Władysław Wolter, *Funkcja błędu w prawie karnym* [Function of Error in Criminal Law], Warszawa 1965, 214 pages.

In the recently published work by Władysław Wolter, professor of criminal law at the Jagiellonian University in Cracow, two problems are involved often approached by the author, an outstanding theoretician. These are: the problem of error in criminal law and the problem of applying the principles of formal logic in juridical research. Wolter has quite often dealt with psychic phenomena involved in a crime, e.g. in one of his earlier works published in 1924 (on psychic factor in the essence of a crime) and in his studies on criminal law (1947) where he presented "error in criminal law in a systematic approach." Formal logic is another discipline this scholar teaches besides criminal law.

Funkcja błędu w *prawie karnym* [Function of Error in Criminal Law] is an interesting work not only because of thoroughly treating the topic being so much the problem in everyday practice and so difficult in theoretical considerations. The value of the work lies also in the author's critical attitude towards other problems of criminal law of rather general nature, such as elements constituting a crime *(Tatbestand),* and typical circumstances that exclude criminal nature of an act, what at a time Wolter named in Polish *kontratypy* (contratypes). The term became common in the Polish legal literature what is to be considered for advantage of its initiator.

The author discusses the essence of the error and the error in relation to such categories of criminal law as the crime of fundamental, qualified (i.e. aggravated), and privileged (i.e. exonerated) type; further on, the following problems are dealth with: possible and impossible attempt, "contr atypes", elements of guilt, inlawfullness. In this review there is no place to present the author's point of view and his opinion on all the indicated problems, discussed as usual concisely, in a rigorous juristical style, rich in argumentation taken from the law (now in force in Poland) content and the Polish doctrine as well as the foreign one, particularly German. Main problems presented in the work are summarized in German

at the end of the book, which is of a great help for a reader who knows that language and is not acquainted with the Polish language.

Here more attention will be given to just one problem extensively treated in the book, namely to the liability in case of acting erroneously as to a "contratype" (for instance of the necessary defence, state of higher necessity, consent of an injured person, etc.) Two kinds of error may be distinguished as to the "contratype." The one lies in the erroneous impression that there occurs the "contratype" (what in fact does not take place), and the other — in the erroneous impression that there does not occur the "contratype" (and, actually, it does occur). The author solves both these cases in the area of the error as to the circumstance that constitutes the crime (*Tatbestandmerkmal).* In other words, he considers the "contratype" to be a negative constitutional circumstance of the crime *{negativer Tatbestandmerkmal).* Such opinion has as usual its opponents and protagonists as well. Therefore, not only the opinion itself but the way of reasoning which leads Wolter to have such an opinion is worth considering. The reasoning of the author is in consequence of his other thesis pertaining to the logical relationship between *lex generalis* and *lex specialis* (vide Wolter's book on rules excluding multitude of evaluations in penal law, published in 1961). The author states that the relationship of superiority between rules generally called *leges generales* and *leges spéciales* is only apparent. The range of the rule named *lex generalis,* due to the very fact that another rule is obligatory (i.e. *lex specialis),* is confined to that part which the latter does not cover. In fact, *lex generalis* is a rule equivalent to *lex specialis* the only difference lying in its form. In order to understand properly the rule called *lex generalis* it is necessary to complete it by a stipulation indicating that it does not refer to cases covered by *leges spéciales.* Such a stipulation is synonymous to completing (in mind) the rule *lex generalis* by negative constitutional elements of the crime (negative *Tatbestandeselemente).* Similar situation occurs with "contratypes" as to w[7]hich Wolter changed his opinion since he had not treated them as negative elements in his earlier works. The author discusses in detail all the arguments which made him before to be of a different opinion. For instance, the argument that in the case of intentional wrongdoing the awareness of a wrongdoer is to comprise all the elements of an object of wrongdoing, and as a matter of fact it is hard to imagine that the premises of intended crime always include the consciousness of a wrongdoer that he does not act in necessary defence or in the state of higher necessity, etc. ; Wolter opposes to this argument by his thesis on completive reality. Judgement on lack of something need not necessarily be expressed in negative form; equally proper reflection of negative elements in consciousness are the positive completive elements. Murder with intent to rob cannot be a murder in necessary defence; if a wrongdoer is quite aware that he commits a murder with intent to rob, then the robbery is a positive and completive indication equal to a negative one "not in necessary defence". The statement that certain object is not green — says Wolter — may be expressed in a positive form, i.e., the object is red.

In effect, the author sees the correct solution of the case in which a person has a wrong impression that he acts in necessary defence in the area of error as to the fact (not to *error juris),* which eliminates an intended offence. If, however, a per on is not aware that he acts, in necessary defence, then the correct solution of such a case will be in the area of impossible attempt.

Wolter's book has aroused a great deal of interest as an important contribution in efforts to obtain a logical and harmonious system of criminal law institution. The author quite purposely avoids a versatile approach to the legal institutions in the aspect of their activity and practice, it does not deprive, though, the book of its high values.

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