

DOWNLOAD PDF FEDERAL AID IN DOMESTIC DISTURBANCES, 1787-1903

Chapter 1 : Full text of "Federal aid in domestic disturbances. "

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Use of the Military to Enforce Civilian Law Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both. Americans have a tradition, born in England and developed in the early years of our nation, that rebels against military involvement in civilian affairs. It finds its most tangible expression in the nineteenth century Posse Comitatus Act, 18 U. The Act forbids use of the Army and Air Force to execute civil law except where expressly authorized. The exception documents a contrary component of the tradition. It accepts the use of the armed forces in extraordinary circumstances if expressly approved by Congress. Striking the balance between rule and exception has never been easy, but failure to do so has often proven unfortunate. When exceptions are too generously granted, a Boston Massacre or Kent State tragedy may follow. Several times in the recent past, concerns that civil authorities may be overwhelmed by threats of natural disasters, civil disturbances, drug trafficking, and terrorism have produced calls for more generous exceptions to the rule. Some of those calls have been answered, others have not. This is an effort to sketch the current state of the law. Background The Magna Carta gives us the first recorded acknowledgment of the origins of the Anglo-American tradition against military involvement in civilian affairs with its declaration that "no free man shall be. LEGEND AND LEGACY "No freeman shall be taken, or imprisoned, or be disseised of any freehold, or liberties, or free customs, or outlawed, or banished, or in any other way destroyed, nor will we go or send against him, except by the lawful judgment of his peers or by the law of the land" language added to ch. Although the Magna Carta in the modified version of King Henry remains in effect, the language quoted above is generally cited as "chapter 29," see e. No Man of what[ever] Estate or Condition that he be, shall be put out of land or Tenement, nor taken, nor imprisoned, nor disinherited, nor put to Death, without being brought in Answer by due Process of the Law". King Charles I, preparing for a military expedition in France, had quartered his troops in homes along the southern English coastline. Offended by this peacetime exercise of military judicial authority over civilians, Parliament sought and was granted the Petition of Right of which outlawed both quartering and martial law commissions. And in the eight-and-twentieth year of the reign of King Edward III, it was declared and enacted by authority of parliament, that no man, of what estate or condition that he be, should be put out of his land or tenements, nor taken, nor imprisoned, nor disinherited, nor put to death without being brought to answer by due process of law. They do therefore humbly pray your most excellent Majesty. Petition of Right, 3 Car. Secondly, This indulged law was only to extend to members of the army, or to those of the opposite army, and never was so much indulged as intended to be executed or exercised upon others; for others were not listed under the army, had no colour of reason to be bound by military constitutions, applicable only to the army; whereof they were not parts, but they were to be ordered and governed according to the laws to which they were subject, though it were a time of war. This is the substance declared by Petition of Right, 3 Car. Their circumstances, however, were not exactly identical to those surrounding the Petition of Right. First, the question arose in the colonies. England had stationed troops in the colonies to protect them against the French and Indians and had opted for military governorships in other territories. Second, there was no military usurpation of judicial functions. The colonists remained subject to civil rather than military justice, and soldiers who employed more force than civilian law permitted were themselves subject to civilian justice as the trials of the soldiers involved in the Boston Massacre demonstrates. On the other hand, the troops involved in the Boston Massacre were stationed in Massachusetts not for protection against a marauding invader as they had been in the French and Indian Wars, not to accomplish the transition between civil governments within a conquered territory as they had been after the French lost Canada to the British as a consequence of those conflicts, but as an independent military force

