



---

# **HAWAI‘I UNDER MARTIAL LAW**

**The King Kamehameha V Judiciary History Center**

---

# **Hawai‘i Under Martial Law**

A Humanities Exhibit

*By* The King Kamehameha V Judiciary History Center

© The King Kamehameha V Judiciary History Center

The King Kamehameha V Judiciary History Center (the Center) is an educational institution created to provide learning opportunities about the judicial process and Hawai'i's legal history from pre-contact to the present. The Center, an administrative program of the Hawai'i State Judiciary, conducts and encourages research, disseminates information, and collects, preserves and exhibits materials. Interpreting hundreds of years of dynamic legal history through audio visual presentations, exhibitions, and public programs, the Center serves as a bridge between the Judiciary and the community.

King Kamehameha V Judiciary History Center  
417 South King Street  
Honolulu, HI 96813  
[www.jhchawaii.net](http://www.jhchawaii.net)



Pearl Harbor attack, December 7, 1941  
(Courtesy of Hawai'i War Records Depository, Hamilton Library, University of Hawai'i)

**PROCLAMATION**  
**UNITED STATES ARMY**

HEADQUARTERS HAWAIIAN DEPARTMENT  
FORT SHAFTER, 7 DECEMBER 1941.

To the People of Hawaii:

The military and naval forces of the Empire of Japan have attacked and attempted to invade these islands.

Pursuant to section 67 of the Organic Act of the Territory of Hawaii, approved April 30, 1900, the Governor of Hawaii has called upon me, as commander of the military forces of the United States in Hawaii, to prevent such an invasion; has suspended the privilege of the writ of habeas corpus; has placed the Territory under martial law; has authorized and requested me and my subordinates to exercise the powers normally exercised by the governor and by subordinate civil officers; and has required all persons within the Territory to obey such proclamations, orders, and regulations as I may issue during the present emergency.

I announce to the people of Hawaii, that, in compliance with the above requests of the Governor of Hawaii, I have this day assumed the position of military governor of Hawaii, and have taken charge of the government of the Territory, of the preservation of order therein, and of putting these islands in a proper state of defense.

All persons within the Territory of Hawaii, whether residents there of or not, whether citizens of the United States or not, of no matter what race or nationality, are warned that by reason of their presence here they owe during their stay at least a temporary duty of obedience to the United States, and that they are bound to refrain from giving, by word or deed, any aid or comfort to the enemies of the United States. Any violation of this duty is treason, and will be punished by the severest penalties.

The troops under my command, in putting down any disorder or rebellion and in preventing any aid to the invader, will act with such firmness and vigor and will use such arms as the accomplishment of their task may require.

The imminence of attack by the enemy and the possibility of invasion make necessary a stricter control of your actions than would be necessary or proper at

other times. I shall therefore shortly publish ordinances governing the conduct of the peoples of the Territory with respect to the showing of lights, circulation, meetings, censorship, possession of arms, ammunition, and explosives, the sale of intoxicating liquors and other subjects.

In order to assist in repelling the threatened invasion of our island home, good citizens will cheerfully obey this proclamation and the ordinances to be published; others will be required to do so. Offenders will be severely punished by military tribunals or will be held in custody until such time as the civil courts are able to function.

Pending further instructions from this headquarters the Hawaii Defense Act and the Proclamation of the Governor of Hawaii heretofore issued thereunder shall continue in full force and effect.

Walter C. Short  
Lieutenant General, U.S. Army, Commanding.  
Military  
Governor of Hawaii

# Chapter 1

---

## **CIVILIAN LIFE IN WARTIME HAWAII**

by Glenn Grant, Ph.D.

Kapi 'olani Community College

"KGBQ to car 20," called the calm voice of Honolulu Police Dispatcher Jimmy Wong that Sunday morning sometime after 8:00 a.m. .. "KGBQ to car 20. Proceed to 610E Damon Drive. Complainant reported a bomb fell through his house while he was having breakfast. KGBQ to Car 30, car 30. Proceed immediately to Lewers and Kalakaua, Lewers and Kalakaua. Someone, an unknown woman, reported a bomb fell near this address."

"KGBQ to car 23. Proceed immediately to the Japanese language school at Waipa Lane. Complainant reported a bomb fell near the premises and shattered all of the windows."

Throughout the city of Honolulu frantic telephone calls were coming into the police switchboard. What were these projectiles falling from the sky? As various police cars reported in from the scene of the disturbances, the magnitude of what was really occurring took on unbelievable proportions.

"KGBQ to all cars and country stations," dispatcher Wong radioed to all units on the island of Oahu. "Cars 20 and 75 report planes bombing Pearl Harbor. Place is all afire."

Was it only a few days before that the local newspaper ads were stirring up the Christmas shopping rush by reminding islanders that Hawai'i would be one of the few places on earth celebrating a Peaceful Noel? While war in the Pacific was not unlikely, a Japanese assault on the Hawaiian islands seemed to both civilians and military an impossibility. Air maneuvers above Pearl Harbor in the weeks before December 7, 1941 had become so customary, some island residents in the first unreal moments of the air attack were convinced it was some kind of simulated Navy practice.

"This is the real McCoy," radio announcer Webley Edwards shouted into the microphones at KGMB radio. "This is the real McCoy. Oahu is under air attack. The hundreds of civilians who had gathered on Aiea heights or Tantalus mountain to watch the "maneuvers" as if it were a carnival show were soon

realizing that the bellowing black smoke above Ford Island or the exploding gasoline tanks at Iwilei were no mock exercise. As a squadron of Japanese dive bombers and Mitsubishi Zeros swarmed over Diamond Head on their deadly path from Kaneohe Air Station to Pearl Harbor, the bright "red meatballs" on the fuselage and wings were clearly visible. Fifty-one of the bombs that were falling on Honolulu were actually "friendly fire," the result of mistimed 5-inch Navy anti-aircraft shells missing their targets and falling back on the city with deadly effect.

Throughout Honolulu, the frightful cacophony of police and fire sirens intermingled with the thunderous explosions of damaged battleships and falling projectiles shattered the usual Sunday calm. As veterans were being called to the American Legion at McCully and Kapi'olani Blvd., all automobiles were ordered off the city streets so as to facilitate emergency vehicles and the police. One kama'aina remembers that as he walked that morning through the main boulevards of Honolulu, "people were standing in front of their stores or homes as if in a state of shock. When I passed by Beretania and Richards Street, I remember seeing the blood of a civilian splattered on the sidewalk. He had died when a bomb landed across the street on Governor Poindexter's driveway at Washington Place. At Queen's Hospital, the many bodies of the dead were laid out on the lawn because there wasn't enough space in the hospital." An estimated 60 civilians would die that morning in addition to the over 2,341 military personnel killed during the Pearl Harbor attack. The immediate panic following the realization that this was a real enemy air attack was soon accompanied by the terrible dread that a land invasion was certainly imminent. Even as the bombs were still falling at Pearl Harbor, the island residents gripped themselves for parachutists and landing parties.

"Calling all cars and country stations," Jimmy Wong broadcast from the central station at Bethel and Merchant Streets. "Information! Parachute troops landed somewhere on Oahu wearing blue clothing, red shields. Orders from Army, shoot on sight. Shoot all enemy on sight."

Civil defense workers, ROTC units and the Territorial Guard readied themselves for the invasion, stretching barbed-wire on the beaches of Oahu along lines of fortification manned by young, frightened and often trigger-happy recruits. The Organized Defense Volunteers, eventually numbering 20,000 men throughout the islands, bolstered the military defense system while the Woman's Army Volunteer Group of 400 women went into action with their support services.



