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ORIGINAL ARTICLE

An Instrument of Military Power: The Development and Evolution of Japanese Martial Law in Occupied Territories, 1894–1945

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Abstract

The Imperial Japanese Army imposed martial law (*gunritsu*) in areas occupied during each of the full-scale conflicts it fought between 1894 and 1945. This article traces changes and continuities in the purpose, function, and content of martial law during the First Sino-Japanese War, the Russo-Japanese War, and the Asia-Pacific War to advance our historical knowledge of a much-understudied aspect of Japanese warfare. In so doing, it details the development and evolution of martial law as an instrument of military power showing how regulations were also influenced by and, therefore, tended to reflect the different wartime priorities and macro-level policies of the (military) leadership. It also highlights that the character of martial law remained largely unchanged and reveals that many of the legal practices utilized during the Asia-Pacific War were rooted in earlier conflicts. It ultimately argues, however, that wartime context and immediate military objectives took precedence over any longer-term political ambitions in Asia and, more crucially, over the welfare of civilians under occupation.

The Imperial Japanese Army (IJA) imposed martial law (*gunritsu*), as well as additional regulations regarding its enforcement, in areas that came under military control during all full-scale conflicts fought between 1894 and 1945.[1]

[1] While some dictionaries offer "martial law" for a translation of "*gunritsu*," it has been more commonly translated as "military law." In English, "military law" means a fixed set of rules which govern the conduct of armed forces, whereas martial law, an historically confused and inconsistent term, refers to the extension of military rule over civilians either domestically in times of emergency (normally "*kaigen*" in Japanese) or in occupied territories as part of a temporary

This was a form of emergency legislation deriving from the "right of supreme command" (*tōsuiken*) in Article 11 of the Meiji Constitution enacted uniquely for each war and, therefore, rooted in military necessity. As such, it functioned, first and foremost, as a means of protecting the IJA and securing its interests in occupied territories.[2] It also imposed restrictions and prohibitions upon the day-to-day lives of civilians under occupation as a principal means of control and ensured compliance by threatening military punishment for contravention of its provisions. In short, law in this context was, as this article argues throughout, wielded as an instrument of military power.

Such has been similarly observed by Kita Hiroaki[3] who emphasized that the swift, stern judgment of civilians seen in the Asia-Pacific War (1937–1945) was an attribute of a judicial mechanism that prioritized military interests to the "maximum extent."[4] Indeed, wartime concerns, military needs and, at times, convenience were at the heart of the enforcement of martial law during this conflict. Violations were investigated by the "dreaded" Kenpeitai, units initially modeled on the French gendarmerie which held, according to the Field Kenpei Handbook, "power over life and death" (*seisatsuyodatsu no ken*). Infamous for the use of torture in their investigations, kenpei officers also conducted summary arrests and were empowered to carry out on-the-spot judgments in certain cases.[5] Military courts followed streamlined procedures, failed to uphold (what have now become) normal judicial safeguards and operated under the principle of severe punishment (*genbatsu shugi*) in wartime to deliver judgments as befit the military situation.[6] Moreover, through the legal framework established under martial law regulations, military policies which could be exploitative and intrusive were reinforced, often contributing to the burdens, hardships, and privations endured by civilians under wartime occupation.[7] In

installation of military government. While "*gunritsu*" was used in reference to military laws in the early Meiji period, around the time of the Russo-Japanese War, "*gunritsu*" started to be used to describe military regulations (with the same effect as law) imposed over civilians in occupied territory. As such, "martial law" is a better English descriptor of what is meant by "*gunritsu*" in this context and will be used throughout this article.

[2] For a general overview, see Kita Hiroaki, *Gunritsu hōtei: Senji-ka no shirarezaru (saiban)* (Tokyo: Asahi Shinbun-sha, 1997), 11–16.

[3] Name order for Japanese names in this article follows Japanese convention with family name given first, unless the work cited is an English publication in which name order was given in accordance with Western convention.

[4] Kita Hiroaki, *Nitchū kaisen: Gun-hōmukyoku bunsho kara mita kyokoku itchi taisei e no michi* (Tokyo: Chūōkōron-sha, 1994), 217–18; for a detailed discussion of navy martial law, see Kita Hiroaki, "Shina hōmen kantai no baai wo shutosuru gunritsu ni tsuite," *Bōei-hō kenkyū* no. 9 (1985): 180–205.

[5] *Yasen kenpei hikkei* (Tokyo: Kenpei Gakkō, c. 1942), 138–39.

[6] Such principles were highlighted in "Shina jihen gunpyō-shi: Dai 2-kan, dai 3-shō, dai 6-han/4-ken-satsu jō no sochi oyobi genron tōsei" (November 1943), 1760. Digitized record available via Japan Center for Asian Historical Records (https://www.jacar.go.jp/) (hereafter JACAR): C11110839000; original at the Military Archives at the National Institute of Defence Studies (hereafter NIDS): Shina-shina jihen zenpan-478.

[7] For example, one civilian alluded to the "rigors of martial law" in his account of the occupation of the Philippines, see Jose Reyes, *Terrorism and Redemption: Japanese Atrocities in the Philippines*, trans. Jose Garcia Insua (Manila: Publisher unknown, 1945), 16.

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other words, martial law was a central, though much-understudied, element of military occupation policy and practice during the Asia-Pacific War which impacted the lives of the populations under Japanese rule.

This article offers the first English-language examination of martial law, in addition to various other ordinances enacted under this rubric, imposed by the IJA in occupied territory. It builds upon the work of Kita by tracing the origins and initial use of law as an instrument of military power during the First Sino-Japanese War (1894–1895) and then exploring its subsequent development through the conflict between Russia and Japan in 1904/1905. In tracing changes and continuities in the content, purpose, and function of martial law over the course of two early wars in which Japanese forces won international praise for their conduct—a stark contrast to the brutality demonstrated between 1937 and 1945—the article stresses that the fundamental character of martial law remained basically unchanged. Furthermore, in its focus on law specifically, it highlights that many of the judicial practices which evolved during the Asia-Pacific War (some of which later condemned as war crimes), were systemic, rooted in the legal framework first established and developed during these earlier conflicts.[8] The article also complements the recent work of Ono Hiroshi who has examined military administration laws (*gunsei-hō*), including martial law, enacted in occupied areas from the First Sino-Japanese War until the Siberian Intervention (1918–1921).[9] However, it offers a different approach in two respects. First, it analyzes continuities and changes in a longer-term frame by incorporating the Asia-Pacific War, a conflict which diverged substantially in terms of scope, scale, and character. In doing so, it observes key developments commensurate with the shifting (deteriorating) wartime situation which emphasize that, while martial law was often used in support of political goals as Ono has argued of military administration laws, at its core it remained a fundamentally *military* control mechanism central to occupation strategy.[10] Second, it adopts a different analytical perspective. Though Ono has convincingly argued for the importance of integrating analysis of such laws within the broader framework of Japanese legal and political history, this article aims to accentuate the value of examining the military's instrumentalization of law in occupied territories to a broader history and understanding of Japanese military conduct and occupation practice, particularly during the Asia-Pacific War. In this manner, it aligns somewhat with the interdisciplinary scholarship which has exposed the instrumentality of law in other, albeit predominantly colonial, contexts in support of foreign rule which have, thereby, underscored the importance of law to histories of

[8] For examples of law- and justice-related war crimes, see United Nations' War Crimes Commission, *Law Reports of the Trials of War Criminals*, 15 Vols. (London: HMSO, 1948–1949), Vol. 5, 25–36.

[9] Ono Hiroshi, "Meiji kokka ni okeru senryōchi gunsei-hō—Nisshin sensō-ki kara shiberia shuppei-ki made wo chūshin ni," *Hō to bunka no seido-shi* 3 (2023): 33–69; Ono Hiroshi, "Honkon gunsei-hō jōsetsu: 1942-nen seitei kōtoku-rei no shōkai wo chūshin ni," *Kobe Law Journal* 67, no. 1 (2017): 49–84 and Ono Hiroshi, "Kaigun senryō-ki nanyō guntō no hō gairon," *Kobe Law Journal* 68, no. 3 (2018): 37–101.

[10] Ono, "Meiji kokka," 68–69.

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empire.[11] This article adds to this literature by drawing attention to the more overlooked but related use of law in support of military rule during wartime occupation. Indeed, it shows that martial law was one of the principal instruments through which the Japanese military established and continually reinforced its authority over occupied populations. To highlight this, the initial conception of (martial) law as a tool of occupation is discussed in the following section which begins with an analysis of its development and use in occupied territory during the IJA's first modern conflict in 1894.