quartered among a disgruntled civilian population to police it. And it is laid down, that if a lieutenant, or other, that hath commission of martial authority, doth in time of peace hang or otherwise execute any one by colour of martial law, this is murder; for it is against the magna carta. And the petition of right enacts, that no soldier shall be quartered on the subject without his own consent; and that no commission shall issue to proceed within this land according to martial law. And whereas, after the restoration, king Charles the second kept up about five thousand regular troops, by his own authority, for guards and garrisons; which king James the second by degrees increased to no less than thirty thousand, all paid from his own civil list; it was made one of the articles of the bill of rights, that the raising or keeping of a standing army within the kingdom in time of peace, unless it be with the consent of the parliament, is against the law". Their role as even the radicals conceived it was to assist the executive and if necessary the courts to maintain order" ; Engdahl, Soldiers, Riots, and Revolution: Boston was a hotbed of colonial discontent. The assemblage of military troops for control of possible disorders aggravated the discontent, not only because it affronted the English tradition against domestic use of military troops, but also because it was without warrant in the charter of Massachusetts Bay. The unwelcome troops were frequently taunted and vilified, and the ultimate and inevitable outrage soon occurred. A crowd of angry Bostonians. The soldiers made ready to force their passage, but were ordered back to the main guard. The crowd approached the main guard with angry and opprobrious taunts. A sentinel struck one particularly bothersome boy with the butt of his musket, and quickly a crowd converged on that spot throwing snowballs and rocks at the sentinel along with verbal threats on his life. The sentinel loaded his musket and waved it at the mob, a squad of soldiers were sent to his aid. The soldiers, soon joined by a colonel, loaded their muskets as the crowd hooted and jeered and berated them and dared them to shoot. They kept the crowd back a time with bayonets, but then suddenly fired. It was never In any event, the experience was sufficiently vexing that the Declaration of Independence listed among our grievances against Great Britain that the King had "kept among us, in times of peace, Standing Armies without the consent of our legislatures," had "affected to render the Military independent of and superior to the civil power," and had "quarter[ed] large bodies of armed troops among us. It provided that a civilian, the President, should be the Commander in Chief of the Army and Navy of the United States and that civilian authorities, the Congress, should be solely empowered to raise and support Armies, provide and maintain a Navy, and make rules for their government and regulation. In any event, five Americans lay dead and several others seriously wounded. Two of the soldiers were convicted of manslaughter, branded on the hand and released; the officer and the other soldiers were acquitted. When land-forces are raised by any State for the common defence, all officers of or under the rank of colonel, shall be appointed by the Legislature of each State respectively by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment. The United States in Congress assembled shall never. The Constitution treats the militia similarly. The President is the Commander in Chief of the militia while it is in federal service, and Congress is empowered to approve its organization, arms and discipline, U. III, and noted that "a well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed," U. The Constitution, on the other hand, explicitly permitted the Congress to provide for calling out the militia to execute the laws, suppress insurrection, and repel invasion, U. Soon after Congress was first assembled under the Constitution, it authorized the President to call out the militia, initially to protect the frontier against "hostile incursions of the Indians," and subsequently in cases of invasion, insurrection, or obstruction of the laws. The Constitutional and statutory authority to use military force in case on insurrection seems to have been in direct response to a perceived weakness in government under the Articles of Confederation. In , a group farmers in western Massachusetts, lead by a Revolutionary War veteran named Daniel Shays and feeling oppressed by tax and creditor protection policies within the Commonwealth, had harassed the state courts and constabulary, and had attempted to storm the federal arsenal at Springfield before being repulsed by the militia. Some saw in the insurrection evidence of the need for a stronger central government and implicitly that domestic tranquility might be more readily ensured if backed by centralized

