

## **Martial “Law” in Hawaii: Civil Rights Violations and the Illegality of Army Rule**

At 4:25pm on December 7, 1941, the Governor of Hawaii declared martial law on the archipelago immediately following the Japanese attack on Pearl Harbor.<sup>1</sup> Under the pretense of security, the right of *habeas corpus* was suspended, the military began to regulate all aspects of civilian life, and civil courts were shut down and replaced with provost courts, for less serious offense, and military tribunals, for capital crimes.<sup>2</sup> The military converted Iolani Palace into their headquarters (*see figure 1*),<sup>3</sup> and began to fortify the islands, installing heavy artillery, seacoast guns, and other defenses (*see figure 2*).<sup>4</sup> Army rule lasted for almost three years, until it was finally lifted on October 24, 1944 by President Roosevelt.<sup>5</sup> The extended period of martial law in Hawaii during World War 2 was characterized by the military’s indifference to laws, disregard for civilian power, and their excessive violations of basic rights to a free press, a fair trial, and protection against discrimination.

Though initially imposing martial law in Hawaii was technically legal, the continuation of army rule for such an extended period of time was not. The primary legal justification for declaring martial law was the *Hawaiian Organic Act*, a law passed in 1900 that allowed the Governor to place Hawaii under martial law and suspend the writ of habeas corpus (a legal action requiring an incarcerated person to be brought before a court) in the case of “rebellion or invasion, or imminent danger thereof.”<sup>6</sup> Therefore, declaring martial law was legal, as

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<sup>1</sup> Tetsuden Kashima, *Judgement without Trial* (Seattle, WA: University of Washington Press, 2003), 69.

<sup>2</sup> John P. Frank, "Ex Parte Milligan v. The Five Companies: Martial Law in Hawaii," *Columbia Law Review* 44, no. 5 (September 1944): 651, <http://www.jstor.org/stable/1117929>.

<sup>3</sup> J. Garner Anthony, *Hawaii under Army Rule* (Stanford, CA: Stanford University Press, 1955), 12.

<sup>4</sup> Thomas H. Green, Maj Gen, "Martial Law in Hawaii," April 4, 1943, accessed January 20, 2018, [https://www.loc.gov/rr/frd/Military\\_Law/pdf/Martial-Law\\_Green.pdf](https://www.loc.gov/rr/frd/Military_Law/pdf/Martial-Law_Green.pdf), 54.

<sup>5</sup> "Martial Law Ends in Hawaii," *The Deseret News* (Salt Lake City, UT), October 24, 1944, accessed January 20, 2018,

<https://news.google.com/newspapers?id=tU5SAAAAIBAJ&sjid=xnwDAAAAIBAJ&pg=3153%2C5465917>.

<sup>6</sup> Walter P. Armstrong, "Martial Law in Hawaii," *American Bar Association Journal* 29, no. 12 (December 1943): 698, <http://www.jstor.org/stable/25714762>.

there was a legitimate threat of invasion after Pearl Harbor. However, according to Major General Thomas Green, who was stationed on Hawaii when martial law was declared, army rule was only intended to be in effect for one or two days.<sup>7</sup> Martial law lasted for almost three years, even though the U.S.'s decisive victory at the Battle of Midway in June of 1942 eliminated any imminent danger to Hawaii.<sup>8</sup> Power was also completely delegated to a military governor, which was not legal under the *Organic Act*,<sup>9</sup> and the Chief Justice of the Hawaiian Supreme Court signed an order to close all the civilian courts, despite having no authority to do so.<sup>10</sup> The illegality of prolonged martial law was corroborated by District Judge Delbert Metzger, who ruled that Hawaiian martial law was illegal on April 14, 1944,<sup>11</sup> because it was not in imminent danger of invasion.<sup>12</sup> Metzger also ruled that the office of military governor was created illegally and therefore had no lawful authority over Hawaii.<sup>13</sup> Despite this explicit statement that Hawaiian martial law was illegal, army rule continued, and the military continued to try civilians in provost courts.<sup>14</sup> In effect, the military openly disregarded civilian authority by continuing to enforce army rule over Hawaii far after it was necessary or legal.

