

## **Public Wars and Private Armies: Militaries, Mercenaries, and Public Values**

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### **Abstract**

This paper investigates the growing outsourcing of national defense and security services and presents a public values analysis of the contemporary United States military and its relationship with private contractors. Using Bozeman's (2002) Public Values Failure Model to elucidate issues of legitimacy, accountability, and oversight in this age of increased privatization, I begin with an overview of the historic role of private firms in supporting military activities and how these roles have evolved. First, I outline the multiple factors that explain the increased use of private services for national defence including: decreased public support for conscription or a military draft, reductions in military capacity, and widespread acceptance for reforms such as the New Public Management resulting in a rise in privatization. Next, using Public Values Failure Model, I examine whether this growing reliance on private contractors signifies a shift in public values and discuss how the public reconciles the provision of this public good by private means. Does the shift to private military services signify an increase in the philosophy and discourse of economic individualism or a means to technical efficiency? Have public values shifted enough that people are willing to have a private military with government management? Similar to other case studies using the Public Values Failure Model (Bozeman & Sarewitz 2005; Feeney & Bozeman 2007; Jørgensen & Bozeman 2002), this paper analyzes how the values related to American national security as a public good have shifted in the face of increased dependence between public and private organizations, increased contracting out and privatization, and an evolving political culture which promotes economic individualism.

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### **Introduction**

Whether we examine government purposes with the frame of European political thought (e.g. Plato, Aristotle, Locke, Hobbes) or American political thought (e.g. Jefferson, Hamilton, Madison) there is general agreement that a legitimate government is charged with protecting those within its borders from one another and forces outside of its borders. If Americans accept national defence and security as a core public value and a legitimate activity of governments, how do state institutions, which are increasingly reliant on private contractors to administer services, ensure the fulfilment of this core public value? This paper uses the case of outsourcing in the U.S. military to examine whether the core public value of national military has suffered from modern reform initiatives (New Public Management, outsourcing, and privatization) or if such reforms enable the government to provide public values in new, improved ways.

Militaries throughout the world have long relied on industrial firms and businesses to support their missions and activities. The reliance on the private sector to support military activities is certainly not a new phenomenon in the United States. For example, during World War I and World War II private industry including munitions makers, ship builders, meat packers, and manufacturers supported military efforts. Textile manufacturers provided clothing, t-shirts, and warm socks for soldiers while steel manufacturers produced tanks, planes, and ships, bullets, and hardware. Many private companies reaped financial rewards during WWI (See Table 1). For example, Du Pont's profits increased from an average of \$6 million a year before 1914 to \$56 million per year between 1914 and 1918 (Butler, 1935). Bethlehem Steel reported profits of an average \$6 million annually in the four years before World War I and more than five times more each year between 1914-1918.

**Table 1. Annual Income of Large Companies Before and After WWI**

	<b>1910-1914</b>	<b>1914-1918</b>	<b>%Change</b>
Du Pont	\$6 million	\$56 million	900%
Bethlehem Steel	\$6 million	\$49 million	800%
Utah Copper	\$5 million	\$21 million	400%
Anaconda	\$10 million	\$34 million	300%
	<b>1911-14</b>	<b>1916</b>	
Central Leather Company	\$1.17 million	\$15.5 million	900%
General Chemical Company	\$800,000	\$12 million	1500%
American Sugar Refining Company	\$200,000	\$6 million	3000%
Developed from data presented in Butler (1935)			

Today, private manufacturers continue to supply modern military equipment such as bullet-proof vests, sunglasses for the desert, and night vision goggles. Supplying the military is big business. The relationship between industry and the military, though distasteful to some, is certainly not a flagrant violation of public values and in many cases provides the best method for militaries to ensure they receive the best possible supplies for their soldiers while helping to drive the national economy. In general, there are three types of contractors working for and with the military: military support firms, military consultant firms, and military provide firms also known as external, systems, and theater contractors, respectively (Rampy, 2005). This paper is neither overly concerned with the role of industrial interests in the delivery of military supplies nor general contractors who supply and support the military, otherwise known as *military support firms* (Singer, 2003). Furthermore, this paper is not particularly concerned with the role of *military consultant firms*, which typically offer strategic, operational, and organizational analysis and training for national militaries (though military consultants sometimes work in the same firms as military provide contractors (Singer, 2003). Although there remains the constant threat of conflicts of interest in the relationships between a national military and military support and consultant firms, these types of consultants and contractors do not generally serve at the street-level, engage in client contact, or use violence to fulfill their contractual agreements with the military. These supply and advice contractors are not acting on behalf of the national military or other government agencies in the theater of war, but rather serving to support the mission of the military.

This paper is concerned with the third type of firm known as military provide firms, private military contractors, private security contractors, private military corporations or firms, military service providers, security contractors. The Government Accountability Office (GAO) labels these “private security firms” or “contractors accompanying the force” in comparison to reconstruction contractors, or service providers not directly working on the battlefield (Stewart 2005). Private security firms play an active role in the theater of war and work next to national militaries in assessment, management, and coordination in the battlefield or supplant the core mission of a national military. These are the contracts and actions that are of great concern to the public values aspects of the privatization movement in national militaries. This paper focuses on military provision at the theater level, which results in direct contact with civilians and involves the use of force, or violence, to provide security to people or facilities. For simplicity, in the remainder of the paper, I will interchangeably use the terms military contractor, security firm, private military firm, and military providing when discussing the contracting out of military and government security activities in the theater of war.

### **Terms and Definitions**

Before moving further into the discussion of the role of military provide contractors in the theatre of war, it is important to acknowledge the terms of usage that I will apply or refrain from using and how I define those terms.

First, the term *mercenary* is not appropriate when discussing military providing contractors (Singer, 2003). A mercenary as defined by the Merriam Webster and Oxford dictionaries are, respectively, “[a] soldier hired into foreign service” and “[a] professional soldier hired to serve in a foreign army”. In the case of many firms providing military services in the theater of war in Iraq, the firms employ U.S. citizens, thus not qualifying as employment to serve in a foreign army, and when they do hire citizens of other nations they remain US-based firms with majority US citizen employees. Second, typically, these firms sell their services in government contracts, not as individual soldiers selling their individual services to the U.S. military. Third, military providing firms are institutional arrangements, which contract freely with the national military on a situational basis. The firms determine the level of commitment to each contract, while the individual are hired

by the firm, not the national military, and their commitments are to the private firm, not a national military. The contractual relationships between these firms and the military make the use of the term “mercenary” inappropriate.

Of course, there are more detailed definitions of a mercenary. The Protocol Additional to the Geneva Convention of 12 August 1949, Article 47 defines a mercenary as any person who

*“(a) Is specially recruited locally or abroad in order to fight in an armed conflict; (b) Does, in fact, take a direct part in the hostilities; (c) Is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party; (d) Is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict; (e) Is not a member of the armed forces of a Party to the conflict; and (f) Has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.”*

These military providing contractors are recruited to and do take part in foreign armed conflicts. In addition, they are motivated in part by private gain that is in excess of that compared to combatants of similar ranks. However, many military providing contractors are often U.S. citizens, and thus a national of a party to the conflict. Second, many of these contractors are former or retired members of the US armed forces.

It is important to explain my use of the term “military”. In the context of this paper, I use the terms national military and military interchangeably. In both cases I am referring to a national military consisting of the armed forces of a country or nation state (Oxford Online Dictionary). Militaries are comprised of citizens or permanent residents of the nation state, which they represent and are charged with using force to secure society and the nation state at home and abroad.

The privatization of military services and the core missions of the U.S. military is a complex case. Rather than detail each component of the military outsourcing case, I provide a brief overview of the case and then use Bozeman’s (2002) public failure model to highlight particular issues within the case. Without going into the detailed politically charged arguments behind military outsourcing, detailing the entire history of the U.S. military, or the numerous politically charged arguments about military outsourcing, I

present an analytical assessment of the public values of outsourced military action. In order to address this dense and complex issue within the bounds of a single paper I have adopted the following rules of thumb. First, when an argument is highly detailed and fully articulated elsewhere, I summarize the main points and direct the reader to other sources. Second, I bound the arguments addressed here to a narrow portion of military outsourcing - contracts for core military actions of security and violence that take place in the theater of war. Third, I limit my arguments to the case of U.S. military outsourcing, but do, when appropriate, draw brief comparisons to other national militaries. Because this case centers on U.S. military outsourcing, I assume a basic knowledge of U.S. politics and systems, but do offer brief explanations of U.S. policy and administrative processes when appropriate.

