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*Federalist* No. 70: Where Does the Public Service Begin and End?

Without revolution, public debate, or even much public awareness, a giant workforce has invaded Washington, D.C.—one that can undermine the public and national interest from the inside. This workforce consists of government contractors, specifically those who perform “inherently governmental” functions that the government deems so integral to its work that only federal employees should carry them out. Today, many federal government functions are conducted, and many public priorities and decisions are driven, by private companies and players instead of government agencies and officials who are duty-bound to answer to citizens and sworn to uphold the national interest.

It is hard to imagine that the founding fathers would have embraced this state of affairs. Acting as a nation—defending its security and providing for the safety of its citizens—is a bedrock concept in some of the *Federalist Papers*. For instance, John Jay writes in *Federalist* No. 2,

> As a nation we have made peace and war; as a nation we have vanquished our common enemies; as a nation we have formed alliances, and made treaties, and entered into various compacts and conventions with foreign states.
>
> A strong sense of the value and blessings of union induced the people, at a very early period, to institute a federal government to preserve and perpetuate it.

James Madison lays out a forceful case for the separation and distribution of government powers. He cautions against “a tyrannical concentration of all the powers of government in the same hands” and outlines the importance of maintaining boundaries among the divisions of government (see *Federalist* No. 47, 48, 51). I argue that the considerable contracting out of government functions is counter to the vision espoused by these statesmen. Such contracting out potentially erodes the government’s ability to operate in the public and national interest. It also creates the conditions for the intertwining of state and private power and the concentration of power in just a few hands—about which Madison warned.
The Indispensable Hand

Once, government contractors primarily sold military parts, prepared food, or printed government reports. Today, contractors routinely perform “inherently governmental” functions—activities that involve “the exercise of sovereign government authority or the establishment of procedures and processes related to the oversight of monetary transactions or entitlements.” The 20 “inherently governmental” functions on the books include “command of military forces, especially the leadership of military personnel who are members of the combat, combat support, or combat service support role”; “the conduct of foreign relations and the determination of foreign policy”; “the determination of agency policy, such as determining the content and application of regulations”; “the determination of Federal program priorities or budget requests”; “the direction and control of Federal employees”; “the direction and control of intelligence and counter-intelligence operations; the selection or nonselection of individuals for Federal Government employment, including the interviewing of individuals for employment”; and “the approval of position descriptions and performance standards for Federal employees.”

Government contractors are involved in many, if not all, of these arenas of government work. Consider, for instance, that contractors perform the following tasks:

• Run intelligence operations: Contractors from private security companies have been hired to help track and kill suspected militants in Afghanistan and Pakistan. At the National Security Agency (NSA), the number of contractor facilities approved for classified work jumped from 41 in 2002 to 1,265 in 2006. A full 95 percent of the workers at the very secret National Reconnaissance Office (one of the 16 intelligence agencies), which runs U.S. spy satellites and analyzes the information that they produce, are full-time contractors. In more than half of the 117 contracts let by three big agencies of the U.S. Department of Homeland Security (DHS)—the Coast Guard, Transportation Security Administration, and Office of Procurement Operations—the Government Accountability Office (GAO) found that contractors did inherently governmental work. One company, for instance, was awarded $42.4 million to develop budget and policies for the DHS, as well as to support its information analysis, procurement operations, and infrastructure protection.
- Manage—and more—federal taxpayer monies doled out under the stimulus plans and bailouts: The government enlisted money manager BlackRock to help advise it and manage the unsuccessful attempt to rescue Bear Stearns, as well as to save AIG and Citigroup. BlackRock also won a bid to help the Federal Reserve evaluate hard-to-price assets of Freddie Mac and Fannie Mae. **With regard to the $700 billion bailout in the fall of 2008, known as the Troubled Asset Relief Program, the U.S. Treasury Department hired several contractors to set up a process to disburse the funds.**

- Control crucial databases: In a mega-contract awarded by the DHS in 2004, Accenture LLP was granted up to $10 billion to supervise and enlarge a mammoth U.S. government project to track citizens of foreign countries as they enter and exit the United States. As the undersecretary for border and transportation security at the DHS at the time remarked, “I don’t think you could overstake the impact of this responsibility in terms of the security of our nation.”

