

Military Commissions and Curbing the Court

1. What is a military commission?
2. Under Court precedents, who can be tried by a military commission?
3. President Bush signed a military order creating commissions in November 2001. What were the major provisions of this order?
4. Two of the cases coming to the Supreme Court regarding military commissions dealt with American citizens. The Court sidestepped the Padilla case, and Padilla was eventually transferred to a domestic court to be tried there.
5. The Court decision in Hamdi has many parts:
 - a. What did the Court state about the role of the court in this process?
 - b. What must an enemy combatant be informed of?
 - c. What does the court mean by stating that a neutral decisionmaker is required? What is the reasoning here?
 - d. The Court states that circumstances might allow some procedures to be modified. Why and what are some examples? (i.e. hearsay).
 - e. What is Justice Souter's position in his dissent?
 - f. What is the bottom line in this case? (can hold enemy combatants but they have some rights)
6. What was the impact of Rasul?
7. In Hamdan, the Court decided that the military commissions couldn't continue as designed.
 - a. What was Hamdan charged with?
 - b. What is Hamdan's argument regarding how the military commissions cannot try him? (two reasons)
 - c. What did the AUMF accomplish?
 - d. What did the AUMF not accomplish? How was the UCMJ unchanged?
8. How did Congress and the President respond?
9. Boumediene
 - a. Do the courts have jurisdiction to hear habeas corpus from detainees?
 - b. Upon what two grounds might petitioners be barred from invoking the writ (status as enemy combatants or location in Guantanamo Bay)?
 - c. What is the history of the writ of habeas corpus?
 - d. What is the core of Rehnquist's dissent? Scalia?

Curbing

10. The text lists a number of participants to the public policy process. How do each of them participate in interpreting Supreme Court decisions?
11. When is the Court likely to be in step or out of step with other branches or the public?
12. Explain and provide examples of the following two court-curbing methods.
 - a. Constitutional amendments
 - b. Statutory reversals
13. Describe FDR's court-packing plan.
14. What is jurisdiction-stripping and how does it work?
15. Be familiar with the contemporary disputes from 2004 – 2008 (page 451).

16. Ex parte McCordle
 - a. Did Congress successfully withdraw jurisdiction from the Court?
 - b. What does the Court state about the sources and limitations of jurisdiction?
17. How does noncompliance threaten the Court?
18. How is the lower-court implementation challenge Supreme Court decisions?
19. We are always engaged in constitutional dialogues. Do these present a major challenge to what the Court does?
20. Pay attention to the examples on page 462 regarding the “last-word doctrine.”