### **Military Provision Outsourcing**

According to political scientist P.W. Singer although “private contractors have long accompanied US armed forces, the wholesale outsourcing of US military services since the 1990s is unprecedented” (2003: 16). Worldwide the use of private contractors has been steadily increasing. Private military firms have worked on behalf of the South African Defence Community (SADC), the Western European Union (WEU), the International Monetary Fund (IMF), and the Economic Community of West African States (ECOWAS) and are active in more than 50 countries including Croatia, Ethiopia-Eritrea, and Sierra Leone (Singer, 2006:3). Although Zamparelli reported in 1999 that the increase in private contractors had not entered the battlefield, this changed in 2003 with the US invasion of Iraq. Zamparelli (1999) had argued that it was not clear that private firms would be interested in the profits of war when their lives were in immediate danger. The experiences of contractors in Iraq and Afghanistan have indicated that the answer to this question is a resounding “YES, we’re interested”. In fact, as the security situation in Iraq worsened between 2001 and 2003, there was an *increase* in the presence of private contractors, since they were deemed the best suited to provide security for state employees, facilities, and private firm personnel.

There are a number of reasons for the increase in the outsourcing of military force and the military’s core mission of security. These reasons range from increased demand for military action worldwide to a decreasing supply of active, strong standing national

militaries. Drawing largely from *Corporate Warriors* (Singer, 2003), Table 2 outlines the general supply and demand mechanisms which help to explain why military contracting worldwide has been on a rise.

**Table 2: The Rise of Military Contracting Worldwide and in the United States**

<b>Demand</b>
<ul style="list-style-type: none"> <li>- Increased non-state action;</li> <li>- Increased global conflicts – more nation states with shifting borders;</li> <li>- Increased demand from individuals, corporations, states, and international organizations for security services;</li> <li>- Increase in multinational businesses who demand security;</li> <li>- Increase in number of weak states unable to guarantee security and secure borders;</li> <li>- Increase in number of weak states that lack resources, skilled personnel, weapons, and power to manage and maintain a well-trained, professional standing military;</li> <li>- Decline of regional organizations, international bodies, and powerful nations intervening to end conflicts;</li> <li>- Decline in foreign support for weak states (e.g. during Cold War nations depended on Soviet or U.S. support);</li> <li>- Increased demand for military services due to inability of UN (and other international bodies) to effectively intervene;</li> <li>- Rise of violent nonstate (stateless) organizations Increased demand for U.S. involvement in international conflicts where NATO, UN, or other international bodies cannot effectively intervene (e.g. Bosnia, Somalia, Nigeria, Macedonia);</li> <li>- Increased demand for security and military action due to rise of violent nonstate (stateless) organizations (e.g. FARC, Al-Qaeda, terrorist cells)</li> <li>- Increased demand for well-trained personnel willing to engage in high risk activities</li> </ul>
<b>Supply</b>
<ul style="list-style-type: none"> <li>- Military demobilization has left a large supply of well-trained military professionals looking for work;</li> <li>- Decreased military capacity;</li> <li>- Decreased supply of military enlistees and recruits;</li> <li>- Increased supply of publicly accessible weaponry, aircraft, and military equipment (equipment from former Soviet areas and Cold War supply chains);</li> <li>- Increased supply of weaponry and other equipment available at low cost;</li> <li>- Increased supply of “Virtual Companies” and military providing firms which can operate with relatively low overhead costs (few permanent employees, few sites)</li> <li>- Increased supply of former, well-trained military personnel seeking occupational stability, corporate rewards (stock options), high pay, and adventure</li> </ul>
<b>Other</b>
<ul style="list-style-type: none"> <li>- “Privatization revolution” - Increased privatization in all aspects of government;</li> <li>- Ideology favoring competitive private markets over government intervention;</li> <li>- Overarching changes in global markets for security and business</li> <li>- Desire for an executive policy tool enabling action quick, lower cost action;</li> <li>- Public distaste for international military activities, nation-building, and expansion of U.S. activities abroad (Post-Vietnam isolationism);</li> <li>- Terrorist attacks of September 11, 2001</li> </ul>

\*This table draws heavily from Singer (2003).

As summarized in Table 2 there are a number of reasons why there has been a rise of military contracting worldwide. First, post-Cold War there has been a steady increase in the number of conflicts in the world as nation states emerge, fall, and shift borders. In addition to national conflicts there is rise in violent non-state action (e.g. FARC, Al-Qaeda) coupled with a reduction in the willingness and capability of nation states to intervene in such conflicts. There are increasing numbers of weak states with increasing demand for military resources, support, and security. And, of course, with the rise of globalization and international business, there is an ever-increasing demand for security for businesses, corporations, nongovernmental, and nonprofit organizations throughout the world. These various demands are coupled with a decreased supply of willing and able militaries.

The end of the Cold War left a large supply of weaponry, aircraft, and military equipment accessible to the public at relatively low cost (Singer, 2003). Meanwhile, militaries throughout the world have worked to demobilize, downsize, and become leaner. Military demobilization has not only decreased national military capacity around the world and the general public's experience serving in the military, but it has increased the supply of well-trained military professionals looking for work, occupational stability, corporate rewards (stock options), and adventure. As one would expect, these former military personnel often turn to the growing private military provision firms and other "virtual" companies, which seek to fill the worldwide growing demand for security and military services. For example, in 2003 Military Professional Resources Inc. reported access to 12,500 military veterans ready to serve on private contracts (Yeoman, 2003)

Of course, there are reasons listed in Table 2, which do not apply in the U.S. situation and others, which are especially important. First, there continues to be increased demand for military action throughout the world and, as the most powerful military in the world, the U.S. is often called upon to act or support the actions of international bodies. Second, in the face of increasing demand, the U.S. has demobilized and downsized its military over the past three decades. The downsizing of the U.S. military was driven in part by the desire for a leaner, meaner, more nimble military of the future and in part by a post-Vietnam public distaste for engaging in international military activities and nation-

building and the end of conscription in the U.S. (See (Congressional Budget Office, 2007; Kane, 2005; RAND 2005) for more information).

Technological advancements make it easier to do more with fewer service members (Roberts, 2008): 107). The current and previous administrations have preferred a high-tech military, which could operate with low-manpower and high-precision (Kagan, 2008). The movement towards a smaller, leaner military in the U.S. decreased the number of enlistees in the military. The shift to an all-volunteer force in 1973 helped to reshape public opinion about the military from one of a large force that relied on personal and financial sacrifice from many American families to a capital-intensive military that relied on volunteers who decided to pursue military careers (Moynihan, 2008): 517). Another result of a leaner military is fewer opportunities for promotion and life-long employment and thus an increased the supply of well-trained military personnel no longer employed by the military.

Most important, the downsizing of the military is reinforced by a growing privatization movement in all aspects of U.S. government. In the U.S., the privatization movement also known as the New Public Management is characterized by decentralization, devolution, and personnel reforms and is certainly not new. Devolution, decentralization, and outsourcing began in the 1980s and have continued through Republican and Democratic administrations (Cooper, 2005; Osborne, 1998). In previous decades, both democrats and republican executive leaders have used private companies to enact policies around the world including the war on drugs in South America, U.S. military aid to Macedonia and Nigeria, and peacekeeping efforts in Africa, Haiti, and Bosnia.

The military has been expanding its privatization efforts for decades. For example, during the Gulf War, then Defense Secretary Dick Cheney awarded a \$9 million contract to Brown and Root Services to study how private companies could support the U.S. military on the battle field and in the theater of war (Yeoman, 2003). After serving as CEO of Halliburton and Brown and Root, Cheney was in a secure position to further military privatization while serving as vice president from 2000-2008. Private firms and defense contractors such as Northrop Grumman, Lockheed Martin, General Dynamics, Raytheon, and Boeing provided an abundance of employment

opportunities for departing military personnel who exit the military and continue to do the same work (building, installing, and maintaining military aircraft, ships, vehicles, and communications and electronic systems), but reap the benefits of higher salaries in the private sector. In addition to the increased demand for security throughout the world and the decreased will to maintain a large standing military, the September 11 attacks on the U.S. and more important the political ideology of the executive leadership set the stage for the shift from national military to military contracting and the outsourcing of core military activities such as security and violence.

### **Expansion of Executive Power or Alternative Policy Tool?**

It is typical in the U.S. political system for the executive and the legislative branches to seek policies, which empower their particular branches. The Bush Administration is one that not only values executive decision-making but also actively seeks policy mechanisms and tools, which empower the executive at the expense of the legislative branch. Many popular news reports and political analysts have noted that the Bush administration has actively sought to advance executive power through signing statements, appointments, secret action, and legal interpretations of the constitutional powers of the president (Editorial 2008, Kirk, 2007; Lithwick, 2007). For example, presidential signing statements have enabled the president to pass Congressional bills while noting that he “shall construe such provisions in a manner consistent with the constitutional authority of the President” (Bush, 2008)<sup>2</sup>. In a study of the Bush administration’s use of presidential signing statements, Cooper (Cooper, 2005) found 108 signing statements with 505 constitutional challenges to Congress between 2001 and 2004. These statements included 22 rejections of the need to report or seek approval from Congress, 77 claims for exclusive power over foreign affairs, 48 statements asserting the president’s authority to determine and impost national security classification and withhold information, and 82 statements of the power to supervise the unitary executive. These executive powers were reinforced by memos and statements from John Yoo at the Justice Department, Office of Legal Counsel who argued that “[t]he laws as they were written and the Constitution that we have gives the president a lot of power in wartime. The president is the commander-in-chief” (Kirk, 2007).

