

Opinion of ROBERTS, C. J.

SUPREME COURT OF THE UNITED STATES

No. 08–267

UNITED STATES, PETITIONER *v.* JACOB DENEDO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE ARMED FORCES

[June 8, 2009]

CHIEF JUSTICE ROBERTS, with whom JUSTICE SCALIA, JUSTICE THOMAS, and JUSTICE ALITO join, concurring in part and dissenting in part.

The Court’s approach is simple: Jurisdiction to issue writs of *coram nobis* is a “belated extension” of a court’s original, statutory jurisdiction. *Ante*, at 8. The military courts here had original jurisdiction over Denedo’s case. Those courts therefore have implicit “extended” jurisdiction to consider Denedo’s *coram nobis* petition.

The flaw in this syllogism is at the first step: The only arguable authority for the proposition that *coram nobis* jurisdiction marches hand in hand with original jurisdiction is a footnote in *United States v. Morgan*, 346 U. S. 502 (1954), and that case concerned Article III courts. The military courts are markedly different. They are Article I courts whose jurisdiction is precisely limited at every turn. Those careful limits cannot be overridden by judicial “extension” of statutory jurisdiction, or the addition of a “further step” to the ones marked out by Congress. *Ante*, at 9 (internal quotation marks omitted).

I agree with the majority that this Court has jurisdiction to review the decision below, but respectfully dissent from its holding that military courts have jurisdiction to issue writs of *coram nobis*.

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I

“Traditionally, military justice has been a rough form of justice emphasizing summary procedures, speedy convictions and stern penalties with a view to maintaining obedience and fighting fitness in the ranks.” *Reid v. Covert*, 354 U. S. 1, 35–36 (1957) (plurality opinion). Courts-martial are composed of active service members who sit only to hear the particular case before them. Once a court-martial reaches a judgment and imposes a sentence, it is dissolved, and its members return to their regular duties.

Prior to the Uniform Code of Military Justice (UCMJ), military courts of appeals did not exist. If a service member wanted to challenge a court-martial conviction, he pursued a collateral attack in an Article III court. There, review was limited to whether the conviction was void “because of lack of jurisdiction or some other equally fundamental defect,” *Schlesinger v. Councilman*, 420 U. S. 738, 747 (1975); beyond that, Article III courts adhered to “the general rule that the acts of a court martial, within the scope of its jurisdiction and duty, cannot be controlled or reviewed in the civil courts,” *Smith v. Whitney*, 116 U. S. 167, 177 (1886).

The UCMJ established a “complete system of [military] review,” *Burns v. Wilson*, 346 U. S. 137, 140 (1953) (plurality opinion), including direct review in what are now the Courts of Criminal Appeals (CCAs) and the Court of Appeals for the Armed Forces (CAAF). But in keeping with the historical backdrop against which these courts were created, Congress did not grant military courts of appeals “broad responsibility with respect to administration of military justice”; on the contrary, their jurisdiction is “narrowly circumscribed” by the governing statutes. *Clinton v. Goldsmith*, 526 U. S. 529, 534, 535 (1999) (internal quotation marks omitted).

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The CCAs provide direct, record-based review of court-martial judgments, but they may only review cases referred by the judge advocate general, who in turn refers only those cases in which specific sentences are imposed. 10 U. S. C. §§866(b), (c). When reviewing that subset of court-martial judgments, a CCA “may act only with respect to the findings and sentence as approved by the convening authority.” §866(c). If a case is reviewed by the CCA, the CCA’s decision may then be reviewed by the CAAF. §867(a). But that court, too, conducts limited direct review: It “may act only with respect to the findings and sentence as approved by the convening authority and as affirmed or set aside as incorrect in law by the [CCA].” §867(c). Once direct review in the CCA and the CAAF is complete, and review in this Court is exhausted or waived, a judgment as to the legality of the court-martial proceedings is final, and the sentence imposed may be executed. §871(c)(1).

