Privatisation and coercion: the question of legitimacy

Abstract

This article explores issues surrounding the legitimacy of private sector provision in criminal justice. It examines changes in ideas about legitimate coercion which have made possible private sector involvement possible. It then elaborates two models of the processes whereby private sector entities attempt to obtain and maintain the legitimacy of their activities in the eyes of the public.

Keywords: privatisation, coercion, legitimacy, criminal justice, punishment, policing

In stable democracies powers of legitimate coercion over citizens have historically been treated as a state monopoly. Indeed, in the European context, Max Weber’s definition of the modern state as that institution which holds a monopoly of legitimate coercion on its territory is generally taken as read. Recent decades have, however, seen the increased role of the private security industry and other non-state organisations in the exercise of coercive authority previously regarded as the natural monopoly of state criminal justice agencies and as – to use a phrase familiar in the US literature – ‘inherently governmental’ (2005, Fairfax 2010). Increased outsourcing to the private security industry of various aspects of the work of police, prisons and probation has been accompanied by the growth of autonomous areas of private security work – such as guarding of various types of private space. A further aspect has been the expansion of an ‘extended police family’ in which a number of non-police agencies such as club owners, charities, social housing and other organisations have become expected to develop their own systems of policing - in close co-operation with state authorities - for the particular populations with which they are concerned.

Such outsourcing does not of course directly challenge the state’s ultimate monopoly of legitimate coercion because the latter retains the role of outsourcing agent, inspector and custodian of the legal frameworks governing private sector subcontracting. Nevertheless as day to day coercion and constraint are exercised by employees of private security companies – locking inmates or suspects in cells, handing out fixed penalty notices and requiring name and address, sanctioning offenders on probation licence for breaches etc. - quite profound issues of the legitimacy of such constraint are raised.

Even if the legitimacy of such coercion is increasingly unquestioned – by public and media – this was not always the case and changes over a relatively short historical period need to be understood. An outline of the dynamics of such change is the purpose of this article. Specifically, by what processes has coercion by private security agencies come to be regarded as legitimate and what steps have been taken to this end by the state on the one hand and the private security industry on the other?

The hollowing out of state legitimacy in the penal sector

In the early 1990s at the beginning of the debate on the privatisation of parts of the prison
estate in the UK, the leading criminologist Sir Leon Radzinowicz argued that:

in a democracy grounded on the rule of law and public accountability the enforcement of penal legislation ... should be the undiluted responsibility of the state. It is one thing for private companies to provide services for the prison system but it is an altogether different matter for bodies whose motivation is primarily commercial to have coercive powers over prisoners (quoted in Shaw 1992: 31).

Such opinions have not disappeared but have rather moved to the political margins, to prison reform groups and others resisting the advance of privatisation (Teague 2012, Hogg 2012, Fitzgibbon and Lea 2014). Similar developments have occurred in policing. As recently as 2012 Lynne Owens, then Chief Constable of Surrey, notwithstanding that her force had been among those negotiating major outsourcing of 'back office' police work with the private security giant G4S, was adamant that:

Any suggestion that a private sector company will patrol the streets of Surrey is simply nonsense. It would be no more acceptable to the public than it would be to me (Travis and Jowit 2012).

But the legislation enabling Chief Constables to delegate certain police powers to non-police agencies had already been in place in England and Wales since the Police Reform Act of 2002. This legislation created the Police Community Support Officer (PCSO) – employed by the police but not a warranted police officer – holding a subset of police powers including the power to issue PNDs (Penalty Notices for Disorder under the 2001 Criminal Justice and Police Act) covering various types of anti-social behaviour. PCSOs have limited powers of search and may detain a suspect for a short time pending the arrival of a police officer. The legislation also provided for the delegation of similar powers to employees of private security companies as accredited Community Safety Protection Officers patrolling public space and in 2014 the Police and Crime Commissioner for Dorset was welcoming the patrolling of public space by the latter as uncontroversial, as "an extra pair of eyes and ears", "an extra tool in the toolbox" (Frampton 2014). The mundane issues of efficiency, cost and 'results' seem significantly to have displaced issues of legitimacy.

