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Unfortunately, there is evidence that these two conditions have not been met, in the sense that American telecommunications companies were participants in the domestic wiretap program initiated by the George W. Bush administration, and because intelligence corporations CACI and Blackwater were involved in torture in Iraq at Abu Ghraib and in Baghdad’s Nisour Square respectively. Such a position notes that even supporters of intelligence outsourcing have called for a slashing of their numbers by 10%, and that reform is obviously necessary on this core national security issue.

Naturally, both sides of the debate take their arguments to policy implementation, but one thing remains accepted by opponents and supporters of contractors in the U.S. intelligence community: intelligence outsourcing was not a new phenomenon after 9/11. Regardless, it did accelerate at this time. Through at least as far back as the Vietnam War, companies were participants in the domestic intelligence community: intelligence control at home and abroad and the implementation of counterintelligence warfare.

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The Central Intelligence Agency's lobby seal.

activities of the U.S. intelligence agencies. With a cut in the post-Cold War military budget of the United States came a corresponding lack that was "fully addressed" (by some accounts) by a highly-capitalized, high-tech business sector. Journalist Lynda Hurst writes in the Toronto Star that, "Outsourcing has been on the rise since the Cold War’s end to the downsizing of the world’s huge standing armies." After 9/11 a heap of funding was designated to the Defense Department and intelligence bureaucracies such as the Central Intelligence Agency (CIA), which was used to improve short-term organizational capacity, for example to catch up on the backlogs of messages to translate, and to complete other tasks that could be solved by a surge in manpower alone.

This paper takes the position that in the "post-9/11 age" contractors can almost be considered necessary, but that they should not become a powerful majority of labor within intelligence agencies. Unfortunately, instances abound of the numerical majority of non-governmental actors; in fact, this is the case in multiple U.S. intelligence agencies. It can be argued that whereas contractors were once utilized because of their presence is cost effectiveness and access to technology and management structure that the government lacked, they are today utilized because their inaccessibility and functionally, and in agency budgets. At a time of public calls to reduce the defense budget from various congressional members, it is pertinent to assess the value of contractors against the main criteria they were originally rationalized upon: cost savings and a general notion of corporate efficiency. Indeed, a "fully loaded" contractor is estimated to cost the government about $250,000 per year, compared to a governmental employee, which figures at about half that (approximately $126,000).³

There is also a legal-moral debate that examines whether contractors are "incentivized" to act outside of governmental spheres, in cases which may be illegal, unauthorized, or simply inappropriate according to the criteria mentioned in OMB circular A-76. Such a view explains that contractors are legally prohibited from carrying out tasks which relate to the government’s "inherent" responsibilities, which are the direction of policy and counter-intelligence collection, among others. Some critics have questioned the notion that the U.S. government regulates contractors at all. Contractors have their own management and profit structures, and are short-term focused to the mission at hand, but not always to the long-term interest of the government’s plans. Private companies do not always follow the rule of law—abroad or at home—since immunity is sometimes given and contracts renewed, even after so-called "product failures." In this sense, there is a market failure that the government must address.

This paper therefore argues that the Congress and Executive must regulate more heavily the hiring practices and budgetary expenditures of the 16 intelligence agencies within the Office of the Director of National Intelligence (ODNI) management umbrella, if effective reform is to occur. While corporate actors should be recognized as vital to the mission at hand, intelligence contractors should not be an overbearing presence in the military command structure, collecting frontline human intelligence or running espionage or counterintelligence affairs. This is counterproductive to national security and budgetary considerations—a claim that this article will now address.

A Brief Look at the History of Public-Private Intelligence Efforts

Partnering with corporations to win wars and maintain stability is not a new task for Western governments. This phenomenon stretches back to the days of the British Empire, which used the East India Company to maintain British dominance in South Asia and beyond. The phenomenon of contracting core military responsibilities, however, is more recent. Some analysts place the beginning of U.S. engagement with this technique at the end of World War Two. In 1953, AT&T and the Defense Department were jointly planning a Distant Early Warning ("DEW") Line along the coast of Northern Alaska and Canada.⁷ By 1955, the first U-2A airplane, the original prototype of today’s U-2 spy-plane, took flight.⁸ This aircraft was designed by Kelly Johnson and the Lockheed Skunk Works Company in complete secrecy under an agreement with the U.S. government that was concluded in 1943.⁹