The UCMJ provides only one avenue for reconsideration of a final court-martial conviction: a petition for a new trial under Article 73. See §873. An Article 73 petition may be brought “within two years after approval by the convening authority of a court-martial sentence,” meaning it may be brought before or after a conviction becomes final. *Ibid.* If direct review is still pending before a CCA or the CAAF when the petition is filed, the judge advocate general (to whom the petition must be directed) will refer the petition to that court. *Ibid.* But once the conviction is final, only the judge advocate general may act on an Article 73 petition. *Ibid.*

Article 76 “describ[es] the terminal point for proceedings within the court-martial system.” *Councilman, supra*, at 750 (quoting *Gusik v. Schilder*, 340 U. S. 128, 132 (1950)). Under that provision, final court-martial judgments are “binding upon all departments, courts, agencies, and officers of the United States, *subject only to*

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action upon a petition for a new trial [under Article 73],” or to action by the appropriate Secretary or the President. 10 U. S. C. §876 (emphasis added). Once an Article 73 petition is denied, a service member has no relief left to seek within the court-martial system. See *Gusik, supra*, at 133–134.¹

Federal courts are authorized to issue extraordinary writs such as *coram nobis* only as “necessary or appropriate in aid of their respective jurisdictions.” 28 U. S. C. §1651(a). The All Writs Act “confine[s] the power of the CAAF to issuing process ‘in aid of’ its existing statutory jurisdiction” and “does not enlarge that jurisdiction.” *Goldsmith, supra*, at 534–535; see also *Noyd v. Bond*, 395 U. S. 683, 695, n. 7 (1969) (although military courts can issue extraordinary writs in aid of their direct review jurisdiction, “[a] different question would, of course, arise in a case which the [courts are] not authorized to review under the governing statutes”). The UCMJ grants military courts of appeals no jurisdiction over final court-martial judgments, so there is no jurisdiction for a postconviction extraordinary writ to “aid.” A petition for *coram nobis* by its nature seeks postconviction review; it is therefore beyond the scope of these courts’ “narrowly circumscribed” statutory jurisdiction. *Goldsmith, supra*, at 535.

II

The majority overrides these careful limits on military court jurisdiction by maintaining that later jurisdiction to

¹A court-martial conviction may still be collaterally attacked in an Article III court, but that is because *those* courts possess jurisdiction beyond that granted by the UCMJ. See, *e.g.*, 28 U. S. C. §§2241, 1331. We have repeatedly held that Article 76 “does not expressly effect any change in the subject-matter jurisdiction of Art. III courts.” *Schlesinger v. Councilman*, 420 U. S. 738, 749 (1975). Our cases have never questioned that Article 76 limits the jurisdiction of *military* courts.

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issue *coram nobis* is a “belated extension” of the statutory jurisdiction, that “jurisdiction to issue [*coram nobis*] derives from the earlier jurisdiction.” *Ante*, at 8, 9. The authority the Court cites for this key jurisdictional analysis is—a footnote. See *ante*, at 8 (citing *Morgan*, 346 U. S., at 505, n. 4); *ante*, at 9 (same). Now, footnotes are part of an opinion, too, even if not the most likely place to look for a key jurisdictional ruling. But since footnote 4 plays such an indispensable role in the majority’s analysis, it must be read with care.

The first thing you notice in doing so is that the footnote does not mention the word “jurisdiction” at all. That is because it has nothing to do with jurisdiction. The issue addressed in the paragraph to which the footnote was appended was “choice of remedy.” 346 U. S., at 505. The Court concluded that *coram nobis* was the appropriate one. The footnote simply addressed the concern that the remedy might not be available because the Federal Rules of Civil Procedure had abolished *coram nobis* as a remedy; the concern was dismissed because the Court concluded the criminal rules, not the civil rules, applied. *Id.*, at 505, n. 4; see also *United States v. Keogh*, 391 F. 2d 138, 140 (CA2 1968) (Friendly, J.) (“The problem to which the footnote was addressed was that F. R. Civ. P. 60(b) had abolished writs of error *coram nobis*”).

The point is further confirmed by the text in the body of the opinion: The Court’s conclusion in the paragraph in which the footnote appears is that since the remedy sought was “in the nature of . . . *coram nobis*,” the trial court could “properly *exercise* its jurisdiction.” 346 U. S., at 505 (emphasis added). The issue was not the existence of jurisdiction, but whether the court had the authority to exercise it. The Court in the present case recognizes the distinction. See *ante*, at 10 (“When exercising its jurisdiction, the CAAF’s authority is confined to matters of law” (internal quotation marks omitted)); *ante*, at 9 (“The au-

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thority to issue a writ under the All Writs Act is not a font of jurisdiction”).

Even accepting the majority’s reading of *Morgan*’s hitherto obscure footnote, that reading would only establish the “belated jurisdiction” theory for Article III courts. The military courts are Article I courts. The distinction has direct pertinence to the point at issue in this case.

