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Adolphe Prins and social defence in Belgium: The reform in the service of maintaining social order*

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Abstract

This chapter focus on Adolphe Prins' influence on the birth, development and reception of the social defence doctrine at the turn of the 19th and 20th centuries in Belgium. In a context dominated by fear of the “dangerous classes”, Prins proposes an integrated project of social and penal reforms, largely influenced by the positivist epistemological turn developing at the Université Libre de Bruxelles. Social reformer to safeguard the social and political system, Prins also intended to reform the penal system to maintain order. The two dimensions of its reformist action complement each other in a global project fulfilling the traditional foundations of the liberal State law with a new legislative trend marked by a risk logic an insurance perspective. In the penal area, Prins' project represents the search for an eclectic compromise between the fundamental principles of penal law and the endorsement of a dangerousness logic from positivist obedience.

Keywords

Adolphe Prins, Belgium, social defence, risk and dangerousness, International Union of Criminal law, eclecticism, social and penal reform

Summary: Introduction. 1. Adolphe Prins at the ULB: the *School of Brussels* and the *circle of criminology*. 1.1. *The School of Brussels*, a crucible of positivism and progressivism. 1.1.1 The creation of the *School of Brussels*. 1.1.2. The prolegomena of penal positivism within the *School of Brussels*: Dallemagne and De Greef. 1. 2. The *circle of criminology* at the ULB: Prins' influential penal rhizome. 2. Prins as social reformer: an ideal of justice in the service of maintaining social order. 2.1. Prins and the social question. 2.2. The excesses of inequality as primary source of the social question. 2.2.1. Real inequalities and individualistic materialism. 2.2.2. Inequality is the law of progress. 2.2.3. Transaction and corporatism. 2.2.4. Social engineering and insurance logic. 2.2.5. The ultimate goal: preserving the social order. 3. Prins and social defence: the criminal component of a risk logic. 3.1. Prins' penal project: from neoclassical criminal law towards an integrated criminal science. 3.1.1. The criticism of the neoclassical criminal law 3.1.2. Dangerousness as foundation of the modern criminal law. 3.1.3. From guilt to dangerousness: the transfer of risk into criminal law. 3.1.4. A broadened and integrated criminal science in the service of maintaining order. 3.1.5. Classifying according to dangerousness: the return of the criminal anthropology. 3.2. Adolphe Prins' impact on penal discussions and reforms. 3.2.1. Prins, co-founder of the *International Union of Criminal Law* and promoter of the *Revue de droit pénal et de criminologie*. 3.2.2. Prins' influence on penal reforms in Belgium. 4. Conclusion. 5. Bibliographical References

Introduction

Adolphe Prins (1845-1919) is generally presented in Belgium as the father of Social Defence. Professor of Criminal Law at the *Université Libre de Bruxelles* (ULB) (1876-1919) and Inspector General of Prisons (1884-1917), Prins was also co-founder of the International Union of Penal Law and Chair of the *Revue de droit pénal et de criminologie*, for which he

also signed two keynote texts in 1907. Author of several works and articles dedicated to criminal questions, Prins played a central role in the reception of the “modern criminal law” from positivist obedience in Belgium and in transforming criminal law and prison practices in that country, from 1880 to 1930.

Prins is particularly known for his penal writings, for the most part inspired by the positivist discourse of the Italian school. However, in order to better understand the orientation of his penal project, it is useful to consider the academic context in which he has evolved as well as his work in the social and political field. On an academic level, Prins starts his career at the *Université Libre de Bruxelles* in 1876. In a time when the ULB was divided by a conflict between liberal conservatives and progressive positivists, Prins quickly adhered to the progressive trend. A fellow of the “School of Brussels”, where scientific positivism is claimed as an epistemological posture, Prins is also the main leader of a “cercle de criminologie” linked to the Faculty of Law of the ULB. This circle, in which future ministers of Justice and other influential penal lawyers will cross paths, served as an important think tank on criminal matters. The issues raised by the Italian positivist school are discussed and the relationships built between researchers and practitioners shall facilitate their implementation in the criminal legislation (1).

However, Prins is not only an enlightened criminal lawyer. Aware of the social problems and worried about the revolutionary threat, Prins sets himself as a social reformer, a committed player in the areas of social and constitutional law. His credo on those scenes is clear: in light of the upheaval of the industrial society, it is necessary to change the equilibrium between capital and labor and to improve the fate of the working class, for reasons of social justice as well as to maintain social order (2).

This double detour by the university context of the ULB as well as by Prins’ social thinking is necessary to understand the fundamentals of his penal project. First, because his reflections on the transformations in the field of criminal policy are closely connected to the necessary changes he calls for in the social policies. And second, because the joint reading of his works on the two areas show the continuity of his reform projects. Driven by a positivist anchoring and adhering to a conception of law as social engineering, Prins advocates for the same guidelines in both social and criminal matters: the shared aim is to change the major balances of the liberal State in order to better defend society against the risks of the “dangerous classes” (3). As social fears and criminal threats are closely linked in his view, it is not surprising that his penal approach fits into a much larger “integrated” project of social conservation relying, on the one hand, on the social integration of the proletariat and, on the other hand, on the management of “dangerous individuals” whose criminal threat affects the social order.

1. Adolphe Prins at the ULB: the *School of Brussels* and the *circle of criminology*

Born in Brussels in 1845, Adolphe Prins obtained the title of Doctor of Law at the *Université Libre de Bruxelles* in 1867, with a thesis on “Appeals in Criminal Law.” Full Professor of criminal law since 1868 and lecturer of a course in natural law (1882-1884), Prins is a “reflexive” lawyer, interested in an open approach to law from the outset. A bright and prolific intellectual, he played an important role at the Faculty of Law as Dean from 1886

to 1890, before becoming temporarily Rector of the University for the 1900-1901¹ academic year.

Caught in the turmoil sparked within the ULB by the clash between conservative spiritualists and progressive positivists, Prins quickly finds in the “School of Brussels” a fertile ground to hatch his ideas, including those on criminal matters (1.1.) With the “circle of criminology” at the ULB, Prins also establishes the first political-scientific network to discuss and disseminate the ideas of the new criminal science of positivist obedience (1. 2.)

1.1. *The School of Brussels, a crucible of positivism and progressivism*

1.1.1 *The creation of the School of Brussels*

The end of the 1880s and the following decade mark a period of internal crisis at the ULB. A serious struggle, partly intergenerational, confronts two intellectual schools opposed by a political and scientific divide. On the one hand, a liberal trend known as “doctrinaire” with professors from the Faculty of Philosophy and Humanities holds the power reigns at the Administration Board of the University. Defenders of a moral approach to humanities, these “spiritualists” reject materialism and positivism. On a political level, they advocate for a liberal approach and oppose any kind of state intervention in economic and social affairs. On the other hand, a “progressive” or “radical” stream gathers teachers from the Faculties of Science and Medicine and some professors from the Law Faculty, as well as a significant number of students. Committed to the precepts of scientific positivism, the progressives believe that human sciences, no less than natural sciences, should be based on modern empirical methods: observation, experimentation and verification. Furthermore, due to the legacy of the Belgian founder of statistics, Alphonse Quételet², quantification becomes the key word of a scientific methodology in the service of organising society³. From this new

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¹ For Prins’ biography, see ‘Notice biographique dressée par Jules Lespes’, *L’oeuvre d’Adolphe Prins* L., Wodon, J. Servais), Bruxelles: Université libre de Bruxelles, 1934, pp. XIII et XIV.

² Quételet, A., *Sur l’homme et le développement de ses facultés. Essai de physique sociale*, Paris: Bachelier, 1835. With this essay, Quételet is considered as the father of social statistics. Quételet will be one of the first to uphold that “inclination to crime” should be studied as a social fact and not as a moral fact and that the aim consists of calculating the frequency of crime the same as with natural events. Prins considers him as the father of criminal sociology: “Criminal sociology per se originated in Belgium, for it was the illustrious Quételet who, in his “Essai de physique sociale”, showed the permanence of the ‘inclination to crime’, the frequency of the criminality curve, the impact of economic events and natural phenomena such as the seasons or the climate on criminality” (Prins, A., *Science pénale et droit positif*, Bruxelles-Paris: Bruylant, 1899, pp. 20-21.)

³ De Greef, V.G. *Leçon d’ouverture du cours de méthodologie des sciences sociales*, Bruxelles: Mayolez, 1889. On this, see Frydman, B., “Adolphe Prins et l’Ecole de Bruxelles. La défense sociale dans la guerre des idées”, *La Science pénale dans tous ses états. Liber amicorum Patrick Mandoux et Marc Preumont* (F. Kutu, A. Weyembergh, (eds.), Bruxelles: Larcier, 2019, pp. 562-563.

perspective, positivism and progressivism are linked: a greater empirical knowledge of social phenomena is supposed to help building a better social organisation⁴.

After several ups and downs, the progressive trend gains power at the ULB. In 1889, some progressive liberals manage to create an interdisciplinary social sciences establishment linked to the Faculty of Law⁵. Amongst the teachers, a group of professors who are called upon to play an important role afterwards, privilege a positivist approach and adopt a progressive agenda. Guillaume De Greef, an important defender of the positivist method in social sciences also considered as “the first Belgian sociologist”⁶, Hector Denis, a lawyer and a doctor in sciences, Louis Wodon, a lawyer specialised in social law, and Adolphe Prins are part of it.

In 1894, following a new conflict with conservatives, Denis resigns as Rector of the ULB, a position he held from 1892. The progressives establish then a “New University” which is linked to the Faculty of Social Sciences. Amongst the founding members of this ephemeral institution, we find Guillaume de Greef and lawyer Emile Vandervelde, future Minister of Justice and a disciple of A. Prins. Amongst the professors, most of them foreign, are mentioned the names of Enrico Ferri⁷ and perhaps equally noticeable, Lombroso⁸. Still in 1894, Ernest Solvay, a major industrial productivist, creates and subsidises a “Social Sciences Institute” with Guillaume De Greef, Hector Denis and Emile Vandervelde at the head, all three also members of the emerging labour party (*parti ouvrier*). In 1902, the Social Sciences Institute is replaced by the “Solvay Institute of Sociology” whose memberships include Louis Wodon and Adolphe Prins⁹. Prins is in charge of studying “social pathology” phenomena, criminal sociology and criminal anthropology, degeneration and social heredity¹⁰. What is also called the “School of Brussels” endorses the idea that crime and criminal constitute a “sociological object”, to be studied as “social facts” and not solely as moral questions.

1.1.2. The prolegomena of penal positivism within the *School of Brussels: Dallemagne and De Greef*

The School of Brussels has specialists from several disciplines whose common epistemological ground is the link to positivism. Some of them are interested by the new

⁴ On the emergence of a movement associating positivism, materialism and progressivism in Belgium, since 1835, see Wils K., *De omweg van de wetenschap. Het positivisme en de Belgische en Nederlandse intellectuele cultuur, 1845-1914*, Amsterdam: Amsterdam University Press, 2005, pp. 142-146.

⁵ The debate is non-existent in the other biggest University in the country, the Université Catholique de Louvain, dominated by the conservatives. Sociology as a discipline did not emerge there until 1940 (Digneffe, Fr., “La sociologie en Belgique de 1880 à 1914 : la naissance des Instituts de sociologie”, *Généalogie de la défense sociale en Belgique (1880-1914)* (Fr. Tulkens, ed.), Bruxelles: Story-Scientia, 1988, p. 249).

⁶ Frydman, “Adolphe Prins et l’Ecole de Bruxelles. La défense sociale dans la guerre des idées”, p. 563.

⁷ Gülich, Ch., “Le rôle de la coopération scientifique internationale dans la constitution de la sociologie en Europe (1890-1914) », *Communications*, 54 (1992), p. 112.

⁸ The presence of Lombroso as a professor at the *Université Nouvelle* is indicated by one source: Durviaux, S., “Le cercle universitaire », *100 ans de criminologie à l’ULB* (P. Van der Vorst, Ph. Mary eds.), Bruxelles : Bruylant, 1990, p. 43. Durviaux also mentions the creation of a course in criminology in 1898.

⁹ For a deeper analysis of the Institute, see Warnotte, D., *Ernest Solvay et l’Institut de sociologie*, Bruxelles : Bruylant, 1946, vol. 2.; Digneffe, *La sociologie en Belgique de 1880 à 1914 : la naissance des instituts de sociologie*, pp. 266-280; *Belgique de 1880 à 1914 : la naissance des instituts de sociologie*, pp. 266-280.

¹⁰ Van Langenhoven, F., “L’Institut de sociologie Solvay au temps de Waxweiler”, *Revue de l’Institut de Sociologie*, 3 (1978), pp. 229-261.

criminal theories coming from Italy. As early as 1881, Paul Héger published with Jules Dallemagne, still a student in medicine at the time, an *Etude craniologique d'une série d'assassins exécutés en Belgique*¹¹. With the aim of testing Lombroso's theory, this research could have been inspired by the first article devoted by Prins to modern criminal science, his *Essai sur la criminalité d'après la science moderne* (1880).¹² An unrecognised figure, Dallemagne may also be considered as the first representative of criminal anthropology in Belgium. Acknowledging his debt to Quételet, to whom he nevertheless reproaches a rather timid determinism¹³, the anthropologist doctor does not deny the multifaceted nature of crime, that is to say "the physical, biological and social nature of the problem of criminality"¹⁴. However, he clearly asserts Lombroso's heritage and attributes a significant causal role to biological factors in the explanation of crime. Adherent to the degeneration theories, he's one of the first to suggest indeterminate incarceration for "born criminals" and other serious cases of epilepsy, depending on their dangerousness¹⁵. Likewise, Dallemagne considers that the theory of the irresponsibility of criminals proposed by the Italian School does not represent a risk to society as long as it is framed by a scientifically organised social defence system¹⁶. Dallemagne's works highlight the early existence in Belgium of a criminal anthropology trend, whose main representative was undoubtedly Louis Vervaeck, Director of a Criminal Anthropological Laboratory founded in 1907, then Director of the Anthropological Prison Service¹⁷ in the interwar years.