The military continued to violate the law and ignore civilian authorities by upholding the suspension of habeas corpus. An example of this is the *Glockner* and *Seifert* cases in 1943.

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<sup>7</sup> Green, "Martial Law in Hawaii", 109.

<sup>8</sup> "Nippon Threat to West Coast Greatly Reduced," *The Bend Bulletin* (Bend, OR), June 18, 1942, accessed February 13, 2018, <https://news.google.com/newspapers?nid=1243&dat=19420618&id=FOcsAAAAIABJ&sjid=UiEEAAAAIABJ&pg=1871,711590>.

<sup>9</sup> Anthony Garner, "Martial Law in Hawaii," *California Law Review* 30, no. 4 (May 1942): 372, <http://www.jstor.org/stable/3477589>.

<sup>10</sup> *Ibid.*, 372-373.

<sup>11</sup> "Judge Invalidates Martial Law in Hawaiian Islands," *The Evening Independent* (St. Petersburg, FL), April 14, 1944, accessed January 20, 2018, <https://news.google.com/newspapers?id=GmpIAAAAIBAJ&sjid=CVUDAAAAIBAJ&pg=4284%2C6259680>.

<sup>12</sup> Richard W. Johnston, "Army Defies Ban on Hawaii Martial Law," *San Jose News* (San Jose, CA), April 13, 1944, accessed January 20, 2018, <https://news.google.com/newspapers?id=JygiAAAAIBAJ&sjid=FKQFAAAAIBAJ&pg=986%2C1109323>.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

Glockner and Seifert, both American citizens of German descent, had been unlawfully detained by military authorities for an extended period of time, causing the District Court to petition for writs of habeas corpus for them.<sup>15</sup> The US Attorney, representing Lieutenant General Robert Richardson, motioned to drop the petition, but this was rejected by Judge Metzger.<sup>16</sup> However, when the Deputy Marshall of Hawaii attempted to serve the writ, Richardson used the military police to forcibly eject the Marshall from his office.<sup>17</sup> Richardson refused to obey the writ and was subsequently fined \$5000 for contempt.<sup>18</sup> Richardson then proceeded to issue an order forbidding anybody from applying for a writ of habeas corpus, under punishment of hard labor and a fine of \$5000.<sup>19</sup> This situation clearly illustrates how the military government knowingly violated the law and superseded traditional civilian power.

Furthermore, trying civilians in provost and military courts was not only excessive, but also illegal according to *Ex Parte Milligan*, an 1866 Supreme Court case declared that trying civilians in military tribunals was unconstitutional, as long as civilian courts could function.<sup>20</sup> When martial law was initially declared, civilian courts in Hawaii were closed down as a matter of “military necessity,” despite how rarely this was done before. For instance, places such as Kentucky, St. Louis, and New Orleans were placed under martial law during the Civil War, but civilian courts were only closed in New Orleans, indicating the rarity of this measure.<sup>21</sup> Therefore, it appears that closing civilian courts in Hawaii was excessive, as other courts were closed only in the most extreme of circumstances. Though civilian courts were re-opened in September of 1942, many civilians who posed no threat to the military were still

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<sup>15</sup> Armstrong, "Martial Law in Hawaii," 698.

<sup>16</sup> Ibid, 698-699.

<sup>17</sup> Ibid, 698

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Frank, "Ex Parte," 639-641.

<sup>21</sup> Armstrong, "Martial Law in Hawaii," 700..

tried by military courts, an obvious violation of *Milligan*. For instance, Lloyd Duncan, a civilian ship fitter, was arrested and tried in 1944 for drunkenly attacking two sentries at the Honolulu Navy Yard.<sup>22</sup> Duncan was clearly not a major threat to national security in his drunken stupor, and therefore should have been tried in one of the many fully competent civilian courts in accordance to *Milligan*. The illegality of Duncan's trial by military court is supported by *Duncan v Kahanamoku*, a case in 1946 where the Supreme Court ruled that Duncan's trial by military tribunal was unconstitutional as the *Organic Act* never intended for the military regime to unnecessarily supersede the civilian.<sup>23</sup> Altogether, trying non-threatening civilians in military courts was an excessive and illegal supersession of the power of civilian courts by the military.

