

## TEACHING AMERICAN HISTORY PROJECT

### ***Lesson Title –Andrew Jackson and the Use of Martial Law and the Suspension of Habeas Corpus***

Grade 9-12

Length of class period –*two (2) 45 minute class periods*

Inquiry – (What essential question are students answering, what problem are they solving, or what decision are they making?)

*-How did Andrew Jackson's use of martial law during the Battle of New Orleans influence later generations?*

*-Hypothetically, when is the use of martial law or the suspension of habeas corpus permissible?*

Objectives (What content and skills do you expect students to learn from this lesson?)

*-Students will read through primary sources related to Congress' debate over Andrew Jackson's use of martial law to better understand the reasons for his decision and judge whether or not it was the right course of action to take.*

*-Students will take the details of Andrew Jackson's use of martial law and extrapolate that to future events and the restricting of people's rights during wartimes, i.e. Abraham Lincoln suspending the writ of habeas corpus during the Civil War and George W. Bush's use of the Patriot Act.*

*-Students will evaluate hypothetical scenarios where the use of martial law could be used today.*

Materials (What primary sources or local resources are the basis for this lesson?) –  
(please attach)

-U.S. Constitution, specifically Article I, Section 9, Clause 2 where it states:

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

- Warshauer, Matthew Andrew Jackson and the Politics of Martial Law:

Nationalism, Civil Liberties, and Partisanship, University of Tennessee Press: Knoxville, 2006.

-The book goes into great detail about Jackson's use of martial law and the debates in the 1840's over reimbursing Jackson the \$1000 fine for contempt of court.

-Library of Congress, American Memory Collection, Congressional Globe on-line.  
Keyword searchable. <<http://memory.loc.gov/ammem/amlaw/lwgc.html>>  
-This is the Congressional record of the bill and debates over Jackson getting reimbursed for his \$1000 contempt of court fine during the martial law of New Orleans.

“Constitutional Topic: Martial Law”. The U.S. Constitution Online.  
<[http://www.usconstitution.net/constop\\_mlaw.html#milligan](http://www.usconstitution.net/constop_mlaw.html#milligan)>  
-There is a general discussion of martial law and a timeline of its use in American history

FindLaw: EX PARTE BOLLMAN, 8 U.S. 75 (1807)  
<http://laws.findlaw.com/us/8/75.html>  
-Court case where the decision rendered was that the legislative branch is the only one who can suspend habeas corpus.

FindLaw: EX PARTE MILLIGAN, 71 U.S. 2 (1866)  
<http://laws.findlaw.com/us/71/2.html>  
-Court case where Lincoln suspends habeas corpus

“USA Patriot Act (H.R. 3162)” Electronic Information Privacy Center.  
<<http://www.epic.org/privacy/terrorism/hr3162.html>>  
-Law that established government surveillance of individuals deemed potential security threat

Activities (What will you and your students do during the lesson to promote learning?)

### **Day 1**

1. *10 minutes—Students will be given some background about Jackson’s decision to declare martial law in New Orleans prior, during, and after the Battle of New Orleans and the consequences of that decision. (This background can be found in Warshauer book.)*
2. *15 minutes—Students will be given some excerpts from Congressional Globe of Congressmen debating Jackson’s use of martial law in New Orleans. Students should read one of four Congressmen’s speech individually.*
3. *15 minutes—Students will be grouped with other students who read the other 3 congressional speeches and discussed the overall point of view of their Congressman. Students will decide: 1) Whether Jackson was right or wrong in declaring martial law in New Orleans? And 2) Should Jackson be reimbursed for his \$1000 contempt of court fine?*
4. *5 minutes—Students will be given the homework assignment of writing a paragraph answering the two questions from #3.*

## Day 2

1. 10-15 minutes—Students will share their paragraphs and defend their positions
2. 10-15 minutes—Students will discuss the primary sources on Abraham Lincoln's suspension of habeas corpus and George W. Bush's use of the Patriot Act and decide if these situations warranted the restriction/limitations of people's rights.
3. 15-25 minutes—Students in small groups will discuss hypothetical situations where the use of martial law could be used.
  - a. Scenario #1—A major hurricane hits New England. Thousands are dead, billions in property is damaged and destroyed. The president declares martial law, suspends civil liberties, and sends in the military.
  - b. Scenario #2—The president declares that there is a serious potential terrorist attack on the United States and raises the terrorist threat level to red, the highest warning. He subsequently suspends the writ of habeas corpus and imposes martial law throughout the nation.
  - c. Scenario #3—There is a flu pandemic in Boston, New York, and Philadelphia. The president declares martial law, suspends the writ of habeas corpus, and nationalizes the National Guard of MA, NY, CT, NJ, and PA.

How will you assess what student learned during this lesson?