By 11:30 a.m. on the morning of December 7, 1941, Governor Poindexter announced that after phone consultation with the President of the United States, martial law had been declared. The Territory of Hawai'i was now under the control of military authorities. All civilian courts of law and law enforcement agencies would come under the jurisdiction of the United States military. All saloons were closed; a sunset curfew and a total blackout was in effect. Hawai'i and the United States were thus thrust into the largest, most terrifying and deadly conflict the human race would ever endure.

Governor Poindexter would later note that when he authorized martial law that morning in December 1941, he expected it to be in effect for perhaps several months. He never anticipated that it would last until October of 1944, suspending for nearly three years the civil liberties of island residents and essentially transforming the Hawaiian islands into an armed military camp. Situated in the center of the Pacific Theater of war, an open target for what was initially believed to be a Japanese invasion and consisting of an overwhelmingly non-white population of which forty percent was Japanese aliens and their American-born second generation, Hawai'i was put under tight military control that regulated almost every facet of island life.

In the weeks following the attack of Pearl Harbor, islanders learned quickly the extent to which their lives would be altered by war and the threat of invasion. The curfew that had been placed on the civilian population was initially set at 6:00 p.m. with downtown Honolulu businesses closing at 4:45 p.m. so as to allow their employees to get home safely. While the curfew would be extended by February 1942 to 9:00 p.m. and following the Battle of Midway in May, 1942 to 10:00 p.m., strict curfew regulations would not be suspended until July, 7, 1945. In accordance with curfew, a total blackout was immediately in effect from 6:00 p.m. to 6:00 a.m., the times altering during the war with the length of the day. No lights could be shown from any business or residence during blackout hours, civilians needing to acquire blackout bulbs, window coverings and interior light-sealed rooms for their evening hours. Automobiles out after dark must also have blackout headlights. Although "dim-out" bulbs of 25 watts for every 200 square feet were allowed in July 1942, the familiar radio warning, "It's time to black out! Lights out!" would initiate the regular evening routine so that no block wardens would need to issue the \$15 violation tickets.



Gas mask issue, Kapalama School  
(Courtesy of Hawai'i War Records Depository, Hamilton Library, University of Hawai'i.)

Bracing for invasion also meant the issuing of gas masks to all civilians and full-body "bunny masks" for infants. "Scare pukas" or bomb shelters were dug throughout the islands, with over 250 shelters on the island of O'ahu provided to accommodate 70,000 people. Every citizen in the Hawaiian islands was required to be fingerprinted for purposes of identification and civilian control, the first such mass fingerprinting of civilians in the history of the United States. Recognizing that the invading Japanese army would seize the monetary assets of the civilian population, the government ordered that all U.S. currency be surrendered for proper disposal. Over \$200,000,000 would be burned at the Nu'uuanu crematorium and Aiea sugar mill with new bills being issued with a "Hawaii" imprint so as to make them worthless to the invading army. Individuals were restricted to having \$200 in currency while businesses were allowed \$500 to meet their payrolls.

The visible signs of martial law and the military presence were pervasive in downtown Honolulu in the first months of the war. Store windows were taped to

prevent shattering during air attacks; armed guards stood sentry at public utilities and sand-bagged machine gun nests looked down over some city streets. Major thoroughfares were for the first time in Honolulu made one-way to accommodate emergency vehicles as well as the khaki tanks, jeeps and trucks whose presence was everywhere. The police station at Bethel and Merchant streets housed the military police who with the Navy's shore patrol served as the cities' law enforcement agency. Familiar landmarks such as Aloha Tower took on stark new camouflage colors which would conceal them from aerial attack.

Sensitive military areas such as all beaches, the Iwilei gasoline tanks, military bases and Honolulu harbor were declared restricted areas with all civilian populations immediately evacuated. Japanese alien property such as banks, department stores, language schools and Shinto shrines were confiscated by the military as authorities also occupied public and private property as required for hospital rooms, housing or military offices. From Kamehameha Schools at Kapalama to Punahou School in Manoa, 'Iolani Palace in

downtown Honolulu and the Moana and Royal Hawaiian Hotels at Waikiki, the military presence was felt everywhere. At one point during the war, one third of O'ahu was under occupation by the Army with the Navy acquiring lands surrounding Pearl Harbor as well as the island of Kaho'olawe.

Within the first 48 hours of the Pearl Harbor attack, hundreds of Japanese, German and Italian aliens were arrested by military intelligence and the FBI. Many of those arrested were first detained at Sand Island and then transferred to Honouliuli prisoner of war camp. A total of 1,875 Japanese aliens in Hawai'i would be arrested by the United States government during the war and sent to relocation centers or internment camps on the U.S. mainland. While the majority of the Japanese population in Hawai'i would be left relatively unmolested by military authorities, all weapons, shortwave transmitting radios, cameras and signaling devices were confiscated in the first days of the war. Civilian workers of Japanese ancestry whose labor was needed at Pearl Harbor or other military bases were required to wear a demeaning black-bordered badge that indicated their ethnic origins even though they were American citizens. With language schools, Shinto shrines and other ethnic centers closed, the once familiar kimono disappeared from city streets as did the Japanese language itself. "Speak American" posters and campaigns equated language with patriotism and the older alien community increasingly looked to their American-born children for leadership during this troubled, frightening time.

Along with internal security, the military government also needed to address more mundane but vital problems. The long queues which formed at the food stores on the morning of December 8 seriously threatened food shortages. While three months supply of food had been planned as the island reserve before the Pearl P Harbor attack, it became apparent that with, for instance, only an 18 day supply of rice left in December, strict food controls were y necessary. Food rationing and price control which was universal throughout the United States during World War II, became especially critical in the islands. By the summer of 1942, the food supplies had stabilized with even an unusual food surplus developing in July-900 tons of onions suddenly arrived with a bumper crop of 75 tons of Maui onions also available! "Maui Onion Week" was the valiant attempt of islanders to consume nearly 1,000 tons of onions in three weeks, noticeably altering the quality of breath in the archipelago.

Civilian life under martial law also meant being able to wade through the maze of bureaucratic offices that the military and civilian governments initiated. The Civilian Governor, the Mayor of Honolulu, the Territorial Government and County Governments coexisted with the Military Governor, his advisory board, law enforcement and the Provost Courts, all of which funneled their authority through the Executive Section. Within this Executive Section, six major directors controlled Civilian Defense, Food Control, Labor, Materials and Supplies Control, Cargo and Passenger Control, and Land Transportation Control. Under these directors, there were nearly 75 sub-departments regulating various activities ranging from block wardens, civil defense and mortuaries to internal security and price control. It was often a nightmare of red-tape and forms. With gas rationing lines sometimes stretching from 'Iolani Palace grounds to the Honolulu Academy of Arts, it is no wonder that the Royal Hawaiian Band was at times requested to entertain the civilians waiting to deal with the bureaucracy.

Martial law even extended to censorship of the mail. All letters sent from the islands needed to be cleared with government censors who examined all letters and parcels at the post office. Doodles or illegible portions of the letter were deleted; any references to ship movements were also removed. The stamp of the censor and a blue tape sealing the envelope was required before the letter could be posted.