American companies continued to be involved in the business of national defense throughout the Vietnam War, producing battlefield weapons and servicing a limited number of communications needs. Technology advanced in this period and often, as a result of the Cold War, the federal government did not always have the start up capital or expertise that the private sector could offer. When the Vietnam War ended, the period of economic deregulation popularized by President Ronald Reagan began. Although this contributed in theory to the acceptance of contractors of all sorts, it was not until after the fall of the Soviet Union that the CIA was able to become so heavily privatized. Industry lobbyist Stan Soloway tells outsourcing expert Tim Shorrock in his 2008 book Spies For Hire that "very little privatization took place in the Reagan administration and none under George H. W. Bush."¹⁰ This was somewhat a consequence of the dissolving f the global chess set-up that the U.S. was used to navigating throughout the Cold War.

As a result, intelligence agencies had a mission somewhat undefined. Vice President Al Gore, along with powerful blocks in both houses of Congress, supported a notion of "reinventing government" in the early 1990’s, and those running the CIA and other agencies took this as a cue to expand the use of contractors outside the traditional information technology sphere.¹¹ Former CIA Middle East expert and author Bob Baer reports that after 1997, "practically all [CIA] training...[was] done by contractors."¹² Much debate at this time focused on the financial and management efficiency and cost-savings of private labor; there was less discussion of the inherent, immediate need for private intelligence professionals, as was the case after 9/11.

By the beginning of the 2001 Afghanistan War, the atmosphere was such that the intelligence agencies had plenty of tasks and funding given to them by a generally supportive Congress. Almost immediately after 9/11, the CIA was charged with recruiting and training the linguists that were in great shortage. The most pressing goal was to fill the void: this could be accomplished by reaching out to retired military and intelligence professionals who had critical knowledge for the War on Terror.¹³ Although direction on
intelligence reform came from the Executive, 9/11 Commission, and Congress, it was the direct responsibility of the individual agency leader to staff his or her team. Because of the supply and demand for higher-paying and patriotic jobs in-theater, the financial incentives lined up, and in the process many new companies were established and many more bought and reconsolidated.

In Iraq, contractors worked side by side intelligence personnel to interrogate prisoners, “track and investigate” Iraqis, map the territory for military battle plans, arrest and detain civilians and combatants, as well as provide basic support services to intelligence agencies in everyday operations. These practices have been useful to the extent that the agencies were not able to meet the demand for labor and technology previous to the contracts being signed. However, it is now argued by many industry observers that both defense and civilian intelligence agencies have become too dependent on contractors, who are taking away labor from the governmental sector where it was traditionally to be found. This thematic is one that the Director of National Intelligence (DNI) has recognized as inherently problematic due to the lack of new recruits staying within the public sector. The DNI went so far as to complain in a 2006 public report that:

“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 government expense, and then ‘lease’ them back to us at considerably greater expense.”

The penning of such a forceful statement highlights the magnitude of the problem, as seen from within the government’s intelligence command.

A Look at the Agencies

Although there were consolidations of private intelligence businesses in the late 1990s, it was not until the Bush years that intelligence reform led to the consolidation of significant bureaucratic power in the ODNI. But privately, competing forces were at work too. The intelligence community spent $18 billion per year on contractors in 1998, but by 2003 that number had more than doubled to $43.5 billion. Today, each agency has its own proportion of contracted work. In the Defense Intelligence Agency (DIA), for example, it’s around 35%—a low figure compared to the National Reconnaissance Office (NRO), where it is estimated to be as high as 90%.

At the Central Intelligence Agency, the problem is distinct, as questions of operational security and source-control come into play when pondering the human intelligence (HUMINT) work of contractors. The CIA’s Directorate of Operations (DO) has been over-stressed since the end of the Cold War because of the budgetary cuts of the 1990s and severe manpower shortages after 9/11. Today, many fear that the majority of the agency’s employees are for-profit actors and that these people may not have the long-term goal of public institution-building incorporated into their business plans. Some watchdogs believe that the government should hold a majority of labor (and power) and grown upon the reality that in the National Clandestine Service—

the CIA’s directorate that deals with human intelligence collection—the percentage of contractors is above 50%.

