Chapter 4 - The evolution of public-private intelligence ‘partnerships’ during the Global War on Terrorism

This chapter examines the rationales and implications behind the evolution of public-private intelligence interactions during George W. Bush’s Global War on Terrorism (GWOT). Although the relationship between the intelligence community and the private sector predates the GWOT, a series of factors fostered its growth in the US in the decade following the 9/11 attacks. Three types of rationales for this growth are discussed. First, following the end of the Cold War, the US political context offered a permissive environment in which privatisation burgeoned. Second, the evolution of the nature and the imminence of the threats faced by the US intelligence community fostered calls for cooperation between the intelligence community and the private sector. In the time of crisis that followed 9/11, policy-makers and intelligence managers considered that staff shortages within the intelligence community needed to be filled rapidly. In order to do so, vast amounts of money were appropriated to the intelligence community and intelligence managers were then able to rely on private contractors to augment the capabilities of the US intelligence community. As a result, both the US intelligence community and the market for intelligence expanded. These two first rationales helped the government justifying privatisation by presenting it as a necessity resulting from the requirements that were faced by the intelligence community. However, these requirements were not only due to ‘new’ threats and demands, but also the product of previous governmental decisions. At the dawn of the twenty-first century, following a movement of privatisation that decimated its ranks, the intelligence community considered that outsourcing intelligence was the easiest solution to palliate an apparent lack of capabilities. Third, some authors have suggested that the US government has occasionally turned to the private sector in order to circumvent regular channels of intelligence accountability, or even to further some government officials’ private interest.¹ Notwithstanding that it may have occurred in some specific cases, this type of rationale does not fully explain the increasing scope and depth of public-private intelligence interactions since 2001. From 9/11 onwards, public-private intelligence interactions proliferated and diversified to an unprecedented level. Private contractors, that is to say commercial companies (industrial contractors) and individuals (independent contractors), now carry out

all types of intelligence activities for the government, from the most banal kind of administrative support to the most sensitive covert actions. In this context, it is not infrequent to hear that public-private relations are maturing towards a ‘partnership’. However, a closer look at the organisation of public-private interactions reveals a more complex reality. Furthermore, a variety of private entities relate to the US government and its intelligence community in ways that are not always formal, harmonious or economically viable.

The government’s rationales for an increased reliance on the private sector

A permissive environment

The privatisation movement
In the second half of the twentieth century, economic and political views supporting privatisation gained increasing appeal and reached the realm of national security. The foundations for privatisation were actually laid in the 1950s in academia and in politics. The so-called ‘Chicago school’ provided an economic rationale for unfettered free markets and a series of government decisions set up the policy of contracting-out commercial activities. The end of the Cold War prompted the prominence of a capitalist ideology and similar economic arguments that consider privatisation as a positive solution to the shortfall of government resources, capabilities and performance. Proponents of privatisation argued that shifting the production of goods and services from the government to the private sector allows cost-savings in the long term because the existence of public-private competition and

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comparative advantages within the private sector would drive costs down.\(^5\) For example, when contracting out its activities, the government would not have a lifetime obligation regarding the health care and retirement benefits of the people it hires.

In the US, these economic arguments were relatively well received by a people whose belief in self-government has historically been strong. Popular political leaders such as Ronald Reagan introduced privatisation on the national agenda in the 1980s\(^6\) in a deliberate effort to reduce the scope of the government and change the balance between public and private sectors.\(^7\) In his inaugural address, President Reagan famously argued that ‘government is not the solution to our problem; government is the problem’.\(^8\) The US Office of Management and Budget (OMB) circular A-76 then became a central tool behind the outsourcing of governmental activities. The circular set up a procedure to review the operations of government and determine which ones are ‘commercial’ or ‘inherently governmental’.\(^9\) It also provided a mechanism to measure private versus public sector efficiency. President Reagan started to outsource a considerable amount of government activities, among which military support services.\(^10\) For example, in the 1980s, the Army started planning its reliance on civilian contractors with the Logistics Civil Augmentation Program (LOGCAP).\(^11\) However, overall, this venture in privatisation remained limited by the reluctance of various government agencies attached to their prerogatives.\(^12\)

\(^5\) For a similar argument applied to the CIA, see: Michael Rubin, ‘Privatize the CIA’, Weekly Standard 12/20, 5 February 2007 <http://staging.weeklystandard.com/Content/Public/Articles/000/000/013/220wwnna.asp> (accessed 21 June 2010).


The privatisation trend was not limited to just Republican presidents. After a lull under President George H. W. Bush, the Clinton administration streamlined privatisation across multiple areas. In 1993 Vice-President Al Gore initiated the national performance review, which intended to determine how to transform the government bureaucracy in an ‘entrepreneurial government’ in order to guarantee better public performance levels. Capitalism and privatisation, it was expected, would reinvent the government. Deregulation was deemed to guarantee better public performance levels. A series of legislation modernised government procurement and partly redefined ‘inherently governmental functions’. On the White House website, Gore drew a list of achievements resulting from this initiative and announced that ‘with 377,000 fewer employees, the federal government is now the smallest it has been since President Eisenhower’. This policy also affected the defence and intelligence communities whose workforces were significantly downsized during the 1990s. In 1996, the Defense Science Board produced a report on ‘outsourcing and privatization’. In his letter accompanying the report, the chairman of the board recommended to the Secretary of Defense ‘an aggressive outsourcing initiative’, to ‘improve the quality of support services at significantly reduced costs’. According to the former Chief Human Capital Officer at the Office of the Director of National Intelligence (ODNI), the intelligence community was ‘decimated’ and some agencies lost as much as 40 percent of their capability. Meanwhile, the defence and intelligence communities started to rely more extensively on contractors’

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supplies and services to support their missions.\(^{20}\) The First Gulf War (1991) and then the American intervention in Bosnia (1995) confirmed the importance but also the difficulty to manage private contractors supporting the military.\(^{21}\)

At the turn of the twenty-first century, the intelligence community and the Pentagon, in particular, increasingly sought to meet its requirements through technology solutions provided by the private sector. Many of these technologies were ‘superior and cheaper than those developed by the government’.\(^{22}\) As the private sector improved and diversified its offering, for example in the sector of satellite imagery services,\(^ {23}\) the intelligence community increasingly relied on commercial companies to collect information and support its missions.\(^ {24}\) The company ManTech provided support services to Army intelligence during the First Gulf War, and then in Bosnia, Kosovo and Albania.\(^ {25}\) In the US, as a result of the privatisation movement, the critical information infrastructure shifted gradually towards the private sector. A declassified document produced by the NSA in December 2000 worried that private sector infrastructure was becoming ‘more vulnerable to foreign intelligence operations and to compromise by a host of non-state entities’.\(^ {26}\) Manifestly, intelligence community leaders recognised that the security and fates of the public and private sectors had become increasingly intertwined. Intelligence agencies relying on technological development

\(^{20}\) Mark M. Lowenthal, Statement before the US Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Intelligence Community Contractors: Are We Striking the Right Balance?, Hearing, 112th Congress, 2nd sess., 20 September 2011, p.5. Mark Lowenthal is a former Assistant Director of Central Intelligence for Analysis & Production, and President of the Intelligence & Security Academy, LLC.


\(^{25}\) Shorrock, Spies for Hire, pp. 102-3.

devised policies to augment their reliance on the private sector. A policy directive approved by the director of the National Imagery and Mapping Agency (NIMA) on 10 September 1997 emphasised how the agency could ‘improve performance by capitalising on proven commercial capability, capacity, and efficiency’. Michael Hayden, the former director of the NSA, recognised in a 2002 testimony that the NSA’s ‘strategy for nearly three years has been a shift to a greater reliance on American industry’. The so-called open source revolution in the 1990s generated enthusiasm for the development of networks of experts bridging the public-private divide. In an article published in 1993, Robert Steele, a specialist on open source intelligence, imagined ‘an extended network of citizen analysts, competitive intelligence analysts in the private sector and government intelligence analysts, each able to access one another, share unclassified files, rapidly establish bulletin boards on topics of mutual interest’. Steele further argued that the privatisation of intelligence would be particularly relevant to broaden not only producers but also the consumer base for intelligence products. The open source intelligence movement was livening up a basic truth of intelligence, society constitutes a pool of knowledge, global reach, experience and skills that intelligence agencies cannot overlook. In this context, it seems logical that the US government has come to rely increasingly on the private sector for research and development, the collection and analysis of information.

