of destroying life were common, especially in the time of the persecution of the Christians under Nero.@@1 Cruci­fixion as a punishment was abolished by Constantine in 315, in veneration of the memory of Him who was crucified for mankind. The punishment of mutilation was mode­rated by Justinian, who forbade amputation of both hands or feet or of any limb, and confined it in future to ampu­tation of one hand.@@2 Scourging was inflicted only on slaves ; free men were exempt by the *Lex Porcia* and *Lex Valeria,* except in a few cases, such as that of adultery, the penalty for which was scourging and cutting off the nose.@@3 On the other hand, where the interests of the church were concerned, the tendency was in favour of greater severity. Thus, by the Theodosian Code, a heretic was to be flogged with lead *(contusus plumbo)* before banishment,@@4 and Justinian made liable to torture and exile any one insulting a bishop or priest in a church.@@5

*The Church.—*As far as it could the church adopted the Roman law, with the important and characteristic difference (dating from the severe edicts of Theodosius the Great in 381) that heresy took the place of treason, it being regarded as a kind of treason against God (“ crimen læsæ majestatis divinæ”).@@6 The doctrine of confiscation for treason was so convenient and profitable that it was rapidly adopted by the church.@@7 As most instances in which torture was inflicted by ecclesiastical tribunals would be accusations of heresy or Judaism—a specially revolting form of heresy to mediæval Christians—this theory practi­cally equalized all persons for the purpose of torture, in accordance with the doctrine that in treason all were equal. The church generally secured the almost entire immunity of its clergy, at any rate of the higher ranks, from torture by civil tribunals.@@8 In many instances councils of the church pronounced against torture, *e.g.,* in a synod at Rome in 384.@@9 Torture even of heretics seems to have been originally left to the ordinary tribunals. Thus a bull of Innocent IV., in 1252, directed the torture of heretics by the civil power, as being robbers and murderers of souls, and thieves of the sacraments of God.@@10 The church also enjoined torture for usury.@@11 A character­istic division of torture, accepted by the church but not generally acknowledged by lay authorities, was into spiritual and corporal, the latter being simply the imposi­tion of the oath of purgation, the only form originally in use in the ecclesiastical courts. The canon law contains little on the subject of torture, and that little of a com­paratively humane nature. It laid down that it was no sin in the faithful to inflict torture,@@12 but a priest might not do so with his own hands,@@13 and charity was to be used in all punishments.@@14 No confession was to be extracted by torture.@@15 The principal ecclesiastical tribunal by which torture was inflicted in more recent times was of course the

Inquisition (*q.v.*) The code of instructions issued by Torquemada in Spain in 1484 provided that an accused person might be put to the torture if *semiplena probatio* existed against the accused,—that is, so much evidence as to raise a grave and not merely a light presumption of guilt, often used for the evidence of one eye or ear witness of a fact. If the accused confessed during torture, and afterwards confirmed the confession, he was punished as convicted *; if* he retracted, he was tortured again, or sub­jected to extraordinary punishment. One or two inquis­itors, or a commissioner of the Holy Office, were bound to be present at every examination. Owing to the occurrence of certain cases of abuse of torture, a decree of Philip II. was issued, in 1558, forbidding the administration of torture without an order from the council. But this decree does not appear to have been fully observed. By the edict of the inquisitor-general Valdés, in 1561, torture was to be left to the prudence and equity of the judges. They must consider motives and circumstances before decreeing torture, and must declare whether it is to be employed *in caput proprium, i.e.,* to extort a confession, or *in caput alienum, i.e.,* to incriminate an accomplice. The accused was not to be informed of the grounds of torture. He was not to be questioned on a particular fact, but was to be allowed to say what he pleased. Torture was not to be decreed until the termination of the process, and after defence heard, and the decree was subject to appeal, but only in doubtful cases, to the Council of the Supreme. It was also only in doubtful cases that the inquisitors were bound to consult the council ; where the law was clear (and of this they were the judges) there need be no consultation, and no appeal was allowed. The judges, the registrar, and the executioners were the only persons allowed to be present at the torture. They were to be careful that the jailer suggested nothing to the accused during the tor­ture. On ratification twenty-four hours afterwards of a confession made under torture, the accused might be re­conciled, if the inquisitors believed him to be sincerely repentant. If convicted of bad faith, he might be relaxed, *ue.,* delivered to the secular power to be burned. The inquisitors had a discretion to allow the accused to make the canonical purgation by oath instead of undergoing corporal torture, but the rule which allows this to be done at the same time discountenances it as fallacious. It is remarkable that the rules do not allow much greater efficacy to torture. They speak of it almost in the terms of Roman law as dangerous and uncertain, and depending for its effects on physical strength.16 Torture had ceased to be inflicted before the suppression of the Inquisition, and in 1816 a papal bull decreed that torture should cease, that proceedings should be public, and that the accuser should be confronted with the accused.17 It was still, however, customary for the fiscal, even in the latest times, to end the requisition by demanding torture as a matter of form. The rules in themselves were not so cruel as the con­struction put upon them by the inquisitors. For instance, by Torquemada’s instructions torture could not be repeated unless in case of retractation. This led to the subtlety of calling a renewed torture a continuation, and not a repe­tition.18 The rules of Torquemada and of Valdés are those of the greatest historical importance, the latter forming the code of the Holy Office until its suppression, not only

@@@1 The well-known lines of Juvenal *(Sat.,* i. 155),

“ Tæda lucebis in ilia,

Qua stantes ardent qui fixo gutture fumant,” will serve as an example of such punishments.

*@@@2 Nov.,* cxxxiv. 13.

*@@@3 Cod.,* ix. 9, 37.

@@@4 xvi. 53.

*@@@5 Nov.,* cxxiii. 31. On the subject of torture in Roman law refer­ence may be made to Westphal, *Die Torturer der Griechen, Römer, und Deutschen,* Leipsic, 1785; Wasserschleben, *Historia Quaestionum per Tormenta apud Romanos,* Berlin, 1836.

@@@6 This term, which included blasphemy and cognate offences, is used both by ecclesiastical and secular jurists, *e.g.,* by Suarez de Paz and by Jousse, *Traité de la Justice Criminelle.*

@@@7 See an article by Mr Lea in *The English Historical Review,* April 1887, “Confiscation for Heresy in the Middle Ages.”

@@@8 See Escobar, *Mor. Theol.,* tract. vi. c. 2. They were to be tortured only by the clergy, where possible, and only on *indicia* of special gravity.

@@@9 Lea, *Superstition and Force,* p. 419, 3d ed., Philadelphia, 1878.

@@@10 Leges et Constitutiones contra Hæreticos, § 26.

@@@11 Lecky, *Rationalism in Europe,* vol. ii. p. 34, n.

*@@@12 Decr.,* pt. ii. 23, 4, 45.

*@@@13 Decr.,* pt. i. 86, 25.

*@@@14 Decr.,* pt. ii. 12, 2, 11.

@@@15 *Decr*., pt. ii. 15, 6, 1.

@@@16 The rules will be found in Llorente’s *Hist. of the Inquisition,* cc. vi., xxii.

@@@17 A case of actual torture occurred in Spain in the case of Van Halen, in 1817, in spite of the papal bull. In South America, as late as 1809, power to torture was conferred on inquisitors by the dean and chapter of Santiago. See *Francisco Moyen, or the Inquisition in South America,* by B. V. Mackenna (transl. by J. W. Duffy, 1869), p. 217.

@@@18 Prescott, *Ferdinand and Isabella,* vol. i. p. 327.