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Private Security and Democracy: Lessons from the US in Iraq

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Erratum

An error appeared in *Security Studies*, Volume 19, Issue 2, “Private Security and Democracy: Lessons from the US in Iraq” by Deborah Avant and Lee Sigelman. The following acknowledgement was omitted from their article.

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Private Security and Democracy: Lessons from the US in Iraq

DEBORAH AVANT AND LEE SIGELMAN

Arguments about the importance of democracy for international behavior assume that states rely on military organizations rather than “hired guns.” With the growth of the private security market this assumption no longer holds true. Focusing on the United States, we use original data to compare the impacts of using private military/security forces and military forces on attributes identified as endemic to democracies: constitutionalism, transparency, and public consent. Our evidence indicates that forces raised via contract are harder to learn about and thus less transparent than military forces. Largely due to lowered transparency, Congress has a harder time exercising its constitutional role, which impedes constitutionalism. Finally, though the public is just as sensitive to the deaths of private forces as it is to military deaths, it is less likely to know about them. Thus the lack of transparency also circumvents meaningful public consent. We conclude with a consideration of the potential implications of these changes for U.S. foreign policy.

Toward the end of the twentieth century scholarly opinion converged on the notion that democracy is a key factor shaping the behavior of states, both at home and abroad. At home, scholars argued that more inclusive electoral processes and greater flows of information led democracies to invest in public services such as education, health, and social security at higher rates than nondemocracies.¹ Abroad, some asserted, norms that favor non-violent

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¹ Adam Przeworski, A. M. E. Alvarez, J. A. Cheibub, and F. Limongi, *Democracy and Development: Political Institutions and Well-Being in the World, 1950–1990* (Cambridge: Cambridge University Press, 2000); and David Lake and Mathew Baum, “The Invisible Hand of Democracy: Political Control and the Provision of Public Services,” *Comparative Political Studies* 34, no. 6 (April 2001): 587–621.

solutions and institutions that afford citizens meaningful opportunities for participation make it harder for leaders “to guide the ship of state into war.”² So widely accepted were these ideas that the “democratic peace” was taken as a “law” in political science and a guideline for action in the policy community.³

A widely held, albeit often implicit, assumption in theory and research on the importance of democracy for international behavior is that states rely on militaries drawn from their citizenry rather than “hired guns” to project force.⁴ Over the last two decades, however, a robust market for force has emerged with commercial firms delivering a wide array of military and security services alongside and intertwined with state military forces.⁵ Thus, the assumption that states mobilize forces of their citizens through military organizations no longer holds true. Do the attributes that have been identified as endemic to democracies remain strong when states rely on private forces instead of, or in addition to, public ones? If greater reliance on the market to exercise force sidesteps or undermines democratic practices, then this trend has implications for democracy at home and abroad.

Notwithstanding disagreement over exactly how democracy shapes the behavior of states, there is consensus that democracies share particular core features—transparency, constitutionalism, and public consent—which contribute to both contestation and participation.⁶ After describing the development of the contemporary market for force, we distill from prior analyses expectations about the ways in which strategies for mobilizing force are related to these features of democracy. Focusing on the contemporary United States, we compare the impacts of using private forces and traditional military instruments on transparency, constitutionalism, and public consent by analyzing the relative ease of attaining information as well as actual news coverage, the capacity of Congress to play its constitutional role as a veto point, and the reactions of citizens to casualties. Our evidence indicates that forces raised via contract are harder to learn about and thus less transparent

² Joseph Paul Vasquez III, “Shouldering the Soldiering: Democracy, Conscription and Military Casualties,” *Journal of Conflict Resolution* 46, no. 6 (December 2005).

³ Michael Doyle, “Kant, Liberal Legacies, and Foreign Affairs,” *Philosophy and Public Affairs* 12, no. 3 (Summer 1983); Jack Levy, “Domestic Politics and War,” *Journal of Interdisciplinary History* 18 (Spring 1988): 653–73; and Jack Snyder, “One World, Rival Theories,” *Foreign Policy* (November/December 2004).

⁴ This assumption is prominent in international relations theorizing in general but is particularly so in the literature on the international behavior of democracies. It is explicit in Immanuel Kant, “Eternal Peace,” in *The Philosophy of Kant*, ed. Carl J. Friedrich (New York: The Modern Library, 1949); and Anthony Giddens, *The Nation State and Violence* (Berkeley: University of California Press, 1987).

⁵ Peter Singer, *Corporate Warriors: the Rise of the Privatized Military Industry* (Ithaca: Cornell University Press, 2003); and Deborah Avant, *The Market for Force: the Consequences of Privatizing Security* (Cambridge: Cambridge University Press, 2005).

⁶ Robert A. Dahl, *Polyarchy: Participation and Opposition* (New Haven: Yale University Press, 1971); Ronald Krebs, “In the Shadow of War: The Effects of Conflict on Liberal Democracy,” *International Organization* 63, no. 1 (Winter 2009): 177–210; and Charles Lipson, *Reliable Partners: How Democracies Have Made a Separate Peace* (Princeton: Princeton University Press, 2003).

than military forces. Largely due to lowered transparency, Congress has a harder time exercising its constitutional role, which impedes constitutionalism. Finally, we show that the public is just as sensitive to the deaths of private forces as it is to military deaths but it is much less likely to know about them. Thus the lack of transparency also circumvents meaningful public consent. We conclude with a consideration of the potential implications of these changes for U.S. foreign policy.

THE TWENTY-FIRST CENTURY MARKET FOR FORCE

A global market for military and security services blossomed in the 1990s.⁷ Private military and security companies (hereafter PMSCs)⁸ registered in many different countries began providing services to an array of international actors, including states, international organizations, nongovernmental organizations, and global corporations. PMSCs offer a wide range of services including operational support, military advice and training, and logistical support as well as site security (armed and unarmed), crime prevention, police training, interrogation, and intelligence gathering.⁹ Some PMSCs provide the whole range of military and policing services, and some specialize in only a few. All can morph quickly to meet consumer demands given the ease of hiring different people to staff their contracts.

The scope and capacities of this market have become abundantly clear during the ongoing hostilities in Iraq and Afghanistan. When the United States defeated the Iraqi Army in 2003, more than one out of every ten personnel deployed to the theater were civilians employed by PMSCs performing functions formerly handled by soldiers. As U.S. forces were stretched thin by the chaos that followed the fall of Saddam Hussein, an “army” of private personnel surged into the country to train the Iraqi police force, the Iraqi army, and a private Iraqi force to guard government facilities and oil fields, and to protect expatriates working in the country and to bolster staffing in military prisons.¹⁰ Retired military or police—from countries as varied as Fiji, Israel, Nepal, South Africa, El Salvador, the United Kingdom, and the

⁷ Peter Singer, “Corporate Warriors: the Rise of the Privatized Military Industry and Its Ramifications for International Security,” *International Security* 26, no. 3 (Winter 2000/2001); Singer, *Corporate Warriors*; and Avant *The Market for Force*.

⁸ There is a debate over how to characterize these forces. Some distinguish between private military companies (PMCs) and private security companies (PSCs). This distinction is hard to maintain in practice given the large gray area of services that fit uneasily in one or the other category and the many companies that provide services on both sides of the military/security divide. Others come up with new acronyms altogether such as privatized military forces (PMFs), use PMC or PSC to refer to the entire range of services, or use the less-defined term—contractor. To avoid confusion, it is increasingly common to refer to these companies as private military and security companies (PMSC) so we adopt this term to refer to companies that, under contract, perform services that might otherwise be provided by military forces.

⁹ Singer, *Corporate Warriors*; and Avant, *The Market for Force*.

¹⁰ *Ibid.*

United States—employed by a multitude of PMSCs, worked for the U.S. or British governments, the Coalition Provisional Authority (CPA), and then the fledgling Iraqi government, private firms, and international nongovernmental organizations in Iraq.

A 2008 Congressional Budget Office Report found the number of contractors working for the United States in Iraq in 2007 to be at least one hundred ninety thousand—greater than the number of U.S. troops—and explained that the ratio of contractors to troops was at least 2.5 times higher in Iraq than it had been during any other major U.S. conflict.¹¹ The number of U.S. contractors in Iraq gradually declined to approximately one hundred twenty thousand as of June 2009. As the Barack Obama administration shifted its focus to Afghanistan, however, the number of contractors there grew to approximately seventy-four thousand, more than the number of U.S. troops in that country. The total number of contractors in Iraq and Afghanistan in 2009 hovered around two hundred forty thousand to two hundred forty-five thousand.¹²

How to think about these personnel relative to U.S. military forces is complicated. We use the same categorization as the Commission on Wartime Contracting (CWC), established by Congress in 2008—differentiating among logistics, security, and reconstruction services.¹³ Almost all of the tasks in each of these categories were commonly performed by U.S. military personnel in the recent past. The issues and concerns raised by relying on private personnel for each are different, as we discuss briefly below. The personnel in all of these categories, however, have provided services so critical to the U.S. efforts in Iraq and Afghanistan that the United States could not have gone to war without them. So, the implications of each are relevant for mobilization and democracy.

Logistics services include supply of food, laundry, and fuel, and construction of temporary base facilities. The U.S. Army's logistics civil augmentation contract (LOGCAP) was held by Kellogg, Brown, and Root (KBR) in the early years of the Iraq and Afghanistan conflicts. In June 2007 the new LOGCAP contract (LOGCAP IV) was awarded to three companies: DynCorp International LLC, Fluor Intercontinental Inc, and KBR. In Iraq alone, the LOGCAP contract paid out twenty-two billion dollars between 2003 and 2007.¹⁴ Though not generally associated with deadly force, logistics services are fundamental to the

¹¹ Congressional Budget Office (CBO), "Contractor Support of U.S. Operations in Iraq," (Washington, DC: August 2008), available at <http://www.cbo.gov/ftpdocs/96xx/doc9688/08--12-IraqContractors.pdf>.

¹² Commission on Wartime Contracting (CWC), "At What Cost? Contingency Contracting in Iraq and Afghanistan: Interim Report to Congress," (June 2009), available at http://www.wartimecontracting.gov/docs/CWC_Interim_Report_At_What_Cost_06--10-09.pdf; Office of the Under Secretary of Defense for Acquisition, Technology and Logistics (OSD ACQ), "Contractor Support of U.S. Operations in USCENTCOM AOR, Iraq and Afghanistan," Department of Defense Instruction (DoDI), 3020.50, 22 July 2009, available at http://www.acq.osd.mil/log/PS/p_vault/5A_august_3rd_qtr_2009.doc.

¹³ CWC, "At What Cost."

¹⁴ CBO, "Contractor Support of US Operations in Iraq."

ability of the military to operate. When KBR had trouble fielding the requisite personnel at the beginning of the Iraqi conflict, troops went without fresh food.¹⁵ When KBR transport drivers were kidnapped or killed, troops did not have fuel. Without these personnel the U.S. military simply cannot perform wartime tasks. Furthermore, once they are deployed in a hostile environment, they require protection by either the military or private security forces.

Those providing security services (guarding people, buildings, and convoys) perform tasks most similar to those seen as fundamental to the military. Many are armed (the CBO estimated that thirty thousand to thirty-five thousand of the contractors working in Iraq in 2008 were armed) and routinely shoot and are shot at in carrying out their duties.¹⁶ Blackwater (now Xe) employees have received the most notoriety for their work providing security in Iraq. Four Blackwater employees were killed and mutilated in March 2004 while escorting a convoy through Fallujah. Under contract to the CPA and the U.S. State Department in Iraq, Blackwater personnel carried weapons, had their own helicopters, and fought off insurgents in ways hard to distinguish from military actions.¹⁷ Although security contractors played a fundamental role for the United States in Iraq as the insurgency heated up, the use of force by these personnel also generated controversy.¹⁸ Blackwater stands out for the behavior of its personnel in the September 2007 shooting in a Baghdad square. Their lethal capacity makes security forces difficult to distinguish from military forces. They pose the greatest risk to people around them and their misbehavior could have devastating impact on the long run goals of the United States. Ironically, however, the tasks they undertake are sometimes less crucial to military operations than logistics—unless, of course, they are providing security for troops or logistics personnel.