At the School of Brussels, the anthropological tendency coexists with an undoubtedly more influential positivist trend from sociological obedience, with which it shares an organicist interpretation of society. The "bio-sociological"¹⁸ approach of Hector Denis is a symbol of this coexistence. Presenting criminology as a product of positivist philosophy, Denis favours a sociological approach of the criminal phenomenon building on Comte and Quételet¹⁹. Such a "sociological positivism" can also be found in Guillaume De Greef's works.

A member of the Solvay Sociology Institute, doctor in law and author of an *Eléments de Sociologie* (1886), De Greef adopts the positivist dogma in the area of knowledge. Asserting Auguste Comte's heritage, De Greef breaks clean from the spiritualist trend. He

¹¹ Heger, P., Dallemagne, J., *Etude craniologique d'une série d'assassins exécutés en Belgique*, Bruxelles: H. Manceaux, 1881; On Héger as "criminologist", see De Ruyver B., Goethaels J., "Paul Héger. 1846-1925", *Gestalten uit het verleden. 32 voorgangers in de strafrechtswetenschap, de strafrechtspleging en de criminologie* (C Fijnaut ed.), Leuven: Leuven Universitaire Pers, 1993, pp. 125-131.

¹² "Journal des Etudiants de l'Université de Bruxelles", 16 of May 1800, n°13, reprint in *100 ans de criminologie à l'ULB*, (P. Van der Vorst, Ph. Mary eds.), Annexe I.

¹³ Dallemagne, J., "Principes de sociologie", *Bulletin de la Sociologie d'Anthropologie de Bruxelles*, 1885-1886, T. IV, pp. 269-386, 4 (quoted by Wils, *De omweg van de wetenschap. Het positivisme en de Belgische en Nederlandse intellectuele cultuur, 1845-1914*, p. 273).

¹⁴ Dallemagne, J. *Stigmates anatomiques de la criminalité*, Paris: Masson, 1894, p. 7.

¹⁵ Dallemagne, J., *Dégénérés et déséquilibrés*, Bruxelles-Paris: Lamartin-Alcan, 1896, p. 367.

¹⁶ Wils, *De omweg van de wetenschap. Het positivisme en de Belgische en Nederlandse intellectuele cultuur, 1845-1914*, p. 297.

¹⁷ De Bont, R., "Met en verzoenen. Louis Vervaeck en de criminele antropologie, 1900-1940", *Degeneratie in België 1860-1940. Een geschiedenis van ideeën en praktijken* (J. Tollebeek, G. Van Paemel, K. Wils eds.), Leuven: Leuven Universitaire Pers, 2003, 185-225.

¹⁸ Wils, *De omweg van de wetenschap. Het positivisme en de Belgische en Nederlandse intellectuele cultuur, 1845-1914*, p. 274.

¹⁹ Denis, H., "Discours", *Rapport de l'année académique 1891-92*, Bruxelles: Université Libre de Bruxelles, 1893, p. 27, quoted in Wils, *De omweg van de wetenschap. Het positivisme en de Belgische en Nederlandse intellectuele cultuur, 1845-1914*, p. 297.

refutes any knowledge based on faith or on pure reason and considers that “direct or indirect observation is the only source of knowledge” and that “neither Providence nor Reason, that is, neither revelation nor reasoning can explain anything in themselves.”²⁰ Despite being a follower of evolutionism and progress, De Greef admits that society as a whole is susceptible of “regression” in a manner analogous to the degeneration phenomenon highlighted by Dallemagne for individuals²¹. If De Greef states that biological influence is real, he nevertheless considers that such influence remains limited. Resorting to biology as a global model to decode society is thus rejected by a sociologist who believes that social matters have their own laws, irreducible to the laws of nature²². Explanations on evolutions in society must leave room to social and individual factors.

We find traces of this posture in De Greef’s writings directly or indirectly devoted to the criminal issue. In *Les lois sociologiques*, published in 1908, De Greef addresses the debate between freedom and determinism, an issue that was at the heart of the Italian positivist criticism against the (neo)classical criminal law doctrine. De Greef takes up a nuanced stance, mid-way between free will and absolute determinism. Adopting a view similar to Prins (*infra*, II,1,a), he writes that “From a social point of view, free will, an area of fruitless controversy within the closed domain of psychology and individual morals, represents such a small percentage that it can be overlooked without serious disruptions. Socially, our free will might be limited, so to speak, to an ideal point of view, without measurements, amidst the complex and vast ocean of determinism.”²³ Nonetheless, De Greef does not believe that this deterministic stance destroys morals or justice. Therefore, it does not exclude maintaining the responsibility principle as fundament of law in practice.

Furthermore, as early as 1893, De Greef praised Enrico Ferri’s *Sociologie criminelle* in an article likewise titled. De Greef presents criminal psychology as a branch of general psychology whose area “stretches to abnormal or antisocial human activity”. He explains to distance himself from “the sentimental school of Beccaria” and its abstract legal approach to crime, to favour a scientific approach resorting to positivist methods. Identifying “crime laws and their repression” must allow to ensure “social defence with more practical efficiency.” Moreover, De Greef predicts the “death to metaphysical criminal law” which inevitably bears the “daily contrast between formalist perfection of its theories and a progressive increase of criminality”, as well as the “contradictions between its conceptions on moral and psychopathological responsibility of criminals.”²⁴

De Greef’s criticism of the traditional or ancient criminal law is harsh. From a practical point of view, it is a failure. Surely, courts work “with admirable regularity.” But they pass their judgements in a stereotyped manner, based on abstract categorisations, and do not look for “ways to stop the increasing criminality.” Similarly, the punishment’s aims of correcting or intimidating the criminals remain futile, as evidenced by the rise of crime as well as the failure of the “prison school with its solitary confinement system.” The separate

²⁰ De Greef, G., *Introduction à la sociologie*, Paris, 1910, T.I., p. 31.

²¹ De Greef, G., *Le transformisme social. Essai sur le progrès et le régrès des sociétés*, Paris: Alcan, 1895. A study of Jean Massart and Emile Vandervelde (“Parasitisme organique et parasitisme social”, *La Société Nouvelle*, 1893, I, 274-290; 511-526; 833-845; 1893, II, 123-132) will also influence De Greef’s theory on social regression.

²² De Greef also criticises Spencer of wanting to subordinate sociological approaches of society to a pre-established science, biology (Wils, *De omweg van de wetenschap. Het positivisme en de Belgische en Nederlandse intellectuele cultuur, 1845-1914*, p. 275).

²³ De Greef, G., *Les lois sociologiques*, Bruxelles, 1908, p. 125.

²⁴ De Greef, G., “La sociologie criminelle”, *Journal des Tribunaux*, 969 (1893), p. 545.

confinement, whose origin dates back to Bentham's panopticon, does not prepare social reintegration. From a theoretical point of view, the error of the classical school is to address "the crime in itself." In order to truly defend society, it is on the contrary necessary to study "criminals, their records, their backgrounds." The study object of criminal science is not crime and its abstract categorisations, but rather criminality as a social fact, at the crossroad of sources situated "in the individual but also in the physical and social environment."²⁵

This change in perspective, from crime to criminal, has significant consequences: criminal statistics are necessary to better grasp the different types of crimes and their recurrence; clinical studies or forensic and psychological expertises are necessary in order to categorise the types of criminals from an anthropological point of view, or to even emphasize prevention and access to "criminal alternatives" as promoted by E. Ferri²⁶. These different topics, including the criticism from the "pure anthropological school" which "accorded excessive importance to craniological and anthropometric data"²⁷, correspond to the agenda that Prins will further develop (see below 3. 1.)

1. 2. The *cercle de criminologie* at the ULB: Prins' influential penal rhizome²⁸

At the ULB, a second circle plays an important role in building and diffusing scientific positivism in the study of crime. In 1890, a "circle of criminology" (*cercle de criminologie*) is founded by a set of brilliant students encouraged by a progressive lawyer, Henry Jaspar, and under Prins' leadership. At the time, the circle constitutes an "incubator of young criminologists" which imports in Belgium the discussion initiated by the Italian positivist school and taken over by the International Union of Criminal Law at an international level. Several of the circle members played a protagonist role in the "major reforms made by the Legislator and the Administration from the Department of Justice, concerning criminal and penitentiary matters during the first half of the (20th) century."²⁹

As a matter of fact, several important members of the "cercle de criminologie" are called on to play a main scientific and/or political role. In addition to Jules Dallemagne, Paul Heger and Joseph de Smeth who officiate as directors, the circle includes as members Emile Vandervelde (Minister of Justice from 1918 to 1921), Louis Wodon (Senior Official at the Ministry of Industry and Labour in 1896 and influential civil servant at the Ministry of Economic Affairs in 1919), Henry Jaspar (Prime Minister from 1926 to 1931) or Paul Hymans (Minister of Economic Affairs in 1916).³⁰ If we consider the ties that unite several members of the circle to Henry Carton de Wiart, Catholic Minister of Justice from 1911 to 1918³¹, we get a better understanding of the criminology circle's impact as an influential

²⁵ De Greef, G., *La sociologie criminelle*, pp. 548-550.

²⁶ De Greef, G., *La sociologie criminelle*, pp. 551-556.

²⁷ De Greef, G., *La sociologie criminelle*, pp. 552.

²⁸ This section is mainly based on the chapter dedicated to the *cercle de criminologie* by Stephan Durviaux, "Le cercle universitaire pour les études criminologiques", *100 ans de criminologie à l'ULB*, pp. 21-44.

²⁹ Constant, J., "L'enseignement de la criminologie en Belgique", *Cinquante ans de droit pénal et de criminologie (1907-1957)*, *Revue de droit pénal et de criminologie*, 1957, p. 197.

³⁰ Manifestation Adolphe Prins le 15 décembre 1934 à l'Université de Bruxelles, *Revue de droit pénal et de criminologie*, 1934, p. 1087.

³¹ Mainly Vandervelde, Hymans et Wodon (Frydman, *Adolphe Prins et l'Ecole de Bruxelles. La défense sociale dans la guerre des idées*, p. 570). The latter mentions also Carton de Wiart as member of the "cercle de criminologie".

network of Prins' ideas. A feature is to be pointed out in this regard: the name Jules Le Jeune is not associated with the circle of criminology. Minister of Justice from 1887 to 1894, Le Jeune nonetheless remains very close to Adolphe Prins and will propose several reforms or reform proposals inspired by Prins (see below II, 2.)

The activities of the circle, as presented by Prins to van Hamel, von Litz and Tarde at the World Anthropology Congress held in Brussels in 1892³², are clearly organised around topics close to Prins concerns³³. The founding document of the circle of criminology is eloquent:

*“A powerful renovation movement is transforming the criminal sciences. The works of Ferri, Garofalo, Alimena, Lombroso in Italy, of Fr. von Litszt, Ascrott, ... in Germany, of Core, Garaud, Léveillé and Tarde in France, of Prins, Heger, de Smedt in Belgium, the new Russian criminal code, the creation of the International Union of Criminal Law are the clear landmarks of this important evolution. Criminology used to be a science of definitions and reasoning; it is becoming a science of facts and observation; it resorts to exact and positive methods; the object of study is no longer the crime on its own - an abstract legal concept; nor prison - a sometimes exaggerated philanthropic experiment; but rather the criminal, a moral, social and psychological phenomenon.”*³⁴

The aim is to recognize the gaps introduced by the positivist thinking into the criminal discussion, to take into account the advances made abroad and to study the different scientific and political issues raised by the Italian School, the UIDP and Adolphe Prins himself. In this regard, the circle undertakes three activities. Firstly, a *brainstorming activity*, by reading and analysing important authors such as Quételet, Tarde, Lombroso or Ferri. Then, a *research activity*, by studying several predominant themes at the time such as recidivism, juvenile delinquency, vagrancy and begging. The reports published by the circle members on these issues emphasize the influence of Prins' analyses: the need to study criminals not as abstract beings but as real and living persons determined by their context; the importance of grounding repression on social utility rather than on retributive justice; the questioning of a “too lenient” neoclassical criminal law which fails in the fight against the (rising) petty criminality; the fascination for the “abnormal criminal”, described as bearer of psychological scars and brain abnormalities, almost always seen as victim of degeneration; the distinction made between “habitual criminals”, lost for society and to be neutralised, and “occasional criminals”, recoverable and reinsertable into society; the need to categorise criminals and to examine three crucial categories of dangerous offenders represented by recidivists, juvenile delinquents, vagrants and beggars, to which Prins will add the mentally ill offender in the last years of the Circle³⁵. Finally, a *disseminating ideas activity*, by creating a “*Newsletter of the Circle of criminology*” and by publishing numerous articles from the members of the circle in the *Revue Universitaire* or *Revue de l'Université Libre de Bruxelles*.³⁶

³² Van der Vorst, P., “Avant-dire”, *100 ans de criminologie à l'ULB*, p. 15.

