

**The Rise of the 'Intelligence-Industrial Complex':
Outsourcing Intelligence in the post-9/11 World**

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At the end of Dwight D. Eisenhower's presidency, a few days after he lamented the legacy of intelligence failures he would pass on to his successors, he gave his farewell address to the nation and famously warned them of the "military-industrial complex." Little more than half a century later, the surge of secret spending on national security in the aftermath of the attacks on the World Trade Center and the Pentagon on September 11, 2001—hereinafter "9/11"—created a booming "intelligence-industrial complex." The events of 9/11 further² shattered the ideal Westphalian image of a world populated by territorially and legally bounded sovereign states due to the rise of strong non-state actors including armed groups, ranging from recognized rebel and guerrilla movements to transnational criminal and terrorist networks.³ Therefore, a state's engagement in warfare in today's world can at times be asymmetrical if its opponent is a non-state actor, such as the transnational terrorist network of Al Qaeda.

It can be argued that the combination of the abovementioned conditions create a hollowed-out state, meaning that the state's power is undermined given that it has lost its claims to the "monopoly of the legitimate use of physical force within a given territory."⁴ However, this paper demonstrates that the state has not lost its power, rather it has reconceptualised its power by adjusting to the conditions brought about by globalization in the twenty-first century. Philip Bobbitt has argued that the state has historically proved itself to be a remarkably resilient institution, periodically transforming its structure to meet newly emerging social and political environments.⁵ Hereinafter, I will refer to this newly structured and reconceptualised power as the 'contract state.'⁶

²It should be noted that I say 'further' shattered due to the fact that these developments are not unique to the post 9/11 era. However, the events of 9/11 further intensified the asymmetric conflict environment that can be traced back to the early 1990s.

³Kateri Carmola, *Private Security Contractors and New Wars: Risk, Law and Ethics* (New York: Routledge, 2010), 5.

⁴Max Weber, "Politics as Vocation," in *Max Weber: Essays in Sociology*, eds. H.H. Gerth and C.W. Mills (Oxford: Oxford University Press, 1946), 77.

⁵Philip Bobbitt, *The Shield of Achilles: War, Peace, and the Course of History* (New York: Alfred A. Knopf, 2002), 216.

⁶ I use the term 'Contract State' in order to highlight the contractual relationship between the state and the various private military security entities that it outsources its activities to. This term is not yet widely circulated in international relations or international security literature. I am using this term by drawing upon David Harvey's interpretation of the neoliberal state and Philip Bobbitt's 'market-state.'

This paper will focus on one of the most contentious practices of the contract state: the privatization of national security in the post-9/11 world. Over the past decade, Private Military Security Companies (PMSCs) have become major suppliers of tools and brainpower to the Intelligence Community. In accordance with said developments, this paper is primarily interested in documenting how such contracting practices impact the ability of the intelligence community to carry out its operations, and more importantly, what are the broader implications of this on the ability to uphold human rights and democracy? In answering these questions, this paper will argue that the profit-driven interests that underline the outsourcing of intelligence will inevitably at times produce “bad intelligence.”⁷ Furthermore, I contend that outsourcing intelligence will further obscure the shadowy world within which intelligence already operates. Not only will this undermine democratic accountability but it will also strengthen the principle of “plausible deniability” when questions surrounding human rights abuses come to the forefront.

To facilitate a coherent discussion in what follows, this paper will be divided into three parts. The first part will theorize the contract state which is arguably born out of the synthesis of David Harvey’s approach to the neoliberal state and Philip Bobbitt’s “market-state.” In addition, given that this paper will primarily focus on the outsourcing practices of the United States’ “war on terror” in the post-9/11 world and the Bush Doctrine, I will provide a quick analysis of neoconservatism in order to contextualize and explain the practices of the contract state in a comprehensive manner. The second part of the paper will document the impact of outsourcing on the intelligence community. Specifically, I will look at the impact of profit-driven interests of PMSCs on the intelligence community and the politicization of intelligence. The third and final part of this paper will look at the implications of outsourcing for human rights and democracy through the case study of torture and extraordinary rendition. This section will conclude with the exploration of key questions relating to transparency, accountability, and diplomacy.

⁷Bad intelligence in the context of this paper means intelligence that is fused in political and profit interest rather than objective analysis. Instead of driving policy, bad intelligence is driven by policy.

I. Defining and Theorizing the “Contract State”

In the aftermath of the Second World War, the United States Department of Defense emerged as the largest public management operation within the U.S. government. Thereafter, the defense industry embarked on its trajectory of unabated expansion and forged an intimate relationship with the government.⁸ This is the generational shift that Eisenhower was referring to when he warned his successors of the coming of the military-industrial complex. By the 1980s, expert firms focusing on distinct military tasks were operating throughout the world in support of US foreign policy goals, and in the next decade, many of these firms became known as Private Military Security Companies.⁹ In short, the contract state is defined by decentralization and privatization as it outsources activities that have been traditionally understood as being inherently within the realm of the State, such as national security.

If one follows the Westphalian model of international relations, then the “privatization” of security will be taken to be indicative of a loss of sovereign power. Peter W. Singer, for example, argues that many states have been unable to live up to their side of the “security promise,” allowing for events such as 9/11 to take place. Consequently, a profound re-conceptualization of the politics of security has taken place in the twenty-first century.¹⁰ There is a tendency in international relations to associate the rise of private security with a corresponding erosion of state sovereignty. This is a well-known theme in studies of globalization, which is frequently seen as indicating a long-term shift from state-centric forms of governance towards a dispersal of power and authority towards private sectors and international organizations.¹¹

On the contrary, this paper contends that the contract state remains the ultimate arbiter of the legitimate use of force. Private Military Security Companies mostly attain their legitimacy due to their contract relationship with the State; such forces tend to access the state monopoly with the sanctioning and acquiescence of the state. The conditions of warfare in the twenty first century can be asymmetrical due to the fact that non-state actors are now able to engage in conflict outside of the bounds of recognized state armed forces. Therefore, the contract state has adapted

⁸Carlos Ortiz, *Private Armed Forces and Global Security: A Guide to the Issues* (Oxford: Praeger, 2010), 114.

⁹ *Ibid.*, 115.