Military regulations and censorship not only invaded the personal and family lives of civilians, but radicalized the cultural climate of the islands. The war effort brought hundreds of thousands of new, haole or Caucasian faces to the Hawaiian islands. An estimated one million G.I.s as well as construction

workers would pass through the Hawaiian islands between December 1941 and August 1945. City buses were now jam-packed with Army and Navy personnel on leave; bars, honky-tonks, barbershops, movie houses, tattoo parlors and the River Street brothels thrived. The House of Mitsukoshi a Japanese department store at the corner of King and Bethel Streets had been confiscated and transformed with \$100,000 into the USO Victory Club, one of Honolulu's best and biggest social centers. Downtown office workers, married and single women, lent a hand for the war effort by attending the noon hour dances at the USO clubs or opening their homes to extend island hospitality. During the war, the attendance at USO club functions totaled over 66,000,000 men and women.

The war effort touched all aspects of daily life. Victory gardens, newspaper, rubber and tin drives, Red Cross volunteer services, defense work by "Rosie the Riveters" and young children trained to identify enemy aircraft by making models all illustrated the extent of the war on language, recreation and even childrearing. And what family was not personally touched by wartime service? Forty thousand men and women from the islands would volunteer in the armed forces, the noted all-AJA (Americans of Japanese Ancestry) 100th Battalion and 442nd Combat Regiment Team bringing distinction to themselves, family and ethnic community. Indeed, islanders of all races demonstrated their patriotism through their constant support for war bonds-Hawai'i was the only community in the United States that every month met or surpassed their quota of war bond purchases. Between May 1941 and December 1945, over \$415,000,000 worth of war bonds were purchased by island residents.

On August 14, 1945 at 1:35 p.m., the people of Hawai'i learned that World War II had come to a victorious end. From those first minutes when Jimmy Wong announced to police that Pearl Harbor was under attack to the joyous news that the United Nations were victorious on the land, in the air and on the sea, over 800 islanders had given their lives in the war effort. For nearly four years they had lived under martial law, military restrictions, censorship and suspicion. It is no wonder that what first came pouring out of Honolulu office windows was a torrent of confetti made from shredded government forms that had for so long dominated their lives. The city went wild as 50,000 telephone calls were made in one hour-friends and loved ones informing one another of the good news. The war was over and the celebrations were long and raucous. Yet in the rising sun of the postwar calm, islanders would discover that in those four years their Hawai'i home had been forever altered, though the possibilities for the future seemed endless.

# Honolulu Star-Bulletin 1<sup>st</sup> EXTRA

8 PAGES—HONOLULU, TERRITORY OF HAWAII, U. S. A., SUNDAY, DECEMBER 7, 1941—6 PAGES

PRICE FIVE CENTS

(Associated Press by Transpacific Telephone)

**SAN FRANCISCO, Dec. 7.—President Roosevelt announced this morning that Japanese planes had attacked Manila and Pearl Harbor.**

# WAR! OAHU BOMBED BY JAPANESE PLANES

## SIX KNOWN DEAD, 21 INJURED, AT EMERGENCY HOSPITAL

### Attack Made On Island's Defense Areas

WASHINGTON, Dec. 7.—Text of a White House announcement detailing the attack on the Hawaiian islands is:

"The Japanese attacked Pearl Harbor from the air and all naval and military activities on the island of Oahu, principal American base in the Hawaiian islands."

Oahu was attacked at 7:55 this morning by Japanese planes.

The Rising Sun, emblem of Japan, was seen on plane wing tips.

Waves after waves of bombers streamed through the clouded morning sky from the southwest and flung their missiles on a city resting in peaceful Sabbath calm.

According to an unconfirmed report received at the governor's office, the Japanese force that attacked Oahu reached island waters aboard two small airplane carriers. It was also reported that at the governor's office either an attempt had been made to bomb the USS Lexington, or that it had been bombed.

#### CITY IN UPROAR

Within 10 minutes the city was in an uproar. As bombs fell in many parts of the city, and in defense areas the defenders of the islands went into quick action.

Army intelligence officers at Ft. Shafter announced officially shortly after 9 a. m. the fact of the bombardment by an enemy but long previous army and navy had taken immediate measures in defense.

"Oahu is under a sporadic air raid," the announcement said.

"Citizens are ordered to stay off the streets until further notice."

#### CIVILIANS ORDERED OFF STREETS

The army has ordered that all civilians stay off the streets and highways and not use telephones.

Evidence that the Japanese attack has registered some hits was shown by three billowing pillars of smoke in the Pearl Harbor and Hickam field areas.

All navy personnel and civilian defense workers, with the exception of women, have been ordered to duty at Pearl Harbor.

The Pearl Harbor highway was immediately a mass of racing cars.

A trickling stream of injured people began pouring into the city emergency hospital a few minutes after the bombardment started.

Thousands of telephone calls almost swamped the Mutual Telephone Co., which put extra operators on duty.

At The Star-Bulletin office the phone call deluged the single operator and it was impossible for this newspaper, for sometimes, to handle the flood of calls. Here also an emergency operator was called.

#### HOURLY ATTACK 7:55 A. M.

An official army report from department headquarters, made public shortly before 11, is that the first attack was at 7:55 a. m.

Witnesses said they saw at least 50 jet planes over Pearl Harbor.

The attack centered in the Pearl Harbor. Army authorities said:

"The rising sun was seen on the wing tips of the airplanes."

Although mortal law has not been declared officially, the city of Honolulu was operating under M-day conditions.

It is reliably reported that enemy objectives under attack were Wheeler field, Hickam field, Kaneohe bay and naval air stations and Pearl Harbor.

Some enemy planes were reported shot down.

The body of the pilot was seen in a plane burning at Whittier.

Oahu appeared to be taking calmly after the first uproar of queries.

#### ANTI-AIRCRAFT GUNS IN ACTION

First indication of the raid came shortly before 8 this morning when anti-aircraft guns near Pearl Harbor began sending up a thunderous barrage.

At the same time a vast cloud of black smoke arose from the naval base and also from Hickam field where flames could be seen.

BOOM NEAR GOVERNOR'S MANSION

Shortly before 9:30 a bomb fell near Washington Place, the residence of the governor, Governor Poindexter and Secretary Charles M. Hitt were there.

It was reported that the bomb killed an unidentified Chinese man across the street in front of the Schumann Corriaga Co. where windows were broken.

C. E. Daniels, a welder, found a fragment of shell or bomb of South and Queen Sts. which he brought into the City Hall. This fragment weighed about a pound.

At 10:05 a. m. today Governor Poindexter telephoned to The Star-Bulletin announcing he had declared a state of emergency for the entire territory.

"He announced that Edward L. Dory, executive secretary of the major disaster council, has been appointed director under the M-day law's provisions."

Governor Poindexter urged all residents of Honolulu to remain off the street, and the police of the territory to remain calm.

Also, duty reported that all major disaster council wardens and medical units were on duty within a half hour of the time the alarm was given.

Workers employed at Pearl Harbor were ordered at 10:10 a. m. not to report at Pearl Harbor.

The mayor's major disaster council was to meet at the city hall at about 10:30 this morning.

At least two Japanese planes were reported shot down.

One of the planes was shot down at Ft. Kamehameha and the other back of the Waianae.

### Hundreds See City Bombed

Hundreds of Honolulu residents gathered in the city to see the attack. Many of them were in the city at the time of the attack.

The Japanese planes were seen in the sky over the city. Many people were in the city at the time of the attack.

The Japanese planes were seen in the sky over the city. Many people were in the city at the time of the attack.

The Japanese planes were seen in the sky over the city. Many people were in the city at the time of the attack.

The Japanese planes were seen in the sky over the city. Many people were in the city at the time of the attack.

