

Deeper Objections to the Privatisation of Military Force*

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THE private military industry has been growing rapidly since the end of the Cold War. Private military and security companies (PMSCs) provide a myriad of services, including the training of troops and security services, the provision of transportation and logistics, and a number of roles more likely to involve direct combat, such as the protection of state officials.¹ The estimates of the size of the industry vary, but most accounts value it at between \$20 billion to \$200 billion annually per year.² The US Department of Defence alone employs 170,000 military contractors, 25,000 of which provide armed services such as personnel, transport and site protection.³ Given its extent, the increased reliance on PMSCs is often claimed to be one the most significant changes in the military profession over the past three decades.⁴

This privatisation of military force has led to a range of reactions. Some perceive PMSCs to be vital actors in promoting not only states' interests, but also humanitarianism worldwide. Others view them as part of a 'dark and distasteful' industry that enables new opportunities for western colonialist projects.⁵ Whilst the potential benefits and disadvantages of using PMSCs are often discussed, the

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¹For documentation of this rise, see Peter W. Singer's excellent *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca, NY: Cornell University Press, 2003).

²Doug Brooks and Matan Chorev, 'Ruthless humanitarianism: why marginalizing private peacekeeping kills people', *Private Military and Security Companies: Ethics, Policies and Civil-Military Relations*, ed. Andrew Alexandra, Deane-Peter Baker, and Marina Caparini (New York: Routledge, 2008), pp. 116–30. For a detailed analysis of the size of the industry, see Sam Perlo-Freeman and Elisabeth Sköns, 'The private military services industry', *SIPRI Insights on Peace and Security*, No. 2008/1.

³Elke Krahnmann, 'The new model soldier and civil-military relations', *Private Military and Security Companies*, ed. Alexandra, Baker, and Caparini, pp. 247–65 at p. 254.

⁴*Ibid.*, p. 248.

⁵See, for instance, Filiz Zabcı, 'Private military companies: "shadow soldiers" of neo-colonialism', *Capital and Class*, 92 (2007), 1–10 and War on Want, 'Corporate Mercenaries', (<http://www.waronwant.org/attachments/Corporate%20Mercenaries.pdf>), posted November, 2006.

ethical considerations are rarely fully elaborated.⁶ Nevertheless, amongst the literature that does consider the ethical issues, there is some commonality on the problems posed by PMSCs.⁷ First, they can undermine democratic accountability by circumventing parliamentary constraints on the use of force and reducing control on the battlefield. Second, a number of private contractors have allegedly been involved in the violation of civilians' human rights. Third, and related, there is not an effective system of national and international law to govern their use. The focus of these objections is on the *contingent* problems with PMSCs, seemingly caused by the lack of proper regulation of the industry.⁸

Although these problems provide significant cause for concern, it is possible that more robust systems of democratic oversight, vetting of contractors, and national and international regulation could deal with many of them. To put this in context, in September 2008 seventeen states (including Australia, Canada, France, Germany, Iraq, the UK, and the US) agreed to the Montreux Document, following a process initiated by the Swiss government and the International Committee of the Red Cross (ICRC).⁹ The Montreux Document outlines existing legal obligations in international humanitarian law and international human rights law on the use of private force and a series of 'good practices' that states should follow when dealing with PMSCs. For example, according to the Montreux Document, contracting states, territorial states (states on whose

⁶Notable exceptions include Andrew Alexandra, 'Mars meets mammon', *Private Military and Security Companies*, ed. Alexandra, Baker, and Caparini, pp. 89–101; Deane-Peter Baker, 'Of "mercenaries" and prostitutes: can private warriors be ethical?' *Private Military and Security Companies*, ed. Alexandra, Baker, and Caparini, pp. 30–42; Kateri Carmola, 'It's all contracts now: private military firms and a clash of legal culture', *Brown Journal of World Affairs*, 8 (2006), 161–73; C. A. J. Coady, *Morality and Political Violence* (Cambridge: Cambridge University Press, 2007), pp. 205–27; Cécile Fabre, 'In defence of mercenarism', *British Journal of Political Science*, forthcoming; Mervyn Frost, 'Regulating anarchy: the ethics of PMCs in global society', *Private Military and Security Companies*, ed. Alexandra, Baker, and Caparini, pp. 43–55; Marcus Hedahl, 'Blood and Blackwaters: a call to arms for the profession of arms', *Journal of Military Ethics*, 8 (2009), 19–33; George R. Lucas Jr., 'Pirates and PMCs: internationalism and military interoperability', *International Journal of Applied Philosophy*, 23 (2009), 87–94; Tony Lynch and A. J. Walsh, 'The good mercenary?' *Journal of Political Philosophy*, 8 (2000), 133–53; and Singer, *Corporate Warriors*, pp. 216–29. Michael Walzer has also recently offers some remarks on PMSCs in 'Mercenary impulse: is there an ethics that justifies Blackwater?' *New Republic*, 12 March 2008, (<http://www.tnr.com/politics/story.html?id=a498d530-e959-4f1e-8432-8851075ac657>).

⁷See, for example: Carmola, 'It's all contracts now'; James Pattison, 'Just war theory and the privatization of military force', *Ethics & International Affairs*, 22 (2008), 143–62; James Pattison, 'Outsourcing the responsibility to protect: humanitarian intervention and private military and security companies', *International Theory*, forthcoming; and Singer, *Corporate Warriors*, pp. 216–29.

⁸For analysis of PMSCs' lack of effective legal accountability, see Lindsey Cameron, 'Private military companies: their status under international humanitarian law and its impact on their regulation', *International Review of the Red Cross* 88 (2006), 573–98; Foreign and Commonwealth Office, *Private Military Companies* (London: The Stationery Office, 2002); Caroline Holmqvist, *Private Security Companies: The Case for Regulation*, SIPRI Policy Paper No. 9 (Stockholm: Stockholm International Peace Research Institute, 2005); and, generally, Simon Chesterman and Chia Lehnardt, eds, *From Mercenaries to Market: The Rise and Regulation of Private Military Companies* (Oxford: Oxford University Press, 2007).

⁹The document's full title is the 'Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict'. It is available at (<http://www.eda.admin.ch/psc>).

territory PMSCs operate), and home states (where a PMSC is registered) all have existing legal obligations to ensure, within their power, respect for international humanitarian law by PMSCs.¹⁰ If these obligations were robustly enforced by states (which is not currently the case), many of the concerns over the violation of civilians' human rights by private contractors would dissipate. In fact, certain theorists assert that, if an adequate system of regulation were put in place, there would be little wrong with the use of private military force.¹¹ That is, they claim there is nothing *fundamentally* wrong with private force. The aim of this article is to question this assertion. I present several deeper, more fundamental moral objections to the privatisation of military force. These objections are deeper in the sense that they would apply *even if PMSCs were rigorously regulated*.

The article is split into three sections. In the first section, I consider whether it is justifiable for an individual to be employed as a private contractor—that is, the focus is on the *employee*. After claiming that there are more stringent requirements of *jus ad bellum* for private contractors than regular soldiers, I argue that the mercenary motives of those involved with private force presents some reason (although not necessarily a weighty one) to hold that being employed as a military contractor is morally problematic. The second section focuses on the *employer* and particularly the state. I argue that there are, in addition, moral problems with *employing* PMSCs. Although I reject the claim that the use of PMSCs undermines the social contract, I assert that the use of private force potentially undermines both communal bonds and a state's ability to fight just wars. In the third section, I argue, further, that there is something morally amiss with having military services as a commodity to be traded on the market. Overall, then, I claim that, even if PMSCs were well regulated, there are reasons to eschew the use of private force.

