

1 Privatisation and coercion: the question of legitimacy

2 XX and XX

3

4 *Abstract*

5

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

11

12 *keywords*

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14 privatisation, coercion, legitimacy, criminal justice, punishment, policing

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16 In stable democracies powers of legitimate coercion over citizens have historically been
17 treated as a state monopoly. Indeed, in the European context, Max Weber's definition of the
18 modern state as that institution which holds a monopoly of legitimate coercion on its territory
19 is generally taken as read. Recent decades have, however, seen the increased role of the
20 private security industry and other non-state organisations in the exercise of coercive
21 authority previously regarded as the natural monopoly of state criminal justice agencies and
22 as – to use a phrase familiar in the US literature – 'inherently governmental' (2005, Fairfax
23 2010). Increased outsourcing to the private security industry of various aspects of the work of
24 police, prisons and probation has been accompanied by the growth of autonomous areas of
25 private security work – such as guarding of various types of private space. A further aspect
26 has been the expansion of an 'extended police family' in which a number of non-police
27 agencies such as club owners, charities, social housing and other organisations have become
28 expected to develop their own systems of policing - in close co-operation with state
29 authorities - for the particular populations with which they are concerned.

30

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

38

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

45

46 The hollowing out of state legitimacy in the penal sector

47 In the early 1990s at the beginning of the debate on the privatisation of parts of the prison

48 estate in the UK, the leading criminologist Sir Leon Radzinowicz argued that:

49

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

55

56 Such opinions have not disappeared but have rather moved to the political margins, to prison
57 reform groups and others resisting the advance of privatisation (Teague 2012, Hogg 2012,
58 Fitzgibbon and Lea 2014). Similar developments have occurred in policing. As recently as
59 2012 Lynne Owens, then Chief Constable of Surrey, notwithstanding that her force had been
60 among those negotiating major outsourcing of 'back office' police work with the private
61 security giant G4S, was adamant that:

62

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

66

67 But the legislation enabling Chief Constables to delegate certain police powers to non-police
68 agencies had already been in place in England and Wales since the Police Reform Act of
69 2002. This legislation created the Police Community Support Officer (PCSO) – employed by
70 the police but not a warranted police officer – holding a subset of police powers including the
71 power to issue PNDs (Penalty Notices for Disorder under the 2001 Criminal Justice and
72 Police Act) covering various types of anti-social behaviour. PCSOs have limited powers of
73 search and may detain a suspect for a short time pending the arrival of a police officer. The
74 legislation also provided for the delegation of similar powers to employees of private security
75 companies as accredited Community Safety Protection Officers patrolling public space and in
76 2014 the Police and Crime Commissioner for Dorset was welcoming the patrolling of public
77 space by the latter as uncontroversial, as "an extra pair of eyes and ears", "an extra tool in the
78 toolbox" (Frampton 2014). The mundane issues of efficiency, cost and 'results' seem
79 significantly to have displaced issues of legitimacy.

80

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

96

97 This distinction is, of course, easily contestable by reference to the fact that the management
98 of sentenced populations involves *independent* coercive decisions – by prison staff and

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

112

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

119

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

128

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

145

146 In this way a parallel process of delegation of legitimacy can be initiated. The legitimacy of
147 the private security company derives simply from its contract with the local authority and the
148 delegated subset of police powers (under the 2002 Act) approved by the Chief Constable. In

149 reality of course discretion on the part of the private agent is employed but it is limited to the
150 decision whether or not to attempt the imposition of a penalty notice in a particular incident
151 or to 'look the other way'. The idea of private security guards giving troublesome youth a
152 'good talking to' in the manner of traditional police officers is highly implausible both in
153 terms of the actual levels of training of private security and, most importantly, in terms of
154 their lack of status, authority and capacity to emit 'control signals' (Jackson et al. 2013,
155 Rowland and Coupe 2014) or to participate in a 'legitimacy dialogue' (Bottoms and Tankebe
156 2012: 159).

