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WHY THEY ARE DENIED
BY
MILITARY AND MARTIAL LAW
AND
::AN APPEAL::
TO THE
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EVERY HONEST CITIZEN
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JURY TRIALS AND WESTERN FREEDOM.

"A trial that hath been used time out of mind in this nation, and seems to have been coeval with the first civil government thereof."

Blackstone.

If there is any one institution or custom more responsible than another for the distinction between the passive fatalism of the Orient and the active initiative of the Occident it is the Trial by Jury. The spirit of liberty and justice which gave birth to the trial of persons by their own fellow-men has been preserved and passed on to posterity only by the maintenance of this method of procedure. In all European countries where the early forms of trials by the whole community or by a certain number of picked men were encroached upon, the tyranny of the masters led to slavery and revolution.

The absence of jury trials in Oriental countries, which have from the dawn of history been characterized for the slavish conditions of their people, is conceded by all authorities. Lesser in his "History of the Jury System" says: "Among the Oriental nations, no traces of jury trial are discoverable. With the Jews and Phoenicians (who may be taken as fair representatives) the administration of
justice was monopolized by the priests, who were judges of both law and fact, paying little deference to precedent and deciding each case without much reference to any general principles."

Whether these fatalistic tendencies of the people of the Orient grew out of a loss of early liberties through the encroachment of the priestcraft, or whether these fatalistic tendencies were prior to and precluded a desire for personal freedom and popular judgement, may never be known for certain. But from all that can be learned of early gentile society it seems that its universal customs of democracy would make it impossible for the oppression of the priestcraft to have existed from the beginning, and that their early liberties were lost through their relinquishment of the popular methods of judging.

Traces of jury trials are discovered in the Dikasts of Greece and the Judices of Rome. Some writers have asserted that we have inherited the jury from these institutions. But the overwhelming opinion is that it has come down to us from the Northmen and Teutonic races. The personal liberties of the early barbarian tribes of northern Europe was one of their chief characteristics. Among practically all these people, trial by jury in various forms, existed from the very earliest times of which we have any record. Among the early Germans, judgement was rendered by all the freeman of the gau or province. In Denmark, Sweden, Norway, Iceland, and among the Franks, jury trials, somewhat various, were
the only methods of judgement. And in England Blackstone has well said of it as "a trial that hath been used time out of mind in this nation, and seems to have been coeval with the first civil government thereof." The personal freedom and high sense of justice held by these early tribesmen made judgement by any other than their own equals and neighbors a tyranny not to be submitted to.

Forsyth in a few words has graphically described the judicial system of the early Germans. He says; "The Germanic courts of justice in their earliest form... were composed of the freemen of the district, and presided over by the Graf or count (comes). All had a right to attend and take part in the judgement...... at a later period...... we find judges duly appointed to the office and called acubini who, however, did not at first, exclude the freemen, but seem to have sat with them as joint members of the court....... Usually the court in convicting an offender, did no more than sentence him to undergo the ordeal, which gave him still a chance to escape; and amongst the old Saxons on the continent the judges (seven in number) might themselves be challenged to fight, by the culprit and six of his friends."

However, as the Feudal System advanced and the power of the priesthood and the feudal lords increased the so-called freemen almost everywhere except England were gradually deprived of their right of popular trials. During the early periods the land belonged, either in common or individually, to the freemen of
the community, and for this reason the people retained their sovereignty. But with the passing of the ownership of the soil into the hands of the feudal lord, he in time became not only their legislator and military commander but their judge, also. And with the growth of Nations and the power of kings, the judiciary was removed still farther from the people.

But it must not be assumed that the right of popular trials passed immediately with the advent of feudalism. An institution that is so inextricably woven into the very fabric of western freedom was not to be readily surrendered. And it is all the more surprising and interesting to know, in view of the fact that our present military system has abolished jury trials, that it was the fixed method of trials among soldiers during the early feudal period.

"It was in those days when the highest sense of military honor, justice, and truth, was associated upon principles of equal rights and liberty, that these brave and hardy sons of nature, would be judged on every charge only by their equals, assembled before their immediate commanders. Their assemblies were frequent; and it made a part of the grandeur of the commander, that his dependents should in times of peace assemble at or attend his court at stated times.

"These persons so attending, . . . . . . made convenient bodies, to decide all controversies either civil or criminal. At first four knights were returned, who chose twelve more, and their verdict determined; afterwards the twelve
alone were summoned, twelve being separated and charged to find whether the person was 'guilty or not guilty' and without which finding none was punished." (Daune, Treatise on Jury Trials).

Under such a system the liberties and privileges of the soldier were zealously protected. The high sense of honor, justice, and truth of which Daune speaks was the result of the independence of the soldier through jury trials, for these virtues can exist only in men who are independent. A loss of independence is always accompanied by a loss of these virtues and a loss of self respect in general. It is the grossest mistake to think that there existed among these knight-soldiers of the middle ages a military despotism such as we have today. And it seems that so long as the military system depended upon fief-holding knights who were economically independent, these liberties were never seriously encroached upon. Even so late as 1385, in the latter days of feudalism, we find in one of the Articles of War of Richard II, that no great inroads had been made upon the personal rights of the soldier.

Article VI. "Item, that every one be obedient to his captain, and perform watch and ward, forage, and all other things belonging to his duty, under penalty of losing his horse and armour, and his body being in arrest to the Mareschall, till he shall have made his peace with his lord and master, according to the award of the court."
Disobedience of orders being in its very nature an offence against the army, the fine by horse and armor was an arbitrary rule, previously agreed upon, to act as a preventative. And the preamble to these Articles states that they were "made by good consideration and deliberation" of the king, the high lords and barons, and the experienced knights. So that it appears that they were agreeable to all parties concerned. And the latter part of the article shows clearly that the court was much a court of arbiters or go-betweens trying to ascertain the faults and recommend proposals for settling the dispute between the two contending parties. This of course could only obtain where men stood on a basis of equality. And the holding of the body of the offender was only a precaution against the settling of the dispute by a trial of arms, which if not discouraged would result in an unnecessary weakening of the army.