It is not our purpose here to provide a detailed account of the gradual penetration of the private sector into penal or policing domains. At this stage of the argument we simply note the changes in ideas about legitimate coercion which have accompanied such developments. The core change is a process of 'hollowing out' or 'thinning' of state legitimacy enabling coercive tasks to be delegated to non-state actors without compromising the state as the ultimate repository of legitimate coercion. Such delegation, most clearly illustrated in the penal system, involves a growing distinction between the original coercive decision and its enactment and administration. Thus only the state, in the form of the courts, has the power to sentence people to imprisonment but this power "does not necessarily depend on the State owning the means of force or employing the individuals who use it" (Ryan and Ward, 1989: 69). Some commentators characterise the process as a distinction between the determination and allocation of punishment (Genders 2002, Moyle 2001) whereby the initial (legitimate) decisions by state officials – police arrest and court sentence, initial probation assessment – justify subsequent coercive activities by non-state persons as long as the latter are working as agents of the former through processes of subcontracting and outsourcing.

This distinction is, of course, easily contestable by reference to the fact that the management of sentenced populations involves independent coercive decisions – by prison staff and
governors or probation officers – which may result in variations of harshness of conditions, length of sentence, breach of licence etc.. The power to make these decisions cannot, therefore, really be conceived simply as the allocation and management of the original sentence (South 1997, Moyle 1995, 2001). The issue is not, of course, restricted to the private sector because "public prisons too can be sites of unchecked discretion exercised by individuals with their own personal interests and agendas" (Dolovich 2005: 546). However, the fact that many such individuals are prison officials employed by private security companies aiming to make a commercial profit immediately inserts a factor most likely to lead to independent variation of the original sentence in the interests, for example, of economy in the deployment of resources. Indeed, as exemplified by the recent experience of privatisation of the English probation service, the interests of profitability may tempt private contractors into all sorts of 'innovations' which profoundly influence the actual conditions of supervision experienced by the offender (see Fitzgibbon and Lea 2014, Fitzgibbon 2016).

Policing is more complex. Policing private space such as gated communities, shopping centres, politically contentious building sites (see South 1997) and, more controversially, the expanding domain of Privately Owned Public Space (Minton 2006, Garrett 2015a) deploys traditional notions of the authority of the property owner and, although important and controversial – in particular in the context of the advance of CCTV and mushrooming surveillance by private companies - will not be considered here for reasons of space.

The private policing of public space raises different but equally complex questions. Partly, the waters are muddied by common law traditions such as the power of citizen arrest which can be deployed by private security agents (South 1988). On the other hand, the notion of policing in a democratic society is heavily associated with the use of discretion: when to intervene and how, regulated by sensitivities based on police appreciation of community norms (Lea and Young 1984, Reiner 2010, Bronitt and Stenning 2011). The exercise of such discretion requires, it may be argued, the authority inherent in the status of police officer as public official, a status unavailable to employees of a private security company.

However, private patrolling of public space is usually concerned with the management of anti-social behaviour. Traditionally, noise, rowdy gatherings, begging, public drunkenness etc. were lumped together loosely as 'trouble' and the resourcefulness of police discretion was an important part of their management. Modern anti-social behaviour legislation, by contrast, tends to disaggregate such behaviour into a number of discrete offences such as noise, gatherings exceeding a certain size, public drinking, skateboarding and so on and equips local authorities and social housing managers, concerned with the management of public space, with a spectrum of specific offences each with its distinct penalty (Squires and Stephen 2005, Squires 2008). These are combined with wider spatial powers such as Public Space Protection Orders (Garrett 2015b). Thus intervention by police officers using their legitimate status and authority to 'calm things down' and choose from a variety of sanctions ranging from arrest to warning, is being displaced by a purely transactional process of enforcement in which a specific violation is identified and a fixed penalty notice handed to the offender. An aggressive response by the recipient may trigger the summoning of the police, but the handing out of fixed penalty notices for disorder as such involves little reference to traditional notions of legitimacy.

In this way a parallel process of delegation of legitimacy can be initiated. The legitimacy of the private security company derives simply from its contract with the local authority and the delegated subset of police powers (under the 2002 Act) approved by the Chief Constable. In
reality of course discretion on the part of the private agent is employed but it is limited to the
decision whether or not to attempt the imposition of a penalty notice in a particular incident
or to 'look the other way'. The idea of private security guards giving troublesome youth a
'good talking to' in the manner of traditional police officers is highly implausible both in
terms of the actual levels of training of private security and, most importantly, in terms of
their lack of status, authority and capacity to emit 'control signals' (Jackson et al. 2013,
Rowland and Coupe 2014) or to participate in a 'legitimacy dialogue' (Bottoms and Tankebe
2012: 159).

The advance of delegated legitimacy in the penal and policing areas has to be attributed to
social and political changes rather than to any intellectual coherence. At the simplest level
there is the tenacity of the private sector itself. Thus Burkhardt (2014) argues – in the US
context – that the acceptability of private prisons resulted from private sector innovators
forcefully arguing in terms of costs and benefits and effectively sideliners debates about
legitimacy. But such an empiricist approach sidetracks the issue of precisely what social
changes enabled the supporters of privatisation to succeed in marginalising the issue of
legitimacy.