157

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

166

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

179

180 The traditional model of private sector legitimacy

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

187

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

196

197 There may of course, as McNeill et al. (2012) observe, be relative hierarchies of legitimacy

198 within the criminal justice system itself – with probation, for example, being seen as
199 something of a soft option compared with prison. Furthermore, catastrophic and well
200 publicised failures by particular criminal justice institutions may well create a political
201 climate favourable to further inroads by the private sector.

202
203 Such issues aside, our argument is that it is possible to distinguish two stages in the
204 development of private sector legitimacy in relation to the state. The first, both
205 chronologically and in terms of the strategy of smaller private security companies, is to get as
206 close as possible to the state by efficiently delivering the outsourced requirements and
207 hopefully sheltering in the shadow of the state's own legitimacy. The second, which has come
208 to prominence more recently with the increasing profile of the large transnational
209 corporations of the *security-industrial complex* – such as G4S – while not entirely
210 abandoning such orientation, supplements it with an independent appeal to forms of public
211 legitimacy such as, in particular, an emphasis on human rights which aims to establish the
212 private sector as a legitimate provider of coercive services in its own right.

213
214
215 pragmatic legitimacy

216
217 Until recently the predominant form of legitimacy for private security companies providing
218 services outsourced by the state is (the second of Suchman's typology) *pragmatic* legitimacy
219 (Suchman 1995: 578). This is achieved when the company "fulfils needs and interests of its
220 stakeholders and constituents" (Brinkerhoff 2005: 4). From this perspective it seems obvious
221 that the private subcontractor in criminal justice services, as in other areas, can aspire only to
222 a *pragmatic* legitimacy dependent on continuing to 'deliver the goods'. The inherent
223 insecurity of such pragmatic legitimacy is the essence of market competition between private
224 providers which, in theory, guarantees efficiency. This is the ostensible aim of government
225 outsourcing contracts based on such – not altogether coherent – measures as 'payment by
226 results' (Fitzgibbon 2016).

227
228 By contrast the traditional *cognitive* legitimacy of the police is only partially dependent on
229 actual success in controlling crime and similarly for the penal system with regard to reduction
230 of re-offending rates (Jackson et al. 2012). The cognitive legitimacy of these institutions
231 derives from other sources such as the retributive element in punishment and role of the
232 police as symbolic of 'the state on the street' (Brogden and Ellison 2012).

233
234
235 hiding behind the state

236
237 In whose eyes is legitimacy, pragmatic or otherwise, achieved (or rejected)? If we leave aside
238 the 'captive population' of offenders, that leaves the state itself and, in a democracy, the
239 general public, as the key 'stakeholders and constituents'. The thinking behind delegated
240 legitimacy is that possible public disquiet about coercion by private bodies will be alleviated
241 to the extent that the state remains clearly in charge and its own authority is stamped upon the
242 outsourcing arrangements. The state attempts to ensure this through its regime of inspection
243 and evaluation of its subcontractors, notwithstanding conflicting requirements of contractual
244 confidentiality. The public, from this standpoint, will accept private prisons (and probation)
245 knowing that these are responsible ultimately to the Ministry of Justice, and will accept
246 private security patrols in public space knowing that the Chief Constable and the Police and
247 Crime Commissioner retain ultimate control.

248
249 For their part the private security companies involved will nestle as close to the state as
250 possible in an attempt to clothe themselves in at least some of its cognitive legitimacy in the
251 understanding that the general public still have traditional 'Weberian' notions of the
252 legitimacy of coercion despite sustained attempts by neoliberal political ideology to portray
253 security as simply a commodity so that pragmatic legitimacy is the only form that counts.
254 The result, at least in the early stages of private provision, is, as Thumala et al. note, a
255 nervousness on the part of the private security providers such that

256
257 the loud confidence that dominates the security industry's public presentation of self is
258 accompanied by a quieter ambivalence about its credibility and recurrent efforts at self-
259 justification and justification in the eyes of others (Thumala et al. 2011: 286).

