

The Constitution, the Laws, the Division of Powers, Civil Society and Its Institutions: Fundamental Democratic tools of 'Guarding the Guardians'

The most striking characteristic of modern statehood is a paradox: the separation of powers and the monopolization of force. Any modern democratic constitution ensures that the legislative power, as the one making laws, is clearly separated from the executive power, as the one who executes the laws. With the modern state civil society has given itself a tool of coercion that assures the populace of security from both external and internal threats while, at the same time, giving them the opportunity to live out their freedoms and determine themselves within the boundaries of legal justice.

To achieve this aim, the use of force and the means of violence are monopolized and concentrated in the hands of the coercive tools of the state – the security forces, such as the military, the police force, border police and gendarmerie, etc. Given the task of the military to protect the country primarily from external threats, the monopoly on the use of a large range of instruments of lethal force rests with the armed forces. Since this almost exclusive monopoly on force endows the armed forces with the potential to physically dominate all other institutions and take over the political control of the state, one of the oldest challenges to a democratic society has persistently been of how to subordinate the armed forces to the civilian leadership and authority; a problem that has already concerned ancient Rome. It was the senator Juventus who raised the question in the Roman Senate, 'Quid custodit ipsos custodes?' (Who shall guard the guardians?)

The problematic is difficult because it involves balancing two vital and potentially conflicting interests. On the one hand, the military should be strong to prevail in war, to ward off attacks and protect the society against any external threats and support internally when non-military security forces are overwhelmed; on the other hand, the polity wants to make sure that the use of force remains a last resort and a means used only when legitimized by the elected political authorities. In light of the military's capability to prevail under the exceptional circumstances of armed conflict and war, the uniqueness and distinctiveness of the military is an essential criterion influencing civil-military relations. Even under the conditions of modernity and the contemporary challenges to societies, there is a continuing need for the armed forces to remain apart from society in their distinctive organizational structure and military culture if they want to successfully carry out assigned tasks and missions. This distinguishing characteristic makes it even more crucial to establish civilian political control over the military and, at the same time, to integrate the military in a social and political environment. In modern civil societies the essential framework for the position of the military in the state as well as the mechanisms for the democratic civilian control over the armed forces are set forth in the Constitution. The

political power of modern statehood is divided into three branches: The

Executive

(headed by the President or the Prime minister), the

Legislative

(usually exercised by the Parliamentary Assembly or Congress, with one or two houses), and the

Judiciary

. The strict rules of the constitutional and legal framework provide for a system of checks and balances that is intended to ensure successful governance. According to the Constitution, the armed forces are normally part of the executive and embedded in the system of the separation of powers. They are bound by law and justice, subordinated to the political leadership and, like the other executive branches of the state, the armed forces are subject to legislative and judicial control.

This set of constitutional regulations shall ensure that the sole legitimate source for the direction and actions of the military should be derived from civilians outside the military establishment. These legal arrangements also make clear that the armed forces are accountable to the legitimate democratic authorities.

Although subject to national differences, democratic constitutions generally bestow the responsibility for national security and the overall guidance of the armed forces on the executive power. The Constitution designates the President (in some cases the Prime Minister) as the Commander in Chief of the Armed Forces of the nation, who exercises his power normally through a cabinet and an appointed civilian Minister of Defense.

The executive power formulates and proposes security and defense policies and implements them after approval by the legislature.

The general role of the legislature in matters of defense and security is to pass respective legislation and to ratify procurement decisions, policies, and on the deployment of forces.

The most important role for the legislature to exert civilian control, however, is the budgetary control, the 'Power of the Purse' function of the parliament, which gives it especially the competencies to pass the budget and to decide on appropriate funds for the personal and material requirements of the armed forces. This task is reinforced by the entitlement to parliamentary oversight in all fields of national security and defense. In addition, the parliament establishes special committees on defense to carry out a particular functions in monitoring the implementation of the security and defense policy by the government.

Parliamentary Committees also participate in preparatory work for parliamentary debates and decisions on matters of security and defense.

The legislature may also subject the armed forces to control by a national auditing office regarding efficient, legal and transparent budgetary spending and lawful financial conduct of the armed forces.

The legislature also provides an extensive set of legal rules and provisions pertaining to the internal order of the armed forces. Concrete military legislation is provided through laws on defense (such as Defense Acts) which, among other issues, regulate the legal status of soldiers and define basic rights and duties for military and defense personnel.

The significant role of the parliament in legislating on security and defense issues is also an

important prerequisite for good civil-military relations. This role is crucial in the formulation of defense and security policies, the decision-making processes concerning defense budgets, and the controlling mechanisms for spending the resources.

The judicial power evaluates and interprets the constitutionality of laws and, by way of independent courts, monitors and ensures that the armed forces act in accordance with the laws. It also guarantees the members of the armed forces their rights and make sure that they are always subjected to a constitutional consistent jurisdiction. A firm constitutional foundation warrants a clear separation of powers and also defines the basic relationship between the state authorities and the armed forces. In essence, the constitutional provisions protect the state from two types of dangers: from politicians who have military ambitions, and from militaries with political ambitions.

