

Book Review

Brett J. Kyle and Andrew G. Reiter. *Military Courts, Civil-Military Relations, and the Legal Battle for Democracy: The Politics of Military Justice*. Abingdon: Routledge, 2022. Figures, tables, index, 252 pp.; hardcover \$144, paperback \$43.99.

Is there a particular legality that pertains to the armed forces? Authors Kyle and Reiter argue that there is, and throughout the book, they aim to demonstrate this. In order to maintain public order, the armed forces are authorized to act against civilians in response to an indiscriminate increase in the use of force. Throughout the study of military courts of justice, the book examines military power. There are numerous studies of civilian control of the armed forces under different political regimes and in various regions of the world. The specific and successful contribution of this book is that, to study the behavior of military personnel and governments in establishing military subordination to elected authorities, it is important to focus on an infrequently examined aspect: the competencies of military courts.

Military courts are important, especially when the military is engaged in war. The authors' main concern is the extension of the special powers of military courts over the civilian population. To this end, they develop a conceptual typology of military justice systems based on the jurisdiction and practice of military courts. The text clearly demonstrates the increasing militarization of public life. It questions the ineffective mechanisms of democratic civilian control of the armed forces, which result in a threat to democracy. The authors indicate that it is the governments' obligation to protect their citizens and that one of the main objectives of new democracies is to establish firm civilian control over the armed forces. The central point of this book is to reflect on how the expansion of the military judicial system into the civilian sphere weakens democratic civilian control of the armed forces. Military courts then function as a means to add power, reinforce their autonomy, and turn officers into political actors.

The text recounts the history of military courts and highlights the peculiarities of military activity, which imposes special guidelines for the use of force and for punishing disobedience to established codes. The legality of who is authorized to kill is different from civil legality. Discipline is a fundamental component of military life and does not hold the same value in civilian life. Military courts should only act in cases of insubordination to military justice codes, for acts against their own population, or for breaking the chain of command. An aspect to highlight in this work is that they rescue

a concept that has lost relevance in recent years and was very important during the transitions to democracy: “Preventing future human rights violations is then a component of the quality of democracy” (8).

Kyle and Reiter have strong backgrounds for writing this book. Both are academics specializing in human rights, democracy, authoritarianism, political violence, transitional justice, and civil-military relations. To achieve this purpose, they construct three conceptual models of military subordination (full subordination; jurisdictional contestation; and military overreach). This is an intelligent and very useful contribution for those studying military issues. The actual practice of these military courts, their operation for officers and civilians, is far from fair and does not adhere to due process guidelines.

After highlighting military subordination in European democracies and the transfer of their institutions to their colonies, they go on to describe the cases they study in depth. Some might wonder why these cases were selected. I believe they are perfectly suited to the authors’ objectives, the designed model, and the presented chronology. The analysis of cases begins with Portugal. Portugal is presented as an example of total subordination, from direct military participation in government (1926–1974 and 1974–1976) to democratization and judicial reform. Portugal’s transformation into a democratic regime led, as explained in the relevant chapter, to military courts being limited to judging military crimes. On January 1, 1986, Portugal entered the European Community, which encouraged and required the consolidation of civilian control over the armed forces, precipitating full subordination reforms starting in 1997.

The case of Colombia is more controversial. There was an incremental reform process, but in practice, especially in combating the FARC guerrilla group (Revolutionary Colombian Armed Forces) and the BACRIM (criminal gangs), military subordination to civilian authorities was, in my view, a fiction. There was more autonomy than subordination in this case. The description of the period known as *La Violencia*, a permanent state of siege, is spot on. The authors consider it a moment of military overreach, subordination based on compelling data. The reforms manage to change the position held by the Supreme Court. They also value the changes in the Andean Commission of Jurists and the Constitutional Court.