A better candidate might be the rising influence of neoliberal ideology which, while by no
means uncontested, has achieved a 'sea change' in political culture whereby the state – in
particular the criminal justice agencies – come to be regarded simply as providers of security
(Lea and Hallsworth 2012). Neoliberalism also encourages a focus on individual and
community as a source of resilience, prudence and self-reliance with a stress on crime control
through prevention. Such an environment is arguably conducive to greater public acceptance
of security as a commodity to be bought and sold rather than as associated with the symbolic
authority of the state. However, although it becomes less important who provides security
than that it is effectively provided there must still be a clear relationship to the ultimate
legitimacy of the state. Outsourcing must be distinguished from outright privatisation. The
issue therefore arises of what type or types of legitimacy private providers aim to achieve as
appropriate carriers of outsourced coercive authority.

The traditional model of private sector legitimacy

There is a useful discussion in management studies literature which aims to distinguish
various strategies pursued by private companies to enhance their legitimacy in the eyes of
their stakeholders – including the state and the public. Thus Suchman (1995) defines
legitimacy in the private corporate context as "a generalized perception or assumption that
the actions of an entity are desirable, proper, or appropriate within some socially constructed
system of norms, values, beliefs, and definitions" (Suchman 1995: 574).

He proceeds to distinguish three types of such legitimacy to which private corporations may
aspire. The most secure form that an organisation can achieve is cognitive defined as the
"acceptance of the organization as necessary or inevitable based on some taken-for-granted
cultural account" (Suchman 1995: 582; see also Brinkerhoff 2005). As Suchman notes, its
achievement is normally beyond the reach of private corporations because "pluralist political
cultures rarely go so far as to assume that only one organization can wield a given technology
or pursue a given program" (Suchman 1995: 583). This is precisely the position of the state
(and its criminal justice agencies) as the repository of a monopoly of legitimate coercion.

There may of course, as McNeill et al. (2012) observe, be relative hierarchies of legitimacy
within the criminal justice system itself – with probation, for example, being seen as
something of a soft option compared with prison. Furthermore, catastrophic and well
publicised failures by particular criminal justice institutions may well create a political
climate favourable to further inroads by the private sector.

Such issues aside, our argument is that it is possible to distinguish two stages in the
development of private sector legitimacy in relation to the state. The first, both
chronologically and in terms of the strategy of smaller private security companies, is to get as
close as possible to the state by efficiently delivering the outsourced requirements and
hopefully sheltering in the shadow of the state's own legitimacy. The second, which has come
to prominence more recently with the increasing profile of the large transnational
corporations of the security-industrial complex – such as G4S – while not entirely
abandoning such orientation, supplements it with an independent appeal to forms of public
legitimacy such as, in particular, an emphasis on human rights which aims to establish the
private sector as a legitimate provider of coercive services in its own right.

pragmatic legitimacy

Until recently the predominant form of legitimacy for private security companies providing
services outsourced by the state is (the second of Suchman's typology) pragmatic legitimacy
(Suchman 1995: 578). This is achieved when the company "fulfils needs and interests of its
stakeholders and constituents" (Brinkerhoff 2005: 4). From this perspective it seems obvious
that the private subcontractor in criminal justice services, as in other areas, can aspire only to
a pragmatic legitimacy dependent on continuing to 'deliver the goods'. The inherent
insecurity of such pragmatic legitimacy is the essence of market competition between private
providers which, in theory, guarantees efficiency. This is the ostensible aim of government
outsourcing contracts based on such – not altogether coherent – measures as 'payment by
results' (Fitzgibbon 2016).

By contrast the traditional cognitive legitimacy of the police is only partially dependent on
actual success in controlling crime and similarly for the penal system with regard to reduction
of re-offending rates (Jackson et al. 2012). The cognitive legitimacy of these institutions
derives from other sources such as the retributive element in punishment and role of the
police as symbolic of 'the state on the street' (Brogden and Ellison 2012).

