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Militarized Justice in New Democracies: Explaining the Process of Military Court Reform in Latin America

Brett J. Kyle

Andrew G. Reiter

ABSTRACT

While a large body of literature emphasizes the importance of judicial reform in new democracies, few scholars have examined the reform of military justice systems in these settings—despite the potential for these courts to compete directly with civilian courts and subvert the rule of law. This article focuses on Latin America to empirically examine how the process of reforming military courts has played out in each democracy following authoritarian rule. We outline two distinct pathways: (1) unilateral efforts on the part of civilian reformers, and (2) strategic bargains between civilian reformers and the military. Within the unilateral category, we further distinguish efforts driven by civilian courts, those pursued by politicians, and those undertaken in the context of larger political transformations. Ultimately, we find that, absent a dramatic defeat of an authoritarian regime and its armed forces, reform efforts that do not engage and bargain with the military directly often fail to achieve long-term compliance and improvements in human rights practices. The success of such reform efforts, therefore, may come at a cost in other areas of democracy and civil-military relations. We conclude the article by summarizing our findings and reflecting on the lessons they provide for ongoing military justice reform efforts around the globe.

In 2006, Mexican President Felipe Calderón deployed more than 40,000 soldiers to combat drug trafficking in the country. Since then, as the drug war intensified, complaints of human rights abuses committed by the military have increased dramatically and have drawn widespread domestic and international condemnation (e.g., Human Rights Watch 2012a). Yet, the military has largely escaped accountability for its actions. The Mexican military uses its own justice system to prevent civilian judicial oversight of its actions and in turn to shield its members from prosecution. Intense inter-national pressure, coupled with a 2011 Supreme Court ruling that military personnel “be tried in civilian courts, not military tribunals, when accused of torture, extrajudicial killing and other abuses” (Wilkinson 2011), however, have led to the creation of sweeping legislation that would revamp the military justice system. Two key senate subcommittees recently approved the law (Justice in Mexico Project 2012), but the bill has not been passed by the full Senate, and enforcing military compliance with any new law may prove difficult. Mexico thus finds itself with the difficult task of

reforming the scope of military court jurisdiction, a challenge that plagues almost all democracies with authoritarian pasts.

Yet, the mere presence of military courts in Mexico is not the problem. Military courts play an important role in all militaries. Military codes of justice include laws that have no equivalent in the civilian world. The armed forces must maintain the highest standards of discipline and obedience to authority for chains of command to work effectively. Minor issues in the civilian world, such as being tardy for work, are serious infractions in the military. Consequently, military institutions operate their own courts to enforce their distinct codes of justice. Such measures are important to the proper functioning of a military, and there is a clear benefit to having separate venues for the resolution of breaches of military conduct. Scholars and policy makers recognize these systems to be a necessary and valuable piece of the armed forces and do not view them as being inherently problematic.

Moreover, these systems exist throughout the world and operate successfully in tandem with civilian courts in mature democracies such as the United States and those in Western Europe. While the U.S. Uniform Code of Military Justice describes its applicability to “members of a regular component of the armed forces” as well as “retired members” of the armed forces and any “persons serving with or accompanying an armed force in the field” whether they are in uniform or not (10 U.S.C. § 802 Art. 2), in instances of military personnel being accused of committing a common crime or felony covered in the civilian legal code, the case is transferred to civilian authorities.

Where militaries claim jurisdiction over their personnel for those crimes that are covered by the civilian legal code, however, military courts represent a competing legal system that threatens the ability of the civilian authorities to hold their militaries accountable for their actions. This situation subverts the rule of law, strains civil-military relations, weakens democracy, and threatens human rights. Thus, it is not the existence of a military justice system in Mexico, but rather its interaction with the civilian justice system that remains problematic.

Mexico is not alone. Almost all new democracies—especially those in which the military played a prominent role in previous authoritarian periods—face the difficult task of reshaping the relationship between civilian and military courts. Latin America is a particularly important part of the world in which to examine this issue. Throughout the region, militaries have been dominant political actors since independence and have been notably inward looking, tasked with maintaining internal security in the name of the national interest (Fitch 1998; Love man & Davies 1997). During the Cold War, Latin American militaries ruled nearly every country in the region directly and relied on military courts as a key tool in their repression. Some militaries instituted extensively legalized authoritarian regimes (Pereira 2005), and others used special military courts to protect themselves when conducting operations against guerrilla armies and other internal threats. Following democratization in the 1980s and 1990s, the new democracies have

engaged in efforts to reform military court jurisdiction, using a variety of tactics and producing varying degrees of success.

In each case, reform attempts have involved the interaction between reformers and resisters, including the efforts of civilian courts, politicians, nongovernmental organizations, and international pressure to change practices, and often, pushback from militaries and their civilian allies to resist such changes.¹ This article examines these interactions to understand how the reform processes have played out in the region and to draw lessons about the relative success and failure of specific reform approaches that can be applied more broadly to democracies.

We first review the importance of military–civilian court interaction and military judicial reform in the larger context of judicial politics and the rule of law, civil-military relations, and democratic consolidation. Second, we briefly survey the state of military justice across Latin America, demonstrating that there has been significant variation in the level of success of reform efforts to date. In the next section, we empirically examine how the reform process has played out in each Latin American democracy, outlining two distinct path-ways: (1) unilateral efforts on the part of civilian reformers, and (2) strategic bargains between civilian reformers and the military. Within the unilateral category, we further distinguish efforts driven by civilian courts, those pursued by politicians, and those under-taken in the context of larger political transformations. In each case, we reflect on the relative success or failure of such efforts. Ultimately, we find that, absent a dramatic defeat of an authoritarian regime and its armed forces, reform efforts that do not engage and bargain with the military directly often fail to achieve long-term compliance and improvements in human rights practices. The success of such reform efforts, therefore, may come at a cost in other areas of democracy and civil-military relations. We conclude the article by summarizing our findings and reflecting on the lessons they provide for ongoing military justice reform efforts around the globe.

The Importance of Military Justice Reform for New Democracies

While new democracies face myriad challenges following transitions from authoritarian rule, ranging from developing new electoral and party systems to reorganizing national economies, the form of the military justice system is a crucial and drastically understudied component of the democratic consolidation process. Military courts that retain too much power and overstep their bounds represent a direct

1 It should be stressed that not all civilian actors are in favor of reform. As we discuss in the cases later, civilian politicians affiliated with previous authoritarian regimes or those in favor of stronger internal security roles for the armed forces often resist such efforts. Moreover, where civilian courts were complicit with past authoritarian repression, judges are sometimes resistant to challenge the military with court rulings in favor of reform.

2 Moreover, the use of military courts for human rights crimes can complicate a new democracy's relationship with an international community that views the use of such venues for those crimes as a violation of international law.

challenge to obtaining proper civil-military relations, interfere with the democratic operation of judicial systems and weaken the rule of law, and prevent new democracies from being able to guarantee respect for humanrights.² The function of such courts is particularly important for the democratic consolidation process in Latin America, a region in which militaries often played substantial roles in previous authoritarian repression.