The military and provost courts established by the army government also violated the defendants' basic right to a fair trial by jury. Provost courts often held secretive sessions, judges lacked basic legal training,<sup>24</sup> and the average provost trial took five minutes, returning a guilty verdict 99% of the time.<sup>25</sup> Moreover, Attorney General of Hawaii Garner Anthony said that in military courts "Many citizens appear without counsel; they know, generally speaking, that no matter what evidence is produce the 'trial' will result in a conviction ... Accordingly, in most cases a plea of guilt is entered in order to avoid the imposition of a more severe penalty."<sup>26</sup> The accused are also not given a copy of the charges against them, and trials "take place in crowded courtrooms in which the officers in charge are fully armed."<sup>27</sup> Clearly, the haphazard operations of these courts violated the defendants' right to a fair trial. Another example of how unfairly the courts operated was Saffrey John Brown, a

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<sup>22</sup> William H. Rehnquist, *All the Laws but One* (New York, NY: Alfred Knopf, 1998), 216.

<sup>23</sup> Ibid.

<sup>24</sup> Armstrong, "Martial Law in Hawaii," 701.

<sup>25</sup> Lawrence Friedman, *Crime and Punishment in American History* (New York, NY: BasicBooks, 1993), 370, accessed February 14, 2018.

<sup>26</sup> Frank, "Ex Parte," 652-653.

<sup>27</sup> Ibid.

civilian tried by a military commission for murdering his wife.<sup>28</sup> Brown was tried by five army officers who didn't even know the distinction between first and second degree murder, which is presumably necessary for a murder trial.<sup>29</sup> Moreover, he was defended by a military officer without legal training, but was prosecuted by a trained attorney.<sup>30</sup> Brown was sentenced to death, a sentence later commuted by the Commanding General.<sup>31</sup> Though evidence strongly suggested Brown was guilty, he was still a civilian, tried by a military tribunal for a civilian crime, that was sentenced to death after being tried in a legally inept court.

Under martial law, Hawaiians also faced unnecessary violations of liberty such as censorship, blackouts, and curfews. The military governor controlled the press through a licensing system that permitted it to publish "under such conditions and regulations as shall be prescribed from time to time by the military governor."<sup>32</sup> These extremely vague regulations were not limited to matters of national security, however, and were used by the military government to censor anything they didn't like. For example, when the editor of the *Honolulu Star Bulletin* wrote an editorial mildly criticizing the administration, he was promptly prohibited from publishing anything of the sort ever again.<sup>33</sup> A system of unnecessary and selectively followed blackouts and curfews was also in effect from December 7, 1941 to 1945.<sup>34</sup> The blackout and curfew was from sundown to sunrise, and was strictly enforced by the provost courts and by guards who would halt, and likely arrest civilians out after curfew (*see figure 3 below*).<sup>35</sup> Though military officials stated that

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<sup>28</sup> Ibid, 700.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Anthony, *Hawaii under*, 39.

<sup>33</sup> Ibid, 40.

<sup>34</sup> Ibid, 58.

<sup>35</sup> Ibid.

blackouts were necessary,<sup>36</sup> military installations, which presumably were most vital, were frequently lit during the night.<sup>37</sup> Essentially, the military administration of Hawaii, by enforcing censorship, blackouts, and curfews, violated civil liberties that had absolutely nothing to do with their stated intent of preserving national security.

Although the rights of all Hawaiians were abused under martial law, Japanese Hawaiians faced special discrimination. For the purposes of this essay, the injustices of Japanese internment will not be discussed as they do not uniquely relate to Hawaiian martial law. Regardless, Japanese Hawaiians were forbidden from travelling or moving without military permission, publishing broadcasts or newspapers in Japanese, assembling in groups of ten or more, and possessing items such as short-wave radios, cameras, or signal devices.<sup>38</sup> These actions were implemented for the sake of security, despite there being widespread loyalty to the US amongst Japanese Americans, and no evidence, according to then Secretary of War Henry Stimson, of their involvement in the Pearl Harbor attacks.<sup>39</sup> Therefore, the military government heavily discriminated against Japanese Hawaiians for “security” reasons, despite evidence that there was no necessity to do so. Japanese Americans were also subject to repeat workforce discrimination, and many were fired after Pearl Harbor and explicitly told that Japanese workers would not be hired when looking for new work.<sup>40</sup> Under Roosevelt’s Executive Order 8802, defense employers were not allowed to discriminate based on race,<sup>41</sup> yet there is anecdotal evidence that many Japanese defense workers were “ordered off

