



Conceptualising the Dichotomy between Private Military Contractors and Soldiers amid 'Society'

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Abstract: *Since the end of the Cold War Private Military Companies have emerged as important players within international politics. Their significance is expressed by the fact that the United States of America are unable to wage war without the assistance of such companies. Due to the strong reliance of states on such private actors various studies have investigated this phenomenon. This paper contributes to this literature by conceptualising the status of private contractors in relation to society. It will do so by looking at the different perceptions towards private contractors and soldiers when they die and when they kill.*

*Denn die einen sind im Dunkeln
Und die anderen sind im Licht,
Und man sieht die im Lichte,
Die im Dunkeln sieht man nicht.*

*For some are in the dark
And some are in the light
And we see those in the Light
But those in the Dark are out of sight*

- Bertolt Brecht, *The Ballad of Mack the Knife* in *The Threepenny Opera*

Since the end of the Cold War, states witnessed an increasing outsourcing trend of their military capabilities. Private Military and Security Companies (henceforth PMSC's and private contractors) began to emerge as an important actor within the security structure of states. The numbers with regard to this phenomenon are indeed impressive. Today the private marketing of war, seen on a global scale, has created several hundred companies, operating in over 100 countries on six continents, and its global annual revenue is expected to be close to \$230 billion by 2015 (Singer, 2003; Singer, 2007: 78;

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Abrahamsen and Williams, 2011: 19). This makes the privatization of war one of the fastest growing and most profitable sectors of the economy worldwide. Furthermore, with regards to the United States of America, which will be the main focus of this paper, we see that the extent to which the U.S. relies on contractors has changed significantly. We can observe that during Operation Desert Storm in 1991 1 out of every 100 servicemen deployed in Iraq was a contractor. With respect to Operation Iraqi Freedom in 2003 the numbers of contractors increased steadily up to the point that the numbers of contractors compared to U.S. soldiers reached parity in 2008 (CBO Report, 2008) The implication of this is that the U.S. has become depended on private contractors when she decides to engage in warfare (Singer, 2007: 2). Although reasons for the rise of the Private Military Industry are manifold and therefore go beyond the scope of this paper, two of the main reasons which led to the ascent of these corporate actors should be highlighted. Firstly, the end of the Cold War led to large global military cutbacks of expenditures. These cutbacks created high numbers of unemployed soldiers as well as a variety of 'security vacuums' in certain areas of the world, resulting from the demise of patron-client state relations (Francis, 1999; Singer, 2008; Uessler, 2008) Secondly, and most importantly, a general outsourcing trend has taken hold within political and military institutions, following neo-liberal principles (e.g. Thatcherism and Reaganomics), which had a huge impact on the way national armed forces were organized and composed (Francis, 1999; Singer, 2008). Especially following the invasion of Iraq, the outsourcing of military capabilities has stirred up heated debates within various disciplines including history, economics and political science (Singer, 2003; Avant, 2005; Franoni & Ronzitti, 2011). What is missing in these debates, however, is a discussion on the different perceptions towards private contractors and soldiers when they die and when they kill. The main concern here is that contractor deaths do not receive the same amount of attention if compared to the death of a soldier. Consequently, the death of a private contractor, it appears, is somehow absent from the act of war. Similarly absent from the act of war is the criminal liability of private contractors as exemplified by the various immunity laws that govern their status.

In order to develop a framework which will help to conceptualise the contractor's status this paper will proceed in a twofold way. Part one will be concerned with the difference between the status of a private contractor and that of a soldier amid the societies that employ their labour. Here, the focus will lie on the observation that the contractor's loss of life is widely ignored. This part will build on the famous works "*Gemeinschaft und Gesellschaft*" (*community and society*) by German sociologist Ferdinand Tönnies (1887) and *Imagined Communities* by Benedict Anderson (1991). It will be argued that the dichotomous relationship between community (*Gemeinschaft*) and society (*Gesellschaft*) can offer an explanation for the lack of public concern towards contractor deaths. The second part will conceptualise the status of private contractors with regards to the societies they encounter in conflict zones focussing specifically on the legal immunity private contractors enjoy in those zones.

