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Symposium: The New German Penal Code

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Symposium: The New German Penal Code

FOREWORD

The adoption of a new Penal Code by the Federal Republic of Germany in 1975* immediately suggested the desirability of a symposium on comparative criminal law. Although the new Code is the product of many years of comparative research, revision and discussion, it is not regarded as "final" or perfect. In Germany penal codification is an on-going enterprise which might well set an example for other countries. More important even than the Code is the fact that German scholarship in penal law is very highly regarded everywhere; indeed, except in English-speaking countries, India and a few others, German penal law and theory are without question the dominant influence.

On the other hand, Anglo-American criminal law, extending over an unbroken span of more than seven centuries, is expressed in a body of case law that is the most valuable repository of the moral and legal experience of the English-speaking peoples. Moreover, while scholarship distinguishes the German product, Anglo-American penal law is preeminently the work of able judges. Many of them were men of extraordinary competence, and some of them, like Hale and Stephen in England, and Holmes and Frankfurter in the United States, were not only great judges but also great scholars.

Accordingly, the prospect of comparative study of these two systems of penal law and their respective theories was an inviting, indeed an exciting one. For these reasons, the decision was made to focus not only on the principal innovations of the new Code but also on some basic problems regarding which the comparative method might be especially significant. Obviously, we wished to promote the spread of knowledge of German penal law and theory and, particularly, the knowledge resulting from their comparison with Anglo-American penal law and theory. Reaching even beyond that, we hoped it might be possible to make a contribution to the progress of comparative law in general.

To achieve these perhaps over-ambitious goals we first held panel discussions of the selected problems in two sessions of the annual meeting of the Association of American Law Schools in Washington, D.C., on 27 & 29 December 1975. The principal papers and the pre-

* Strafgesetzbuch (StGB) in the version of 2 January 1975 (BGBl. I Nr. 1, 7 Jan. 75 at 2; SaBl. Nr. 5, 31 Jan. 75 at 209).

pared discussions of them were presented. But there was little time left for spontaneous general discussion. We therefore invited all participants to write Comments on any of the papers. All the papers and all the Comments were circulated among the participants to allow for additions or correction and response to any questions raised or any criticism. We believe that such an exchange of ideas is essential to the progress of comparative law.

There is an additional feature of our collaboration that is noteworthy, viz. every participant was acquainted with other participants, some with almost all the others, and for some these friendly relations extended over a period of many years. This made it possible to expect more than the recital of various rules and the description of the respective methods of analysis; we were able to engage in a more meaningful exchange of ideas. Text books and treatises are silent in this respect; yet we believe we learned something from our collaboration that may be of the utmost importance. As the legal scholars of different countries are drawn more closely together, the avenues to the progress of comparative law become wider, more fruitful and more interesting.

Finally, but not least among our thoughts, the Symposium Editors thank the participants for their contributions, especially Professor Lüderssen who came from Frankfurt to Washington to participate in the discussion. We also thank Professor David A. Funk for his valuable editorial assistance. We acknowledge with thanks a grant from the Association of American Law Schools which helped to meet some of the expenses of this rather complicated venture in comparative law.

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