¹⁰ Mark Neocleous, “Security, Commodity, Fetishism,” *Critique* 35, no. 3 (2007), 345.

¹¹ Rita Abrahamsen, and Michael C. Williams, “Securing the City: Private Security Companies and Non-State Authority in Global Governance,” *International Relations* 21 no. 2 (2007), 237-238.

accordingly by changing the means through which it exerts its power. At times, the contract state strategically resorts to private actors in order to adjust and enhance the means of coercion at its disposal. Ultimately, the contract state is engaging the shadowy world of non-state violence with tactics that operate from within the shadows as well; private, fragmented, and at times, untraceable. It is important to note that the relationship between the contract state and PMSCs is at times fluid and at times contentious. In other words, the interests of the state will often clash with the primarily profit-driven interests of the contractors. I will explore this tension as it specifically relates to intelligence in the second part of the paper.

This paper has proposed that the contract state can be best understood by synthesizing Harvey's particular framework of neoliberalism and Bobbitt's market-state. The reason for providing a synthesis rather than using one theory over the other is as follows: Harvey's interpretation of the Neoliberal State focuses on the theory of political economic practices and tracks the broader development of neoliberalism since the 1970s, whereas Bobbitt provides a more focused argument with regard to the 'market-state' that captures the unique conditions created by the post 9/11 world, terrorism and non-state violence. Hence, by equally drawing from these two theories, one is better able to understand the core values upon which the contract state has developed and its outsourcing practices.

David Harvey asserts that the history of neoliberalism can be traced back to the 1970s at which time the practices of deregulation, privatization, and the withdrawal of the state from many areas of social provision began to become all too common.¹² Throughout the 1990s and particularly in the post 9/11 political context, neoliberalism has entailed increasing reliance on public-private partnerships whereby businesses and corporations not only collaborate intimately with state actors but acquire a significant role in writing legislation, determining public policies, and setting forward regulatory frameworks.¹³ The neoliberal state typically produces legislation and regulatory frameworks that advantage corporations. In many of the instances of public-private partnerships, the state assumes much of the risk while the private sector takes most of the

¹² David Harvey, *A Brief History of Neoliberalism* (Oxford: Oxford University Press, 2005), 64.

¹³ *Ibid.*, 76-77.

profits.¹⁴ This is precisely the case when the contract state outsources highly sensitive governmental functions such as intelligence operations to PMSCs.

Furthermore, Harvey's analysis of neoliberalism suggests that there has been a significant shift from government (state power on its own) to governance (a broader configuration of state and key elements in civil society), which has been marked under neoliberalism. Although this paper supports this argument, it is important to point out that this "shift" is not necessarily a new phenomenon. Rather, this movement from government to governance has become more visible in the post 9/11 context due to the explosive outsourcing practices of the contract state, particularly in Afghanistan and Iraq. Lastly, Harvey argues that neoliberalism tends to favour governance by experts and elites rather than democratic and parliamentary decision-making. Given the inherently shadowy practices of the contract state, a preference for elite governance significantly undermines the principles of democracy and accountability to the public. This matter will be further discussed in the third section of the paper in relation to the implications of outsourcing human intelligence.¹⁵

Having outlined the key components of the neoliberal framework within which the contract state has grown, this paper will now proceed with Bobbitt's conceptualization of the "market-state," which will shed further light on the practices of the contract state. Bobbitt makes a clear distinction between the nation-state—a highly centralized entity—and the "market-state" which is fragmented and is run by outsourcing its powers to transnational, privatized organizations.¹⁶ Bobbitt states that "[t]errorism in the era of the market-state will reflect the nature of the market-state. It will be decentralized, [and] disseminated."¹⁷ This point is critical in understanding the adaptive nature of the contract state as it operates within the asymmetrical conflict environment of the twenty first century, and particularly for the purposes of this paper, of the post 9/11 world. According to Bobbitt, "the state exists to master violence"; it came into being in order to establish a monopoly on domestic violence, which is a necessary condition for law, and to

¹⁴Ibid, 77.

¹⁵This paper will analyze the implications of outsourcing intelligence in general. However, it will specifically focus on human intelligence operations as it relates to torture and extraordinary rendition.

¹⁶Philip Bobbitt, *Terror and Consent: The Wars for the Twenty-first Century* (New York: Alfred A. Knopf, 2008), 84.

¹⁷ Ibid, 85.

protect its jurisdiction from foreign violence, which is the basis for strategy.¹⁸ If the state is unable to deliver on these promises, it will be changed; and so it did. The Bush administration stated quite clearly in its 2002 National Security Strategy Statement that it believed that the events of 9/11 changed the rules of international security and the role of states in responding to the dangers of terrorism:

For centuries, international law recognized that nations need not suffer an attack before they can lawfully take action to defend themselves against forces that present an imminent danger of attack. Legal scholars and international jurists often conditioned the legitimacy of pre-emption on the existence of an imminent threat—most often the visible mobilization of armies, navies and air forces preparing to attack. *We must adopt the concept of imminent threat to the capabilities and objectives of today's adversaries...*[I]n an age where enemies of civilization openly and actively seek the world's most destructive technologies, the United States cannot remain idle while dangers gather.¹⁹

The quotation above, delivered by then President George W. Bush, demonstrates that the United States began to advocate a direct challenge to long-standing rules governing international security. In addition, the U.S. adopted new strategies and tactics, such as the outsourcing of intelligence and carrying out extraordinary renditions, justified by reference to the events of 9/11. The terrorist attacks on 9/11 were used to claim that the legal and political structures that had been central to the international order—the long standing rules of the system—needed radical revision. The retaliatory practices of the United States in response to 9/11 were carried out under the auspices of neoconservatism.

Harvey argues that neoconservatism is entirely consistent with the neoliberal agenda of elite governance, mistrust of democracy, and the maintenance of corporate power.²⁰ The military-industrial complex is underpinned with neoconservative practices that emphasize militarization as necessary for responding to threats, both at home and abroad, to the integrity and stability of the nation.²¹ It is important to briefly explore the ideology underlying neoconservatism due to the fact that the Bush Doctrine is inherently linked to the core ideas put forth by neoconservatism. Beyond supporting privatization and corporate power, neoconservatism is an

¹⁸Supra, footnote 4, 216.

