Private Military Companies and Civil-Military Relations Theory

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Introduction

Recent events in Somalia have highlighted once again a glaring gap in the African Union's capabilities. Yet again the continent's main regional body has shown itself to be unable to deploy a capable peacekeeping force at short notice.

In December 2006, in response to what seemed like the imminent fall of the southern city of Baidoa to the forces of the Union of Islamic Courts (UIC), Ethiopian troops launched an offensive into Somalia in support of the country's beleaguered interim federal government. Apparently catching the UIC off guard, Ethiopian soldiers – backed by tanks, artillery, attack helicopters and fixed-wing ground attack aircraft – quickly drove the UIC forces out of Mogadishu and most of the territory it had previously occupied. The remnants of the UIC fled to a rugged, forested corner of Southern Somalia on Kenya's border.

However, despite the initial success of the Ethiopian invasion, Ethiopia's position in the country quickly became uncomfortable. Pressure from parts of the international community, the early stirrings of a guerrilla war against Ethiopian troops by disaffected Somalis, and the potential for a regional conflict involving Eritrea, have all contributed to a strong desire by Ethiopia to withdraw its forces from Somalia. Part of the justification given is the fact that the AU Peace and Security Council has authorised the deployment of the African Union Mission to Somalia (AMISOM), a planned force of some 8,000 African peacekeepers. Unfortunately only Uganda has, at time of writing, actually contributed troops to AMISOM, and there appears little likelihood that AMISOM will graduate into a meaningful stabilisation force. As a

result Somalia once again faces the prospect of a security vacuum in which chaos reigns – an all too common occurrence in Somalia's recent history.

The case of AMISOM is by no means the first time this capabilities gap has become evident. While the AU has unquestionably played an increasingly important role in peacekeeping on the African continent, its responses have typically been slow, logistically creaky, and piecemeal. This problem has not, of course, escaped the attention of decision-makers in Addis Ababa. It was precisely to address situations such as that now developing in Somalia that the AU developed it's doctrine of the African Standby Force.

A central element of the African Union's Peace and Security Council (PSC), the African Standby Force (ASF) is intended to be a body of multidisciplinary military and civilian contingents available for rapid deployment when authorised by the PSC. The central rationale for the ASF was to enable the AU to respond rapidly to situations of conflict, in order to prevent a developing situation of conflict from becoming catastrophic. This capability was considered particularly important given the fact that it takes on average three to six months for the UN to get peacekeeping boots on the ground once a resolution has been passed, allowing far too much time for the situation to deteriorate. At the heart of the ASF concept is the idea of five regional standby brigades, each consisting of anywhere between 2,000 and 6,000 troops and their equipment. Together this should give the PSC between 10,000 and 30,000 troops available for rapid deployment to hotspots around the continent.

The Standby Force concept is a good one. Unfortunately it's a good idea that, since being launched in 2003 and despite some genuine progress, has yet to become a functional reality. Despite an announcement by South Africa's Defence Minster Mosiuoa Lekota in late 2005 that the SADC brigade is ready to deploy, and the actual launch of SADCBRIG in August 2007, the fact that there has been no suggestion of deploying the brigade to Somalia makes it clear that this is not the case. As usual the biggest obstacle to implementation is a lack of resources. African countries are generally poor, and having the capability to project military power is expensive. Consider, by way of comparison, the NATO Response Force.

NATO describes its Response force as a "coherent, high readiness, joint, multinational force package" that is "technologically advanced, flexible, deployable, interoperable and sustainable".[1] This capability allows NATO to project a 25,000-strong force across the globe, where it can sustain itself under high-tempo combat conditions for a period of 30 days.

There is no question that the RRF is a powerful force that offers a potentially valuable tool for addressing international conflict. But the fact that the world's wealthiest security grouping can only manage to sustain a rapid reaction capability of 25,000 troops, illustrates how ambitious the AU Standby Battalion Concept is.

The biggest problem is not primarily one of finding the troops, though with countries like South Africa increasingly stretched to meet existing peacekeeping commitments, this is not an inconsiderable issue. The biggest difficulty, however, is having the

[1] www.nato.int/issues/nrf/index.htm.

capability to move necessary forces to where they're needed and to keep them supplied. The old adage remains applicable – 'amateurs talk strategy, professionals talk logistics'. Given the vastness of Africa, there are realistically only two ways to move and supply a force like one of the standby battalions, by air or by sea.

Because the naval forces of African nations, where they exist at all, have virtually no sea-lift capability, the transport of choice for the standby brigades is airlift. But while the AU's members have more airlift than sealift capability, that's not saying much. The South African Air Force is relatively well off in this regard, but even the SAAF capability falls well below what might be desired. The introduction between 2010 and 2014 of the recently-ordered batch of between 8 and 14 Airbus A400M tactical transport aircraft will help, but will not be enough to resolve the problem. Consider for example the proposed order of battle of the East Africa Brigade of the ASF. Apart from over 2000 troops, there's the logistical challenge of moving close to 160 vehicles, not to mention food, ammunition and other supplies.

Even if sufficient logistics could be found, other problems remain. The harsh reality is that the troops contributed to AU and many UN operations display low levels of professionalism, inadequate warfighting skills, and are poorly equipped. The contrast is made clear in this telling quote from a report by Greg Mills, describing the intervention of British forces in Sierra Leone:

> Well-led and resourceful, the UK troops soon gained local support as their methods proved effective. As the situation stabilised in mid-2000, one 19 year-old Sierra Leonean observed, "We love the British soldiers – they are our

> salvation.... They are well-equipped. They are not as fearful as the UN soldiers. They do not steal from us. We want them to stay."[2]

Given the economic realities of the African continent, and the inefficiencies of the UN system, it is likely that it will take quite some time before swift and capable responses to conflicts on the African context can be expected with any regularity from the AU and UN. Western military capabilities, like those inherent in the NATO Response Force described above, are certainly adequate to the task of rapid and decisive response to such conflicts. Unfortunately the West has shown very little willingness to risk the lives of Western troops in African conflicts, and there appears to be little likelihood of this changing in the foreseeable future.

This is, clearly, a bleak picture indeed. Is there nothing that can be done? Is Africa simply doomed to bear the terrible burden of armed conflict that has so long blighted it, with no reprieve in sight?

Recently a suggested response has been put forward from an unexpected quarter. In March 2006 Cofer Black, former senior antiterrorism official at the CIA and US State Department and now Vice Chairman of one of the world's largest private military companies, Blackwater USA, suggested that Blackwater could provide a "a small, nimble, brigade-size force"[3] for rapid deployment to trouble spots around the world.

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[2] http://www.crimesofwar.org/africa-mag/afr_03_mills.html. While Western nations did contribute forces to the UN mission in Sierra Leone (UNAMSIL), the vast majority of the boots on the ground were African forces or forces from other developing world nations.(http://www.un.org/Depts/dpko/missions/unamsil/). Accessed 17 July 2007.

[3] http://content.hamptonroads.com/story.cfm?story=102251&ran=202519&tref=po. Accessed 17 July 2007.

According to the same report, Chris Taylor[4], Vice President of Blackwater, confirmed Black's position and specifically mentioned the possibility of deploying in support of AU and UN objectives in Sudan.

There is little doubt that putting together a force of this nature is well within Blackwater's capabilities. Owned and staffed primarily by former members of the US Special Forces community, Blackwater boasts some of the most advanced military training facilities in the US. It is believed to have a fleet of around 20 aircraft,[5] including a fixed wing gunship in the style of the AC130H Spectre[6] as well as 'Little Bird' helicopter gunships under contract in Iraq.[7] Blackwater operatives have been employed on close protection and training contracts all over the world, including contracts "to combat the booming opium trade in Afghanistan and to support a SEAL-like maritime commando force in Azerbaijan, an oil-rich former Soviet republic".[8] Further personnel are available via Blackwater's 'international division', Greystone Ltd, which recruits and employs non-US personnel.[9] Blackwater has developed and manufactures its own armoured vehicle, the Grizzly.[10] Blackwater personnel in Iraq are reported to undertake convoy protection duties in RG-31 Armoured Personnel Carriers, manufactured in South Africa and under great demand in Iraq due to their high level of protection against improvised explosive devices.[11] One of Blackwater's many divisions has developed and is manufacturing a remotely piloted airship vehicle

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[4] Whom I had the opportunity to meet on a visit to Blackwater's training site in Moyock, North Carolina in 2005.

[5] http://content.hamptonroads.com/story.cfm?story=102168&ran=18268. Accessed 17 July 2007.

[6] Footage of this aircraft is featured on Blackwater's promotional video.

[7] http://www.cnn.com/2007/WORLD/meast/01/24/iraq.helicopter.crash.ap/index.html. Accessed 17 July 2007.

[8] http://content.hamptonroads.com/story.cfm?story=108242&ran=18183. Accessed 17 July 2007.

[9] http://www.greystone-ltd.com/. Accessed 17 July 2007.

[10] http://www.blackwaterusa.com/grizzly/. Accessed 17 July 2007.

[11] http://www.canada.com/nationalpost/news/story.html?id=45c1631a-4d5f-49db-8bfd-e5963d0a44ec&k=29717. Accessed 17 July 2007.

designed to provide persistent surveillance over conflict zones, in much the same way as the US military uses unmanned aerial vehicles like the now famous Predator UAV (unmanned aerial vehicle).[12] In addition Blackwater has, in its Terrorism Research Centre,[13] an existing in-house intelligence gathering and analysis capability, a capability that will grow massively with the launch of Blackwater's private intelligence branch 'Total Intelligence'.[14] It is even rumoured that Blackwater has acquired a roll-on, roll-off (RORO) ferry, and is in the process of converting it into an amphibious warfare vessel capable of supporting both humanitarian and combat operations.[15] It takes very little imagination to see the potential of a private military company like Blackwater providing a militarily and logistically capable force to intervene in the crucial early stages of conflicts in Africa and elsewhere in the developing world.

Of course it goes almost without saying that Black's suggestion of developing a capable brigade-sized military force staffed entirely by private contractors has been a very controversial one. This is but one controversy within the generally controversial rise of the modern private military corporation, which has its roots in the emergence of the South African group Executive Outcomes in the early 1990's.[16] Since then, particularly with the US-led deployments in Iraq and Afghanistan, there has been a huge surge in the employment of private companies supplying services that were traditionally supplied by men and women in uniform. Indeed, the *Los Angeles Times*

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[12] http://www.blackwaterusa.com/airship/. Accessed 17 July 2007.
[13] http://www.terrorism.com. Accessed 17 July 2007.
[14] http://www.philly.com/philly/opinion/20070603_What_if_our_mercenaries_turn_on_us_.html Accessed 17 July 2007.
[15] This was told to me in 2007 by a senior member of the US military who had the previous year been briefed by Blackwater Vice Chairman Chris Taylor during a visit to Blackwater's headquarters in North Carolina. I have no independent confirmation of this, however, and include this information more as an illustration of the potential of private military companies like Blackwater than as a claim of fact.
[16] http://web.archive.org/web/19981212024722/http://www.eo.com/. Accessed 17 July 2007.

reported on the 4th July 2007 that, even with the increase in US forces resulting from the 'surge' into Baghdad, contractors in Iraq now outnumber US troops.[17]

The growth of the private military industry is without question one of the most significant developments in armed conflict in recent years. As Musah and Fayemi put it, "Private military companies (PMC's) are ... assuming an important role in the balance of power both within individual states and in international security as a whole" (Musah and Fayemi 2000, 1). It is not surprising therefore that academic analyses of the phenomenal rise of the private military industry have been appearing on the scene at a regular rate. The first substantial account and critique of the industry to gain significant influence was Peter W. Singer's *Corporate Warriors* (2003). Since then important contributions to the debate have been made by the likes of Deborah Avant (2005) and Christopher Kinsey (2006), and there are in addition a number of important edited collections in print.[18]

One of the issues that is regularly raised in the academic literature on private military companies is a concern about the impact of the privatization of military force on appropriate civil-military relations. It is my view, however, that this question has not been adequately analysed at the theoretical level, and it is the goal of this thesis to address that shortcoming. Deborah Avant frames the question well when she writes that

> the implications of privatizing security for the control of force are debated. Pessimists claim that the turn to private security threatens to undermine state

[17] http://gamatiasz.wordpress.com/tag/los-angeles-times/. Accessed 17 July 2007.
[18] For example Bryden and Caparini 2006.

> control and democratic processes. Ken Silverstein characterizes this process as one "by which the responsibilities of government are transferred to corporate hands." ... Optimists, however, declare that private options offer solutions to intractable security problems that can operate within national interests and/or the values shared by the international community. ... Who is right? (Avant 2005, 4 – 5)

An important limitation on the scope of this project must be made clear from the outset. Many private companies active in conflict zones around the world balk at the label 'private military company', preferring instead to be called 'private security companies'. For many of those companies this is an important and accurate distinction to make, and there is an unhelpful tendency to clump all companies that do business in conflict zones as 'private military companies', whether they provide armed guards, military trainers, convoy drivers, or cooks. I have specifically stuck to the term 'private military company' in this thesis, for the simple reason that the focus of this work is explicitly intended to address those companies at the 'sharp end' of the stick. Put another way, the focus of this thesis is on the implications, in terms of civil-military relations theory, of private companies providing genuinely military services such as the provision of armed force. It is for this reason that this introduction has focused on drawing out the notion of the 'Blackwater standby brigade'. It is precisely this 'pure' form of private military service provision that provides the greatest test for civil- private military relations, and it is therefore this form of private military service provision that provides the focus for this thesis.

The Way Ahead

"... any serious evaluation of privatization's impact must compare private alternatives against a common standard – most suitably the other available alternatives than an unachievable ideal." (Avant 2005, 6)

The first two chapters of this thesis provide essential background to the central question at hand. Chapter one examines the emerging battlespace[19] of the 21st century and attempts to discover its essential features. Supporters of the so-called Revolution in Military Affairs (RMA) argue that technological advances have radically altered the nature of warfare, such that military victory will go to high-tech forces with a minimal presence on the ground. If this is so, then there seems little reason to be particularly concerned about private military companies like Blackwater, for it is unlikely in the extreme that they will be able to develop the required level of technological capability to deploy self-contained military forces of this kind. Against this view, however, I deploy an important recent argument by Stephen Biddle that shows that the nature of military conflict is essentially unchanged since the emergence of what he calls 'the modern system' in the latter years of the First World War. Added to this is the near certainty that much if not most future armed conflict will be fought in urban environments. Drawing on Alice Hills' analysis, I show how this increases the likelihood of the employment of private military companies in such conflicts.

Perhaps more important than the material conditions of the future battlespace are the social and moral conditions in which future conflicts will take place. The second part

[19] This term, which has achieved wide currency in military circles in recent years, reflects the increasing complexity of contemporary armed conflict. No longer is it adequate to refer to the battle*field*, with its implication of primarily land-based conflict on open terrain. Armed conflict is now multi-dimensional and multi-faceted, and the idea of a battle*space* better captures this reality.

of chapter one focuses on this issue, arguing that the asymmetrical relation between the moral perspectives of developed nations and those of their adversaries means that the push for humanitarian interventions from the developed world will increase while, at the same time, the reluctance to risk developed world military personnel in distant conflicts will also increase. Together, I argue, these considerations provide a strong indication that private military companies are likely to continue to be an important feature of the future battlespace. It follows from this, therefore, that there is good reason to closely consider the implications of such forces for the civil-military balance.

That said, if it is clear that the private provision of military services is inherently immoral, then no matter how much the nature of the future battlespace might favour the employment of private warriors, states and international organisations ought to declare the private military company to be an illegal entity and take steps to ensure its demise. This is certainly a widely held view in both the academic world and the popular press. Once again this question is essential to our enquiry, for if states ought to eradicate private military companies, then there is little need for a close conceptual analysis of their impact on civil-military relations. Chapter Two examines the question of whether the private provision of military services is inherently immoral by asking what, precisely, is held to be immoral about this activity. I consider a number of alternative explanations, but conclude that none of them give good grounds to think the private warrior to be inherently immoral.

Chapter Two also makes clear, however, that there may be other, consequentialist, reasons for rejecting the use of private military companies. One such reason, and it is

the central one under investigation in this thesis, is if private military companies by their nature undermine the appropriate relationship between civilian governments and their military agents. I begin my investigation into this issue in Chapter Three by examining the state of civil-military relations theory. I argue that the recently-developed approach to this age-old question developed by Peter Feaver – what he calls Agency Theory – represents a significant advance over the received view, Samuel Huntington's 'professionalism' model. I also argue, contrary to Feaver's own view, that Agency Theory is also applicable in new and relatively unstable democracies. Feaver is pessimistic about the value of his theory in a context where there is not an established culture of submission to civilian rule among military forces, and where coups are a real danger. This is clearly an important issue if this theory is to be applied to private military companies, for there are many who fear that these organisations might grow to the point where they could overthrow legitimate governments.[20] I argue, however, that even under these conditions Agency Theory remains extremely valuable as an analytic tool. I argue further that Feaver has not recognized the potential benefits that regional organisations offer to civilian principals in their goal of ensuring military obedience.

In Chapter Four I begin an analysis of the effect private military relations have on appropriate civil-military relations. It must be stressed from the beginning, however, that this analysis is limited only to the direct relationship between civilian principals and their private military agents. What will not be addressed in this thesis are a range of other concerns that have been raised regarding private military companies' impact

[20] Most analysts point to the recent attempted coup in Equatorial Guinea which involved a group of mostly former Executive Outcomes members. Pulitzer prize winning *New York Times* foreign correspondent, Chris Hedges, is a good representative of the general fear of private military companies – see http://www.philly.com/philly/opinion/20070603_What_if_our_mercenaries_turn_on_us_.html. Accessed 17 July 2007.

on the broader civil-military environment. A concern that is regularly expressed, for example, is that private military companies provide a means whereby a state's executive may sidestep many of the checks and balances that most democratic states impose on executive decisions to use military force. Other concerns point to potentially detrimental effects on the loyalty or morale of state military forces. Thus Singer writes:

> The firms entrance as a third party tied to the civilian leadership may also leave military leadership feeling isolated or excluded from the inner circle of power, causing further resentment. (Singer 2003, 198)

And

> There is a growing belief that old-fashioned military virtues are particularly threatened by increasing military contracting with the PMF industry and the overwhelming presence of ex-soldiers in its employment rolls. The argument of these opponents, who often include officers presently serving in public forces, is that the armed forces' professionalism must not be associated with or compromised by commercial enterprise. To do so potentially endangers the fabric of communal loyalty. (Singer 2003, 204)

While these are important concerns, they are not, strictly speaking problems for what I call civil – (private) military relations, but are rather about the democratic accountability of political leaders or civil – (state) military relations. I will therefore not consider them in this thesis.

In Chapter Four I present the first stage of an analysis of private military companies in terms of Agency Theory. I begin by focusing the strategic relationship that Agency Theory reveals as being in operation between civilian principals and their traditional military agents (army, air force, navy, marines and other paramilitary services). For each central feature of that strategic relationship, I ask the question whether any significant difference emerges when private military agents are considered in place of state military forces. I conclude that no such difference exists at the strategic level.

In the final chapter, Chapter Five, I move on to examine the specific mechanisms of monitoring and punishment that Agency Theory shows to be available to civilian principals in controlling state military forces. Once again, as in the previous chapter, I focus on whether there is any significant difference in the applicability of these mechanisms to the task of controlling private military forces. While there are certainly some differences, I argue that overall there is no reason to think that private military forces cannot be controlled in the same way and with the same mechanisms that are available to civilian principals to control state military forces. In sum, I argue that, at the conceptual level (i.e. setting aside practical problems of implementation that might arise), private military companies are no more of a threat to appropriate civil-military relations than are state military forces.

Chapter One

The Emerging Battlespace and the Demand for Private Military Companies

It has become commonplace among analysts to insist that in recent years warfare has changed radically. Of course change in warfare is nothing new – like any human activity it is subject to the powerful influences of societal and technological change. But this is different. The shifts that these analysts point to are, they insist, *radical*. That is to say, they contend that these changes represent a fundamental altering of the *nature* of warfare.

Depending on their particular disciplinary perspectives, the actual changes pointed to by these scholars differ. For some it is the genocidal practice and ethnic politics that are increasingly at the centre of today's armed conflicts that are the most important distinctives of these 'new wars'. For others it is the advent of information warfare and the rise of the computer-geek 'info-warrior' that represents the vanguard of the revolution. Others still point to the new-found focus on human rights in warfare, and with it the rise of the applicability of humanitarian grounds for military intervention and the consequent decline of the sanctity of the sovereign state. Yet others point to the growing involvement of non-state actors in warfare, and argue that this portends a future in which states will no longer dominate armed conflicts. And finally (though not exhaustively) there are the proponents of the so-called Revolution in Military Affairs (RMA) who insist that recent technological advances (such as the

development of precision-guided munitions, advanced C4ISR[21] capabilities, network-centric battlefield systems, and so on) have irrevocably altered the nature of warfighting itself.

In the first part of this chapter I will analyse some of the central material changes to the emerging battlespace and examine their implications for the private military company. In part two I perform a similar analysis focusing on non-material changes to the emerging battlespace.

1.1. Material Factors

Certainly it is clear that many of these changes, as well as others, are of crucial importance in understanding warfare today. For example, the fact that about eighty percent of casualties in armed conflict are today civilians, as opposed to around ten to fifteen percent at the beginning of the twentieth century (Kaldor 1999, 100), and the ever-decreasing likelihood of conventional conflicts between major national armies, are examples of important changes that should (though, sadly, all too often do not) play an important role in defence planning. But whether such changes to the broad shape of armed conflict are indeed *revolutionary* remains to be seen. Certainly it is assumed by many of the pundits of the revolution that these broad changes to the nature of contemporary armed conflict do indeed bring with them a radical revision of the heartland of war, warfighting. For if (for example) the central goal of armed forces is no longer primarily to 'kill people and break things', then does this not radically change the nature of victory in battle, and therefore the nature of warfighting? More

[21] Command, Control, Communications, Computers, Intelligence, Surveillance and Reconnaissance.

directly focused on warfighting are the supporters of the idea that we are seeing a revolution in military affairs in which "modern conventional weapons [have] become so accurate and so deadly that human beings [will] simply not be able to survive in appreciable numbers on traditional battlefields" (Alexander 2003, 3).

In striking contrast to these prophets of change stand the authors of two important arguments that are the focal point of the first part of this chapter, Stephen Biddle and Anne Hills.[22] Though the specific focus of these arguments differ, they are united by a common assertion that none of the broad changes in the nature of warfare in general that we have seen in recent years alter the fundamental nature of warfighting itself. In what follows I shall begin by setting out Biddle's argument, then turn to a consideration of Hills' work, before offering an analysis of what these authors have achieved and in what direction their work points.

Mid- to High- Level Continental Conflict – Biddle

Stephen Biddle, former Associate Professor of National Security Studies at the US Army War College Strategic Studies Institute and now Senior Fellow at the Council on Foreign Relations, sets out to answer the questions "What causes victory and defeat in battle? Why do the winners win and the losers lose?" (Biddle 2004, 1) This is obviously a big question, so in order to make his investigation manageable, Biddle takes as his basic unit of analysis the operation – "a series of interconnected battles resulting from a single prior plan" (Biddle 2004, 6) – and focuses on continental

[22] I have written a fuller critical analysis of these two arguments, published as 'The Future of Warfighting,' (*Scientia Militaria*, 2006, 34 (1), pp 93 – 107). This chapter includes material from that paper.

conflicts, those that take place on or over major land masses.[23] He also concentrates on warfare that falls in the mid- to high-level range, thereby excluding low-intensity conflicts on the one hand and global-scale conflicts involving weapons of mass destruction on the other. While this narrowing of focus does indeed make Biddle's investigation manageable, the selected area of investigation is not arbitrary. To the contrary, Biddle argues convincingly that it is military success that falls within this range that is the best indicator of military power in general.

