is that he has been deprived of his liberty without due process of law. But it is familiar that what is due process of law depends on circumstances. . . . So long as such arrests are made in good faith and in honest belief that they are needed in order to head the insurrection off, the Governor is the final judge and cannot be subjected to an action after he is out of office on the ground that he had not reasonable ground for his belief."[211] The "good faith" test of *Moyer*, however, was superseded by the "direct relation" test of *Sterling v. Constantin*,[212] where the Court made it very clear that "[i]t does not follow . . . that every sort of action the Governor may take, no matter how justified by the exigency or subversive of private right and the jurisdiction of the courts, otherwise available, is conclusively supported by mere executive fiat. . . . What are the allowable limits of military discretion, and whether or not they have been overstepped in a particular case, are judicial questions."[213]

Martial Law in Hawaii.—The question of the constitutional status of martial law was raised again in World War II by the proclamation of Governor Poindexter of Hawaii, on December 7, 1941, suspending the writ of *habeas corpus* and conferring on the local commanding General of the Army all his own powers as governor and also "all of the powers normally exercised by the judicial officers . . . of this territory . . . during the present emergency and until the danger of invasion is removed." Two days later the Governor's action was approved by President Roosevelt. The regime which the proclamation set up continued with certain abatements until October 24, 1944.

By section 67 of the Organic Act of April 30, 1900,[214] the Territorial Governor was authorized "in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, [to] suspend the privilege of the writ of *habeas corpus*, or place the Territory, or any part thereof, under martial law until communication can be had with the President and his decision thereon made known."

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[211] 212 U.S. at 83–85.

[212] 287 U.S. 378 (1932). "The nature of the power also necessarily implies that there is a permitted range of honest judgment as to the measures to be taken in meeting force with force, in suppressing violence and restoring order, for without such liberty to make immediate decision, the power itself would be useless. Such measures, conceived in good faith, in the face of the emergency and directly related to the quelling of the disorder or the prevention of its continuance, fall within the discretion of the Executive in the exercise of his authority to maintain peace." Id. at 399–400.

[213] 287 U.S. at 400–01. This holding has been ignored by states on numerous occasions. *E.g.*, Allen v. Oklahoma City, 175 Okla. 421, 52 P.2d 1054 (1935); Hearon v. Calus, 178 S.C. 381, 183 S.E. 13 (1935); and Joyner v. Browning, 30 F. Supp. 512 (W.D. Tenn. 1939).

[214] 31 Stat. 141, 153 (1900).