The means by which this study will proceed in making an argument will be based on an etymological analysis. This way of advancing an argument goes at least back to Socrates and found great expression during the Middle Ages especially in the writings of Isidorus of Seville (Malkiel, 1993;

Verlinsky, 2003). The interest in etymology, which these authors expressed, lay in the assumption that etymology will give us the means first to recover a hidden objective truth that lies at the origin of words and secondly, that the recovery of this origin will allow a narrowing and tightening up of the term, thereby making it possible for any form of analysis to discover the truth. Hence, *etymologia* literally means the “study of true meanings”. Etymology as an analytical tool received renewed interest by modern writers such as Friedrich Nietzsche (Nietzsche, 2007: 13), Martin Heidegger (King, 2007: 278) and Jacques Derrida (Derrida, 2009: 66). But the way in which these authors have used etymology differed significantly from the intention of the previously mentioned authors. Rather than tightening terms up, their interest lay in the opening up of these very terms. The aim was not to arrive at a singular original meaning of a term but to discover the whole range of various and often contrasting meanings that a term can carry with it (King, 2007: 216). Used in this way the study of etymology can contribute to the understanding of the performativity of language in making the world in which “we” live in. It thereby makes visible the contested meaning of taken-for-granted political concepts. Costas Constantinou has done this in a most fruitful way to “our” understanding of the “state”. Through an etymological analysis he traces the origin of the term state back to the Greek term *stasis*, ‘which had not only the meaning of immobility, standing and status, but also of division, controversy, turbulence, strife and revolt’ (Constantinou, 2004: 6). What this etymology makes visible is how the word state, conceals its own contested nature by privileging one meaning, that of immobility, standing and status, over the other. Hence, etymology can bring light into those dark places that have been concealed by the same language that constitutes them.

Remembrance, duty and sacrifice

- *The dead die only when they have been forgotten* (Kostas Ouranis, Athens 1915)

As mentioned in the introduction, the death of private contractors does not raise any attention. This lack of recognition is exemplified by a speech former U.S. President George W. Bush gave at Arlington Cemetery on May 30th, 2005. There he paid tribute to those who gave their lives in defence of American liberty, and flanked by two American flags, Bush spoke the following words:

The soldiers, sailors, airmen, and marines we remember today, answered the call of service in their Nation's hour of need. They stood to fight for America's highest ideals. And when the sun came up this morning, the flag flew at half-staff in solemn gratitude and in deep respect. ... All stood to protect America. And all carried with them memories of a family that they hoped to keep safe by their *sacrifice*. Looking across this field, we see the scale of heroism and *sacrifice*. All who are buried here understood their *duty*. ... Because of the *sacrifices* of our men and women in uniform, two terror regimes are gone forever. These are the men and women who wear our uniform.... their *sacrifice* will always be remembered by a grateful Nation (Bush, 2005: 893-894 my emphasis).

George W. Bush's words recall that Memorial Day rites; "are a modern cult of the dead and conform to Durkheim's definition of sacred collective representations" (Warner, 1959: 278). According to Durkheim all human societies make a distinction between the sacred and the profane (Durkheim, 2012, 29 – 36). This is extremely visible with respect to the soldier, who is set apart as "sacred" because of the duties he performs for the nation, which if need be, might require his/her death. In this way the soldier's death takes the form of a sacrifice. By giving up his life he kept the American Nation alive and safe, assuring its continuity.

But what George W. Bush failed to mention are those that are not 'men and women who wear *our uniform*' (Bush, 2005: 893-894) but are contracted to fight alongside U.S. Military forces. Those agents whose dead is not honoured, nor even recognized. While the media reports the death of every fallen soldier, contractor deaths receive limited attention. Additionally to Bush's speech this is further exemplified by the Washington Post's website "Faces of the Fallen"; 'which not only identifies deceased soldiers, but humanizes each loss with a photograph, biographical information, and a description of each service member's final action' (Schooner, 2010: 16) But information about contractor fatalities appears to be of no particular interest to societies that hire their services. A news story that hit the American media in late summer 2004 confirms this. It stated that U.S. casualties had passed the 1000 killed in action mark, putting a great deal of pressure on the Bush Administration. What they missed, however, is the blunt reality that such a figure had long been passed, if contractor deaths would have been included. (Singer, 2004: 10) With regards to the theatres in Iraq and Afghanistan, Schooner and Swan (2010: 16) observed that; 'contractor deaths now represent over 25 percent of all U.S. fatalities' in those conflicts. But it is more than possible that contractor fatalities are far higher, since there is no indication that non-U.S. deaths have been tracked with any reliability (Ricks, 2011). Hence, '(o)n the modern battlefield, contractor personnel are dying at rates similar to – and at times in excess of – soldiers' (Schooner & Swan, 2012: 3).