The parameters of his investigation thus fixed, Biddle sets out to discover just what factors account for military capability, which he defines as follows: "offensive military capability [is] *the capacity to destroy the largest possible defensive force over the largest possible territory for the smallest attacker casualties in the least time*; defensive military capability is conversely the ability to preserve the largest possible defensive force over the largest possible territory with the greatest attacker casualties for the longest time" (Biddle 2004, 6). Historically, the main approaches to measuring military capability have been those of numerical preponderance, technology (the measure favoured by RMA believers), and (to a lesser degree) force employment. Biddle, however, believes that these capability measures, at least as generally applied, are of little value. Force employment, Biddle argues, is usually only employed (and usually only by historians) as a subjective measure of military capability, and offers little by way of predictive power. Numerical preponderance and technology as predictors of military success show little more utility. Indeed, Biddle contends that they are in fact "no better than coin flips at predicting real military outcomes" (Biddle 2004, 2). This is not hyperbole on Biddle's part. In the second chapter of the book he

[23] Conflicts that are fought primarily in the air or on the sea are therefore excluded from his analysis.

subjects these two central traditional measures of military capability to statistical testing by assessing their predictive power when measured against the data collected in the University of Michegan's Correlates of War (COW) dataset, which provides statistical data relating to sixteen actual wars that took place between 1900 and 1992. He concludes, for both numerical preponderance and technology, that applying these measures to the COW data produce predictions of victory that are *in fact* little better than a coin flip, and indeed sometimes perform even worse. As if that were not bad enough, Biddle also points out important theoretical concerns regarding the numerical preponderance and technology approaches: "the two main views imply mutually inconsistent policies and conflicting understandings of international politics. Defense planners cannot maximise technological sophistication and numerical preponderance simultaneously" (Biddle 2004, 19).

Biddle's explanation for the shortcomings of the generally accepted approaches to analysing military effectiveness is, firstly, that the approaches used are either rigorous but too narrow, or else broad in their scope but insufficiently rigorous. To address this, Biddle's own approach is to use what he calls 'methodological triangulation', that is, employing a number of different analytical tools in an attempt to compensate for the shortcomings of each on its own. In particular, writes Biddle, "I combine close review of recent historiography with formal theory, case method, statistical analysis, and simulation experimentation" (Biddle 2004, 9). The second major shortcoming that Biddle believes accounts for the poor results of employing existing models is that there is an explanatory variable missing from the analysis. In Biddle's view, the missing factor is the proper application of the idea of force employment, or, more specifically, what Biddle calls the 'modern system' of force employment. This

system, he contends, has been employed since at least 1918, but its importance has nonetheless slipped the attention of most military analysts, with the result that an enormous body of literature in strategic studies and international relations has been built on weak foundations. "The modern system is a tightly interrelated complex of cover, concealment, dispersion, suppression, small-unit independent manoeuvre, and combined arms at the tactical level, and depth, reserves, and differential concentration at the operational level of war" (Biddle 2004, 3). Properly understood, this factor is the deciding one in predicting the outcome of military operations. Regarding numerical preponderance, Biddle contends that "Superior numbers can be decisive or almost irrelevant depending on the two sides' force employment. This in turn means that states' relative economic, demographic or industrial strength are poor indicators of real military power: gross resource advantages matter only if they can be exploited via modern-system force employment, and many states cannot do so" (Biddle 2004, 3). Likewise, Biddle argues, technology's value is relative to modern system force employment: "Taken together these techniques sharply reduce vulnerability to even twenty-first century weapons and sensors. Where fully implemented, the modern system damps the effects of technological change and insulates its users from the full lethality of their opponents' weapons" (Biddle 2004, 2 – 3).

The modern system works by exploiting properties of military technology that have changed little since 1918 and are changing only slowly today. It thus damps the effect of technological change: modern-system militaries are far less exposed to the effects of increasing lethality, speed, and sensory acuity than are non-modern-system forces. This in turn means that the modern system has actually grown more important over time: technological change is increasing the vulnerability of non-modern system

forces much faster than modern-system ones, yielding an ever-growing gap in real military capability between the two. (Biddle 2004, 52)

Thus, while important, technology is not decisive in the way that advocates of the RMA think it is, and it certainly does not negate 'traditional' approaches to warfare in the way they believe – indeed, the very opposite is true. Likewise modern system force employment is the decisive factor in making preponderance valuable: "Modern weapons are so lethal that exposed, non-modern-system forces become cannon fodder. For numbers to tell requires modern-system force employment" (Biddle 2004, 52).

With laudable thoroughness, Biddle submits his modern system hypothesis to rigorous testing by assessing its predictive power against the evidence of three carefully chosen case studies, namely Operation Michael (The Second Battle of the Somme), Operation Goodwood (the failed Allied attempt to break out of the Normandy beachhead in July 1944), and Operation Desert Storm. The first two cases were chosen according to Harry Eckstein's method of critical-case analysis – "by picking cases with extreme values on the key independent variables, one creates conditions where theories should be at their strongest (or weakest), making it unusually illuminating if a theory fails to perform as expected" (Biddle 2004, 78). In Ecksteinian terms, both the successful German offensive in Operation Michael and the failed Allied breakout in Operation Goodwood qualify as 'most-likely' cases for orthodox theories of capability and 'least-likely' cases for Biddle's modern system

approach.[24] Operation Desert Storm, on the other hand, is not an Ecksteinian critical case, as the Coalition attackers were obviously superior in terms of all of the factors in question – numerical preponderance, technology and force employment – and so all of the theories predict the same result. The value of this case, however, is that it offers a way of comparing each theory's prediction of how and why the Coalition forces would be *expected* to break through the Iraqi defences, against what actually happened. In particular, Biddle uses this case to test how each theory fares at explaining Operation Desert Storm's most remarkable feature, the unprecedented low casualty rate suffered by the Coalition forces.[25]

For each of the test-cases Biddle begins with an explanation of why the particular operation has been chosen as a test case, and then, after giving an overview of the operation, goes on to rigorously test the predictions of each of the three competing theories against the actual outcome of the operation. In each case Biddle's theory significantly outperforms its traditional rivals, despite the fact that two out of the three cases are chosen as 'most-likely' cases for the traditional theories, and 'least-likely' cases for the modern system approach.

Not content with this small-*n* test case analysis, however, Biddle then moves on to a series of large-*n* statistical analyses, in which "the data contradict orthodox

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[24] "A *most-likely* case is one where extreme values put a theory on its strongest possible ground – if it is going to be right anywhere it should be right here. For such cases, a valid theory should fail very rarely; if we nevertheless observer failure, this surprising result warrants a greater loss of confidence in the theory than would a single disconfirmatory observation under less ideal conditions. Conversely, a *least-likely* case is one where extreme values make the theory unusually unlikely to succeed – even if the theory were generally valid, under such unfavourable conditions it might well fail anyway. For such cases, we would expect weak theories to be overwhelmed by confounding effects; if we nevertheless observe successful prediction, this surprise would warrant a greater gain of confidence than would a single confirmation under less extreme conditions." (Biddle 2004, 78 – 79)

[25] "In less than six weeks, 795 000 Coalition troops destroyed a defending Iraqi army of hundreds of thousands for the loss of only 240 attackers." (Biddle 2004, 133)

preponderance and technology theories for twenty-five of the twenty-seven testable hypotheses; in only two of twenty-seven were they supported. By contrast, the new theory was corroborated for eighteen of twenty-four hypotheses; in three of the twenty-four the results were ambiguous or weakly contradictory; in only three of the twenty-four were the results unambiguously inconsistent with the new theory's predictions" (Biddle 2004, 191).

The final test Biddle subjects his theory to is that of computer simulation experimentation. Using "the most rigorously validated combat simulation available in the defense analytic community" (Biddle 2004, 181), the Janus system developed by the University of California's Lawrence Livermore National Laboratory, Biddle tests his theory and its competitors using the data collected under the 73 Easting Project.[26] Specifically, Biddle uses the simulation to test the following counterfactuals:

1. What if the Iraqis had fully implemented the modern system?
2. What if the United States had not had such advanced technology?

The results of the simulation showed, firstly, that had the US Army's 2nd Armored Cavalry Regiment been up against a modern-system defense, it would have suffered significantly more casualties than in fact it did, *despite its clear technological advantage*. Secondly, the simulation showed that, when confronted with advanced technology, partial modern-system implementation is insufficient. Finally, Biddle's

[26] "The 73 Easting Project was a collaborative study conducted jointly by the independent Institute for Defense Analyses (IDA), the Defense Advanced Research Projects Agency (DARPA), and the US Army. Its purpose was to develop a database of unprecedented detail on the conduct of a single battle (the Battle of 73 Easting [Operation Desert Storm]), then to use modern computer simulation technology to represent that data in a "virtual re-creation" of the minute-to-minute activities of each participating tank, armoured vehicle, truck, or infantry team. ... The resulting dataset offers probably the most complete and reliable depiction of any combat action in history." (Biddle 2004,182 – 183)

experiment indicated that less sophisticated or less diverse offensive technology reduces the consequences of a defender's failure to implement the modern system. Each of these conclusions stress the increased importance of modern system force employment in the face of modern technological advances, and in general the results of the simulation were once again consistent with the new theory and inconsistent with the technological-superiority explanation preferred by proponents of the RMA.

Urban Operations – Hills

I now turn to the recent work of Alice Hills, a lecturer at the UK Joint Services Commission and Staff College. Where Biddle focuses on the nature of warfighting within a certain range (mid- to high-level continental conflict), Hills' focus is on warfighting on a particular type of terrain, namely operations on urban terrain. A central thesis of Hills' work, however, is that it is not simply a matter of differing terrain that makes urban operations unique. For while it is true that fighting in urban areas offers unique physical challenges (such as the fact that "Cities represent a complex multidimensional blend of horizontal, vertical, interior and external forms, superimposed on natural relief" in which "Ground manoeuvre becomes multidimensional" (Hills 2004, 9)), this is only one of the issues that marks out urban operations as deserving special attention. Among the other relevant features of war in cities and other urban areas are:

- Cities carry particular political significance.
- Urban areas are heavily populated, multiplying the potential for 'collateral damage'.

- Issues of humanitarian aid and development are tied in with urban conflict in a uniquely close and complex manner.
- Urban environments favour asymmetrical opponents.
- Standoff-range combat is technically and morally difficult, increasing the need for close or dismounted combat, which is invariably attritional and results in higher levels of casualties.
- Logistics becomes both more difficult and more important in urban conflict, particularly in the light of the increased humanitarian demands placed on liberal participants in said conflicts.
- Local social, cultural, economic and demographic conditions are significantly more important factors in urban conflict than in other types of operations.

Furthermore, we live in an increasingly urbanised world. Hills points out that "It has been estimated that in 2015 the world's population will be 7.2 billion; that is, 1.1 billion more than in 2000. Approximately 95 per cent of the increase will be in developing countries and almost all of it will occur in cities" (Hills 2004, 16). While is has been a common goal among Western and other liberal militaries to avoid fighting in urban environments as far as possible, Hills argues convincingly that it will become increasingly more difficult to do so as more adversaries recognise the asymmetric advantages cities offer them. "Baghdad, Beirut, Belfast, Dili, Freetown, Gaza City, Grozny, Kabul, Mogadishu, Monrovia, Pristina and Sarajevo – all suggest that it will be as difficult to avoid operations in cities in the future as it was in the past" (Hills 2004, 4).

Despite this, Hills analysis shows that warfighting in urban areas has received relatively little focused attention. Indeed, she goes as far as to claim that "There are no reliable or coherent theories of urban operations" (Hills 2004, 36). Focusing primarily, though not exclusively on Western thought, Hills concludes that what doctrine there is focuses strongly on tactical issues relevant to fighting on urban terrain, and most of that is extrapolated from conventional manoeuverist doctrine. Very little doctrine exists that engages with the broader, and in Hills' view more pressing, strategic problems posed by urban operations. Part of the problem, Hills argues, is that doctrine is by its very nature reactive and formal. She is therefore pessimistic about the possibility of innovative doctrine emerging that will successfully address the critical problem of "balancing tolerable levels of casualties and collateral damage with military success" (Hills 2004, 57 – 58).

Not surprisingly one of the proposed solutions to the quandaries of urban combat is to turn to transformational technology. Hills considers the lure of technology and such innovations as precision targeted munitions delivered by close air support, unmanned robotic weapons systems and netcentric warfare systems. While such innovations undoubtedly are of great assistance to the urban warrior, Hills concludes that "There is as yet not evidence that technology has or can cause a fundamental shift in the nature or conduct of urban operations" (Hills 2004, 84), and that, indeed, urban combat remains little changed from what took place in the 1940's in places like Stalingrad and Berlin. She is clearly right in claiming that, in urban operations, "training and experience are of greater significance than doctrine or technology" (Hills 2004, 29).

Hills then focuses on emergent trends and issues that may have an impact on strategy relating to urban operations. She begins with an investigation into the implications for urban operations of the recent emphasis among liberal nations on notions like human security and civil society. Several questions are addressed: "What is the military utility of the liberal notions associated with expanded definitions of security? Can they make the conduct of Western operations more efficient? Could such trends shape strategic guidance? What are their implications for future urban operations?" (Hills 2004, 174). Hills' conclusion here is that, while such issues undoubtedly do and will affect political decisions about security operations, "the notion of civil society is irrelevant during war, and unhelpful as an analytic tool … In other words, civil society has no operational value, but the concerns it represents have, for various reasons, become important and may yet shape strategic guidance" (Hills 2004, 191).

Hills also considers the vexing issue of controlling non-combatants and minimising 'collateral damage' during urban conflict. The quandary is summed up well when she writes that "Urban war traditionally destroys cities, yet it seems likely that military control of a city during policing, enforcement and post-conflict scenarios is easier if electricity, water and sewerage systems work; if public-health concerns are lower; if logistics are easier; and if populations are generally more compliant" (Hills 2004, 199) Compounding the problem is the historical point, as Hills observes, that "the attacking force in almost every modern urban battle has begun operations with a strict set of ROE [Rules of Engagement] designed to limit collateral damage, but all have invariably been eased in the course of operations because minimising friendly casualties always takes precedence over the desire to avoid civilian casualties and collateral damage" (Hills 2004, 209). Once again technology – and here non-lethal

weaponry comes to the fore – does not provide a straightforward answer to this problem. In Hills' view, "NLWs appear to offer a middle ground as far as control is concerned, yet it seems unlikely that they will offer significant tactical or operational advantages in the near future, and their use will not necessarily make operations easier or less destructive; they may merely make the infliction of pain more compatible with liberal consciences" (Hills 2004, 213).

The sombre message of Hills' analysis is that urban operations are intractable. This is because urban warfare is inherently brutal, and presents a range of analytic, strategic, and moral challenges to which current thinking seems to offer no solution. How, for example, can liberal nations come to terms with the fact that the most effective weapons (such as flamethrowers or their contemporary equivalents, thermobaric munitions) and tactics (such as levelling buildings with artillery or bombs in order to neutralise snipers) for urban combat run contrary to central liberal moral commitments? How will liberal nations cope with the reality that urban operations seem inescapably to involve high casualty levels? Hills' final thoughts are worth quoting at length:

> Ultimately, urban operations deserve attention because they are the most complex of all military operations and because they engage with key emergent issues and trends. Urban operations represent a hard security challenge while offering a powerful conceptual means for generating new insights into military operations in an urbanising world. They are a reminder that, when searching for the global roles and meaningful purposes that 'new war' articulates, we run the risk of paying insufficient attention to the unchanging nature of military

> force. Integrating the various aspects of urban operations is therefore important. For just as the Cold War placed security studies at the centre of the intellectual and political challenges confronting the West, so urbanisation and demographic change may meant that urban operations represent a critical issue in the twenty-first century. The West's ability to address these challenges effectively will depend to a large extent on the skill with which it understands the phenomenon of military operations within the broader context of security. (Hills 2004, 260)

Implications

What is clear from both Biddle and Hills is that, for all the talk of radical transformation in contemporary warfare, future operations are far more likely to reflect past lessons learned than anything revolutionary. In this section of this chapter I wish to consider the implications of the analyses put forward by Biddle and Hills for the private military industry.

There is no revolution

The first point here, and it bears repeating, is that while technology will no doubt continue to increase the lethality of the emerging battlespace, it does not and will not (at least in the foreseeable future) change the essential nature of military operations. It is simply not true that the so-called 'Afghan Model' – in which a handful of special operations soldiers backed by sophisticated airpower and artillery support take on and defeat traditional forces – will replace the need for traditional 'boots on the ground'

operations.[27] The reality is that it still requires infantry to take and hold ground, and this places considerable manpower demands on military forces. As Hills' analysis emphasises, this is particularly so for operations on urban terrain, which will in all likelihood be the most common environment for conflict in the 21st century. In the post Cold War era of discretionary operations in which large standing armies seem to most policymakers to be an unnecessary expense, it is increasingly likely that it will be necessary to turn to other sources – including private military companies – to make up the shortfall in trained military personnel.

Professionalism is crucial

Biddle's 'modern system' will continue to be the crucial factor in battlefield success. The implication of this is that the skills of the highly trained professional soldier will continue to be in demand. Gone are the days of Napoleon's *levee en mass* in which the sheer weight of a huge conscript army could tip the scales in battle. We need only remember the fate of the numerically superior conscript forces of Argentina in the Falklands/Malvinas war, or that of the vast conscript forces of the Iraqi regime in 1991. Biddle's analysis is uncompromisingly clear – it is force employment, rather than simple force of numbers that counts on the battlefield. Biddle's analysis also makes it very clear, however, that developing and maintaining military forces capable of operating the modern system is both difficult and expensive. For many states, particularly in the developing world but also in an increasingly budget-conscious developed world, the cost of having an in-house modern-system capable military will

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[27] See Stephen Biddle's excellent analysis of the 'Afghan Model' in his *Afghanistan and the Future of Warfare: Implications for Army and Defense Policy*, (Strategic Studies Institute of the US Army War College, 2002). Available as a free download at http://www.strategicstudiesinstitute.army.mil/pubs/display.cfm?PubID=109. Accessed 18 July 2007.

be adjudged as being too high. While some of this capability may be supplied by allies and regional organisations, the off-the-shelf and on demand professional capability offered by private military companies staffed by highly-trained former members of the world's elite armed forces will become an increasingly attractive alternative.

Warfare will be bloody and difficult

Biddle's analysis consciously focuses on conventional operations outside of urban areas, and takes as its basis a conventional view of military victory. As mentioned above this is defined in terms of military 'capability', which Biddle describes as follows: "offensive military capability [is] *the capacity to destroy the largest possible defensive force over the largest possible territory for the smallest attacker casualties in the least time*; defensive military capability is conversely the ability to preserve the largest possible defensive force over the largest possible territory with the greatest attacker casualties for the longest time" (Biddle 2004, 6). This broadly Clausewitzean view of victory[28] remains relevant for conventional conflicts like the 1991 Iraq war, and in such conflicts it remains possible for vastly superior forces like those of the US military to inflict massive casualties on enemy forces while keeping its own casualties to a minimum. Unfortunately, as Hills' analysis makes clear, Biddle's approach to military victory cannot be applied easily to asymmetrical urban conflict. As US forces in Iraq have discovered to their detriment, it is almost impossible to arrange a 'decisive battle' in this kind of conflict, and even the most capable and technologically advanced forces must still accept a significant and steady stream of casualties. As I will discuss below, social conditions in the developed world make this

[28] Perhaps it would be more accurate to describe this in terms of the standard US military reading of Clausewitz. See Andreas Herberg Rothe's very interesting analysis of Clausewitz in his *Clausewitz's Puzzle: The Political Theory of War* (Oxford: Oxford University Press, 2007).

sort of casualty rate increasingly unpalatable. It is increasingly likely, therefore, that policymakers seeking to project force beyond the borders of their nations will turn to proxy forces as a way to minimise risk. Such forces are increasingly likely to include highly professional and capable forces supplied by private military companies. It takes little imagination, for example, to see this approach suggested 'between the lines' in the main conclusions of Metz and Millen's 2003 report for the Strategic Studies Institute of the US Army War College entitled *Future War/Future Battlespace*. The report singles out two main conclusions:

> first, the marked decline of large-scale state-on-state warfare and the rise of ambiguous, protracted, indecisive conflict in complex environments; second, because the collective international community will seek to harness American military hegemony, the United States should adopt a broad spectrum strategy based on partnership and shared risks for long-term national interests. (Metz and Millen 2003, vii)

1.2. Non-Material Factors[29]

The latest catchphrase to enter the English language as a result of military conflict is the term 'asymmetrical warfare'. At its broadest, asymmetrical warfare is simply any conflict in which there is a significant qualitative[30] mismatch between opponents in

[29] This section draws on my article 'Moral Asymmetry in Contemporary Warfare' *Theoria*, April 2005, 106, pp 128 – 140.

[30] By which term I mean not differing degrees of quality, but rather differences in kind. Thus, simply having much better tanks than one's opponents (for example) would not qualify the conflict as asymmetrical. In this respect the 'first' Gulf War probably does not qualify as an asymmetrical conflict,

any or all of the following: manpower, firepower, technology and tactics. While the phrase is new, the concept is not. Asymmetrical warfare has been going on for about as long as humans have fought each other in organized ways. In the South African context, for example, one need only think of the devastating attacks by King Shaka's highly-organized regiments (equipped as they were with revolutionary weaponry like the short stabbing spear or assegai), against the various tribes and groups that got in the way of Shaka's expansionist goals. Asymmetry was also an essential component in the successes of the rifle, canon and Gatling-gun equipped colonial armies who subdued the tribesmen of Africa and elsewhere. In the more recent past the ANC's low-tech guerrilla campaign against the conventional might of the apartheid regime is yet another example. There are of course complexities here, and asymmetries are not all of the same ilk, nor do they remain fixed, and certainly it is sometimes difficult to tell whether a conflict can properly be defined as asymmetrical. Nonetheless the general concept is easily recognizable.

The conflict that has brought the phrase into the public sphere is the US-led 'War on Terror', and in particular the post 9/11 US interventions in Afghanistan and Iraq. In the latter region, a very clear and obvious difference can be seen between Gulf wars I and II. In the 1991 war the US-led coalition faced the world's fourth largest conventional army arrayed along a clear battlefront, the border between Saudi Arabia and Kuwait. Once the land-war started, in less than 89 hours the numerically inferior but technologically superior coalition forces plunged Saddam's army's world ranking from fourth down to somewhere in the twenties. And despite over ten intervening

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despite the one-sidedness of the campaign and the clear technological advantage of the coalition forces over the Iraqi army.

years, the army that the US-led coalition forces took on more recently in their march to Baghdad had not improved much on their conventional forces seeding.