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<sup>2</sup> [www.whitehouse.gov/news/releases/2008/01/20080128-10.html](http://www.whitehouse.gov/news/releases/2008/01/20080128-10.html)

In contrast, Roberts (2008) argues that post-Vietnam reforms to check executive power; the passing of the Freedom of Information Act (July 4, 1966) and the Electronic Freedom of Information Act Amendments (1996); and the expansion of transparency mechanisms have worked to curtail executive power. Moreover, the post-Regan era is characterized by tax restraint, budgetary discipline, free trade, light regulation, and limited presidential power (Roberts, 2008).

Given this competition for power and formal constraints on executive action, the Bush administration hastened to use outsourcing as a policy tool for executive action, in particular, the outsourcing of military action and violence. With the shock of the 9/11 attacks the U.S. public and media was eager for political and military action and in many cases unwilling to criticize the administration's policies.<sup>3</sup> With this "window of opportunity" and a desire to act quickly the executive was able to use emergency funding and private contracting for many of these military activities toward unilateral foreign policy and action in Afghanistan and later Iraq.

Once calls for oversight and investigation emerged, from the public and the Congress, the executive had effectively insulated itself from Congressional oversight and traditional accountability measures through the use of private contractors and private contracts. Thus military outsourcing served as a policy tool enabling quick executive action, lower cost action (according to public bankbooks), and minimal oversight and transparency.

### **Public Value Failure**

Bozeman (2002) outlines seven criteria to identify public failure: insufficient mechanisms for articulating and aggregating values, imperfect monopolies, benefit hoarding, scarcity of providers, short-time horizons, substitutability for resources, and threats to subsistence and human dignity (see Table 3). In the following section, I discuss

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<sup>3</sup> The U.S. relies on a complex process of checks and balances to enable military action. Although foreign policy is generally the purview of the executive branch and the president is known as the "Commander in Chief" of the armed forces, the constitution allocates the legislative branch with the ability to declare war. However, Congressional declarations of war typically occur after prior request by the President. Regardless of Presidential power to engage in foreign policy and command the military, the Congress maintains the power of the purse and all oversight responsibilities related to military action and spending. Hence, although the U.S. has a complex process to check and balance the ability to declare war, the shock of the terrorist attacks left much of the U.S. public and leadership unable to fully manage the subsequent policies proposed by the executive branch.

how the case of privatized military activities in the U.S. measures up to these categories of public failure.

**Table 3: Public Failure Criteria**

<b>Mechanisms for Articulating &amp; Aggregating Values</b>	Political processes and social cohesion are insufficient to ensure effective communication and processing of public values.
<b>Imperfect Monopolies</b>	Private provision of goods and services permitted, even though government monopoly is deemed to be in the public interest.
<b>Benefit Hoarding</b>	Public commodities and services have been captured by individuals or groups, limiting distribution to the population
<b>Scarcity of Providers</b>	Despite a recognition of a public value and agreement on the public provision of goods and services, they are not provided because of the unavailability of providers
<b>Short-Time Horizon</b>	Short time horizon is employed when a longer-term view shows that a set of actions is counter to public values
<b>Substitutability vs. Conservation of Resources</b>	Policies focus on substitutability (for indemnification) even in cases when there is no satisfactory substitute
<b>Threats to Subsistence &amp; Human Dignity</b>	The core value of subsistence is violated

From Bozeman (2002)

**Articulating & Aggregating Values:** The first indication of public failure is insufficient mechanisms for articulating and aggregating values. In these cases the political processes and social cohesion act to ensure effective communication and processing of public values. In the case of military outsourcing, it is difficult to understand the public’s value of outsourcing, given the lack of public information concerning military outsourcing. In 2001, when the United States first invaded Afghanistan and later Iraq (March 2003) there was little to no public awareness of the role of private contractors in the theatre of war. Of course, U.S. citizens were aware of the role that industrial interests play in supporting military efforts, but there was little knowledge of the role that private actors were increasingly asked to play in securing facilities and diplomatic and government representatives.

The outburst of media coverage of private military firms in Iraq and Afghanistan began with the public footage of Iraqis attacking four Blackwater USA<sup>4</sup> employees in

<sup>4</sup> This paper presents many examples using Blackwater USA. Although there are numerous contractors acting on behalf of the U.S. military, Blackwater has been widely covered in the news due to the killing in Fallujah, the shoot out in Najaf, the crash of Blackwater 61, and the increasing number of private lawsuits in the U.S. against Blackwater. There remain numerous other firms operating in Iraq or operating as

March 2004 in Fallujah. As Americans sought to understand the role of these U.S. civilians in a war zone, the public, elected officials, and the media began to understand the new role contractors were playing in this war. The killings in Fallujah marked not only the first public media coverage of the role of private military providers in Iraq, but began to raise public concerns about the danger facing the U.S. military that are often mistaken for private contractors, and vice versa. The U.S. media began to depict the confusing roles played by military personnel and private contractors. Returning soldiers talked to their families about private contractors and some exited the military to take better paying jobs with these firms. As public debate and lawsuits ensued the public became increasingly aware of the problems surrounding issues such as the role of contractors, the allocation of liability, accountability, the secrecy surrounding private contracts, and issues related to command and control.

For example, media reports highlighted the pay differential between private contractors and those serving in the U.S. military. Pay for private contractors can be two to 10 times as much as official military service or police (Singer, 2003). In some cases, in a single day a private contractor can earn the equivalent of a month of military pay (Evans, 2002). Benefits to private contractors and their firms include corporate stocks, exclusive business contracts, bartering national resources and assets, payment in the form of oil, diamonds, or mining concessions (e.g. Sierra Leone, Angola).

Knowledge about the role of private contractors on the battlefield and public outrage about the role of private contractors in Iraq moved into the mainstream media and vernacular of Americans following the *60 Minutes* exposé of the prisoner abuse at Abu Ghraib, where military personnel and private contractors, acting in military and interrogation capacity, abused Iraqi prisoners. This was not only humiliating for U.S. civilians and the military, but also it made public many more questions about the appropriate role of private citizens acting under contract to the U.S. government.

In addition to media coverage, government oversight and investigations provide a venue for the aggregation of public values. The first Government Accountability Office (GAO) study of the role of contractors in Iraq was published in June 2003, three months

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subcontractors to larger firms such as Blackwater, thus enabling many of those firms to fall under the media and public radar (See Scahill 2007 for more detail).

after the U.S. invasion of Iraq and eight months after the U.S. Congress granted a joint resolution to authorize the use of U.S. armed forces against Iraq. That report, GAO-03-695 titled *Military Operations: Contractors Provide Vital Services to Deployed Forces but are not Adequately Addressed in DOD Plans* indicated that among all military armed services, only the Army had developed guidance for dealing with contractors and that Department of Defense (DOD) acquisition regulations did not require standard contract language nor comprehensive oversight mechanisms. Another report targeting contractors *Rebuilding Iraq: Fiscal Year 2003 Contract Award Procedures and Management Challenges*, published in June 2004, discussed the use of sole-source and limited competition contracts by government agencies. Subsequent reports considering the role of military contractors in the war primarily focus on questions of funding and oversight of all contractors, but not the conflicts of interest and threats to public values inherent in the expanding role of military provide firms.

In July 2005, 28 months after the U.S. invaded Iraq, the GAO conducted its first report which specifically referring to the use of private military providers in its title: *Rebuilding Iraq: Actions Needed to Improve the Use of Private Security Providers* (July 28, 2005). The report highlighted a need to coordinate between the U.S. military and private security providers and the need for pre-deployment training of U.S. military to understand the role of private security providers. The report notes that the need for private military firms is two fold. First, Iraq presents a unique security threat for all private firms or nongovernmental organizations working in the country. Second, the military provision of security only extends to DOD civilians and contractors who directly support the military mission. Thus, individual U.S. government agencies and private firms are responsible for finding their own security services. This raises the question about the public's understanding of the military and U.S. involvement in Iraq. Would the U.S. public support the engagement of nonmilitary government agencies in Iraq? Shouldn't those agencies be working in the domestic realm? And if their services are needed in Iraq, shouldn't they receive military protection in the theater of war? These questions have not been a part of the public discourse about U.S. involvement in Iraq or the role of U.S. public institutions acting in Iraq. Finally, and of most concern, this first GAO assessment of the role of contractors in Iraq finds that "neither the Department of

State, nor DOD, nor USAID – the principal agencies responsible for Iraq reconstruction efforts – have complete data on the costs associated with using private security providers” (GAO, 2005:4).