But this knight-soldier who had preserved the liberties of his class by the judgement of a jury of his peers was soon to be supplanted by the soldier drawn from the ranks of the dispossessed proletarian. At the battle of Crecy (1346) the English foot-soldiers inflicted upon the French army, composed chiefly of knights, an overwhelming defeat. Twelve hundred knights, the flower of French chivalry, lay dead upon the field. Green says: "the churl had struck down the noble; the yeoman had proved himself in sheer fighting strength, more than a match for the knight. From the day of Crecy, feudalism tottered
slowly but surely to its grave.” The battles of Poitiers and Agincourt, and the War of the Roses in England were veritable massacres for the nobles and knights. The invention and use of gunpowder completed the overthrow of the knight-soldier who had kept alive the right of the ancient trial by jury through all the Dark and Middle Ages. His place was taken more and more by the soldier drawn from the working class who was economically dependent, so that we find that by the Articles of War of James II, 1688, all powers of courts-martial had passed into the hands of the commissioned officers.

The economic forces which brought about this change must not be overlooked. Economic forces are so rooted at the very bottom of all changes in human society that no apology need be made at their continued mention. The growth of the towns and commerce due to the crusades, and the resultant wealth and power of the merchant and manufacturing classes led to the establishment of the House of Commons in England and to the Third Estate in France. With the bourgeois established in political power controlling taxation and the raising of revenues for the equipping of military forces, a gradual change began to be worked in the organization of these forces. They began to utilize for soldiers the proletarian over whom they held economic power.

But standing armies up to this time were unauthorized and courts-martial were used only when the kings called their armies into actual service. The kings sometimes attempted arbitrariness to use court-martial in their
struggles with the Commons, and this resulted in 1628 in the Petition of Right being brought forward by the Commons who refused to vote any more money for military purpose until the Petition was signed. Charles at first haughtily refused to do this but as the French were pressing the siege of Rochelle and he must have money, Charles at last signed the Petition and martial law was abolished in England.

But when the bourgeoisie House of Commons with its proletarian army overthrew and beheaded Charles, and later in 1688 by a peaceful revolution took dominant control of the government of England the need of a standing army was at once recognized. The campaign of world-wide exploitation upon which this capitalistic government now entered not only made standing armies necessary but it also required that the proletarian soldier be deprived of jury trials. The capitalistic intent of the government could not be executed if judgement was to be rendered by proletarian soldiers.

In the following year (1689) this bourgeoisie Parliament enacted into law what is known as the First British Mutiny Act. The far reaching effects of this act and its direct bearing upon all subsequent armies is of such proportions as to warrant the publication here of its chief parts. And it will be noted that like all selfish and class-interest laws of the bourgeois, the real intent and purpose is hidden behind a halo of “sanctimonious” Patriotism.
FIRST BRITISH MUTINY ACT.

"Whereas the raising or keeping a standing Army within this Kingdom in time of peace unless it be with consent of Parliament is against Law. And whereas it is judged necessary by their Majesties and this present Parliament That during this time of Danger several of the Forces which are now on foot should be continued and others raised for the Safety of the Kingdom for the common defense of the Protestant Religion and for the reducing of Ireland. "And whereas noe man may be forejudged of Life or Limb, or subjected to any Kinde of punishment by Martial Law or in any other manner than by the judgement of his Peeres, and according to the Knowne and Established Laws of the Realme. Yet, nevertheless, it being requisite for the retaining such Forces as are or shall be raised during the exigence of Affairs in their Duty an exact Discipline be observed. And that Soldiers who shall Mutiny or Stir up Sedition, or shall desert their Majestyes Service be brought to a more exemplary and speedy Punishment than the usual forms of Law will allow:

Be it therefore enacted that every person being in Their Majestyes Service who shall excite, cause, or joyne in any mutiny or sedition in the Army, or shall desert Their Majestyes Service in the Army, shall suffer death or such other punishment as by a Court-Martial shall be inflicted." (See Col. Winthrop's Military Law and Precedents; vol. 2, appendix.)
This Mutiny Act has been passed with some modifications by every succeeding parliament. By the revolution of 1688 the House of Commons became the dominant legislative power in England. Its members were made up for the most part of the bourgeois element. The policy of the English government from that time on was to be capitalistic. The worldwide campaign of exploitation upon which this bourgeois government was about to start, made it necessary that they maintain a standing army. It was also necessary that they keep this force in complete subjection. The most drastic military rules the world had as yet ever known were imposed. Writers on military law have attempted to excuse this Mutiny Act on the ground that a number of Scots refused to join the army on an expedition into Holland. But this particular incident would not account for the passing and repassing of this Act ever since. Nor would it hardly be sufficient cause for its adoption into our own military laws. There was a deeper and more sinister motive than to regulate a few stubborn Scotch. Civil government had become capitalistic, which sole aim was to further the economic interests of the master class. Standing armies had been created to execute its will. It was therefore necessary that the power of administering the affairs of the military be placed in the hands of officers having bourgeois tendencies.

RESULTS OF THIS ACT.

The First British Mutiny Act clearly divided the military into two separate parts; one
with bourgeoisie characteristics and possessed of all powers of government, the other with proletarian characteristics and dispossessed of all participation in the management of its own affairs. While it damned the common soldier to slavery, it conferred all powers to enforce such slavery upon his superior officers.

“3. And it is hereby further enacted and declared, That Their Majestyes, or the Generall of the Army for the time being, may by vertue of this Act have full power and authoritie to grant Commissions to any Lieutenants, Generall or other Officers, not under the degree of Collonels, from time to time to call and assemble Courts-Martial for punishing such offenders as aforesaid.

“4. And it is further enacted and declared, that noe Court-Martaill which shall have power to inflict any punishment by vertue of this Act for the offences aforesaid shall consist of fewer than thirteene, whereof none to be under the degree of Captaines.”

Here is a clear cut division. None under the degree of captains. To them alone, was given power to try all offenders. They were of the bourgeoisie. To be a captain in the British army implies wealth and influence. Either he was a chief holder or had great industrial possessions. He must be of the possessed class. He was given absolute power. Always has the capitalist struggled for wealth and power. These two forces have ever been his two chief characteristics.