260
261 The authors proceed to discuss a variety of types of 'legitimation work' undertaken by private
262 security companies in order to counter negative public images stemming from "the poor
263 quality of industry personnel; the stubborn presence of 'cowboy' traders and associations
264 with criminality and violence; perceived dishonesty in the selling of products and services"
265 (Thumala et al. 2011: 287). But the issue is to what type of legitimacy is the overcoming of
266 these defects oriented? The authors identify attempts at professionalisation – the
267 establishment of the UK Security Industry Authority in 2001 as a licencing authority
268 designed to separate out professionals from the less competent and disreputable; the
269 investment in better education and training of personnel through university-associated
270 courses and credentials. As Adam White (2015) points out the Home Office resisted this for a
271 long time precisely because it did not wish to see enhanced legitimacy for an elite of private
272 security companies. Such legitimacy was partly pragmatic: focused on the emergence of a
273 supposedly more efficient private sector (see Genders 2002) but also an attempt, on the part
274 of the industry, to get as close as possible to the cognitive legitimacy of the state (see also
275 White 2010).

276
277 The latter is also the aim of what Thumala et al. detect in their study as 'symbolic borrowing'
278 (from the police and also the medical profession) whereby private security gets as 'close' as
279 possible to state agencies through conduits (familiar in other areas such as defence
280 procurement) of recruiting ex-police to boards of private companies (ditto with prison
281 governors and probation chiefs), having private security guards wear uniforms resembling as
282 closely as possible those of police officers and generally taking steps to "associate with the
283 police in part because they wish to borrow its ethos of vocation and public service" (Thumala
284 et al. 2011: 297; see also White 2010). A much more elaborate form of this process is
285 documented by Diphoorn (2016) in her study of 'twilight' policing in Durban, South Africa in
286 which private security seeks legitimacy by 'mimicking' police behaviour in public places. But
287 this, as she notes, leads to public expectations that private agencies can be called upon to
288 provide a full police service including armed response. When this cannot legally be provided
289 the legitimation strategy may backfire and the public come to view private security as a poor
290 imitation of the 'real thing'. A similar point is made in the UK context by Thumala et al. who
291 note that "by drawing comparisons with the 'real' thing, or describing private security as
292 having 'filled a void' left by the police, one simply invites the conclusion that the security
293 industry is a poor imitation" (Thumala et al 2011: 295).

294
295 These dynamics may be relatively absent from prisons and probation which do not provide a
296 direct interaction with the public. A member of the public, standing outside a private prison
297 or probation office may, without careful inspection of the logo on the entrance, not even be

298 aware of the presence of the private commercial element. The private penal sector can get
299 close to the state more easily because it is more closely integrated *physically* into the
300 workings of the state system. Indeed, it was the relative invisibility of these services which
301 made rapid and unthinking privatisation politically feasible.

302
303 The situation we have described so far is fairly straightforward. The state has retained its
304 overall *cognitive* legitimacy, its taken for granted monopoly of legitimate coercion. But by
305 thinning or delegating elements of this legitimacy it has enabled the private sector to take
306 over some of its functions. The latter achieves a degree of *pragmatic* legitimacy to the extent
307 that it meets efficiency targets set by the state. The private sector remains, especially in the
308 policing area, nervous of its status and engages in various practices – some of which may be
309 counterproductive – aimed at getting as close as possible to the state and sharing (marginally)
310 some of its cognitive legitimacy. This state of affairs, very much an ideal type representation
311 of a more complex and nuanced situation, is essentially transitional. It is arguably in an
312 advanced state of decomposition: a decomposition very much to the advantage of the more
313 powerful elements in private sector.

314
315

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

317 There are two sets of changes which are undermining the type of relationship we have
318 described above, based on the overriding cognitive legitimacy of the state and the subordinate
319 pragmatic legitimacy of the private sector. Neoliberal-inspired orientation to security in penal
320 policy prioritises low cost surveillance and monitoring of offenders at the expense of
321 rehabilitation and social reintegration (Garland 2001, Wacquant 2009, 2010). While the latter
322 is generally labour-intensive in terms of practitioner skills, the former enables deskilling, a
323 process which of itself facilitates the entry of private sector providers (Fitzgibbon 2007,
324 2008, Fitzgibbon and Lea 2014) irrespective of divergent forms of legitimacy between state
325 and private sector.