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<sup>36</sup> Frank Tremaine, "Martial Law Proclaimed for Hawaii," *Pittsburgh Post-Gazette* (Pittsburgh, PA), December 11, 1941, accessed January 20, 2018, <https://news.google.com/newspapers?id=I5RRAAAAIBAJ&sjid=LWoDAAAAIBAJ&pg=2442%2C5301386>.

<sup>37</sup> Anthony, *Hawaii under*, 59.

<sup>38</sup> Andrew Lind, "The Japanese in Hawaii Under War Conditions" (paper presented at Eighth Conference of the Institute of Pacific Relations, Mont Tremblant, December 1942), accessed January 26, 2018, <http://www.oac.cdlib.org/ark:/28722/bk001392v15/?brand=oac4>.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Exec. Order No. 8802, 3 C.F.R. (1941). Accessed January 30, 2018. <https://www.ourdocuments.gov/doc.php?flash=false&doc=72#>.

[projects] at the point of a bayonet.”<sup>42</sup> Despite this explicit statement that discriminating against Japanese defense workers was illegal, there is no record that this executive order was ever seriously enforced, illustrating the military government’s characteristic ambivalence to following the law. The excessive and unwarranted discrimination that affected Japanese Hawaiians, and the military’s lack of enforcement of laws intended to reduce this discrimination is further emblematic of martial law in Hawaii as a whole.

So, why did the army enforce such a broad range of civil rights violations for such a long period of time? Likely, this is because the military government and its corporate allies profited significantly off of abusing their power. From the start of martial law until August 31, 1942, \$789,417 (roughly \$13.4 million, when adjusted for inflation) was collected from fines and permit fees.<sup>43</sup> Provost courts also gave out, according to Hawaiian Attorney General Anthony, “heavy fines ... for comparatively trivial violations of military orders” and forced people to purchase war bonds, a method of funding the military, as a punishment.<sup>44</sup> Therefore, it seems as if the provost courts, with their almost 100% conviction rate, disregard for due process, and proclivity towards disproportionately high fines were set up that way, at least in some part, to enrich the military.

Ultimately, many actions taken by the military during martial law on Hawaii were illegal and subjugated civilians to extensive violations of rights. It is generally agreed that in healthy democracies, the military is always subservient to the civilian government, yet Hawaiian martial law was characterized by the military ignoring both civilian power and the law. Despite this fact, this period of time has faded into relative obscurity, and is infrequently mentioned against the broader backdrop of World War Two. It’s easy to disregard the injustices committed under Hawaiian martial law as exclusive to that former, seemingly less

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<sup>42</sup> Lind, "The Japanese."

<sup>43</sup> Anthony, *Hawaii under*, 48.

<sup>44</sup> *Ibid*, 39.

American U.S. territory, yet at the time, the Constitution and all U.S. laws applied just as much to Hawaii as to the states.<sup>45</sup> Therefore, it was just as illegal to implement martial law on Hawaii as it was anywhere else in the United States. The fact that the military so effortlessly got away with violating the law, stripping constitutional rights away from Hawaiians, and being insubordinate to a civilian government was a fundamental threat to American democracy that should not be forgotten.

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<sup>45</sup> Territories and Insular Possessions, 48 U.S.C. §§ 401-718 (1940). Accessed January 20, 2018. <https://www.loc.gov/item/uscode1940-003048003/>.



## Figures

*Figure 1.*

A photo of the military installing barbed wire outside the Iolani Palace, their headquarters.



*Figure 2.*

The back view of an anti-tank gun guarding a road on Oahu.



*Figure 3.*

A guard halts a civilian who is out after curfew to determine their reason for being outside, taken 1942.



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