

1919

Correspondence

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

Recommended Citation

Correspondence, 10 J. Am. Inst. Crim. L. & Criminology 275 (May 1919 to February 1920)

This Correspondence is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

CORRESPONDENCE

THE NEW CRIMINAL CODES OF CENTRAL EUROPE

To the Editors:

Before the year 1914, the American public was in close touch with the daily life and interests of Central Europe. Since the war, however, a thick curtain has been dropped between us. We see on the curtain a few moving shadows. But we have very few exact ideas of what is really taking place behind it. And this has been especially true since the armistice. But, very soon we hope, this curtain will be lifted, when peace comes. Should not those of us who take an interest in the development of the criminal law and of penology be ready to make the most of the moment, when this curtain will be raised at last?

Let me enumerate one or two points of interest.

I. Russia. I speak of Russia first, because I know least of conditions there, but surely the whole fabric of the criminal law, as well as the administration of prisons, has undergone a great change during the past two years. The Institute of Criminal Law ought to take an active interest in discovering what these changes have been.

II. Germany and the Former Austrian Empire. Some years before the war, royal commissions had been appointed both in Austria and in Germany to prepare a complete revision of the Criminal Code. The reports of these commissions filled several bulky volumes. But the criminal code was never altered; at least not up to the war. The report was a half-hearted attempt at compromise between the two existing schools of criminology: the old conservative school, and the radical modern school of von Liszt and his followers. Since the fall of the German Empire, there must have been some attempt at a complete revision of the existing criminal code. Also some sort of prison reform. Heaven knows, the Austrian prison needed it badly enough.

(a) Take, for example, a community like Bavaria, with Munich as its center. Rightly or wrongly, Bavaria was apparently going to make an attempt at whole-hearted socialism in its most complete modern sense. What sort of a new criminal code will be evolved by those thorough logical Germans on such a basis? And what sort of prison administration will be put into force? Surely there was never such a wonderful chance for a complete revision of the old criminal law on an entirely new basis. What will the new doctrines of Property Rights do to the old established concepts of Larceny and Burglary?

(b) Or take such an interesting people as the Tyrolese. For decades they have groaned under the antiquated criminal code of Imperial Austria, which bore more impossible hall-marks of the Middle Ages than any other code in existence. What kind of a new code will this free people of the snow-capped mountains evolve for themselves?

It seems to me that never before in our history have there been such interesting possibilities for students of criminal law and penology.

Ought we not to be making some preparation betimes, in order to get into touch with the new law-makers and penologists in Germany, in Munich, in Russia, or in Tyrol? Ought we not to be in readiness to find out what they have done, as soon as the curtain lifts that has concealed their doings from us for so long?

Surely, among the members of our institute, there are many who have legal friends or connections in Russia. Could they not have letters of inquiry written and ready to send to Russia, as soon as peace is declared and the mail routes are open again? And even more of us will have former acquaintances among the Austrians or the South Germans. Should we not be ready to get into touch with them as soon as possible?

For myself, if I may be permitted to speak of personal matters, I have made the following plans: I am writing a letter to a former friend of mine, Professor Archibald C. Coolidge, who is the head of the American commission at present working in Austria. I am asking him to give me some suggestions as to how I shall be able to get at the newly made criminal code and methods of penology. I have also—or rather, unfortunately, I *had*, once—friends, lawyers and judges, in Austria, in Munich, and in Tyrol. Most of them may be dead. All of them had ceased to be friends during the war. But when peace comes, I am hoping to find one or two left here and there—men of modern views who hated the Prussian yoke and the outworn Austrian Criminal Code—men who will surely have been active in recasting the criminal law and who may be willing to tell me all about it.

I have written this in the hope that I may interest other members of the Institute to make some preparations for getting into touch with the new law-making powers of Central Europe.

Let us not let the opportunity slip. Sooner or later, when normal relations are resumed again, there will be some sort of an international Congress on Criminal Law and on prison reform in general. Our Institute ought to be ready to send representatives to such meetings or congresses. And as our first step in that direction, we should be turning our minds, now, at once, towards those European countries, which

have perhaps already made important attempts to revise their criminal codes on a modern humane basis, that may in time become models of perfection for the entire world. Or, on the other hand, they may be making experiments in criminal procedure and in penology, which will be so disastrous that they will be warnings to the rest of mankind of how NOT to do it. In either case, their experiments will be intensely interesting. And we, as an Institute, should do our utmost to be ready to get into touch with them.

JOHN R. OLIVER.

Baltimore, July 1, 1919.