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@@1 as a strong objection to the use of torture. The main differences between the infliction of torture in England and on the continent of Europe seem, to be that English lawyers made no dis­tinction of those liable to it, never allowed torture of witnesses, and elaborated no subtle rules as to *plena* and *semiplena probatio.*

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.@@2 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 whip-cord was used instead of the *peine.* This was said to be a common practice at the Old Bailey up to the 18th century.@@3 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,@@4 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 punishmcnt appears in some of the pre-Conquest codes, such as those of Alfred, Æthelstan and Canute, in the laws attributed to William the Conqueror and in the assize of Northampton (1176). Bracton, who does not notice torture as a means of obtaining evidence, divides corporal punishment into that inflicted with and without torture.@@5 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, the pillory (abolished by 7 Will. IV. and 1 Vict. c. 23), the stocks, branks and cucking-stool, and the burning in the hand for felony (abolished by 19 Geo. III. c. 74). Corporal punishment now exists only in the case of iuvenile offenders and of robbery with violence. It was abolished in the army by the Army Act 1881.@@β Cruelty in punishment did not entirely cease in prisons even after the Bill of Rights. See such cases as R. v. *Huggins,* 17 *State Trials,* 298; *Castell* v. *Bambridge,* 2 *Strange's Rep.* 856.

*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. Numerous instances occur in the *Register of the Privy Council.*@@*7* 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,@@8 the other of a warrant to a committee to inquire as to the use of torture against persons suspected of witchcraft.@@9 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-establishing his competency as a witness.@@10 The last warrant appears to be one in 1690 for torturing a man accused of rape and murder. In 1708 torture in Scotland was finally abolished by 7

Anne c. 21, s 5. Many details of the tortures inflicted will be found in Pitcairn’s *Criminal Trials,* the introduction to J. Maclaurins’ R. *Criminal Cases* and J. H. Burton’s *Narratives from Criminal Trials.* Among other varieties—the nature of some of them can only be guessed—were the rack, the pilniewinkis, the boot,@@u the caschie-laws, the lang irnis, the narrow-bore, the pynebankis, and worst of all, the waking, or artificial prevention of sleep.@@12 The ingenuity of torture was exercised in a special degree on charges of witchcraft, notably in the reign of James VI., an expert both in witchcraft and in torture. The act of 1649 already cited shows that the principle survived him. Under the government of the dukes of Lauderdale and York torture as a practice in charges of religious and political offences reached its height. “ The privy council was accustomed to extort confessions by torture; that grim divan of bishops, lawyers and peers sucking in the groans of each undaunted enthusiast, in hope that some imperfect avowal might lead to the sacrifice of other victims, or at least warrant the execution of the present.”@@13 With such examples before them in the law, it is scarcely to be wondered at that persons in positions of authority, especially the nobility, sometimes exceeded the law and inflicted torture at their own will and for their own purposes. There are several instances in the *Register of the Privy Council* of suits against such persons, *e.g.* against the earl of Orkney, in 1605, for putting a son of Sir Patrick Bellenden in the boots.

*Ireland* seems to have enjoyed comparative immunity from torture. It was not recognized by the common or statute law, and the cases of its infliction do not appear to be numerous. In 1566 the president and council of Munster, or any three of them, were empowered to inflict torture, “ in cases necessary, upon vehement presumption of any great offence in any party committed against the Queen’s Majesty.”@@14 In 1583 Hurley, an Irish priest, was tortured in Dublin by “ toasting his feet against the fire with hot boots.”@@15 In 1627 the lord deputy doubted whether he had authority to put a priest named O’Cullenan to the rack. An answer was returned by Lord Killultagh to the effect that “ you ought to rack him if you saw cause and hang him if you found reason.”@@16 The latest case of *peine forte et dure* seems to have been in 1740.

*British Colonies and Dependencies.*—The infliction of torture in any British colony or dependency has usually been regarded as contrary to law, and ordered only by arbitrary authority, lt is true that in the trial, of Sir Thomas Pιcton in 1806, for subjecting, while governor of Trinidad, a woman named Luisa Calderon to the torture of the picquet,@@17 one of the grounds of defence was that such torture was authorized by the Spanish law of the island, but the accused was convicted in spite of this defence, and the final decision of the court of king’s bench, in 1812, decreeing a respite of the defendant’s recognizances till further order, was perhaps not so much an affirmation of the legality in the particular instance as the practical expression of a wish to spare an eminent public servant.@@18 As to India, the second charge against Warren Hastings was extortion from the begums of Oude by means of the torture of their servants.@@19 In the present Indian Penal Code and Evidence Acts there are provisions intended, as Sir James Stephen says,@@20 to prevent the practice of torture by the police for the purpose of extracting con- fessions from persons in their custody.@@21 In Ceylon torture, which had been allowed under the Dutch government, was expressly abolished by royal proclamation in 1799.

In the Channel Islands confessions of persons accused of witch- craft in the 17th century were frequently obtained by torture.@@22

*United States.—*One instance of the *peine forte et dure* is known. It was inflicted in 1692 on Giles Cory of Salem, who refused to plead when arraigned for witchcraft.@@23 The constitution of the United States provides, in the words of the Bill of Rights, that cruel and unusual punishments are not to be inflicted.@@24 This is repeated in the constitutions of most states. The infliction of cruel and unusual punishment by the master or officer of an American vessel on the high seas, or within the maritime jurisdiction of the United States, is punishable with fine or imprisonment, or both.@@25 There have been a good many decisions on the question of cruel and unusual punishments; *e.g. Wilkerson* v. *Utah,* 99 U.S. Rep. 130;

*@@@1 Table Talk, "*Trial.”

*@@@*j Stephen, *Hist. of the Criminal Law,* i. 297.

*@@@*, Stephen i. 300; Kelyng, *Reports,* p. 27.

*@@@*4 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.”

*@@@*6 104*b.*

*@@@*β 44 Vict. c. 9, s 7.

*@@@7 E.g.* i. 525, iv. 680, vi. 156.

*@@@*» c. 333.

*@@@*’ c. 370.

*@@@*ωThe thumbscrew with which Carstares had been tortured was afterwards presented to him as a remembrance by the privy council.

*@@@*11 Persons subjected to more than usual torture from the boot were said to be “ extremely booted."

*@@@*12 This seems to have been used in one case in England. Lecky, *Rationalism in Europe,* i. 122.

*@@@*u Hallam, *Const. Hist.* iii. 436. See Burnet, *Hist. of Own Time,* i. 583; and Scotland.

*@@@*14 Froude, *Hist. of England,* viii. 386.

*@@@*15 Ibid xi. 263.

*@@@*lβ Jardine, p. 54.

*@@@*17 In the picquet the sufferer was supported only on the great toe (which rested on a sharp stake), and by a rope attached to one arm.

*@@@*18 30 *State Trials,* 449, besides many pamphlets of the period.

*@@@*19 See the *Report of the Proceedings,* vol. i.

*@@@*20 Stephen, *Indian Evidence Act,* p. 126.

*@@@*21 Sections 327-331 of code; ss. 25-27 of act.

*@@@*22 J. L. Pitts, *Witchcraft in the Channel Islands,* p. 9 (Guernsey, 1886).

*@@@*23 Bouvier, *Law Dict., s.v.* “ Peine forte et dure.”

*@@@*24 Amendments, art. viii. (1789).

*@@@25 Revised Stat.* 5347.