Initial Conception: The First Sino–Japanese War, 1894–1895

The outbreak of war between China and Japan in July 1894 was a culmination of long-standing Sino-Japanese rivalry over influence in Korea which had intensified following the Tonghak Rebellion in April that year. The leadership's main concerns in this war were to fully assert Japanese influence over the peninsula—"the dagger pointed at the heart of Japan"—thereby dismantling the traditional tributary system and ensuring a more favorable balance of power in the region which was understood to be essential for national defense.[12] As Japan's first modern conflict, it was also viewed as an opportunity to improve the nation's international standing. In a war against an ostensibly "uncivilized" enemy, the IJA, as the international face of Japan, could demonstrate the progress that had been made following years of reform and modernization under the Meiji slogan, "rich country, strong army" (*fukoku kyōhei*). More importantly, by demonstrating compliance with international law, Japan could assert its "civilized" status and gain admittance into the "family of nations."[13] Aside from impressing with striking military victories then, Japanese soldiers were instructed that their conduct be above reproach and in conformity with the laws and customs of warfare.[14] The exercise of legislative and judicial authority over civilians in occupied areas was a central element of this. It would serve as a further test of Japan's proficiency in navigating the complexities, ambiguities, and lacunae of the emerging law of belligerent occupation.

[11] For two recent examples, see Troy Downs, "Bengal Regulations 10 of 1804 and Martial Law in British Colonial India," *Law and History Review* 40, no. 1 (2022): 1–36 and Will Smiley, "Lawless Wars of Empire? The International Law of War in the Philippines, 1898–1903," *Law and History Review* 36, no. 3 (2018): 511–50. For an overview of the Japanese use of law in the imperial context, see Thomas David Dubois, "Rule of Law in a Brave New Empire: Legal Rhetoric and Practice in Manchukuo," *Law and History Review* 26, no. 2 (2008): 285–317.

[12] Peter Duus, *The Abacus and the Sword: The Japanese Penetration of Korea* (1995; pbk edn, Berkeley: University of California Press, 1998), 49–51; origins of this conflict and war aims are detailed in Stewart Lone, *Japan's First Modern War: Army and Society in the Conflict with China, 1894–5* (London: Macmillan, 1994), 12–50 and Sarah C. M. Paine., *The Japanese Empire: Grand Strategy from the Meiji Restoration to the Pacific War* (Cambridge: Cambridge University Press, 2017), 15–26.

[13] Lone, *Japan's First Modern War*, 142. Douglas Howland, "Japan's Civilized War: International Law as Diplomacy in the Sino-Japanese War (1894–1895)," *Journal of the History of International Law* 9 (2007): 179–201; see also Shogo Suzuki, *Civilization and Empire: China and Japan's Encounter with European International Society* (London and New York: Routledge, 2009), 161–76.

[14] Lone, *Japan's First Modern War*, 144–46; Sarah C. M. Paine, *The Sino-Japanese War of 1894–1895: Perceptions, Power and Primacy* (Cambridge: Cambridge University Press, 2003), 209–10.

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Against this backdrop, Japanese martial law developed along the same lines as that of other powers as a set of informal rules originating from the necessities of wartime occupation.[15] With no pre-existing legislation for, or precedents regarding, procedure for the administration of justice in occupied territories, senior commanders drafted "emergency laws" (*kinkyū hōshō*) in the field on an ad hoc basis as they considered necessary. In establishing these improvised rules, commanders drew on Japanese laws and customs, but were also counseled by legal advisors like Ariga Nagao who, as experts in international law, were well-versed in the nascent and ongoing debates regarding the application of the rules of warfare. To ensure conformity with contemporary standards, commanders enacted disciplinary measures solely for the protection of the IJA and the populace. Violators were tried in impromptu military courts rather than summarily and, in the Second Army, permission had to be sought from the commander-in-chief prior to the enforcement of a death sentence.[16]

This patchwork of informal provisions and procedures remained in place until February 23, 1895 when Imperial General Headquarters issued the Ordinance for the Punishment of People in Occupied Areas (*Senryōchi jinmin shobun-rei*), hereafter Ordinance.[17] Military authorities in Tokyo, under Prince Komatsu Akihito, began drafting regulations, with input from legal experts and government ministers, to formalize military authority in occupied territories following the invasion of the Liaodong Peninsula in late 1894. Earlier iterations concurred that respective army commanders should have the power to issue any appropriate orders as necessary for the preservation of public safety and social order, as well as the realization of wartime objectives. However, in line with obligations under international law, these drafts also stipulated that existing Qing laws continue to be enforced, modified, or suspended only when unavoidable, and that trials involving civil cases or criminal offences which did not have an impact on the military be adjudicated in local courts.[18] Draft provisions detailing responsibilities ascribed to officials assigned to civil administrations (*minsei-chō*), organized in late 1894 to assist in duties relating to the maintenance of peace in occupied areas which included overseeing the administration of justice, advised a similar approach.[19] These early drafts were not formally enacted, however.

[15] For other examples and discussion, see James M. Spaight, *War Rights on Land* (London: Macmillan, 1911), 333–65 and Francis Lieber and Guido Norman Lieber, *To Save the Country: A Lost Treatise on Martial Law*, eds. Will Smiley and John Fabian Witt (New Haven: Yale University Press, 2019).

[16] More detailed overview of this early system given in Ariga Nagao, *Nisshin sen'eki kokusaihō ron* (Tokyo: Rikugun Daigakkō, 1896), 270–75.

[17] "Horyo oyobi hokaku-sen shobun nami senryōchi jinmin shobun" (February 23, 1895), 0381–0384. JACAR: C08040745400, NIDS: Daihon'ei-nisshin sen'eki shorui tsudzuri-M28-12-151.

[18] "Senryōchi ni okeru ware gun no kengen kitei," 0870-2. JACAR: C11080095400; NIDS: Kaigunshō-kōbun shorui-M27_28-2-2; for obligations under international law, see Project of an International Declaration concerning the Laws and Customs of War. Brussels, August 27, 1874, Articles 2 and 3 (https://ihl-databases.icrc.org/en/ihl-treaties/brussels-decl-1874?activeTab=undefined) (accessed January 30, 2023).

[19] "Meiji 27—28, Sen'eki tōkei gekan, dai 20-hen: Senryōchi gyōsei," 0985. JACAR: C14020395000, NIDS: Chūō-zenpan tōkei nenpō-7; for regulations, see "Senryōchi jinmin ni kansuru

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The final version of what became the Ordinance outlined both substantive and procedural elements to create a uniform, but flexible system for the adjudication of offences committed by civilians which placed military needs at the center.[20] According to a set of explanatory notes appended to the text, this mechanism was to be based as far as possible on the recently established modern Japanese legal system since it was thought that this framework would sufficiently cover the vast majority of offences and would provide a useful point of reference for military judges involved in the exercise of judicial power. It was recognized, however, that peacetime laws and procedures were not always appropriate during wartime.[21] Thus, while Article 1 of the Ordinance comprehensively stated that any acts of harm toward Japanese forces would be punished according to Japanese laws, the remaining articles were designed to accommodate a more fluid, practical approach commensurate with the perceived necessities and demands of war. In respect to the substantive components of the Ordinance, this was achieved primarily by removing some of the restrictive legal requirements found in the existing penal codes and through adopting simple, straightforward language to reduce the need for complex legal deliberation.[22] It also involved permitting harsher punishments than normally allowed in Japanese legislation and making punishable acts which could be harmful in the wartime context, but which were not otherwise illegal. Article 2 thus enumerated a range of acts of obvious detriment to an occupying force, like war treason, espionage, damage to military equipment, and poisoning of the water supply, but also sanctioned non-criminal acts like the spreading of rumors and the careless making of noise. These were subject to the death penalty which was considered a valuable intimidation tactic, particularly in the case of "defiant" or "dishonest" elements of the populace. By prescribing the death penalty even for more minor offences, the leadership hoped to inspire awe for the authority of the IJA among Chinese people which would deter further obstructions to military activities.[23]

It was considered important, however, that those enforcing the Ordinance be free to determine whether it was necessary to take such strict disciplinary action based on their own individual assessment of the circumstances of the crime, as well as on contemplation of whether the harm to Japanese forces had been significant and on evaluation of the apparent sentiments of the local populace. If no real harm had been done and local conditions did not warrant harsh punishment as an example to others, according to Article 3, judges could pronounce alternative sentences at their own discretion.[24] It was believed that to rigidly impose the death penalty with no consideration of mitigating circumstances would have been unjust. At the same time, it was

kitei/Shinkoku senryōchi minsei chōkan-sei" (November 1894), 0907-14. JACAR: C06061251300, NIDS: Daihon'ei-nisshin sen'eki shorui tsudzuri-M27-11-123.