So, instead of facing up to US and British tanks, artillery and airpower on the open battlefield, the Iraqi army, Republican Guard and related units attempted to transform themselves into fast-moving and difficult to identify guerrilla units, who chose as their terrain the major cities of their country. Despite this effort, Saddam's regime did not long survive the coalition onslaught, but this attempt by the Iraqi army to fight an asymmetrical war was not without its successes. Take, for example, the experience of the much-vaunted US Apache helicopter forces. On one occasion, on the night of 23-24 March 2003, a force of 32 AH-64D 'Longbow' Apaches, arguably the most technologically advanced attack helicopters in the world, were dispatched on a textbook mission to interdict Iraqi forces in the town of Karbala, some 113km southwest of Baghdad. Using their advanced night-fighting abilities, the idea was to utilize their sophisticated long-range Hellfire missiles to destroy Iraqi mechanized units in the town, in order to ease the passage of advancing US ground forces. Instead, the Apaches found themselves engulfed by a hail of low-tech ground fire, which resulted in 31 of the 32 aircraft being damaged, some of them severely. One Apache was lost when it was forced to crash-land on its return to base, while another went down in enemy territory, resulting in its crew being captured.[31]

Despite successes like these, the attempt by the Iraqi army to defeat the US and UK forces by asymmetrical warfare failed, and the invading forces achieved all of their military goals with relatively few losses. It is, however, in the time since the fall of

[31] http://www.cnn.com/SPECIALS/2003/iraq/war.tracker/03.24.index.html. See also the excellent account in Gordon and Trainor 2006, Chapter 14.

Baghdad that asymmetrical warfare has truly come to the fore. US and allied forces have sustained significantly more casualties since the end of the 'proper' war than they suffered during it. The almost daily attacks that the occupying forces are facing from lightly armed insurgents who then melt back into the general populace are taxing the resources and morale of the world's military superpower more than Saddam's army ever could. The technological advantages that the US armed forces in particular have are rendered largely ineffectual in the face of this kind of low-intensity conflict. In such situations what good, for example, is the M1A2 Abrams tank's much vaunted ability to achieve a near 100% kill rate against enemy armour at ranges of up to 4000m at night and while on the move?

The current situation in Iraq, then, most certainly warrants the 'asymmetrical warfare' label. The occupying forces doubtless far outnumber those they are fighting. Despite the increasing sophistication of insurgent improvised explosive devices (IED's), the weaponry being employed by the Iraqi resistance remains virtually Stone Age in comparison to the technological marvels available to the occupiers. And the guerrilla tactics being employed by the coalition's opponents bear little resemblance to the mechanized warfare that the US and allied forces are primarily trained for. All of this is well documented and has been much discussed in the media. There is, however, one other asymmetry between the combatants that has been far less frequently commented upon, and it strikes me as possibly the most important.

The asymmetry referred to here is a moral one. It is not, however, the asymmetry between good and evil. The asymmetry referred to involves instead, the nature of the moral understanding of the opposing parties. Ostensibly, at least, both sides believe

themselves to be fighting for good. What differs is how 'fighting for good' is understood.

On the one hand, the commanders and soldiers of the US and other forces currently occupying Afghanistan and Iraq are held to a moral code that coheres, for the most part, to the traditional Just War doctrine of *jus in bello*. For example there is the rule that occupying forces must respect the human rights of the Iraqi people. Military operations must be conducted in such a way as to minimize what is clinically called 'collateral damage': the death of civilians and the destruction of non-military property. Rules of engagement forbid soldiers to fire on civilians unless they present a clear threat. And so the list continues. Of course the presence of this code is no guarantee that it will be followed, as recent humiliations of Iraqi prisoners evince. Nonetheless, the condemnation of such actions directed at those responsible provides further evidence of its existence.

On the other hand, those opposing the US and its allies, whether it be the Taliban, Al-Qaeda, or the seemingly vast array of other groups that are responsible for the various attacks in Iraq, show little commitment to these same ideals. While there may well be some sorts of moral restraints on how these groups conduct their campaigns (the diversity and secrecy of the organizations involved make this difficult to ascertain), those restraints, if they exist, are manifestly not the same as those that guide the official conduct of the coalition forces. Torture, the killing of innocent bystanders, attacks on civilian targets, hostage-taking and executions, manipulating the faithful into carrying out suicide bombings, and so on, are not only commonplace but appear to be among the main strategies being employed by the opposing forces.

This moral asymmetry strongly favours the opponents of the US and its allies. For where Western forces are increasingly restricted in their operations by the restraints imposed on them by squeamish Western standards of decency, their opponents are free to participate in whatever 'evils' they deem effective in undermining their opponents. In an article in *Time* magazine, columnist Joe Klein reminds us that when Julius Caesar faced 'pacification problems' after his conquest of Gaul, he simply had his troops cut off the hands of the first batch of rebels to be captured, and ordered them to be sent through Gaul as a warning to others. As Klein points out, however, the US has 'a less vivid set of pacification options than Caesar did.'[32] Western notions of human rights, justice, and the like have seen to that.

The biggest question facing developed world forces is not that of whether or not they are capable of adjusting weapons and tactics to more effectively meet the attacks of asymmetrical opponents. More fundamental is the question of whether or not the moral asymmetry between the combatants makes an ultimately effective response even *possible*. And if it is, indeed possible, what principles should guide combat troops under these conditions? Will effective and (from the Western point of view) morally acceptable means be found by which to prosecute the 'War on Terror' and other asymmetrical conflicts? Or will developed world armed forces be forced to (officially) fight dirty too? This latter possibility ought not to be too quickly discounted. A recent example of such thinking comes from Col. John B. Alexander, US Army (retired) in a recent book called *Winning the War: Advanced Weapons, Strategies, and Concepts for the Post-9/11 World.* Among the 'advanced strategies'

[32] 'Who is Losing Iraq?' *Time* August 31st 2003 (electronic version, http://www.time.com/time/columnist/klein/article/0,9565,480230,00.html, accessed 7 July 2004)

proposed by Alexander is the assassination of all known family members of suicide bombers, on the grounds that one of the things that encourages suicide bombers in taking on their missions is the assurance that their families will be well cared for (Alexander 2003, 201). That this opinion is not necessarily that of a lunatic fringe is reflected by the fact that, among other things, Alexander is a consultant to the commander-in-chief of US Special Operations.

While Western government officials seem to have paid little attention to this problem of moral asymmetry, it has not gone unnoticed in the academic world. In this part of this chapter I will discuss three arguments that seem to me to be a representative selection of contemporary approaches, namely those put forward by Roger Barnett, Christopher Coker and Gwyn Prins.

Asymmetrical Warfare – Barnett

It is Barnett who most straightforwardly deals with asymmetrical warfare, which he succinctly defines as "those actions that an adversary can exercise that you either cannot or will not" (Barnett 2003, 15). Barnett's analysis is a clear, concise and no-nonsense account of the restrictions in place on the use of force by the US armed forces, the 'cannot' and 'will not' that leads to asymmetry as he defines it. He dwells little on the position of the actual and potential opposition faced by the US, instead he primarily points the reader's attention to a book entitled *Unrestricted Warfare* written by two colonels of the People's Republic of China's People's Liberation Amy, and published in 1999. Barnett quotes from that work as follows:

> When a nation state or national armed force, (which adheres to certain rules and will only use limited force to obtain a limited goal), faces off with one of these types of organizations [the Japanese Aum Shinrikyo cult; and ... terrorist groups like Osama bin Laden's] (which never observe any rules and which are not afraid to fight an unlimited war using unlimited means), it will often prove very difficult for the nation state or national armed force to gain the upper hand. (quoted in Barnett 2003, 1)

Little more than this needs to be said, and the few other cases of adversaries or potential adversaries singled out by Barnett are judiciously chosen and together constitute a very convincing case. Barnett puts more effort into accounting for the fourfold restrictions on the use of force by the US.[33] The operational constraints singled out by Barnett are the US's commitment to the 'strategic defensive'; the restriction of ways, means and risks to reflect limited ends; and reservations about the *effects* of the use of force. Organizational constraints are those that arise out of the organization of the US government and the various international treaties and commitments that bind it. Legal restraints involve the various codifications of the *jus ad bellum* and the *jus in bello* that exist in international treaties, protocols, conventions, opinions of international courts and tribunals and the like. Finally, the central and obvious moral constraint that Barnett focuses on is the moral presumption against the use of force: "It underlies the other sources of constraint -- operational, organizational, and legal -- but can be separated from them because it goes beyond them" (Barnett 2003, 83). In Barnett's view, the effects that these constraints have are, in a nutshell, that unless addressed they at best leave the US an impotent player

[3] While Barnett focuses almost entirely on the situation of the US, the points he makes generally apply just as appropriately to her allies, and indeed, to the developed world in general.

on the world stage, and at worst they open the gates of civilization to the barbarian hordes beyond.

Barnett's solution? While admitting that the complex effects of the constraints he sets out make simple solutions unlikely, he suggests that remedies may be discovered within a mix of decisive and strong leadership, greater commitment to consequentialist thinking in decision-making regarding the use of force and the nature of the force used (including a willingness to "reach outside international law and organizations for remedies" (Barnett 2003, 135)), and a clearly thought through and realistic set of guidelines for the use of force in a complex set of contexts. This will have the consequence, Barnett argues, of helping to "illuminate the constraints on the use of force and to reduce their effects" (Barnett 2003, 146). Importantly for the purposes of this thesis, among the strategic force options that Barnett thinks could emerge from the implementation of this cluster of remedies are the use by the United States of 'mercenary forces'. He also recommends the sanctioned use of assassination as a means to bring a conflict to termination. In general, it is clear that Barnett is frustrated and impatient with many of the constraints he delineates, and that he is convinced that some clear thinking on this issue will make it clear that "many of the constraints are strictly fair weather phenomena: When the going gets tough, the constraints get going" (Barnett 2003, 147).[34]

For all his thoroughness, Barnett offers no analysis of the underlying causes of the moral constraints he delineates (it is clear that, though differently defined, all of the

[34] These are the 'last words' of Barnett's book. It is interesting to note that this is very similar in tone to the ending of Col John Alexander's book *Winning the War* (quoted above). Alexander closes off his book with these sentences: "We Americans are a magnanimous poeple [sic] who would prefer to be loved rather than feared. Unfortunately, there are others who respect only those they fear. So be it." (Alexander 2003, 273)

constraints he sets out are broadly moral in nature). In fact, he is very explicit about this, claiming that "the sources of such moral constraints -- whether they arise from basic Judeo-Christian teachings, from the Enlightenment, or from other sources -- need not detain this analysis. It suffices here to note their existence and to seek to appreciate their depth and breadth" (Barnett 2003, 83). Certainly, the lack of such an analysis in no way undermines the quality of the account Barnett gives. Nonetheless, the solutions he proposes are at least in part solutions involving an adjustment to the moral stance taken by the US (and, by proxy, her allies), and, as we shall see below, it is an open question whether such an adjustment is indeed possible for developed world nations given the prevailing moral climate.

Humane Warfare – Coker

Christopher Coker's *Humane Warfare* is explicitly focused on the underlying cultural and philosophical trends that have led to contemporary views of force and its deployment. Coker's book is reminiscent in approach (though much shorter and focused on a narrower question) to Charles Taylor's magisterial *Sources of the Self* (1989), in that it sets out to track the changes in western consciousness that have led to the 'humanising' of war: war in which cruelty and hatred are renounced and courage is redundant, war which is fought by humane soldiers rather than warriors and which is justified exclusively on humanitarian grounds. Like Taylor's book, *Humane Warfare* traces shifting conceptualizations of war, its nature, and its justification by focusing on key Western thinkers who best encapsulate the understanding of their time. Machiavelli, Hegel and Nietzsche are prominent, as are contemporary thinkers like Judith Shklar, Ulrich Beck and, most notably, Richard

Rorty. Also addressed along the way (another similarity with Taylor's approach) are a selection of significant and influential literary works that further reflect the changes Coker is delineating, books like Joseph Heller's *Catch 22* and Kurt Vonnegut's *Slaughterhouse 5*.

Coker offers a disclaimer for his work in the introduction to the book, describing it as exploratory rather than explanatory, and limiting its scope to the "reflections, impressions and objections that the phenomenon [of humane warfare] has provoked in me" (Coker 2001, 6). Laudable as this modesty is, it is in large part unwarranted. While no work of this kind can ever be considered to be complete or definitive, Coker nonetheless presents a very convincing and articulate case for his conclusion. For all its accuracy, however, that conclusion is an uncomfortable one. Coker depicts the contemporary West as faced with a seemingly irresolvable paradox. On the one hand, the rise and rise of respect for individual human rights provides impetus for Western military intervention in situations where those rights are severely trampled. Unique to our 'post-Westphalian' era is the conviction that humanitarianism trumps over state sovereignty. On the other hand, the loss of faith in universal truth and the consequent 'ironic' approach to war has robbed the West of the courage of that conviction. No longer can we expect, or even allow, soldiers to lay down their lives in the service of some ideal. Furthermore, it is also becoming less and less palatable to kill the enemy.

This paradox is not entirely disabling. Coker points to the rise of 'non-lethal weapons' and the increasing automation of the battlefield as ways that are being explored to circumvent the paradox. These measures, however, are not viewed by Coker as sufficient to truly address the problem faced by the West with respect to the

deployment of military force. His conclusions are sombre. We are likely, he argues, to "pay a high price for continuing to find war 'ironic'" (Coker 2001, 144). Unlike Barnett he believes that the asymmetry resulting from this paradox is unlikely to result in the fall of the West to the 'barbarians' at the gate ("The West remains more than powerful enough to fight its own corner" (Coker 2001, 144)), Coker thinks that there remains a significant problem. "Instead of intervening on behalf of others [the West] may prefer to lock itself into its own world, to quarantine itself off from the infection of the outside world, like Caliban in his cell, unwilling to face Prospero's phantoms ... we may abandon much of the world to the forces of barbarism" (Coker 2001, 144 –145).

The Heart of War – Prins

Somewhat more upbeat is Gwyn Prins. For the purposes of this thesis what is of primary interest in Prins' work is the theoretical underpinning of the response he pursues to the moral difficulties inherent in engaging in contemporary armed conflict. Prins recognizes and takes seriously the points made by the doomsayers who argue that the moral and political resources are simply not available to make humanitarian interventions a meaningful reality.[35] Nonetheless he believes that while intervention is difficult and only likely to occur in extreme cases such as cases of genocide, such

[35] Interestingly, Prins is not convinced that terrorism presents the threat that many (including the US government) take it to. While he in no way attempts to downplay the horror and effects of events like the 9/11 attacks, he points out that Westerners remain statistically very unlikely to die or be injured as a result of war or terrorism (see Prins 2002, 63 ff). Against the much-feared future scenario of terrorist groups deploying weapons of mass destruction, he argues that if the well financed, technologically advanced and highly organised Aum Shinrikyo cult were unable to successfully carry out a WMD attack (despite pouring an enormous amount of energy and resources into chemical, biological and nuclear weapons programmes) it is highly unlikely that other terrorist groups will succeed either. The biggest challenge he sees for the West, therefore, is that of humanitarian intervention. In this he is in agreement with Christopher Coker who, as I mentioned above, thinks that the West has more than enough resources to 'fight its corner', but that the real worry is whether or not the West is able to intervene in the 'poor on poor' uncivil wars of the rest of the world.

intervention is indeed possible. For Prins, the principles that he believes can provide the impetus for humanitarian intervention are Kantian in nature. Kant's *Perpetual Peace,* with its notion that hospitality[36] is the key to genuine, self-sustaining peace, is what pilots Prins' revised view of strategic studies away from neo-realism. He contends that "What makes Kant's way of thinking so useful for our early-twenty-first-century task is that he offers a way of prescribing and guiding practical actions where there is no unitary Leviathan, or where those suffering with unsatisfied or abused human rights, like the poor, hungry and powerless, have no other option than to rely upon the inner sense of duty propelled (in Kant's terms) by the Categorical Imperative within the rich and powerful, to quicken their will to act" (Prins 2002, 121). Indeed, Prins views the categorical imperative as the ground-breaking consideration introduced into international common law by Tony Blair in his justification of NATO intervention in Kosovo, and as implicit in the introduction by Kofi Annan of the idea of individual sovereignty as a notion that must be considered by the UN to carry as much weight as the sovereignty of nations. It is this Kant-inspired thinking that convinces Prins that meaningful interventions (what he calls 'strategic raiding') in response to extreme humanitarian crises are both feasible and justifiable for the UN and the countries of the developed world. Prins argues that the urgency and stringency of humanitarian crises allow for operations that fall outside of UN sanctioned-activity, as long as those operations carry the broad support of the international community. He cites the NATO intervention in Kosovo and the British intervention in Sierra Leone as examples (see Prins 2002, Ch 5).

Implications

[36] 'Hospitality means the right of a stranger not to be treated with hostility when he arrives on someone else's territory.' (Immanuel Kant, *Perpetual Peace*, quoted in Prins 2002, 120)

The positions considered above present, as we have seen, a range of differing conclusions. Barnett worries that, unless strong measures are taken, asymmetrical warfare may even result in the demise of the West. Coker dismisses this possibility, but sees little hope that the West will be able to sustain meaningful interventions in support of humanity in the non-Western world. Prins also rejects Barnett's concern, but differs with Coker in his conviction that, though difficult, humanitarian intervention against the perpetrators of 'uncivil' wars is morally and politically possible if launched from a platform of Kant's categorical imperative. Which of these predictions seems most likely? My own view is closest to, though not exactly the same as, Barnett's. Unlike Coker and Prins I am more cautious about believing that the developed World's asymmetrical opponents do not represent a real threat to the very existence of liberal democracy. I am not convinced by Prins' argument about the inability of terrorist groups to make use of weapons of mass destruction. Although, as Prins points out, the Aum Shinrikyo cult failed in their pursuit of a nuclear weapons programme (which included the purchase of a large sheep station in Australia's outback, where they intended to mine uranium (Prins 2002, 81)), it seems clear that the production of a so-called 'dirty bomb'[37] is well within the technological grasp of many terrorist groups, and that the necessary radioactive material would not be all that difficult to acquire. While the use of such weapons would not defeat the armed forces available to the West, the impact of their deployment might well be of sufficient scale that liberal democracies could be transformed into right-wing totalitarian regimes. A similar point forms the basis of my disagreement with Coker. Though he is (rightly) confident that the West is militarily powerful enough to fight its own corner, the

[37] A 'dirty bomb' is one which uses conventional explosives for its explosive effect, but which has radioactive material packed around the conventional core. Such a bomb has the potential to result in massive long-term casualties and could turn a major city into a radioactive wasteland for centuries.

question is whether the moral will to fight will be in place in sufficient time to protect the liberal democratic ideal, and indeed whether that will, when it does arise, might not itself undermine liberal democracy.

I am also less confident than Prins that the categorical imperative carries sufficient force in our post-modern world to sustain humanitarian interventions by the armed forces of the developed world. I do not for a moment doubt the motivating force of this Kantian principle, but rather its ongoing power. The ironism that Coker points to is not nihilism, it is not that those affected by it do not feel the push of moral imperatives, rather it is that the lack of belief in moral absolutes (which, it must be remembered, is what underlies the categorical imperative) means that such imperatives must be viewed with detachment. Wholehearted commitment is no longer truly possible. Prins points out that the test that Blair famously set up in his Kosovo speeches for when humanitarian intervention may be considered justifiable includes providing a positive answer to the question "are we prepared for the long haul?" (Prins 2002, 150) This is exactly what the paradox that Coker so adeptly brings to light calls into question.

More positively, though, it seems to me that some of the ways of avoiding Coker's paradox gestured at by Coker and Barnett offer more hope than either of them seem to believe is possible. Coker is right that cruise missiles, unmanned aerial vehicles (like the highly successful Predator UAV), and other such 'war robots' probably do not represent a complete answer to the partial paralysis induced by an ironic view of war.

At the end of the day, Kosovo notwithstanding,[38] wars are only won by boots on the ground. However, combine these technological advances with Barnett's reluctant suggestion of the mandated use of 'mercenary forces' and a genuinely possible response emerges. While he doesn't make it explicit, it seems clear that Barnett is referring to private military companies when he makes use of the term 'mercenary' here. Certainly, the businesslike approach to war overtly taken by private military companies fits well with the emotionally neutral view of war (war without cruelty, war without hatred, and so on) that Coker describes so well in his book. As Herfried Münkler points out "In the history of political thought, this lack of political ties to the contractor has again and again been viewed as the crucial defect of the mercenary system. In modern 'post-heroic' societies with a high degree of political responsiveness, however, this suddenly turns out to be a major point in its favour. Mercenaries, unlike professional soldiers or conscripts originating in the national electorate, have no possibility of eliciting a political response in the event of high-risk and high-loss operations" (Münkler 2005, 134).

Given the general agreement among the authors discussed above, that the social and moral conditions prevalent in the developed world are such as to significantly restrict the likelihood of the deployment of national military forces on discretionary operations like humanitarian interventions, there seems a far greater likelihood that the general trend towards such operations will be conducted via proxy forces, including and perhaps primarily forces supplied by private military companies.

[38] Kosovo is often pointed to as a clear case of the triumph of air power. However, as Stephen Biddle has pointed out to me (in conversation), the tide only turned in this conflict when a real threat of ground forces was brought to bear.

Conclusion

I began this chapter by considering the material conditions most likely to apply to the battlespace of the 21st Century. Convincing analyses presented by Biddle and Hills show that while technology will undoubtedly continue to enhance the lethality of future weapons systems, these technological advances will not change the essential nature of armed conflict. Future battlefield success will still require well-trained and professional soldiers capable of using the 'modern system' of force employment. Private military companies, staffed primarily by former members of the world's elite military units, are a good source of such soldiers, particularly for countries without the necessary resources to develop and maintain 'modern system' capable forces of their own. Furthermore, the increasing likelihood of bloody, intractable and manpower-intensive urban conflicts increases the probability that states and regional organizations will turn to the private sector to provide additional forces and to undertake the more dangerous operations.

In the second part of the chapter we saw that the push towards the deployment of private military companies caused by material factors in the future battlespace are multiplied by the non-material factors that seem likely to apply. In particular we saw that leading analysts identify two conflicting social and moral trends in the developed world: first, a rising recognition of, and concern for, the global importance of universal human rights; and second, an increasing intolerance for the casualties and other consequences that result from committing national military forces to distant conflicts in order to fight for those very same universal human rights. I argued that the private sector offers a means to address this paradox. The detached, 'socially

responsible corporation' and 'risk-management' approach presented by private military companies seems to fit well with the demands of both of these trends.

It seems, then, that both the material and non-material conditions of the future battlespace favour the employment and deployment of private military forces like the one described in the introduction to this thesis. That being so, we must agree with Singer when he writes that "[a]s long as war exists, so will a demand for military expertise. [Private Military Companies] will resultantly benefit from any slack given by traditional sources of security. The overall history of public versus private military actors indicates that the privatized military industry will continue to play a significant and increasing role in international security in the next decades" (Singer 2003, 230). However, this on its own is not sufficient to show that private military companies ought to be employed – as philosophers are fond of pointing out, one cannot derive an *ought* from an *is*. In the next chapter I turn to the question of whether the use of private military companies should be rejected on the grounds that private warriors are intrinsically immoral.

Chapter Two

Are Private Warriors Intrinsically Immoral?

