and not a repetition. The rules of Torquemada and of Valdés are those of the greatest historical importance, the latter forming the code of the Holy Office until its suppression, not only in Spain, but in other countries where the Inquisition was established. But several other manuals of procedure existed before the final perfec- tion of the system by Valdes. 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 textbook of procedure of the Italian Inquisition was the *Sacro arsenale.*@@*2* In 1545 and 1550 instructions for the guidance of inquisitors were issued by Charles V. 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 Iimbs, the fact is not to be imputed to the licentiate.@@3

Thus far of the law. In practice all the ingenuity of cruelty was exercised to find new modes of torment.@@4 These cruelties led at times to remonstrance from the civil power. One example is the edict of Philip IL 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.@@6 At Venice the senate decreed that three senators should be present as inquisitors.

As the practice of torture 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. Ón 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 withess.@@® If any one, to avoid grave torments, charges himself with a capital crime, he does not sin mortally.@@7 It was a doubtful question whether he sinned gravely in such a case. Escobar at an earlier date supported the morally dangerous view that an inquisitor may follow a probable opinion in ordering torture, relinquishing a more probable.@@8

*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 European countries. To use words more familiar in foreign jurisprudence, the English system is *accusatorial* as distinguished from *inquisitorial.* In the former the accuser has to prove guilt, in the latter the accused has to prove innocence. The common law of England has always shown itself averse from 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 Carta, § 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.”@@9 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.”@@10 In accordance with this are the opinions of Sir John Fortescue,@@11 Sir Thomas Smith@@12 and Sir E. Coke. The Iatter 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.”@@13 ln 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 pf 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.@@14

A licence to torture is found as early as the Pipe Roll of 34 Hen. II.@@lδ The Templars were tortured in 1310 by royal warrant addressed to the mayor and sheriffs of London.@@1 In this case it is recorded that torture was unknown in England, and that no torturer was to be found in the realm.@@17 A commission was issued concerning the tortures at Newgate in 1334.@@l8 The rack in the Tower is said to have been introduced by the duke of Exeter in the reign of Henry VI., and to have been thence called “the duke of Exeter’s daughter.”@@19 In this reign torture seems to have taken its place as a part of what may be called extraordinary criminal procedure, claimed, and it may be said tacitly recognized, as exercisable by virtue of the prerogative, and continued in use down to 1640.@@sζ The infliction of torture gradually became more common under the Tudor monarchs. Under Henry VIII. it appears to have been in frequent use. Only two cases are recorded under Edward VI., and eight under Mary.@@21 The reign of Elizabeth was its culminating point. In the words of Hallam, “the rack seldom stood idle in the Tower for all the latter part of Elizabeth’s reign."@@22 The varieties of torture used at this period are fully described by Dr Lingard,@@23 and consisted of the rack, the scavenger’s daughter,@@24 the iron gauntlets or bilboes, and the cell called “ Little Ease.” The registers of the council during the Tudor and early Stuart reigns are full of entries as to the use of torture, both for state and for ordinary offences.@@26 Among notable prisoners put to the torture were Anne Askew, the Jesuit Campion, Guy Fawkes@@26 and Peacham (who was examined by Bacon "before torture, in torture and after torture").@@27 The prevalence of torture in Elizabeth’s reign led to the well-known defence at- tributed to Lord Burghley, "À declaration of the favourable dealing of Her Majesty’s commissioners appointed for the examination of certain traitors, and of tortures unjustly reported to be done upon them for matter of religion,” 1583.@@^ The use of torture in England being always of an extraordinary and extra-judicial nature, it is

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

*@@@*2 lt was by Father Masini, and went through numerous editions (complete or compendia) from 1558 to 1730. Among other manuals of practice were, those of Carenas Caesar (1655), Morellet (1762).

*@@@*3 Llorente c. xiv.

*@@@*4 Among others were the gradual pouring of water drop by drop on a particular spot of the body, the *tormento de toca,* 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.

*@@@δ Ordonnances des rois,* i. 346.

*@@@δ Theol. mor.* bk. ix. § 202.

*@@@*7 lbid. § 274.

*@@@*8 Ibid. v. 3 and 7.

*@@@*9 2 *Inst.* 48 b.

*@@@*10 3 *State Trials,* 371.

*@@@n De laudibus legurn Angliae,* c. 22.

*@@@12 Commonwealth of England,* bk. ii. c. 27 (1583; ed. by L. Alston, 1906). 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 hateful a task.

*@@@*1,3 *Inst.* 35. Nevertheless, in the trials of Lord Essex and Southampton, Coke is found extolling the queen’s mercy for not racking or torturing the accused (1 *State Trials,* 1338). (See further authorities in Pollock and Maitland, *Hist. of English Law,* ii. 656.)

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

*@@@*lδ L. O. Pike, *Hist. of Crime in England,* i. 427.

*@@@*lβ Rymer, *Foedera,* iii. 228, 232.

*@@@*17 Walter of Hemingford, p. 256.

*@@@*18 Pike i. 481.

*@@@*19 3 *Inst.* 34.

*@@@*20 This is the date of the latest warrant in Jardine’s work, but it was used on three Portuguese at Plymouth during the Commonwealth (Thurloe iii. 298).

*@@@*21 lt is to be noticed, as Jardine observes, that all these are cases of an ordinary nature, and afford no ground for the assertions made by Strutt and Bishop Burnet that torture was used to heretics as heretics.

*@@@22 Const. Hist.* i. 201.

*@@@23 Hist. of England,* vol. viii. app. note v.

*@@@*24 These two were exactly opposite in principle. The rack stretched the limbs of the sufferer; the scavenger’s daughter compressed him into a ball.

*@@@*25 Fifty-five of these will be found in the appendix to Mr Jardine’s work. An ordinary robber of plate was threatened with torture in 1567.—Froude, *Hist. of England,* viii. 386.

*@@@*26 It is not certain whether he was racked, but probably he was, in accordance with the king’s letter: “ If he will not otherwise confess the gentlest tortures are to be first used to him, and so on, step by step, to the most severe, and so God speed the good work.”

*@@@*27 Dalrymple, *Memoirs and Letters of James I.* p. 85; Macaulay’s essay on the works of Bacon.

*@@@*\*8 Lord Somers’s *Tracts,* i. 189.