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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**

**Edinburgh, 1778**

Section II.

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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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King

\* 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 indemnum 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. Institue, 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. Institue, 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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