Reconstruction, stabilization, and development contractors provide a wide range of services, from building infrastructure (roads, communication, water, and power) to building institutions (training government employees including military, police, and justice personnel at the national, provincial, and local levels, supporting civil society groups, promoting rule of law and democratization, and so on). A wide variety of PMSCs, along with other

¹⁵ General Charles S. Mahan Jr., then the Army's top logistics officer, was referenced complaining of troops going without adequate support due to problems deploying contractors in a draft of what became Gregory Fontenot, E. J. Degen, and David Tohn, *On Point: the us Army in Operation Iraqi Freedom*, Office of the Chief of Staff U.S. Army (Fort Leavenworth: Combat Institute Press, 2004). In the final version of the document, however, the discussion of the difficulty with logistics did not mention contractors. General Mahan's complaints were also reported by Anthony Bianco and Stephanie Anderson Forest, "Outsourcing War," *Business Week*, 15 September 2003; and David Wood, "Some of Army's Civilian Contractors are No-Shows in Iraq," *Newhouse News Service*, 31 July 2003.

¹⁶ CBO, "Contractor Support of U.S. Operations in Iraq."

¹⁷ Dana Priest, "Private Guards Repel Attack on U.S. Headquarters," *Washington Post*, 6 April 2004.

¹⁸ Steve Fainaru, *Big Boy Rules: America's Mercenaries Fighting in Iraq* (Cambridge: Da Capo Press, 2008).

contractors, have delivered these services. DynCorp has trained Iraqi police, constructed police and prison facilities, and built capacity for a justice system. Vinnell and MPRI both provided training for the new Iraqi Army early in the conflict. Parsons has worked on many large infrastructure projects and myriad others have delivered various other capacity-building services. Like logistics forces, these personnel require someone to provide security for them in hostile environments. In today's world, reconstruction tasks are often more crucial for accomplishing the goals of the war effort than either logistics or security services, as they lay the conditions for stability and thus an exit strategy. To be successful, it is imperative that reconstruction be undertaken in a coordinated way so that police reform and justice reform complement one another, for instance, and civilian leaders understand the military they are supposed to oversee. Thus, these contractors deliver services that are among the most crucial for U.S. goals and must not only worry about the quality of their services but also how well their efforts coordinate with other contractors and the U.S. military. And yet these jobs are less important to the functioning of military units than logistics personnel and pose less deadly risk than security personnel.

For our purposes, the most relevant features of these forces are that they are both crucial to the U.S. war effort and deliver services that used to be provided by the U.S. military itself. If the United States could not mobilize these services through the market, it would either have to mobilize them through the military or reassess its decision to go to war. For these reasons, all of these forces are relevant to our question about how market-based mobilization affects the democratic quality of U.S. foreign policy.

DEMOCRACY, MOBILIZATION, AND THE USE OF FORCE

Despite widespread accord that democracy matters, there is disagreement over how it matters. Democracy is said to empower the mass public by expanding participation and contestation—who gets a say in government and what choices they are offered.¹⁹ At home, when more people participate and have meaningful choices, their rights as citizens, including access to information and accountability levers, are expected to deliver more public services.²⁰ Who counts as citizens, what their rights are, and how to judge a government's accountability to them, though, are subjects for debate—as

¹⁹ Dahl, *Polyarchy*; and Christian Welzel and Amy Alexander, "Rethinking Democracy: How to Capture Democracy's Empowering Nature," paper presented at the annual meeting of the MPSA Annual National Conference, Palmer House Hotel, Hilton, Chicago, IL, 3 April 2008.

²⁰ Przeworski et al., *Democracy and Development*; and Lake and Baum, "The Invisible Hand of Democracy."

are the kinds of services democracy actually supplies.²¹ Scholars also debate how democracy matters abroad. Some realists still hold that it does not matter at all—or matters only as a hurdle to effective policy.²² Among those who argue that democracy matters, some claim that democracies are more restrained in the use of force overall.²³ Others maintain that democracies are more restrained only in their behavior toward one another—they do not fight each other.²⁴ Even those who agree that democracies do not fight one another argue about whether liberal norms or institutional processes are responsible for this outcome.²⁵ Finally, another line of argument is that democracies are more effective at fighting those wars in which they do engage.²⁶

Despite these disagreements, there is general consensus that established or effective democracies share particular institutional features—most prominently: transparency, constitutionalism, and public consent. Transparency allows citizens, other government officials, and societal groups access to information about policy and is crucial for a citizenry to be aware of the choices it has and capable of informed judgments about them.²⁷ Constitutionalism defines and limits the power of government, ensuring a range of policy inputs and predictable processes subject to contestation.²⁸ Public consent refers to what Robert Dahl calls “institutions for making government policies depend on votes and other expressions of preference.”²⁹ These institutions include elections, of course, but also public opinion, public debate,

²¹ Arthur Arblaster, *Democracy* (London: Open University Press, 2002); David Held, *Models of Democracy* (London: Polity Press, 2006); and Michael Ross, “Is Democracy Good for the Poor?” *American Journal of Political Science* 50, no. 4 (October 2006): 860–74.

²² Christopher Layne, “Kant or Cant: the Myth of the Democratic Peace,” *International Security* 19, no. 2 (Autumn 1994): 5–49; and Michael Desch, “Democracy and Victory: Why Regime Type Hardly Matters,” *International Security* 27, no. 2 (Fall 2002): 5–47. Those who argue that democratic processes act as hurdles should be interested in the changes we describe even though they may come to different normative conclusions about their importance.

²³ Kenneth Benoit, “Democracies Really are More Pacific (In General): Reexamining Regime Type and War Involvement,” *Journal of Conflict Resolution* 40, no. 4 (1996): 636–57.

²⁴ Doyle, “Kant, Liberal Legacies, and Foreign Affairs”; and Zeev Maoz and Bruce Russett, “Normative and Structural Causes of Democratic Peace,” *American Political Science Review* 87, no. 3 (September 1993).

²⁵ See Maoz and Russett, “Normative and Structural Causes of Democratic Peace,” 624–38. For a focus on liberal norms, see Doyle, “Kant, Liberal Legacies and Foreign Affairs.” For a focus on institutions see Bruce Bueno de Mesquita, Alastair Smith, Randolph M. Siverson, and James D. Morrow, *The Logic of Political Survival* (Cambridge, MA: MIT Press, 2003); Brett Ashley Leeds, “Domestic Political Institutions, Credible Commitments and International Cooperation,” *American Journal of Political Science* 43, no. 4 (October 1999): 979–1002; and Lipson, *Reliable Partners*.

²⁶ David Lake, “Powerful Pacifists: Democratic States and War,” *American Political Science Review* 86, no. 1, (March 1992): 24–37; and Dan Reiter and Alan Stam, “Democracy, War Initiation and Victory,” *American Political Science Review* 92, no. 2 (June 1998): 377–89.

²⁷ Dahl, *Polyarchy*; and Gordon Henderson, “The Public and the Peace: The Consequences for Citizenship of the Democratic Peace Literature,” *International Studies Review* 8, no. 2 (June 2006): 199–224.

²⁸ Held, *Models of Democracy*; Doyle, “Kant, Liberal Legacies and Foreign Affairs”; and Lipson, *Reliable Partners*.

²⁹ Dahl, *Polyarchy*.

rallies, and protests to ensure that leaders either convince the public of the necessity of using force or abide by public worries about its costs: in lives, financial resources, or opportunities.³⁰

Many analyses of democracy's impact abroad focus on demonstrating differences in the international behavior of "democracies" and "nondemocracies." They define and measure which states are democracies (often via a composite score on these general features³¹) and then look for a connection between how "democratic" a state is and policy outcomes. These analyses are answered by critics who contest either the scoring of democracy in particular countries or the interpretation of the behavior of "democracies."³² Both sides of the debate tend to treat democracy rather crudely as a fixed variable that either has effects on policy outcomes or does not.

Democratic theorists, though, tend to think about democracy as a continuous process rather than a fixed attribute. States do not simply pass a democracy threshold and suddenly produce more democratic policies. States are more democratic to the extent that they maximize participation and contestation.³³ More transparency, more attention to constitutionalism, and greater public involvement should lead to more democratic policy. Similarly, states do not go on autopilot once democratic processes have been established. These processes can be corrupted, leaders can usurp power, and citizens can be inattentive and unengaged; under such circumstances, we should expect policy results to be less likely to serve the public interest, whether at home or abroad. Although some argue that democratic institutions offer avenues for correcting non-democratic impulses, these do not guarantee democratic policy outcomes.³⁴ Few democratic theorists would dispute that a state is more democratic to the degree that its leaders and citizens remain true to practices that enhance participation and contestation and less democratic to the degree that they stray from these. Thinking of democracy as a process opens avenues for examining more fine-grained incremental and even issue-specific changes in practice that should have effects on policy. In sum, "democracies"

³⁰ Kant, *Perpetual Peace*; and Henderson, "The Public and the Peace."

³¹ Doyle, "Kant, Liberal Legacies and Foreign Affairs" draws up his own scores, most others rely on Polity IV Project, available at <http://www.systemicpeace.org/polity/polity4.htm>, or Freedom House, available at <http://www.freedomhouse.org/template.cfm?page=15>, scores.

³² See, for instance, David Spiro, "The Insignificance of the Liberal Peace," *International Security* 19, no. 2 (Autumn 1994): 50–86; Henry Farber and Joanne Gowa, "Politics and Peace," *International Security* 20, no. 2 (Autumn 1995); and Ido Oren, "The Subjectivity of the 'Democratic' Peace: Changing U.S. Perceptions of Imperial Germany," *International Security* 20, no. 2 (Autumn 1995).

³³ Dahl, *Polyarchy*; and Krebs, "In the Shadow of War."

³⁴ John Owen, "How Liberalism Produced the Democratic Peace," *International Security* 19, no. 2 (Autumn 1994); and Ronald Krebs, "International Conflict and the Constitutional Balance: The Liberal Legacy of Imperial Wars," in *In War's Wake*, eds., Elizabeth Kier and Ronald Krebs (Cambridge: Cambridge University Press, forthcoming 2010).

can vary in their democratic qualities—or “democraticness”—over time or issue.³⁵

In granting that the democraticness of practices varies within states, we accept some arguments critical of the democratic peace.³⁶ Contrary to the conclusions of these critics, though, we do not believe that variability in democratic practices should lead to the conclusion that democracy does not matter. The democraticness of practices at a particular point in time or on a particular issue should matter a good deal for policy. But the degree of democracy in a state is not fixed in time or space. It requires the exercise of democratic practices. A variety of features or institutions may increase or decrease the likelihood of transparency, constitutionalism, and public consent at particular times or on particular issues. The degree to which members of a state follow these practices, in turn, should affect the quality of policy.

We examine mobilization policy as such an institution; potentially important for the transparency, constitutionalism, and public consent surrounding policy on the use of force abroad. We first consider how mobilization should be expected to affect the practices identified as key to democracy based on theory and logic alone. Second, we examine the actual impact of the use of PMSCs on these processes in the United States. Finally, we take up the more controversial issue of how the changes engendered by the use of PMSCs should affect U.S. behavior abroad.

Military Mobilization and Democratic Practices

The idea that citizenship is—and should be—connected with military service underlies both republican and liberal theories of democracy. There are different arguments about the ideal form of military service and the way it should affect democracy. The range of mobilization policies recommended for democracies, though, is fairly narrow and generally focuses on conscripts or volunteers. Without exception, mercenary forces or hired guns are looked upon with great suspicion.

Niccolo Machiavelli made an early and strong claim about the importance of a conscript army for a republic and the peril associated with mercenaries.³⁷ “One’s own troops are those composed of either subjects or of

³⁵ It is more common to find attention to democratic qualities in the literature on comparative politics—though what qualities authors examine vary. See, for instance, Arendt Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-six Countries* (New Haven: Yale University Press, 1999); and Guillermo O’Donnell, Philippe Schmitter, and Laurence Whitehead, *Transitions from Authoritarian Rule: Comparative Perspectives* (Baltimore: Johns Hopkins University Press, 1986).

