological ethics, and focus on the individual's decision-making process in the modern, bureaucratic organization and as a member of a profession. In the public sphere, deontological ethics are meant to safeguard the integrity of the organization by helping individuals conform to professional norms, avoid mistakes and misdeeds that violate the public trust (corruption, nepotism, etc.), and assure that public officials in a constitutional republic are accountable through their elected representatives to the people. At the same time, public servants are encouraged to pursue the greater good by using discretion in the application of rules and regulations and creativity in the face of changing conditions (consequentialist ethics). The “good” public servant should avoid both the extremes of rule-bound behavior and undermining the rule of law with individual judgments and interests. Like most people, public servants operate within a partly tacit mix of different ethical orientations, with the mix often shifting from one situation to the next. Virtue

ethics, with its focus on moral character, does not align well with either the current organizational or cultural context, especially if it is understood to be a social, and not just an individual, construct.

### **Public Service Ethics in the Modern Age**

The theory and practice of public service ethics in the last 150 years follows largely from the cultural context of the modern age. The cultural context in the U.S. (among other nation states) in the modern age can be characterized as one of technical rationality-- that is, a way of thinking and a way of living that exalts the scientific-analytical mindset and a belief in technological progress. Donald Schon (1983:21) and others have argued that technical rationality has been the most powerful influence on both thinking about the professions and the institutional relations of research, government, and business. Technical rationality emerged in full form in the twentieth century, and continues in the twenty-first century new governance era as perhaps the central pillar within the mental map of globalization. We suggest that technical rationality underpins globalization and economic rationalism, which in turn energize and sustain new public management and market-based government. One author has described technical rationality as the first universal human culture (Vanderburg, 1985 and 2005; see also Barrett, 1979; Bauman, 1989; Ellul, 1954; and Ritzer, 2004).

How does technical rationality's combination of the scientific-analytic mindset and the concomitant belief in technological progress shape our culture? The scientific-analytic mindset has come to characterize—and ultimately define—how knowledge is thought to be developed, resulting in a narrowing of the concept of human reason, and the devaluing of other sources and processes previously thought to develop knowledge. The

closely connected belief in technological progress is essentially both a fascination and a faith in each successive technological advance—and the typically unquestioned assumption that each new technology is in fact an advance. Both individual and social problems are thought to be fixable by a (new) technique or technology. These twin assumptions are reinforced within a self-sealing way of thinking and way of living that simultaneously produces the outcomes that are made inevitable by the prior assumptions.

### **Professionalism, Rationality and Organizational Ethics**

The modern organization is largely a creature of the culture of technical rationality. Within organizations, technical rationality has led to task and knowledge specialization, the successive application of the “latest, most up-to-date” technique (including machines, information systems and/or management schemes), and an inhospitable context for ethics and morality. As both MacIntyre (1984) and Poole (1991) have argued, modernity has produced a way of thinking -- an epistemology -- that renders moral reasoning necessary but superfluous. Organizational practice is based largely on technical expertise and pragmatic action, and organizations continue to be staffed primarily by professionals, that is, by people whose self-identity is as a professional. Even those obviously not in a recognized profession still strive to be seen as “professional” in their actions.

Indeed, many have seen professionalism as a source of ethical standards for organizational practice. Professional ethics, however, has also been captured by technical rationality (Adams, 2001), emphasizing as it does the technical expertise of the individual practitioner. Public service (and other) professionals do not see the technical rational model of professionalism as eschewing ethics, quite the contrary: They see the role

model of “professional” as satisfying the need for a system of ethical standards. Many scholars in the field have assumed that ethical behavior can be treated as an afterthought that will follow from the accepted professional management practices of the day (Maesschalck, 2004). The net result is an organizational context that defaults to leaving ethics as an afterthought.

