

Chapter XLIV: Idea Of The Roman Jurisprudence.--Part IV.

When Justinian ascended the throne, the reformation of the Roman jurisprudence was an arduous but indispensable task. In the space of ten centuries, the infinite variety of laws and legal opinions had filled many thousand volumes, which no fortune could purchase and no capacity could digest. Books could not easily be found; and the judges, poor in the midst of riches, were reduced to the exercise of their illiterate discretion. The subjects of the Greek provinces were ignorant of the language that disposed of their lives and properties; and the barbarous dialect of the Latins was imperfectly studied in the academies of Berytus and Constantinople. As an Illyrian soldier, that idiom was familiar to the infancy of Justinian; his youth had been instructed by the lessons of jurisprudence, and his Imperial choice selected the most learned civilians of the East, to labor with their sovereign in the work of reformation. [71] The theory of professors was assisted by the practice of advocates, and the experience of magistrates; and the whole undertaking was animated by the spirit of Tribonian. [72] This extraordinary man, the object of so much praise and censure, was a native of Side in Pamphylia; and his genius, like that of Bacon, embraced, as his own, all the business and knowledge of the age. Tribonian composed, both in prose and verse, on a strange diversity of curious and abstruse subjects: [73] a double panegyric of Justinian and the life of the philosopher Theodotus; the nature of happiness and the duties of government; Homer's catalogue and the four-and-twenty sorts of metre; the astronomical canon of Ptolemy; the changes of the months;

the houses of the planets; and the harmonic system of the world. To the literature of Greece he added the use of the Latin tongue; the Roman civilians were deposited in his library and in his mind; and he most assiduously cultivated those arts which opened the road of wealth and preferment. From the bar of the Praetorian praefects, he raised himself to the honors of quaestor, of consul, and of master of the offices: the council of Justinian listened to his eloquence and wisdom; and envy was mitigated by the gentleness and affability of his manners. The reproaches of impiety and avarice have stained the virtue or the reputation of Tribonian. In a bigoted and persecuting court, the principal minister was accused of a secret aversion to the Christian faith, and was supposed to entertain the sentiments of an Atheist and a Pagan, which have been imputed, inconsistently enough, to the last philosophers of Greece. His avarice was more clearly proved and more sensibly felt. If he were swayed by gifts in the administration of justice, the example of Bacon will again occur; nor can the merit of Tribonian atone for his baseness, if he degraded the sanctity of his profession; and if laws were every day enacted, modified, or repealed, for the base consideration of his private emolument. In the sedition of Constantinople, his removal was granted to the clamors, perhaps to the just indignation, of the people: but the quaestor was speedily restored, and, till the hour of his death, he possessed, above twenty years, the favor and confidence of the emperor. His passive and dutiful submission had been honored with the praise of Justinian himself, whose vanity was incapable of discerning how often that submission degenerated into the grossest adulation. Tribonian adored the virtues of his gracious of

his gracious master; the earth was unworthy of such a prince; and he affected a pious fear, that Justinian, like Elijah or Romulus, would be snatched into the air, and translated alive to the mansions of celestial glory. [74]

[Footnote 71: For the legal labors of Justinian, I have studied the Preface to the Institutes; the 1st, 2d, and 3d Prefaces to the Pandects; the 1st and 2d Preface to the Code; and the Code itself, (l. i. tit. xvii. de Veteri Jure enucleando.) After these original testimonies, I have consulted, among the moderns, Heineccius, (Hist. J. R. No. 383--404,) Terasson. (Hist. de la Jurisprudence Romaine, p. 295--356,) Gravina, (Opp. p. 93-100,) and Ludewig, in his Life of Justinian, (p.19--123, 318-321; for the Code and Novels, p. 209--261; for the Digest or Pandects, p. 262--317.)]

[Footnote 72: For the character of Tribonian, see the testimonies of Procopius, (Persic. l. i. c. 23, 24. Anecd. c. 13, 20,) and Suidas, (tom. iii. p. 501, edit. Kuster.) Ludewig (in Vit. Justinian, p. 175--209) works hard, very hard, to whitewash--the blackamoor.]

[Footnote 73: I apply the two passages of Suidas to the same man; every circumstance so exactly tallies. Yet the lawyers appear ignorant; and Fabricius is inclined to separate the two characters, (Bibliot. Grae. tom. i. p. 341, ii. p. 518, iii. p. 418, xii. p. 346, 353, 474.)]