³⁶ Farber and Gowa, “Politics and Peace”; and Oren, “the Subjectivity of the Democratic Peace.”

³⁷ For arguments that Machiavelli’s writings reflect a commitment to a republican form of democracy, see J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Political*

citizens or of one's own dependents; all others are mercenaries or auxiliaries."³⁸ Mercenaries, he claimed, are dangerous because of their reluctance to fight, and auxiliaries (troops from a different state) are even more dangerous because they owe allegiance to another. Only national forces can be counted on, and a truly national force is one that sees itself fighting for its own good and glory—not for the ambition of another.³⁹ Machiavelli saw war as both natural and the most essential activity of political life and thus saw mobilization policy as key to the essence of a state.⁴⁰ "Although I have elsewhere maintained that the foundation of states is a good military organization, yet it seems to me not superfluous to report here that without such a military organization there can neither be good laws nor anything else good."⁴¹ Machiavelli's writings suggest that mobilizing via conscription can reinforce both good leadership and good citizenship. Because a national force of conscripts is most effective when it is well treated by the state and is pursuing the public interest rather than a ruler's private ambition, leaders should be encouraged to treat their citizens well and pursue the national interest in order to be effective in war. Conscription should also induce citizen commitment to the state and public life.⁴² By encouraging both leaders and citizens to focus on their responsibilities to the common good, mobilization based on conscription was seen by Machiavelli as a key foundation for good military organization and good laws.

Building on Enlightenment notions about reason and the social contract and reflecting more liberal principles, Immanuel Kant also saw military service as fundamental to republican (democratic) government.⁴³ He argued, though, that any manpower system should be voluntary. A militia-based, voluntary military manpower system was most appropriate for a republic. Contrary to Machiavelli, Kant did not see war as natural or essential. By involving citizens in decisions about war, republics based on freedom, law, and equality could exercise greater caution and sometimes avoid the calamities of war. His essay on the Perpetual or Eternal Peace assembled the logic through

Tradition (Princeton: Princeton University Press, 1975); and John P. McCormick, "Machiavellian Democracy: Controlling Elites with Ferocious Populism," *American Political Science Review* 95, no. 2 (June 2001): 297–313.

³⁸ Niccolò Machiavelli, *The Prince and the Discourses*, with an introduction by Max Lerner (New York: Modern Library, 1950), 53

³⁹ *Ibid.*, 226

⁴⁰ Felix Gilbert, "Machiavelli: The Renaissance of the Art of War," in *The Makers of Modern Strategy: From Machiavelli to the Nuclear Age*, ed. Peter Paret (Princeton: Princeton University Press, 1986), 24.

⁴¹ Machiavelli, *The Prince and the Discourses*, 503.

⁴² James Burk, "Theories of Democratic Civil Military Relations," *Armed Forces and Society* 29, no. 1 (Fall 2002).

⁴³ Kant, of course, showed disdain for pure majoritarian democracies in favor of republics that guaranteed individual rights and freedoms through a separation of executive and legislative powers. His notion of republican government, though, is similar to our conception of democracy today.

which such republics could build a liberal peace among themselves. He worried that standing armies—even standing armies of conscripts—would precipitate fear and offensive action and thus should eventually be banished.⁴⁴ In his words, “to pay men to kill or to be killed seems to entail using them as mere machines and tools in the hand of another (the state), and this is hardly compatible with the rights of mankind in our own person. But the periodic and voluntary military exercises of citizens who thereby secure themselves and their country against foreign aggression are entirely different.”⁴⁵

Alexis de Tocqueville also based his logic on liberal principles but worried that “men living in democratic times seldom choose military service” and thus claimed that democracies would have to resort to conscription out of necessity alone. He argued, though, that universal service conscription was not only necessary but desirable for democracies. Because it appeals to and imposes the same burdens on the entire political community, it distributes obligations fairly and links government policy most closely to the political community as a whole.⁴⁶ Furthermore, such a system does the most to infuse civilian values—the habits of the nation and public opinion—into the forces of a democracy.⁴⁷ If the pacifying effects of a democratic government on foreign policy are connected with popular participation in bearing the cost of war, conscription should both pacify foreign policy and ensure a force ready for emergencies in ways that voluntary service would not.

In practice, the requirements of freedom that liberalism implies have posed tension with ideas of equity and duty in the relation between citizenship and military service.⁴⁸ Free will, inalienable individual rights, and the ability of citizens to check the state imply a suspicion of duty or government-imposed equity. Though the tension has periodically led to fierce debates about mobilization policy within democratic states, the idea of a citizen-based army is a key feature of participation in governance. It suggests a blend of citizens’ duties to the state with a liberal commitment to free choice, willing deference to political entities, and the state’s duties to abide by citizen wishes.⁴⁹ Debates over mobilization thus mask the general agreement that a democratic state entails a military of committed, effective citizens subject to the control of civilian leaders who are, in turn, subject to the will of the population.

⁴⁴ Kant, *Perpetual Peace*, 432.

⁴⁵ Ibid.

⁴⁶ Alexis de Tocqueville, *Democracy in America*, trans. Henry Reeve (New York: Vintage, 1945), 228.

⁴⁷ Even though he agreed with Machiavelli on the preferred mode of mobilization, his reasoning reflects a very different logic. Machiavelli saw military service as instilling a public spirit in the populace, while de Tocqueville saw the same service as ensuring that the military would reflect civilian culture.

⁴⁸ Eliot Cohen, *Citizens and Soldiers: The Dilemmas of Military Service* (Ithaca: Cornell University Press, 1984).

⁴⁹ Jean Jacques Rousseau, *On the Social Contract*, trans. Judith R. Masters (1762; New York: St. Martin’s, 1978).

Both the citizen's relationship to the state and the relationship between citizenship and military service have been closely associated with arguments about the rise of the state, and particularly the democratic state.⁵⁰ Military mobilization strategies based on the citizenry have been said to play an important role in both limiting the power of democratic states vis-à-vis their citizens and enhancing their power vis-à-vis one another by strengthening public responsibility and patriotism.⁵¹ According to Stanislav Andreski, the higher the military participation ratio, the more democratic the regime.⁵² Anthony Giddens claims that the connection between the nation state and democracy "implies acceptance of the obligations of military service."⁵³

Underlying the above arguments are logical ways in which a connection between citizens and military service could also be expected to generate support for particular democratic practices, particularly participation but also contestation. In a democratic structure of government, where compulsion and rights go together, a system of obligatory service directly involves citizens in foreign policy. The fact that citizens are required to give up their time, if not their lives, in service to the country's goals should increase the stake of citizens in those goals, enhancing participation. It should ensure that citizens show an active interest in the policies of their government—including the rules by which they are conscripted.⁵⁴ The impact of government policies on citizens' lives should also prompt legislators to demand and play an active role in foreign policy in order to better serve their constituents, thereby enhancing both participation and contestation. An actively interested public and legislature should increase the demand for—and supply of—transparency on foreign policy. Transparency, in turn, allows for more effective participation and contestation.

By, in a sense, forcing interest in foreign policy, conscription should make it most likely that citizens play the role required to ensure the health of the democracy. If democratic foreign policy outcomes require a particular level of engagement by the citizenry to uphold democratic practices, obligatory service helps generate that level of engagement.⁵⁵ One could argue that

⁵⁰ Stanislav Andreski, *Military Organization and Society* (London: Routledge and Kegan Paul, 1954); Cohen, *Citizens and Soldiers*; Giddens, *The Nation State and Violence*; Charles Tilly, ed. *Coercion, Capital and European States* (Cambridge: Basil Blackwood, 1990); and Michael Mann, *The Sources of Social Power* (New York: Cambridge University Press, 1986).

⁵¹ Giddens, *The Nation State and Violence*; and Burk, "Theories of Democratic Civil-Military Relations."

⁵² Andreski, *Military Organization and Society*.

⁵³ Giddens, *The Nation State and Violence*, 253.

⁵⁴ As Margaret Levi has demonstrated, citizens are more likely to comply with conscription policies that are seen as fair. See Margaret Levi, *Consent, Dissent and Patriotism* (Cambridge: Cambridge University Press, 1997).

⁵⁵ Henderson, "The Public and the Peace." None of this suggests that conscription causes democracy. There are many examples of nondemocracies with conscription. But among states committed to democracy, obligatory military service should strengthen the incentives for the government to attend to the demands of its citizenry in decisions about whether to use force.

a voluntary structure of service—where only a segment of the population is linked to the most extreme costs of foreign policy (and a segment that has volunteered)—should enhance choice and liberty but at the cost of participation. It should chip away at demands by legislative institutions for a check on policy and by citizens for transparency, and it should make securing public consent to use force easier. Eliot Cohen’s argument that small wars “require” professional volunteer armies rather than armies based on conscription is partly based on this logic.⁵⁶

A movement away from a citizen-based army toward a market-based system should undercut this support altogether. If military “service” is really just a job, if forces can quit at any time, and if combatants need not be citizens at all, then the public demand for information relevant to forces and the legislative interest in their safety should be further weakened. All things being equal, public consent for actions abroad that use hired forces should be easier to obtain. A market-based system for mobilizing forces should remove one source of public participation and institutional concern about the use of force abroad, which in turn should reduce the demand for input and information about foreign policy plans—and thus remove this support for democratic practices. This is not to imply that democratic checks on foreign policy fall away if a state relies on market-based mobilization. Citizens and legislators should still be concerned with a variety of financial, reputational, and other costs of using force. But erasing the link between citizenship and military service should undercut an important pillar of support for democratic practices.

These potential consequences of greater reliance on private forces seem plausible and are consistent with academic, policy, and popular arguments.⁵⁷ To date, however, little systematic evidence has been marshaled to assess whether they are actually operative. In what follows, we elaborate on how

⁵⁶ Cohen claims that small, peripheral wars, which are not crucial to a country’s survival, incite greater domestic protest when they are met with a conscript army. In the experience of Great Britain and the United States, he says, “an unfettered press and a powerful and independent legislature have publicized and criticized the prosecution of far flung military commitments.” Cohen, *Citizens and Soldiers*, 87. This, along with the constraints of public opinion led both countries to be more effective with professional armies than conscript armies in these kinds of wars. Cohen suggests that the United States in the Philippines was more successful given that its force of volunteers in that war “precluded some of the violent domestic protest that accompanied the Vietnam War by avoiding any kind of conscription.” Cohen, *Citizens and Soldiers*, 97. Though Cohen’s larger point is critical of democratic processes and his suggestion is that the imperatives of small wars require avoiding them by using professional forces—the logic of his argument supports the claim that conscript armies are more sensitive to democratic processes. Whether a volunteer army in fact leads to less critique in today’s world is subject to debate. In Somalia, coverage of volunteers dying led to a significant critique of U.S. policy.

⁵⁷ Deborah Avant, “The Implications of Marketized Security for IR Theory: the Democratic Peace, Late State Building and the Nature and Frequency of Conflict,” *Perspectives on Politics* 4, no. 3 (September 2006); Robert Mandel, *Armies Without States: the Privatization of Security* (Boulder: Lynne Rienner, 2002); Singer, *Corporate Warriors*; Ken Silverstein, *Private Warriors* (New York: Verso, 2000); and Allison Stanger and Mark Williams, “Private Military Corporations: Benefits and Costs of Outsourcing Security,” *Yale Law Journal of International Affairs* (Fall/Winter 2006).

this logic should work in the current U.S. context and then use a variety of measures to assess how the U.S.'s use of PMSCs has affected these processes in Iraq.

PRIVATE FORCES AND DEMOCRACY IN THE CONTEMPORARY UNITED STATES

Transparency

Transparency in states is defined as “legal, political and institutional structures that make information about the internal characteristics of a government and society available to actors both inside and outside of the domestic political system.”⁵⁸ Because it allows informed action on the part of both citizens and other institutions of government, transparency is fundamental to democratic practice. Most analyses of transparency use very general measures to track the degree of transparency in a government overall.⁵⁹ Because we are interested in whether the process surrounding the use of contractors is less transparent than the use of troops within the United States, however, these all-purpose measures of the U.S. government’s transparency are not useful. In ascertaining general levels of transparency analysts examine common indices: lack of governmental control over information, institutions for governmental disclosure of information, and evidence of free debate.⁶⁰ Drawing on these, we begin by comparing the degree to which Congress, interested citizens, and foreign governments can obtain information about the mobilization and activities of troops versus PMSCs. To carry the analysis further, we offer a measure of the relative amount of information in the public sphere about troops versus contractors by contrasting newspaper coverage of U.S. troops and PMSCs over time in Iraq.