Of all the parts of the modern world it is unquestionably Africa that has been most affected by the practice of mercenarism. Indeed, most of our era's most infamous mercenaries – 'Mad' Mike Hoare, 'Black' Jack Schramm, and Bob Denard, to name a few – have plied their trade almost exclusively on African soil. The recent attempted toppling of the government of Equatorial Guinea by a group of mostly ex-South African Defence Force personnel has been a poignant reminder that mercenarism remains very much on the African agenda. An even more pervasive presence of the private warrior in African armed conflicts has been in his recent role as the employee of the private military company, the mercenary band's more sophisticated cousin.[39]

As we saw in the previous chapter, there are good reasons to think that the nature of the future battlespace favours the employment of private military companies. Indeed, the employment of private military companies in places like Iraq and Afghanistan is unprecedented in modern times. Private military companies claim to be legitimate military service providers, and are for the first time challenging the view that the private provision of military force is intrinsically politically and ethically unacceptable. There is an increasingly vocal lobby that argues that the private provision of military services is simply a facet of a global trend, one not generally considered to be inherently ethically problematic, namely the move towards

[39] I use the male pronoun here because, with a few exceptions, warriors for hire are male. The exceptions to which I refer are almost entirely limited to the private military industry, where some former female soldiers and police officers have lucrative contracts interrogating and guarding women suspected of involvement in the Iraqi and Afghan insurgencies.

outsourcing what were traditionally government functions. For example, in a forthcoming paper Mervyn Frost argues that:

> the creation of private military companies does not offend or contradict the ethical values built into the most fundamental global institutions of our time, global civil society, and, the society of democratic states. We who hold civilian and citizenship rights are entitled to use our rights to create private companies offering services to other rights holders, provided that in doing so, we do not abuse the rights of our fellow rights holders. ... citizens in democracies might, with good reason, seek to privatize some functions normally carried out by public bodies. Furthermore, ... doing this need not offend our fundamental ethical commitments. Privatization is a public act, by a public authority, for the achievement of a public good. It involves the creation of an anarchical institution, for the achievement of public goods. The key ... is regulation by public bodies. (Frost forthcoming 2008)

Advocates of Private military companies argue, further, that the private military industry can often perform vital military tasks – particularly in cases of humanitarian intervention – far more efficiently and in more cost-effective fashion than traditional UN or coalition forces. There now exists a growing body of scholarly literature dedicated to debating the question of what role, if any, the private military industry can legitimately have in the context of 'new' wars and humanitarian interventions. While the debate goes on, the industry is increasing its market share of conflict zones through involvement in such conflicts as the US led occupation of Iraq and Afghanistan and the recent AU intervention in Sudan.

Despite the demand for legitimacy that is being made by the private military industry, the fact remains that in modern times soldiers-for-hire have been almost universally considered to be morally reprehensible. Surprisingly, however, there has been very little scholarly exploration of just what it is that so tarnishes the character of the private warrior. A recent search of the main database of philosophical work, *The Philosophers' Index*, revealed no publications on the topic of private military companies, and only two journal articles over the past decade on mercenaries in general. It is widely assumed that there is something deeply immoral about mercenarism, to the extent that 'mercenary' is unquestionably one of the more offensive descriptions we can give of a fellow human being. But what, exactly, is it about this kind activity that validates such moral censure?

On closer inspection it becomes clear that there are really two main questions here. First, there is the question of whether or not mercenary activity is bad for the world – if so, then clearly the warrior of good conscience ought not to become a mercenary. Second, there is the question of whether there is something intrinsically morally problematic about the warrior-for-hire, something that would make it wrong to become a mercenary even in a possible world in which the employment of mercenaries led to overwhelmingly good consequences for that world. Most of the ethics-related discussion of the private military industry has been around the first of these questions. A significant proportion of the consequentialist concern over the employment of private warriors relates to the question of the impact of such employment on civil-military relations. This concern is, of course, the central focus of this thesis, and is the subject of the next three chapters. But there is a prior question

that must be answered. For if the private warrior is intrinsically ethically objectionable, then the question of civil-military relations simply does not arise, for then it is inappropriate for democratically elected civil governments to have anything to do with private military companies other than outlawing them.

An important restriction on the scope of this chapter must be acknowledged from the beginning. The political debate over whether military functions can be ethically outsourced to the private sector exists almost exclusively against the background of the broadly liberal political principles that underpin international law. In order to remain relevant to that debate, therefore, I shall restrict the scope of my analysis by taking that same broadly liberal background as given. Thus, there may well be good arguments for or against mercenarism that emerge from within the principles of certain religious viewpoints or philosophical traditions, but those arguments fall only within the scope of my discussion insofar as they overlap with the contemporary international debate on this topic. It should also be noted that most employees of private military companies do not like to be called mercenaries, and argue that it is not applicable to them. I do not, by using this term here, intend to imply that I believe the private military contractor to be synonymous with a mercenary. Instead, I take the idea of a mercenary as the *worst case* description of the private warrior, following the logic that if mercenaries turn out not to be intrinsically ethically objectionable, then this is almost certainly true of the private military contractor.

In what follows I begin by drawing on the two papers on the ethics of mercenaries that were mentioned above, one authored by Anthony Coady (1992) and the other by Tony Lynch and A.J. Walsh (2000). Following these authors I begin by considering

the relevant arguments against mercenarism that were put forward by Niccolo Machiavelli. I will then turn to a consideration of the analogy that is supposed to hold between the mercenary and the prostitute, in order to assess whether or not this analogy stands up to close scrutiny. I conclude the chapter by analysing the argument expounded in a forthcoming work by Joseph Runzo to the effect that the private warrior lacks an essential qualification required of ethical battlefield actors, namely honour.

Of course, one of the relevant issues in investigating just what is wrong with being a mercenary, is the definition of just what it is to be a mercenary. In his forthcoming paper 'What Are Mercenaries?' (forthcoming 2008) Uwe Steinhoff sets out to provide a satisfactory understanding of the term 'mercenary', firstly by presenting a definition of 'mercenary' as it applies to individual fighters, then by looking at the supposed differences between 'traditional' mercenary groups and modern PMSCs. Steinhoff considers what he describes as a typical definition, consonant with recent international agreements, given by Francoise Hampson, according to which "[m]ercenaries appear to have three essential characteristics. They are foreign, motivated principally by financial gain and use force, but not as regular members of the armed forces of a State" (quoted in Steinhoff forthcoming 2008).

The characteristics which distinguish a mercenary from a regular soldier, on this sort of account, can be specified in terms of affiliation, motivation, and organizational incorporation. Though a mercenary, so understood, will not be morally admirable and may even be essentially morally disreputable – they are, after all, 'primarily motivated' by financial gain to engage in activities which might include killing their

fellow human beings – they are not by definition morally beyond the pale, since it is at least consistent with this definition that a mercenary accepts certain moral side constraints such that they will not, for example, fight in a clearly unjust war. Steinhoff points to a number of apparent counterexamples to Hampson's definition, where someone we would generally count as a mercenary lacks one or more of these distinguishing characteristics. Steinhoff offers his own definition, which has it that

> *A* mercenary *is a person who is contracted to provide military services to groups other than his own (in terms of nation, ethnic group, class, etc.) and is ready to deliver this service even if this involves taking part in hostilities. Which groups are relevant depends on the nature of the conflict.* (Steinhoff forthcoming 2008)

Again, this does not make a mercenary morally beyond the pale by definition, and it is a narrower definition than that offered by Hampson, since it does not make motivation or organisational incorporation an essential feature of a mercenary. Steinhoff's definition is, to my knowledge, the best definition that is currently available, and is therefore the one that I will make use of in this chapter.

As noted above, this definition is unusual in not defining mercenarism in terms of the motive for monetary gain, or something similar. Certainly, for most people, it is this that immediately springs to mind as the key characteristic of the mercenary warrior. But as Steinhoff points out:

> If one looks at what are considered paradigmatic examples of mercenaries, for example the men of the Free companies or 'Mad' Mike Hoare's and Bob Denard's men in the Congo in the 1960s or 'Colonel' Callan in Angola in the 70s, it becomes very clear that these men, or at least a very significant number of them, were *not* motivated principally by financial gain (which does not mean that they were not at all motivated by financial gain), but [rather] by adventurism or a love for war and fighting. (Steinhoff forthcoming 2008)

Of course money is not irrelevant here, hence the idea of contract in Steinhoff's definition. As Steinhoff puts it:

> The financial motive, to be sure, should remain part of the definition of 'mercenary'. Someone who fights for free or for relatively small pay in war after war is a *pure* adventurer or a war junkie, not a mercenary. On the other hand, the financial motive does not need to override or dominate all others, not even moral or ideological ones. Mercenaries who fight exclusively in wars that meet certain moral or ideological preconditions are not only conceivable but real.[40] (Steinhoff forthcoming 2008)

Before beginning our investigation proper, one final, and fairly important flag needs to be raised. It will not be possible here to analyze every single possible way the

[40] Steinhoff refers, by way of example, to "mercenaries like the famous Count von Rosen who are so selective about the wars they fight in that they can hardly be distinguished from ideologically motivated volunteers." Another relevant example would be the American pilots of the 'Flying Tigers', or the American Volunteer Airgroup, under the command of the legendary Captain Claire L. Chennault, who fought for China against Japan prior to US entry into the Second World War. Flying Tigers airmen were US Army and Navy pilots pilots who resigned their commissions in order to sign one-year contracts with the Central Aircraft Manufacturing Company, to 'manufacture, repair and operate aircraft'.

mercenary might be considered to be morally problematic. Obviously, for example, if any kind of voluntary involvement in a situation of armed conflict were considered to be morally reprehensible, then this would be a good reason for not being a mercenary. It would, of course, also be a good reason not to volunteer to be a member of a national militia. That sort of issue is beyond what can be attempted in this thesis. The question that will be addressed here is what, if anything, negatively distinguishes the ethical status of the private warrior from that of an enlisted soldier, sailor or airman in the armed forces of some nation.

Machiavelli and the Mercenary Warrior

Coady, Lynch and Walsh take as central the objections to mercenarism raised by Niccolo Machiavelli in his famous work, *The Prince*. Following Coady, Lynch and Walsh, it seems that these are effectively threefold:

1. Mercenaries are not sufficiently bloodthirsty.
2. Mercenaries cannot be trusted because of the temptations of political power.
3. There exists some motive or motives appropriate to engaging in war that mercenaries necessarily lack, or else mercenaries are motivated by some factor that is inappropriate to engaging in war.

The first of these points need not detain us long. For it is quite clear that, even if the empirically questionable claim that mercenaries lack the killing instinct necessary for war were true, this can hardly be considered a moral failing on the part of the private warrior. But perhaps the point is instead one about effectiveness – the claim that the

soldier for hire cannot be relied upon to do what is necessary in battle when the crunch comes, because he is too squeamish perhaps. Again, however, it is evident that this cannot be the moral failing we are looking for. For while we might cast moral aspersions on such a private warrior, those aspersions would be in the family of such terms as 'feeble', 'pathetic', or 'hopeless'. But these are quite clearly not the moral failings we are looking for in trying to discover just what is morally wrong with being *a mercenary*. Indeed, this very characteristic might just as easily be considered to be an ethically positive one. A more positive version of Machiavelli's claim, as Coady points out, is that the mercenary may be less prone to the passions that lead the national or ethnic zealot soldier to demonize the enemy and seek their total destruction. In this case, it must be the soldier who fights for his country or creed who is more deserving of our moral censure than the warrior-for-hire.

The second point is even more easily dealt with. For it is quite clear that the temptation to grab power over a nation by force is at least as strong for national military forces as it is for mercenaries. In fact, it could well be argued that mercenaries are more reliable in this respect, given that they are usually foreign and therefore have less incentive to try to gain power over the nation that has contracted their services. Regardless of how true this latter empirical point is, it seems clear that there is nothing about being a mercenary that makes one *more* susceptible to being tempted by the lure of political power that is not also a factor for a member of a national military force or equivalent.

The question of motives, however, is a weightier one, and requires more of our attention. The most common version of this objection is that there is something wrong

with fighting for money. As pointed out above, it is a central feature of the definition of a mercenary that he be contracted to provide military services – he is not simply a volunteer, and mercenarism has an inescapable commercial dimension to it. As Lynch and Walsh point out, however, the objection cannot simply be that money is in itself a morally questionable motivator for action. For while a case could perhaps be made for this, it would apply to such a wide range of human activities that it offers little help in discerning what singles out mercenarism as especially problematic. Perhaps, therefore, the problem is being motivated by money above all else. Lynch and Walsh helpfully suggest that we label such a person a *lucrepath*. Certainly we do find something deeply objectionable about someone for whom the accumulation of money is always the overriding consideration. By this thinking, as Lynch and Walsh put it, "Those criticizing mercenaries for taking blood money are then accusing them of being lucrepaths … it is not that they do things for money, but that money is the *sole* or the *dominant* consideration in their practical deliberations" (Lynch and Walsh 2000, 136).

As Steinhoff's discussion makes clear, and as Lynch and Walsh themselves point out, there is no particular reason to think that mercenaries *must* be lucrepaths, or even that they *usually* are. Certainly there is no connection of a logical kind between being a lucrepath on the one hand and, on the other, a person who is "contracted to provide military services to groups other than his own" and who is "ready to deliver this service even if this involves taking part in hostilities." Steinhoff's discussion points out that there is good reason to doubt whether the pecuniary motive is the overriding one for most private warriors, indeed it is far more likely that, like the soldier of a

national militia, their motives are mixed. An additional point here[41] is that there seems little reason to think that a soldier of a national military could not be a lucrepath (though, admittedly, not an especially successful one), and if this is so, then lucrepathology cannot be a useful way of distinguishing between the moral standing of all mercenaries, on the one hand, and the set of all members of national military forces on the other.

Perhaps then, the question of appropriate motives is not that mercenaries are united by having a particular morally reprehensible motive, but rather that they lack a particular motive that is necessary for good moral standing when it comes to fighting and killing. What might such a motive be? Coady, as do Lynch and Walsh, identifies the main candidate here as that of just cause and right intention, as defined by Just War Theory.[42] As Lynch and Walsh put it, "*Ex hypothesi*, killing in warfare is justifiable only when the soldier in question is motivated amongst other things by a just cause. Justifiable killing motives must not only be non-lucrepathic, but also, following Aquinas, must include just cause and right intention" (Lynch and Walsh 2000, 138). Immediately, however, Lynch and Walsh point out the obvious point that it is far from clear that this consideration is one that distinguishes the vile mercenary from the righteous citizen soldier. For it would be bizarre to claim that every member of a national military were so motivated, and equally doubtful that a private warrior could not be motivated in this way when entering into some or all of his contracts. As Coady points out, we can easily imagine a group of private warriors working together as 'Just Warriors Inc', who take remuneration for their services but who only offer those services in support of just causes. Indeed, many established private military

[41] Again one raised by Lynch and Walsh.
[42] This presumes that the idea of just cause or right intention applies to the individual soldier in a conflict, itself a contentious claim.

companies at least pay lip service to exactly this ideal,[43] and there is no conceptual reason why private warriors of this kind could not exist.[44]

There is one further version of the 'improper motives' objection to mercenaries that may yet provide a basis for appropriate moral censure, and here again it is the lack of a motivational element that is important. Here I am referring to the idea that the private warrior is not motivated to fight by a close association with the population on whose behalf he is deploying his military skills, what Lynch and Walsh refer to as "strong group identification" (Lynch and Walsh 2000, 140). The problem with the mercenary, by this interpretation, is that he is a *foreigner*, fighting for a group of people he cannot possibly care deeply about. The corollary of this is that it is a moral principle that one ought only to be willing to fight, kill and possibly die for people with whom one identifies in a close and personal way. But why should this be so? Of course it is not difficult to imagine an argument to the effect that there exists some sort of moral requirement on us to be willing to fight to defend the social group to which we, in some sense, belong, at least where the relevant conditions of a just war are met. But it does not follow from this that there are no other circumstances in which a warrior might legitimately practice his deadly trade. Take the soldiers of many nations who deployed to the Middle East in 1990 and 1991 to eject Saddam Hussein's forces from occupied Kuwait – were they guilty of some serious moral failing? And what of the United Nations peacekeepers who deploy to and sometimes fight in distant parts of the world, far from their home nations and societies? Quite

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[43] See for example the website of Blackwater USA, which declares that the company offers its services 'in support of security and peace, and freedom and democracy everywhere' (http://www.blackwaterusa.com/about/). Historically, we can again think of the case of the Flying Tigers. Chennault himself seems to fall quite neatly into this category.

[44] Interestingly, Tobias Masterton and others have put forward the idea of a non-profit private military company that works exclusively for the United Nations. See http://www.corpwatch.org/article.php?id=8989. Accessed 19 July 07.

clearly there are circumstances in which a warrior may ethically be involved in an armed conflict even where his identification with the group for whose benefit he fights is no more specific than his identification with humanity in general. Furthermore, as we have already seen, there seems no reason to suppose that a soldier for hire might not, on principle, offer his services only to the group or groups with whom he strongly identifies. Unless this somehow means he is no longer a mercenary, then clearly this consideration is unhelpful in singling out the private warrior for moral condemnation. As Lynch and Walsh point out, "such considerations are *external* to the practice of mercenarism" (Lynch and Walsh 2000, 140).

Before turning to an examination of the supposed analogy between prostitutes and mercenaries, there is one final possibility that remains to be considered under the 'improper motives' rubric. And that is the thought that it is not any one of the above considerations that accounts for the badness of being a mercenary, but that it is instead the presence of *all* of these motivational factors. So perhaps what matters is holding a very strong (though not lucrepathic) pecuniary motive *plus* not being motivated by such ideals as just cause and right intention *plus* the lack of a strong identification with the group for whom the mercenary is employed to fight. Perhaps, but I don't think so. Firstly it is hard to see what it is about this combination of these factors that should lead us to a different conclusion to that reached by a consideration of each factor individually. And secondly, it is again not clear that this combination of factors offers sufficient ground to distinguish the mercenary from, say, a South African rifleman on African Union peacekeeping duties in the Sudan, who might easily display exactly these characteristics. And finally, it is evident once more that there is nothing about this bundle of characteristics that make them a necessary

feature of being a mercenary – as we have seen above, a private warrior could quite easily lack all of these characteristics and still fit the definition of a mercenary that I set out earlier in this paper.

It seems therefore that an investigation into the reasons Machiavelli gives for counting the mercenary to be morally lacking, offers little support for the traditional vilification of the class of all private warriors. This is clear enough in Lynch and Walsh's paper, and were this all there is to be said, this chapter would offer nothing particularly new to the discussion. But there is at least one more angle of attack that is levelled at the private warrior that neither Lynch and Walsh nor Coady analyze closely, albeit a vague and unclear one, and that is that mercenaries are the 'whores of war'. What remains for this paper is to take a closer look at this analogy that is often supposed to hold between prostitutes and mercenaries.

Whores of War?

As I have said, an intriguing and yet under-analyzed analogy is often held to apply between those who contractually provide sexual services and those who contractually provide military services. Both forms of employment vie for the title of the oldest profession, and both are generally considered to be ethically problematic. But just what is it about mercenaries that supposedly makes them the 'whores of war'? A necessary starting point in assessing this is to consider what it is that is taken to be ethically troublesome about prostitution.

It's worth noting from the start that prostitution is no longer as universally vilified as it once was. In an interesting parallel with the rise of private military companies, prostitutes are increasingly re-labelling themselves as 'sex workers' and demanding recognition as legitimate members of economic society. Arguments in favour of this sort of view tend to be of the liberal contractarian brand advocated by Lars Ericsson, who argues that "If two adults voluntarily consent to an economic arrangement concerning sexual activity and this activity takes place in private, it seems plainly absurd to maintain that there is something intrinsically wrong with it" (Ericsson 1980, 33). Such arguments are of little interest to us here, of course, for we are in search of reasons why prostitution might be considered to be bad.

The response to Ericsson's paper by Carol Pateman sets up nicely one of the dominant lines of argument against prostitution, that which emerges from some quarters of feminism. As Pateman puts it, "The central feminist argument is that prostitution remains morally undesirable, no matter what reforms are made, because it is one of the most graphic examples of men's domination of women" (Pateman 1983, 561). Related to this are objections to prostitution on the grounds that it oppresses, endangers or harms the prostitute,[45] or that prostitution results in a violation of one's autonomy (Anderson 2002). Again, however, this does not help us very much. For those fond of comparing mercenarism with prostitution are quite obviously not trying to argue that the mercenary is at risk of exploitation or some other abusive harm,[46] and that *this* is what is wrong with mercenarism!

[45] See for example the arguments put forward at http://www.prostitutionresearch.com/

[46] Though this may in fact be a very real risk. However this possible objection to mercenarism has not, to my knowledge, been explored in the scholarly literature.

What we are looking for here is some sort of objection to prostitution that would justify the sort of moral censure that lies behind such Biblical injunctions as the command to burn to death a priest's daughter if she turns to prostitution (Leviticus 21:9). What is obvious is that this objection lies within the bounds of the claim that it is not appropriate to offer sex for money. But why is it not appropriate? I have already indirectly dismissed the idea that the problem here is an overriding desire for money (lucrepathology), for though this might well be considered to be morally problematic it is not specific enough to enable us to point the moral finger at the prostitute.[47] So if it is not simply an overriding lust for money that is the problem, it must be that there is something about the nature of sexual relations that makes offering sex on a commercial basis immoral. Here, perhaps surprisingly, the Bible is of some help to us, for in it the nation of Israel is often compared with a prostitute when 'she' turns away from the God who has created, chosen, and rescued her (see for example Ezekiel 16). What seems to be at stake here is a particular relationship – prostitution is problematic because it involves a violation or breach of what is deemed to be the appropriate relationship.

Whether this is a legitimate reason for the negative moral judgement on prostitution is not relevant here. The question for us is whether there is a successful analogy between mercenaries and prostitutes, where success is measured by the justification of apportioning moral censure on mercenaries. Asking this question requires us to heuristically take as given the most conservative view of prostitution, regardless of what we actually believe to be true of the morality of prostitution. The first thing we

[47] That this is one version of the 'mercenaries are prostitutes' objection is made clear by Lynch and Walsh when they write that "It is a commonplace that mercenaries are evil because they receive "blood money". Sometimes there is talk of "the whores of war". Such epithets point to a common moral criticism of mercenarism; namely, that mercenaries kill for money. The mercenary's killing motives are morally inappropriate because they are in a determining sense financial." (Lunch and Walsh 2000, 135)

note here is that there is at first glance an apparent disanalogy between offering sex commercially on the one hand, and offering military services commercially on the other. In the case of prostitution, the act in question takes place between the two parties involved in the contractual relationship, presumably for mutual benefit. Mercenarism, on the other hand, involves one party contracting with another, for mutual benefit, to fight against some third party (presumably not for said third party's benefit!). This disanalogy does not, however, seem to be morally significant, and can be dissolved by replacing the term 'fighting' with something like 'defending' – then in both cases there is a contract for mutual benefit in which the first party pays the second to perform a desired service on his (or its) behalf.

So then, what is it about commercial soldiering that is like offering sexual services for pecuniary reward? More specifically, what appropriate relationship is violated or disrupted by mercenarism? The main candidate in view here is that of the relationship between the citizen and the state. Just as it might be argued that the only morally appropriate relationship for the exercise of sexual relations is that between a husband and wife,[48] so the implied argument here is that the only morally appropriate relationship for the exercise of martial skills is that between the citizen and the nation of his citizenship. Thus, just as prostitution and other forms of adultery or fornication are violations or disruptions of the morally appropriate sexual relationship, so mercenarism is a disruption of the morally appropriate martial relationship.