326

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

336

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

344

345 To take G4S as the exemplar: according to the company's 2015 *Corporate Responsibility*
346 *Report* (G4S 2015) the range of services offered to clients includes Care and Justice Services

347 comprising "Adult custody and rehabilitation; Prisoner escorting; Immigration services;
348 Electronic monitoring". This amounts to 9 percent of global company revenue. Meanwhile
349 Police Services include "back office support and custody suites to UK police forces" which
350 are grouped together with welfare to work, smart meter monitoring and data collection under
351 the heading of "specialist outsourced services" responsible for 11 percent of global revenue.
352 Thus just under 20 percent of company revenue is directly related to criminal justice
353 outsourcing.

354
355 By no means all of this comes from UK operations. Revenue for Care and Justice Services
356 derives also from operations based in "USA, Australia and South Africa and on a smaller
357 scale in a number of European markets and New Zealand" (G4S 2015: 5). By far the largest
358 activities of G4S globally in terms of revenue are 'security and facilities management
359 services' (58 percent of revenue) and 'cash solutions' (14 percent of revenue). Both these are
360 spread over a global sphere of operations including, besides the UK, the USA and the Middle
361 East and 'emerging markets'. The geographical distribution of revenue in 2015 was fairly
362 evenly distributed between the UK and Ireland (23 percent), North America (24 percent) and
363 Asia and the Middle East (21 percent). Areas of lesser importance are Europe (18 percent),
364 Latin America (8 percent) and Africa (6 percent). This brief picture shows a corporation of
365 global reach firmly, but by no means entirely, entrenched in outsourced criminal justice
366 work. In 2015 in revenue terms G4S was the largest security company in the world with
367 operations in around 125 countries and, with over 600,000 employees, it is the world's third-
368 largest private employer and among the largest companies listed on the London Stock
369 Exchange. The emergence of giants such as G4S is profoundly changing the dynamics of
370 legitimisation.

371
372

373 from pragmatic legitimacy to lock-in

374

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

383

384 Similar examples can be found in recent years in the UK involving both G4S and Serco,
385 another global operator. The most publicised incident involved the apparent inability of G4S
386 to fulfil its contract to provide effective security for the 2012 Olympics, necessitating the
387 deployment of military personnel at the last moment. Meanwhile G4S and Serco were
388 allegedly involved in overcharging the Ministry of Justice for services relating to the
389 electronic monitoring of offenders and Serco was subject to inquiry by the Serious Fraud
390 Office (SFO) (Travis 2013a, 2013b). Both companies sustained reputational damage leading
391 to the resignation of senior management and this was a factor in the decision by two English
392 police forces not to proceed with proposed multi-million pound contracts for outsourcing
393 back office work (White 2014). Both companies were effectively barred by the Ministry of
394 Justice from participation in initial contract bidding for the outsourcing of the bulk of the
395 English probation service (Fitzgibbon and Lea 2014).

396

397 Such events would seem to confirm the continued importance of pragmatic legitimacy
398 through the penalisation of these companies precisely on the basis of failure in this regard.
399 However, in 2014 the House of Commons Public Accounts Committee found that a number
400 of government departments (Ministry of Justice, Ministry of Defence, Department for
401 Business, Innovation and Skills and HM Revenue & Customs) were continuing to award
402 contracts to both these companies even while – in the case of Serco – under criminal
403 investigation by the SFO. The Committee report concluded: "The fact that Government gave
404 the impression that all discussions with Serco and G4S were halted whilst investigations took
405 place ... is evidence of the over-reliance on these larger suppliers" (House of Commons
406 2014). It also transpired that, despite the overcharging and the criminal investigation, both
407 G4S and Serco continued to provide services to the Ministry of Justice relating to electronic
408 tagging because "it seems that there weren't any other companies with enough tagging
409 equipment to cover the entire population of monitored convicted law-breakers" (Ford 2015:
410 1). In other words the extent of lock-in had become so great that these companies had become
411 essential to the functioning of the state even in the face of major demonstrations of
412 incompetence and suspected corruption.