[Footnote 74: This story is related by Hesychius, (de Viris

Illustribus,) Procopius, (Anecdot. c. 13,) and Suidas, (tom. iii. p. 501.) Such flattery is incredible! --Nihil est quod credere de se Non possit, cum laudatur Diis aequa potestas. Fontenelle (tom. i. p. 32--39) has ridiculed the impudence of the modest Virgil. But the same Fontenelle places his king above the divine Augustus; and the sage Boileau has not blushed to say, "Le destin a ses yeux n'oseroit balancer" Yet neither Augustus nor Louis XIV. were fools.]

If Caesar had achieved the reformation of the Roman law, his creative genius, enlightened by reflection and study, would have given to the world a pure and original system of jurisprudence. Whatever flattery might suggest, the emperor of the East was afraid to establish his private judgment as the standard of equity: in the possession of legislative power, he borrowed the aid of time and opinion; and his laborious compilations are guarded by the sages and legislature of past times. Instead of a statue cast in a simple mould by the hand of an artist, the works of Justinian represent a tessellated pavement of antique and costly, but too often of incoherent, fragments. In the first year of his reign, he directed the faithful Tribonian, and nine learned associates, to revise the ordinances of his predecessors, as they were contained, since the time of Adrian, in the Gregorian Hermogenian, and Theodosian codes; to purge the errors and contradictions, to retrench whatever was obsolete or superfluous, and to select the wise and salutary laws best adapted to the practice of the tribunals and the use of his subjects. The work was accomplished in fourteen months; and the twelve books or tables, which the new decemvirs produced, might be

designed to imitate the labors of their Roman predecessors. The new Code of Justinian was honored with his name, and confirmed by his royal signature: authentic transcripts were multiplied by the pens of notaries and scribes; they were transmitted to the magistrates of the European, the Asiatic, and afterwards the African provinces; and the law of the empire was proclaimed on solemn festivals at the doors of churches. A more arduous operation was still behind--to extract the spirit of jurisprudence from the decisions and conjectures, the questions and disputes, of the Roman civilians. Seventeen lawyers, with Tribonian at their head, were appointed by the emperor to exercise an absolute jurisdiction over the works of their predecessors. If they had obeyed his commands in ten years, Justinian would have been satisfied with their diligence; and the rapid composition of the Digest of Pandects, [75] in three years, will deserve praise or censure, according to the merit of the execution. From the library of Tribonian, they chose forty, the most eminent civilians of former times: [76] two thousand treatises were comprised in an abridgment of fifty books; and it has been carefully recorded, that three millions of lines or sentences, [77] were reduced, in this abstract, to the moderate number of one hundred and fifty thousand. The edition of this great work was delayed a month after that of the Institutes; and it seemed reasonable that the elements should precede the digest of the Roman law. As soon as the emperor had approved their labors, he ratified, by his legislative power, the speculations of these private citizens: their commentaries, on the twelve tables, the perpetual edict, the laws of the people, and the decrees of the senate, succeeded to the authority of the text; and the

text was abandoned, as a useless, though venerable, relic of antiquity. The Code, the Pandects, and the Institutes, were declared to be the legitimate system of civil jurisprudence; they alone were admitted into the tribunals, and they alone were taught in the academies of Rome, Constantinople, and Berytus. Justinian addressed to the senate and provinces his eternal oracles; and his pride, under the mask of piety, ascribed the consummation of this great design to the support and inspiration of the Deity.

[Footnote 75: General receivers was a common title of the Greek miscellanies, (Plin. Praefat. ad Hist. Natur.) The Digesta of Scaevola, Marcellinus, Celsus, were already familiar to the civilians: but Justinian was in the wrong when he used the two appellations as synonymous. Is the word Pandects Greek or Latin--masculine or feminine? The diligent Brenckman will not presume to decide these momentous controversies, (Hist. Pandect. Florentine. p. 200--304.) Note: The word was formerly in common use. See the preface is Aulus Gellius--W]

[Footnote 76: Angelus Politianus (l. v. Epist. ult.) reckons thirty-seven (p. 192--200) civilians quoted in the Pandects--a learned, and for his times, an extraordinary list. The Greek index to the Pandects enumerates thirty-nine, and forty are produced by the indefatigable Fabricius, (Bibliot. Graec. tom. iii. p. 488--502.) Antoninus Augustus (de Nominibus Propriis Pandect. apud Ludewig, p. 283) is said to have added fifty-four names; but they must be vague or second-hand references.]