Legal doctrines “must be placed in their historical setting. They cannot be wrenched from it and mechanically transplanted into an alien, unrelated context without suffering mutilation or distortion.” *Reid*, 354 U. S., at 50 (Frankfurter, J., concurring in result). The Article III courts have been given broad jurisdiction. I can understand, if not necessarily agree with, the notion that they might enjoy some implicit “long-recognized authority” to correct their earlier judgments. See *ante*, at 11. But not so for Article I courts. The principle that Congress defines the jurisdiction of the lower federal courts “applies with added force to Article I tribunals.” *Ante*, at 7. That is especially true with respect to military courts. The military justice system is the last place courts should go about finding “extensions” of jurisdiction beyond that conferred by statute.

As we expressly recognized in *Goldsmith*, “there is no source of *continuing* jurisdiction for the CAAF over all actions administering sentences that the CAAF *at one time* had the power to review.” 526 U. S., at 536 (emphasis added). Since the UCMJ grants military courts no postconviction jurisdiction, conferring on them perpetual authority to entertain *coram nobis* petitions plainly contravenes that basic principle.²

²Once you get into the business of extending jurisdiction, it can be hard to stop. Denedo is no longer in the military. *Ante*, at 2. Military courts lack jurisdiction over “civilian ex-soldiers who ha[ve] severed all relationship with the military and its institutions.” *United States ex rel. Toth v. Quarles*, 350 U. S. 11, 14 (1955). In the event *coram nobis*

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III

Even if the majority's reading of *Morgan's* footnote could be transplanted to the military context, the majority's conclusion would still not follow. "[T]he All Writs Act is a residual source of authority to issue writs that are not otherwise covered by statute. Where a statute specifically addresses the particular issue at hand, it is that authority, and not the All Writs Act, that is controlling." *Carlisle v. United States*, 517 U. S. 416, 429 (1996) (quoting *Pennsylvania Bureau of Correction v. United States Marshals Service*, 474 U. S. 34, 43 (1985)).

The UCMJ contains not one, but two provisions specifically limiting the circumstances under which postconviction relief (other than action by the appropriate Secretary or the President) may be obtained within the court-martial system. First, Article 73 provides that, "within two years after approval by the convening authority of a court-martial sentence, the accused may petition the Judge Advocate General for a new trial on the grounds of newly discovered evidence or fraud on the court." 10 U. S. C. §873. The only relief available under this "special post-conviction remedy" is a new trial, *Burns*, 346 U. S., at 141 (plurality opinion), and even that may be granted only in an expressly circumscribed timeframe (two years) and set of circumstances (newly discovered evidence or fraud on the court). Article 73 stands in stark contrast to *coram nobis*, which the majority characterizes as a writ infinitely available "to redress a[ny] fundamental error." *Ante*, at 6; see *Morgan, supra*, at 512 ("fundamental error" not limited to jurisdictional defects or errors on the face of the

does issue with respect to a former service member, the Government maintains it would lack jurisdiction to retry. Tr. of Oral Arg. 56–57; see 10 U. S. C. §§802–803. Avoiding that extraordinary result would require another "belated extension" of the original court-martial proceeding, expanding the jurisdiction of military courts to try individuals who have long since severed their ties to the military.

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record).

To be sure, the limited nature of relief available under Article 73 might lead one to question whether that is truly the *only* postconviction relief the UCMJ permits. “You’re in the Army now” is a sufficient answer to such concerns; the relief available looks positively extravagant in light of the prior history and tradition of military justice. In any event, as the majority recognizes, see *ante*, at 11, Article 76 makes clear that all court-martial judgments “carried into execution” after completion of direct review are “final and conclusive,” 10 U. S. C. §876. Contrary to the majority’s assertion, that language does not simply “codif[y] the common-law rule that respects the finality of judgments.” *Ante*, at 11. In fact, Article 76 does not stop there. It goes on to instruct that final court-martial judgments are binding “*subject only* to action upon a petition for a new trial [under Article 73],” or action by the appropriate Secretary or the President. 10 U. S. C. §876 (emphasis added).

In light of these provisions, only Article 73 provides *any* authority to the CCAs or the CAAF, and even that narrow authority is limited to pending cases. Once a conviction is final, only the judge advocate general can provide relief. See *supra*, at 3; 10 U. S. C. §873. To the extent the CCAs or the CAAF could be deemed to have some inherent continuing authority to issue writs of *coram nobis*, Articles 73 and 76 extinguish it.

