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Edited by Alison Duxbury, Matthew Groves  
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## MILITARY JUSTICE IN THE MODERN AGE

Military justice systems across the world are in a state of transition. These changes are due to a combination of both domestic and international legal pressures. The domestic influences include constitutional principles, bills of rights and the presence of increasingly strong oversight bodies such as parliamentary committees. Military justice has also come under pressure from international law, particularly when applied on operations. The common theme in these many different influences is the growing role of external legal principles and institutions on military justice. This book provides insights from both scholars and practitioners on reforms to military justice in individual countries (including the UK, Canada, the Netherlands and Australia) and in wider regions (for example, South Asia and Latin America). It also analyses the impact of 'civilianisation', the changing nature of operations and the decisions of domestic and international courts on efforts to reform military justice.

ALISON DUXBURY is a Professor at the Melbourne Law School, University of Melbourne, Australia.

MATTHEW GROVES is a Professor of Law at Monash University, Australia.

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Edited by

**ALISON DUXBURY**

*Melbourne Law School, University of Melbourne*

**MATTHEW GROVES**

*Faculty of Law, Monash University*



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## CONTRIBUTORS

**Ivette Castañeda García** holds a bachelor's degree in social sciences from the Pontificia Universidad Católica del Perú and a Masters in International Studies from Universidad Torcuato Di Tella in Argentina. She has worked in several governmental and non-governmental organisations in Peru, dealing with aspects of military and security issues, such as post-conflict reforms on armed and police forces, human rights and social conflicts. In 2008–2010 Ivette worked in the Latin American Defense and Security Network (RESDAL), an NGO in Argentina. In that role, she worked for a programme called 'Military Justice in Latin America: Disciplinary Codes and Intern Regulations', which involved the systematisation and data analysis of military justice system of sixteen Latin American countries. Castañeda García currently works for the Presidency of the Council of Ministers of Peru.

**Christina M. Cerna** is a graduate of New York University, Ludwig-Maximilian Universität, the American University and Columbia University and a former Fulbright scholar. Cerna was Principal Human Rights Specialist at the Inter-American Commission on Human Rights (IACHR) at the headquarters of the Organization of American States (OAS) in Washington, DC, from 1979 to 2011. She conducted research as a Fulbright fellow at the European Court of Human Rights (2000–2001). In 1992–1994 she was seconded by the IACHR to the UN Centre for Human Rights (now the Office of the UN High Commissioner for Human Rights) in Geneva to assist in the preparation of the UN World Conference on Human Rights, held in Vienna in 1993. Cerna has published numerous articles on international human rights law, the inter-American system and public international law. She taught international human rights law as an adjunct for the law schools at George Washington University, Penn State University and, since 2005, at Georgetown University.

**Pauline Collins** holds a law degree from the University of Adelaide, and Master of Laws and PhD from the University of Queensland. Pauline's

PhD is a comparative study of the civilian courts' jurisprudence in the United Kingdom, the United States and Australia on military matters and the impact on the civil–military relationship. Dr Collins is an associate professor at the University of Southern Queensland, School of Law and Justice. Prior to becoming an academic, she was a legal practitioner in South Australia for ten years, working in general practice, Parliamentary Counsel, the Crown Solicitor's Office and Director of Public Prosecutions. She has published on matters such as industrial relations, alternative dispute resolution, legal education, international law and private military companies.

**Paul Cronan** is the former Director-General of the Australian Defence Force Legal Service (DGADFLS). In that capacity, he served as the senior military legal advisor to the Chief of the Defence Force and the Secretary of the Department of Defence, and as the principal source of legal advice to the Department of Defence on military legal issues. As the head of the tri-service ADF legal service, Air Commodore Cronan was responsible for the professional oversight and direction of more than 140 permanent and 320 reserve legal officers. Air Commodore Cronan received his Bachelor of Laws and Graduate Diploma in Legal Practice from the Queensland Institute of Technology in 1982 and 1983, respectively, and his Master of International Law from the University of Sydney in 2005.

**Alison Duxbury** is a professor at the Melbourne Law School. She is also an associate director of the Asia Pacific Centre for Military Law and a member of the Board of Directors of the International Society for Military Law and the Law of War. Dr Duxbury studied law at the University of Melbourne and the University of Cambridge. Her publications include 'The Curious Case of the Australian Military Court' (2010) 10 *Oxford University Commonwealth Law Journal* 155 and *The Participation of States in International Organisations: The Role of Human Rights and Democracy* (Cambridge 2011).

**Geoffrey Farmiloe**, LLB (Hons) LL.M AFRIN, is a barrister of the Honourable Society of the Inner Temple and a university law lecturer to both undergraduate and postgraduate students. Having previously served in the Royal Navy, he then devoted a large proportion of his life to various aspects of criminal law. His academic research had led him to specialise in military law and the historical development of law within the Royal Navy. He continues to work on the legal aspects of military justice



and the laws of armed conflict and has been involved in editing a text on aviation law.