[Footnote 77: The item of the ancient Mss. may be strictly defined as sentences or periods of a complete sense, which, on the breadth of the parchment rolls or volumes, composed as many lines of unequal length. The number in each book served as a check on the errors of the scribes, (Ludewig, p. 211--215; and his original author Suicer. Thesaur. Ecclesiast. tom. i. p 1021-1036).]

Since the emperor declined the fame and envy of original composition, we can only require, at his hands, method choice, and fidelity, the humble, though indispensable, virtues of a compiler. Among the various combinations of ideas, it is difficult to assign any reasonable preference; but as the order of Justinian is different in his three works, it is possible that all may be wrong; and it is certain that two cannot be right. In the selection of ancient laws, he seems to have viewed his predecessors without jealousy, and with equal regard: the series could not ascend above the reign of Adrian, and the narrow distinction of Paganism and Christianity, introduced by the superstition of Theodosius, had been abolished by the consent of mankind. But the jurisprudence of the Pandects is circumscribed within a period of a hundred years, from the perpetual edict to the death of Severus Alexander: the civilians who lived under the first Caesars are seldom permitted to speak, and only three names can be attributed to the age of the republic. The favorite of Justinian (it has been fiercely urged) was fearful of encountering the light of freedom and the gravity of Roman sages.

Tribonian condemned to oblivion the genuine and native wisdom of Cato, the Scaevolus, and Sulpicius; while he invoked spirits more congenial to his own, the Syrians, Greeks, and Africans, who flocked to the Imperial court to study Latin as a foreign tongue, and jurisprudence as a lucrative profession. But the ministers of Justinian, [78] were instructed to labor, not for the curiosity of antiquarians, but for the immediate benefit of his subjects. It was their duty to select the useful and practical parts of the Roman law; and the writings of the old republicans, however curious on excellent, were no longer suited to the new system of manners, religion, and government. Perhaps, if the preceptors and friends of Cicero were still alive, our candor would acknowledge, that, except in purity of language, [79] their intrinsic merit was excelled by the school of Papinian and Ulpian. The science of the laws is the slow growth of time and experience, and the advantage both of method and materials, is naturally assumed by the most recent authors. The civilians of the reign of the Antonines had studied the works of their predecessors: their philosophic spirit had mitigated the rigor of antiquity, simplified the forms of proceeding, and emerged from the jealousy and prejudice of the rival sects. The choice of the authorities that compose the Pandects depended on the judgment of Tribonian: but the power of his sovereign could not absolve him from the sacred obligations of truth and fidelity. As the legislator of the empire, Justinian might repeal the acts of the Antonines, or condemn, as seditious, the free principles, which were maintained by the last of the Roman lawyers. [80] But the existence of past facts is placed beyond

the reach of despotism; and the emperor was guilty of fraud and forgery, when he corrupted the integrity of their text, inscribed with their venerable names the words and ideas of his servile reign, [81] and suppressed, by the hand of power, the pure and authentic copies of their sentiments. The changes and interpolations of Tribonian and his colleagues are excused by the pretence of uniformity: but their cares have been insufficient, and the antinomies, or contradictions of the Code and Pandects, still exercise the patience and subtilty of modern civilians. [82]

[Footnote 78: An ingenious and learned oration of Schultingius (*Jurisprudentia Ante-Justiniana*, p. 883--907) justifies the choice of Tribonian, against the passionate charges of Francis Hottoman and his sectaries.]

[Footnote 79: Strip away the crust of Tribonian, and allow for the use of technical words, and the Latin of the Pandects will be found not unworthy of the silver age. It has been vehemently attacked by Laurentius Valla, a fastidious grammarian of the xvth century, and by his apologist Floridus Sabinus. It has been defended by Alciat, and a name less advocate, (most probably James Capellus.) Their various treatises are collected by Duker, (*Opuscula de Latinitate veterum Jurisconsultorum*, Lugd. Bat. 1721, in 12mo.) Note: Gibbon is mistaken with regard to Valla, who, though he inveighs against the barbarous style of the civilians of his own day, lavishes the highest praise on the admirable purity of the language of the ancient writers on civil

law. (M. Warnkonig quotes a long passage of Valla in justification of this observation.) Since his time, this truth has been recognized by men of the highest eminence, such as Erasmus, David Hume and Runkhenius.--W.]

