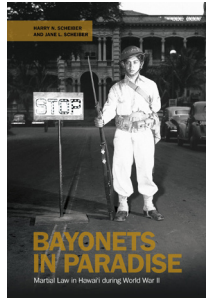


## How Martial Law Came to Hawai‘i

BY SHERRY P. BRODER

Harry N. Scheiber and Jane L. Scheiber  
*BAYONETS IN PARADISE: MARTIAL LAW IN HAWAII DURING WORLD WAR II*  
 Honolulu, HI: University of Hawaii Press, 2016



**H**ARRY SCHEIBER AND JANE SCHEIBER<sup>1</sup> have authored a wonderful and richly researched book chronicling the almost three years of comprehensive and harsh martial law in Hawai‘i. From December 7, 1941, until October 24, 1944, President Franklin Roosevelt and his War Department fully supported martial law in Hawai‘i. Constitutional rights were denied to the entire Hawaiian population of more than 430,000 people, 89 percent of whom were American citizens. *Bayonets in Paradise* describes this profound and troubling time in the history of the United States.

Just after noon on December 7th, immediately following the attack on Pearl Harbor and at the urging of the Army’s commander, Lieutenant General Walter Short, and with the concurrence of the President Roosevelt, Hawai‘i’s Territorial Governor Joseph Poindexter proclaimed martial law. The military immediately took over Iolani Palace which, since the overthrow of the Hawaiian kingdom in 1893, had served as the Capitol of Hawai‘i’s civilian government for almost 50 years. The military assumed wide-ranging and absolute authority over all legislative, executive, and judicial powers. Lieutenant General Short named himself the “Military Governor.” He issued general orders that deprived all civilians in the Territory of Hawai‘i of their constitutional rights and tightly regulated all aspects of civilian life. The writ of habeas corpus was suspended, provost courts and military tribunals replaced the state and federal courts, the press and all civilian mail and telephone calls were censored, and Japanese language newspapers and radio stations shuttered. So-called enemy aliens and citizens of Japanese (and Italian and German) descent were detained with no formal charges, and with no tangible evidence of any subversive activities or allegiance to Japan. Many were sent to internment camps in Hawai‘i and the U.S. mainland. Wages, working conditions and allocations of workers to jobs were tightly controlled. In

1. Harry Scheiber is Chancellor’s Emeritus Professor at UC Berkeley. Jane Scheiber is a research associate in the Center for the Study of Law and Society and Special Assistant to the Dean of the College of Chemistry at UC Berkeley.

short, the military exercised wide-ranging dictatorial powers in all spheres of civilian life.

It is disheartening to learn in detail the steadfast support for martial law from leaders of the pineapple and sugar companies, other powerful Hawai‘i corporate interests including the Hawai‘i Chamber of Commerce, and influential white people in Hawai‘i, especially since they knew the Japanese community in Hawai‘i to be law abiding and hardworking. More disheartening, these corporate interests and white leaders reaped handsome economic rewards during martial law and through military expenditures in Hawai‘i. The Scheibers critically analyze the army’s well-worn and inadequate excuse of “military necessity” for the imposition of martial law and condemn its continuation after the Battle of Midway in June 1942, which had crushed the Japanese Navy and freed Hawai‘i from any real threat of invasion.

In Part One, “Martial Law and Military Government,” the Scheibers describe what the military termed, the “Japanese Problem.” The basic plans to declare martial law were worked on and refined over 20 years before Pearl Harbor by the Army’s War Plans Division. The plan always envisioned making the military commander become the supreme authority answerable only to the president as commander-in-chief. Territorial Governor Joseph Poindexter, who signed the proclamation that placed Hawai‘i under martial law, later admitted that “the large Japanese population we have in Hawai‘i was the reason that was advanced [concerning] why that could be better handled through martial law than by civilian authorities.”

In Part Two, “Civilians under Army Rule: The Iron Grasp of Martial Law,” the Scheibers report that the military stringently controlled almost every civilian activity, even trash collection. Thirty-one general orders were issued in the first 10 days after the Pearl Harbor attack, then 181 more to March 1943, when some powers were returned to the civilian government, and then an additional 70 until the end of martial law in October 1944. Censorship began within hours after the Pearl Harbor bombing, even before the declaration of martial law later that day. After martial law was terminated, two dozen military “security orders” and “special orders” regulated daily life.

The many race-based regulations and particularly harsh treatment of Japanese aliens and in some cases Japanese-American citizens are carefully detailed in Part Three, “Japanese Americans under Martial Law.” Those of Japanese descent lived under the daily fear of searches, investigations, arrests, interrogations and incarceration. In December 1941, 37 percent of the territory’s population were persons of Japanese ancestry. Of this total, about 37,000 were resident aliens (the Issei) who were

ineligible for citizenship, and 121,000 were American citizens (the Nisei and Sansei). These numbers were used by the military to justify martial law. Because there were too many people of Japanese ethnicity to organize mass internment as was done on the mainland, the military practiced “selective internment” in Hawai‘i.

