Introduction

This thesis examines the reasons, the means and the consequences of the privatisation of intelligence in the United States (US) between 2001 and 2009. The expansion of public-private intelligence ‘partnerships’ during this period raised important questions about the relationship between the state, its intelligence apparatus, and the private sector, and accountability within a liberal democracy. In precise terms, this thesis addresses the following central research question: How did the relationship between the intelligence community’s reliance on the private sector and intelligence accountability evolve during the Global War on Terrorism (GWOT)?

On the whole, from 2001 to 2009, the relationship between the privatisation of intelligence and intelligence accountability was characterised by both interdependence and imperfection but this research finds that privatisation did not necessarily impact in a completely negative way on intelligence accountability. Yet, after the 9/11 attacks, under some specific conditions, the intelligence community’s reliance on the private sector did complicate the intelligence accountability process. Despite these shortcomings, the US government *always* retained the authority to hold the private sector to account by devising better means to access private sector information, improving accountability standards, and sanctioning or supporting its private ‘partners’. This authority, however, was not used systematically because the Bush administration lacked the means to control and oversee the private sector effectively. The shortcomings in post-2001 intelligence accountability with regard to public-private intelligence ‘partnerships’ were obviously bound up with the emerging agenda of the new administration and this was especially so with regard to national security matters. Accountability problems, although highlighted by a series of official and non-official reports,¹ were not satisfactorily addressed before 2006. From then on, even

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though significant efforts were made to tackle accountability challenges related to the privatisation of intelligence, problems remained.

The impetus for this project stems from an awareness of critical shortcomings within the literature on intelligence accountability. Public-private intelligence ‘partnerships’ have expanded significantly during the Global War on Terrorism (GWOT), yet very few studies have analysed this phenomenon in depth.\(^2\) To date, the literature has failed to consider the impact of the reliance on private actors, on intelligence accountability. When filling this gap, this study critically engages with, and updates two strands of literature in the field of security and strategic studies that focus on intelligence accountability\(^3\) and private security.\(^4\) These


two central research areas are explored in the context of the GWOT, which represents a third research area.

![Figure 1 – Key research areas](image)

Research on democratic accountability has been growing steadily since 2001 and the beginning of the GWOT. Some scholars have been alarmed by the merging between the

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‘extra- legality’ of the GWOT and the growth of the government’s reliance on the private sector to augment US intelligence capabilities. The institutionalisation of the GWOT, according to Michael Welch, has undermined the rule of law and shifted the balance between security and liberty towards the former. In addition, the intensification and the deepening of the role of intelligence contractors have given rise to ‘concerns regarding oversight and accountability’. Recently, in a panel on intelligence studies held at a major academic conference in the UK, leading scholars argued that the privatisation of intelligence is problematic because of the lack of accountability of the private sector. In a similar vein, Laura Dickinson has argued that ‘the mechanisms of accountability and oversight that the United States has generally used to curb abuses by government employees do not translate well to contractors’. Taken together, these elements deserve further scrutiny.

This study also takes into account the ever-growing scholarship on private security in order to discuss the potential risks that accompany the involvement of the private sector in the most sensitive domain of national security. This literature provides a solid stepping-stone to reflect further on the more specific, and in many respects unique, case of the privatisation of intelligence in the United States. Although some researchers of private security have addressed concerns regarding democratic values, the growth of the market for intelligence and national security since the beginning of the GWOT differs to a degree from the broader