Nevertheless, contractor casualties go unnoticed. In Avant & Sigelman's words (2008: 29);

There is no running count of private security deaths posted on the network news or the DoD website. Photos of private security personnel who have died in Iraq are not part of the "honor roll" flashed across the screen at the end of the "News Hour with Jim Lehrer.

This is further exemplified by debates inside the academic domain. While issues such as the accountability and legitimacy of PMSC's are extensively discussed, apart from a few exceptions (Avant & Sigelman, 2008; Taussig-Rubbo, 2009; Schooner, 2010; Schooner & Swan, 2012), the deaths of contractors are nearly absent from this debate. From here, Taussig-Rubbo concludes, and this paper subscribes to this observation, that the indifference of the public to the death of contractors stems from the perception that they lack a sacrificial component (Taussig-Rubbo, 2009: 106). The importance of sacrifice is illustrated in Bush's speech by its constant reiteration. But this paper will depart from Taussig-Rubbo as its aim is to analyse how the lacking sacrificial component surrounding the concept of the private contractor can be accounted for with respect to society. For this it will look at the dichotomy between community and society outlined in Ferdinand Tönnies work "*Gemeinschaft und Gesellschaft*".

Community, duty and the sacred death

- "*Dulce et decorum est pro patria mori*"¹ Horace, Odes (Book III; 2.13)

Before we can turn to the question why the death of a private contractor does not evoke sacrificial feelings by societies that hire them, we must find an explanation for the perceived "sacredness" of the soldier, which makes his death worthy to mourn about. Ferdinand Tönnies work "*Gemeinschaft und Gesellschaft*", this paper will argue, can offer an explanation. In this work Tönnies conceptualised *Gemeinschaft* (community) as a status in which the interests of the individual fuses with the interests of the group as a whole. Within a community, relationships rest on three pillars (whether real or imagined), which are; shared blood, shared place, and shared mind or belief (Haidt & Graham, 2009: 375). For this reason, these relationships are based on a shared morality and ties that bind individuals emotionally together. Tönnies furthermore identified communities by a natural will, which, is directed towards; 'the 'sod' that ... forefathers have worked [on] for generations, and towards other persons who are the object of ... direct affirmation, of love, trust, or of feelings of duty' (Kamenka & Erh-Soon Tay, 1990: 134). Love, trust and duty do all resemble important notions that surround the idea of the soldier; hence it is within community where this paper situates the position of the soldier. Although Tönnies communities merely describe small social units like villages, combining Tönnies work with Benedict Anderson can lift the notion of community to the higher level of nations, which Anderson so famously called; "Imagined Communities" (Anderson, 1991: 5-6).

Following Anderson, Imagined Communities are personal and social constructions, which are created and imagined by the people who then perceive themselves as part of that group. Unlike a family unit or any other small-scale community, the members of any nation will never meet all of the other members of their nation and have face-to-face interaction only with a fraction of the population; yet they will still have a sense or image of the collective in their minds (Anderson, 2002: 5). *Nation* is thus an over generalized abstract sign that is produced through large-scale events, like for example, war. War takes an exceptional position within the construction of the nation, as the notion of the Nation, and with it the modern conception of citizenship, are intrinsically linked to the idea of soldiering as a prerequisite for citizen rights (Janowitz, 1976; Kier & Krebs, 2010: 8-9). A vivid and contemporary expression of this phenomenon is the observation that service in the United States Army can offer a route to citizenship for non-U.S. nationals (US Immigration Office, 2011). In this sense imagined communities have overcome the aspect of shared blood, as described by Tönnies, through the service in the armed forces.