[20] "Senryōchi jinmin shobun-rei kyōgi ni taishi kaian riyū-sho aiso kaitō" (January 24, 1895), 0077–100. JACAR: C06061398500, NIDS: Daihon'ei-nisshin sen'eki shorui tsudzuri-M28-17-143.

[21] "Horyo," 0386–8.

[22] "Horyo," 0386–9.

[23] Ibid., 0389–4.

[24] Ibid., 0393.

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understood that disciplining those who had been involved in the crime, even if they played a minor role, was essential if martial law was to fulfill the preventive function envisioned for it. Since Japanese legislation placed strict limitations and legal requirements on the reduction of sentences and on the punishment of accessories, conspirators, and others, the spirit of this article, as explained in the notes, was to widen the scope of existing laws by giving judges latitude to adapt punishments to local circumstances and the perceived needs of the military at that specific time.[25] Reductions in punishment were not only possible for those who attempted, aided and abetted, instigated, or conspired to commit an offence. If it was deemed advantageous, judges might also commute sentences for principal offenders. When doing so, they were generally expected to use Japanese laws as a baseline; however, as stipulated in Article 4, punishments might be selected from those in practice in that locality, if deemed appropriate or advantageous. Judges could decide on the best course of action based on their evaluation of the customs of the area and the requirements of the present military situation. The explanatory notes did warn, however, that the freedom to impose alternative sentences was not meant to be utilized simply for the judges' own convenience. Traditional customs (especially those involving corporal punishment) were not be used as a way of teaching cruel lessons; they were to be employed only when absolutely necessary.[26]

Indeed, the prolific and unjustified use of customary corporal punishments would contradict the reasoning behind Article 5 which skirted the boundaries of international law somewhat by stipulating that any person who disturbed the peace or who inflicted injury on the body or property of another would be punished upon consultation with local customs and in reference to the laws of Japan. In the explanatory notes it was recognized that in the maintenance of public order, the occupier was meant to respect existing laws, amending or replacing them only as needed from a military standpoint.[27] However, it was argued that because there was a tendency for brutal laws and customs to be practiced in "inferior, uncivilized countries" (*rettō mikai no kuni*), while consulting local laws, judges should nevertheless mainly be guided by the principles enshrined in Japanese penal codes. This was not a matter of military necessity *per se*, but was thought essential in upholding civilized standards by avoiding barbaric practices like that of *lingchi*, a slow method of execution popularized in recent times as "death by a thousand cuts."[28] As highlighted here then, the substantive features of martial law strongly accentuated the civilization–barbarism dichotomy in the framing of this war and, consequently, tended to stress reliance on Japanese laws as a guide to ensuring the "civilized" exercise of judicial authority.

[25] "Horyo," 0392–4.

[26] Ibid., 0392–5.

[27] "Horyo," 0396, discussed in William Edward Hall, *International Law* (Oxford: Clarendon Press, 1880), 395–400.

[28] Ibid., 0396.

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While the Army General Staff similarly encouraged reference to Japanese codes of criminal procedure in respect to the procedural components of martial law, they were aware that the administrative and judicial mechanisms established by the military in occupied territory could not be as they were in peacetime Japan. As such, Article 6 necessitated the establishment of military courts (*gunji hōin*) in all occupied areas. An earlier proposal had suggested a similar approach to the aforementioned drafts in that criminal cases directly affecting the military be tried by courts-martial (*gunpō kaigi*), while those that affected civilians be tried by civil administrations. It was thought, however, that differentiating in such a way would not be so clear-cut in practice and would consequently add an unnecessary complication to a process that was supposed to be convenient and swift. Furthermore, since courts-martial moved frequently with the headquarters of each army, it was argued that it would have been logistically cumbersome to send offenders to wherever the court-martial happened to be located.[29] Military courts, which could be convened at any location under the jurisdiction of the army or a civil administration, would try all criminal cases as a matter of practicality and, according to Article 7, would also have the authority to accept or reject civil cases as required in the absence of local judicial organs.[30]

These courts, as outlined in Article 8, would be composed of judges assigned from among the officers or senior officials of whichever court-martial or civil administration had jurisdiction to try the offence. While a military court was essentially a court-martial, as per the explanatory notes, its composition would not need to fully conform to the regulations established in the Army/Navy Code of Criminal Procedure (*Riku/Kaigun chizai-hō*), while the disposition of cases need not be compliant with the provisions set forth in the civilian Code of Criminal Procedure (*Chizai-hō*).[31] As such, under Article 9, army commanders were permitted to establish more detailed regulations regarding trial procedure and sentencing, in addition to issuing instructions on any other matters regarding the implementation of the Ordinance and methods for communicating its provisions to the populace. The explanatory notes reiterated here that any acts not covered by the Ordinance would be punished according to Japanese penal codes and advised that commanders publicly announce the relevant articles so as to ensure that the populace were aware of acts which they should avoid. Overall, however, it was acknowledged that the Ordinance was very general in nature and that commanders must have the authority to enact more detailed regulations as necessary to fully implement its provisions in wartime.[32] In other words, the center recognized that, while the Ordinance could offer guidance, the implementation of its provisions

[29] "Horyo," 0396–9.

[30] Ibid., 0399–0400.

[31] "Hōritsu dai 2-gō: Rikugun chizai-hō kaisei" (October 19, 1888), Article 11. JACAR: A03020018700; original at National Archives of Japan (NAJ): 00179100; see Joseph E. de Becker, *Japanese Code of Criminal Procedure* (Yokohama: Kelly & Walsh Ltd., 1898) for an English translation of the Code of Criminal Procedure.

[32] "Horyo," 0400–1.

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had to be determined on-the-ground if it were to truly serve military objectives.

The use of martial law-esque regulations in the form of the Ordinance during Japan's first modern conflict emerged organically in the field during the opening months of battle. After the expansion of fighting into enemy territory, however, there was an effort on the part of the leadership to standardize and centralize the administration of law and justice in occupied areas and ensure it largely conformed with established international practice. Interestingly, given the aims for this war, early draft regulations which emphasized close adherence to the laws of war regarding respect for local laws and customs appear to have been rejected in favor of an Ordinance which, at its heart, gave precedence to military needs and wartime convenience. The Ordinance was designed to offer a flexible framework which afforded a high degree of latitude to those on-the-ground in regard its enforcement. Of course, the underlying political aim of demonstrating Japan's "civilized" status to the world through observance of international law was prevalent and its influence is observed throughout the document. But, it was first and foremost an instrument of power designed to protect the IJA and ensure its interests by permitting extended military control over aspects of life in occupied areas, restricting certain undesirable behaviors regardless of their inherent illegality, simplifying and accelerating the judicial process and, ultimately, deterring unrest through threats of severe punishment. The different circumstances prevailing in the Russo-Japanese War, as outlined in the section which follows, saw ideas about the jurisdiction, content, and scope of martial law evolve in diverse ways. However, as will be shown, this initial conception of martial law remained true of its character throughout.

Conflicting Ideas: The Russo–Japanese War, 1904–1905

In February 1904, years of imperial rivalry with Russia, which had emerged as the biggest threat to Japan after 1895, erupted in war. Following a series of failed attempts to persuade Russia to accept Japanese dominance in Korea in exchange for recognition of Russian dominance in Manchuria, the Japanese leadership viewed victory in this war as the only means to assert control over the peninsula and realize growing imperial ambitions for the region.[33] In prosecuting this war, Japanese leaders were cautious to avoid this conflict leading to international isolation. The Tripartite Intervention of 1895, in which France, Germany, and Russia had interceded to force Japan to return control of the Liaodong Peninsula to China, had provided an important lesson.[34] Aware also of the obligations that befell Japan as a member of the

[33] For an overview of origins and strategy see Paine, *The Japanese Empire*, 49–75; Michael Auslin, "Japanese Strategy, Geopolitics and the Origins of the War, 1792–1895" in *The Russo-Japanese War in Global Perspective: World War Zero*, eds. John Steinberg et al., Vol. 1 (Leiden: Brill, 2005), 3–21 and Ian Nish, "Stretching Out to the Yalu: A Contested Frontier, 1900–1903," in *Russo-Japanese War*, 45–64.

[34] For further details, see Urs Matthias Zachmann, "Imperialism in a Nutshell: Conflict and the 'Concert of Powers' in the Tripartite Intervention, 1895," *Japanstudien/Contemporary Japan* 17 (2005): 57–82.