To begin, we consider the amount of governmental control over information about troops versus contractors. Although the U.S. government restricts information about troop movements and plans for obvious reasons, it does not restrict information about who is deployed, where, or with what unit. Nor does it restrict information about the overall number of U.S. forces in Iraq and Afghanistan, the number of casualties, or spending on both wars. When a U.S. military employee is accused of a crime, that information is available as well. A wealth of information is available on the Pentagon’s website and even more to analysts and reporters who cover the American military.⁶¹

⁵⁸ Bernard Finel and Kristin Lord, “The Surprising Logic of Transparency,” *International Studies Quarterly* 43, no. 2 (June 1999): 315–39. See 316.

⁵⁹ See for instance, Freedom House, available at <http://www.freedomhouse.org/template.cfm?page=16>, or Transparency International, available at http://www.transparency.org/policy_research/surveys_indices/cpi/2007.

⁶⁰ Finel and Lord, “The Surprising Logic of Transparency.”

⁶¹ See U.S. Department of Defense website, available at <http://www.defenselink.mil/>.

Even in highly sensitive policy arenas, the United States has procedures such as the Freedom of Information Act (FOIA) that guarantee public access to information deemed relevant to the public interest.

The situation for contractors in Iraq is quite different. Not all of this is a matter of restriction. In many areas, the government simply does not (or did not) collect data on contractors, so information about which PMSC personnel are deployed, where, and in what ways is (or was) de facto not available. Until quite recently, neither did the government collect information about the overall number of contract employees, the number of casualties, or how much it spends on contracts.⁶² That information is now collected, though it is not as available as information about troops.⁶³

The strongest evidence of formal government restriction of information comes from FOIA denials or blockages. Because PMSCs are private, their assertions of control over proprietary information about the terms of their contracts, their operations, and their policies have reduced public access to information. By law, commercially sensitive information must be concealed when government documents are released. Thus, the Pentagon often sends documents to individual firms so they can block out sensitive information. Sometimes this process has been abused. For instance, when journalists sought access to information about Halliburton subsidiary Kellogg, Brown, and Root's work to repair oil fields in Iraq, significant portions of a Pentagon audit sent to the international monitoring board were blacked out. The firm claimed that it was permissible to black out not only proprietary information but also statements "that we believe are factually incorrect or misleading and could be used by a competitor to damage KBR's ability to win and negotiate new work."⁶⁴ Even when they are not abused, proprietary limits on information can reduce the transparency of government policy. The government, in concert with PMSCs, has successfully restricted the release of a wide variety of information.⁶⁵

Many different institutions and more informal mechanisms release information about military forces. The Department of Defense, along with each service branch, has formal organizations to feed information to the press and

⁶² Government Accountability Office (GAO), report to Congress, "Rebuilding Iraq: Actions Needed to Improve Use of Private Security Providers," (GAO-05-737), July 2005.

⁶³ The Department of Defense is now required to keep regular census numbers of contract employees in Iraq but that information is not publicized. See Department of Defense Instruction (DoDI), no. 3020.41, "Contractor Personnel Authorized to Accompany the U.S. Armed Forces," 3 October 2005, Section 4.5. and 6.2.6.

⁶⁴ Erik Eckholm, "Now You See It: An Audit of KBR," *New York Times*, 20 March 2005.

⁶⁵ The *Los Angeles Times* requested access to the data on reports of violent incidents by contractors but received only a heavily redacted version of the data that omitted the names of the security team members as well as the names of armed forces members and government employees. The newspaper filed suit in November 2005 but was unable to get access to the information. See David G. Savage, "U.S. Can Withhold Security Firm Data," *Los Angeles Times*, 27 July 2006, for one of many similar stories.

engender routine coverage of the military.⁶⁶ The fanfare that accompanies deployments of military forces abroad ensures knowledge about them. Informal mechanisms include triggers that alert the media as well as pathways through which information can be accessed. Television networks and major newspapers assign correspondents to the Pentagon and local television stations, and newspapers routinely cover military bases and the families that are attached to them within their circulation area. Military casualty figures are routinely collected and released. The names and faces of military casualties in Iraq and Afghanistan are shown nightly on *The PBS News Hour*. Coverage of military deployments is virtually automatic.

There is no such coordinated or automatic diffusion of information about contractors, nor are there triggers to alert the media. Casualty figures routinely collected and released by the military exclude contract personnel, thus reducing information about the human costs of war. If reporters want access to the newest census data on the number of contractors in Iraq, they must submit a FOIA request. Furthermore, PMSCs attract no coverage on a regular basis. Although the irresistible attraction of bad news draws media coverage if something goes wrong, it is hard for the media even to discover that something has gone wrong if they are not covering these deployments in the first place. Partly because of information blockages, even when PMSCs are known to be involved in an operation, investigators may find it difficult to ferret out information about them.⁶⁷ Contracts also come in many shapes and sizes, giving them a degree of flexibility that is often deemed a virtue. For instance, CACI's contract through which interrogators at Abu Ghraib prison were hired was with the Interior Department's National Business Center.⁶⁸ Because of this vehicle, interrogators could be deployed more quickly to Abu Ghraib prison than would have been the case had a new contract been required. That virtue, however, increases the burden on anyone trying to piece together a picture of what is involved.⁶⁹

Even when information on PMSCs is potentially available, it is more diffuse and harder to collect, aggregate, and analyze than parallel military information. For instance, in 2004 as analysts were decrying the lack of information about CACI's provision of interrogators at Abu Ghraib prison, CACI itself was advertising on its website for interrogators to serve in Iraq.⁷⁰ The information was not so much secret as it was hard to amass. When information

⁶⁶ See information about the DoD Press Office at <http://www.defenselink.mil/news/dodnews.aspx>.

⁶⁷ Deborah Avant's conversations with Steve Farenau of the *Washington Post*, T. Christian Miller of the *Los Angeles Times*, and Renae Mearle of the *Washington Post*.

⁶⁸ Roxanne Tiron, "Contracting Faulted in Abu Ghraib Abuse," *The Hill*, 28 September 2005, available at <http://thehill.com/business--lobby/contracting-faulted-in-abu-ghraib-abuse-2005--09-28.html>.

⁶⁹ While contract interrogators are no longer permitted and this particular issue is not likely to reoccur, the use of umbrella contracts remains common.

⁷⁰ See CACI website at <http://www.caci.com/webapp/Apps/JobSurvey.aspx>.

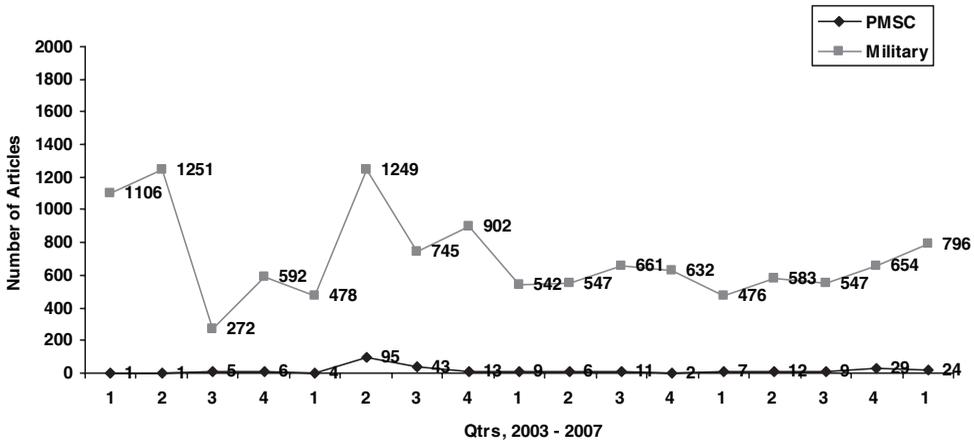


FIGURE 1 New York Times News Coverage of the Military versus PMSCs.

is hard to gather, it limits free debate and thus reduces transparency regardless of any intentional action.

These considerations imply that PMSCs working for the government abroad should be less likely to generate the same degree of media coverage as troops would. To gain a better perspective on this difference, we consider newspaper coverage of PMSCs versus troops in Iraq.⁷¹ Figure 1 shows the month-by-month number of articles in the *New York Times*, January 2003 through March 2007, in which either the military or PMSCs were mentioned.

Coverage of the military in the *New York Times* dwarfed that of PMSCs. The only times when PMSC personnel amounted to more than a blip on the media's radar screen were when sensational events occurred that involved PMSC employees. During the second quarter of 2004, just after four employees of Blackwater, USA were killed and mutilated in Fallujah, PMSCs were mentioned in an all-time high of ninety-five articles. In the following two months, coverage of PMSCs continued to be relatively high, due to allegations that contractors from CACI and Titan were involved in the abuse of prisoners at Abu Ghraib. Even during that period, coverage of troops far outstripped that of PMSC. More generally, under "normal" circumstances PMSCs were conspicuously absent from reporting on the Iraq conflict. Although coverage of PMSCs did increase after the Democrats gained control of the House and Senate, giving them an institutional base for the first time since the war started, it was still far outstripped by increases in the coverage of troops. Thus the minimal coverage of PMSCs continued.

⁷¹ These data were amassed by running Lexis-Nexis searches and then reading each article to ensure its coverage of military, PMSCs, or both. We then created archives of the text of all articles counted.

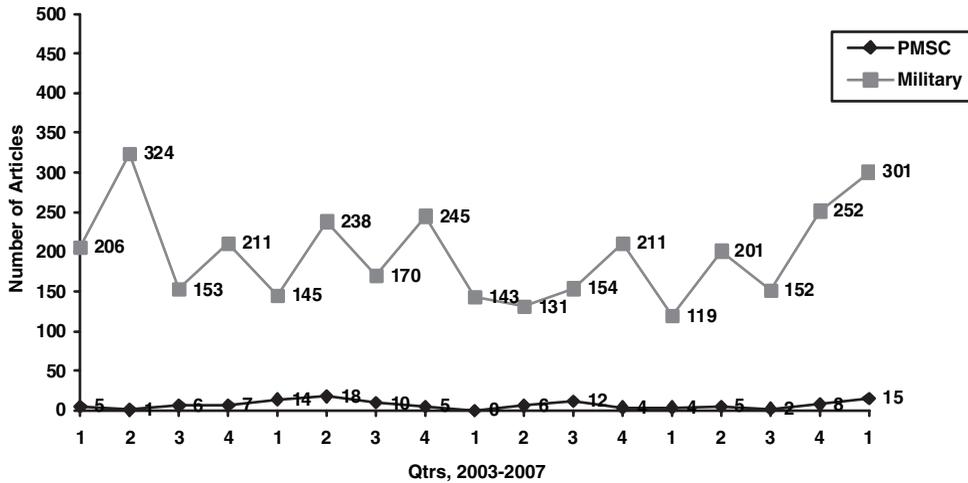


FIGURE 2 St. Louis Post-Dispatch News Coverage of the Military versus PMSCs.

To ensure that some peculiar coverage pattern in the *New York Times* was not skewing our analysis, we also tracked coverage over a similar period in the *St. Louis Post-Dispatch*.

As Figure 2 demonstrates, the overall amount of news coverage on Iraq in the *St. Louis Post-Dispatch* was lower than in the *New York Times*, which styles itself as America's "newspaper of record." The ratio of coverage of PMSCs to the military was still very low. Although they did receive better coverage compared with troops in the *St. Louis Post-Dispatch*—roughly 1/27 as opposed to 1/47 in the *New York Times*—the numbers still demonstrate an overwhelming lack of coverage for contractors in Iraq.