*The role of the national military.* This brief outline of the events associated with public coverage and elected representatives’ efforts to investigate these relationships illustrates the complexity behind public understanding of the outsourcing of military activities, and the slow-moving mechanisms available for the general public to aggregate and articulate its values. It is easy to assume that the public would desire a smaller military. It makes sense that the public would prefer a military that acts efficiently and takes advantage of private markets to lower costs and increase efficiencies. However, a desire for outsourcing of some activities, such as the provision of military support services does not necessarily indicate a desire to move core military activities to the private market nor a widespread belief that national security, defence, and violence in the name of the nation state should be carried out by nongovernmental private parties. Some of the methods by which we can assess public values about the role of the military include (1) assessing cultural norms about the military, (2) monitoring financial support from Congress, (3) willingness to enlist and serve in the military, (4) assessing public perceptions of the military through public opinion polls, and (5) evaluating public reactions to the increasing media coverage of military outsourcing.

First, regardless of individual views of the legitimacy and appropriateness of the current “war on terrorism”, we can consider aggregate values about the military role in society and its obligations to society. In his classic book, *The Soldier and the State: The Theory and Politics of Civil-Military Relations*, political scientist Samuel Huntington (Huntington, 1957) details the “vocation of officership” and the skills and training which distinguish professional military officers from civilians and vice versa. Huntington notes that military professionalism goes beyond training alone to include responsibility, patriotism, a sense of duty, and the recognition that the officer “does not act primarily from economic incentives.” In fact, Huntington (1957) goes on to note that “In western society the vocation of officership is not well rewarded monetarily” (15) because it is essentially a position of service. He argues that the military is the direct outcome of the

nation state and is comprised of citizens and residents of the nation state to protect against threats to national security (Huntington, 1957:37). He goes so far as to state that:

“[u]pon the soldiers, the defenders of order, rests a heavy responsibility. The greatest service they can render is to remain true to themselves, to serve with silence and courage in the military way. If they adjure the military spirit, they destroy themselves first and their nation ultimately. If the civilians permit the soldiers to adhere to the military standard, the nations themselves may eventually find redemption and security in making that standard their own” (Huntington, 1957:466).

The idea of military service as both vocation and profession is reinforced by the “career” personnel system found in the U.S. and many other national militaries. Promotion within the system is based on education and seniority; prohibitions upon officers participating in nonmilitary activities; limitations on the employment of retired officers; and forced retirement out of the system. This system furthers commitment and loyalty within the national military while ensuring that individual officers and soldiers are motivated by a sense of service and not motivated by commercial gain.

Within the U.S. system of government a division of power between Congress and the President to control the national military ensures civilian control over the military. The President is not given the function “to command the Army and Navy”; he is given the office of “Commander in Chief” (Huntington, 1957:178). As commander in chief, the president can engage in foreign policy, but requires the approval of Congress to declare war. The Congress maintains the “power of the purse” and the “power of investigation” and can investigate, call administrative officials to account, allocate funds, and earmark or limit funding for specific purposes (Huntington, 1957:402). Because Congress provides funding to the military, military professionals are critical for explaining and justifying policies before Congress and the public (Huntington, 1957:385).

Regardless of the widespread outsourcing of military activity and responsibility, the U.S. public and its leadership continue to value the role of the national military. President George W. Bush, the executive responsible for leading this new era of privatization of force, stated at a speech to those working at Fort Bragg, a major U.S. military base, “[t]here is no higher calling than service in our armed forces” (Mian, 2005). The Congress continues to pass war-spending bills as “support” of our men and women in service, despite their individual views of the appropriateness of the war.

A third proxy for public support for the military can be found in the willingness of Americans to enlist in the military. Media reports continue to highlight a shortage of military personnel and an inability of the U.S. military “to sustain itself” (Mian, 2005). General Barry McCaffrey, now a professor at West Point, wrote in the Wall Street Journal that the U.S. is in a "race against time" in Iraq because of the strains on the military – the military is "starting to unravel." He argues that, "The U.S. Army and the Marines are too under-manned and under-resourced to sustain this security policy beyond next fall" (Mian, 2005).

A study by the military think-tank, the RAND Corporation, titled *Stretched Thin: Army Forces for Sustained Operations* (2005) notes that Army troop shortages are so severe that America may be unable to provide domestic security as the Pentagon wages two major regional wars in Iraq and Afghanistan and fights the war on terrorism (Davis et al. 2005). In contrast, reports from the conservative think tank the Heritage Foundation and the Congressional Budget Office argue that the military is not facing recruitment problems. In a statement to the House of Representative’s Committee on Armed Services, Subcommittee on Military Personnel Derek B. Stewart, Director of Defense Capabilities and Management reported that the data on recruitment and retention are mixed because of variation across military branches and job type (Stewart, 2005). For example, hard-to-fill occupations such as infantry and cavalry scout or linguist are hard to recruit and retain.

Given the increased bonuses for enlisting in the military, “stop loss” policies<sup>5</sup>, the extension of tours of duty from 12 to 15 months, and requirements for enlistees to serve two or three tours of duty, it is hard to believe that there is not a recruitment problem in the U.S. military. The military has increased bonuses and rewards to enhance recruitment efforts and make serving in the military more advantageous for young Americans. New recruits now qualify for a joining bonus of \$20,000 in cash, \$70,000 in benefits paid over

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<sup>5</sup> Stop-loss policies refer to the involuntary extension of enlistment contracts for service members beyond the normal term of service. The U.S. Congress created stop-loss after the Vietnam War to ensure that the all-volunteer force could, at times, ensure necessary force levels without resulting in a draft. Title 10, United States Code, Section 12305(a): "... the President may suspend any provision of law relating to promotion, retirement, or separation applicable to any member of the armed forces who the President determines is essential to the national security of the United States". There is an allowance for stop-loss in the Armed Forces Enlistment Contract, which is signed by all enlistees and recruits. Stop-loss policies have been used in the Persian Gulf War, deployments to Kosovo, Somalia, Haiti, and Bosnia, and most recently in Iraq and Afghanistan.

three years, and canceling of college loans. In addition, physical and intellectual requirements have been lowered and the age of eligibility has been expanded so that people nearly 40 years old are eligible to join the military (Mian, 2005). Second, as the death toll exceeds 4,000 and more than 29,395 military personnel have been wounded (as of April 2008), public support for serving in the military is waning ([http://www.globalsecurity.org/military/ops/iraq\\_casualties.htm](http://www.globalsecurity.org/military/ops/iraq_casualties.htm)). The Gallup poll found that from 2000 to June 2005 the proportion of Americans who said they would support their child's entering the military declined from two-thirds to about half (Mian, 2005). Furthermore, the U.S. military has become dependent on soldiers serving multiple tours of duty, a sign that there are too few new recruits.

It is possible that the military is using private contractors to fulfill many services that were once provided by the military and the U.S. government. Maybe the military is not facing recruitment problems because it is looking to private contractors to fill those gaps, thus easing pressure to recruit and enlist larger numbers of soldiers. On the other hand, it is possible that resorting to private contractors is a result of recruitment problems. It is unclear if the military cannot find recruits or if the military has decided to outsource instead of expanding its membership.<sup>6</sup> Because this is the first large-scale military engagement with an all-volunteer force, it is unclear if the low recruitment rates are the result of unpopularity of the war efforts, the all-volunteer force, or both. Either way, it is clear that public support for engaging in the war in Iraq is not high enough to bring the general public to enlist to fight in that war.

Fourth, public perceptions of the military can be measured in the level of confidence, prestige, and trust that the general public allocates to the military. The American public consistently reports a high level of trust in the military and those who

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<sup>6</sup> Some argue that the "recruitment problem" in the U.S. military is not necessarily a sign of a lack of public support for the war on terror but a result of reliance on an all-volunteer military. Unfortunately, there are no comparative examples of unpopular wars (e.g. Vietnam) and an all-volunteer military or widely supported war efforts (e.g. WWI and WWII) and an all-volunteer military. In previous conflicts and starting with the Revolutionary War (conscription for state militias) the U.S. military has relied on conscription or a formal draft (CBO 2007). In the Vietnam War, 1.9 million men were drafted between August 1964 and March 1973. As of 1967 only 40% of first-term personnel were true volunteers. During the Korean War, draftees made up about half the services' accession with 1.5 million men drafted between June 1950 and July 1953. In WWI 30% of US service members were volunteers and 2.8 million men were drafted. During the U.S. Civil War both the Union and Confederate sides used conscription. For example, at least 50,000 union soldiers were conscripted (CBO 2007). The current military actions in Afghanistan and Iraq are the first example of a full-scale, long-term engagement without a draft or conscription.

work for the military. For example, according to Gallup Polls (www.gallup.com) between 1975 and 2002 more than half of all Americans have reported a "great deal" or "quite a lot" of confidence in the military. In fact, this support for the military has increased from 58 percent in 1975 to 79 percent in 2002 (Toner, 2003). According to the most recent Gallup polls on confidence in institutions (2006 and 2007) Americans continue to rank their confidence in the military at "great deal" or "quite a lot" and above all the remaining institutions in which they are asked about their confidence including: small business, the police, church/organized religion, banks, the Supreme Court, public schools, the medical system, the presidency, television news, newspapers, criminal justice system, organized labor, big business, HMOs, and Congress (Newport, 2007).