This specific division has well extended to our own times. Our congressmen appoint our
naval and military cadets. Does any one know just how many of our congressmen are class-conscious working men? These cadets are, in every way possible, made to know that they are not of the proletarian.* They are admitted into the society of the rich. If they are not already rich, they hope to marry into rich families. Forbidden by military etiquette to associate with the proletarian soldier and worker, the cadet, by reason of his environment, naturally grows the bourgeois habit. And after being commissioned, if for any reason he shows party treason to his class by mixing with his "inferiors" he is straightway ejected under the 61st Article of War for "conduct unbecoming an officer and a gentleman."

The pay of officers, alone considered, will not bring it into the working class. According to a table furnished by The New York World's Almanac for 1913, the army pay for commissioned officers runs from $1,700 to $11,000 per year. Taking the nine grades we get an average of $4,322. This does not include allowances for quarters, etc. There is no fear of getting out of a job. In case of sickness they get the best of attention, with no loss of pay. The pay check comes with the regularity of the tides. It is so certain that it might be considered as interest on principal, which at the rate of five per cent. would amount to a fortune of nearly $100,000. Does any of the workers find himself in such "humble circumstances?" We think not.

(*) F. N. "The military community cannot expect—nor can it be expected of them—to preserve a higher tone of moral conduct than what is sustained by the higher orders of society." DeHart, Military Law, P. 372.
The enlisted force are recruited from the working class. There may be rare instances of rich men's sons, who out of pure romance or a hankering for the charms of the simple life, cast their lot amongst the rank and file of the military. But these are the few exceptions which prove the rule. The great mass of the common soldiers who enlist in time of peace do it either as a vocation or because of dissatisfaction with industrial conditions. This statement is generally true, notwithstanding the flowery stories of feathered nests many of them are wont to tell of having left. A choice in life of a vocation so commonly known to be fraught with such great handicaps has behind it a stronger motive than romance or a love for simplicity.

The soldier then is to be classified as dispossessed. But he is not dispossessed economically, in the sense that the worker is dispossessed. The workers can be emancipated, only by giving them the right to produce food, clothing, and shelter. If they have the right to produce these things there can be no slavery of the working class. The soldier has these things. Yet he is the most dispossessed of all classes. And in order to more properly understand the reasons for this unnatural bondage, we will treat, briefly, a few of the navy regulations and articles of war governing the army, that are a heritage and growth of the First British Mutiny Act.

Mutiny: The sentence of death is emphatically laid down in cases of mutiny. No exact boundary line can be set to exactly define and
limit the meaning of the term “mutiny.” That has to be left to the “high standard of justice” and “superior judgement” of the officers. But it might generally be defined to be “a resisting of lawful military authority, with intent to overthrow, subvert, or neutralize its power.” The British Articles of War in the year of the so-called “glorious revolution” of 1688, say:

“And if any number of Soldiers shall presume to assemble to take Counsel among themselves for the demanding their Pay, any Inferior Officers accessory thereunto, shall suffer death for it, as the Heads and Ring-leaders of such Mutinous and Seditious Meetings; and the Soldiers shall be punished with death or otherwise at the Discretion of the General Court-Martiall.” (Col. Winthrop’s Mill. law and Prece.) The Articles of 1765 state, “on any pretence whatsoever.”

“Mutiny” having been defined by precedent, our own regulations merely use the one term, there being no occasion to specifically outline its metes and bounds. As the officers are the sole judges, the circumstances provoking the assemblage may receive no consideration. Men, half-starved by reason of some corrupt Quartermaster, might be shot to death for daring to take counsel among themselves.

The death sentence is imposed upon any soldier “Who disobeys the lawful order of his superior officer. (This is a fearful drop from the feudal soldier who suffered only the loss of horse and armor.) It does not matter if the order be to fire upon a striking body of
men and women workers; or it may have been to plunge a bayonet through the heart of his own neighbor or acquaintance. All this does not matter. To disobey is to die. And to die, blindfolded, at the hands of his own class. This is the tragedy of the class struggle. The bourgeois decrees. But he can not execute. Always does the proletarian slay his own class with his own hands. This would not happen if the soldier was given a trial by jury.

Also, "or strikes or assaults, or attempts or threatens to strike or assault, his superior officer while in the execution of the duties of his office." (Navy reg.) The articles of war specifically state "on any pretence, whatsoever," and this construction is implied in the naval regulations.

The tremendous degradation to which the soldier is hurled by such shameful legislation is altogether unthinkable. He can not resist force with force. He must submit to the most gallling abuses without so much as lifting his hand, or threatening to lift his hand. Colonel Winthrop says: "The person of an officer should indeed be sacred to the soldier," (Mil. law and prec., p. 879.) It does not matter if this officer be a coward. It does not matter if he be a scoundrel. It does not matter if he provoke the soldier, even to the extent of having struck him. Death for the soldier, ignominously applied by his own comrades, lurks in the slightest offering of violence to this "sacred" person.

Navy reg. Art. 8. "Such punishment as a Court-Martial may adjudge may be inflicted on any person in the Navy:
(6) "or treats his superior officer with contempt, or is disrespectful to him, in language or deportment, while in the execution of the duties of his office:

(7) "or joins in or abets any combination to weaken the lawful authority of, or lesson the respect due to, his commanding officer:

These regulations bind the soldier hand and foot. They do not even stop there. They bind his tongue when it would cry out against the crushing pain that kills the soul. They make it cleave to the roof of his mouth when it would shout its protest against a slavery, the most heinous that has ever disgraced our civilization. For when we have read the next article we know that not only must the soldier suffer, but that he must suffer in silence."

(8) "or utters any seditious or mutinous words.

These regulations are only for the benefit of "the higher orders of society." The persons of this class are "indeed sacred to the soldier." But with the proletarian, his own dispossessed class, it is different. He may wade knee-deep in the blood of striking workers, and get a medal for so wading. He may stand in the firing squad and dye his hands with the blood of his own dispossessed comrades, and be mentioned as having performed "brave and meritorious" service. But upon long and weary marches; under the famishing pangs of hunger; in the grimy toil of the trenches; and under any form of tyrannical oppression, must he always remember: "The person of the officer should indeed be sacred to the soldier."

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And as if to guard against any possible loophole through which the soldier might possibly escape, we have another "splendid" article. Article 22. "All offenses committed by persons belonging to the Navy which are not specified in the foregoing articles shall be punished as a court-martial may direct."