If this is, indeed, the crux of the analogy between the prostitute and the mercenary, then, to state the obvious, the question we must here ponder is whether the

[48] Or (less conservatively) between two parties in a committed love relationship.

relationship between citizen and state is indeed the only appropriate one in service of which the warfighter can legitimately apply his deadly skills? It is generally accepted that killing is a morally serious matter, and it is this seriousness that, within civil society, seems to make it ethically appropriate for the state to hold the monopoly on violence, for this shifting of violence from the individual to the state is supposed to reduce the overall level and destructiveness of violence in society. For similar reasons, it is generally accepted that it is the organs of the state which bear responsibility for defending the state's citizens from outside attack.[49] Does this, therefore mean that because states ought to defend their citizenry, citizens ought only to fight in the service of their states? The most coherent version of this thesis is based on the idea that, for individuals, the employment of violence is only ethically legitimate in cases of self-defence, and that the state's right to defend itself from attack derives in turn from the individual's right to self-defence. If this is true, the argument continues, then clearly the right to employ violence in defence of a state or other relevant group cannot extend to persons who are not members of that state or relevant group.

The view that a state can derive its right to defend itself from the individual's right to self-defence is subjected to close scrutiny in a recent book by David Rodin. Rodin's rigorous analysis leads him to the following conclusion:

> The argument which draws a connection between personal self-defense and national-defense is at once beguilingly simple and intuitively appealing. It has informed moral and philosophical thinking on warfare since at least the time

[49] This generally accepted view is not, however, without its difficulties. David Rodin's book *War and Self-Defense* (2002) provides an excellent account of these difficulties. See also Baker 2006.

> of the Christian Fathers and has had a powerful influence on the development of modern international law. But I have argued that the analogy cannot be philosophically sustained. National-defense cannot be reduced to a collective application of personal rights of self-defense, and it cannot be explained as a state-held right analogous to personal self-defense. (Rodin 2002, 162)

Not surprisingly, Rodin's book has drawn a range of responses, but very few of these seem to undermine his conclusions. The one response to Rodin that seems to offer some hope of redeeming the state's right to defend itself from attack, one I explore elsewhere (Baker 2006), rests on the notion of human development as the central concept justifying the proportionate employment of armed force, both in defence of a state and for the purposes of humanitarian intervention. But if this is true, there is nothing particular about the state that gives it the authority to intervene using force in the interests of human development.

Even if it were granted that the state's right to defend itself from attack derives from the individual's right to self-defence, it does not necessarily follow that this makes the private warrior a violator of the relationship between citizen and state. For it is questionable why the right to intervene in order to protect a citizen or group thereof should extend only to the state. Surely what matters is that said citizen or group of citizens is protected? In matters of life of death, it seems self-evident that a promiscuity of defenders is desirable. If we take the analogy with individual self-defence seriously, then it must not be forgotten that there is a right for individuals to intervene to defend others as well as themselves, and there is nothing about this being a contractual arrangement that would undermine that right. Consider the case of Jane,

who finds that she has to walk through a bad neighbourhood at night. Jane is a taxpayer, and is therefore rightfully under the protection of the local police. However, the local police are not sufficiently effective to ensure her safety. Believing (rightly) that her chances of being attacked are high, Jane enters into a contractual arrangement with a bouncer at a nightclub she happens to pass, who agrees to protect her on her walk through the bad neighbourhood for an agreed fee. As it happens, Jane is attacked, and her companion does intervene to save her. Do we think that Jane's companion is in some sense unethical? No. True, we might have valued his actions more highly if he had offered his protection for free. But we do not somehow consider his actions to be *unethical*. This example reflects the dynamic that exists between state police and private security forces. It has not, to my knowledge, been argued that rent-a-cops are somehow deeply immoral because their occupation violates the citizen-state relationship with respect to the employment of force. Why then, should this suddenly become an issue when military force is involved?

Even if the preceding argument is not accepted, this still doesn't necessarily leave the private warrior out in the cold. For why could a state not contractually employ private warriors who are its own citizens, as, for example, the US government does when it employs the services of Blackwater USA?[50] Furthermore, it is not at all clear how the state-citizen relationship justifies the use of force in cases of humanitarian intervention and other 'peace operations', and yet it is increasingly recognized that in

[50] While the security clearances required for almost all Blackwater positions makes it virtually inevitable that its employees are US citizens, it's worth noting that citizenship is not a requirement for employment by the US military.

some cases such interventions are ethically required. Why then could private warriors not be employed for armed interventions of this kind?[51]

The flip side of this issue (and it must be admitted that this is a consequentialist consideration, not one directly relevant to the virtue of the private warrior himself) is that it seems that a good argument could be made for the view that states ought always to prefer foreign mercenaries to citizen soldiers, for if the state has a duty to protect its citizens then that duty must surely extend also to those citizens who happen to make up the nation's armed forces. As Coady points out, Thomas More makes exactly this point in articulating the strategies of his wise Utopians.[52]

My analysis thus far leads me to be inclined to concur with Lynch and Walsh when they write that:

> ... many writers ... base their hostility to mercenarism on a moral analogy with prostitution. But if the strategy is a common one, nonetheless it is inadequate, depending on an extraordinary idealization of appropriate sexual and military relationships, and on a mistaken equation of the morality of intimacy with that of organized violence.[53] (Lynch and Walsh 2000, 134)

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[51] As it happens, this is precisely the market that the private military industry is working hardest to make its own. See for example the articles available on the website of the International Peace Operations Association (www.ipoaonline.org/home/)

[52] Coady makes reference to Thomas More, *Utopia*, p.112.

[53] Lynch and Walsh seem poised at this point in their paper to go on to offer a detailed analysis of just why this analogy is inadequate. Oddly, however, they continue instead with this point: "The latter mistake is of particular importance, for too often the case against mercenarism rests on a failure to appreciate an insight contained in the liberal tradition. For it does not at all follow that encouraging virtuous motives in individuals ("righteousness") will contribute to the end of social justice, indeed on occasions the opposite may well be true. The attempt to maximise the virtue of the individual's participation in organised violence may have as a result more- and more bloody – violence than under a moral regime in which the virtue of such actions lies more generally in the merely pecuniary." (Lynch and Walsh 2000, 134)

> Furthermore, as we saw, Machiavelli's arguments regarding the moral character of the mercenary are generally unconvincing. Of course this does not mean that some mercenaries have not nor will not do bad things – this is obviously not true. But the point is that there is nothing particular about their being mercenaries that makes them intrinsically bad. Our investigation thus far also does not show that, even if soldiers-for-hire are not necessarily bad in themselves, the exercise of this trade might not result in bad consequences for the world. I shall turn to an aspect of this question in the remaining chapters of this thesis. But if it turns out that there are ways of regulating the private military profession such that these private warriors may be employed in ways that are generally beneficial, then it seems to me there is then no further reason for policymakers to deny them a role in the management of armed conflict.

Honour and the Private Warrior – Runzo

Before concluding this analysis, there is one further line of argument that must be considered here. Joseph Runzo (forthcoming 2008), Professor of Philosophy and Religious Studies at Chapman University, puts forward the argument that the private warrior lacks a critical quality, 'honour', which disqualifies him from being ethically employed in combat.

Runzo is at pains to show that the phenomenon of the private military company exists within the broad context of a shift in the focus of contemporary warfare towards discretionary operations directed against terrorism or in support of humanitarian objectives (and sometimes both). The ethics of war, exemplified by Just War Theory,

evolves along with the evolution of warfare itself, Runzo argues, and his chapter is an attempt to articulate a revised version of Just War Theory that accounts for the contemporary conflict environment. While certainly interesting, this aspect of Runzo's chapter is not of primary relevance to this thesis. What is relevant are what Runzo believes to be a number of significant problems with the employment of private military companies in contemporary conflicts. Together these factors lead him to conclude that the private warrior lacks the honour necessary for ethical engagement in armed conflict.

Firstly, Runzo is troubled by the thought that "the personnel of a private military company neither systematically studies military law and Just War Theory nor operates under the purview of military law." While this has most certainly been true in the past, it is not clear this is really an *intrinsic* problem with the private warrior. Indeed, at time of writing, contractors in Iraq with contracts from the US military are coming to terms with the implications of new legislation that brings them under the Uniform Code of Military Justice of the US armed forces.[54] One wonders also to what extent it is true that the personnel of private military companies lack the necessary grasp of military law and Just War Theory. Given that private military companies tend to employ those with military or law enforcement backgrounds, it seems likely that there is in fact a fair degree of proficiency in these matters among private warriors. Added to this is the fact that the industry is increasingly taking self-regulatory steps to ensure that its members act ethically on the battlefield. For example the International Peace Operations Association, one of the largest associations of private military and security companies, has, in conjunction with American University, recently launched a

[54] http://www.military.com/NewsContent/0,13319,121592,00.html. Accessed 19 July 2007.

training program aimed at 'field managers and independent contractors' which has stated goal of serving

> ... as a mechanism by which the IPOA Code of Conduct and other standards can be operationalized by contractors active in conflict and post-conflict environments around the world. Participants will be trained in essential areas such as international humanitarian law, NGO/IO interaction, cultural, gender and religious sensitivities and learn how to operationalize field guidelines, increase productivity levels and to improve interaction with other actors.[55]

The second problem with using private military companies in conflict zones that concerns Runzo is that, while they may provide some short term military advantage, they are not suited to the long-term endeavour of building peace, because "they are not in the business of reconciliation." Herfried Münkler argues the same point when he writes that, though private military companies might be of value for some tasks, "It is quite another question whether this kind of soldier is the best suited for operations designed to end a war and to bring peace; 'freelancers' can scarcely be expected to have the discipline and incorruptibility that are an essential condition for the success of such operations" (Münkler 2005, 134). This is of course a problem that is regularly pointed out about military forces in general, and it's hard to see here how this is a significant problem with private military companies in particular. In a later chapter in the same volume, Doug Brooks and Matan Chorev (forthcoming 2008) argue the contrary point that, because private military companies tend to employ a significant proportion of local personnel, this reduces their intrusiveness, which represents a

[55] http://www.american.edu/sis/peacebuilding/security/traininginfo.htm, accessed 27 March 2007.

significant advantage for private military companies over regular military forces in building peace.

In the remainder of his analysis Runzo, drawing on a wide range of religious and other sources, moves on to outline a global honour ethic for the contemporary warrior and an accordingly adjusted contemporary version of Just War Theory. Both of these, he argues, leave little room for the private warrior. The main reason Runzo gives for this conclusion is that, because of his pecuniary motive, the contractor is less likely to be free of the ropes of materialism (and so will face death with regret rather than resolution), more likely to dehumanise the enemy, and will have a greater propensity to use weapons to kill rather than to defend peace. Given that these points differ little from those considered and set aside earlier in the chapter, there seems little point in being detained by them here.

Conclusion

I began this chapter by outlining Uwe Steinhoff's well-conceived definition of the mercenary. With that in place I turned to a consideration of the main ethical objections to mercenarism that have been expressed in the relevant literature, primarily those expressed by Machiavelli and brought into recent discourse by Tony Coady. Following Lynch and Walsh I argued that none of these objections showed that we should consider the private warrior to be intrinsically ethically deficient. I then turned to a consideration of the analogy that is often held to apply between prostitution and mercenarism. Once again this analogy held nothing of substance with which to legitimately condemn the private warrior. Finally I considered the recent concerns raised by Joseph Runzo concerning the private warrior's honour. On close

inspection Runzo's concerns turned out to be either obviously unfounded or to collapse into objections considered and dispensed with earlier in this chapter.

In conclusion, then, it is my claim that we should agree with Lynch and Walsh when they write that "The Good Mercenary is neither logically impossible nor psychologically implausible"(Lynch and Walsh 2000, 141). This does not, as I have said, mean that there are no consequentialist reasons for resisting the rise of the private military industry. In the remainder of this thesis, with the ground-clearing exercise of these first two chapters completed, I turn to consider one of the most central consequentialist concerns that are raised by those opposed to the employment and deployment of private military companies, namely the worry that private military companies are a significant threat to appropriate civil-military relations.

Chapter Three

Agency Theory: A new Approach to Civil-Military Relations[56]

Despite trendy and dramatic academic pronouncements of the decline and fall of the state as the key player on the global stage, states continue doggedly on. In those few countries where the structures of the state have, in fact, collapsed (such as Somalia), the state has not been replaced by some novel new system, but has instead regressed to chaos and anarchy. States, then, remain important.

Perhaps the defining feature of the state is that of its monopoly over the legitimate use of force, as famously expressed by Max Weber in his landmark 1918 speech *Politik als Beruf*.[57] In contemporary times, with the rise of notions such as the doctrine of humanitarian intervention, it has also been increasingly asserted that the legitimacy of the state's use of force is dependent on responsible civilian oversight of those state arms (such as the police and the military) that exercise that monopoly on behalf of the state. This is not the place to debate the legitimacy of undemocratic states in the international system. What can be confidently asserted is that the democratic control of armed forces, usually described in terms of 'civil-military relations', is an essential feature of democratic governance and an important element in the prevention of internal armed conflict. In a democratic state it is the people, through their properly elected representatives, who are to rule over every aspect of the public life of the nation, including (perhaps especially) the application of force. Military leaders and

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[56] A paper derived from this chapter has recently been published as 'Agency Theory: A New Model of Civil-Military Relations for Africa?' (*African Journal on Conflict Resolution*, 2007, 7 (1) p.113-136).

[57] 'Politics as a Vocation'. An English translation can be found online at http://www.ne.jp/asahi/moriyuki/abukuma/weber/lecture/politics_vocation.html (accessed 7 June 2007).

institutions must therefore be the servants, not the rulers, of the state. This feature of democratic states, however, contains within it a fundamental paradox – the very institution that is created to protect the state, the military, has the power to become its greatest threat. Military values are also antithetical to democratic values. As Richard Kohn points out, "The military is, by necessity, among the least democratic institutions in human experience; martial customs and procedures clash by nature with individual freedom and civil liberty, the highest values in democratic societies" (Kohn 1997, 141).

In today's world the challenge of civil control of the military has two distinct, though interconnected, aspects. At the most basic level, the challenge is that of preventing military forces from taking control of the nation's political life, whether by means of a coup d'état or by way of less obvious, but no less pernicious, pressures on civilian government. This task is made all the more difficult by the fact that it must be achieved without weakening the military to the extent that it faces serious defeat on the battlefield, thereby placing the state and its citizens at considerable risk. This fundamental challenge is the one that is felt most keenly by the young democracies of the world. In the older democracies, where civilian control of the military is an established feature of the political terrain, the challenge is less dramatic, but no less difficult to address. Here, as Kohn puts it,

> the test is whether civilians can exercise supremacy in military policy and decision making – that is, frame the alternatives and define the discussion, as well as make the final choice. When the military enjoys great prestige, possesses advanced bureaucratic skills, believes that its ability to fulfil its

> mission may be at risk, or comes to doubt the civilian leadership, civilians can face great obstacles in exercising their authority. (Kohn 1997, 141)

Despite the importance of civil-military relations, theoretical understandings of this question have advanced surprisingly slowly in recent decades. Most academics and practitioners whose work touches on this issue still take as given the theory of Samuel P. Huntington, published nearly fifty years ago in his seminal work *The Soldier and the State* (1957). The only other academic figure to achieve a significant profile in this regard during the preceding fifty years is the late Morris Janowitz, whose landmark book *The Professional Soldier* (1960) explored the sociological connections between the military and the society it serves. Recently, however, a number of new works have emerged on the question of civil-military relations, that threaten (or promise) to break the near-monopoly that Huntington and Janowitz have long held on this field. One of those important recent works is Michael Desch's 1999 book *Civilian Control of the Military*, which expounds the thesis that civil-military relations are deeply affected by the level of threat in the security environment, and that civilian control is at its weakest when the threat is at its lowest. More recently we have seen the emergence of an impressive new theory, 'agency theory' which has been developed by Peter D. Feaver of Duke University, and which is comprehensively laid out in his recent book *Armed Servants* (2003).

The purpose of this chapter is to assess whether Feaver's agency theory offers any important advances over the traditional Huntington/Janowitz 'professionalism' approach. In what follows I shall begin by giving a brief account of the traditional view, whereafter I shall present a comprehensive account of Agency Theory. I will

then offer an assessment of the general advantages or disadvantages of Agency Theory over its older competitors. As we will see, Feaver himself raises questions as to the applicability of his theory to states where a real threat of a coup d'état exists. I will argue, however, that Agency Theory is able to deal with this issue.

Huntington and Janowitz

At the heart of both Huntington's and Janowitz's analysis of the military and its relationship to the polity, is the notion of professionalism. For both, a profession is defined in a fairly conventional manner, as an occupation which has highly specialised characteristics in the areas of expertise, responsibility and corporateness. Both also restrict the membership of the society of military professionals to those who belong to the officer corps. In terms of civil-military relations, Huntington takes the notion of professionalism to be at the heart of what he calls 'objective civilian control' of the military (Huntington 1957, 83–85 and passim). In more recent times Huntington helpfully summarises the features of objective civilian control as follows:

> This involves: 1) a high level of military professionalism and recognition by military officers of the limits of their professional competence; 2) the effective subordination of the military to the civilian political leaders who make the basic decisions on foreign and military policy; 3) the recognition and acceptance by that leadership of an area of professional competence and autonomy for the military; and 4) as a result, the minimization of military intervention in politics and of political intervention in the military. (Huntington 1995, 9 – 10)

The key consequence of this professionalism-driven model is, in Huntington's account, that it provides a way to weaken the military politically (by keeping it out of political matters) while at the same time allowing it to be strong militarily, thereby ensuring both civilian control and military effectiveness (Huntington 1957, 83 – 85).

Because his focus is more sociological than political, in many respects Janowitz's approach is not a competitor but is rather a complement to Huntington's theory. Perhaps the main difference between these theorists' views regarding civilian control of the military relates to their views of professional autonomy. Huntington argued for a strict separation between the values of the military profession and those of liberal civil society, and believed that the imposition or infusion of liberal values into the military would undermine its military effectiveness. Writing as he was in the context of the US participation in the Cold War, and with this belief about liberal values in mind, Huntington saw a real crisis looming on the horizon. He believed that in a time of war the only way a liberal society can meet a serious threat is by suspending its liberal values for the period of that war. In the case of the Cold War, however, which he recognised as being likely to be a long-term feature of international relations, he believed the only hope for survival was for liberal values to be jettisoned altogether, and for the US to become a conservative republic.

In contrast to this view Janowitz argued that the distinction between war and peace was becoming increasingly difficult to draw in the modern world, and that military forces were increasingly becoming 'constabulary forces' rather than the traditional warfighters of old. As a result, he argued, the professional soldier, while remaining in

important ways distinct from his civilian counterparts, must become politically aware, and must of essence therefore absorb many of the values of the society he serves. This is sometimes describes as 'subjective' civilian control (see for example Williams 1995). He also described how the rise of bureaucratization and the increasing dependence on technology in the military produced additional constraints on the autonomy of the military professional.

What is common to Huntington and Janowitz is that for both of them civilian control of the military is assured by the military's professionalism, defined in terms of voluntary submission to civilian authorities – in Huntington's case, submission based on the incentive of civilian non-interference in the military realm; and in Janowitz' case, submission based on shared values. In this respect, then, Peter Feaver seems correct when he writes that "The tradition inspired by Moris Janowitz provides an important counterweight to Huntington, but on the crucial question of how civilian institutions control military institutions on a day-to-day basis the Janowitzean school does not represent a significant alternative to Huntington" (Feaver 2003, 2). In what follows I will outline Feaver's own theory, which I will argue represents and important advance over Huntington's approach.

Feaver's Agency Theory

Feaver makes it very clear from the start of his book that of the two aspects of civil military relations outlined at the beginning of this chapter – the fundamental issue of establishing and maintaining civilian control over the might of the military, on the one hand, and the day-to-day control over policy decisions on the other – it is the latter at

which his Agency Theory is directed. This remains, however, a central problem for the democratic state. For though it is not its physical coercive power that causes the military to be a challenge in this regard, the military nonetheless also wields power in other forms – its claim to special expertise in military matters, the general prestige of the military, and so on. Apart from the practical dangers, this also poses a danger to the principle of democratic governance – that in a democracy the citizenry by definition retains the right to decide, through their elected representatives, on all matters of state, even on matters in which experts (such as the military[58]) may have greater expertise. As Feaver neatly puts it, "In a democracy, civilians have the right to be wrong" (Feaver 2003, 65).

Feaver focuses on comparing his theory with Huntington only. Janowitz is set aside because, "when it comes to understanding the day-to-day political management of the military, the Janowitzean approach does not differ from the Huntingtonian on any fundamental issue" (Feaver 2003, 9). The central difference between Feaver and Huntington is that, while not declaring these irrelevant, Feaver's focus is not on nonmaterial determinants of behaviour (such as beliefs, norms and identity), but on material factors. For Huntington the central variable in civil-military relations is one of *identity*, the identity of the military officer as a professional.

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[58] As Feaver points out (Feaver 2003, 300), there is some evidence that the general presumption that the military is more likely to be correct than civilians on questions of national security is not necessarily the case. In this Feaver points particularly to Eliot A. Cohen's important work *Supreme Command* (Cohen 2002). Feaver comments as follows:

"History shows that the military is not as "right" in civil-military disputes as the military triumphalists might suppose. But even when the military is right, democratic theory intervenes and insists that it submit to the civilian leadership that the polity has chosen. Let civilian voters punish civilian leaders for wrong decisions. Let the military advise against foolish adventures, even advising strenuously when circumstances demand. But let the military execute those orders faithfully. The republic would be better served even by foolish working than by enlightened shirking." (Feaver 2003, 302)

Against this Feaver builds a model that draws on principal-agent theory, a framework widely used in economic and political analysis. Its goal is to address problems of agency, particularly between actors in a position of superiority or authority (principals) and their subordinates (agents). The classic case is perhaps the employer-employee relationship. In such cases the goal of principal-agent theory is to address the problem of how the employer ensures that the employee does what is required of her, or in other terms, how the employer ensures that the employee is 'working' rather than 'shirking'. Feaver argues that civil-military relations can be seen as "an interesting special case" (Feaver 2003, 12) of the principal-agent relationship. Because this 'special case' has features that are unique and not broadly applicable to other principal-agent relationships, Feaver coins the term 'Agency Theory' to describe it (Feaver 2003, 55).

At the heart of Agency Theory is the idea that civil-military relations is essentially a form of strategic interaction between civilian masters (principals) and their military servants (agents). In that strategic interaction civilians choose methods by which to monitor the military. What methods are chosen depends on what expectations the civilians have about the degree to which the military will submit to their authority. Submission or obedience, is, in Feaver's terminology, 'working', while rebellion or refusal to obey is 'shirking'. "The military decides whether to obey in this way, based on military expectations of whether shirking will be detected and, if so, whether civilians will punish them for it. These expectations are a function of overlap between the preferences of the civilian and the military players, and the political strength of the actors" (Feaver 2003, 3).