IV

The Government goes on to argue that even if military courts have jurisdiction to issue writs of *coram nobis*, and even if Articles 73 and 76 do not bar such relief, the courts still lack authority to issue *coram nobis*, because the writ is neither “necessary” nor “appropriate” to the court-martial system of justice. See 28 U. S. C. §1651(a) (federal courts “may issue all writs necessary or appropriate in aid

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of their respective jurisdictions”). *Coram nobis* allows the court that issued a judgment to correct its own errors of fact. See *Morgan*, 346 U. S., at 507, n. 9 (“If a judgment in the King’s Bench be erroneous in matter of *fact* only, . . . it may be reversed *in the same court*, by writ of error *coram nobis*” (quoting 2 W. Tidd, *Practice of the Courts of King’s Bench, and Common Pleas* 1136 (4th Am. ed. 1856); some emphasis added)); see also *ante*, at 11 (referring to “authority of a court to protect the integrity of *its* earlier judgments” (emphasis added)). But a court-martial is not a standing court. On a case-by-case basis, “[i]t is called into existence for a special purpose and to perform a particular duty. When the object of its creation has been accomplished it is dissolved.” *Runkle v. United States*, 122 U. S. 543, 555–556 (1887); see also 66 M. J. 114, 124 (CAAF 2008) (a court-martial “does not have independent jurisdiction over a case after the military judge authenticates the record and the convening authority forwards the record after taking action”). Because the court-martial that issues the conviction no longer exists once the conviction is final, there is no court to which a postconviction petition for *coram nobis* could be directed.

The absence of standing courts-martial is no mere technicality, but rather an integral and intentional part of the military justice system. “Court-martial jurisdiction sprang from the belief that within the military ranks there is need for a prompt, ready-at-hand means of compelling obedience and order.” *United States ex rel. Toth v. Quarles*, 350 U. S. 11, 22 (1955). But meeting that need requires expending significant military resources, and “[t]o the extent that those responsible for performance of [the military’s] primary function are diverted from it by the necessity of trying cases, the basic fighting purpose of armies is not served.” *Id.*, at 17. Accordingly, courts-martial, composed of active duty military personnel, have always been called into existence for a limited purpose and duration.

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It is no answer that the CCAs and the CAAF are standing courts that could act as substitutes for *coram nobis* purposes. As this case illustrates, those courts are not equipped to handle the kind of factfinding necessary to resolve claims that might be brought on *coram nobis*. Instead, the CCAs will have to resort to the procedures invented by *United States v. DuBay*, 17 U. S. C. M. A. 147, 37 C. M. R. 411 (1967), under which a new convening authority will refer a case to a new court-martial, and task various military personnel who have no prior familiarity with the case to conduct an out-of-court evidentiary hearing on the merits of the petitioner's claim. *Id.*, at 149, 37 C. M. R., at 413. This "unwieldy and imperfect system" will undoubtedly divert valuable military resources, 66 M. J., at 136 (Ryan, J., dissenting), all in aid of postconviction relief Congress specifically withheld.

The Court expressly declines to consider the Government's "necessary or appropriate" argument: "[T]he Government's argument speaks to the scope of the writ, not the [CCA's] jurisdiction to issue it. The CAAF rejected the former argument. Only the latter one is before us." *Ante*, at 12. The Court may well be correct in dividing the questions into separate pigeonholes. But the Government's argument, even if an argument about authority rather than jurisdiction, applies to *every coram nobis* case, given the nature of the military justice system. It is curious to conclude that military courts have jurisdiction, while not considering a raised and briefed argument that they may never exercise it.

* * *

Since the adoption of the UCMJ, "Congress has gradually changed the system of military justice so that it has come to more closely resemble the civilian system." *Weiss v. United States*, 510 U. S. 163, 174 (1994). "But the military in important respects remains a specialized society

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separate from civilian society.” *Ibid.* (internal quotation marks omitted). Neither the jurisdiction nor the powers of Article III courts are necessarily appropriate for military courts, and Congress’s contrary determinations in this area are entitled to “the highest deference.” *Loving v. United States*, 517 U. S. 748, 768 (1996). Rather than respect the rule that military courts have no jurisdiction to revisit final convictions, the majority creates an exception that swallows it. Because I would hold the military courts to the statutory restraints that govern them, I respectfully dissent.