One primary goal of the democratic leadership in a post-authoritarian setting is to bring the military fully under a civilian chain of command and to establish firm civilian control over military behavior (e.g., Bland 1999; Desch 1999). Indeed, the ability of elected officials to govern without interference from the military is considered a necessary condition for democracy (Schmitter & Karl 1991). Scholars examining Latin America likewise have focused on civilian control of the military (Bruneau 2005; Pion-Berlin 2000) generally, and the establishment of particular institutional controls (Fitch 1998; Trinkunas 2000) and elimination of certain military prerogatives (Hunter 1997; Pion-Berlin 2005; Serra 2010) more specifically.

While existing studies tend to focus on such issues as legislative control and budgets (Bruneau & Tollefson 2006) and the organization of defense ministries (Pion-Berlin 2009), some work has begun to examine the importance of legal interactions between military and civilian actors. Scholars note that civilian control of the military can only be achieved when the “armed forces act within the rule of law” (Trinkunas 2000: 709) and when military personnel are not “granted special legal privileges” (Fitch 1998: 38). In one of the few studies to engage this issue empirically, David Pion-Berlin (2010) examines civilian–military bargaining over the jurisdiction of military officers accused of human rights violations in Chile, Argentina, and Bolivia. In sum, institutional arrangements that allow the military to remain separate from civilian government or to enjoy an independent power base threaten civilian control of the military. Yet more explicit analyses are required to better understand the important relationship between military and civilian courts.

Relatedly, scholars have also given significant attention to judicial politics in new democracies, with an emphasis on strengthening courts, ensuring that all actors adhere to the rule of law, and engendering a new societal faith in the justice system (e.g., Magalhães 1999). While there are notable exceptions (e.g., Fiss 1993), there is a strong line of scholarly work that finds a positive impact for the rule of law on democracy (e.g., Farer 1995; Gloppen, Gargarella, & Skaar 2004) and holds that the furtherance of democratic values by the judicial branch is vital to the stability of democratic regimes (Hammergen 1998). The overextension of military courts threatens this positive relationship. Guillermo O’Donnell (1999) stresses that all agents must be “subject to appropriate, legally established controls of the lawfulness of their acts” (318); and differential treatment of state actors undermines answer-ability and enforcement—essential components of accountability (Foweraker & Krznaric 2002).

The role of military courts also has important implications for scholarship on judicial politics more generally. Scholars examine the role of courts as political actors,

but largely focus on the inter-action of civilian courts with other civilian actors, such as the executive (e.g., Helmke 2002; Hilbink 2007) and legislature (Iaryczower, Spiller, & Tommasi 2006), and rarely examine the interactions between military courts and civilian actors, or between civilian courts and the military. Similarly, when examining judicial independence (or autonomy), particularly in Latin America, scholars predominantly focus on the ability of civilian courts to make decisions free from pressure from the elected branches of government (e.g., Couso 2005), or on the internal independence of lower courts to make rulings without interference from higher courts (Ríos-Figueroa 2006), while ignoring the importance of the courts' freedoms from interference by the military. Furthermore, the range of cases upon which civilian courts can rule (Finkel 2003; Larkins 1998) and the extent to which other actors comply with courts' decisions (Gloppen, Gargarella, & Skaar 2004), can both be threatened where military courts retain jurisdiction over large numbers of crimes and refuse to transfer cases in defiance of civilian court rulings.

Finally, the overextension of military courts has important implications for the development of human rights in new democracies. Military control over prosecution of its personnel when they are accused of human rights violations permits the institution to act with impunity, as shown in the Mexican case, where military officials alleged to have committed human rights abuses are rarely pursued and access to justice for victims is limited (RESDAL 2008:241–42). Throughout Latin America, overreach from military courts and weakness in the civilian judiciary have made laws ineffective. Moreover, in new democracies, prosecuting past crimes committed under authoritarian rule is meant to deter contemplation of future abuses by the state and aid in the consolidation of democracy (e.g., Olsen, Payne, & Reiter 2010). Yet, despite significant advances in recent years that include the prosecution of several former dictators (Augusto Pinochet in Chile, Alberto Fujimori in Peru, and Juan María Bordaberry in Uruguay), Latin American countries are still struggling to bring justice to former authoritarian actors. One of the first steps in this process is often a battle between civilian and military courts over the jurisdiction of the crimes. This is perhaps best exemplified by the trials of the military junta in Argentina, where military courts insisted upon hearing the cases, but then simply refused to go forward with the trial proceedings, forcing a Federal Court of Appeals to assume jurisdiction after many months of inaction.

In sum, when military courts overstep their boundaries, victims do not receive justice for past human rights violations, future human rights violations are not deterred, civil-military relations suffer, the rule of law is weakened, and, as a result, democratic consolidation is hampered. Yet, surprisingly little research has examined the military justice system in Latin America³ or the crucial role of reforming it, and the field is ripe for such an endeavor.⁴ In the following section, we begin our analysis by first tracking the.

3 Castro (2009) and Pereira (2001) are notable exceptions. In addition, our previous work (Kyle & Reiter 2012) identified key patterns of military court jurisdiction across the region.

4 Moreover, most studies of judicial politics in Latin America are of single countries and scholars have called for greater cross-national inquiries such as we pursue here (Kapiszewski & Taylor 2008).

uneven state of military justice reform in the region to date. We then examine the processes by which the various types of reform efforts in Latin America have played out

The Uneven State of Reform in Latin America

Following the dramatic shift from military-dominated authoritarian rule to civilian democratic regimes in Latin America in the 1980s and 1990s, nearly every new democracy in the region has pursued some reform of military courts. These efforts have been more effective in some cases than in others and have produced a state of uneven reform across Latin America. In some countries, reform has been complete, with laws requiring civilian jurisdiction over members of the armed forces for human rights crimes and a consistent transfer of such cases to civilian courts. In other states, reform efforts have failed, and the military continues to try its members for human rights crimes in its own courts. The majority of cases stand somewhere in the middle, where civilian attempts at change are resisted by the military and reform remains incomplete.

On the positive end of the spectrum, the constitution of Panama eliminated its military and, subsequently, its military judicial system. Panama's special police forces are fully under the jurisdiction and control of the civilian court system. In Argentina, the Congress's 2008 annulment of the Code of Military Justice placed all cases in the hands of federal civilian courts, and these authorities continue to prosecute hundreds of cases, many concerning crimes committed during the 1976–1983 military regime. Recent legislative changes in Colombia, similarly, have mandated that cases of alleged human rights violations be transferred from military to civilian courts. The military is becoming increasingly cooperative in shifting appropriate cases out of its jurisdiction. Finally, while Nicaragua maintains its military and accompanying military court system, the country undertook a series of reforms in the early 1990s; and civilian courts have jurisdiction over members of the military for common crimes and human rights violations, and there are no jurisdictional battles between the two judicial systems.