- Choose other contractors: The Pentagon has employed contractors to counsel it on selecting other contractors. The General Services Administration enlisted CACI, a company based in Arlington, Virginia—some of whose employees were among those allegedly involved in the Abu Ghraib prisoner abuse scandal in Iraq, according to U.S. Department of the Army—to help the government suspend and debar other contractors. . . . (CACI itself later became the subject of possible suspension or debarment from federal contracts.)

- Oversee other contractors: The DHS is among the federal agencies that have hired contractors to select and supervise other contractors. Some of these contractors set policy and business goals and plan reorganizations. And, in the National Clandestine Service, an integral part of the Central Intelligence Agency (CIA), contractors are sometimes in charge of other contractors.

- Execute military and occupying operations: The Department of Defense is ever more dependent on contractors to supply a host of “mission-critical services,” including “information technology systems, interpreters, intelligence analysts, as well as weapons system maintenance and base operation support.” U.S. efforts in Afghanistan and Iraq illustrate this reliance. As of September 2009, U.S.-paid contractors far outnumbered U.S. military personnel in Afghanistan, composing nearly two-thirds of the combined contractor and military personnel workforce (approximately 104,000 Defense Department contractors compared with 64,000 uniformed personnel). In Iraq, contractors made up nearly half of the combined contractor and military personnel
workforce (roughly 114,000 Defense Department contractors compared with 130,000 uniformed personnel). These proportions are in sharp contrast to the 1991 Persian Gulf War: The 540,000 military personnel deployed in that effort greatly outnumbered the 9,200 contractors on the scene.

- Draft official documents: Contractors have prepared congressional testimony for the secretary of energy. Websites of contractors working for the Department of Defense also have posted announcements of job openings for analysts to perform functions such as preparing the defense budget. One contractor boasted of having written the U.S. Army’s Field Manual on “Contractors on the Battlefield.”

In short, the outsourcing of many inherently governmental functions is now routine. The government is utterly dependent on private contractors to carry out many such functions. As the Acquisition Advisory Panel, a government-mandated, typically contractor-friendly task force made up of representatives from industry, government, and academe, acknowledged in a 2007 report that “[m]any federal agencies rely extensively on contractors in the performance of their basic missions. In some cases, contractors are solely or predominantly responsible for the performance of mission-critical functions that were traditionally performed by civil servants.” This trend, the report concluded, “poses a threat to the government’s long-term ability to perform its mission” and could “undermine the integrity of the government’s decision making.”

Contractor officials and employees are interdependent with government, involved in all aspects of governing and negotiating “over policy making, implementation, and enforcement,” as one legal scholar has noted. Contractor and government employees work side by side in what has come to be called the “blended” or “embedded” workforce, often sitting next to each other in cubicles or sharing an office and doing the same or similar work (but typically with markedly different pay). When the GAO looked into the setup of Defense Department offices, its investigation established that, in some, the percentage of contractors was in the 80s.

Yet contractors’ imperatives are not necessarily the same as the government’s imperatives. Contractor companies are responsible for making a profit for their shareholders; government is supposedly answerable to the public in a democracy.

Amid this environment, which is complicated by mixed motives, contractors are positioned to influence policy to their liking on even the most sensitive, mission-critical, intelligence, questions on government to manage agencies that are at risk of losing nation’s core of dependable and trustable part of the nation.
mission-critical government functions, such as fighting wars, guarding against terrorism, and shaping economic policy. Government investigators looking into intelligence, defense, homeland security, energy, and other arenas have raised questions about who drives policy—government or contractors—and whether government has the information, expertise, institutional memory, and personnel to manage contractors—or is it the other way around? And in three government agencies that the GAO investigated, including the DOD and DHS, the GAO found that “sensitive information is not fully safeguarded and thus may remain at risk of unauthorized disclosure or misuse.” The result of all of this is that the nation’s safety, security, and sovereignty may be jeopardized, along with the very core of democratic society—citizens’ ability to hold their government accountable and have a say in public decisions. This seems far afield from the concept of the nation expressed by, say, John Jay.