413
414 There are further dimensions to lock-in. In addition to the inability of the state agencies to
415 function without the private sector, as the latter becomes dominated by a few very large
416 players these become effectively, in the same manner as large global investment banks, 'too
417 big to prosecute'. Thus in December 2014 the City of London police dropped their
418 investigation of Serco (on behalf of the SFO) having found no evidence of wrongdoing.
419 While there is no reason to doubt this, it is nevertheless true that in such cases in England and
420 Wales the Crown Prosecution Service (CPS) seems extraordinarily reluctant to proceed
421 against the companies themselves for wrongdoing and tends rather to focus on the
422 prosecution of individual employees (Hattenstone and Allison 2014). Thus in the case of the
423 migrant detainee Jimmy Mubenga who was asphyxiated by G4S employees working for the
424 then UK Border Agency (UKBA) while being placed on an aircraft for deportation, the
425 government eventually brought a prosecution against the employees (which failed) but
426 refused to prosecute the company itself for corporate manslaughter. When the Director of
427 Public Prosecutions (the head of the CPS) decided not to prosecute G4S in the Mubenga case,
428 Lord Ramsbotham, the former chief inspector of prisons, in a speech in the House of Lords
429 described the decision as 'perverse' (Sambrook 2013).

430
431 More recent cases have shown similar tendencies. In January 2016, BBC Panorama
432 documented serious abuse at Medway Secure Training Centre (STC) for young people
433 (Travis 2016). This led to the suspension and arrest of G4S staff for violent behaviour but,
434 despite an inquiry which "highlighted initial concerns about the efficacy of monitoring
435 arrangements and about whether G4S staff had sufficient understanding and training in
436 relation to the safeguarding of children in their care" (Holden et al. 2016: 8), no attempt has
437 been made (to date) to go beyond prosecution of the employees involved. This focus leaves
438 the company itself some breathing space to demonstrate its continued commitment to high
439 standards and willingness to collaborate with the authorities against criminality by its
440 employees. Although the company has suffered considerable reputational damage and
441 adverse publicity it continues to receive major government contracts. For example in July
442 2016 it was reported that the contract for the running of the Equality Advisory and Support
443 Service helpline (supervised by Government Equalities Office) was to be awarded to G4S
444 despite the fact that a House of Lords committee had in March recommended that the service
445 be taken in-house (White 2016). Lock-in and a policy of prosecuting only employees rather
446 than the company are in fact different sides of the same coin. The refusal to prosecute the

447 company is a confirmation of lock-in in which the company attempts to emulate the state
 448 itself (see below).

449
 450 Finally lock-in not only enhances the power of the private sector but also changes the
 451 character of the outsourcing agent itself. The state gradually loses the capacity – in terms of
 452 personnel and expertise – itself to provide the services it has outsourced. With funding
 453 reductions for state agencies and the transfer of personnel to the private sector, which may
 454 then impose further cuts and deskilling in the interests of profitability, it is decreasingly
 455 plausible for the state to resume control of the outsourced services at a later date. Meanwhile
 456 at the core of the state the declining size – and increasing dependence on private sector
 457 secondments – of the civil service, steadily implants the culture and personnel of the private
 458 sector into the state. We can talk of 'state debilitation' as a key aspect of lock-in (Leys 2006,
 459 Marquand 2004) which further ties the state to the private providers *irrespective* of the
 460 performance of the latter, again rather in the manner of large global financial institutions
 461 which have become 'too big to fail'.

462
 463 It might be concluded that the larger corporations of the security-industrial complex are on
 464 the verge of achieving a cognitive legitimacy such that even if they fail to deliver they are
 465 still seen as the natural agencies of state outsourcing. But the situation is rather characterised
 466 by contradiction and tension. On the one hand increasing lock-in appears to give companies
 467 considerable power to neutralise pragmatic legitimisation deficits. But, on the other hand, the
 468 process of outsourcing is still itself controversial (see for example House of Commons 2016)
 469 and the frequent controversial failures which seem to beset high profile companies like G4S
 470 threaten to reassert the logic of failed pragmatic legitimacy.

