Book Review

Alison Duxbury and Matthew Groves (eds), Military Justice in the Modern Age (Cambridge, 2016)

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Introduction

Injustice can have serious consequences for an individual. Ill-discipline in the military can have disastrous consequences for society. The Mutiny Act of 1689 immediately followed the Glorious Revolution because, despite the deep parliamentary mistrust of standing armies after the English Civil War, Jacobite forces threatened and a standing army seemed indispensable. This was the beginning of parliamentary discipline legislation in the common law world. The Preamble to the Act clearly stated the tensions at play.

...whereas no man may be forejudged of life or limb, or subjected to any kind of punishment by martial law, or in any other manner than by the judgment of his peers and according to the known and established laws of this realm; yet nevertheless, it being requisite for retaining such forces as are or shall be raised during this exigence of affairs in their duty [that] an exact discipline be observed, and that soldiers who shall mutiny or stir up sedition or shall desert their majesties’ service be brought to a more exemplary and speedy punishment than the usual forms of law will allow.

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This tension between justice and military discipline in a democracy survives to this day, as *Military Justice in the Modern Age* masterfully illustrates through 18 chapters which capture the issues in great breadth and depth. Its geographical range includes South Asia, South America, South Africa, the Anglo Commonwealth, the Netherlands, Israel and the United States. The book addresses the law of armed conflict, peace operations, human rights, civilianisation, summary level processes and military jurisdiction over civilians. The authors are military and civilian legal practitioners, as well as academics, with wide experience of both militaries and legal systems.

While traversing thoroughly the more familiar debate between civilianised and command based approaches, the book’s consideration of broader issues does much to advance debates around military justice overall. Its division into three parts – the civil-military intersection, comparative military justice, and international law and military justice – works well in achieving this. It comes now to consider the chapters within each of these parts in turn.

**Part i – The Civilian-Military Intersection**

The first part of the book could be divided between those favouring more civilianisation and those questioning it, although there is more nuance in each chapter than this simple division would suggest.

In ‘How Well do International Human Rights Bodies Understand Military Courts?’ Peter Rowe gives an excellent analysis of the criticisms of military courts and why such criticism may be misguided.¹ He does argue that such courts should be independent from command at every stage however,² which favours human rights compliance over command authority in this respect. Human rights compliance is not necessarily an end in itself though, it is one value among others, and military effectiveness can be overlooked in this discourse. Christopher Waters makes a persuasive argument for the need for balance between civilianisation and excessive deference in ‘Democratic Oversight Through Courts and Tribunals’.³ Pauline Collins then argues that greater scrutiny of the military by the courts will improve the reputation of the military in ‘The Civil Courts’ Challenge to Military Justice and its Impact on the Civil-Military Relationship’.⁴ This point is very well made and is a conclusion that prefers human rights over military necessity. It does not weigh the value of military

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³ Ibid., p. 56.
⁴ Ibid., p. 80.