It's worth pausing here to consider more closely what Feaver means by the terms 'working' and 'shirking'. 'Working' is relatively unproblematic – an agent is working when she is diligently pursuing the tasks assigned to her by her superior. In the case of the military, the military is working when it diligently seeks to fulfil the wishes of its civilian overseers. 'Shirking', in this context, means more than simply failing to work. For the military may be vigorously pursuing military and/or policy goals, but it will still be shirking if those goals do not correspond with the desires of the civilian principal.

'What civilians want' is of course a complex and multidimensional issue in the context of civil-military relations, far more so than in the traditional economic applications of principal-agent theory. Feaver points out that, in structural terms, the desires of the civilian principal can be viewed as two-fold. Firstly, civilians want to be protected from external enemies. Secondly, they want to retain political control over the military, and ensure that it is in fact the civilian principal that is making the key decisions about the military and its activities. Feaver calls the first of these the 'functional goal', and the second the 'relational goal'.

In principal-agent theory terms, the problem of getting the agent to work in the desired manner is called the 'moral hazard problem'. Feaver points out that in the general literature on principal-agent theory, there are two distinct opinions in this regard. On the one hand there are those who contend that the best way to ensure that the agent is working is by applying the best available monitoring system. On the other hand there are those who believe that the superior approach is to implement measures aimed at adjusting the agent's preferences to increasingly coincide with those of the

principal. Feaver's theory draws on insights from both. Importantly, Feaver adds an important additional consideration that is seldom addressed in principal-agent theory, namely "how agent behavior is a function of their expectation that they will be punished if their failure to work is discovered; traditional principal-agent treatments assume punishment is automatic but … I argue … that assumption must be relaxed when analyzing civil-military relations" (Feaver 2003, 56).

Envisaged in this way, civil-military relations are viewed as a game of strategic interaction in which each side attempts to achieve outcomes that maximally promote that side's interests. This is clearly a significantly different approach to that favoured by Huntington and Janowitz, where nonmaterial factors such as identity and moral commitments arguably play the central role. These factors are not, however, irrelevant to Agency Theory. Instead, Feaver argues, Agency Theory provides a framework of analysis against which the influence of these factors may be measured and assessed. In particular they can be understood in terms of the attempt to seek convergence between the preferences of the civilian principal and the military agents.

The preference for honour is one of three preferences that the military agent is assumed to hold by Agency Theory. Another is the preference for specific policy outcomes. This is different to the usual principal-agent relationship, where the agent generally has no interest in which economic policy is pursued by the principal. The military agent, on the other hand, has a preference for policies that do not needlessly risk his life. In addition, the military agent has a preference for policies that give overwhelming supremacy on the battlefield. The last basic military preference is one for maximal autonomy, which translates in large part into a desire for the

minimisation of civilian interference in military affairs. All of these preferences can lead the military to attempt to influence policy in ways that undermine civilian control. In terms of democratic governance, this is pernicious even when such interference leads to better security arrangements than would otherwise have been achieved. Dealing with this is made all the more difficult by the fact that the military agent carries a particular moral status – her willingness to make the ultimate sacrifice for her country acts in some sense as a moral counterweight to the civilian principal's political competence. As a consequence, "the moral ambiguity of the relationship bolsters the hand of a military agent should he choose to resist civilian direction" (Feaver 2003, 71-72).

The other central problem for civil-military relations, in terms of Feaver's principal-agent derived theory, is the 'adverse selection problem'. This is the problem facing the principal in selecting which agent to contract with to undertake the required task. The agent has a strong incentive to portray herself as being far more diligent than she is, in order to ensure that she is contracted, which complicates the principal's task of selecting the best possible agent for the job. In civil-military terms the task is one of leadership selection – which potential senior officers are most likely to lead the military to work rather than to shirk? The special nature of the military context gives this problem a unique twist. Feaver seems right to point out, for example, that it is 'at least plausible' that the sort of personality that is advantageous on the battlefield is by nature problematic in terms of the principal-agent relationship (Feaver 2003, 72). Indeed, as we have seen, this is one of the central reasons that Huntington stresses a sharp differentiation of the civilian and military spheres.

So described, Feaver's Agency Theory offers a very useful descriptive framework by which to understand civil-military relations. In the next section I turn to a consideration of the main advantages that arise from the application of Agency Theory.

Agency Theory: General Advantages

At its most basic, the notion of professionalism as Huntington uses it raises questions of circularity. For the defining feature of military professionalism, in Huntington's account, is that of voluntary submission to civilian authority: "A highly professional officer corps stands ready to carry out the wishes of any civilian group which secures legitimate authority within the state" (Huntington 1957, 74). This obviously raises questions about definitional circularity – objective civilian control is defined in terms of military professionalism, while military professionalism is defined as voluntary submission by the military to civilian control. Another problem with Huntington's approach, as Kohl points out, is that "while "objective" civilian control might minimize military involvement in politics, it also decreases civilian control over military affairs" (Kohn 1997, 143).

The most obvious advantage of Agency Theory is that it introduces material factors into the account, something that is clearly missing from the theories proffered by Huntington and Janowitz, while at the same time not excluding the nonmaterial factors (like identity and moral commitments) highlighted by these theorists. That this matters is demonstrated convincingly by Feaver in the central chapters of *Armed Servants*, where he shows that Agency Theory fits far more closely with real-world

civil-military relations – the cases of Cold War and post-Cold War civil-military relations – than its main rival, Huntington's theory of 'objective civilian control'.

By contrast, Agency Theory offers both a means of accurately measuring civilian control of the military, and mechanisms for addressing the constantly-threatened imbalance in the civil-military relationship. These control and monitoring mechanisms address the issue that is at the heart of both the moral hazard and the adverse selection problems – information – by providing means whereby the principal can cause the agent to reveal the necessary information, or else by adjusting the incentives on offer to the agent in ways that can give the principal confidence that the agents preferences are in line with those held by the principal.

Among the central means of monitoring singled out by Feaver are the following (Feaver 2003, 76 – 85):

1. **Restricting the scope of delegation to the military**. Devising strategy, drawing up operational plans, directing the equipping and provisioning of the military, and setting rules of engagement are among the means civilians can employ to achieve this.
2. **Contractual incentives**. This less intrusive approach 'builds in' incentives to the contract between the principal and the agent. Feaver points out that the military's desire for autonomy might well fit here. "Since monitoring mechanisms vary in their degree of intrusiveness, and assuming that the military prefers less intrusive means, civilians have a powerful incentive with which to influence military behavior:

offer to use less intrusive means to monitor military agents" (Feaver 2003, 78).

3. **Screening and selection mechanisms**. Such mechanisms (referred to as 'accession policy', in the military context) enable civilians to address the adverse selection problem, and also provides (in a relatively unintrusive manner) information that can help the civilian in predicting the future behaviour of the military agents thereby selected.
4. **'Fire alarms'**. These are third parties who have an interest in the behaviour of the agent in question, and who therefore monitor the agent. In the civil-military context it is primarily defense-orientated think tanks and the media that play this role, but other less formal groups (such as draftees in a conscription-based military) can play the same role. Interservice rivalry can also function in this way.
5. **'Police patrols'**. This describes principal-initiated investigations of the agent, such as (in the civil-military context) audits and public hearings, and is a significantly more intrusive form of monitoring than those already mentioned.
6. **Revocation of delegated authority**. Where necessary, civilian principals retain the option of withdrawing authority that has previously been delegated to the military. This can either be a complete withdrawal (by, for example, re-delegating a particular area of responsibility to a competing arm of the state, such as the police or intelligence community), or a partial withdrawal, in which the civilian agency involved takes on greater powers over, for example, the

> planning of military operations. This is the most intrusive form of monitoring.

These monitoring mechanisms are general features of most accounts of the principal-agent relationship, though obviously their specific application to the civil-military context is new. What sets Agency Theory apart from other principal-agent theories, however, is the close attention that is given to punishment mechanisms. The general principal-agent literature tends to take punishment for granted. But this is clearly significantly more difficult in the context of civil-military relations, due to the unique coercive power that is incumbent in military forces. As Feaver points out, history is replete with examples of *coups* that have been triggered by an attempt to punish the military for some or other indiscretion. Thus the first question here is whether or not civilian principals can in fact punish the military. In what may be viewed as a major concession to Huntington, Feaver expressly sidesteps this question, arguing that it is not relevant in a discussion of Agency Theory, which takes as given a relationship in which the military understands itself in the role of the agent, subservient to its civilian masters. (Feaver 2003, 89) Nonetheless, Feaver makes his own view of the prerequisites for punishment mechanisms in the civil-military context very clear, when he writes that

> the power to punish rests on a normative foundation – that is, the willingness of the military to be punished – and this normative foundation is thus a prerequisite for democratic civil-military relations. It exists in the United States and other advanced democracies but not necessarily in all countries. As

discussed in the concluding chapter, this may limit the applicability of the agency model to other countries. (Feaver 2003, 90)

This is an important qualification of Agency Theory, one to which I shall return in the next section.

Where punishment is a possibility, there are, Feaver argues, a wide range of punishment options available to civilians, which generally fall into the following five categories (Feaver 2003, 90 – 93):

1. **Intrusive monitoring**. As described above.
2. **Budget cuts and withdrawal of privileges**. Given that shirking often involves offering inflated estimates of threats and costs in order to boost the military's share of the national budget, this is often a particularly appropriate punishment mechanism.
3. **'Forced detachment from the military'**. This is the military equivalent of 'firing' a shirking agent. The US military's 'up-or-out' career path system, in which military personnel who do not achieve promotion within a set time-limit are discharged from the service, is one mechanism of this kind. Another option available in the US military system is that of forcing a disgraced officer to retire at a rank lower than that achieved, which again results in a significant financial loss.[59]

[59] A recent example of this is the case of Janis Karpinski, who was the Brigadier General in command of the Abu Ghraib prison, but who was demoted and dismissed from the service at the rank of Colonel.

4. **Military justice**. Military law, such as that encapsulated in the Uniform Code of Military Justice, provides for a range of punishments (including dismissal and imprisonment) that can be applied to transgressing military agents.
5. **Extralegal civilian action**. There are a range of actions a civilian principal can take beyond the legal system that can be quite effective, such as publicly reprimanding military agents.[60]

These mechanisms for monitoring and punishment represent a clear advantage for Agency Theory over its rivals, which offer no framework of this kind. In terms of analysis, the practical value of Agency Theory is clear. Feaver is correct when he writes that "[a]gency theory cues us to look for certain things and to ask certain questions in a case study and thereby illuminates the give and take of day-to-day civil-military relations in ways that a straightforward journalistic account might miss" (Feaver 2003, 234). Furthermore, Agency Theory offers a way of understanding civil-military relations that extends beyond the traditional concern with coups to the everyday strategic interactions between the military agent and the civilian principal. The presumption that the military will desire to shirk – where this is understood as more than simply disobeying orders – is an important one, and emphasises the need for civilians to be constantly vigilant. In addition, Agency Theory offers a means of systematically analysing historical examples of civil-military relations, which Feaver himself does very thoroughly in his analysis of Cold War and Post-Cold War US civil-military relations.

[60] In addition to these five categories of punishment, Feaver muses that, under some circumstances, war itself, which can inflict significant hardship on the military, might be understood as a form of punishment. He concludes, however, that war is too rare an occurrence for this to be considered a meaningful punishment mechanism.

It is also clear that Agency Theory, as outlined by Feaver, offers scope for further development, and can incorporate insights from other theories (such as Huntington's) without changing its basic structure. This flexibility is important in the context of today's rapidly changing security environment, in which military forces are increasingly deployed in unfamiliar roles, with potentially unexpected results for civil-military relations. Related to this is another advantage of Agency Theory, namely that it "preserves the civilian-military distinction – the sine qua non of all civil-military theory – but without reliance on an ideal-type division of labor. And it preserves the military subordination conception essential to democratic theory, without assuming military obedience" (Feaver 2003, 10).

Clearly then, there are good reasons for considering Agency Theory to be among the most useful frameworks for the analysis of civil-military relations – at least in the day-to-day strategic interactions between the military agent and the civilian principal – currently in existence. An important question remains however. Given Feaver's own restrictions of the scope of Agency Theory to mature democracies where there is a normative presumption of civil control of the military, how applicable is it in dealing with the possibility of coups? Our purpose in analysing Agency Theory is to assess it's general utility, but with a particular eye to its possible application to private military companies. Given that there is genuine concern among analysts and the public that private military companies might overthrow legitimate governments, it is essential that Agency Theory be able to deal with the possibility of coups and attempted coups if it is to be of utility for this project.

Agency Theory and Coups

Because Feaver's focus is on US civil-military relations, he is careful to emphasise that his conclusions regarding the applicability of Agency Theory can only be seen as applicable in mature democracies like the US, where the submission of the military to civilian authority is a normative presumption. That disclaimer in place, Feaver also recognises that the obvious next step for Agency Theory research is to examine whether it is applicable in less stable democracies, where the threat of coups is a real one. Although Feaver doesn't attempt any kind of systematic answer to this question, it seems that his intuitions lead him in different directions. On the one hand, he stresses the connection between Agency Theory and the normative presumption of civilian oversight mentioned above. (Feaver 2003, 90) On the other hand, despite his laudable conservatism in not extrapolating results beyond the scope of his investigation, he is unable to completely restrain a cautious optimism on this point:

> Agency Theory may even make some contributions to the study of civil-military relations in countries where the threat of coups is real. After all, a coup represents the ultimate in shirking – reversing the principal-agent relationship so that the old agent (the military) becomes the new principal (the dictator). Pathological civil-military interactions within the agency framework could end up in a coup. (Feaver 2003, 293)

Despite this flash of optimism, Feaver immediately expresses his belief that if Agency Theory were to be applied to 'coup-ridden' states it would require significant modification. It is on this point that I find myself for the first time in disagreement

with Feaver. For the essence of the principal-agent relationship is that it is a 'game' of strategic interaction between two parties, where each party is presumed to be seeking dominance. Thus, as long as both parties exist (i.e. where civilian government is real rather than just a front for the military) then there will be the 'game' of strategic interaction between the two, and therefore there is a good prima facie reason to believe that Agency Theory will be applicable. The central question is whether, under such conditions, civilian monitoring and punishment is possible. Even where it is not, measuring such cases against Agency Theory enables a clear and objective judgement about civil-military relations in that particular state to be made.

One example will suffice. An important recent study by Patrick J. McGowan of coups in West Africa between 1955 and 2004 leads him to conclude that "[i]n contrast to the rest of the world, where "coups became less common and less effective from the 1970s onward," West Africa remains the most coup-prone region in the world" (McGowan 2006, 238). A significant factor in the cycle of coups in West Africa, according to McGowan, is the structure of military forces, which tend to break down into factions. McGowan quotes Decalo who points out that "many African armies bear little resemblance to a modern complex organizational model and are instead a coterie of armed camps owing primary clientelist allegiance to a handful of mutually competitive officers of different ranks seething with a variety of corporate, ethnic and personal grievances" (quoted in McGowan 2006, 238). Agency Theory offers a ready framework to see why such a military structure makes coups more likely. Such conditions make monitoring and punishment of the sort outlined by Agency Theory very difficult, and thereby increase the likelihood of shirking among the military.

McGowan's study also brings to light some interesting data on what factors seem to have decreased the likelihood of coups in West Africa. A crucial factor seems to be the quality of the political leadership in the countries concerned. In this regard he writes of the recent history of Cape Verde, Senegal, Ghana and Mali as follows:

> What clearly does make these four states different from the rest of West Africa is the quality of their political leadership since independence in the cases of Cape Verde and Senegal and since the coups that brought Jerry Rawlings and Amadou Touré to power in Ghana and Mali. Senegal has benefited from three presidents who rank among Africa's most accomplished statesmen: Presidents Senghor (1960-1980), Diouf (1981-2000), and Wade (2000–). It is noteworthy that President Diouf made an up-to-then-unprecedented military intervention in Gambia in 1981 to suppress what otherwise would have been a successful coup against President Jawara. Presidents Pereira and Monteiro stepped down after losing democratic elections in CapeVerde in 1991 and 2000. Pereira strongly opposed the first successful military coup in Guinea- Bissau in 1980, broke diplomatic relations, and removed from the Cape Verde Constitution provisions relating to an eventual union between the two counties. (McGowan 2006, 248 – 249)

Once again Agency Theory provides a ready answer for why this is the case. The strong political leadership referred to here is precisely the sort of factor that Agency Theory would predict as being likely to lead to success in the civil-military realm, given that civil-military relations is at heart a strategic interaction between the civilian principal and the military agent. Furthermore, the *type* of strength involved in this

leadership is important. This is not 'strong man' leadership, but rather leadership that willingly emphasises and devolves power to democratic institutions. These are precisely the conditions that optimise the possibilities for the operation of the types of material factors outlined in Agency Theory.

An important factor that Feaver has overlooked is the fact that, even in states where there is no presumption that the military will submit to civilian oversight, and where civilian governments have few resources with which to apply coercive power over military agents, these civilian governments can still put into place both monitoring and punishment mechanisms, *by means of its involvement in regional organisations.* In the African context organisations like the African Union and SADC offer a prime example. Such organisations include principles and commitments that have a direct impact on military subservience to civilian governments. Take for example Operation Boleas, the 1998 SADC intervention in Lesotho, which was a response to a suspected coup. The justification for that intervention was explicitly an appeal to a clear SADC principle rejecting the military overthrow of civilian governments. The AU has shown a similar commitment to this principle – in recent times, for example, Mauritania has had its membership of the AU revoked as a result of a military coup in 2005. Furthermore, the AU has in its toolbox the African Peer Review Mechanism which seems to give ample scope for the monitoring of civil-military relations. Punishments available to address transgressions of accepted norms of military submission to civilian authority could range in severity from military intervention to oust the coup plotters (as in the case of Lesotho), sanctions, and diplomatic censure – where coups have actually taken place – to more limited measures that affect only the military directly, for less serious forms of shirking. Examples of these limited measures could

include ejection from prestigious regional military arrangements such as the AU standby battalions, withdrawal of training and other assistance, expulsion of officers of the offending military from military colleges in other countries, and the like.

McGowan, albeit cautiously, affirms a similar view from the perspective of his empirical study of coups in West Africa. In this regard he points out that:

> the new African Union (AU) and the New Partnership for Africa's Development explicitly reject military coups and military rule and were able to reverse a successful coup in Sao Tome and Principe in July 2003, although such pressure did not work to reverse Francois Bozize's successful coup in the Central African Republic in March 2003. This pan-African initiative may have discouraged some West African militaries from plotting and attempting coups. However, the claim that "the days of the coup in Africa are numbered and while the response may be a little slow and a little ad hoc, the AU will do what it can by any means necessary to ensure that regime changes take the form of legitimate expressions of the will of the people" seems premature at this juncture because the AU does not have the capacity to compel democratic behavior as shown by the successful coup in Mauritania on August 3, 2005. This said, if foreign-aid-donor nations would cooperate with the AU and withhold aid from any country that experiences a coup, "together, they could help make African coups a scourge of the past."(McGowan 2006, 242)

As McGowan's analysis implies, focusing on the lack of impact of regional organisations in recent history in Africa misses the point. The point is that such

actions are *conceptually possible*, and in some cases have been actualised. Punishing coups can be done – how much punishment results, and how much of a deterrent there is against coups as a result, depends on how seriously civilian principals take the threat and how much they are prepared to invest in the deterrent.

Thus there seems good reason to reject Feaver's claim that "Agency Theory is only applicable in those settings where the military conceives of itself as the agent of the civilian; crucial to that conception is a recognition of the civilian's right to sanction, and hence an explicit commitment to submit to sanctions" (Feaver 2003, 89). More important than this is the possibility of monitoring and punishment mechanisms even in cases where the military's commitment to principles of civilian oversight are limited or even non-existent, and as we have seen this is a real possibility.

A further advantage of Agency Theory in the context of weak democracies like those common in Africa lies in its value with regard to attempts to 'democratise' military forces that have traditionally existed as part of totalitarian regimes. Democratisation programmes, given the Huntingtonian orthodoxy, have tended to focus on inculcating a professional ethos among the officers of the military in question. While there is undoubtedly value in such training (which, as we have seen above, can be incorporated into the theoretical matrix of Agency Theory), this can only be seen as a long-term strategy, for such values take time to become embedded into the ethos of a military force. In the shorter term, a clear grasp of the monitoring/punishment relationship described by Agency Theory can allow for immediate implementation of practical mechanisms for the oversight of the military. The presumption that the military will desire to shirk is a particularly useful one in such contexts.

It seems therefore that there are good reasons to believe that Agency Theory is flexible and robust enough to address situations in which the threat of coups is a very real one. It is clear, also, that the Agency Theory represents a major advance over the Huntingtonian orthodoxy in understanding and managing civil-military relations. In the next two chapters I present an Agency Theory based evaluation of the impact of private military companies on civil-military relations, or what I describe as civil-(private) military relations.

Chapter Four

Civil- (Private) Military Relations: The Strategic Challenge

"[Private Military Companies] challenge one of the basic premises of the study of international security: that states possess a monopoly over the use of force, and thus the study of security can be based on the premise that states constitute the sole unit of analysis" (Singer 2003, 233)

As we have seen, although the private provision of military services is by no means a new phenomenon, what is new in our era is the fact that many Western governments are increasingly seeing private military companies as legitimate service providers. This shift has troubled many commentators in academia and the policy world, for a range of different reasons. One of the central concerns that is regularly voiced is the worry that the outsourcing of traditional military functions into private hands could potentially undermine civil-military relations. Given the traditional view of civil-military relations, one defined by Samuel Huntington in his classic book *The Soldier and the State*, it is hardly surprising that this should be a cause for concern. Following this orthodoxy, the central determinants of appropriate civil-military relations are 'soft' factors, primarily such features as military professionalism, honour and a culture of submission to civil authority. Clearly, while private military companies may sometimes display these features, there is no particular reason to think that they will. Elke Krahmann expresses this concern well when she writes that,

> High levels of mutual interpenetration and common identity are regarded as supportive of democratic civil-military relations because they increase the

> commitment of the armed forces to the defence of their society, ensure that the military shares societal norms and beliefs, and facilitate support of government policies. The model of the private military contractor undermines these historically established means of democratic control in a number of ways and thus requires a revision of traditional civil-military relations. (Krahmann forthcoming 2008)

However, as we saw in the previous chapter, Huntington's approach has been challenged by a new theory of civil-military relations, one advocated by Peter Feaver. Feaver's 'Agency Theory', while recognising the importance of the soft factors so central to Huntington's approach, also recognises the importance a range of 'hard' determinants of whether military forces submit to democratically elected civilian leadership. It is the central hypothesis of this thesis that Agency Theory provides a superior analytic tool for addressing the question of appropriate relations between private military companies and democratically elected governments. In this chapter and the one that follows, I will attempt to show that, rather than the blanket condemnation of private military companies that seems to result from the application of Huntington's model of civil-military relations, Agency Theory provides a far more agile tool that can advance the debate over military privatisation by giving a significantly more fine-grained account of what is necessary for appropriate civil – private military relations. As Singer points out, this kind of analysis is largely missing from the academic literature:

> From its very beginning, the underlying basis of current civil-military relations theory has been fairly simple. Essentially it is a story of balancing proper

> civilian control with the military professionals' need for autonomy to do their jobs properly. Although ongoing debates over where exactly these lines of control should be drawn, the whole of civil-military relations theory, regardless of its viewpoint, sticks to this general assumption of a dualistic balance between soldiers and state. Presently, civil-military relations theory does not fully account for any potential role of external, third-party influences on this two-sided structure. (Singer 2003, 196)

It is critical that this analysis be carried out, in order to ensure that we avoid falling into the trap, pointed out by Musah and Fayemi, of those scholars "who see the use of today's mercenaries as the effective antidote for insecurity in zones of complex emergencies, but pay little or no attention to the subversion of the very state sovereignty the mercenaries claim to protect" (Musah and Fayemi 2000, 27).