hiding behind the state

In whose eyes is legitimacy, pragmatic or otherwise, achieved (or rejected)? If we leave aside
the 'captive population' of offenders, that leaves the state itself and, in a democracy, the
general public, as the key 'stakeholders and constituents'. The thinking behind delegated
legitimacy is that possible public disquiet about coercion by private bodies will be alleviated
to the extent that the state remains clearly in charge and its own authority is stamped upon the
outsourcing arrangements. The state attempts to ensure this through its regime of inspection
and evaluation of its subcontractors, notwithstanding conflicting requirements of contractual
confidentiality. The public, from this standpoint, will accept private prisons (and probation)
knowing that these are responsible ultimately to the Ministry of Justice, and will accept
private security patrols in public space knowing that the Chief Constable and the Police and
Crime Commissioner retain ultimate control.
For their part the private security companies involved will nestle as close to the state as possible in an attempt to clothe themselves in at least some of its cognitive legitimacy in the understanding that the general public still have traditional 'Weberian' notions of the legitimacy of coercion despite sustained attempts by neoliberal political ideology to portray security as simply a commodity so that pragmatic legitimacy is the only form that counts. The result, at least in the early stages of private provision, is, as Thumala et al. note, a nervousness on the part of the private security providers such that

the loud confidence that dominates the security industry’s public presentation of self is accompanied by a quieter ambivalence about its credibility and recurrent efforts at self-justification and justification in the eyes of others (Thumala et al. 2011: 286).

The authors proceed to discuss a variety of types of 'legitimation work' undertaken by private security companies in order to counter negative public images stemming from "the poor quality of industry personnel; the stubborn presence of 'cowboy' traders and associations with criminality and violence; perceived dishonesty in the selling of products and services" (Thumala et al. 2011: 287). But the issue is to what type of legitimacy is the overcoming of these defects oriented? The authors identify attempts at professionalisation – the establishment of the UK Security Industry Authority in 2001 as a licencing authority designed to separate out professionals from the less competent and disreputable; the investment in better education and training of personnel through university-associated courses and credentials. As Adam White (2015) points out the Home Office resisted this for a long time precisely because it did not wish to see enhanced legitimacy for an elite of private security companies. Such legitimacy was partly pragmatic: focused on the emergence of a supposedly more efficient private sector (see Genders 2002) but also an attempt, on the part of the industry, to get as close as possible to the cognitive legitimacy of the state (see also White 2010).

The latter is also the aim of what Thumala et al. detect in their study as 'symbolic borrowing' (from the police and also the medical profession) whereby private security gets as 'close' as possible to state agencies through conduits (familiar in other areas such as defence procurement) of recruiting ex-police to boards of private companies (ditto with prison governors and probation chiefs), having private security guards wear uniforms resembling as closely as possible those of police officers and generally taking steps to "associate with the police in part because they wish to borrow its ethos of vocation and public service" (Thumala et al. 2011: 297; see also White 2010). A much more elaborate form of this process is documented by Diphoorn (2016) in her study of 'twilight' policing in Durban, South Africa in which private security seeks legitimacy by 'mimicking' police behaviour in public places. But this, as she notes, leads to public expectations that private agencies can be called upon to provide a full police service including armed response. When this cannot legally be provided the legitimation strategy may backfire and the public come to view private security as a poor imitation of the 'real thing'. A similar point is made in the UK context by Thumala et al. who note that "by drawing comparisons with the 'real' thing, or describing private security as having ‘filled a void’ left by the police, one simply invites the conclusion that the security industry is a poor imitation" (Thumala et al 2011: 295).

These dynamics may be relatively absent from prisons and probation which do not provide a direct interaction with the public. A member of the public, standing outside a private prison or probation office may, without careful inspection of the logo on the entrance, not even be
aware of the presence of the private commercial element. The private penal sector can get close to the state more easily because it is more closely integrated **physically** into the workings of the state system. Indeed, it was the relative invisibility of these services which made rapid and unthinking privatisation politically feasible.

The situation we have described so far is fairly straightforward. The state has retained its overall **cognitive** legitimacy, its taken for granted monopoly of legitimate coercion. But by thinning or delegating elements of this legitimacy it has enabled the private sector to take over some of its functions. The latter achieves a degree of **pragmatic** legitimacy to the extent that it meets efficiency targets set by the state. The private sector remains, especially in the policing area, nervous of its status and engages in various practices – some of which may be counterproductive – aimed at getting as close as possible to the state and sharing (marginally) some of its cognitive legitimacy. This state of affairs, very much an ideal type representation of a more complex and nuanced situation, is essentially transitional. It is arguably in an advanced state of decomposition: a decomposition very much to the advantage of the more powerful elements in private sector.

**Lock-in, normative legitimacy and the security-industrial complex**

There are two sets of changes which are undermining the type of relationship we have described above, based on the overriding cognitive legitimacy of the state and the subordinate pragmatic legitimacy of the private sector. Neoliberal-inspired orientation to security in penal policy prioritises low cost surveillance and monitoring of offenders at the expense of rehabilitation and social reintegration (Garland 2001, Wacquant 2009, 2010). While the latter is generally labour-intensive in terms of practitioner skills, the former enables deskilling, a process which of itself facilitates the entry of private sector providers (Fitzgibbon 2007, 2008, Fitzgibbon and Lea 2014) irrespective of divergent forms of legitimacy between state and private sector.

