CONTENTS

EDITORIAL COMMITTEE AND LIST OF TRANSLATORS ........................................ v
GENERAL INTRODUCTION TO THE CONTINENTAL LEGAL HISTORY ................. ix
SOURCES ......................................................... xii
EDITORIAL PREFACE BY JOHN HENRY WISMORE ....................................... xxi
INTRODUCTION BY WILLIAM REWINCK RICKET ......................................... xliii
INTRODUCTION BY EDWIN RUFUS KEEBY .................................................... xlix
AUTHOR'S PREFACE BY CARL LUDWIG VON BAR ....................................... liii

PART I

GENERAL HISTORY OF THE CRIMINAL LAW

TITLE I

THE ROMAN AND THE GERMANIC ELEMENTS

CHAPTER I

THE ROMAN LAW

§ 1. Various Sources of Criminal Law. Vengeance. Influence of the Priest-
hood ......................................................... 4
§ 2. Rome. Prominence of Religious Elements. Roman Law not a The-
ocratic System. Early Suppression of Vengeance .................................. 7
§ 3. Suppression of Vengeance in Cases of Homicide ................................ 12
§ 4. "Ferriello." "Mallea. '.. Irrogatio" ......................................................... 16
§ 5. Roman Conception of the Relation of the Individual to the State. Ger-
manic Conception of the Relation of the Individual to the State. Con-
CHAPTER II

PRIMITIVE GERMANIC CRIMINAL LAW

§ 22. Special Relations of Peace. "Repos of the Peace of the Land."
§ 23. Composition of Offences

§ 24. Little Consideration


CHAPTER III

THE CHRISTIAN CHURCH'S LAW


CHAPTER IV

MEDIEVAL GERMANIC LAW

§ 34. Goods and Self-Restored. The "Landfrieden."

CHAPTER V
SCANDINAVIA AND SWITZERLAND IN THE LATER MIDDLE AGES

A. SCANDINAVIA


B. SWITZERLAND

§ 39c. The Common Law of the Later Middle Ages. (Peace; Fledged and

CHAPTER VI
FRANCE IN THE LATER MIDDLE AGES

§ 39d. General Features of Medieval Criminal Law in France. 166
§ 39e. Specific Crimes. Punishments. 187

§ 39f. The Renascence, the Reformation, and the 1700s

CHAPTER VII
GERMANY'S RECEIPTION OF THE ROMAN LAW IN THE EARLY 1500s

§ 41. Early Law Books Introducing the Italian Legal Doctrines into Germany. The Bambergensis Hallegroth's Opus. Relation of the Bambergensis to the Italian Legal Learning. 207
§ 42. The Penalties of the Bambergensis. Relation of the Bambergensis to the Local Law. Intrinsic Merit of the Bambergensis. Recognition of the Bambergensis Outside of Bamberg. 211
§ 43. The "Carolus." Local Opposition. The "Saving Clause." 215

CHAPTER VII
GERMANY IN THE LATE 1600s AND THE 1600s

§ 45. Relation of the Carolins to the Reformation. Religious Tolerance. Unfortunate Results of the Reformation. The Literature of the 1590s and 1600s. The Jurists and the Law Faculty. 223
§ 46. Dominance of Theology. Witchcraft, Blasphemy. 220
§ 47. Despotism of the Rulers. 229
§ 49. The "Despotism of the Rulers." 233
§ 50. Recognition of the Principles of Mitigating Circumstances. Rise of
## CONTENTS

<table>
<thead>
<tr>
<th>PAGE</th>
<th>CONTENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 58.</td>
<td>Doctrines as to Judicial Discretion in Defining Crimes</td>
</tr>
</tbody>
</table>

### CHAPTER IX

**GERMANY IN THE 1700s**

| § 55. | The Universities. The Early Treatises. The New Theories of Criminal Law in Italy and France | 246 |
| § 56. | Legislation of the 1700s: the Bavarian Code of 1751; The Austrian Theresian. The Statute of Frederick II of Prussia | 248 |
| § 58. | The Prussian Landrecht of 1791 | 254 |
| § 59. | The Austrian Code of 1803 | 257 |

### CHAPTER X

**FRANCE, FROM THE 1500s TO THE REVOLUTION**

| § 56a. | General Features; Lack of a Criminal Code. Roman Principles in France | 259 |
| § 56b. | Discretionary Character of the Penal System | 262 |
| § 56c. | Crimes; General Notions and Classification | 285 |
| § 56d. | Penalties in Use | 296 |
| § 56e. | The Several Crimes and Their Punishments | 273 |