These differences do not stem from the lesser number of PMSC personnel than military personnel in Iraq. Although that may have been true in the early days of the war, there have been nearly equal numbers of contractors and military personnel since the U.S. government began keeping count of the numbers of deployed contractor personnel.⁷² One could also claim that contractors are doing less high-risk work, but even without keeping track of contractor casualties we know that death claims filed for contractors have been roughly one-third of U.S. military deaths.⁷³ Since the insurgency began, the work performed by contractors has not been different enough in scope from the work performed by the U.S. military to account for the observed differences in news coverage.

⁷² Renae Merle, "Census Counts 100,000 Contractors in Iraq," *Washington Post*, 5 December 2006; GAO, "Contingency Contracting: DOD, State and USAID Contracts and Contracting Personnel in Iraq and Afghanistan," (GAO 09-19), October 2008; CBO, "Contractor Support of U.S. Operations in Iraq."

⁷³ Given that many who work for the U.S. government are third country nationals who may have difficulty filing these claims, most agree that the number of actual contractor deaths is undercounted. See Steven L. Schooner, "Why Contractor Fatalities Matter," *Parameters* 38, no. 3 (Autumn 2008): 78–91.

Finally, one could claim that the military gets more coverage because military leaders make the strategic and policy decisions, and these are the concerns worthy of coverage by the media. It is true that decisions about military operations are made by military leaders and are of significant consequence. However, some policies central to the success of the war—such as initial efforts to train the Iraqi army—were made by (or with significant input from) contractors.⁷⁴ So while contractors may have less to say about strategy at the very highest levels, they do influence important policy. Furthermore, most media coverage is not about major policy choices. It is about attacks, casualties, soldiers and their lives, the level of U.S. commitment, and how the war is going. We suspect that such coverage cues thoughts about the war and the level of U.S. commitment and sacrifice. Because it refers only to one-half of the personnel the United States has mobilized, though, and counts only the casualties in the military, it underplays both the level of commitment and the level of sacrifice.⁷⁵

The volume of news coverage is only one measure of information available to the public. Researchers could also track talk about troops and contractors in the blogosphere, on television news, and on the radio. Tracing newspaper coverage is a reasonable place to start, however, given that we have had no measures of that information up until now. The volume of newspaper coverage tells a compelling story, consistent with our other indicators about the degree to which the use of PMSCs has reduced transparency.

Less extensive media coverage, more diffuse information, and the proprietary blockage of information involving PMSCs reduces transparency surrounding the use of PMSCs relative to that of traditional military forces. Reduced transparency limits the amount of information available to the public (and other institutions of government as discussed in the constitutionalism section below), and thus the potential for free debate. The absence of such debate on the deployment of contractors to Iraq as the insurgency heated up in 2004 is telling, particularly when contrasted with the fierce debate surrounding the deployment of an additional twenty thousand troops in early 2007. Note also that the debate over whether to bring “our troops” home from Iraq during the 2008 presidential contest also did not address the equal numbers of contractors. Similarly, suggestions that the United States might shift military personnel in Afghanistan to “trigger pulling” roles have not mentioned that this will effectively be an increase of forces—but of contractors rather than troops.⁷⁶

In sum, the U.S. government has more restrictions on information available about PMSC contracts than about the deployment of troops. There are also many more formal and informal mechanisms for sharing information about

⁷⁴ Avant, *Market for Force*, 124–25.

⁷⁵ Schooner, “Why Contractor Fatalities Matter.”

⁷⁶ Julian Barnes, “U.S. to Boost Combat Force in Afghanistan,” *Los Angeles Times*, 2 September 2009.

military forces than about contractors. There is evidence of far lower actual newspaper coverage of PMSC forces relative to troops and evidence of less public debate over the deployment of contractors relative to the deployment of troops. All of this leads us to conclude that privatizing military services has indeed reduced transparency over U.S. policy in Iraq and Afghanistan.

Constitutionalism

In the United States, congressional and judicial checks help make outcomes predictable and reduce the potential for capricious action. Privatization could affect constitutionalism by evading these key veto points in the policy-making process. For example, the use of contractors rather than military personnel could enable members of the executive branch to pursue policy without going through normal channels—evading checks from Congress or even from other portions of the executive branch; or leaders in the executive branch could encourage contracts between PMSCs and foreign governments or other entities and thereby avoid formal government involvement altogether—what has been called “foreign policy by proxy.”⁷⁷ If contracting force rather than mobilizing military forces bypasses veto points, it erodes constitutionalism. To begin an assessment of the impact of privatization on constitutionalism, we consider how contracting with PMSCs or allowing PMSCs to contract directly with foreign governments or other entities has affected the relative power of the executive, legislative, and judicial branches and the associated number of veto points in the policy process.

Even without contracting, the executive branch enjoys significant advantages over Congress in military policy decision making.⁷⁸ Contracting enhances these advantages. The executive branch, not Congress, hires contractors. Congress approves the military budget, but it does not approve—or often even know about—individual decisions for contracts. Information about contracts is held almost exclusively by the executive branch. While Congress has begun to investigate the role of contractors in response to scandals in Iraq, the vast majority of oversight is conducted in the executive branch. The traditional deference of the Supreme Court to the president on matters of war powers, combined with the nebulous legal framework surrounding contractors, makes it unlikely that this imbalance will be rectified by the judiciary.⁷⁹

⁷⁷ Ken Silverstein, “Privatizing War: How Affairs of State are Outsourced to Corporations Beyond Public Control,” *The Nation*, 28 July 1997.

⁷⁸ Harold Koh, *The National Security Constitution* (New Haven: Yale University Press, 1990); and James M. Lindsay, *Congress and the Politics of U.S. Foreign Policy* (Baltimore: Johns Hopkins, 1994).

⁷⁹ See Koh, *The National Security Constitution*; and Lindsay, *Congress and the Politics of U.S. Foreign Policy*. Even scholars who see a greater role for the court in foreign policy overall still agree that it is likely to defer to the executive on issues surrounding war powers. See Kimi Lynn King and James Meernik, “The

Although the executive branch dominates military information and oversight, especially in the short term, Congress has several avenues of influence over the long-term manner in which the military does its business, as well as over short-term funds for the military and deployment of U.S. troops.⁸⁰ Congressional authority over personnel ranges from limiting the size of the military to regulating and restricting how soldiers can be deployed, structuring chains of command, and approving promotions.⁸¹ Congressional appropriations also frequently carry restrictions on the use of the funds that regulate the use of military forces. Among the most important tools at Congress' disposal is its ability to structure incentives within the services—requirements for entry, criteria for promotion, and so on.⁸² Finally, as a consequence of the War Powers Resolution, the President must consult Congress and seek its approval to deploy U.S. military forces in conflict zones.⁸³ Congress may not be able to veto a presidential decision to deploy forces, but it can and does use tools at its disposal to exact political costs from the president if they do not agree with him. The politics surrounding the “surge,” which deployed an additional twenty thousand troops to Iraq in 2007, demonstrate how these tools work.

Transparency is fundamental to Congress's ability to practice its constitutional role. Congressional avenues for influence over the military are enhanced by access to information about military units. Congress has the information to keep track of how many military units there are, and how, where, and when they are deployed. It has devised procedures for receiving information about the military, and it uses these to influence the military on a short-term as well as long-term basis.

Congress, however, has much less access to information over contractors and has thus far been less able to structure their long-term incentives. In Iraq Congress was shocked to learn the extent of contractor duties in the wake of the incident in which Blackwater employees were killed and

Supreme Court and the Powers of the Executive: the Adjudication of Foreign Policy,” *Political Research Quarterly* 52, no. 4 (December 1999): 801–24.

⁸⁰ Paul Hammond, *Organizing for Defense* (Princeton: Princeton University Press, 1961); Samuel Huntington, *The Common Defense* (New York: Columbia University Press, 1961); Deborah Avant, *Political Institutions and Military Change: Lessons from Peripheral Wars* (Ithaca: Cornell University Press, 1994); Mark Brandon, “War and the American Constitutional Order,” *Vanderbilt Law Review* 56 (2003): 1,860; and Jon D. Michaels, “Beyond Accountability: the Constitutional, Democratic, and Strategic Problems with Privatizing War,” *Washington University Law Quarterly* 82 (2005): 1,001.

⁸¹ Michaels, “Beyond Accountability”; Avant, *Political Institutions and Military Change*; and Lindsay, *Congress and the Politics of U.S. National Security Policy*.

⁸² Terry Moe, “The Politics of Structural Choice: Toward a Theory of Public Bureaucracy,” in *Organizational Theory: From Chester Barnard to the Present and Beyond* (New York: Oxford University Press, 1990).

⁸³ Michaels, “Beyond Accountability”; and David Auerswald and Peter Cowhey, “Ballotbox Diplomacy: The War Powers Resolution and the Use of Force,” *International Studies Quarterly* 41 (September 1997): 505–28.

mutilated in Fallujah.⁸⁴ This should not be surprising, though, because many reports to Congress focus on the job at hand, not who is doing the job. The annual consolidated report on military assistance and sales, for instance, does not even identify whether particular training missions are accomplished by troops or PMSCs.⁸⁵ As the experience in Iraq has demonstrated, it has also been hard for Congress to gain access to contracts due to the proprietary concerns of the contractor.⁸⁶ Congress is far from even understanding how these contracts work and through which agencies. Contracts for security services (such as interrogation) have been routed through the federal bureaucracy (via the Interior or Commerce Department, for instance) in ways that mask their military impact.⁸⁷ This has made it difficult for the legislative branch to affect either the internal processes of private firms or the terms on which the executive branch contracts with them.⁸⁸

Some congressional tools are simply harder to use to control contractors than the military. Congress retains its power of the purse but has not been able to use that power to structure the internal working of PMSCs—who gets promoted, blanket requirements for particular jobs, punishments for wrongdoing, and so on, as it has the workings of the military branches. This is in part because access to information is more difficult. PMSCs, for instance, fit awkwardly into the organizational set up of investigative bodies such as the Government Accountability Office (GAO).⁸⁹ Some of these difficulties can be overcome. The GAO has reoriented itself on this issue, and along with the Congressional Research Service (CRS), the newly appointed CWC and the Special Inspectors General for Iraq and Afghanistan, provides much better information to Congress about contractors than was the case in the early days of the war in Iraq and Afghanistan. Congress could also increase its control with more apt use of some of these tools such as blanket requirements for particular jobs. Other issues are more difficult to resolve. For example, it is

⁸⁴ Ike Skelton, letter to Donald Rumsfeld, 2 April 2004, available at: http://www.house.gov/skelton/4-2-04_Skelton_letter_to_Rumsfeld_re_contractors.pdf; and Robert Schlesinger, "The Imperial Pentagon," Salon.com, 20 May 2004, available at <http://dir.salon.com/story/news/feature/2004/05/20/secrets/print.html>.

⁸⁵ Lora Lumpe, "U.S. Foreign Military Training: Global Reach, Global Power, and Oversight Issues," *Foreign Policy In Focus*, Special Report, May 2002.

⁸⁶ Congress has complained in its legislative drafts. See Stop Outsourcing Security Act of 2007, HR 4102, 110th Cong., 1st sess., section 2, paragraph 6.

⁸⁷ Prison interrogators at Abu Ghraib were hired through a Department of Interior contract. See Major General Antonio M. Taguba, "Article 15–6 Investigation of the 800th Military Police Brigade," report to U.S. Central Command, March 2004; Major General George R Fay and Lieutenant General Anthony R. Jones, *Investigation of the Abu Ghraib Detention Facility and 205th Military Intelligence Brigade*, AR 15–6, August 2004; and Steven L. Schooner, "Contractor Atrocities at Abu Ghraib: Compromised Accountability in a Streamlined, Outsourced Government," *Stanford Law and Policy Review* 16, no. 2 (2005): 549.

⁸⁸ This is a common feature of contracting in general. See John Donahue, *The Privatization Decision: Public Ends, Private Means* (New York: Basic Books, 1989); and Daniel Guttman and Barry Willner, *The Shadow Government* (New York: Pantheon, 1976).

⁸⁹ GAO staff member, interview by Deborah Avant, May 2002.

unlikely that Congress will be able to affect who gets promoted in private sector firms the way it affects these policies in the military.

