In Spain, as in Italy, the law depended partly on the writings of jurists, partly on legislation. Roman law was carried through the Visigothic Code and the *Fuero juzgo*@@*l* (which repeats it almost word for word) down to the *Siete partidas.*@@*2* This treatise, compiled by Alphonso the Wise about 1243, but not promulgated till 1256, amended the previously existing law in the direction of greater precision. Torment is defined as a manner of punishment which overs of justice use, to scrutinize by it the truth of crimes committed secretly and not provable in any other manner. Repetition was allowed in case of grave crimes. There were the usual provisions for the infliction of torture only by a judge having jurisdiction, and for the liability of the judge for exceeding legal limits. Subsequent codes did little more than amend the *Partidas* in matters of pro- cedure. Torture is not named in the *Ordenanzas reales* of Ferdinand and Isabella (1485). The *Nueυa recopilacion* of Philip II. enacted that torture was to be applied by the *alcaldes* on due sentence of the court—even on *hidalgos* in grave crimes—without regard to alleged privilege or custom. In the *Novisima recopilacion* of 1775 the only provisions on the subject are that the *alcaldes* are not to condemn to torment without preceding sentence according to law, and that *hidalgos* are not to be tormented or suffer infamous punishment. In Aragon, while it was an inde­pendent state, torture was not in use to the same extent as in other parts of Spain. It was abolished in the 13th century by the General Privilege of 1283 except in the case of vagabonds charged with coin- ing. A statute of 1335 made it unlawful to put any freeman to the torture.@@3 On the other hand, the Aragonese nobility had a power, similar to the *peine forte et dure,* of putting a criminal to death by cold, hunger and thirst.@@4 The jurists dealing with the subject are not as numerous as in Italy, no doubt because Italian opinions were received as law in all countries whose systems were based on Roman law.@@6 Some of the Italian jurists too, like Clarus, were at that same time Spanish officials. The earliest Spanish secular jurist appears to be Suarez de Paz.@@8 According to him the most usual tortures in Spain were the water and cord, the pulley or *strappado,* the hot brick, and the *tablillas,* or thumbscrew and boot combined. Three was the greatest number of times that any torture could be applied. It might be decreed either on demand of the accuser or at will of the judge. The Roman rule of beginning with the weakest was amplified into a series of regulations that a son was to be put to the question before a father, a woman before a man, &c. The fullest statement of Spanish law is to be found in the work of Antonio Gomez, a professor at Salamanca.@@7 With him no exceptions apply in charges of *laesa majestas diυina* or *humana.* A judge is liable to different punishment according as he orders torture *dolose* or *culpabiliter.* Differing from Hippolytus de Marsiliis, Gomez holds that the dying accusation of a murdered man is not an *indicium,* A confession on insufficient *indicia* is void. His division of torture into *tortura actualis* and *terror propinquus* is the same as that of the French jurists into torture and presentment. The conclusions of the ecclesiastical writers of Spain, such as Eymerico and Simancas, were accepted wholly or partially by the secular writers, such as Alvarez de Velasco,@@8 and the Peruvian, Juan de Hevia Bolanos,@@9 who points out differences in the ecclesiastical and secular systems, *e.g.* the former brought up the accused for ratification in three days, the latter in twenty-four hours. A good deal of the Spanish law will be found in the proceedings against Sir Thomas Picton (see above). Torture in Spain seems to have been inflicted on Jews to an extraordinary extent, as it was also in Portugal, where the latest legislation as to torture seems to be of the year 1678. In 1790 it had become obsolete,@@l° and in a work on criminal procedure four years later it is only referred to for the purpose of stating that when it did exist it was *realis* or *υerbοlis.*@@*l1*

*Teutonic States,*—Germany (including Austria) is distinguished by the possession of the most extensive literature and legislation

on the subject. The principal writers are Langer, von Rosbach and von Boden. In addition may be cited the curious *Layenspiegel* of Ulrich Tengler (1544), and the works of Remus, Casonus and Carpzow.@@n Legislation was partly for the empire, partly for its component states. Imperial legislation dealt with the matter in the Golden Bull (1356), the Ordinance of Bamberg (1507), the Carolina (1532)@@13 and the *Cοnstitutiο criminalis theresiana* (1768).@@14 The Carolina followed the usual lines, the main difference being that the infliction must be in the presence of two *scabini* and a notary, who was to make a detailed record of the proceedings. The code of María Theresa defines torture as “ a subsidiary means of eliciting truth.” It could be applied only in cases where condemnation would have involved capital or severe corporal punishment. The illustrated edition was suppressed by Prince Kaunitz a few days after its appearance. Torture was formally abolished in the empire in 1776. In Prussia it was practically abolished by Frederick the Great in 1740, formally in 1805. Even before its abolition it was in use only to discover accomplices after conviction.@@16 In some other states it existed longer, in Baden as late as 1831. It was carried to excess in Germany, as in the Netherlands and Scotland in charges of witchcraft.