Three points of clarification are necessary. First, none of the objections that I make require there to be an absolute prohibition on, or a complete rejection of, the use of PMSCs. Rather, they provide *reasons against the use of these firms*, to be taken into account in the overall assessment of the justifiability of private force. There may be cases where the hiring of PMSCs would still be morally acceptable, despite the problems that I will highlight, because the potential benefit of their use outweighs the potential drawbacks. An example might be hiring a PMSC to help tackle genocide, where the benefits of private force in terms of improving the enjoyment of basic human rights of those suffering outweighs the difficulties, all things considered.¹² Of course, any judgment on

¹⁰*Ibid.*, pp. 7–9.

¹¹Examples include: Baker, 'Of "mercenaries"'; Fabre, 'In defence of mercenarism'; and Frost, 'Regulating anarchy'. Likewise, in 'The good mercenary?' Lynch and Walsh are eager to show the failings in Machiavelli's infamous denunciation of mercenaries as 'useless and dangerous . . . disunited, thirsty for power, undisciplined, and disloyal'. Niccolò Machiavelli, *The Prince*, trans. George Bull (London: Penguin, [1515] 1961), p. 38. Malcolm Patterson, 'A corporate alternative to United Nations *ad hoc* military deployments', *Journal of Conflict & Security Law*, 13 (2008), 215–32, argues that if PMSCs were very heavily regulated, they could be used instead of state-based forces for UN peacekeeping.

¹²See my 'Outsourcing the responsibility to protect' for a detailed discussion of this possibility.

whether to use private force should also take into account the contingent political and legal problems posed by the use of PMSCs, such as the lack of democratic accountability and effective national and international regulation.

Second, the three sets of objections that I present are, to a certain extent, reinforcing.¹³ I will argue that (I) individuals do something wrong by being employed as a private contractor. It follows that those employing private contractors, such as states, are complicit in the individual contractor's wrongdoing, regardless of whether there are any further problems. In the second section, I assert that (II) there are moral problems with the employment of private force by states. The other agents involved, such as individual contractors and the PMSCs, are also implicated to the extent that their willing participation enables states to employ private force. In the third section, I assert that (III) treating military force as a commodity has morally undesirable implications. It follows that individuals, states, and other agents commit wrongdoing by using private military force in as far as they are morally required to avoid contributing to the collective action problem of treating military force as a commodity.¹⁴

The third point of clarification is that PMSCs are often distinguished from mercenaries because of their corporate identity and the range of services that they offer.¹⁵ However, many of the objections that I consider could also be levelled at mercenaries since, like PMSCs, they provide military services in exchange for financial reward. Also note here that, for the purpose of this article, I adopt Simon Chesterman and Chia Lehnardt's definition of PMSCs as 'firms providing services outside their home states with the potential for use of lethal force, as well as of training and advice to militaries that substantially affects their war-fighting capacities'.¹⁶

I. THE EMPLOYEES

I will begin by questioning the moral acceptability of being employed as a private contractor. To do this, I will first outline the sorts of circumstances in which a private contractor could legitimately use (or assist in the use of) military force. These circumstances, I will argue, are more limited than for regular soldiers. This does not provide a deeper objection to private force in itself (being employed by

¹³See, further, Fabre, 'In defence of mercenarism', who has a thoughtful discussion of the relationship between the objections to employers of PMSCs, the firms themselves, and private soldiers.

¹⁴The third set of objections differs from the previous two in that it is not agent specific and, as such, is more general. The primary focus of the first set of two objections is wrongdoing committed by the employees and employers, although others may be implicated. By contrast, the third set of objections does not focus on wrongdoing committed by any particular agent.

¹⁵See Fred Schreier and Marina Caparini, *Privatising Security: Law, Practice and Governance of Private Military and Security Companies*, Occasional Paper No. 6 (Geneva: Geneva Centre for the Democratic Control of Armed Forces, 2005) and Singer, *Corporate Warriors*, pp. 41–8.

¹⁶Simon Chesterman and Chia Lehnardt, 'Introduction', *From Mercenaries to Market*, ed. Chesterman and Lehnardt, pp. 1–10 at p. 3. Note that their definition is of private military companies, rather than PMSCs.

a PMSC could be acceptable if one meets these circumstances). Nevertheless, outlining when private contractors could legitimately use force will help to set the scope of the discussion and to avoid misunderstanding (notably, when the objection is not really to contractors using or assisting force, but to those fighting unjust wars). In addition, the conclusion that I will draw about authority and private contractors will be relevant for when it comes to the discussion of sacrifice in the next section. Second, and more substantively, I will argue that there are problems with individuals' reasons for being contractors—in short, their mercenary motives.

A. TWO RESTRICTIONS

According to most accounts of just war, soldiers can use military force only when the target is another combatant, the means used are proportionate, and any collateral damage (such as civilian casualties) is minimised (or completely avoided).¹⁷ At the very least, the use of force by private contractors should also meet these conditions. Yet there is reason to hold that PMSC personnel need to follow even stricter standards to be able legitimately to use or assist force. Let me explain.

Traditional, convention-based just war theory treats the principles of *jus in bello* as distinct from *jus ad bellum*. The rules of *jus in bello*, on this view, derive from existing legal rules and norms governing the use of force and are designed to reflect a number of pragmatic considerations. They apply both to those fighting a just war—a war that meets the requirements of *jus ad bellum* (principles that govern when war can be waged)—and to those fighting an unjust war—a war that does not meet these requirements. It follows that soldiers do nothing wrong if they use military force, including lethal force, providing that they meet the requirements of *jus in bello*, even if the war that they are pursuing is an unjust one.¹⁸

Recent work in just war theory, however, has raised doubts about the adequacy of the moral underpinnings of the traditional, convention-based just war. Most notably, Jeff McMahan offers what he calls an account of the 'deep morality' of the rules of war.¹⁹ This is less concerned with existing conventions and pragmatic considerations; the focus instead is on offering an account of the principles of *jus in bello* which better reflects underlying moral principles and, in particular, individual rights. And, on this 'deep' view, the separation of *jus in*

¹⁷The classic statement is Michael Walzer, *Just and Unjust Wars*, 4th edn (New York: Basic Books, 2006), pp. 34–50, 127–59.

¹⁸This is the position essentially adopted by Walzer, *ibid*.