We have written elsewhere (Adams and Balfour, 2004) about the moral and ethical failings of the technical-rational cultural and organizational context, especially the tendency towards moral inversions and administrative evil. There has been little recognition of the most fundamental ethical challenge to the professional within a technical-rational culture: that is, one can be a "good" or responsible administrator or professional and at the same time commit or contribute to acts of administrative evil. As Harmon (1995) has argued, technical-rational ethics has difficulty dealing with what Milgram (1974) termed the "agentic shift," whereby the professional or administrator acts responsibly towards the hierarchy of authority, public policy, and the requirements of the job or profession, while abdicating any personal, much less social, responsibility for the content or effects of decisions or actions. From a virtue ethics perspective, this seems to risk a kind of “moral schizophrenia” in the worst cases.

### **A Challenging Context for Public Service Ethics**

Given the changes associated with market-based government, along with globalization and economic rationalism, the changed requirements for success in organizations make adherence to both public values and the grounds for ethical behavior even more uncertain (Barley, 2007). While bureaucracy and stable lines of authority and routine were valued in a nation state environment, market state organizations emphasize

flexibility and autonomous action. Corporations and governments want employees who can think on their feet and adroitly adjust to rapid change, but also want to retain the right (in the name of adaptability to market imperatives) to let these employees go at any time for the good of the organization. More flexibility does not necessarily mean more freedom for employees (as the song has it: Freedom's just another word for nothing left to lose). The threat of expendability and fear of social breakdown make people all the more prone to protect their self-interest rather than consider the implications of their actions for the well being of others. The context these developments provide for public service values and ethics is significantly more difficult than in the past.

While the welfare of the people remains a concern for government and the stated aim of public policies, it takes a less prominent role in the emerging system of market states to efforts to maximize economic opportunities for citizens and business. Whereas nation states primarily used rules and regulations to achieve desired behaviors and results, market states in a new governance context rely upon incentives and penalties, not to achieve specific results, but to create a stable market place and favorable economic conditions conducive to maximizing opportunities. As Don Kettl put it (1993: 22): “Instead of a chain of authority from policy to product, there is a negotiated document that separates policy makers from policy output. Top officials cannot give orders to contractors. They can only shape the incentives to which the contractors respond.” Market states thus de-emphasize the programmatic and legal/Constitutional aspects of governance in favor of mechanisms for enhancing opportunities (Rosenbloom and Piotrowski, 2005; Bobbitt, 2002).

Under such conditions, governments have been under pressure to devolve much

of their service delivery to other organizations via contracts, networks, and privatization. Most agree on what happened: in the U.S. and, to an increasing extent in other countries, government became less and less responsible (and trusted to provide) for the delivery of what had been thought of as public services, including social services, health care, corrections, and basic municipal services. A new mode of governance emerged that relies upon networks of public, nonprofit, and for-profit organizations and market-based management, with less commitment to public values and far lower expectations for providing for the welfare of the nation, and a greater emphasis on expanding opportunities in a global political economy.

As the transition from the nation state to the market state unfolded in an era of new governance, it is important to note that what has remained unchanged in the U.S. are the core assumptions of liberal democracy in the American context. Liberalism and democracy of course came together in the American founding period (Macpherson, 1977). The core values of classical liberalism are: individualism, the notion of rights (particularly to property), the sanctity of contracts, and the rule of law. Classical liberalism set the ideational foundation for American society, which allows for and encourages differential achievement by individuals. Democracy's chief value—equality—has often been outweighed within this framework. The transition to the market state has dramatically accentuated the core assumptions of classical liberalism, and just as dramatically diminished the capacity of governments to achieve advances in democratic practices, indeed in public discourse today, a “free market” is thought by many to constitute democracy.

## **The Demise of Public Service Ethics**

How the field thinks about public service ethics has simply not responded to these dramatic changes at a commensurate level. To an ever-increasing extent, government organizations and programs are compared in a negative light to their private sector counterparts. It is widely assumed that private organizations are more effective than government if given the opportunity to perform (Frederickson, 2005). At a minimum, government organizations should be exposed to the marketplace to *force* them to perform better, and market-based government has become a preferred strategy at all levels of government. Contracting, outsourcing, competitive sourcing, privatization, and public-private partnerships are now the methods of choice for delivering public services, and public agencies must compete (competitive sourcing) and demonstrate cost savings and effectiveness before directly providing a service. A considerable literature has emerged on market-based service delivery and the principles for successful management of contracts and outsourcing. Simply scanning recent issues of the *International Public Management Journal* or *Governance* provides ample evidence. Scant attention in the literature is given, however, to the ethical dimensions and consequences of market-based government, as scanning those same two journals illustrates.