military capable. When Massachusetts appealed to the Confederation for help, Congress was unable to do a thing. It hung like a shadow over the old Congress, and gave both impetus and urgency to the Constitutional Convention. It was the final, irrefutable piece of evidence that something had gone badly wrong. For some time these men had known that the deficiencies of the American government must be remedied. Even though Congress empowered the President to call out the militia to overcome obstructions to law enforcement, it continued to vest the federal equivalent of the sheriff, the federal marshal, with the power to call forth the posse comitatus in performance of his duties. Under the Fugitive Slave Act, for instance, owners whose slaves had escaped to another state were entitled to an arrest warrant for the slaves and to have the warrant executed by the federal marshals. The marshals in turn might "summon and call to their aid the bystanders, or posse comitatus of the proper county. In June of , a federal marshal in Chicago arrested a fugitive slave on a warrant issued under the Act. He called for the assistance of members of the police force and of the state militia to prevent abolitionists from rescuing the prisoner before he could be returned to his owner. The marshal subsequently filed a claim with the Treasury of the United States for reimbursement of the funds he had paid the members of the police force and the militia who responded to his call. The Latin phrase literally means attendants with the capacity to act from the words comes and posse meaning companions or attendants comes and to be able or capable posse. Among the Romans comitatus referred to one who accompanied the proconsul to his province. The fact that they are organized as military bodies, under the immediate command of their own officers, does not in any wise affect their legal character. They are still the posse comitatus. He hoped, before he should agree to the Address, that ministers would give him satisfaction in another point: Lord Mansfield for some time argued [several points]. A private man, if he sees a person committing an unlawful act, more particularly an act amounting to a violent breach of the peace, felony, or treason, may apprehend the offender, and in his attempt to apprehend him may use force to compel him, not to submit to him, but to the law. What a private man may do, a magistrate or peace officer may clearly undertake; and according to the necessity of the case, arising from the danger to be apprehended, any number of men assembled or called together for the purpose are justified to perform. This doctrine I take to be clear and indisputable, with all the possible consequences which can flow from it, and to be the true foundation for calling in of the military power to assist in quelling the late riots. For instance, supposing a soldier, or any other military person, who acted in the course of the late riots, had exceeded the powers with which he was invested, I have not a single doubt but he is liable to be tried and punished, not by martial law, but by the common and statute law of the realm; consequently, the false idea that we are living under a military government or that the military have any more power or other power, since the commencement of the riots, is the point which I rose to refute, and on that ground to remove those idle and ill-founded apprehensions, that any part of the laws or the constitution are either suspended or have been dispensed with. On the whole, my lords, while I deprecate and sincerely lament the cause which rendered it indispensably necessary to call out the military to assist in the suppression of the late disturbances, I am clearly of the opinion, that no steps have been taken which were not strictly legal, as well as fully justifiable in point of policy. The military have been called in, and very wisely called in, not as soldiers, but as citizens: Congress reacted with a rider to an Army appropriations bill forbidding the use of any "part of the military forces of the United States to enforce territorial law in Kansas. Following the Civil War, the use of federal troops to execute the laws, particularly in the states that had been part of the Confederacy, continued even after all other political restrictions had been lifted. By , there was evidence that Republican state governments in more than one southern state owed their continued political existence to the presence of the military and that the activities of federal troops may have influenced the outcome of the Hayes-Tilden presidential election. Lord Mansfield justified an apparent breach of the martial law proscription by asserting that the soldiers had acted as individuals called, commanded, and governed exclusively by the dictates of law applicable to civilians. Civilians are not organized as military units and are not subject to the command of military officers. Military law governs such matters. The fact that they were organized as military bodies, under the immediate command of their own officers, would determine their legal character; it was in

fact the critical determinant of their legal character. Banning , with, "Nor do I think, sir, that the use of troops in the States recently in rebellion was uncalled for or inconsistent with the spirit of republican liberty. If they were recalled before every man, white and black, was safe -- safe and truly free, with all his civil rights in their fullest extent -- they were recalled too soon. No compromise could be reached, and the session ended without passage of an Army appropriation bill. Money to pay the Army was subsequently appropriated in a special session,²⁰ without reference to restrictions on use of the Army. Packard to be governor the State of Louisiana. Nor shall any of said money be applied in support of the claim of the two bodies claiming to be the Legislature of said State, presided over respectively by L. Wiltz and Louis Bush; nor of the two bodies claiming to be the Legislature of said State, presided over respectively by C. Antonie and Michael Hahn; nor in support of the claim of Thomas C. Manning and associates to be the supreme court of said State; nor in support of the claim of John T. Ludeling and associates to the supreme court of said State; nor in the aid of the execution of any process in the hands of the United States marshal in said State issued in aid of and for the support of any such claims. Nor shall the Army, or any portion of it, be used in support of the claims, or pretended claim or claims, of any State government, or officer thereof, in any State, until the same shall have been duly recognized by Congress. Any person offending against any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned at hard labor for not less than five years or more than ten years," 5 Cong. Sargent ; instances of express Constitutional authority were added to the statutory exception, although then as now the precise effect of this change was a matter of dispute; the penalty was applicable only to willful violations although a Senate requirement that the penalty be restricted to willful and knowing violations was not accepted. The Posse Comitatus Act has remained essentially unchanged ever since,²⁴ although Congress has authorized a substantial number of exceptions and has buttressed the Act with an additional proscription against use of the armed forces to make arrests or conduct searches and seizures.

