

viewed with reference to the law of the land as embodied in the United States Supreme Court's leading opinion upon "martial law" and due process, *Sterling v. Constantin*.³⁴

In 1932, Governor Sterling of Texas declared "martial law" in several oil-producing counties of the state in order to halt the wasteful production of oil contrary to a conservation statute; he was thus overriding a federal court order issued against the conservation commission in favor of the oil-producers.

The central issue was whether a governor's declaration of "martial law" is a "supreme and unchallengeable edict, overriding all conflicting rights of property and unreviewable through the judicial power of the Federal Government."³⁵ The Court answered that the governor's discretion, albeit broad, is conditioned by the Fourteenth Amendment's Due Process Clause³⁶ and that "where there is a substantial showing that the exertion of state power has overridden private rights secured by the Constitution, the subject is necessarily one for judicial inquiry . . ."³⁷

In enforcing the laws, a governor "must of necessity, enjoy a broad discretion,"³⁸ and "a permitted range of

honest judgment as to the measures to be taken in meeting force with force, in suppressing violence and restoring order, for without such liberty to make immediate decisions, the power itself would be useless."³⁹

The Court recalled the still vibrant language of Chief Justice Taney:

" . . . that in all of these cases the danger must be immediate and impending, or the necessity urgent for the public service, such as will not admit of delay, and where the action of the civil authority would be too late in providing the means which the occasion calls for Every case must depend on its own circumstances. It is the emergency that gives the Right, and the emergency must be shown to exist before the taking can be justified."⁴⁰

In conclusion, let it be said that although a governor's employment of the militia is not an absolute matter, he does necessarily have the constitutional authority and mandate to act through the military arm whenever civil violence is imminent. The country knows many misuses of the power, but the existence of the power cannot be doubted. It is rooted in the common law and common sense. It is a principle of necessity and as necessity commands, so must the governor take action.

³⁴ *Sterling v. Constantin*, 287 U.S. 378 (1932).

³⁵ *Id.* at 397.

³⁶ Maryland's Declaration of Rights equivalent is article 23.

³⁷ *Sterling v. Constantin*, 287 U.S. 398 (1932).

³⁸ *Ibid.*

³⁹ *Id.* at 399-400.

⁴⁰ *Mitchell v. Harmony*, 54 U.S. 115, 134 (1851).