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**A View Of Society In Europe, In Its Progress From
Rudeness To Refinement: Or, Inquiries Concerning The
History Of Law, Government, And Manners**

Stuart, Gilbert

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Chapter V.

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C H A P T E R V.

S E C T I O N I.

(1) 'FIT interdum,' says the old dialogue concerning the exchequer, 'ut imminente vel insurgente in regnum hostium machinatione, decernat rex de singulis feodis militum summam aliquam solvi, marcam scilicet, vel libram unam; unde militibus stipendia vel donativa succedant. Mavult enim princeps stipendiarios, quam domesticos bellicis apponere casibus. Haec itaque summa, quia nomine scutorum solvitur, *scutagium* nuncupatur.' *Dial. de Scaccar. lib. 1. sect. 9.*

It was according to the number of their fees that the barons and tenants *in capite* were charged with *scutage*. Each knight's fee paid a determined sum to the King. And, as the vassals of the crown were charged with the full payments for their fees, they had recourse for compensation to their knights, from whom they claimed a scutage in proportion to the fees held and pos-

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assessed by each. The king applied to his vassals, and his vassals applied to their tenants.

(2) It is commonly conceived, on the authority of Alexander de Swereford, an accurate observer of records, that, in England, there was no *scutage* or tax on knight-fees before the reign of Henry II. There is great probability, however, that the *scutage* preceded the age of this prince. It is to be thought that it was coeval with the use of *mercenaries*; but the period of the introduction of these is not, I believe, to be ascertained with precision.

In the second year of the reign of Henry II. there was a *scutage* for the army of Wales. It was assessed only on the prelates who held their lands in knight-service. They paid at the rate of xx s. for each knight's fee. There was, in the fifth year of the same reign, a second *scutage* for the army of Wales; and it was assessed not only on the prelates, but on all the tenants by knight-service indiscriminately. They paid two marks for each knight's fee. In the thirty-third year of the same prince, there was a *scutage* for the army of Galway. It was xx s. *per fee*. Under Richard I. a *scutage* for Wales was assessed at c s. *per fee*. *Madox, hist of the Excheq. vol. 1. p. 620. et seq.*

I know that the first mode of taxation in England was not the tax on knight's fees, of which I now speak. In the Anglo-Saxon times,



times, Danegeld was an imposition on the landed property of England ; and it was established with the consent of the people in the wittenagemot or national council. The earlier Norman princes appear also to have levied this tribute ; but, in doing so, they probably exercised an illegal stretch of prerogative.

It was as mercenaries came to be employed, and as the spirit of the feudal institutions declined, that the scutage, or the tax on knight-fees, was to prevail. To this tax the *Magna Charta* gave a blow, which, in time, was to be decisive. The grant of money by the people succeeded to it. Subsidies, tenths, and fifteenths, were adopted, and continued long. The tax of Danegeld was only intended as a temporary expedient. The scutage led the way to a regular, a constant, and a formal method of taxation.

(3) Kennet, Collection of English Historians. Madox, Hist. of the Exchequer. Hume, History of England.

(4) It is an important circumstance, that the free gifts of cities and towns should have grown into taxes. In France, in the year 1231, the burgeses of S. Omer paid to S. Louis the sum of 1500 livres ; and this payment was called a *donum* ; a proof that it was not exigible as a duty. It is likewise evident, that, in France, such presents had been common, and had grown into taxes. *Brussel, Usage-general des Fiefs, liv. 2. ch. 32.*



In England, it is clear, from a variety of records produced or appealed to in *Madox*, that the word *donum* must also have been used to express gifts that were free. *Hist. of the Excheq. ch. 17.* After mercenaries were known, these gifts ceased to be free, and were termed *tallages*. And of tallages, both in England and France, there are frequent examples in the books I have just cited. See farther *Du Cange, voc. Donum.*

As Kings received gifts which they were to convert into tallages, so the lords and superiors, who were honoured with similar presents, did not fail to change them also into taxes or customs. *Du Cange, voc. Talliare.*

What is curious in a peculiar degree, the distant source of these usages, and the spirit of them too, while manners retained their simplicity, may be seen in the following words of *Tacitus*, of which this note may serve as an illustration. ‘*Mos est civitibus ultro et vitim conferre principibus vel armentorum vel frugum, quod pro honore acceptum, etiam necessitatibus subvenit.*’ *De Mor. Germ. c. 15.*

A distinction of great moment, as to civil liberty, deserves here to be remarked. During the pure times of the Gothic manners, the towns and boroughs made gifts at their own pleasure. When these manners were altered, they were tallaged at the pleasure

pleasure of the crown and the barons. The former times were times of liberty; the latter of oppression.