Enabling Big Government

How did this state of affairs come to be?

Ironically, the perennial American predilection to rail against “big government” is partly to blame for the creation of still bigger government—the “shadow government” of companies, consulting firms, nonprofits, think tanks, and other nongovernmental entities that contract with the government to do so much of its work. This is government for sure, but often of a less visible and accountable kind.

The necessity of making government look small—or at least contained—has fueled the rise of this shadow government. In an ostensible effort to limit government, caps have been put on how many civil servants government can hire. But citizens still expect government to supply all manner of services—from Medicare and Social Security to interstate highways to national defense. To avoid this conundrum, both Democratic and Republican administrations over the years have been busily enlisting more and more contractors (who, in turn, often hire subcontractors) to do the work of government. Because they are not counted as part of the federal workforce, it can appear as if the size of government is being kept in check. Like the Potemkin village of Russia, constructed to make the ruler or the foreigner think that things are rosy, the public is led to believe they have something they do not.

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Where federal employees once executed most government work, today, upwards of three-quarters of the work of federal government, measured in terms of jobs, is contracted out. Many of the most dramatic alterations have occurred since the end of the Cold War. Contracting out accelerated and assumed new incarnations during and after the Bill Clinton administration. The advent of ever more complex technologies, which gave birth to information technologies on which society now relies and which the U.S. government largely outsources, tipped the balance even further. The shadow government, which devises and implements so much policy and forms the core of governance, is the elephant in the room.

The shadow government encompasses all of the entities that swell the ranks of contractors and entire bastions of outsourcing—neighborhoods whose high-rise office buildings house an army of contractors and “Beltway Bandits.” Largely out of sight except to Washington-area dwellers, contractors and the companies they work for do not appear in government phone books. They are less likely to be dragged before congressional committees for hostile questioning. They function with less visibility and scrutiny on a regular basis than government employees would face. Most important, they are not counted as government employees, and so the fiction of limited government can be upheld, while the reality is an expanding sprawl of entities that are the government in practice.

The Elephant in the Room

While it may be the elephant in the room, we know little about the nature of the beast. A key barometer of the growth of the shadow government, driven in part by an increase in demand for military, nation-building, and homeland security services after 9/11, is the number of government employees versus contractors. Government scholar Paul C. Light has compiled the most reliable figures on contractors. The number of contract workers—compared with civil servants, uniformed military personnel, and postal service employees—increased steadily over the last two decades. In 1990, roughly three out of every five employees in the total federal labor force worked indirectly for government—in jobs created by contracts and grants, as opposed to jobs performed by civil servants, uniformed military personnel, and postal service workers. By 2002, two out of every three employees in the federal labor force worked indirectly for government, and, by 2008, the number was three out of four.
In the DHS—the mega-bureaucracy established in 2003 through the merger of 180,000 employees and 22 agencies, the creation of which entailed the largest reorganization of the federal government in more than half a century—contractors are more numerous than federal employees. The DHS estimates that it employs 188,000 workers, compared with 200,000 contractors.

In some arenas of government, contractors virtually are the government. The DHS, which includes the Customs Service, Coast Guard, and Transportation Security Administration, has relied substantially on contractors to fill new security needs and shore up gaps. In nine cases examined by the GAO, “decisions to contract for ... services were largely driven by the need for staff and expertise to get DHS programs and operations up and running quickly”.

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Meanwhile, about 70 percent of the budget of the U.S. intelligence community is devoted to contracts, according to the Office of the Director of National Intelligence, which was created in 2005 and supervises 16 federal agencies. Contract employees make up an estimated one-quarter of the country’s core intelligence workforce, according to the same office. The director both heads the U.S. intelligence community and serves as the main advisor to the president on national security matters.

Contractors are plentiful in other arenas of government that directly affect national and homeland security, not only the departments of defense and homeland security. For instance, nearly 90 percent of the budgets of the Department of Energy and NASA go to contracts.