¹⁹[Emphasis Added] Anthony F. Lang, and Amanda Russell Beattie, eds. War, Torture and Terrorism: Rethinking the Rules of International Security (London and New York: Routledge, 2009), 1.

²⁰Supra, footnote 10, 82.

²¹Ibid, 82.

idealist-constructed “dream” and an elaborated value system.²² Neoconservatism is characterized by its strong endorsement of military instruments for the promotion of what has been viewed as the national interest of the United States. The practices of the contract state in the context of the United States can be understood by combining neoconservatism’s promotion of corporate power and militarization, thus creating the military-industrial complex, and for the purposes of this paper, the intelligence-industrial complex.

The militaristic enthusiasm of the Neoconservatives is quite rational given that neoconservatives are convinced that their truth is absolute, therefore, they rarely show any reluctance to use military means to promote their ideas.²³ In this regard, the character of neoconservatism is arguably totalitarian for the mere reason that absolute truths lead to radical, violent means for their implementation. This radical behaviour is evident in the United States’ decision to engage in outsourcing torture and extraordinary rendition.

In sum, this section sought to provide a comprehensive definition of the contract state, which is critical to understand the intelligence-industrial complex. The contract state stands firmly behind outsourcing practices and encourages the fragmentation as well as the privatization of the delivery of national security in the post-9/11 world; nonetheless, at times the interests of the contract state will clash with those of PMSCs. Tony Geraghty alluded to this tension when he suggested that “the relationship between freelance soldier and government is akin to that of the ventriloquist and his dummy. It is sometimes competitive, sometimes symbiotic.”²⁴ The next section will examine the impact of the contract states’ outsourcing practices on the intelligence community.

²²Ilan Peleg, The Legacy of George W. Bush’s Foreign Policy: Moving Beyond Neoconservatism (United States: Westview Press, 2009), 46.

²³Ibid, 55.

²⁴Tony Geraghty, Black Ops: The Rise of the Special Forces in the C.I.A., the S.A.S., and Mossad (New York: Pegasus Books, 2010), 151.

II. Outsourcing Intelligence in the post-9/11 World

James Der Derian has observed that intelligence is the least understood and most undertheorized area of international relations.²⁵ Given the events of 9/11, the need for a better understanding of both the nature of the intelligence process and its importance to national and international security policy has never been more apparent. The study of intelligence can be approached in various ways; however, for the purposes of this paper I will focus on the approach that is characteristic of political science.²⁶ This approach strives to establish a general model that can explain success and failure in the intelligence process; it focuses almost exclusively on the levels of analysis and decision. The aim is to identify and analyze the personal, political, and institutional biases that characterize intelligence organizations and affect their performance in the decision-making process.²⁷ This approach will shed light on the politicization of the intelligence process which became so widespread in the immediate aftermath of 9/11. Arguably, in the post-9/11 political context, intelligence informed but rarely drove policy. Hence, the image of the intelligence official as an apolitical interpreter of the real world for political decision makers must be re-evaluated.²⁸

Intelligence analysts are considered politically detached observers and are supposed to stand above the political fray and provide honest estimates. Nevertheless, politics and intelligence are often in an inter-relationship whereby intelligence becomes subject, object, and instrument of power politics.²⁹ In other words, when analysts “hit their target” and produce timely finished intelligence that addresses matters of national importance and debate, charges are sometimes raised that someone has unduly influenced the intelligence process or that analysts are following

²⁵Len Scott, and Peter Jackson, “The Study of Intelligence in Theory and Practice” Intelligence and National Security: The Secret World of Spies. 2nd ed. Eds., Loch K. Johnson, and James J. Wirtz (New York: Oxford University Press, 2008), 22.

²⁶Ibid. 22-23. Two other approaches are worthy of noting. The first approach, favoured among international historians in particular, but also characteristic of theoretical approaches, seeks to explain the relationship between organizational structure and policy making, and conceives the study of intelligence primarily as a means of acquiring new information in order to explain specific decisions made by policy makers in both war and peace. A thorough understanding of the organizational structure of government machinery, and of the place of intelligence within this machinery, is crucial to this approach. The second approach focuses on the political function of intelligence as means of state control.

²⁷Ibid, 24.

²⁸Ibid, 27.

²⁹Harry Howe Ransom, “The Politicization of Intelligence” Intelligence and National Security: The Secret World of Spies. 2nd ed. Eds., Loch K. Johnson, and James J. Wirtz (New York: Oxford University Press, 2008), 193.

their own policy or political interests at the expense of objectivity.³⁰ This issue becomes further complicated when former intelligence officers are contracted by the contract state to provide their services; this paper will demonstrate that private contractors, particularly in the intelligence field, re-enter the field with political interests that then become supplemented with profit-driven interests. This drives policy away from the public interest to corporate or political interests.

In order to examine such forms of politicization, one needs to look no further than the actions of the United States in the aftermath of 9/11. Following the attacks of 9/11, investigations criticized the United States intelligence community for its lack of imagination, failure of agencies to share information, and the inability of analysts to connect the dots, implying that the intelligence community had significant responsibility for the attacks, which killed nearly 3,000 people.³¹ Adding to criticism, the 2002 National Intelligence Estimate (NIE) on Iraqi Weapons of Mass Destruction (WMDs) came under media and congressional scrutiny with claims that analysts failed to properly assess available information and that the NIE was politicized to help justify the Bush administration's plan to invade Iraq. As a result, the post-9/11 intelligence community garnered several new players and adapted to the new political environment at hand. This reflects the largest reorganization of the United States federal government in history, with the creation of the Department of Homeland Security, incorporating twenty-two entities under one department to enhance communication and function in intelligence and security.

After the Cold War, the Central Intelligence Agency (CIA) began contracting out thousands of jobs to fill the void created by the budget cuts that began in 1992. A CIA officer could file his retirement papers, turn in his blue identification badge, go to work for a much better salary at a military contractor such as Lockheed Martin or Booz Allen Hamilton, then return to the CIA the next day, wearing a green badge.³² In the aftermath of 9/11, the outsourcing of intelligence went out of control. Green badge bosses started openly recruiting in the CIA's cafeteria.³³ By 2006, something on the order of half the officers at the Baghdad station and the new National

³⁰Ibid, 194.