28 Michael V. Hayden, Statement for the Record before the Joint Inquiry of the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence, 17 October 2002, p.8.
30 For a similar argument in the late 1990s, see: Rathmell, ‘Privatising Intelligence’, pp. 199–204.
President George W. Bush strongly endorsed privatisation. As many other senior policy-makers in the US, President Bush, Vice-President Cheney, Secretary of Defense Rumsfeld had extensive experience in the private sector. In 2002, the President’s management agenda emphasised market-based performance and the outsourcing of products and services that were not ‘inherently governmental’. The outsourcing of services was particularly prevalent. In 2003, the Office of Management and Budget revised its circular A-76, which regulates competition for commercial services and among other aims, this revision intended to support the administration’s goals towards more competitive sourcing. In particular, the revision was supposed to help downsizing the civilian workforce in the Department of Defense by 50 percent. From 2000 to 2010, federal spending on service contracts increased from $164 billion to $343 billion. In this context, the 9/11 attacks and the wide support they generated for the Bush administration constituted an opportunity to further its belief in privatisation, including in the realm of national security intelligence.

The ‘functional arguments’ for privatisation

From the early 1990s onwards, the nature of the threat facing the US called for a disaggregation of its security strategy and an increasing reliance on the private sector. With the disintegration of the Soviet Union, US intelligence agencies were faced with a diversified set of new challenges while their workforce was downsized. In 1993, the new Director of Central Intelligence (DCI), James Woosley, famously underlined this shift when he told Congress: ‘we have slain a large dragon, but we live now in a jungle filled with a bewildering variety of poisonous snakes. And in many ways the dragon was easier to keep track of’.

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33 President Bush worked in the oil industry during his early career. Vice-President Cheney was chairman of the board and chief executive officer of Halliburton, one of the largest oilfield service corporations in the world. Secretary Rumsfeld was CEO of a pharmaceutical company and sat on the board of many other companies. For more on Cheney and Halliburton, see Pratap Chatterjee, *Halliburton’s Army. How a Well-Connected Texas Oil Company Revolutionized the Way America Makes War* (New York: Nation Books 2009); Robert Young Pelton, *Licensed to Kill. Hired Guns in the War on Terror* (New York: Three Rivers Press 2007) pp. 100-1. On Rumsfeld, see: Andrew Cockburn, *Rumsfeld. An American Disaster* (London: Verso 2007) pp. 55-72.
38 James R. Woosley, Testimony before the Select Committee on Intelligence of the United States Senate, Nomination of James R. Woosley to be Director of Central Intelligence, Senate Select Committee on Intelligence, 103rd Congress, 1st sess., 2-3 February 1993, p.76.
Less than a decade later, when George W. Bush became President, Woosley’s metaphor held true. If anything, US intelligence managers faced more and more snakes. In the words of a senior intelligence officer, the intelligence community had to focus on ‘literally the entire world, all of the peoples, all of the cultures, all of the languages’. Moreover, the end of bipolarity paved the way for the emergence of ‘new wars’ (Afghanistan and Iraq) where the military is facing adversaries such as insurgents that cross the traditional nation-state boundaries and tend to use unconventional methods. As a result, the intelligence community’s support to military operations increasingly focused on individual threats and networks. In 2002, Secretary of Defense Rumsfeld argued that new technologies and an emphasis on networks would revolutionise the sectors of defence and national security. This alliance between technology and networks proved particularly successful in the early days of the wars in Afghanistan and Iraq and it also solicited a deeper alliance between the public and private sectors.

Furthermore, terrorists’ ability to penetrate open societies and their indiscriminate targeting of civilians called for greater cooperation between the civilian entities that may be targeted in the American homeland such as transportation, communication networks, energy circuits, and the government. Since citizens constitute the quintessential targets of terrorism, they were asked to notice any unusual trend or fact to the intelligence community.

government aimed to create a new ‘information sharing environment’ in which both the public and private sectors would share prevention strategies and warning about specific attacks.\(^4^5\) This emphasis on surveillance in the homeland fostered the emergence of commercial companies specialised in gathering, fusing, analysing and disseminating intelligence to government agencies.\(^4^6\) Some of these companies offered ‘tailor-made security solutions’, arguing that they could gather information that is closer to the source of the threat, closer to society.\(^4^7\) This situation was also reinforced by US law which restricts government access to private information and imposes fewer restrictions on the private sector.\(^4^8\) As a result, the government began to rely increasingly on private-sector databases such as the ones created by credit card marketing companies to gather private information.\(^4^9\)

**Emergency growth and structural conditions**

The unprecedented growth of public-private intelligence ‘partnerships’ in the GWOT can be traced to the structural conditions under which an overwhelming increase in demand for intelligence occurred.\(^5^0\) Following the 9/11 attacks, the legitimisation of the role of the government in securing the homeland constituted a key dynamic behind the privatisation of

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intelligence. Since public-private intelligence ties have existed throughout American history, the growth of the intelligence community logically instigated further public-private intelligence interactions. In other words, the growth of the intelligence budget from 2001 onwards generated an increase of the intelligence community’s reliance on the private sector in absolute terms. The IC reliance on the private sector also increased in relative terms when compared to the pool of government employees and in order to justify this relative growth, intelligence managers have repeatedly evoked the structural conditions that constrained the US intelligence community. From this perspective, the intensification of the outsourcing of intelligence in the twenty-first century stems from the government’s lack of strategic planning in the area of human capital. After the downsizing of the 1990s, a significant part of the national security workforce shifted to the private sector. Following 9/11, the requirements for intelligence products and services dramatically increased and managers were expected to provide a rapid and effective answer to the crisis. However the scarcity of resources and loss of institutional knowledge within the IC meant that new challenges could hardly be met by the community alone. To support the surge in intelligence requirements, senior policy-makers decided to augment the capabilities of the intelligence community. President Bush ‘gave orders to increase the size of the analytic and operational cadres in CIA by 50 percent each’. According to the ODNI, ‘more than 50% of the Intelligence Community workforce was hired after 9/11’. This reaction was based on the debatable conclusion that the US ‘intelligence agencies on 9/11 just didn’t have enough people to do the job’. With hindsight, some commentators have criticised the decision to comfort the US intelligence community’s ‘bureaucratic instinct that bigger is always better’. For Carl Ford, a former senior intelligence official at the State Department, ‘pouring more money and human resources into taming surprise only insures many of the policy-makers’ urgent problems will go

51 Sanders, Results of the Fiscal Year 2007 U.S. Intelligence Community Inventory of Core Contractor Personnel, p.2.
52 Lowenthal, Statement before the US Senate Committee on Homeland Security and Governmental Affairs, p.5. See also: John Ganon (Vice President for Global Analysis, BAE Systems Information Technology), Testimony Before the US Senate Committee on the Judiciary, FBI Oversight, Hearing, 109th Congress, 2nd sess., 2 May 2006.
54 Sanders, interview with Mr. Andrew Pourinski, p.2.
unaddressed’. Nevertheless, Congress effectively sanctioned the growth of the intelligence community by granting it vast amounts of money. In the decade following the 9/11 attacks, the intelligence community’s budget roughly doubled. In addition, the use of supplemental appropriations and overseas contingency operations funding to carry out the GWOT, which are renewed on a yearly basis, made it ‘very difficult to hire government employees’ because these latter are ‘very difficult to hire one year at a time’. In this situation of emergency, the intelligence community expanded rapidly and in a relatively unplanned fashion.

The loss of experience that occurred in the 1990s effectively created a need to replace knowledge and skills. As a result, the government started to rely more heavily on commercial companies providing the services of former experienced government employees to augment particular intelligence capabilities. An unclassified document released by the ODNI notes that the ‘dramatic surge required people with the institutional knowledge and tradecraft to fill skill gaps and train new hires. Much of that expertise existed among our retired ranks, who answered the post-9/11 call to duty as a de facto “intelligence reserve corps”’. Similarly, Michael Hayden, the former director of the CIA, is keen to note that the intelligence community was not experiencing a new growth but it was simply ‘buying back capacity, buying back capability, buying back resources and personnel that we had lost in the decade of the ‘90s following the collapse of the Soviet Union’. In this view, when outsourcing intelligence, the government was able to keep talented professionals close to the community.