¹⁹See, for example, Jeff McMahan, 'The ethics of killing in war', *Ethics*, 114 (2004), 693–733 and 'The morality of war and the law of war', *Just and Unjust Warriors*, ed. David Rodin and Henry Shue (Oxford: Clarendon Press, 2008), pp. 19–43. McMahan has recently developed his theory of warfare more systematically in *Killing in War* (Oxford: Clarendon Press, 2009). (His book was published after this article was written.)

bello from *jus ad bellum* is mistaken. This can be seen most clearly for the moral equality of soldiers. Traditional just war theory asserts that, regardless of the justice of the war that they are prosecuting, soldiers are legitimate targets because, in Michael Walzer's terminology, they are dangerous men.²⁰ The problem with this view, McMahan asserts, is that it is not clear why soldiers prosecuting *just* wars—wars that meet the requirements of *jus ad bellum*—should be legitimate targets.²¹ He suggests that individual liability to attack in war is 'by virtue of being morally responsible for a wrong that is sufficiently serious to constitute a just cause for war, or by being morally responsible for an unjust threat in the context of war'.²² Thus, in prosecuting a just war, combatants do nothing wrong. They do nothing to forgo their right not to be killed. If we adopt this view of just war, it might seem that there is a demand on both regular soldiers and private contractors to question whether their employer's war meets the principles of *jus ad bellum*. If they were to fight an unjust war against an enemy pursuing a just war, the soldier or contractor would not possess the moral right to use (or assist) force since they would be harming just combatants. In short, they would be killing people who, in fighting a just war, do not surrender their right not to be killed.²³

The picture is more complex, however. In *Just and Unjust Wars*, Walzer claims that the authority and centralisation processes in the political community mean that it can be difficult to obtain the knowledge that a war is unjust.²⁴ As such, those fighting an unjust war should not be held morally culpable for their participation. What is more, even if there are cases where soldiers did know, or should have known, about the injustice of the war that they were fighting, the argument runs, questions of *jus ad bellum* should be left to institutions because institutions are generally in a better position to make an informed judgment than the individual. Thus, defenders of traditional, convention-based just war theory can claim that the individual should let the institution's judgment pre-empt their own. Furthermore, in order for a military to prosecute a *war* successfully, it may seem necessary that its commands be treated as content-independent (obeyed regardless of what the command dictates). The problem with these claims, however, is that institutions may not always make better decisions about warfare than the individual. In addition, the military may still be able to fight a war even if there are a number of conscientious objectors or unwilling military contractors and, even if it cannot fight such a war, this may not be problematic—the war may be unjust.²⁵

²⁰Walzer, *Just and Unjust Wars*, p. 145.

²¹McMahan, 'Ethics of killing'.

²²McMahan, 'The Morality of war and the law of war', p. 22.

²³That said, sometimes it can be justifiable for unjust combatants to use force against those conducting a just war: namely, when the just forces themselves violate *jus in bello*. McMahan, 'Ethics of killing', p. 710, gives the example of an unjust combatant discovering a just combatant who is preparing to rape a woman in an occupied village.

²⁴Walzer, *Just and Unjust Wars*, pp. 39–40.

²⁵See McMahan, 'Ethics of killing'.

A more persuasive line of argument is that, for the military to function as an *institution*, it is generally necessary for soldiers to agree to follow orders that they disagree with.²⁶ It is important for the continuing existence of a legitimate authority that its commands be treated as content-independent, even though we might disagree with particular decisions because, for example, its commands were decided by a democratic decision-making process.²⁷ Likewise, McMahan notes that:

[i]t may be rational both epistemically and practically to establish an institutional division of moral labor that assigns responsibility for important decisions such as whether to go to war to those who have access to the relevant information . . . If the institution is to survive and carry out its functions, others within it must fulfil their assigned roles even if they disagree with the decisions reached by those responsible for matters of *jus ad bellum*.²⁸

As McMahan also points out, however, this view provides an excuse only for certain combatants fighting unjust wars—namely those where the institutions are ‘just and important’.²⁹ Accordingly, both regular soldiers and military contractors have reason (if not always an infeasible one) to let their judgment on *jus ad bellum* be pre-empted only when the state looking to employ their services is legitimate (which, for our purposes, we can take to mean democratic and respectful of human rights).

But for private contractors there is a further requirement. It is questionable whether a private contractor has reason to let their judgment be pre-empted even by a legitimate state. Unlike for regular soldiers, the continuing existence of the military is not dependent on private contractors agreeing to the contracts that they are asked to fulfil.³⁰ They are not under the *authority* of the institution and so do not undermine its authority—and therefore its continuing existence—by refusing to treat its commands as content-independent (i.e., by refusing a contract on grounds of *jus ad bellum*). This is not to assert what David Estlund calls the ‘primacy of private judgement view’—namely, that the individual’s judgment is likely to be better than the judgment of a state.³¹ Of course, a legitimate state could be in a better position to judge, given the

²⁶The focus here is on *jus ad bellum*: even on conventional accounts of just war, soldiers are sometimes required to disobey their commander’s orders if, for instance, the orders would result in war crimes.

²⁷For a detailed analysis of this issue for regular soldiers, see David Estlund, ‘On following orders in an unjust war’, *Journal of Political Philosophy*, 15 (2007), 213–34. For more on the importance of pre-emption and content-independence for authority, see Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986).

²⁸McMahan, ‘Ethics of killing’, pp. 704–5.

²⁹*Ibid.*, p. 705. Note that McMahan (p. 708) thinks that these institutional obligations are, in practice, unlikely to be sufficiently weighty to override the duty not to kill just combatants.

³⁰It is often said that the UK and US cannot wage war effectively now without employing the services of PMSCs. See, for instance, Lucas, ‘Pirates and PMCs’, p. 90. However, this does not necessarily mean that any particular set of private contractors are obliged to obey the commands of their home state, given that there are a number of firms that could help the state to wage war.

³¹Estlund, ‘On following orders’, p. 216.

resources it has at hand. Nor is it to say that a private contractor should rely solely on their own judgment of the justice of a war for all potential contracts, which waters down the restriction on warfare by allowing them to undertake contracts for dubious ends that they mistakenly perceive as just. On the contrary, these epistemological difficulties point to two restrictions on warfare for private contractors.

First, there is a restriction of *individual conscience*: contractors should fight wars only that, as far as they, the contractors, can reasonably establish, are clearly just. Even a legitimate state may be mistaken in the assessment of the justice of the war. For regular soldiers, there arguably exist institutional reasons which mean that, if the state is mistaken, they are excused (if only partially) for fighting unjust wars. These do not apply to private contractors. Moreover, given the potential for individual error in the assessment of the justice of a war, they should not rely solely on their own judgment either. Second, as noted above, there is an *institutional* restriction: contractors should agree to fight wars only for a legitimate state (and which the state deems just). Legitimate states, we can assume, are more likely to be accurate in this assessment, given their resources. We can also assume that legitimate states are more likely to fight just wars and, given that they uphold basic human rights and are democratic, are worth defending. To be sure, this institutional restriction functions only as a *prima facie* restriction. There may be occasions when a war fought by an illegitimate state is nevertheless clearly just. In such cases, when the likelihood of fighting an unjust war is very small, the restriction of individual conscience may be sufficient. Notwithstanding, in most cases it falls on private contractors to fight wars only that *both* they and legitimate states view as clearly meeting the conditions of *jus ad bellum*. So, if Sandline International had have worked for President Mobutu of Zaire or Executive Outcomes had have fought for the genocidal Rwandan government in 1994 against the Tutsi rebel force (options both companies explored),³² the private contractors working for these firms would be morally culpable.