In other cases, reform processes are complete, but compliance is inconsistent. Despite formal changes in Brazil, Bolivia, Ecuador, the Dominican Republic, El Salvador, Guatemala, Honduras, and Mexico, the militaries in these countries retain significant control over the investigation of charges, and actively work to obstruct the transfer of cases to civilian courts or refuse to release evidence when requested by civilian authorities. On the negative end of the spectrum, in the face of court rulings against such practices, Peruvian lawmakers recently passed new legislation specifically granting military courts jurisdiction over any crimes—including human rights violations—committed by the military. In two cases, not discussed in this article, military court reform has yet to be pursued. Courts and lawmakers have not addressed the issue of military court jurisdiction in Uruguay, and in December 2010, Chile passed new legislation to ensure that civilians could no longer be tried in the military justice system, but the military maintains jurisdiction over its personnel for all crimes (Human Rights Watch 2012b).

Different pressures and incentives presented themselves in the interaction between the military and civilian reformers in each case. Some states faced widespread civil wars that led to political transitions and the implementation of new constitutions that explicitly addressed issues of military court jurisdiction, while others took up reform through congressional attention to military codes of conduct or broader changes to legal institutions. In still other cases, court rulings led the way in ushering the issue onto the political agenda. In the following section, we document and explain the complicated and difficult reform process across the region. To do so, we examine national constitutions, along with relevant laws, to determine how actors modified jurisdictional rules in each country. We then examine United States Department of State (USDS) Country Reports on Human Rights, reports produced by Human Rights Watch and Amnesty International and other organizations, rulings by domestic and international courts, secondary academic sources, and media reports for each country. The following section begins with a discussion of the major reform pathways we find in the region. It then examines each country to illustrate these path-ways and to identify the relative success or failure of each one.

The Process of Military Justice Reform in Latin America

A variety of actors can play decisive roles in the process of military justice reform, including civilian politicians, judges, civil society organizations, external states, and important leaders within the military. Domestic and regional courts—in the case of Latin America, the Inter-American Court of Human Rights (IACtHR)—often rule against the adjudication of cases involving human rights violations in military court systems. Activists strategically bring cases to these courts in an attempt to gain a favorable ruling that will lead to the transfer of such cases from military to civilian courts. In other cases, new constitutions often redefine the judicial system, including the appropriate role of military courts. Constitutions may abolish the military judicial system completely or simply create new, specific guidelines for its interaction with the regular civilian judicial system—including the crimes each is allowed to adjudicate. Similarly, legislatures can enact laws that redefine the role of military courts, often delineating the cases that fall under its jurisdiction, the process for determining jurisdiction when in question, and the procedures and oversight for the transfer of cases from military to civilian courts. In general, these processes are often interrelated—as when a legislature passes a constitutional amendment—react to one another, and are often layered over time in specific cases. In addition, key political events and environments shape the ability of particular actors to affect or resist change. The end of a civil war or the withdrawal of external military support, for example, can diminish the ability of the armed forces to continue to claim the need for significant prerogatives.

The civilian political establishment in each country may not be unified in its attitude toward its military or in its desire to change the jurisdiction of military courts. Indeed, through much of Latin America's history, civilian elites, particularly those on the political Right, have been supportive of military prerogatives and have used military power against the populist impulses of democracy (Pion-Berlin 1997). This pattern has

changed under contemporary democracies, however, as civilian elites found the military to be an unreliable ally in the last round of military rule. Militaries often excluded their civilian backers from policymaking, and outcomes became unpredictable (O'Donnell 1992). The reprehensible acts and policy failures of many of the dictatorial regimes of the 1970s and 1980s also tarnished militaries' institutional reputations throughout the region and made them less attractive as political allies (Boron 1992). Militaries have now stayed in their barracks through numerous institutional, political, and economic crises in Latin America where they once would have been expected, or explicitly asked by civilian leaders, to intervene in politics (Pérez-Liñán 2007). Nevertheless, the lack of overt military intervention in the political arena does not mean that democratic civil-military relations have been established. Military attitudes persist among civilian elites in some cases (Stevens, Bishin, & R. Barr 2006), and in states where members of the armed forces and of the former military regime have found a voice in politics, the military institution has its prerogatives protected without the saber-rattling once required. For example, in 2005, former general and current Guatemalan president, Otto Pérez Molina, and his party in Congress sought to bolster military court jurisdiction over its personnel, even in crimes of a nonmilitary nature (OMCT 2006). In all cases, civilian reformers must work to put the issue of military judicial reform on the political agenda. Empirically, there have been no cases in which the military initiates reform of its own practices in this area. Thus, civilian reformers face many obstacles, not only from the military or institutional inertia, but potentially from fellow civilian legislators and judges.

We identify two distinct pathways of reform in Latin America: (1) unilateral efforts on the part of civilian reformers and (2) strategic bargains between civilian reformers and the military. Within the unilateral category we further distinguish efforts driven by civilian courts, those pursued by politicians, and those undertaken in the context of larger political transformations. In each case, we reflect on the relative success or failure of such efforts.

Unilateral Civilian Reform Efforts

We find that civilian reform efforts may be undertaken unilaterally—that is, without consultation or approval from military actors—under three particular modes. First, civilian reformers may attempt to seize the opportunity for military judicial reform during a broader transformative moment such as a democratic transition or the end of a civil war. Panama, El Salvador, Guatemala, and Honduras, fall into this category. Second, civilian courts may choose to exert their authority, issuing rulings that require the transfer of cases to their jurisdiction. Bolivia, Peru, and Mexico have followed this path. In these cases, civilian judiciaries have attempted to alter military practices without formal changes to legal statutes. Finally, in the cases of Ecuador, Brazil, and the Dominican Republic, civilian reformers in government have targeted the judicial power of the military to serve their political interests or the interests of elements of civil society. Among these cases, only Panama has experienced notable success in compliance because its military was abolished entirely at the transformative point, thereby leaving it with only one judicial system. We explore each of these cases in detail later.

Transformative Events

Four cases in the region undertook unilateral reform of military justice systems in the context of larger transformative political events. Panama reformed its military justice system when the military itself was abolished. The military dominated Panamanian politics in the twentieth century, particularly after the reorganization of the National Police into the National Guard in 1952. Following his seizure of power in a coup in 1968, General Omar Torrijos ruled until his death in 1981. At this point, a struggle for power ensued within the National Guard, and General Manuel Antonio Noriega, the former head of intelligence, soon took over and reorganized the National Guard into the Panamanian Defense Forces (PDF) under his command. The PDF had complete control of the country during the 1980s.

When the United States grew tired of Noriega's corruption and involvement in the illegal drug trade, it gave \$10 million to the opposition candidate—Guillermo Endara—in the 1989 elections. Endara appeared to be victorious, but Noriega annulled the results and maintained power. In response, the United States launched operation Just Cause, a December 1989 military invasion of Panama. Within days, U.S. forces occupied the country, the PDF was eliminated as a fighting force, Noriega was captured, and Endara was instated as president. With the United States and massive public pressure on his side, Endara successfully disbanded or demilitarized most of the PDF units; and in February 1990, he announced its abolishment.⁵ From that time, Panama has had no regular military forces, and the civilian Ministry of Public Security⁶ and the civilian court system, oversee all Panamanian National Police, National Air-Naval Service, and National Border Service (USDS 2009a). Reform has been complete and successful.