Civilian political control finds its roots in the concept of representative democracy. The fundamental premise is that elected civilian authorities define and guide national policies concerning security and defense and maintain decision-making power over the military at all time. Civilian control and leadership, in the general sense, extends even beyond competence in a particular sense. Given the nature of modern societies, including the position of the armed forces as an instrument of politics, civilians are morally and politically authorized to make decisions. This holds true even if they do not possess the relevant technical competence in the form of a particular expertise. In a civil-military context this means that the military is tasked to help identify threats and appropriate responses, however, that beyond the military's advisory role the political decision-making power rests with the civilian leadership.

With respect to civilian control of the military and the stance of the armed forces in society and state, a conceptual distinction between two principle forms – *subjective* and *objective* – of civilian control of military power has been made by Samuel Huntington in his seminal work “The Soldier and the State”. By

subjective

civilian control Huntington understood the maximizing of civilian power by both civilianizing and politicizing the military, by making it politically dependent, and denying the military a distinct professionalism remarkably different from other organizations in society; by

objective

civilian control he recognized the maximizing of military professionalism, making it a politically neutral tool of the state, and guaranteeing the military a distinctive existence as a professional body.

Huntington's idea is that objective civilian control is preferable since the best guarantor for military subordination to political supremacy is a truly professional military. Only military professionalism would acknowledge the role of the military as an impartial instrument of national security, neither bound to engage in party politics nor prone to intervene in politics or assume

governmental control.

Civilian political control, however, is only one aspect of democratic rule. The hierarchical responsibility of the military to the government through the establishment of a civilian minister of defense and a civilian administration in the ministry of defense do not exclusively provide for stable civil-military relations. The legitimization of civilian control by legal institutionalization in connection with the organizational structures and control mechanisms built into the legal framework is only one precondition for establishing democratic civil-military relations. Political control is necessary, but not sufficient. The second parameter of civil-military relations, the societal dimension, is necessitated by the major three political factors making up the environment of civil-military affairs: the political elite, the military profession, and the civil society.

Several important scholars of civil-military relations theory came to emphasize the focus of societal rather than institutional state control as decisive in modern democratic civil-military relations. Among others, Morris Janowitz made clear that this side of civilian control refers to the incorporation of democratic ideas and values in the military culture as well as in the political traditions of a nation. While the military and particularly the officer corps have to fully acknowledge the principles of democratic governance and ought to share the basic democratic and human values, a developed civil society has to have clear understanding of the democratic political culture, including the acceptance of the roles and missions of the military.

Together with the need for the armed forces to earn the understanding and respect of the society within which they exist, society itself has a reciprocal duty towards the armed forces. Society must be understanding and respectful if it wants to enable the armed forces to contribute efficiently to national security, without overstepping the boundaries of their constitutional entitlements. The soldiers have taken on a personal obligation for their nation that is almost unlimited – an obligation that may include fighting and even dying. In return, the societal community must recognize the consequences of military duty, e. g. the use of land for military training, airspace. Furthermore, if the nation's political leaders decide that conscription remains essential, society must accept the consequences of recruitment for individuals and families. Society also needs to acknowledge the expenses for defense and security, including the right of soldiers to proper pay, appropriate living conditions, and its obligation to integrate soldiers and their families in the civil environment for which they are required to serve. Adequate education of military personnel also plays a major role in the societal integration of the armed forces and reveals the necessity to turn the guardians into fully cultured and developed members of society who carry out their duties in a deliberate and conscientious manner. This will also help to reintegrate the soldiers both socially and economically after they have finished their service. The skills in civil emergency and disaster relief operations soldiers and defense personnel have acquired during their service will add valuable technical and

leadership competencies to society.

All of these considerations reflect the fact that finding an appropriate position of the armed forces within the society is not only a matter of establishing constitutional norms, but requires reflection and sustained efforts by all actors involved in civil-military relations. It demands the reciprocal sharing of duties and responsibilities in a joint venture of civil and military players.

The maintenance of national security, including efficient contributions from the part of the armed forces presupposes some amount of confidence and trust, which the armed forces must have in their political leadership. Political governance has to be provided in a consistent and coherent manner with clear initiating and implementing authority, even and particularly when defense decisions have to be made in complex situations or during crises. Representatives of the military establishment have to be heard in their advisory function and should be properly integrated in the counseling bodies established for political decision-making in security matters.

In open and democratic societies political processes take place under media scrutiny and the critical eye of the public. Transparency and legitimization of goals, objectives, and operative organizational procedures are constant challenges that have to be met by all organizations. The responsibility to explain defense policies and military needs to the public rests primarily with the government and the parliament. The military establishment contributes to these processes by presenting their tasks, roles, and missions openly to the community at national, regional, and local levels while observing political impartiality and without violating the principle of the supremacy of policy. This makes it inevitable that academic circles, the media, the industry, and the society as a whole are being integrated into the processes of communication and dialogue on security and defense matters. In a world of comprehensive security challenges, civil-military relations in a democracy is a wide-ranging, multifaceted, and interdisciplinary undertaking which involves all relevant forces of society and state.

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