the Germans, Sonnenfels (1766), and, among the Italians, Beccaria,@@1 Verri@@2 and Manzoni@@3 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 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@@4 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 are chiefly among jurists. But theoretical objections to it are often urged by the authors of books of practice, as by Damhouder, von Rosbach, von Boden, Voet, and others named below under the head of *The Netherlands.* It is worthy of note as illustrative of the feeling of the time that even Bacon@@6 compares experiment in nature to torture in civil matters as the best means of eliciting truth. Muyart de Vouglans@@β derives the origin of torture from the law of God. Other apologists are Simancas, bishop of Badajoz,@@7 Engel,@@8 Pedro de Castro,@@9 and in England Sir R. Wiseman.@@10

*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 ” (*ἄτεχνοι* *πίστεις*).@@11 “ lt was the surest means of obtaining evidence, says Demosthenes.@@12 At Athens slaves, and probably at times resident aliens, were tortured,@@13 in the former case generally with the master’s consent, but torture was seldom applied to free citizens,@@14 such application being forbidden by a psephism passed in the archonship of Scamandrius. After the mutilation of the Hermae 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.@@15 Torture was sometimes inflicted in open court. The rack was used as a punish- ment even for free citizens. Antiphon was put to death by this means.@@10 The torture of Nicias by the Syracusans is alluded to by Thucydides@@17 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 *στρέβλωσις*, but it was generally called *βάσανοι*, in the plural, like *tormenta.* As might be expected, torture was frequently inflicted by the Greek despots, and both Zeno and Anaxarchus are said to have been put to it by such irre- sponsible authorities. At Sparta the despot Nabis was accustomed, as we learn from Polybius,@@19 to nut 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 used in Germany. At Argos, as Diodorus informs us (xv. 57), certain conspirators were put to the torture in 371 b.c.@@19

*Rome.—*The Roman system was the basis of all subsequent European systems which recognized torture as a part of their procedure, and the rules attained a refinement beyond anything approached at Athens. The law of torture was said by Cicero to rest originally on custom *(mores majorum),* but there is no allusion to it in the Twelve Tables. There are frequent allusions to it in the classical writers,@@20 both of the republic and the empire. The law, as it existed under the later empire, is contained mainly in the titles *De quaestionibus@@2i* of the *Digest* and the *Code@@22*—the former consisting largely of opinions from the *Sententiae receptae* of Paulus,@@23 the latter being for the most part merely a repetition of constitutions contained in the Theodosian Code.@@24 Both substantive law and procedure were dealt with by these texts of Roman law, the latter, however, not as fully as in medieval codes, a large discretion being left to the judges. Torture was used both in civil and criminal trials, but in the former only upon slaves and freedmen or infamous persons (after *Nov.* xc. 1, 1, upon *ignoti* and *obscuri* if they showed signs of corrup­tion)—such as gladiators—and in the absence of *alia manifesta indicia,@@26* as in cases affecting the inheritance *(res hereditariae).* Its place in the case of free citizens was taken by the reference to the oath of the party. During the republic torture appears to have been confined to slaves in all cases, but with the empire a free man became liable to it if accused of a crime, though in most cases not as a witness. On an accusation of treason every one, whatever his rank, was liable to torture, for in treason the condition of all was equal.@@2\* The same was the case of those accused of sorcery *(magi),* who were regarded as *humani generis inimici.@@27* A wife might be tortured (but only after her slaves had been put to the torture) it accused of poisoning her husband. In accusations of crimes other than treason or sorcery, certain persons were protected by the dignity of their position or their tender age. The main exemptions were contained in a constitution of Diocletian and Maximian, and included soldiers, nobles of a particular rank, *i.e. eminentissimi* and *perfectissimi,* and their descendants to the third generation, and *decuriones* and their children to a limited extent *(tormenta moderata)—*that is to say, they were subject to the torture of the *plumbatae* in certain cases, such as fraud on the revenue and extortion. In addition to these, priests (but not clergy of a lower rank), children under fourteen and pregnant women were exempt. A free man could be tortured only where he had been inconsistent in his depositions, or where there was a suspicion that he was lying.@@28 The rules as to the torture of slaves were numerous and precise. It was a maxim of Roman law that torture of slaves was the most efficacious means of obtaining truth.@@29 They could be tortured either as accused or as witnesses for their masters in all cases, but against their masters only in accusations of treason, adultery, frauds on the revenue, coining, and similar offences (which were regarded as a species of treason), attempts by a husband or wife on the life of the other, and in cases where a master had bought a slave for the special reason that he should not give evidence against him. The privilege from accusa­tions by the slave extended to the master’s father, mother, wife, or tutor, and also to a former master. On the same principle a freedman could not be tortured against his patron. The privilege did not apply where the slave was joint property, and one of his masters had been murdered by the other, or where he was the property of a corporation, for in such a case he could be tortured in a charge against a member of the corporation. Slaves belonging to the inheritance could be tortured in actions concerning the inheritance. The adult slaves of a deceased person could be tortured where the deceased had been murdered, ln a charge of adultery against a wife, her husband’s, her own and her father’s slaves could be put to the torture. A slave manumitted for the express purpose of escaping torture was regarded as still liable to it. Before putting a slave to torture without the consent of his master, security must be given to the master for his value and the oath of calumny must be taken.@@30 The master of a slave tortured on a false accusation could recover double his value from the accuser. The undergoing of torture had at one time a serious effect upon the after-life of the slave, for in the time of Gaius a slave who had been tortured could on manumission obtain no higher civil rights than those of a *dediticius*@@81 The rules of procedure were conceived in a spirit of as much fairness as such rules could be. Some of the most important were these: The amount of torture was at the discretion of the judge, but it was to be so