International context and pressure was important in El Salvador, as well. Reform of military court jurisdiction was part of broader efforts to change the relationship between the military and the nation. For much of the twentieth century, El Salvador was governed by an alliance of wealthy landowners and a pre-professionalized military that served their interests. In the wake of increasing land pressures from a growing population, frustration with the system developed among many sectors in society, producing regular violence. In 1979, junior officers staged a coup intent on change, but were quickly edged out by hardliners. The civil war with communist guerrillas began in earnest while the military was fractured (Bonner 1984).

In the early 1980s, the Salvadoran armed forces were small, weak, and on the verge of collapse (Bacevich et al. 1988). Fearing another communist revolution in Central America, the United States became heavily involved in propping up the

⁵That move was confirmed by the legislature in 1994 via a new constitutional amendment.

⁶The forces were under the Ministry of Ministry of Government and Justice until 2010 when it was transformed into the Ministry of Public Security.

Salvador a military regime while also pushing for democratization. While the United States involvement failed to reform military practices in El Salvador or to curb human rights abuse directly, the country eventually became so dependent upon U.S. aid that it gave the super power unparalleled bargaining power in forcing the transition to civilian government (Alvarez & Arnson 1982; Country Reports on Human Rights Practices for 1983). Threats of withdrawal of U.S. assistance ensured that the military would be forced to respect the results of democratic elections (Bacevich et al. 1988), and in 1983, the country transitioned away from military rule, seating a civilian president and approving a new constitution. This new constitution took advantage of the broader transformation in government to make military court jurisdiction “an exceptional procedure limited to dealing with purely military offences and misdemeanors” (Article 216). The military had been challenged on the battlefield by the Farabundo Martí National Liberation Front and was becoming highly factionalized politically, making it difficult for the institution to resist the formal change. This state of affairs presented a window of opportunity to force the military to give up its governing role and to push through sweeping reforms to reduce military prerogatives. Nevertheless, compliance with reform in subsequent years has been incomplete. Prior to enacting the new constitution, military power made judicial efforts against military personnel generally ineffective as in the case of the arrest warrant for Major Roberto d’Aubuisson, which was issued, but never carried out (Becker 1981; Belthran 1981). Military influence persisted in other high-profile cases like that of Captain Eduardo Alfonso Avila, accused of killing two U.S. labor advisors. He was held in military custody and investigated by military authorities (Associated Press 1984). Throughout the 1980s, military pressure prevented crimes from being investigated by civilian authorities, and those individuals whose cases were turned over to civilian authorities were simultaneously dismissed from the service and the cases went unresolved. This pattern has continued with better formal cooperation in transfer of cases but with civilian courts dismissing charges against military personnel (USDS 2011a). When Spanish courts sought to prosecute members of the Salvadoran army for the high-profile 1989 murder of six Jesuit priests, the nine accused surrendered to a military unit, seeking special protection from the armed forces (Delfin 2011). The military turned the case over to civilian officials, and the Salvadoran Supreme Court denied the Spanish extradition request and released the officers, claiming “the petition had been filed improperly” (USDS2011a).

As in El Salvador, Guatemala transitioned from military to civilian rule in the context of widespread civil conflict, but the Guatemalan armed forces were considerably stronger than the Salvadoran military in relation to the threats the two faced. Nevertheless, the international pressure for democratization and attention to a variety of military reforms in the eventual peace process led to the reform of military courts in the country. The Guatemalan armed forces had been operating on a 19th century code of military justice well into the 1990s, with few reforms along the way. The military was one of the only national institutions in existence, and it worked in service of wealthy civilian elites (Schirmer 1998). Rebellion from leftist military officers in 1960 touched off a civil war that would last 36 years. For Guatemala, the transformative event that produced

reform of military court jurisdiction was not the transition to democracy in 1986, but rather the end of the war itself. The new constitution only prohibited the military from putting a civilian on trial (Article 219). The provision did not address military jurisdiction over its personnel for human rights crimes.

Formal changes in the legal venue for members of the armed forces accused of ordinary crimes would not come for another decade. In 1996, as the war was ending and the military's ability to object to reform was constrained by the ongoing peace process, the Guatemalan Congress reformed the Code of Military Justice. Decree 41-96 changed the code to ensure that cases of common crimes would be dealt with in the civilian court system (Diario de Centro America 1996). The lengthy Central American peace process drew considerable attention from the United Nations and other international actors who pushed for an array of military reforms. The "Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society" and the "Agreement on Constitutional Reforms and the Electoral Regime" signed in September and December 1996, respectively, addressed Article 216 of the constitution and the need to limit military court jurisdiction over military personnel strictly to military offenses. The Guatemalan Congress approved these changes in 1999. The military, severely discredited by its performance in the civil war, was unable to resist these reform efforts; but compliance with reform has been incomplete.

Civilian authorities in Guatemala have been exercising their judicial powers in notable instances involving the military in recent years, as in the arrest of three retired members of the armed forces for their roles in the 1982 Dos Erres massacre. And, military and police personnel have been the subject of arrest and investigation by civilian authorities in connection with homicide, organized crime, and embezzlement (USDS 2010a). The military, however, continues to be uncooperative. In February 2009, the army refused to release military archives after the president announced that they would be made public. Similarly, the Constitutional Court "ruled that classified documents be made public," but the documents were not released, with the military claiming that some of them had been lost (Amnesty International 2009a).

Democratization also played a vital role in the final Central American case, Honduras. As the military handed power over to civilian authorities for the last time in 1981, military reform came through larger political transformation. The new 1982 constitution formally changed military court jurisdiction to cover only military personnel accused of military crimes (Article 91) and the Constitutive Law of the Armed Forces, passed by Congress in 1984, further codified this reform into law (Decreto No. 98-84, La Gaceta, No.01294). Nevertheless, under civilian rule, the military's power grew, largely in response to the escalation of the civil war in El Salvador and the contra war in Nicaragua; and it began a concerted campaign of political violence against potential communist activity (Ruhl 1996).

The weakness of domestic civilian institutions and the United States' backing of Honduran military activity also meant greater ability to thwart judicial efforts to hold the military accountable for human rights abuses. The campaign of torture and

disappearances undertaken in Honduras by special units of the army, such as Battalion 3–16 were reinforced by United States and other regional militaries' training and assistance (Clarín 1995). The military routinely refused to cooperate with investigations or to allow cases to be turned over to civilian authorities. In 1991, in one instance where civilian courts were making progress in a case of human rights abuses by armed forces personnel, the military “discharged the suspects . . . so as not to set the precedent of military members being tried in civilian courts” (Library of Congress 1998). The initial reforms were not particularly successful until the Central American peace process brought a conclusion to the neighboring conflicts, eliminating the primary reasons for political repression and for U.S. support of Honduran military activity.

In subsequent years, strengthening of domestic institutions such as the Office of the Attorney General and the National Commission for the Protection of Human Rights has led to modest advances in holding military personnel accountable for human rights violations, but the military continues to resist the transfer of cases to civilian courts (Human Rights Watch 2010). Tensions between military and civilian authorities in this area were heightened in the wake of the 2009 coup against President Manuel Zelaya. In the days after his removal from office, anti-coup demonstrators staged a protest at the airport in Tegucigalpa. One protestor was shot and killed by security forces, and in their investigation, the civilian Public Ministry reported “that the military twice denied requests to provide information on police and military deployments” from that day nor would they turn over some of the weapons used at the site, despite having previously agreed to do so (USDS 2010b; Amnesty International 2010). In an unrelated episode the same year, a citizen was shot and killed after driving through a military roadblock. The government issued an arrest warrant for the soldier who was alleged to be responsible, but he could not be found for the warrant to be served, presumably hidden with the help of military colleagues (USDS 2010b). As in El Salvador and Guatemala, when cases do progress in the civilian court system, it is very common for charges to be dismissed or significantly delayed, allowing impunity to reign (Center for Justice & Accountability 2011; UNODC 2007).