*The Netherlands.—*The principal legislative enactment was the code of criminal procedure promulgated by Philip II. in 1570 and generally known as the *Ordonnance sur le style.*@@*™* One of its main objects was to assimilate the varieties of local custom, as the *Nueυa recopilacion* had done in Spain three years earlier. The French *ordonnance* of 1670 is probably largely based on it. In spite of the attempt of the ordinance to introduce uniformity, certain cities of Brabant, it is said, still claimed the privilege of torturing in certain cases not permitted by the ordinance, *e.g.* where there was only one witness.@@17

The law of 1670 continued to be the basis of criminal procedure in the Austrian Netherlands until 1787. In the United Provinces it was not repeated until 1798. The principal text-writers are DamhoUder,@@18 van Leeuwen@@19 aNd Voet. Van Leeuwen lays down as a fundamental principle that no one was to be condemned to death without confession, and such confession, if attainable in no other way, ought to be elicited by torture. witnesses could be tortured only if they varied on confrontation. One of the *indicia* not always recognized by jurists was previous conviction for a similar crime. Voet’s commentary *ad Pandectas*@@*\*i* is interesting for its taking the same view as St Augustine as to the uselessness of torture, and compares its effect with that of the trial by battle. At the same time he allows it to be of some value in the case of very grave crimes. The value of torture was doubted by others as well as Voet, *e.g.* by A. Nicholas@@21 and by van Essen.@@22 At the same time a writer was found to compose a work on the unpromising subject of the rack.@@«

*Scandinavian Countries.—*There is a notice of torture in the Ice- landic Code known as the Grágás (about 1119). Judicial torture is said to have been introduced into Denmark by Valdemar L in 1157.@@24 In the code of Christian V. (1683) it was limited to cases of treason.@@26 It was abolished by the influence of Struensee in 1771, but notwithstanding this he was threatened with it, though it was not actually inflicted, before his execution in 1772. In Sweden torture never existed as a system, and in the code of 1734 it was expressly forbidden.@@2® It was however occasionally inflicted, as in England, by extrajudicial authorities, called secret committees.

*@@@*1 V1. 4, 5.

*@@@2 Partida,* vii. 30. It was one of the earliest books printed in Spain, the earIiest edition appearing in 1491.

*@@@*3 Cited HalIam, *Middle Ages,* iii. 76.

*@@@*4 Du Cange, *s.v*. *Fame necare.*

*@@@*5 In all the Latin countries the idea of torture had become a commonplace. The dramatists contain frequent allusions to it. In Lope de Vega’s *El Perro del hortelano* (“ The Dog in the Manger ”), one of the characters says, “ Here’s a pretty inquisition!” to which the answer is, “ The torture will be next applied.” Molière and Racine both make use of it. In *L'Avare,* act iv. sc. 7, Harpagon threatens to put his whole household to the question. In *Les Plaideurs* Dandin invites Isabelle to see *la question* as a mode of passing an hour or two. In England Bacon (Essay lvi.) says, "There is no worse torture than the torture of laws.” The same idea occurs again in the *Advancement of Learning,* viii. 3, 13, “It is a cruel thing to torture the laws that they may torture men.”

*@@@1 Praxis ecclesiastica et saecularis,* vol. i. pt. V. §. 3 (Salamanca, 1583).

*@@@7 Variae resolutiones,* p. 412 (Antwerp, 1593).

*@@@• Judex perfectus* (Lausanne, 1740).

*@@@, Curia filipica* (Madrid, 1825).

*@@@19 Repertoria geral das leis extravagantes,* p. 381 (Coimbra, 1815).

*@@@*u Paschal Freirus, *Inst. jur. crim. lusitani,* p. 203 (Lisbon, 1794).

*@@@*12 Extracts from these and other writers will be found in Lea, *Superstition and Force,* and in R. Quanter, *Die Folter in der deutschen Rechtspflege sonst und jetzt* (Berlin, 1900).

*@@@*13 Chs. 33-44·

*@@@*14 Art. 38 (Vienna, 1769).

*@@@*16 This statement is made on the authority of a work attributed to Frederick himself, *Dissertation sur les raisons d'établir au d'abroger les lois* (1748).

*@@@*lβ A list of the numerous commentaries on this code will be found in Nybels, *Les Ordonnances criminelles de Philippe II. de 1570,* p. 23 (Brussels, 1856).

*@@@*17 Nybels, pp. 31, 33.

*@@@18 Pratique judiciaire en causes criminelles* (Antwerp, 1564).

*@@@19 Censura forensis,* pt. ii. bk. ii. chs. 8, 9 (Leiden, 1677).

*@@@*20 On *Dig.* xlviii. 18. There are numerous editions of Voet, the sixth (generally found in libraries) is the Hague (1734).

*@@@21 Si la torture est un moyen sûr a vérifier les crimes* (Amsterdam, 1681). Also by an anonymous writer thirty years earlier, *Do Pijnbαηk wedersproken en bematigt* (Rotterdam, 1651).

*@@@22 Jus ecclesiasticum universum* (Louvain, 1720).

*@@@23 Hieronymi Magii Anglarenis de equuleo liber postumus* (Amsterdam, 1664). There are several works dealing with torture in witchcraft proceedings. A large number of cases will be found in J. Scheltema, *Geschιedenis der Hexen-processoη* (Haarlem, 1828). For torture in the 18th century see E. Hubert, *La Torture aux Pays Bas autrichiens pendant la xviιie siècle* (Brussels, 1897).

*@@@*î4 Baden, *Dansk juridisk Ordbog, s.v.* “ Tortur ” (Copenhagen, 1828).

*@@@*u Kolderup-Rosenvinge, *Udvalg af gamle Danske-Domme,* bk. i. c. 20 (Copenhagen, 1848).

*@@@2β Cod. leg. svecicarum,* pp. 233, 370 (Stockholm, 1743).