The alternative, which was not followed at the time, was to hire new government employees. However, recruiting and training new government employees typically takes time

57 See for example: US Congress, Pub. Law 107-38, An Act Making emergency supplemental appropriations for fiscal year 2001 for additional disaster assistance, for anti-terrorism initiatives, and for assistance in the recovery from the tragedy that occurred on September 11, 2001, and for other purposes, 107th Congress, 1st sess., 18 September 2001.
58 James Clapper, cited in US Senate, Select Committee on Intelligence, Nomination of Lieutenant General James Clapper, Jr., USAF, Ret., To Be Director of National Intelligence, p.11; US Senate, Post-Hearing Questions for the Record Submitted to Paula Roberts From Senator Daniel Akaka, Intelligence Community contractors: Are We Striking the Right Balance?, 20 September 2011, p.72.
and this was a resource policy-makers appeared to lack following the 9/11 attacks.\textsuperscript{62} According to Michael Chertoff, the Director of the Department of Homeland Security between 2005 and 2009, the intelligence community needed the flexibility and the responsiveness of the private sector.\textsuperscript{63} Following the 9/11 attacks, contractors were expected to fill the intelligence community’s capability gaps temporarily, until the government would catch up. The government could not have directly augmented its number of full-time employees because it is a very slow bureaucratic process. Government employees need to be vetted and trained for years in order to acquire the necessary experience and work efficiently.\textsuperscript{64} Outsourcing government activities to former employees with security clearance typically proceeds faster, often only a few weeks.\textsuperscript{65} Moreover, once an activity is outsourced, a commercial company can get started quickly, direct important sums of money towards the product or the activity and then absorb early expenses in the following years. In contrast, because of bureaucratic constraints, the government typically spends its money in a more linear fashion.\textsuperscript{66} As a result, it is more difficult for intelligence agencies to spend vast amounts of money in a short period of time. Outsourcing is also more flexible because it binds the government for the length of contracts, generally for a few years. In this sense, contractors can provide a solution to some of the problems of resources allocations and prioritisation faced by intelligence managers.

In terms of resource allocation, intelligence managers are limited by the congressional ceiling imposed on each agency’s personnel.\textsuperscript{67} Although Congress can move these ceilings, it has been reluctant to do so. In an interview, Michael Hayden noted that ‘money was always easier to get increased than it was to get end strength… because [raising the end strength] has

\begin{itemize}
\item \textsuperscript{62} Sanders, interview with Mr. Andrew Pourinski, p.8.
\item \textsuperscript{63} Michael Chertoff, in video: C-SPAN, Privatization of U.S. intelligence, 20 August 2009, <http://www.c-spanvideo.org/program/288482-1> (accessed 10 September 2011). The Department of Homeland Security is not a formal member of the intelligence community. However, the Department has a handful of offices producing intelligence, for example the Office of Intelligence and Analysis. See also: Sanders, Results of the Fiscal Year 2007 U.S. Intelligence Community Inventory of Core Contractor Personnel, p.1.
\item \textsuperscript{64} On the recurring problems regarding the US government’s security clearance process, see: US Senate, Committee on Homeland Security and Governmental Affairs, Oversight of Government Management, The Federal Workforce and The District of Columbia Subcommittee, Progress or More Problems: Assessing the Federal Government’s Security Clearance Process, Hearing, 109\textsuperscript{th} Congress, 2\textsuperscript{nd} sess., 17 May 2006, p.70. According to the Department of Defense, security clearance investigations average between 150 to 410 days to complete.
\item \textsuperscript{65} Former Senior Intelligence Official A, interview with author, 8 August 2011, Washington DC.
\item \textsuperscript{66} See: Appendix 7.
\item \textsuperscript{67} Congress imposes ceilings on the intelligence community workforce. These ceilings are part of the classified schedule of authorisation of the annual intelligence authorisation act. See for example: US Congress, Pub. Law 108–487, Intelligence Authorization Act for Fiscal Year 2005, 108\textsuperscript{th} Congress, 2\textsuperscript{nd} sess., 23 December 2004, Section 103. See also: Sanders, Media Conference Call, p.12; Sanders, Results of the Fiscal Year 2007 U.S. Intelligence Community Inventory of Core Contractor Personnel, p.6.
\end{itemize}
an air of permanence about it, whereas money appropriated for this fiscal year, that’s a good idea. Therefore intelligence agencies used supplemental appropriations to hire contractors and raise their capability temporarily. In this way, the workforce grew without being limited by congressional ceilings. This explains why (in some cases) the use of contractors may have been ‘driven by factors unrelated to mission’. Furthermore, the reliance on contractors can minimise resource allocation problems by focusing government employees on key tasks and orienting contractors towards support tasks. More generally, contractors can act as a temporary fix in order to palliate some of the capabilities gaps caused by the uncertain variation of intelligence requirements. In turn, the federal government’s intention to use contractors as a temporary fix, partly explains why the lack of planning behind the community’s increasing reliance on contractors was deemed acceptable. Interestingly, this managerial perspective presents the privatisation of intelligence in a-political and pragmatic terms as an aggregation of ad hoc managerial adjustments aiming at restoring security rapidly. This perspective plausibly explains why, when problems involving public-private ‘partnerships’ occurred, the leaders of the intelligence community did not seem to have kept an eye on them.

Privatisation as a strategy for domination

Privatisation has been described as a political strategy aiming ‘to realign institutions and decision-making processes so as to privilege the goals of some groups over the competing aspirations of other groups’. This strategy could support political goals such as the expansion of influence, and many studies point out that, under some specific conditions, privatising security allows government reducing political costs, depoliticising decisions or even evading accountability all together by shifting responsibilities and removing basic

68 Hayden, interview with Frontline.
69 Former staff member of the HPSCI, conversation with author, 2 April 2012, San Diego, CA.
71 For justification in terms of ‘temporary need for additional personnel’, see: US Senate, Select Committee on Intelligence, Authorizing Appropriations for Fiscal Year 2004 for Intelligence and Intelligence-related Activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for Other Purposes, Report 108-044, 108th Congress, 1st sess., 8 May 2003, p.19.
73 For a similar argument, see: Solomon Hughes, War on Terror, Inc. Corporate profiteering from the politics of fear (London: Verso 2007) p.177. Hughes argues that private companies shifted the control of intelligence operations into the hands of Department of Defense officials.
decisions from the public to the private realm. For example, Joshua Chaffin, a journalist, reported that ‘the Pentagon used private contractors to interrogate prisoners in Iraq and Afghanistan in a deliberate attempt to obscure aggressive practices from congressional or military oversight’. Considering some of the controversies that surrounded the use of intelligence agencies by policy-makers, such as the Watergate scandal or the use of raw intelligence by the Bush administration to support its case for a war in Iraq, this type of argument is conceivable. However, while executive aspirations provide a plausible intent, a more careful examination of the events following the 9/11 attacks weakens the argument that privatising intelligence reduces political costs. First, as the policy failure in the lead-up to the 2003 Iraq War demonstrated, decision-makers do not need to rely on the private sector to circumvent traditional intelligence processes or gain more power. Experienced policy-makers can use the bureaucracy to their own ends. For example, when Rumsfeld created an Office of Special Plans, he effectively created an extra layer of bureaucracy that sidestepped the traditional intelligence processes. Second, in the case government officials would outsource an activity to hide some wrongdoing, the fact that they could outsource actually brings more people in the loop, not just the public actors but also some private actors. Inevitably the more people know about a secret, the more likely it is that it will be revealed. Considering the attention security and intelligence contractors have drawn, at least since 2004, the continuing government reliance on contractors despite the political headache such arrangements have sometimes caused, suggests that the government had more significant other reasons to rely on the private sector. Nevertheless, certain experts have argued that outsourced activities are

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75 Chaffin, ‘Contract Interrogators Hired to Avoid Supervision’, p.6.

76 According to Seymour Hersh’s sources, the Office of Special Plans was created in order to find evidence that Saddam Hussein had close ties to Al Qaeda, and that Iraq possessed WMDs. Hersh then proceeds to explain how the creation of this office ‘gave the Pentagon’s pro-war leadership added leverage’ in its turf battles against the CIA and State Department. Seymour M. Hersh, ‘Selective Intelligence. Donald Rumsfeld has his own special sources. Are they reliable?’, *New Yorker*, 12 May 2003 <http://www.newyorker.com/archive/2003/05/12/030512fa_fact> (10 May 2009).