Frederickson (2005) points out that the combination of increased privatization, contracting out of services, and downsizing of government creates more opportunities for corruption, and diminished assurance that citizens are treated fairly and have equal access to the opportunities afforded by the market state. While wartime has always provided enhanced opportunities for “profiteering,” one has only to scan the reports of the Special Inspector General for Iraq to realize that the market state environment has escalated by

several orders of magnitude the opportunities to garner profits that merit the rubric obscene. The ethical challenge posed by the market state and new governance is not that government will disappear, but that it may be devalued to the point of ineffectiveness and lose the public's trust, as both a service provider and as a significant institution in society. Such a devalued government is more likely to attract and reward managers who use their offices for selfish purposes and/or to undermine democratic and constitutional governance. The drive to privatize, to promote the delivery of public services by private organizations, tends to blur the boundaries between the public and private sectors to the point where government cannot easily be distinguished from agents of private interests. Perhaps the most severe risk to the integrity of public organizations stems from conflicts of interest, or, employees putting their own interests above of those of the organization.

### **New Governance and the Market-Based State: The End of Ethics, or, a New Opportunity to Promote Public Values and Ethics?**

The era of the market state or “super-capitalism” poses substantial ethical challenges for both public and private organizations, suggesting a new line of inquiry that transcends the focus on individual ethical behavior and takes into account the interconnectedness and shared responsibility of organizations in a global political economy. Governments at all levels can promote public values only if they require of themselves and their private sector partners a broader scope of ethical standards and vigilance that addresses the organizational and cultural context of values and ethics.

The most basic level of such organizational ethics, one that is mainly deontological in nature, is that of *compliance*, or, conforming to the legal and regulatory requirements of a host (and home) nation. Offices of corporate compliance, which emerged following the business scandals of the 1980s, are sometimes criticized for

focusing too much on the letter of the law but at least provide some minimal guidance for ethical standards and behavior. Compliance regimes have been the bedrock of virtually all government ethics programs as well.

*Stakeholder responsibility* moves ethical considerations in a teleological direction by focusing on fulfilling obligations to both shareholders and the broader population of stakeholders who may benefit from or be negatively affected by corporate activities. Stakeholders in corporate activities may include employees, unions, consumers, suppliers, neighborhoods near production facilities, the natural environment, firms of outsourced functions and their employees, etc. Stakeholders for government ethics programs have typically been thought of as the citizenry. Advocates of stakeholder responsibility argue that organizations must craft their strategies and product lines in relation to the interests of this greater population of stakeholders in order to produce sustainable profits in a global context.

Recently, there has been increasing attention given —far more outside the U.S.— to the concept of *corporate social responsibility*, placing an emphasis on both the organizational and cultural context which have been among the missing links in fostering public values and ethical behavior. Here the focus is on the organization's obligations to the community in terms of charitable activities, economic development, and protecting the natural environment. At this level, organizations are expected to not only consider stakeholder values when making strategic decisions, but also consciously adopt ethics and public values as part of their core identity. This is a hallmark of a “well implemented,” comprehensive organizational ethics program (Ethics Resource Center, 2008: 39). Organizational social responsibility entails a tacit contract between an

organization and its host community, in which both recognize the costs and benefits of doing business within a jurisdiction and the expectations a community has for an organization to give back to the community by helping to make it a better place to live and work, and not just a source of cheap labor or a dumping ground for industrial waste (The Economist, 2008). This perspective encourages organizations to adopt a “triple bottom line” – financial, social, and environmental – and to focus not just on legal obligations but on what is ethically acceptable to the broader, even global, community of which it is a member (McBarnet, 2004).