Other congressional controls are skirted altogether by contracting. Congress controls the size of the military but does not control the size of the contract force.⁹⁰ Also, Congress must authorize the deployment of U.S. troops but need not provide authorization for the deployment of contractors. Congress often limits U.S. involvement in a conflict by stipulating a ceiling on the number of U.S. troops; the executive branch can then use contractors to evade that ceiling. Even if Congress does put a ceiling on the number of contractors in a specific engagement, PMSCs can hire third-country nationals to work around that restriction. Finally, Congress has little control over contracts between PMSCs and foreign governments.

In Iraq the executive's use of contractors in the wake of insurgent violence evaded asking Congress for more troops. In 2004, as the insurgency grew, the Bush administration deployed a vast number of contractors to bolster U.S. efforts. Official reports of the number of contractors in Iraq went from twenty thousand in May 2004 to one hundred ninety thousand in January 2008.⁹¹ Even if we take into account that there were likely many more contractors than the initial estimate in 2004, the increase in the number deployed was likely between one hundred thirty thousand and one hundred seventy thousand. This increase caused no scandal, uproar, or even notice in the United States even though this was the very time when members of Congress were furiously trying to figure out the role of contractors following the publicity that surrounded the deaths of four Blackwater personnel in Fallujah and the role of contractors in the Abu Ghraib prison abuse scandal. Because no congressional authorization was needed, the president could vastly increase the numbers of PMSCs deployed to Iraq with no political discussion. Had the president sought to mobilize one hundred thirty thousand to one hundred seventy thousand additional military personnel, he would have run into the need for congressional authorization and political costs. This is a highly plausible counterfactual, given the controversy and debate that surrounded President Bush's request for an additional twenty thousand troops in early 2007.

⁹⁰ Michaels, "Beyond Accountability" cites *Swain versus United States*, 28 Ct. Cl. 173, 221 (1893) "Congress may increase the Army, or reduce the Army, or abolish it altogether . . .," 1,054.

⁹¹ It is likely that there were more than twenty thousand in Iraq in May 2004. The twenty thousand number was estimated by Donald Rumsfeld in discussion paper responding to a congressional inquiry. Donald Rumsfeld, letter to Ike Skelton, ranking Minority Member, Committee on Armed Services, U.S. House of Representatives from Donald Rumsfeld, Secretary of Defense, attachment "Discussion Paper on Private Security Companies Operating in Iraq," May 2004, 4. Those following private security matters at the time were dubious about that figure. Analyst estimates ranged from forty thousand to sixty thousand though one former member of the CPA claimed that no one really knew how many private security personnel were in the country. CPA official, interview by Deborah Avant, March 2004. Even assuming the sixty thousand figure was correct in May 2004, there was a surge that more than doubled the number of contractors in response to the insurgency.

The executive branch has also allowed direct contracts between foreign governments and PMSCs to evade congressional meddling in politically fraught policy.⁹² For instance, in 1994 the United States licensed MPRI to provide advice and training to the Croatian government. President Franjo Tudjman thereby received many of the advantages of U.S. military assistance—indeed, he touted the contract as evidence of an “alliance” between the United States and Croatia—but the contract flew under Congress’ radar screen.⁹³ Had the United States opted to send military trainers to Croatia in 1994, that decision could not have fallen outside congressional scrutiny, and given the tense politics surrounding the Balkan crisis, it likely would have sparked significant debate.⁹⁴

In response to particular incidents in Iraq and Afghanistan, Congress has begun to use its appropriations powers to demand more information and has taken steps toward greater control. Most significantly, it has required the Department of Defense to develop tools for tracking the number of contractors employed in areas where the U.S. military is involved in war or contingency operations.⁹⁵ Congress also amended language in both the Military Extraterritorial Jurisdiction Act (MEJA) and the Uniform Code of Military Justice in an attempt to extend the jurisdiction of U.S. law over persons serving with or accompanying armed forces in the field.⁹⁶ A variety of other legislation has been proposed that reacts in one way or another to the controversies raised by the use of contractors in Iraq and Afghanistan.⁹⁷ The 2009 Defense Authorization Act required that a contractor misconduct database be kept

⁹² As specified in the International Transfer of Arms Regulations (ITAR) of the Arms Control Export Act, contracts for the export of military services must be licensed by the State Department’s Office of Defense Trade Controls, available at http://www.pmddtc.state.gov/regulations_laws/itar_official.html.

⁹³ Avant, *Market for Force*.

⁹⁴ Deborah Avant, “Are the Reluctant Warriors Out of Control?” *Security Studies* 6, no. 2 (Winter 1996/1997).

⁹⁵ See DoDI Number 3020.41, “Contractor Personnel Authorized to Accompany the U.S. Armed Forces.” The Synchronized Pre-deployment Operation Tracker (SPOT) database now implements this requirement. Although problems remain (see GAO, “Contingency Contracting,” 2008 and 2009), this is a vast improvement on the early years of the wars. See GAO, “Contingency Contracting: DOD, State, USAID are taking actions to track contracts and contractor personnel in Iraq and Afghanistan,” (GAO-09-538T), testimony to Subcommittee on Oversight and Investigations, Committee on Armed Services, United States House of Representatives, 1 April 2009.

⁹⁶ See the John Warner National Defense Authorization Act for Fiscal Year 2007 (P.L. 109-364), Section 552. Previously this extension only occurred in instances of declared war. See Jennifer K. Elsea and Nina M. Serafino, “Private Security Contractors in Iraq: Background, Legal Status and Other Issues,” Congressional Research Service Report to Congress (RL 32419), updated 11 July 2007, 20–24.

⁹⁷ See “Transparency and Accountability in Military and Security Contracting Act of 2007,” S 674, 110th Cong., 1st sess.; “National Defense Authorization Act for FY 2008,” S 1547, 110th Cong., 1st sess.; “Transparency and Accountability in Military and Security Contracting Act of 2007,” HR 369, 110th Cong., 1st sess.; “Iraq Contracting Fraud Review Act of 2007,” HR 528, 110th Cong., 1st sess.; “New Direction for Iraq Act of 2007,” HR 663, 110th Cong., 1st sess.; “Iraq and Afghanistan Contractor Sunshine Act,” HR 897, 110th Cong., 1st sess.; “Iraq Reconstruction Improvement Act of 2007,” HR 1581, 110th Cong., 1st sess.; “National Defense Authorization Act for FY 2008,” HR 1585, 110th Cong., 1st sess.; “MEJA Expansion and Enforcement Act of 2007,” HR 2740, 110th Cong., 1st sess.; and “Providing for Operation Iraqi Freedom

to inform decisions about hiring.⁹⁸ In 2010, the Defense Appropriations Act banned the use of contractors for interrogation, required better record keeping on contractors, and authorized the DoD to deny contracts to companies found to jeopardize the health and safety of U.S. government employees.⁹⁹

The degree of control these changes offers is unclear. As is typical of Congress, legislation often reacts to particular controversies and sometimes does not work as intended. For instance, Congress thought it had fixed MEJA to extend criminal jurisdiction of U.S. civilian courts to persons supporting the mission of the Department of Defense overseas regardless of the federal agency under which they were contracted.¹⁰⁰ It also acted to extend the criminal jurisdiction of military courts under the Uniform Code of Military Justice to persons serving with or accompanying the force in *contingency operations*.¹⁰¹ But, in Senator Carl Levin's (D-MI) words, "despite the enactment of these provisions and the presence of these provisions on the books, we continue to hear questions raised about the jurisdiction of U.S. military and civilian courts over criminal misconduct by contractor employees on the battlefield in Iraq and Afghanistan."¹⁰² The Justice Department did opt to prosecute the Blackwater personnel accused of shooting civilians in Baghdad's Nisoor Square pursuant to MEJA despite jurisdictional challenges, which suggested some progress.¹⁰³ But the ultimate dismissal of the suit demonstrates the continued challenges in erecting effective legal accountability for PMSCS.¹⁰⁴ Regardless of these changes, the control Congress has over PMSCS still pales beside the control it has over military forces.¹⁰⁵

The advantages accorded to the executive branch by contracting are not written in stone. One could look at contracting for services as a military innovation that simply requires a legislative response—similar to the

Cost Accountability," HR 97, 110th Cong., 1st sess. See summaries of each in Elsea and Serafino, "Private Security Contractors in Iraq."

⁹⁸ See "National Defense Authorization Act for FY 2009," S 3001, 110th Cong., 2nd sess.

⁹⁹ "Contractor Personnel Authorized to Accompany the U.S. Armed Forces," DoDI 3020.41, October 2005; and "National Defense Authorization Act for FY 2010," HR 2647, 111th Cong., 1st sess.

¹⁰⁰ "National Defense Authorization Act for FY 2005," HR 4200, 108th Cong., 2nd sess.

¹⁰¹ See "National Defense Authorization Act for FY 07," HR 5122, 109th Cong., 2nd sess. Thus far the constitutionality of prosecuting civilians under the UCMJ has not been upheld by the Supreme Court. See *Reid v. Covert*, 345 US 1 (1957).

¹⁰² Statement at the Joint Hearing on Management and Oversight of Contingency Contracting in Hostile Zones, *Federal News Service*, 24 January 2008.

¹⁰³ Del Quentin Wilbur and Karen DeYoung, "Justice Department Moves Toward Charges Against Contractors in Iraq Shooting," *Washington Post*, 17 August 2008.

¹⁰⁴ Matt Apuzzo, "Judge Slams DOJ Prosecutors, Dismisses Blackwater Charges," *Associated Press*, 4 January 2010.

¹⁰⁵ One might argue that checks could come within the executive branch rather than from the legislative—perhaps in competition between bureaucratic agencies. We look only at checks and balances among the branches of government here, but encourage others to examine how the use of contractors matter for checks and balances within the executive branch.

strategy by which Congress gained effective influence over weapons acquisition during the Cold War.¹⁰⁶ Congress could prohibit the use of certain kinds of personnel, restrict the use of contracts for some services, subpoena contracts, require contractors to waive proprietary rights, require information about the use of contractors, and even require congressional authorization of the numbers of contractors paid by the United States.¹⁰⁷ As matters currently stand, however, contracting limits the capacity of Congress to weigh in. We conclude, therefore, that privatizing military services has thus far reduced the veto points through which policy must travel and thereby the impact of constitutionalism on U.S. foreign policy.

Public Consent

Contracting could also erode processes through which public consent is offered by reducing public interest in or concern about the use of force by their leaders. Kant argued that citizens of a republic are less war-prone because those with influence over decisions to use force must also bear its costs. Although many have pointed out that this does not preclude the use of force, in democracies the standards for using force are said to be higher than elsewhere; war must be of great importance to warrant spilling the blood of citizens fighting for their country and to subject democratic leaders to political consequences when casualties mount.¹⁰⁸

How might the use of PMSCs affect public consent? First, it could reduce transparency. Because reporting about missions frequently focuses on the number of troops needed or involved, using PMSCs to bolster national deployments could lower those numbers and make it easier to appeal for support. Secretary of Defense Donald Rumsfeld was adamant that the U.S. war effort in Iraq could be undertaken with a much smaller force than recommended by Chief of Staff Gen. Eric Shinseki.¹⁰⁹ As the conflict progressed, however, it became clear that this was possible only because PMSCs employees filled in for a shortage of troops. So PMSCs could make the U.S.'s apparent commitment to a particular effort seem lower than the actual commitment required.

¹⁰⁶ Eugene Gholz and Harvey M. Sapolsky, "Restructuring the U.S. Defense Industry," *International Security* 24, no. 3 (Winter 1999/2000): 5–51.

¹⁰⁷ The Gansler Report outlines some options. See Jacques Gansler et al., Report of the Commission on Army Acquisition and Program Management in Expeditionary Operations, *Urgent Reform Required: Army Expeditionary Contracting*, 31 October 2007. The final report of the Commission on Wartime Contracting is likely to yield others.

