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MILITARY JUSTICE

Almost since the beginning of organized violence, military forces have had a separate criminal justice system to maintain the morale and discipline necessary for battlefield success. In addition to typical criminal offenses, the system addresses offenses unique to the military environment (e.g., desertion, disobedience, dereliction of duty, and disrespect to superiors).

HISTORY OF MILITARY JUSTICE

Military justice in the United States originated with the Articles of War adopted from the British Army by the Continental Congress in 1775. Although there were various updates and amendments to them, the Articles of War remained in place until after World War II.

World War II saw extensive use of the military justice system as more than two million courts-martial were convened. However, widespread dissatisfaction with their conduct, and especially the paucity of rights afforded those accused, led to a number of studies and recommendations that eventually produced the Uniform Code of Military Justice (UCMJ) in 1951, codified in 10 U.S.C. § 801 *et seq*.

UNIFORM CODE OF MILITARY JUSTICE (UCMJ)

Congress's authority to legislate the UCMJ and other measures relating to the military justice system does not arise from Article III of the Constitution as does most of the federal judiciary. Rather, it arises from Congress's authority under Article I to "make rules for the Army and the Navy." Additionally, Article 36 of the UCMJ permits the president to prescribe "pretrial, trial, and post-trial procedures, including modes of proof," for courts-martial and military commissions. An executive order containing the president's prescripts is published as the Manual for Courts-Martial (MCM).

As the military justice system is a creature of statute, the Bill of Rights does not automatically apply; the rights of military members are principally defined by Congress in the UCMJ. Often these statutory rights exceed those provided by the Constitution in the civilian setting. Article 31 of the UCMJ, for example, mandates advisement of rights against self-incrimination anytime a criminal offense is suspected, whereas the civilian Miranda rights apply only to custodial situations. Moreover, military defendants are always entitled to free legal counsel whether indigent or not.

TYPES OF COURTS-MARTIAL

The UCMJ provides for three types of courts-martial: summary, special, and general courts-martial. Unlike their civilian counterparts, military courts are differentiated mainly by the severity of sentences they are authorized to impose.

Summary courts-martial, which are composed of a single officer who need not be a military judge, may impose sentences of confinement that cannot exceed thirty days, along with reduction in rank, and forfeiture of pay. Special courts-martial are additionally empowered to impose sentences that include confinement for a period of up to one year and a bad-conduct discharge (upon enlisted members only). A bad-conduct discharge is an unfavorable characterization of service, which can impinge upon veterans benefits to which the service member would have otherwise been entitled.

A general court-martial can impose any sentence authorized up to and including death. In addition, it is the only type of court-martial that can impose a dishonorable discharge upon enlisted personnel, and its legal equivalent for officers, a dismissal. Persons receiving a dishonorable discharge or a dismissal are precluded by law from receiving almost all veterans' benefits.

The military justice system has been updated and revised several times since 1951. In the Military Justice Act of 1968, Congress amended the UCMJ to require military judges. In 1984 the Federal Rules of Evidence were repurposed with very few adjustments as the Military Rules of Evidence and mandated for courts-martial. Twenty-first-century military trials are quite similar in their legal content to those conducted in federal courts for civilians.

DIFFERENCES BETWEEN CIVIL AND MILITARY COURTS

There are two significant differences between military trials and civilian trials. The Fifth Amendment of the US Constitution specifically exempts the armed forces from the requirement of a grand jury indictment. In addition, the UCMJ does not provide for juries that are

coterminous with those contemplated by the Sixth Amendment for Article III civilian courts.

The military equivalent to a jury is a panel normally composed of officers but may include enlisted personnel if the accused is enlisted and he or she requests enlisted membership on the panel. Special courts-martial must have at least three members, whereas general courts-martial must have at least five, except in the death penalty cases, where there must be twelve members. An accused may also request a trial by military judge alone.

As in civilian trials, the accused is presumed innocent until guilt is proven beyond a reasonable doubt. If convicted, the accused is also given a sentence determined by the panel or, in the case of a bench trial, the military judge alone (except in death penalty cases, which must be adjudicated by a panel).

Although military courts were once limited to trying offenses with a military connection, the UCMJ essentially grants jurisdiction to the military to try a military member for any offense, even those without an obvious service connection. In 1987 the Supreme Court in *Solario v. United States*, 83 US 435 (1987), upheld the UCMJ's jurisdictional scope. Civilians, however, are generally not subject to military trials.

The military justice system also provides for administrative disciplinary proceedings under Article 15 of the UCMJ. These are limited by statute to "minor offenses" and are primarily aimed at rehabilitating the offender for further military service. Penalties include forfeitures of pay for up to two months, correctional custody for up to thirty days, reduction in rank, and an administrative reprimand.

Court-martial cases may be appealed to a panel of military judges that each service maintains. Further appeal may be had to the Court of Appeals for the Armed Forces, an Article I tribunal composed entirely of civilian judges appointed by the president and confirmed by the Senate. Appeal to the Supreme Court by certiorari is also possible.

Questions continue about the appropriate role of the military commander. Although forbidden to influence the outcome of cases, the military commander has authority to determine what charges, if any, are prosecuted, and the military commanders selects the court-martial panel.

Publicity surrounding reports of sexual assaults in the armed forces has resulted in statutory changes in the characterization of sexual offenses and the procedures applicable to them.

SEE ALSO Ex parte Milligan*;* Hamdi v. Rumsfeld*;* *Martial Law.*

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MILLENNIAL GENERATION

Millennials, born from 1982 through 2003, are the largest and most diverse generation in American history. In 2015 there were about ninety-five million Millennials in the United States, compared to seventy-eight million Baby Boomers and sixty-eight million Generation Xers. In their classic work on generational analysis, William Strauss and Neil Howe (1991) label the Millennial generation as "civic." Civic generations tend to be reared by their parents in a positive, protected, and structured manner that usually leads to group-oriented, optimistic offspring. As with all generational cohorts, the attitudes and behaviors of Millennials have also been strongly shaped by the major societal crises of their childhood and formative years—in their case, the September 11, 2001, terrorist attacks and the great recession that began in 2008. As adults, Millennials, like civic generations before them, are likely to be broadly unified in their major beliefs and institution builders.

WHO THEY ARE AND HOW THEY GOT THAT WAY

About 40 percent of Millennials are nonwhite, compared to only about 25 percent in the two previous generations, Gen Xers and Boomers. This diversity has contributed to the generation's group orientation and desire to find broadly beneficial solutions to societal problems. Reflecting those civic beliefs, the share of Millennial college graduates who believe their community is more important than their job doubled between 1982, when a young Generation X answered the question, and 2008, when Millennials did. That represents the single largest shift in basic values among young people on any measure during that period.

Perhaps the most important shaper of the attitudes and values of Millennials was their parents' approach to raising children. The primary goal of parents of Millennials was to build up their children's sense of self-esteem so that the hard knocks they would inevitably experience