Further evidence of public support for the military can be found in the Harris Poll (1982 to 2007), which asks Americans about the prestige associated with 23 professions and occupations, has consistently registered being a military officer with high prestige. In 2007, 52% of respondents indicated that being a military officer has "very great" prestige. Even more telling, as noted in Table 4, the perception that serving in the U.S. military has steadily increased since 2001, compared to perceptions prior to the war in Iraq. In fact, Americans rank the prestige of being a military officer at twice that of serving as a member of Congress. The ranking of "military officer" as a more prestigious career than police officer, architect, minister, engineer, and member of Congress is a rough indicator of the public's value of military service.

**Table 4: Percent Response "Very Great Prestige"**

Career	1977	1982	1992	1997	1998	2000	2001	2002	2003	2004	2005	2006	2007
Police Officer	n/a	n/a	34	36	41	38	37	40	42	40	40	43	46
Architect	n/a	n/a	n/a	n/a	26	26	28	27	24	20	27	27	23
Union leader	n/a	n/a	12	14	16	16	17	14	15	16	15	12	13
Accountant	n/a	13	14	18	17	14	15	13	15	10	13	17	11
<b>Military officer</b>	<b>n/a</b>	<b>22</b>	<b>32</b>	<b>29</b>	<b>34</b>	<b>42</b>	<b>40</b>	<b>47</b>	<b>46</b>	<b>47</b>	<b>49</b>	<b>51</b>	<b>52</b>
Congress Member	n/a	n/a	24	23	25	33	24	27	30	31	26	28	26
Doctor	61	55	50	52	61	61	61	50	52	52	54	58	52
Scientist	66	59	57	51	55	56	53	51	57	52	56	54	54

Survey Item: "I am going to read off a number of different occupations. For each, would you tell me if you feel it is an occupation of very great prestige, considerable prestige, some prestige or hardly any prestige at all?"

*The Harris Poll*® #77, August 1, 2007

According to David C. King, associate professor of public policy, a positive image of the U.S. military is striking among children and grandchildren of baby boomers (King & Karabell, 2003). For example, interviews with 1,200 college undergraduates in 2003 found that three quarters trusted the military "to do the right thing" either "all of the time" or "most of the time" despite the fact that only two-thirds of those respondents supported the Iraq war (Harvard Institute of Politics). He notes that this public support for the military is related to its improved performance and professionalism, an all-volunteer force, and the expansion of military advertising and images in popular culture such as *Top Gun* and *An Officer and a Gentleman* (Toner, 2003).

Still this popular support for the military, as a profession and an institution, and its mission, does not translate into increased enlistments or willingness to serve in the military (Toner, 2003). One could easily argue that the U.S. political system continues to fail in offering an efficient and effective mechanism for articulating and aggregating public values in a time of war. In fact, many of the mechanisms preventing articulation of public values are the same mechanisms that stalled public cries for a change in policy in the Vietnam War. The methods for articulating and aggregating public values currently available include: (1) public opinion polls, (2) re-election of officials based on their military and foreign policy statements and record, (3) military enlistment numbers, (4) prevalence of public protests, (5) quantity of letters to political representatives, (5) prevalence of oversight reports and calculations of the costs of the war, and (6) media coverage. Unfortunately, it is increasingly difficult to separate and assess public values, which support or do not support the war on terrorism, the troops, the military as an institution, military presence in Afghanistan, military presence in Iraq, and the use of private contractors in the theatre of war especially when general public support for the military crowd out other important value considerations.

Despite this messiness in aggregating and assessing public values, in the U.S. (the general public, the media, and military members), there is growing public discontent with the role of private contractors in advancing the military's work and mission, however it seems that a widespread change in these policies would require an articulating and aggregating of public values and aligning those values with the values of the national military and the political leadership setting these policies. Currently, there is no clear,

quick mechanism for the American public to shape military policy or how the U.S. government funds, supports, and contracts out the military mission, without the leadership of the Congress and the President.

**Imperfect Monopolies.** The nation state's provision of national security has historically been driven by the assumption that national defense is too expensive for individuals to provide and requires the organization and support of the entire nation. National security is the quintessential public good, where all residents benefit from the provision of security. In this case, national militaries no longer hold a monopoly on force and violence.

Today, with the growth of outsourcing, there are numerous providers of military services in Iraq and worldwide including, Blackwater Worldwide, DynCorp, Aedion Corporation, ALGIZ Services Ltd., AirScan, AQMI Strategy Corp, Braddock Dunn & McDonald (BDM), Hart, Kroll, Steele Foundaton, C3 Defense, Inc., Triple Canopy, Global Guards, Critical Intervention Services, Custer Battles, L-3 Communications Titan (formerly Titan Corporation), Top Cat Marine Security, VIP Investigations & Protective Services Inc., SOS Temps Inc., ISCS International, SCG International Risk, Landmine Sourcing, and Military Professional Resources Inc. (MPRI). Military providing firms are not limited to the United States. For example there are UK-based firms working on behalf of the U.S. government such as Adson Holdings, ALGIZ Services Ltd., Aegis Defence Services (previously Sandline International which closed April 2004), Aegis World, Branch Energy Limited, BroadBridge Wraith, Control Risks Group, Defence Services Limited, Erinys International, Executive Decision, Hart Security Limited, and Hostile Control Tactics. The breadth of military providers is extensive enough to warrant the 2001 creation of a trade organization, the International Peace Operations Association (IPOA). IPOA, a trade organization for private military companies, publishes a journal, *The Journal of International Peace Operations*, and is registered in the U.S. and includes members such as MPRI, Pacific Architects and Engineers, and Hart Security.

The emergence of this private market of private military and security providers is not likely a response to public demand for these services, but rather demand created by the inability of national militaries to provide these services and the desire of some political actors to act outside the realm of the nation state and public opinion,

bureaucratic control and constraint, and transparency requirements. For example, in this case, the lack of security and stability in Iraq has made it difficult for the military to engage in nation building. Also, since military service members are not typically trained in nation building or long-term occupation, there is a growing need for private contractors to assist with infrastructure building and maintenance. The instability in the region has forced military support contractors to seek security-providing firms. With the decreasing size of the military, the unwillingness of U.S. citizens to enlist in the military, and the unwillingness of the administration and the Congress to fully inform the public of the cost and commitments of these wars in Iraq and Afghanistan (Stiglitz & Bilmes, 2008), the emergence of this market of providers of military goods and services is a direct response to increased demand from the U.S. military and leadership and decreased enlistments and conscription, thus an imperfect monopoly.<sup>7</sup> Furthermore, there is no system-wide military provision of security for other government agencies working in the area. Thus the State Department, USAID, and private firms all find themselves in need of military-like security services.

**Benefit Hoarding.** Bozeman (2002) defines benefit hoarding as the result of individuals or groups capturing public commodities and services, which then enables those individuals or groups to limit the distribution of the good or service to the population. In the case of privatized militaries, benefit hoarding occurs on multiple levels. First, the use of private military contractors passes war expenditures to private firms instead of U.S. families of soldiers who are sacrificing to serve or local Iraqi companies and small businesses which could greatly benefit from the work inside their own country (thus reducing refugee problems) and most likely operate without the dangerous threats toward U.S. contractors. Second, private provision of security and benefit hoarding leads to threats of security for some, but not all. Third, private firms threaten to hoard the supply of talented military personnel. Fourth, decision making about

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<sup>7</sup> As discussed in detail by P.W. Singer (2003), around the world the demand for private security is also driven by weak nation states, changing boundaries and territories, weak governments without standing armies, internal conflicts, and the demand among private nongovernmental organizations, service and nonprofit organizations, and commercial companies which require security for their personnel and facilities in unstable parts of the world.

when to shoot, when to protect, and when to act falls to private groups and not the nation state.

Benefit hoarding, as a result of emerging markets for private military and security firms is a real threat. First, the U.S. government has spent billions of dollars in contracts in Iraq, for example as of March 2008 Blackwater has received more than \$1 billion in no-bid war contracts (Editorial, 2008) and continues to spend on contracts that fall outside of standard budgets and result in spending in the shadow government of private firms (Light, 1999a; 1999b). Because of the security and proprietary claims to contracts, there is no standard report or central collection of data to determine whether or not these contracts for security services have been an effective or efficient use of contractors. It is hard to believe that if those contracts had been kept in-house the military would have spent as much. Furthermore, even if the military had used \$1 billion to provide those services it would have been public tax monies paid to government employees and government supply services. Instead, the income generated by these private firms and their employees result in private gain. This private gain has gone beyond simple profits as private firms have registered individuals as separate contractors in Iraq and not U.S. employees, thus exempting themselves from paying payroll taxes. These loopholes have furthered private benefits by first earning profits from government contracts and second by not paying taxes. Moreover, private contractors receive government-paid insurance for death benefits and disability (Stiglitz, 2008). Government military employees receive care through veteran affairs, which requires veterans to navigate a complicated bureaucratic system, wait months to schedule appointments with VA doctors (Stiglitz, 2008) and qualify for benefits under government measures for the degree of disability. Meanwhile, private contractors receive benefits without being subjected to the military system of injury and benefits qualification.

