

Hi, this is Chris Micheli, an adjunct professor at McGeorge School of Law, and a principal at the Sacramento government relations firm of Aprea & Micheli.

Welcome to today's podcast on martial law in California. We've heard a lot about the term "martial law", so what exactly does it mean? And is it martial law, or martial order?

Martial law basically means that the civil laws are being suspended, and that the military is in charge. Now, this sounds rather ominous, and certainly it's a power that is rarely used in the United States. The term is used interchangeably "martial law" or "martial rule", but it's essentially a condition where the military takes on the functions of the civil government, generally during a time of war or of great civil turmoil.

Here, the job of the military is to enforce order to keep the peace, and basically to ensure that the state or federal government remain in functioning order.

Now, we've seen that both the president, as well as the governor, have put the National Guard to use here in California. Some have raised concern whether the COVID-19 pandemic will somehow result in the imposition of martial law in the State of California.

Governor Newsom has made it clear that he thinks it's very unlikely that martial law will be used in the state. He also cautioned recently in the press that it could be used "if we feel the necessity."

Looking back, there's actually a United States Supreme Court decision from the late 1800s that attempts to impose some limitations on the use of martial law in this country. Basically, the US Supreme Court said it could be used during battle times, or where the country has been invaded.

Now, the last time that martial law was instituted was back in Hawaii at the start of World War II. Basically, what happened was that a military governor was placed in charge of the state civilian government.

Now, we have used, including California, our state National Guard have been used to enforce state laws. For example, most recently occurred in 1992 after the now-infamous beating of Rodney King, and the riots that occurred in Los Angeles. Prior to that, the National Guard was last used to address some of the student protests during the Vietnam War. Those were very limited instances, not in a statewide manner, and the use of the state's National Guard not the true militia.

Now, if we look at the California Constitution and remember that Article 5 deals with the executive branch, in Section 7 it provides very succinctly that the governor is the Commander in Chief of a militia that shall be provided by statute, and that the governor may call it forth to execute the laws.

Now, this is similar to many other state constitutions, where the governors are made commanders of their respective state militias, which, of course, today we call that the National Guard. They can utilize the National Guard troops, again, to enforce the laws, and even the executive orders that are issued by the respective governors. California's Constitution is similar to those of most other states.

So far, and this is only the beginning of the second week of being under a statewide shelter in place, Governor Newsom has been using the National Guard in limited instances to assist with food banks, some different community activities. He has not so far enlisted the National Guard to either enforce state law or any of his executive orders.

You may have also read or heard that President Trump announced that he had activated the National Guard in three states -- California, New York, and Washington -- in order to combat the spread of the coronavirus. Note that these federal National Guard troop members are reportable to FEMA -- the Federal Emergency Management Agency -- but they are under the command of the governors of those states.

In theory, there could be National Guard troops that are under the president's command, and a separate set of state National Guard members who are commanded by the state's governor.

As you can see, neither the United States nor the State of California specifically actually have much experience with martial law, either how it could be used, or what might warrant or justify its use. Ultimately, per the Constitution, Article 5 Section 7, it's up to the discretion of the governor to determine when and how to use the militia in the State of California.

Thanks for joining me on this brief look at what are the implications and how could we use martial law in the state of California.