

James Madison to Thomas S. Grimke, January 15, 1828. Transcription: The Writings of James Madison, ed. Gaillard Hunt. New York: G.P. Putnam's Sons, 1900-1910.

TO THOMAS S. GRIMKE MAD. MSS.

Montpr, Jany 15, 1828

I return my thanks, Sir for a copy of a Report on the question of reducing the Laws of S. Carolina to the form of a Code.

The Report, presents certainly very able & interesting views of the subject, and can leave no doubt of the practicability & utility of such a digest of the Statute law as would prune it of its redundancies of every sort, clear it of its obscurities, and introduce whatever changes in its provisions might improve its general character. Within a certain extent, the remark is applicable to the unwritten law also, which must be susceptible of many improvements not yet made by Legislative enactments. How far a reduction of the entire body of unwritten Law into a systematic text be practicable & eligible, is the only question on which doubts can be entertained. And here there seems to be no insuperable difficulty, in classifying & defining every portion of that law, provided the terms employed be at once sufficiently general & sufficiently technical; the first requisite, avoiding details too voluminous, the last avoiding new terms, always liable more or less till made technical by practice, to discordant interpretations. It has been observed that in carrying into effect the several codified digests not excepting the Napoleon, the most distinguished of them, the former resort in the Tribunals has been necessarily continued to the course of precedents

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and other recognized authorities. What indeed would the Justinian Code be without the explanatory comments & decrees which make a part of the Civil Law?

One of the earliest acts of the Virginia Legislature, after the State became Independent provided for a revisal of the Laws in force, with a view to give it a systematic character accommodated to the Republican form of Govt. and a meliorated spirit of Legislation. The task was committed to five Commissioners, and executed by three of them, Mr. Jefferson, Mr. Wythe & Mr. Pendleton. In a consultative meeting of the whole number, the question was discussed whether the Common Law at large, or such parts only as were to be changed, should be reduced to a text law. It was decided by a majority that an attempt to embrace the whole was unadvisable; and the work, as executed, was accordingly limited to the Old British Statutes admitted to be in force, to the Colonial Statutes, to the penal law in such parts as needed reform, and to such new laws as would be favorable to the intellectual & moral condition of the community. In the changes made in the penal law, the Revisors were unfortunately misled into some of the specious errors of Beccaria, then in the zenith of his fame as a Philosophical Legislator.

The work employed the Commissioners several years, and was reported in upwards of a hundred Bills, many of which were readily, as others have been from time to time passed into laws; the residue being a fund still occasionally drawn on in the course of Legislation. The work is thought to be particularly valuable as a model of statutory composition. It contains not a superfluous word, and invariably prefers technical terms & phrases having a settled meaning where they are applicable. The Copies of the Report printed were but few, and are now very rare, or I should be happy in forwarding one in return for your politeness. I may mention however that many years ago, at the request of Judge H. Pendleton of S. Carolina, then engaged in revising the laws of the State, I lent him a Copy, which not having been returned, may possibly be traced to the hands into which his death threw it.

Be pleased to accept, Sir, the expression of my great respect.