³³ See below 2.1.

³⁴ Journal des étudiants de l'Université de Bruxelles, 9 (13 March 1890), p. 3, quoted by Durviaux, *Le cercle universitaire pour les études criminologiques*, p. 24.

³⁵ For more on this, see Durviaux, *Le cercle universitaire pour les études criminologiques*, pp. 21-44.

³⁶ For a list of publications by the members of the “Cercle de criminologie”, see Durviaux, “Textes du cercle de criminologie”, *100 ans de criminologie à l'ULB*, Annexe II, pp. 323-326.

As early as 1880, Prins found himself in good company within the progressive and positivist trend which led the fight against ideas in social as well as criminal matters at the Free University of Brussels. Far from being isolated in his reform struggle, he found both at the School of Brussels as at the circle of criminology, a place to discuss his ideas and allies to disseminate them. Prin's work as a "social reformist" needs to be re-contextualised in this framework, before delving into his project of social defence in criminal matters.

2. Prins as social reformist: an ideal of justice in the service of maintaining social order

Marked by his attachment to the progressive camp, Prins is quickly concerned with the reform for a social system marked by inequalities. It is not about dreaming of an equal society, which he deems to be utopian and contrary to the laws of progress, but rather on at least fighting against the "excess of inequality", both unfair and dangerous for social order (2.1.) In order to reform the social order, Prins defends the adoption of a corporate system rather than a representative one, and promotes a conception of law as "social engineering", in a context where the concept of legal risk transforms the traditional foundations of responsibility in law (2. 2.)

2.1. Prins and the social question

If Adolphe Prins is mainly known for his penal social defence project³⁷, he is not interested only in the criminal question. Parliamentary democracy, the system of representation and the organisation of professional relationships also keep the attention of an author who, as from 1880, publishes four reference works on political and social matters. *La démocratie parlementaire. Etude sur le régime corporatif et la représentation des intérêts* (1884) ; *L'organisation de la liberté et le devoir social* (1895); *De l'esprit du gouvernement démocratique. Essai de science politique* (1906) and, finally, *La démocratie après la Guerre* (1919), a sort of political legacy published at the end of the First World War. A pioneer article, *Discours sur le développement politique de l'ancien droit national* (1875), already proposed several of his political theses. Three other important articles, where Prins develops the concept of a "social democracy", are also to be mentioned: *La crise nationale* (1886), *La représentation des intérêts* (1891) et *L'idée sociale* (1894).

As a man of action, Prins has an early involvement in the area of professional relations. As early as 1873, he publishes with two fellow lawyers a *Draft act on labour regulations for children and women employed in factories*³⁸. In 1886, he becomes a member of the *Labour Commission*, a social consultation body established by Royal Decree on 15 April 1886. As from the following year, Prins takes part in the work of the *Industry and Labour Council*. Established by Royal Decree on 16 August 1887, the Council's mission is to "ponder on the common interests of employers and workers, to prevent and bridge the

³⁷ For more on this, see Mary, Ph. "A. Prins ou la légitime défense sociale", *Revue de droit pénal et de criminologie*, 1999, pp. 15-37 ; *Généalogie de la défense sociale en Belgique (1880-1914)* (Fr. Tulkens ed.), Bruxelles: Story Scientia, 1988; *100 ans de criminologie à l'ULB*, (P. Van der Vorst, Ph. Mary eds.), Bruxelles: Bruylant, 1990.

³⁸ This text comes into force 16 years later, with the Act of 13 December 1889 on the labor of women, adolescents and children (Frydman, *Adolphe Prins et l'Ecole de Bruxelles. La défense sociale dans la guerre des idées*, p. 575, note 62).

differences which might arise between them.”³⁹ In 1892, Prins becomes a member of the *Superior Labour Council*, a body gathering 16 workers’ representatives and 16 experts on economic and social matters.⁴⁰ Along with his colleagues, Prins will contribute to the promotion of the first “social laws” of the time, between 1892 and 1912.

Chair of Criminal Law at the ULB, Prins is thus nonetheless greatly concerned by the social question at the end of the 19th century⁴¹. In fact, Belgium had been facing a significant social crisis in the last third of the 19th century⁴², which marks the limits of the liberal state project or “*Etat gendarme*”. Still flourishing, the industrial capitalism scales up. It becomes a “capitalism of major entities” and gives rise to a growing culture of global confrontation between capital and labour representatives. Major exodus towards big cities, reduction of salaries and increase of unemployment, concentration of a (sub)urban proletariat in the impoverished areas, malnutrition and illiteracy, alcoholism and prostitution emerge as so many symptoms of a growing social divide⁴³. In this context, the birth of the Belgian labour party in 1885 comes to disturb the “holy alliance” between Catholics and Liberals which, until then, shared power. The *parti ouvrier* becomes the voice of social demands, questions the census vote and claims for a fair political representation of the proletariat.

At a time where Europe had been dominated for several years by the fear of the labour classes associated with the dangerous classes⁴⁴, the growing agitation in major industrial cities of French-speaking Belgium worries the elites, especially as anarchist ideas spread among workers⁴⁵. The explosion of significant social problems in 1884, followed by a series of bloody repressed strikes in 1886, makes the social problem a crucial question. Prins takes hold of the social situation to denounce the increasing inequalities and suggests that the bourgeois “make concessions” in order to maintain social order.

2.2. The primary source of the social question: the excesses of inequality

We cannot escape a deeper analysis of Adolphe Prins’ political and social work, which some would also call his “sociological work”⁴⁶. By leaning on the excellent analysis of Fr.

³⁹ Act of 16 August 1887 establishing the Industry and Labour Council, *Pasinomie*, 1887, p. 374.

⁴⁰ Tulkens, Fr., “Un chapitre de l’histoire des réformateurs : Adolphe Prins et la défense sociale”, *Généalogie de la défense sociale en Belgique (1880-1914)* (Fr. Tulkens, ed.), Bruxelles: Story Scientia, 1988, p. 29.

⁴¹ I During these years, Prins is the author of various reports, texts or conferences on *La réglementation du travail des enfants et des femmes employée dans l’industrie* (1873), *Les unions de métiers ou associations professionnelles* (1886), *Le paupérisme et le principe des assurances ouvrières obligatoires* (1893), *Les hauts salaires, les courtes journées de travail et les unions professionnelles* (1894), *Les tribunaux professionnels en matière d’accidents de travail* (1897) ou encore *La législation relative au repos hebdomadaire* (1902). For a complete list, see Warnotte, “Bibliographie des écrits d’Adolphe Prins”, *L’oeuvre d’Adolphe Prins* (Wodon, L., Servais, J.), pp. XV-XXII.

⁴² On the social history of Belgium at the end of the 19th century, see e. a. Schlepner, B. S., *Cent ans d’histoire sociale en Belgique*, Bruxelles: U.L.B., 1956; Witte, E., Craeybeckx, J., *politieke geschiedenis van België sinds 1830 - Spanningen in een burgerlijke democratie*, Antwerpen: de Standaard, 1983, 31-71.

⁴³ Van Kalken, F., *Commotions populaires en Belgique (1834-1902)*, Bruxelles: Office de publicité, 1936, p. 9-35.

⁴⁴ Chevallier, L., *Classes laborieuses et classes dangereuses pendant la première moitié du XIXe siècle*, Paris: Plon, 1958 ; Frégier, H.A., *Des classes dangereuses de la population dans les grandes villes et des moyens de les rendre meilleures*, Paris: Baillière, 1840.

⁴⁵ Prins, A., *De l’esprit du gouvernement démocratique*, Bruxelles: Institut de Sociologie, 1906, p. 119, quoted by J. Puissant, “Prins et la pensée Lepleysienne”, *Cent ans de criminologie à l’U.L.B.*, p. 248.

⁴⁶ Wodon, L., “L’oeuvre sociologique d’Adolphe” *L’oeuvre d’Adolphe Prins* (Wodon, L., Servais J. eds), pp. 1-218.

Tulkens⁴⁷ and Pierre Van der Vorst and Michèle De Gols's duo⁴⁸, we would like to emphasise two points. Regarding the causes of the social problem, Prins clearly highlights the central threat represented by the excess of social inequalities, even though he does not renounce to the “law of inequality” as a driving force behind progress. Regarding the solutions, Prins is adamant that concessions and reforms are necessary, as well as adopting a culture of transactions and an insurance logic to maintain social order.

2.2.1. Real inequalities and individualistic materialism

Faithful to the positivist approach, Prins begins by examining *the causes of the social question*. His perspective is not really innovative at the time. For many years now, social philanthropists like Ducpétiaux in Belgium are interested in social misery, its causes and criminogenic consequences, as well as the ways to fight them⁴⁹. An existing tradition emphasises the problematic effects of a labour organisation breeding misery and vice and shows concern for the widening gap between “the working class and the leading class” which results in riots and social revolt⁵⁰. Following the same analysis, Prins denounces a social organisation hiding behind the principles of formal equality the dangerous excesses of real inequalities as one of the primary causes of the social problem: “a democracy which proclaims equality of conditions without giving everyone their daily bread, carries alongside it a revolutionary catalyst.” Yet, Prins claims that, in Belgium, “the abyss between extreme opulence and extreme misery is as deep as ever.”⁵¹ The fundamental problem in the 19th century, underlines Prins, is “having given more importance to the production problem rather to the distribution.” Prins thus stigmatises “the triumphant rise of the movable property fortune and company shares”, and calls for fairer taxation by imposing tariffs on “movable fortune in shares, which are generally excluded from tax.”⁵²

Furthermore, Prins considers that the dominant individualistic materialism is the source of a generalised “moral decline” which affects not only the underprivileged classes. The bourgeoisie, shut away in a productive model, has become “selfish and indifferent.” As long as the governing group “has no ideal any more and limits his action to defend its own interests”, it leads to a “demoralising and corrupt artificial life.”⁵³ For Prins, this capitalism based on accumulating is in a way suicidal: should we be surprised, in this context, if the proletariat “swirls at random... like dust in space” and if “the masses, left to their own will, are like an uncontrollable torrent?”⁵⁴ If social order is to be maintained and progress ensured,

⁴⁷ Tulkens, *Un chapitre de l'histoire des réformateurs : Adolphe Prins et la défense sociale*, pp. 1-45.

⁴⁸ Van Der Vorst, P., De Gols, M., “Adolphe Prins et le droit social. Vingt ans de présence au Conseil supérieur du travail, trente-cinq ans de réflexion et d'action socio-économiques, *100 ans de criminologie à l'ULB*, 1990, pp. 249-304.

⁴⁹ Ducpétiaux, E., Du sort des enfants trouvés et abandonnés en Belgique, *Bulletin de la commission Centrale de Statistique*, Bruxelles, 1843, pp. 207-272.

⁵⁰ Buret, E., *De la misère des classes laborieuses en Angleterre et en France ; de la nature de la misère, de son existence, de ses effets, de ses causes, et de l'insuffisance des remèdes qu'on lui a opposés jusqu'ici, avec l'indication des moyens propres à en affranchir les sociétés*, Bruxelles: Société typographique belge, Ad. Walhen et compagnie, 1842, vol. II, pp. 58-59.

⁵¹ Prins, A., *La démocratie et le régime parlementaire. Etude sur le régime corporatif et la représentation des intérêts*, Bruxelles-Paris: Muquardt-Guillaumin, 1884, p. 215.

⁵² Prins, A., “La crise nationale”, *Revue de Belgique*, 1886, p. 339.

⁵³ Prins, *La crise nationale*, pp. 331-332

⁵⁴ Prins, *La démocratie et le régime parlementaire. Etude sur le régime corporatif et la représentation des intérêts*, p. 57.

there is urgency to reform in order to decrease these inequalities whose enormous contrast incites a rebellion.

2.2.2. Inequality is the law of progress

If Prins considers decreasing the inequalities as necessary, he does not dream of an equal society. According to him, equality is a “misleading dogma”⁵⁵ and inequality is an inescapable law for individual and social progress: there have always been differences between people from a physical, intellectual and moral point of view, just as there has always been, regardless of the state of human evolution, “superior beings, average beings and inferior beings.” This law repeats itself at every stage of history, it is “the condition for individual and social development in the universe.”⁵⁶ It is therefore normal to have in “our advanced culture” “social classes equivalent to primitive tribes”, so the proletariat which is “at the bottom of the slope leading to civilisation.”⁵⁷

If the existence of inequalities is unavoidable, it is still welcome, for it is the condition and the driver to progress⁵⁸. In fact, organic progress “entails a variety of conditions” and it “excludes the equal and simultaneous development of all.”⁵⁹ In addition, nothing excludes “the mediocre” of being happy in their mediocrity if it corresponds to their condition: “there is a feasible relative happiness, inner happiness, resulting from being able to adapt to one’s environment. And this happiness neither requires identity nor equality of environments.”⁶⁰ Progress does not imply a uniform development for all⁶¹ but rather a progressive evolution of everyone, under the control of a benevolent authority to reconcile superior and inferior beings. Social progress, which implies bringing the largest number of people to the superior type, sees inequality as a “driver”.⁶²

Additionally, social progress cannot be separated from a *moral progress*: social development must be accompanied by a progressive moralisation process or by the acquisition of an “organic moral culture” which teaches individuals “that the general interest comes before their own.” In his penal science works, Prins also highlights the lack of moral sense of several categories of criminals and their needed moralisation. But in this area here, he mainly refers to “dominant” individuals, who only defend their own interests, in a society where “the exaggerated contemporary individualism” breeds “disintegration and dissolution.”⁶³

⁵⁵ Prins, *La crise nationale*, p. 336. Moreover, Prins explains that the myth of equality is the result of an incorrect interpretation of the “state of nature” associated with freedom and equality, whereas it actually embodies a “state of war and the triumph of force, craftiness and terror.” Prins emphasizes that this myth is dangerous because opposing the idea of progress and pushing people down a path to regression and in search of a lost paradise instead of towards evolution and civilisation (Prins, A., *L’organisation de la liberté et le devoir social*, Bruxelles-Paris: Falk-Alcan, 1895, pp. 6-7).