When Dr Brady, therefore, Mr Hume, and a multitude of writers, enlarge on the low and insignificant state of the towns, and, treating their inhabitants as little better than slaves, infer thence, the original despotism of our government, they are only active to betray their inattention. It is strange, that men of genius and talents, should take so lame a survey of this subject. Of the two states or conditions of society which prevailed, they have no conception. They knew only the history of towns in their last situation, and could not perceive that the oppressions they saw had only a reference to the change of manners, and the breaking down of the feudal system, which affected, indeed, the administrations of princes, and the conduct of the nobles to their vassals, but did not alter the established form of our government.

From the *Magna Charta*, these authors presume to date the commencement of our liberty; while that monument is a proof, the most indubitable, of the encroachments which had been made upon liberty, since it was its great purpose to destroy them.

(5) *Nullum scutagium vel auxilium ponatur in regno nostro, nisi per commune consilium regni nostri, nisi ad corpus nostrum redimendum, et ad primogenitum filium nostrum militem faciendum, et ad filiam nostram primogenitam semel maritandam; et ad*
hoc



‘hoc non fiet nisi rationabile auxilium.’ *Magna Charta, Reg. Joan. ap. Spelm. Cod. vet. p. 369.*

The *scutagium* was the tax on lands held in knight-service. The *auxilium* was any tax whatever. I am sensible, that, after the *Magna Charta*, there are instances of taxes which were levied without the concurrence of the great council of the nation; but these were violations of the constitution, and of liberty. For, from that period, the legal method of assisting government was by a parliamentary subsidy or assessment. The violent exactions of several princes, posterior to the *Magna Charta*, are, indeed, held out, by many authors, as descriptive of the despotism of our government. But of such authors, it is to be said, that they cannot distinguish our constitution from the administrations of our princes. The madness or the folly of a King may disfigure our government by wild, encroaching, and unhappy exertions; but from these we must infer nothing against those principles of liberty upon which it is founded.

(6) ‘Simili modo fiat de *auxiliis* de civitate Londinensi. Et civitas Londinensis habeat omnes ANTIQUAS *libertates, et liberas consuetudines suas*, tam per terras quam per aquas. Praeterea volumus et concedimus, quod omnes aliae civitates, et burgi, et villae et barones de quinque portibus, et omnes portus habeant omnes *libertates et omnes liberas consuetudines suas*, et ad habendum
‘dum



'dum commune consilium regni de auxiliis affidendis.' *Mag. Chart.*
ap. Spelm. Cod. vet. p. 369.

The *Magna Charta* was explanatory of the *antient* law and custom, as well as correctory of abuses and tyranny. It is to be regretted, that, notwithstanding all which has been written concerning this invaluable record, there should yet, at this late hour, be desiderated a complete illustration of it. Much, I know, has already been executed towards this end ; but, if I am not greatly deceived, there remains still more to be done. And this, I imagine, will appear clearly to the philosophical reader, who will attend to it, in its connection with history, law, and manners.

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SECTION II.

(1) **B**RUSSEL, *Usage-general des Fiefs*, liv. 2. ch. 6. Bacon, *Discourse on the Government of England*, part 1. p. 141. 264.

(2) Daniel, *Milice Française*, liv. 4. Hume, *History of England*, vol. 2. p. 85. Barrington, *Observations on the more ancient statutes*, p. 379.

(3) Bacon, *Discourse on the Government of England*, part 1. ch. 63. 71. Lord Lyttelton, *Hist. of Henry II.* vol. 3. p. 354.