The Japanese planes were seen in the sky over the city. Many people were in the city at the time of the attack.

The Japanese planes were seen in the sky over the city. Many people were in the city at the time of the attack.

The Japanese planes were seen in the sky over the city. Many people were in the city at the time of the attack.

The Japanese planes were seen in the sky over the city. Many people were in the city at the time of the attack.

The Japanese planes were seen in the sky over the city. Many people were in the city at the time of the attack.

The Japanese planes were seen in the sky over the city. Many people were in the city at the time of the attack.

The Japanese planes were seen in the sky over the city. Many people were in the city at the time of the attack.

The Japanese planes were seen in the sky over the city. Many people were in the city at the time of the attack.

### Names of Dead and Injured

The names of the dead and injured are being compiled by the city health department.

The names of the dead and injured are being compiled by the city health department.

The names of the dead and injured are being compiled by the city health department.

The names of the dead and injured are being compiled by the city health department.

The names of the dead and injured are being compiled by the city health department.

The names of the dead and injured are being compiled by the city health department.

The names of the dead and injured are being compiled by the city health department.

The names of the dead and injured are being compiled by the city health department.

The names of the dead and injured are being compiled by the city health department.

The names of the dead and injured are being compiled by the city health department.

The names of the dead and injured are being compiled by the city health department.

The names of the dead and injured are being compiled by the city health department.

### Schools Closed

All schools in the city are closed today.

All schools in the city are closed today.

All schools in the city are closed today.

All schools in the city are closed today.

All schools in the city are closed today.

All schools in the city are closed today.

All schools in the city are closed today.

All schools in the city are closed today.

All schools in the city are closed today.

All schools in the city are closed today.

### Editorial

#### HAWAII MEETS THE CRISIS

Honolulu and Hawaii will meet the crisis of our nation's history. Hawaii has met emergency in the past, calmly, calmly, with intelligence and complete support of the officials, officers and men who are in charge. Hawaii's people and the army and navy leaders have rallied to the public to remain calm. For Hawaii is a part of the United States and Hawaii is a part of the United States and Hawaii is a part of the United States.

The people, proud with the Hawaiian people's history, will be needed.

Hawaii will be the part—on a world of Hawaii's history. In this crisis, every difference of race, creed and color will be forgotten by the most dignified and determined to play the part that Americans always play in crisis.

#### BULLETIN

Additional Star-Bulletin extra today will cover the latest developments in this war.

(Courtesy of Hawai'i War Records Depository, Hamilton Library, University of Hawai'i.)

# Chapter 2

---

## PHILOSOPHICAL REFLECTIONS ON MARTIAL LAW

Kenneth Kipnis  
Professor of Philosophy  
University of Hawaii at Manoa

Political philosophy, in large measure, concerns itself with systematic reflection on (1) the proper purposes of government and (2) the institutional arrangements that can best advance those purposes. In liberal democratic societies like the United States, we are generally comfortable understanding our political arrangements in terms of the value we commonly place on domestic political goods such as liberty and justice. And so we might say that our governing institutions are designed for the purpose of preserving as large a domain as possible for the exercise of free personal choice and, especially, to provide protection against the arbitrary use of state power. As we review what most of us know about the mechanics of our political union- the regime of constitutional rights, the independent judiciary, democratic electoral procedures, equal justice under law-it is easy to see these social mechanisms as serving domestic values-like liberty and justice-that can bind us together in a common enterprise.

The Preamble to the Constitution of the United States articulates values that generally inform the rest of the document as well as our political lives together: "to establish justice, insure domestic tranquility ... , promote the general welfare, and secure the blessings of liberty to ourselves and our posterity." But also present in this list are the words "provide for the common defense." And, in keeping with this, the body of the document further specifies, for example, that the President shall be "Commander-in-Chief of the Army and Navy of the United States" and that the Congress shall have the power "to declare war".

At one level, the assignment of political "war powers" is consistent with the commitment to secure and further the other domestic purposes. For if, for example, we value liberty and justice, and our political institutions are devised to protect and further liberty and justice, it is reasonable to organize ourselves effectively to defend these institutions at times when they are under external attack.

But at another level, the effort to organize ourselves for defense may come at the expense of those very values we defend. The framers of the Constitution, in Article I, Section 9, anticipated that one central constitutional liberty-the ancient writ of habeas corpus-can properly be suspended during periods when, "because of rebellion or invasion, the public safety shall require it". Because the "militarization" of the social order will be for the purpose of defending against and defeating some external enemy, domestic values may suffer as the war powers are exercised. I have a vague recollection of an interview with an American draftee during the Vietnam War. He had explained that he was fighting communism and the interviewer was asking him what communism was: "Communism" he said, "was when you weren't allowed to do what you wanted to do". He paused, and then added, "I guess it's a lot like the Army."

In the extremity of war, the need to organize for the common defense can surely appear to be in conflict with shared political commitments to values like liberty and justice. The imposition of martial law signals a suspension of the usual constitutional pursuit of domestic purposes in the interests of organizing society around military objectives instead. The courts are closed, replaced by military tribunals. The right to a jury trial is suspended. Notwithstanding First Amendment protections of freedom of the press, military censors govern the media. Workers are prohibited from quitting their jobs. Civil authorities are removed and replaced by military governors. Against the background of military attack, civil liberties and constitutional guarantees can seem like luxuries. An entirely new constituting task comes to inform our political association.

It would be well to consider, at great length and in a "cool moment" when, if ever, it might be justifiable to set aside constitutional processes, when it would be right to substitute rule by military authorities for representative democracy with an independent judiciary. But I want instead to register some warnings. What I offer is a list of issues to think about in conjunction with this larger question: Should the Constitution be suspended because of a public emergency?

First, it may be much easier to begin martial law than to end it. For, to the extent that an independent judiciary is no longer functioning, it may not be possible to challenge, in a court of law, the authority of the military governors to rule. More broadly, it seems to be a law of nature that heads of organizations characteristically complain about not having the resources they need to do the job as well as they would like. In a system of checks and balances, one / might expect some claims for resources to be honored, others to be rejected. But where one institution is both claiming social resources and determining how social



resources should be divided, it can happen that power, and the resources to exercise it, can gravitate improperly and irrevocably to that agency.

Second, the need to continue with martial law may be increasingly difficult for citizens to determine. Where one of the powers exercised by military authority is the power to censor criticism of military authority (the practices of military censorship pose this risk), it is not possible for citizens to know whether they believe that martial law is needed because there is a true need for martial law, or whether they believe that martial law is needed because it has long been unlawful to express dissenting opinions.

Finally-and this is my most serious worry-democratic practices produce in many instances a remarkable sense of empowerment and personal dignity that is often quite absent among peoples who have accepted authoritarian rule. Where our fundamental expectations about our rights as citizens are suspended, where we become used to life under military government, we may cease to be a people who value the very subtle goods that flow from life under liberal democratic government.



Wahiawā Provost Court. Courtesy of Hawai'i War Records Depository, Hamilton Library, University of Hawai'i.)

# Chapter 3

---

## **DUNCAN V. KAHANAMOKU**

327 U.S. 304 (1946)

by Jon M. Van Dyke  
Professor of Law  
William S. Richardson School of Law  
University of Hawaii at Manoa

The U.S. Supreme Court's decision in *Duncan v. Kahanamoku* stands as an important beacon of liberty to reassert the values of individual freedom and civilian government which were so blatantly subverted during the period of martial law imposed upon Hawaii in World War II.

