

He gave her a good governor in his son Henry. He gave her the union, which brought both her races under imperial control, and opened to her that free trade with England for which, when it was withdrawn, she long pined. He gave the Catholics freedom of conscience, though not liberty of celebrating the mass. Both Mr. Gardiner and Mr. Lecky seem to find fault with him for want of true statesmanship in not having developed Celtic nationality on its traditional lines. But no Celtic nationality had ever existed, nor were there any traditional lines on which development would have been possible. The Celtic race was the débris of broken clans. It had never been politically united or shown any tendency to found a commonwealth. Its intertribal wars had gone on even when England was waging war upon the whole of it. May not the Celt's best chance have been political and industrial subordination under the protection of imperial power from which he would have risen in time to the level of the dominant race?

It is Mr. Gardiner's general tendency to pare down. This is better than exaggeration, but may possibly in its turn be carried too far. Mr. Gardiner has so pared down the differences of parties at the opening of the Revolution that there scarcely seems enough left to fight about. He pares down Cromwell, and the Cromwell of Carlyle will no doubt bear considerable pruning; yet if there had not been a very great man, there would not have been the Cromwell of Carlyle.

GOLDWIN SMITH.

La Torture aux Pays-Bas Autrichiens pendant le XVIII^e Siècle.
Étude Historique par EUGÈNE HUBERT, Professeur à l' Université de Liège. (Bruxelles: J. Lebègue et Cie. 1897. Pp. 176.)

IN the humanitarian movement of the present century, which has interposed such obstacles to the prompt punishment of crime, and has frequently evoked such diseased sentimentalism in favor of criminals, it is difficult for us to realize the arbitrary methods in vogue up to comparatively recent times. If there are any, however, whose impatience of the dilatory proceedings of the criminal law and the frequent escape of the guilty lead them to look back with regret on the sterner processes of former centuries, a perusal of Professor Hubert's work will disabuse them. It is the result of a laborious search among the records, local and general, of Belgium, and is a contribution of scientific value to the history of criminal jurisprudence. It shows that no matter what safeguards and limitations were theoretically prescribed for the administration of torture they were rendered necessarily nugatory by the discretion allowed to the judge in the inquisitorial process which had become universal in the criminal courts of the Continent.

Thus in theory torture could be administered but once, but the device was invented of "continuing" it in place of repeating it. Besides, confession under torture was valueless unless subsequently confirmed out-

side of the torture-chamber, but, if the victim then revoked it as having been extorted by his agony, he was forthwith tortured again. According to the books, this could only be repeated thrice, but judges zealous for conviction were accustomed to carry it on indefinitely. Theoretically, an hour was the prescribed limit of duration, but when, in 1768, Prince Kaunitz called the attention of Count Cobenzl to the excessive abuse of torture, saying that he had heard of it being applied continuously for forty and forty-three hours, Cobenzl carelessly replied that he had seen it used for nearly a hundred. It was a universal rule that its severity should not endanger life or limb, but a man who was hung in the strap-pado for six or eight hours at a time was at the least crippled for life. If he fainted from the extremity of pain he was resuscitated and the torture was resumed. In Austria there were cases of arms torn off, of legs crushed and of persons so permanently disabled that the government was obliged to pension them. Cases were not rare in which death resulted. There was one such in Brussels, in 1757, after a man had been tortured four times, one of which was for twenty-four hours. In 1774, at Liège, two prisoners died simultaneously, one of whom had endured the strap-pado for six hours on one occasion and for over eight hours on another, while the other victim had been exposed to the boot for twelve hours. The ferocity with which the earnest seekers after justice disregarded all limitations is exhibited in a case which M. Hubert relates at length from the original record. In 1792, at Antwerp, Philip Mertens was accused of a double murder. The chief evidence against him was that he had some connection with a band of robbers in Guelderland; but their conviction and denunciation of him as an accomplice had been obtained by excessive torture and they had died asserting their innocence to the last. On July 3, 1792, the unfortunate man was tortured for over four hours, when he confessed. As he subsequently retracted he was tortured again on July 5th, when, at the end of an hour and a half, he fainted and remained insensible for three hours and a half, at the expiration of which the torture was resumed until he again confessed after enduring it for two hours and a half. The next day he retracted and on August 9th he was again tortured for nearly fourteen hours, or till he confessed, followed the next day by a retraction. An appeal which he interjected postponed further proceedings until October 29th. By this time he was paralyzed and reduced to pitiable weakness; his power of endurance was diminished and he confessed after an hour. As he retracted the next day, he was tortured again on the 31st, and this time nineteen minutes sufficed to bring a confession, which was retracted as before. A long interval was allowed to elapse, until July 25, 1793, when he was brought forward again. His resolution was now entirely exhausted and he confessed without torture, so on September 23d his persevering judges had the satisfaction of breaking him on the wheel.

