

Chapter Six

The Ethics of Defense and Private Security Contracting

Q: What is “defense and security contracting”?

This simple phrase refers to an enormous diversity of private commercial enterprises that support military operations. They can be either combat-related or not. Typically, national defense departments have hired private firms to do work in three broad areas: (1) weapons and engineering; (2) logistical support and the operation of facilities; and (3) armed protection for specific individuals or events, also known as security contracting.

For area (1), think of the companies whose names are commonly associated with defense contracting: Lockheed-Martin, Northrup Grumman, BAE Systems, Thales, Airbus Defense & Space Industries, General Dynamics, Raytheon, and a host of other firms. These companies (and there are many more) specialize in weapons, military transportation equipment, and systems engineering. You could find the wide range of products of such companies displayed in *Jane's Defence Weekly* and its companion publications on military hardware. These companies have been contracted by the military to help conceive, design, manufacture, test, and ultimately deploy advanced aircraft (like the F-22, the F-35 “Defense Strike Fighter,” the “Typhoon,” or the MV-22 “Osprey” personnel transport vehicle) and weapons systems (like Tomahawk Cruise and Hellfire missiles, or the Patriot anti-missile defense system). They also contract to build tanks, armored vehicles, helicopters, littoral combat ships, and a variety of conventional and nuclear-powered submarines and aircraft carriers.

Other large multinational corporations provide (2), “logistical support” (such as food services at temporary posts) and facilities (such as refueling stations) for land and maritime military forces deployed throughout the world. Companies like Halliburton and KBR (“Kellogg, Root & Brown”) maintain enormous naval seaports, with ship supply and refueling stations, but they are also contracted to build and maintain air fields and army posts. Such companies are commonly used for a wide variety of civil engineering projects and logistical services ranging from barracks, showers and latrines to food services and dining facilities. Many of these kinds of projects, institutions, or services were once handled directly by military services and personnel directly, a topic to which we will turn in a moment.

Finally, there is a third type of military contracting, known as armed security contracting. Private companies – “Blackwater Worldwide, Inc.” was for a time the most well-known example -- provide armed security guards for logistical supply convoys transporting food, fuel, and other essential supplies to military forces who are “forward-deployed” to outposts in disputed territories or zones of active combat. Private security contractors like DynCorp and Triple Canopy provide police services for military posts, and provide training for local police and military personnel who will serve in routine domestic and international security operations for their own country upon conclusion of an ongoing armed conflict. Often such services involve activities normally expected of military personnel themselves, and indeed, have been thought

more properly to constitute the primary responsibilities of uniformed national militaries, rather than of employees in the “private sector.”

Defense and security contracting bring with them a host of ethical issues. Engineers working for private defense firms that have designed and built a new weapons system for the military may find themselves deployed by their company to the front lines of combat, in order to assist military personnel at war in learning to use, maintain, and sometimes even re-engineer the new system to adapt to local needs. In those support roles, whether aware of this or not, they become, for legal purposes, hostile combatants rather than immune civilian personnel. Private security guards for a logistical convoy may be attacked by insurgents and quickly find themselves pinned down and embroiled in a firefight that looks for all the world exactly like a conventional military altercation with the enemy.

Another kind of ethical question arises because most private-sector security employees were formerly uniformed, active-duty military personnel. This means they gained their own experience, training and expertise while serving in their country’s military service, and then either “retired” or separated from that service in order to assume similar duties with private firms at much higher rates of compensation.

Yet another ethical controversy erupted recently when the U.S. Army, urgently in need of greater cultural knowledge and expertise in the midst of complex military counterinsurgency operations in Iraq and Afghanistan, proposed to hire civilian academic experts in these subjects, give them some military training at Ft. Leavenworth, and deploy them to advise and assist Brigade Combat and Reconstruction Teams fighting in those two theaters of war as part of a controversial program known as the “Human Terrain System.”¹ Interestingly, the *American* academics were actually recruited, trained, and then were initially deployed and paid as private security contractors in the employ of a *British*-based defense contractor, BAE Systems, Inc.

In general, the wide range of contracted support enterprises presents military personnel and public policy officials with a never-ending sequence of moral quandaries. There can be serious conflicts of interest between personal and corporate gain on one hand, and the interests of the public and the welfare of its fighting forces on the other. The garden variety temptations to graft and corruption are magnified by the sheer complexity of many of these contracting arrangements, as well as by the vast sums of money involved. Navigating the maze of moral dilemmas and tests of character can pose tremendous moral challenge for individuals caught up in this process, as well as for corporations, government agencies, and branches of military service.

Q: Is there a difference between defense contracting and “private military contracting?”

¹ See G. R. Lucas, *Anthropologists in Arms: the Ethics of Military Anthropology* (Lanham, MD: AltaMira Press 2009).

The differences are not well-defined and are seldom carefully discussed.² Traditionally, “defense contracting” referred to large domestic corporations or state-owned enterprises that engaged in systems engineering and weapons development. These enterprises date back to the period of Galileo (who initially designed and manufactured his telescopes primarily for the use of the Venetian Navy in its ongoing sea conflicts with the Turkish Navy, rather than for the purpose of scientific astronomy *per se*), and even further, to the skilled shipwrights and shipyards operated by kings and governments, at least as far back in history as the manufacture of the magnificent triremes in ancient Athens.