In this chapter I begin this analysis by considering the more general features of Agency Theory and their applicability to civil- private military relations. The following chapter examines the specific issues of monitoring and punishing the private military agent, in the light of Agency Theory.

Civil-military relations, contracting, and delegation

As we have seen, Feaver argues convincingly that civil-military relations are essentially a strategic interaction between civilian governments and the military, which civilians create and contract with for the purpose of protecting society from its enemies (and, we might add – beyond Feaver's own account – for the purpose of

pursuing some of the civilian government's policy goals). "It is strategic interaction because the choices civilians make are contingent on their expectations of what the military is likely to do, and vice versa" (Feaver 2003, 54). The relationship is also a hierarchical one, particularly in democratic societies where it is a core principle of democratic theory that the military be subservient to the elected representatives of the populace. The purpose of this section of this chapter is to consider whether or not there is any substantial difference in the nature of the essential relationship between civilian principals and state military agents, on the one hand, and that between civilian principals and private military agents on the other. Critics of the private military industry have strongly expressed their concerns in this regard. Elke Krahmann, for example, expresses deep concerns over the effects of "disconnect between military service and duty to the state" (Krahmann forthcoming 2008), while Herfried Münkler expresses the opinion that

> a continuation of this tendency [towards military privatisation] would have enormous political consequences, as the armed force would be subject to weak control by governments (linked only by the employment relationship). ... Privatized warfare would rapidly take on a disastrous life of its own, in accordance with the laws of the market. (Münkler 2005, 134 – 135)

In what follows I shall begin to explore whether such concerns are justified.

A key commonality, but one that is not necessarily obvious when civil-military relations is viewed outside of the Agency Theory framework, is that in both cases the relationship is one of *delegation*. This is most obvious in the case of the private

military company, for the notion of delegation is built into the very essence of the commercial contract. As Feaver points out, however, the same goes for the state military: "In the civil-military context, the civilian principal contracts with the military agent to develop the ability to use force in defense of the civilian's interests" (Feaver 2003, 57). This is an important point to recognise, for the essential objection made by many opponents of military privatisation is that it is inappropriate to delegate military tasks to non-governmental organisations. Peter W. Singer, for example, writes that

> [w]hen the government delegates out part of its role in national security though the recruitment and maintenance of armed forces, it is abdicating an essential responsibility. When the forms of public protection are hired through private means, the citizens of society do not enjoy security by right of their membership in a state. Rather, it results from the coincidence between the firm's contract parameters, its profitability, and the specific contracting members' interests. Thus, when marketized, security is often not about collective good, but about private means and ends. (Singer 2003, 226)

However, once it is recognised that state military forces are distinct organisations to which elected civilian governments delegate some of the responsibility of protecting the state and pursuing the state's vital interests, it is hard to see how this can stand as a meaningful objection. For delegation is the essence of democracy: citizens delegate to their elected representatives the responsibility to rule, and those representatives in turn delegate to others the specific tasks that must be carried out in order to actualize that rule. These relationships can also be expressed in terms of *contracts*, as in social

contract theory. The form of the contract between the civilian principal and the military agent may look somewhat different to more standard contractual arrangements – involving as it does various cultural rituals, symbols and honours – but a contract it is nonetheless.

Feaver points out that "[t]he primary claim of the principal-agent literature is that delegation need not be an abdication of responsibility" (Feaver 2003, 55). This is because delegation need not mean a loss of control. As we shall see, a number of means are available to civilian principals by which to make state military agents to do what they are supposed to do. In the next chapter I will examine whether these monitoring and punishment mechanisms can be applied in the case of civil- (private) military relations. Before doing that, however, it is necessary to establish whether private agents alter the fundamental strategic relationship that generally holds between military forces and civilian agents. In so doing it is important we keep in mind Avant's point that "There is generally some loss of control, or slippage, associated with *any* delegation; the question should not be how private choices compare with an ideal relationship, but how they compare with other available options" (Avant 2005, 43).

What underlies the strategic relationship between civilians and the state military is the fact that there is a strong likelihood of a divergence of preferences between the two parties. This is the essence of the principal-agent problematique. Although there may at times be shared preferences among both parties, the very nature of the two-sided relationship opens up the potential for divergence. Various factors contribute to this

potential – differing views of what national security goals should be, differing views of how to pursue those goals, the natural desire for the military to build the biggest 'empire' possible, the natural desire of the civilians to limit the size and scope of the military to what they deem is necessary to achieve security, and so on. As Feaver points out, "the military has the ability and sometimes also the incentive to respond strategically to civilian delegation and control decisions – in the jargon of principal-agency, to shirk rather than to work" (Feaver 2003, 57). This defines the strategic relationship on the military's side. On the other side, the civilian principal has the desire to ensure that the military works rather than shirks, and so sets out to set in place mechanisms for making this so. Feaver sums up the results as follows:

> In sum, civil-military relations is a game of strategic interaction. The "players" are civilian leaders and military agents. Each makes "moves" based on its own preferences for outcomes and its expectations of how the other side is likely to act. The game is influenced by exogenous factors, for instance the intensity of the external threat facing the state made up of the players. The game is also influenced by uncertainties. The civilians cannot be sure that the military will do what they want; the military agents cannot be sure that the civilians will catch and punish them if they misbehave. (Feaver 2003, 58)

Returning to our central concern, we must ask the question of whether this description would read any differently if Feaver had written it about civil- (private) military relations, in which the "players" are civilian leaders and private military agents? Given that Agency Theory is derived from principal-agent theory developed in the context of commercial relationships between employers and employees, and that this

is essentially the same kind of relationship as applies between civilian leaders and private military agents, there seems very little reason to think that the strategic relationship should be any different. The only significant difference between the state military and private military companies in this context is that there is generally only one official state military for any particular country (albeit one divided into different services), while there is potentially a plethora of private military companies competing for state contracts. If anything, however, this difference favours the private military companies when it comes to the application of Agency Theory. As Feaver points out, there is something anomalous in applying principal-agent theory to the issue of civil-military relations because "[t] here is not really a market of agents; the civilian cannot hire from many different militaries to do its work. The principal can create new military agents, and does so from time to time, but there is something of a monopoly in providing security"[61] (Feaver 2003, 314, note 6). Feaver argues implicitly, and I believe successfully, that this anomaly does not undermine the applicability of the principal-agent framework to the sphere of civil-military relations. But it is worth noting that no such anomaly applies to the relationship between private military companies and state employers. Instead the latter relationship is a classic case of principal-agent interaction.

In broad terms then, it seems that the basic strategic relationship between civilian principals and state military agents, on the one hand, is not significantly different to

[61] In the same footnote Feaver notes that in traditional civil-military relations "the government enjoys a monopsomy in purchasing security." It is generally held that, in terms of social contract theory, it is essential that the state hold the monopoly on violence. This is a point that is sometimes raised to argue for the illegitimacy of private military companies. It's a nice question, however, whether it is not more accurate to say that social contract theory requires the state to have a monopsomy with regard to violence. Unfortunately the constraints of this thesis do not allow me to pursue this question, though it is my hunch that this is indeed what is, in fact, implied by social contract theory. The undermining of this monopsomy seems to me far more of a threat to appropriate civil-military relations than is the loss of the state military's monopoly on force.

that between civilian principals and private military agents. In the next section I consider the specific goals civilian principals have in the context of military force, and evaluate whether there is any significant divergence here between what civilians want from state military forces and private military forces.

Functional and Relational Goals

The central challenge presented to civilian principals by the nature of the strategic relationship at the heart of civil-military relations, is the danger that military shirking will lead to significantly 'suboptimal arrangements' ranging from battlefield collapse, unwanted wars and coups; to simply placing an unwarranted economic burden on society. This problem is minimised when there is a convergence of preferences between civilians and their military agents. This can sometimes be achieved through, for example, promoting senior officers who have shown themselves to share the preferences of their civilian masters. Feaver, however, argues that there are limits to how far this goes:

> For starters, military communities have strong identities that mark them as "different" from those of civilians, and this is deliberately cultivated and signified through uniforms, oaths of office, rituals, and so on; there is, in other words, some irreducible difference between military and civilian, and this will naturally extend to different perspectives. Moreover, the civil-military difference is compounded by the different role each plays, one as principal, the other as agent; there is a *de minimis* difference in perspective that attends agency, hiring someone else to do something for you. (Feaver 2003, 60)

The range of monitoring and punishment mechanisms I will focus on in the next chapter are designed to address this unavoidable problem in civil-military relations. But a prior question to that of means of securing compliance is that of just what goals civilian principals have with which they desire military agents to comply. Feaver singles out two central goals that it can be presumed that civilian principals have with regard to military servants: "Civilians want protection from external enemies *and* want to remain in political control over their destiny" (Feaver 2003, 62). As we saw in the previous chapter, Feaver calls the first of these goals the functional goal, and the second the relational goal. These goals can be further broken down into specific tasks:

The functional goal includes the following:

1. whether the military is doing what civilians asked it to do, to include instances where civilians have expressed a preference on both the "what" and the "how" of any given action;
2. whether the military is working to the fullest extent of its duty to do what the civilians asked it to do;
3. whether the military is competent (measured by some reasonableness standard) to do what civilians asked it to do.

The relational goal can be broken down into the following:

1. whether the civilian is the one who is making key policy decisions (i.e., no de facto or de jure coup) and whether those decisions are substantive rather than nominal;
2. whether the civilian is the one who decides which decisions civilians should make and which decisions can be left to the military;
3. whether the military is avoiding any behavior that undermines civilian supremacy in the long run even if it is fulfilling civilian functional orders. (Feaver 2003, 62)

Returning to our central quest, we must ask at this point whether there is anything different here if we substitute private military companies for state military forces? Once again it is hard to see why there should be any difference here.

While the desires civilian principals have for the behaviour of private military agents appears to be little different from the desires they have for the behaviour of state military agents, there are clear differences between the preferences of state militaries and those of private military forces. One important difference here between state militaries and private forces arises from the fact that private military companies are only paid when they are deployed, while state militaries are paid even when they are not employed in their primary warfighting role. In terms of the strategic game described by Agency Theory, the ideal situation for the state military is where civilians view the threat environment as a threatening one and fund the military accordingly, but where the military does not in fact have to deploy or fight, thereby avoiding all the costs incurred. As we put it in the previous chapter, the military agent

has a preference for policies that do not needlessly risk his life, as well as for policies that give overwhelming supremacy on the battlefield. Feaver points out that this results in a danger that state militaries will use their advisory role to pump up estimates of what military power is required to resist possible threats, while also using their advisory role to minimise the number and extent of their actual deployments. As Feaver puts it, "[T]here is an exceedingly blurry line between advising against a course of action and resisting civilian efforts to pursue that course of action. Sometimes negative advice can rise to the level of shirking, especially if the advice is exaggerated" (Feaver 2003, 62).

Following the same strategic logic, it appears that private military companies will be inclined to shirk in the other direction. As they are paid to deploy and receive no income from the state when not deployed, they are likely to be prone to downplaying the likely cost of intervention while at the same time exaggerating the benefits thereof. Thus, where the state military is strategically inclined to shirk in the direction of inertia, the private military company is inclined to shirk by seeking to deploy more often than is in fact necessary. Some commentators express concern of what they see as the broader implications of this.Musah and Fayemi, for example, argue that "it is in the interest of the new mercenaries that the world remains in a perpetual state of instability" and that, as a result "their 'solutions' are often short-term" (Musah and Fayemi 2000, 28).

Does this difference amount to a significant problem when considered from the perspective of the civilian principal? I argue that it is not. The first point to note is that both preferences, if carried through, result in shirking, and so there is no difference in

the *type* of problem these preferences potentially raise. In both cases the civilian principal has a duty to make herself aware of these preferences and their potential dangers, and act to ensure that those potential dangers do not become actual. Thus, for example, a civilian principal who is aware of the private military company's potential to exaggerate the benefits of military action can employ another company to act purely as an advisor on these matters – i.e. the latter company will gain no benefit if a decision is made to deploy. The fact that the private provision of military services is competitive and involves numerous players in a market offers the civilian principal greater flexibility of this kind than when dealing with the monopoly agent that is the state military force.

A second relevant point here is that, given that in a democracy civilians 'have the right to be wrong', there should in a democratic society be a preference for agents that will be more responsive to civilian directives. Given that, as we have seen, the strategic preference of the state military is well-paid inactivity, while the strategic preference of the private military company is active employment, there seems to be at least a small reason to prefer the private agent in this regard.

A related point that favours the use of private military agents by civilian principals is the fact that private military companies have no special societal status, unlike their state military counterparts. As we saw in the previous chapter, the state military agent has a unique moral status in society, as a result of her willingness to make the ultimate sacrifice for her country. This can give the state military agent leverage should she seek to resist civilian direction. In Feaver's words, "the moral ambiguity of the relationship bolsters the hand of a military agent should he choose to resist civilian

direction" (Feaver 2003, 71-72). The private military company has no such moral status, despite potentially carrying out precisely the same missions and carrying precisely the same level of risk as the state military. Once again it seems that the private military agent is, at least in principle, likely to be more responsive to civilian direction than the state military agent.

As we saw in the previous chapter, there are two further preferences that the state military agent is assumed to hold by Agency Theory. The first is the preference for honour. As I considered this in Chapter Two, I will not address this issue in depth here. It is however worth making one additional point on this matter. As Feaver points out, "[h]onor permeates the famous concept of small-group cohesion, the factor that makes human beings willing to risk their lives" (Feaver 2003, 73). Numerous authors argue that the heart of small-group cohesion in military forces is commitment to one's buddies in the group, rather than commitment to broader ideals.[62] If this is indeed true, then there is little reason to think that private units will by their nature lack the cohesion necessary for battlefield success.

The final essential preference displayed by the state military is the preference for maximal autonomy. In Agency Theory terms, this autonomy acts as a substitute for profit sharing. Autonomy is what the state military receives in exchange for obedience to the civilian principal – this is the heart of Huntington's notion of 'objective control'. But as we saw previously Kohl points out that "while "objective" civilian control might minimize military involvement in politics, it also decreases civilian control over military affairs" (Kohn 1997, 143). The same does not go for the private

[62] See for example the account of the complexities of battle-motivation in chapter 7 of Richard Holmes' classic work, *Firing Line* (1985).

military company, where it is profit rather than autonomy that is the key preference. While this does not mean that autonomy is not a value for the private military agent, there is good reason to expect that the private military agent will be willing to trade autonomy for profit, thereby potentially increasing civilian control. Once again, therefore, it seems that the private military company looks somewhat better than the state military agent from the perspective of a civilian principal who is aware of Agency Theory.

Information Asymmetries, Adverse Selection and Moral Hazard in Civil-Military Relations

> Principal-agent relationships involve information asymmetries. Both sides share common information; in the civil-military context, they know who the domestic players are, the size of the defense budget, the general identity and nature of their enemies. They also share a common history and political memory. But each has private information that is discerned only dimly by the other. (Feaver 2003, 69)

In the case of civil-military relations, the private information held by state military forces includes expert knowledge on issues like weapons system capabilities, tactics, logistics and morale, as well as inside knowledge regarding the general attitude within the military towards the directives of the civilian principal. For civilians, the private information includes insight into political realities and preferences. Overall, however, as Feaver points out, "information asymmetries favor the [state] military agent" (Feaver 2003, 69). This is particularly so when the state military is deployed and

engaged in combat operations – the very nature of distant and chaotic engagements makes it extremely difficult for civilians to monitor the military.

Is the information asymmetry between state military forces and civilian principals matched by a similar asymmetry between private military companies and their state employers? Certainly, at the most basic level, the question must be answered in the affirmative. As Feaver implies in the quote at the beginning of this section, the very nature of the principal-agent relationship ensures the existence of some informational asymmetry. But there are significant differences between the private military company and the state military force that suggest that the asymmetry might be less pronounced in the case of the private military company. For one thing, as discussed in the previous section, the substitution of autonomy for profit in the case of the state military force increases the likelihood that the state military force will be more resistant to civilian monitoring than will the private military company. For another thing, the nature of the market for the private provision of force increases the incentive for private companies to seek to earn the trust (and therefore the contracts) of the civilian principals by making themselves as open to the civilians as possible. Christopher Kinsey, for example, argues that the future success of private military companies will be determined more on how much 'corporate social responsibility' they display than on their ability to find new markets (Kinsey forthcoming 2008). Avant agrees: "Conceptions of proper behavior, such as the codes of conduct and standards in vogue among advocates of corporate social responsibility, can be important in setting expectations and norms within which the market works" (Avant 2005, 220).

Apart from information asymmetries, principal-agent interactions in general, and civil- military relations in particular, are also afflicted by the adverse selection problem and moral hazard. As Feaver explains:

> Adverse selection refers to the moment of hiring in the employer metaphor. Has the employer hired someone who is naturally a hard worker or has he been deceived by the interview and hired a lout? Just how closely aligned are the preferences of the agent and the principal? The adverse selection problem means, in the first instance, that the employer cannot know for certain about the true preferences and capabilities of the applicant. But adverse selection is more than mere uncertainty about the applicant. It also refers to the fact that the very act of hiring creates perverse incentives for the agent to misrepresent himself, which thereby increases the chances that the principal will hire a lout: it is hard to verify the true type, and the lout has a great incentive to appear even more attractive than a good worker. … More generally, adverse selection can extend beyond the hiring phase to include all those situations in which the agent presents himself, or some proposal, to the principal for approval or decision. For instance, it means that because of their informational advantage over superiors, subordinates tend to propose policies that benefit their own interests rather than the interests of the superiors. (Feaver 2003, 72 – 23)

While adverse selection does not confront the traditional civil-military relationship in a direct way, given that the civilian principal is not faced with a choice as to which agent to employ, Feaver points out that in this context the problem appears when civilians decide on which military officers to promote to senior rank. There are

particular difficulties here because the personality of a person who is likely to succeed on the battlefield is not one that succumbs comfortably to oversight by civilians who, in military matters at least, are in all likelihood her inferiors. As Feaver observes, "[o]ne of the major concerns of traditional civil-military relations theory was precisely the great divergence of viewpoint between what Huntington called the liberal civilian ideology and the military mind" (Feaver 2003, 73).

The other area where adverse selection appears in the traditional civil-military relationship is in the budget process, in which the civilian 'selects' what warfighting capability it will pay for, on the basis of proposals put forward by state military organizations. "Again, because the military has an information advantage it can advance artfully drawn proposals that appear to meet civilian needs but in reality are tailored to its own interests. In the extreme, adverse selection might lead civilians to adopt policies they think will increase the military's ability to protect society but that in fact will increase the ability or even the propensity of the military to undermine society" (Feaver 2003, 74).

Peter W. Singer, for one, thinks that the adverse selection problem is particularly problematic for states that employ private military companies:

> This issue of adverse selection becomes particularly worrisome when placed in the context of the industry, with its layers of moral hazard and diffused responsibilities. Thus, even if PMF's are scrupulous in screening out their hires for human rights violations (which is difficult for a firm to accomplish, given that most of its prospective employees' resumes do not have an

> "atrocities committed" section), it is still difficult for them to monitor their troops in the field completely. (Singer 2003, 222)

I will examine the specifics of monitoring in the next chapter. For our purposes here the interesting question is whether the fact that adverse selection is only indirectly applicable to traditional civil – (state) military relations (because of the state military's monopoly on the provision of military forces) is something that shows that Agency Theory's applicability to private military companies is limited?

Once again the obvious rejoinder is that it is the relationship between the private military company and its civilian state employer that is the paradigm case of the principal-agent relationship, and it is the traditional civil- (state) military relationship that must be manoeuvred somewhat to fit this framework. The adverse selection problem very clearly applies when the state is choosing which private military company to employ, in exactly the same way as it applies when the state is choosing which contractor of any type to employ. This problem is exactly that, a problem. But as Feaver makes clear it is a problem that applies in the context of state military forces as well, and it is one that in that context can be addressed by some or all of the mechanisms I will consider in the next chapter. It remains to be seen whether the same or similar endeavours on the part of the civilian principal will successfully address the problem as it appears in the civil – (private) military context.

I come finally, and most briefly, to moral hazard.

> Moral hazard refers to the behavior of the employee once hired. Like adverse selection, moral hazard refers at a general level to the problem that principals cannot completely observe the true behavior of the agent and so cannot be certain whether the agent is working or shirking. It has an additional specialized meaning based on the perverse incentives in the agency relationship. Employees have an incentive to shirk rather than work; if you can get paid for doing less, why do more? The principal, of course, tries to minimize shirking because it is inefficient" (Feaver 2003, 74).

Moral hazard afflicts the civil- (state) military relationship in a more direct way than adverse selection. Because moral hazard is structurally very similar to the adverse selection problem, albeit applied downstream, it seems clear that the comments made above apply equally well here, so I will not belabour the point by repeating them.

In sum, what is missed by many critics of private military companies is that their concern over the impact of military privatisation on civil-military relations ignores the fact that civil-military relations are by their very nature fraught. Feaver's analysis leads to the expectation that "this principal-agent relationship [i.e. that between civilian principals and state military forces] should be particularly characterized by distrust and friction, and any equilibria of delegation and control are unlikely to endure, giving way to new arrangements as costs and benefits shift" (Feaver 2003, 72). As we have seen in this chapter, it appears that not only do private military companies not fundamentally part company with state military forces over the nature of their relationship with civilian principals, but on some counts private military companies also fare slightly better (from the perspective of the civilian principal)

within that relationship. Better, that is, from a broad conceptual point of view. It may well turn out, however, that things look less rosy for the private supplier of military force when the crucial and more specific issues of monitoring and punishment are considered. It is to that task I turn in the next chapter.

Chapter Five

Civil – (Private) Military Relations: Monitoring and Punishment

The civil-military relations literature, which specifically examines the control of force, reflects attention to all three dimensions of control evident in the debate over private security: functional, political, and social. Those who emphasized the functionality of force use a military's ability to deploy coercion effectively to defend the state's interests as the standard by which to measure control. Others claim that not only should forces defend the state's interest, they should do so within the bounds of received political structures. Still others have judged control by the military's fidelity to the larger social context – the degree to which the military has achieved a meaningful integration with social values. Scholars of privatization refer to a similar range of meanings when evaluating privatization's merits on other issue areas. (Avant 2005, 41)

We saw in the previous chapter that the strategic tension that is at the heart of the traditional civil-military relationship, as described by Agency Theory, is essentially the same challenge as that faced when civilian principals outsource to private military companies. In the traditional case, Agency Theory shows that this challenge is not insurmountable, and that various mechanisms are available to the civilian principal by which to manage the state military agent. As Feaver points out, "[a] central premise of political applications of the principal-agent framework is that despite all of the foregoing problems, political control does not end with the delegation decision. Civilians still have the means available with which to direct the military and thereby mitigate the adverse selection and moral hazard problems inherent in delegation"

(Feaver 2003, 75). Two main types of control mechanisms are available to civilian principals: monitoring mechanisms and punishment mechanisms. These mechanisms and their sub-variants are not to be considered as competing options from which civilians would choose one or two. Instead civilians would use a mixture which would have a cumulative effect.