Here is a conflict of interest which needs to be addressed by not only a reduction in contractors, but by the strengthening of CIA management. “The [CIA’s] directive is losing ‘25 or 30 chiefs of station’—the top CIA representative in a country or major city—‘or their equivalent’ at headquarters, every six months,” reports former intelligence official Sam Faddis.

For those with an opinion similar to Faddis’, the problem of 21st century management runs parallel to the problem of outsourcing. Recently, former CIA Director Michael Hayden, in looking to take a new “middle approach,” agreed to cut 10% of his agency’s contractors.

At the DIA, the percentage of private-sector “staff” is 51%, just barely a majority. In 2007, the DIA Director wrote a letter to the Washington Post claiming that his agency “does not outsource analysis…government managers are fully in charge of this process.” It is possible that this is completely true; but if so, his agency is among the exceptions to the rule. In general, contractors do perform core analysis work, and in the majority of intelligence agencies.

At DIA, contractors such as Booz Allen Hamilton (BAH) focus on technology assistance for programs such as measurement and signature intelligence—the latest subfield of intelligence collection called MASINT. MASINT heavily overlaps with the work of the National Reconnaissance Office (NRO), a Defense Department agency that contracts almost all of its work. In both the DIA and NRO, geographic and political mapping technology is extremely important. It is a tradecraft in which private corporations sometimes have superior technology—or even the only technology to do the job. Contractors therefore find their way into the work of the DIA, and operate parallel structures of incentives and management, alongside the U.S. military’s command and control system.

At the National Security Agency (NSA), complaints of contractors are primarily centered on telecommunications companies, which joined in the domestic wiretap program after 9/11. Companies working for the NSA often focus on signals intelligence (SIGINT) collection abroad and data-mining domestically, among other controversial topics. Concerns of privacy, American public opinion, and electoral politics enter the fray in discussions about the use of contractors in the NSA’s global surveillance work. Liberal Democrats and human rights groups have called for reform measures such as Executive branch repudiation of the so-called “warrantless wiretap program,” which began during the Bush administration. Proponents of this view reference the rule of law in the guise of OMB memo A-76, which codifies concern about privatizing “inherently Governmental” tasks relating to intelligence work. NYU Law Professor Simon Chesterman notes that, “The executive has adopted various guidelines seeking to elaborate a definition. The 1983 version of the OMB circular stated that ‘Certain functions are inherently Governmental in nature, being so intimately related to the public interest as to mandate performance only by Federal employees.”

Further criticism of NSA practices has often included a case study in Michael McConnell, who went from being head of NSA to a top executive at Booz Allen Hamilton (BAH), and then back into government as the nation’s Director of National Intelligence in 2007. Critics point to the involvement of BAH in the NSA’s Total Information Awareness data-mining program as well as the failure of the “Goundbreaker” project, which ran over budget and produced questionable results. Supporters counter that without certain private-sector abilities, the NSA would be rendered substantially weaker.

Today, the NSA contracts out work on secret encryption, a field that has been at the forefront of advances in private-sector technologies since the 1990s. In 2000, the
NSA experienced a system-wide computer blackout “that shut down the agency’s global listening and surveillance system for more than two days, reducing the contents of the president’s Daily Briefing by more than 30 percent.” As a result of the pressure that ensued, “during the waning days of the Clinton era, the highly secretive agency...opened its doors to contractors.”

As mentioned, the NRO is highly intertwined with the NSA and DIA. Their job involves using and coordinating advanced technology products, military satellites, and 3-D battlefield mapping technology, often in conjunction with the relatively new National Geospatial-Intelligence Agency (NGA). Lately, the NGA has been working with Lockheed Martin on a contract called “GeoScout,” a project to develop a ground-based infrastructure which blends data from classified and unclassified military satellites. Like the NSA’s Trailblazer project before it, the GeoScout public-private partnership has been criticized for going over budget and ceding too much power to corporations. For better or worse, these NGA partnerships have often in conjunction with the relatively new NRO program offices, instead of the program managers. “The real engineering breakthroughs (in the NRO) did not occur within the government program offices; they occurred at the contractor facilities,” writes Dennis Fitzgerald in an archived commentary on the CIA website. Today, that breakthrough in technology collection has been augmented by a near complete reliance on outside manufacturers. The NRO is emblematic of other agencies in that it is not experiencing a capital dearth, but is nonetheless short on organizational capital. Intelligence analyst Robert Kohler, commenting on the divide between the CIA and NRO, reports that: “Now, contracting officers, the financial oversight staff, and the Community Management Staff are the major power brokers in most of the NRO program offices, instead of the program managers.”