⁵⁶ Prins, *L’organisation de la liberté et le devoir social*, p. 5.

⁵⁷ Prins, *L’organisation de la liberté et le devoir social*, p. 17.

⁵⁸ Prins, *L’organisation de la liberté et le devoir social*, p. 8.

⁵⁹ Prins, *L’organisation de la liberté et le devoir social*, p. 11.

⁶⁰ Prins, *L’organisation de la liberté et le devoir social*, p. 256.

⁶¹ Prins, *L’organisation de la liberté et le devoir social*, pp. 27 et 32. Prins believes that there are “latecomers” to be found at every stage of civilisation and that “progress does not prevent inferior civilisations from existing in a given level.”

⁶² Prins, *L’organisation de la liberté et le devoir social*, p. 27.

⁶³ Prins, *L’organisation de la liberté et le devoir social*, pp. 250-255.

With its emphasis on the laws of evolution and the existence of inferior beings, progress through history and an organicist interpretation of society (at the time dominant within the School of Brussels)⁶⁴, the need of moralising individuals, Prins creates an epistemological reference framework equally relevant for his criminal approach

2.2.3. Transaction and corporatism

To ensure the indispensable reform which favours “social harmonisation” and prevent society from “death by anarchy”⁶⁵, Prins relies on two complementary strategies. The first embraces a basic principle shaping his entire way of thinking: transaction. As a follower of the conciliation culture, Prins always looks for the middle way between the extremes, which will earn him the reputation of *eclecticism*. According to him, progress implies that “instead of killing inequalities with violence, they should be combined and harmonised.”⁶⁶ Therefore, the rights and obligations of superior and inferior beings must be reconciled, at the heart of a moral culture which teaches individuals about “their dependence concerning the whole society.”⁶⁷ It is therefore a “transaction which will one day put an end to the social fight of the 19th century, and this transaction shall ensure the regular pace of progress.”⁶⁸

In order to favour this transactional logic, Prins does not believe much in the virtues of a parliamentary democracy and universal suffrage⁶⁹, in the principle of election confused with the principle of representation⁷⁰. Favouring a social democratic model, he advocates adopting a *corporate system* which gives more importance to the “collective interests” which take into account “social drivers” and “social interests”, like the “trade unions”⁷¹ we know today.

Between law and interest, Prins chooses interest as the pivot of democratic regulation. According to him, a corporate model associated with a type of government which gives an important role to decentralisation has three main advantages: firstly, it is based on reality “that is, the “local and social drivers” that we privilege in Belgium given “our temperament and traditions”, and which help to avoid a type of elected representation based on abstraction.⁷² The corporate model is the only way “to adapt to the real world the abstract theory of the social contract.”⁷³ Second, given the dialogue established between representatives of social groups, corporatism embodies this median culture which Prins calls for. And finally, if corporations are more efficient to ensure emancipation of workers and the protection of the

⁶⁴ Frydman, *Adolphe Prins et l'École de Bruxelles. La défense sociale dans la guerre des idées*, p. 578.

⁶⁵ Prins, *L'organisation de la liberté et le devoir social*, pp. 33-34.

⁶⁶ Prins, *L'organisation de la liberté et le devoir social*, p. 5.

⁶⁷ Prins, *L'organisation de la liberté et le devoir social*, p. 250.

⁶⁸ Prins, *L'organisation de la liberté et le devoir social*, p. 34. Such a transaction favors a “conciliation” between “freedom and authority, the individual and social elements, the rights and obligations of each individual.”

⁶⁹ Prins, *La crise nationale*, p. 336 : “The theory of universal suffrage is incorrect; it crushes intelligence with the numbers... It thus leaves the destiny of a Nation in the hands of a disintegrated, inexperienced and thoughtless crowd without specific aims...”

⁷⁰ Prins, *La démocratie et le régime parlementaire. Etude sur le régime corporatif et la représentation des intérêts*, p. 192. See also, p. 200 : “We can say that universal suffrage is a blind chance, the unknown, the path to trouble, the murky torrent that reverses everything in its way.”

⁷¹ Prins, *La démocratie et le régime parlementaire. Etude sur le régime corporatif et la représentation des intérêts*, pp. 195-197.

⁷² Prins, *La démocratie et le régime parlementaire. Etude sur le régime corporatif et la représentation des interest*, p. 219.

⁷³ Prins, *L'organisation de la liberté et le devoir social*, p. 135.

weakest, they are also “the dikes which contain and regulate the popular trend”, giving their members feelings that keeps them from going to “the extremes.”⁷⁴ A recurrent theme of Prins, social justice is in the service of maintaining the social order (*see point 3*).

2.2.4. Social engineering and insurance logic

On a legal level, Prins develops his integrative project of the most vulnerable individuals on the crucible of a dual complementary movement which shakes the foundations of traditional law of the liberal State. On the one hand, like the lawyers of the School of Brussels, Prins adheres to the “legal pragmatism” trend which accompanies the creation of the social State⁷⁵. This trend, sometimes also described as “realism”⁷⁶, proposes a representation of law as “social engineering”, in the service of a goal to reach. Consolidating its authority not on established moral values anymore but on an expert knowledge, the law is transformed into an instrument whose legitimacy is function of the results obtained by its implementation. This consequential approach is particularly present in Prins’ works (and those of the School of Brussels) on social law issues, where it also reflects a more utilitarian approach. Though, is also present in his criminal science approach, which is greatly determined by the concern of the “objective to be met.”⁷⁷

On the other hand, Prins’ project also stands together with the emergence of the *legal risk* which appeared in law at the end of the 19th century, changing considerably the approach of the liability or responsibility systems. In the framework of “insurance societies” (*sociétés assurantielles*) marked by the transfer of risks from the individual to the state⁷⁸, the logic of risk appears shyly in civil law with the development of an objective responsibility principle or “responsibility without fault” (*responsabilité sans faute*). Prins highlights this by taking examples from foreign law. In German Law, the introduction of a responsibility principle for cause (*Causahftung*) supersedes the principle of responsibility for fault (*Culpahftung*), having the effect that an event which causes damage can lead to an obligation of reparation, even if the event can’t be morally imputable to the wrongdoer. Thus, for example, “the damage caused by a lunatic must be repaired” even if the last one is not responsible. The same is true in French Law, where recognised civil law experts adopt the principle of “objective responsibility regardless of the fault”⁷⁹.

Nonetheless, it is mainly in social and labour law that such an objectivist logic, seen as “realistic”, imposes itself⁸⁰: the aim is to put an end to the civil regulations applied to labor

⁷⁴ Prins, *La démocratie et le régime parlementaire. Etude sur le régime corporatif et la représentation des intérêts*, p. 57. On this point, Prins’ position is quickly outdated by the demands of the Belgian Labour Party and the adoption of the Universal Suffrage Constitution in 1892, just tempered by the plural vote.

⁷⁵ Prins himself evokes a reference to pragmatism at a conference held at the “Institut de sociologie Solvay” upon his return from a trip to the United States (Prins, A., “L’esprit social en Europe et aux Etats-Unis”, *Revue de l’Université de Bruxelles*, 5 (1911), pp. 321-347).

⁷⁶ Frydman, *Adolphe Prins et l’Ecole de Bruxelles. La défense sociale dans la guerre des idées*, p. 570.

⁷⁷ Furthermore, some contemporary commentators reproach Prins “a non-disguised utilitarian pragmatism, even if social defence claims a certain humanism” (Dedecker, R., Slachmuylder L., “De la critique de l’école classique à la théorie de la défense sociale : la protection de l’enfance dans la pensée de Prins”, *100 ans de criminologie à l’ULB*, p. 128).

⁷⁸ On this general trend, see Ewald, F., *L’Etat-Providence*, Paris: Grasset, 1986.

⁷⁹ Prins, A., *La Défense sociale et les transformations du droit pénal*, Bruxelles, Misch et Thron, 1910 (reprint Genève, Médecine et Hygiène, 1986, p. 57).

⁸⁰ In Belgium, the objectivist logic is noticeable in the 1903 Act on labour-related accidents drafted by Louis Wodon.

relationships based on the fiction of a signed contract between two equal parties⁸¹; to introduce collective insurance mechanisms to protect the weaker parties; and for work-related accidents, to substitute a reparations system based on fault for an insurance system against professional risks regardless of the wrongdoers' liability. Prins totally adheres to that legal evolution which responds to the growing complexity of social relationships and the impasse on liability theories: "The expanding functioning of the enormous social machine leads to countless injuries of every kind. And in a civilisation as complicated as ours, it becomes increasingly difficult, if one wishes to attribute damage to a wrongdoer, to precisely know or prove where the fault lies, who is to blame and the degree of the fault⁸²." This is why "by influence of Bismarckian legislation in the area of work-related accidents, the notion of *professional risk*" was introduced⁸³. The aim is not to determine the fault of the employer or the worker, but rather to confirm the accident, to "legally remedy the social damage" and protect the injured persons regardless of the fault⁸⁴.

As highlighted by Prins, with the notion of risk, the issue is shifted from fault and responsibility to protection and reparation: "The aim is not to determine who is responsible for the professional risk, but rather who is its legitimate bearer"⁸⁵ and the risk is to be borne collectively. This insurance logic defended by Prins in social law is important for us, as it is also at the heart of its criminal reform project.

2.2.5. The ultimate goal: preserving the social order

In his reformist fight, Prins is clearly encouraged by a social justice ideal. The aim of the reforms he encourages is to improve the most vulnerable populations, to promote protective legislation of the weaker and to adopt a consultation model based on transaction between the employers and the workers. But the progressive ideal remains indissociable from the priority concern of maintaining social order. In his article *La crise nationale* from 1886, Prins is very clear on this: insurance reforms are necessary "not only in the name of a justice ideal, but in the name of maintaining the order".⁸⁶

The greatest danger society faces is on a revolutionary level: in an ever-increasing dual society marked by the arrogance of the wealthy who "are consumed by trivial pleasures", the hollowness of the middle class and the powerlessness of the lower classes, the temptation of the class struggle intensifies. In this regard, the 1884-1886 violent social events serve as a warning: "The sorry sight of fury was not a symptom of force, but of weakness, a mad explosion of powerless rage." In Belgium, as well as in other parts of the world, the social question is well present and the "*laissez-faire* theory", promoted by naive economists who,

⁸¹ Van Der Vorst, P., De Gols, M., *Adolphe Prins et le droit social. Vingt ans de présence au Conseil supérieur du travail, trente-cinq ans de réflexion et d'action socio-économiques*, p. 253.

⁸² Prins, *La Défense sociale et les transformations du droit pénal*, p. 55.

⁸³ Prins, *La Défense sociale et les transformations du droit pénal*, pp. 56-57.

⁸⁴ Prins A., "La liberté morale dans le droit pénal nouveau", *Revue de Droit Pénal et de Criminologie*, 1909, p. 520. This thesis claiming the adoption of a risk model in the name of "the primitive unity between civil and criminal law" is also developed by Prins in *La Défense sociale et les transformations du droit pénal*, pp. 55-65.

⁸⁵ Prins, A., Draft Act on the labour Contract. Report submitted to the Higher Labour Council on behalf of the Special Commission, 24 February 1896, p.64-65, quoted by P. Van der Vorst, M. De Gols, *Adolphe Prins et le droit social. Vingt ans de présence au Conseil supérieur du travail, trente-cinq ans de réflexion et d'action socio-économiques*, p. 295.

⁸⁶ Prins, *La crise nationale*, p. 337.

“in order to solve our conflicts, only resort to events”, is no longer able to provide answers. If the bourgeoisie refuses to hear the cries of anger, then these roaming and vegetating men without aims nor means to achieve them shall become “the prey of agitators” and “will one day rise against it with all their beastly might.”⁸⁷

According to Prins, the time has come for the bourgeoisie to make concessions. Rejecting altogether the “social ideas” is suicidal: they “will be taken to the revolutionary parties and be given an invincible force”, he writes. The threat is even greater as there is an “injurious school, a purely negative destructive socialism wishing to destroy everything” developing in Europe. The “wise and productive” reforms are unavoidable, since they are the only ones capable of “preventing wild adventures and useless cataclysms.”⁸⁸ Such reforms are in fact the best weapon of “conservative politics” and represent a “sacrifice to be made by the capital, in its own interest as well as in the national interest.” The ultimate goal is to “disarm the Revolution.”⁸⁹ A progressive reformist, Prins is also a conservative. He is a progressist because he is a conservative.