It was the enormous growth in the size, cost, and political influence of these corporate interests during the two world wars of the 20th century, however, against which the U.S. President, General Dwight D. Eisenhower (formerly the Supreme Commander of Allied Forces in Europe during WW II), warned the American public in his “farewell address” upon leaving public office in January, 1961.

The political dynamics that had come to alarm Eisenhower were these. Large industrial firms donate substantial sums to political candidates in democratic elections; the jobs provided and the wealth generated in local districts constitute powerful incentives for those political figures, in turn, to prioritize the interests of their constituents in the award of lucrative contracts, often ahead of the genuine needs of military services for equipment. This can make it difficult for the nation to provide adequately and wisely for defense, especially since this puts defense in competition with other urgent national needs like roads and schools.

Not infrequently, in addition, senior military officers involved in the acquisitions of military weapons systems have, upon retiring from active duty, gone to work in these firms. In the private sector, the value of their engineering expertise in designing and operating these systems is matched only by the power of their influence within the military itself (an inevitable effect of having a network of friends and associates still on active duty). It was this behemoth, and its outsized political and economic power, that Eisenhower first labeled the “military-industrial complex.” The private corporations subsumed within this complex are what are customarily meant today by “defense industries.”³

The term “private military contracting” is more conventionally applied to (3), the remaining phenomena described above. These are distinct from large weapons and military systems procurement. “PMC’s” are generally companies that provide more immediate logistical

² A glance at the extant literature shows that, apart from commentaries on General (President) Eisenhower’s phrase, “military-industrial complex,” there are no formal histories of the origins and growth of defense contracting. Most mentions of this phrase are instead faintly polemical, as referring to an incipient evil or malevolent force, rather than objective studies of the historical rise of these firms. Most of the academic and historical attention has gone instead to the relatively recent phenomenon of private military contracting. But see: <http://www.militaryindustrialcomplex.com/what-is-the-military-industrial-complex.asp> for an account of the former.

³ An excellent if sobering account of the myriad moral dilemmas and serious tests of character that arise in defense weapons systems and procurement in such firms can be found in the analysis of this complex labyrinth by one of the U.S.A.’s most senior and experienced defense industry military liaisons, Major General Robert Latiff, U.S. Air Force (retired): “Ethical Issues in Defense Systems Acquisitions,” *Routledge Handbook of Military Ethics*, ed. George Lucas (Oxford: Routledge, 2015): 209-219

and security needs in support of deployed military forces in the midst of an armed conflict. While one can argue that nations and militaries have availed themselves of this kind of private service from the time of Miles Standish and John Smith (both of whom were armed private security contractors),⁴ the enormous growth in this kind of contracting, leading to the conundrums described above, began to occur only during and after the so-called “first Gulf War” of 1991, involving the effort by a U.S.-led United Nations coalition force to repel an invasion of the nation of Kuwait by Iraq, then under the leadership of Saddam Hussein.

Needs for logistical support expand abruptly in wartime. This can present tremendous business opportunities in the private sector. In the early 1990s, companies that had previously specialized in large, non-military logistical tasks and construction projects (like KBR and Halliburton) as well as established defense contractors (like British Aerospace and General Dynamics) amended their conventional business models from the exclusive pursuit of large, expensive government contracts to bidding on a range of smaller but more reliable and ongoing ventures. The web pages of large defense contractors now offer links to the new range of services on which they may be counted upon to provide.

These opportunities also led to the founding of brand new private corporate firms specifically addressed to these needs, who also began competing for newly-available federal work. The best known of these are the new security firms, with names like the aforementioned Blackwater (since re-organized under different names), Triple Canopy, Aegis, and Dyncorp International. One of the first of these private security contractors was a South African firm with the innocuous name, “Executive Solutions,” staffed by former South African defense force personnel from the apartheid era. It was employed in the early 1990s by the nation of Liberia to assist with national security and the protection of vital oil fields during an onset of civil war in the early 1990s. Attention was first drawn to the exponential growth of such firms, and to the numerous moral and legal anomalies to which they led, by Brookings Institution senior fellow, Peter W. Singer, in his book, *Corporate Warriors* (2002).

Q: Why does any military service need defense contractors? Can't military personnel themselves already do all the things that they are now hiring contractors to undertake?

Contractors present an interesting solution to a very difficult problem. Without doubt, military personnel can do, and in the past, have done the things that we now pay contractors to do. But there are some good reasons why we would not want them to continue doing so. The main reasons are cost and efficiency. In some cases, however, there is an unexpectedly urgent,

⁴ See Sarah Percy, *Mercenaries* (2007). I do not include some of the most famous of the Spanish “conquistadors” two centuries earlier only because a majority if not all of these famous military explorers were technically on “active duty” directly in the service of the King, as opposed to “retired” from active duty and/or private employed, as were both Smith and Standish.

but temporary, need for the acquisition of specialized subject-matter expertise that military personnel don't have and cannot quickly acquire otherwise.