These restrictions should be viewed, for now, only as part of the 'deep' morality of warfare. They should not be legally formalised (e.g., by developing a new legal convention on the use of PMSCs or amending existing international humanitarian law) because it can be tricky to determine whether a contractor's assessments, first, of the justice of the *war* and, second, of the legitimacy of the *state* fighting the war were reasonable. If these two restrictions were formalised, the risk would be that contractors are wrongly prosecuted for their participation in an unjust war. The prosecuting court may fail to see the reasonableness of the contractor's mistakes in the assessments of the justice of the war and the legitimacy of the state. This does not mean that these requirements of deep morality are unimportant. As I have suggested, they impose a twofold moral

³²See Singer, *Corporate Warriors*, p. 225.

requirement on private contractors.³³ My point, instead, is that until a more reliable institution (such as an international court) is developed to judge *jus ad bellum* in a more objective manner, thereby removing the need for these two subjective restrictions, contractors should not be punished for their participation in an unjust war. However, they are still *morally* culpable when they fail to satisfy these two requirements on warfare.³⁴

B. MERCENARY MOTIVES

We have seen then that a private contractor needs to meet stricter conditions of *jus ad bellum*. If they do so, can they possess the right to use force (or assist in its use)? That is, if they are fighting a war that both they and a legitimate state deems just, can they (proportionately) target (or help in targeting) combatants fighting unjust wars?

One of the most common objections to the individuals involved with private force is that they possess an inappropriate *motive* for waging war, namely, a mercenary motive. Tony Coady, for instance, argues that '[s]omeone who hires his gun to the highest bidder or, less dramatically, fights predominantly for money will typically lack the motive appropriate to war'.³⁵ This objection, I will argue, has some force.

It should be noted here that the objection is not about private contractors or PMSCs' *intentions*. An individual's intention is the *purpose* or *objective* of their action, whereas their motive is their *underlying reason* for acting. There are serious contingent problems with PMSCs' intentions. For instance, the financially driven intentions of PMSCs can lead them to morally problematic behaviour in the field and undermine the employing state's good intentions.³⁶ However, many of these problems may be able to be regulated away by, for instance, a tighter system of contracting (including significant financial penalties for pursuing other purposes) and the licensing of companies. The issue of motives, although currently less serious, presents a potentially deeper objection, the basic premises of which are as follows.

³³In addition, as part of the deep morality of war, these restrictions should ultimately, if not immediately, guide the design of our political institutions and legal norms governing the use of private force. For more on the relevance of the deep morality of warfare, see Jeff McMahan, 'The sources and status of just war principles', *Journal of Military Ethics*, 6 (2007), 91–106.

³⁴Similarly, McMahan, 'The morality of war and the law of war', argues that, although we should reject the *moral* equality of soldiers, we should eschew (at least for now) amendments to the *legal* equality of soldiers, until we can develop institutions, such as an impartial international court, to judge *jus ad bellum*.

³⁵C. A. J. Coady, 'Mercenary morality', *International Law and Armed Conflict*, ed. A. G. D. Bradney (Stuttgart: Franz Steiner Verlag, 1992), pp. 55–69 at p. 63. I discuss this objection in more detail in Pattison, 'Just war theory and the privatization of military force', pp. 144–9. On the issue of 'mercenary motives', also see Baker, 'Of "Mercenaries"'; Lynch and Walsh, 'The good mercenary?'; Iain Scobbie, 'Mercenary morality: a reply to Professor Coady', *International Law and Armed Conflict*, ed. Bradney, pp. 71–91; and Jessica Wolfendale, 'The military and the community: comparing national military forces and private military companies', *Private Military and Security Companies*, ed. Alexandra, Baker, and Caparini, pp. 217–34.

³⁶See my 'Just war theory and the privatization of military force', pp. 148–9.

- (1) Motives matter in moral judgement.
- (2) It is problematic if individuals are motivated by financial gain *in the context of military force*, given that military force harms others.
- (3) Private contractors are more likely to be motivated by financial gain than regular soldiers.

Premise (1) is relatively uncontroversial. As Terry Nardin argues: '[m]otives are a necessary element in judgments of responsibility, of praise and blame, culpability and excuse' and are 'relevant in making moral judgments because we have moral duties to act from the proper motives'.³⁷

Sometimes premise (2) is rejected since, it is argued, it is acceptable for those in other professions, such as lawyers and stockbrokers, to be motivated by financial gain. But this reply misses the point. The 'mercenary motives' objection focuses particularly on military force, which typically involves inflicting *harm* upon others, and being motivated by financial gain to harm (or assist in the harming of) others seems wrong. That is, those using or assisting military force should not possess a particularly problematic motive, and a financial motive (along with, for example, sadism, xenophobia, hatred, and revenge) seems to be objectionable in the context of military force.³⁸ Note here that the claim is negative in that it asserts that the possession of a *bad* motive is problematic, not the more demanding, positive claim that those using or assisting force must possess a *good* motive.

The most common rejection of this objection targets premise (3). On the one hand, it is claimed that regular soldiers may also be motivated by financial gain. One of the reasons why a soldier may choose to pursue a career in the regular army might be, for instance, because they perceive such a career to offer generous remuneration. On the other hand, it is claimed that that nonpecuniary motives are dominant for some private contractors.³⁹ Private contractors may, for instance, be motivated by a sense of adventure or a desire to continue performing military services. Individuals may, then, possess a variety of motivations that will influence their decision to take up arms. Nevertheless, it does seem that, for private contractors, the motive of financial gain is likely to play a greater role in this choice than for regular soldiers. It would be odd if the high wages on offer were *not* a key motivating factor for private contractors' decisions to undertake contracts. Elke Krahnmann argues that private contractors in Iraq:

³⁷Terry Nardin, 'Introduction', *NOMOS XLVII: Humanitarian Intervention*, ed. Terry Nardin and Melissa S. Williams (New York: New York University Press, 2006), pp. 1–28 at p. 10.

³⁸There are two reasons in particular why a financial motive *in general* may seem troublesome. First, the financial motive is individualistic (at best it includes family members). It aims to benefit the individual concerned rather than a wider group (and so differs from patriotism in this respect). Second, in extreme cases, it suggests an amoral approach and, in particular, indicates few limits on what will be done for personal gain. See, further, A. J. Walsh, 'Commercial medicine and the ethics of the profit motive', *Journal of Value Inquiry*, 40 (2006), 341–57. To be sure, I am *not* claiming that all PMSC personnel are self-interested and amoral. The point is simply to indicate why a financial motive may be problematic.

³⁹See, for example, Lynch and Walsh, 'The good mercenary?'

admit that the key reason for their being in the region is the high wages . . . As one US citizen recruited by Halliburton for one of the notoriously dangerous truck driver positions in Iraq puts it: ‘I look at it from a business perspective. When you’re talking a possible \$1,000 a day tax free, it’s real attractive’.⁴⁰

So, although there will be exceptions, we can expect that financial considerations will figure more prominently in the decision-making of PMSC personnel than in that of their public counterparts, who may be motivated by other considerations, such as national duty. Indeed, the high salaries in the private sector are often blamed for the ‘brawn drain’ of regular soldiers from the military. Accordingly, it does seem that there is something wrong—namely, a mercenary motive—when an individual is employed by a PMSC.

It is important to be clear about the strength of this objection. The mindset of those undertaking a war has only a fairly small impact on its justifiability, all things considered. This is because, first, other factors, such as responding to a just cause, having a reasonable prospect of success, and following principles of *jus in bello*, are much more important considerations, given the much higher moral stakes involved.⁴¹ Second, much of just war theory is predicated on the notion that, for *ad bellum* matters, it is leaders’ reasons, and not soldiers’ reasons, for acting that matter. This is because the leaders are responsible for the decision to go to war and soldiers are tasked only with enacting this decision.⁴² Accordingly, a contractors’ problematic mercenary motive may not figure highly in the calculations of the overall justice of a war. Nevertheless, even if it does only a small amount of moral work, it still does *some* work. Given the three premises above, we have reason to object to individuals being employed in private military operations and, other things being equal, this means that we should prefer public to private force.