On a social level, Prins places reform in the service of a utilitarian pragmatism. Progress and preservation, eclecticism and reconciliation, legal pragmatism and insurance logic constitute several stages of a project led by justice and security reasons. If we also consider his interest for social and not only moral causes to explain human behaviours, the positivist inspiration and the rejection of law as a pure abstract construction, the priority he gives to the preservation of social order, we can measure the importance of a global analytical framework which will influence his social defence project in criminal matters.

To a greater or lesser extent, all these elements indeed influence the new penology he promotes. The issue could be to determine whether the same conclusion can be drawn, according to the “penalist Prins”, as is drawn by Pierre Van der Vorst concerning Prins as a social reformist: “We might like or dislike Prins’ convivial enthusiasm towards the principle, his persistent quest for social harmony... His concern of maintaining the ruling order, of swapping the social fight for transaction... His shy opposition to revolutionary socialism, his interpretation of human evolution... Only, the writings left by this author show that his thoughts and actions were following the path to what would become social law, that positive law, reality wearing a legal uniform, were the tracing or almost tracing of his speeches.”⁹⁰

3. Prins and social defence: the criminal component of a risk logic

From maintaining social order to maintaining order, there is only one step. Prins’ penal project seems to fit well within the continuity of his social project. By transposing his criticism of a formalist and abstract conception of the law of the liberal State into the criminal sphere, Prins proposes a penal reform taking into account the crime and the criminal’s “living reality.” This leads him to propose a “social defence” system based on the criminal dangerousness, which at the same time ensures the transposition of the risk logic applied in

⁸⁷ Prins *La crise nationale*, pp. 332- 337.

⁸⁸ Prins, *La crise nationale*, p. 330.

⁸⁹ Prins, *La crise nationale*, pp. 340-341.

⁹⁰ Van Der Vorst, De Gols, *Adolphe Prins et le droit social. Vingt ans de présence au Conseil supérieur du travail, trente-cinq ans de réflexion et d’action socio-économiques*, pp. 300-301.

civil and labour law to criminal law (3.1.) Widely discussed within the International Union of Criminal Law, spread through the “Revue de droit pénal et de criminology”, Prins’ ideas assert a defining influence on several “social defence” laws and proposed acts which, from 1888 to 1930, will complete the Belgian Criminal Code of 1867 at its edges (3. 2.).

3.1. Prins’ penal project: from neoclassical criminal law towards an integrated criminal science

3.1.1. The criticism of the neoclassical criminal law

The reform project supported by Prins throughout his works is first based on the failings affecting the classical or neoclassical criminal law. His comments on the 1867 Belgian Criminal Code, the embodiment of the classical school, are revealing in this regard. In a comment passed in 1899, Prins praises the attributes of this neoclassical Code where he sees “a work of optimism and humanity, hope and faith in the perfectibility of man.”⁹¹ However, hardly any other positive comments on that neoclassical Code are mentioned in his works. As early as 1885, in a text entitled *De l’amélioration de la justice criminelle*, Prins criticises the excess of legalism in a Code lost by its abstraction and theoretical manoeuvrings, setting aside the concrete realities of the crime and the criminal as social phenomena: “codifying is very well. However, drafting a Criminal Code is not creating a systematic work from scratch and to the smallest details, but offering a translation of the general guidelines of a social epoch.”⁹² The angle of the criticism is set: the problem of (neo)classical criminal law is to propose a very sophisticated system of crimes and corresponding punishments, but an abstract system neglecting crime and the criminal as social realities. No more than the “sociologist” Prins, the “penal” Prins does’nt like abstract constructions detached from reality.

A second problem of the classical criminal science is the responsibility principle at the foundation of a retributive criminal law. The fundament of the classical sentencing, emphasized by the neoclassical ideology, implies that a “smart and free individual commits a crime knowingly and willingly. The individual is punished only because he is responsible for his conscious and willing act”.⁹³ Yet, this being endowed with conscience and free will, granted by the Code, is nothing but a mere fiction which does not reflect any of the conditions set by real life. This free and responsible individual is, like Quetelet’s “average man” or Descartes and Kant’s “reasonable being”, nothing but an abstraction, “a mathematical formula erasing any traces of individuality, originality and differences, reducing it to an abstract outline of a being which does not live.”⁹⁴ In real life, there are always “causes which limit a person’s freedom” and the conditions for full responsibility are never met. With Freudian accents, Prins highlights that if an action responds to a logical and rational sequence, “there is no doubt that at the beginning, it is lost in the deep subconscious and remains inexplicable... A man’s behaviour... has its starting point in the dark and unfathomable realm of instincts,

⁹¹ Prins, A., *Science pénale et droit positif*, p. 98.

⁹² Prins, A., “De l’amélioration de la justice criminelle”, *Journal des Tribunaux*, 1885, pp. 681-687, 737-740, 733-756. See also Prins, A., “Essai sur la criminalité d’après la science moderne”, *Revue de Belgique*, 1880, pp. 396-414.

⁹³ Prins, A., “Les difficultés actuelles du problème répressif”, *Journal des Tribunaux*, 1905, p. 1113.

⁹⁴ Prins, A., *La défense sociale et les transformations du droit pénal*, pp. 5-6.

ethnic and cosmic influences, in distant and confusing traditions, with the consequence that we lose track of its initial Why.”⁹⁵

Prins does not choose between moral freedom and determinism. His demonstration indicates that humans are a mix of freedom and fatality. At the same time, there is “some behavioural freedom” and “some necessity of our actions.”⁹⁶ All he cares about is showing that a criminal system based on a moral responsibility principle confronts criminal justice with unsolvable problems, both in theory and in practice. On a theoretical level, making the sentence proportionate to the degree of moral responsibility means weighing all “the limiting causes of a person’s freedom”, and striking a balance between free will and determinism. One cannot impose on judges this “inhuman task riddled with pitfalls”, which has nothing to do with law and supposes to basing a sentence “on a mystery”, on the “Unknown.”⁹⁷ On a practical level, criminal law based on responsibility weakens repression insofar as “diminished responsibility leads to a reduced sentence; a lack of responsibility abolishes the sentence.” The (neo)classical logic leads to a paradox, for “the most defective individuals being the less guilty ones in the classical trend, social defence is even more negligent since the principles concerning responsibility are better respected.” And yet, the irresponsible criminal is as awful, if not more, than the responsible and healthy-minded criminal, and “Society has a right to defence against both of them.”⁹⁸

Prins’ reasoning reaches a dual conclusion. On the one hand, once the (neo) classical system weakens repression, it becomes necessary to adopt a criminal code “that considers the sentence not as an aim in itself but as a means to ensure public security.”⁹⁹ On the other hand, from this instrumental perspective, it becomes urgent to set aside the disputes on the question of responsibility, and “more rational to adapt the sentence to the type of danger presented by the wrongdoer’s actions.”¹⁰⁰ Prins’ utilitarian pragmatism is obvious: faced to the increased crime rates which statistics highlight year by year¹⁰¹, maintaining the order becomes the primary objective of criminal law and the social dangerousness represented by the criminal must be the basis of repression. Maintaining order and dangerousness are the two pillars for “the new criminal law” called for by Prins, a law centred around the crime’s social or living reality and based on “a more objective foundation: the principle of social defence.”¹⁰²

3.1.2. Dangerousness as foundation of the new criminal law

According to Prins, the basis and benchmark of repression is from now onwards “the criminal’s dangerousness”, which must “replace the very exclusive notion of the prosecuted act.”¹⁰³ The criminal law based on the act must be substituted by a criminal law based on the offender, for behind the “temporary act” there is the “permanent state of the individual”, “his

⁹⁵ Prins, “Les difficultés actuelles du problème répressif”, p. 1115.

⁹⁶ Prins, *La défense sociale et les transformations du droit pénal*, pp. 36-37.

⁹⁷ Prins, “Les difficultés actuelles du problème répressif”, p. 1115.

⁹⁸ Prins, *La défense sociale et les transformations du droit pénal*, pp.71-72.

⁹⁹ Prins, A., De la transformation des idées directrices du droit criminel, *Revue de droit pénal et de criminologie*, 1907, pp. 14-15.

¹⁰⁰ Prins, *La défense sociale et les transformations du droit pénal*, Bruxelles, p. 71.

¹⁰¹ Prins, A., “La loi sur la libération conditionnelle et les condamnations conditionnelles”, *Journal des Tribunaux*, 5550 (1888), pp. 1105-1108.

¹⁰² Prins, *La défense sociale et les transformations du droit pénal*, p. 71

¹⁰³ Prins, *La défense sociale et les transformations du droit pénal*, p. 74.

special nature” which must be the yardstick of social reaction.¹⁰⁴ In the stride of criminological positivism, social defence, according to Prins, introduces the principle of anthropologisation of the criminal: the aim is no longer to punish an act, but rather an individual who has committed an act.¹⁰⁵

As soon as the criminal repression criteria favour the type of danger presented by the criminal for the seriousness of the act, the garantistic principles of criminal law totter. For instance, it becomes conceivable to extend detention beyond the legal completion of the sentence or to introduce indeterminate judicial punishments depending on the criminal’s evolution. Prins recognises that a system based on the dangerousness of the criminal can lead to a partially arbitrary analysis. But, he wonders if such a system results in consequences “more detrimental for the individual whose freedom shall be more threatened by the new doctrine than by the current criminal code”.¹⁰⁶ Prins is aware that he is shaking one of the pillars of classical criminal law, the principles of legality and proportionality of penalties. Quoting an intervention of the French E. Garçon at the UIDP Congress in 1909, Prins mentions the criticisms of those who “are repulsed by the idea that a judge can sentence someone to prison and that a convicted person is deprived of his freedom, without knowing the exact duration of the sentence in advance.”¹⁰⁷ However, he questions, is arbitrariness lower in a legal system when the *in abstracto* fixed penalty varies from country to country for the same act or when the penalty imposed *in concreto* varies from one court to another, depending on the subtle balance between determinism and responsibility sought by each judge? Furthermore, is the rebuked “arbitrariness” of an indeterminate sentence, with a possible release if the dangerousness condition is improved, not a greater concession to the “humane spirit” than a life sentence which excludes any flexibility?¹⁰⁸

In order to limit the risk of arbitrariness, Prins however reserves the use of such indeterminate measures or sentences to certain categories of dangerous individuals. He also proposes to lean the implementation of these “special measures” against a “medical report” designed to serve as “one of the several factors for the judges to take into account when making their decision”¹⁰⁹ and to entrust these “special measures” or “conservation measures” only to higher courts. Likewise, he contemplates entrusting the follow-up of these measures to “administrative commissions composed of lawyers and experts” responsible for making a decision on releasing or keeping a detainee, based on the Australian model of *Indeterminate Sentences Board*¹¹⁰. Even if he is considering it in the only framework of “conservation measures”, Prins endorses an early innovation which influenced the whole welfare penalty of the 20th century: organising the sentence execution stage and entrusting its control to a multidisciplinary administrative body, better informed about the incarceration realities and therefore better suited to decide and inflect the prison’s trajectory of the condemned.

3.1.3. From guilt to dangerousness: the transfer of risk into criminal law

¹⁰⁴ Prins, *La défense sociale et les transformations du droit pénal*, pp.75-76

¹⁰⁵ Foucault, M., “About the Concept of the ‘Dangerous Individual’ in the 19th-Century Psychiatry, *International Journal of Law and Psychiatry*, 1 (1978), pp. 1-18.

¹⁰⁶ Prins, *La défense sociale et les transformations du droit pénal*, p. 131.

¹⁰⁷ Prins, *La défense sociale et les transformations du droit pénal*, pp. 135-136.

¹⁰⁸ Prins, *La défense sociale et les transformations du droit pénal*, p. 137.

¹⁰⁹ Prins, *La défense sociale et les transformations du droit pénal*, p. 136.

¹¹⁰ Prins, *La défense sociale et les transformations du droit pénal*, pp. 133, 137-139.

If the theoretical and practical impasses of criminal responsibility drive Prins to advocate for a repressive law based on dangerousness, his reasoning is also built on the general transformation of the responsibility principle in law at the beginning of the 20th century.

As seen earlier, Prins welcomes the progressive replacement of the responsibility principle based on fault for an “objective” responsibility principle without fault in civil and social law. According to him, social defence is merely operating the transfer into criminal law of the same insurance logic. As such, a criminal law system based on the *criminal risk* “responds on its part, to the changes of the contemporary legal consciousness.”¹¹¹ Having said this, the concept of legal risk, as Foucault will rightly underline,¹¹² has potentially different consequences in criminal law from the protective role it plays in civil law or in social law. In the area of punishment, the insurance logic collides with the protection of rights, at the expense of a paradoxical reversal. Built on the concept of dangerousness, the social defence or risk logic is in fact susceptible to overtake the garantistic foundations of classical criminal law, such as the requirement of a criminalised act to justify the penal answer, or the principles of legality and proportionality of criminal offences and penalties. Prins highlights it himself: “The social defence doctrine goes further than criminal law, strictly speaking; it goes beyond criminal offence and penalty... It senses the dangerous condition of degenerate beings who have not committed a crime but who would if they were left to themselves.”¹¹³

Social defence “goes further than criminal law.” It clearly weakens the rule of law principles and limitations. But does Prins go as far as to justify, in the name of a risk logic, a criminal justice intervention before the commission of a criminal act? The wording used remains cautious. So, Prins dedicates the last chapter of his work *La défense sociale et les transformations du droit pénal* to “the dangerous condition before the crime and misdemeanour.” He writes that “the transformations of criminal law make us perceive a dangerous condition even if there is no criminal yet and *a right for the State to intervene*, even if there was no crime or delict yet.” and “even if it is not within the scope of criminal law, strictly speaking.”¹¹⁴ Later on, Prins proclaims: “The right to public intervention on criminals starts when corruption grows within them and not only when they have given proof of hopeless corruption.” In the same way, he adds that it is non sense to wait for “homeless blind and deaf-mutes” “to succumb” before to intervene. In such cases, “the urgent need to take measures of social defence” imposes itself before “the defective” can take action: for these individuals, starting by “the abnormal, defective, degenerate and cast aside child without resources amidst a degenerated world”, the “right to public authority, outside any hypothesis on criminality” is justified.¹¹⁵

Can criminal justice thus intervene and punish before a criminal act has been committed? Prins is smart or prudent enough to not express it in this way: at the cost of a language trick, the State preventive intervention he defends is then referred to not as punitive but rather as protective and preservative. Degenerated children or defective women shall not be punished but rather “hosted” at the “work colonies” or “asylum shelters”. “Kindly treated”, they shall receive care and adequate work. These “preventive sacrifices” are necessary for a

¹¹¹ Prins, *La Défense sociale et les transformations du droit pénal*, p. 57.