[Footnote 80: *Nomina quidem veteribus servavimus, legum autem veritatem nostram fecimus. Itaque siquid erat in illis seditiosum, multa autem talia erant ibi reposita, hoc decisum est et definitum, et in perspicuum finem deducta est quaeque lex,* (Cod. Justinian. l. i. tit. xvii. leg. 3, No 10.) A frank confession! * Note: *Seditiosum*, in the language of Justinian, means not seditious, but discounted.--W.]

[Footnote 81: The number of these *emblemata* (a polite name for forgeries) is much reduced by Bynkershoek, (in the four last books of his *Observations*,) who poorly maintains the right of Justinian and the duty of Tribonian.]

[Footnote 82: The antinomies, or opposite laws of the Code and Pandects, are sometimes the cause, and often the excuse, of the glorious uncertainty of the civil law, which so often affords what Montaigne calls "*Questions pour l'Ami.*" See a fine passage of Franciscus Balduinus in Justinian, (l. ii. p. 259, &c., apud Ludewig, p. 305, 306.)]

A rumor devoid of evidence has been propagated by the enemies of Justinian; that the jurisprudence of ancient Rome was reduced to ashes by the author of the Pandects, from the vain persuasion, that it was now

either false or superfluous. Without usurping an office so invidious, the emperor might safely commit to ignorance and time the accomplishments of this destructive wish. Before the invention of printing and paper, the labor and the materials of writing could be purchased only by the rich; and it may reasonably be computed, that the price of books was a hundred fold their present value. [83] Copies were slowly multiplied and cautiously renewed: the hopes of profit tempted the sacrilegious scribes to erase the characters of antiquity, [8311] and Sophocles or Tacitus were obliged to resign the parchment to missals, homilies, and the golden legend. [84] If such was the fate of the most beautiful compositions of genius, what stability could be expected for the dull and barren works of an obsolete science? The books of jurisprudence were interesting to few, and entertaining to none: their value was connected with present use, and they sunk forever as soon as that use was superseded by the innovations of fashion, superior merit, or public authority. In the age of peace and learning, between Cicero and the last of the Antonines, many losses had been already sustained, and some luminaries of the school, or forum, were known only to the curious by tradition and report. Three hundred and sixty years of disorder and decay accelerated the progress of oblivion; and it may fairly be presumed, that of the writings, which Justinian is accused of neglecting, many were no longer to be found in the libraries of the East. [85] The copies of Papinian, or Ulpian, which the reformer had proscribed, were deemed unworthy of future notice: the Twelve Tables and praetorian edicts insensibly vanished, and the monuments of ancient Rome were neglected or destroyed by the envy and ignorance of the Greeks.

Even the Pandects themselves have escaped with difficulty and danger from the common shipwreck, and criticism has pronounced that all the editions and manuscripts of the West are derived from one original. [86] It was transcribed at Constantinople in the beginning of the seventh century, [87] was successively transported by the accidents of war and commerce to Amalphi, [88] Pisa, [89] and Florence, [90] and is now deposited as a sacred relic [91] in the ancient palace of the republic. [92]

[Footnote 83: When Faust, or Faustus, sold at Paris his first printed Bibles as manuscripts, the price of a parchment copy was reduced from four or five hundred to sixty, fifty, and forty crowns. The public was at first pleased with the cheapness, and at length provoked by the discovery of the fraud, (Mattaire, *Annal. Typograph.* tom. i. p. 12; first edit.)]

[Footnote 8311: Among the works which have been recovered, by the persevering and successful endeavors of M. Mai and his followers to trace the imperfectly erased characters of the ancient writers on these Palimpsests, Gibbon at this period of his labors would have hailed with delight the recovery of the Institutes of Gaius, and the fragments of the Theodosian Code, published by M Keyron of Turin.--M.]

[Footnote 84: This execrable practice prevailed from the viiith, and more especially from the xiith, century, when it became almost universal (Montfaucon, in the *Memoires de l'Academie*, tom. vi. p. 606, &c.]

Bibliothèque Raisonnée de la Diplomatique, tom. i. p. 176.)]