In the past, soldiers (especially newly-enlisted) might be assigned to perform menial tasks like "K.P. duty," peeling potatoes, washing dishes, and mopping the floors in the mess hall. Or, as punishment for minor infractions, soldiers might be assigned to "police up" (i.e., clean and straighten up) barracks, bathroom latrines, or the parade or training grounds. Between these tasks and routine military drills, a conscript might complete his or her two years of military service without ever serving in an armed conflict. Thereafter, the conscript or recruit, upon completing their term of military service, would be entitled to a fairly generous list of veteran's benefits, including university tuition assistance and perhaps health care at military hospitals. Re-enlistment, even with the same list of menial duties, might qualify them to receive additional benefits, including a pension at retirement if they had served a sufficient number of years. And in the meantime, if they were duly enlisted for a specified term of service and had performed satisfactorily, they were entitled to keep their positions even if (during a peacetime "drawdown" of troop strength) there was little in the way of specialized military work for them to do.

This is an expensive and extremely inflexible pattern of manpower use, with some additional disadvantages attendant upon trying to perform all manner of tasks using the military personnel one has at hand. The results can be comical. Readers of American print media, and film and television fans from many other countries, might recall cartoonist Mort Walker's comic strip, "Beetle Bailey" (c. 1950-present), or films and television shows about military service like "Sergeant Bilko." These comic portrayals of comic military characters actually reveal the underlying structural problems with these earlier customs.

As his name suggests, for example, "Bilko," a fictional U.S. Army sergeant in charge of an Army post motor pool, was a cigar-smoking, card-playing, whiskey-drinking rascal with a slightly seedy moral reputation. He was an unreliable, lazy, and invariably engaged in schemes, scams, and financial cons, avoiding work at all costs, running an inefficient transportation system, and occasionally stealing spare tires, fuel, or mechanical parts to sell on the black market. Meanwhile, Beetle and his friends "Zero," "Killer," and the slightly pudgy and bespectacled "Plato" would be assigned to K.P. with "Cookie," the burly, unshaven mess-hall cook, preparing meals of somewhat questionable gustatory provenance for the remaining hapless camp members, or else assigned by "Sarge" to perform some of the other menial chores (like latrine duty) described above.

While entertaining and perhaps reminiscent of the lighter side of the *esprit de corps* among military personnel from a bygone era, we now question the efficacy of this arrangement. To be blunt, we cannot afford Sergeant Bilko in the motor pool: we need more technically proficient and reliable mechanical service and transportation for our modern militaries than he and his cronies could ever provide. And Beetle, Zero and Sarge should be out fighting the Taliban, not clowning around on some backwater state-side Army post with worn-out, befuddled and incompetent old "General Halftrack." Finally, when discussing the pros and cons of private military contracting with a wide range of military personnel newly returned from deployment, I

often ask them in the same spirit if we *really* want “Cookie” back in the mess hall brewing up creamed dried beef on toast. The universal and unequivocal answer is “No!”

Today’s logistical contractors do a vastly better job of supplying and caring for combat troops than did the real counterparts of these comic characters. The food is much better, for one thing, and if an “Army travels on its stomach,” as the old saying goes, today’s Army can travel a lot further, for a lot longer, than could past Army personnel dependent upon their own soldiers to undertake these tasks. Most importantly, reliance on logistical contracting frees up additional military personnel to engage in their primary professional activity: training, preparing for, and fighting in their nation’s wars.

Advocates of the private contracting system claim that this entire arrangement is both more efficient and less costly (“faster, better, cheaper” is their motto) than the system of internal military self-reliance which it replaces. It reduces the number of active-duty personnel needed to maintain combat-readiness, for one thing. Amortized over what would have been the entire range of Bilko’s, Sarge’s and “Beetle’s” anticipated active-duty careers and subsequent retirement, this can amount to considerable savings. Private firms claim to be more flexible, and more able to respond quickly to changing circumstances, than the personnel in military organizations. Mobilizing personnel from peace-time to full combat readiness for war can take a national military several months, even years, while a private firm can hire (or fire) personnel quickly, and deploy them where needed with startling rapidity.

Some of that flexibility stems from the ability of private firms to staff combat-theater operations with members of the local population, who are often desperately in need of work to survive the vagaries of a war-torn economy. This has the added advantage of giving the local economy a much-needed lift. Contractor personnel can also include “TCNs”: “third-country nationals” from relatively poor economies (e.g., the Philippines), from which workers with specifically-needed skills who are eager for these lucrative jobs can quickly be recruited.

And finally, when the war is over, this entire process can be quickly reversed. Unlike post-war demobilization (which likewise takes national militaries months or years to achieve) the private firms can offer a final paycheck with severance pay, then de-camp, and ship everyone and everything home. This can be done at a fraction of the military’s cost, and with no residual, long-term employment or financial obligations due its private employees.

Q: If this all works so well, what is the problem with increasing reliance on military contracting?

Contracting and outsourcing components of the wartime workload presents formidable administrative challenges, as well as ethical problems of transparency, accountability, oversight, and adequate control. Contractors themselves are “anomalous” personnel in the battle space, largely ungoverned (and largely unprotected) by either domestic or international law. This is problematic for all forms of contracting, but especially, as we shall see, for *armed private security contractors*.