¹¹² Foucault, M., “L’évolution de la notion d’individu dangereux dans la psychiatrie légale”, *Déviance et Société* 4 (1981), pp. 403-422.

¹¹³ Prins, « *La liberté morale dans le droit pénal nouveau* », pp. 518-519.

¹¹⁴ Prins, *La Défense sociale et les transformations du droit pénal*, p. 141.

¹¹⁵ Prins, *La Défense sociale et les transformations du droit pénal*, pp.150-155.

state that is twice as protective: on the one hand, they represent an alternative to more radical elimination measures which would ultimately be unavoidable if these unfortunates were left “to the laws of nature.” On the other hand, they allow “reducing the criminality risk insofar as it can be reduced.”¹¹⁶

According to Prins, by the use of these prophylactic measures, social defence is exerted “in its most noble and highest asset, linked in its entirety to social protection.” And it remains “separated from any kind of reprehensible act of the Authority on individual freedom.”¹¹⁷ With this argument, Prins highlights all the ambiguity of a social defence project which, on behalf of prevention and integration, creates a continuum of formal non-punitive measures aimed to precede, replace or extend the penal response. Based on the individual’s dangerous or defective condition (the terms are often used interchangeably), these measures represent an armed benevolence logic: as emphasised by Prins regarding abandoned children, if preventive measures are sustained by “a breeze of fraternity and humanitarian protection”, their aim is also to fight against criminality and they are thus included in a “broadened criminal science.”¹¹⁸

3.1.4. A broadened and integrated criminal science in the service of maintaining order

Prins’ insistence on the fact that his social defence project does not go against freedoms shows without doubt that the risk truly exists. The issue triggers debate within the UIDP. At the 1909 UIDP Amsterdam Congress, the French Professor Garçon warns against a generalised system of social defence, which would result in “that extreme consequence... of taking safety measures against the dangerous criminal *before* he has committed a crime.”¹¹⁹ In his reference book on individualisation of punishment, Raymond Saleilles, another French member of the UIDP, also expresses his criticism towards a generalisation of social defence, which could signify the end of criminal law and its garantistic dimension.¹²⁰ Responsive to this warnings, Prins shifts towards a system largely based on three complementary pillars: assistance and preventive measures to keep vulnerable individuals from falling into crime; classical penalties for “normal” offenders who can be reintegrated into society without too much difficulties; alternative or complementary social defence measures for “abnormal” or “defective” offenders, whose indeterminate duration will depend on their dangerousness.

In line with Ferri in Italy, an author he follows on many points without hardly mentioning it¹²¹, Prins first conceives an integrated criminal policy system built on preventive measures. The well-understood social defence is not a mere reform of the repressive system. In several cases, it allows a preventive intervention prior to the criminal offence, to act on the social causes of crime and to remove potentially dangerous individuals from a criminogenic environment which could drag them to a deviant culture.¹²² At this stage, as explained by

¹¹⁶ Prins, *La Défense sociale et les transformations du droit pénal*, p. 169.

¹¹⁷ Prins, *La Défense sociale et les transformations du droit pénal*, p. 168.

¹¹⁸ Prins, “Les difficultés actuelles du problème répressif”, p. 1119.

¹¹⁹ Garçon, E., “Rapport à la session d’Amsterdam, Bulletin de l’Union internationale de droit pénal”, *Revue de droit pénal et de criminologie*, 1909, p. 398.

¹²⁰ Saleilles, R., “L’individualisation de la peine (188), in *L’individualisation de la peine. De Saleilles à aujourd’hui* (R. Ottenhof, ed.), Toulouse: Eres, 2012, pp. 87-95.

¹²¹ Mary, Ph., Adolphe Prins ou la légitime défense sociale, *Revue de droit pénal et de criminologie*, 1 (1990), p. 27, note 46.

¹²² On this point see Mary, *Adolphe Prins ou la légitime défense sociale*, pp. 23-25.

Prins regarding the abandoned child, “the repressive principle yields to the educational and social protection principles¹²³.” But this protection logic is set in the aim of criminal prophylaxis: these children must be taken care of from an early age, “removed from a depraved environment”, and sheltered “for as long as their personal security and public security require it¹²⁴” to prevent them from later on becoming criminals¹²⁵. Prins advocates for adopting laws on abandoned children which, like in the United States and other States, have established children’s courts whereby the State becomes the “child’s guardian” and provides “moral care” instead of a prison sentence¹²⁶.

Likewise, Prins highlights the importance of the social and preventive role of patronage, a body which emerges in his reformist project as the link between the social and criminal policies of the State. On the social level, the charitable doings of the patronage intervene where the insurance logic of the social State stops.¹²⁷ Prins calls for the creation of a “colossal Patronage” whose actions “targets the heterogeneous mass cast away from the organic life in society.”¹²⁸ The duty of the patronages, to which “women and young girls from affluent classes” are called to play a central role, is dual. On the one hand, they must conduct thorough investigations on “the life of the poor, their moral and physical habits, the causes of their misery or their vice” in order to complete the existing statistical knowledge on the poor and to set forth adapted reforms. On the other hand, they have to assist and control this “social residue” of half a million “unemployable”, “defective”, “abnormal” or “insufficient” people and to instill in those assisted “degenerates” physical and moral hygiene since childhood. Moreover, the patronage practice is also meant to “inform the leading classes” on the misery experienced by the working classes, which can only make the bourgeoisie more aware of the need for social reforms. According to Prins, the action of the patronage, which moralises the weaker and raises awareness on the privileged classes, is a source of “moral progress” for each other.¹²⁹ The patronage should favour mediation between each other’s points of view and realities.

If driven by a benevolent ideal, this assistance policy is also meant to prevent crime and recidivism, as poverty is a source for vice which leads to crime.¹³⁰ In turn, patronage becomes a dyke against the “leaven of revolt” that can contaminate a sub-proletariat which, falling out the protective net of the workplace, flirts with vagrancy and crime.¹³¹ In other terms, as G. de Jaer summarises, the patronage’s actions constitute “the most indestructible dyke anyone could possibly desire against the flows of communism.”¹³² Finally, assistance also legitimises a stricter repressive intervention for those who did not wish to benefit from the charitable actions offered to them. Prins clearly says so regarding vagrancy and begging: “Certainly, there will always be beggars and vagabonds; however, authorities shall have the

¹²³ Prins, A., “De la transformation des idées directrices du droit criminel”, p. 15.

¹²⁴ Prins, *La défense sociale et les transformations du droit pénal*, p. 164.

¹²⁵ Prins, A., *La criminalité et l’Etat social*, Bruxelles, Berquelman, 1890, p. 23.

¹²⁶ Prins, A., *De la transformation des idées directrices du droit criminel*, p. 16.

¹²⁷ Prins, A., “L’évolution du patronage”, *Revue de droit pénal et de criminologie*, 1911, p. 586 : where “the social action of insurance ceases, the social action of patronage begins.”

¹²⁸ Prins, *L’évolution du patronage*, pp. 586 et 590.

¹²⁹ Prins, *L’évolution du patronage*, p. 590.

¹³⁰ Prins, *L’évolution du patronage*, p. 587.

¹³¹ Prins, *Criminalité et repression. Essai de science pénale*, Bruxelles: librairie européenne C. Mucquardt, 1886 p. 19.

¹³² De Jaer, G., “L’économie chrétienne, année 1870”, 37, quoted in *Généalogie de la défense sociale en Belgique*, 158.

right to apply stricter repressive measures on vagrancy because several means have been provided to escape it.”¹³³

On a criminal level, the “private charity”¹³⁴ of patronage is awarded a same integrative foundation. Individual visits to prison are meant to initiate a process of moralisation of detainees as well as to sort those who can be correct and those who cannot.¹³⁵ But they must also contribute to the reintegration of detainees and help to fight against recidivism. The same applies to the close follow-up of detainees on parole.¹³⁶ It should be noted that, at a time when the issue of relegation of recidivist and habitual criminals is on the agenda in other countries, Prins advocates for patronage committees to inject into released detainees a culture of emigration: joining the saturated labour market, where they will compete with a large number of “the shameful jobless poor”¹³⁷ is deemed as problematic. It is better to encourage them to emigrate where there is a lack of workforce.

When assistance fails, punitive responses take over. The criminal act remains the foundation for the State’s repressive response, under the form of a penalty or a social defence measure. According to Prins, social defence does not rule out the classical penalty logic. If it is necessary to “forsaking the *exclusive* and partial criterion of responsibility”, this does not concern offenders “with a normal background of activities and morality.”¹³⁸ For normal offenders, the retributive response logic remains legitimate and this for two reasons. Firstly, because the dangerousness of most of these occasional criminals does not justify resorting to security measures.¹³⁹ For these offenders, Prins consider a diversification of penalties, namely to fight against the damaging effect of short prison sentences¹⁴⁰. Stopping criminal proceedings for minor offences, suspended sentence and conditional release, cautions, bail on good behaviour, monetary sanctions, house arrest, community service are some of the modalities for a diverse system useful for non dangerous offenders.¹⁴¹ Likewise, very critical of the solitary confinement¹⁴², Prins advocates adopting a system of progressive sentence

¹³³ Prins, *criminalité et repression. Essai de science pénale*, pp. 60-61.

¹³⁴ Prins, A., “La loi sur la libération conditionnelle et les condamnations conditionnelles”, *Journal des Tribunaux*, 589 (1889), p. 27.

¹³⁵ Prins, A., *Criminalité et répression : essai de science pénale*, p. 170.

¹³⁶ The idea of a “patronage” to monitor detainees on parole emerges in 1835 in Belgium. The creation of a public patronage by the State nevertheless fails and leads to the implementation of private patronages as from 1888. According to F. Thiry, chair of the “Patronage Society for children, convicts, vagrants, beggars and insane people”, the patronage is meant to “take care of all those whose age, vice, abnormality or illness disables them from living without aid nor council, in the social and private interest.” This concerns convicted persons but also children in danger, vagrants and beggars, abnormal adults and alcoholics (Thiry, F., “Patronage”, *Revue de droit pénal et de criminologie*, 1912, pp. 281-290).

¹³⁷ Prins, A., “La loi sur la libération conditionnelle et les condamnations conditionnelles”, *Journal des Tribunaux*, 589 (1889), p. 25.

¹³⁸ Prins, “La loi sur la libération conditionnelle et les condamnations conditionnelles”, 1889, p. 136.

¹³⁹ Prins, *La Défense sociale et les transformations du droit pénal*, p. 127: These occasional criminals “can be struck by penalties, without resorting to preservation measures.”

¹⁴⁰ Prins, “La loi sur la libération conditionnelle et les condamnations conditionnelles”, *Journal des Tribunaux*, (n°555) 1888, p. 114: “prison does not offer a relevant answer to the inferior degree of criminality and the only question is to know whether a less deceptive punishment can be found.”

¹⁴¹ Prins, A., *La criminalité et l’Etat social*, Bruxelles, Berqueman, 1890, 25; see also Prins, A., “La loi sur la libération conditionnelle et les condamnations conditionnelles”, *Journal des Tribunaux*, n°581, 1888, pp. 1121-1128.

¹⁴² Prins, “La loi sur la libération conditionnelle et les condamnations conditionnelles”, *Journal des Tribunaux*, n°581 (1888), p. 1534: “It should be acknowledged that we have moved from one extreme to the other, swinging from a former promiscuity to an excessive isolation which is absolutist and too long.” See also Prins, “Les institutions pénitentiaires aux Etats-Unis”, *Revue de Droit Pénal et de Criminologie*, 1911, 174-180.

execution (“probation system”), with an initial incarceration period, followed by a conditional release and eventually a final release¹⁴³. According to Prins, to the suspended sentence which should benefit occasional criminals concerning property crimes responds the conditional release affecting occasional criminals concerning bodily injuries¹⁴⁴. And secondly, a retributive response remains necessary, because not punishing these responsible offenders would neither be accepted by the victims nor by the public awareness. Renouncing punishment in this case would risk encouraging personal vengeance¹⁴⁵.