³¹Michael W. Collier, "Intelligence Analysis: A 9/11 Case Study" *Homeland Security and Intelligence*. Ed. Keith Gregory Logan (Santa Barbara: Praeger Security International, 2010), 59.

³²Weiner. *Legacy of Ashes*, 592. Within the CIA, blue badges signify government personnel, whereas green identification cards signify the position of a private contractor.

³³Ibid.

Counterterrorism Center were contract employees, and Lockheed Martin, the nation's largest military contractor, was posting "Help Wanted" advertisements for "counterterrorism analysts" to interrogate suspected terrorists at the Guantanamo Bay prison.³⁴

Part of the rationale for this outsourcing is that the commercialization of high technology in the twenty-first century has meant that the intelligence capabilities limited to the superpowers during the Cold War are now available to any willing buyer. Locally gathered information that used to be accessed only by being smuggled across borders is now readily available on the Internet, as are state statistics, which were once the sole provenance of intelligence agencies.³⁵ According to former CIA Director James Woolsey, about 95 percent of all intelligence comes from open sources; the other 5 percent is from covert sources, in the case of the United States, this predominantly concerns satellite surveillance. However, even in this area, the proliferation of civilian earth observation satellites and improvements in image analysis techniques mean that the private market has significantly entrenched itself within areas that traditionally were limited to the state.³⁶

Since 9/11, the private sector has become a major supplier of tools and brainpower to the intelligence community, giving rise to the establishment of the 'Intelligence-Industrial Complex.' The CIA, the National Security Agency (NSA) and other agencies once renowned for their analysis of intelligence and for their technical prowess in covert operations, electronic surveillance, and overhead reconnaissance are now outsourcing many of their core tasks to private intelligence companies.³⁷ Consequently, spying in the United States has blossomed into a domestic market worth nearly \$50 billion a year. The bulk of this \$50 billion market is serviced by one hundred companies, ranging in size from multibillion-dollar defense behemoths to small technology shops funded by venture capitalists that have yet to turn a profit. Tasks that

³⁴Ibid, 593. Guantanamo Bay is a detention facility that was set up by the United States following the events of 9/11 to house suspected terrorists. The facility, which has been run mainly by private contractors, has been the subject of much debate among human rights activists who argue that inmates are subjected to serious human rights violations.

³⁵Peter W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca: Cornell University Press, 2008), 99..

³⁶Ibid, 99-100.

³⁷Tim Shorrock, *Spies for Hire: The Secret World of Intelligence Outsourcing* (New York: Simon & Schuster Paperbacks, 2008), 11.

are now outsourced include running spy networks out of embassies, intelligence analysis, signals intelligence collection, covert operations, and the interrogation of enemy prisoners.³⁸

By 2006, according to the Office of the Director of National Intelligence, 70 percent of the intelligence budget was spent on contracts.³⁹ This means that the vast majority of the money spent on the intelligence community is not going into building an expert care within government, but to creating a secret army of analysts and action officers inside the private sector. Following the events of 9/11, the CIA alone has been spending 50 to 60 percent of its budget on for-profit contractors; its number of contract employees now exceeds the agency's full time work force of 17,500. At the CIA, contractors assist staff overseas stations and provide disguise used by agents working undercover. Lastly, intelligence outsourcing has mushroomed at the Department of Defense, which controls more than 85 percent of the U.S. intelligence budget.⁴⁰

It is crucial to note that with contractors deeply embedded in the CIA, the NSA, and the Pentagon, substantial portions of the President Daily Brief, the most sensitive document in government, are based on the work of private sector analysts.⁴¹ Nearly 70 percent of the brief is drawn from telephone and e-mail intercepts provided by the NSA, which relies heavily on private companies for analysis and interpretation of signals intelligence. The same is true for the Office of the Director of National Intelligence (DNI) which prepares the final draft of the President's brief. Needless to say, this further adds private intelligence to the presidential mix, and dilutes the significance of the DNI seal on the President's Daily Brief. At best, that seal is misleading, says R.J. Hillhouse, an intelligence expert, "for full disclosure, the President's Daily Brief really should look more like NASCAR with corporate logos plastered all over it."⁴² This is an important point because it sheds light on the dangers of outsourcing. It is very well possible that corporate interests will become embedded in the information and analysis that is ultimately provided within the President's Daily Brief; this is dangerous because it may clash with the interests of the public to whom the state is accountable to in a democracy.

³⁸Ibid, 12.

³⁹Ibid, 13.

⁴⁰ Ibid, 15.

⁴¹Ibid.

⁴²Ibid.

The clashing of interests that has been discussed thus far is most controversial when it concerns the outsourcing of human intelligence. Former Director of the CIA James Woolsey asserted that “human intelligence is a long-term operation. It’s like growing orchids, it takes a long time.”⁴³ This mentality clashes with the short-term goals of private contractors. For instance, founded in February 2007, Total Intelligence Solutions was run by Cofer Black—the Chief of the CIA’s counterterrorist center on 9/11. His partners were Robert Richer, who had been the number-two man at the clandestine service, and Enrique Prado, Black’s chief of counter-terror operations. All three individuals, among the best of the CIA’s officers, had decamped from the Bush administration’s war on terror in 2005 to join Blackwater, now re-branded as Xe.⁴⁴ However, jumping ship in the middle of a war to for financial gain was unremarkable in twenty-first century Washington. It was already commonplace for CIA veterans to sell their services to the agency by writing analyses, creating cover for overseas officers, setting up communications networks, and running clandestine operations. Having joined a number of PMSCs, the ex-CIA officers now operated within a new mindset marked by business interests. For example, they adopted a five year plan: “get in, get out, and get paid.”⁴⁵ Certainly, this corporate mindset directly contradicts the government mindset highlighted by James Woolsey.