Chapter 2 : The Posse Comitatus Act and Related Matters: The Use of the Military to Execute Civilian Law

Page 70 - The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the Legislature, or of the Executive (when the Legislature can not be convened), against domestic violence.

Violence began in Martinsburg, West Virginia and spread along the rail lines through Baltimore and on to several major cities and transportation hubs of the time, including Reading , Scranton and Shamokin , Pennsylvania; a bloodless general strike in St. Louis, Missouri ; and a short lived uprising in Chicago, Illinois. In the worst case, rioting in Pittsburgh, Pennsylvania left 61 dead and injured. What began as the peaceful actions of organized labor attracted the masses of discontented and unemployed workers spawned by the depression, along with others who took opportunistic advantage of the chaos. In total, an estimated , workers participated nationwide. They appealed to the vice president, Mr. King, but he declined to meet. In response, the strikers resolved to occupy portions of the rail line, and to stop trains from passing unless the company rescinded the wage cuts. According to the newspaper reports the following day, a westbound train was thrown from the tracks at a switch in a suburb south of the city. The switch had been opened and locked by an unknown person. One by one the shops have become wholly or partly silent, and very many men, especially in South Baltimore, are without work or the means of providing for their families. This state of affairs is confined not alone to railroad shops, but to other workshops, and a great deal of distress exists among the workingmen of all kinds. It involved multiple rail companies, [f] and had grown to include a variety of mechanics, artisans, and other laborers. General violence threatened to break out in Pittsburgh and the city was blockaded. According to the edition of July 20 of The Sun, the city was peaceful, but anxious, as many awaited word of the happenings in Martinsburg, which was seen as the central point of the movement. Herbert was ordered by Governor Carroll to muster the troops of the 5th and 6th Regiments, Maryland National Guard, to their respective armories in preparation. Mayor Ferdinand Latrobe issued a proclamation, reciting the riot act and ordering the crowds to disperse, but to no effect. They fixed bayonets and advanced. Shots were fired at the troops, but they successfully moved through the crowd and into the station. Soldiers who subsequently arrived were beaten and driven away. The troops returned fire, with live ammunition as they were equipped, and the frightened crowd retreated west across Fayette Street Bridge. The crowd fell upon the engine, assailing it with stones, disabling it, and driving off both its engineer and fireman. Hayes , convinced that the state forces were insufficient. If any needed to leave, they did so in civilian clothes and unarmed, for fear of the crowd should they be discovered to be a member of the militia. Toward nightfall, a battery of artillery was stationed at the depot. The crowd grew increasingly restless until the soldiers guarding the area around the depot were again assaulted with stones and pistol fire. The crowd, by then familiar with what was likely to follow, dispersed, and the regiment was not ordered to fire. The strategy was largely successful, and by The news reported that four, including one police officer, were injured in the exchange, and several who resisted arrest were beaten severely. A contingent of the 5th under Captain Lipscomb arrived, and a volley fired over the heads of the crowd was sufficient to dissuade the crowd. The circular Passenger Car Shop and Mt. Clare Depot are located in center right. Passenger Car Shop and Paint Shop Buildings demolished after Top left to top center: Police, firefighters, and thousands of citizens flocked to the scene. The entire property, extending over a full city block, was destroyed. Realizing the severity of the situation, the firefighters concentrated their efforts on trying to save the surrounding structures. Hancock arrived and was followed by " federal troops from New York and Fort Monroe, who relieved those guarding Camden Station. From that point on, the men of the 5th and the federal troops took turns guarding the station. Abbot gave orders that his men were to halt and fix bayonets, at which point the crowd scattered. Townsend to General Hancock, who had just arrived in the city earlier that day. He was directed to move his men to Pittsburgh, where riots were ongoing. No official order was given to this effect, but their duties had by this point been entirely assumed by federal troops, the soldiers