Second, and probably most important is that when security becomes the realm of the wealthy and the connected, we no longer have a public good, which benefits all individuals within a nation, territory, or community. Singer (2003) offers a detailed discussion of how private security markets, especially when coupled with a weak nation state and weak or nonexistent national military create a system where the wealthy and privileged are able to hoard the benefits of security. In these cases, private military firms

may be fulfilling contracts to (1) provide protection for humanitarian groups (e.g. Red Cross, Care International) (Greenway & Harris 1998:5); (2) provide “teeth” for peacekeeping missions; (3) operate in conflict zones when nation states and regional or international bodies will not act; or (4) serve to protect individual corporations and their employees (Singer, 2003). These private markets for security are profit-driven and security is a commodity, which inevitably will favor the privileged and the wealthy. When the nation state provides the public good of security it is nonrival and nonexcludable extending to all individuals because people are not “priced out” of the market. With private security firms, nations run the risk of allowing the wealthy to prevail in a secure world while the disadvantaged cannot afford security. The reliance on private firms undermines the social contract requiring the state to ensure national security.

Third, military contracts enable private firms to hoard the supply of talented military personnel. Talented and highly trained military personnel are increasingly turning to the private sector for employment. These jobs pay significantly more than military service and as national militaries continue to downsize and increase outsourcing these positions are becoming more prevalent than high ranking military positions. Smaller militaries mean fewer opportunities for promotion and career employment. For example, private security in the United Kingdom outnumber the British Army two to one, in Australia there are twice as many private security personnel compared to military personnel, and in South Africa the ratio of private security to military personnel is four to one (Singer 2003:69). Private firms continue to compete with state militaries for talent. The irony is that the national military pays for and provides the training for these individuals to move to the private sector for personal gain. Private firms are creating a marketplace for state trained military personnel. These individuals, trained in violence, are able to freely sell their services. In the case of U.S. military, this typically results in the movement from the military to the U.S. private sector. But there are numerous cases of retired military agents from rogue states or former oppressive regimes (e.g. Chile, South Africa) selling their services in the market of private firms.

Fourth, the outsourcing of core military mission activities puts the decision-making about when to shoot, when to protect, and when to act into private groups and not

the nation state, or in the case of the U.S. a democratically elected government. The shift from military as a national force of public servants acting in public interest to a private market for security raises questions about cost and more important legitimacy. What happens when prices rise and security becomes a hot commodity, available to the highest bidders? As the U.S. and other wealthier nations (e.g. Australia, United Kingdom) spend increasingly more for security contractors, security becomes less affordable to poorer nations and civilians. Governments and nation states run the risk of losing control over the price of security and force and the ability to make legitimate policy decisions about force. The global market for private military firms is “unregulated, lacking both formal controls and limits” (Singer 2003:180) leaving private businesses the ability to hoard resources and redistribute security as a private good. By relying on the private market to commodify and trade security and defense, nation states are not only giving up control over force, but are outsourcing coercive power to profit-driven firms which have incentives to hoard benefits and increase personal gain. Perhaps the threat to benefit hoarding is best stated by Singer (2003:190) who notes that private interests and national interests often conflict in the “marketplace for violence.”

**Scarcity of Providers.** Bozeman notes that the scarcity of providers occurs when, despite a recognition of a public value and agreement on the public provision of goods and services, the public goods are not provided because of the unavailability of providers. In this case, as described earlier, there is no shortage of private companies, in the U.S. and abroad, interested in providing private security on behalf of nation states and militaries. However, the category of “scarcity of providers” does not focus on the market of private service providers, but rather the market for the public provision of goods and services once there is recognition of a public value and agreement on the public provision of those services. It is hard to believe that the most powerful military for the wealthiest nation in the world is incapable of providing the public good of national security. However, it is possible to argue that the public distaste for conscription and unwillingness to instate a draft has reduced the ability of the US military to provide for national security. One could also make the case that the Bush administration has over extended the military without fully supporting the capability of the military to fulfil its core

mission, because of its unwillingness to raise taxes, require sacrifice from the American people, or tamper with the domestic economy (Roberts, 2006, 2008).

Thus, in this case, and many other cases of private security firms providing national security or foreign military services, the scarcity of providers refers to the scarcity of government providers. In this particular case, the scarcity of providers is the public failure driven by the inability or unwillingness of the national government to provide the public goods and services associated with national defence.

In Iraq, the U.S. government was unable to properly prepare, plan, or coordinate efforts to maintain security and ensure successful occupation and rebuilding efforts. The military was not prepared to occupy and rebuild the nation and the State Department lacked the capacity (funding and discipline) to take on these responsibilities. In essence, the military (CENTCOM) and the State Department failed to provide for the military action and security with which they were charged. The State Department “lacked experience, expertise, funding authority, local knowledge, and established contacts with other potential civilian organizations” (RAND, 2005:9) thus ensuring the scarcity of effective providers of security and defense. Because Donald Rumsfeld, then Secretary of Defense, insisted upon the separation of military and civilian functions in Iraq, he furthered the inability of these providers to ensure security (Roberts, 2006, 2008). Meanwhile, newly formatted agencies operating in Iraq, such as the Central Provisional Authority (CPA) lacked security provisions because of their conflicting relationships with other federal agencies or the uncertainty of their place in the federal bureaucracy making it unclear if it was the military’s responsibility to protect CPA employees. This resulted in the CPA relying heavily on private contractors for security, though few CPA employees were familiar with government contracting and procurement procedures or the role of private firms and military actors in Iraq (Roberts, 2008:128). The conflicting relationships between government agencies in Iraq and the role of a military that is heavily constrained by its lower than needed recruitment numbers in providing security for all of those organizations ultimately resulted in a scarcity of government providers of security and defense for government employees and military actions in Iraq.

**Short Time Horizon.** Within the Public Value Failure Framework, a short time horizon is employed when a longer-term view shows that a set of actions is counter to

public values. When focusing on the short-term, actions may not appear to be counter to public values or the long-term consequences may not be readily apparent. In the case of private military provision in the U.S. the post 9/11 short-time horizon enabled the quick outsourcing of national security. Whether or not these short-term contracts were taken because of a desire to act quickly before the public noticed the action was counter to public values or because the leadership believed that the short-term outcomes would not be counter to public values and did not anticipate the long-term outcomes, it is clear that the outsourcing of core military action is not widely accepted by the American public or military actors. The subsequent drawing out of U.S. military action in Afghanistan and Iraq has brought forth a clearer view of the role of private military firms on the battlefield. Many Americans are increasingly concerned with the shift in government control over military actions and see that this outsourcing is counter to public values. Possibly, more persuasive military experts and military leaders are publishing research critical of the use of private actors in military missions. For example, U.S. Army Colonel Bruce D. Grant (1998) published a strategy research project, which outlined the dangers of moving “military expertise from public accountability” (iii), corrupting the military, and developing foreign policy “without traditional congressional oversight or public knowledge” (iii). Grant discusses the long-term negative outcomes of outsourcing military action including reduced morale among service members and misuse of power.

Furthermore, focusing on the short-term can result in long-term public discontent. For example, Roberts (2008) notes that the Bush administration’s tactics of exploiting momentary opportunities, focusing domestic security policy to alien residents, evading the law, and working in secrecy only work in the short-term and that over the longer-term these policy tools encourage deeper distrust of leadership as the general public begins to focus on government action that is based on “opportunism, evasion, and secretiveness” (57).

Focusing on short-term horizons threatens to weaken public values. In contrast the increase in the U.S. occupation of Iraq and the use of contractors may bring public awareness and ultimately public demands to bring these goods and services back into the public realm. As the U.S. occupation has entered its sixth year, the public, the media, and oversight bodies (e.g. Congress, GAO) have become increasingly concerned with the role

of private military contractors in Iraq. Books such as *Corporate Warriors* (2003), *Blackwater: The Rise of the World's Most Powerful Mercenary Army* (2007), *The Three Trillion Dollar War* (2008), and investigative reports in news magazines are uncovering the activities of these firms and pushing a public debate about the appropriate role of private firms in driving conflicts and profiting from violence.

The longer time horizon has brought forward problems associated with returning soldiers and returning private contractors, conflicts, lawsuits associated with these conflicting commitments and responsibilities, the perceptions of contractors compared to military personnel, and the differential benefits reaped by those in service of the country compared to those earning high salaries.

**Substitutability vs. conservation of resources.** Bozeman argues that public values failure occurs when policies focus on substitutability (for indemnification) even in cases when there is no satisfactory substitute. This criterion is not particularly important for this case, thus I move to the next category.

**Threats to subsistence and human dignity.** The final criterion in the public values failure model is the threat to subsistence and human dignity. The category of threats to subsistence and human dignity, as a measure of public failure, is quite complex in this case. Of course, military personnel and private contractors are equally capable of behaving inappropriately, violating the human dignity of civilians, fellow soldiers, contractors, and detainees in their care. Nowhere is this more apparent than in the Abu Ghraib prison abuse where military personnel and private contractors equally contributed to abusing prisoners in their care. Similarly, in the shoot out at Najaf (April 4, 2004) private contractors and one military soldier stood side-by-side as they decimated a neighbourhood. A third example of contractors engaged in a blatant abuse of their position of power is the widely viewed “trophy” video of private contractors from Aegis Defence Services shooting at Iraqi civilians. In all three of these examples, subsequent investigations have raised important questions about liability and contractual obligations and the role of military and civilian contractors in the theatre of war.