471
 472

	<i>legitimation strategy</i>	<i>relations with the state</i>
<i>Traditional and small sector, competition</i>	Sheltering under the cognitive legitimacy of the state	Pragmatic legitimacy (delivering the goods to the state)
<i>Security-industrial complex</i>	Independent global moral/normative legitimacy through 'corporate responsibility' strategies	Replacement of legitimacy with lock-in (too big to fail etc.)

473
 474

475 from hiding behind the state to normative legitimacy

476

477 In this context a third type of business legitimacy – available to the larger corporations -
 478 becomes important. The management studies authors cited above distinguish normative or
 479 moral legitimacy (we shall use the former) as a third variety alongside cognitive and
 480 pragmatic. Traditional legitimacy strategies involve the private sector seeking public
 481 approval indirectly through the filter of state approval. Pragmatic legitimacy is oriented
 482 mainly to the state as outsourcing authority and relates to effective delivery, while strategies
 483 such as 'symbolic borrowing' (see above) aim to secure public acceptability through hiding
 484 behind the cognitive legitimacy of the state.

485
486 Normative legitimacy, by contrast with both of these, involves a direct orientation towards
487 civil society – a *public relations* campaign aimed at establishing the corporation as
488 responsible 'citizen' (Bell 2016) by reference to the corporation's own values and standards.
489 The aim is to establish a type of legitimacy which "reflects a pro-social logic that differs
490 fundamentally from narrow self-interest" (Suchman 1995: 579) and leads the corporation
491 "towards acceptable and desirable norms, standards, and values" (Brinkerhoff 2005: 4). The
492 theme of the social leadership duties of the corporation is of course a familiar one among
493 business gurus such as Peter Drucker (see Cohen 2009). The more powerful the corporation,
494 the firmer the base from which it can launch its campaign for legitimacy. The growth in the
495 size and power of the security-industrial complex and the greater dependence on it of the
496 state (through lock-in and state debilitation) increases the *independent* power of the security-
497 industrial complex as policymaker in its own right, without the need to hide behind the state:

498
499 under the conditions of globalization, the strict division of labour between private
500 business and nation-state governance does not hold any more. Many business firms have
501 started to assume social and political responsibilities that go beyond legal requirements
502 and fill the regulatory vacuum in global governance (Scherer and Palazzo 2011: 899).

503
504 Normative legitimacy strategies attempt to deflect particular failures which would otherwise
505 compromise pragmatic legitimacy by stressing the basic values of the corporation – including
506 the steps taken to 'correct mistakes' when these are exposed. The aim, then, is to establish the
507 overall legitimacy of the corporation as the sort of entity to which government contracts
508 (including criminal justice) can be safely awarded despite the fact that things may
509 'occasionally go wrong'. Normative legitimacy has to be consciously propagated - through
510 various media and advertising campaigns - because:

511
512 in contrast to the unconscious internalization of cognitive and institutional logics that is
513 the basis of cognitive legitimacy, normative legitimacy requires the explicit
514 consideration of the legitimacy of capitalist mechanisms and corporate activities by
515 giving credit to the interests and arguments of a wide range of constituencies that are
516 affected by the activities of (multinational) corporations (Scherer and Palazzo 2011:
517 916).

518
519 Thus the rise of the security-industrial complex characterised by the predominance of
520 transnational corporations is in the process of displacing the older combination of pragmatic
521 legitimacy and hiding behind the state with a new combination of lock-in and normative
522 legitimacy.