In no other business area are former high-ranking officials as ubiquitous as they are in intelligence. Companies involved in the intelligence business seek out former intelligence and national security officials as both managers and directors. For the most part, these are people who have served for decades at the pinnacle of national power. Their lives have been defined by secret briefings, classified documents, covert wars, and sensitive intelligence missions.⁴⁶ Hence, many of these individuals have kept their security clearances and maintain a hand in government by serving as advisers to high-level advisory bodies at the Pentagon, the CIA, the NSA, and the White House.⁴⁷ In other words, they are very much so still embedded in politics and maintain their own political agendas; nevertheless, now with their government careers behind them, they make their living by rendering strategic advice to dozens of intelligence contractors. In these

⁴³Stephen Grey, *Ghost Plane: The True Story of the CIA Rendition and Torture Program* (New York: St. Martin’s Griffin, 2007), 137.

⁴⁴Supra, footnote 29, 593.

⁴⁵Ibid, 594.

⁴⁶Supra, footnote 34, 28.

⁴⁷Ibid.

new jobs, they continue to fight terrorist threats and protect the “homeland,” as they once did while working in the government, but now they do it for profit, in the form of lucrative stock options, director and consultant fees, and executive salaries.

By fusing their politics with business, these former officials have brought moneymaking into the highest reaches of national security and created a new class of capitalist policy-makers, the likes of which have never been seen before the establishment of the contract state in the post-9/11 world. Take the case of George Tenet, for example, who retired as CIA Director in 2004. As he was writing his memoirs and preparing for a new career as a professor at Georgetown University, Tenet quietly began cutting deals with companies that earn much of their revenue from contracts with the intelligence community. By the summer of 2007, he had made nearly \$3 million in director fees and other compensation from his service as a director and adviser to four companies.⁴⁸ Tenet has extensive inside knowledge about intelligence services in Saudi Arabia, the United Kingdom, and Pakistan, as well as secret U.S. operations in Iraq, Afghanistan, and Somalia. For that matter, Tenet was hired by a contractor because he still has relationships, influence, access, and favours to call in.⁴⁹ Thus, the fusing of political and business interests within the intelligence field is arguably dangerous because it may result in circumstances where the public interest becomes secondary to corporate interests.

In 2002, as the nation braced for the next move in the global “war on terror”, the Bush administration and its corporate allies began talking of a common ideological framework for the long struggle ahead. America, they said, needed a new form of governance⁵⁰ to respond to terrorism; they were referring to a “partnership” between the private and public sectors that would come together to pursue and defeat the “common” enemy.⁵¹ This alliance was based on a simple proposition: that the private sector, as the owner of 90 percent of the nation’s communications, energy, and transportation networks, must play a central role in the fight

⁴⁸Ibid, 30.

⁴⁹ Ibid.

⁵⁰Note the reference to “governance” made by the U.S. administration in accordance with David Harvey’s argument that was outlined in the first part of the paper. That is, the specific shift from government to governance.

⁵¹Supra, footnote 34, 357.

against terrorism. Government, it was said repeatedly, could not protect the American people without industry; homeland security “was too important to be left to the government alone.”⁵²

The implications of this endorsement of the private sector was captured in 2003 by the nation’s most powerful corporate lobby, the Business Roundtable, which represents the CEOs of America’s 150 largest corporations. The Roundtable called for an “anti-terror joint venture” between business and the Bush administration.⁵³ The CEOs argued that “[h]istorical suspicions and adversarial relationships between government-as-regulator and business-as-regulated have traditionally made cooperation difficult. In the current security climate, this could prove disastrous to the common objective of enhancing homeland security.”⁵⁴ Therefore, the key phrase in this new counterterrorism lexicon became “public-private partnerships.” This rhetoric smothered the fact that the “noble cause” of homeland security would, over time, yield enormous profits for a host of government contractors.

Thus, given that the primary interest behind this partnership was profit, at least on the corporate side, this could lead to the politicization of intelligence resulting in policies and decisions that would not necessarily be in the interest of the public’s security. Once reserved for partial privatization in which the private sector was mobilized to support public utilities such as subways and roads, that term private has been subverted in the post 9/11 world to mean something very specific to national security: defense, homeland security, and intelligence contracts and practically any government decision that favours business interests.⁵⁵

III. Implications of Outsourcing Intelligence on Human Rights and Democracy: A Case Study of Torture and Extraordinary Rendition

Since 9/11, counterterrorism has been viewed more emphatically as a “war” with consequently greater emphasis given by executives to “secrecy”—both as necessary for counterintelligence

⁵²Ibid, 358.

⁵³Ibid, 358-359.

⁵⁴Ibid, 359.

⁵⁵Ibid, 367.

and as an essential prerequisite for “surprising” enemies.⁵⁶ There are several areas in which the U.S. executive has sought to reduce the flow of information. In a memo to federal agencies, Attorney General John Ashcroft⁵⁷ encouraged resistance to freedom of information requests, not in relation to security, but more broadly in relation to “institutional, commercial and personal privacy interests.”⁵⁸ One such area has been intelligence gathering (human intelligence) and the treatment of prisoners and suspected terrorists.

Only six days after 9/11, President Bush signed a classified “finding” statement granting the CIA extraordinary powers with which to prosecute the global “war on terror.” This still-classified document was part birth certificate, part blueprint for what would become the “war on terror”; a guide to a new kind of war that would involve new collaborations with foreign governments, new psychological programs, and new paramilitary activities.⁵⁹ The document authorized the creation of a network of secret prisons, or “black sites,” around the globe, and it provided the CIA with the authority to capture anyone suspected of having terrorist affiliations.

This document essentially established the ‘extraordinary rendition’⁶⁰ program; a secret intelligence program authorized by President Bush, without congressional comment or approval.⁶¹ Known publicly only as “GST,” an abbreviation of a classified code name, the U.S. government is running one of the largest covert intelligence-gathering programs in the country’s

⁵⁶Hans Born and Marina Caparini, eds. Democratic Control of Intelligence Services: Containing Rogue Elephants (USA: Ashgate, 2007), 205.

⁵⁷Eyder Peralta, “Ashcroft Joins Former Blackwater Firm as Head of Ethics Committee,” Npr. 4 May 2011. <<http://www.npr.org/blogs/thetwo-way/2011/05/04/135991896/ashcroft-joins-former-blackwater-firm-as-head-of-ethics-committee>>. Interestingly, Ashcroft has crossed over to the field of private contracting as he will now head Blackwater’s—now rebranded as Xe—subcommittee on governance and ethics.

⁵⁸Supra, footnote 52, 205.