The shift to surveillance reflects the transformation of much of the population managed by the penal system from 'conditional citizens' (Vaughan 2000) destined for rehabilitation, to risk groups to be kept under monitoring and control. De-industrialisation of the UK has formed a sizeable 'precariat' of insecurely employed (Savage 2013) augmented by migrants and asylum seekers and collectively marginalised from social and political processes. This stratum, increasingly regarded as a population **against** whom society needs protection can be safely consigned to the private sector with little concern for the legitimacy of constraint. The privately run immigrant detention centre is the archetype in this respect (De Giorgi 2009; Bosworth and Guild 2008).

The second important change is that the private sector is itself evolving in terms of size and scope of provision. While small, mainly local providers still exist – and are often in the forefront of patrolling public space in city centres – they are being relatively marginalised and increasingly owned and absorbed by the large global corporations of the **security-industrial complex**. In the UK the transnational security corporations G4S and Serco are becoming household names and are involved in a bewildering variety of outsourced governmental tasks.

To take G4S as the exemplar: according to the company's 2015 **Corporate Responsibility Report** (G4S 2015) the range of services offered to clients includes Care and Justice Services
comprising "Adult custody and rehabilitation; Prisoner escorting; Immigration services; Electronic monitoring". This amounts to 9 percent of global company revenue. Meanwhile Police Services include "back office support and custody suites to UK police forces" which are grouped together with welfare to work, smart meter monitoring and data collection under the heading of "specialist outsourced services" responsible for 11 percent of global revenue. Thus just under 20 percent of company revenue is directly related to criminal justice outsourcing.

By no means all of this comes from UK operations. Revenue for Care and Justice Services derives also from operations based in "USA, Australia and South Africa and on a smaller scale in a number of European markets and New Zealand" (G4S 2015: 5). By far the largest activities of G4S globally in terms of revenue are 'security and facilities management services' (58 percent of revenue) and 'cash solutions' (14 percent of revenue). Both these are spread over a global sphere of operations including, besides the UK, the USA and the Middle East and 'emerging markets'. The geographical distribution of revenue in 2015 was fairly evenly distributed between the UK and Ireland (23 percent), North America (24 percent) and Asia and the Middle East (21 percent). Areas of lesser importance are Europe (18 percent), Latin America (8 percent) and Africa (6 percent). This brief picture shows a corporation of global reach firmly, but by no means entirely, entrenched in outsourced criminal justice work. In 2015 in revenue terms G4S was the largest security company in the world with operations in around 125 countries and, with over 600,000 employees, it is the world's third-largest private employer and among the largest companies listed on the London Stock Exchange. The emergence of giants such as G4S is profoundly changing the dynamics of legitimation.

In his studies of the role of the private sector in the management of migrant detention facilities, George Menz described a fire which broke out at a G4S-managed detention centre at Schipol airport in Amsterdam in 2005 resulting in the deaths of 11 detainees. The incident provoked a public outcry, with G4S being blamed for inadequate safety procedures, and caused the resignation of the Dutch Minister of Justice. Despite this the contract with G4S was extended in 2007 for another six years. Menz attributes this to a 'lock-in' effect whereby despite widely publicised failure it is impossible to disentangle the functioning of the state agencies from dependence on the company (see Menz 2011: 21).

Similar examples can be found in recent years in the UK involving both G4S and Serco, another global operator. The most publicised incident involved the apparent inability of G4S to fulfil its contract to provide effective security for the 2012 Olympics, necessitating the deployment of military personnel at the last moment. Meanwhile G4S and Serco were allegedly involved in overcharging the Ministry of Justice for services relating to the electronic monitoring of offenders and Serco was subject to inquiry by the Serious Fraud Office (SFO) (Travis 2013a, 2013b). Both companies sustained reputational damage leading to the resignation of senior management and this was a factor in the decision by two English police forces not to proceed with proposed multi-million pound contracts for outsourcing back office work (White 2014). Both companies were effectively barred by the Ministry of Justice from participation in initial contract bidding for the outsourcing of the bulk of the English probation service (Fitzgibbon and Lea 2014).
Such events would seem to confirm the continued importance of pragmatic legitimacy through the penalisation of these companies precisely on the basis of failure in this regard. However, in 2014 the House of Commons Public Accounts Committee found that a number of government departments (Ministry of Justice, Ministry of Defence, Department for Business, Innovation and Skills and HM Revenue & Customs) were continuing to award contracts to both these companies even while – in the case of Serco – under criminal investigation by the SFO. The Committee report concluded: "The fact that Government gave the impression that all discussions with Serco and G4S were halted whilst investigations took place ... is evidence of the over-reliance on these larger suppliers" (House of Commons 2014). It also transpired that, despite the overcharging and the criminal investigation, both G4S and Serco continued to provide services to the Ministry of Justice relating to electronic tagging because "it seems that there weren't any other companies with enough tagging equipment to cover the entire population of monitored convicted law-breakers" (Ford 2015: 1). In other words the extent of lock-in had become so great that these companies had become essential to the functioning of the state even in the face of major demonstrations of incompetence and suspected corruption.