**Michael Gibson** was, prior to his recent appointment as a military judge, Deputy Judge Advocate General (Military Justice) in the Canadian Forces. He joined the Canadian Forces in 1980. He initially flew as an air navigator in the Royal Canadian Air Force, doing passenger, cargo, VIP and air-to-air refuelling missions. Since becoming a legal officer, he has been prosecution, defence and appellate counsel, and has had significant involvement in recent legislation affecting the military justice system as policy architect, instructing counsel for the drafting of legislation, and as a witness before parliamentary committees. He has also published many articles on international human rights law and the administration of justice by military tribunals.

**Matthew Groves** is a professor in the Faculty of Law at Monash University, where he teaches administrative and public law. Groves was a member of the Administrative Review Council, which was the peak Australian body that advises the Commonwealth Attorney-General on administrative law issues. Groves has written and edited several books, including Matthew Groves (ed.), *Law and Government in Australia* (Sydney: Federation Press, 2005) and Matthew Groves (ed.), *Modern Australian Administrative Law: Concepts and Context* (Cambridge, 2014). His most well-known work is Mark Aronson and Matthew Groves, *Judicial Review of Administrative Action*, 5th edn (Pyrmont: Thomson Reuters Australia, 2013).

**Victor Hansen** is a professor of criminal law, criminal procedure, evidence, national security law and prosecutorial ethics at New England Law Boston. Before joining the New England faculty, he served a twenty-year career as an Army JAG Corps officer. His previous assignments include work as a military prosecutor and supervising prosecutor and a military defence attorney and supervisory defence counsel. He also represented Lieutenant General Ricardo Sanchez, during the investigations into detainee abuse at Abu Ghraib prison. Prof Hansen served as an associate professor of law at the Judge Advocate General's Legal Center and School in Charlottesville, Virginia. He is the author of many articles on criminal and military law, and national security issues. Hansen is also a co-author of a treatise titled *Military Crimes and Defenses*, published by Lexis-Nexis.

**Chris Jenks** is an assistant professor of law and directs the criminal justice clinic at the SMU Dedman School of Law in Dallas, Texas. Prior

to joining the law faculty he served for twenty years in the US Army, first as an Infantry officer, serving in Kuwait and Bosnia, and later as a judge advocate, serving in Korea and Iraq. In his last assignment he served as Chief of the International Law Branch at the Office of the Judge Advocate General in the Pentagon. He is a graduate of the United States Military Academy, the University of Arizona College of Law, the Judge Advocate General's Legal Center and School, and Georgetown University Law School. He is currently a PhD candidate at the University of Melbourne in Australia, focusing on the US approach to war crimes investigations and prosecutions. He has published articles and book chapters on international criminal law, human rights law and international humanitarian law.

**U.C. Jha** served in the Indian Air Force for twenty-four years until retiring in 2001 as Wing Commander. Dr Jha was awarded a PhD in law and governance from Jawaharlal Nehru University, New Delhi. He also holds master's degrees in biological sciences, law, business administration, and defence and strategic studies. He has authored twelve books and published more than sixty articles on subjects relating to military law, environment, human rights and international humanitarian law. He was awarded a visiting fellowship by Jawaharlal Nehru University in 2008–2009. Jha is a visiting faculty member at the Indian Society of International Law, Centre for the United Nations Peacekeeping and United Service Institution of India, New Delhi. He has also worked as Consultant (Legal) for the National Human Rights Commission of India.

**Panagiotis Kremmydiotis** is the chief judge of the Athens Air Force Military Court. He has been a military judge in the Judicial Corps of the Hellenic Armed Forces since 1984. Kremmydiotis holds graduate law and social-political sciences degrees from the Aristotle University of Thessaloniki, a postgraduate degree from that university on penal law and criminology, and a further LLM from Bristol University on international law. He has delivered seminars and lecture programmes on international humanitarian law, military law, civilian criminal law and procedure at Military Medical School, Medical Personnel School and Military Police School. Kremmydiotis has also published many scholarly articles on military law, criminal law and procedure, human rights and humanitarian law.

**Michelle Lesh** was a Golda Meir post-doctoral fellow at the Hebrew University of Jerusalem. She worked as a legal assistant to the Turkel

Commission during its second phase. She also provided an expert's paper on the Second Turkel Report to the drones inquiry by the UN Special Rapporteur on counterterrorism and human rights (A/68/389; A/HRC/25/29). Dr Lesh's areas of research include international humanitarian law, international human rights law and the interaction between these bodies of law. Her work currently focuses on the legal controversy over targeted killing as well as the duty to investigate under international law.