From a strictly moral standpoint, we might immediately flag the issue of fair and equitable treatment of contract employees themselves. The final sentences from the preceding answer, in particular, ought to raise moral concerns. For example, even if well-paid while working under hazardous combat conditions, are the locals and TCNs being exploited as an expendable and inexpensive source of “sweat shop” labor? They receive no benefits, like health care or insurance, so what happens to them or to their families if they are gravely injured or killed on the job? Here, we might be faced with the same ethical concerns that plague outsourcing and reliance on inexpensive labor sources in other industries, like textiles and manufacturing. Are the cost savings realized through exploitative labor practices -- carried out among desperate and vulnerable populations, for whom any bargain, no matter how unsatisfactory or unfair, is likely better than none -- *morally justifiable* from the standpoint of justice, fairness, and basic human rights?

Secondly, logistical contracting presents some ethical challenges in common with defense contracting “back home.” Just as with the procurement of new weapons systems, logistical contracting requires the military to first identify tasks, systems, supplies and services that are required, then “put these contracts out for bid.” This publicizes the opportunity for competitive bidding among rival firms, before a contract for logistical services is awarded to any one of them. Keeping this whole process fair and equitable is as fraught with difficulty as any other mode of acquisitions or procurement. Military personnel have to be devoted to awarding, and then managing the contractors. Subsequent oversight and accountability for contract performance also falls upon the military.

Especially in midst of an armed conflict, it can be hard for even the most diligent military personnel to control the contracting process. The confusion, chaos, and enormous sums of money involved mean proliferating opportunities for fraud and corruption. Opportunities abound as well for innocent mistakes that lead to serious problems. At one point, midway through the controversial war in Iraq, there were some 1800 private contracts awarded in one critical sector alone, overseen by a total of two military personnel who had been pressed into emergency service without prior training or experience as acquisitions and program management specialists.⁵ This under-manning raises serious questions about whether such contracts could possibly be fairly bid out, or adequately monitored for proper performance.

Finally, readers should note that I have limited my description of the procedural and ethical challenges, and putative benefits that might accrue from private contracting, to those stemming from increased “outsourcing” of *logistical* tasks by the military. We have not yet discussed private military or *armed security contracting* in detail. APSC’s, as they are sometimes called, present a special range of moral and legal conundrums. We take these up at the conclusion of this chapter.

But first we should take note of some numbers. During the 2003-2010 Iraq war, at the height of personnel deployment in that region, there were roughly 160,000 military personnel,

⁵ See the account in Jeffrey D. McCausland, *Developing Strategic Leaders for the 21st Century* (Carlisle, PA: Strategic Studies Institute Press, 2008): http://www.au.af.mil/au/awc/awcgate/ssi/devel_strat_ldrs.pdf.

outnumbered by more than 210,000 private contractors. Almost all of these contractors were on the logistical side; only about 10,000-12,000 (around five percent) of these personnel were armed private security contractors, performing “inherently military” and security duties. Notably, that five percent minority accounts for a disproportionate majority of moral and legal dilemmas encountered in private contracting.

So there were more private contractors than military personnel. One might wonder, as did the newly incoming Secretary of Defense, Dr. Robert Gates, in 2006: “who are all these people, and how did things get to this point?”⁶ The answer is that this outsized reliance on private military contracting was driven by mainly by fiscal expediency in the moment, rather than by any preconceived strategic plan. For reasons of cost, efficiency, and real-time response and flexibility, it proved easiest to outsource certain specific needs encountered while ramping up the fighting force to engage in the Iraq war. Outsourcing produced contractors with employment opportunities. As a result of these opportunities, the combat theater and “staging areas” were overwhelmed by eager personnel looking for jobs and profit. One disgusted former Navy SEAL and military journalist described Kuwait City, a staging area for entry into Iraq, as having quickly come to resemble the famous “Bar Scene” from the movie, “Star Wars,” with all sorts of odd and fearsome characters sporting firearms, tattoos and earrings wandering around looking for employment.⁷

As noted earlier, this becomes a perilous ethical proving ground. Against the chaotic backdrop of the “Bar Scene” in Kuwait, real personnel have to try to negotiate and solve pressing logistical and security problems on a rapid, “real-time” basis. Imagine the opportunities for cronyism, favoritism, bribery, graft, corruption, greed, and straightforward waste, fraud, incompetence, or abuse of public resources! Allegations swirled during this period (and have ever since) in both the Iraq and Afghan war theaters, suggesting that massive amounts of public funds were diverted, misappropriated, misspent, wasted, or simply embezzled. By most reckoning, there has never been adequate oversight or full accountability for these funds. As a general rule of thumb, the entire situation of private contracting (logistical as well as security) raises questions concerning adequate strategic planning and tactical oversight.

Q: Aren’t armed private security contractors simply “mercenaries?”