There is another article upon which the administrators of military law can always depend. It is the article containing the words "conduct to the prejudice of good order and discipline." When an offense can not properly be placed anywhere, they so construe it. To officers alone, is given power. It must be remembered that courts-martial have the powers of both judge and jury. They determine the law and the evidence. They are the sole judges of what is and what is not an offense. Any act of the soldier which threatens, or even disregards their power is sure to be met by prompt and drastic repression.

That such an inhuman code should have grown up under a regime where jury trials have been abolished is only to be expected. When men can not defend themselves against oppression, their wrongs are multiplied till the tyranny grows into slavery. One thing especially to be noticed, is the number of Constitutional guarantees that have been taken away. The right, peaceably to assemble, has been taken away. The right of free speech has been taken away. The right of personal freedom has been taken away. In view of these facts it might be difficult to determine whether one was in Russia or America. And furthermore, the right of trial by jury has been taken
away. This last right is more than all the others, for with it the others could be protected. With this right gone and the power placed in the hands of their snobbish masters, the rights of soldiers are only such as these snobbish masters see fit to allow.

JURY TRIALS AND MARTIAL LAW.

When the English freemen wrote trial by jury into the Magna Charta as the best means of safeguarding their early liberties they did not take into consideration that vast population of serfs and villiends which comprised the working class of that time. This dispossessed laboring class received no more benefits from the Great Charter than did the chattel slaves of America from the Constitution. They were accorded none of the rights of human beings. Blackstone says that "they were transferable by deed from one owner to another, and if they ran away or were purloined, might be recovered by action like beasts or other chattels." (Book, Right of Things.) They were judged by the classes above them. And it was this gross injustice which led to their insurrections, of which their tremendous hatred of courts and lawyers best testifies. Wat Tyler's rebellion furnishes us with a splendid illustration of the vicious conditions which grow up in a society where jury trials have been denied to portions of the population. Of the acts of these rebel peasants Gardiner in his "Student's History of England" says: "The court roles which testified to the villiends' services were burnt, and lawyers and all others

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connected with the courts were put to death without mercy. From Kent and Essex 100,000 enraged peasants, headed by Wat Tyler and Jack Straw, released John Ball from jail and poured along the road to London...... Lancaster's palace of the Savoy and the houses of officials and lawyers were sacked and burnt. All the lawyers who could be found were murdered."

There is one thing which can always be looked upon with a degree of certainty in the process of human government. It is this; that one injustice can be maintained only by the creation of some other form of injustice. Had these peasants been granted the equal protection of the laws and the right to administer them by jury trials, there never would have been an insurrection and the intense hatred of the courts and lawyers. But since these rights and privileges were denied them they could be forced to accept these injustices only by force. This means was found in martial law which has ever been and shall ever be the greatest enemy of justice that the world has ever known. The very essence of martial law is the abolition of jury trials. So martial law was created, and it is the natural and inevitable phenomenon that could only grow out of a social structure based entirely upon the ethics of property.

Mention has already been made to martial law as it applied to the early English armies when actually called out. In these times it affected only the soldiers. But the growing discontent of the peasants, accompanied by
violent insurrection, put a new phase into the problem of controlling the workers. The "hue and cry" provided by the common law, calling on the people to put down uprisings, was insufficient. A stronger and surer means was demanded. Birkhimer, an authority on "martial law" has gone to the root of this problem, and has very clearly and forcibly told the reason and purpose of applying martial law to the workers. He says:

"But years wrought the before-mentioned change in the signification of the term (martial law.) The lines drawn between classes of the people in England were at once marked and pronounced. The rise, progress, and finally, to a considerable extent, the obliteration of these deeply implanted distinctions form one of the most interesting chapters in the history of that nation. The serfs and villiens often rose in rebellion, not by preconcerted movement, but urged on by the common and intense hatred of the classes above them.

"There was no civil power in the land capable of suppressing these uprisings. As just mentioned, the sovereign had not at command the strong right arm of a regularly organized military force. On such occasions the need of a regular army was severely felt. The large numbers of the turbulent and discontented rendered it impracticable for the ordinary officers of government to overthrow and bring to justice open, defiant disturbers of the peace."

Mr. Birkhimer was a LL. B. At the time of his writing he was a first lieutenant and adjutant in the Third United States Artillery.
It is not likely that Mr. Birkhimer was a socialist, or a labor agitator. But if he had been one, or both, he could not have stated the class-struggle more briefly, or shown more plainly just why the “big stick” is aimed at the heads of the workers. He speaks of “bringing to justice open, defiant disturbers of the peace.” Disturbers of the peace, have through all history, been those who questioned the right of the rich to plunder. And justice has been always construed to mean the wishes of the ruling class. He further says:

“Whenever there was any insurrection or public disorder the crown employed martial law, and it was exercised not only over soldiers but the whole people. Any one might be punished as a rebel or an aider or abettor of rebellion whom the provost marshal or lieutenant of a county or their deputies pleased to suspect.”

MARTIAL LAW IN AMERICA.

So far martial law has been discussed only as to the reasons of its introduction, and its application to English workmen. But Birkhimer tells us that since the Petition of Right no one, not even the sovereign, would contend that martial law in time of peace is lawful in England. To argue that it is not, he continues, would be a waste of words. It would be asserting what every one admits to be true. But while England has emphatically set her foot down on martial law, the trend in this country is quite to the contrary. The resort
to it here is of such frequency that its occurrence brings forth no further comment than mere news mention in the press. No stronger argument for the future use of martial law in labor disputes in this country can be made than the great number of precedents laid down of its use in the past. Whether it is the greater arrogance of the American workman, or an unusual amount of timidity on the part of the American capitalist, does not matter. The fact remains that its continued and frequent use has made it a fixed American institution.

Martial law in this country was first employed in what is known as the "whiskey rebellion" during Washington's administration. The resort to it during the war of the Rebellion was only to have been expected. But that there is a fixed tendency to apply it in the suppression of the workers, is obvious to the most conservative observer. Apologists for martial law base their claim on necessity, and of course this is quite right when we remember that capitalism considers anything necessary that defeats the wishes of the workers. Birkhimer, in his argument to show the inadequacy of the posse comitatus, says:

"Where was the posse comitatus when death and destruction stalked abroad in the Tennessee and Coeur d' Alene regions, at the Homestead, Penn. mills, and the extensive railroad depots at Buffalo, N. Y.?” Concluding, he says: "If the posse comitatus fail, some other effective coercive power must take its place, or disorder grows apace and government fails of its purpose. That power is the military. If this fail, revolution results."
If then we are going to get martial law in this country every time the workers decide that conditions have reached an intolerable state, let us get into our minds a picture of just what martial law is. The people of the districts mentioned by Mr. Birkhimer have a picture of martial law. So have the miners of the Cabin and Paint Creek districts a picture of martial law; a life-size picture that will remain as long as life.