77 In other places, such as Colombia, the US intelligence community’s reliance on private companies has been less visible. See for example: Juan Forero, ‘Private U.S. Operatives on Risky Missions in Colombia’, *New York Times*, 14 February 2004, A3.
often less transparent than political and bureaucratic structures. Dana Priest, an investigative journalist for *The Washington Post*, holds that outsourcing masks ‘the fact that the government was growing in response to the 9/11 attacks’. Although Priest is not wrong, in the realm of national security intelligence agencies have never been controlled by completely overt bureaucratic and political structures, and even since the institutionalisation of congressional oversight in the 1970s the intelligence committees mostly meet in secret. Fourth, if privatisation really turns out to weaken intelligence accountability, it does not mean that decision makers intended to do so. For instance, there has been some confusion - not to say conflation - between the use of the private sector as a cover to protect intelligence agencies’ sources and methods and its use to cover agencies’ wrongdoings. While the former situation is part of the daily challenges of intelligence, such abuses do surface occasionally and are often difficult to prove.

Privatisation is sometimes considered as a strategy adopted by policy makers and intelligence officials to further their own interest and the interest of their former colleagues who moved to the private sector. This strategy can be opportunist in an electoralist and nepotistic sense if the decision-maker intends to reward political allies. Allegations of cronyism have been widespread in recent years and are supported by at least two phenomena: the revolving door or the flow of individuals moving from the public to the private sector (and vice versa) and the American system of political funding. The first phenomenon feeds allegations that some government employees developed strong ties with some commercial companies and awarded them government contracts in order to obtain a job with one of these companies when they left the government. Although this sequence of events may actually not breach the law, the revolving door does give an incentive for senior policy-makers to

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80 See Chesterman, supra note 78. In the case of the rendition flights, at the time, the US government may not have considered it was involved in some kind of wrongdoing.
make favours to commercial companies for which they have worked or those that are willing to hire them in the future.

The second phenomenon that feeds allegations of personal interest is the funding of political campaigns by some of the companies that are involved with the intelligence community.\(^{83}\) It is reasonable to suppose that these companies expect political favours in exchange to their funding and, in at least two cases, this kind of cronyism has been proved illegal. In 2006, former Republican congressman Randy Cunningham (R-CA) was convicted for using his position as a member of the House appropriations and intelligence committees to earmark contracts for MZM Inc. with the Pentagon’s Counterintelligence Field Activity (CIFA).\(^{84}\) Cunningham was sentenced to eight years in prison.\(^{85}\) In 2007 Kyle “Dusty” Foggo, then executive director at the CIA, was convicted for using his position to steer public money towards one of his friends’ defence company.\(^{86}\) Both cases suggested that mechanisms controlling the regularity of contracts and ethics within the Department of Defense and the CIA were imperfect. However, overall, they do not provide a satisfying rationale for the substantial intensification of public-private intelligence ‘partnerships’ in the twenty-first century. These two cases, whilst attracting considerable attention, remain relatively isolated.

An overview of the weight of some of these rationales was provided by the ODNI in 2008 during a conference held by the agency’s Chief Human Capital Officer, Ronald Sanders.\(^{87}\) The pie chart below is a declassified slide of the PowerPoint document on which Sanders based his intervention. The percentages presented in the pie chart confirm the unique character of some of the services provided by the private sector, with 56 percent of core


\(^{84}\) Shorrock, *Spies for Hire*, pp. 375-6.


\(^{87}\) Sanders, Results of the Fiscal Year 2007 U.S. Intelligence Community Inventory of Core Contractor Personnel.
contract personnel providing ‘unique expertise’ to the intelligence community in 2007. This percentage corroborates arguments that the private sector is essential to the IC. The chart (below) also confirms that some of the decisions to privatise are based on: cost-effectiveness; the uncertain nature of intelligence activities; and surge requirements related to the GWOT.

Figure 1 – NIP Contract Personnel FTEs: Percentage by Purpose (FY 2007)

Source: Office of the Director of National Intelligence, Letter to the Author, FY 2007 Results, US Intelligence Community, Inventory of Core Contractor Personnel, p.5.

In his presentation, Sanders explained the meaning of some of the categories used in this chart. Funding uncertainties consists for example in year-to-year emergency supplemental funding. Surge requirements occur when the government hires contract personnel to fill the gap, while civilians are being trained and developed to be eventually deployed instead of contract personnel. According to Sanders, the percentage for surge requirement was higher in the years directly following the 9/11 attacks. Non-recurring projects are defined as work with very specific and definite duration. Further explanation about other categories was later

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88 Sanders, Results of the Fiscal Year 2007 U.S. Intelligence Community Inventory of Core Contractor Personnel, p.3. This percentage is based on the budget for the National Intelligence Program for FY 2007.
89 For a further break down of some of the categories, see: Appendix 8.
provided by the Intelligence Community Directive Number 612 which became effective on 30 October 2009. Among others, the directive describes transfer of knowledge as maintaining ‘critical continuity or skills in support of a particular mission or functional area in the face of skills gaps, the loss (anticipated or otherwise) of mission-essential USG civilian or military personnel, or other similar exigency’. Overall, the information presented by the ODNI is revealing but incomplete. The ODNI figures are based on a part of the aggregate intelligence budget for 2007, the budget for the National Intelligence Program (NIP) and not its totality. They only account for core contract personnel and leave out other types of contractors. The category ‘Other’ on the pie chart remains unexplained.

There is strong evidence that the US intelligence community’s reliance on the private sector has so far been truly essential to US national security. Intelligence, because of its nature, could not function without the private sector. This explains why the relationship between the IC and the private sector is here to stay. The fiercest opponents of the intelligence community’s reliance on the private sector, those who argue that intelligence (as a whole) should not be privatised, do not properly take into account the fact that government bureaucracy is unable to provide all the innovation, flexibility and critical knowledge necessary for the craft of intelligence. Public-private coordination is essential to intelligence because the government needs the expertise of the private sector to carry out its mission and for intelligence agencies not to rely on the private sector, government would have to grow so significantly that the United States may transform into a burdensome and undemocratic security state.

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Proliferation and diversification

The government’s consumption of private intelligence

The strengthening of the rationales for privatising intelligence in the GWOT generated a quantitative proliferation and qualitative diversification of the relationship between the IC and the private sector. In May 2007 Terry Everett, a senior procurement executive at the ODNI, revealed that 70 percent of the intelligence budget was spent on private contracts\(^{94}\) and based on the budget for the NIP in 2006, it appears that $28.63 billion were spent on private contracts that year.\(^{95}\) Another slide used by Everett during the ODNI presentation suggests that the spending on intelligence contractors roughly doubled from 1996 to 2006.\(^{96}\) However such aggregate budget figures typically conflate the provision of supplies and services. In this context, expensive goods such as satellites are likely to constitute the lion’s share of the 70 percent spent on private contracts. Considering human capital, the ODNI revealed in 2008 that 27 percent of the intelligence community’s workforce, that is to say 37,000 contractors, was engaged in ‘core’ intelligence tasks.\(^{97}\) Among these, several...
thousands were individual contractors who, by definition, do not depend on a company.\textsuperscript{98} According to a national security expert, in 2007, in the most sensitive division of the CIA, the National Clandestine Service, ‘over half of the workforce is made up of industrial contractors’.\textsuperscript{99} At the NSA, procurement spending doubled from 2000 to 2004 and was forecast to double again in the following decade.\textsuperscript{100} According to an account of a briefing by Harry Gatanas, the Senior Acquisition Executive for the NSA from 2004 to 2005, in 2003 alone, the NSA executed some 43,000 contracts, and in 2004 the Agency used as much as 2,690 businesses.\textsuperscript{101} In a Senate hearing, James Clapper noted that when he served as director of the National Geospatial-Intelligence Agency (NGA), from 2001 to 2006, ‘half of the labor force was contractors’.\textsuperscript{102} In 2007, the Director of the DIA stated that contractors represented about 35 percent of his agency’s workforce.\textsuperscript{103} In sum, these figures confirm that contractors constituted a significant part of the intelligence community’s workforce between 2001 and 2009.