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"family of nations," it was important that military conduct continue to be in line with accepted rules and customs of warfare. Thus, Japanese leaders again adopted a "law-abiding attitude" and promised to comply with international law to maintain favorable relations with neutral powers.[35]

For the most part, both military authorities, and the international law advisors who counseled them, sought conformity with the new Hague Conventions as well as accepted customs of the time. On the specific issue of (what would now be formally and hereafter referred to as) martial law, however, there were tensions and a divergence of opinions. Japanese forces were mainly operating in China and Korea during this war and, since these were technically neutral territories, military leaders believed it inappropriate to impose laws which would infringe on the liberties of impartial civilians.[36] The general staff of the Manchurian Army, the senior command authority in the field, was also opposed to establishing a uniform set of regulations as in the previous war. It was believed that to do so would mean commanders would be bound by inflexible, legal stipulations which, in view of the diverse local circumstances in these occupied areas, could act as a hindrance by requiring that punishment be strictly enforced, even if not commensurate with the crime.[37] Thus, while refusing a formal declaration of martial law, they simultaneously advised subordinate commanders to refrain from drafting and publicly announcing their own regulations.[38]

International law advisors were opposed to the approach advocated in the Manchurian Army because they viewed martial law as the primary means of defense for any force operating in occupied territory, regardless of whether it was neutral.[39] They disagreed with the suggestion that any uniform regulations would have produced a rigid and restrictive system since, in the words of Ariga who acted again as legal advisor in this war, "nothing is more elastic than the application of a rule of martial law."[40] In their view, the enactment of uniform regulations would have merely acted as a point of reference, standardizing procedure and, in doing so, guarding against any inconsistent, impartial, and illegal practices which would have negatively damaged the prestige of the IJA.[41] Of most concern was the advice not to publicly announce martial law for this was understood to be essential in realizing its chief deterrent function. Martial law's purpose, according to Ariga, was not to punish every act, but

[35] Kinji Akashi, "Japan–Europe," in *The Oxford Handbook of the History of International Law*, eds. Bardo Fassbender and Anne Peters (Oxford: Oxford University Press, 2012), 738–39; Douglas Howland, "Sovereignty and the Laws of War: International Consequences of Japan's 1905 Victory over Russia," *Law and History Review* 29, no. 1 (2011): 54.

[36] Ariga Nagao, *Extracts from La Guerre Russo-Japonaise au Point de Vue Continental et le Droit International: d'après les Documents Officiels du Grand État-Major Japonais* (Washington, DC: Division of International Law of the Carnegie Endowment for International Peace, 1942), 2–3; Ninagawa Arata, *Kurokigun to senji kokusaihō* (Tokyo: Shimizu Shoten, 1905), 141–43.

[37] Ariga, *Extracts*, 3–4.

[38] Shinoda Jisaku, *Nichiro sen'eki kokusai kōhō* (Tokyo: Hōsei Daigaku, 1911), 387.

[39] Ibid., 386; Ariga, *Extracts*, 4–5.

[40] Ariga, *Extracts*, 5

[41] Shinoda, *Nichiro*, 386–89.

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to threaten punishment as a preventive measure.[42] Shinoda Jisaku, international law advisor in the Third Army, also pointed out that it was an accepted and necessary custom of warfare that disciplinary measures in occupied areas could be taken only after a formal announcement of the prohibited acts.[43] In the view of these advisors, a full declaration of martial law must precede any imposition of punishment upon civilians if Japan were to adhere fully to the practices established and accepted by other belligerents.

Despite the position of the Manchurian Army on this issue, there was no official ban on the enactment of martial law or the public announcement of its main provisions. As such, in view of the circumstances in occupied areas and on the advice of international law advisors, most commanders of subordinate armies opted to draft and publish, at least partially if not completely, some regulations. The result was a return to the ad hoc, informal system which had characterized the opening months of the First Sino-Japanese War. Due to overlapping jurisdictions, the existence of this myriad of different provisions and procedures added confusion and complexity.[44] Driven by those on-the-ground, rather than military authorities at the center, these regulations reflected the different approaches taken, as well as evolving ideas and practices due to the specific opinions, priorities of, and challenges faced by, commanders operating in quite diverse locales.

Occupying armies and garrison units, for instance, had different thoughts about the applicability of martial law over Imperial subjects. Within occupying armies, it was generally thought, and international law advisors agreed, that Imperial subjects should be exempted from martial law because, according to Articles 23 and 24 of the Meiji Constitution, Japanese nationals could not be punished without recourse to law.[45] Since martial law did not derive from ordinary legislation, but from the "right of supreme command" in Article 11, they argued that commanders did not have special dispensation to impose disciplinary measures on Japanese nationals. Furthermore, any offences that might occur would be suitably covered by Japanese penal codes and could be handled appropriately in consular courts which were still in operation. Within garrison units usually based in rear areas which tended to come more into contact with Imperial subjects, it was argued that Articles 23 and 24 were only applicable inside Japanese borders and that, in any case, the stipulations in Article 31 regarding the Emperor's powers meant that nothing should impede any prerogative that commanders thought necessary in the field. Thus, in this view, martial law could apply to Japanese nationals, although some garrison units resolved to punish only those acts not accounted for in existing legislation.[46]

There was no question that all other inhabitants of occupied territory, regardless of whether they were local residents or foreign nationals, would

[42] Ariga, *Extracts*, 4.

[43] Shinoda, *Nichiro*, 348–50, 385

[44] Shinoda, *Nichiro*, 348–50; Ariga, *Extracts*, 5–6.

[45] See https://www.ndl.go.jp/constitution/e/etc/c02.html#s2 (accessed October 22, 2021) for an English translation of the Meiji Constitution.

[46] See Shinoda, *Nichiro*, 389–92 for further discussion of these debates.

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be subject to martial law. Nevertheless, some armies put additional safeguards in place in respect to the handling of non-Asians. When violations of martial law were committed by foreign nationals residing in Korea, for example, Korea Garrison Army regulations required that a summary of the case be submitted immediately with a request for instructions from the responsible commander before further actions were taken.[47] In the Third Army, the commander-in-chief was also expected to supervise the adjudication of cases involving any inhabitants who were neither Korean nor Chinese.[48] The development of this discriminatory approach to the treatment of civilians embedded in the legal framework represented, among other things, concern that foreign residents be treated judiciously, especially in neutral territory, to assure other powers that Japan was compliant with the rules and customs of war.

Against the backdrop of debates about the (im)propriety of imposing martial law in neutral territories, the content of regulations was also more clearly oriented toward the protection of the IJA and its activities. The list of enumerated acts punishable by death was greatly expanded with some armies specifying twenty separate offences which featured a host of additional crimes such as looting dead soldiers, betraying military secrets, deliberately misguiding army units, possessing weapons and surveying, photographing, or making copies of the landscape without permission.[49] In contrast to the previous war, only two armies referred to acts which disturbed the peace in these regulations. Third Army martial law contained a separate article explaining that those who disrupted public order or inflicted harm on the body or property of other people would be punished in accordance with local laws and the laws of Japan. However, such acts would be tried separately by members of the military administration rather than military courts.[50] In its supplementary provisions, the First Army stated that persons who committed illegal acts which harmed public security or the body or property of other people would be punished by local officials in accordance with local laws.[51] Martial law regulations, then, reflected a marked reluctance on the part of commanders to become involved in the maintenance of peace and order in neutral occupied territory in this war.

Furthermore, since perceived military necessity was prominent in driving the enactment of regulations, there was a shift away from any overt obligation to use Japanese legislation as the baseline for the administration of military justice in occupied areas. This was particularly evident in procedural provisions which contained a pronounced emphasis on ensuring that the exercise of judicial powers in occupied areas served the military and met the demands of wartime. A number of armies established their own trial regulations on the basis of the Army Code of Criminal Procedure which followed a more simplified format than the civilian equivalent. In the interest of expediency, guilt was assumed

[47] Article 7 in ibid., 374.
[48] Article 10 in ibid., 363.
[49] Ariga gives an overview of main acts in *Extracts*, 6–10.
[50] Articles 4 and 6 in Shinoda, *Nichiro*, 362.
[51] Supplementary Provisions, Article 2 in ibid., 360.

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and it was incumbent upon the defendant to refute accusations and prove their own innocence.[52] Some armies also invested the Kenpeitai with judicial powers allowing them, as in the First Army, to act as judges and, if necessary, legal officers or, as in the Korea Garrison Army, to impose sentences of imprisonment for no more than one year, fines of no more than fifty yen, and flogging of no more than 100 strikes for minor crimes as a form of summary punishment.[53] In the face of logistical difficulties, military administrations composed of civil officials could also hold trials rather than forward defendants to the nearest military unit and, in some cases, as in the Fourth Army, the enforcement of sentences might be entrusted to local authorities.[54] If cases arose while on the march, in combat, or any other emergency situation, according to the Third Army regulations, the duties of a military court could be carried out impromptu through consultation of three officers in the field.[55]

Some key elements of the Ordinance from the First Sino-Japanese War were retained in this conflict and the identical wording of some regulations, like those of the Third Army, are indicative of its influence in the drafting of martial law provisions on this occasion. However, in the absence of a uniform set of rules for the administration of justice, commanders had more freedom to adapt martial law to the specific demands and challenges they encountered in the field. This resulted in a marked shift away from using Japanese legislation as a point of reference in these regulations, an expansion of the list of punishable acts, albeit with a noticeable inclination to eschew too much involvement in the general maintenance of peace in occupied areas, and an extension of martial law to Imperial subjects in some units. It also saw a broader sanctioning of streamlined procedures when confronted by logistical challenges and a widening of judicial powers for kenpei officers. Without specific instructions from authorities in Tokyo then, the regulations drafted by commanders were shaped by, and therefore reflected, perceived necessities in this war. Consequently, martial law evolved even more as an instrument of power wielded in service of the military and its interests.