In the Milligan case (4 Wallace, 2), Attorney General Speed says: "Martial law is the will of the commanding officer of an armed force, or of a government military department, expressed in time of war within the limits of his military jurisdiction, as necessity demands and prudence dictates, restricted or enlarged by the orders of his military chief, or supreme executive ruler.

"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 offender."

Mr. David Dudley Field, arguing in opposition, says of martial law: "What is ordinarily called martial law is no law at all. Let us call the thing by its right name; it is not martial law, but martial rule. And when we speak of it, let us speak of it as abolishing all law, and substituting the will of the military commander, and we shall give a true idea
of the thing, and be able to reason about it with a clear sense of what we are doing.”

Daniel Webster, in arguing the case of Luther vs. Borden, has this to say: “I shall merely observe that martial law confers power of arrest, of summary trial, and prompt execution, and that when it has been proclaimed the land becomes a camp, and the law of the camp is the law of the land.” (See Birkhimer’s Mil. Gov. and Martial Law; p. 412.)

This then is the graphic picture of martial law. This is the “big stick” which, it is claimed, is so much needed to drive back invading nations, but which is nevertheless brought down with a whack on the heads of the workers whenever they become too menacing to the profits of capitalism. And when all has been said and done and the truth sifted out it will be found that the aim and object of martial law is to suspend the right of trial by jury. How else could men have been held in the bull pens of Coeur d’ Alene for such a long time without a trial, except by martial law? How else could the masters in Colorado, who said: “To hell with the Constitution,” have arrested and deported men out of the State, except by martial law? How else could the coal barons of West Virginia have imprisoned Mother Jones and other strike leaders on trumped up charges and convicted them on flimsy evidence, except by martial law? The Supreme Court in the Milligan case (4 Wallace 2) has sounded the key note for the reason of martial law. It says in part:
"It was as easy to protect witnesses before a civil as a military tribunal; and as there could be no wish to convict except on sufficient legal evidence, surely an ordained and established court was better able to judge of this than a military tribunal composed of gentlemen not trained to the profession of law."

What the court suspected and hinted at, is the very thing that our capitalistic supporters of the "big stick" very often desire. That is that capitalism often desires that labor leaders be convicted on less than "sufficient legal evidence." Since this can not be done before a regularly constituted court with its jury system, it is necessary for Capitalism to suppress the jury trial through its old friend the military.
DECLARATION OF THE SOCIALIST PARTY.

"The judgement by jurors is the true guaranty of individual liberty in England, and in every other country in the world where men aspire to freedom." SIEYES (France).

The Socialist party went on record, at its last National Convention, as intending to start a campaign of education among the military. This is the first expression coming from any political party looking towards the solution of the soldier problem. Although constantly misrepresented, Socialists are genuinely interested in this work. The success of their efforts will depend upon two things: First, upon a thorough understanding of the relation of the soldier to the worker; and second, upon the nature of the appeal which the Socialist party makes to offer relief to the soldier. The first of these has been briefly and very inadequately treated. To discuss this question fully would require more space than can be allowed in this pamphlet. But these generalizations seem reasonable; that both come of the dispossessed proletarian; that both would be benefited by the abolition of capitalism. An open and impartial discussion of the soldier problem from this standpoint would soon lead to a co-operation of these two forces.
It has already been pointed out that officers are, by position and environment, friendly to the present capitalist system. And for this reason they have been delegated all powers of administration concerning military affairs. Taking the stand that the capitalist and the officer have a mutual interest, a few words will not be amiss to discover the relations of the worker and the soldier to their respective masters.

The capitalist privately own and control the natural resources and the social tools of production and distribution. The worker, being dispossessed, in order to produce the thing necessary to his own life, and the lives of those dependent upon him, must get permission from the employer to use these tools. Without this permission the worker must inevitably perish. The capitalist will grant permission only on condition that the worker surrender a certain amount of his produce, called profit. But the right to produce the things necessary to life, in short the right to live, is, according to our capitalistic laws, something not inherent in the worker. That belongs to his employer, who grants it or denies it as profits dictate.

The officers in the military have all power. They adjudge all punishments, and decide what is and what is not an offense. The truth spoken, written, or acted by an enlisted man might be considered by them as an offense against their class. The injustice of courts-martial is a matter of common comment. In fact, officers have declared them to be, not courts of justice, but courts of discipline. Necessity is
the thing taken into consideration by members of a court-martial in reaching a verdict. Necessity, as seen by all fortified classes having usurped or delegated powers, means the repression of all movements to curtail or destroy their power. And do not forget this: The proceedings of a court-martial can not be reviewed by any civil court. The right of the soldier to life and liberty is but a mockery and without meaning. Life, to him, becomes a privilege, dependent upon his willingness to serve without protest, every whim of his masters.

We find then: That the workers and the soldiers belong to the same class, the dispossessed or serving class. They have one alternate; to serve their masters or to die. One by the slow and wretched process of starvation, the other with his back to the wall at sunrise.

Let us go back to the second requisite for the Socialist party to properly dispose of the soldier problem. That is, what appeal does the Socialist party intend to make in order to get a retaining hold upon the minds of the enlisted force. And let the Socialist party know this: It need make no appeal to the commissioned officers. It could hardly benefit them financially, and it would destroy forever their tyrannical power.

The remedy is simplicity itself and can be summed up in ten words: The trial of enlisted men by a jury of themselves.

This may not seem important. Yet it is everything. Men could then speak their thoughts and still be able to say whether it be
insolence, or sedition, or neither. Men might then presume to speak with one another about bettering their conditions and still not be shot for mutiny. Also, should an officer mistreat a soldier by words or violence, it is not likely that now "the person of the officer should indeed be sacred to the soldier." On the other hand he would most probably reciprocate with a "haymaker" in the solar plexis. For he would be protected in defending his manhood by a jury of his own class.