*Day 1—paragraph on Jackson's use of martial law and his reimbursement*

*Day 2—responses to the hypothetical situation.*

Connecticut Framework Performance Standards –

- gather historical data from multiple sources
- identify the main idea in a source of historical information
- identify various parties and analyze their interest in conflicts from selected historical periods
- describe, explain and analyze political, economic and social consequences that came about as the resolution of conflict
- describe and analyze, using historical data and understandings, the options which are available to parties involved in contemporary conflicts or decision making
- historical and contemporary conflicts over Constitutional principles

### Additional Materials

<http://www.nndb.com/people/654/000026576/>

During his stay in New Orleans he proclaimed martial law, and carried out his measures with unrelenting sternness, banishing from the town a judge who attempted resistance. When civil law was restored, Jackson was fined \$1000 for contempt of court; in 1844 Congress ordered the fine with interest (\$2700) to be repaid.

[http://www.usconstitution.net/consttop\\_mlaw.html#milligan](http://www.usconstitution.net/consttop_mlaw.html#milligan)

## Constitutional Topic: Martial Law

The Constitutional Topics pages at the USConstitution.net site are presented to delve deeper into topics than can be provided on the [Glossary Page](#) or in the [FAQ pages](#). This Topic Page concerns Martial Law. Martial law is not explicitly mentioned in the Constitution, but the suspension of habeas corpus is mentioned in [Article 1, Section 9](#), and the activation of the militia in time of rebellion or invasion is mentioned in [Article 1, Section 8](#). The Topic Page for [Military Justice](#) may also be of interest.

The sources for this topic are, primarily, [The Living U.S. Constitution](#) by Saul Padover and Jacob Landynski (Meridian, 1995); [Constitutional Law: Cases and Commentary](#) by Daniel Hall (Lawyer's Cooperative Publishing, 1997); and *ex parte Milligan*, 71 US 2.

*Note: please note the spelling of "martial law." A common mistake is to spell it as "marshal law" or "marshall law." A "marshal" is a law enforcement officer of, for example, the U.S. Marshal Service. There is such a thing as a marshal, but no such thing as marshal law.*

- [Introduction](#)
- *ex parte Milligan*
- [Examples of Martial Law](#)

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In strict dictionary terms, martial law is the suspension of civil authority and the imposition of military authority. When we say a region or country is "under martial law," we mean to say that the military is in control of the area, that it acts as the police, as the courts, as the legislature. The degree of control might vary - a nation may have a civilian legislature but have the courts administered by the military. Or the legislature and courts may operate under civilian control with a military ruler. In each case, martial law is in effect, even if it is not called "martial law."

Martial law should not be confused with [military justice](#). In the United States, for example, each branch of the military has its own judicial structures in place. Members of the service are under the control of military law, and in some cases civilians working for or with the military may be subject to military law. But this is the normal course of business in the military. Martial law is the exception to the rule. In the United States, the military courts were created by the Congress, and cases can be appealed out of the military system to the Supreme Court in many cases. In addition, a civilian court can petition the military for habeas corpus.

Article 1, Section 9 states, "The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." [Habeas corpus](#) is a concept of law, in which a person may not be held by the government without a valid reason for being held. A writ of habeas corpus can be issued by a court upon a government agency (such as a police force or the military). Such a writ compels the agency to produce the individual to the court, and to convince the court that the person is being reasonably held. The suspension of habeas corpus allows an agency to hold a person without a charge. Suspension of habeas corpus is often equated with martial law.

Because of this connection of the two concepts, it is often argued that only Congress can declare martial law, because Congress alone is granted the power to suspend the writ. The President, however, is commander-in-chief of the military, and it has been argued that the President can take it upon himself to declare martial law. In these times, Congress may decide not to act, effectively accepting martial law by failing to stop it; Congress may agree to the declaration, putting the official stamp of approval on the declaration; or it can reject the President's imposition of martial law, which could set up a power struggle between the Congress and the Executive that only the Judiciary would be able to resolve.

In the United States, there is precedent for martial law. Several times in the course of our history, martial law of varying degrees has been declared. The most obvious and often-cited example was when President Lincoln declared martial law during the Civil War. This instance provides us with most of the rules for martial law that we would use today, should the need arise.

### *ex parte Milligan*

On September 15, 1863, Lincoln imposed Congressionally-authorized martial law. The authorizing act allowed the President to suspend habeas corpus throughout the entire United States. Lincoln imposed the suspension on "prisoners of war, spies, or aiders and abettors of the enemy," as well as on other classes of people, such as draft dodgers. The President's proclamation was challenged in *ex parte Milligan* (71 US 2 [1866]). The Supreme Court ruled that Lincoln's imposition of martial law (by way of suspension of habeas corpus) was unconstitutional.

In arguments before the Court, the counsel for the United States spoke to the question of "what is martial law?" "Martial law," it was argued, "is the will of the commanding officer of an armed force, or of a geographical military department, expressed in time of war within the limits of his military jurisdiction, as necessity demands and prudence dictates, restrained or enlarged by the orders of his military chief, or supreme executive ruler." In other words, martial law is imposed by a local commander on the region he controls, on an as-needed basis. Further, it was argued, "The officer executing martial law is at the same time supreme legislator, supreme judge, and supreme executive. As necessity makes his will the law, he only can define and declare it; and whether or not it is infringed, and of the extent of the infraction, he alone can judge; and his sole order punishes or acquits the alleged offender."

