

THE ARGENTINE PENAL CODE. Translated by E. Gonzales-Lopes [London: Sweet & Maxwell; South Hackensack, N.J.: Rothman. 1963. xii + 114. £1 12s. 6d.]

The *Argentine Penal Code* is the sixth in “The American Series of Foreign Penal Codes”^{1 & 2} a series of which Gerhard O. W. Mueller, Director of the Comparative Criminal Law Project of New York University’s School of Law, is the Editor-in-Chief.²

In a useful Introduction, Professor Ricardo Levene traces the history of criminal studies in the Argentine since 1821 and of penal legislation since 1891. The activity in both fields during the respective periods appears to have been considerable. The influence of European and, latterly, American criminal studies and legislation is made apparent. The present Argentine Penal Code dates from 1921 and is stated by Professor Levene to have been influenced by the Italian Code of 1890. Professor Levene, while noting some technical shortcomings, is of the view that the Code is doctrinally sound. He does not share the view, which he notes, that the Code is “all too timidly positivistic”.³

1. The Codes already translated and published in the Series are the French, Korean, Norwegian and German Penal Codes and the Turkish Code of Criminal Procedure. Those stated to be in preparation are the Spanish, German Draft of 1960, Italian, Austrian, Greek and Brazilian Penal Codes and the French Code of Criminal Procedure.
2. It is not clear from this volume what exactly the word “foreign” in the title of the series is meant to cover. Professor Levene in his Introduction to this Code states that the series is intended to give to American and English lawyers easier access to the criminal codes in force in the world, suggesting that “foreign” should be read as not readily available in English. This would, of course, exclude the Indian and Malaysian Penal Codes from the scope of the series.
3. Introduction, p. 15.

The Code itself is divided into two Books, the First containing General Provisions and the Second, Crimes. There are 12 titles (chapters) containing 78 articles⁴ (sections) in the first Book, and the same number of titles containing 224 articles in the second.⁵ Of note in the First Book are the attention given to matters of punishment⁶ (an attention which is continued throughout the Second Book with a particularised specification of different punishments for different degrees of criminality) and the simplicity of the title dealing with Criminal Liability.⁷ Of interest in the Second Book to the Malaysian criminalist are the general absence of *mens rea* elements in the definitions of crimes (the lack of such elements having been stated to exempt from criminal liability under Title V);⁸ the number of articles dealing with crimes against the State, the public order, the public administration and the like;⁹ the criminality of restrictive trade practices;¹⁰ the protection given under criminal sanction to the freedoms of work, association, assembly and the press;¹¹ and a few particular provisions, such as those dealing with duelling,¹² the article exempting from punishment the perpetrator of rape, seduction, abduction or indecent assault who marries his victim with her consent after returning her home,¹³ and the article making criminal the eulogising of crime.¹⁴

In his Introduction, Professor Levene notes that it is not possible in this type of work to give an explanation to every article even though such a course would be more useful for the English reader.¹⁵ Many of the articles need no explanation for the purpose of such a work still to be served. In the case of matter which is likely to cause difficulty to the English reader,¹⁶ however, an explanation would be particularly useful. For instance this reviewer would appreciate an explanation of the difference between the barring of prosecutions under Article 62 and the statute of limitations for crimes under Article 65.

The language of the Code, at least as translated, is generally simple and clear.¹⁷

This whole series of Foreign Penal Codes should, judged by the quality of this one, prove most useful to those interested in the criminal law of English-speaking jurisdictions, particularly those faced with the problem of keeping in concord with the times the criminal laws of jurisdictions such as India and Malaysia that are based on Penal Codes settled, in much their present form, well over a century ago.

B. A. MCKILLOP.

4. Or 87 if the 13 articles contained in the Appendix relating to minors are substituted for the 4 original articles thereon.
5. By contrast, the Singapore Penal Code has 7 chapters with some 120 sections on the matter covered by the Argentine First Book, and 17 Chapters with some 390 sections dealing with specific crimes. There are thus some 200 more sections in the Singapore Code. Even excluding Illustrations, the present reviewer estimates the Singapore Code to contain at least twice as many words as its Argentine equivalent, as here translated.
6. I.e., Titles II "Punishment", III "Suspended Sentence", IV "Reparation of Damages", Articles 40-41 of V "Criminal Liability", dealing with the circumstances to be taken into account in determining sentence, and VIII "Recidivism".
7. Title V. This Title corresponds with the General Exceptions Chapter of the Malaysian Penal Codes.
8. The position in this respect contrasts favourably with the position under the Malaysian Codes where, despite the existence of similar general exemption provisions, the *mens rea* elements are also written into the definitions of crimes.
9. Nearly two-thirds of the Articles in the Book.
10. Title XII, Chapter V, "Frauds in Commerce and Industry".
11. Title V "Crimes Against Personal Liberty".
12. Articles 97-103. A potential dueller would seem to be placed in a dilemma by these articles, for he is more severely punished if he duels without seconds than if with them, but in the latter case the seconds are also punished.
13. Article 132.
14. Article 161.
15. Introduction, p. 1.
16. And this could be ascertained by submission of the proofs to an unfamiliar English reader.
17. There is the occasional exception. Thus under Article 81 there is a lesser punishment for a killing by a person who, for the purpose of harming the body or the health of another, "causes his death which reasonably would not have caused the death". (It is, of course, possible that words have been omitted by oversight here).