What is there against it? There is not a socialist who does not enjoy the same privilege. Surely they would not deny to others what they themselves so zealously treasure. Such a course is the basis of class legislation, a thing socialists seek to destroy.

But some say; It is best not to better conditions, in order to keep men out of the army and navy. This is not consistent for two reasons. First, you can not by bad conditions do away with the military. Every capitalistic nation is flooded with unemployed men. Capitalism does not provide for these men. They must do something. This country rejects over 75 per cent. of all applicants to the military service. The army and marine corps are practically filled up. The navy is at present a little short. This can be remedied by lowering the standard of efficiency of applicants. In the June number of the Fleet Review the Surgeon-General is quoted as having given such instructions. Also, the Secretary of the Navy has announced that he will send the fleet to the Mediterranean during the
winter. Already this is bearing fruit and recruits are coming in. They are mostly young men from the rural districts. They have led clean lives and their blood is good. They will be thrown in contact with the most revolting conditions conceivable. Go confidentially among the men who made the world cruise and find out what sort of allurements are thrown in front of the American sailor in these ports. On the opposite shores are Mohammedan towns filled with the "unspeakable" Turk, whose abomination has made his name a synonym for all that is perverted and vile in nature. Here our young men will be taken to "see the world." It matters little if they return with impure blood. Fourteen marines were sent away for treatment from the Legation Guard at Pekin, China, at one time, with Asiatic syphilis. But men are needed for the Navy. And one way or another, they will be got.

Secondly, the Socialist party has declared its intention of educating the military. You can not educate people without first interesting them. You can not interest people unless you offer to help them. The Socialist party pursues this course in its campaign with the workers. It does not go to them and say that it will work to make their conditions worse in order to make them dissatisfied with capitalism. It would not dare to pursue such a course. If it did it would get 1,000 votes instead of 1,000,000 votes. To be just with the soldier the Socialist party should offer a constructive platform for him as well as for the
worker. Armaments will last as long as capitalism lasts. The sooner you win the soldier the sooner you will have another force with which to stop the robbery of the capitalist.

Perhaps some of our capitalistic friends might raise objection to the good sense of this course on the ground that courts-martial having power of both judge and jury, the enlisted force would not be qualified to pass on points of law and evidence. Granting this contention to be sufficiently true to warrant discussion, we still see no reason why a soldier should be deprived of the right of jurymen. He is so qualified while under the civil law. He would be required to determine facts, only. Surely a man who can locate a bobbing target at 1,000 yards ought to be able to recognize a fact if he met it in a court room.

Our capitalist friends might raise yet another objection. Courts-martial being considered courts of honor, the high sense of justice in cases affecting personal honor might be in danger of receiving a lower standard than where the court was made up of the gold braided gentry, every one of which, according to the Blue Book is "an officer and a gentleman."

This argument might once have had weight but since the public have become enlightened on the kind of honor prevailing among the ruling class, it will be wasted platitudes. Tangling, turkey-trotting, and society-shocking in general are not justifiable claims to superior decency. Of course, "the military community
cannot expect, nor ought it be expected of them, to preserve a higher tone of moral conduct than what is sustained by the higher orders of society.” Do you get that? The higher orders of society. See how the law is interpreted to connect the industrial rulers with the military rulers. Believing only half of the stories circulated about the debaucheries of the society of the “high orders” still sufficient remains to show that shoulder straps is no proper claim to a higher sense of honor.

No, Mr. Officer, we don’t want any of your sense of honor. We detest it. Still more do we detest your sense of justice. You preserve your own so-called honor by trampling upon the manhood of the soldier. With the jury the soldier will protect his own honor. His honor is as sacred as yours. With the jury the soldier will do justice. And his sense of justice is infinitely superior to yours.

If the capitalist contends that the soldier cannot determine right from wrong, then the capitalist system must be responsible for this corruption. But this position is untenable. The capitalist’s conception of right is something which will benefit him. His conception of wrong is something which will injure him. Decisions of soldier-juries would weaken and destroy the power with which he now enslaves the many.

But the jury system is right. It is a constitutional right for every one—except soldiers. It was considered a sacred right even as far back as Magna Charta. And it was forever after so held until the burgeoisie, upon gaining

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political power in 1689, denied this right to its soldiers. All capitalist society has since recognized the wisdom of this act.

There may be many socialists who believe that the better way to remedy this situation would be to abolish military law and make soldiers subject to the law of the land. There is much weighty argument in favor of this procedure. But this would require a change in the constitution. Under the former alternative Congress could provide all needed regulations. Military procedure is based upon the excepting clause in article 5, of the Bill of Rights, which says that, "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land and naval forces, etc." In order to accomplish the above remedy it would be necessary to strike out this exception clause.

Another cogent argument in favor of the former proposal is that acts not cognizable at civil law are offences at military law. There are such things as insolence and insubordination which if unchecked would destroy the efficiency of the military. What is objected to is that one class has a monopoly on the right to say when these acts become offensive. It is certain that armies and navies will be required as long as capitalism lasts. It is not certain that armies and navies will be required under socialism. We hope not. But while armies last let us, at least, have democratic management.
THE NEED OF CLASS-CONSCIOUS ACTION.

"An institution admirable in itself, and best calculated for the preservation of liberty and the administration of justice, that was ever devised by the wit of man." — Hume.

Paragraph 1, section 5, article 1, of the Constitution of the United States, speaking of the House of Representatives and the Senate, says: "Each House shall be the judge of the elections, returns, and qualifications of its own members," etc. This clause is generally incorporated into the constitutions of the various states. Behind it lurks one of the greatest of dangers to the proletarian movement.

In 1912 the Socialists elected a state senator to the Kansas legislature. He was elected by a sound plurality. The old political parties contested the election, but the courts decided against them. It was apparent, from the evidence, that Mr. Stanton, the Socialist, had been duly elected. Yet the state senate, acting under its arbitrary right, refused to seat the Socialist senator-elect and declared Mr. Porter, the Republican contestant, elected.