524 Human rights: G4S

525 Company annual reports are likely to be a key instrument in the campaign for normative
526 legitimacy. The 2015 G4S report (G4S 2015) works to construct the company as the
527 embodiment of a set of 'acceptable and desirable norms, standards and values' such as
528 sustainable environmental impact, health and safety of employees and customers,
529 commitment to diversity, training and employee engagement etc. The aim is to portray the
530 company as a 'good citizen' in the environment in which it operates. The 2015 report includes
531 a 'Materiality Review' of three key areas: Health and Safety, Anti-Bribery and Corruption and
532 Human Rights. Health and Safety establishes that the "safety and wellbeing of our employees
533 and those in our care is one of our key priorities. Our goal is zero harm" (G4S 2015: 25).

534
535 Regarding Human Rights the report recognises that "we have a duty to ensure that we are not
536 at risk of violating human rights through the services we provide, the customers we work
537 with, the suppliers we use, or through the unfair or inappropriate treatment of our own
538 employees and others who are in our care" (G4S 2015: 25). As regards criminal justice
539 outsourcing this orientation is embodied in the undertaking that G4S "will only offer custody
540 and detention services where we can maintain a qualified talent pool and where the political,
541 legal, human rights standards and regulatory framework is consistent with our group values
542 and results in acceptable operational, commercial and reputational risk" (G4S 2015: 5).

543
544 This is good to hear but the question obviously arises of periodic departures from these
545 aspirations, many of which reach the national media through the work of investigative
546 journalists and organised global campaigns such as *StopG4S*. In this respect the global sphere
547 of operations by the company creates resources which may be deployed by critics and
548 campaigners to counter its normative legitimacy. We have already noted that the company
549 has continued to secure UK government contracts despite major failures. There seem to be
550 two elements of the response to failure. The first is to simply withdraw from a particular area
551 of outsourcing which has become problematic. For smaller security companies such a move
552 may rapidly undermine financial viability but for large transnationals like G4S, providing, as
553 we have seen, a wide variety of services, such a move may be seen as simply a step on the
554 road to rationalising the spectrum of services provided by withdrawing from those which
555 produce reputational damage for the company and focusing on less problematic forms of
556 outsourcing. Though there are obvious limits to such a strategy if the company is not to
557 forego profitable opportunities, it does seem to have been the response to the Medway
558 incident and indeed other adverse publicity globally as evidenced by the reported intention of
559 the company to withdraw from provision of penal facilities in Israel (Reed and Plimmer
560 2016).

561
562 The second part of the response, which goes to the heart of the normative legitimacy strategy,
563 is the attempt to emulate the type of response to failure characteristic of state agencies. This
564 involves a familiar mantra of admitting mistakes but claiming that lessons have been learned
565 and new procedures put in place to prevent repetition. In extreme cases there will be an
566 independent investigation. In cases of major failure by criminal justice agencies, senior police
567 officers, chief probation officers or prison governors – even on rare occasions judges – may
568 be forced to resign (Fitzgibbon 2011). Such measures have the effect of *strengthening* the
569 cognitive legitimacy of the state as such by demonstrating its ability to deal effectively with
570 failure. The normative legitimacy strategy of the security-industrial complex aims to emulate
571 this and as far as possible act *as if* the company were part of a state system enjoying cognitive
572 legitimacy. Rather than 'hiding behind the state' the aim is to project independently an image
573 of *state-like* procedures which suggest that the company can function – in response to failure
574 – in similar ways to the state and therefore should not suffer legitimacy deficits.

575
576 Thus the G4S 2015 annual report discusses the response of the company to the Medway STC
577 events mentioned above. The report stresses the co-operation by the company with external
578 inquiries into the Medway events by local authority children's services officials and the
579 police and notes the speed with which it put in place its own processes to remedy such
580 behaviour by its employees:

581
582 We have reinforced the standards expected of all employees, reminded them of the
583 group's whistleblowing facility Speak Out, implemented a series of improved processes

584 around rotation of staff and accelerated the process to implement body-worn cameras for
585 our employees in STCs. Refresher training for all staff on Minimising and Managing
586 Physical Restraint (MMPR) has been conducted... appropriate remedial action has been
587 taken to strengthen the control environment, prevent the re-occurrence of such events
588 and ensure that the group's values are adhered to and their importance reiterated across
589 the organisation (G4S 2015: 29).

590

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

600

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

614

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

628

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