The regulations established by the Eighteenth Division upon occupation of Qingdao during World War I in September 1914 largely replicated these provisions and, for this reason, will not be discussed at length in this article.[56] One development of note is that martial law in this conflict was supplemented by a range of additional rules and stipulations regarding the administration of occupied areas by the Qingdao Garrison Army, mobilized in November that year to enforce military government.[57] The enactment of these regulations,

[52] Ariga Nagao, *La guerre Russo-Japonaise au point de vue continental et la droit international d'après les documents officiels du Grand État Major Japonais* (Paris: Pedone, 1908), 385.

[53] First Army Martial Law, Article 9 and Korean Garrison Army Martial Law, Article 6 in Shinoda, *Nichiro*, 359 and 373–74.

[54] Article 4 in ibid., 381.

[55] Article 8 in ibid., 362.

[56] For the regulations, see "Gunritsu oyobi gunji hōtei shinpan kisoku no ken," 0181–96. JACAR: C03024379600, NIDS: Rikugunshō-ō jū dai nikki-T3-8-31.

[57] "Chintao shubi-gun gunji hōtei kisoku-tō kitei hōkoku no ken," JACAR: A04010292800, NAJ: San-01334100.

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as discussed in more detail in Ono's work, marked the beginning of a shift toward using martial law, not just to safeguard the Army, but as a crucial element in support of wider goals and strategies for the region.[58] Key developments during the Asia-Pacific War, the focus of the final part of this article, saw the continued evolution of martial law as a tool of both short-term military occupation policy and longer-term political visions for Asia. However, these developments also exposed the gradual subordination of political goals to military necessity, a process which accelerated sharply commensurate with developments in the wartime situation in 1945.

Key Developments and Radicalization: The Asia-Pacific War, 1937–1945

When a local skirmish broke out between Chinese and Japanese soldiers garrisoned at Lugouqiao (Marco Polo Bridge) on the outskirts of Beijing on July 7, 1937, it was viewed by some within the leadership as an opportunity to further extend Japanese influence in the region. A series of other "incidents" instigated by troops in the field following the Manchurian Incident in 1931 had all ended with favorable concessions from Chiang Kai-Shek's nationalist government and expansion of Japanese control over areas in northern China. Others were more cautious. They warned that Japan was not ready for war with China and that any protracted engagement would disrupt long-term national defense preparations. All agreed, however, that fighting must be contained to the north and be resolved swiftly. With the majority anticipating a short, decisive victory for Japan and keen to maintain amicable relations with trade partners as a crucial pre-condition for the nation's defense plans, the leadership eschewed a formal declaration of war.[59]

This decision not to declare war initially complicated matters in respect to martial law. Although commanders in the field saw the necessity of establishing restrictions to control civilians in territories coming under army control, the leadership in Tokyo were concerned about the appropriateness of doing so. Diplomatic relations with China had yet to be completely severed and any premature installation of military government might damage Japan's international relations, possibly resulting inwider geopolitical consequences.[60] It was advised, then, that the maintenance of public order be left to local authorities, assisted by dedicated Public Order Maintenance Associations (*Chian iji kai*) established in northern China.[61] But, with the continued expansion of military operations, those on-the-ground argued for the increasing

[58] For further discussion, see Ono, "Meiji kokka," 48–51.

[59] For an overview of the origins of the war from both Chinese and Japanese perspectives, see Rana Mitter, *China's War with Japan, 1937–1945: The Struggle for Survival* (London: Allen Lane, 2013), 49–91; for war aims and strategy see Sarah C. M. Paine, *The Wars for Asia, 1911–1949* (Cambridge: Cambridge University Press, 2012), 123–69.

[60] "Shina jihen kankei shitsumu hōkoku jōkan dai san-satsu: Dai jūgo-sho—Kita Shina senryōchi kankei sho mondai (1937)," 669–72. JACAR: B02130114900, original in Diplomatic Archives of the Ministry of Foreign Affairs: Tōa-2.

[61] For more details, see ibid., 640–59.

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importance of implementing some measures to control foreign residents and Chinese civilians. Accordingly, plans for the establishment of "necessary measures" (*hitsuyōnaru sochi*) to suppress crime were submitted for approval in September 1937. These plans involved issuing cautionary proclamations detailing prohibited acts, permitting extrajudicial practices for those caught in the act, and the referral of foreigners subsequently arrested to Chinese or consular courts for trial.[62] The Army Ministry, in consultation with the Foreign Ministry, agreed to the proposed measures with no reservations regarding the summary punishment of Chinese civilians. It did warn, though, that until a policy for occupied territories had been officially decided, field units were to exercise extreme caution in dealing with third country nationals.[63] The lack of army judicial organs soon became untenable, however, and toward the end of that month, the military leadership in Tokyo conceded regarding the formal imposition of martial law with some caveats. Namely, that the content be restricted to just those items which were directly necessary for the protection of the IJA and that special attention be paid to its application over members of third countries.[64] Martial law regulations covering offences, punishments, and procedure to be followed in trial were promulgated in northern China on October 5, followed by central China on December 1, 1937.

Provisions in these regulations were much less detailed than they had been in earlier conflicts, reflecting the distinctive concerns and circumstances of this undeclared war. Martial law, for example, applied to all civilians (though not Imperial subjects), but only in the IJA's operational and base areas. Punishable acts were limited to war treason, espionage, and "other acts" which either harmed the Army or benefitted the activities of its enemies. Examples, as communicated in proclamations to the populace, comprised damage to transportation and communication links, inflicting injury on persons attached to the IJA, stealing military equipment, and spreading poisons or bacteria for the purpose of harming military units. Unlike in previous wars, there was no mention of acts which disturbed public order. Aiding and abetting, conspiring to commit, or attempting such acts was also punishable, although in these cases sentences could be commuted or pardoned depending on the circumstances. Those who turned themselves in prior to the commission of acts, might also have their sentences reduced or may be even be exempted from punishment. Penalties, as enumerated in the accompanying military punishment ordinances, comprised, in order of severity, death, confinement (with labor), exile, fines and, as a supplementary punishment, confiscation. Corporal punishments, like flogging, were no longer permitted in this conflict. Although regulations did outline some parameters for the enforcement of sentences, the terms of confinement and exile, as well as the value of fines, could still be determined at the discretion of judges who, as in other wars, had latitude to punish severely (to coerce or strike fear in the hearts of the

[62] Detailed in ibid. 671–72 and "Furyō gaijin sono ta ni kansuru ken" (August 20, 1937), 0495–0500. JACAR: C04120074500, NIDS: Rikugunshō-riku shi mitsu dai nikki-S12-3-98.

[63] "Shina jihen kankei," 670–71.

[64] Ibid., 673–77.

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population) or leniently (to appease or impress with the magnanimity of the IJA) as the situation demanded.[65]

This discretion, also much like in earlier conflicts, was not to be exercised arbitrarily. Military commissions were established in the headquarters of all occupying armies, as well as supply bases, and were overseen by their respective commanders as the official head of said commissions. The commanders' main tasks in this role were to determine, based on recommendations from the legal department, whether to proceed with prosecution in each case, as well as to appoint court judges—two army officers and one legal officer—who were also supported in their work by prosecutors, clerks and guards. When a death sentence was pronounced in court, approval had to be sought from these commanders, except in cases of urgency, and enforcement of all military punishments would be carried out by the members of the Kenpeitai under the direction of legal officers. Addressing the concerns of the military leadership regarding the application of martial law to nationals of third countries, and retaining the difference in treatment between Asians and non-Asians which emerged during the Russo-Japanese War, permission had to be obtained from the relevant army or base commander when foreign nationals were to be referred to trial. All other procedural matters not specifically established in the regulations were to be in accordance with provisions relating to the special courts-martial (*tokusetsu gunpō kaigi*) in the Army Courts Martial Law (*Rikugun gunpō kaigi-hō*), introduced in 1921 to replace the Army Code of Criminal Procedure.[66] Utilized as a simplified version of the regular courts-martial to try soldiers in the field, many of the judicial safeguards (e.g., provisions for defense or appeal) prescribed in the aforementioned law did not apply in these special courts.[67] This was, however, not all that different from the judicial practices established in earlier wars where simplification of procedure had been prioritized.