Since 2007, further disclosures clarified the proportions of the 70 percent of the intelligence budget that were spent on private contracts.\textsuperscript{104} The document on which Ronald Sanders based his presentation reveals that collection and operations take most of the budget, and that management and support, and analysis and production are also significantly outsourced. According to the release, a significant part of the budget for the NIP (22 percent)
is spent on technology. In a follow-up interview, Sanders further specified that there were no particular reasons for this overall repartition.¹⁰⁵ The outsourcing of intelligence activities expanded in a relatively unplanned fashion and this is not surprising. As Wilbur Jones observed in his seminal history of US acquisition, the overall precept followed by the US government has been ‘to act now, worry later’.¹⁰⁶

Figure 2 – NIP Contract Personnel FTEs: By Function and Agency (FY 2007)

Although this chart gives an idea of contractors’ contribution to intelligence activities, it remains limited by a broad and debatable view of what intelligence agencies do. Contractors’ provision of goods and services to the intelligence community can be divided in six sub-sets

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¹⁰⁷ See also: Sanders, Results of the Fiscal Year 2007 U.S. Intelligence Community Inventory of Core Contractor Personnel, pp. 2-3. Information and Technology (IT) consists in running computer systems, information security etc. Enterprise management and support are the formal term for administrative functions (e.g. processing travel vouchers, personnel actions). Mission management is understood as a coordinating function. The right side of this slide remains classified and was therefore excised by the ODNI.
of activities: collection, covert action, analysis, dissemination, management and support, and counter-intelligence. When carrying out these tasks, contractors have worked from places ranging from offices in Washington DC area to the frontlines in Afghanistan and Iraq.

Since the beginning of the GWOT private contractors have been involved in all the types of intelligence collection from the most mundane tasks to the most sensitive. Companies have contributed to the collection of signal (SIGINT), imagery (IMINT) and measurement intelligence (MASINT) when they developed and built satellites or drones. Drones have been remotely controlled by private contractors sitting in an office somewhere in the US or abroad, providing timely imagery intelligence and 24-hour surveillance of sensitive areas on the frontlines of the GWOT. Contractors worked in the National Counter Terrorism Center to collect and maintain intelligence to feed its terrorist database. They also worked closer to the field. For example, the intelligence community contracted out linguists and social scientists to join teams collecting human intelligence (HUMINT) in Afghan and Iraqi villages. The US Army Intelligence and Security Command used contractors to conduct ‘overt and controlled HUMINT operations in support of deployed U.S. and coalition forces’ in Iraq and Afghanistan. Contracted linguists also worked directly in the interrogation room, and contractors devised sets of techniques to interrogate detainees and some interrogated detainees.

108 The term national security intelligence has been used to describe processes, products and institutions. In this case, the focus is on the intelligence process, or intelligence as a set of activities. For a similar definition of intelligence, see: Mark M. Lowenthal, Intelligence: From Secrets to Policy (Washington DC: CQ Press 2006) p.9.
110 Ibid, p.11. Shorrock refers to The Analysis Corporation for the maintenance, and to CACI International for the collection. See also: Miller, ‘Spy Agencies Outsourcing to Fill Key Jobs’.
113 Chatterjee, Outsourcing Intelligence in Iraq, pp. 13-22. According to Dana Priest and William Arkin, more than 56 commercial companies compete for the linguist business. See: Priest and Arkin, Top Secret America, p.182.
Hayden suggested some contractors may have been involved in waterboarding and recognised that the CIA used contractors to conduct espionage, although ‘by and large, these were individual contractors’. In the CIA Iraq station, contractors reportedly worked as case officers, recruited informants and supervised government agents supporting combat units. In Afghanistan, contractors reportedly gathered ‘intelligence on the whereabouts of suspected militants and the location of insurgent camps’. Finally, commercial companies collected and provided open source intelligence (OSINT) to the intelligence community. Some of these companies specialised in the aggregations of data on other companies’ customers. This type of arrangement reportedly allowed the government to circumvent the Stored Communications Act which prohibits companies, such as Internet Service Providers, from turning over some information directly to the government.

Contractors have also been involved in some of the most offensive intelligence activities led by the IC. According to Robert Young Pelton’s account of his field research in Afghanistan, some contractors worked on a ‘CIA-paid covert hunt for Bin Laden in the border region of Afghanistan’. This use of contractors for paramilitary operations, a type of covert action, was indirectly confirmed by the CIA in a press release in which it stated that two contractors ‘died while tracking terrorists near Shkin, Afghanistan, on October 25, 2003’. Commercial companies have also been an essential part of the drone war – in which

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116 Hayden, interview with Frontline.
remotely controlled unmanned aerial vehicles have allowed the CIA to conduct targeted killings. Private contractors developed, built, maintained, loaded and operated drones.\textsuperscript{124} Reportedly, ‘management and training responsibility for CIA’s “targeted killing” efforts’ was handed to Blackwater USA.\textsuperscript{125} Within the military intelligence community, contractors have been in charge of ‘selecting targets for assassination in Iraq and Afghanistan’.\textsuperscript{126} However, according to Dana Priest and William Arkin:

They had to hand the joystick controls over to a federal employee – either a CIA officer or someone in uniform – once the vehicle got inside the kill box, meaning within the range of launching its missiles. Government and military lawyers insisted that a service member or agency officer sworn first and foremost to act in the United States’ interest, and not some corporate interest, push the launch button.\textsuperscript{127}

Commercial companies have been extensively involved in intelligence analysis. They provided data harvesting and mining services to the IC in order to make sense of large databases.\textsuperscript{128} Furthermore, companies developed software programmes ‘used to manipulate and visualize data’.\textsuperscript{129} Besides these relatively uncontroversial services, contracted analysts briefed senior intelligence officials or policy-makers, a significantly sensitive task given the influence experts can have in government.\textsuperscript{130} Hillhouse claimed in 2007 that the President Daily Brief, arguably the most important intelligence product, heavily relied on private contractors,\textsuperscript{131} but this claim seems to be based on reasoned guesses rather than evidence. Commercial companies have also disseminated intelligence. In a 2004 testimony, General

\textsuperscript{126} Joshua Foust, Statement before the U.S. Senate Committee on Homeland Security and Governmental Affairs, p.18.
Miller, the former commander of Joint Task Force Guantanamo, pointed out that contractors were ‘developing processed intelligence form raw intelligence and feeding our computer systems’. Raytheon Corporation designed and built the Distributed Common Ground System, which allowed the US military to fuse ‘tactical intelligence from military units with signals intelligence and imagery from the national collection agencies’. Commercial companies have also provided the US government with report officers ‘who act as liaisons between officers in the field and analysts back at headquarters’.

 Contractors have provided all sorts of management and support tasks. In most cases, these tasks do not constitute an intelligence activity per se. However, they are essential to the functioning of intelligence. For example, a company called Antheon has reportedly trained instructors at the Army’s intelligence school in Fort Huachuca, Arizona. Commercial companies and non-profit organisations advised intelligence agencies on the efficiency of their structure and workforce management. They have also been involved in outside reviews and auditing of intelligence community programmes or activities. At the CIA, companies acted as travel agents and planned international trips for the Agency’s employees. Some companies were involved in the planning of the extraordinary rendition flights, transporting high values detainees around the world. Companies have also been involved in procurement processes. According to Tim Shorrock, Northrop Grumman subcontractors managed ‘DIA’s system for processing bids and awarding contracts’ and various sources

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133 Shorrock, Spies for Hire, pp. 12, 155, 253.
135 Shorrock, Spies for Hire, pp. 5, 267.
139 Shorrock, Spies for Hire, p.175.
have also confirmed the involvement of commercial companies in drafting government agencies budgets and writing statements of work.\textsuperscript{140}

Finally, companies have provided services in the area of counter-intelligence and information security, protecting intelligence sources and methods against enemy intrusions. Contractors compartmentalised secret information and made sure compartments were respected by intelligence producers and consumers.\textsuperscript{141} In order to hide some programmes, companies such as Abraxas Corporation have reportedly devised nonofficial covers for case officers overseas.\textsuperscript{142} Other companies have physically protected and stored secret documents, or provided security tools to protect classified computer networks.\textsuperscript{143} The defunct Blackwater company has been reported to physically protect personnel in and around some the most dangerous CIA stations and during field officers missions.\textsuperscript{144} Commercial companies also provided investigative support and vetted intelligence agencies employees and contractors.\textsuperscript{145} Finally, private contractors have reportedly acted as counterintelligence officers, overseeing clandestine meetings between agency officers and their recruited spies.\textsuperscript{146}