II. THE EMPLOYERS

Let us now turn to the employers of private force. Does a state do something morally wrong by outsourcing military force? To answer this question, I will first reject three potential deeper objections based on the challenge to the social contract. I will then present two objections that are more telling: the undermining of communal bonds and the threat to a state’s ability to fight and to wage just wars.

A. THE SOCIAL CONTRACT

According to the classic model of the social contract, individuals consent to the authority of the sovereign in return for its protection against both internal and

⁴⁰Krahmann, ‘The new model soldier’, p. 255.

⁴¹See, further, my *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?* (Oxford: Oxford University Press, 2010).

⁴²This second reason may have less force in the context of private force, given that private contractors do not rely on state leaders to decide which wars to fight—contractors’ motives are relevant to this decision.

external threats. In submitting to the sovereign's rule, we forego our right to self-defence, placing it instead in the hands of the authority, which is then responsible for our security. This idea continues to underlie much of our thinking on the legitimacy of the state: the state's right to rule over us, and our obligation to obey its rule, depend on the provision of national defence and the maintenance of internal security. By hiring PMSCs to provide national defence, however, the state may be claimed to renege on its side of the bargain. As the industry expert Peter W. Singer asserts, '[w]hen a government delegates out part of its role in national security through the recruitment and maintenance of armed forces, it is abdicating an essential responsibility'.⁴³

The first objection, then, is that, since the sovereign is no longer the provider of national defence, individuals have less reason to agree to its authority and are arguably no longer bound to obey its rule.⁴⁴ Much depends on the degree to which the state uses external agencies to provide national defence. A state that limits its employment of PMSCs to a few, minor roles, such as refueling and airlift, may still be legitimate on the social contract model. But the legitimacy of a state that heavily relies on PMSCs for a wide range of services is more doubtful. Of course, the objection runs, the hiring of a PMSC can in fact *help* the state to secure national defence both internally (for instance, against insurgents) and externally (for instance, against terrorist organisations)—hiring a PMSC can enable a state to fulfil its side of the social contract. However, when employing PMSCs, the market, rather than the state, becomes the provider of military protection. In short, the state no longer has a monopoly over force—it is not the *sole provider* of protection—and this puts its legitimacy on this model in doubt.

The problem with this objection is that a state does not need to be the sole provider of military force for it to be justified on the terms of the social contract. What matters instead is that it effectively protects its citizens from internal and external threats. Consider states that pool aspects of their military capability in order to bolster their defence against a potentially powerful aggressor. Although each state relies to a certain degree on another state's military capability, and so is no longer the sole provider of protection, by making such an arrangement it is better able to protect its citizens and, as such, more legitimate on terms of the social contract. The same reasoning applies to PMSCs: the legitimacy of a state can be increased by relying on private force if this helps to improve protection. Accordingly, a state can be legitimised even though it acts as an intermediary between the provider of protection (such as a PMSC or another state) and its citizens. What matters is that it is an effective intermediary—that it is successful in ensuring its citizens' protection.

If it is not necessary that the state possess a monopoly over the *provision* of military force, must it have a monopsony over the *use* of military force? In other words, does the social contract require the state to be the sole *consumer* of force?

⁴³Singer, *Corporate Warriors*, p. 226.

⁴⁴*Ibid.*, pp. 226, 298 n. 48.

The privatisation of military force means that other, nonstate actors, such as insurgents and multinational companies, can more easily develop their own military capacity by hiring PMSCs. The second potential objection, therefore, is that increasing the opportunity for other actors to arm themselves will potentially harm the state's ability to protect its citizens. However, this argument is unconvincing because there is nothing innate to the use of private force that means that other, nonstate actors must be able to purchase the services of PMSCs. States could develop a strict system of regulation whereby only states and state-based institutions can purchase these services. This would ensure the monopsony over the use of force.

Third, it might be argued that, in return for the sovereign's protection, citizens consent to protect the state when needed. This implies the citizen-soldier model of the armed forces, according to which soldiers should be citizens, and citizens should be soldiers. The relationship is reciprocal: the state defends us, so we defend the state. Citizens who endorse the state's outsourcing of military force seemingly abdicate their responsibility to provide national defence. (Note that 'endorse' here is used broadly to denote citizens that embrace, sanction, do not oppose, or even necessitate, by their refusal to take up arms, the use of PMSCs.) It is the people, then, rather than the state, that it might be argued break the social contract by agreeing to the hiring of PMSCs.

This argument also falters. The problem with it is that, even if there is a case for holding that citizens have a responsibility to provide national defence, they may be able to authorise others to fulfill this responsibility for them. In many states, the professional army already takes on this role. Likewise, it would seem to follow that private force could be authorised to provide internal and external defence, without requiring citizens to take up arms.

B. COMMUNAL TIES

Having rejected the undermining of the social contract as a deeper argument against the employers of private force, let us now consider a more telling objection. If citizens are willing to defend their state, it can develop affinity within the community. Citizens may feel closer by defending the community, for instance, as they join together to fight against a common aggressor. However, when PMSCs are employed instead, the potential benefits in terms of communal identity that come from having citizens defend the community are lost. Communal defence becomes not a matter of shared pride in the community, but simply necessary for the protection of the atomistic individual. Consider, by analogy, Peter Singer's discussion of blood donations.⁴⁵ Singer argues that, since the donation of blood is a voluntary expression of altruism, it strengthens

⁴⁵Peter Singer in 'Arguments against markets: two cases from the health field', *Medical Care and Markets: Conflicts Between Efficiency and Justice*, ed. C. L. Buchanan and E. W. Prior (Sydney: Allen & Unwin, 1985), pp. 2–19 at pp. 5–11.

communal ties and fosters a general sense of concern for other members of the community. By contrast, he claims, the commercial system leads us to see each other as competitive, profit-seeking individuals.⁴⁶

The challenges posed by the use of PMSCs for communal identity also apply to states that have professional armed forces. Although citizens may rely on these professional soldiers for national defence, and therefore perhaps not show a willingness to defend the community themselves, having professional soldiers provide national defence is still beneficial for communal bonds. The customs and traditions of the professional army help to reinforce communal bonds between citizens as they celebrate war figures, hold parades, veteran days, and so on.⁴⁷

Two points of clarification about this objection are necessary. First, there will not always exist a fit between the community and the state, so sometimes acting in the interests of the state will contravene the community. But, for the sake of developing the objection, I will overlook these nuanced cases, and assume that there is a morally relevant political community at the state level. Second, one can assert this objection without necessarily endorsing a strong, unpalatable view on the moral centrality of the community in international politics. Instead, we can hold that communal identity, although sometimes problematic, does have *some*, if not *absolute*, moral value (it can be outweighed sometimes by cosmopolitan concerns). This value may ultimately be reducible to the value of the community for individuals by, for instance, living in a close-knit, stable society.

