

**The American Series
of
Foreign Penal Codes**

**21
Alternative Draft
of a
Penal Code for
The Federal Republic of
Germany**

Alternative Draft of a Penal Code for the Federal Republic of Germany

Translated and with an Introduction by

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Commentary By

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COMPARATIVE CRIMINAL LAW PROJECT
a division of
THE
CRIMINAL LAW EDUCATION AND RESEARCH
CENTER
New York University School of Law

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Gerhard O. W. Mueller

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PREFACE

The publication of Volume Twenty-one of the American Series of Foreign Penal Codes represents the first presentation in the Series of an alternative draft to an officially proposed penal code. It was prepared by younger, more liberal criminal law scholars in the Federal Republic of Germany who were dissatisfied with a government proposal submitted to the *Bundestag* in 1962. Its provocative proposals are outlined by Professor Joseph J. Darby in the Introduction. They include proposals to specify "the reintegration of the offender" as "the purpose of corrections," to create a practical process for criminalizing industrial behaviors that "unlawfully pollute," and to protect individual privacy against intrusion. All of these proposals have significance in the United States where controversies rage over the purpose(s) of prisons, the role of the criminal law process in protecting the environment, and the threat posed to our liberties by the institutionalized intrusions of the Federal Bureau of Investigation, the Central Intelligence Agency and other federal, state and local "red squad" activities.

Volume Twenty-one is a significant precedent to be emulated in the United States and elsewhere. Draft proposals of new penal codes emanate from official sources, including the National Commission on Reform of the Federal Criminal Laws, and state commissions established for this purpose. Even the Model Penal Code of the American Law Institute, completed in 1962, reflects traditional academic and practitioner thinking on reformist themes. Criticism of these proposals is often important—witness the current opposition to the proposed new federal criminal code—but it is usually fragmented and, for the most part, negative. The existence of a systematic alternative draft of a penal code could strengthen the quality of public debate and enhance the possibility of enactment of a more just penal code. As penal ideologies evolve and come into conflict, the utility of embodying different ideologies into specific proposals be-

Jürgen Baumann who participated in the drafting, I have endeavored to convey German legal terminology in an understandable way to the reader trained in the Anglo-comes more apparent. Dissenting scholars in many countries should emulate their brethren in West Germany. It is hoped that the publication of this volume will foster this process.

I gratefully acknowledge the distinctive professional quality of the Translation and Introduction by Professor Joseph J. Darby of the University of San Diego School of Law. The commentary by Professor Jürgen Baumann of the University of Tübingen is incisive and provides a critical guide through the provisions of the Draft. The achievement of the German criminal law scholars who participated in producing this Draft is acknowledged. These included Gunther Arzt, Otto Backes, Jürgen Baumann, Anne-Eva Brauneck, Albin Eser, Klaus Geppert, Gerald Grünwald, Ernst-Walter Hanack, Armin Kaufmann, Arthur Kaufmann, Ulrich Klug, Ernst-Joachim Lampe, Theodor Lenckner, Werner Maihofer, Peter Noll, Stephan Quensel, Klaus Rolinski, Claus Roxin, Rudolf Schmitt, Wolfgang Schöne, Horst Schüler-Springorum, Hans Schultz, Günter Stratenwerth and Walter Stree.

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