**Rain Liivoja** is a senior lecturer and Branco Weiss Fellow at the Melbourne Law School. He is also Project Director for the Law of Armed Conflict at the Asia Pacific Centre for Military Law and an affiliated research fellow of the Erik Castrén Institute of International Law and Human Rights, University of Helsinki. Dr Liivoja's research focuses on the law of armed conflict, state jurisdiction and comparative military justice. He holds degrees from the University of Tartu and the University of Helsinki.

**Ann Lyon** is a member of the Faculty of Law at the University of Plymouth in the United Kingdom. Her main area of expertise is British constitutional law but she also researches in military law. Lyon's best-known work on military law is 'Two Swords and Two Standards', which was published in the *Criminal Law Review* in 2005. That article offered the radical thesis that courts which are constituted and operate according to military principles might offer greater procedural protections and observance of rights than equivalent civilian courts.

**Rob McLaughlin** is an associate professor of law at the Australian National University, and a captain in the RANR. His postings include Director Operations and International Law, Director Naval Legal Service, Strategic Legal Adviser and Fleet Legal Officer. He has served on operations in East Timor and Iraq, and in maritime law enforcement operations. He is a consultant to the United Nations Office on Drugs and Crime and the International Maritime Organization on counter-piracy and maritime crime. Dr McLaughlin holds a PhD from Cambridge University and has published widely on many aspects of military law and operations.

**Peter Rowe** is an emeritus professor of the Law School at the University of Lancaster in the United Kingdom. He has published widely in various areas of human rights and international law. Rowe is the author of *The Impact of Human Rights Law on the Armed Forces* (Cambridge, 2006). This seminal book examined the growing influence of human rights law

on the British armed forces. One of the key conclusions of this book – which is to challenge the widely held assumption that human rights principles weaken effective military organisations and their operations – has profoundly influenced recent scholarship on military law. He has also published many articles on the influence of domestic and international human rights law on soldiers and the military.

**John Tarrant** is a professor of law at the University of Western Australia. He has published on a wide range of topics including contract, tort, property, corporations law, insolvency law, mining law, international law, practice and procedure and unit trusts. Before becoming an academic, Tarrant held positions in the mining, oil and gas industries as an executive director of Australian and Canadian listed companies.

**Aifheli Enos Tshivhase** is an associate professor in public law at the Nelson Mandela Metropolitan University (NMMU) and is also Military Law Officer in the reserve force of the South African Air Force, where he carries the rank of Captain. After obtaining an LLM in human rights and democracy in Africa, Dr Tshivhase served as a law clerk to Justice Kate O'Regan of the Constitutional Court of South Africa. He then joined the regular force of the South African National Defence Force in 2002 as a defence counsel, where he started as a lieutenant. After serving in the military for just over two years he joined the University of Cape Town, where he taught, *inter alia*, constitutional law and criminal procedure for nine years. In 2008 he was appointed by the Minister of Justice to serve on the advisory committee of the SA Law Reform Commission, looking into the review of defence legislation to ensure its compliance with the Constitution of South Africa. Aifheli has also had a stint at the University of Johannesburg, where he taught the Bill of Rights and Public International Law in 2013. He is a recipient of the Fox International Fellowship at Yale University in the United States (2009–2010). Aifheli has published on judicial independence of military courts in South Africa and was awarded a PhD in the same field by the University of Cape Town in 2012.

**Bas van Hoek** is a legal military adviser in the Royal Dutch Air Force. He has been a legal adviser in the Dutch Public Prosecution Service and Head of the Expertise Centre for Military Criminal Law. Before his position at the Public Prosecution Service, Bas was attached to the military legal branch of the Netherlands Royal Army. In that capacity he held various positions in the operational field, including a deployment

in Bosnia-Herzegovina and the province of Uruzgan, Afghanistan. Bas is also an adjunct associate professor of military criminal and disciplinary law at the University of Amsterdam. Bas is a member of the editorial board of the *Van den Bosch-bundel*, a commentary on Dutch military criminal and disciplinary law. Bas has published several articles in the *Militair Rechtelijke Tijdschrift* and *The Military Law and the Law of War Review*. He also contributed to the expert report on comparative military justice in the second phase of the Turkel Commission.

**Christopher Waters** is a professor at the Faculty of Law, University of Windsor, Canada. He joined the Faculty in 2007 and served as Associate Dean from 2009 to 2012. His previous academic post was at the School of Law of the University of Reading. Waters teaches and researches on various aspects of public international law, with an emphasis on international humanitarian law. He has extensive field experience in Eastern Europe and the former Soviet Union. His publications include articles in *Defence Studies* and the *American Journal of International Law*. His latest book is *A Guide to International Law Careers* (with A. Smit, 2014).

