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The American Series of Foreign Penal Codes--I. France edited by Gerhard O. W. Mueller

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Book Reviews

THE AMERICAN SERIES OF FOREIGN PENAL CODES—I. FRANCE. Editor-in-Chief, Gerhard O. W. Mueller. Fred B. Rothman & Co., South Hackensack, N. J., and Sweet & Maxwell Limited, London, Publishers. 1 Vol., 158 pp.

This translation of the French Penal Code is the first in a series of substantive and procedural codes from foreign nations. As such it marks an epochal step in the development of comparative law. The fact is indeed true that the laws of the various nations vary—for many reasons. With a series such as this at hand a worker in the criminal field, particularly one working upon the revision of a code, will have a number of suggestions as to the solution of his drafting problems. Sometimes this will be largely as to the selection of a particular word; often it will consist of a fundamental choice in the treatment of a problem.

Scholars in this country have not, as yet, made much use of comparative law. Those who have had the opportunity to sit with Roscoe Pound have seen the remarkable use that he has made of it. It is surprising how many of the most valuable innovations in American law have come from the continent, often by way of England. A number of years ago the writer had the opportunity to do an intensive study in Workmen's Compensation where he found a remarkable instance of this. In this instance practically the whole solution to this industrial problem was transplanted.

A study of English law upon a topic is not strictly a use of comparative law—although there is quite a variance in English and American law today in many instances. Particularly has the writer been helped in the finding of words and phrases in the English decisions to give a more exact shade in interpretation and description. Several years ago in a study of criminal negligence, a problem as yet unsolved at the time, it was found that the English and Canadian cases were consistently using the word "reckless" to describe the lack of care requisite for manslaughter and other negligence crimes on the lower level. See, for example, *Andrews v. Director of Public Prosecutions*, (1937) A.C. 576. American cases also used that word—but they also used many others, resulting in confusion and lack of clarity. The point is that English and Canadian decisions preceded the American cases by twenty five years in coming to a decision on the choice of a definite and exact word in that situation.

On the other hand comparative law is not always helpful. Some of it must be positively repudiated. The writer has found many instances of this in Criminal Procedure. There are, at least to this reviewer, many fundamental differences in continental and English-American procedure. One instance is found in continental law having to do with accusatorial and inquisitorial procedures, broadly speaking the "third degree" problem. The writer in a recent book, *Modern Criminal Procedure*, takes a very vigorous position against such practices, and by way of illustration cites a number of continental procedures as illustrative of the evil in all inquisitorial criminal procedure pointing out that the English criminal procedural system is opposed to the continental in this regard, at least in statement of the law. Gerhard Mueller, the leading, and practically only, comparative law scholar in the criminal field, takes sharp issue with this portion of the book in a recent penetrating review of the volume in 35 *New York University Law Review* 578. It is his considered belief that such evils do not exist in the continental inquisitorial system *in normal times*. It is the writer's position that they do exist in normal times although in lesser degree, and that consequently the English system of non-inquisition should be accepted and the continental inquisitorial procedures repudiated in drawing an American criminal code.

The French Code is to be followed by substantive and procedural codes from other nations. Volume 2 presents the new Code of the Republic of Korea, and the Comparative Criminal Law Project has codes from Norway, Spain, Germany, Turkey, Italy and several other states in preparation. This series representing the international spirit of the times is a scholarly and practical addition in the criminal law field. An ambitious, much needed innovation is well launched. Professor Mueller and his colleagues on the Comparative Criminal Law Project are to be congratulated.

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