\section*{The organisation(s) of public-private intelligence interactions}

\textit{A variety of statuses and incentives}

In the twenty-first century, public-private intelligence interactions have been characterised by a variety of statuses and incentives. Regarding the status of the actors, the public side of the relation can be defined as one of the 16 government agencies constituting the intelligence community. The status of the private entity acting in support of the intelligence community

varies and the intelligence community usually contracts out to companies and individuals. At the most general level, the Department of the Army defines contractors as ‘persons or businesses, to include authorized subcontractors, who provide products or services for monetary compensation. A contractor furnishes supplies, services, or performs work at a certain price or rate based on the terms of a contract’. \footnote{147} One key distinction is between personal and nonpersonal services contracts. In the former type of contracts, the government retains control of and ‘full personal responsibility for the function’, and ‘contractor personnel are subject to the relatively continuous supervision and control of a Government officer or employee’. \footnote{148} In the latter type of contracts, the government delegates a function to a contractor and ‘the personnel rendering the services are not subject, either by the contract's terms or by the manner of its administration, to the supervision and control’. \footnote{149} Furthermore, in its ‘IC contractor workforce assessment’, the ODNI has divided contractors into three groups. \footnote{150} Commercial contractors provide commercially available services such as food or janitorial services. Another group of contractors, commodity contractors, provide a ‘specified commodity, such as a satellite or information system’. Finally, core contractors:

provide direct support to IC mission areas such as collection activities and operations (both technical and human intelligence), intelligence analysis and production, basic and applied technology research and development, acquisition and program management, and management support to these functions. Core contractors perform staff-like work, often fully integrated with federal workers and working in federal workspaces. Furthermore, they produce work products such as reports, analyses, and intelligence estimates that are often indistinguishable from those produced by federal personnel. \footnote{151}

Commercial companies working for the intelligence community vary immensely in size along a continuum that stems from the well-established defence industry giants to small start-up companies relying on their rolodex to provide contractors to an intelligence agency. The biggest companies, such as Lockheed Martin, Raytheon, or Booz Allen Hamilton, employ ten thousands of cleared personnel to provide all sorts of services to the defence and

\footnote{147} Department of the Army, FM 3-100.21: Contractors on the Battlefield, January 2003, pp. 1-2.
\footnote{148} General Service Administration, Federal Acquisition Regulation (FAR), 19 September 2001, Title 48, Vol.1, Section 37.104.
\footnote{149} Ibid, Section 37.101. For more on types of contracts and contracts typology, see: Gale, ‘Intelligence Outsourcing in the U.S. Department of Defense: Theory, Practice, And Implications’, pp. 13-5.
\footnote{150} US Senate, Committee on Homeland Security and Governmental Affairs, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Background: Intelligence Community Contractors: Are We Striking the Right Balance?, 112th Congress, 1st sess., 20 September 2011, p.75.
\footnote{151} Ibid. See also: Office of the Director of National Intelligence, Intelligence Community Directive Number 612, Intelligence Community Core Contract Personnel, 30 October 2009, p.4.
intelligence communities. They are so extensively involved with the government that they have arguably become semi-public organisations.\textsuperscript{152} Legally speaking, most of these companies are actually public companies since they offer their securities for sale to the public.\textsuperscript{153} As technology became more complex, these prime contractors, or ‘systems integrators’,\textsuperscript{154} began to rely more heavily on smaller, more specialised, private companies to which they subcontract their work. At this second level, the government rely on a contractual relation between two or more contractors to obtain intelligence supplies or services. In the last decade, companies which were not historically related to the intelligence community shifted into the intelligence business. For instance, Google and AT&T, which are known for their achievement in information technology, greatly profited from greater public demand for intelligence.\textsuperscript{155} Finally, a range of smaller companies focuses more exclusively on intelligence activities.\textsuperscript{156} Shorrock estimates that their collective value exploded in the years following the 9/11 attacks from $980.5 million in 2001 to $8.3 billion in 2006.\textsuperscript{157}

The public-private distinction can also be used to distinguish between different public and private incentives. In theory, the intelligence community’s main organisational incentive is national security. This public end is embedded in the secretive intelligence bureaucracy.\textsuperscript{158} In practice, however, agencies often pursue their own organisational interest.\textsuperscript{159} Moreover, their activities can be influenced at the political level by trade-offs between national security and liberal democratic values. Private entities supporting the intelligence community are usually considered as ‘partners’, which emphasises a commonality of goals. A former senior CIA officer even recalls ‘a very brotherly relationship’ with the company Blackwater, which

\textsuperscript{152} Most of these companies can be found in the list of the top 100 federal contractors available in the Federal Procurement Data System. See: Federal Procurement Data system, Federal Procurement Report, <https://www.fpds.gov/fpdsng_cms/index.php/reports> (accessed 21 October 2011).


\textsuperscript{154} Shorrock, Spies for Hire, p.23.

\textsuperscript{155} Ibid, p.25.

\textsuperscript{156} Ibid, pp. 264-5.

\textsuperscript{157} Ibid, pp. 268-9.


he felt was ‘an extension of the Agency’. Nevertheless, in most cases, the private partner is a company with a clear profit interest that is contracted for a particular task. In the market for intelligence, as in most other markets, public, private, small, or large companies, have in common an incentive structure that primarily aims to fulfil their owners’ main interest: profit. At the individual level, profit is rarely the sole incentive and ‘exchanging an official blue badge for the contractor’s green one does not automatically divest someone of a sense of professional dedication’. In this sense, private actors are also driven by their national security mission. Patriotic and self-reward are certainly key motivations but in some situations economic interests prevail more clearly. This is the case of informers who accept to work for an intelligence agency in exchange of monetary compensations.

Commercial companies sometimes relate to the intelligence community for other motives and through other means than a contract. Sometimes a company is forced to cooperate. For example, this is the case when the FBI serves a subpoena to a company to obtain some of its proprietary information. If a company fails to comply with this kind of legal requirement, the government can fine it. In other cases, a company may be willing to disclose information to the government in a more informal way, without requiring a subpoena or a warrant. For example, as a part of the Terrorism Surveillance Program, the NSA obtained vast amounts of information from AT&T without a warrant. In this particular programme, some companies even took a proactive approach, trying to extend the network of communications available to intelligence agencies. Other companies acted in a more adversarial fashion and refused to collaborate with the government because it did not have a...
warrant.\textsuperscript{168} However, refusals to cooperate are probably rare and Jon Michaels notes that, when confronted by the government, ‘firms do not always have sufficiently strong incentives to ask a whole lot of questions or necessarily conduct their own legal research’.\textsuperscript{169}

In some cases, the correlation between public-private status and public-private interest blurs. In 1999, the CIA established a non-profit venture capital firm called In-Q-Tel in order to invest in high-tech companies developing products and services of interest.\textsuperscript{170} George Tenet, the former Director of the CIA, explained ‘the CIA identifies pressing problems, and In-Q-Tel provides the technology to address them’.\textsuperscript{171} The CIA’s close relation to the firm ensured that public and private interests converge, and in practice, although In-Q-Tel is private by status, it is publicly led. Apart from companies, other public, private or semi-private organisations provide services to the intelligence community. The Defense Advanced Projects Research Agency, for example, awarded contracts to public and private universities to conduct research on surveillance projects.\textsuperscript{172} The RAND corporation defines itself as a non-profit organisation that intends to ‘help improve policy and decision making through research and analysis’.\textsuperscript{173} Government agencies, as well as foundations and private companies commission RAND’s research, which makes it a sort of ‘non-profit’ contractor.

Moreover, a handful of trade associations - such as the Intelligence and National Security Alliance (INSA) and Business Executive for National Security (BENS) - aim to support relations between the intelligence community and the private sector in order to ‘provide solutions’ to the government.\textsuperscript{174} These associations are ‘not-for profit’, and mostly funded by their member companies and, to a lesser extent, by individual donations. They organise networking events and produce reports for senior policy-makers on topics of


\textsuperscript{169} Michaels, ‘All the President’s Spies’, p.928.


\textsuperscript{171} George Tenet, \textit{At the Center of the Storm: My Years at the CIA} (London: Harper Press 2007) p.26.

\textsuperscript{172} Adam Mayle and Alex Knott, ‘Outsourcing Big Brother: Office of Total Information Awareness Relies on Private Sector to Track Americans’, \textit{Center for Public Integrity}, <http://projects.publicintegrity.org/report.aspx?aid=106> (accessed 11 October 2011). Mayle and Knott point out that Universities developed language translation softwares, translingual information detection, extraction, and summarization instruments and so on. Their article is based on documents obtained thanks to a FOIA request from the Electronic Privacy Information Center (EPIC). The primary sources can be accessed from the EPIC, <http://epic.org/privacy/profiling/tia/contractors_table.html> (accessed 11 October 2011).


interest. In practice, they offer a platform for public and private sector elites to cooperate. Indeed, most of the staffs of these associations are former senior government employees with relevant experience in intelligence and national security. In the case of INSA, a government official serving at the DIA sits on the board of directors and an official serving at the NGA on its board of advisors. The presence of serving senior officials on these boards blurs the private nature of INSA.

