Law and Torture Key Ideas

**Why should the later sixteenth century have seen an upsurge in witchcraft persecutions? Changes in the legal system**

* Changes in the law are considered to be important in explaining the timing of the witchcraze.
* Sixteenth century persecution was only possible because governments, lawyers and clerics began to take age-old imaginings about devil-worshipping and subverting the community seriously.
* Major changes in law allowed for the outbreak in witch trials. Such laws established criteria for determining heretical nature, and punished all aspects.
* This was only possible with the aid of a legal machinery established by the elites, and some degree of interaction between local law enforcers and the general population was commonplace.

**The Nature of Witchcraft Accusations**

**The preconditions**

* The necessity for the ruling elite and the common people to have some knowledge of the various activities that witches allegedly engaged in.
* The laws and the judicial machinery.
* The presence of a crisis mentality, both religious and political.
* It is not surprising that one combination of factors seems to have ‘caused’ a witch-hunt in one area while a virtually identical situation did not produce prosecutions in another.
* Witch-hunts did not start spontaneously in those communities that were intellectually, legally and psychologically prepared to experience them. There was always a trigger factor; someone who ‘had to get the ball rolling’.
* The evidence required to convict an alleged witch varied from country to country, but prosecutions everywhere were most frequently sparked off by denunciations, while convictions invariably required a confession.
* The latter was often obtained by extremely violent methods. Although Europe's witch-frenzy did not begin until the late 15th century, brutal techniques were routinely used to extract the required admission of guilt.
* They included hot pincers, the thumbscrew, and the ‘swimming’ of suspects (an old superstition whereby innocence was established by immersing the accused in water for a sufficiently long period of time).
* Investigators were consequently able to establish many fantastic crimes that could never have occurred, even in theory.
* That said, many judicial procedures of the time required proof of a causative link between the alleged act of witchcraft and an identifiable injury, such as a death or property damage.
* The flexibility of the crime and the methods of proving it resulted in easy convictions.
* Any reckoning of the death toll should take account of the facts that rules of evidence varied from jurisdiction to jurisdiction, and that a significant number of witch trials always ended in acquittal.
* Various acts of torture were used against accused witches to coerce confessions and perhaps cause them to name their co-conspirators.
* The torture of witches began to grow after 1468 when the Pope declared witchcraft to be ‘crimen exeptum’ and thereby removed all legal limits on the application of torture in cases where evidence was difficult to find.
* With the publication of the *Malleus Maleficarum* in 1487 the accusations and torture of witches again began to increase, leading to the deaths of thousands.
* In Italy, an accused witch was deprived of sleep for periods of up to forty hours. This technique was also used in England, but without a limitation on time.
* Sexual humiliation torture was used, such as forced sitting on red-hot stools with the claim that the accused woman would not perform sexual acts with the devil.
* Besides torture, at trial, certain ‘proofs’ were taken as valid to establish that a person practiced witchcraft:
* The diabolical mark. Usually, this was a mole or a birthmark. If no such mark was visible, the examiner would claim to have found an invisible mark.
* Diabolical pact. This was an alleged pact with Satan to perform evil acts in return for rewards.
* Denouncement by another witch. This was common, since the accused could often avoid execution by naming accomplices.
* Relationship with other convicted witch/witches
* Blasphemy
* Participation in Sabbaths
* To cause harm that could only be done by means of sorcery
* Possession of elements necessary for the practice of black magic
* To have one or more witches in the family
* To be afraid during the interrogatories
* Not to cry under torment (supposedly by means of the Devil's aid)
* To have had sexual relationships with a demon

**Executions**

* The sentence generally was death (as Exodus 22:18 states, ‘Thou shalt not suffer a witch to live’).
* There were other sentences, the most common to be chained for years to the oars of a ship, or excommunicated then imprisoned.
* Nearly always, a witch's execution involved burning of their body. In England, witches were usually hanged before having their bodies burned and their ashes scattered.
* In Scotland, the witches were usually strangled at the stake before having their bodies burned—though there are several instances where they were burned alive.
* In France, witches were nearly always burned alive.  Most of the victims were never given proper burials, since they had been convicted of witchcraft; they were no longer considered people. They were often laid in unmarked graves.
* The peculiar beliefs and superstitions attached to or associated with witchcraft caused those who were suspected of practising the craft to be extremely likely to be subjected to tortures of greater degree than any ordinary heretic or criminal. More, certain specific torments were invented for use against them.
* It has been suggested that the execution of persons associated with witchcraft resulted in the loss of much traditional knowledge and folklore, which was often regarded with suspicion and tainted by association.

#### Numbers of executions

* The historian Brian Levack, author of *The Witch Hunt in Early Modern Europe* (1987), took the number of known European witch trials and multiplied it by the average rate of conviction and execution.
* This provided him with a figure of around 60,000 deaths; however, for the third edition of the work (2006) he later reassessed that number to 45,000.
* This number was criticised as being too low by Anne Llewellyn Barstow, author of *Witchcraze: A New History of the European Witch Hunts* (1994).
* She arrived at a number of approximately 100,000 deaths by attempting to adjust Levack's estimate to account for what she believed were unaccounted lost records.
* There has been much debate among historians about whether witch accusations and persecutions arose from ‘above’ or ‘below’.
* Village and small town witchcraft was the basic type, the everyday reality around which everything else was built.
* Witchcraft was about envy, ill-will and the power to harm others, exercised in small face-to-face communities which, although they could contain such feelings, found it almost impossible to disperse them.
* Witches were people you lived with, however unhappily, until they goaded someone past endurance.
* It is therefore a misconception to see persecution as essentially directed and managed from above, a mere adjunct to state-building, religious conflict and social hostility.
* We must downgrade support by the rulers to being a necessary condition for widespread persecution, not its fundamental cause.
* The multiple local variations resulted from a complex and unpredictable interaction between popular and elite ideas about witchcraft’.