To their collective consternation, this is often what armed security contractors are labeled. This is problematic, not the least because serving as a “mercenary” is technically illegal under international law. According to the United Nations General Assembly Resolution 44/34 (4 December 1989; as revised and ratified on 20 October 2001), technically known as the *International Convention against the Recruitment, Use, Financing and Training of*

⁶ Anecdotal at the time; recorded subsequently in his memoirs: Robert M. Gates, *Duty: Memoirs of a Secretary at War* (New York: Alfred A. Knopf, 2014).

⁷ Dick Couch, *The Sheriff of Ramadi* (Annapolis, MD: Naval Institute Press, 2008).

Mercenaries,⁸ members and signatory States “are not to recruit, use, finance or train mercenaries,” who in turn are defined (originally in Article 47 of Protocol Additions to the Geneva Conventions of 12 August 1949) as persons hired to provide security or to engage in warfare who are not citizens of the state at war, nor under the control of, nor sent in an official capacity as representative of another state, but are privately engaged in conflict strictly for personal financial gain.

Do armed private security contractors qualify as “mercenaries” under these definitions? That is a complicated matter, but the answer is “probably not,” despite the general public’s tendency to label them, and to regard them, as such.

Some firms will argue, for example, that their employees are not engaged in “acts of war” on behalf of another nation in which they are not citizens, but are usually working (albeit indirectly) for their own governments. They are engaged in recognized inter-state conflict, and are often providing security for personnel (like State Department or Foreign Office employees), or else guarding unarmed convoys of vital supplies transiting insecure areas. Other PMC firms will claim that their employees are engaged in peace-keeping, law enforcement, and simple training of local citizens for assuming security responsibilities themselves. And in all cases, whatever the motive of individuals joining the company, the company itself is engaged in supplying armed force for specific contracted purposes, under the auspices (and with at least the tacit approval) of both the host government and the company’s domestic home government. As such, these companies are fully subject to the laws and regulations of their home government.

Arguments about status, oversight, and legal jurisdiction go to the heart of the moral concerns about “mercenaries” and “soldiers of fortune” and the attempts to outlaw them. There is fundamental moral conflict of interest in serving as a mercenary. Wars, and the killing and destruction that they cause, are thought to be morally wrong, and so should be avoided insofar as possible. But the mercenary makes his or her living by fighting, and so, simply from interests of livelihood, must be committed at some level to desiring, rather than abhorring war. In sum, the mercenary does not seem to fit Augustine’s portrait of the morally-justified combatant who engages in war reluctantly, or with regret.

The reputedly ruthless, “realist” Italian political philosopher, Niccolò Machiavelli, complained vociferously about this underlying conflict of interest, and vigorously protested the widespread reliance of Italian city-states on mercenaries during his lifetime. Motivated by financial gain, he grumbled, mercenaries serve the best paymaster, rather than any discernable political purpose. They are prone to quit, to run from the conflict, or even to “switch sides” if the financial incentives change, or if the conflict itself becomes too risky in light of their compensation. Accordingly, Machiavelli argued, mercenaries are unprincipled and wholly unreliable. They interfere with, rather than advance, the goal of wielding political power and control with ruthless efficiency. Instead, they tend to promote chaos and political instability through the misalignment of their personal motives with the overarching political goals of state

⁸ <http://legal.un.org/avl/ha/icruftm/icruftm.html>.

leaders. Although Machiavelli is portrayed as eschewing ethics in politics, one is hard-pressed to find a more telling moral critique of the practice of using mercenaries than his.

The question remains, does any of this fairly characterize the behavior of today's modern armed private security contractor or firm? Once again, most individuals and corporate representatives insist the answer is "no!" Their employees are highly trained professionals, often, indeed almost exclusively, recruited from the ranks of (former) active duty members of the military profession. Their professional values carry over into private practice in just the manner in which we would expect the professional values of public health officials to carry over with them when they subsequently engage in private health care practice. Habits and ideals of the profession of arms are not so easily laid aside – assuming they were present initially and properly inculcated.

But this confident assertion of professional continuity and reliability truly begs the question of whether professional values, grounded in public service and sacrifice, *can* carry over so easily into a corporate, for-profit environment. And we should also be a bit uneasy about *what values* are, in fact, inculcated to carry over into that environment. This book is testimony to the fact that professional ethics in a military context remains vexed, contested, and not well-understood by the public. If we take the problem of uncertainty and disagreement over professional ethics and military virtues out of its public context, and place it instead in the "private sector," we generate even more difficulties. For example, is it professional proficiency, or core military virtues like courage, that one requires in the private sector? Can these Clausewitzian military virtues survive intact in a corporate environment?

And what becomes of what Vice Admiral James Stockdale once described as the core military virtues of service, obedience, and sacrifice? In a famous essay written shortly after the conclusion of the Vietnam War, Stockdale argued that the virtues of military practice simply do not accord well with those of business and commerce.⁹ They are different, and fundamentally incompatible. Stockdale's devastating critique of the corporate-management philosophy of the Robert McNamara era might apply equally well to that of subsequent armed private military contracting.