of the 5th, and the newly formed 7th and 8th. The armory of the 6th remained guarded by a single police officer. They presented him with a list of their unanimously adopted demands. The governor informed them that he had no power to satisfy them, which was a matter for the railroad, but assured them he intended to enforce the law and put down violence by any means necessary. The committee in turn maintained they had no connection with the violence, but merely intended to stop work until their demands were met. You have more to do than simply abstain from riotous proceedings. You must not stand behind riots and let violators of the law promote the destruction of property. You are responsible for the violence that has been done, whether you were actually engaged in it or not. You on your part must drive away from you the evil-disposed people who have done so much harm, and discountenance in the plainest way everything tending to violence. He wrote that the choice of the company was to either lay off many men and retain only those for whom they had work, or to spread what work was to be done among its employees; they chose the latter as the more humane. The experience of the last ten days must satisfy everyone that if freight trains are stopped on the Baltimore and Ohio Railroad, the city of Baltimore is not only deprived of the great commercial advantages which she has heretofore enjoyed, but the entire community is made to feel that all business must be seriously crippled and the price of all kinds of family supplies greatly increased. The Baltimore American and Commercial Advertiser reported a general hope that, owing to the imminent increase in traffic due to the transport of harvested crops, the firemen would be able to make daily round trips, thus avoiding layovers, and that the company could arrange for them to return home on passenger trains when this was not feasible. He said that a system of passes would be arranged to address the issue of idle time caused by delays. He entreated the men that if the situation could not be resolved, it must "bring want and suffering upon all; suffering from which you and your families cannot hope to be exempt. He said the rescinding of the wage cuts were "entirely out of the question" and requested the men either return to work, or allow those who would to resume working. Under this guard, freight traffic once again resumed in and out of Baltimore. The strikers have gained absolutely nothing by the movement. Such of the strikers as were caught committing criminal acts are now under arrest, and the great majority of the rest are most anxious to resume their places. Some of the railroad companies have discharged every man that took part in the strike, while others have only dropped the ringleaders, and have held out inducements to the others to return to work. They marched that day with, according to contemporary accounts, counted among their ranks. Undoubtedly the extraordinary depression which has existed for the past four years in all branches of business, compelled the great railway lines to make reductions in their expenditures, and thus the numbers of unemployed have been constantly added to. The want and suffering produced by such a condition of the working classes is always an evil greatly to be deplored, but one, unfortunately, that cannot be reached by immediate legislation. The great and only remedy for unemployed labor, is the revival of business, and the encouragement of a judicious political system by which it will be brought about.

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The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Office, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment. The first, which stems from the Petition of Right, , provides that the common law knows no such thing as martial law; that is to say, martial law is not established by official authority of any sort, but arises from the nature of things, being the law of paramount necessity, leaving the civil courts to be the final judges of necessity. In the early years of the Supreme Court, the American judiciary embraced the latter theory as it held in *Luther v. Borden* that state declarations of martial law were conclusive and therefore not subject to judicial review. The decision in the Prize Cases, although not dealing directly with the subject of martial law, gave national scope to the same general principle in *As necessity creates the rule, so it limits its duration; for, if this government is continued after the courts are reinstated, it is a gross usurpation of power. Martial rule can never exist where the courts are open, and in proper and unobstructed exercise of their jurisdiction. It is also confined to the locality of actual war. The Chief Justice wrote: It has, therefore, the power to provide by law for carrying on war. This power necessarily extends to all legislation essential to the prosecution of war with vigor and success, except such as interferes with the command of the forces and the conduct of campaigns. That power and duty belong to the President as commander-in-chief. Both these powers are derived from the Constitution, but neither is defined by that instrument. Their extent must be determined by their nature, and by the principles of our institutions. What we do maintain is, that when the nation is involved in war, and some portions of the country are invaded, and all are exposed to invasion, it is within the power of Congress to determine in what states or districts such great and imminent public danger exists as justifies the authorization of military tribunals for the trial of crimes and offences against the discipline or security of the army or against the public safety. Early in the 20th century, however, the Court appeared to retreat from its stand in *Milligan* insofar as it held in *Moyer v.* 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. What are the allowable limits of military discretion, and whether or not they have been overstepped in a particular case, are judicial questions. The regime which the proclamation set up continued with certain abatements until October 24, Chief Justice Stone concurred in the result. Justice Burton, speaking for himself and Justice Frankfurter, dissented. He stressed the importance of Hawaii as a military outpost and its constant exposure to the danger of fresh invasion. On July 2, the President appointed a military commission to try them for violation of the laws of war, to wit: In the midst of the trial, the accused petitioned the Supreme Court and the United States District Court for the District of Columbia for leave to bring habeas corpus proceedings. Their argument embraced the contentions: The first argument the Court met as follows: The act of Congress in providing for the trial before military tribunals of offenses against the law of war is sufficiently definite, although Congress has not undertaken to codify or mark the precise boundaries of the law of war, or to enumerate or define by statute all the acts which that law condemns. The decision might well have rested on the ground that the Constitution is without restrictive force in wartime in a situation of this sort. Moreover, seven of the petitioners were enemy aliens, and so, strictly speaking, without constitutional status. Even had they been civilians properly domiciled in the United States at the outbreak of the war, they would have been*