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6 Michaels, ‘All the President’s Spies’, p.901; Voelz, Managing the Private Spies; idem, ‘Contractors and Intelligence’, pp. 586-613.
7 Michael Welch, ‘Sovereign impunitedy in America’s war on terror’, pp. 135-50.
privatisation of security. The stronger culture of secrecy and the deniability that surrounds the intelligence community (IC) makes privatisation a far more delicate issue in the realm of intelligence.\textsuperscript{12} Military forces operate under the rules of international law and therefore benefit from its protection. This is not the case of intelligence agencies that typically operate within the rule of law at home, though often operate illegally abroad. Moreover, the literature on private security tends to focus on Private Military and Security Companies (PMSCs). Public-private intelligence ‘partnerships’ do not only involve PMSCs, but also companies from other sectors such as telecommunications and information technology (IT). These companies do not have the same history as PMSCs. For example, they have never been considered as mercenaries.\textsuperscript{13} In addition, they do not always relate formally, through contracts, to the IC. For some authors, this informality makes public-private ‘partnerships’ more difficult to scrutinise.\textsuperscript{14} Moreover, the driving forces behind, and the consequences of public-private intelligence ‘partnerships’ differ from those identified as underlying the ‘market for force’.\textsuperscript{15} For example, the intelligence ‘open-source revolution’ hardly explains the reasons for the use of PMSCs to protect convoys in Iraq.\textsuperscript{16} Yet most of the PMSCs involved in the theatres of the GWOT gather intelligence and some of them even specialise in such tasks.\textsuperscript{17} As such, this study examines their role alongside the US government apparatus.

\section*{State of the art}

Research and debates about the privatisation of intelligence predate the beginning of the GWOT. In the mid-1990s, Steven Aftergood and John E. Pike were among the first explorers to look into the relationship between the IC and the private sector. As a part of a broader project to study intelligence-related facilities in the Washington DC area, they compiled an

\begin{enumerate}
\item Simon Chesterman, ‘We Can't Spy ... If We Can't Buy!', pp. 1066-7.
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intelligence contractors’ guide.\(^{18}\) Around the same time, the privatisation of intelligence was publicly debated (and the *Guardian*, for instance, published a paper on ‘CIA’s secret Fears Over Privatisation’ asking how far this process should go,\(^{19}\) while another news outlet suggested ‘Let’s privatize the Central Intelligence Agency’).\(^{20}\) A year later, US representatives discussed this issue in closed meetings.\(^{21}\) In 2000, James Sutton, a national security expert, published a master’s thesis entitled ‘The Subversion of a Government Monopoly, the Privatization of Intelligence’.\(^{22}\) His research offered a series of interesting reflections on the nature of intelligence and prefigured the intensification of public-private interactions that followed the 9/11 attacks. Writing in the mid-2000s, Tim Shorrock, an investigative journalist, has provided the most significant effort to uncover and describe the development of the market for intelligence in the twenty-first century.\(^{23}\) Nevertheless, his account, like other journalistic accounts, should be approached with utmost care since it is not an academic work, ignores existing literature on intelligence, and overly focuses on the excesses of public-private intelligence ‘partnerships’.\(^{24}\)

In the first decade of the twenty-first century, the negative aspects of public-private intelligence ‘partnerships’ have repeatedly occupied the limelight. In the *New York Times*, in 2007 for example, Patrick Radden Keefe published an article entitled ‘Don’t Privatize Our Spies’.\(^{25}\) Some of the most prominent intelligence scandals of the decade, such as the National Security Agency’s (NSA) warrantless wiretap programme, or the Abu Ghraib prisoner abuses, have involved both government and private organisations. These incidents, and others, have threatened the core tenets of liberal democracies, in particular, human rights,

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\(^{18}\) John E. Pike, e-mail correspondence with author, 21 June 2011; Steven Aftergood, interview with author, 20 June 2011, Washington DC.


civil liberties, the rule of law, the separation of powers and the legitimacy of the government. Nevertheless, the involvement of the private sector in a series of controversies does not in itself demonstrate the existence of a causal relationship between the privatisation of intelligence and weak intelligence accountability, especially with regard to threats to liberal democratic values.

