

Leon Tyszkiewicz, *Doktryny i ruch "Obrony społecznej" we współczesnym prawie karnym* [Doctrines and the Movement of "Social Defense" in Modern Penal Law], Poznań 1968, 343 pages, Adam Mickiewicz University, Publication of the Law Department No. 32.

We needed this publication long ago. One may not agree with the principles of the "social defence" trend or with this or another opinion of its advocates and, as it were, it is difficult to agree with some of them. But you cannot ignore that movement any longer. Its range and fame are too widespread and its successes, both in doctrinal and legislation matters, too great. The causes of that success are manifold and would require a separate study. No doubt the movement reflects the tendencies prevailing in modern societies, not only in the field of jurisdiction. It mirrors also a clearly humanitarian attitude which poses in the centre of attention the basic and inviolable rights of man; rejects the anti-humanitarian burden of prejudices and bad traditions, including also the death sentence which is especially repulsing from that point of view; puts emphasis on special preventive and resocializing

functions of the sentence; recognizes the personality of an offender as the main point of interest in a court trial, etc.

In his work Tyszkiewicz presents, in an analytical and almost encyclopedic way, the origins and development of the "social defence" movement after World War Two, emphasizing in particular Filippo Gramatica's prominent contribution.

The author describes in a concise manner the basic principles of the Centro Internazionale di Studi di Difesa Sociale which sprang up into being in Genoa in 1947 out of a similar circle set up earlier by signor Gramatica. Next, he acquaints the reader with successive stages of the development of the movement, marked by periodical social defence congresses the first of which was held in San Remo in 1947<sup>1</sup> and by other meetings of a more limited scope (mention is due here to the French Social Defence Days). In the second chapter the author gives an account of Filippo Gramatica's views and in the third he deals with the "new social defence" as conceived by its chief protagonist Marc Ancel, to discuss (in the fourth chapter) the views of other prominent advocates of the social defence theory (J. Graven, J. B. Herzog, J. R. Mendoza, A. Mergen, P. Nuvolone, J. Pinatel, I. Strahl, G. Vassalli, S. C. Versèle, C. de Vincentiis, J. Bellon). Presentation of F. Gramatica's and M. Ancel's views is preceded by short biographical notes about the two writers. When reviewing the opinions of other followers of the movement Tyszkiewicz always informs the reader about their lives and work.

Chapter five is devoted to the criticism of the "social defence" movement in the West, (A. Santoro, E. R. Frey, L. Jimenez de Asua, O. Kinberg, J. Foyer, G. Bettoli, W. Kaufmann, R. Merle) and in socialist countries (J. Sawicki, E. S. Rappaport, M. D. Szargorodski, F. M. Reshetnikov). Next the author makes a brief review of the influence of the movement on contemporary codification work, focussing attention on the 1954 penal law in Greenland and the Swedish draft preventive code of 1956.

In the final, seventh chapter the author makes a general "recapitulation and reassessment" which came out rather badly. Admitting the existence of different doctrines of the "social defence" movement the author states that there have been two distinctly separate sections in the movement for a long time: a radical wing (F. Gramatica) and a moderate one (new social defence) led by M. Ancel. The author is inclined to single out, as A. Rebhan<sup>2</sup> does, a third wing which he calls conservative and to which he includes P. Nuvelone and G. Vassali in the first place. After presenting the basic theses and convergent points of the two main, radical and moderate trends, the author passes to an analysis of some major charges against the doctrines of "social defence." Among them, he argues, there are: "a certain threat to the rights of man, a fear that law and order might be loosened and ethical values not sufficiently taken into consideration when sentences are passed" (p. 277). However, to those drawbacks he counterposes true "values" which the author presents in the following order, as if summarizing in this way the doctrinal merits of the "social defence" movement: 1) courageous, exhaustive and consistent reconsideration of problems which have come as a result of an unquestionable

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<sup>1</sup> 2nd Congress was held in Liège-Spa in 1949, 3rd in Antwerp (with two earlier preparatory meetings: in San Marino and in Carcas), 4th in Milan in 1956, 5th in Stockholm in 1958, 6th in Belgrade-Opatia in 1961, 7th in Lecce in 1966.

<sup>2</sup> *Franz von Liszt und die moderne "défense sociale"*, Hamburg 1963.

crisis of penal law; 2) creation of the possibly most comprehensive and, in principle, homogenous system of "penal law of the culprit" (*Täters Strafrecht*), based on the idea of resocialization, a system which favours double integration: of empirical science and law and, on the other hand, of the three fields of penal law: material penal law, penal law of legal proceedings, and executive penal law; 3) creation of theoretical foundations for a reform of the present system of punishments and transformation of that system into a system of social education means; 4) valuable suggestions on how to solve such important and difficult problems of penal law as war on alcoholism, unintentional crimes or crimes committed in a state of mental aberration; 5) rightly made emphasis on prophylactic measures against crime and on the need to involve the entire society into that action; 6) encouragement of research programmes on subjects involved in prevention of crimes and resocialization of criminals.

One may dispute with the author over the rightness of his certain formulations and some assessments. Especially arguable is his somewhat overestimated view of the historical role of the current "social defence" doctrines and their theoretical contribution to the progress of penal thought. But one must agree with the general positive tenor of that assessment.

What Tyszkiewicz's work definitely lacks, however, is a doctrinal genealogy of the movement under review. On the basis of this book a reader unfamiliar with the problem could come to a conclusion that the "social defence" theory was invented by F. Gramatica and the movement itself appeared for the first time in Genoa after World War Two. While in fact its historical origins are clear and undisputable. They go back to 1889 in the least when F. von Liszt, van Hammel and Prins had founded Union internationale de droit pénal. Thus, the point of departure was the foundation of a sociological school and Prins is acknowledged the first theoretician of "social defence." His famous work published in 1910 bears a significant title: *La défense sociale et les transformations du droit pénal*. Reading about the basic foundations of the F. Gramatica doctrines we note their convergence, in probably all major points, with the doctrines of the Italian positive school, which still provokes lively and continuous reminiscences in Italian literature. It would not be difficult either to find in the views of modern advocates of "social defence" some echoes of the principles of the long-forgotten "Italian humanistic school" (V. Lanza and others). This does not diminishes the value or originality of the contribution made by F. Gramatica, M. Ancel and other advocates of "social defence" to the doctrinal achievements of that theory. It seems, however, that if the author outlined historical origins of the movement: foundation of the positive and sociological schools, and presented against that background the views of the present advocates of "social defence," the role and the merits of the latter would be shown in due proportions, not speaking of the fact that only such a presentation would allow to form an opinion about the historical evolution of the ideas which underlie the "social defence" trend. The author has also failed to make a more thorough critical analysis of the theoretical foundations of the "social defence" movement, which would allow to rank his book among profound scientific studies. But perhaps this was not his intention.

The method which the author has chosen to present the views of "social defence" advocates, that is to discuss individual authors in succession (adding biographic information), may displease those who are accustomed to synthetic presentations. However, from the point of view of the informative function

of this work it is the best method since it gives an amount of knowledge set in a natural order, so to say, which makes it easier to check some information or revert to it when this is needed. This method reduces, besides, the risk of distortion involved in any attempt to present in a synthetic way the views of a group of authors.

Thus, in spite of the impression that its theoretical background is not quite sufficient, the book by L. Tyszkiewicz should be recognized — from the point of view of its informative values, as an excellent work.

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