Finally, the questions of the contextual compatibility and transference of "professional military virtues" into the private sector may be unrelated to the personal motivations of a great many individuals who go into this field. The designation of "mercenary" suggests their motives are all about wealth and financial gain. What we know about actual PMCs, however, belies this tidy, psychological reduction. Pulitzer-prize winning journalist, Steven Fainaru, carefully followed the lives and deaths of four young former military enlisted personnel who subsequently joined a poorly-organized and inadequately-resourced private security firm in Iraq.¹⁰ Very soon thereafter, all four were kidnapped and finally executed by al- Qaeda insurgents. Their remains

⁹ "Military Ethics is not at Home with Business Values," in *A Vietnam Experience: Ten Years of Reflection* (Stanford: Hoover Institution Press, 1984): 110-112.

¹⁰ Fainaru, *Big Boy Rules* (2008).

were returned to their grieving families without the military honors that normally accompany active military personnel killed in action. In essence, their prior military service, and their very lives (their families felt) were simply swept aside and forgotten.

And for what? Fainaru's interviews with the families and his acquaintance with the victims persuaded him that they were animated not so much the prospect of financial gain, as by psychological damage and moral injury sustained during active duty combat. Service in the Iraq war had transformed all four into "adrenaline junkies," unable to re-adjust after deployment to the normalcy of civilian life. They proved to be vulnerable to the seduction of employers who offered combat-area jobs (as well as being tempted by the good pay).

If it is the case (as old automobile bumper stickers from the Vietnam era used to warn) that "war is not good for children and other living things," it is likewise not good for combatants. Former Naval Academy colleagues and philosophers, Shannon French and Nancy Sherman, write movingly about the impact of these recent wars on returning "wounded warriors." French focuses upon the historical and cultural rituals of "cleansing" and re-integration of warriors into their respective societies following the experience of combat, while Sherman movingly analyzes numerous contemporary instances of the impact of incomplete or inadequate re-integration for those trying to attempt it.¹¹

Both sets of discussions bear poignantly on the problem that Fainaru's profoundly troubling book highlights. It is not only the increasingly-recognized problem of post-traumatic stress (PTSD) and "warrior's heart," but the addictive excitement and heightened sensitivity that participation in combat produces that damage the normal coping capacities of human beings exposed to it.¹² The very existence of armed private security corporations provides, not simply alternative employment for returning veterans, but the temptation through the prospect of lucrative financial gain for some to re-engage in the most addictive and harmful (and dangerous) elements of their former profession. It would be more salutary for them instead to begin the difficult task of moving beyond their wartime experiences toward successful re-integration into civilian society following their military service.

Q: What is the principal ethical difficulty with employing private military security contractors?

¹¹ Shannon E. French, *Code of the Warrior* (Lanham MD: Rowman & Littlefield, 2004); Nancy Sherman, *Stoic Warriors* (Cambridge: Cambridge University Press, 2005). Sherman, who turned to these topics in earnest after serving two years as a guest professor at the U.S. Naval Academy in 1997-99, has since written two additional books on these tragic and complex issues: *The Untold War* (New York: Norton & Norton, 2011) and *Afterwar: Healing the Moral Wounds of our Soldiers* (New York: Oxford University Press, 2015).

¹² John Glenn Gray likewise described this strange affection for the heightened sensibilities of combat involvement in his study of returning WW II warriors in his famous book, *The Warriors* (Harper & Row, 1954). Jonathan Shay touches on this phenomenon in passing in his analysis of PTSD in his likewise-famed work, *Achilles in Vietnam*.

Apart from the subtle psychological effects alluded to above, perhaps the clearest example of the moral and legal problems that can be occasioned through private security contracting is the so-called “Nisour Square Massacre” of September 2007. There are many accounts of the details and circumstances,¹³ but a useful summary of the event that emphasizes its morally salient features is a case study, “War is Big Business,” written shortly after the event by military students, some of whom had witnessed the event, as a class project in military ethics at the Naval Postgraduate School.¹⁴ In brief compass: armed guards employed by the firm Blackwater Worldwide, Inc., while providing transportation security for U.S. State Department personnel on official duty, opened fire on Iraqi citizens in Baghdad’s Nisour Square, for reasons that are still contested. Fourteen Iraqi civilians were killed, and several others wounded in the gunfire. All the local citizens who witnessed the tragedy claimed that only the Blackwater guards were armed, and that no imminent threat was in evidence (a matter that the guards themselves disputed).

As employees of an American-based firm legitimately employed for security purposes by a U.S. government agency, the existing “Status of Forces” (SOF) agreement exempted the guards from prosecution under local domestic law. As civilians, however, they were not (at that time) subject to the provisions of the Uniform Code of Military Justice (under the UCMJ, military service personnel involved in such an incident would have been court-martialed, imprisoned, and tried by a military court). Four years after the incident, following several unsuccessful attempts to prosecute the case on the basis of investigation by U.S. and Iraqi authorities, five of the Blackwater security guards were finally charged by a U.S. grand jury with voluntary manslaughter and reckless discharge of a firearm. They were subsequently tried in a Utah court under the terms of what is known as the Military Extraterritorial Jurisdiction Act (MEJA). All were eventually acquitted on the grounds of insufficient evidence. Further legal actions stemming from this case remain ongoing at the time of this writing.