A unifying theme for the Central American cases is the influence of the United States in condoning and facilitating human rights abuses from its military allies. Through financial and military aid as well as international training like that seen in Honduras and at the Fort Benning-based School of the Americas, U.S. involvement in the Central American wars had a significant impact on the power of military institutions in the region. While the United States pushed for formal changes in constitutions and legal codes, it failed to hold its partners accountable for violations of human rights and did not follow through on reform efforts outlined in the Central American peace agreements or recommended by truth commissions (Jonas 2000). Thus, while withdrawal of international support for military prerogatives or international pressure for reform may alter the political landscape in favor of civilian reformers, these developments have not reversed practices of impunity established under authoritarianism.

Overall, unilateral civilian reform efforts undertaken in the context of a transformative event have not produced positive outcomes for democracy, the rule of law, and human rights protections. Only in Panama, where the unique elements of the transition allowed for the elimination of the military as a political player, did such efforts truly succeed. In the other three cases, the military has continued to ignore or actively resist new laws governing jurisdiction, and use military courts to provide impunity for its members who commit human rights violations in the context of maintaining internal security.

Civilian Court Rulings

In three separate cases, unilateral civilian efforts to reform military courts took the form of civilian courts issuing rulings requiring the transfer of cases from military to civilian courts. The military in Bolivia has long been an important political player, stemming from its prominent role in the war of independence and in a number of conflicts with neighboring countries (War of the Pacific; Acre War; Chaco War) that helped shape the early political culture of the country. The military intervened in politics more directly beginning with a coup in 1964 and the later installation of Colonel (later General) Hugo Banzer in 1971, who ruled until 1978. The military intervened directly again in the early 1980s before the country finally transitioned to democracy in 1982. Since then, the military has continued to be an important political actor and has often been called upon by the government to enforce internal security. When conducting such operations, the military has enjoyed near complete impunity for its actions. Any human rights cases involving members of the military were handled by military tribunals that protected its members and failed to advance cases (Human Rights Watch 2003). If a case did make it to the civilian judicial system, the military simply applied pressure on weak judges and prosecutors to bring it to a close (Quintana 2004). Despite hundreds of deaths at the hands of security forces, there were no convictions from 1985 to 2003 (Human Rights Watch 2003; Pion-Berlin & Trinkunas 2000).

In 2003, the civilian government faced massive demonstrations against its rule and called on the military to combat the protesters. In a series of confrontations in February, September, and October 2003, the military killed 80 and wounded hundreds (El Diario 2003). Yet, protests continued and President Sánchez de Lozada was forced to resign and flee the country. Following these events, new president Carlos Mesa called for accountability for the military's actions (BBC 2003), and in May 2004, Bolivia's Constitutional Court ruled that the military had to allow civilian courts to try cases of alleged military human rights abuses (Human Rights Watch 2004).

In reaction to this ruling, the leaders of the military confined their troops to barracks and held an all-day meeting to decide on a response (BBC 2004). In an open letter, the military threatened the court with "grave consequences" (El Deber 2004), and in the ensuing political standoff, Mesa and the high courts dropped efforts to hold the military accountable (Pion-Berlin 2010). No comprehensive legislation has been passed,

and the military continues to resist the transfer of cases and refuses to appear before civilian prosecutors (Inter-American Commission on Human Rights 2007). In addition, an administrative policy currently prohibits the military from commenting on its activities, all investigations are tightly controlled by officers in the unit in which the crime occurs, and senior-level officers continue to influence military court decisions to ensure that rulings do not embarrass the military as a whole (USDS 2010c). In sum, the court ruling has had little effect on the behavior of the military, which continues to play a large role in combating social protests and domestic unrest, and does so with impunity.

The case of Peru has followed a similar trajectory. The military regime that ruled from 1968 to 1980 used military courts extensively to allow members of the armed forces to terrorize civilians with impunity and to try civilians accused of political crimes. The military extended the definition of these crimes to include sabotage and attacks—even verbal insults—against the military. After the democratic transition in 1980, the practice of trying civilians mostly stopped; limited to the crime of treason, but the courts continued to hold jurisdiction over members of the military as they fought a civil war against the Shining Path guerrilla group. When Alberto Fujimori came to power in 1992, he ruled that terrorism constituted a variety of treason and was now subject to military justice. Special “faceless” military courts were created to prosecute civilians once again (Human Rights Watch 1995). After Fujimori left power, military courts ceased trying civilians, but current action by the military in combating drug trafficking and remnant guerrillas of the Shining Path is still shielded by military courts.

In recent years, however, the Peruvian Constitutional Court⁷ and the IACtHR⁸ have made significant rulings against Peruvian laws granting the military jurisdiction in cases of human rights violations. Yet these unilateral judicial efforts have had little effect. Not only has the military resisted the rulings, but it has found civilian allies in doing so. In reaction to high court rulings, the Peruvian legislature has passed a series of laws that grant the military increased power, including military courts, which now have explicit judicial power over military actions (USDS 2010d; Zúñiga2007). In addition, the Peruvian government has openly clashed with the IACtHR and has recently requested that the Inter-American Commission review its powers (Páez 2011). In sum, these judicial reform efforts have not only failed, but have also led to a backlash in which the judicial powers of the military have increased.

Finally, the recent developments in Mexico fit this pattern. The escalation of the drug war in the past decade has given the military a much larger role in domestic operations and complaints of human rights abuses committed by the military against civilians have soared. In 2009, the IACtHR, examining a 1974 case of a “disappearance” committed by the military, ordered Mexico to reform its military

7 There are nearly a dozen important rulings from 2004 to 2009, see: González Ocantos (2012: 30).

8 The Barrios Altos (March 14, 2001) and La Cantuta(November 29, 2006) cases represent the two most prominent rulings.

code of justice to ensure the transfer of such cases to civilian courts.⁹ In the context of rising criticism of military behavior, in July 2011, the Mexican Supreme Court voted to support the IACtHR's ruling, and ordered all civilian judges to comply with the ruling and take over jurisdiction in such cases (Wilkinson 2011).¹⁰ The legislature has also begun the process of acting on legislation that would reform the military court system, but the bill has not yet been passed by the Senate, and enforcing military compliance will likely prove difficult.

In sum, the three cases of court-led reform have failed to bring about lasting improvements in military court behavior. Given the important role of the military in the internal security of each case, it was left to courts to engage the issue. Without any political backing, the efforts have been largely ignored by the military. In the case of Peru, those efforts even led to a civilian–military coalition that worked against the courts to cement the role of military courts in the judicial system. While not enough time has passed since Mexico's reform to make a definitive assessment, early indications are that any improvements will be slow to develop and likely will meet resistance from the military.