⁵⁹Trevor Paglen, and A.C. Thomson, Torture Taxi: On the Trail of the CIA’s Renditions Flights (New Jersey: Melville House Publishing, 2006), 22.

⁶⁰Maureen Webb, Illusions of Security: Global Surveillance and Democracy in the post-9/11 World (San Francisco: City Lights, 2007), 70. This term, considered by critics to be a euphemism for what is in actuality torture by proxy, is an extrajudicial procedure used by the government of the United States and other Western countries whereby untried suspects are sent to another country for interrogation under less human conditions. Although it is known that torture is likely to occur, the dispatching country hopes to avoid being viewed as in default of its humanitarian commitments.

⁶¹Barbara Olshansky, Democracy Detained: Secret Unconstitutional Practices in the U.S. War on Terror (New York: Seven Stories Press, 2007), 191.

history, with an infrastructure that literally spans the globe.⁶² Prisoners were captured and transported by the United States not only from the war zones of Afghanistan and Iraq, but from countries including Bosnia, Croatia, Macedonia, Albania, Sudan, Somalia, Kenya, Zambia, Pakistan, Indonesia, and Malaysia. Detainees were taken from these countries to slightly smaller lists of destinations, including Egypt, Syria, Morocco, Jordan, Afghanistan, Uzbekistan, and Thailand.⁶³ Determining the exact scale of the program is extremely difficult and imprecise given that the details of these transfers are kept classified by the CIA. George Tenet, former Director of the CIA, testified to seventy renditions in the (unspecified) years leading up to 9/11, of which some twenty were brought to trial in the United States. Since 9/11, no figures have been given officially, although CIA officials speaking anonymously told journalists of a total of 100 to 150 transfers.⁶⁴

In the mid 1990s, what is now the practice of extraordinary rendition was then called “rendition to justice.” The practice was developed to allow U.S. agents to apprehend wanted persons in so-called ‘failed states’ like Lebanon, where lawful extradition procedures were either ineffectual or nonexistent.⁶⁵ The focus was on rendering suspects back to U.S. courts, in the traditional way, but it also had a new component—the idea of sending a suspected terrorist to a third country to be imprisoned.⁶⁶ Interestingly, the policy was set out in President Clinton’s Presidential Decision Directive (PDD-39) of June 21, 1995. It stated: “When terrorists wanted for violation of U.S. law are at large overseas, their return for prosecution shall be a matter of the highest priority and shall be a continuing central issue in bilateral relations with any state that harbours or assists them.”⁶⁷ It was summarized later in a staff report of the 9/11 commission: “If extradition procedures were unavailable or put aside, the United States could seek the local country’s assistance in a rendition, secretly putting the fugitive in a place back to America or *some third country* for trial.”⁶⁸ Here then was the beginning of the “extraordinary rendition” program as we have come to know it.

⁶²Ibid, 192.

⁶³Supra, footnote 40, 38-39.

⁶⁴Ibid, 39.

⁶⁵Supra, footnote 56, 214.

⁶⁶Supra, footnote 40, 136.

⁶⁷Ibid.

⁶⁸ [Emphasis Added] Ibid.

Former President George W. Bush put a new rendition program into operation within days of the 9/11 attacks. A Memorandum of Notification was signed on September 17 that authorized the CIA to conduct renditions without any advance approval from either the White House or the Department of Justice, thus cloaking this practice from public debate and approval as required within a democracy.⁶⁹ In addressing the possibility of torture as part of the practice of rendition, former CIA official, Michael Scheuer said “[t]he bottom line is, getting anyone off the street who you’re confident has been involved, or is planning to be involved in operations that could kill Americans, is a worthwhile activity...[i]t wouldn’t be us [United States] torturing them.”⁷⁰ Scheuer was essentially alluding to the “plausible deniability” factor. That is to say, by creating layers of shadowy networks and relationship that includes private contractors working for the CIA and third party countries hosting the rendition, more often than not, there can be no way to trace these practices back to the United States. This deniability factor is evident in the following two cases.

On September 26, 2002, Maher Arar, a Canadian citizen, while passing through John F. Kennedy International Airport in New York, was arrested and subsequently detained by American officials for 12 days. He was removed to Syria, the country of his birth, where he was imprisoned for nearly a year. While in Syria, Arar was interrogated, tortured, and held in degrading and inhumane conditions.⁷¹ Testimony from the Arar Inquiry revealed that Canadian security agencies—the Royal Canadian Mounted Police and the Canadian Security Intelligence Service—may, in some circumstances, share information with foreign agencies they suspect are engaged in torture and that they will receive and use information from agencies obtained through torture. All of the interrogations were overseen by the same Syrian General, Hassan Kalil, with whom the Canadian ambassador to Syria, Franco D. Pillarella, liaised regularly.⁷² This case essentially demonstrates the layers of shadowy relationships created in the process of rendition which in Arar’s case involved Canada, the United States, and Syria.

⁶⁹Ibid, 149.

⁷⁰Ibid, 152.

⁷¹Report of the Events Relating to Maher Arar: Analysis and Recommendations. Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar (Ottawa: Gilmore Print Group, 2006), 9.

⁷²Supra, footnote 56, 161.

Similarly, Ahmad Abou El Maati was detained in Syria in November 2001, when he traveled there for his marriage to his Syrian bride. Returning from a delivery in the United States, he was stopped at the Buffalo border and the truck's glove compartment was searched. Border officials seized a copy of a map that was found in the compartment. It was a map of a government complex in Ottawa with nuclear facilities, a virus lab, and other government facilities.⁷³ The map was one the Canadian government regularly gave to visitors to its Tunney Pasture Complex. As soon as El Maati landed in Damascus, he was asked about the map, when he did not produce the information that the Syrian officials wanted to hear, he was tortured. Subsequently, Ahmad was transferred by airplane to Egypt and interrogated at the main intelligence headquarters in Cairo. For months, Ahmad was transferred between different jails inside the country and tortured.⁷⁴ The interests in finding further information about the map were clearly coming from the United States and Canada; however, they were able to deny having any involvement due to the third party conditions created by the practice of rendition.