While many of us hope that professional military training reduces the likelihood of inappropriate behaviours, abuses of power, and threats to human dignity, the history of military action throughout the world indicates that this remains a constant threat (e.g. My

Lai massacre in Vietnam). However, in the case of military provide firms, the threat to human dignity is not necessarily the likelihood of these abuses, but rather the lack of reporting mechanism, oversight, and punishment. In the case of national militaries, there are national and international mechanisms to ensure that when abuses occur the public and the nation state can assign accountability and protect against threats to human dignity. For example, nation states can try generals and citizens for war crimes and hold Truth and Reconciliation hearings. With private contractors, especially in the case of Iraq, there is no clear line of command or authority and no party responsible for public disclosure and accountability. In fact, when firms behave illegally they seal their files, do not document activities, or disappear. Private firms are not simply contracting activities; they are serving as a mechanism for nation states to contract out legitimacy, oversight, and accountability.

Increasingly, the U.S. public is becoming aware of the differential treatment of military personnel and private contractors subsequent to abuse, conflict, and acts of violence. The following examples demonstrate how the public has become increasingly aware of the differential treatment of contractors in the theatre of war. These distinctions come in the form of confusion related to command and control and questions about who is making decisions and who is accountable for maintaining safety standards. Second, how are benefits awarded and who is responsible for allocating benefits. Third, who is held accountable by whom and what punitive actions can be taken against servicemen compared to private contractors. And finally, what constitutes proprietary and public information.

An example of the differential treatment of military personnel and private contractors is the Blackwater flight 61 crash of November 27, 2004. In this crash the privately owned plane, carrying U.S. military personnel, flown by private employees under contract with the military crashed in the mountains of Afghanistan. An investigation by the U.S. Army's Collateral Investigations Board and the National Transportation Safety Board found the crash was the result of reckless behaviour, failure to follow basic safety procedures, and cutting corners. As a result of these findings the families of three U.S. soldiers killed in the crash filed a lawsuit (June 10, 2005) against Presidential Airways, a subsidiary of Blackwater. This lawsuit begs the question, who is

responsible for the death of these soldiers? The individual contractors, the company that hired those individuals, the military branch that hired those contractors, the contract designer who did not specify basic military safety standards in the contract, or the government manager who did not regulate, oversee, and enforce the contract? As of November 2007, the government had not altered its contracts with Blackwater and had not penalized the company. On the contrary, in September 2007 the Defense Department signed a \$92 million contract to the Blackwater for the provision of services Afghanistan for the next five years (Anderson, 2007).

The tension regarding liability and accountability remains between military service and private contracting. For example, subsequent to the killing of four Blackwater employees in Fallujah, the families of those employees filed a wrongful death lawsuit against Blackwater (January 2005). In comparison, soldiers return home with no options to sue the U.S. military for injuries and their families cannot sue on the military in the case of wrongful death because the 1950 Supreme Court ruling known as the Feres Doctrine prohibits damage claims against the military. In the Abu Ghraib prison abuse case, a federal judge in Washington DC (November 2007) ruled that 200 Iraqis could file a civil lawsuit against CACI International, a U.S.-based contracting firm which abused prisoners detained at Abu Ghraib. CACI interrogators contend that they were fulfilling orders of the contract and military commanders. Meanwhile, soldiers were reprimanded under the military courts. Again, the responsibility and accountability questions about liability and command and control remain.

Second, differential treatment of soldiers and private contractors becomes a problem when considering the benefits of their work. First, consider the benefits allocated to soldiers and employees of private contracting firms. The compensation allocated to soldiers serving in the military is a fraction of the pay awarded to private contractors who can earn two to 10 times as much as official military personnel or police (Singer, 2003). In addition to the high salaries these private contractors are earning on the job, many contractors are retired military personnel who are double dipping into the public coffers collecting a retirement check from the U.S. military, while the government is also providing care for wounded private employees and paying death benefits and survivor benefits to families of private contractors. Compare these benefits to the complex

bureaucratic system of post-service veteran care awaiting returning soldiers (See Priest & Hull 2007, for more on the challenges facing returning veterans and the expose of the Walter Reed Medical Center).

Third, the punitive mechanisms applied when individuals or groups do not fulfil their contractual obligations and allocate punitive measures to soldiers and private contractors are distinct and do not align with public values. First, when soldiers enlist in the military they take an oath to serve the nation and to act upon commanding orders. When a soldier behaves inappropriately, that soldier faces a court martial and possible prison time. A dishonourable discharge from the military results in a loss of veterans' benefits, a loss of the right to own a firearm, and carries extensive social stigma which can prevent or at least complicate finding gainful employment. In comparison, when individual private contractors act inappropriately or break local, national, or international laws, they may be penalized with a loss of pay or a reduction of pay, or they may lose their job. However, the private contractor is not subject to military law, international law, nor Iraqi law.<sup>8</sup> In fact, they are protected from Iraqi law (see Order 17).

Lastly, there are conflicts related to proprietary information. When a private military firm hires a contractor, the contractor signs a contract with that firm, not with the U.S. military. The contract is private and not subject to public oversight. In fact, the government awarding a contract to a firm does not typically have the right to view individual employment contracts. Therefore, although the U.S. government is outsourcing a service, funded with public monies, the terms of the contracts between the firm and its employees to fulfil the public service become proprietary. That proprietary information is unavailable to the contracting agency and other agencies with which the firm may contract. Finally, when a private firm violates the terms of a contract, the contracting agency can terminate the contract but cannot get information about the firms other contracts with other agencies, which can result in continual rewards to these firms.

### **Conflicts of Interest**

The outsourcing of force and violence serves as a tool for expanding executive power and circumventing congressional authorization and oversight mechanisms and

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<sup>8</sup> This is not only the case for U.S. based contractors. For example, Aegis Defence Services are also exempt from regulation in Britain and Iraq.

clearly meets most of the criteria for public values failure including a failure of mechanisms for articulating and aggregating values, imperfect monopolies, benefit hoarding, scarcity of providers, short-time horizon, and threats to subsistence and human dignity. In addition to the categories detailed in this paper, there remain the stark conflicts of interest associated with military outsourcing and the privatization of the nation state's use of force. There are numerous conflicts of interest embedded in the outsourcing of military services.

Conflicts of interest include, first, the role of private and individual incentives to promote war and violence. These contracts, known as "imperialism by invitation" (Doyle, 1986) create bizarre incentives for engaging in conflicts and escalating security threats and certainly do not promote the public interests of nation states. Well-paid private contractors have the incentive to prove the need for their services and advance personal and private interests in contracts. Second, private military firms are becoming increasingly influential in the political process. For example, between 1999 and 2003, seventeen of the leading private military firms in the US contributed \$12.4 million in congressional and presidential campaigns (Yeoman, 2003). Third, hiring retired U.S. military personnel creates conflicts of interest for those that continue to collect military pensions and a salary through government contracts. These conflicts are even more concerning when retired military service members use their military contacts, networks, and military credentials to access high level U.S. intelligence reports and other military documents and resources. These revolving door issues also violate the notion of professional military careers and create competition for the talent necessary to maintain a strong national military. Meanwhile the private firm, MPRI is managing the recruitment of military personnel through the Reserve Officer Training Corps (Singer, 2003) and was contracted to develop and write the Army's field manuals on how to deal with acquiring and managing contractors in wartime environment, FM100-10-2, *Contracting Support on the Battlefield*, and 100-21, *Contractors on the Battlefield*. (footnote 18, 123). Finally, the use of private contractors in the theater of war endangers the safety and reputation of the U.S. military and the contractors as it becomes difficult to distinguish between the two parties. There are even large conflicts of interest when private firms are used to engage in foreign policy in places where U.S. troops are not allowed to officially travel or become

involved in conflicts (Singer, 2003). As the lack of oversight and control continues to emerge in the media and public resources become strapped to investigating these inappropriate contracts, it is becoming clear that there are some services best left to the government.

### **Concluding Discussion**

The use of military contractors in Iraq and Afghanistan marks a new phase of privatization in the United States. This is the first time that contractors have played a large role in the theatre of war. The use of contractors is often justified because of the large security threats facing government agencies and private companies working in Iraq, recruitment challenges facing the all-volunteer military, and the pursuit of a lean military force. The use of private contractors is also an alternative policy tool enabling executive discretion. Throughout history the executive has used covert action to pursue executive policies around the world such as C.I.A. actions in Columbia, Nicaragua, and Iran. Today, the executive is acting in the open but using private companies to shield actions from congressional and public oversight and accountability.