Civilian Politicians

The final type of unilateral reform centers on actions by civil politicians. Ecuador, Brazil, and the Dominican Republic represent such cases in the region; here, key political actors sought to reform military courts to increase their own power vis-à-vis the military or gain political support from the populace.¹¹ In Brazil, the military ruled directly from 1964 to 1985, and used military courts extensively in its repression, including as a venue to try thousands of civilians (Pereira 1998). Following the transition to democracy in 1985, military courts ceased trying civilians, but otherwise remain unreformed. In addition, the military continues to play an active role in internal security. With high crime rates, a proliferation of gangs, and ungoverned favelas, the Brazilian military police, who are reserve and auxiliary units of the regular military, patrol the streets, maintain public order, respond to crimes, and make arrests.

The first effort to reform the military justice system did not occur until 1995, spurred by an overwhelming number of police and military abuses in the early 1990s that went unpunished in military courts (Inter-American Commission on Human Rights 1997: 12–13). The 1995 reform attempt began as a bill requiring the transfer of all military crimes against civilians to civilian courts, but widespread pressure by the military and civilian allies in the legislature stripped the bill of many important provisions and limited the final law (1996 N° 9299) to cases of intentional homicide (Zaverucha

9 Radilla Pacheco (November 23, 2009).

10 In October 2010, President Calderón proposed a partial reform of the military justice system, but it was heavily criticized, particularly for not requiring the transfer of extrajudicial killings, among other crimes. Congress has not seriously engaged the proposal. Kyle & Reiter 391

11 Paraguay represents a similar type of process occurring under authoritarian rule. General Alfredo Stroessner, who had come to power in 1954 in a military coup, sought to insulate himself from the threat of a coup-prone military. He and his Colorado Party passed a new constitution in 1967 that removed cases involving crimes against civilians from military courts (Sondrol 1992).

1999: 65–70).¹² Moreover, the law applies only to the state military justice system and not to the federal level, a key distinction noted by Anthony W. Pereira (2001: 563).

Pereira and Jorge Zaverucha argue that the military consented to this reform in return for the institutional status quo (Pereira & Zaverucha 2005: 126): the rest of the complex military and police justice system would remain intact, the military would retain its role in internal security, and past abuses of the former military regime would not be investigated. Even today, the police and military police consistently work to cover up their wrongdoings—manipulating evidence, coercing witnesses, and refusing to testify against one another (Human Rights Watch 2009b). The Brazilian military was thus willing to agree to a superficial change to the system to satisfy important civil society and judicial actors, in exchange for a tacit acknowledgment that further reforms would not be carried out. In the end, change on the ground has been minimal, and the Brazilian military continues to commit high levels of abuses with widespread impunity in its internal security operations.

Ecuador is the second case of civilian reform efforts in the region. Ecuador became a democracy in 1979 after nearly a decade of military rule, but the military has remained an active player in politics since. The military was behind a series of uprisings in 1986 and members of the air force kidnapped President León Febres Cordero in 1987. In 2000, the military deposed President Jamil Mahuad and replaced him with Vice President Gustavo Noboa. Throughout this period, the military relied extensively on the use of military courts to protect its members from accountability.¹³ Not surprisingly, the new Noboa government pursued no significant reforms to curb the military's power.

The scene changed with the election of Rafael Correa to the presidency in 2006. Pursuing a populist agenda, Correa lashed out against the West and declined to renew the United States' lease of the Manta Air Base, a major component of his campaign platform. Correa subsequently purged the upper echelons of the military, accused the institution of being in league with the United States Central Intelligence Agency, and publicly claimed that he had found evidence of a "Honduran-like" coup conspiracy among its leaders (Romero 2008). Moreover, the new 2008 constitution, approved by referendum, provides for a unified judicial system, abolishing separate military and police judicial systems. This abolishment shifted all cases previously under the jurisdiction of military courts to the National Court of Justice (El Comercio 2008). The ability for the government to institute this legal reform was due to the unique popularity of Correa. The military would have been unlikely to find much support among the population if it had attempted to resist these judicial reforms, and there was little political incentive for politicians to ally with the military and confront Correa.

12 Torture and cases of other nonlethal, or nonintentional, human rights abuses are still under military jurisdiction, despite Law 9299 (Amnesty International 2001: 26).³⁹²Militarized Justice in New Democracies

13 For a concise overview of the long history of the military justice in Ecuador, see Andreu-Guzmán (2004: 256–63).

Yet the military still enjoys widespread impunity for its actions, and civilian courts refrain from trying members of the military or police (Amnesty International 2012; USDS 2009b). Moreover, in September 2010, Correa attempted to reform the system of bonuses granted to police and the military, and a number of units staged massive protests and kidnapped Correa (BBC 2010). Only international pressure and intervention by other military forces kept him in power. And in a move that further diminishes the likelihood of accountability for the military, Correa has recently re-empowered the military's role in domestic security, using the procedure of declaring Reserved Security Areas to provide the military direct control of indigenous areas where protests threaten his rule (Amnesty International 2011a). In the end, the unilateral reform efforts led by civilian politicians in Ecuador have led to nothing more than temporary or incomplete compliance.

The final case—the Dominican Republic—is unique in that it combines multiple unilateral pathways, but is best categorized as being led by civilian politicians. The military played a prominent role in supporting various dictatorships in the Dominican Republic throughout the twentieth century and remained a key political actor with a strong internal security role following the transition to democracy in 1978; and military courts retained full jurisdiction over military forces.

Yet in response to high levels of human rights violations by the military, a coalition of civil society groups challenged the constitutionality of police and military courts before the Supreme Court in 2000, and public pressure to transfer important human rights cases to civilian courts increased. In 2002, the legislature restricted the scope of military courts as part of the new Code of Criminal Procedure, a comprehensive reform of the judicial system that replaced the French judicial tradition with an adversarial model. The new criminal code explicitly placed all cases involving human rights violations committed by security forces under civilian jurisdiction, but the military challenged the validity of the law and resisted its implementation (Amnesty International 2004). In the years following, the military resisted the transfer of such cases and worked to hinder investigations by not cooperating with prosecutors (Amnesty International 2009b).

On January 26, 2010, the constitution was changed again to further separate the duties of the National Police and the military, providing the police with sole jurisdiction over internal security, and restricting the role of the military to protecting the state's sovereignty. While this makes military court jurisdiction overcurrent behavior less of a contentious issue, the military continues to resist the transfer of old cases, as evidenced by the February 2011 IACtHR case (*Nadege Dorzemaet et al.*) concerning the June 2000 deaths and detention of a group of Haitians and one Dominican citizen at the hands of the military. Moreover, recent events suggest that the issue of military courts may become prominent once again. Despite the constitution's prohibition of the use of the military for internal security, in late 2011, the government ordered military personnel to patrol jointly with police officers in specific operations, including forced evictions, such as that which occurred in Alto Brisadel Este (Amnesty International 2011b).