The idea that military duty represents a prerequisite for citizenship has its point of emergence within French Revolutionary thought and the creation of the first large scale conscription army the *levée en masse* (mass mobilisation/mass uprising) in 1793. In this timeframe we must also situate the emergence of the soldier's death perceived as a sacrifice. Because, with regards to the French Revolution, Durkheim observed, that a communities aptitude

¹ What joy, for fatherland to die.

... for setting itself up as god or for creating gods was never more apparent than during the first years of the French Revolution. At this time ... under the influence of the general enthusiasm, things purely laical by nature were transformed by public opinion into sacred things: these were the Fatherland Liberty, Reason” (Durkheim, 2012: 214)

This sacredness in due turn was then conferred to the actor who swore an oath to protect these sacred abstractions. Defending these abstractions was the task of the citizen, who only by becoming a soldier enrolled in the national armed forces could guarantee his citizenship. To defend the citizenship conferred to him and with it all the sacred symbols of the nation that granted him that right, a soldier should understand his service not as a burden but as a moral duty. Such a moral duty is already visible in the etymological meaning of the term community itself, deriving from the Latin *communitas*.

At first *communitas* refers to that which is not proper, ‘... and therefore is that which is “public” in opposition to “private” or “general” (though also “collective”) in contrast to “individual” (*particololare*)’ (Esposito, 2010: 3-4). But there is a further meaning to *communitas*, which is enclosed in the terms stem “*munus*”. This term vacillates three distinct meanings, which are *onus*, *officium*, and *donum*, all traceable to the idea of “duty” (*dovere*) (Esposito, 2010: 4). While the meaning of duty, with regards to *onus* and *officium* is exemplified by words like; obligation, office, official or position, the third, *donum*, denotes a gift. (Esposito, 2010: 4) With respect to *munus*, *donum* is a gift that one *cannot not* give, making it an obligation. (Esposito, 2010: 5) The gift aspect of *munus* therefore needs to be understood as a *giving*, or more vivid, as a *giving up*. Hence, with respect to the soldier, *munus* implies the duty ‘... of dying *of* the or *for* the other. Such a death is not given in the first instance as annihilation. It institutes responsibility as a putting-oneself-to-death or offering-one’s-death, that is, one’s life, in the ethical dimension of sacrifice.’ (Derrida, 1996: 48) This, offering of one’s death, imbues the soldier’s death with the meaning of sacrifice, and this sacrifice takes a significant role in the construction of nations. Because only in death, can the soldier become a powerful sacred symbol which revives the collective ideals of the nation. (Warner, 1959: 279) A community therefore requires a constant fresh stream of recently dead as through death it symbolically stays alive and vital, while at the same time teaching the living the meaning of life and death. (Bastide, 2011: 264) In this way, the communities’ renewal of vitality depends on the death of a soldier. The soldier’s death therefore can be seen as an act of love for the nation (imagined community). An act of love, that lifts the soldier’s death up to the sublime level of the sacrifice. Through such an act of sacrificial love the community’s existence transcends death and finds meaning.

The significance this kind of love assumes for the creation and survival of a political concept like the nation might best be explained by turning to Plato, as he not only offers the first recorded philosophical discussion on love, but more significantly because Western political philosophy in general is understood as a series of footnotes to his work. (Cooper, 2008: 17) For Plato, such a sacrificial love, for which he used the term *eros*, is the tie that binds the individuals of a community together. *Eros* here takes on the form not of a love that is erotic and sexual in nature, but that of a platonic expression of love, which is projected onto an abstraction, such as the *polis*. Plato most famously expressed such a kind of love in the Symposium, where, in a well-known passage the character Phaedrus calls upon the citizens to love their