The case perfectly illustrated what, at the time, were the legal perplexities of private military security contracting. Companies and their employees fell neatly between the seams of overlapping legal regimes, accountable to no one for their actions. The international law of armed conflict had no jurisdiction over non-combatants, who in any case were not engaged in a military conflict. Immune from local law by otherwise routine inter-state agreements, the contractors were finally tried under a very tenuous extension of jurisdiction for MEJA, which was designed to hold civilians accountable in U.S. courts for behavior abroad (such as child molestation) that would constitute an actionable offense under U.S. domestic law. The length of

¹³ E.g., a subsequent Reuter’s News Service account of the event and subsequent trials: <http://www.reuters.com/article/2013/10/17/us-usa-crime-blackwater-idUSBRE99G1A320131017> . See also coverage in *The Washington Post*: http://www.washingtonpost.com/world/national-security/new-charges-brought-against-former-blackwater-guards-in-baghdad-shooting/2013/10/17/9307b562-3759-11e3-8a0e-4e2cf80831fc_story.html.

¹⁴ LT Matt Courtney, LT Sean Maloney, LCDR William Pugh, and LCDR Andrew J. McFarland, USN, and Mr. Joseph Prisella, DOD/USN (Patuxent River Naval Air Station, MD), “War is Big Business” in G.R. Lucas and W.R. Rubel, eds., *Case Studies in Military Ethics*, 3rd ed (New York: Pearson Publishers, 2010).

time and ultimate geographical distances involved in pursuing the case made custody of evidence and securing the testimony of eyewitnesses difficult to ensure, ultimately leading to the acquittal of the guards.

Morally speaking, most eyewitnesses and commentators felt that the behavior of the guards in these circumstances was reckless and negligent, and that they should have been held accountable, and somehow punished for the deaths of the Iraqi civilians. The CEO of Blackwater, Eric Prince (who was himself a former U.S. Navy SEAL), vigorously defended the integrity of his company and the behavior of the guards themselves. The guards, in turn, steadfastly maintained that they had believed themselves to be under attack from insurgents hidden in the crowd.

The case brought to the fore numerous earlier charges that employees of Blackwater routinely behaved with a kind of ruthless arrogance in the Iraqi theater. Blackwater employees were accused of frightening and angering local citizens, who simply viewed them as “Americans” or American soldiers, and did not differentiate their behavior from that of active duty military personnel. The problem highlighted the difficulties of having private security contractors operating in a war zone, harkening back to the abduction and murder of four contractors early in the war, whose bodies, burned and mutilated, were hung from a bridge leading into the hotbed Sunni-insurgent city of Fallujah. That horrifying incident subsequently triggered one of the most violent and bloody battles of the war.

All of these issues of law, jurisdiction and policy regarding private contracting are obviously complex and important. Some, like matters of legal jurisdiction and accountability, have subsequently been addressed. The UCMJ was amended to cover the activities of military security contractors under U.S. employ, and to permit local police to investigate crimes by contractors that occur within their precincts. Blackwater itself was disbanded, and reorganized under other names to provide security training, but would never again (its founder vowed) engage in direct, military-like operations of its own within a zone of combat.

One matter remains outstanding. Mr. Prince rightly claimed, in defense of his company, that they had performed with enormous success and effectiveness in Iraq. Their job was principally to provide security to U.S. State Department personnel. For the duration of their contract, Prince observed, not one single State Department employee had had so much a hair on his or her head disturbed. Judged purely from a business perspective, this security detail was a highly successful operation, when viewed from the standpoint of the satisfied client and “customers.” But the wider political price paid for this success had been the defamation of American service personnel, who were wrongly associated with the contractors’ aggressive and hostile behaviors. This, in turn, led to the further alienation of a terrified local populace. But winning the “hearts and minds” of that population had constituted the principal objective of the Iraq war. In effect, Blackwater’s very corporate success threatened to undermine, and very possibly did succeed in undermining, whatever moral authority and legitimacy remained for the war itself. This aspect of the use of private contractors remains unresolved. In fact, it has scarcely been addressed.

Q: Is there, nonetheless, a legitimate role for armed private security contractors to play in armed conflict?

Well-trained and professional military personnel in the employ of private firms can (and almost certainly will) continue to provide certain services that were once the domain of military police (“M.P.’s”) and Marine guards. Private security contractors may undertake “guard duty,” and conduct routine police patrols, on established and secure military posts and domestic or ally-based military installations. A consensus emerged after the Blackwater incident that armed private contractors ought never to be deployed “outside the wire,” that is, in areas of dispute and active armed conflict. Those areas, by law and by tradition, should be solely the province of professional, active-duty military personnel subject to full accountability under national and international law. This leaves unaddressed the question of how to provide security for logistical supply convoys operating in such areas. That relatively limited task can probably be returned to military control without proving to be an unsustainable burden on manpower requirements. These are among the policy and professional questions remaining to be ironed out.