Now, Mr. Worker, how do you like that? Does that look as if the capitalist class are going to step out of, and allow you to step into the powers of government? If you think so you will wake up to find that you have been slumbering in dreamland. The capitalist class do not intend that you shall ever get a dominant hold on government. Kansas people

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have stormy ways of doing things. Its people are, temperamentally, cyclonic. In this matter of governmental power they went straight to the point. They have decided that in the affairs of government there is no place for the worker. They have established a precedent which, if followed elsewhere, is so charged with dire possibilities for the workers as to overshadow every other existing problem.

Also, paragraph 2, following the above mentioned, says: "Each House may, with the concurrence of two-thirds, expel a member." These arbitrary rules in the Constitution should be immediately abolished. The courts being upon the ground can be made competent judges of election returns. And with the recall established the second paragraph is not needed. But you can not propose amendments to the Constitution unless you have members of your own party in either Congress or the state legislatures. And if the old political parties, representing the capitalists, decide to keep you out of these legislative bodies you are as helpless as a new born babe. Your ballot will not be worth the paper and ink which compose it. You will be as completely disfranchised as were the blacks in chattel slavery. During all the long years that you voted to send your masters to office you were showered with platitudes about being sovereign citizens and the bulwark of the Republic. But now you have arrayed yourselves into a distinct political party and elected your candidate to office. And he was given the boot.

Precedents are a great thing: That is, when they are favorable to the capitalists.
Here is a precedent that is extremely favorable to capitalism. And if it is to be used in the future, as it probably will be, the working class will be up against a stone wall. And if they attempt to scale or batter down that wall they will find behind it another wall, a wall of steel. A great deal depends upon the character of the class-conscious action of the workers toward the military whether this wall of steel is to help or to hinder them.

But some say: The capitalist class is cowardly; it will not dare to resist the will of the many. Let me say this: The capitalist class may not be so cowardly as you think. A cowardly class can not rule, and the possessed class has always ruled. From time immemorial, those who have owned the land and the means by which the many lived, have ruled. It has ever been so. It is so today. And it will be so till the end of time. If the people wish to rule themselves they must own the means by which they live. Moreover, the capitalist does not need to do any fighting. Because he owns the means by which many live, he can pit one dependent class against another.

Socialists, of all people, are able to read the handwriting on the wall. Mr. Benson, in his valuable book, "The Truth About Socialism", in the chapter, "Socialists, the Lone Foe of War" (First appearing in Pearson's Magazine), very plainly senses this danger. He says that if the Socialists ever carry a general election, and are denied their seats that they will fight, even with bullets. He also states that there are 12,000,000 men in this country
subject to the call of the President. As Congress alone can declare war against a foreign power, Mr. Benson concludes with a remark to the worker, using a phrase of Carlyle's "'Simpleton,' they are to be used against you."

But there is one thing which Mr. Benson did not mention and which the worker and the soldier should do well to remember. A soldier is not bound to obey an unlawful order. Colonel Winthrop says that it is "affirmed by all authorities that a command not lawful may be disobeyed, no matter from what source it proceeds." (Military Law and Precedents; vol. 2, p. 887.) It has been so decided by the U. S. Supreme Court. (Little versus Barreme; 2 Cranch 179.) And if these 12,000,000 men under arms should receive an order, flagrantly in violation of the law of the land,—which is the will of the people—it would be their right not to obey such unlawful order. It would be more than this. There would be a plain and moral obligation to disobey such unlawful order. And it would be a great advantage if soldier-juries instead of officers were to decide the facts in such cases.

It will be the Socialist party which first forces relief for the soldier. In this respect the other political parties have done nothing. On the contrary, the conditions of the soldier with regards to human rights, has been steadily growing worse. This has been true for the last 500 years. To illustrate, take the before-mentioned article 6, of the Articles of War of Richard II, A. D., 1385:
“Item, that every one be obedient to his
captain, and perform watch and ward, forage,
and all other things belonging to his duty,
under penalty of losing his horse and armour,
and his body being in arrest to the Mareschall,
till he shall have made his peace with his lord
or master, according to the award of the court.”

Over 500 years ago, in what we are wont
to call the Middle or Dark Ages, disobedience
of orders was only considered serious enough
to punish by a loss of horse and armor. The
latter part of the article indicates that the
court was, as has been stated, chiefly a court
of arbitration acting as a go-between to satisfy
the two contending parties.

Turn the pages gently, fearingly, and with
trembling hands and hearts. We are passing
through 300 years of the rule of kings and
nobles whom we have been taught to believe
to have been the very incarnation of fierce-
ness and cruelty. Surely, disobedient soldiers
in those days must have met horrible fates.
We fancy them being hung, their bodies taken
down, drawn and quartered, and exposed
in the most conspicuous places of the camp
as a terrible warning to others. But luckily
we have it all in print, from the Articles of
James II, 1688.

Art. 15: “If any Inferior Officer or Soldier
shall refuse to obey his Superior Officer, or
shall quarrel with him, he shall be cashiered,
or suffer such punishment as a Court-Martial
shall think fit.”

It is safe to say that the term “cashiered”
applied to the inferior officers, and that the
latter punishment named referred to the soldiers. But it is an old rule at law that where the death penalty is not specifically stated, it can not be inflicted. It is therefore evident that these punishments were either in fines or corporeal, such as being placed in stocks in public places, or otherwise according to the customs of the times. This punishment is harder than the previous one because upon the advent of the dispossessed working-class soldier, power was passing to the commissioned officers.

The next year the bourgeois seized the English Government. Government from them on was to be used for the furtherance of the economic interests of the capitalist class. The ghastly and inhuman laws of kings were not ghastly and inhuman enough to meet the requirements of the soulless bourgeois. The British Articles of 1765 declare death to be the punishment for disobeying the lawful command of a superior officer. And the 21st Article of War of our own regulations, in this great enlightened 20th century, demands the life of any soldier who would be so hardy as to question for a moment the justice of the decree of his masters.

Such barbarity is inhuman. It is utterly inexcusable in this age of the world. To speak of such an age as Christian is to throw the lie into the very face of religion itself. It is an age of brutishness, intensified by its complexity of torture. We out-Herod Herod in the cruelties and injustices of an ancient
and heathen world. Such monstrosity is criminal. It is the most vivid indictment of the capitalist system that can be imagined. It is such an incredible thing that we have to be told of it twice before we can realize it. It is because it is written with black on white that we can not deny it. Yet just such an unwritten law runs through the whole fabric of our industrial system. The economic decree of the masters is: For the privilege to work you must pay toll. If you pay no toll you can not work. If you do not work you must surely starve. To disobey our law is death. And this to the worker as well as the soldier. It is the fate of the proletarian. It is the lot of the dispossessed.