polis and if need be to sacrifice their lives for it (Plato, 1925: 178a - 179b). This notion is summed up by Phaedrus in the following words: ‘... *only such as are in love will consent to die for others.*’ (Plato, 1925: 179b) The *polis*, thereby, becomes the prime political abstraction towards which a community creating form of platonic love is directed. But this form of love only creates communities by demanding a blood tribute from the lovers. A blood tribute that only becomes community creating if spilled in the name of the abstract community, because then it becomes a debt and duty for others to assure that such blood was not spilled in vain. For this reason war becomes a constitutive element for both the creation and survival of political communities. War assumes this role because it is the prime catalyst for the creation of a blood stream that allows this debt to be incurred, while simultaneously creating the situation for repaying this debt. Fighting and dying in war thereby becomes a sublime action, but only if conducted in the name of a community. Hence, the soldier’s death assumes a significant role within the survival of communities as in this way the *polis* power and the citizen’s own glory in death prove everlasting. (Berg, 2010: 17) For this reason, love for the *polis* (or nation) is a form of love in which, *eros* and death (*thanatos*) are fused, because the soldier’s love for the nation is perfected in death. Thus, for the soldier it seems that *eros* and *thanatos* become one in war, because it is on times of war when *eros* rises above the bodily and platonically orients itself towards abstract objects. (Ludwig, 2002: 333)

Imagined communities are exactly such abstract objects and therefore it might be claimed that this form of *eros* can explain why Anderson describes the nation as a: “fraternity that makes it possible, over the past two centuries, for so many millions of people, not so much to kill, as willingly to die for such limited imaginings” (Anderson, 2002: 7). Soldiers therefore, living and dead, inhabit a prominent role within the imagined community, since they represent the “nation” in war. Consequently “soldiers” as a collective entity enjoy an elevated position in this construct and through their humility and sacrifice for “all of us”, their death is perceived to be worthy to mourn about, as exemplified by Bush’s speech (Bush, 2005: 893-894). Furthermore, through the public display of grievance and remembrance dead soldier are “transformed from a father owed for sacrifice who will need future blood tributes, into a child embodying the renewed life of the community, on whom its future also depends...Every soldier becomes a redemptive sacred figure to subsequent generations of celebrants.” (Marvin & Ingle, 1999: 68 - 69) The soldier therefore, plays the part of the sacrificial victim whose death is invested with the meaning and the power of the group making his sacrifice a symbol for collectivity. (Monnet, 2012: 9) This is exemplified by, the war memorial of the Unknown Soldier. These memorials are the definite expression of the idea of the nation, because the ones who have sacrificed their live for it, are honoured even beyond their personal identity. In honouring the unknown we honour the entire imagined community.²

Seen in this way sacrifice becomes the prime duty of the soldier and the price for his elevated position within the community, as well as the debt that he inherited from the gift of citizenship. This debt, is already visible in the etymology of duty itself, because duty derives from *debere*, the Latin terminology for debt. *Communitas* therefore is the totality of persons united by an obligation or a debt; a previously contracted debt. But it is a debt that can never fully be repaid. That the debt can never totally be repaid is

² I thank Norma Rossi for pointing that out to me.

colourfully illustrated by a speech, former U.S. President George W. Bush gave a few months after the Veteran's Day speech quoted above. On the 22nd of August, 2005, he said:

In war and in peace, America's veterans *set an example of citizenship*, and we honour your devotion to *duty* and to our country. All of America's *veterans have placed the nation's security before their own lives. Your sacrifice creates a debt that America can never really fully - fully repay.* (President Honors Veterans of Foreign Wars at National Convention, August 2005, my emphasis)

By sacrificing their lives, American soldiers guaranteed the nations security, making sacrifice for the nation an example of citizenship. This sacrifice creates a debt, which can only partially be repaid through remembrance and further blood sacrifices, which assure that previous sacrifices have not been in vain. The soldier's death therefore, creates a void that can never be filled; his sacrifice therefore creates a debt that can never "*fully - fully*" be repaid. But community necessitates that void as its own legitimacy is grounded in it. By dying on behalf of the community, the soldier's negation of life provides the legitimacy that the cause and the entity in which name they died, is just. As '[b]y the canalisation of violence for protecting a particular social entity, the existence of that entity is made legitimate' (Brænder, 2009: 27-28). The death of the soldier therefore legitimises and justifies violence concurrently. Hence, the public display of grievance and remembrance serves the nation as a constant reminder that its legitimacy, towards itself, is uncontested. The soldier's love for the nation therefore, can only be perfected in death, and must be repaid by recognition and remembrance. Through death, the soldier makes the nation fall in love with him, thereby stylizing him as a sacred symbol, and thus making the nation renew its love for itself.