(4) *Pere Daniel* mentions an array in France in the 1302, which called out ‘*tous les François nobles, et non nobles, de quelque condition qu’ils soient, qui auront âge de 18 ans et plus, juiqu’ à l’âge de 60 ans.*’ He adds, ‘*Ce n’est pas à dire pour cela que tous marchassent en effet: Mais ceux que le roi com- mettoit pour faire ces levées, prenoient de chaque ville, et de*
‘*chaque*

‘chaque bourg et village le nombre d’hommes, et telles hommes
 ‘qu’ils jugeoient á propos en ces occasions.’ *Hist. de la Milice
 Françoise, vol. 1. p. 57.*

In England, ‘in the sixteenth year of King Edward II. a
 ‘commission issued out of the exchequer to Geoffrey de St Quyn-
 ‘tyn and John de Kaffthorp, ordering them to raise speedily, in
 ‘every town and place in the wapentake of Dykeryng, as well
 ‘within the franchises as without, all the defensible men that
 ‘were between the age of sixteen and sixty, as well of gentz
 ‘d’armes as of foot, each man being duly arrayed, according to
 ‘his estate, and to put the said men in *array* by hundreds and
 ‘twenties, and being so arrayed, to lead them to the King at York,
 ‘by such a day, to act against the Scots. The like commissions
 ‘issued out of the exchequer, to John de Belkthorp and Geof-
 ‘frey Stull, for the wapentake of Buckros, and to other persons,
 ‘for other wapentakes.’ *Madox, Hist. of the Exchequer, vol. 2.
 p. 111.*

An example of an array, in the reign of Edward I. is also re-
 marked by *Mr Madox*, and it proceeded on writs from that
 prince to all the sheriffs of England *. It has been thought, that

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* In his writ to each sheriff, after having ordered the *array*, and expressed
 his meaning, he subjoins these words. ‘Et hoc, sicut indignationem nostram
 ‘vitare et te indempnem servare volueris, nullatenus omittas.’ *Hist. of the
 Exchequer, vol. 2. p. 104.*



King John's reign afforded the first instance of an array. But I think it highly probable, that arrays were prior to his age. Mr Hume had met with no commission of array till the reign of Henry V. and this circumstance could not fail of leading him into mistakes. *Hist. of England, vol. 2. p. 321.*

Arrays for sailors were practised after the same method as for soldiers. The custom is still retained in *the pressing of seamen*. It is somewhat remarkable, that this illegal power is yet suffered to remain with the crown. If exerted as to soldiers, it would seem the highest tyranny. In apology for it, authors have said, that it is difficult to discover an expedient to answer its purposes, without greater danger to liberty.

(5) Daniel, *Hist. de la Milice Françoise*, liv. 3. ch. 8. Hume, *Hist. of England*, vol. 2. p. 224. Barrington, *Observations on the more ancient Statutes*, p. 378. 380.

I am disposed to believe, that it was chiefly the enormous dissoluteness and irregularity of manners introduced by the mercenaries, which deformed England so much in the reign of Edward I. that the ordinary judges were thought unable to execute the laws. This, it would seem, made Edward invent a new tribunal of justice, which had power to traverse the kingdom, and to inflict discretionary punishments on offenders. *Spelman. Gloss. voc. Trailbaston*. Yet a court so inquisitorial was a daring insult to a free nation, and infinitely a greater calamity, than all the disorders

ders which prevailed. That country is miserable where the discretion of a judge is the law.

(6) Daniel, Hist. de la Milice Françoise, liv. 4. The archers were called *frank*, because they were free from taxes.

(7) 3. InSTITUTE, p. 85. 87. Barrington on the more antient Statutes, p. 379. 380.

(8) Bacon, Discourse on the Government of England, part. 1. p. 187. part 2. p. 60.

(9) 2. InSTITUTE, p. 3.

(10) Parl. an. 1. Hen. IV. de Deposit. Reg. Ricardi II. ap. Dec. Script. p. 2748.

(11) *Sir John Fortescue*, who resided some time in France with Prince Edward, the son of Henry VI. and who wrote there his excellent treatise, 'De Laudibus Legum Angliae,' describes, from actual knowledge, the exorbitant insolence of the French soldiery, and the miserable condition of the people. The picture he draws is too long for insertion in this place. But, though the features are strong, there is no reason to suspect the likeness. A native of Great Britain, in attending to it, must feel, in a lively degree, the happy advantages of our free constitution.

(12) 12. Charles II. cap. 24.

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