*@@@1 Dei Delitti e delle pene,* c. xvi.

*@@@2 Osservazioni sulla tortura.*

*@@@3 Storia della Colonna infame.*

*@@@4 Works,* vii. 525.

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

*@@@β Instituts du droit criminel* (Paris, 1757).

*@@@7 De catholicis institutionibus liber, ad praecavendas et extirpandas haereses αdrnodum necessarius* (Rome, 1575).

*@@@β De tortura ex foris christianis non proscribenda* (Leipzig, 1733).

*@@@β Defensa de la tortura* (Madrid, 1778).

*@@@10 Law of Laws,* p. 122 (London, 1686).

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

*@@@12 In Onetum,* i. 874.

*@@@*13 Usually by the diaetetae in the Hephaestaeum, Isocrates, *Trapez.* 361.

*@@@*14 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.

*@@@*16 The demand for, or the giving up of, a slave for torture was called *πρόκλησις* *εἰς* *βάσαvοv.*

*@@@*15 In the *Ranae* of Aristophanes, V. 617, there is a list of kinds of torture, and the wheel is alluded to in *Lysistrata,* v. 846.

*@@@*17 vii. 86.

*@@@*18 xiii. 7.

*@@@*u For the whole subject, see *Dict. Ant., s.v. Tormenta.*

*@@@*20 An instance is Pliny’s letter to Trajan *(Epist.* x. 97), where he mentions having put to the torture two Christiallr deaconesses *(ministrae).* The words are *confitentes iterum ac tertio interrogaυi.* This supports Tertullian’s objection to the torture of Christians, *torquemur confitentes (Apol.* c. 2).

*@@@21 Quaestio* included the whole process of which torture was a part. In the words of Cujacius, *Quaestio est interrogate quae fit per tormenta, vel de reis, vel de testibus qui facto interυenisse dicuntur.*

*@@@22 Dig.* xlviii. 18; *Cod.* ix. 41.

*@@@*23 v. 14, 15, 16.

*@@@*24 ix. 35.

*@@@2δ Cod.* ix. 8, 3.

*@@@*2β Ibid. ix. 8, 4.

*@@@*27 Ibid. ix. 18, 7.

*@@@*28 Ibid. iv. 20, 13.

*@@@*29 Ibid. i. 3, 8.

*@@@*30 Ibid. ii. 59,1,1. The demand of another man’s slave for torture was *postulare.*

*@@@*31 Gaius i. 13.