be said to have succeeded the ordeal and trial by battle (compare Ordeal). where these are found in full vigour, as in the capitularies of Charlemagne, there is no provision for torture. It was no doubt accepted reluctantly, but tolerated in the absence of any better means of eliciting truth, especially in cases of great gravity, on the illogical assumption that extraordinary offences must be met by extraordinary remedies.

The opinions of the best authorities have been in theory almost unanimously against the use of torture, even in a system where it was as completely established as it was in Roman law. “ Tormenta,” says Cicero,@@1 in words which it is almost impossible to translate satisfactorily, “ gubernat dolor, regit quæsitor, flectit libido, corrumpit spes, infirmat metus, ut in tot rerum angustiis nihil veritati loci relinqua­tur.” Seneca says bitterly, “ it forces even the innocent to lie.” St Augustine @@2 recognizes the fallacy of torture. “ If,” says he, “ the accused be innocent, he will undergo for an uncertain crime a certain punishment, and that not for having committed a crime, but because it is unknown whether he committed it.” At the same time he regards it as excused by its necessity. The words of Ulpian, in the *Digest* of Justinian,@@3 are no less impressive. “ The torture *(quaestio)* is not to be regarded as wholly deserving or wholly undeserving of confidence ; indeed, it is untrust­worthy, perilous, and deceptive. For most men, by patience or the severity of the torture, come so to despise the torture that the truth cannot be elicited from them ; others are so impatient that they will lie in any direction rather than suffer the torture ; so it happens that they depose to con­tradictions and accuse not only themselves but others.” Montaigne’s @@4 view of torture as a part of the punishment is a most just one :—“ All that exceeds a simple death appears to me absolute cruelty ; neither can our justice expect that he whom the fear of being executed by being beheaded or hanged will not restrain should be any more awed by the imagination of a languishing fire, burning pincers, or the wheel.” Montesquieu@@5 speaks of torture in a most guarded manner, condemning it, but without giving reasons, and eulogizing England for doing without it. The system was condemned by Bayle and Voltaire with less reserve. Among the Italians, Beccaria,@@6 Verri,@@7 and Man- zoni@@8 will be found to contain most that can be said on the subject. The influence of Beccaria in rendering the use of torture obsolete was undoubtedly greater than that of any other legal reformer. The great point that he makes is the unfair incidence of torture, as persons’ minds and bodies differ in strength. Moreover, it is, says he, to con­found all relations to expect that a man should be both accuser and accused, and that pain should be the test of truth, as though truth resided in the muscles and fibres of a wretch under torture. The result of the torture is simply a matter of calculation. Given the force of the muscles and the sensibility of the nerves of an innocent person, it is required to find the degree of pain necessary to make him confess himself guilty of a given crime. Bentham’s@@9 objection to torture is that the effect is exactly the reverse of the intention. “ Upon the face of it, and probably enough in the intention of the framers, the object of this institution was the protection of innocence; the protection of guilt and the aggravation of the pressure upon innocence was the real fruit of it.” The apologists of torture, even among jurists, are not numerous. In fact, theoretical objections to it are often urged by the authors of books of practice, as by Damhouder, Von Rosbach, Von

Boden, and Voet. It is worthy of note, however, as illus­trative of the feeling of the time, that even Bacon@@10 com­pares experiment in nature to torture in civil matters as the best means of eliciting truth. Muyart de Vouglans@@11 derives the origin of torture from the law of God. Other apologists are Simancas, bishop of Badajos,@@12 Engel,@@13 and in England Sir R. Wiseman.@@14

