

THE GERMAN CODE OF CRIMINAL PROCEDURE. No. 10 in the American Series of Foreign Penal Codes Ed. by Gerhard O. W. Mueller. [South Hackensack, N.J.: Fred B. Rothman; London: Sweet and Maxwell. 1965. xvii + 235 pp. £3.17s. 6d.].

This is the third in the American Series of Foreign Penal Codes reviewed by this reviewer and for the third time a problem arises: Is the German Code of Criminal Procedure itself to be discussed, or just the translation of it here presented, or both, or neither? And is the Introduction to be treated as to the Code or to the translation, or both? In the best traditions of compromise, "both" is here adopted as the solution, to both problems. But with these two reservations — the legislation of other English-language systems is, with reason, not normally reviewed in the journals, certainly not under book reviews, and translated legislation is in no very dissimilar position; and expertise in the foreign language is necessary to be able to speak on the translation (plus the text of the legislation in the original language). This reviewer has less than no expertise in German.

As well as the translation of the Code of Criminal Procedure, this volume contains, usefully, relevant excerpts from the Court Organization Law and the Basic Law (or Constitution). There is also a helpful specimen of a Charge Sheet and of a Judgment. For the first time in this series, some explanatory annotations to the provisions of the legislation have been provided, in this case by the translator. The Editor-in-Chief of the Series, Gerhard O. W. Mueller, explains in a Foreword some of the features of the translations, for example, why the two highest courts have been styled, somewhat unusually, High State Court and High Federal Court of Ordinary Jurisdiction.

There is an Introduction by Professor Eberhard Schmidt of Heidelberg, styled by Mueller in his Foreword as "one of the great scholars of German criminal procedure." The Introduction presents, broadly but clearly, the history of criminal procedure in Germany as a projection of socio-political developments, stressing particularly the watershed in the nineteenth century between the old Continental common law inquisitorial proceeding and the more liberal "reformed criminal procedure". Professor Schmidt then summarises, again with clarity, the stages in and features of criminal proceedings in the Federal Republic of Germany to-day. There is some insistence on how well the rights of an accused are protected, the more so as a result of amendments in 1964, together with reminders that it is truth and justice that are primarily and well served.

The Code itself is in seven Books, the first three, entitled General Provisions, Procedure at First Instance, and Means of Review providing the basic procedures. There are three main stages leading up to a first instance decision on a more serious charge — the investigation (normally by the police but under the eye of the prosecution), the preliminary judicial investigation (by a judge of the potential trial court to see if the case should go to trial), and the trial or main proceeding. The second stage is normally dispensed with for less serious offences (before District or Magistrate's Courts), and even the third stage may be dispensed with for offences punished with no more than 3 months imprisonment if the prosecution so moves and the defendant does not object (Procedure by Penal Order: Sixth Book, First Title). There is considerable scope for review of first instance decisions, including the interesting remedy of *Beschwerde* which extends to review of decisions taken before the main trial commences, such as decisions concerning arrest or seizure.

In fact the position of the accused seems to be generally well protected under the Code. He may challenge a judge for bias (§24), defense counsel is mandatory for a wide range of offences (§140) (although nothing is said about who pays), an accused does not have to answer accusations made against him during investigation (§§115, 136, 163a) or at his trial (§243), coerced statements may not be used against him (§136a), he always has the last word at his trial (§258) and on review (§§326, 351). However, it appears to be mandatory that the accused be examined during the preliminary judicial investigation (§192) and at the trial (§§238, 240), and a confession made during the preliminary judicial examination can be given in evidence at the trial (§254). Also preliminary detention may last up to six months, or even longer in some cases (§121). But these provisions, to an outsider,

are only words in a book — how these provisions are translated into practice, the nature of the spirit that animates them, is crucial, but essentially unknowable from the text.

The orderly arrangement, thoroughness and clarity of the Code are striking, as also the economy of words. There may be a slight overall conflict of purposes between getting at the truth as to an alleged criminal act on the one hand and guaranteeing rights and immunities to an accused on the other.

Contrasts with the Singapore and Malaysian Criminal Procedure Codes additionally noteworthy are in the extent of evidentiary provisions in the German Code, especially under the title "Witnesses" in the First Book; the powers of the various criminal courts is dealt with in Germany primarily under the Court Organization Law and not the Criminal Procedure Code; the Singapore and Malaysian chapters on Preventive of Offences have no counterpart in the German Code, nor do the chapters here dealing with such special proceedings as Inquests, and, to a lesser extent, for Persons of Unsound Mind (see the German Procedure in Protective Proceedings; Sixth Book, Third Title), and *habeas corpus* (though see the protections afforded in the Ninth Title of the First Book dealing with Arrest and Provisional Apprehension); and finally German decisions must normally be supported by a statement of grounds (§34). More generally, we may note the use of lay-judges at Magistrate and District Court (called Jury Courts) level, and the absence of lay-juries in the Anglo-American sense.

The translation, though generally succinct, is sometimes awkward (§264, I, "to"; §275, IV, "provided"; §290) and occasionally grammatically incorrect (§125, I, "its"; §399, II, "it"; §401, I, "independent(ly)"). Sometimes also provisions are rendered in descriptive form when they would read better prescriptively, e.g. §266, II. There are, finally, some misprints (§111, I, "counterrailing" for "countervailing"; §114a I, "modification" for "notification"; §135, I, but no II; italics in §160; §290 "arrest" instead of "warrant" in the heading, comma after "arrest" in the third line; §358, I, "on" missing; "Magistrate" sometimes gets a capital, e.g., §451, III; Court Organization Law §28, and sometimes not, e.g. §457, III; C.O.L. §25; §454, III, "assigned"; §456, I, "damages").