It is possible that the use of private contractors to advance executive action is the result of a new era of constraint on the executive. In detailed case studies of four major foreign military interventions since Vietnam, Sobel (2001) finds that administrative efforts are frequently “constrained” by the public’s unwillingness to support broader objectives or activities. Roberts (2006, 2008) has argued that the American political system and the executive in particular is constrained and protected by four general political and cultural norms: (1) a complex network of individuals and groups protecting and advocating individual rights, (2) high levels of corporate influence in government, (3) militarism, and (4) an anti-statist approach to governance. In summary, the U.S. is “democratic, strongly committed to personal liberties, and hostile to “big government” (Roberts 2008:14). Given these assessments of American culture and political culture, it is no wonder that the nation would turn to private companies to operate in the shadow of the government.

The post 9/11 conflicts in Afghanistan and Iraq mark not only the second largest military effort in U.S. history, but the first large scale military action since the movement to downsize the military and the post-Vietnam efforts to limit the powers of the president.

Of course the Bush administration and the Pentagon in particular would move toward a privatized military. First, the administration came into office after transforming the state of Texas into a bastion of the New Public Management. It follows that they would work to transform the federal government along the same ideological lines. The shock of 9/11 and the belief that the war in Iraq would be quick and swift led the administration to believe that they could act without public consent or public (and congressional) oversight in the outsourcing of military action. However, as the prolonged conflict in Iraq begins to draw increased public scrutiny and the conflicts of interest inherent in privatizing violence and force become apparent, Americans increasingly uncomfortable with the outsourcing of national security and the core public good of military action.

*Does the shift to private military firms signify an increase in the philosophy and discourse of economic individualism or a means to technical efficiency?* Public opinion regarding trust in the military indicates that the U.S. has not altered its view of the national military as a public value. However, it is true that the desire for technical efficiency and a leaner and meaner military has created the need for supplemental forces, since the public is not willing to return to conscription or raise taxes to a level high enough to support a military sufficient to ensure security in Iraq. Which raises the question, if people are not willing to pay for military action in Iraq and public support is insufficient to maintain conscription, maybe privatization is not the answer, but rather the answer is a public refusal to engage in pre-emptive attacks, occupation, and nation-building missions. The U.S. public has consistently opposed committing forces to long-term deployment (e.g. Bosnia and Somalia), but today with the assistance of private forces, the executive has made this commitment in Iraq.

*Have public values shifted enough that Americans are willing to have a private military with government management?* The outrage present in media reports of the use of private military firms in Iraq and Afghanistan, public distaste for the large profits obtained by private military contractors, and the ever-growing litigation against private military firms indicates that Americans do not desire a private military and prefer a national military (given approval and trust ratings for the military). Yet, it remains possible that the U.S. is entering a new era for relationships between the military and the nation state. Huntington (1957) discusses long-term shifts in the use and purposes of

militaries, from feudal defense systems, to mercenaries protecting trading companies, to the emergence of the modern national army. If we are facing a shift in the role and purpose of militaries, from one of nation based militaries to one of private markets for security and defense, democracy and American public values require a more transparent process by which the public may voice its approval or dissent for such changes. Maybe private markets are more efficient for ensuring public safety and defense, but as it currently stands, the lack of transparency and the high level of ideology associated with these shifts leave little reassurance that this is indeed a shift in public values and not a malicious attempt among the few to profit from the use of violence against the less empowered.

Many of the academic critiques of the use of private military firms (Singer, 2003) and government reports (Waxman 2007; GAO 2005) conclude with a call for better contract management and government oversight. This would be a laudable solution if the core problem in military outsourcing were a problem of contract violation. As demonstrated by this paper, the primary problem is public values failure.<sup>9</sup> If the U.S. must outsource elements of military work, that outsourcing should be left to the military experts and commanders and elected representatives entrusted by the public to execute and manage force. However, it is unlikely that military leadership is interested in widespread outsourcing of force and violence (Dudley 2005; Werve 2004; Grant 1998). For example, Assistant Secretary of the Army, Patrick Henry, notes that contracting out of intelligence work and services in combat zones is a risk to national security and poses threats to maintaining civilian oversight (Werve, 2004).

If the U.S. military does not want to contract out specific tasks, than it should be given the ability to put larger resources into recruiting and retaining a well-trained, talented force of career professionals. Perhaps it is time for us to ask for input from soldiers and generals to gain a better understanding of the costs and benefits associated with the use of private security companies. This option may be preferable to the American public since according to a New York Times / CBS News poll in September 2007 Americans overwhelmingly trust the military commanders to resolve the war (68%)

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<sup>9</sup> One could easily argue that the twin problems are contract failure and public values failure. Since this paper is concerned with Public Values Failure, I refrain from addressing this second problem.

compared to their trust in Congress (21%) or the president (5%) to resolve the war (Myers and Thee, 2007).

Ultimately, like the rules of engagement for war, the treatment of prisoners of war, and banning of mercenaries, this case requires international action to manage or regulate the market for private militaries because the market for private militaries can shift across national borders. Just as the UN has rules of war and regulations against the use of mercenaries, there are worldwide public values about the role of the state in providing domestic security. There are simply too many threats and conflicts of interest and too little oversight, regulation, and accountability when security and violence are commodities in the free market.

Given the public values failures discussed in this paper, it follows that privatization of national security is not in the interest of nation states, their citizens, nor the parties with which they are in conflict. In fact, when the wealthiest nations in the world (e.g. U.S., U.K. Australia) engage in privatized violence it sets a dangerous precedent for less stable nations. With the ever-growing threat of violence from stateless actors, we face even greater threats of a growing market for violence as private military firms advance their private interests around the world. The only viable, worldwide solution to the emerging market for private security and the wholesale marketing of violence is an international solution banning the use of private military forces similar to the rules for mercenary fighters.<sup>10</sup> Since the world has determined that hiring mercenary fighters is illegal, it follows that the same should be true for private military firms engaging in the theater of war.

Understandably, there may be cases when nation states wish to engage private firms through contracts, such as supplying goods. Of course, governments and militaries have the right to hire contractors for various services. However, these private firms should not be allowed to engage in fighting or battle. Furthermore, contractors should not be free from military oversight and regulations nor international law. Instead, if the contract requires civilians to enter the theater, they should be given security by a national military. For example, in the case of private military firms working on behalf of

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<sup>10</sup> Here again it is important to distinguish between private security for a facility compared to armed individuals acting on behalf of a military or agency on the battlefield.

government agencies such as the State Department or the Pentagon these contractors should follow the same rules and regulations as government employees and military service members. Just as we have international rules and regulations that prevent the use of mercenaries, limit the ability of national militaries to act inside the borders of sovereign nations, rules of engagement for military agents who serve abroad, and enforceable rules set to manage violence and ensure human dignity, we need rules and regulations for the use of private contractors in the theater of war. Contractors and other agents acting on behalf of a principal, must be held accountable to the same standards as the principal, or we run the risk of simply contacting out illegal and unethical behavior.

In particular to the case of U.S. military outsourcing, when contracting does occur contracts with private firms must remain the property of the U.S. government and subject to oversight from the congress and other government bodies that are charged with funding and overseeing military activities. Of course, many contracts will be classified and they certainly will not be widely available for public scrutiny, but certainly the principal writing the contracts should be able to access any and all information from the agent when needed. When a private firm declares that their contracts or accounting records are proprietary and not open for government oversight, that firm should no longer be allowed to contract with the U.S. government. The public good of national defense cannot be contracted out for the sole reason of efficiency or expediency if it also means that the public and its representatives lose the power to investigate and oversee. The threats of information asymmetry and shirking are simply too large, in addition to the threats to accountability, legitimacy, and the people's right to national security.

The public values failures outlined in this complex case of military outsourcing overwhelmingly indicate that the military mission and core responsibilities are best suited to remain in the public sector. National, foreign, and domestic security is a public good. It is best managed by the nation state, which is equipped to oversee and manage the behemoth military organism and the potential hazards associated with the power of violence.

Although the arguments against the privatization of military services lean toward economic justifications for limiting outsourcing (Stiglitz 2008) there remain important public value arguments in this debate. Military reports, government oversight documents,

and economic analyses continue to advance the public value of a national military. For example, Congressman Henry Waxman (CA-Democrat), chairman of the House Committee on Oversight and Government Reform, notes that contracting is inefficient stating that “It’s costing us more money . . . and I believe it’s causing us problems” (Editorial 2007). Huntington (1957:178) reminds us of George Mason’s statement that “The purse and the sword ought never to get into the same hands [whether legislative or executive]” (in Huntington, 1957, 178). And Stiglitz (2008) uses economic justifications as the basis for his assertion that “[W]e should be wary of privatizing the military to the extent that we have; it has been expensive, in so many ways. There are some things that should be privatized, but there are some things which should not: this is one area where economic theory and historical experience suggests that we should not” (7). This paper, with the use of Bozeman’s (2002) Public Values Failure criteria concludes that regardless of economic theory or the costs associated with military provide contracts, there are some public goods, such as national security and defense, which by their very nature should not be outsourced. Period.

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