"Gesellschaft" or how to die profane

If community offers an explanation for the sacrificial feelings towards soldiers, its opposite can help to explain the lack of sacrificial feelings towards private contractors. Hence, this paper situates the private contractor within the realm of society, which according to Tönnies, is community's opposite.

Where Tönnies described *Gemeinschaft* (community) as something based on intimacy, duty and sacrifice, *Gesellschaft* (society) on the other hand is based on relationships that are impersonal and contractually bound resulting from competing individual interests. Hence, where; 'Gemeinschaft...is the genuine form of living together...Gesellschaft is transitory and superficial. Accordingly, Gemeinschaft should be understood as a living organism, Gesellschaft as a mechanical aggregate' (Tönnies, 2002: 35). We might therefore, state that, while community is sacred, society appears profane. Profane, in Tönnies sense, because society describes associations in which, for the individual, the larger association never takes precedence over the individual's self-interest. This self-interest, according to Tönnies, is based on the idea of rational will. Rational will, which governs decisions within societies, is described as a '*paradigmatic expression in relation to money*' (Kamenke & Erh-Soon Tay, 1990: 134). Consequently, rational will is oriented towards the future, and what might be obtained in it. Hence; 'Society's inhabitants live in a world dominated by interested exchange (disunity of goods), as illustrated by the metropolis and

the world market – a world whose protagonists are the merchant and the salaried worker.’ (Schulte-Tenckhoff, 2001: 9) In this way, if trade is one of the core characteristics of society, we could conceptualize the private contractor as a person who is selling his body and expertise on a market. He therefore becomes *hominum commercium*, human commerce. The private contractor’s relational dimension therefore is limited to the domain of the market, which is situated within the realm of society. Therefore, where the soldier is perceived to offer his body in an act of love, the private contractor is perceived to sell it in exchange for remuneration.

And here we have the *munus* stem reappearing again. Remuneration derives from “*re*”, which means “back” in conjunction with *munerari*, having *munus* as its etymological stem, denoting “to give”. Seen in this way the contractor might be understood as an individual that gave back the sacred debt incurring aspect of *munus* in exchange for profane remuneration. Through this transaction the contractor is perceived to have sold his body, thereby denying his death to be acknowledged as a sacrifice because death can only be understood as a sacrifice if it has been offered freely in the line of duty, disconnected from any desire for private gain. Furthermore, as the contractor is being perceived to serve solely for remuneration, or in other words self-interest, he cannot be part of the community anymore, as he violates the whole idea of community by being self-interested. Therefore the contractor who initially belonged to the imagined community, which is the nation (although still being marked by it through his nationality), has been placed outside of it. By serving any community only in expectancy of remuneration, the private contractor serves none. Hence:

... since contractors are sometimes seen as motivated by compensation in excess of that offered soldiers—to borrow a word from the international law definition of the mercenary—their conduct lacks a component of the sacrificial idea. That is, that sacrifice as an altruistic giving of the self, even an act of love. (Taussig-Rubbo, 2008: 106)

Therefore the contractor’s motivation is not understood as the sacrificial love of the soldier, this belongs to the domain of the community, but as a form of self-love (*amor mercenarius*), an individualistic love that belongs to the realm of society. This love always comes with the implication that the lover is eyeing a reward. (Pieper, 1997: 242-243) Consequently, the contractor is perceived to make war his object of desire, as it is war, which offers this specific individual the possibility of enrichment. As desire is always projected onto something to be obtained in the future (in this case monetary remuneration), sacrifice must be excluded from the contractor’s intention. The negation of the own life therefore, must run counter to the contractor’s desire if he wants to avoid losing his remuneration. Understood in this way, the private contractor becomes; ‘he who with impunity may be allowed to die ... in the name of the rationality and equilibrium of the market’ (Montag, 2005: 15).

Private contractors are therefore situated within a realm, which is unworthy of sacrifice and recognition. Furthermore, because their death is not recognized since it lacks a sacrificial component, their legitimacy with respect to the use of force is contested. Therefore, I argue, the reason for their contested status is found in the observation that private contractors are not perceived to be dying for a

higher cause, which then retrospectively legitimises their status, as they are perceived to have left the imagined community of shared sacrifice.