Humanitarian operations are another arena where private security contractors might play a legitimate role. Foreign affairs expert Max Boot of the U.S. Council on Foreign Relations first suggested that nations -- and the United Nations -- fund and hire private firms to undertake humanitarian military operations. Humanitarian military interventions (to which we will turn specifically in the next chapter) are operations that are designed to protect victims of social unrest, insurgency, or ethnically-inspired, genocidal violence.¹⁵ As members of the United Nations agonized over how best to cope with the civil unrest and ethnic violence in southern and western Sudan in 2006, Boot argued that a small force of Blackwater security guards could have brought matters to a quick and satisfactory resolution, at a fraction of the cost of deploying reluctant national militaries.

While this suggestion was quickly overshadowed (and seemingly discredited) by the Nisour Square incident, there is some anecdotal and conceptual evidence that some variation of this proposal just might work. Conceptually, humanitarian interventions are situations where the “vector” of corporate responsibility to protect the client aligns perfectly with the interests of the population at large, inasmuch as the potential victims of genocide are, in this instance, the “clients” of the private security firm. In the Iraq war scenarios, protecting the client was achieved in utter disregard for the welfare of the general population. In the case of humanitarian intervention, by contrast, the welfare of the general population, and their protection from harm

¹⁵ Max Boot, “Send in the mercenaries: Darfur needs someone to stop the bloodshed, not more empty UN promises!” Council on Foreign Relations, http://www.cfr.org/publication/10798/send_in_the_mercenaries.html; “Accept the Blackwater Mercenaries!” <http://www.cfr.org/security-contractors/accept-blackwater-mercenaries/p14359>; see also James Pattison, “The Principled Case for Employing Private Military and Security Companies in Humanitarian Interventions and Peacekeeping Operations,” (January 29, 2010). Available at SSRN: <http://ssrn.com/abstract=1544463>.

by marauders bent on genocide, would constitute precisely the “corporate mission” for which success would be financially rewarded.¹⁶

It is the plight of nations and peoples like this, wracked by civil war and ethnic strife, to which we now turn. In all other contexts, the perils of outsourcing inherently military operations to private contractors should provoke concern and cautious oversight. If the military is a profession, characterized by the professional military virtues of honor, obedience, courage, public service, and sacrifice (as Vice Admiral Stockdale asserted), then it seems hard to understand how a corporate or business model could replace it. The military, as a profession, is characterized principally by public service. For businesses, the public interest is of principal concern only inasmuch as it affects profit and personal gain, which come first.

There is much of value that is at stake in this newly emergent challenge to ethics and the military profession. One can find similar arguments in cost-cutting proposals for replacing professionals like local police and firefighters with private contractors. These proposals could work, and might even save (or at least appear to save) scarce public funds. Perhaps, in the aftermath of a global financial crisis and dwindling public resources in many nations, this is all we can afford.

But one might reasonably wonder whether such private contractors would do what professional first-responders have done. Would private contractors have unflinchingly pushed themselves up the stairs of the World Trade Center to rescue victims of 9/11? Could we simply pay contractors to perform the heroic feats that life-saving and security-providing professionals accomplish in the spirit of public service? Something important is at danger of being lost if we assume that a personal commitment to selfless public service is merely another commodity for hire. This concluding observation is not intended to settle the question, but precisely the opposite: to raise it as an example of the profound challenges to military and professional ethics which will emerge in the remaining chapters of this book.

Further Reading

Dean-Peter Baker, *Just Warriors, Inc.: The Ethics of Privatized Force* (London: Continuum, 2011).

¹⁶ The anecdotal, historical evidence comes from the performance on such a mission by one of the first distinct private security firms, South-African based “Executive Outcomes.” Composed of former South African security forces disbanded by President Nelson Mandela during the dismantling of apartheid in South Africa itself, the company was subsequently hired by the government of Angola to provide security and stability in the aftermath of a hotly-contested election, whose results an insurgent group, UNITA, refused to accept. The firm quickly re-established law and order, trained the local militia, defeated UNITA, protected the population, and guarded Angola’s civil infrastructure (including its valuable oil fields) from insurgent attacks. In the initial confusion regarding the use of “mercenaries” by the Angolan government, however, these efforts were denounced and the company forced to withdraw. Civil unrest quickly resumed thereafter. Perhaps, in hindsight, this was a moralistic or legalistic rush to judgment, based upon an underlying conceptual confusion and moral uncertainty about the mercenary problem, rather than a wise and prudent policy decision for the people of Angola.

- Steve Fainaru, *Big Boy Rules: America's Mercenaries Fighting in Iraq* (Philadelphia, PA: DeCapo Press, 2008)
- James Pattison, *The Morality of Private War: The Challenge of Private Military and Security Companies* (Oxford: Oxford University Press, 2014)
- Sarah Percy, *Mercenaries: The History of a Norm in International Relations* (Oxford: Oxford University Press, 2007)
- Jeremy Scahill, *Blackwater: the Rise of the World's Most Powerful Mercenary Army* (New York: Nation Books, 2007)
- P. W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca, NY: Cornell UP, 2003; rev. edition 2008)
- Todor Tagarev, editor: *Building Integrity and Reducing Corruption in Defence: A Compendium of Best Practices* (Geneva: NATO/Geneva Center for the Democratic Control of Armed Forces, 2010)