In the last few years, researchers have started to address more thoroughly the interactions between the IC and the private sector. Some contributions in particular stand out. Glenn J. Voelz, an intelligence officer in the US Army, published three articles demonstrating an in-depth knowledge of the most technical aspects of the challenges posed by intelligence contracting. Simon Chesterman, a lawyer by profession, took a wider view to describe the evolution of outsourcing in the twenty-first century and relate it to some accountability challenges. His research put a particular emphasis on the definition of ‘inherently governmental functions’. Jon D. Michaels, another lawyer, published a lengthy article on ‘Private-Public Intelligence Partnerships in the War on Terror’ in which he examined a series of interactions between the intelligence community and the private sector, emphasised the ‘harm’ caused by these interactions, and put forward procedural reforms. Christopher Caldwell and James Roper carried out ethical appraisals of the privatisation of intelligence. They concluded, somewhat radically, to reject any privatising of intelligence - a solution that is difficult, if not impossible, to embrace in practice. Thus far, there is a consensus that the private sector always has, and always will have, a role in US intelligence. Furthermore, many of the seminal books in the field of intelligence history offer brief but valuable insight into the role the private sector has played alongside the US government.

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28 Chesterman, ‘“We Can’t Spy… If We Can’t Buy!”’, pp. 1055-74.

29 Michaels, ‘All the President’s Spies’, pp. 901-66.


apparatus. Jonathan E. Lewis’ Spy Capitalism does provide an in-depth account of a specific type of public-private interaction in the field of national security intelligence, and examines the relation between intelligence, technological innovation and capitalism during the Cold War.

**Research Focus**

The research project essentially pursues two central channels of enquiry. First, the thesis investigates the origins and the evolution of the intelligence community’s reliance on the private sector, with a particular emphasis on George W. Bush’s GWOT. Second, the study analyses how this evolution related to the practice and the academic understanding of intelligence accountability in the United States. These two aims correspond to the key concern of the thesis: namely, the relationship between the privatisation of intelligence and intelligence accountability.

In this thesis, there exists an acute awareness that the privatisation of intelligence is used as an umbrella term. In the United States, privatisation is often mentioned to refer to the operational notion of contracting out, or the outsourcing, of supplies and services by the government. In this context, ‘commercial augmentation’ describes the use of contractors to bolster the government’s capabilities. This study considers privatisation more broadly, as a movement through which the government increases its reliance on the private sector.

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35 Jacob B. Gale, ‘Intelligence Outsourcing in the U.S. Department of Defense: Theory, Practice, And Implications’, Thesis submitted to the Faculty of the Graduate School of Arts and Sciences of Georgetown University in partial fulfillment of the requirements for the degree of Master of Arts in Security Studies, 15 April 2011, Washington DC, p.13;
36 For a similar definition, see: E. S. Savas, ‘Privatization and Public-Private Partnerships’, p.2; E.S. Savas, ‘Privatization”, in Mary Hawksworth and Maurice Kogan (eds), Encyclopedia of government and Politics
definition allows for the inclusion of the outsourcing of government services, but also informal interactions between government and the private sector. Although the intelligence community’s reliance on contractors and its reliance on telecommunication companies are essentially different phenomena, both can inform thinking on the relative place of the government security apparatus and the private sector. In addition, intelligence accountability is understood as a process guaranteed by a series of institutions and actors. This process centres on the relations between accountability holders and accountability holdees. Accountability holders refer to a series of political and legal standards, get information on the activities of the holdees, and punish or threaten to punish the holdees if deemed necessary.\textsuperscript{37} Behind this process, the nature of intelligence accountability in a democratic society is defined by the delicate trade-off between national security and liberal democratic values. Contemporary scholarship suggests that the privatisation of intelligence has impacted negatively on intelligence accountability, especially in terms of access to information and use of sanctions.\textsuperscript{38} In the course of this research project it became increasingly clear that intelligence accountability, and in particular obstacles to intelligence accountability, can also impact on the privatisation of intelligence and the thesis therefore considers this possibility.

\textit{Scope of the project}

This study of the relationship between the privatisation of intelligence and intelligence accountability explicitly focuses on the case of the US because its intelligence community is the most developed and well-funded of all the democratic societies. In the realm of national security and defence, the US has been and remains at the forefront of innovation, which grants it additional influence. Furthermore, no other country has carried privatisation as far as the United States. Consequently, the US case may actually ‘clarify through its example just how far privatization can be taken’.\textsuperscript{39} From a practical point of view, the amount of information available on the US intelligence community and its relationship with the private sector is substantial. Finally, the US case is unique. This is particularly clear when

considering the convergence of the following factors: a historical interpenetration between the public and private sectors, a relative transparency of the intelligence apparatus and worldwide influence.