Strengthening the deniability factor was the use of CIA front companies when practicing rendition. According to *New Yorker* reporter, Jane Mayer, Jeppesen International Trip Planning, a wholly owned subsidiary of Boeing, handled many of the logistical and navigational details for these trips, including flight plans, clearance to fly over other countries, hotel reservations, and ground-crew arrangements.⁷⁵ Additionally, shortly after 9/11, the Bush administration started a program using a network of private planes. As the rendition program kicked into high gear, the United States began using private aircraft to transport prisoners.⁷⁶ Blackwater—now Xe—directly owns its aviation division and has been public and proud in promoting its military involvement. In 2004, Blackwater announced plans to move the operations of its aviation division to North Carolina and in 2006 sought approval to build a private airstrip with two runways for its fleet of more than twenty planes. According to the company, at that time, every single aircraft had a contract.⁷⁷ As it happens, Blackwater's planes in Afghanistan operated out

⁷³Ibid, 24.

⁷⁴Ibid, 27.

⁷⁵Jane Mayer, "Outsourcing Torture," *The New Yorker*. 14 Feb. 2005. 20 April 2011.
<http://www.newyorker.com/archive/2005/02/14/050214fa_fact6>

⁷⁶Jeremy Scahill, *Blackwater: The Rise of the World's Most Powerful Mercenary Army* (New York: Nation Books, 2007), 323.

⁷⁷Ibid, 324.

of Bagram, a known U.S. run detention and torture facility. The company's president, Gary Jackson, was bold in bragging of Blackwater's "black" and "secret" contracts, which were not publicly available or traceable.⁷⁸

Under the "war on terror", Blackwater's first security contract was a "black" contract with the CIA, an agency with which it has deep ties. In early 2005, Blackwater hired the career CIA spy many believe was responsible for jump-starting the Bush administration's post-9/11 rendition program: J. Cofer Black, the former chief of the CIA's counterterrorism center.⁷⁹ In November 2001, when U.S. forces captured Ibn al-Shayk al-Libi, believed to have run the Al Qaeda training camp in Khalden, Afghanistan, Black allegedly requested and got permission, through CIA Director George Tenet, from the White House to render Libi, reportedly for objections of Federal Bureau of Investigation (FBI) officials who said they wanted to see Libi dealt with more transparently. Interestingly, the covert operations Black organized immediately after 9/11 relied heavily on private contractors, answering directly to him, rather than active-duty military forces.⁸⁰

Needless to say, this form of relationship did not leave room for any framework of accountability or transparency. David Price, a former professor of Political Science at Duke University, and currently a congressman representing North Carolina's Fourth Congressional District has stated that "once you get into outsourcing, you find layer upon layers...[therefore], [m]y primary concern was that private security contracting has become so widespread and unaccountable that Congress needs to assert some legal authority."⁸¹ Asserting any form of legal authority requires access to information and classified contracts that are more often than not kept classified. Thus, outsourcing intelligence has created a system that has arguably become unaccountable to legal institutions.

In order to evaluate rendition fairly, the most obvious first step is to examine its real objectives. Most important, is extraordinary rendition a torture program designed for the purpose of

⁷⁸Ibid.

⁷⁹Ibid, 327.

⁸⁰Ibid, 328.

⁸¹ Supra, footnote 37, 369.

gathering intelligence by outsourcing interrogation? Or was it a policy that simply resulted in torture? Based on interviews with CIA insiders, it is fair to say that prior to 9/11 renditions were principally about a disappearance, not about interrogation.⁸² However, after 9/11, the rendition program became an extension of human intelligence gathering.

The United States invaded Afghanistan with a mission of capturing Osama Bin Laden. Tracked by the CIA to Tora Bora, Bin Laden escaped when the U.S. military refused to commit troops to surround him. Through dogged intelligence work, the CIA went on to capture some of the most important members of Bin Laden's circle—not only the main architects of 9/11, but key operatives like Abd al-Rahim al-Nashiri, the leader of Al Qaeda in the Gulf, and Ahmed Khalfan Ghailani, who was wanted for the 1998 U.S. embassy bombings.⁸³ The real problem came in the next stage that followed the arrests, when the CIA and the U.S. military began to render these new prisoners across the world. It put the agency at the center of a large global prison network often supported by private corporations. From the end of 2001, therefore, the purpose of these renditions was widened. Rendition was not just used to incarcerate or “disappear” captured prisoners; a top priority was now to gather more intelligence.⁸⁴ This was how a program aimed at supporting arrest and disruption became a program that outsourced torture.

Arguably, no other case better demonstrates the serious legal and political implications of outsourcing human intelligence than the Abu Ghraib torture scandal. In 2006, *Iraq for Sale: The War Profiteers*, a film made by Hollywood producer Robert Greenwald made headlines around the world. The film portrayed four U.S. military contractors in Iraq—Halliburton, Blackwater, CACI International, and Titan—as opportunistic corporations oblivious to the human suffering caused by their actions.⁸⁵ CACI got involved in the Abu Ghraib detention center through an IT contract it obtained when it acquired a company called Premier Technology Group (PTG) in 2003. To CACI's benefit, PTG had existing contracts with the Pentagon for intelligence analysis and security services, IT, training, program management, and logistics, and 360 employees with high-level security clearances. At the time of CACI's acquisition, all of PTG's contracts were

⁸²Supra, footnote 40, 239.

⁸³Ibid.

⁸⁴Ibid, 240.

⁸⁵Supra, footnote 34, 270.

being administered by the Department of Interior. Two of the contracts, one worth \$19.9 million, the other \$21.8 million, required CACI to supply screening, interrogation and support functions, and human intelligence at an unspecified site in Iraq.⁸⁶

It is crucial to highlight that the interrogators at Abu Ghraib arrived at a critical time. For the first few months after U.S. forces took control of the prison, the interrogations were conducted by U.S. military intelligence officers. However, their efforts did not yield the kind of information on the insurgency sought by the Bush administration. Their solution, Seymour Hersh reported in the *New Yorker*, “was to get tough with those Iraqis in the Army prison system who were suspected of being insurgents.”⁸⁷ Resultantly, Major General Geoffrey Miller, the commander of the detention center at Guantanamo, was ordered to visit Baghdad to review interrogation procedures. His solution “was to ‘Gitomize’ the prison system in Iraq—to make it more focused on interrogation”—by using techniques of sleep deprivation, exposure to extreme temperatures, and placing prisoners in stress positions for lengthy periods of time.⁸⁸ Interestingly, CACI was brought in exactly when these “unconventional” methods were being introduced. This goes to support the point that the fragmented and privatized nature of the contract state provides it with the flexibility to adjust to challenging circumstances created by the post-9/11 world without being held responsible for its action given that it mostly operates from the shadows.