At this point, the category of “abnormal” or “defective” offenders remains. For these individuals, Prins advocates resorting to a system of “additional measures”¹⁴⁶ to either complement or substitute penalties. In this area, Prins undoubtedly pulls apart from the Italian School and shows its eclectic approach. Perhaps out of realism, given the resistance to positivist theses within the Belgian judiciary¹⁴⁷, Prins asserts a transaction between the neoclassical and the new school, to find a middle way allowing the diversification and individualisation of repression. According to him, this way is already built in practice in several neighbouring countries with “the new spirit within foreign criminal law.”¹⁴⁸ Prins’ eclectic thinking will be underlined, as of 1934 by Léon Cornil, a Belgian high court judge, who considered eclecticism as the main characteristic of the social defence school in Belgium: “If the sociological and anthropological schools based on determinism are apparently in total opposition with the classical school based on free will, their conciliation would not be impossible in the realm of facts; their collaboration is necessary and allows to create a new doctrine which would have the most positive effects in the fight against criminality. *The school of social defence was born.*”¹⁴⁹

3.1.5. Classifying according to dangerousness: the return of the criminal anthropology

Once a dual system of penalties and measures depending on the dangerousness of criminals is established, it becomes vital to sort and classify these offenders based on their criminogenic nature and dangerousness: “The core issue is to determine categories of condemned and to treat them depending on the class to which they belong.”¹⁵⁰ Which

Prins opposes to solitary confinement - a legacy of the *Quakers* philosophy based on “solitary meditation, lonely work, walks on isolated courtyards” - the benefits of “community service, common life, common work and group exercise” (p. 174.) On this, see also Prins, *Science pénale et droit positif*, pp. 439-444; Mary, Ph., *De la cellule à l’atelier. Prins et la naissance du traitement des détenus en Belgique*, in, *100 ans de criminologie à l’ULB*, pp. 161-184.

¹⁴³ Prins, “La loi sur la libération conditionnelle et les condamnations conditionnelles”, *Journal des Tribunaux*, 582 (1889), pp. 1-11.

¹⁴⁴ Prins, “La loi sur la libération conditionnelle et les condamnations conditionnelles”, *Journal des Tribunaux*, 583 (1888), p. 18.

¹⁴⁵ Prins, “La loi sur la libération conditionnelle et les condamnations conditionnelles”, *Journal des Tribunaux*, 589 (1888), p. 141.

¹⁴⁶ Prins, *La Défense sociale et les transformations du droit pénal*, p. 77.

¹⁴⁷ Wils, K., *De omweg van de wetenschap. Het positivisme en de Belgische en Nederlandse intellectuele cultuur, 1845-1914*, p. 305.

¹⁴⁸ Prins, A., “L’esprit nouveau dans le droit criminel étranger”, *Revue de droit penal et de criminologie*, 1912, p. 145. On this transactional choice, associated with a “third way”, see Collin, F., “Etude critique du système de Ferri”, *Revue de droit pénal et de criminologie*, 4 (1927), pp. 435-452.

¹⁴⁹ Cornil, P., “Manifestation Adolphe Prins, 15 décembre 1934”, *Revue de l’Université de Bruxelles*, 1934-1935, pp. 231-251.

¹⁵⁰ Prins, *Criminalité et repression? Essai de science pénale*, p. 353.

category of individuals should the “security measures” be reserved to?”¹⁵¹ Through his works, Prins regularly targets abandoned children, defective women, beggars and vagrants but above all, professional criminals and recidivists or even the insane criminal.¹⁵² If insane criminals pose a dreadful danger given their “invariably defective” character, recidivists represent another important target as they increase figures on delinquency¹⁵³, often “look for trouble and unrest” and therefore pose a constant political danger¹⁵⁴. For these last two categories of dangerous individuals, the security measures become stricter: the aim is to conceive a security system capable of “distancing them for as long as possible or even eliminating them from a social life in which they are incapable of following rules.”¹⁵⁵

If these classifications clearly point out the figures of the threat, they also contribute to draw a line, although not always clear, between “normal” and “abnormal” people in a context of a shared fear for degeneration¹⁵⁶. Amongst the different figures of deviance mentioned at the time, the individual’s “defective” nature always crosses the line over to the dangerous side of the scale. It is worth dwelling for a minute on this issue: it refers to Prins’ reading of the relationship between social and biological causes when explaining crime and criminal and his position seems to have evolved overtime concerning this problem.

In his article *Criminalité et l’Etat social*, published in 1890, Prins seems to favour a social explanation of crime over an anthropological approach of the criminal. Quite critical of Lombroso, he dismisses “the fictitious average man” of the classical school as well as the “Criminal Man” figure proposed by the Italian psychiatrist: “When studying a criminal’s physical traits, it (Lombroso’s school) has generalised too much the result of its studies and has unknowingly emulated metaphysics, for the type of anthropological criminal it has created is as far from reality as the abstract and ideal type created by Kant.”¹⁵⁷ According to Prins, there is no such thing as a born criminal. It is not that the type described by Lombroso can not be found amongst criminals, this type exists and “recently Gall and Lavater have studied it”, but it should not become an ideal type of the criminal.¹⁵⁸ Prins opposes to Lombroso’s born criminal the different types of criminals shaped by their living conditions and the context in which they live. Certainly, biological determinism or heredity can play a role in passing on the criminal role, but a criminal is first of all a “social type” and “social laws rule anthropological laws.” In Prins view, the consequence is important: if crime is first the result of social causes, responding “through social means” is then justified, whereas

¹⁵¹ Prins, A., “Allocution à la séance du Bureau central de l’Union Internationale de Droit Pénal à Paris, le 20 avril 1912”, *Revue de droit pénal et de criminologie*, 1912, p. 277. Prins also considers classifying and diversifying prisons following the types of criminals (Prins, *Science pénale et droit positif*, pp. 445-453).

¹⁵² See Prins, *La Défense sociale et les transformations du droit pénal*, chapter IV : «La notion de l’Etat dangereux».

¹⁵³ Prins, A., “Le péril moral et social de la récidive d’après les dernières données statistiques”, *Revue de l’Université de Bruxelles*, 1905-1906, 545-566. See also Prins, A., “La loi sur la libération conditionnelle et les condamnations conditionnelles”, *Journal des Tribunaux*, 555 (1888), pp. 1105-1108. Prins underlines that the increase of recidivist cases mainly concerns correctional and police tribunals and therefore not criminal cases.

¹⁵⁴ Prins, *Les difficultés du problème répressif*, pp.118-1119; Prins, *La défense sociale et les transformations du droit penal*, p. 90.

¹⁵⁵ Prins, “Allocution à la séance du Bureau central de l’UID, Paris, 20 avril 1912”, *Revue de droit pénal et de criminologie*, 1912, p. 279.

¹⁵⁶ On abnormality, see Foucault, M., *Les Anormaux. Cours au Collège de France, 1974-1975*, Paris: Gallimard, 1999; on the link between dangerousness and degeneration, see Da Agra, C., “Dangerosité et dégénérescence. La médecine mentale en Belgique à la fin du XIXe siècle et au début du XXe siècle”, *Généalogie de la défense sociale en Belgique*, pp. 91-111.

¹⁵⁷ Prins, *La criminalité et l’Etat social*, p. 5.

¹⁵⁸ Prins, *La criminalité et l’Etat social*, p. 6.

giving the primacy to “the biological need” only leads to “isolating, distancing and eliminating criminals.”¹⁵⁹

20 years later, in *L'esprit nouveau dans le droit criminel étranger* (1912), a more pessimistic Prins seems to reverse the relationship between social causes and biological factors in the hatching of dangerous individuals. Is it the influence of the doctors he rubs shoulders with in the ‘cercle de criminologie’ at the ULB or that of Doctor Vervaeck, the Director of the new Penitentiary Anthropology Laboratory established in 1907?¹⁶⁰ Prins strongly emphasises the dangerousness linked to the existence of “negative biological factors.” Who are the truly dangerous individuals? These are “deficient” or “inferior” beings with an “inherited inability”, “abnormal” or “disgraced”, “degenerated and incompetent criminals.” These are all the more terrible than “feeble minded” and marked by a hopeless “mental and moral deficit”.¹⁶¹ Source of weakening for society, this “social waste”¹⁶² seems to have become hopeless. Giving more room to the anthropological side of positivism at the end of his life, Prins returns to the biological aspect, highlighting in another text the importance of “helping to improve the race.”¹⁶³ The consequence is the opposite to the one he drew twenty years ago in combatting crime: regarding “the abnormals”, the aim is not focused on combatting through social means but rather foreseeing special security measures of unlimited duration, to keep them away from society. At the other end of the *continuum* of measures and penalties, social defence leans on necessary social elimination measures for the common good but also to fight against the degeneration of the race.¹⁶⁴

The epidemic of crime will be fought with this set of measures and penalties. At a time obsessed by fear of degeneration, Prins does not hesitate to use the medical metaphor. If modern States have “perfected their means of fighting against the contagion of epidemics” to preserve society from “the disabled and the sick”, they must protect themselves by resorting to similar methods against the “morally disabled” in order to fight against the “contagion of criminality.”¹⁶⁵ Beyond the humanist proclamations, fear seems to be the ultimate guide for a social defence project primarily destined to maintaining order.

3.2. Adolphe Prins’ impact on penal discussions and reforms

3.2.1. Prins, co-founder of the *International Union of Criminal Law* and promoter of the *Revue de droit pénal et de criminologie*

As young professor of criminal law at the Free University of Brussels, Prins starts his writings on criminal matters with an *Essai sur la criminalité d’après la science moderne*, published in 1880 in the *Revue de Belgique*. Right after, his prolific writings are marked by three reference works: *Criminalité et répression. essai de science pénale* (1886), *Science*

¹⁵⁹ Prins, *La criminalité et l’Etat social*, p. 6.

¹⁶⁰ Vervaeck places strong emphasis on the “constitutional degeneration” as a fertile ground for social abnormalities and different forms of criminality (Vervaeck, L., “Le traitement de tous les délinquants dans le cadre pénitentiaire”, Rapport présenté au IX Congrès de médecine légale de langue française, Paris, 26, 27 et 28 mai 1924”, *Médecine Légale*, T.IV, 5 (1924), pp. 165-192.

¹⁶¹ Prins, *La défense sociale et les transformations du droit penal*, p. 94.

¹⁶² Prins, *L’esprit nouveau dans le droit criminel étranger*, pp.134-136 and 141.

¹⁶³ Prins, A., “L’évolution du patronage”, 1911, p. 589

¹⁶⁴ This thesis will be strongly supported by Vervaecke, “La stérilisation des anormaux et des criminels dangereux”, *Revue de droit pénal et de criminologie*, 1926, pp. 23-30.

¹⁶⁵ Prins, *De la transformation des idées directrices du droit criminel*, p. 18.

pénale et droit positif (1899) and *La défense sociale et les transformations du droit pénal* (1910), as well as the publication of numerous articles on criminal matters, enlarged from 1880 to 1912.¹⁶⁶

A prolific writer, Prins is keen to spread his ideas in the scientific and political world. In addition to organising the “circle of criminology” at the ULB, he leaves his mark on two important fora. On an international level, Prins founds in 1889 the International Union of Criminal Law (UIDP) with the German von Listz and the Dutch van Hamel. Under the leadership of the three academics, the UIDP plays an important role in the creation, the discussion and the diffusion of the new criminal science in Europe through several congresses held from 1889 to 1912. Keen to promote the necessary transformations of criminal law, the Union is inspired from the outset by the ideas of the Italian School and its first bylaws require members “to fully adopt positivist dogmas.”¹⁶⁷ However, the revision of the bylaws at the Lisbon Congress in 1897 led to a more moderate positioning¹⁶⁸: through the years, the Union adopts a more cautious logic, reconciling the useful advances of the new positivist criminal science, its anthropological and sociological explanations of crime with the requirements of the “Republican law.” (*le droit républicain*)¹⁶⁹ As such, it looks for a third way given the impasse of classical criminal law and the excess of the Italian school; a stance which incurred the wrath of Enrico Ferri: for the latter, the refusal of globally endorsing the Italian School’s programme and the quest to compromise sink the UIDP in “the limb of eclecticism.”¹⁷⁰

Within the Union, Prins greatly contributes to the creation of this new common criminal law inspired by social defence, which largely corresponds to his ideas. In this regard, the report presented by E. Garçon at the Amsterdam Congress in 1909 is enlightening. In an extremely dense text, Garçon proposes a synthesis of the new criminal science which could have been written by A. Prins: a criticism of the “metaphysical” classical project and the will to look at the “real criminal” beyond the committed penal act; a criticism of the “born criminal” theory but acknowledging that there are degenerated criminals; an emphasis on the social and biological causes leading to the criminal act and an insistence on dangerousness as criterion of social reaction; the adoption of security measures for specific dangerous figures such as the insane or recidivists but complying with the legal framework of a penal code “which is also a guarantee of civil freedom” for primary criminals; a criticism of “certain theories which claim to be inspired by the new ideas but seem to forget or disregard these principles” but a willingness to reform. All these elements are included in Prins’ work, as well as the reconciliation spirit concluded openly by Garçon: “The idea is not to condemn the reformist ideas held by the International Union of Criminal Law, nor to abandon the main principles upon which modern governments are based on: it is only necessary to reconcile them. Pursuing these new ideas by restoring arbitrary in criminal law would come at a high cost for progress.”¹⁷¹ It is undoubtedly difficult to determine who, Prins or the UIDP, has influenced the other one more. At a minimum, a phenomenon of crossed-fertilisation can be mentioned, which reproduces itself in the Belgian context.