The notion of organizational social responsibility is appealing and provides some promise for creating more ethical organizations (The Economist, 2008). However, the varying degrees of organizational ethics and responsibility suggest that organizations differ in their stages or categories of ethical development and behavior, and that achieving an ethical organizational culture is a considerable challenge. Figure 1 depicts four types of ethical situations based on the intersection of compliance and social responsibility. For example, a company that is high in both compliance and social responsibility would be considered an ethical organization. By contrast, a company that is low on compliance and social responsibility is at least unethical and may even merit classification as a criminal organization. Enron provides one of the most striking examples of companies that broke laws, violated regulations, and damaged communities and the natural environment, despite being one of the first companies to issue a “triple bottom line” report (Reich, 2007: 174), and despite touting its ethics program as an industry leader. An organization that is low in compliance and high in social

responsibility may be classified as ineffective, either lacking access to markets or the expertise to comply with complex regulations.

Figure 1: Typology of Organizational Ethics

|                   |      | <b>Social Responsibility</b> |                       |
|-------------------|------|------------------------------|-----------------------|
|                   |      | <u>High</u>                  | <u>Low</u>            |
| <b>Compliance</b> | High | Ethical Organization         | “Masked” Organization |
|                   | Low  | Ineffective Organization     | Criminal Organization |

Achieving organizational social responsibility is made more difficult by the possibility that an organization may be both high in compliance and low in social responsibility, a situation that can be referred to as “masked” in that the organization (and its affiliated organizations) may not be aware of the unethical and even destructive consequences of organizational action even as they may be quite successful in the marketplace, and complying with the letter of the law. Masked ethical failures can occur in more than one way. An organization can be in compliance with all relevant laws and regulations while its actions harm one or more stakeholder groups. Or, an organization can be legally compliant while operating in a nation that violates human rights and/or allows environmental degradation in order to achieve economic goals. Finally, an organization may follow the rules while facilitating irresponsible behavior by other organizations with which it is affiliated through contracts, outsourcing, off-shoring, suppliers, and customers. We turn now to a case example of an organization that has contracted with the U.S. State Department for a mission that embodies an important

public value—the protection and physical safety of diplomats and other State Department employees. This organization has a corporate compliance program. Whether it should be considered a “masked” organization or a criminal organization is an open question. First, we provide an overview of the practice of contracting public goods and services.

### **The Abdication of Public Values and Ethics Via Contracting**

Government contracting is not a new phenomenon. The Defense Department has long relied on contracting as a means for procuring all kinds of material, from high-tech bombers to toilet seats. The “military-industrial complex” was born in the era of the nation state and is still largely defined by the huge defense contracts with major corporations such as Lockheed Martin, Northrop, Boeing, General Dynamics, and more recently, Halliburton. In the wake of a series of scandals and public outcry in the 1980s over reports that the Pentagon paid highly inflated prices for commercially available products, Congress acted to overhaul government procurement processes. The result was the Federal Acquisition Streamlining Act of 1994, which, in line with the “reinventing government” movement (Gore, 1995), simplified procurement regulations to make it easier for federal agencies to buy products at competitive prices from the private sector and to encourage “entrepreneurial government” (Center for Public Integrity, 2003).

These and other reforms, the emergence of the market state, and the policies of the Bush administration, have opened the door for the private sector to take advantage of hitherto unimagined opportunities for contracts and other market-based mechanisms with governments at all levels. From FY 2000 to FY 2006, federal spending on contracts more than doubled from \$208.8 billion per year (11% of all spending) to \$415 billion (14.4%), with a total of \$2.28 trillion spent over the six-year period (OMB Watch, 2008).

This growth in federal contracting was over five times faster than the inflation rate and almost twice as great as the growth in other discretionary federal spending over this period, with nearly 40 cents of every discretionary federal dollar now flowing to private contractors (Committee on Government Reform – Minority Staff, 2006). The increased reliance on contracting has been driven not only by structural changes in an increasingly competitive global economy, but also by an ideological preference for smaller (if not less costly) government and the presumed efficiencies to be derived from the discipline of the marketplace over rule-bound bureaucracies (Frederickson, 2005).