Ultimately, nine low-level Army soldiers were convicted for their abuse of prisoners at Abu Ghraib and given sentences ranging from six months to ten years in prison. However, despite the fact that military investigations found that CACI interrogators directed some of the worst abuse at Abu Ghraib, they and their employer did not face any charges.⁸⁹ This paper contends that the contract state has a strategic interest behind outsourcing intelligence; it is able to aggressively carry out its war against non-state actors while escaping serious scrutiny with regard to issues concerning the upholding of human rights and democratic accountability. By 2006, after four

⁸⁶Ibid, 279.

⁸⁷Seymour M. Hersh, “Torture at Abu Ghraib: American soldiers brutalized Iraqis. How far up does the responsibility go?” *The New Yorker*. 10 May 2004. 20 April 2011. <http://www.newyorker.com/archive/2004/05/10/040510fa_fact>

⁸⁸Supra, footnote 34, 280.

⁸⁹Ibid, 281.

years of war, involving approximately 25,000 intelligence and private military security contractors in Iraq and Afghanistan, only one private sector intelligence operative, a CIA contractor named David Passaro, had been investigated and charged for a crime—the beating death of a prisoner held in a CIA detention center in Afghanistan. Singer argued, “[y]our conclusion has to be one of two things: we’ve either found 25,000 perfect angels—the Stepford Village of Iraq—or we have found the town of 25,000 where no crimes happen...it’s a statistical impossibility.”⁹⁰ To P.W. Singer, that was proof that the government had deliberately turned a blind eye toward contractors.

Secrecy has come at a high political cost. The lack of transparency and the classified nature of most intelligence contracts makes Congress’ oversight job over contractors nearly impossible. Only a few Members of the House and Senate committees with oversight jurisdiction over intelligence spending have access to specific projects. The public, and most of Congress, is completely left out, and have no real way of knowing how their tax money is being spent, let alone if it is being spent wisely. In a democracy, secrecy poses a particular problem: the potential to call into question the political legitimacy, as opposed to the actual control, of an intelligence service.⁹¹ If democracy is government not only for the people but of and by them as well, it is not surprising that states that rely so heavily on secrecy, such as the United States in the post-9/11 context, can easily become objects of popular mistrust.

Moreover, it is not just the secrecy, or the lack of oversight that is wrong with intelligence contracting, it is also the extent of outsourcing itself, and the way it is carried out. At all levels of warfare functions which involve gaining knowledge about an opponent, while denying them knowledge of oneself, are critical to military success. For that matter, they traditionally have been restricted to the most trusted institutions of the state.⁹² Intelligence services are deemed as “inherently governmental functions” within the United States. This means that as a matter of law and policy, an inherently governmental function must be performed by federal government

⁹⁰ Ibid, 370.

⁹¹ Abram N. Shulsky, and Gary J. Schmitt, *Silent Warfare: Understanding the World of Intelligence*. 3rd ed (Washington: Potomac Books, Inc., 2002),144.

⁹² Supra, footnote 35, 99.

employees and cannot be contracted out because it is “intimately related to the public interest.”⁹³ Nevertheless, this has not deterred the United States from outsourcing intelligence operations to various PMSCs.

Ultimately, it is not the contractors that are the central problem with the intelligence-industrial complex, it is the outsourcers; that is, the elected politicians and the government administrators they appoint or confirm. The contractors are working to maximize profits, and are answerable mainly to company shareholders. The outsourcers, however, are ultimately answerable, at least in principle, to the public.

Conclusion

In sum, this paper has proposed that in the post-9/11 world a reconceptualised form of state power has emerged; I referred to this entity as the contract state. In order to define and theorize the contract state, this paper synthesized the arguments put forth by David Harvey and Phillip Bobbitt. The combining of Harvey’s interpretation of neoliberalism and focus on the concept of governance with Bobbitt’s contemporary market-state, provided this paper with the grounds to theorize the contract state.

This central focus of this paper was on one of the most controversial practices of the contract state, that is, the privatization of national security and intelligence in the post-9/11 “war on terror.” In doing so, this essay sought to answer the following central question: how does the outsourcing of intelligence impact the intelligence community and its ability to carry out its operations objectively; in addition, what are the broader implications of outsourcing intelligence for human rights and democracy. In response to the former part of the question, this paper argued that contracting out intelligence agencies will produce bad intelligence, and in addressing the latter part of the question, this essay contended that inherently secretive nature of intelligence combined with the shadowy practices of the contract state will significantly undermine the states’ ability to uphold human rights and democracy.

⁹³John R. Luckey, Valerie Bailey Grasso, and Kate M. Manuel, “Inherently Governmental Functions and Department of Defense Operations: Background, Issues, and Options for Congress,” Congressional Research Service (2009), 1.

In order to substantiate the aforementioned thesis, this paper was divided into three sections. The first section provided a comprehensive definition and theory of the contract state for the purposes of laying the fundamental groundwork upon which the rest of the arguments were developed throughout the paper. The second section of the paper specifically focused on the relationship between the contract state and the intelligence community. This section demonstrated that outsourcing intelligence is inherently dangerous as it will lead to politicization, profit maximization, and lack of transparency. Last but certainly not least, I analyzed the implications of outsourcing human intelligence by focusing on the case study of outsourcing torture and extraordinary rendition. This section demonstrated that the contract state creates a situation whereby holding private security contractors responsible for their actions is extremely difficult, and at times, impossible.

The questions posed in this paper must continue to be debated and challenged. The end of the Bush administration by no means has fazed the intelligence-industrial complex. It is going to take years, if not decades, to get that 70 percent of the intelligence budget spent on contractors down to a tolerable and more controllable level. Thus, advocates of human rights and democracy must continue to push this debate to the mainstream and into the public's consciousness.

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