Within a few hours after the Japanese air attack on Pearl Harbor on December 7, 1941, the territorial governor of Hawaii and its military commander announced that martial law would be imposed on the islands. This proclamation suspended all civil liberties and extended into all facets of island life. All civilians except infants had to be registered and fingerprinted. The press was strictly censored. Schools were closed for several weeks. The hospitals and the food distribution system were put under military control. An evening curfew was instituted, and hundreds of persons were incarcerated on suspicion of disloyalty.

The court system was also put completely under military authority. Although civil courts remained open for noncriminal cases, no jury trials or habeas-corpus petitions were permitted. All serious misdemeanors and felonies were tried before military tribunals. Some easing of restrictions occurred in 1943, but martial law was not finally lifted until October 1944.

The procedures in the "Provost Courts" which were set up to process almost all criminal matters were described in a recent article as follows: The average trial in provost court took five minutes or less; more than 22,000 trials were conducted in

Oahu alone during 1942 and 1943. Guilty verdicts were handed down in more than 99 percent of the cases. The provost courts formally allowed defendants a right to counsel; but the provost judges apparently frequently told defendants it was neither desirable nor necessary to have a lawyer. It soon became the common wisdom that to appear with counsel virtually guaranteed a harsher sentence than to appear without one and contritely accept the court's verdict. There was a right to appeal, though Green's office claimed to review routinely each decision and sentence.<sup>1</sup>

These military decisions were not subject to either direct appellate court review or petitions for habeas corpus review. In the words of Justice Hugo L. Black writing in the Duncan case:

[T]he military authorities ... could and did, by simply promulgating orders, govern the day to day activities of civilians who lived, worked, or were merely passing through [Hawaii] .... Military tribunals could punish violators of these orders by fine, imprisonment or death.<sup>2</sup>

Lloyd C. Duncan was a civilian shipfitter working in the Honolulu Navy Yard. On February 24, 1944, he had a fight with two Marine sentries at the yard and was arrested. Although considerable power had been returned to the civilian courts by then, the military retained jurisdiction over "violations of military orders," and Duncan was charged with violating an order that "prohibited assault on military or naval personnel with intent to resist or hinder them in the discharge of their duty."<sup>3</sup> A military tribunal convicted him and he was sentenced to six months imprisonment.

When the U.S. Supreme Court reviewed Duncan's case, the justices also examined a companion case involving Harry E. White. White was a stockbroker who had no business connected with the armed forces, but he [was] arrested by the military police on August 20, 1942 and charged with embezzling stock belonging to another civilian in violation of Hawai'i's laws. When White was brought before the military's "Provost Court" two days later, his attorney

---

<sup>1</sup> Harry N. Scheiber and Jane L. Scheiber, *Constitutional Liberty in World War II; Army Rule and Martial Law in Hawaii, 1941-1946*, 3 *Western Legal History* 341 , 352-53 (1990).

<sup>2</sup> *Duncan v. Kanahanamoku*, 327 U.S. 304, 309 (1946).

<sup>3</sup> *Id.* at 310-11.

objected to the court's jurisdiction, requested a jury trial, and asked for time to prepare a defense. These motions were all rejected, and on August 25-five days after his arrest-he was tried and convicted and sentenced to five years imprisonment.<sup>4</sup> On August 31, 1942- six days later-the military issued an order permitting Hawaii's civilian courts to try nonmilitary matters such as White's with jury trials.<sup>5</sup>

Duncan and White challenged the procedure used to convict them by filing writs of habeas corpus in the U.S. District Court for the Territory of Hawaii in March and April 1944. (Earlier efforts to challenge the military rule had been frustrated by the transfer off the islands or release of persons who brought such proceedings.)<sup>6</sup> District Judge Delbert E. Metzger held separate hearings in the two cases and ruled in favor of both Duncan and White. He determined that the civilian courts had been open and "able to function but for the military orders closing them, and that consequently there was no military necessity for the trial of petitioners by military tribunals rather than regular courts."<sup>7</sup>

The U.S Court of Appeals for the Ninth Circuit reversed, however, ruling that Section 67 of the Organic Act<sup>8</sup> passed by the U.S. Congress in 1900 to govern Hawaii authorized the establishment of martial law whenever the President determined that the public safety required it.<sup>9</sup>

The U.S. Supreme Court reversed once again, agreeing by a 6- 2 vote with Judge Metzger that the decisions of the military tribunals could not stand. Justice Black wrote the main decision (joined by Justices Stanley Reed, William O. Douglas, and Wiley Rutledge), ruling that the Organic Act could not be interpreted to authorize the imposition of military justice on civilians if the

---

<sup>4</sup> Id. at 309-10. White's sentence was later reduced to four years.

<sup>5</sup> Id. at 353 n. 6 and 356 (Burton, J., dissenting), citing General Order No. 133.

<sup>6</sup> See, e.g., H. Scheiber and J. Scheiber, *supra* note 1, at 355-57, describing the case of Dr. Hans Zimmerman, and at 366-68, describing the cases of Glockner and Seifert.

<sup>7</sup> Id. at 311-12.

<sup>8</sup> 31 Stat. 153, c.339, 48 U.S.C.A. sec. 532.

<sup>9</sup> 146 F.2d. 576 (9th Cir.).

civilian courts were still able to function. Chief Justice Harlan Fiske Stone wrote a separate concurring opinion agreeing with the result.

Justice Frank Murphy also wrote a separate concurring opinion. Although he agreed with Justice Black's view, he wanted to comment on the issue that Justice Black avoided (because it was not necessary for the result). Justice Murphy stated explicitly that the U.S. Constitution would not permit the substitution of military tribunals for civilian courts, even if the Organic Act could have been interpreted to authorize such action. Justices Harold H. Burton and Felix Frankfurter dissented, arguing that the courts must defer to judgments made by the executive branch and the military in times of war. Justice Robert H. Jackson did not participate in this decision.

Although Justice Black's opinion for the Court relies on a statutory interpretation of the language of the Organic Act rather than on the U.S. Constitution, it is clear from the concerns identified by Justice Black that the Constitution also imposes limits on the ability of the military to eliminate the power and role of the civilian courts. Section 67 of the Organic Act authorized the Governor of Hawaii to suspend the privilege of the writ of habeas corpus or to impose martial law on the Territory "in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it" until the President can be contacted for guidance. (In this situation, President Franklin D. Roosevelt approved the imposition of martial law on December 9, 1941.)

Justice Black began by noting that the "term 'martial law' carries no precise meaning".<sup>10</sup> He then examined the status of Hawaii and determined that, although it was a territory, Hawaii was entitled to the same protections of the U.S. Constitution as the 48 states (because of language in Section 5 of the Organic Act).<sup>11</sup> "It follows," he wrote, "that civilians in Hawaii are entitled to the Constitutional guarantee of a fair trial to the same extent as those who live in any other part of our country."<sup>12</sup>

He then turned to periods of high tension in U.S. history and found that except in the Civil War period, our people have never permitted military rule to

---

<sup>10</sup> *Id.* at 315.

<sup>11</sup> *Id.* at 317-18.

