

Should the President have this Power in Wartime?

To accompany *Presidential Powers in Wartime (standard)*

The following situations represent actual presidential actions during war. For the number you have been assigned, read the situation and discuss whether the president should be able to exercise this power or not. Some issues to think about as you discuss:

- Is there evidence of this power for the president in the U.S. Constitution? If there is nothing specifically, could you interpret the Constitution in such a way that the president would have this power?
- What are the advantages and disadvantages of the president having this power?

Situation 1

Suppose the United States is involved in a war overseas and needs more steel to produce military equipment. The owners of the steel factories and the workers are in a disagreement over wages and working conditions. The steel workers' union announces that there will be a strike. Should the president have the power to put the factories under government control, so that they continue to produce steel?

- Read the handout about the case and the Supreme Court's decision. Do you agree with it?

Situation 2

Suppose the United States is involved in a war overseas. Not all citizens are completely supportive of the U.S. involvement and there are some groups organized specifically in protest of U.S. involvement in the war. A protester is arrested by federal officers, held in jail, and put on trial before a military tribunal. Should the president have the power to suspend habeas corpus (the protection against illegal imprisonment) and allow for civilian prosecutions to take place in military courts?

- Read the handout about the case and the Supreme Court's decision. Do you agree with it?

Situation 3

Suppose the United States is involved in a war overseas as a result of a terrorist attack that took place on American soil. U.S. troops capture an individual who is a U.S. citizen, claiming he was fighting against the U.S. and is therefore considered an unlawful combatant. As such, the government says he is not entitled to the same rights as a regular U.S. citizen (such as access to the court system and legal counsel). Should the president have the power during wartime to label U.S. citizens as unlawful combatants (with no oversight), hold them indefinitely, and deny them counsel?

- Read the handout about the case and the Supreme Court's decision. Do you agree with it?

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Decisions/summaries to accompany *Presidential Powers in Wartime (standard)*

Situation 1: *Youngstown Sheet and Tube Co. v. Sawyer (1952)*

During the early 1950s, there was significant unrest in the labor and business sectors which prompted President Truman to set up the Federal Wage Stabilization Board. The Board had the power to set wages and handle labor disputes.

The United States was involved in the Korean War and therefore the military was dependent on steel production for war materials. In 1951, the steel mill owners and employees (who were represented by a strong union) were involved in a labor dispute and the union threatened strikes. Truman ordered the Board to investigate, which delayed the strike. When there was no clear settlement after the investigation, the union again announced there would be a strike. In response, Truman issued Executive Order 10340 which ordered the Secretary of Commerce to seize the steel mills and continue to operate them. The obvious justification was for steel production necessary for war materials.

The Supreme Court ruled against the government, invalidating Truman's order. The Court held that the President's power during wartime does not extend to the power to seize private property. That power is not enumerated in Article 2 of the Constitution, and Congress had not given the President authorization, therefore it was unconstitutional.

Situation 2: *Ex Parte Milligan (1866)*

In 1863, Congress gave President Lincoln authorization to suspend the writ of habeas corpus in cases dealing with offenses against the armed forces. Milligan, a civilian from Indiana, was involved in local activities supporting the Confederacy. He was arrested and tried by a military court. The court found him guilty of treason and sentenced him to death. Because the trial was conducted by a military court, Milligan was not entitled to the same protections he would have received otherwise, such as a jury trial.

The Supreme Court agreed to hear the case in 1866, after the Civil War was over. The Court said that even though civilians could be imprisoned by the military during times of war, if the civilian courts are still operating, it is unconstitutional to subject Milligan to a military court martial. Therefore, the suspension of habeas corpus was unconstitutional because the civilian courts were still operating. The Court further pointed out that even when habeas corpus has been suspended, the civilian can only be held without charges; but not tried or sentenced by a military court.

Situation 3: *Hamdi v. Rumsfeld (2004)*

Hamdi, an American citizen, was arrested by U.S. military troops in Afghanistan in 2001. He was charged as an "enemy combatant" and accused of fighting against the U.S. He was originally held in Guantanamo Bay and then transferred to a military prison in Virginia. Hamdi claimed that as an American citizen he was entitled to an attorney and a trial, and was protected against being held indefinitely. The U.S. argued that during wartime, the government can declare people "enemy combatants" which then limits what rights they are entitled to while in custody.

The Supreme Court heard the case, and had to decide not only if Hamdi's Fifth Amendment rights were violated, but also if the Court was bound to defer to the Executive branch during wartime because of the separation of powers. The Court held that while it was lawful to hold Hamdi, he must be given the protections of the Fifth Amendment and the opportunity to challenge his detention. The Court also rejected the argument that the judicial branch is prevented by the separation of powers from hearing Hamdi's case.