The core of the project focuses on a specific timeframe ranging from the beginning of the GWOT in 2001 until the end of the presidency of George W. Bush in 2009. This period of time was selected because the privatisation of intelligence was significantly accelerated in these years.\(^{40}\) It is also interesting because of the recurrence of public debates exposing tensions between intelligence activities and liberal democratic values. As a result, the lens of democratic accountability is particularly relevant to the timeframe.

**Research design and methods**

The research question at the heart of this study lends itself to an exploratory, interpretative and qualitative methodology. This methodology aims to reach an in-depth understanding of the relationship between the privatisation of intelligence and intelligence accountability. Despite the remarkable transparency of the US government, the realm of intelligence and national security is undeniably marked by severe data constraints; notwithstanding that, information about intelligence programmes and activities often becomes public when they meet some hurdles. The thesis combines two main research methods and triangulates between and within each group of data type as much as possible. These methods are document analysis and semi-structured interviews. Concerning the former, the research is based on legal documents (jurisprudence, legislation and bills from the Congress, decisions from the executive branch); official press releases; investigative journalism;\(^{41}\) memoirs;\(^{42}\) documents from public and private organisations (unclassified and declassified documents from intelligence agencies); and second degree sources released by epistemic communities. Most documents surrounding the procurement process in the realm of national security, such as statement of work, contracts and performance reviews, are classified and remain therefore inaccessible to outsiders,\(^{43}\) though when available, some of them were used.\(^{44}\) In the case of


\(^{43}\) Gale, ‘Intelligence Outsourcing in the U.S. Department of Defense: Theory, Practice, And Implications’, p.32.
relevant documents from the executive branch that were known but publicly inaccessible, Freedom of Information Act (FOIA) requests were sent to intelligence agencies.\textsuperscript{45} To date, only one request was successful. Overall, documents were accessed online and in archives. Archival research was conducted at the Library of Congress in Washington DC and the National Archives at College Park, Maryland. The documents that were accessed there were mostly used to complement the historical overview offered in the second chapter of the thesis. From an internet source perspective, the websites of the US Government Printing Office (GPO) and the Federation of American Scientists (FAS), to name just two, provided access to a host of official documents.\textsuperscript{46} In turn, all of these sources have been approached with utmost care since their authors may have an interest to either downplay or overemphasise the impacts and implications of the privatisation of intelligence.

These documentary sources provided the necessary epistemological and empirical foundations for the interviews. Interviews were necessary to reveal or clarify day-to-day practices, human interactions, individual perceptions and preferences beyond the information available on paper. Philip Davies has rightly emphasised the importance of elite interviewing in the study of intelligence services because these latter are created by and for the policy-making elites.\textsuperscript{47} In the case of intelligence accountability, it is equally important to access information on wider society. In addition to national security elites working in the public and private sectors, I interviewed activists working for public interest groups such as the American Civil Liberties Union (ACLU) and the Project on Government Oversight (POGO), and investigative journalists. Since this study tackles a very contemporary problem, finding interviewees with first-hand knowledge of the topic was not a problem. In general, access to key individuals was good. However, some stakeholders were impossible to contact, either because their contact details were not available, or because they declined to respond to repeated requests for discussion.\textsuperscript{48} This was particularly the case with some serving and former members of the intelligence community and US representatives. Nevertheless, more than 35 individuals were able to provide valuable information. Three interviewees asked to

\textsuperscript{44} For example, see: Department of the Interior-CACI, 2003-2004, Work orders, \langle http://projects.publicintegrity.org/docs/wow/CACI_ordersAll.pdf \rangle (accessed 6 January 2009).

\textsuperscript{45} See appendix 2.


\textsuperscript{48} At the start of each interview, interviewees were presented with a consent form, a copy of which is provided in annex (appendix 3).
remain anonymous. Two of them are referred to by their function, as a congressional staffer, and a third one (an intelligence contractor) preferred the use of a pseudonym.