The Nationalization Debate

Hopefully there is a middle ground compromise which both deregulators and regulators can accept in the spirit of political compromise: reconsideration of the role of contractors in interrogation and in-field operations. To this end, the Obama administration should reexamine the domestic wiretap legislation to determine its efficacy and also the role of telecommunications companies. Is investing in them the most efficient use of federal funds? Should they continue the work that immunity had to be granted for in the first place—work that was perhaps illegal? Or could the government start incubating technologies for future use, more by itself and less via private capital, and in the process build its capacities? Any changes may necessitate a massive structural change, foisted upon the DNI and agency directors by the Executive. At least, this is how it will probably be framed. While opponents may not complain of “nationalization” per se, they may highlight the government’s “ineptitude” and undue “interference” with the efficiency of the market—charges that critics of intelligence contractors will have to answer.

There have been numerous reports the Presidential Daily Briefing is shaped by companies operating from within the ODNI, such as Lockheed, Raytheon, Booz Allen Hamilton and SAIC, and that they have the ability to affect policy making at the highest of levels, given their prowess and proximity. Indeed, the ODNI revealed in May 2007 that 70% of the intelligence budget goes to outside contractors. Unfortunately, to address problems with contractors—which are not always separate from problems with governmental employees—it is necessary to affect change in the management structures and budgets of multiple intelligence agencies that are overseen by the ODNI, Congress, and the media. This is no doubt difficult. However, with a recent interest by Henry Waxman’s House Oversight Committee, and a public outcry over the atrocities at Abu Ghrabib (committed by the military command and contractors alike), many consider the political atmosphere ripe for consensus on intelligence reform which addresses governmental and military contractors. Full “nationalization” may not be required, but some heavy lifting may be inevitable.

Still, it is easy to be pessimistic about the weakening of U.S. intelligence capacities, by saying that it is too difficult to hire, manage, and maintain new federal recruits. Cleared persons have too many incentives to leave for private sector jobs after just a few years in government service. In a sense, this dynamic becomes cyclical and therefore further bureaucratically ingrained: the “revolving door” phenomenon kicks in and the government serves as a de facto training force for private sector labor, a situation that the ODNI has complained about.

While instances of security breaches by contractors are generally believed to be minimal, the presence of green-badgers nonetheless remains a “bureaucratic security threat” in the sense that the government is becoming increasingly dependent on the private sector for the core functions of government—a backward situation, according to the “inherently governmental” clause which prohibits some outsourcing. This problem not only runs against the spirit of the law but also leads to a weakening of the nation’s defense mechanisms. Pro-free market politicians and the spirit of libertarianism (which upheld many of the privatization reforms of the past 30 years) are responsible for transferring many critical governmental functions into the private sector; but ironically, even such conservatives believe that the government’s most legitimate venture is in national defense. Conservatives should thus be natural allies in this intelligence reform effort. Conclusion

It is difficult to tell if the domestic intelligence program, or “black sites” staffed by contractors abroad, will continue under Obama, given the telecommunication industry’s immunity bestowed by Congress and the President’s campaign pledges. Nevertheless, it is possible for the Executive and Legislative branches to regulate the use of contractors so that they are primarily a back-up force: available at a moments notice, and working on critical support tasks, but not interfering in the daily command and control of the federal government’s core intelligence mission: to collect, analyze, and store secret information.

Certainly President Obama has...
numerous challenges ahead, many of which revolve around the intelligence question. Undoubtedly interwoven into the intelligence community’s activities in the War on Terror is the issue of corporate contractors. One can argue, for better or worse, their monetary and battle effectiveness. But one cannot claim they are not a majority force, in many respects and in many agencies.

Endnotes