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VI.17 On the rack or torture of criminals

- The Spirit of Law - Book VI. Consequences of the principles of the various governments with respect to the simplicity of the civil and criminal laws, the form of judgments, and the establishment of punishments -

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Since men are wicked, the law is obliged to assume they are better than they are. Thus the deposition of two witnesses suffices in the punishment of all crimes. The law believes them as if they were speaking through the mouth of truth. We also deem that any child conceived during marriage is legitimate : the law has confidence in the mother as if she were chastity itself. But using the rack against criminals is not in a forced case like these. We see today a very well-ordered nation [1] rejecting it without detriment. It is therefore not inherently necessary. [2]

So many able men and so many excellent minds have written against this practice that I dare not speak after them. I was about to say that it could be appropriate under despotic governments, where whatever inspires fear is a more natural part of the government's resources ; I was about to say that slaves among the Greeks and the Romans..... But I hear the voice of nature crying out against me.

[1] The English nation.

[2] The citizens of Athens could not be subjected to torture (Lisias, *Orationes, Against Argoratus*) except for the crime of lese-majesty. The torture was applied thirty days after the condemnation (Chirius Fortunatianus, *Artis rhetoricæ*, book II). There was no preparatory torture. As for the Romans, Laws 3 and 4 *ad legem Juliam majestatis* shows that birth, dignity, and the profession of the militia guaranteed against torture, with the exception of the case of lese-majesty. See the wise restrictions which the laws of the Visigoths placed on this practice.