There are further dimensions to lock-in. In addition to the inability of the state agencies to function without the private sector, as the latter becomes dominated by a few very large players these become effectively, in the same manner as large global investment banks, 'too big to prosecute'. Thus in December 2014 the City of London police dropped their investigation of Serco (on behalf of the SFO) having found no evidence of wrongdoing. While there is no reason to doubt this, it is nevertheless true that in such cases in England and Wales the Crown Prosecution Service (CPS) seems extraordinarily reluctant to proceed against the companies themselves for wrongdoing and tends rather to focus on the prosecution of individual employees (Hattenstone and Allison 2014). Thus in the case of the migrant detainee Jimmy Mubenga who was asphyxiated by G4S employees working for the then UK Border Agency (UKBA) while being placed on an aircraft for deportation, the government eventually brought a prosecution against the employees (which failed) but refused to prosecute the company itself for corporate manslaughter. When the Director of Public Prosecutions (the head of the CPS) decided not to prosecute G4S in the Mubenga case, Lord Ramsbotham, the former chief inspector of prisons, in a speech in the House of Lords described the decision as 'perverse' (Sambrook 2013).

More recent cases have shown similar tendencies. In January 2016, BBC Panorama documented serious abuse at Medway Secure Training Centre (STC) for young people (Travis 2016). This led to the suspension and arrest of G4S staff for violent behaviour but, despite an inquiry which "highlighted initial concerns about the efficacy of monitoring arrangements and about whether G4S staff had sufficient understanding and training in relation to the safeguarding of children in their care" (Holden et al. 2016: 8), no attempt has been made (to date) to go beyond prosecution of the employees involved. This focus leaves the company itself some breathing space to demonstrate its continued commitment to high standards and willingness to collaborate with the authorities against criminality by its employees. Although the company has suffered considerable reputational damage and adverse publicity it continues to receive major government contracts. For example in July 2016 it was reported that the contract for the running of the Equality Advisory and Support Service helpline (supervised by Government Equalities Office) was to be awarded to G4S despite the fact that a House of Lords committee had in March recommended that the service be taken in-house (White 2016). Lock-in and a policy of prosecuting only employees rather than the company are in fact different sides of the same coin. The refusal to prosecute the
Finally lock-in not only enhances the power of the private sector but also changes the character of the outsourcing agent itself. The state gradually loses the capacity—in terms of personnel and expertise—of itself to provide the services it has outsourced. With funding reductions for state agencies and the transfer of personnel to the private sector, which may then impose further cuts and deskilling in the interests of profitability, it is increasingly plausible for the state to resume control of the outsourced services at a later date. Meanwhile at the core of the state the declining size—and increasing dependence on private sector secondments—of the civil service, steadily implants the culture and personnel of the private sector into the state. We can talk of 'state debilitation' as a key aspect of lock-in (Leys 2006, Marquand 2004) which further ties the state to the private providers irrespective of the performance of the latter, again rather in the manner of large global financial institutions which have become 'too big to fail'.

It might be concluded that the larger corporations of the security-industrial complex are on the verge of achieving a cognitive legitimacy such that even if they fail to deliver they are still seen as the natural agencies of state outsourcing. But the situation is rather characterised by contradiction and tension. On the one hand increasing lock-in appears to give companies considerable power to neutralise pragmatic legitimacy deficits. But, on the other hand, the process of outsourcing is still itself controversial (see for example House of Commons 2016) and the frequent controversial failures which seem to beset high profile companies like G4S threaten to reassert the logic of failed pragmatic legitimacy.