Senior intelligence officials and their private sector counterparts often conceive of the relationship between the IC and the private sector as a ‘partnership’. Such rhetoric reinforces the idea that the intelligence community also encompasses the private entities augmenting US intelligence capabilities. Considering the intensification of public-private interactions in recent years, the term ‘partnership’ is not incorrect. In 1996, the IC21 Report called for ‘a government-commercial bridge’ in order to attempt ‘influencing commercial capabilities to encompass government requirements.’ For instance, INSA co-organised the ODNI industry days. In May 2004, at its annual memorial ceremony, the CIA honoured two civilian contractors working for its Directorate of Operations who were killed in an ambush in Afghanistan. The Director of National Intelligence (DNI) established an Open Source Center within the CIA in 2005, thereby recognising and establishing even more the importance of the private sector in acquiring information. The ODNI launched the ‘Private Sector Engagement Initiative’ in 2006 in order to dialogue with the ‘corporate community’, and a private sector office was established to reach out to the private sector, exchange information and institutionalise public-private ‘partnerships’. Public-private cooperation was further institutionalised with the creation of a deputy DNI for Acquisition in

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175 See for example: BENS, ‘Pay for Performance at the CIA’. In this case, the audit was gratuitously provided to the CIA.
176 Shorrock, Spies for Hire, p.65.
177 INSA, ‘About us’.
182 Center for Strategic and International Studies (CSIS), ‘Director of National Intelligence Private Sector Engagement Initiative’, <http://csis.org/programs/transnational-threats-project/transnational-threats-project-past-initiatives/director-natio> (accessed 21 October 2011). The CSIS points out that the heart of this effort is a private off-the-record meeting with the DNI and selected CEOs to review conclusions from previous meetings and discuss forecasts on future threats.
2007. These efforts were supposed to help sharing the responsibility for national security across the public-private divide and build a common understanding of the partners’ mission.\(^{183}\)

However, the rhetoric of partnership does not convince everybody. Karen Lund Petersen argues it is problematic because it gives commercial companies “the power to interpret what is best for society and then act on its behalf”.\(^{184}\) Considering the profit incentive of companies, this ‘power’ may not always support the public end. The public sector is often defined by its capacity for disinterested judgment and decision-making.\(^{185}\) A characteristic that is not necessarily present in the private sector. An ODNI report noted that acquisition has suffered from ‘instances of noncompliance, cost and schedule overruns and poor process discipline’, and that oversight efforts have been ‘impeded by a perceived lack of trust, communication, and accountability in the IC acquisition community’.\(^{186}\) Some commercial companies actually hesitate or even refuse to cooperate with the government for fear it may impact on their reputation or for fear they may engage in illegal activities.\(^{187}\) Vice versa, government agencies sometimes distrust companies working for them and refuse to share sensitive information.\(^{188}\) Even in the case of non-profit organisations such as BENS and INSA, the idea of a partnership can be contested since the existence of these associations is mostly guaranteed by commercial companies’ funding, and is therefore captive to their private interests. Moreover, a sense of rivalry is emphasised by the existence of public-private competition. As the ODNI noted in its 2006 human capital plan, ‘we find ourselves in a war for talent, often for the most arcane and esoteric of skills, sometimes between ourselves and/or with our own contractors’.\(^{189}\) In turn, the variation of incentives explains why public-private intelligence interactions should not always be considered as ‘partnerships’ but rather as a set of interactions, a more neutral characterisation. Eventually, the profit incentive of the

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\(^{187}\) Shorrock, Spies for Hire, pp. 309, 323. This point is also suggested in Hayden in the following video: C-SPAN, ‘Privatization of U.S. Intelligence’.

\(^{188}\) Strachan-Morris, ‘The Future of Civil-military Intelligence Cooperation’, p.259. Strachan-Morris points out that some military units in Iraq have refused to provide information to contractors.

\(^{189}\) Office of the Director of National Intelligence, The US Intelligence Community’s Five Year Strategic Human Capital Plan, p.5.
private sector is not problematic as long as the government stays in charge and ensures the market logic contributes to a more cost-effective as well as democratic national security.

*An imperfect market for intelligence*

The free market logic, which was behind the origins of the privatisation movement, hardly applies to the specificities of the US market for public, or governmental,\(^{190}\) intelligence. On the demand side, this market is characterised by a main buyer of services and goods, the US government.\(^ {191}\) It is the government, and not the company’s managers, which typically determines the type of product or service and the quantity that is needed.\(^ {192}\) Arguably, the government is constituted of various agencies with different types of requirements constituting various buyers. However, in the case of the intelligence community, most of these agencies are now following a common set of policies and regulations developed by the ODNI and, more generally, by the US government.\(^ {193}\) As a whole, the government is therefore both buyer and regulator. On the supply side, the situation is oligopolistic. In other words, a few prime contractors dominate the market. This situation is not new and in 1978 a CIA report on competition in contracting already noted that given the unique nature and requirements of the supplies or services being procured ‘the number of firms in America capable of handling major systems contracts in the very specialized areas of technology of concern to National Programs is few’.\(^ {194}\) Since then, the biggest contractors have diversified their offer and specialised on a customer - the US government - rather than on a type of

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\(^{191}\) For a similar argument concerning the defence industry, see: John Driessnac and David King, *An Initial Look at Technology and Institutions on Defense Industry Consolidation*, Acquisition Review Journal 35 (2004) p.68.


\(^{193}\) See for example: Office of the Director of National Intelligence, Intelligence Community Directive Number 801, Acquisition, 15 August 2006; Office of the Director of National Intelligence, Intelligence Community Policy guidance Number 801.1, Acquisition, 12 July 2007; Office of the Director of National Intelligence, Intelligence Community Policy guidance Number 801.2, Contracting and Procurement Policy, 20 September 2008.

\(^{194}\) National Archives and Records Administration: CIA Records Search Tool, Maryland: James H. McDonald, director of Logistics, *Competition in CIA Contracting*, Memorandum for Deputy Director for Administration, 19 May 1978.
product or service. Overall, this situation has generated particularly strong market imperfections and a lack of competition.195

When outsourcing intelligence, the government faces number of hidden costs. Government employees need to administer the contracting process, that is to say identify and assess suitable contractors, and then negotiate and write the contracts. Management costs, such as monitoring the agreement, sanctioning the vendor and negotiating changes to the contract when necessary are also involved.196 The government often faces difficulties to determine accurate costs and anticipate performance because of the unpredictable nature of intelligence activities such as surveillance or personnel security abroad.197 Similarly, the history of defence procurement provides countless examples of requirements changes after the initial bid, a situation called spiral development.198 That is why the government often relies on specific types of contracts, such as cost-reimbursement contracts. These contracts ‘provide greater flexibility’ to the companies but force ‘the government to assume financial risk as the vendor has less incentive to perform its work on or under budget’.199 In other words, the competition between contractors is based on promises of performance rather than performance itself.200 Finally, transaction costs arise, for example, when vendors’ fail to deliver a good or service. The need to ensure contract compliance, since contracting out does not eliminate public responsibility, is another type of transaction cost. In turn, all of these costs question the economic rationale for privatising national security.