¹⁰⁸ John Mueller, *War, Presidents and Public Opinion* (New York: Wiley, 1973); Benoit, "Democracies Really Are More Pacific"; Scott Sigmond Gartner and Gary Segura, "War, Casualties and Public Opinion," *Journal of Conflict Resolution* 42, no. 3 (June 1998); and Cohen, *Citizens and Soldiers*.

¹⁰⁹ Michael R. Gordon and Bernard E. Trainor, *Cobra II: The Inside Story of the Invasion and Occupation of Iraq* (New York: Pantheon, 2006).

Lowered transparency could also diminish the perceived human costs of war.¹¹⁰ As noted earlier, whereas military casualties are closely tracked and extensively covered in the media, private casualties are not. This does not mean that PMSCs suffer no casualties. As of 31 December 2009, the number of contractor deaths in Iraq and Afghanistan topped 1,757—as compared with the 5,316 military personnel who had died in those conflicts.¹¹¹ It does mean, though, that PMSC casualties go largely unnoticed.¹¹² There is no running count of contractor deaths on the network news or on the DoD website. Photos of PMSC personnel who have died in Iraq are not part of the “honor roll” flashed across the screen at the end of the *PBS News Hour*. Unlike reporting on civilian casualties, which has grown dramatically due to the efforts of organizations like Iraq Body Count, reporting on casualties among PMSCs is largely absent.

The pertinent differences, though, may extend well beyond the gap in information about military versus PMSC casualties. Deploying personnel who are simply working rather than serving could also lower sensitivity to casualties. That is, the general public may care more about the deaths of soldiers, who are serving out a sense of patriotic duty, than of PMSC operatives, who are motivated by profit. This possibility is widely recognized in policy analyses of the private military and security industry and is reflected in the expectations of policy makers.¹¹³ Although rally-around-the-flag effects are not well understood,¹¹⁴ studies of how people use inferences to make political judgments suggest ways in which soldiers’ deaths might register somewhat differently in the mass public than contractors’ deaths.¹¹⁵ The deaths of soldiers may communicate a message to the public about the importance and legitimacy of a mission—invoking symbols of sacrifice, patriotism, and national interest—and about the importance of sticking it out to honor and validate the commitment of those who have fallen. The deaths

¹¹⁰ Kant, “Eternal Peace”; and Lipson, *Reliable Partners*.

¹¹¹ See <http://www.propublica.org/series/disposable-army>. These numbers are from the Department of Labor and are estimates based on insurance claims. The Defense Base Act (passed in 1941) requires that personnel working overseas for the U.S. government on a military base or for national security purposes be issued life insurance and other benefits. See <http://www.defensebaseact.com/>. By requesting information on claims made through Defense Base Act insurance, T. Christian Miller of ProPublica has estimated the human costs paid by contractor personnel. See also T. Christian Miller, “Civilian Contractor Toll in Iraq and Afghanistan Ignored by Defense Department,” *ProPublica*, 9 October 2009, available at <http://www.propublica.org/feature/civilian-contractor-toll-in-iraq-and-afghanistan-ignored-by-pentagon-1009>.

¹¹² Schooner, “Why Contractor Fatalities Matter.”

¹¹³ Stanger and Williams, “Private Military Corporations.”

¹¹⁴ John Oneal and Anna Bryan, “The Rally ‘Round the Flag’s’ Effect on US Foreign Policy Crises 1950–1985,” *Political Behavior* 17, no. 4 (December 1995); and Richard Hermann, Phil Tetlock, and P. Visser, “Mass Public Decisions on Going to War: A Cognitive-Interactionist Framework,” *American Political Science Review* 93, no. 2 (June 1999): 553–74.

¹¹⁵ Arthus Lupia, Mathew McCubbins, and Samuel Popkin, *Elements of Reason: Cognition, Choice and the Bounds of Rationality* (Cambridge: Cambridge University Press, 2000); and Daniel Kahneman, Paul Slovic, and Amos Tversky, ed., *Judgment Under Uncertainty: Heuristics and Biases* (Cambridge: Cambridge University Press, 1982).

of private soldiers, though, may be less likely to have the same symbolic potency—indeed, they may elicit different feelings altogether.

To explore these possibilities, we conducted an experiment embedded within a general population survey conducted by Knowledge Networks.¹¹⁶ Four randomly selected subsamples, each consisting of two hundred respondents drawn from a demographically representative sample of the U.S. population, were asked to read a simulated news story. Those in the control group read a story unrelated to the Iraqi conflict that focused on the rapid growth of the federal bureaucracy; those in the second group read a story about the deaths of American soldiers in Iraq; those in the third group read the same story, but with the casualties identified as private security guards rather than soldiers; and those in the fourth group read a story that followed the same script as the one for the third group, but with more background information about the PMSC industry's growth and financial benefits.

After reading their assigned story, respondents answered a series of questions about their emotional state, whether they supported the decision for the war, whether they thought the war was “worth it,” how they thought the war was going, and whether they thought those who died in it were motivated by patriotic service, doing their job, or material gain. Our aim was to cast light on whether members of the general public view the motivation of regular and private soldiers differently and whether they react differently to their deaths—either emotionally or in their support for the war.

Strong differences emerged in the survey respondents' perceptions of the motivations of soldiers and contractors. Only 8 percent of those who read about soldiers dying thought these soldiers had been motivated by material gain; 39 percent said they had been motivated to do their job; and 53 percent said their motivation had been to serve their country. This distribution of attributions closely matched that recorded by the control group (those who had read an unrelated story). By contrast, 20 percent of those who had read about contract soldiers dying ascribed their motivation to material gain and only 23 percent saw it as a matter of serving their country; and as can be seen in Table 1, the likelihood of citing material gain as the contractors' motivation was greater among respondents for whom we provided background information about PMSCs. In sum, our respondents were more likely to see soldiers as motivated by patriotism than PMSC employees, and the more information they had about PMSCs, the more likely they were to see contractors as motivated by material gain.¹¹⁷

¹¹⁶ The survey experiment was made possible by Time-Sharing Experiments in the Social Sciences, whose support we gratefully acknowledge; see <http://www.experimentcentral.org>. The stories, questionnaires, and data are available from the authors.

¹¹⁷ Because it appears that the story of “Americans” and “soldiers” dying elicited similar responses, as did the two stories of contractors dying, we grouped our subjects accordingly to create two groups for analysis. The resulting table yields a chi-square value of 109.49 ($p < .001$) and suggests that the respondents did view the motivations of contractors as distinctive.

TABLE 1 Perceptions of Soldier/Contractor Motivations for Being in Iraq

Perception of Motivation	Descriptive Term Used in Story			
	Control	Soldier	Contractor	Contractor, elaborated
For Material Gain	6%	8%	20%	34%
Because It Was Their Job	40%	39%	56%	44%
To Serve Their Country	53%	53%	23%	22%

Importantly, though, the distinction that respondents drew between the motivations of soldiers and those of contractors did not carry over to their emotional reactions to the simulated news stories they read. As can be seen in Table 2, substantial differences emerged between those who read about anyone dying and those who read an unrelated article, but emotional reactions were nearly identical irrespective of whether the casualties were identified as soldiers or contractors. In either case, more than nine out of ten of those who had read about the deaths of Americans claimed to feel sad as a result, and approximately three out of four described themselves as angry. The counterpart percentages were significantly lower for the control group; reading about waste in the federal bureaucracy saddened and angered many respondents, but not nearly as many who experienced those emotions after reading about American deaths in Iraq.

Nor, as Table 3 indicates, did any major differences emerge in support for U.S. involvement in Iraq or in evaluations of how well the situation there was going between those who read about soldiers dying and those who read about contractors dying. The fact that these assessments were no more positive among those who read about deaths among contractors rather than among soldiers should occasion surprise among those who would expect the use of contractors to decrease political costs because people care less about contractor deaths. In any event, these data provide some tentative experimental support for the idea that casualties among military personnel do not always exact political costs and may sometimes produce rally-around-the-flag effects.

We also conducted ten in-depth personal interviews with likely voters in Philadelphia, selected with attention to diversity in age, income level, ethnicity, gender, partisan affiliation, and levels of support for the war in

TABLE 2 Emotional Reactions to the Stories About Soldiers and Contractors in Iraq

Mean Score	Descriptive Term Used in Story			
	Control	Soldier	Contractor	Contractor, elaborated
1 (happy) to 4 (sad)	3.0	3.7	3.6	3.5
1 (angry) to 4 (calm)	2.5	1.8	2.0	1.9

TABLE 3 Assessments of U.S. Involvement in Iraq

Mean Score	Descriptive Term Used in Story			
	Control	Soldier	Contractor	Contractor, elaborated
1 (the right thing) to 4 (not the right thing)	2.5	2.5	2.6	2.4
1 (worth it) to 4 (not worth it)	2.6	2.6	2.7	2.6
1 (not going very well) to 4 (going very well)	1.7	1.8	1.6	1.7

Iraq.¹¹⁸ Each interviewee read one of three stories based on those we had used in the survey experiment described above: about soldiers dying, private soldiers dying, or foreign private soldiers dying. We asked questions similar to those in the survey experiment about the motivations of the soldiers and support for the war in Iraq. We then inquired as to whether their opinion would change if the soldier had a different status.

The interviews confirmed that people understand the motivations of soldiers and private soldiers differently. Soldiers were seen as volunteering for patriotic duty or to protect American interests. Private soldiers were seen as motivated by money. The interviews demonstrated, though, that people saw being motivated by money as a matter of financial need rather than greed. Many who said that private soldiers—and particularly foreign private soldiers—were motivated by money reported feeling sorry for them because they needed money so badly that they would take such dangerous jobs.

The interviews demonstrated little support for the contention that public consent is affected by whether a soldier is serving or contracting, and they did not even suggest that the nationality of the soldier mattered. Although one respondent did say “I feel better that private soldiers die—I’d rather see it all privatized” that was not the sentiment expressed by any of the others.¹¹⁹ As put by several of the interviewees, “a death is a death.” Of the four who read the story about private soldiers dying first, three initially said they would feel even worse (sadder) if it had been soldiers who died but changed their mind as they continued to speak. One of those said she would feel both sadder and angrier if it had been foreign private soldiers because “it is pathetic that we are exploiting people from other countries who are struggling so much that this looks like a way to make money.”¹²⁰ Those who read first about soldiers dying or about foreign soldiers dying all said they would feel no differently if they had read about other deaths.

¹¹⁸ Deborah Avant and Lee Sigelman employed a consultant who recruited the respondents and then conducted and recorded the interviews (Avant was present to observe the process) according to their script. The stories and interview scripts are available from the authors.

¹¹⁹ Interviewee 1.

¹²⁰ Interviewee 7.

Interviewees' reaction to the casualties was similar regardless of whether respondents expressed support for the war before they read the stories.

In keeping with our findings in the transparency section above, the interviews suggested that these Americans know little about the use of PMSCS in Iraq. Unprompted, nine of the ten interviewees asked something to the effect of "is this true?" They then went on to say they had no idea contractors were being used this way in Iraq and expressed great surprise that non-U.S. citizens were serving under contract with PMSCS.

We entertained the possibility that this surprising absence of difference in empathy for soldiers versus private soldiers was merely a product of the experiment and interview format. If this were true, we might see differences expressed in other forums. Local papers might accord more space, for instance to obituaries about soldiers dying than they do for contractors. To investigate this possibility, we collected pairs of articles—one soldier and one private soldier (generally within a month of each other)—that told of individual deaths in the *Plain Dealer* (Cleveland, Ohio), the *St. Louis Post-Dispatch*, the *Denver Post*, and the *Oregonian*. These articles were similar in length, used references to bravery and honor in a comparable way, and even had analogous mentions to service. Overall, they revealed similarly sympathetic portraits of soldiers and private soldiers.

The interviews and obituaries are consistent with the experimental results. The central effect of relying on PMSCS is to reduce the public's knowledge about a portion of the war's casualties rather than to evoke different feelings about contractor deaths. Even though Americans see the motivations of PMSC personnel as more monetary than patriotic, they feel just as sad about their deaths. An individual death evokes sympathy—and a sense that the government is responsible for it—regardless of whether the person who died is a soldier or a contractor. Similar to the expansion of public concern about civilian casualties and collateral damage, members of the public appear to be sympathetic to the deaths of PMSC personnel.