<sup>12</sup> *Id.* at 318.

supplant civilian courts. Some of his statements in this part of the opinion are quite eloquent:

People of many ages and countries have feared and unflinchingly opposed the kind of subordination of executive, legislative and judicial authorities to complete military rule which according to the government Congress has authorized here ....<sup>13</sup> 13

... Our system of government clearly is the antithesis of total military rule and the founders of this country are not likely to have contemplated complete military dominance within the limits of a Territory made part of this country and not recently taken from an enemy. They were opposed to governments that placed in the hands of one man the power to make, interpret and enforce the laws.<sup>14</sup>

The Court's ruling was thus that:

... [W]hen Congress passed the Hawaiian Organic P Act and authorized the establishment of "martial law" it had in mind and did not wish to exceed the boundaries between military and civilian power, in which our people have always believed, which responsible military and executive officers had heeded, and which had become part of our political philosophy and institutions prior to the time Congress passed the Organic Act.<sup>15</sup>

Justice Murphy's concurring opinion is similarly filled with eloquent statements recalling the proud traditions of the nation. He sought to establish a strong precedent that the martial law imposed on Hawaii should never be repeated in the future, and he goes into some additional detail in answering the government's arguments. In one important section, Justice Murphy responds to testimony offered by military leaders and by the U.S. Court of Appeals for the Ninth Circuit that jury trials were inappropriate in Hawaii because of Hawaii's "heterogeneous population with all sort of affinities and loyalties which are alien

---

<sup>13</sup> Id. at 319.

<sup>14</sup> Id. at 322.

<sup>15</sup> Id. at 324.

in many cases to the philosophy of life of the American Government one-third of the civilian population being of Japanese descent."<sup>16</sup>

Justice Murphy points out that "[t]he lack of any factual or logical basis for such implications is clear."<sup>17</sup> Then he states that "this use of the iniquitous doctrine of racism to justify the imposition of military trials" is "[e]specially deplorable."<sup>18</sup> He goes on to say that:

Racism has no place whatsoever in our civilization. The Constitution as well as the conscience of mankind disclaims its use for any purpose military or otherwise ... It renders impotent the ideal of the dignity of the human personality, destroying something of what is noble in our way of life. We must therefore reject it completely whenever it arises in the course of a legal proceeding."<sup>19</sup>

The ruling and opinions of the U.S. Supreme Court in *Duncan v. Kahanamoku* thus stand as eloquent reminders of the principles, of freedom that have guided the United States. During the martial law period, these principles were largely forgotten and the conditions of freedom were denied to the residents of Hawaii far beyond the requirements of military security. The ugly specter of racism led the military and executive decision makers to impose harsh military justice on the civilian population of the islands leading to arbitrary action and suffering for many.

But when the situation was finally brought to the attention of the country's highest court, the justices issued a strong decision explaining why the civilian

Honouliuli Internment Camp, O'ahu.  
(Courtesy of the Honolulu State Bulletin.)

---

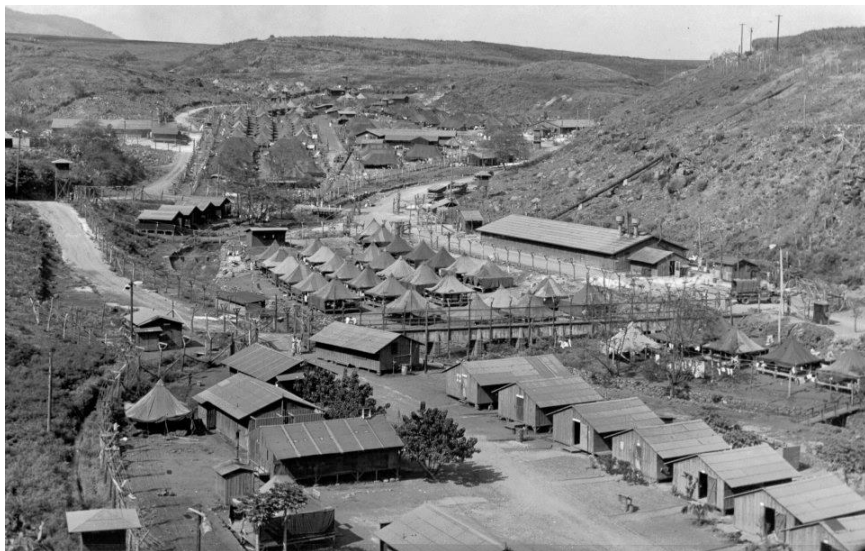
<sup>16</sup> Id. at 333 (Murphy, J., concurring), citing and quoting from 146 F.2d 476, 580, where the u.s. Court of Appeals had referred to the presence of "thousands of citizens of Japanese ancestry besides large numbers of aliens of the same race" who were of "doubtful loyalty."

<sup>17</sup> Id. at 334 (Murphy J., concurring).

<sup>18</sup> Id.

<sup>19</sup> Id.





courts should not have been replaced with military tribunals and stating clearly that assertion of military necessity cannot justify trampling upon the freedoms that form the basis for the American heritage.

"Courts and their procedural safeguards," Justice Black wrote," are indispensable to our system of government."<sup>20</sup> Military trials of civilians charged with crime, especially when not made subject to judicial review, are so obviously contrary to our political traditions and our institution of jury trials in courts of law"<sup>21</sup> that they could not be justified in Hawaii even in the early years of the war. Residents of areas where the U.S. flag flies are entitled to be protected by the rule of law as enforced by civilian courts rather than by the "expression of a General's will dictated by what he considers the imperious necessity of the moment."<sup>22</sup>

---

<sup>20</sup> Id. at 322.

<sup>21</sup> Id. at 317.

<sup>22</sup> Id. at 315.

Martial Law exists when military authorities carry on government or exercise various degrees of control over civilians or civilian authorities in domestic territory.

Ochikubo v. Bonesteel, D.C. Cal., 60 F.Supp. 916 (1945)  
Black's Law Dictionary.

Martial law is neither more nor less than the will of the general who commands the army ... He holds the lives, liberty, and property of all in the palm of his hand, Martial Law is regulated by no known or established system or code of laws, as it is over and above all of them. The commander is the legislator, judge, and executioner.

In re Egan, 5 Blatchf. 321, F. Cas. NoA,303 (1866).  
Black's Law Dictionary.

# Chapter 4

---

## **MARTIAL LAW IN THE UNITED STATES: A BRIEF OVERVIEW**

By Mitch Yamasaki, Ph. D.

Martial Law is the rule by military authority in times of emergency when civil authorities are temporarily suspended. "When instituted, it is, " as a United States federal court noted, "complete and represents the arbitrary will of the commander, controlled only by consideration of strategy, tactics and policy." The imposition of martial law has been likened to the exercise of self-defense by an individual, with necessity justifying the action in both instances. Just as killing or injuring another individual may be justified under the extraordinary circumstance of a threat to one's own life, the suspension of civil authority (including judicial procedures) may be justified in times of war or insurrection.

In societies placing a high premium on the rule of law and the rights of individuals, martial law is seen as an undesirable necessity. "Martial law", which, according to eighteenth century English jurist William Blackstone, "is built upon no settled principles, but is entirely arbitrary in its decisions, is in reality no law, but something indulged rather than allowed as a law." Blackstone therefore argued that "it ought not to be permitted in the time of peace, when the king's courts are open for all persons to receive justice according to the laws of the land."

History has shown that the question of when martial law should be lifted is at least as important as when it should be invoked. The practical minded ancient Romans established the office of dictator to deal with emergencies. With powers over the senate and people of Rome, the term of office was to end when the emergency was over and was not to exceed six months. After decades of civil war, however, an intimidated senate granted victorious general Julius Caesar dictatorship for life. The lifting of martial law has been crucial to the political development of many nations throughout the twentieth century. Regimes, such as that of Ferdinand Marcos in the Philippines, have been accused of extending the period of martial law until all political opposition had been crushed.