Table 1. Unilateral Civilian Reform Processes by Country

Country	
	<i>Transformative Event</i>
Panama	International military intervention; regime change
El Salvador	Democratic transition under civil war; new Constitution
Guatemala	Democratic transition under civil war; new Constitution
Honduras	Democratic transition; new Constitution
	<i>Civilian Court Ruling</i>
Bolivia	Constitutional Court ruling for transfer of cases to civilian venues
Peru	Constitutional Court and IACtHR rulings for transfer of cases
Mexico	Constitutional Court and IACtHR rulings for transfer of cases
	<i>Civilian Political Targeting</i>
Brazil	High Rate of Military Human Rights Abuses
Ecuador	Correa's populist anti-United States and anti-military campaign
Dominican Republic	High Rate of Military Human Rights Abuses

Overall, the process of reforming military justice through unilateral action by civilian actors, summarized in Table 1, has a poor track record in bringing about positive, lasting change. Court rulings and politically motivated reforms are largely ignored. Efforts undertaken during transformative events have produced more substantial change, but in most cases still fall well short of meaningfully improving the rule of law, civil-military relations, and democracy. Only the unique case of Panama, where the military itself was abolished, has produced meaningful reform. The following section details an alternative process of reform in which civilian actors directly bargain with the military.

Civilian-Military Bargains

In contrast with the unilateral efforts to reform military justice systems, some states have engaged their militaries and have found a more collaborative route to changing the jurisdiction of military courts. The bargains typically have involved the guarantee of greater material resources or the preservation of other institutional prerogatives in exchange for concessions from the armed forces on their courts' jurisdiction over nonmilitary crimes committed by military personnel. Three cases fit this type: Colombia, Argentina, and Nicaragua.

From 1946 to 1957, Colombia was ravaged by a civil war (LaViolencia) that killed an estimated 200,000 people. While the war came to an end with a landmark power sharing agreement, many guerrilla groups refused to join the new government, and other groups formed in the ensuing decades. The existence of these guerrilla forces as a significant threat to the state gave the military extensive power. A key component of this power was the military's court system, which was even extended to cover civilians who committed certain security-related crimes. Military courts retained complete jurisdiction over their forces, and members were granted complete legal immunity when committing crimes, even homicide, during investigations of serious crimes (Cepeda 2005: 70).

In the late 1980s, however, the conflict in Colombia began to change dramatically. The thriving drug trade increased the number of armed actors, corruption within the government and military was at an all-time high, and massive human rights violations were common. Colombia became a pariah state; foreign and economic relations suffered. In response, new civilian leaders, aligned with key elements in civil society, began to institute reforms, including a new constitution in 1991 that removed many military prerogatives. In addition, civilian courts made some tentative, but significant rulings against the military, overriding a law that would grant the police judicial functions (1985), striking down the Special Tribunal for Political Crimes (1987), and disallowing the placement of civilian cases under military jurisdiction (1987) (Lawyers Committee for Human Rights 1991: 13–14).

Still, the military fought reform efforts. In addition to using paramilitary units for some of its work, the military applied significant pressure at the drafting of the constitution to ensure that military tribunals were granted jurisdiction over crimes committed by the armed forces (Article 221) and that soldiers were granted explicit immunity for violations that were the result of obeying orders from a superior (Article 91). In 1995, the Constitutional Court boldly declared that active military personnel could not preside as judges on military courts, arguing that this could affect their impartiality (C 141/95). Immediate calls ensued for the Constitutional Court's abolishment; and, in June 1995, Congress almost approved a measure to pack the court (Cepeda 1998: 89–90). Within a few months, a Constitutional amendment passed through Congress explicitly stated that military courts would be composed of active or retired members of the state's armed forces (Rodríguez et al. 2003: 152). The Court issued a later ruling in 1997 (C-358/97) requiring that the gravest human rights violations be tried in civilian courts as they could not rationally be considered acts committed as part of regular military duty (Rodríguez et al. 2003: 152). Yet in 1998, the Supreme Judicial Council, which oversees decisions on jurisdiction, declared that it was not bound by the ruling and effectively ended a civilian investigation of Brigadier General Fernando Millan.

True reform did not occur in Colombia until 2000, when a new Military Penal Code, which denied commanders the power to judge subordinates and disallowed cases of torture, genocide, and forced disappearance to be tried in military courts, was passed. This act, coupled with a strong presidential directive shortly thereafter has eventually led to consistent transfer of cases out of military tribunals (Rodríguez et al. 2003: 152). A key reason the military finally acquiesced to reform efforts was increased power in other areas. The initiation of Plan Colombia by the United States provided over \$1 billion in military aid to Colombia from 1999 to 2000, and U.S. military assistance since then has averaged more than \$600 million annually. In addition, the new president, Álvaro Uribe, consistently increased the percentage of the budget allocated for the military, nearly tripling it over his eight-year presidency. Consequently, the number of professional soldiers expanded from 75,000 in 2002 to 350,000 today. Uribe also entered negotiations with the paramilitaries, and an eventual peace deal was secured that led to the demobilization of more than 30,000 fighters. As a result, the military was anointed as the only actor to combat the remaining guerrilla and has been

given vast resources to accomplish its goals. Given this significant increase in institutional power, the military was willing to give up judicial power. In addition, improving its human rights record was important for the continuation of U.S. military aid, and so it was in the best interest of the Colombian military to reform in this area. The success of reform in Colombia, in sum, was linked to the increased power of the military in other areas.

Recent changes in Argentina follow a similar pattern. In the wake of the 1983 transition from military dictatorship to civilian democracy, the country quickly pursued trials against the juntas and instituted a truth commission. These early efforts held the former leadership accountable for human rights abuses, but they were largely negated by the amnesties and pardons granted in the late 1980s and early 1990s. The power of the military and its courts was also laid bare at the end of the 1980s when dealing with Lieutenant Colonel Aldo Rico, who had led the first carapintada uprisings. After his arrest, it seemed he would be charged by civilian authorities, but Rico's fellow officers threatened another revolt "if the proceedings were transferred to a civilian court" (Latin American Weekly Report 1988). The military eventually went further out of its way to maintain control over the case by "reincorporating [Rico] so he could be tried by military courts" even though he had been cashiered from the army (Latin American Weekly Report 1989).

With the inauguration of President Nestor Kirchner in 2003, accountability for past human rights abuses returned to the table. Kirchner actively pursued a human rights agenda, seeking to end the impunity. Congress voted to annul the amnesty laws, and through a series of rulings in the early 2000s, the courts ruled the pardons unconstitutional, allowing renewed prosecutions against alleged perpetrators of human rights abuses. By the latter part of the decade, trials against members of the former regime proliferated (Human Rights Watch 2009a; USDS 2008). The Argentine military has complied with civilian jurisdiction over human rights trials, with Federal criminal courts continuing to prosecute hundreds of cases, many focused on crimes committed during the military regime (USDS 2011b).

The Kirchner administration also targeted military reform more generally. In relation to military courts, the Congress repealed the Code of Military Justice in 2008, giving federal civilian courts jurisdiction over nonmilitary crimes committed by military personnel (Global Legal Information Network 2008). While taking a political stand in campaigning against the institution's past, the Kirchner team also sought to give the military what it wanted through the bureaucracy. During the Kirchner period (2003–2007), allocations toward procurement and military manufacturing increased—expenditures recognized as crucial given the deteriorating condition of much of Argentina's military equipment (Red de Seguridad Defensa de América Latina 2008, 2010). The troubled Argentine economy threatens to undermine the ability of the government to follow through on the budget outlays, but the effort to give the military what it wants with the bureaucratic hand while reforming with the political hand, demonstrates successful bargaining.