**Thesis outline**

The thesis is thematically divided into six chapters. Chapter one situates the thesis in the literature on intelligence accountability and presents different conceptions of intelligence accountability according to their focus on institutions, the essence of intelligence accountability in a democracy and the accountability process. The chapter makes specific reference to the US political system of democratic accountability and develops a conceptual exploration of the trade-off between liberal democratic values and national security. Accountability is defined as a process and divided in a series of phases that encompasses the occurrence of an accountability problem, the triggers which provoke reactions and responses from accountability holders and ultimately lead to specific outcomes.

The second chapter looks at the history of public-private intelligence interactions in the US. In the realm of intelligence and national security, the US government has always mobilised private interests for public purposes. This ‘special relationship’ is related to some of the values that have underpinned the formation of the United States, in particular, liberalism and individualism. Throughout US history, the private sector filled the gaps left by the federal government and provided security services to various public and private clients. Furthermore, in the twentieth century the development of the federal government and the institutionalisation of intelligence were accompanied by a parallel expansion of the private sector. To some extent, the history of the privatisation of intelligence is the history of US intelligence, as the private sector has contributed to some of the greatest achievements and excesses in the history of US national security.

In the third chapter, the evolution of intelligence and intelligence accountability is explored with a focus on the GWOT led by the administration of George W. Bush (2001-2009). The ‘war’ was a catalyst for the expansion of the requirements for and the use of intelligence. In a context of crisis and transformation, the administration of George W. Bush placed an emphasis on secrecy and effectiveness concerning intelligence, sometimes at the cost of liberal democratic values such as the rule of law, human rights, and privacy. The chapter evaluates the interactions between the three branches of government and wider society that form the basis of the US system of democratic accountability and concludes that the policies pursued by the administration of George W. Bush undermined some of the values
at the basis of intelligence accountability but did not damage the accountability process *per se*.  

Chapter four explores the evolution of public-private intelligence ‘partnerships’ from 2001 onwards. A series of factors accelerated the privatisation of intelligence in the early twenty-first century. The chapter distinguishes between three types of rationales behind this movement: a permissive environment, the evolution and imminence of the threat faced by the US, and privatisation as a strategy for domination. Following the reinforcement of some of these rationales, public-private intelligence ‘partnerships’ proliferated and diversified to an unprecedented level. However, these ‘partnerships’ developed in an imperfect market. Furthermore, the increasing interpenetration of the public and private sectors raised a series of issues about the nature of the state and its ability to maintain the ascendancy of the relationship between public authority and private interest, accountability holder and accountability holdee.

The fifth and sixth chapters explicitly consider public-private intelligence ‘partnerships’ in the light of the accountability process. Chapter five highlights the formation of a series of accountability problems relating to public-private intelligence ‘partnerships’ from 2001 onwards. These problems concerned inadequate and insufficient standards of accountability, key accountability holders’ difficulty of gaining access to private sector information and the inconsistent application of sanctions by the US government. Overall, it must be noted that the accountability regime applying to public-private intelligence ‘partnerships’ between 2001 and 2009 was relatively weak. This situation became apparent when a series of incidents raised accountability holders’ awareness of certain of the problems arising from this accountability process. These incidents triggered reactions from key intelligence accountability holders and crystallised their attention around four issues: conflicts of interests, efficiency, human rights, and civil liberties - all of which are explored in detail.

Finally, the sixth chapter considers the US government’s responses to the challenges posed by public-private intelligence ‘partnerships’ in the early twenty-first century. Key authorities within the executive and legislative branches of government attempted to respond to some of the most pressing challenges posed by the ‘partnerships’. Their measures aimed to ease government access to contractors’ information, and clarify or improve policies and regulations. However, these efforts were only partially successful and by the end of the presidency of George W. Bush, a series of problems remained. These concerned three particular areas: the public-private distinction, sourcing decisions, and legal standards and
their application. In turn, the persistence of relatively well-known problems emphasised the most central flaw of the US system of intelligence accountability: key accountability holders’ lack of willingness to carry out their duty. In this context, the solution(s) to the challenges posed by the privatisation of intelligence is intimately related to the improvement of the US system of intelligence accountability.