In this case, Lambden Milligan, for whom the case is named, was arrested in Indiana as a Confederate sympathizer. Indiana, like the rest of the United States, was part of a military district set up to help conduct the war. Milligan was tried by military commission and sentenced to die by hanging. After his conviction, Milligan petitioned the Circuit Court for habeas corpus, arguing that his arrest, trial, and conviction were all unconstitutional. What the Supreme Court had to decide, it said, was "Had [the military commission] the legal power and authority to try and punish [Milligan]?"

Resoundingly, the Court said no. The Court stated what is almost painfully obvious: "Martial law ... destroys every guarantee of the Constitution." The Court reminded the reader that such actions were taken by the King of Great Britain, which caused, in part, the Revolution. "Civil liberty and this kind of martial law cannot endure together; the antagonism is irreconcilable; and, in the conflict, one or the other must perish."

Did this mean that martial law could never be implemented? No, the Court said. The President can declare martial law when circumstances warrant it: When the civil authority cannot operate, then martial law is not only constitutional, but would be necessary: "If, in foreign invasion or civil war, the courts are actually closed, and it is impossible to administer criminal justice according to law, then, on the theatre of active military operations, where war really prevails, there is a necessity to furnish a substitute for the civil authority, thus overthrown, to preserve the safety of the army and society; and as no power is left but the military, it is allowed to govern by martial rule until the laws can have their free course. 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 the proper and unobstructed exercise of their jurisdiction. It is also confined to the locality of actual war."

### **Examples of Martial Law**

Through out United States history are several examples of the imposition of martial law, aside from that during the Civil War.

During the war of 1812, General Andrew Jackson imposed martial law within his encampment at New Orleans, which he had recently liberated. Martial law was also imposed in a four mile radius around the camp. When word came of the end of the war, Jackson maintained martial law, contending that he had not gotten official word of the peace. A judge demanded habeas corpus for a man arrested for sedition. Rather than comply with the writ, Jackson had the judge arrested. After the civil authority was restored, the judge fined Jackson \$1000, which he paid, and for which the Congress later reimbursed Jackson.

In 1892, at Coeur d'Alene, Idaho, rebellious mine workers blew up a mill and shot at strike-breaking workers. The explosion leveled a four-story building and killed one person. Mine owners asked the governor to declare martial law, which he did. At the same time, a request was made for federal troops to back guardsmen. Over 600 people were arrested. The list was whittled down to two dozen ring leaders who were tried in civil court. While in prison, the mine workers formed a new union, the Western Federation of Miners.

In 1914, imposition of martial law climaxed the so-called Coal Field Wars in Colorado. Dating back decades, the conflicts came to a head in Ludlow in 1913. The Colorado National Guard was called in to quell the strikers. For a time, the peace was kept, but it is reported that the make-up of the Guard stationed at the mines began to shift from impartial normal troops to companies of loyal mine guards. Clashes increased and the proclamation of martial law was made by the governor. President Wilson sent in federal troops, eventually ending the violence.

In 1934, California Governor Frank Merriam placed the docks of San Francisco under martial law, citing "riots and tumult" resulting from a dock worker's strike. The Governor threatened to place the entire city under martial law. The National Guard was called in to open the docks, and a city-wide institution of martial law was averted when goods began to flow. The guardsmen were empowered to make arrests and to then try detainees or turn them over to the civil courts.

Martial law and San Francisco were no strangers - following the earthquake of 1906, the troops stationed in the Presidio were pressed into service. Guards were posted throughout the city, and all dynamite was confiscated. The dynamite was used to destroy buildings in the path of fires, to prevent the fires from spreading. Troops were ordered to shoot looters. Though there was never an official declaration of martial law, the event is often cited as such. However, at all times it appears the troops took their orders indirectly from the civil authority.

Though not a state at the time, Hawaii was placed under martial law in 1941, following the Japanese attack on Pearl Harbor. Many of the residents of Hawaii were, and are, of Asian descent, and the loyalty of these people was called into question. After the war, the federal judge for the islands condemned the conduct of martial law, saying, "Gov. Poindexter declared lawfully martial law but the Army went beyond the governor and set up that which was lawful only in conquered enemy territory namely, military government which is not bound by the Constitution. And they ... threw the Constitution into the discard and set up a military dictatorship."

On 8/26/2005, in the wake of Hurricane Katrina, New Orleans was placed under martial law after widespread flooding rendered civil authority ineffective. The state of Louisiana does not have an actual legal construct called "martial law," but instead something quite like it: a state of public health emergency. The state of emergency allowed the governor can suspend laws, order evacuations, and limit the sales of items such as alcohol and firearms. The governor's order limited the state of emergency, to end on 9/25/2005, "unless terminated sooner."

There have been many instances of the use of the military within the borders of the United States, such as during the Whiskey Rebellion and in the South during the civil rights crises, but these acts are not tantamount to a declaration of martial law. The distinction must be made as clear as that between martial law and military justice: deployment of troops does not necessarily mean that the civil courts cannot function, and that is one of the keys, as the Supreme Court noted, to martial law.