establishing his competency as a witness.@@1 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, § 5. Many details of the tortures inflicted will be found in Pitcairn’s Criminal Trials and the introduction to Maclaurin's Criminal Cases. Among other varieties—the nature of some of them can only be guessed—were the rack, the pilniewinkis, the boot,@@2 the caschie-laws, the lang irnis, the narrow-bore, and, worst of all, the waking, or artificial prevention of sleep.@@3 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.”@@4 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 a 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.”@@5 In 1583 Hurley, an Irish priest, was tortured in Dublin, by “toasting his feet against the fire with hot boots.”@@6 In the case of Myagh, in 1581, the accused was brought over from Ireland by command of the lord deputy to be tortured in the Tower.@@7 In 1615 one O’Kennan was put to the rack in Dublin by virtue of the lord deputy’s commission.@@8 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. ” @@9

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. It is true that in the trial of Sir Thomas Picton in 1806, for subjecting, while governor of Trinidad, a woman named Luisa Calderon to the torture of the picquet,@@1° 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.@@11 As to India, the second charge against Warren Hastings was extortion from the begums of Oude by means of the torture of their servants.@@12 In the present Indian Penal Code and Evidence Act there are pro­visions intended, as Sir James Stephen says,@@13 to prevent the practice of torture by the police for the purpose of extracting con­fessions from persons in their custody.@@14 In Ceylon torture, which had been allowed under the Dutch government, was expressly abolished by royal proclamation in 1799.

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.@@15 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.@@16 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.@@17

Continental States. —The principles of Roman law were generally adopted. Want of space unfortunately prevents a detailed exami­nation of the law of other countries, but that of Italy may fairly be taken as the type of a system which reached at its maturity a certain revolting completeness of which it is difficult to speak with patience. The law as it existed in Italy is contained in a long line of authorities, chiefly supplied by the school of Bologna, beginning with the glossatores and coming down through the post-glossatores, until the system attained its perfection in the vast work of Farinaccius, written early in the 17th century, where every pos­sible question that could arise is treated with elaborate minuteness. The writings of jurists were supplemented by a large body of legis­lative enactments in most of the Italian states, extending from the constitutions of the emperor Frederick II. down to the last century. It is not until Bartolus (1314-1357) that the law begins to assume a definite and complete form. In his commentary on book xlviii. of the Digest he follows Roman law closely, but introduces some further refinements: e.g., though leading questions may not be asked in the main inquiry they are admissible as subsidiary. There is a beginning of classification of indicia. A very full discussion of the law is contained in the work on practice of Hippolytus de Marsiliis,@@18 a jurist of Bologna, notorious, on his own admission, as the inventor of the torture of keeping without sleep. He defines the question as inquisitio veritatis per tormenta et cordis dolorem, thus recognizing the mental as well as the physical elements in torture. It was to be used only in capital cases and atrocious crimes. The works of Farinaccius and of Julius Clarus nearly a century later were of great authority from the high official positions filled by the writers. Farinaccius was procurator-general to Pope Paul V., and his discussion of torture is one of the most complete of any.@@19 It occupies 251 closely printed folio pages with double columns. The length at which the subject is treated is one of the best proofs of the science to which it had been reduced. The chief feature of the work is the minute and skilful analysis of indicia, fama, præsumptio, and other technical terms. Many definitions of indicium are suggested, the best perhaps being conjectura ex probabilibus et non necessariis orta, a quibus potest abesse veritas sed non verisimilitudo. For every infliction of torture a distinct indicium is required. But this rule does not apply where it is inflicted for discovering accomplices or for discovering a crime other than that for which it was originally inflicted. Torture may be ordered in all criminal cases, except small offences, and in certain civil cases, such as denial of a depositum, bankruptcy, usury, treasure trove, and fiscal cases. It may be inflicted on all persons, unless specially exempted (clergy, minors, &c.), and even those exempted may be tortured by command of the sovereign. There are three kinds of torture, levis, gravis, and gravissima, the first and second corresponding to the ordinary torture of French writers, the last to the extraordinary. The extraordinary or gravissima was as much as could possibly be borne without destroying life. An immense variety of tortures is mentioned, the most usual being the tying of one hand only with the cord. The judge could not begin with torture ; it was only a subsidium. If inflicted without due course of law, it was void as a proof. The judge was liable to penalties if he tortured without proper indicia, if a privileged person, or if to the extent that death or permanent illness was the result. An immense variety of tor­tures is mentioned, and the list tended to grow, for, as Farinac­cius says, judges continually invented new modes of torture to please themselves. Numerous casuistical questions are treated at length. Could a priest reveal an acknowledgment of an intended crime made to him in confession ? What kinds of reports or how much hearsay evidence constituted fame ? How far was a con­fession allowed to be extorted by blandishments or false promises on the part of the judge? Were there three or five grades in torture ? Julius Clarus of Alessandria was a member of the council of Philip II.@@20 To a great extent he follows Farinaccius. He puts the questions for the consideration of the judge with great clear­ness. They are—whether (1) a crime has been committed, (2) the charge is one in which torture is admissible, (3) the fact can be proved otherwise, (4) the crime was secret or open, (5) the object of the torture is to elicit confession of crime or discovery of accomplices. He admits the tremendous power given to a judge of torturing a witness should he suspect that the latter knows the truth and is concealing it. An accuser may not be racked with the accused in order to test his sincerity. The clergy can be tortured only in charges of treason, poisoning, and violation of tombs. On the great question whether there are three or five grades, he decides in favour of five, viz., threats, taking to the place of torment, stripping and binding, lifting on the rack, rack­ing. Other Italian writers of less eminence have been referred to for the purposes of this article. The burden of their writings is practically the same, but they have not attained the systematic perfection of Farinaccius. Citations from many of them are made by Manzoni (see below). Among others are Guido de Suzara, Paris

@@@1 The thumbscrew with which Carstares had been tortured was afterwards presented to him as a remembrance by the Privy Council.

@@@2 Persons subjected to more than usual torture from the boot were said to be “ extremely booted.”

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

@@@4 Hallam, *Const. Hist.,* vol. iii. p. 436. See Burnet, *Hist. of Own Time,* vol. i. p. 583, and Scotland, vol. xxi. p. 516.

@@@5 Froude, *Hist. of England,* vol. viii. p. 386.

*@@@6 Ibid.,* vol. xi. p. 263.

7 Jardine, p. 29.

*@@@8 Cal. State Papers* (Irish series, 1615-1625), p. 78.

@@@9 Jardine, p. 54.

@@@10 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.

@@@11 30 *State Trials,* 449.

@@@12 See the Report of the Proceedings, vol. i., and Macaulay’s Essay on Warren Hastings.

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

@@@14 §§ 327-331 of Code ; §§ 25-27 of Act.

@@@15 Bouvier, *Law Dict.,* s.v. “Peine Forte et Dure.”

@@@16 Amendments. Art. viii.

@@@17 *Revised Stat.,* § 5347.

@@@18 *Practica Criminalis quæ Averolda nuncupatur,* Venice, 1532.

@@@19 *Praxis et Theorica Criminalis,* bk. ii. tit. v. quæst. 36-51, Frankfort, 1622.

*@@@20 Practica Criminalis Finalis,* Lyons, 1637.