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In this context a third type of business legitimacy—available to the larger corporations—becomes important. The management studies authors cited above distinguish normative or moral legitimacy (we shall use the former) as a third variety alongside cognitive and pragmatic. Traditional legitimacy strategies involve the private sector seeking public approval indirectly through the filter of state approval. Pragmatic legitimacy is oriented mainly to the state as outsourcing authority and relates to effective delivery, while strategies such as 'symbolic borrowing' (see above) aim to secure public acceptability through hiding behind the cognitive legitimacy of the state.
Normative legitimacy, by contrast with both of these, involves a direct orientation towards civil society – a *public relations* campaign aimed at establishing the corporation as responsible 'citizen' (Bell 2016) by reference to the corporation's own values and standards. The aim is to establish a type of legitimacy which "reflects a pro-social logic that differs fundamentally from narrow self-interest" (Suchman 1995: 579) and leads the corporation "towards acceptable and desirable norms, standards, and values" (Brinkerhoff 2005: 4). The theme of the social leadership duties of the corporation is of course a familiar one among business gurus such as Peter Drucker (see Cohen 2009). The more powerful the corporation, the firmer the base from which it can launch its campaign for legitimacy. The growth in the size and power of the security-industrial complex and the greater dependence on it of the state (through lock-in and state debilitation) increases the *independent* power of the security-industrial complex as policymaker in its own right, without the need to hide behind the state.

Under the conditions of globalization, the strict division of labour between private business and nation-state governance does not hold any more. Many business firms have started to assume social and political responsibilities that go beyond legal requirements and fill the regulatory vacuum in global governance (Scherer and Palazzo 2011: 899).

Normative legitimacy strategies attempt to deflect particular failures which would otherwise compromise pragmatic legitimacy by stressing the basic values of the corporation – including the steps taken to 'correct mistakes' when these are exposed. The aim, then, is to establish the overall legitimacy of the corporation as the sort of entity to which government contracts (including criminal justice) can be safely awarded despite the fact that things may 'occasionally go wrong'. Normative legitimacy has to be consciously propagated - through various media and advertising campaigns - because:

In contrast to the unconscious internalization of cognitive and institutional logics that is the basis of cognitive legitimacy, normative legitimacy requires the explicit consideration of the legitimacy of capitalist mechanisms and corporate activities by giving credit to the interests and arguments of a wide range of constituencies that are affected by the activities of (multinational) corporations (Scherer and Palazzo 2011: 916).

Thus the rise of the security-industrial complex characterised by the predominance of transnational corporations is in the process of displacing the older combination of pragmatic legitimacy and hiding behind the state with a new combination of lock-in and normative legitimacy.

**Human rights: G4S**

Company annual reports are likely to be a key instrument in the campaign for normative legitimacy. The 2015 G4S report (G4S 2015) works to construct the company as the embodiment of a set of 'acceptable and desirable norms, standards and values' such as sustainable environmental impact, health and safety of employees and customers, commitment to diversity, training and employee engagement etc. The aim is to portray the company as a 'good citizen' in the environment in which it operates. The 2015 report includes a 'Materiality Review' of three key areas: Health and Safety, Anti-Bribery and Corruption and Human Rights. Health and Safety establishes that the "safety and wellbeing of our employees and those in our care is one of our key priorities. Our goal is zero harm" (G4S 2015: 25).
Regarding Human Rights the report recognises that "we have a duty to ensure that we are not at risk of violating human rights through the services we provide, the customers we work with, the suppliers we use, or through the unfair or inappropriate treatment of our own employees and others who are in our care" (G4S 2015: 25). As regards criminal justice outsourcing this orientation is embodied in the undertaking that G4S "will only offer custody and detention services where we can maintain a qualified talent pool and where the political, legal, human rights standards and regulatory framework is consistent with our group values and results in acceptable operational, commercial and reputational risk" (G4S 2015: 5).

This is good to hear but the question obviously arises of periodic departures from these aspirations, many of which reach the national media through the work of investigative journalists and organised global campaigns such as StopG4S. In this respect the global sphere of operations by the company creates resources which may be deployed by critics and campaigners to counter its normative legitimacy. We have already noted that the company has continued to secure UK government contracts despite major failures. There seem to be two elements of the response to failure. The first is to simply withdraw from a particular area of outsourcing which has become problematic. For smaller security companies such a move may rapidly undermine financial viability but for large transnationals like G4S, providing, as we have seen, a wide variety of services, such a move may be seen as simply a step on the road to rationalising the spectrum of services provided by withdrawing from those which produce reputational damage for the company and focusing on less problematic forms of outsourcing. Though there are obvious limits to such a strategy if the company is not to forego profitable opportunities, it does seem to have been the response to the Medway incident and indeed other adverse publicity globally as evidenced by the reported intention of the company to withdraw from provision of penal facilities in Israel (Reed and Plimmer 2016).