The Austrian provinces of the Low Countries clung to the use of torture with remarkable tenacity. The liberal tendencies of Joseph II. made him earnestly desirous of abolishing it, but the political situation

Sample
of torture
employed

rendered arbitrary action injudicious, and the consent of the provinces was deemed indispensable. In 1765 the Austrian government submitted the question to the councils of the several provinces, when with virtual unanimity they were opposed to innovation. Again, in 1771, the Privy Council communicated to them a memoir in favor of abolition drawn up by Fierlant and asked their opinions; it required ten years to get replies from them all, and though there were some dissentient voices, they still desired its maintenance. It had been abolished in Prussia, Austria, Sweden and Russia, without the disastrous results which its advocates had predicted, but still they regarded it as indispensable for the protection of society. At length, in 1784, Joseph II. issued a secret edict forbidding all courts to use torture without obtaining in each case the authorization of the government; the councils of Namur and Flanders protested, but were reduced to silence, and the Privy Council refused all applications made to it, saying that it had adopted the disuse of torture as a principle. Then, on April 3, 1787, appeared the imperial edict for the reform of justice in the Low Countries, of which Article 63 declared the abolition of torture in all courts. The end was not yet, however, The Estates of Brabant protested, the political skies were rapidly becoming tempestuous, and in less than two months, on May 4th, the edict was withdrawn. Yet the policy of the government was so fixed that, in 1789, at the commencement of the troubles, it refused permission to torture persons implicated in the plots against itself. Still, when the attempted revolution was suppressed, in 1790, Leopold II. was obliged to pledge himself to govern according to the privileges in force under Maria Theresa; thus the edict of 1787 remained suppressed and the use of torture continued. The French invasion of 1792 detached the Low Countries for a time from Austria and introduced the French laws, in which all torture had been disused by the decree of October 11, 1789, but the battle of Neerwinden (March 18, 1793) restored the Austrian rule and with it the use of torture, until Jourdan's victory at Fleurus, in 1794, gave the French undisputed possession and torture was definitely abolished.

In a supplementary note M. Hubert discusses with M. Prins the causes of the obstinate resistance to improvement, but neither of them seems to me to recognize the obvious one. The councils of the provinces, largely composed of lawyers, necessarily were guided by the opinions of the judges. These were naturally conservative by training and had been bred in a system which regarded the use of torture as an indispensable method handed down and sanctioned by the wisdom of ages. It possessed also for them the incalculable advantage of a ready solvent for all doubts and all otherwise inscrutable questions. No one can read the records of criminal trials conducted according to the inquisitorial process without recognizing the heavy responsibility which it throws upon the judge and the puzzling enigmas which he is constantly called upon to solve. To the conscientious and the indolent alike, the rack or the strappado afforded a ready resource for the resolution of all such difficulties, and one can readily understand the determined opposition of

judges threatened with the deprivation of this and alarmed at the prospect of being thrown back on the exercise of their unaided judgment and greater or less acuteness of perception, without the relief which the jury system gives to the bench. As the judges, moreover, were required to be present during the application of torture, they became hardened and indifferent to human suffering. How complete was this indifference is evident from the fact (p. 20) that the accounts of the judicial expenses show that the prolonged sessions in the torture-chamber were relieved of their tedium by banquets in which the wine flowed freely.

M. Hubert tells us (p. 13) that he has met with no traces in modern times of the torture of witnesses. Strictly speaking, the *question préalable*, which he fully recognizes (pp. 25-33), wherein the convicted criminal was tortured to discover his accomplices, was the torture of a witness. In the Spanish Inquisition torture *in caput alienum* was a recognized resource in frequent use for the relief of a doubting tribunal.

There are other points which it would be interesting to discuss if space permitted, but it must suffice to say that the work is one which all students of judicial institutions can consult with profit, as it is based on conscientious research and furnished with ample documentary support.

HENRY CHARLES LEA.

La France d'après les Cahiers de 1789. Par EDMÉ CHAMPION. (Paris : Armand Colin et Cie. 1897. Pp. 257.)

FOR the student of the French Revolution, one of the most important books of the year is undoubtedly this work by Champion. Professor Aulard refers to it in the most complimentary manner in the June number of *La Révolution Française*. He says, to quote his own words: "Il nous est bien difficile de louer ici autant que nous le voudrions, le livre de notre collègue, collaborateur et ami. Il nous suffira de l'avoir signalé à nos lecteurs comme l'une des œuvres les plus remarquables de notre littérature historique et comme un instrument de travail très-neuf, très-solide et très-commode."

For a long time Champion has been a careful student of the *cahiers*, and this work is the development of chapters that appeared in earlier works. The numerous articles contributed to *La Révolution Française*, several chapters in his excellent book entitled *Esprit de la Révolution Française* (Paris, 1887), his contribution to the *Histoire Générale*, edited by Lavis and Rambaud (Vol. VIII., Chap. I., *La France en 1789*, 51 pp.), all laid the foundation for the work published this year. It is clearly, then, not a maiden effort, but the result of long study and of ripe scholarship.

On the title-page of the book appears the following quotation from Mirabeau: "Il n'est personne qui n'avoue que la Nation a été préparée à la Révolution par le sentiment de ses Maux, bien plus que par le progrès des lumières." This sentence, quoted some years before in another work (*Esprit de la Révolution*, p. 59) is, in a certain sense, the thesis