

loyalty order is that it imposes outside standards and intricate procedures upon the responsible hiring official. His discretion on the question of an applicant's "loyalty" is exposed to an examination and an external procedure that do not attach to his judgments on competence, personality, or work habits. Even though "loyalty" at best involves estimates of future conduct, the hiring official has less room for individual judgment on this question than on those which he can measure by concrete work experience.

Even without a loyalty order, it should be possible to have extensive investigations made of employees in "sensitive" positions, to have the reports of these investigations given to the hiring official, and for him to make his decision balancing the "loyalty" prediction along with other attributes of the applicant. Whatever the situation five or ten years ago, hiring officials certainly will be far more politically sophisticated and cautious today.

Return to individual judgments of the hiring official rather than the stigmatizing procedures of a loyalty program might over a period of time restore to government work the status as a desirable career that the nation's best interests require.

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**The German Penal Code**, newly translated into English by von Oidtman and Reade. Bielefeld: Control Commission for Germany (British Element), 1950. Pp. xxiv, 103.

Of all the skills of legal work one of the most difficult to learn and to practice is that of translating legal texts. That the translator must be completely at home in the two languages concerned goes without saying. But that knowledge does not suffice. Legal terms of one system may or may not have an exact counterpart in another; more often than not they have none. It thus becomes necessary to describe and explain the concept of one system in terms of the other. That task is delicate and cannot be performed except by one who is fully conversant with the two legal systems. Only too often the translation of a contract, deed, will, treaty, statute, or other legal text is made by one who does not fulfil the requirements, with often humorous, but mostly sad or even disastrous, consequences.

The present occupation of Germany has created an almost unprecedented demand for reliable translations of legal texts. A peculiar need for the translation of German texts into English has arisen before the High Commission Courts of the United States and the Control Commission Courts of the United Kingdom Zone, which, in their exercise of criminal jurisdiction in cases withheld from that of the German courts, often have to apply German laws, especially the German Criminal Code. The present translation was made especially for the purposes of these courts, but it is of a more far-reaching significance.

The co-operation of a German and a British author, both of whom have had

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extensive experience in the work of the Control Commission Courts, constitutes a fortunate combination. The translation appears to be exemplary. Wherever a German technical term appears, it is added to its English rendering. Occasionally, where no English equivalent exists and the use of an English term would be confusing, the authors have wisely retained the German term, accompanied by a concise and clear English explanation. In some places one may, of course, feel that the term chosen by the translators may not have been the best available. The German word "Erpressung" in the heading of §253 might be rendered more idiomatically by "blackmail" than by the more cumbersome phrase "demanding with menaces," especially when the meaning is clearly defined in the text of the section; and why not use for "Zuhälterei" (§181a) the good English word "pandering" rather than "trading on prostitution"? However, these and similar instances are minor matters of taste. The only major problem that could be found is the use of the word "property" for the German term "Vermögen" in §263 concerned with fraud. The crime of fraud consists roughly in the making of false pretenses which induce the victim to impair his or some other person's (for instance his principal's) "Vermögen" by parting with or encumbering some asset, paying money, waiving a claim or in some other way. The word "Vermögen" is carefully used in the text to indicate that it is not necessary that there be harmed any specific asset of the victim but that it is sufficient that there appear a minus when one compares the total balance sheet of all his assets made just before with one made just after the making of the false pretenses and the dispositive act induced thereby. This word "Vermögen" has no exact English counterpart. Perhaps the phrase "general assets" comes closest. "Property" has too many different connotations. It should not have been used without an explanatory note.

Notes explanatory of the meaning of a provision or its legislative history are frequent. They are brief, to the point, and well designed to carry information to the common-law-trained user. They constitute a major contribution to legal science. Great pain has also been taken to reproduce in all parts the latest version which is presently in force in the British Zone of Germany. In view of the numerous and often confused amendments which were made especially in the occupation period, that task was anything but easy.

The legislative history of the Code is comprehensively recounted in the Preface, where the reader will also find a useful survey of the literature of German criminal law. The German-English glossary of recurrent terms is useful, but should be more extensive. An Anglo-German glossary and an index are needed and are to be added shortly.

An American translation of the German Criminal Code was made at an earlier stage of the occupation.<sup>2</sup> A detailed comparison of the two English texts might be an instructive exercise in comparative law.

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<sup>2</sup> Gsovsky, *Statutory Criminal Law of Germany* (James ed., 1947).

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