Information technology (IT), which touches practically every area of government operations, is largely contracted out. Upwards of three-quarters of governmental IT is estimated to have been outsourced even before the major Iraq War-related push to contract out. For companies in search of federal business, IT is the “the new frontier,” according to Thomas Burlin, who is in charge of IBM Business Consulting Services’ federal practice. With ever more complex technologies always on the horizon, the outsourcing of IT only stands to grow. Although contracting out computer network services may be unproblematic or even desirable, many IT functions cannot be separated from vital operations such as logistics that are integral to an agency’s mission. * * *

Contractors are so integrated into the federal workforce that proponents of insourcing acknowledge that they face an uphill battle. Yet the proliferation of contracting widens the de facto base of government in which new forms of
unaccountable governance can flourish. It makes government more vulnerable to operations that fall short of the public and national interest.

Swiss-Cheese Government

In theory, contracts and contractors are overseen by government employees who would guard against abuse. But that has become less and less true as the capacity of government oversight has diminished—a lessening that seems to flow directly from the need to maintain the facade of small government. A look at trend lines is illuminating. The number of civil servants who potentially could oversee contractors fell during the Clinton administration and continued to drop during the George W. Bush administration. The contracting business boomed under Bush, while the acquisition workforce—government workers charged with the conceptualization, design, awarding, use, or quality control of contracts and contractors—remained virtually constant. * * *

The result is that government sometimes lacks the information it needs to monitor the entities that work for it. A top GAO official reported that in many cases, government decision makers scarcely supervise the companies on their payrolls. As a result, she observed, they are unable to answer simple questions about what the firms are doing, whether they have performed well or not, and whether their performance has been cost-effective.

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A paucity of oversight is one factor that has led the GAO to identify large procurement operations as “high risk” because of “their greater susceptibility to fraud, waste, abuse, and mismanagement.” The list of high-risk areas has, since 1990 or 1992 (depending on the specific area), included the large procurement operations of the Departments of Defense and Energy, as well as NASA. The DHS has been on the high-risk list since its creation in 2003, and it has been faulted for a lack of oversight in procurement. As comptroller general of the United States, David M. Walker (2003) said that he is “not confident that [high-risk] agencies have the ability to effectively manage cost, quality, and performance in contracts.” He added that the current challenges to contract oversight are “unprecedented.”

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When the number of civil servants available to supervise government contracts and contractors proportionately falls, thus decreasing the government’s oversight capacity, and when crucial governmental functions are outsourced, government
begins to resemble Swiss cheese—full of holes. Contractors are plugging these holes. As a consequence, contractors have become the home for much information, legitimacy, expertise, institutional memory, and leadership that once resided in government.

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Concentrating Powers

Swiss-cheese government lends itself to the kind of concentration of powers that Madison warned about. Over the past decade and a half, new institutional forms of governing have gathered force as contractors perform inherently governmental functions beyond the capacity of government to manage them; as government and contractor officials interact (or do not) in the course of projects; as chains of command among contractors and the agencies they supposedly work for have become ever more convoluted; and as contractors standing in for government are not subject to the same rules that apply to government officials. The result is that new forms of governing join the state and the private, often most visibly in intelligence, defense, and homeland security enterprises, where so much has taken place since 9/11.

Incentive structures that encourage government executives (notably intelligence and military professionals) to move to the private sector, as well as new contracting practices and a limited number of government contracting firms, are among the factors that facilitate the intertwining of state and private power. With regard to the former, not only are salaries and perks for comparable jobs typically greater in the private sector, but often, so is prestige. Many government executives, retirees, and other employees follow the money by moving to the private sector. But the landing spots that supply the big bucks—and with them, influence and stature—are often those held by former government executives. Although there are rules to address the revolving door syndrome, companies with significant government contracts often are headed by former senior officials of intelligence- and defense-related government agencies.