*Greece.—*The opinion of Aristotle was in favour of torture as a mode of proof. It is, he says, a kind of evidence, and appears to carry with it absolute credibility because a kind of constraint is applied. It is classed as one of the “ artless persuasions” (ἂτϵχvαι *πίστεις*).@@15 At Athens slaves, and probably at times resident aliens, were tortured, but it was never applied to free citizens,@@16 such application being forbidden by a psephism passed in the archonship of Scamandrius. After the mutilation of the Hermæ in 415 B.c. a proposition was made, but not carried, that it should be applied to two senators named by an informer. In this particular case Andocides gave up all his slaves to be tortured.@@17 Torture was sometimes inflicted in open court. The rack was used as a punishment even for free citizens. Antiphon was put to death by this means.@@18 The torture of Nicias by the Syracusans is alluded to by Thucydides@@19 as an event likely to happen, and it was only in order to avoid the possibility of inconvenient disclosures that he was put to death without torture. Isocrates and Lysias refer to torture under the generic name of στρέ- *βλωσις.* As might be expected, torture was frequently inflicted by the Greek despots, and both Zeno and Anax- archus are said to have been put to it by such irresponsible authorities. At Sparta the despot Nabis was accustomed, as we learn from Polybius,@@20 to put persons to death by an instrument of torture in the form of his wife Apega, a mode of torture no doubt resembling the *Jungfernkuss* once in use in Germany.

*Rome.—*The Roman system was the basis of all subse­quent European systems which recognized torture as a part of their procedure. The law of torture was said by Cicero to rest originally on custom *(mores majorum).* There are frequent allusions to it in the classical writers@@21 both of the republic and the empire. The law, as it existed under the later empire, is contained mainly in the titles *De Quaestionibus* @@22 of the *Digest* and the *Code,@@23—*the former consisting largely of opinions from the *Sententiae Receptae* of Paulus,@@24 the latter being for the most part merely a re­petition of constitutions contained in the Theodosian Code.@@25 Both substantive law and procedure were dealt with by these texts of Roman law. the latter, however, not as fully

@@@1 Pro Sulla, c. 28.

@@@2 De Civ. Dei, bk. xix. c. 6.

*@@@3 Dig.,* xlviii. 18, 23.

@@@4 Essay lxv. (Cotton’s trans.).

@@@5 Espr. des Lois, bk. vi. c. 17.

@@@6 Dei Delitti e delle Ρene, c. xvi.

@@@7 Osservazioni sulla Tortura.

@@@8 Storia della Colonna Infame.

*@@@9 Works,* vol. vii. p. 525.

*@@@10 Nov. Org.,* bk. i. aph. 98. In the *Advancement of Learning,* bk. iv. ch. 4, Bacon collects many instances of constancy under torture.

@@@11 Instituts du Droit Criminel, Paris, 1757.

@@@12 De Catholicis Institutionibus Liber, ad præcavendas et extirpandas Hæreses admodum necessarius, Rome, 1575.

@@@13 De Tortura ex Foris Christianis non proscribenda, Leipsic, 1733.

*@@@14 Law of Laws,* p. 122, London, 1686.

*@@@15 Rhet.,* i. 15, 26.

@@@16 The opinion of Cicero *(De Partitionibus Oratoriis,* § 34), that it was so applied at Athens and Rhodes, seems, as far as regards Athens, not to be justified by existing evidence.

@@@17 See Grote, *Hist. of Greece,* vol. vii. p. 274.

@@@18 See *Dict. of Antiq., s.v. Bάσavοs.* In the *Banæ* of Aristophanes, V. 617, there is a list of kinds of torture, and the wheel is alluded to in *Lysistrata,* v. 846.

@@@19 vii. 86.

@@@20 xiii. 7.

@@@21 An interesting one, illustrating the uselessness of torture in the face of courage and resolution, is the abortive result of the torture of a Spanish peasant in 25 a.d. on the charge of being the murderer of Lucius Piso (Tac., *Ann.,* iv. 45). A somewhat similar case, occurring in Sicily, is given by Valerius Maximus, bk. iii. c. iii. The horrible torture of Epicharis, a freed woman, is described by Tacitus, *Ann.,* XV. 57. In Pliny’s letter to Trajan *(Epist.,* x. 97), he mentions having put to the torture two Christian deaconesses *(ministræ).*

*@@@22 Quæstio* included the whole process of which torture was a part. In the words of Cujacius, “quæstio est interrogatio quæ fit per tormenta, vel de reis, vel de testibus qui facto intervenisse dicuntur.

*@@@23 Dig.,* xlviii. 18 ; *Cod.,* ix. 41.

@@@24 v. 14, 15, 16.

@@@25 ix. 35.