subject under the statutes to restraint and other disciplinary action by the President without appeals to the courts. In any event, the Court rejected the jurisdictional challenge by one of the saboteurs on the basis of his claim to U. World War II Crimes. These individuals were charged with the crime of instigating aggressive war, which at the time of its commission was not a crime either under international law or under the laws of the prosecuting governments. It must be presumed that the President is not in his capacity as Supreme Commander bound by the prohibition in the Constitution of ex post facto laws, nor does international law forbid ex post facto laws. Response to the Attacks of September 11, Rumsfeld, the Court agreed that the President was authorized to detain a United States citizen seized in Afghanistan, although a majority of the Court appeared to reject the notion that such power was inherent in the Presidency, relying instead on statutory grounds. Bush, the Court rejected an Executive Branch argument that foreign prisoners being held at Guantanamo Bay were outside of federal court jurisdiction. The Court distinguished earlier case law arising during World War II that denied habeas corpus petitions from German citizens who had been captured and tried overseas by United States military tribunals. Bush, as a violation of the Suspension Clause. Thus, the Court concluded that the Suspension Clause was in full effect regarding these detainees. Martial Law and Domestic Disorder. The President justified his action on the ground that there was a substantial likelihood of domestic violence because state authorities were refusing to protect the marchers. See also *Martin v. In Ex parte Vallandigham*, 68 U. 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. This holding has been ignored by states on numerous occasions. *Oklahoma City, Okla.* See also *Colepaugh v.* There was no opinion of the Court. Justice Thomas also found that the Executive Branch had the power to detain the petitioner, although his dissenting opinion found that such detentions were authorized by Article II. Justice Souter, joined by Justice Ginsberg, rejected the argument that the Congress had authorized such detentions, while Justice Scalia, joined with Justice Stevens, denied that such congressional authorization was possible without a suspension of the writ of habeas corpus. The Court concluded that the habeas statute extends to American citizens held overseas by American forces operating subject to an American chain of command, even when those forces are acting as part of a multinational coalition. After the Court decided, in *Hamdan v.* We decline, therefore, to infer too much, one way or the other, from the lack of historical evidence on this point. A Brief History, 36 N. United States Marshals were also used on approximately 30 occasions. United States, F. See *United States v. United States, U.*

Chapter 4 : Martial Law and Constitutional Limitations - United States Constitution

Excerpt from Federal Aid in Domestic Disturbances, Sec. Every person in the military or civil service in the Territory of New Mexico shall aid in the enforcement Of the preceding section [abolishing peonage].

