
Promoting Contractor Accountability in Conflict Zones

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Laura A Dickinson, *Outsourcing War and Peace: Preserving Public Values in a World of Privatized Foreign Affairs* (New Haven: Yale University Press, 2011).

The scandals are notorious. Dyncorp employees trafficked girls and women into brothels while carrying out US government contracts in Bosnia (115).¹ Blackwater security personnel accompanying a US State Department convoy in Baghdad were accused of killing seventeen civilians by firing their weapons in the midst of a crowded square (1).² Abu Ghraib prisoners allege CACI International and Titan contractors abused them while working on behalf of the US government in Iraq (40).³

Several converging phenomena have contributed to these military contractor scandals. The first is the nature of the situation in which military contractors operate. The implementation of US foreign policy in conflict and post-conflict zones is incredibly complex. Multiple US agencies (the Department of Defense, the Department of State, and USAID, among others) share responsibility for American activities, which intersect imperfectly with the work of the counterpart agencies of other governments, the United Nations and other international organizations, and numerous non-governmental organizations (NGOs). Interagency and international relationships are riddled with overlapping responsibilities and conflicting interests, and turf wars are not uncommon. On the ground in conflict and post-conflict areas, staff turnover tends to be high and continuity low, and the socio-political situation is chaotic and often dangerous.

In addition, there has been a sweeping and fundamental shift towards the use of private contractors to implement US foreign policy, to the extent that private contractors have for several years outnumbered US troops in Afghanistan, for example (3).⁴ Each agency has its own contracts with its own contractors, which may have their own subcontractors, and new

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¹ Kathryn Bolkovac and Cari Lynn, *The Whistleblower: Sex Trafficking, Military Contractors, and One Woman's Fight for Justice* (New York: Palgrave Macmillan, 2011); also dramatized in the movie, *The Whistleblower* (2010), online: <http://www.imdb.com/title/tt0896872/>.

² James Glanz and Alyssa J Rubin, "Blackwater Shootings 'Murder,' Iraq Says," *The New York Times*, 8 October 2007, online: <http://www.nytimes.com/2007/10/08/world/middleeast/08blackwater.html>.

³ Greg Stohr, "Abu Gharaib Contractor Suit Draws US Supreme Court Interest," *Bloomberg News*, 4 October 2010, online: <http://www.bloomberg.com/news/2010-10-04/abu-ghraib-case-involving-private-contractors-draws-top-court-s-interest.html>.

⁴ August Cole, "Afghanistan Contractors Outnumber US Troops," *Wall Street Journal* (22 August 2009), online: <http://online.wsj.com/article/SB125089638739950599.html>.

contractors and subcontractors may be hired when each contract period ends, further complicating the web of interagency and international relationships on the ground.

Finally, the legal and institutional frameworks meant to implement and oversee American interventions abroad were not designed for private contractors, while the frameworks meant for implementing and overseeing private contracting were not designed for contracts for these sorts of complex services. Neither regime has kept up with the transition to contractor-dominated military interventions (10-11).

Thus, headline-grabbing private security scandals are symptomatic of structural problems that threaten the integrity and effectiveness of US activities in conflict and post-conflict zones. Evidence of these problems can be found in the less sensational, but disturbingly frequent, reports of mismanagement and fraud by some contractors in Iraq and Afghanistan (70-71).⁵

Laura Dickinson's *Outsourcing War and Peace* takes us through and beyond the scandals, using them to draw us into her discussion of broader legal and policy concerns. This is an engaging book, which nimbly navigates several alternate theoretical frames while remaining grounded in real-world circumstances and producing pragmatic policy proposals. It examines a variety of means of potentially holding contractors accountable including retroactive criminal and tort remedies, as well as proactive measures such as changes to contracting terms and practices, steps to increase public participation, and changes to organizational structure within contracting companies. Throughout, Dickinson looks not just at laws and policies but also at institutional arrangements and other structural factors that determine whether and how the suggested laws and policies can be effectively implemented.

The book's discussion of the role of organizational culture is particularly intriguing. Reminiscent of Galit Sarfaty's study of human rights culture at the World Bank,⁶ as well as the work of other legal anthropologists such as Sally Merry⁷ and Annelise Riles,⁸ Dickinson uses a series of interviews with military lawyers to surface the nuanced organizational behaviours and structures that regulate the everyday functioning of her subject. Drawing from organizational theory, she identifies features, such as shared values, that appear to promote military lawyers' success in attaining compliance

⁵ This review is not intended as an indictment of contractors as such. As in any other line of business, some contracting companies and some of the individuals they employ are responsible, honest, and genuinely attempting to work towards their contract goals, while others are not. Rather, the focus of this review is on the contextual and structural factors that make it relatively easy for irresponsible, dishonest, and abusive individuals and companies to operate unchecked as well as on the consequences for US foreign policy.

⁶ Galit Sarfaty, "Why Culture Matters in International Institutions: The Marginality of Human Rights at the World Bank" (2009) 103 Am J Int'l L 647.

⁷ Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago: University of Chicago Press, 2006).

⁸ Annelise Riles, *Collateral Knowledge: Legal Reasoning in the Global Financial Markets* (Chicago: University of Chicago Press 2011).

with the law from the troops with whom they work. These traits might, accordingly, be beneficially introduced into the private companies that do overlapping work.

As Dickinson notes, “organizational culture is one of the most significant factors in determining whether actors will behave in preferred ways and pursue jobs in accordance with preferred norms and values” (152). However, accessing an organization’s culture is difficult, and thus we legal scholars frequently limit ourselves to analyzing more readily available texts, such as court decisions, laws, regulations, or public events recorded in newspapers or other public media. As such, Dickinson’s detailed exploration of how rules regulating military conduct are implemented on a day-to-day basis is particularly valuable.

Several of the ideas touched on in this book warrant further exploration beyond what was possible here in light of the book’s length, thematic focus, and policy-oriented purpose. Dickinson’s suggestion that an organization’s structure could be strategically tweaked to affect its culture is one of these. A comprehensive investigation of military contractors’ organizational culture and the implications for organizational change would extend and test this proposal. It could also provide us with a model for evaluating the role of private contractors in US foreign affairs more broadly.

Thematically, the book is concerned primarily with promoting adherence to our “core public values,” which Dickinson defines as “including a fundamental respect for human dignity—human rights, human security, and the idea that the use of force has certain limits, even during armed conflict—transparency, and public participation” (3). Thus, other important questions, such as program effectiveness and efficient use of funds, are not front and centre in this volume, although the types of reforms Dickinson suggests would inevitably impact those concerns as well. An analysis of these subjects would be another valuable extension of Dickinson’s work, but such an investigation would require a robust assessment of how her proposals would function in the context of the incredible complexity of conflict and post-conflict environments.

One of the factors that tends to push Dickinson from dwelling unduly on the complexity of the political and social environments she addresses, however, is also one of the qualities of this book that I very much enjoyed—its relentless focus on the possible. Throughout, Dickinson proposes moderate, specific reforms that could improve contractors’ adherence to public values, without claiming that those measures will be a panacea. As should be evident from this review, her book offers ample food for thought and ideas for further exploration. It should be read by anyone interested in understanding the issues behind the military contractor scandals that increasingly capture our headlines.