and sheriffs of London.@@1 In this case it is recorded that torture was unknown in England, and that no torturer was to be found in the realm.@@2 A commission was issued con­cerning the tortures at Newgate in 1334.@@3 The rack in the Tower is said to have been introduced by the duke of Exeter in the reign of Henry VI., and to have been thence called “the duke of Exeter’s daughter.” @@4 In this reign torture seems to have taken its place as a part of what may be called extraordinary criminal procedure, claimed, and it may be said tacitly recognized, as exercisable by virtue of the prerogative, and continued in use down to 1640.@@5 The infliction of torture gradually became more common under the Tudor monarchs. Under Henry VIII. it appears to have been in frequent use. Only two cases are recorded under Edward VI., and eight under Mary.@@6 The reign of Elizabeth was its culminating point. In the words of Hallam, “the rack seldom stood idle in the Tower for all the latter part of Elizabeth’s reign.”@@7 The varieties of torture used at this period are fully described by Dr Lingard,@@8 and consisted of the rack, the scavenger’s daughter,@@9 the iron gauntlets or bilboes, and the cell called “ Little Ease.” The registers of the council during the Tudor and early Stuart reigns are full of entries as to the use of torture, both for state and for ordinary offences.@@10 Among notable prisoners put to the torture were Anne Ascue, the Jesuit Campion, Guy Fawkes,@@11 and Peacham (who was examined by Bacon “ before torture, in torture, and after torture”).@@12 The prevalence of torture in Elizabeth’s reign led to the well-known defence attributed to Lord Burghley, “ A declaration of the favourable dealing of Her Majesty’s commissioners appointed for the examin­ation of certain traitors, and of tortures unjustly reported to be done upon them for matter of religion,” 1583.@@13 The use of torture in England being always of an extra­ordinary and extra-judicial nature, it is comparatively certain that it could hardly have been applied with that observation of forms which existed in countries where it was regulated by law. There were no rules and no re­sponsibility beyond the will of the crown or council. This irresponsibility is urged by Selden@@14 as a strong objection to the use of torture.

So far of what may be called torture proper, to which the common law professed itself a stranger. There were, however, cases fully recognized by the common law which differed from torture only in name. The *peine forte et dure* was a notable example of this. If a prisoner stood mute of malice instead of pleading, he was condemned to the *peine,* that is, to be stretched upon his back and to have iron laid upon him as much as he could bear, and more, and so to continue, fed upon bad bread and stagnant water through alternate days until he pleaded or died.@@15 It

was abolished by 12 Geo. III. c. 20. 7 and 8 Geo. IV. c. 28 enacted that a plea of “ not guilty ” should be entered for a prisoner so standing mute. A case of *peine* occurred as lately as 1726. At times tying the thumbs with whip­cord was used instead of the *peine.* This was said to be a common practice at the Old Bailey up to the last century.@@16 In trials for witchcraft the legal proceedings often partook of the nature of torture, as in the throwing of the reputed witch into a pond to see whether she would sink or swim, in drawing her blood,@@17 and in thrusting pins into the body to try to find the insensible spot. Confessions, too, appear to have been often extorted by actual torture, and torture of an unusual nature, as the devil was supposed to protect his votaries from the effects of ordinary torture.

Torture as a part of the punishment existed in fact, if not in name, down to a very recent period. Mutilation as a punishment appears in some of the pre-Conquest codes, such as those of Alfred, Athelstan, and Canute. Bracton, who does not notice torture as a means of obtain­ing evidence, divides corporal punishment into that inflicted with and without torture.@@18 Later instances are the punish­ment of burning to death inflicted on heretics under the Six Articles (31 Hen. VIII. c. 14) and other Acts, and on women for petit treason (abolished by 30 Geo. III. c. 48), the mutilation inflicted for violence in a royal palace by 33 Hen. VIII. c. 12, the punishment for high treason, which existed nominally until 1870 (see Treason), the pillory (abolished by 7 Will. IV. and I Vict. c. 23), the stocks, and the burning in the hand for felony (abolished by 19 Geo. III. c. 74). Corporal punishment now exists only in the case of juvenile offenders (see Summary Jurisdiction) and of robbery with violence (see Theft). It was abolished in the army by the Army Act, 1881.@@19