Strange encounters of a third kind, or Private Contractors in conflict zones

To describe the status of contractors with regards to the societies they encounter in conflict zones, Bush's speech at Arlington provides a good introduction. There he specifically refers to soldiers as '*men and women who wear our uniform*' (Bush, 2005: 893-894 my emphasis). This might just be an expression to describe soldiers, but it also carries a deeper connotation. The laws of armed conflict specifically address combatants as actors who are uniformed, making the wearers of a uniform subject to a strict legal code. Hence, while the laws of war clearly separate between soldiers and civilians (epitomized by the uniform), the legal conundrum surrounding private military contractors somehow makes these actors a stranger to the law. Stranger, deriving from Latin *extraneus*, from extra (outside of). Therefore, the ambiguous legal status makes the contractor an out-law, *ex-lex*, an actor that due to the lack of clear legal regulations becomes immunized from prosecution. This exemption is also another reason, for the lack of sacrificial feelings to private contractors, because immunity places these actors outside the realm of community. Here again it is essential to concern ourselves with etymology. *Immunitas* refers to a position in which an individual is "exempt" or "freed" from duty (munus). It derives from *immunis*, at which's stem we find "*in-*" meaning "not" combined with *munis* denoting "duty". *Immunitas* therefore describes the opposite of *communitas*, which we derive from "*cum-*" meaning "with" joined with *munis* that is "duty". But it is necessary to highlight that the private contractor's immunity is played out on two different levels. On the one hand, through exemption from legal persecution by host nation law, and on the other, by the lack of clear legal regulations. As laws that could be interpreted to grant private contractors legal immunity are various and complex, this paper must limited itself to exemplary illustrations.

The Iraqi case provides a vivid description of the immunity private contractors enjoy with respect to host nation law, as here the immunity was granted by both, a bi-lateral agreement and a domestic law. At first private contractor immunity, for contractors hired by the U.S., was established through a status of forces agreements between the United States and the provisional Iraqi government. And although these agreements rarely include the term immunity, they are becoming one of the dominant legal mechanism to grant private contractors legal immunity, because the sending state has primary jurisdiction when an offence by send officials has been committed during the performance of official duty (Frulli, 2011: 452). In this way private contractors are exempt from Iraqi persecution if they can effectively claim that any misconduct occurred while serving on official U.S. duty. Furthermore, private contractors enjoy legal immunity from Iraqi law due to CPA Order Number 17, (revised 27 June 2004)³ which states that; '*...contractors shall not be subject to Iraqi laws or regulations in matters relating to the terms and conditions of their contract...*' (Elsa, 2007: 19). Although the Iraqi government lifted private contractor immunity in 2009 (Cockburn, 2010), their legal status as well as how and where they can be hold

³ At the time of writing the original was not retrievable

accountable, in many instances remains unclear. This lack of accountability has been summed up by the Congressional Research Service of the U.S., which stated that; 'Despite congressional efforts to expand court-martial jurisdiction and jurisdiction under MEJA [Military Extraterritorial Jurisdiction Act], some contractors may remain outside the jurisdiction of U.S. courts, civil or military, for improper conduct in Iraq or Afghanistan' (Elsea, 2007: summary). An important reason for why contractors in many cases remain outside MEJA jurisdiction lies in the fact that MEJA can only be applied to contractors hired by the Department of Defence. But in many cases private contractors are working for other U.S. Agencies, and therefore fall into a jurisdictional gap. This is for example the case with respect to the contracts that the State Department in Iraq awarded to a private military presence of more than 5,500 contractors (Ackermann, 2010). Furthermore, the reason why so far none of the private contractors implicated in the Abu Ghraib torture scandal have been held accountable for gross misconduct and mistreatment of prisoners results from the fact that they were working under a Department of Interior contract. The lack of a clear and all agencies encompassing legal framework, explains the difficulties in holding contractors accountable for gross misconduct, as exemplified by the; 'very rare number of criminal convictions of private contractors and the difficulties encountered in adjudicating civil claims against PMSCs and their employees' (Frulli, 2011: 469).