¹⁶⁶ For a list of Prins’ criminal publications, see “Bibliographie des Ecrits d’Adolphe Prins”, *L’oeuvre d’Adolphe Prins*, pp. XV-XXII.

¹⁶⁷ *Bulletin de l’Union Internationale de droit pénal*, 1889, 4.

¹⁶⁸ Jescheck, H.H., “L’influence de l’Union internationale de droit pénal sur l’évolution de la politique criminelle”, *Actes du XIIe congrès de l’Association internationale de droit pénal*, Hambourg, 1979, p. 34.

¹⁶⁹ Donnedieu de Vabres, H., “Le professeur E. Garçon et l’Union internationale de droit pénal”, *Revue internationale de droit pénal*, 1951, p. 197.

¹⁷⁰ Ferri, E., *Sociologia criminale. Quarta edizione con due tavole grafiche*, Torino, p. 53.

¹⁷¹ Garçon, E., “Rapport présenté au Congrès d’Amsterdam de l’Union Internationale de Droit Pénal”, *Revue de Droit Pénal et de Criminologie*, 1909, pp. 393-400.

In Belgium, Prins finds a second important relay to spread his ideas. In 1907, the *Revue de droit pénal et de criminologie* (RDPC) is founded by Raymond de Ryckere, a lawyer of the Brussels Bar and Henry Jaspas, one of the founding members of the circle of criminology at the ULB, under the patronage of Jules Lejeune, former minister of Justice. Jaspas is also member of the UIDP and author of a doctoral thesis under the supervision of Prins¹⁷². Since its creation, the periodical is chaired by Prins and supposed to act as the organ of the Belgian section of the IUDP¹⁷³. In its premier issue, a “foreword” explains the framework of the editorial project: the aim is to promote the new criminal science as it is being constructed within the UIDP and to relay in Belgium the discussions introduced by the “Italian school with Lombroso, Ferri, Garofalo, Sighele, Colajanni; the French school with Tarde, Maouvrier, Lacassagne, Brouardel, Magnan, Garçon, Gauklet, Garraud, Saleilles; the German school with von Liszt, the Dutch school with van Hamel and the Belgian school with Prins, Héger and Houzé.”¹⁷⁴ The journal is clearly part of the “third way” embodied by the UIDP. Encouraged by “three of the most illustrious criminalists of our time, Professors Prins, van Hamel and von Liszt”¹⁷⁵, this third way has modernised criminal science “by completing and correcting the efforts of the Italian and French schools.”¹⁷⁶ Conveying faithfully the options defended by A. Prins, the foreword mentions the “sometimes reasonable” criticism levelled at the “old ideas”, and mainly at the principles of free will and responsibility which lay the foundations of classical criminal law. The text emphasises the importance to comply with this “primal truth that there are no crimes but rather criminals” and the need to focus on these diverse figures of dangerousness which are “recidivists, insane criminals, defectives, vagrants, abandoned children, perverted children and abnormal children.”¹⁷⁷

Adolphe Prins signs one of the two inaugural articles of the first issue of the RDPC, clarifying the axes of the editorial project. The aim is to highlight the impasses of classical criminal law based on responsibility and to replace the retributive and expiatory neoclassical project by a new social defence penology; to discuss the role and importance of psychological and social determinism in the hatching and trajectory of criminals, both young and adult, the need to categorise and sort these criminals depending on their degree of dangerousness, and thus, to diversify the defence and protection systems to be applied.¹⁷⁸ Afterwards, between 1907 and 1912, Prins publishes six articles in a journal which is the main megaphone in Belgium for his ideas as well as for the debates which take place at the UIDP¹⁷⁹.

Through these two channels, an international and a national one respectively, Prins largely contributes to the diffusion of a reform project which he fine-tunes in his three reference books. But his influence is not only a theoretical one. Several significant legislative reforms carry his mark or, at least, the mark of the ideas he defends.

¹⁷² Jadot, J.M., “Jaspas”, *Biographie Belge d’Outre-Mer*, T.VI, 1968, p. 539.

¹⁷³ Radzinowicz, L., *Adventures in criminology*, London-New York: Routledge, 2002, p. 52.

¹⁷⁴ Jaspas, H., “Avant-propos”, *Revue de droit pénal et de criminologie*, 1907, p. 5.

¹⁷⁵ Jaspas, *Avant-propos*, p. 6.

¹⁷⁶ Jaspas, *Avant-propos*, p. 11.

¹⁷⁷ Jaspas, *Avant-propos*, 1907, p. 11.

¹⁷⁸ Prins, “De la transformation des idées directrices du droit criminel”, *Revue de droit pénal et de criminologie*, 1907, pp. 14-20.

¹⁷⁹ For instance, see Prins, A., “Allocution à l’Union internationale de Droit pénal”, *Revue de droit pénal et de criminologie*, 1912, pp. 175-180.

3.2.2. Prins' influence on penal reforms in Belgium

As seen in social matters, Prins is a thinker committed to practice. The same applies to criminal matters: his contacts with several Ministers of Justice in Belgium as of the 1880s, amongst which several have been members of the circle of criminology at the ULB, favour the translation of his ideas into reforms.

Since he is named General Prisons Director in 1884, Prins becomes close to Jules Le Jeune, Minister of Justice who declares to the House in 22 January 1891: "I place great importance on Mister Prins' opinions... Furthermore, as long as he reports to me, he shall occupy the highest rank in the administration of prisons, since he is at the highest status of my appreciation."¹⁸⁰ This comment might as well have been attributed to one of Le Jeune's successors as Minister of Justice, either Léon de Lantsheere or Henry Carton de Wiart before the First World War, or Emile Vandervelde right after the end of the conflict. Prins' influence indeed marks most of the social defence draft acts and laws which, between 1880 and 1930, complete the 1867 Penal Code whose principles are not altered.¹⁸¹

Under Jules Le Jeune (1887-1894), the text are numerous¹⁸²: the most prominent are the *Act of 31 May 1888 which establishes suspended sentence and conditional release in the penal system*; a *draft Act of 05 July 1889 on the application of solitary confinement*; a *draft Act of 10 August 1889 on child protection*; a *draft Act of 15 April 1890 on an increased sentence for recidivists* and a *draft Act of 15 April 1890 on the organisation of special asylums for the internment of the mentally ill offenders, alcoholics and condemned with serious illnesses*; a *draft Act of 08 November 1891 on controlling alcoholism*; an *Act of 27 November 1891 on repressing vagrancy and begging*; an *Act of 27 November 1891 on public assistance*; a *draft act of 26 July 1893 setting a special prison system for recidivists*.

On the one hand, the new legislative trend is encouraging public assistance, promoting alternatives for short prison sentences through suspended sentence, and establishing a progressive system of detention with conditional release. On the other hand, the aim is to suppress the sentence reduction given by a 1870 Act to detainees serving their sentence in solitary confinement and to multiply diverse protective or security measures to better defend society against dangerous children, vagabonds, beggars, alcoholics, recidivists and the criminally insane. If all these initiatives do not succeed right away, they highlight the symbiosis between Prins and a Minister of Justice which "voiced his ideas."¹⁸³ And even though these acts or draft acts are *a priori* supported by a humanist vision, they indicate the security priority of social defence. Henry Jaspar clearly emphasises it in an article devoted to Jules Le Jeune's legislative work in 1911: commenting on the Act on suspended sentence and conditional release from 1888 as well as on the Act on child protection adopted in 1912, Jaspar states that "it would be a mistake to imagine that it was mainly kindness which dictated

¹⁸⁰ Chamber of deputies, *Annales parlementaires*, 1890-1891, 22 Januari 1891, p. 795.

¹⁸¹ For a general analysis, see Weber, D., *Homo criminalis. Belgische parlementsleden over misdaad en strafrecht*, 1830-1940, Brussel, 1996.

¹⁸² See Christiaensen, S., *Jules Lejeune tussen klassieke en moderne politiek. Leven en beleid van Jules Lejeune*, Leuven: Universitaire Pers, Leuven, 2004.

¹⁸³ Tulkens, Fr., van de Kerchove, M., Cartuyvels, Y., Guillain, Ch., *Introduction au droit penal. Aspects juridiques et criminologiques*, Diegem: Kluwer, 2014, p. 116.

the acts he (Minister Le Jeune) proposed... What concerns the Minister the most is recidivism, which in a few words is the defence of society.”¹⁸⁴ No more, no less than Prins.

Thereafter, we might mention the transformation of two draft acts into laws, under Minister of Justice Henry Carton de Wiart (1911-1918). The first one is the *Act of 15 May 1912 on child protection*. In accordance with Adolphe Prins’s views, the new law introduces a system of “custody, preservation and educational measures” regarding juveniles which at the time are considered to be the “incubators of dangerous classes.”¹⁸⁵ The second one is an *Act of 1 May 1913* which revoke the Act of 04 March 1870 providing a reduction of the prison sentence if executed under the regime of separation. Presented as having been inspired by social defence, this act actually confirms solitary confinement as the basic imprisonment system and does not really carry the mark of Prins’ critical vision on solitary confinement¹⁸⁶. It is later, encouraged by Emile Vandervelde as Minister of Justice (1918-1921), that a reform of the prison system more in line with Prins’ ideas takes place, by softening solitary confinement, the creation of a Prisons Superior Council and a central labour system within correctional institutions.¹⁸⁷

Finally, the *Social defence Act of 09 April 1930 against abnormal criminals and habitual offenders* is promulgated, years after Prins’ death. Encompassed in a single text, although in separate chapters, this act plans security measures, which replace penalties for the insane criminal but are added to the sentences for recidivists and habitual offenders. Addressing two main figures of abnormality and dangerousness, this act is undoubtedly the most representative of the securitarian aspect of A. Prins’s social defence doctrine.

4. Conclusion

Adolphe Prins has definitely left his mark in the renewal of the criminal thinking at the turn of the 19th and 20th centuries in Belgium. Adherent to the scientific positivism which prevail in the “School of Brussels”, Prins considers himself from the outset as a reformist in the political, social and criminal areas, with an ultimate goal: to preserve social order. In his view, the excess of inequalities as well as the growing criminality represent a significant social threat in societies characterised by a porous border between the proletariat to be integrated and a sub-proletariat tempted by crime and rebellion.

Faced to this threat, highlighted by the 1884-1886 crisis, Prins conceives a reform project whose two main aspects complement each other. For the working classes, a vital social reform is aimed at a greater real equality and also greater social integration. If the bourgeoisie wishes to preserve the current system, it is time for capital to make the necessary concessions. Justified by a justice ideal, the social laws supported by Prins are laws protecting social order, which in a way turn them into social defence laws; for those who escape the integrative frameworks of the State’s social project, an integrated set of socio-penal measures needs to be developed. For those deviant individuals, situated at the edges of crime or already fallen into it, Prins proposes an articulated combination of preventative measures, penalties

¹⁸⁴ Jaspar, H., “Jules Le Jeune et Son Oeuvre de législation criminelle”, *Revue de droit pénal et de criminologie*, 1911, pp. 260-261.

¹⁸⁵ Act of 27 November 1891 on the repression of vagrancy and begging, *explanatory statements*.

¹⁸⁶ Didion, Ch., L’abrogation de la loi du 4 mars 1870 relative à la réduction des peines, *Revue de Droit Pénal et de Criminologie*, 1913, pp. 435-452.

¹⁸⁷ See Mary, *De la cellule à l’atelier. Prins et la naissance du traitement des détenus*, pp. 176-184.

and security measures depending on the dangerousness of each individual. A “holistic” thinker who defends an organic vision of society, Prins proposes a common and integrated project supported by the same matrix of social defence, on both the social and criminal spheres.

If the basic orientation of the project - to defend society against the social threat - is clear, its range is more complex. In Prins discourse, social utilitarianism is hybridized with a humanist concern, resulting in a compromise logic, in social and in criminal matters. This willingness to reconcile or articulate the opposites is always visible in Prins’ works. However, perhaps compromise is not of the same nature in the two fields. In social matters, a substantially conservative project significantly contributes to changing the balance of social relationships. Critical towards the Liberal State Law, Prins encourages a more egalitarian social project and advocates for real rights for all. Trusting society’s ability to reform, he believes in progress and defends the shift towards the Social State. In criminal matters, Prins is not deprived of humanism. He emphasises prevention, promotes a progressive system in prisons, and defends an ideal of treatment, so many elements which will be central to a welfare penal project based on integration and reintegration. But his discourse becomes much harder when it comes to that “social garbage”, which cannot be recycled according to the society requirements. Less optimistic, Prins is moved by the fear of “regression” which marks this period: degenerated, abnormal and other defective individuals, often described as hopeless, represent a social threat from which society needs to be safeguarded. Removal from society is often the only way to fight against the “contagion” or the “epidemic” represented by these categories of hopeless individuals. It is in these uncompromising parts that a “totalitarian temptation”¹⁸⁸, sometimes reproached to Prins and his panoptic grid of deviance, can be read. And if the integrative aspect of social integration or social defence is conciliatory, its security aspect becomes violent. A discursive violence, with a language that reduces diverse figures of deviance into hopeless waste, degenerate and dangerous individuals; and an instrumental violence, by encouraging the implementation of structures aimed at radically separating the dangerous from the rest of society.

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¹⁸⁸ Tulkens, *Un chapitre de l'histoire des réformateurs*, p. 46.

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