Still, even with the undeclared nature of this war and Japan's so-called "break with the West" in the 1930s, military leaders remained conscious that any overt deviations from the established rules and customs of warfare would damage the nation's international relations.[68] In fact, while the leadership had initially been reluctant to impose martial law during this "incident," as fighting intensified and occupied areas expanded, it came to be viewed as the most legitimate means of asserting military control and safeguarding interests in occupied territory. As such, it became central to military occupation policy, utilized chiefly in the protection of Japanese forces, but also in an effort to sanitize military conduct and avert criticism of military activities in China.

[65] Summarized based on martial law, military punishment regulations, and proclamations for the NCAA in "Gunritsu shikō no ken-tsūkoku," 0295–8, 0303. JACAR: C04120049000, NIDS: Rikugunshō-riku shi mitsu dai nikki-S12-2-97 and CCAA in *Zoku gendaishi shiryō 6: Gunji keisatsu: Kenpei to gunpō kaigi*, ed. Takahashi Masae (Tokyo: Misuzu Shobō, 1982), 194–95.

[66] Summary based on trial regulations in "Gunritsu shikō," 0299–0300 and *Zoku gendaishi*, 195.

[67] "Hōritsu dai hachijūgo-gō—Rikugun gunpō kaigi-hō" (April 1921). JACAR: A03021304500, NAJ: 12866100 for further details. Translated and summarized for the author by Dr Tino Schölz.

[68] "Shina jihen kankei," 669–77; see Eri Hotta, *Pan-Asianism and Japan's War, 1931–1945* (Basingstoke: Palgrave Macmillan, 2007), 75–106 for discussion of Japan's "break with the West."

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Shortly after martial law was declared in October 1937, for instance, summary executions were officially prohibited in northern China by order of North China Area Army (NCAA) Chief of Staff Okabe Naozaburō.[69] Indeed, such "battlefield measures," as observed by the Head of the Tenth Army Legal Department, Ogawa Sekijirō, were considered inappropriate once combat had ceased; the protection of military interests was to be ensured, henceforth, through martial law.[70] Though military authorities in Tokyo recommended a restricted role for martial law, in the field its function as an integral component in the maintenance of public order became apparent early on. Matters of enforcement, for example, became the main theme of an all-day meeting, featuring lectures on pacification and public order work, hosted at the headquarters of the Central China Area Army in Shanghai on December 5, 1937, underscoring the important complementary role which martial law would play in efforts to pacify the occupied population.[71] After 1940, its role as a tool of occupation was strengthened further following a shift in approach brought about by the increasingly adverse situation prevailing in rear areas.

The martial law regulations drafted during the opening months of war were shaped considerably by the expectation that fighting would be over quickly and there would be no need for extensive involvement in the administration of occupied territory. However, fighting continued well beyond 1937 and, with a stalemate having been reached with Chinese forces after the Battle of Wuhan in October 1938, military authorities shifted their focus to the consolidation of the rear areas.[72] In spite of their efforts, by 1940 these areas had become veritable "war zones" rife with guerrilla activity and Japanese forces were under "immense pressure" to restore order.[73] Mounting criticism of Japanese policy in China and perceived deficiencies with the existing military justice system precipitated a re-evaluation of martial law to facilitate this.[74] In June 1940, the scope of the law was expanded to cover any offences which disturbed the peace or impeded military activities. Examples of such acts included, but were not limited to, criticism of Japan's policy in China, slandering the IJA, unjust profiteering, activities which impeded pacification and propaganda work, as well as any act which would have a negative influence on economic, financial, and ideological polices in occupied areas.[75]

This expansion of punishable offences, including non-criminal acts, coincided with the institution of a new ordinance to strengthen existing methods of control and "sweep away" the negative elements of the past system by permitting summary punishments for minor violations of martial law.[76] Kenpei

[69] See notification in "Gunritsu shikō," 0301–2.

[70] Ogawa Sekijirō, *Aru gun hōmukan no nikki* (Tokyo: Misuzu Shobō, 2000), 90.

[71] *Yasen kenpei*, 138–39; "Dai jū-gun hōmubu jinchū nisshi," printed in Takahashi, *Zoku gendaishi*, 51–52.

[72] *Japanese Monographs Series, No. 70: China Area Operations Record, July 1937—November 1941* (Washington, DC: Library of Congress Photoduplication Service, c. 1963), 27.

[73] "Shina jihen gunpyō-shi," 1788–90.

[74] Ibid., 1760.

[75] Ibid., 1785–87.

[76] "Shina jihen gunpyō-shi," 1790.

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officers with command jurisdiction were empowered to make on-the-spot judgments for minor offences committed by Chinese people after reviewing evidence collected by investigators and the statement of the accused. In doing so, they would aid the overburdened military commissions by expediting the handling of trivial cases which had caused no real harm but might, if left unchecked, have a negative influence on military activities. They would also address accusations that sentences pronounced in military courts were overly harsh and often disproportionate which had apparently been fueling hostility toward the IJA. Accordingly, punishments which could be meted out were limited to ninety days detention, fines up to 100 yen and, in central China, the closure of businesses for up to ten days. This new judicial authority was not to be exercised arbitrarily. Commanders were to extensively document the sentences they pronounced, were required to forward all serious cases to military commissions, and were advised to take care that they applied a consistent standard in their judgments; severity and leniency must be balanced to cultivate a better relationship with the populace and ensure confidence in the Kenpeitai.[77]

Appeasement was also at the heart of additional regulations introduced in view of the influx of Japanese nationals into China, and the tensions which the growing problem of "delinquent Japanese residents" (*furyō hōjin*) caused in occupied areas. Under these regulations, Imperial subjects could be punished in military commissions for certain acts which disturbed the peace or disrupted economic stability.[78] Such acts were not criminal under existing legislation (which Japanese nationals remained subject to in occupied territory), but were "in opposition to public order" and were thought to be hindering the construction of a "New Order in East Asia" (*Tōa shin-chitsujo*) based on principles of friendship.[79] Accordingly, martial law would now allow for stricter control of Imperial subjects, a matter of significance in respect to the leadership's longer-term plans in China. Although proclamations emphasized this new policy of non-discrimination, punishments of Imperial subjects were nonetheless different, limited to confinement, fines, and confiscation.[80] That being said, Japanese residents in occupied China were publicly cautioned that, alongside Chinese and foreign nationals, those who committed acts which obstructed the execution of the "Holy War" (*seisen*) would be subject to strict military punishment.[81]

Those involved in enforcing martial law—legal officers and judges—were similarly reminded in June 1940 of the value of the principle of "severe punishment" (*genbatsu shugi*) in wartime which underpinned the character of regulations enacted in occupied China. Explaining the pivotal role which martial law played in defending the Army from "despicable acts" and "external threats" in a speech delivered in the same month, for instance, NCAA Chief

[77] Ibid., 1780–83; see also "Shinajin ni taisuru sokketsu shobun-rei seitei no ken," 1068–70. JACAR: C04121789500, NIDS: Rikugunshō-riku shi mitsu dai nikki-S15-14-109; *Yasen kenpei*, 614–16.

[78] "Furyō hōjin no torishimari ni kansuru ken," 2079–81. JACAR: C04121973100, NIDS: Rikugunshō-riku shi mitsu dai nikki-S15-54-149.

[79] "Shina jihen gunpyō-shi," 1788–90.

[80] Ibid.

[81] Ibid.

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of Staff Kasahara Yukio stressed the importance of considering the wider wartime context and the needs of the armed forces since offences incidental to war could not be judged in accordance with the norms of peacetime.[82] Following this re-evaluation and reassertion of martial law in 1940, it was used more decidedly in support of the Army's occupation policies and the leadership's new transformative plans for Asia. While rooted in earlier conflicts, this emphasis on utilizing legislative power to facilitate both political and military goals, rather than just to protect Japanese forces, became more pronounced at this time and was a guiding principle which influenced the character of martial law after the outbreak of war in the Pacific in December 1941.