### CHAPTER XI

**OTHER COUNTRIES IN THE 1500s-1700s**

| § 57. | Scandinavia during the Period 1500s-1700s: Private Vengeance | 291 |

---

### CONTENTS

<table>
<thead>
<tr>
<th>PAGE</th>
<th>CONTENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 50.</td>
<td>The 1600s and the “Auffälsung” Period</td>
</tr>
</tbody>
</table>

---

### B. SWITZERLAND

| § 50a. | The 1700s; the “Auffälsung” Period | 287 |

---

### C. NETHERLANDS

| § 50b. | Sources of Criminal Law in the Netherlands before the-1500s | 301 |
| § 50c. | The Roman Law and the Carolingian. The Constitutions Criminalis Caroliniana, and the Criminal Ordinances | 302 |

---

### TITLE IV

**THE FRENCH REVOLUTIONARY PERIOD**

### CHAPTER XII

**THE FRENCH REVOLUTIONARY REFORMS**

| § 60a. | Reform Movements in the 1780s and 1790s | 315 |
| § 60b. | The Code of 1791, and the Code of Brumaire | 320 |

### CHAPTER XIII

**THE GERMAN REFORMS OF THE FRENCH REVOLUTIONARY PERIOD**

| § 61. | The New Direction to German Criminal Theory in the Late 1780s. The Germannism of Bayern. The Movement of the Later 1700s | 322 |

---

### TITLE V

**MODERN TIMES**

### CHAPTER XIV

**THE FRENCH CODE OF 1810, AND FRANCE IN THE 1800s**

| § 62a. | The Penal Code of 1810 | 332 |
| § 62b. | Principal Changes during the 1800s | 336 |
CONTENTS

CHAPTER XV

GERMANY SINCE 1813

§ 63. The Criminal Codes of the First Half of the 1800s. Influence of Feuerbach's Bavarian Code. Influence of the Political Agitation of 1818

§ 64. Legislation in Prussia. The Code of 1861

§ 65. Influence of the Prussian Code. The Bavarian Code of 1861. Other States

§ 66. Progress towards Greater Legal Unity in Germany. The Draft of 1869 of a Criminal Code for North Germany

CHAPTER XVI

OTHER COUNTRIES SINCE 1869

A. AUSTRIA

§ 69a. Austrian Legislation since 1848

B. NETHERLANDS AND BELGIUM

§ 69b. Netherlands

§ 69c. Belgium

C. SCANDINAVIA

§ 69d. Denmark

§ 69e. Norway

§ 69f. Sweden

§ 69g. Finland

D. SWITZERLAND

§ 69h. First Period: to 1800

§ 69i. Second Period: 1830-1848

§ 69j. Third Period: since 1848

PART II

HISTORY OF THE THEORIES OF CRIMINAL LAW

CHAPTER I

ANCIENT GREECE AND ROME

§ 70. Practical Importance of the Theories of Criminal Law

§ 71. The Beginnings of Speculation. The Sophists

§ 72. Socrates. Plato

THE PHILOSOPHY OF CRIMINAL LAW IN THE MIDDLE AGES

§ 75. Attitude of the Early Christians towards the Law. Changed Position of Christianity as a State Religion

§ 76. Views of Medieval Philosophers in Criminal Law

CHAPTER III

CRIMINAL THEORIES FROM GROTIUS TO ROUSSEAU


§ 78. Hobbes. Justification of Punishment from Standpoint of the Criminal

§ 79. Spinoza. Influence of Spinoza's Life upon his Work

§ 80. Pufendorf. Comparison with his Predecessors. Value of his Work


XXIV
CHAPTER IV

CRIMINAL THEORIES FROM BECCARIA TO FEUERBACH


§ 85. Kant. Criticism of Kant's Theory

§ 86. Fichte

§ 87. Grobmann. The "Special Prevention" Theory


CHAPTER V

CRIMINAL THEORIES FROM BENTHAM TO HERBART


§ 90. Bauer. The "Admonition" Theory

§ 91. The Reaction against Feuerbach's Theory of Determinism. Schibe, Krenzsch, Ahrens, Röder


§ 93. The "Restitution" or "Compensation" Theory. Hepp


§ 95. Combination of the Absolute and Relative Purposes. Reiss, Hauß, Ottolo, Gallia, von Preuschen, Mohl, Mittermaier, Henriot


CHAPTER VI

CRIMINAL THEORIES IN GERMANY FROM HEGEL TO BINDING

§ 97. Theory of the Negation of Wrong. Hegel