Questions concerning when martial law should be invoked, when it should be lifted and who should make such determinations are crucial to the study of martial law in any nation. Martial law is not mentioned in the United States Constitution, nor is it defined by state or federal statutes. Acceptance of martial law therefore lies in its role in the pursuance of other constitutional and statutory provisions. These include constitutional provisions empowering Congress to callout the militia for suppressing insurrections and repelling invasions, and acts of Congress authorizing the president to employ the army, navy and the militia to put down insurrections against federal or state authority.

Historically, martial law has been invoked in times of emergencies by the president, state, and territorial governors, and military commanders. The validity of proclaiming martial law, maintaining it or actions taken in pursuance of it have often been challenged. In instances, civil courts have been called on to determine the legality of the actions taken.

### Martial Law in Early America

In America, the use of troops in emergencies does not of itself bring about a state of martial law. When, for example, President George Washington sent federal troops to Pennsylvania in 1794 to put down the Whisky Rebellion, he specifically ordered the military commander to adhere to existing laws and to deliver the rebels to regular civil courts for trial. A federal judge and a district attorney accompanied the troops to insure this.

Such care for civil authority was not taken when the City of New Orleans was in danger of attack during the War of 1812. General Andrew Jackson, fearing that its legislature might capitulate to the British, placed the city "under strict martial law." Jackson forbade the legislature to convene and ordered the governor of Louisiana to take field command of the militia. Martial law was not withdrawn after the American victory in the Battle of New Orleans (January 8, 1815) which eliminated the threat to the city, nor was it lifted after news of the peace treaty arrived.

When a legislator publicly criticized Jackson's policies, Jackson had him tried as a spy by a military tribunal. And when a federal judge granted the legislator a writ of habeas corpus (to have his case heard before a civil court) Jackson put his honor under house arrest and later expelled him from the city. After martial law was lifted the judge returned to his bench he fined Jackson \$1,000 for contempt of court.

## Martial Law During the Civil War

The Civil War was America's most divisive conflict. Congress passed several laws to deal with acts of treason and rebellion against the federal government. With several million people taking part in the "rebellion" and no federal judicial authority to deal with them, such acts were not enforceable in the South. In areas under federal control, a policy of having the military deal with persons suspected of treason and rebellion was adopted. At first, this policy applied only to specific localities, mostly in the embattled border states.

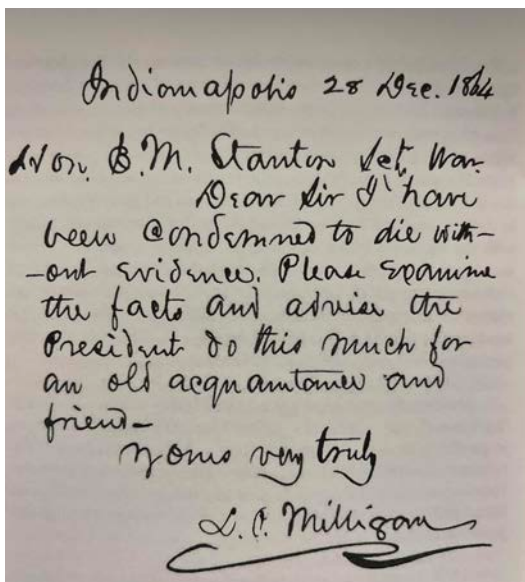
In September 1862, however, President Abraham Lincoln issued a sweeping proclamation declaring that all persons obstructing enlistments, resisting the draft or giving aid and comfort to rebels "shall be subject to martial law, and liable to trial and punishment by court martials or military commissions." Habeas corpus privileges were suspended for all persons arrested or already imprisoned on such charges. Approximately 18,000 civilian suspects were rounded up and held until their potential threat to the union cause could be assessed. Most were released within a few days after taking an oath to refrain from secessionist activities.

While the imposition of martial law did not result in unduly harsh treatment of suspects, suspension of a civil liberty as basic as the habeas corpus privilege roused sharp protests. The habeas corpus right developed in Anglo-American law to prevent the government from arbitrarily arresting and holding individuals without charging him or her with a crime (an ideal way of suppressing political opposition). This was complicated during the Civil War, however, because suspects could escape to rebel areas if they were not held by military authorities.

This issue brought on a confrontation between the President and the Chief Justice of the United States Supreme Court. On circuit in Baltimore, Chief Justice Roger Taney issued a writ of habeas corpus for a Maryland secessionist charged with destroying railroad bridges. When union officers ignored the writ, Taney issued an opinion in *Ex parte Merryman* (1861) denying the president the power to suspend the writ because the section on habeas corpus and its suspension was in Article I, section 9 of the United States Constitution, which dealt with the legislative power of Congress. Lincoln replied in a special message to Congress in which he justified the arrest and detention of individuals "dangerous to the public safety" because the nation's legal system was incapable of dealing with a full scale rebellion, and that breaking the law "to a very limited extent" was preferable to having government be handcuffed and unable to suppress the rebellion.

In March 1863, Congress passed the Habeas Corpus Act which "legitimized" the president's internal security program without jeopardizing its own authority or that of the federal judiciary. The statute authorized the president to suspend the habeas corpus privilege. However, it required the government to provide federal courts with lists of political prisoners being held and to release those whom grand juries fail to indict.

In 1863, a military court in Indiana sentenced Lambden Milligan to death for disloyal activities including an alleged plot to overthrow the state government. In *Ex parte Milligan* (1866), however, a divided United States Supreme Court ruled that the president violated the Habeas Corpus Act of 1863 by ignoring the requirement of a grand jury indictment and that Congress lacked the authority to institute military courts to try civilians in areas remote from the actual fighting and where civil courts were open. "The Constitution," the Court's majority opinion stated, "is a law for rulers and people, equally in war and peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances." The majority therefore followed that "martial law cannot arise from a threatened invasion. The necessity must be actual and present; the invasion real, such as effectually closes the courts and deposes the civil administration."



Indianapolis 28 Dec. 1864  
Wm. B. Stanton Sec. War.  
Dear Sir I have  
been condemned to die with-  
out evidence. Please examine  
the facts and advise the  
President do this much for  
an old acquaintance and  
friend—  
Yours very truly  
S. F. Milligan

Sentenced to die under martial law, civil War prisoner Milligan appeals to the Secretary of War. (Courtesy of the National Archives.)

The court unanimously agreed that Milligan should not have been deprived of his habeas corpus privilege. Four justices, however, disagreed with the majority opinion that Congress did not have the power to authorize military commissions in areas threatened by invasion or insurrection. For them, the threat of war or insurrection was sufficient to warrant martial law and that it should be left to Congress to decide whether or not employ it.

### Martial Law in Economic Crisis

Crisis arising from America's phenomenal economic growth in the nineteenth and twentieth centuries resulted in numerous proclamations of martial law. When strikes by mine workers in Idaho, Colorado and several other states broke into armed conflicts, state governors declared martial law and called on federal troops and state militias to quell the violence. To deal with the economic crisis of the 1930's depression, President Franklin D. Roosevelt, in his 1933 inaugural address, asked Congress for "the one remaining instrument to meet the crisis - broad Executive power to wage war against the emergency, as great as the power that would be given to me if we were in fact invaded by a foreign foe." A cooperative Congress which among other things passed an emergency banking bill over-night, with most Congressmen not even reading it, made it unnecessary for Roosevelt to assume "emergency powers."