There are a number of responses to this objection. First, it may be claimed that, since many private contractors are of the same nationality as the state employing their services, there will be no loss of communal identity. Private contractors are still citizens who willingly agree to defend their community, albeit with handsome financial reward. This reply, however, falls at the first hurdle since many states employ foreign PMSC personnel.⁴⁸ Second, it may be argued that PMSCs can in fact *help* to develop communal bonds by providing internal security for weaker states. Doug Brooks and Matan Chorev assert that private force has been vital in training and supporting African militaries in recent peace operations, since the private sector is not necessarily put off by difficult conditions.⁴⁹ More straightforwardly, PMSCs can protect the community against an aggressor state.

⁴⁶Singer also notes that introducing the market into blood donations can decrease the willingness of donors. Voluntary donors become discouraged as the 'gift' of blood that was previously invaluable—something that the recipients could not buy and without which they might die—is now a commodity with a cash value of a certain number of dollars. Likewise, the privatising of military force means that the 'gift' of military service to the state is no longer invaluable, but a commodity to be bought and sold. This could affect recruitment to the regular army since new potential recruits will not see soldiering an honourable, patriotic, and valiant career, but something for which they should receive substantial financial remuneration.

⁴⁷See, further, Wolfendale, 'The military and the community'.

⁴⁸In this context, Doug Brooks and Matan Chorev, 'Ruthless humanitarianism', p. 119, claim that, whenever possible, the foreign private security industry uses local personnel, since this reduces costs and legal complications. For instance, 113,000 of the 180,000 estimated contractors in Iraq are Iraqis.

⁴⁹Ibid., p. 120.

However, the use of private force can also lead to the violation of communal identity and autonomy by propping up an unpopular government and by assisting a state to intervene in another state's affairs. Tony Lynch and A. J. Walsh call this the 'Argument from State Corruption' against mercenarism: 'in a world in which national armies and the attendant patriotic fervour are ubiquitous, the need for mercenaries becomes a litmus test for the illegitimacy of those rulers who require them'.⁵⁰ Similarly, PMSCs can be used by Western states as a proxy and undermine a people's right to self-determination.⁵¹ More importantly, this response misses the point. All it (arguably) shows is that PMSCs can sometimes help communal bonds. The benefits in terms of communal identity when citizens or professional soldiers defend their community may nonetheless mean that we should prefer regular soldiers to PMSCs. In fact, even in cases where PMSCs could assist communal bonds, it may be preferable to use regular soldiers. For example, if possible, it may be better for a weak state to use regular soldiers instead of PMSC personnel to secure its borders, since the use of regular soldiers may be more beneficial for developing communal bonds, and ultimately strengthen the state.

The third response is that, if we hold that communal identity is valuable, it might be morally *preferable* to use private contractors. In Thomas More's *Utopia*, the Zapoteles (in essence, mercenaries) should be hired so that citizens do not have to undertake national defence themselves.⁵² Taking up arms can be a dangerous business and, given bonds to the fellow members of our community, we should willingly embrace the use of PMSCs—and particularly those who are not fellow citizens. Moreover, the reply runs, it is not only in cases of self-defence that noncitizens may be preferred. It may also follow that there is reason to hire noncitizens (such as foreign PMSC personnel) to undertake humanitarian intervention and other military actions that have the purpose of assisting noncompatriots. This is because it is preferable to risk the lives of noncitizens, rather than citizens, when trying to help those beyond the borders of the community.

The problem with this argument, however, is that it projects a view of the community that does not assign equal moral worth to all individuals. The death of a noncitizen, on this view, is not as morally objectionable as the death of a citizen. This is counterintuitive and at odds with our commonsense thinking on human rights and equal dignity. By contrast, the importance of community outlined above can be consistent with equal moral worth for all individuals since it is ultimately derivative. It simply asserts that there is value for individuals in

⁵⁰Lynch and Walsh, 'The good mercenary?' p. 149.

⁵¹Schreier and Caparini, *Privatising Security*, p. 65. Of course, state armies can also undermine communal autonomy in these ways. My point is simply that private force can often harm communal bonds, not that the harming of communal autonomy is unique to private force.

⁵²Thomas More, *Utopia*, rev. edn (Cambridge: Cambridge University Press, 2002), pp. 88–9. Also see Baker, 'Of "mercenaries"', p. 40.

being part of a close-knit society, but does not deny that individuals in other societies are equally worthy of our respect. The deaths of those within the community are as problematic as the deaths of those outside it.

C. AUTHORITY, SACRIFICE AND JUST WARS

Let us now turn to a second deeper problem with states employing private force. I argued above that PMSC personnel are required to meet even higher standards of *jus ad bellum* because they are not under the authority of the state's military. The fact that PMSC personnel are not subject to the military's authority has a further implication: when states rely heavily on PMSCs, they potentially jeopardise their ability to fight just wars because private contractors cannot be required to make the ultimate sacrifice.

When fighting wars, the military sometimes requires its soldiers to sacrifice their lives. For instance, the gaining of a key strategic position might involve the near-certain deaths of several soldiers (e.g., the D-Day landings). When signing up to the armed forces, regular soldiers implicitly—and sometimes explicitly—consent to such situations. Hence, the Military Covenant of the British Army asserts:

[s]oldiers will be called upon to make personal sacrifices—including the ultimate sacrifice—in the service of the Nation. In putting the needs of the Nation and the Army before their own, they forego some of the rights enjoyed by those outside the Armed Forces. In return, British soldiers must always be able to expect fair treatment, to be valued and respected as individuals, and that they (and their families) will be sustained and rewarded by commensurate terms and conditions of service . . . This mutual obligation forms the Military Covenant between the Nation, the Army and each individual soldier; an unbreakable common bond of identity, loyalty and responsibility which has sustained the Army throughout its history.⁵³

Without the acceptance of sacrifice, it would be difficult for the military to function effectively. If soldiers were to have the option to choose whether to accept a very risky operation, the ability of the military to pursue its objectives could be jeopardised if the operation did not receive a sufficient number of willing volunteers. To be sure, for it to be morally acceptable for states to demand of their soldiers that they take on a very risky operation, it is necessary that (1) the war be just and (2) the operation be necessary to achieve the war aims.

The problem with private force is that private contractors cannot be required to sacrifice themselves. A private contractor may agree to a generally risky mission for financial reward, but then refuse a particularly dangerous operation where it is likely that they will die. Assume, for example, that Chris, a military contractor, has taken a contract with Brownlake, a PMSC, to protect State A's

⁵³The British Army, 'The Military Covenant', (<http://www.army.mod.uk/join/terms/3111.aspx>).

officials from harm. This contract is very lucrative but risky: there is a good chance that Chris's convoy will come under attack. Protecting State A's officials, however, is crucial for the success of the war (assume that A's war is just). Chris's convoy comes under heavy attack. He knows that there is a reasonable chance that he could protect the official, but that he would be likely to die in the process. So, instead, he abandons the convoy and heads for safety, leaving the official to bear the brunt of the attack. Chris's action jeopardises the success of the just war, but, since he is a private contractor, he could not be required by State A to sacrifice himself.⁵⁴ The difficulty, therefore, is that private contractors can be *asked* to accept a degree of risk to themselves, and the acceptance of this risk can be incentivised financially, but it cannot be *demand*ed of them. As Deane-Peter Baker argues:

[t]here are circumstances in which the military commander can, and should, send or lead her unit on missions in which there is significant likelihood that successfully completing these missions will require the death or injury of some, many, or all of those under her command. This is because there is built into the idea of national military service a presumption that would be supererogatory for the average citizen—the willingness to give up life and limb. . . . The same is certainly not true for the private military manager. While individuals who join private military companies accept a significantly higher level of risk in the field of employment than in most other occupations, the private military manager has no right to expect those under his 'command' to sacrifice themselves for some higher good. Sacrifice has no place in the cost-benefit analysis that is at the heart of commercial soldiering.⁵⁵

More specifically, both (certain) private contractors and regular soldiers consent to situations where their lives will be in danger. The difference lies in the nature of the agreement. For private contractors, it is financial and, as such, its fulfillment is not always binding, especially in the face of likely death. Analogously, a drug tester may agree to test five drugs, one of which is likely to have harmful side effects. If, when it comes to testing the harmful drug, the tester simply refuses to take the drug, it cannot be morally demanded that he take it. He may be required to pay the money back, but the financial contract that he agrees to is not sufficient to morally require that he is harmed, even if the testing procedure of the harmful drug will ultimately save more lives (e.g., by the development of a vaccination against a prevalent disease). Likewise, the private contractor has the right to refuse a particularly risky operation. It may be that, since an operation is necessary to achieve the ends of a just war, *someone* is morally required to be put at risk. The financial contract, however, is not sufficient to pick out the contractor as *that person*. It provides little moral reason

⁵⁴This is not simply a theoretical problem. For instance, Singer asserts that a common complaint with PMSCs' mine clearance operations is that they clear only major roads rather than the more risky, but equally vital, areas, such as rural footpaths. Singer, *Corporate Warriors*, p. 157.

⁵⁵Deane-Peter Baker, 'To whom does a private military commander owe a moral duty? Reflections on the trustworthiness of private warriors', *New Wars and New Soldiers*, ed. Paolo Tripodi and Jessica Wolfendale (London: Ashgate, forthcoming).

to demand that *they*, above anyone else, must be sacrificed. By contrast, the implicit, and sometimes explicit, soldier-state contract that regular soldiers agree to when joining *can* demand that regular soldiers be sacrificed. This contract is not simply financial. It is instead a carefully crafted and nuanced historical, societal, and cultural relationship between the state and its armed forces. It involves not only financial reward, but also an extensive responsibility of care, expert training, and a special positioning in society.⁵⁶

I have argued, then, that a second deeper problem with states employing private force is that they may jeopardise their ability to fight just wars because it cannot be demanded that private contractors be sacrificed. But could the abandonment of obligatory sacrifice be a beneficial development? If sacrifice could not be required, it could also harm the ability to fight *unjust* wars and, in doing so, make these wars much less bloody. It could also avoid thousands of deaths amongst soldiers who are ordered to their death in unnecessary operations. If these beneficial effects of scrapping the notion of sacrifice on unjust wars and unnecessary operations would outweigh the potentially harmful effects on the exercise of a just war, then the employment of private force, which cannot demand sacrifice, does not pose a concern. It is unlikely, however, that this would be the case. This is because any general rule that forbids the ordering of soldiers to take on risky operations would be unlikely to hold. Those fighting unjust wars would be likely to break such a rule in the pursuit of military advantage. They can be expected to break this rule precisely because they are fighting an unjust war (although there may, of course, be exceptions). For instance, we can expect those fighting a war of aggression that frequently violates noncombatant immunity to have fewer qualms about shooting their own soldiers who refuse to take on military risky operations. If those fighting a just war do not receive sufficient volunteers for risky, but military necessary, operations, they may be at a disadvantage against an unjust opponent that is happy to order its soldiers to their death. So, the notion of sacrifice is required to ensure the effective fighting of just wars against unjust aggression.

There is a further problem with the reliance on private force by states: it can jeopardise not only their ability to *fight* just wars, but also to *wage* them. Legitimate states that want to launch a just war can insist in the participation of their regular soldiers. But there is little guarantee that private contractors will agree to fight a just war. For instance, suppose that a just humanitarian intervention would involve little financial reward and a large degree of risk. Whereas the regular army can compel its soldiers to fight, there may not be individuals and companies willing to step forward to help the agent intervene.

⁵⁶I have focused thus far on the professional army. It can also be demanded of the citizen-soldier that they take the ultimate sacrifice. In this case, it is not the implicit soldier-state contract, but these individuals' citizenship that identifies them as those to be sacrificed. Admittedly, citizenship is a weaker reason than the soldier-state contract to demand sacrifice, and some may hold that it is not sufficient for this purpose.

To develop this point further, it may seem that there is reason to *prefer* the use of PMSCs. Private contractors can pick and choose their wars and, as a result, can choose to fight only just wars.⁵⁷ By contrast, for regular soldiers, there are institutional reasons against letting them determine the justice of a war (although these reasons may not always be decisive). As such, privatising military force may make it easier for individuals to avoid fighting unjust wars. The difficulty, however, is that, although privatisation makes choosing the right course of action simpler, individuals may not be motivated by the justice of the war, but instead by other considerations. In particular, the financial incentives may mean that, in practice, many private contractors will have few scruples about the justice of the war that they are fighting. This may make it harder for states that rely heavily on PMSCs to wage the just wars that they want to.

To recap, in this section I have argued that employing PMSCs is morally problematic for two reasons. First, employing private force can undermine communal bonds, which are strengthened by the regular army. Second, employing private force can jeopardise a state's ability both to fight and to wage just wars.

III. SECURITY FOR SALE

The third set of issues concern whether there is something amiss with military force being in the hands of the market. Should military provision be left primarily, or even solely, to the public sector? Although there may be certain goods and services that can be entrusted to the market, I will argue that military provision is not one of these. More specifically, I consider (and reject) the two main types of (often rhetorical) justifications—(1) consequentialist and (2) libertarian—offered by defenders of the industry for why the privatisation of military force is beneficial.⁵⁸

But before considering these justifications, it is important to note that the *public* provision of military services by states can, of course, suffer from a number of problems. These include the failures of states to provide equal access to security to citizens, the selling of arms by states to repressive dictators, radical movements, and terrorist networks, and high levels of political influence from those in charge of the state-based supply of military services. However, unlike the problems highlighted below with the private provision of military services, these difficulties do not seem to be *innate* to public provision. A number of states that

⁵⁷See Hedahl, 'Blood and Blackwaters', pp. 29–30 on this point (Hedahl thinks that this is a major problem with private force).

⁵⁸In practice, the reasons for the privatisation of military force may be more pragmatic than principled. These include short-term political requirements for extra military resources and party links with PMSCs. I shall assume that such a short-term perspective is deeply problematic and not sufficient justification for the privatisation of military force. I concentrate on the seemingly more tenable consequentialist and libertarian arguments.

rely heavily on the public provision of military services (e.g., Nordic states) do not suffer from them (at least in the main).

The consequentialist case for privatising military force is based on two assumptions. First, military services are a ‘good’ that should be maximised. Hence, the industry employs the rhetoric of humanitarianism, selling itself as a ‘peace and stability industry’ vital for the protection of human rights worldwide.⁵⁹ It is claimed that PMSCs improve the international community’s abilities to undertake humanitarian intervention, can train troops in peacekeeping, and, by providing protection to NGOs, can facilitate humanitarian assistance in danger zones.