## FOREWORD

HIS HONOUR JUDGE JEFF BLACKETT

*Judge Advocate General of Her Majesty's Armed Forces (UK)*

La guerre! C'est une chose trop grave pour la confier à  
des militaires.<sup>1</sup>

There are some critics who might pray Clemenceau in aid when they suggest that military justice in the modern age is too serious a matter to be entrusted to the military. On the other hand it has been claimed that the civilianisation of military justice is part of the 'lawfare' or 'legal encirclement' which is hampering operational effectiveness.

There is no doubt that the greatest modern challenge to military justice comes from the pressure to civilianise. Many human rights groups argue that military justice is anachronistic in the modern age, where national citizens who serve in a state's armed forces are entitled to all of the rights and safeguards associated with an independent civilian justice system. And that has been reflected in the various levels of civilianisation of military justice systems around the world. However, it is also acknowledged that the military are distinct from other parts of society and that the work undertaken on a state's behalf requires a separate system of military law.<sup>2</sup>

It is difficult to conceive of an effective armed force, particularly one which deploys in the furtherance of its government's policy, without a separate system of justice or at least a system which acknowledges the unique nature of military service. Appreciating and understanding the military context is essential to the administration of justice in the military in peace or armed conflict or at home or abroad. Peter Rowe deals very succinctly with this issue when he writes, 'It should not be forgotten that the maintenance of discipline within the armed forces is as important in

<sup>1</sup> War is too serious a matter to leave to soldiers. As quoted in *Clemenceau and the Third Republic* (1946) by John Hampden Jackson, p. 228; this has also become commonly paraphrased as, war is too important to be left to the generals.

<sup>2</sup> House of Commons Select Committee on the Armed Forces Bill, Special Report of Session 2005–2006, Volume 1, Chapter 2.

peacetime as it is during an armed conflict. Military Courts can have as important a role in both situations: human rights bodies and organisations should recognise this role.'

That said, there is always a tension where any element of military business is placed in the hands of civilians. Certainly, civilians generally provide the necessary independence and impartiality which might not otherwise be apparent. But it is also important that those civilians who operate in the system enjoy the confidence of both the military and the general public to ensure military justice is not perceived as a cover-up, on the one hand, or oppression, on the other. In the United Kingdom that civilian oversight is provided by civilian judge advocates who sit in both the civilian and military courts. Most are ex-military but they are selected and trained in exactly the same way as civilian judges. Additionally, the Court Martial was established as a standing court by the Armed Forces Act 2006, rather than the *ad hoc* courts martial which existed before 2009, and this also ensured independent judge advocates are much more involved in case management. This means they, and the military justice system, are able to withstand critical scrutiny as to fairness while still providing a system which supports operational effectiveness.

It is remarkable, but perhaps not unsurprising, that military justice systems around the world, each existing in very different operational and political contexts, are facing similar challenges. In this book Alison Duxbury and Matthew Groves have drawn together a number of expert contributors whose insight is invaluable in examining those challenges. It is an outstanding collection of essays which tackles head-on the civilian–military intersection, drawing on comparisons of several military justice systems, before examining the very important place of military justice within international law. It represents a compendium which will provide a useful reference for future debate. I commend it to all those involved, or interested, in the administration of military justice.

*Royal Courts of Justice*  
UK

## ACKNOWLEDGEMENTS

In the last few years, justice mechanisms in the military context have received much media attention. This is particularly apparent in the discussion surrounding the military commissions administered by the United States for detainees in the ‘war on terror’. Such military commissions did not offer the full protections provided by the United States’ Uniform Code of Military Justice (UCMJ), the statute that governs the trial of the offences, primarily by members of the armed forces of the United States, outlined in the code. While jurisdiction pursuant to the UCMJ permitted the trial of those suspected of violating the law of war, a deliberate choice was made to create an alternative process for people detained in the war on terror.

The aim of this book is not to examine these extraordinary measures (which have been covered in detail elsewhere), but rather to analyse another development, that is, the wide ranging reforms to military justice systems throughout the world that have taken place in the last few decades. In some states these reforms have resulted in adjustments to the existing military justice system, whereas in other states either a completely new system has been proposed or military justice has been incorporated into the civilian justice system. Many of these reforms have been the result of the influence of international law, not least international human rights law. The chapters in this book focus attention on the detail and significance of these reforms, which have rarely been the subject of detailed scholarly analysis.

This book originates in a symposium convened at the Melbourne Law School, University of Melbourne in November 2011, to commemorate ten years since the establishment of the Asia Pacific Centre for Military Law (APCML), a collaborative initiative between the Melbourne Law School and the Australian Defence Force Legal Service. The topic of the symposium was ‘Military Justice in the Modern Age’ and the aim was to gather both practitioners of military law and academics to discuss some of the challenges faced by military justice systems. This book is based in part on the papers presented at that symposium.



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