In this chapter we consider whether the private military company can be controlled in a similar way to the state military force. Concerns in this respect abound, as Singer illustrates:

> Public military forces have all manner of traditional controls over their activities, ranging from internal checks and balances, domestic laws regulating the activities of the military force and its personnel, parliamentary scrutiny, public opinion, and numerous aspects of international law. [Private military companies], however, are only subject to the laws of the market. ... Other than its shareholders, there are no real checks and balances on a [private military company]" (Singer 2003, 220).

Whether or not private military companies can in principle be controlled is something I will explore in this chapter. It is however worth noting from the outset that one of the reasons some states have turned to private military forces is precisely because of difficulties in controlling state forces. Eboe Hutchful, for example writes that

> ... the phenomenon of privatisation of force paradoxically also reflects the security needs of the state itself, given its historically problematic (and

> declining) ability to project force; private armies … may replace or supplement official armies, which have proven to be difficult to control politically, as well as unreliable on the field of battle. (Hutchful 2000, 222)

Of course it may turn out that 'private armies' are by their nature even more difficult to control than state forces. It is to an analysis of this question that I now turn.

Monitoring

We saw in chapter three that Feaver outlines six main means by which civilians can monitor state military forces: restricting the scope of delegation; contractual incentives; screening and selection mechanisms; 'fire alarms'; 'police patrols'; and revocation of delegated authority. In this section I will examine each of these in turn and assess their applicability to the case of civil – (private) military relations. Singer expresses a widespread concern in this regard when he writes:

> Lost oversight is the first issue of concern. When governments engage in official military and foreign policy endeavors, the policy is held accountable by a wide range of supervision, both from within their own agencies and in the competitive branches of government, such as the legislative and the judiciary. The result is a balance that keeps each branch within the law and holds their relative power in check. … [T]his particular form of privatization removes military expertise from the realm of public accountability. (Singer 2003, 214-215)

Because the focus of this thesis is on a conceptual analysis of civil – (private) military relations, I will not here consider such issues as the cost to principals of the various monitoring mechanisms discussed. As Feaver points out, "[l]ike traditional principal-agent oversight mechanisms, these measures are costly in terms of civilian attention (not to mention dollars) but can mitigate somewhat the informational asymmetries in the civil-military relationship" (Feaver 2003, 85). If this analysis shows that similar monitoring mechanisms are available to the civilian principal in asserting control over private military companies, then it seems likely that there will be considerable costs in operationalising these mechanisms as well. It is a matter of practical policy, rather than conceptual analysis, whether or not civilians choose to pay the price necessary to have control over their military agents (whether state or private), and what degree of control civilians consider to provide the optimal balance between cost and outcome. One point is clear from the beginning – governments that choose not to engage with the private military industry give up any chance whatsoever of monitoring or controlling it. As Deborah Avant puts it: "Governments that have chosen to reduce their reliance on the private sector for sovereign tasks (such as South Africa) have abandoned their capacity to affect the development of the market's ecology" (Avant 2005, 220).

Restricting the scope of delegation to the military

> Consider the most obvious form of monitoring: restricting the scope of delegation to the military. Some degree of agency is inevitable in modern civil-military relations. Not everyone can go to the battlefield to fight. But in theory any amount of delegation short of that basic distinction is possible.

> Force management can be broken down into three broad categories: strategy, structure, and operations. These broad categories can be further broken down into still smaller discrete steps. (Feaver 2003, 75 - 76)

This form of monitoring depends on the degree to which civilians are prepared to take on some of the tasks involved in tasking and mobilising the military. This ranges from devising strategy, at the upper end, all the way down to determining specific tactics in small unit engagements (as President Johnson notoriously did during the Vietnam war). Technological advances in areas such as communications, command and control systems, satellite reconnaissance assets and unmanned aerial vehicles all offer the civilian principal far greater potential for control of this kind than has ever before been possible. There are of course dangers here. Apart from the enormous cost of providing for civilian oversight of every military move, there is the not insignificant danger that civilians will not have the necessary competence. As Feaver points out, "[i]n the extreme, overmeddling could so jeopardize the lives of the military, or the fate of the mission, that the military would turn in revolt" (Feaver 2003, 76). On the other hand, stepping right back and letting the military make every decision would amount to a de facto coup, and would also not be an acceptable arrangement.

Feaver points out that in the state military context this form of monitoring is achieved by means of such mechanisms as rules of engagement, standing orders, mission orders and contingency plans.

> Rules of engagement, in principal-agent terms, are reporting requirements concerning the use of force. By restricting military autonomy and proscribing

> certain behavior, rules of engagement require that the military inform civilian principals about battlefield operations whenever developments indicate (to battlefield commanders) that the rules need to be changed. (Feaver 2003, 77)

Like state military forces, private military companies can be (and are) monitored by restricting the scope of delegation. In the latter case, this is generally done through contractual arrangements. These contracts set the scope of what the private military company must, can, and cannot do. When changing environmental conditions require these restrictions to be amended, contracts must be renegotiated with the civilian principal, thereby alerting the civilian to battlefield conditions and the behaviour of the private military company. As with the state military, it is up to the civilian principal to decide on how tight the restraints set by the contract are.

Contractual incentives

In the broader context of principal-agent theory, one of the key means of control available to the principal to control the agent is that of building performance-related economic incentives such as profit sharing into the contract that establishes the principal-agent relationship. Given that the civil- (state) military relationship is not one to which this sort of economic incentive can be directly applied, one or more proxies must be found.[63] One option, as Feaver points out, is 'slack':

> the difference between the actual budget appropriation and the minimum cost of providing the service. Slack can be used to buy things that the agent (bureaucrat) wants, like new equipment, perquisites, and so on, but does not

[63] In some developing world countries state militaries do in fact directly involve themselves in economic ventures, often with the acquiescence of the civilian government. Where this happens, however, the effect is to reduce rather than enhance civilian control. See Howe 2001.

> actually need to provide the service. In this way, the agent has an incentive to be efficient in providing the desired service, since he can spend the slack on things he values. (Feaver 2003, 77 - 78)

But, says Feaver, slack offers no real guarantee that the agent will perform as the principal desires, and requires the principal to consistently overpay for services rendered.

If slack is problematic, then the next closest proxy to profit sharing in Agency Theory is autonomy:

> [a]utonomy is slack without a monetary denomination. Since monitoring mechanisms vary in their degree of intrusiveness, and assuming that the military prefers less intrusive means, civilians have a powerful incentive with which to influence military behaviour: offer to use less intrusive means to monitor military agents. Indeed this is how traditional civil-military relations theory treats autonomy. (Feaver 2003, 78)

This is certainly true, but it must be noted that autonomy is at best a problematic means for exerting control. In fact what it amounts to is a trade off between a loss of control over some aspects of military life in exchange for an increase in control over other aspects of the military.

No such trade-off is necessary in the case of the private military company. As we have already seen, while all organisations value autonomy, the central value of the

private military company is profit. There is therefore every reason to think that the private military company operating in a competitive environment will be quite prepared to trade autonomy for profit. Thus control is not simply shifted from one area to another, but increased overall. Avant points out some of the broad advantages of contractual incentives when she writes that

> State leaders can also use markets to generate social control. Many analyses have focused on state efforts within international organizations or regimes to set agendas, influence standards, link issues and exercise leadership to enhance the chance that policy results will reflect their values. States can also gain social control of private force, though, with their consumption patterns. Not only do state purchases of security services affect the incentives for [private military companies] to reflect that state's interests abroad, they also communicate the state's values and standards for proper behavior by a [private military company]. Through procurement and other efforts to set and communicate standards and educate the private sector as to the proper modes of security service provision, then, states can also influence the ecology of the global market for security services. States that choose not to participate in these efforts essentially give up this influence – allowing other states, IOs, INGOs and corporations to play a greater role in shaping the ecology of the global market. (Avant 2005, 68 – 69)

Screening and selection mechanisms

> A slightly more intrusive form of monitoring involves using screening and selection mechanisms to ensure that only the right sort of agent enters into the contractual relationship. This directly addresses the adverse selection problem, but it may be thought of as a relatively unintrusive information-gathering device. The way to make sure you have not hired a lout is to identify the characteristics of people who are *not* louts and then hire only them. Once you "know" the type of agent you have, you should be able to predict his behavior with greater confidence. (Feaver 2003, 78)

Once again this mechanism in the general principal-agent framework is not directly available in the civil- (state) military relations context, where the state military has a monopoly on the supply of military force.[64] The proxy in this context is accession policy, the screening and selection of recruits and the promotion of personnel who show themselves to share civilian preferences. The latter has, of course, its limitations. As Feaver points out, "Changes of administration can result in changes in the degree of convergence between the officers appointed by a previous administration and the incoming civilian leaders" (Feaver 2003, 79).

Related to accession policy is organisational culture. Military organisations, at least the established military organs of developed-world countries, are perhaps unique in the degree to which a culture of obedience is a fundamental feature of the

[64] In a few exceptional cases civilian governments are in a position to choose between similarly-capable branches of the military. In the US case, for example, the Marine Corps is a meaningful alternative to the Army for land warfare, Army Aviation's helicopter and transport assets can compete in some areas with the Air Force, and Navy and Marine Corps Aviation can also compete with the Air Force. An interesting case in point was the Vietnam War deployment of Marine Corps units in roles the Army argued they were better suited for.

organisational culture.[65] This is definitely an important feature of ensuring that state military forces 'work' rather than 'shirk'. Nonetheless, it seems clear that Feaver is right when he concludes that "Compared with agency relationships in other sectors of the bureaucracy ... civilian principals have less discretion in using screening and selection to choose military agents" (Feaver 2003, 79).

This is simply not the case with private military agents. In a competitive market for force, civilian principals have genuine choice regarding which agent to contract with, and the screening and selection mechanisms available to them are precisely the same as those generally available in the commercial market-place. This, at least conceptually, provides civilian principals with far greater flexibility in choosing an agent to do their bidding. Instead of each new administration being 'stuck' with the state military institutions it inherits, in the case of private firms the option is available to contract with an entirely new batch of private military companies.

Another point worth making here is that the broader marketplace for force acts as a screening mechanism that stretches beyond the efforts of the individual state. As Avant points out, "Even if the state is not concerned with international values, the firm, not the state, exercises control over the personnel it deploys. The firm is more likely to be concerned with international norms and the professional behavior of its personnel, particularly if acquiescence to these is important to its reputation (and future contracts)" (Avant 2005, 61). Because state forces do not operate within a

[65] The exception clause here is important. This is not the case in the military forces of new and emerging democracies (see for example Howe 2001). While many developed-world attempts to 'professionalise' military forces in such countries focus on trying to 'inject' this culture of obedience (which took generations to develop in their own militaries) into the newcomers, I argue elsewhere (Baker 2007 forthcoming) that applying the broader framework of Agency Theory provides the opportunity to put in place the 'hard' determinants of appropriate civil – (state) military relations, while giving the time for the 'soft' determinants like organisational culture to develop.

marketplace, such pressures only apply in a far weaker and indirect way to them, if they apply at all. This must, therefore, be considered to be an advantage for the private military industry.

'Fire alarms'

Fire alarms are third parties who have an interest in the behaviour of the agent in question, and who therefore monitor the agent. When the agent is believed to be shirking, the interest-group concerned alerts the principal to the alleged misbehaviour. The most important fire-alarm in the traditional civil-military context is the news media. This is one of the many reasons why a strong and independent news media is essential to a flourishing democracy. Defence-orientated 'think tanks' are also important fire-alarms, and tend to offer a greater depth of analysis than the news media and, indeed, often trigger news media 'alarms'.

In addition, Feaver singles out less formal, but nevertheless also important, groupings within the state military that contribute to this form of monitoring. In a conscription-based military, Feaver points out, "draftees, as resident civilians whose primary identity and loyalty is with civilian society, may be expected to sound the alarm if things are going awry" (Feaver 2003, 80). Conscription is increasingly rare among major state militaries. At the same time, however, the employment of reserve forces is on the increase, and it is at least arguable that reservists' dual identities also increase their likelihood of sounding the alarm when serious cases of shirking come to their attention. Another 'internal' fire-alarm that can play a role is that of inter-service rivalry. Where the state military is composed of independent services (army, air force, navy, marines and the like) of relatively similar strength and standing, competition

between these services can encourage them to blow the whistle on one another when they detect shirking. Being within the same overall military structures and being experts in the delivery of armed force means that services often do not have the same informational disadvantages as the civilian principals they serve. "To the extent that the existence of separate services makes carrying out a coup that much more difficult, the services can be treated as separate sub-veto groups" (Feaver 2003, 82). This potential benefit to civilian principals is, however, balanced by the possibility that the services will collude in order to keep their shirking from the civilians, what is sometimes known as 'logrolling'. [66]

As the slew of reports in the recent news-media testifies, private military companies are also subject to the wailing of this particular 'fire alarm', and this industry has also been the focal point of a number of in-depth research projects carried out by defence-related think tanks. In some respects, however, the nature of the private military industry makes it harder for the news-media and think-tanks to keep track of the behaviour of its constituent firms. Private military companies are numerous and come in and out of existence in a way completely unlike the arms and units of state militaries. On the other hand, private military companies have fewer means at their disposal to prevent employees from communicating with the news media. Violators cannot be jailed, for example, as can state military employees who violate direct orders. Furthermore, government contracts in a democracy are generally open to some degree of public scrutiny, which gives the news-media and think-tanks access to

[66] Feaver points out that inter-service rivalry can also be thought of as an 'institutional check': "Institutional checks are related to fire alarms, but the principal-agent literature usually treats them as distinct. An institutional check is a separate agent, established by the principal and empowered with a veto to block action of the other agent. The function of a simple fire alarm is to alert the principal, who will then intervene to punish or adjust behavior as needed. The function of an institutional check is more assertive – to block, either legally or in some cases physically, any behavior that might be considered untoward." (Feaver 2003, 81)

important information relevant to civil- (private) military relations. In addition, the competitive nature of the private military industry makes it essential that companies develop and maintain a publicly accessible profile.

It is an open question whether the employees of private military companies are more or less likely to operate as fire-alarms than draftees or reservists in state military forces. Like draftees private military contractors do not draw their identity primarily from any particular group, for as commercial agents they remain always open to being employed by another company for greater reward. What is clear is that the market for the private provision for force presents a far greater chance of companies raising alarms about one another's behaviour than does the relatively limited competition between services. In particular, competitive bidding for contracts is an excellent mechanism by which to highlight things like exaggerated risk assessments, inflated cost estimates and the like. It has of course in recent times been noted by critics of the private military industry that important contracts have been awarded on a non-competitive basis, and that this undermines transparency. Again it is important here to reiterate the point that I am addressing the question of the conceptual possibility of applying Agency Theory to civil – (private) military relations. If, in concrete policy decisions, governments choose not to avail themselves of the mechanisms for control described by Agency Theory, this in no way undermines the claim that these mechanisms are available in concept.

'Police patrols'

> The next most intrusive form of monitoring has been dubbed "police patrol" monitoring. This involves regular investigations of the agent by the principal – fishing expeditions, if you will, where the quarry is general information on what the agent is doing. Police patrols include regularized audits and intrusive reporting requirements designed to turn up evidence of agent wrongdoing and, through regularized inspection, to deter moral hazard. (Feaver 2003, 84)

In the traditional civil- (state) military context, police patrols are usually carried out by civilian employees of the nation's Department of Defence, or equivalent. In the case of South Africa, for example, it was considered an important step forward for democratic control of the South African military that a separate Department of Defence with a minister and secretariat was created in the aftermath of the 1994 transition to democracy. Feaver points out that the size of the civilian staff of the department is a good indication of the degree of monitoring of the military by the civilian principals. Inspectors general fall somewhere between the category of 'police patrol' and that of the 'fire alarm': "On the one hand, they are internal to the organization and have full audit authority; on the other hand, an inspector general's investigation is not a regularized audit and is usually triggered by some precipitating factor, like a leak" (Feaver 2003, 84).

While governments have been slow to designate officials specifically responsible for 'patrolling' the private military industry, there is no reason in principal why this could not happen. Once again it seems to be simply a matter of how much control the civilian principal chooses to exercise. Indeed, the recent controversy over the incident of 16 September 2007 in which Blackwater USA employees were accused of killing

13 civilians in Baghdad provides a telling example. In the wake of this incident Blackwater was the subject of a Congressional enquiry (the outcome of which has not, at time of writing become apparent), efforts have been made to tighten up the laws under which private military and security contractors in Iraq operate, and, in a literal example of civilian monitoring of the private military and security sector, Secretary of State Condoleezza Rice has ordered video cameras to be mounted in Blackwater vehicles, federal agents to accompany Blackwater contractors protecting Department of State diplomatic convoys, and all radio traffic involving Blackwater to be recorded.[67]

Revocation of delegated authority

The most intrusive form of monitoring outlined by Feaver takes the form of the withdrawal of some authority that was originally extended to the state military agent by the civilian principal. This can either be a complete withdrawal (by, for example, re-delegating a particular area of responsibility to a competing arm of the state, such as the police or intelligence community), or a partial withdrawal, in which the civilian agency involved takes on greater powers over, for example, the planning of military operations. In a similar way, civilian principals clearly have the option of removing responsibilities from private military companies when those companies show signs of shirking.

Punishment

[67] 'Rice Issues New Rules for Blackwater', *Associated Press*, October 8 2007. http://www.military.com/NewsContent/0,13319,151878,00.html?ESRC=eb.nl (accessed 12 October 2007)

Feaver points out that, in the general principal-agent literature, punishment mechanisms are given little attention, and punishment is largely taken for granted. In the standard economic model punishment is relatively simple – shirking agents have financial or other penalties imposed upon them or are fired. This is not, however, so straightforward in the civil- (state) military context. As Feaver points out,

> [o]ne of the distinctives of the civil-military relationship is that fact that the subordinate is almost always more powerful than the superior. This is always true in the most basic sense of brute force. It can even be true for more tangible measures of power. The military may have tremendous political power because it is an important consumer block in a market economy. Likewise, the military can enjoy a prestige that confers political power quite apart from any consideration of physical coercion. (Feaver 2003, 89)

Given the power available to state military forces, there is a real question whether civilian principals can punish their military agents unless those agents choose to accede to the punishments. The threat of coups is a real one, and one unique to the relationship between civilian principals and their military agents, whether state or private. As we saw in Chapter Two, there is no particular reason to think that private warriors would be more inclined than their state bretheren to attempt to overthrow elected governments. Indeed, given that their motives tend to be pecuniary rather than political, it may even be thought that there is less of a danger of this sort of behaviour from private warriors.

Coups aside, Feaver recognises that civilians can and do punish their state military agents, and he outlines five main means by which this can be done. As one of those means is intrusive monitoring (as a form of punishment), and I have addressed monitoring above, I will consider only the remaining four means in what remains of this chapter. As before, the goal is to discern whether there is any important difference in the applicability of this dimension of Agency Theory to the context of the private provision of force. Once again the focus here will be on the conceptual applicability of these punishment options rather than on the financial or other practical implications of implementing them.

Budget cuts and withdrawal of privileges

One of the ways in which civilian principals can show their disapproval of their military agents' shirking is by reducing or withholding funding to those agents. In the US case, for example, Congress will often punish one of the branches of the military by cutting budgets for high-prestige projects, such as the development of advanced weaponry and equipment. In a similar way the military can be punished by withdrawing some or other privilege from them. For example, President Clinton was widely perceived as punishing the military by cutting senior military personnel out of important policy decisions during his term in office.

While private military companies do not have this sort of privilege, nonetheless it is conceivable that private military companies could be punished in a similar way. For example a company that was contracted to train a highly prestigious unit such as the US Navy SEALs would lose considerably more than the contract payments were that contract withdrawn. Prestige is an important and valued commodity in a competitive

marketplace. It is clear, in addition, that financial penalties are an obvious way to punish wayward private military agents. It is worth reiterating that this is a conceptual point. If the reality is that there is in fact no competitive market for force, then obviously this point does not apply. Certainly it is the view of some analysts that genuine market mechanisms are in fact not in place much of the time. As Herbert Wulf points out "real competition is essential to prevent companies from maximising their profit-seeking strategies. But in reality this competition is often lacking" (Wulf forthcoming 2008).

'Forced detachment from the military'

In the broader principal-agent context the most obvious means of punishing a shirking agent is by firing him or her. While civilian principals do not have the option of 'firing' the state military, there are various ways within the military career system of forcibly detaching particular soldiers, sailors, marines or airmen from the military. Options range from the US military's 'up-or-out' career path system, in which military personnel who do not achieve promotion within a set time-limit are discharged from the service; to forcing a disgraced officer to retire at a rank lower than that achieved, resulting in a significant financial loss; to a range of administrative discharges. In the private military context the general principal-agent option of 'firing' the shirking firm is quite clearly available.

Military justice

Agency Theory recognises a range of punishments that are unique to the civil-military context. Unlike the standard principal-agent relationship, civilian principals in a democratic state have the option of applying military-specific penal codes to their

state military agents. If convicted of offences under military law (such as the Uniform Code of Military Justice which applies to US military personnel) state military personnel face punishments ranging from dismissal from the military to imprisonment to, in some extreme circumstances, execution.

It has been a source of significant concern among critics of the private military industry that private military companies and their employees are not subject to the same rigorous standards of justice as state military employees. While this might be a concrete problem relevant to recent experience of the private military industry, there is no conceptual reason why civilian principals cannot either put in place penal codes that apply to private military companies and their employees, or else expand existing military law to cover private military contractors. In fact, this is precisely what is beginning to happen. In 2006 the US Congress extended the scope of the UCMJ to ensure its applicability to private military contractors, and it has recently been reported that, on the 2nd of August 2007, the US House Judiciary approved a bill which, if successful, "would place contractors operating in support of US military operations under US criminal jurisdiction and would direct the Federal Bureau of Investigation (FBI) to stand up field units to probe allegations of criminal misconduct or abuse in places such as Iraq or Afghanistan" (Hodge 2007, 15). While it remains to be seen whether this move will withstand the inevitable legal challenges that will arise, it does indicate that there is no reason in principle why civilian principals cannot use penal codes to punish private military agents for extreme forms of shirking.

Extralegal civilian action

that many critics of the private military industry have expressed concerns, pointing out that private warriors are not subject to the same penal codes that are so important in ensuring that state-employed soldiers, sailors, airmen and marines toe the line. We saw that while this is certainly true of the current legislative environment, recent moves to bring private military companies and their employees under military and civilian penal codes are indicative that this is simply a shortcoming of existing legislation, and that there is no conceptual reason why the private purveyors of force cannot be subject to some equivalent of a military code of justice.

It bears repeating, as I bring this thesis to a close, that the focus here has been on the conceptual nature of the relationship between the elected civilian leaders of democracies and their chosen military servants, whether state or private. In this regard there seems no significant obstacle to the employment of private military companies, at least none that is not already a problem with the employment of state military forces. That said, the claims made in this thesis are in no way intended to minimise the very real practical and political challenges that may well mean that private military companies, while not unduly problematic in principle, could present a serious problem for appropriate civil-military relations. But of course this is (once again) true of many real-world state military forces.

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