The bargaining that occurred in Nicaragua took a different form. Rather than granting the military additional prerogatives in exchange for giving up legal power, civilian reformers allowed the military to maintain particular prerogatives in exchange for reform of the military justice system. Key guarantees were granted to the military that other military powers would be untouched by civilian reformers.

Prior to the early 1990s, Nicaragua never had a professional military; instead, partisan armies dominated the country's political history. The last such army, the Sandinista Popular Army (EPS), supported the rule of Daniel Ortega and the Sandinistas during the 1980s. Following the Sandinista's loss in the 1990 election to Violeta Chamorro and the National Opposition Union (UNO), a number of factors came together to bring about a massive reform process of the military, including its court system.

Immediately after the election, the Sandinistas instituted EPS Military Organization Law 75, which blocked presidential control of the armed forces and provided the EPS with responsibility for maintaining internal security as well as external defense (Premo 1997: 66). This resistance was short lived. The UNO was bolstered by its sweeping electoral victory (55–41%) and opposition to the Sandinistas was high among civil society actors and the general population. In addition, the United States applied considerable pressure on the Chamorro government to reform the EPS, at one point, withholding \$100 million in economic assistance, and funding efforts by the National Democratic Institute for International Affairs to bring civilian and military leaders together (National Democratic Institute for International Affairs 1995). In the face of this mounting pressure, the pragmatic leadership of the EPS embraced reform, in exchange for ensuring the institution's long-term survival (Ruhl 2003). These reform efforts culminated in the passing of the 1994 Code of Military Organization, Jurisdiction, and Social Provision, a portion of which restricted the jurisdiction of military courts to offenses of military discipline, and gave the civilian Supreme Court the power to select military judges (Republic of Nicaragua 1996: 5). By accepting reform, the leadership of the military successfully separated itself from the Sandinistas and created a new image as a nonpartisan professional military, ensuring its survival and political importance into the future. Following the reforms, military tribunals only retained jurisdiction over violations of military regulations and misdemeanors, and civilian courts have consistently tried any other crimes, including human rights violations (USDS 2009c).

Table 2. Civil-Military Bargaining Reform Processes by Country

Country	Context of Bargain	Benefit to Military
Colombia	Civil war; high rate of military human rights abuses	Domestic and international support in fighting the war; financial aid, increased personnel
Argentina	Addressing legacy of authoritarianism	Increased procurement budget; modernization of forces
Nicaragua	Addressing legacy of civil war	Professional autonomy

Overall, we find that engaging directly with the military, as summarized in Table 2, proves more effective than unilateral reform. The three cases demonstrate a high level of success, defined as the existence of new laws removing cases of human rights violations from military courts and consistent compliance with these laws by the military. In contrast, unilateral reform efforts, whether led by courts or politicians, result in a low level of success, defined as either the existence of new laws that do not fully remove cases of human rights violations from military courts, or no or inconsistent compliance by the military with new laws that do remove cases of human rights violations from military courts. The only exception is Panama, a case in which an extraordinary transformative event led to successful reform. A summary of our findings from Latin America is provided in Figure 1.

Success of Reform	High	Panama	Argentina Colombia Nicaragua
	Low	Bolivia Brazil Dominican Republic Ecuador El Salvador Guatemala Honduras Mexico Peru	
		No	Yes
		Civilian Reformers' Engagement with Military	

Figure 1. Military Justice Reform Processes and Outcomes in Latin America.

Conclusion

Reform of military court jurisdiction is of crucial importance to judicial politics and the rule of law, civil-military relations, democratic consolidation, and the protection of human rights. While Latin American militaries traditionally have extended their jurisdiction over military personnel even in cases of nonmilitary crimes, states in the region have undergone reforms in recent years, resulting in varied legal standards and

different levels of successful implementation. This article has sought to document the types of reform processes attempted throughout the region and to understand their relative success and failure in reforming military justice systems.

As expected in a region where the military has a traditionally strong role in politics, reform has been slow, incomplete, and met with strong resistance in many cases. Regardless of how they attempted to reform the military justice system, most countries in Latin America have not been completely successful in doing so. Our analysis reveals several key findings and, in turn, provides lessons that can be applied to future efforts in the region and across the globe.

First, we find that unilateral efforts undertaken by civilian reformers without engaging the military directly have a poor track record. Domestic and international court rulings and support for reform by key politicians are not enough. Such efforts are typically ignored. In one case, Peru, court rulings against the military justice system led to a coalition between civilian politicians and the military that blocked reform and reinforced the military's relatively free hand in internal security. In cases where civilian reformers undertook military justice reform as part of a larger transformative event, such as the writing of a new constitution or the end of a civil war, reform was more successful. Yet even here, compliance is poor and militaries continue to hamper investigations and resist legal control. Only the case of Panama, in which the military was completely abolished, do we see a unilateral effort by civilian leaders prove successful in achieving complete reform and compliance.

Second, we find that reform was much more successful where civilian reformers engaged and bargained with the military directly. Reform of military courts was the result of an increase in prerogatives or institutional power of the military in other areas. In Colombia and Argentina, these bargains were explicit, with reform accompanied by increased budgets and operational roles. The military in Nicaragua and was not granted additional power, but gained guarantees of institutional survival and importance. The military sacrificed limited reform in this area to avoid greater reform in other issue areas. Colombia has seen significant improvement in compliance, and militaries in Argentina and Nicaragua are fully subordinated to civilian courts.

The key lessons from this study are sobering. Scholars and practitioners should not expect a quick fix to issues of overextension of military justice systems. The legal realm is often the last bastion of power by militaries in new democracies and they fight to hold on to this prerogative. Furthermore, even where reform can be accomplished on paper, successful compliance often necessitates significant procedural reform to remove the military from the investigation process and pre-trial stages of cases. In addition, where obstruction fails, militaries often refuse to comply, putting new democratic actors in the untenable position of having to openly challenge the military with the threat of police force or sanction. Not surprisingly, the military usually wins these confrontations, and civilian reformers view the risk of reforming the military justice system as not worth the potential reward.

Moreover, even the successful cases in this study do not represent an unequivocal positive development for the rule of law, democracy, civil-military relations, and human rights. The need for bargaining with the military and granting additional powers in other areas suggest that court reform does not signal a significant improvement in civil-military relations, but rather a continuation of the current balance of power. Such behavior is also worrisome for democracy, indicating that the military remains a powerful political actor and is not fully subordinated to civilian politicians. In addition, the increased institutional power—especially in areas of internal security—that militaries gain as a result of the bargains can hinder the protection of human rights. The successful reform of military court jurisdiction, however, is a positive development for the rule of law. And while we caution that the political conditions that led to the bargain may change, thus shifting compliance, getting the military to accept these judicial restraints, we argue, at least has the potential to lead to normative change and institutional resistance to reversal.

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