The second assumption is that the market is a more efficient provider of military services. It provides states and other agents with a readily available pool of highly-trained, experienced military professionals that can be brought together at short notice. It also allows for a high-level of expertise (for instance, in technical support and training), which allows states and other agents to extend their current capabilities, and which would not otherwise be available without significant expenditure. Thus, Brooks and Chorev argue that:

the private sector offers faster, better and cheaper services . . . the private sector inevitably finds means for greater efficiencies. The truly international nature of the industry allows vastly greater economies of scale that smaller militaries cannot hope to duplicate. The extensive use they make of experienced former military personnel helps to speed deployment, improve quality and reduce costs.⁶⁰

This consequentialist justification is problematic. To start with, the savings and efficiencies of PMSCs are questionable. There is not adequate competition for contracts, given the specialisation in the market, and it is often left up to the PMSC to determine whether (the often vague) contract terms have been met, if their contract should be renewed, and even extended.⁶¹ That said, many of these problems might be contingent—they might be dealt with by stringent regulation and the close monitoring of contracts and performance. But, more fundamentally, it is doubtful whether military services are an unmitigated ‘good’ that should be maximised, despite the industry’s attempts to sell itself as a ‘peace and stability’ industry vital for humanitarianism. So, even if it were true that the market is a more efficient provider of military services, this is not necessarily a good thing. As Andrew Alexandra points out, ‘when what is being produced

⁵⁹One example is Brooks and Chorev, ‘Ruthless humanitarianism’. See Anna Leander and Rens van Munster, ‘Private security contractors in the debate about Darfur: reflecting and reinforcing neo-liberal governmentality’, *International Relations*, 21 (2007), 201–16, for how this discourse is constructed.

⁶⁰Brooks and Chorev, ‘Ruthless humanitarianism’, p. 120.

⁶¹For a more detailed discussion of these contractual dilemmas, see Singer, *Corporate Warriors*, pp. 151–68. For example, despite numerous reports of wrongdoing and much controversy, Blackwater’s contract in Iraq was renewed by the US State Department, largely because there was no other firm that could fill their role. BBC, ‘Blackwater Iraq contract renewed’, *BBC News Online*, (http://news.bbc.co.uk/1/hi/newsid_7331000/7331972.stm), posted 5 April, 2008.

is the capacity to inflict violence . . . greater productive efficiency is actually undesirable'.⁶²

The libertarian defence of the privatisation of military force is based on scepticism of taxation and big government, and a belief that free market provision better protects individual autonomy. For these reasons, Murray Rothbard proposes that private protection agencies should take the role of public law enforcement.⁶³ Most libertarians, however, do accept the necessity of certain public goods—including military services—to avoid problems of free riding.⁶⁴ Indeed, they do not envisage completely handing over the provision of military services to the market, which would radically alter the international system of states. Instead, the proposal is the more tempered view that the market should, on the one hand, take over some of the non-core functions of the military and, on the other, provide additional services not currently available. This would allow the regular military to concentrate on its core competencies, and allow market efficiencies and freedom into the military. It could also improve security for those in developing countries who are able to afford it. There is, in essence, the possibility of a Pareto improvement in security—with a greater degree of security worldwide, but no loss of security for others.

The problem, however, is that relying on the market to provide military services creates massive inequalities in access to security. It is not simply a question of benefiting one set of individuals: *insecurity* is deflected onto those who cannot afford private protection. In this context, Singer cites the case of the investment conglomerate Lonhro which, during the Mozambican war, hired DSL and then Gurkha Security Guards for its own protection.⁶⁵ Whilst Lonhro was well-protected, rebel attacks shifted to unprotected villages. Indeed, these problems seem to be innate to the use of private force (i.e., they could not be easily regulated away). The use of private force means that there is less of an incentive for many in the state—those who *can* afford private protection—to support a satisfactory, community-wide provision of security. As Singer again asserts, those who can afford it employ the best protection, whilst those who cannot have to depend on weak or nonexistent forces which have been deprived of many of their best personnel (who have moved to the private sector).⁶⁶ To be sure, as noted above, many states can be criticised for an unequal distribution of public military services. Yet, despite notable cases, such problems do not seem to be a necessary characteristic of state-based provision of these services (unlike

⁶²Alexandra, 'Mars meets mammon', p. 97.

⁶³Murray Rothbard, 'Society without a state', *NOMOS XIX: Anarchism*, ed. J. Roland Pennock and John W. Chapman (New York: New York University Press, 1978), pp. 191–207.

⁶⁴Ian Loader, 'Thinking normatively about private security', *Journal of Law and Society*, 24 (1997), 377–94 at p. 380. For instance, Robert Nozick, *Anarchy, State and Utopia* (Oxford: Blackwell, 1974) admits that public control of law enforcement is justified because of the problems with the market provision of private protection.

⁶⁵Singer, *Corporate Warriors*, p. 227.

⁶⁶*Ibid.*

when in the hands of the market)—many states do provide something approaching equal access to security.

There can also be other, broader difficulties for international security with having military provision in the hands of the market (which, again, seem innate in the use of private force). To start with, PMSCs have an incentive *not* to be effective, especially in the long-term. Their fortune relies on continued business. As a result, PMSCs have good reason to prolong insecurity, so that they continue to be employed.⁶⁷ This incentive to be ineffective may be somewhat counter-balanced by the need to have a good reputation in order to be employed again. However, a PMSC may be able to prolong the conflict without it being obvious that it is doing so and consequently without harming its reputation.⁶⁸ In addition, there is something pervasive about the market providing military force since PMSCs have a vested interest in international instability. International stability is jeopardised further by the fact that the privatisation of military force increases the number of agents that can use military force, such as otherwise militarily weak states. PMSCs also make using military force easier for militarily capable states: many of the barriers for using military force, such as the fear of casualties, can be circumvented by the employment of these firms.

Accordingly, these problems for national and international security when military provision is entrusted to the market provide further reason to be concerned with the increased prevalence of the private military industry. It seems that military provision should generally be in public hands.

IV. CONCLUSION

We have seen then that, in addition to the contingent problems with PMSCs, there are also deeper moral concerns with private force. In particular, I have argued that: (I) the employees of private force commit wrongdoing to the extent that they possess mercenary motives; (II) the employers of private force (specifically states) commit wrongdoing in that they potentially jeopardise communal bonds between citizens and diminish the capacity to fight and to wage just wars; and, more generally, (III) treating military services as a commodity has negative consequences for national and international security.

To finish, I want to reiterate two points noted above. First, the three types of objections are interlinked. So, for instance, in addition to the difficulties associated with communal identity and fighting just wars, there is further reason to hold that states act wrongly when they employ PMSCs, given (I) the problems with the employees and (III) the more general problems with relying on the market for military provision. Second, the objections raised in this article may not

⁶⁷Oldrich Bures, 'Private military companies: a second best peacekeeping option?' *International Peacekeeping*, 12 (2005), 533–46 at p. 542.

⁶⁸*Ibid.*, p. 540.

be serious enough to support a categorical prohibition on private force. There may, on occasion, be times when the use of PMSCs could be justifiable, all things considered. Notwithstanding, given the deeper, moral problems highlighted, there is reason to be concerned about the privatisation of military force, even if PMSCs were subject to stronger systems of regulation, oversight, and vetting.