Government spending via contracts has not only grown, it has also expanded into new areas. Whereas government contracting was once primarily about procuring goods, the majority of contracts and dollars spent are now for a wide range of services (Center for Public Integrity, 2003). For FY 2006 (and since 2000), the second largest category of federal contracts (after R&D, \$52.5 billion) was professional, administrative, and management support services at \$50.7 billion (\$20.1 billion in FY 2000) or 12.2% of all contract dollars (OMB Watch, 2008). Many of these dollars were once spent for a federal workforce of civil servants which has been cut significantly over the past two decades while spending on private sector contractors increased almost exponentially, creating what some critics (Klein, 2007; Reich, 2007) have called a “shadow government,” a phenomenon that has accelerated dramatically under the Bush administration.

This combination of increased spending on service contracts and cutbacks in the federal workforce has severely strained the government’s ability to properly award and manage contracts, and made it difficult to assure that contractors are accountable for their

performance. And, because service contracts are more difficult to write than an order for a commercial item or construction job, the result is more ambiguity and less oversight (Center for Public Integrity, 2003). The combined effect of these forces has resulted in a vast new system that is running ahead of efforts to insure accountability and upholding of public values and ethics (if indeed such values and ethics are even considered).

Rosenbloom and Piotrowski (2005) argued persuasively that legal/Constitutional norms and values—which overlap considerably with the larger body of public values and ethics—have been essentially left behind as contracts are written and fulfilled. Moreover, congressional critics of the growth in contracting argue that not only have the presumed efficiencies of the marketplace not been achieved by the increased reliance on contracts but that it has resulted in greater costs for taxpayers and higher levels of waste, fraud, and abuse (Committee on Government Reform – Minority Staff, 2006).

There is considerable evidence to suggest that baseline, almost taken-for-granted public values - such as stewardship of public funds, accountability, and effectiveness - have taken a back seat to expediency and favoritism in the drive to privatize government services. The Committee on Government Reform reported that contract mismanagement has grown in tandem with the increase in contracting and occurs at virtually every stage of the process, from pre-contract planning through contract award and oversight to recovery of contract overcharges, and includes (2006):

- Award of Noncompetitive Contracts
- Reliance on Abuse-Prone Contract Types
- Abuse of Contract Flexibilities
- Poor Contract Planning
- Inadequate Contract Oversight
- Unjustified Award Fees
- Corruption.

Many of the recently documented cases of noncompetitive bids, poor contract management, and waste, fraud, and abuse occurred in contracts granted in response to the 9/11 attacks (homeland security), the Katrina disaster, and for the war in Iraq, for example (Committee on Government Reform, 2006:9):

Hurricane Katrina provides a case study in how the exemptions to full and open competition have been stretched to justify the award of noncompetitive contracts. The urgent needs in the immediate aftermath of Hurricane Katrina provided a compelling justification for the award of noncompetitive contracts. Yet as the immediate emergency receded, the percentage of contract dollars awarded without full and open competition actually increased. In September 2005, the month after Hurricane Katrina, 51% of the contract dollars awarded by the Federal Emergency Management Agency were awarded without full and open competition. Rather than declining after September, the percentage of contract dollars awarded noncompetitively increased to 93% in October 2005. As late as December 2006, FEMA was still awarding 57% of the total dollar value of its contracts without full and open competition. In total, 66% of the contract dollars awarded by FEMA for the period ending May 29, 2006, were issued noncompetitively.

These and many other examples suggest that the federal government itself often falls into the category of an incompetent (and unethical) organization (See Figure One) when it comes to the ethics of contracting, often achieving neither compliance nor social responsibility in its administration of contracts.

One of the most disturbing practices pointing towards the abandonment of public values is the contracting out of contract management and oversight, a kind of second level of privatization that contributes to the masking of unethical behaviors and insulates contractors from accountability to the public (Klein, 2007: 417):

The actual state, meanwhile, has lost the ability to perform its core functions without the help of contractors. Its own equipment is out of date, and the best experts have fled to the private sector. When Katrina hit, FEMA had to hire a contractor to award contracts to contractors. Similarly, when it came time to update the Army Manual on the rules for dealing with contractors, the army contracted out the job to one of its major contractors, MPRI – it no longer had the know-how in-house.