These findings suggest the need to reconsider the relationship between citizenship, public consent, and the human cost of war. The vast increase in both reporting and concern about civilian casualties and other collateral damage does not make sense if one assumes that the public worries only about the human costs to its own citizens. Similarly, as the heated debate over the impact of casualties on support for conflict suggests, the relationship between casualties of any kind and support for wars is rarely simple.¹²¹ The general argument over the impact of casualties on support for war would benefit from a more nuanced analysis with more data about how people learn about and process information regarding casualties.

¹²¹ Christopher Gelpi and John Mueller, "The Cost of War," *Foreign Affairs* 85, no. 1 (January/February 2006).

We did not find evidence that the military versus private status of those in Iraq affects how much the American public cares about the human costs of war. Consistent with our findings about transparency, though, the differing status does affect the public's knowledge of the human costs of war. The public cannot be said to have consented to something that it does not know about. The use of PMSCs thus joins the list of tools leaders can use to manipulate or evade public consent. The use of contractors in Iraq, through its reduction of transparency, has interrupted some public consent processes in the United States.

PMSCS AND OTHER TOOLS TO EVADE DEMOCRATIC PRACTICE

PMSCS are not the only tool or avenue through which the United States can evade democratic practices. Leaders can inflate threats to make it easier to go to war. Other tools, such as clandestine organizations, commonly lower transparency, reduce the influence of the legislature, and disrupt public consent. How should we think of PMSCS relative to these other tools?

A widespread concern in the wake of the 9/11 attacks has been threat inflation. According to some, the combination of a stronger than typical executive with control over intelligence, weak legislative opposition, and fear precipitated by the 9/11 attacks, led the "marketplace of ideas" to fail in the lead-up to the war with Iraq.¹²² Others have suggested it was norms of militarized patriotism,¹²³ the dominance of the conservative frame,¹²⁴ or effective rhetoric¹²⁵ that produced the Bush administration's capacity to manipulate the level of threat posed by Saddam Hussein's government or by terrorists more generally. These arguments tie threat inflation to lower levels of political contestation. Lower levels of contestation, in turn, lead to less democratic policy—either at home via lower resistance to the abridgement of civil liberties or abroad via greater propensity to use force.

Other tools have a greater impact on participation. Agencies that avoid transparency, most notably the Central Intelligence Agency (CIA), typically reduce the participation of the citizenry and other governmental institutions. As other analysts have argued, when clandestine organizations evade transparency and constitutionalism, participation declines and so does the democratic quality of foreign policy. "When we come to covert forcible action,

¹²² Chaim Kaufmann, "Threat Inflation and the Failure of the Marketplace of Ideas," *International Security* 29, no. 1 (Summer 2004): 5–48. See also Jack Snyder and Karen Ballentine, "Nationalism and the Marketplace of Ideas," *International Security* 21, no. 2 (Autumn 1996): 5–40.

¹²³ Jane Kellest Kramer, "Militarized Patriotism: Why the US Marketplace of Ideas Failed Before the Iraq War," *Security Studies* 16, no. 3 (July–September 2007): 489–524.

¹²⁴ A. Trevor Thrall, "A Bear in the Woods: Threat Framing and the Marketplace of Values," *Security Studies* 16, no. 3 (July–September 2007): 452–99.

¹²⁵ Ronald R. Krebs and Jennifer K. Lobasz, "Fixing the Meaning of 9/11: Hegemony, Coercion, and the Road to War in Iraq," *Security Studies* 16, no. 3 (July–September 2007): 409–51.

the decisions are not taken in the open, subject to the full range of checks and balances and popular participation. . . . Liberal assumptions about open decision-making and popular desires to avoid human and other costs of war do not affect secretive decisions using mostly foreign personnel.”¹²⁶

Because “democracies” have used these sorts of tools before, some suggest we should not worry about PMSCS because they are simply more of the same. If we think about democracy as a continuous set of processes, though, adding another tool of this sort should be regarded as a development that could further weaken the democratic character of policy processes. This new tool can also interact with other non-democratic tools. As 2009 revelations about the CIA’s use of contractors demonstrate, when clandestine organizations and PMSCS interact, the impact of each may be multiplied.¹²⁷ Another example is the combined use of threat inflation (reducing contestation) and PMSCS (reducing participation) in the war on terror.¹²⁸ The Bush administration’s use of both together led to a less democratic outcome than would have been the case with either one or the other. The profitability of PMSCS offers incentives for their executives to foster interest in new work that could encourage future threat inflation—particularly given the promise of lower political costs. Thus, although we concur that thinking about PMSCS alongside other non-democratic institutions for using force makes sense, this should elevate rather than diminish our concern.

IMPLICATIONS

The use of PMSCS by the United States has had its largest impact on the participatory dimension of democracy. First and foremost, it has weakened transparency. Abridged transparency has been an important element in reducing both constitutionalism and public consent. Because Congress has less information about contractors than troops, it has also been less able to control them. Using contractors avoids an important veto point and thus both speeds policy making and limits the number and variety of inputs into the policy process. Furthermore, because the use of PMSCS has garnered less attention than the use of troops, this tool has reduced the political costs of using force. PMSCS have provided an additional tool through which decisions to use force can be taken with less public arousal, public debate, public

¹²⁶ David Forsythe, “Democracy, War and Covert Action,” *Journal of Peace Research* 29, no. 4 (November 1992): 393–94.

¹²⁷ See, for instance, Mark Mazzetti, “CIA Sought Blackwater Help to Kill Jihadists,” *New York Times*, 20 August 2009; and Jane Mayer, “The Predator War: What are the Risks of the CIA’s Covert Drone Program?” *New Yorker*, 26 October 2009.

¹²⁸ For general analyses of the George W. Bush administration’s use of threat inflation see Kaufmann, “Threat Inflation and the Failure of the Marketplace for Ideas”; Kramer, “Militarized Patriotism”; Thrall, “A Bear in the Woods”; and Krebs and Lobasz, “Fixing the Meaning of 9/11.”

commitment, or public response. By hiding costs, the use of PMSCs has made it easier to take action that may not have the public support necessary to sustain it.¹²⁹

The risk one sees from these developments depends on the value one places on democracy and how one thinks it works. Those skeptical of democracy's impact should be unmoved.¹³⁰ If one believes democratic processes frustrate the pursuit of national interests, one might even see the use of PMSCs as a positive development that shields leaders who understand the national interest from the vagaries of congressional involvement or public consent.¹³¹ Neoconservatives have made this argument. Eliot Cohen holds that it makes good sense for the United States to privatize in order to take advantage of capitalist economies and manage a complex world with fewer troops.¹³² Max Boot claims that mercenaries make sense for the United States today given Congress's unwillingness to increase the size of the U.S. force.¹³³ Akin to the trustee model of democracy articulated by Douglas Foyle, these authors appear to conceptualize leaders as trustees—in office to carry out the national interest and not necessarily the vagaries of public or congressional wishes. If the public does not approve of the result, it can vote the leaders out of office.¹³⁴

In the tradition of Machiavelli, a more conservative, republican tradition should see the greatest risk in the battlefield performance of PMSCs. Beyond that, private mobilization could be argued to do less to instill civic engagement amongst the populace.¹³⁵ Perhaps unsurprisingly, these are concerns commonly voiced among military critics.¹³⁶ The private option may also be less likely to constrain a leader from pursuing individual or private interest rather than the public interest. This perspective is only indirectly worried about transparency and public consent and more concerned about the consequences that flow from lack of participation.

¹²⁹ Leeds claims that inability to adjust policy quickly is a key to democratic foreign policy behavior. Leeds, "Domestic Political Institutions."

¹³⁰ Skeptics include Desch, "Democracy and Victory," and Layne, "Kant or Cant."

¹³¹ See, for instance, Theodore Lowi, "Making Democracy Safe for the World: On Fighting the Next War," in *American Foreign Policy: Theoretical Essays*, ed. G. John Ikenberry (New York: Harper Collins, 1989).

¹³² Eliot Cohen, "Defending America in the Twenty-first Century," *Foreign Affairs* (November/December 2000): 40–56.

¹³³ Max Boot, "Mercenaries Are Inevitable and, If Employed Wisely, Can Be Effective Adjuncts of U.S. Policy," *The American Interest* (May/June 2008): 37–42. Whether neoconservatives such as Eliot Cohen and Boot are actually conservatives is subject to some dispute. Despite the fact that they identify themselves as conservative, their enthusiasm for empire leads some to argue that they are, at least, a different breed. Jack Snyder categorizes their arguments as a combination of realist and liberal principles. See Snyder, "One World, Rival Theories."

¹³⁴ Douglas Foyle, *Counting the Public In* (New York: Columbia University Press, 1999).

¹³⁵ Burk, "Theories of Democratic Civil-Military Relations."

¹³⁶ Avant, *Market for Force*, 118.

Liberal democratic theory tends to see leaders as delegates of the public—in office to carry out public wishes—rather than only trustees. Because attending to the public's wishes is a key part of the liberal view, public knowledge and involvement as well as the involvement of institutions like Congress that represent a different aggregation of the public's view are also crucial. Thus reductions in transparency and the consequent interruptions of congressional involvement and public consent are more important and portend less restrained policy along with a greater tendency for policy to represent narrow or particular interests rather than the public interest. Contemporary liberal arguments have voiced these concerns about contracting in Iraq and Afghanistan, raising the potential for adventurous foreign policy, defense budget expansion, and the capacity for the United States to renege on its commitments.¹³⁷ Ironically, once within the government, liberal critics of contracting such as Hillary Clinton and Barak Obama have acceded to the pragmatic necessity of using contractors even as they have taken steps to make their use more transparent.

In keeping with our focus on the practice of democracy, we expect that whether the United States experiences these risks (or benefits) will depend on the actions of politicians and citizens. We consider it doubtful that the U.S.'s use of contractors will be greatly reduced. There is evidence that Congress is moving to address some issues that should improve transparency to a moderate extent. Even so, PMSCs continue to provide a relatively obscure way for the executive to use force abroad. Lack of transparency is not a foregone conclusion, however, and sustained efforts by the Congress, the public, the media, and members of the Executive branch could, over time, lead to more transparent processes. An increase in transparency may well ease some of the constitutional imbalance. Also our finding that citizens have similar reactions to the deaths of soldiers and PMSC personnel once they know about them suggests that if transparency surrounding the level of private forces were to increase, the American public would engage more actively in debate about them. The transnational nature of the PMSC industry and its morphing capability nonetheless presents particular hurdles for transparency as well as hurdles to democratic regulation that are unlikely to be solved by transparency alone.

CONCLUSION: PRIVATE FORCES, TRANSPARENCY, AND DEMOCRACY

The U.S.'s use of contractors in Iraq and then Afghanistan to double the size of its force led us to inquire about how the use of private forces affects

¹³⁷ Silverstein, *Private Warriors*; Ann Markusen, "The Case Against Privatizing Security," Study Group Meeting, Council on Foreign Relations, 2001; and Stanger and Williams, "Private Military Corporations."

widely recognized features of democracy. Thus far, the use of PMSCs has reduced transparency. The lack of transparency has contributed to erosions of both constitutionalism and public consent. Congress is disadvantaged in the control of contractors in large part because of lower transparency. Transparency is even more important to the interruption of public consent. The public is no less sensitive to the human costs of war when they are borne by contractors, but using PMSCs reduces political costs because the public is less likely to know about the private human costs. Some see the interruption of these processes as beneficial for effective U.S. security policy; others see it as problematic for military effectiveness, democratic restraint, or both. Regardless, these findings have important implications for democracy and foreign policy in the United States and suggest the need for additional research into how the privatization of force affects democratic processes in other states as well.¹³⁸

¹³⁸ For initial research along these lines, see Elke Krahnmann, *States, Citizens and the Privatization of Security* (Cambridge: Cambridge University Press, 2010); and Nicole Deitelhoff and Anna Geis, "Securing the State, Undermining Democracy: Internationalization and Privatization of Western Militaries," TranState Working Papers, no. 92, University of Bremen, 2009.