The invasion of Southeast Asia was framed originally as a "benevolent, liberating mission" embarked upon for the benefit of all Asians.[83] Such rhetoric was mobilized by the leadership in view of plans for the creation of a Greater East Asia Co-Prosperity Sphere (Daitōa kyōeiken).[84] It was also a method of pacification. Japanese forces faced inherent difficulties in fighting an expansive multi-front war while also administering culturally diverse populations in vast, logistically challenging territories. Military strategists, therefore, recognized the value of cooperation with occupied populations and stressed pan-Asian overtures in an effort to co-opt local elites.[85]

The so-called "advance south," however, had been undertaken chiefly as a means of securing access to crucial resources after successive restrictions and embargoes on trade by the United States and its allies had cut off access to the nation's supply of war material.[86] Acquisition of resources became of prime importance and formed the impetus behind risking confrontation with colonial powers in Southeast Asia.[87] Successfully exploiting the region, however, hinged upon the effective consolidation of military power and the strict maintenance of public order. Military authorities understood that wartime occupation would cause hardships for local communities. But, while a conciliatory approach to civilians in Southeast Asia was generally urged, pacification efforts were, out of necessity, limited and policy documents made it clear that any specific requests regarding civilian welfare could not be entertained.[88] Thus, martial law and related regulations came to play a central

[82] "Hōmen-gun sanbō-chō kōen yōshi sōfu no ken" (June 10, 1940), 0382–3, 0385. JACAR: C04122206300, NIDS: Rikugunshō-riku shi mitsu dai nikki-S15-65-160.

[83] For an example, see "Significance of the Fall of Singapore Given," *Official Journal of the Japanese Military Administration in the Philippines* (hereafter *Official Journal*), 1 (1942): 16.

[84] For further discussion, see Hotta, *Pan-Asianism*, 199–223.

[85] "Nanpō senryōchi gyōsei jisshi yōryō" (November 20, 1941), 0333–6. JACAR: C12120152100, NIDS: Chūō-sensō shidō jūyō kokusaku bunsho-989_1; see also Ken'ichi Goto, *Tensions of Empire: Japan and Southeast Asia in the Colonial and Postcolonial World* (Ohio: Ohio University Press, 2003), 77–103.

[86] See Nobutaka Ike, *Japan's Decision for War: Records of the 1941 Policy Conferences* (Stanford: Stanford University Press, 1967) for further details.

[87] "Nanpō senryōchi," 0333; for a detailed overview of occupation planning and policy see Nakano Satoshi, *Japan's Colonial Moment in Southeast Asia, 1942–1945: The Occupiers' Experience* (New York and London: Routledge, 2019), especially 26–55.

[88] "Nanpō sakusen ni tomonau senryōchi tōchi yōkō" (November 25, 1941), 0170. JACAR: C12120137500, NIDS: Chūō-sensō shidō jūyō kokusaku bunsho-964.

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role in support of occupation policy by encouraging, persuading, and when necessary forcing, civilians to accept the burdens placed upon them by the military. While regulations were heavily based upon those established in China in 1940, slight differences in provisions reflect the specific military priorities and different framing of the IJA's presence in the area.

In view of professed claims of "brotherhood" and "co-prosperity" and in an effort to position Japanese rule in opposition to the discriminatory policies of former colonial powers, for example, martial law applied to all civilians in areas in which a military administration was established from the outset. Provisions requiring greater caution or supervision in the adjudication of cases involving non-Asians were removed.[89] Imperial subjects became punishable under the same regulations as other civilians, although only for acts not already covered by existing Japanese legislation. Occupying forces also enacted various supplementary regulations as part of a more concerted effort to constrain the behavior of Japanese nationals arriving into Southeast Asia. These regulations largely focused on non-criminal acts and customs which were a cause of friction with local peoples, but were not serious enough to warrant formal punishment in military courts. An ordinance that allowed kenpei commanders to summarily punish Japanese nationals in the Philippines, for instance, targeted face-slapping, public nudity, and disorderly conduct, like urinating in streets.[90] Under these new laws, the military had greater freedom to punish Imperial subjects for acts which undermined attempts to construct an image of Japan as liberator and natural leader of a united "Asia for the Asiatics." If necessary, authorities could even deport convicted offenders, habitual criminals, or those deemed thoroughly irredeemable back to Japan.[91]

The extent of military authority over local civilians was also greatly expanded. In this "war for resources," punishable offences were far more extensive, encompassing a diverse range of acts which might frustrate or otherwise impede economic objectives. Examples, as detailed in declarations to the local populace, include obstructing the production and circulation of goods, disrupting public sentiment, throwing the financial and economic markets into disarray, making abnormal profits, destroying or concealing clothing, provisions, livestock, fuel, and other items of military importance to avoid commandeering by military authorities, and any other acts in opposition to the policies of Japanese forces.[92] Violating any further prohibitions established

[89] Unless otherwise stated the summary of regulations in this section is based upon the martial law regulations of the Southern Army, the most senior command authority in the region, see "Nanpō-gun gunritsu," 1442–50. JACAR: C14020744000; NIDS: Hitō-zenpan-168.

[90] "Watari shūdan hōjin hii sokketsu shobun-rei seitei no ken tsūchō," 1390–412. JACAR: C14020743500, NIDS: Hitō-zenpan-168.

[91] "Senryōchi ni torai (zairyū) suru Nihonjin toriatsukai ni kansuru ken," 0191–7. JACAR: C14060609800, NIDS: Nansei-gunsei-19; "Furyō hōjin sōkan ni kansuru ken tsūchō," 1376–9. JACAR: C14020743200, NIDS: Hitō-zenpan-168, see also various regulations in *Dai 16-gun hatsu raikan tsudzuri (gunritsu kankei)*, 2290–4, 2537–48, 2690–4. NIDS: Nansei-Mare-Jawa-205.

[92] For proclamations, see "Warning to the Public," *Shōnan Shinbun* (March 12, 1942), 3; "Proclamation" (January 3, 1942), *Official Journal*: 32–33; "Osamu shūdan fukoku gōgai dai ichi-gō," in *Gunritsu kaigi kankei shiryō*, ed. Kita Hiroaki (Tokyo: Fuji Shuppan, 1988), 109;

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as necessary by commanders was also subject to military punishment.[93] These prohibitions imposed predictable constraints in the form of curfews, restrictions on movement, and bans on the possession of weapons and radios. However, severe military punishment was also threatened to minimize noncompliance with policies directly affecting everyday life. Under martial law, the sale and consumption of goods was regulated, wages, prices, and rations were fixed, and every household was obliged to register and report their property, including quantities of important supplies such as fuel or rice. Civilians were also required to keep their houses tidy, to receive compulsory inoculations, and to follow strict guidelines regarding other daily matters, like waste disposal.[94] Essentially, martial law in this conflict was mobilized in ways which allowed the military to encroach even more upon the day-to-day lives of civilians, especially in comparison to earlier conflicts.

The greater reach of martial law, particularly its more expansive list of punishable offences, meant in theory handling more cases which increased the pressure on under-staffed legal departments and kenpei units. To address these issues, and perhaps also to demonstrate the professed cooperative spirit of "Greater East Asia," regulations now permitted local judicial organs to adjudicate violations of martial law, alongside civil cases and criminal acts contravening local laws when expedient or necessary.[95] An amendment in January 1943 also saw the addition of an article which sanctioned army commanders within the Southern Army to enact special administrative orders to assert limits on the adjudication of violations of martial law by local judicial organs according to the circumstances in specific areas.[96] After the Twenty-Fifth Army permitted the high courts in Singapore, Malaysia, and Sumatra to try various seditious acts, for example, the Peace Preservation Law (*Chian iji-hō*) was enacted to clarify more precisely the types of offences (like gambling, possessing radios, and other seditious acts) that might be tried and the scope of punishments (including introducing provisions for the death penalty) that might be imposed in said courts.[97] Giving army commanders the power to enact such supplementary regulations was considered important due to the wide scope of, and discretion afforded judges under, martial law and concern that this might give rise to abuse if left unsupervised and unchecked by the military.[98] Typically, then, there was a high degree of military oversight to ensure propriety in the administration of justice. Although, the principles

"Gunritsu ni kansuru fukoku" (March 23, 1942) in *Biruma ni okeru Nihon gunsei-shi no kenkyū*, ed. Ota Tsuenzō (Tokyo: Yoshikawa Kobunkan, 1967), 498.

[93] "Nanpō-gun gunritsu," 1445.

[94] For other examples, see decrees and orders printed in *The Good Citizen's Guide* (Singapore: Shōnan Shinbun, 1943), and *Official Journal*, Vols. 1–12.

[95] *Yasen kenpei*, 141.

[96] "Nanpō-gun gunritsu," 1449–50; amendment discussed in *Dai 16-gun hatsu*, 2411–14.

[97] See recollections of Timothy Siang Hui Tow who was employed as a clerk in this court for further details, National Archives of Singapore, Oral History Centre, Accession No. 000516 (1984), Transcript, 8–11.1997, 78; regulations in "Tomi kōhō dai 12-gō—Shōnan gunsei kanbu" (February 1, 1943), 0118–21. JACAR: C14060647700, NIDS: Nansei-gunsei-31.