Klein (2007) argues further that the behaviors of the government and its contractors in at least some of these cases border on the category of a criminal organization, as they take advantage of a crisis situation or disaster to advance an aggressive economic program to remake communities and organizations and extend new business opportunities to corporations and cronies. At the very least, the shift of funding from government organizations to contractors has created a level of dependence on the private sector to carry out public functions that goes well beyond the benefits of using market forces to improve the efficiency and effectiveness of government agencies. The case of Blackwater USA vividly illustrates this abdication of public values.

### **Blackwater USA and the State Department**

Even Milton Friedman would have agreed that national defense and diplomacy are at the top of the list of what one normally considers as public goods or functions to be performed by a national government. Recently, however, even these basic governmental functions are relying upon the private sector as never before. In 2007 there were as many private contractors in Iraq as U.S. soldiers, with security firms providing protection for high-ranking officials, visiting foreign dignitaries, and thousands of construction projects (Hastings, 2007), with the fastest growth in contracting from 2000 to 2006 occurring in the Department of State (Committee on Government Reform – Minority Staff, 2006). In 2000, the State Department awarded \$2.55 billion in contracts, with 62% subject to open competition. By 2006 it awarded over \$4.855 billion in contracts with only 35% on the basis of full and open competition, and the largest category of contracts (39%) was “not competed” followed by “unknown” at 26% (OMB Watch, 2008). Overall, the government has awarded billions of dollars in contracts to private security firms for

services in Iraq but admits that it doesn't know how many private soldiers have been hired or where they all are operating (Hastings, 2007).

At the confluence of these trends is Blackwater USA (now Blackwater Worldwide), a private security firm with strong connections to the Republican Party and the Bush administration (Scahill, 2007). Founded in 1998 by Erik Prince (NY Times, 2008), Blackwater found its niche in the war in Iraq when it became the primary security contractor for the State Department, with 90% of its revenues coming from government contracts (another security firm, Triple Canopy, is also one of the State Department's largest contractors). In FY 2000, Blackwater barely registers on the list of federal contractors with only \$205,000 in contract dollars. By 2004, Blackwater's federal contracts were up to \$48.5 million, 78% of which was awarded without competition. In FY 2006, the dollar value of Blackwater's federal contracts ballooned to \$593 million, making it the second largest contractor for the State Department and the 79<sup>th</sup> largest overall federal contractor. Only 3.5% of Blackwater's 2006 contract dollars are listed as having been awarded competitively, with over 70% awarded by an "unknown" process, presumably noncompetitive (OMB Watch, 2008). Better paid and often better equipped than regular troops, Blackwater's personnel are resented by regular soldiers who must endure longer tours of duty, follow strict military regulations, and take the lead on the battlefield.

The lack of accountability in contracting to Blackwater (and other major contractors) extends well beyond noncompetitive awards in ways that reflect a decline of government capacity and public values. Blackwater Worldwide has devoted a significant portion of contract dollars (perhaps \$40 to 50 million) as corporate overhead for building

its paramilitary infrastructure. Blackwater has been described as “al Qaeda for the good guys” and has built, among other things (Klein, 2007: 416-417):

A ...logistics operation that can deliver 100- or 200-ton self-contained humanitarian relief response packages faster than the Red Cross. A Florida aviation division with 26 different platforms... A 20-acre man-made lake with shipping containers that have been mocked up with ship rails and portholes... used to teach how to board a hostile ship... A 1,200 yard-long firing range for sniper training

The New York Times reported (2008): “The Blackwater installation is so modern and well-equipped that Navy Seals stationed at the Little Creek Naval Amphibious Base in Norfolk, Va., routinely use it, military officials said. So do police units from around the country, who come to Blackwater for specialized training.” This is but one example of how taxpayer dollars are being used to build private sector capacity that can carry out government functions outside the control of public authority.