The market for intelligence has developed under the veil of secrecy that pervades the US national security apparatus. Commercial companies, wary about their proprietary secrecy which is supposed to protect their competitiveness, have embraced this veil. However governmental secrecy acts as a structural limit on the market. Following the Federal Acquisition Regulation (FAR), full and open competition, including the advertisement of

199 Gale, Intelligence Outsourcing in the U.S. Department of Defense: Theory, Practice, And Implications’, p.41.
200 Fox, Defense Acquisition Reform, p.13.
contracting actions, can be avoided for national security reasons.\textsuperscript{201} An official from the Government Accountability Office specialised on defence and national security points out that the National Reconnaissance Office (NRO) makes frequent use of such exceptions.\textsuperscript{202} Likewise, section 3 of the Central Intelligence Agency Act of 1949 authorises the Agency to conduct ‘negotiated procurement without advertising’.\textsuperscript{203} Ginger Ann Wright, a CIA lawyer, explains that ‘the Agency’s duty to protect intelligence sources and methods overrides the FAR requirement for agencies to publish proposed contract actions and awards’.\textsuperscript{204} In order to preserve secrecy, contract officers within the intelligence community often use no-bid, or sole-source, contracts according to which only one company can satisfy the government’s demand. When so doing, the government supports the absence of competition in order to maintain secrecy. Secrecy can also lead to unnecessary competition. For example, Hayden points out that the CIA was ‘bidding up the cost’ of contracts, ‘because different pockets of the agency were trying to buy the same services.’\textsuperscript{205}

More generally, the compartmentalisation of data creates information asymmetries between private competitors. Security clearances, which are granted by the government, constitute a significant barrier to entry for would-be competitors. In order to access the (secret) knowledge and capabilities necessary to obtain contracts, companies hire former government employees with security clearance. This commodification of security clearances has had negative consequences on the market for intelligence. According to Joshua Foust, ‘if two candidates are competing for a job with a contractor, and one has deep relevant experience but no clearance, she will most likely lose to a candidate with less relevant experience but a current and active security clearance’.\textsuperscript{206} In such situations, government requirements truncate the market logic. In turn, well-established companies with large number of cleared employees obtain more contracts than newcomers. Their continuing reliance on the government’s demand allows them to further their knowledge of the difficult and evolving set of procurement regulations that apply to the intelligence community. This


\textsuperscript{202} GAO official, interview with author, 7 June 2011, Washington DC.

\textsuperscript{203} US Congress, Pub. Law 81-110, Central Intelligence Agency Act, 81\textsuperscript{st} Congress, 1\textsuperscript{st} sess., 20 June 1949, Section 2 (c)(6).


\textsuperscript{205} Hayden, interview with Frontline.

\textsuperscript{206} Joshua Foust, Statement before the U.S. Senate Committee on Homeland Security and Governmental Affairs, p.4.
situation partly explains why smaller companies have associated with them in order to work for the intelligence community.

In sum, the market for intelligence is not an independent and free market and is unlikely to become so considering the nature of its goods and services, the environment in which they are traded and, in particular, the central role of the government. Government reports have also pointed to problems of efficiency in the domain of intelligence outsourcing. According to a report of the Senate intelligence committee, ‘the average annual cost of a United States Government civilian employee is $126,500, while the average annual cost of a “fully loaded” (including overhead) core contractor is $250,000’. 207 Furthermore, the House intelligence committee has pointed out that many of the major acquisition programs at the NRO, the NSA, and the NGA ‘have cost taxpayers billions of dollars in cost overruns and schedule delays’. 208 In such an imperfect market, privatisation manifestly did not generate the levels of performance some of its proponents envisaged.

**Public-private mobility**

In the two last decades, public-private mobility has notably increased. Since the early 1990s an increasing number of government employees have quit intelligence agencies to work for private companies carrying out similar tasks. 209 According to Julie Tate from the *Washington Post*, ‘at least 91 of the [Central Intelligence] agency's upper-level managers have left for the private sector in the past 10 years’. 210 Since the US government is the biggest buyer of intelligence services and goods, in many cases, former government employees work for private companies on governmental contracts. The ODNI itself has pointed out that:

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increasingly, the IC finds itself in competition with its contractors for our own employees. Confronted by arbitrary staffing ceilings and uncertain funding, components are left with no choice but to use contractors for work that may be borderline “inherently governmental” – only to find that to do that work, those same contractors recruit our own employees, already cleared and trained at the government expense, and then “lease” them back to us at considerably greater expense.\textsuperscript{211}

This phenomenon raises questions about the intelligence community’s employment retention policy. It begs the question of whether individuals trained at taxpayers’ expenses should be allowed to use the knowledge they gained in government to further private interests. Arthur Hulnick uses the example of commercial airline pilots who learned to fly in the military to point out that ‘the precedent was long ago established that skills acquired in government service belong to the individual and not the government’.\textsuperscript{212} In order to prevent its officers from decamping for the private sector, the CIA has allowed its officers to ‘moonlight’ in the private sector.\textsuperscript{213} This long-established practice gives a chance to CIA employees to offer their expertise to private companies on the side of their work for the government. In sum, government employees can work for or move to the private sector, and private sector employees can work for or move to the public sector.

At the senior level, the career path of many officials in the intelligence community is marked by this mobility. The career of Mike McConnell, a former vice admiral in the US Navy, epitomises the revolving door phenomenon. McConnell was successively head of intelligence for the Joint Chiefs of Staff during the first Gulf War of 1991, Director of the NSA from 1992 to 1996, Senior Vice President at Booz Allen Hamilton, Chairman of INSA from 2005 to 2007, Director of National Intelligence from 2007 to 2009, and now (2013) Executive Vice President and leader of the Intelligence Business at Booz Allen Hamilton. In addition, the senior managers of some private companies working for the intelligence community have also served as advisers for the executive branch. A Vice President at AT&T served on George W. Bush President’s Foreign Intelligence Advisory Board.\textsuperscript{214} Inderjeet Parmar notes that public and private leaders are often ‘intimately connected through their

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\item Office of the Director of National Intelligence, The US Intelligence Community’s Five Year Strategic Human Capital Plan, p.6.
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social and educational backgrounds, as well as their numerous shared or interlocking corporate directorships’.  

The growth of public-private interactions and the circulation of personnel across the public-private divide appear to weaken the distinction between public and private interests. McConnell himself raised this issue in an op-ed for the New York Times in which he recognised that during his time at Booz Allen, in many respects he ‘never left’ the government. On the margin, the rapprochement between public and private interests and organisations creates an environment that foster conflicts of interests and can lead to unethical practices and abuses of power. In such an environment, the logic of private interest supported by individuals, companies and trade associations can take precedence over the public interest in national security. For Michael Scheuer, a former CIA officer, the revolving door phenomenon ‘prevents senior officials to remain truthful during their service’. From this perspective, privatisation risks conflating profit with national security at the loss of effective national security. The key issue behind the reconfiguration of the public-private distinction is therefore to determine the role of the government and public officials in the twenty-first century as carefully as possible.

Conclusion

From 2001 onwards, public-private intelligence interactions did not fundamentally change, but significantly intensified in a relatively short period of time. For a variety of reasons, the US intelligence community increased its reliance on the private sector in the decade following the 9/11 attacks. With hindsight, the economic rationale and the set of negative

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217 Conflicts of interests can be defined as situations ‘where employment or financial relationships impair an individual employee’s or a corporation’s ability to act impartially, objectively, and in the best interest of the government’. See: US Senate, Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Background: Intelligence Community Contractors: Are We Striking the Right Balance?, 112th Congress, 1st sess., 20 September 2011, p.79.


rationales behind the privatisation of intelligence are not so convincing. Moreover, the rationales behind privatisation have sometimes been contradictory. For example, the need to ramp-up following the 9/11 attacks has conflicted with the longer-term logic of improving government effectiveness. Overall the proliferation and deepening of public-private intelligence interactions was necessary given the conditions that prevailed at the time in the US. However, in a situation of emergency, the privatisation of intelligence was too hastily endorsed by the US government.

The evolution of public-private ‘partnerships’ in the market for intelligence is problematic, not the least because this market is deeply imperfect. In turn, the unbridled expansion of public-private intelligence ‘partnerships’ raises legitimate concerns about the fading relevance of the public-private distinction and its potential impact on the nature of the government. Ultimately, when privatising intelligence, the government keeps bearing some significant responsibilities. When intelligence activities are outsourced, the government still decides whether or not to produce the good or service and then consumes it. Although the reliance on the private sector presents certain advantages, the outsourcing of intelligence is not a silver bullet. The prominent influence of the US government on its private ‘partners’ sometimes encourages the private sector to emulate well-known intelligence pitfalls. In this context, the continuing importance given to secrecy by the American security apparatus threatens the market for intelligence ‘to fade into irrelevance’. Similarly, the threat of foreign intrusion or the unpredictable nature of intelligence requirements, processes and operations is a challenge for both public and private intelligence providers. In turn, the privatisation of intelligence reconfigures state boundaries but it does not necessarily lead to a transfer of competence and authorities. In this particular sector where performance is barely quantifiable and competition is hardly free, privatisation is a perilous choice that must be carefully implemented.