[98] *Dai 16-gun hatsu*, 2413–14.

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espoused by the military in local courts continued to accentuate military necessity through the "speedy resolution" of cases, emphasis on the greater "culpability" of wartime crime and the deterrent function of punishment.[99]

To further reduce the burden on military authorities, civilians were also encouraged to self-police each other through the establishment of neighborhood associations (*tonarigumi*) and self-defense organizations (*jikei-dan*) which, among other things, made civilians collectively responsible for each other's conduct.[100] While it was acknowledged that international law technically prohibited collective punishments (*renza-batsu*), they had long been viewed as an effective method for preserving the peace.[101] Thus, martial law sanctioned the imposition of fines upon juridical persons (inc. associations and organizations), in addition to the joint punishment of their representatives, when an employee or member committed an offence in connection with their business.[102] Such practices were overseen by the Kenpeitai who continued to wield extensive powers and held considerable discretion with regard to the enforcement of martial law in occupied territory.[103] As in China, with permission from the Commander-in-Chief of the Southern Army, commanders of occupying forces could enact additional ordinances authorizing kenpei officers to punish minor crimes on-the-spot if necessary.[104] Regulations that were identical in substance to those implemented in China were enforced in the Philippines after outbreaks of unrest throughout the islands in late 1942, for example.[105] For the most part, however, unless a kenpei officer decided to co-opt and subsequently release those who had committed minor offences but were otherwise harmless, military commissions were to retain primary responsibility for passing judgments in Southeast Asia, especially in the most serious violations.[106]

Punishments meted out in courts, as detailed in regulations, remained the same as those in China—death, confinement, exile, and fines, with confiscation applied as a supplementary penalty. However, a new stipulation allowed subordinate commanders to request permission from the Commander-in-Chief of the Southern Army to apply other punishments as they considered necessary.[107] Judges also continued to be granted latitude to impose punishments, commute sentences, or waive them altogether depending on the circumstances. Initially,

[99] *Official Gazette of the Japanese Military Administration of the Philippines (hereafter Official Gazette)*, Vol. 1, no. 2 (Manila: Philippine Executive Commission, 1942), 39; Paul Kratoska, *The Japanese Occupation of Malaya: A Social and Economic History* (Hawaii: University of Hawaii Press, 1997), 78.

[100] Regulations outlining the system in the Philippines are printed in *Official Gazette*, Vol. 1, no. 8, 441–44; for this system in Malaya, see Kratoska, *Japanese Occupation of Malaya*, 79–83; for Java see Peter Post et al., eds. *Encyclopedia of Indonesia in the Pacific War* (Leiden: Brill, 2010), 106–8.

[101] *Yasen kenpei*, 93; see, for example, approach and argument made about use of collective punishments in the Russo-Japanese War in Ariga, *La Guerre*, 10–15.

[102] "Nanpō-gun gunritsu," 1076.

[103] Detailed in *Yasen kenpei*, 138–42.

[104] See a notification about this in *Dai 16-gun hatsu*, 2353.

[105] "Watari shū-hō 240-gō—Dai 14-gun gunritsu sokketsu shobun-rei seitei no ken-tachi," 1330–9. JACAR: C14020742900, NIDS: Hitō-zenpan-168.

[106] *Yasen kenpei*, 141.

[107] "Nanpō-gun gunritsu," 1445–46.

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the composition and procedure followed in military courts likewise conformed to regulations established in China.[108] This changed in May 1945. With war having entered a "decisive phase" (*kessen dankai*) and in view of the serious circumstances prevailing at that time, provisions for military commissions were modified. Revisions involved removing provisions permitting local courts to try violations of martial law (though they would continue to try crimes under local laws, in addition to contraventions of military administration decrees); allowing for more simplification of the trial process to ensure cases were dealt with and sentences enforced promptly; and enlarging the scope of recruitment of court personnel in view of mounting difficulties in transportation, a reduction in the number of trained legal officers and an anticipated increase in the incidence of violations of martial law.[109] Accordingly, legal officers could henceforth be replaced with regular officers, trials could be held in absentia (though not if the punishment was expected to be death), legal officers could enact punishments without convening a court in cases where the sentence was expected to be equal to or lower than ten years confinement and the procedures for detailing evidence, notifying defendants of sentences or transmitting enforcement orders were substantially abridged.[110] Explanatory notes on these amendments reveal that such changes were viewed as crucial to achieving military goals at this stage in the war. These new, simplified trial regulations were expected to facilitate the swift handling of numerous cases emerging (and anticipated) in 1945, help suppress and eliminate acts which obstructed operations, and contribute overall to the mopping-up of public order in occupied areas.[111] The notes contained no consideration for the impact that a further streamlining of judicial procedures might have on local inhabitants and little concern for professed political ideals or goals beyond winning the war. The revisions, and the evolving use of legislative powers under the rubric of martial law in sSoutheast Asia more generally, underscore that while mobilized initially in support of longer-term political ambitions, ultimately, this law was an instrument of *military* power and, as such, when confronted with challenging and deteriorating circumstances, military necessities, short-term interests, and convenience came first.

Conclusion

Japanese martial law developed originally as an informal code, born of military necessity, and enacted in the field by commanders authorized to do so under the "right of supreme command." This was understood to be emergency legislation imposed temporarily in occupied territories to protect the IJA, aid military objectives, and accommodate the demands of diverse wartime contexts. First and foremost, law fulfilled these functions through the maintenance of public order in occupied territories. More specifically, it was directed toward

[108] Ibid.

[109] Revisions and explanatory notes are contained in *Dai 16-gun hatsu*, 2577–603.

[110] Ibid., 2579–83.

[111] *Dai 16-gun hatsu*, 2594–95.

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deterring criminal or other disruptive acts and coercing civilian compliance with prohibitions and restrictions on daily life in occupied areas. In short, it was a cornerstone of military policy and practice vis-a-vis the administration of civilian populations in occupied territory. Despite an initial attempt to standardize both substantial and procedural elements of martial law, it was recognized that some degree of flexibility and latitude in respect to establishing and amending related regulations and ordinances was necessary on-the-ground. As such, while martial law was heavily influenced by the geopolitical considerations, longer-term plans and political ambitions of the leadership at the center, it was also constituted according to, and increasingly shaped by, the specific wartime demands, needs, and immediate interests of military commanders as they assessed the evolving situation in the field. Indeed, during the Asia-Pacific War, several adaptations, additions, and amendments to martial law, and the ways in which it was enforced, were initiated by field commanders as they deemed necessary and salutary. As the wartime situation deteriorated, military needs took precedence as reflected by a radicalization of law and legal practice during the final months of fighting. This had implications for civilians who were at the mercy of a justice system which had always tended to prioritize military interest and convenience over civilian rights. In fact, many of the issues which Allied judge advocates later raised with the Japanese military justice system—a lack of fairness or impartiality, failure to provide defense counsel, simplified or ad hoc procedures, presumptions of guilt, etc.—predated the Asia-Pacific War. These specific features came to be embedded within the concept of martial law and its legal framework as it developed and evolved during this and earlier conflicts. Consequently, while changes in content and purpose can be observed, martial law remained the same at a fundamental level—it was always designed to be a flexible instrument of power preferential to the military which served its interests by widening the scope of punishable acts to control civilians, permitting harsh, subjective punishments as a deterrent, and creating streamlined procedures to expedite the handling of cases. Martial law had never been envisioned as neutral or independent. However, judicial practices permitted within its framework did become less discerning and more radical during the Asia-Pacific War as an understaffed and overwhelmed judiciary struggled to cope with the larger-scale, longer duration, and greater logistical challenges presented by the very different nature of this conflict.[112] In the context of worsening conditions in 1945, rather than bypass the judicial process altogether, military authorities in the field amended martial law regulations to better serve perceived needs, giving legitimacy to summary procedures which would now be considered gross violations of human rights. This was arguably successful—the limited efforts to prosecute war crimes related to unfair judicial practices by the Allies often resulted in light, commuted, or unconfirmed sentences due to the fact that such practices had been permitted within the Japanese legal

[112] For an overview of these issues observed by a kenpei officer in 1941, see Nakamura Michinori, "Senchi ni okeru gun shihō ni tsuite," *Kenyū*, 35, no. 12 (1941): 67–78.

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framework.[113] In view of this and with the recent invasion of the Ukraine by Russian forces bringing issues of military occupation practice to the fore, other detailed analyses of martial law as imposed in occupied territories across a wide range of historical and geographical contexts are needed in order to deconstruct the ways in which law can be instrumentalized by militaries and how this impacts civilian populations.

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[113] *Law Reports*, Vol. 5, 25–36.

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