See also *Martin v. As* necessity creates the rule, so it limits its duration; for, if this government is continued after the courts are reinstated, it is a gross usurpation of power. Martial rule can never exist where the courts are open, and in proper and unobstructed exercise of their jurisdiction. It is also confined to the locality of actual war. Said the Chief Justice: It has, therefore, the power to provide by law for carrying on war. This power necessarily extends to all legislation essential to the prosecution of war with vigor and success, except such as interferes with the command of the forces and the conduct of campaigns. That power and duty belong to the President and Commander-in-Chief. Both these powers are derived from the Constitution, but neither is defined by that instrument. Their extent must be determined by their nature, and by the principles of our institutions. We by no means assert that Congress can establish and apply the laws of war where no war has been declared or exists. What we do maintain is, that when the nation is involved in war, and some portions of the country are invaded, and all are exposed to invasion, it is within the power of Congress to determine in what States or districts such great and imminent public danger exists as justifies the authorization of military tribunals for the trial of crimes and offenses against the discipline or security of the army or against the public safety. At the turn of the century, however, the Court appears to have retreated from its stand in *Milligan* insofar as it held in *Moyer v.* 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. What are the allowable limits of military discretion, and whether or not they have been overstepped in a particular case, are judicial questions. In *Ex parte Vallandigham*, 68 U. This holding has been ignored by States on numerous occasions. *Oklahoma City, Okla. Martial Law in Hawaii.* The regime which the proclamation set up continued with certain abatements until October 24, Chief Justice Stone concurred in the result. Justice Burton, speaking for himself and Justice Frankfurter, dissented. He stressed the importance of Hawaii as a military outpost and its constant exposure to the danger of fresh invasion. On July 2, the President appointed a military commission to try them for violation of the laws of war, to wit: In the midst of the trial, the accused petitioned the Supreme Court and the United States District Court for the District of Columbia for leave to bring habeas corpus proceedings. Their argument embraced the contentions: The first argument the Court met as follows: The act of Congress in providing for the trial before military tribunals of offenses against the law of war is sufficiently definite, although Congress has not undertaken to codify or mark the precise boundaries of the law of war, or to enumerate or define by statute all the acts which that law condemns. The decision might well have rested on the ground that the Constitution is without restrictive force in wartime in a situation of this sort. The saboteurs were invaders; their penetration of the boundary of the country, projected from units of a hostile fleet, was essentially a military operation, their capture was a continuation of that operation. Moreover, seven of the petitioners were enemy aliens, and so, strictly speaking, without constitutional status. Even had they been civilians properly domiciled in the United States at the outbreak of the war, they would have been subject under the statutes to restraint and other disciplinary action by the President without appeals to the courts. In any event, the Court rejected the jurisdictional challenge by one of the saboteurs on the basis of his claim to U. World War II Crimes. These individuals were charged with the crime of instigating aggressive war, which at the time of its commission was not a crime either under international law or under the laws of the prosecuting governments. It must be presumed that the President is not in his capacity as Supreme Commander bound by the prohibition in the Constitution of ex post facto laws, nor does international law forbid ex post facto laws. Response to the Attacks of September 11, Rumsfeld, the Court agreed that the President was authorized to

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detain a United States citizen seized in Afghanistan, although a majority of the Court appeared to reject the notion that such power was inherent in the Presidency, relying instead on statutory grounds. Bush,⁷ the Court rejected an Executive Branch argument that foreign prisoners being held at Guantanamo Bay, Cuba were outside of federal court jurisdiction. The Court distinguished earlier case law arising during World War II that denied habeas corpus petitions from German citizens who had been captured and tried overseas by United States military tribunals. Bush¹³ as a violation of the Suspension Clause. Thus, the Court concluded that the Suspension Clause was in full effect regarding these detainees. See also *Colepaugh v.*

Chapter 5 : Baltimore Railroad Strike & Riot of , MSA SC Guide to Documents

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Chapter 6 : Federal aid in domestic disturbances. - CORE

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Chapter 7 : The Clarence Darrow Collection

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Chapter 8 : Frederick T. Wilson (Author of Federal Aid in Domestic Disturbances,)

Abstract. Cover title"Continued by Federal aid in domestic disturbances , prepared by the Office of the Judge Advocate General. (U.S. Judge Advocate General's Dept. (Army)Includes bibliographical footnotes and index

Chapter 9 : Library Resource Finder: More Details for: Federal aid in domestic disturbances, 17

Federal aid in domestic disturbances, [microform] / prepared under the direction of Henry O. Corbin, Adjutant-General U.S. Army, by Frederick T. Wilson, chief of division, Adjutant-general's office.