

Presidential Powers During Wartime: Scenarios

For each scenario, answer the question: "Is the President justified?"

SCENARIO 1

The United States is receiving reports of a possible act of genocide overseas. Acting on his own authority as Commander in Chief, the President commits the U.S. Air Force and later U.S. ground troops to stopping the alleged genocide. The President defends his responsibility "to deal with problems such as this before they do permanent harm to our national interests."

SCENARIO 2

During an armed conflict overseas, the steel industry and its workers are at an impasse over wages, and the workers threaten to strike. The President, worried about the effect of interruption in steel production on U.S. combat forces, nationalizes the industry on his authority as Commander in Chief and without the permission of the Congress.

SCENARIO 3

The country is in the first months of a declared war with countries overseas. The President requests and the Congress passes legislation making it a crime to, among other things, "wilfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies" or "cause or attempt to cause insubordination, disloyalty, mutiny, refusal of duty, in the military or naval forces of the United States," or "obstruct the recruiting or enlistment service of the United States."

SCENARIO 4

The country is in the midst of a civil war. The President issues a proclamation on his own authority saying, among other things, that any persons "guilty of any disloyal practice, affording aid and comfort" to those rebelling against the authority of the United States, shall be subject to martial law and liable to trial and punishment by courts martial or military commission." Congress later grants this power to the President.

SCENARIO 5

The country is in the first months of a declared war with countries overseas that began with a devastating sneak attack on the United States. The President in virtue of his authority as Commander in Chief, issues an executive order directing military leaders, whenever they deem such actions necessary, to define "military areas in such places and of such extent as they determine, from which any or all persons may be excluded." The Congress later passed legislation to support this action.

SCENARIO 6

Many citizens are opposed to an armed conflict overseas. The President authorizes the National Security Agency to monitor communications "concerning individuals or organizations involved in civil disturbances, anti-war movements/demonstrations and military deserters involved in anti-war movements" and provide information on organizations or governments that might influence them. This information is collected without a warrant or notification to the Congress.

SCENARIO 7

The country is in the first months of a declared war with countries overseas that began with a devastating sneak attack on the United States. Persons who had lived in the United States previously but were trained by the belligerent country entered the United States secretly and illegally carrying explosives, fuses, and incendiary and time devices. In civilian clothes, they set out to various places but were captured within two weeks. By executive order, the President appoints a military tribunal to try the men for offenses against the law of war and the Articles of War. The Proclamation also stated in terms that all such persons were denied access to the courts.

Presidential Powers During Wartime: The Facts behind the Scenarios

SCENARIO 1

In 1999, President William J. Clinton approved the participation of U.S. Air Force planes in a NATO-led campaign against Serbia to halt a suspected program of genocide and ethnic cleansing in Kosovo. The President did so without the approval of the Congress.

SCENARIO 2

President Harry S. Truman seized control over the American steel industry in 1952 during the Korean War in order to avert the possibility of an interruption of steel production he thought was vital for the creation of military materiel. He immediately went to Congress and explained his actions. Youngstown Sheet & Tube Co. sued. In *Youngstown Sheet & Tube v. Sawyer* (1952), the U.S. Supreme Court determined that the President's seizure order was not within his constitutional power. Truman immediately returned control to the steel industry, the workers struck, and the war went on.

SCENARIO 3

Following America's entry into World War One, President Woodrow Wilson proposed and the Congress enacted the Espionage Act of 1917. Using this Act, the Administration conducted almost 2,100 trials resulting in 1,055 convictions during and after the war. The Act itself was upheld as constitutional by the U.S. Supreme Court in a series of decisions called *The Espionage Cases*.

SCENARIO 4

In 1862, President Abraham Lincoln suspended habeas corpus and made disloyal persons subject to trial and punishment by courts martial or military commission. The U.S. Supreme Court, most famously in *Ex parte Milligan* (1866), held the trials to be unconstitutional as long as the regular federal courts were open and functioning. Declaring that "the Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times and under all circumstances."

SCENARIO 5

On February 19, 1942, President Franklin D. Roosevelt issued Executive Order 9066, placing the western United States under military control; Congress supported this order through legislation the following month. The order permitting the Secretary of War to forcibly transfer more than 120,000 persons of Japanese descent to "relocation centers" away from the coast. The relocation was the focus of several U.S. Supreme Court decisions, including *Korematsu v. United States* (1944), which held that the 1942 legislation was constitutional.

SCENARIO 6

In 1969, President Richard M. Nixon authorized operation MINARET, which authorized the National Security Agency to create a "watch list" of U.S. persons which included anti-war demonstrators, agitators, and draft dodgers, and military deserters. According to the National Security Archive, the list included anti-war activists Joan Baez, Jane Fonda and Dr. Benjamin Spock.

SCENARIO 7

In 1942, President Franklin D. Roosevelt responded to the capture of eight German would-be saboteurs who had landed by submarine on the Atlantic Coast by creating a military tribunal. During their tribunal, the case of the saboteurs was brought in federal court, and it was heard and decided before an extraordinary session of the U.S. Supreme Court on July 29, 1942. On July 31, the Court denied the saboteurs' petition for habeas corpus. All eight were found guilty by tribunal, and six were executed on August 8 (the other two, who had helped the government with its case, received harsh sentences). The Court issued its opinion in the case, *Ex parte Quirin*, in October 1942, affirming its right to review the case.