[Footnote 85: Pomponius (Pandect. l. i. tit. ii. leg. 2) observes, that of the three founders of the civil law, Mucius, Brutus, and Manilius, extant volumina, scripta Manilii monumenta; that of some old republican lawyers, haec versantur eorum scripta inter manus hominum. Eight of the Augustan sages were reduced to a compendium: of Cascellius, scripta non extant sed unus liber, &c.; of Trebatius, minus frequentatur; of Tubero, libri parum grati sunt. Many quotations in the Pandects are derived from books which Tribonian never saw; and in the long period from the viith to the xiiiith century of Rome, the apparent reading of the moderns successively depends on the knowledge and veracity of their predecessors.]

[Footnote 86: All, in several instances, repeat the errors of the scribe and the transpositions of some leaves in the Florentine Pandects. This fact, if it be true, is decisive. Yet the Pandects are quoted by Ivo of Chartres, (who died in 1117,) by Theobald, archbishop of Canterbury, and by Vacarius, our first professor, in the year 1140, (Selden ad Fletam, c. 7, tom. ii. p. 1080--1085.) Have our British Mss. of the Pandects been collated?]

[Footnote 87: See the description of this original in Brenckman, (Hist. Pandect. Florent. l. i. c. 2, 3, p. 4--17, and l. ii.) Politian, an enthusiast, revered it as the authentic standard of Justinian himself, (p. 407, 408;) but this paradox is refuted by the abbreviations of the

Florentine Ms. (l. ii. c. 3, p. 117-130.) It is composed of two quarto volumes, with large margins, on a thin parchment, and the Latin characters betray the hand of a Greek scribe.]

[Footnote 88: Brenckman, at the end of his history, has inserted two dissertations on the republic of Amalphi, and the Pisan war in the year 1135, &c.]

[Footnote 89: The discovery of the Pandects at Amalphi (A. D 1137) is first noticed (in 1501) by Ludovicus Bologninus, (Brenckman, l. i. c. 11, p. 73, 74, l. iv. c. 2, p. 417--425,) on the faith of a Pisan chronicle, (p. 409, 410,) without a name or a date. The whole story, though unknown to the xiith century, embellished by ignorant ages, and suspected by rigid criticism, is not, however, destitute of much internal probability, (l. i. c. 4--8, p. 17--50.) The Liber Pandectarum of Pisa was undoubtedly consulted in the xivth century by the great Bartolus, (p. 406, 407. See l. i. c. 9, p. 50--62.) Note: Savigny (vol. iii. p. 83, 89) examines and rejects the whole story. See likewise Hallam vol. iii. p. 514.--M.]

[Footnote 90: Pisa was taken by the Florentines in the year 1406; and in 1411 the Pandects were transported to the capital. These events are authentic and famous.]

[Footnote 91: They were new bound in purple, deposited in a rich casket, and shown to curious travellers by the monks and magistrates bareheaded,

and with lighted tapers, (Brenckman, l. i. c. 10, 11, 12, p. 62--93.)]

[Footnote 92: After the collations of Politian, Bolognius, and Antoninus Augustinus, and the splendid edition of the Pandects by Taurellus, (in 1551,) Henry Brenckman, a Dutchman, undertook a pilgrimage to Florence, where he employed several years in the study of a single manuscript. His *Historia Pandectarum Florentinorum*, (Utrecht, 1722, in 4to.,) though a monument of industry, is a small portion of his original design.]

It is the first care of a reformer to prevent any future reformation. To maintain the text of the Pandects, the Institutes, and the Code, the use of ciphers and abbreviations was rigorously proscribed; and as Justinian recollected, that the perpetual edict had been buried under the weight of commentators, he denounced the punishment of forgery against the rash civilians who should presume to interpret or pervert the will of their sovereign. The scholars of Accursius, of Bartolus, of Cujacius, should blush for their accumulated guilt, unless they dare to dispute his right of binding the authority of his successors, and the native freedom of the mind. But the emperor was unable to fix his own inconstancy; and, while he boasted of renewing the exchange of Diomede, of transmuting brass into gold, [93] discovered the necessity of purifying his gold from the mixture of baser alloy. Six years had not elapsed from the publication of the Code, before he condemned the imperfect attempt, by a new and more accurate edition of the same work; which he enriched with two hundred of his own laws, and fifty decisions of the darkest and