When government contractors hire former directors of intelligence- and defense-related government agencies, they are banking on “coincidences” of interest between their hires and their hires’ former (government) employers. (A coincidence of interest occurs when a player crafts an array of overlapping roles across organizations to serve his own agenda—or that of his network—above that of those of the organizations for which he works.) The result of such
coincidences in the intelligence arena is that “the Intelligence Community and the contractors are so tightly intertwined at the leadership level that their interests, practically speaking, are identical,” as one intelligence expert said.

Also potentially facilitating the fusion of state and private power are changes in contracting practices and the dearth of competition among and consolidation of government contracting firms, which has led to government dependence on a limited number of firms. The Clinton administration transformed contracting rules with regard to oversight, competition, and transparency under the rubric of “reinventing government.” As a result, small contracts often have been replaced by bigger, and frequently open-ended, multiyear, multimillion- and even billion-dollar and potentially much more lucrative contracts with a “limited pool of contractors,” as the Acquisition Advisory Panel put it. Today, most federal procurement contracts are conferred either without competition or to a limited set of contractors. A Barack Obama White House memo noted the “significant increase in the dollars awarded without full and open competition” during the period 2001–2008. Moreover, industry consolidation (defense is a case in point) has produced fewer and larger firms. * * *

The routine outsourcing of government functions, the structures of incentives, and new contracting rules and practices encourage new forms of governing in which state and private power are joined. These forms seem very far afield indeed from Madison’s vision of a nation in which government powers cannot be concentrated.

Reclaiming the Soul of Government

Some authorities have sounded alarm bells about the present state of affairs. In 2007, David M. Walker, the comptroller general of the United States and longtime head of the GAO, called for “a fundamental reexamination of when and under what circumstances we should use contractors versus civil servants or military personnel,” And President Obama acknowledged the problem. Early in his term, Obama announced plans to “insource” certain jobs—transferring work back to the government—and expressed concern about the outsourcing of inherently governmental functions. While the administration has proposed some insourcing and efforts to push back or review the ever upward spiral of outsourcing, the current state of affairs cannot simply be rolled back.

It is not just that government is utterly dependent on private companies to do much of its work. The United States faces an entrenched problem that cannot

*be fixed simply by overseeing contracting or by even losing to the private sector. Another sector have been contracting and influence the government from the outside.

The change system, in essence, will occur if we would enhance the inherent incentive in the system. But the change must take momentum and be essentially described as a movement.”

Cato Institute
Privatization

In recent decades, such as airpower, has overthrown a number of governments, led to reductions in military spending. The Second World War in the 1980s...
be fixed simply by insourcing jobs or by hiring more government employees to oversee contractors, as some observers have suggested. A top-to-bottom rethinking of how government makes use of contractors is necessary. One particularly important issue that deserves attention is how to rebuild capacity that has been lost with the privatization of information, expertise, and institutional memory. Another set of challenges lies in reforming the contract laws and regulations that have been changed over the past decade and a half—and that have made the contracting system less transparent and accountable and more vulnerable to the influence of private and corporate agendas.

The changes that have taken place are so systemic and sweeping that a new system, in effect, is now in place. It is the ground on which any future changes will occur. A fundamental redesign of the system is necessary. In that redesign, we would do well to pay attention to the vision of the founding fathers regarding the security of the nation and safety of its citizens, as well as the dangers inherent in the consolidation of powers.

But reclaiming government is not merely a design challenge. Government must take its soul back. While it may be strange to mention “soul” and government in the same breath, linking the quintessentially personal with the quintessentially bureaucratic and impersonal, a government procurement lawyer described the current state of affairs as the “ebbing away of the soul of government.” When an institution is drained of expertise, information, and institutional memory, it not only loses its edge, but also its essence.

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Cato Handbook for Policymakers

Privatization

In recent decades, governments on every continent have sold state-owned assets, such as airports, railroads, and energy utilities. The privatization revolution has overthrown the belief widely held in the 20th century that governments should own the most important industries in the economy. Privatization has generally led to reduced costs, higher-quality services, and increased innovation in formerly moribund government industries.

The presumption that government should own industry was challenged in the 1980s by British Prime Minister Margaret Thatcher and by President