Against this backdrop of lax accountability and rapid growth in and dependence on contracting, Blackwater developed its reputation as a loose cannon in Iraq, operating outside any meaningful legal or regulatory controls. Blackwater first gained public attention in 2004 when four of its employees were killed and burned by Iraqi insurgents in the Sunni city of Fallujah, a key contributing factor in President Bush’s decision to order the Marines to attack the city. This tragic incident likely influenced the attitudes and operating procedures of Blackwater and other private security firms in Iraq. During the subsequent months, as the company increased its presence and activities in Iraq, Blackwater personnel became well known for their fast-moving convoys of SUVs with darkened windshields and “Little Bird” helicopters, and their callous attitudes toward Iraqi civilians - often firing from moving vehicles (“spray and pray”) without stopping to count the dead or assist the wounded - and sometimes taking steps in concert with State

Department officials to cover up their misdeeds and pay off victims' families in exchange for their silence (Broder, 2007).

Several high profile incidents made their way into the media and prompted scrutiny of the role of private security firms in Iraq. Whereas Blackwater may have deserved some sympathy for the deaths of its personnel and credit for assisting in the war effort, it increasingly became a symbol for American arrogance and irresponsible behavior. In May 2005 American soldiers and Iraqis were angered and dismayed when a Blackwater helicopter and an armored vehicle both released CS gas canisters (normally used for riot control) on the Assassins' Gate checkpoint in Baghdad's "Green Zone": As many as 10 American soldiers and an unknown number of Iraqis were temporarily disabled by the gas. The only apparent reason for dropping the gas was to try to clear the intersection for a Blackwater convoy. There was no violence or other activity to warrant the use of the gas or any other action. Despite the fact that CS gas is not approved for use in a battle zone, the incident was not investigated and the State Department said that its lawyers did not believe that the incident violated any treaty agreements (Risen, 2008).

Indeed, it is difficult to determine what Blackwater could do in Iraq that would violate any laws or regulations, Iraqi or American, especially given the apparent lack of any accountability regime. By 2007, there were nearly 200 reports of shootings by Blackwater personnel, mostly against Iraqi civilians but some even at American personnel. On Christmas Eve, 2006, a drunk Blackwater employee shot and killed a bodyguard for one of the Iraqi vice-presidents. No charges have been brought against the shooter, who was quickly flown out of Iraq by Blackwater with the assistance of the State Department (and then fired). More serious incidents, culminating in the shooting deaths

of 17 Iraqi citizens at a Baghdad checkpoint, resulted in the Iraqi government insisting that Blackwater be banned from operating in Iraq. Federal agents investigating the September, 2007 episode have found that at least 14 of the shootings were unjustified and violated deadly-force rules in effect for security contractors in Iraq, according to civilian and military officials briefed on the case (Johnston and Broder, 2007). Yet, to date, no Blackwater personnel have been indicted for the killings and the State Department has stood by the firm and its claims that the convoy was fired upon and responded to a deadly threat.

The lack of accountability for Blackwater and other security firms in Iraq can be traced to two major interrelated factors: unregulated privatization and dependency on contracts rather than direct service delivery (Singer, 2003; Cooper, 2007). One of the many laws authored by Paul Bremer, then the head of the provisional government in Iraq, was the 2004 special provision that exempted private security firms from prosecution by the Iraqi government, basically allowing them to operate outside of any recognized legal framework, including our own uniform code of military justice. This provision was part of an overall strategy to privatize and remake the Iraqi economy (Klein, 2007:346): “Where the Iraq experiment entered bold new terrain was that it transformed the invasion, occupation, and reconstruction into an exciting, fully privatized new market.” In December of 2007, in response to the many incidents of misconduct, General Petraeus, the top United States commander in Iraq and Ryan C. Crocker, the American ambassador to Baghdad, agreed on the details governing the operations of Blackwater and other private security contractors. The focus of this effort is on coordinating operations with the military and tighter supervision of private contractors, but it does not address the legal

framework governing the security firms and whether contractors can be prosecuted for breaking either Iraqi or American laws. Quite to the contrary, the Bush administration has proposed that civilian contractors in Iraq be granted specific legal protections from Iraqi law (Shanker and Myers, 2008).

