in Spain, but in other countries where the Inquisition was established. But several other codes of procedure existed before the final perfection of the system by Valdés. The earliest is perhaps the instructions for inquisitors (*Direc­torium Inquisitorum)* compiled a century earlier than Torquemada by Nicholas Eymerico, grand inquisitor of Aragon about 1368.@@1 Rules of practice were also framed two centuries later by Simancas, whose position as an apologist has been already stated. The text-book of pro­cedure of the Italian Inquisition was the *Sacro Arsenale.@@2* In the Netherlands, Francis Van der Heist was appointed inquisitor-general in 1521, with authority to torture heretics without observing the ordinary forms of law, and without appeal.@@3 In 1545 and 1550 instructions for the guidance of inquisitors were issued by Charles V.@@4 The liability of a judge for exceeding the law was not always recognized by the Inquisition to the same extent as by the lay tribunals. Llorente gives an instance of a warrant by an inquisitor to a licentiate ordering the torture of an accused person, and protesting that, in case of death or fracture of limbs, the fact is not to be imputed to the licentiate.@@5

Thus far of the law. In practice all the ingenuity of cruelty was exercised to find new modes of torment.@@6 These cruelties led at times to remonstrance from the civil power. One example is the edict of Philip II. just mentioned. Another and an earlier one is an *ordonnance* of Philip the Fair, in 1302, bidding the Inquisition confine itself within the limits of the law.@@7 At Venice the senate decreed that three senators should be present as inquisitors. Further details of the varieties of torture will be found, by those curious in such matters, in the works of Llorente, Herculano (*History of the Inquisition in Portugal),* Motley, Garrido and Cayley, and Picart, to which may be added works giving accounts of the sufferings of individuals under the Inquisition, such as the narrative of the suffer­ings of William Lithgow at Malaga in 1622 and of Van Halen in 1817, and (in the Spanish and Portuguese colonies) the cases of Francisco Moyen in Chili, and of Dellon at Goa in 1673.@@8 Mental torture may be exempli­fied by Excommunication (*q.v.),* and by the secrecy and uncertainty of the proceedings of the inquisitors.

As the practice of torture, both by the civil and ecclesiastical power, became more systematized, it grew to be the subject of casuistical inquiry by churchmen, to an extent far exceeding the scanty discussion of the question in the text of the canon law. It will be sufficient here to cite as an example the treatment of it by Liguori, who incorporates the opinions of many of the Spanish casuists. On the whole, his views appear to be more humane than the prevailing practice. The object of torture he defines very neatly as being to turn *semiplena* into *plena probatio.* For this proper *indicia* are necessary. He then proceeds to decide certain questions which had arisen, the most interesting of which deal with the nature of the sin of which the accused and the judge are guilty in particular instances. A judge sins gravely if he does not attempt all

milder means of discovering truth before resorting to tor­ture. He sins in a criminal cause, or in one of notable infamy, if he binds the accused by oath to tell the truth before there is proof against him. It is the same if with­out oath he uses threats, terror, or exhibition of torments to confound the witness.@@9 If any one, to avoid grave torments, charges himself with a capital crime, he does not sin mortally.@@10 It was a doubtful question whether he sinned gravely in such a case.

*England.—*It is the boast of the common law of England that it never recognized torture as legal. One, perhaps the chief, reason for this position taken by the law is the difference of the nature of the procedure in criminal cases from that in general use in Continental countries. To use words more familiar in foreign jurisprudence, the English system is *accusatorial* as distinguished from *inquisitorial.* The common law of England has always shown itself averse to the inquisitorial system, and so (at least in theory) to the torture which may be regarded as an outcome of the system whose one end was to obtain a confession from the accused. The tendency of the small amount of statute law bearing on the subject is in the same direction. It was provided by Magna Charta, § 29, “ that no free man should be destroyed in any

way unless by legal judgment of his equals or by the law of the land.” On this Sir E. Coke comments, “ No man destroyed, &c., that is, forejudged of life or limb, dis­inherited, or put to torture or death.”@@11 The Act of 27 Hen. VIII. c. 4 enacted that, owing to the frequent escape of pirates in trials by the civil law, “the nature whereof is that before any judgment of death can be given against the offenders they must plainly confess their offence (which they will never do without torture or pains),” such persons should be tried by jury before commissioners under the Great Seal. Finally, the Bill of Rights provided that cruel and unusual punishments ought not to be inflicted. The opinions of the judges have been invariably against torture in theory, however much some of them may have been led to countenance it in practice. The strongest authority is the resolution of the judges in Felton’s case (1628), “ that he ought not by the law to be tortured by the rack, for no such punishment is known or allowed by our law.”@@12 In accordance with this are the opinions of Sir John Fortescue,@@13 Sir Thomas Smith,@@14 and Sir E. Coke. The latter says,—“ As there is no law to warrant tortures in this land, nor can they be justified by any prescription, being so lately brought in.” @@15 In spite of all this torture in criminal proceedings was inflicted in England with more or less frequency for some centuries, both as a means of obtaining evidence and as a part of the punishment. But it should be remarked that torture of the former kind was invariably ordered by the crown or council, or by some tribunal of extraordinary authority, such as the Star Chamber, not professing to be bound by the rules of the common law. In only two instances was a warrant to torture issued to a common law judge.@@16

A licence to torture is found as early as the Pipe Roll of 34 Hen. II.@@17 The Templars (see Templars) were tortured in 1310 by royal warrant addressed to the mayor

@@@1 An edition was published at Rome in 1558, and a compendium at Lisbon in 1762, and by Marchena at Montpellier in 1821.

@@@2 The only edition which the writer has seen is dated Genoa and Perugia, 1653.

@@@3 Motley, *Dutch Republic,* vol. i. p. 528.

@@@4 Id., p. 329.

@@@5 Llorente, c. xiv.

@@@6 Among others were the gradual pouring of water drop by drop on a particular spot of the body, the *tormento de tοca,* or pouring of water into a gauze bag in the throat, which gradually forced the gauze into the stomach, and the *péndola,* or swinging pendulum, so graphi­cally described in one of Edgar Poe’s tales.

@@@7 Ordonnances des Rois, vol. i. p. 346.

@@@8 The history of Dellon’s narrative of his experiences in the prison of the Inquisition is remarkable. It was translated into English in 1688 by the Rev. R. Wharton, a chaplain of Archbishop Sancroft, but was refused a licence, as being contrary to the king’s religion, and the publisher was imprisoned.

*@@@9 Theol. Mor.,* bk. ix. § 202.

@@@10 § 274.

@@@11 2 *Inst.,* 485.

@@@12 3 State Trials, 371.

@@@13 De Laudibus Legum Angliæ, c. 22.

*@@@14 Commonwealth of England,* bk. ii. c. 27. It is curious that Sir T. Smith, with all his hatred of torture, was directed by a warrant under the queen’s seal alone (not through the council) to torture the duke of Norfolk’s servants in 1571. In a letter to Lord Burghley he pleaded for exemption from so thankless a task.

@@@15 3 *Inst.,* 35. Nevertheless, in the trial of Lords Essex and South­ampton, Coke is found extolling the queen’s mercy for not racking or torturing the accused, 1 *State Trials,* 1338.

@@@16 Jardine, Reading on the Use of Torture in the Criminal Law of England (1837), p. 52.

@@@17 Pike, Hist. of Crime in England, vol. i. p. 427.