The second part of the response, which goes to the heart of the normative legitimacy strategy, is the attempt to emulate the type of response to failure characteristic of state agencies. This involves a familiar mantra of admitting mistakes but claiming that lessons have been learned and new procedures put in place to prevent repetition. In extreme cases there will be an independent investigation. In cases of major failure by criminal justice agencies, senior police officers, chief probation officers or prison governors – even on rare occasions judges – may be forced to resign (Fitzgibbon 2011). Such measures have the effect of strengthening the cognitive legitimacy of the state as such by demonstrating its ability to deal effectively with failure. The normative legitimacy strategy of the security-industrial complex aims to emulate this and as far as possible act as if the company were part of a state system enjoying cognitive legitimacy. Rather than 'hiding behind the state' the aim is to project independently an image of state-like procedures which suggest that the company can function – in response to failure – in similar ways to the state and therefore should not suffer legitimacy deficits.

Thus the G4S 2015 annual report discusses the response of the company to the Medway STC events mentioned above. The report stresses the co-operation by the company with external inquiries into the Medway events by local authority children's services officials and the police and notes the speed with which it put in place its own processes to remedy such behaviour by its employees:

We have reinforced the standards expected of all employees, reminded them of the group's whistleblowing facility Speak Out, implemented a series of improved processes
around rotation of staff and accelerated the process to implement body-worn cameras for
our employees in STCs. Refresher training for all staff on Minimising and Managing
Physical Restraint (MMPR) has been conducted... appropriate remedial action has been
taken to strengthen the control environment, prevent the re-occurrence of such events
and ensure that the group’s values are adhered to and their importance reiterated across
the organisation (G4S 2015: 29).

In this way the actions of employees are seen as exogenous departures by particular
employees from the high standards insisted upon by the company. The fact that some
employees violate such standards cannot be allowed to encourage the notion that the
company itself does not adhere rigorously to them. As we have also noted, the state has
tended to collaborate with this view by only prosecuting the employees of the company rather
than prosecuting the company e.g. for corporate manslaughter. The notion that core aspects
of company policy such as its recruitment methods, training programmes and internal
workplace cultures provide a background conducive to periodic failure is thereby ruled out of
the discourse.

This is particularly important regarding companies with a global sphere of operations. How
far, for example, labour conditions or workplace culture in one country influence those in
another can be influenced by internal company dynamics. For example whether the
recruitment, training and supervision of G4S employees at Mangaung prison in South Africa
were issues in the alleged use of electric shock treatment to secure inmate compliance
(Hopkins 2013), and whether the employment conditions in South Africa influence those in
the UK, remains unknown. It is not being suggested here that there is a connection, only that
a failure to relate particular incidents to these general conditions either through prosecutions
for corporate manslaughter or rigorous inquiries by international bodies, leaves the issue as
essentially unknown. Some commentators see the internal conduits of the large corporations
as possibly promoting the flow of civilised values from the global north to the global south
(Abrahamsen and Williams 2011). But the opposite is equally plausible, particularly in an
environment of financial austerity placing a high value on cost minimisation.

In conclusion the conditions under which the security-industrial complex might achieve a
stable normative legitimacy can be tentatively spelled out as themes for further empirical
research. Firstly, a business logic of further amalgamations and interlocking ownership
patterns may result in new combinations of powerful private corporations 'locked' in to
elements of national criminal justice systems forming new public-private 'assemblages'
(Sassen 2008; Abrahamsen and Williams 2011). Also further blurring between state cognitive
legitimacy and the normative legitimacy of private corporations might result from the
progressive privatisation of security and urban space such that claims to rightful authority by
private corporations become commonplace. Finally, of course, such transformation would
provide new terrain for the development of criticism and countervailing power – for example
popular mobilisations aiming to stipulate private security powers in central or local
government outsourcing contracts. Meanwhile it is a not an unreasonable assertion that the
campaign for normative legitimacy by the security-industrial complex has yet to be won.

References

Abrahamsen R and Williams MC (2011) Security Beyond the State: Private Security in
International Politics. Cambridge: Cambridge University Press.


Hopkins R (2013) G4S sacked by South Africa after 'losing control' of violent prison *Guardian* 9 October


https://www.opendemocracy.net/ourkingdom/clare-sambrook/lord-ramsbotham-attacks-
pervasive-decision-not-to-prosecute-g4s-over-mubeng (accessed 10 October 2016).


Travis A (2016) Seven G4S staff suspended over abuse claims at youth institution. *Guardian* 8 January


Travis A (2013b) Offender tagging: Serco to repay more than £68m in overcharging. *Guardian*, 19th December.