But the almost impossibility of proceedings against private contractors, stems from a political will (Frulli, 2011: 469). The lacking willingness of states, especially the U.S., to regulate the Private Military Sector might be explained by the private contractor's position as a valuable policy option. At first, private contractors allow means of plausible deniability, when the sending state does not officially want to intervene in a conflict. The case of the private military company SCG International, which at present day is engaged in support operations to help the Syrian opposition to overthrow the Bashar al-Assad regime, exemplifies this. The U.S. government has hired SCG International, as has been revealed by the leaked Stratfor emails published by WIKILEAKS. Secondly, with regard to the principles of the law, the practical benefits of using military contractors is that they are able to perform tasks that ordinary military personnel cannot due to certain legal restrictions which are imposed upon them. These reasons explain; 'the prevailing tendency to 'immunize' private contractors through the application of the various available exceptions and controversial arguments' (Frulli, 2011: 496).

But what does this immunity imply with respect to the private contractor status amid societies in conflict zones. If we recall the case of Abu Ghraib, where some of the prisoners died as a result of torture, the immunity contractors enjoy, shows that, *immunitas* 'if carried past a certain threshold, winds up negating life.' (Esposito, 2013: 61) If we consider the elevated position of private contractors in conflict zones with respect to the law, immunity allows contractors to transform populations with whom they are in contact into *homines sacri* or bare life. In ancient Roman law, *homo sacer* referred to people whose deaths were of no value to the gods and thus could not be sacrificed but could be killed with impunity as their lives were deemed to be of no value. Following Agamben, *homo sacer* is the '... one who may be killed but not sacrificed'. (Agamben, 1998: 53) *Homo sacer*, although once a citizen, becomes reduced to 'bare life' and deprived of basic rights such as representation before the law. (Downey, 2009: 110) Hence, the populations in Afghanistan and Iraq, with regards to the contractor, become subjects which can be killed

with impunity, giving the contractor the right to let live and the right to let die. Although it might very well be argued that most private contractors are unarmed and do not directly operate in the field, a clear line between private contractors engaged in combat support operations and contractors hired for e.g. interpreting, cannot be drawn. As; ' ... interpreting may be a mundane job far from the core of military operations, but not when interpreters are working at a military prison; two of the four contractors implicated in the abuses at Abu Ghraib prison were hired as interpreters or translators.' (Avant & Sigelmann, 2008: 11)

Seen in this light, private contractors, by sovereign decree, have become in some form a shadow sovereign with respect to the societies they encounter in conflict zones. Due to the laws that grant private contractors immunity and supported by the unwillingness of the international community of states to create binding legal codes for PMSCs, private contractors have become actors who are above and beyond the law.

Concluding Remarks

Let us recall the words of the opening quote of this analysis: *For some are in the dark; And some are in the light; And we see those in the Light; But those in the Dark are out of sight.* These words issued to describe *Mack the Knife*, a character in Bertolt Brecht's play the *Threepenny Opera*, which might well have been written to describe the dichotomous relationship between the private contractor and the soldier with regards to their status amid society. Where the death of a soldier guarantees him a place in the spotlight, the private contractor's death is veiled in a shadow that escapes public attention. The lack of public concern towards fallen contractors, coupled with immunity laws and escapable legal restrictions, which could cast some light on the misdeeds of private contractors through public trials, make contractors a valuable political asset. A political asset which's usefulness lies in the fact that military outsourcing allows states to operate in the shadows of public oversight. Wars can be waged, or continued to be waged, without bearing the political costs for it, which returning body bags would demand. Furthermore, private contractors free states from certain legal constraints that would normally have been imposed on them by law. The increasing use of private military contractors, it might therefore be argued, transforms conflict zones into spaces, which resemble what Stuart Murray observed with regards to the camp:

Nobody is killed, at least not directly, and nobody's hands are bloodied, at least not that we can see; ... crimes are outsourced ... deaths are never "caused" as such; officially, they are merely "allowed," a passive event, collateral damage ... "we" may live, live well and live fully, "they" must die ... excluded as bare life, disposable life. (Murray, 2008: 204)

But the outsourcing of death poses a pressing question with regard to the state, if understood as an entity embodying an imagined community. If the soldier's sacrifice legitimizes the nation, and if the reliance on unsacrificable private contractors continues to replace the soldier, community is outsourcing its own demise. Hence, we must ask ourselves: *Whither goest thou communitas?*

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