Scotland.—Torture was long a recognized part of Scottish criminal procedure, and was acknowledged as such by many Acts and warrants of the Scottish parliament, and warrants of the crown and the privy council. Some of the more important instances are the following. In 1542 the forfeiture of John, Lord Glammis, was reduced by the parliament as having proceeded on a confession extorted by threats of the “pynebankis.” In 1567 four persons were ordered by the Privy Council to be tortured for complicity in Darnley’s murder.@@20 In 1591 a commission issued to torture certain persons accused of witchcraft.@@21 James VI., in 1596, empowered the provost and bailies of Edinburgh to try rioters by torture. The torture was applied to Rhynd in 1600, on a charge of being privy to the Gowrie House conspiracy.@@22 Two Acts in 1649 dealt with torture: one took the form of a warrant to examine witnesses against William Barton by any form of probation,@@23 the other of a warrant to a committee to inquire as to the use of torture against persons suspected of witch­craft.@@24 In 1650 the parliament ordained the committee appointed for the examination of prisoners to intimate to Colonel Sibbald that if his examination were not satisfactory the parliament would ordain him to be tortured. The judges, in 1689, were empowered by the estates to torture Chiesly of Dalrye, charged with the murder of the Lord President Lockhart, in order to discover ac­complices. In the same year the use of torture without evidence or in ordinary cases was declared illegal in the Claim of Right. The careful wording of this will be noticed : it does not object to torture altogether, but reserves it for cases where a basis of evidence had already been laid, and for crimes of great gravity, thus admitting the dangerous principle, founded on Roman law, that the importance of the crime is a reason for departing from the ordinary rules of justice. However great the crime, it is no more certain than in the case of a crime of less gravity that the person accused was the person who committed it. A warrant issued in the same year to put to the torture certain persons accused of con­spiring against the Government, and also certain dragoons suspected of corresponding with Lord Dundee. In 1690 an Act passed recit­ing the torture of William Carstares, a minister, in 1683, and re-

@@@1 Rymer, Fœdera, vol. iii. 228, 232.

@@@2 Hallam, Middle Ages, vol. iii. p. 232.

@@@3 Pike, vol. i. p. 481.

@@@4 3 Inst., 34.

@@@5 This is the date of the latest warrant in Mr Jardine’s work.

@@@6 It is to be noticed, as Mr Jardine observes, that all these are cases of an ordinary nature, and afford no ground for the assertions made by Strutt and Bishop Burnet that torture was used to heretics as heretics.

@@@7 Const. Hist., vol. i. p. 201.

@@@8 Hist. of England, vol. viii., appendix, note v.

@@@9 These two were exactly opposite in principle. The rack stretched the limbs of the sufferer ; the scavenger’s daughter compressed him into a ball.

@@@10 Fifty-five of these will be found in the appendix to Mr Jardine’s work. An ordinary robber of plate was threatened with torture in 1567.—Froude, Hist. of England, vol. viii. p. 386.

@@@11 It is not certain whether he was racked, but probably he was, in accordance with the king’s letter :—“ If he will not otherwise con­fess, the gentlest tortures are to be first used to him, and so on, step by step, to the most severe, and so God speed the good work.”

@@@12 Dalrymple, Memoirs and Letters of James I., p. 58 ; Macaulay’s Essay on the Works of Bacon.

@@@13 Lord Somers’s Tracts, vol. i. p. 189.

@@@14 Table Talk, “Trial.”

@@@15 Stephen, Hist. of the Criminal Law, vol. i. p. 297.

@@@16 Stephen, vol. i. p. 300 ; Kelyng, Reports, p. 27.

@@@17 The superstition was that any one drawing a witch’s blood was free from her power. This is alluded to in Henry VI., pt. i. act i. sc. 5 ; “ Blood will I draw on thee ; thou art a witch.”

@@@18 104b.

@@@19 44 Vict. c. 9, § 7.

@@@20 Register of the Privy Council, vol. i. p. 525.

@@@21 Ibid., vol. iv. p. 680.

@@@22 Ibid., vol. vi. p. 156

@@@23 c. 333.

@@@24 c. 370.