### Martial Law in Hawai'i

The threat to the nation quickly shifted from economic to the military with Japan's attack on Pearl Harbor on December 7, 1941. Three days after the attack, the territorial governor declared martial law, relying on the Hawaiian Organic Act of 1900, which authorized him to do so "in case of rebellion or invasion, or eminent danger thereof, when the public safety requires it." All authority was turned over to the military, which proceeded to remove persons from militarily sensitive areas, set curfews, regulate night driving, censor newspapers and radio broadcasts, and regulate prices on everything from groceries to prostitutes. Civil courts were closed and the writ of habeas corpus was suspended.

Martial law was not new to Hawai'i. The islands were seized and temporarily ruled by the French and British military forces during the nineteenth century. A sailors' riot in Honolulu forced the Kingdom's marshal to declare martial law in 1852. In 1895, martial law was declared when the supporters of Queen Liliu'okalani attempted to overthrow the Republic of Hawaii. A military court tried 191 rebels

and sentenced five, including Robert Wilcox, to death. Their sentences were later commuted and all of them were freed by the following year.



The Citizen's Guard searches for Loyalists, 1895 Wilcox Rebellion.  
(Courtesy of Hawai'i State Archives.)

Protests against martial law were minimal in 1941 and in early 1942. As the threat of invasion diminished, however, clamor to end martial law began to rise from some of the territory's leading citizens, including its attorney general J. Garner Anthony. Over military objections, President Roosevelt partially restored the independent functions of the civil governor and the regular civil courts in February 1943. Martial law was suspended in October 1944.

The first legal challenge to Hawai'i's martial law came from Dr. Hans Zimmerman, a German-born American citizen who had a successful osteopathic practice in Hawai'i. Zimmerman was picked up and held by the military as a security risk shortly after the Pearl Harbor attack. Denial of a writ of habeas corpus granted him by the federal district court was upheld by the Ninth Circuit Court of Appeals on the grounds that the military had full authority to declare the state of emergency and to determine when it should be lifted. Another case involved Saffery Brown, who was sentenced to death by a five-man military tribunal for the murder of his wife. Residents of Maui were shocked by the death



sentence, which they did not recall ever being rendered on the island. An appeal to President Roosevelt resulted in the sentence being commuted to life imprisonment.

Legally and constitutionally, the most significant case challenging martial law in Hawai'i during World War II was Duncan v. Kahanamoku (1946). In the case the Court avoided reviewing the constitutionality of suspending the writ of habeas corpus on the ground(s) that the appeal was taken by the court after the writ was restored in 1944. It did rule, however, that the establishment of military tribunals in Hawai'i to try civilians was illegal. The Court held that Hawai'i's Organic Act did not authorize the declaration of martial law except under conditions of actual invasion or rebellion. In its view, the primary purpose of the Organic Act was to extend civilians in Hawai'i the same constitutional guarantees enjoyed by those living in other parts of the United States.

### Internment of Japanese Americans

One of the biggest concerns of the military during World War II was Hawai'i's large Japanese-American population. The 159,000 Hawai'i residents of Japanese descent (124,000 American citizens and 35,000 aliens) made up almost half of Hawai'i's population. Mass internment was out of the question. Some thought was given to shipping them to camps in the mainland. Eventually, 1,466 residents of Japanese descent were detained on suspicion of disloyalty, while numerous others were "removed" from militarily sensitive areas.

Martial law was not invoked anywhere on the mainland during World War II. The president's Executive Order No. 9066, however, gave military commanders wide authority for securing the west coast against possible attacks by the Japanese. On March 2, 1942, General J. L. DeWitt, commanding general of the Western Defense Command, established Military Areas No.1 and No.2, which covered the west coast from Washington State to Mexico. In these areas, curfews were set for German and Italian nationals, and all persons of Japanese ancestry. A proclamation on March 27th prohibited Japanese-Americans from leaving the coastal area. A May 9th order formally excluded all persons of Japanese origin from the area. The net result of these contradictory orders was to force Japanese-Americans to report to Civil Control Stations, from where 112,000 of them, more than 70,000 of whom were American citizens, were shipped off to "Relocation Centers." Some remained there for four years. Most internees lost all of their property left behind on the west coast.

The government's actions were challenged in three cases that reached the United States Supreme Court. In Hirabayashi v. United States (1943), a case involving a University of Washington student who was arrested for failing to report to a control center and for violating curfew, the Court evaded the relocation question and ruled that the government was within its authority in ordering curfews in the military areas.

Korematsu v. United States (1944) involved an American citizen who volunteered for military service but was turned down for his ulcers and was later arrested for refusing to leave the war zone. The Court's majority separated the exclusion issue from that of detention, and ruled that the government was justified in its actions because in wartime civilians have to defer to military judgement and bear its hardships. "Hardships," the Court observed, "are a part of war, and war is an aggregation of hardships." Three justices dissented, calling it a plain "case of convicting a citizen as punishment for not submitting to imprisonment in a concentration camp, solely because of his ancestry," without considering any evidence relating to his loyalty to the United States.

On the same day, the Court unanimously granted a writ of habeas corpus to Mitsuye Endo, a citizen whose loyalty had been clearly established, thus freeing her from the Tule Lake War Relocation Camp. In *Ex parte Endo* (1944), the court ruled that the government had no right to confine persons of undoubted loyalty. By making this ruling, the Court avoided the question of the constitutionality of the actions of the president and technically attributed the violation to the abuse of the presidential order by war relocation authorities. The internment of Japanese-Americans has haunted the nation's conscience. In 1948, Congress took the first step to undo some of the damage by passing the Japanese American Evacuation Claims Act. The statute sought to recover property loss incurred by the ~ relocation, but because compensation was limited to claims that could be verified by written records, less than \$37 million of the estimated \$400 of property loss was recovered. In 1983, the Commission on Wartime Relocation and Internment of Civilians (established by Congress in 1980) published its report "Personal Justice Denied". The report condemned the internment as a "grave injustice," resulting from decisions "conceived in haste and executed in an atmosphere of fear and anger at Japan," and that

Executive Order No. 9066 was not justified by military necessity, but was the result of "race prejudice, war hysteria and a failure of political leadership." Subsequently, a federal district court vacated Korematsu's conviction in 1984, and Congress passed a law in 1988 awarding \$20,000 to each person interned in a relocation camp.

## Conclusion

Throughout American history there has been a willingness to accept military authority in times of emergency. Because of the irony of having to suspend the very constitutional system martial law ultimately attempts to protect, Americans have not been willing to allow those who invoke it to determine its validity or its parameters. This has been left to the courts. American courts have not created any permanent doctrines on martial law but have established some guidelines for its imposition. The bottom line, however, remains necessity, because without it there is no real justification for martial law.



## Acknowledgments:

### Humanities Scholars

**Dr. Mitch Yamasaki**

Principal Scholar - History  
Chaminade University

**Dr. Kenneth Kipnis**

Philosophy  
University of Hawai'i

**Dr. Eric Sears**

History  
Kapi'olani Community College

**Dr. Eric Yamamoto**

Jurisprudence  
William S. Richardson School of  
Law

**Dr. Glenn Grant**

American Studies  
Kapi'olani Community College

**Dr. Linda Menton**

American Studies  
University of Hawai'i

**Dr. Jon Van Dyke**

Jurisprudence  
William S. Richardson School of  
Law

## **Online Resources**

- Martial Law in Hawaii, December 7, 1941
- Hawaii War Records Depository Photos
- National Archives
- Martial Law in Hawaii
- <https://www.nps.gov/hono/index.htm>
- <https://www.hawaiiinternment.org/>
- Organic Act of 1900
- Duncan v. Kahanamoku
- U.S. Constitution