most intricate points of jurisprudence. Every year, or, according to Procopius, each day, of his long reign, was marked by some legal innovation. Many of his acts were rescinded by himself; many were rejected by his successors; many have been obliterated by time; but the number of sixteen Edicts, and one hundred and sixty-eight Novels, [94] has been admitted into the authentic body of the civil jurisprudence. In the opinion of a philosopher superior to the prejudices of his profession, these incessant, and, for the most part, trifling alterations, can be only explained by the venal spirit of a prince, who sold without shame his judgments and his laws. [95] The charge of the secret historian is indeed explicit and vehement; but the sole instance, which he produces, may be ascribed to the devotion as well as to the avarice of Justinian. A wealthy bigot had bequeathed his inheritance to the church of Emesa; and its value was enhanced by the dexterity of an artist, who subscribed confessions of debt and promises of payment with the names of the richest Syrians. They pleaded the established prescription of thirty or forty years; but their defence was overruled by a retrospective edict, which extended the claims of the church to the term of a century; an edict so pregnant with injustice and disorder, that, after serving this occasional purpose, it was prudently abolished in the same reign. [96] If candor will acquit the emperor himself, and transfer the corruption to his wife and favorites, the suspicion of so foul a vice must still degrade the majesty of his laws; and the advocates of Justinian may acknowledge, that such levity, whatsoever be the motive, is unworthy of a legislator and a man.

[Footnote 93: Apud Homerum patrem omnis virtutis, (1st Praefat. ad Pandect.) A line of Milton or Tasso would surprise us in an act of parliament. Quae omnia obtinere sancimus in omne aevum. Of the first Code, he says, (2d Praefat.,) in aeternum valiturum. Man and forever!]

[Footnote 94: Novellae is a classic adjective, but a barbarous substantive, (Ludewig, p. 245.) Justinian never collected them himself; the nine collations, the legal standard of modern tribunals, consist of ninety-eight Novels; but the number was increased by the diligence of Julian, Haloander, and Contius, (Ludewig, p. 249, 258 Aleman. Not in Anecdote. p. 98.)]

[Footnote 95: Montesquieu, Considerations sur la Grandeur et la Decadence des Romains, c. 20, tom. iii. p. 501, in 4to. On this occasion he throws aside the gown and cap of a President a Mortier.]

[Footnote 96: Procopius, Anecdote. c. 28. A similar privilege was granted to the church of Rome, (Novel. ix.) For the general repeal of these mischievous indulgences, see Novel. cxi. and Edict. v.]

Monarchs seldom condescend to become the preceptors of their subjects; and some praise is due to Justinian, by whose command an ample system was reduced to a short and elementary treatise. Among the various institutes of the Roman law, [97] those of Caius [98] were the most popular in the East and West; and their use may be considered as an evidence of their merit. They were selected by the Imperial delegates,

Tribonian, Theophilus, and Dorotheus; and the freedom and purity of the Antonines was incrustated with the coarser materials of a degenerate age. The same volume which introduced the youth of Rome, Constantinople, and Berytus, to the gradual study of the Code and Pandects, is still precious to the historian, the philosopher, and the magistrate. The Institutes of Justinian are divided into four books: they proceed, with no contemptible method, from, I. Persons, to, II. Things, and from things, to, III. Actions; and the article IV., of Private Wrongs, is terminated by the principles of Criminal Law. [9811]

[Footnote 97: Lactantius, in his Institutes of Christianity, an elegant and specious work, proposes to imitate the title and method of the civilians. *Quidam prudentes et arbitri aequitatis Institutiones Civilis Juris compositas ediderunt*, (Institut. Divin. l. i. c. 1.) Such as Ulpian, Paul, Florentinus, Marcian.]

[Footnote 98: The emperor Justinian calls him *suum*, though he died before the end of the second century. His Institutes are quoted by Servius, Boethius, Priscian, &c.; and the Epitome by Arrian is still extant. (See the Prolegomena and notes to the edition of Schulting, in the *Jurisprudentia Ante-Justiniana*, Lugd. Bat. 1717. Heineccius, *Hist. J R* No. 313. Ludewig, in *Vit. Just.* p. 199.)]

[Footnote 9811: Gibbon, dividing the Institutes into four parts, considers the appendix of the criminal law in the last title as a fourth part.--W.]