The Scheibers locate the origins of martial law, including plans for the islands laid decades before the war, in anti-Asian discrimination embedded in federal law and policy following the arrival of Asian immigrants to Hawai‘i and the mainland. That discrimination culminated in the Immigration Act of 1924, completely excluding immigrants from Asia, whose stated goal was “to preserve the ideal of U.S. homogeneity.”<sup>2</sup> It was but a short leap to the military’s assumption that all those of Japanese descent were complicit, which justified imprisoning community leaders based solely on their ethnicity.

Plans to counter the “Japanese menace” were the subject of reports and discussions for many years before the bombing on Pearl Harbor. General John DeWitt, who headed the internments on the West Coast, advised: “Racial affinities are not severed by migration. The Japanese race is an enemy race and while many . . . have become ‘Americanized,’ the racial strains are undiluted.” Secretary of the Navy Frank Knox recommended the incarceration or forced removal of all ethnic Japanese on O‘ahu. Even before the war broke out, the FBI and the army and naval intelligence services compiled lists of those to be interned, including leaders of the Hawai‘i Japanese community and even those who simply possessed a memento from Japan — not identified subversives.

The Scheibers recount the courageous roles played by some local government officials and others in the military and Roosevelt Administration who opposed martial law and refused to accept the assumed guilt of the ethnic Japanese. People speaking out against racial prejudice were instrumental in protecting the citizens and aliens of Japanese descent in Hawai‘i from the same fate of mass incarcerations as those on the West Coast. No member of Hawai‘i’s Japanese community was ever found guilty of collaborating with the enemy during the war. Nor was there ever any confirmed espionage or sabotage in Hawai‘i. The Scheibers point out that ethnic Japanese workers were essential to keep Hawai‘i functioning — they operated shipping, were cheap labor for the sugar and pineapple plantations, and generally supported the economy, defense industry and military effort in the Pacific.

The courage, bravery and passion of the Nisei soldiers in battle is well known in Hawai‘i. In January 1943, the War Department finally permitted 1,500 Nisei, out of 10,000 volunteers, to serve in combat. A total of 2,645 ultimately served in the 442nd Infantry Regiment. Other Nisei soldiers had earlier undergone training as

the 100th Infantry Battalion. In mid-1944, the two units joined forces in Europe as a segregated unit and fought in France, Italy, and Germany. Many of the soldiers came from internment camps. Their motto “Go For Broke” became a legend and these soldiers were awarded more citations for bravery than any other United States infantry unit of comparable size during World War II. For their valor they earned 21 Medals of Honor, more than 18,000 individual decorations, and seven Presidential Unit Citations. They played an important role in the liberation of Dachau. When the Nisei soldiers returned to the United States, at a parade and ceremony for the 442nd in Washington DC on July 18, 1946, President Harry Truman praised their sacrifices and achievements while acknowledging the discrimination they endured: “You fought, not only the enemy, but you fought prejudice, and won.”<sup>3</sup>

The Scheibers’ critique in Part Five, “Legal Challenges,” of the Army’s legal strategy to avoid judicial review of habeas corpus petitions reveals a manipulative and evasive game plan. First, the military closed the federal courts in Hawai‘i. Then when the courts reopened and granted several habeas corpus petitions, the Army appealed. The Army consistently took the position that defining military necessity was exclusively within its sole authority and discretion and could not be challenged in court. When the Ninth Circuit Court of Appeals reversed the district court,<sup>4</sup> the Army would release the prisoner and render the case moot in order to eliminate the risk of an appeal to and decision by the U.S. Supreme Court. The Army also deliberately incarcerated Japanese-American citizens in jurisdictions where it would be difficult or impossible for them to file a habeas corpus petition.

In Part Seven, “The Supreme Court Rules,” the Scheibers recount how the Army finally allowed an appeal to the U.S. Supreme Court — but by white citizens who had been tried before military tribunals. In *Duncan v. Kahanamoku*,<sup>5</sup> the U.S. Supreme Court struck the conviction of Lloyd C. Duncan and ruled that martial law was illegal. The decision was issued in 1946, eight months after Japan surrendered and long after President Roosevelt formally terminated martial law and reinstated habeas corpus in Presidential Proclamation No. 2627 on Oct. 24, 1944. The court based its findings on statutory rather than constitutional grounds and found that Governor Poindexter’s reliance on the Organic Act of Hawai‘i’s authorization of martial law did not include the power to replace civilian courts with military tribunals.

The Scheibers have authored a fascinating and moving account of the history of martial law in Hawai‘i and the

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3. Truman quoted in “Nisei at war in Europe with the 100th and 442nd,” Nisei Veterans Legacy, <https://www.nvlchawaii.org/nisei-war-europe-100th-and-442nd> [as of Oct. 9, 2021].

4. Scheiber and Scheiber, *Bayonets in Paradise*, 252.

5. (1946) 327 U.S. 324.

2. Scheiber and Scheiber, *Bayonets in Paradise*, 12.

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treatment of those of Japanese descent. Their meticulous original research and deep knowledge makes *Bayonets in Paradise* an essential contribution to the understanding of not only those times but of today, when constitutional rights have been suspended in the name of the war on

terror. This outstanding book deserves the highest praise. Please take the time to read it. ★

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SHERRY P. BRODER is a Hawai‘i civil litigator, teaches International Ocean Law, and was the first woman president of the Hawai‘i State Bar Association.