Why then these monstrous barbarities? They stun us with inexpressible horror. They shock the conscience. They crush out of us every semblance of humanity and return us to the jungle of tigerish savagery. These laws are absolutely essential. They are the soul and spirit of capitalism. They are the only means by which one class can rob another class. Without them capitalism could not last a single day. There is a simple law of proportion which explains the steady growth of such an outrageous condition. At the same ratio that the capitalist has gone on obtaining control of the means by which all must live, in just that proportion has the worker been more and more placed under the economic pressure—plus martial law—which enslaves him until his life is dependable only upon his willingness to produce wealth for his masters.
At the same ratio that the capitalist has gone on obtaining the means by which all must live in just that proportion has the soldier been subjected to specific legislation until his only claim to life is his readiness to do the bidding of his masters.

Any effort on the part of the working class party to better the conditions of the soldier will only be an effort to better its own class. The soldiers are recruited from the working class. It is insufficient to say that these men should seek other channels of employment. At present we are living under capitalism, not socialism. Socialism will surely, at some early date, do away with the absurdity of armies and navies. But it must first do away with capitalism. The grinding processes of capitalism glut the labor market with millions of men. Out of these millions of dependent would-be workers the capitalist class chooses its minions to pit against the workers. But to insure complete obedience it has imposed upon this serving class the most stringent laws and regulations. If they were free from this galling slavery they would not struggle against their own class. This slavery consists of specific legislation. If they had a trial by a jury of themselves they would not be under this galling slavery, because they would be subject to their own judgements, and a man's own judgement can not be considered tyranny to himself. And if the soldier class did not struggle against the workers, the working class political party would soon have control of both government and industry.
THE COMMON GROUND.

"The noblest invention (jury trial) for the support of justice ever produced." DE LOLME.

The common ground upon which the soldier and the worker may stand in their fight for freedom is that capitalism results in the enslavement of both. Through different means it strikes at their lives and liberties of action. It is directly responsible for their dependent conditions.

Acknowledging this common ground and looking toward a plan for class-conscious action the Socialist party could take up three propositions, all of which have been mentioned. They are: Firstly:

"To declare for the trial of enlisted men by a jury of themselves."

The Socialist party should not only make this a part of its platform but it should call the attention of the people of the United States to the unjust form now prevailing, asking them to demand of Congress sufficient legislation to make the proposal into law. The locals could, wherever convenient, take steps toward the securing of all information obtainable from among enlisted men, to strengthen their cause before Congress. Secondly; "The
abolition of courts-martial for the trial of citizen in districts where Congress or the state legislatures have not formally declared to be in a state of war, or insurrection.”

In King's Chapel, Boston, is the marble statue of Samuel Vassall. The sculpture work is excellent. The marble folds and frills of the silken coat and collar are remarkably well carved, almost to a point of deception. One can almost fancy hearing these stone frills crunch and rustle under the touch of the hand. But after all it is not the superior workmanship of the sculptor that holds one before this statue. Below is told the story of the man. It is the story of a fighting man; of a man who fought against overwhelming odds, against the judgement of the courts, against the palaverers of his time, and against kings, king by "divine right," the notorious Charles I. Refusing to obey the arbitrary and unconstitututional demands of Charles, his goods were seized and confiscated, and his body arrested and thrown into prison and held without the king so much as showing cause for so doing. But because he was right he still fought. Also, his colleagues were fighting men. It was these kind of men with this kind of spirit who the same year forced the
king to sign the Petition of Right which abolished the use of martial law and courts-martial for the trial of citizens in England.

It seems strange that after nearly 300 years of our boasted Christian civilization that in freedom loving America men should be subjected to the same unjust treatment as was Samuel Vassall. But this is not the worst phase of the matter. Women gray of hair and feeble of body, women eighty years of age, thrown into prison, summarily tried and convicted before a court-martial. While king Charles may have been tyrannical, his tyranny was at least of the chivalrous type. He was not so cowardly as to wreak his power upon an old and enfeebled woman.

Let the Socialist party circulate a petition before every organized worker and every other citizen who prides his constitutional liberties as much as did Samuel Vassall and his colleagues prized theirs. Surely we can do what these men did. And certainly there is much need of a Petition of Right in this land of the "free." Let this petition demand of Congress and every state legislature to pass legislation destroying the right of the military to try citizens in time of peace. The Supreme Court has frowned upon and declared against the trial of citizens by military tribunals except in
time of actual war where the civil power was completely overthrown. In the Milligan Case (4 Wallace, 2.) the court has this to say:

"It is difficult to see how the safety of the country required martial law in Indiana. If any of her citizens were plotting treason, the power of arrest could secure them, until the government was prepared for their trial, when the courts were open and ready to try them.

Martial law can never exist where the courts are open, and in the proper and unobstructed exercise of their jurisdiction."

The right of Congress to regulate the military is given it by the Constitution which says that Congress shall have power to "raise, support, and govern armies and navies, etc." The state Constitutions give their legislatures the same power over their respective militia.

Thirdly; "Immediate amendment of the Constitution, striking out paragraphs 1 and 2 of section 5, Article 1."

While the Socialist platform already provides for the calling of a National Convention to revise the Constitution it seems that the application of the arbitrary rule in the Kansas case ought to be sufficient to make the workers realize the importance of having these two clauses immediately struck out. The possibilities of the capitalist political parties applying the "steam roller" to the officers-elect from
the working class party in the future will not permit this issue to lie dormant. The discussion of this question will also bring to the mind of the soldier the fact as “affirmed by all authorities” and sustained by the Supreme Court, that “an unlawful order need not be obeyed.” When the regular soldier and the 12,000,000 citizen-soldiers of this country understand that it is their right to disobey an unlawful order, the defeated capitalist class at the ballot-box will not dare attempt to unlawfully deprive the victorious working class party of a justly earned election. And the best means of interpreting the word unlawful and to insure the soldier against unlawful tyranny is to place in his hands the ancient right of TRIAL by JURY.