What also has not changed is the utter dependency of the State Department (and increasingly the military) on contracts with private firms to deliver security and other services (Cooper, 2007). There literally is no other available option short of withdrawing from Iraq. Late in 2007, its reputation in tatters and its State Department contracts apparently in jeopardy, Blackwater Worldwide reversed its policies of staying away from the media and began a major public relations campaign to try to restore its tarnished image (Broder and Risen, November 1, 2007): “The central message in all of the interviews was that Blackwater was doing only what the State Department asked it to do, that it had not lost a single official under its protection while 30 Blackwater guards had been killed, and that if the company lost its \$1.2 billion contract with the State Department it would find other ways to make money.”

But there was, in fact, little danger than the contract would not be renewed. Although the history of Blackwater’s contracts with the State Department includes unresolved problems and violations at virtually every stage of the process, from noncompetitive awards to inadequate oversight and corruption, on April 5, 2008, the New York Times reported that the State Department had renewed its contract with Blackwater Worldwide, citing ongoing security needs. By renewing its contract with Blackwater Worldwide the State Department has tacitly admitted that it has no other choice (Cooper, 2007). The federal government has created a system that is dependent upon the services

of private companies, and now lacks the capacity not only to perform the services, but also to provide adequate oversight and accountability for how the services are performed, let alone assure the social responsibility of the companies under contract. Public values and ethics are really not even a part of this conversation, and are unlikely to become part of it until a basic floor of public functionality is restored. With regard to public values and ethics, the U.S. public sector has slipped almost into a third world developing country condition.

### **Achieving Ethical Organizations**

Both strong ethics cultures in organizations and organizational social responsibility go against the grain of individualism (the classical liberal values inherent to American culture) and against the grain of technical rationality (professionalism, scientific-analytic mindset and belief in technique). Arguably, the market state, globalization and economic rationality have exacerbated considerably the difficulty of fostering public values and of achieving the ethical organization, well-developed on both compliance and social responsibility dimensions.

And indeed, masked ethical failures are quite commonplace, perhaps even characteristic, of organizational behavior in today's global economy. Even with good intentions, organizations (both public and private) are rarely in the best position to be able to perceive their own ethical failures, which suggests the need for external accountability and oversight, not just self-policing. The key question is who can and will promote public values? Are governments able to do this in the age of new governance and the market state? Evidence to date suggests that the very drive to promote corporate social responsibility is an outgrowth of lack of confidence in government as an effective

and ethical agent of public values (Reich, 2007:169): “These days, reformers often say that they find it easier to lobby corporate executives than to lobby politicians; they contend they can be more effective pushing certain large corporations to change their ways than trying to alter public policy.”

This decline in democratic governance may be the ethical Achilles’ heel of the market state with regard to public values and ethics. Life is not after all just a set of exchange relations, although it can be reduced close to it. Humans are social creatures, and for all practical purposes, can only exist in communities. The development of democratic governance and fostering of public values requires strenuous attention to how we live together, that is, to political life. Historically, this has meant that governments can do things that other institutions cannot. Governments can and sometimes do consider the long-term consequences of public and private action, and formulate plans and regulations with the future in mind, an important balance in an economy that emphasizes short-term gains and losses (Reich, 2007).

Most critical observers of the market state (for example, Reich, 2007; Frederickson, 2005; Denhardt and Denhardt, 2003) bemoan the loss of public values and citizen confidence in government as a fair and reliable agent of the public interest, if only potentially so. Ethical scandals entwined with acts of incompetence (Macaulay and Lawton, 2006; Adams, Balfour, and Reed, 2006) deepen the disconnection between citizens and their governments, and between public values and ethics on the one hand, and the promotion of economic opportunity (not to say, greed) on the other. In the era of Enron, Abu Ghraib, Katrina, and Blackwater, the revitalization of public values and ethics seems essential to avoid the further erosion of democracy and continuing loss of

legitimacy for government in society. Citizens are unlikely to answer the call to greater involvement in government and civic life unless it becomes clear that those in public service are at least attempting to foster a cultural and organizational context within which both public service ethics and public values are paramount, and no longer an afterthought at best.

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