The next set of cases studied are Indonesia and Fiji. They are based on military contestation of measures proposed by civilian authorities. The armed forces protect themselves even in crimes that could be sanctioned through civil criminal law. Military impunity is established. Although reforms are implemented, the armed forces retain autonomy over several areas of “military competence,” as seen in the case of Indonesia. Thanks to the military being discredited before society, some judicial system reforms could be implemented. In the case of Fiji, which had limited civil justice intervention in military matters for years, there was a negative record of arbitrary detentions and human rights abuses. The legal system allowed the military to maintain legal prerogatives. The armed forces of Fiji are not under full civilian control. In both cases, the authorities avoided direct confrontation with the military while introducing reforms to limit their traditional power.

The last model, military overreach, is exemplified by Brazil and Pakistan. This model implies that military courts have jurisdiction over their personnel as well as civilians, in processes where the military has not been stripped of their prerogatives. In Brazil, despite the efforts of some democratic governments, the jurisdiction of military courts remained unchanged. The politicization of the Brazilian armed forces is present throughout the twentieth century and it increases in the twenty-first century. In the democratization process, Brazilian military personnel halted any reform measures in their area, fearing it would be accompanied by a review of the human rights record of the military regime. In recent years, the armed forces have been used to fulfill a police role. And most clearly, the Jair Bolsonaro government enhanced the political role of the armed forces. Regarding Pakistan, the armed forces there enjoy broad prerogatives that allow for repeated political intervention. There is a tension between the judicial reforms implemented by the government and the government's imperative to maintain the support of the officer corps. The result is that the government prioritizes security over human rights. As in other cases, the Pakistani military feels responsible for the survival of the state. The analysis of Pakistan demonstrates once again how the fight against terrorism enables the sentencing of civilians in military courts.

A different case is the last one, that of military justice in the United States. Samuel Huntington's fear that led him to write his most cited work, *The Soldier and the State*, becomes a reality. Victory in two world wars gave the American military much political power, though the political system still managed to maintain military subordination to elected authorities. However, the terrorist threat in recent years once again granted power to the armed forces, both outside the country and by prioritizing security over civil liberties.

Experts in civil-military issues must contend with issues of the legal power of the military. This is important to understanding how the armed forces can extend their presence through a persistent militarized socialization of the population. The presence of soldiers in the streets, transportation stations, hospitals and other public spaces "normalized" a situation that is not normal and that can undermine democracy.

The work under review is methodologically effective and the sources used are complete and diverse, as well as the explanatory notes for each chapter. As the authors rightly point out, the role of military courts is not only a historical fact but of tremendous current relevance. This book is relevant at a time when the politicization of justice adds bias and erodes democracy. Additionally, the authors propose a future research agenda consistent with the findings of this book.

In my opinion, there are some reservations about the book's findings. For example, the authors use the concept of domestic influences as if it were something isolated. Society often has a positive view of the military in public order. However, this positive illusion does not come from society; it is constructed by the government with clear support from the armed forces. The book analyzes the position of various actors, allowing the differentiation of each sector's agendas. But it also elides the particular intentions of each actor. Public pressure is driven by discourses that narrate real or fictitious problems as if they were matters of war, conflict, and militarization. Thus, it

becomes clear that judicial procedures are driven by political motivations. Finally, the book's bibliography is very extensive and varied. But it does rely too much on secondary sources from the Anglo-Saxon world. This relativizes some of the book's conclusions. Even the citation of texts with broader perspectives, such as the text by Khuen and Trinkunas, is reduced to a version that aligns with the postulates of Kyle and Reiter.

Despite these reservations, I recommend reading this book as it provides a deep insight into the role of military courts. It offers useful data and provides convincing details of each period it analyzes. In a few pages, it provides the political history of many countries on different continents. The authors' main insights are confirmed: greater civilian control of the armed forces is a crucial step for successful protection of human rights. Anyone who delves into this text will be very satisfied with its clear arguments and compelling, well-organized evidence. In times of increasing global remilitarization, this analysis of military courts provides a different perspective on the existing deficiencies in civilian control over the armed forces. For all these reasons, this book makes for indispensable study.

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