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**BIOLOGICAL DETERMINISM AS A FOUNDATION
OF CRIMINOLOGICAL THEORY OF INBORN CRIMINAL:
HISTORICAL LEGAL ASPECTS**

Actuality of work is conditioned by the increase of interest to the biological direction of criminology due to scientific and technological advance in modern scientific world.

The aim of the work is to investigate the ideological foundation of the inborn criminal theory, its law basis in Ukrainian legislation and the type of social organization of society in which realization of this criminological theory is possible. Investigation of ideological foundation provides determination of special methodology. The methodological basis of investigation of inborn criminal theory in the given work is ten general principles of integrity of science. That were worked out by German scientist Ernest Creek.

Italian criminal anthropologist and psychiatrist, professor of Turin university Cesare Lombroso at one time was working on systematization of inborn criminal theory on the basis of empirical material. He considered criminal personality to be a special biological species that inherits atavistic properties of his ancestors from earlier evolutionary period and which is a degenerate with his peculiar psychological and physical indications. Degeneration consists of mental diseases, sexual perversions and

physical deformations. Using anthropological and anthropometric methods, Cesare Lombroso based the definition of an inborn criminal.

The ideological foundation of the inborn criminal theory is biological determinism. Biological determinism – is an outlook due to which phenomena of social character are explained by the influence of hereditary biological factors. In the given case methodological position is the idea about socio biological nature of a human. Non-recognition of influence of biological factors on individual's behaviour criminal behaviour in particular leads to dualism of definitions and as a consequence to one-sided perception of social phenomena. Biological determinism studies biological precondition of any social activity, connected also with criminal behaviour with the help of science methodology of political anthropology, whose founder is Ludwig Woltmann, criminal anthropology by Cesare Lombroso, anthropological sociology by Georges Vacher de Lapouge, ethical anthropology by B. O. Didenko.

View on the nature of criminal behaviour from the point of view of socio biological approach provides the change of ideological foundation of the general theory of state and law.

From the point view of biological determinism state according to ideas of Herbert Spencer , Hans Hartman, Carl August Эмре , Hans Alfred Hourounsky and others supporters of biological determinism is regarded from biological point view and is considered to be national organism. In the given case the reasons of negative social events are the process of degeneration that are shown more brightly as criminal behaviour. The duty of organs of state government is to control processes of degeneration and as a consequence – the level of criminality. As is well known such negative phenomenon can't be eradicated for ever but it is possible to decrease this level.

The idea of controlling the level of criminality is rational at the first sight but it has its ideological utopia. It should be noted that from our point of view any rational scientific idea has utopia in its essence. As Hans Hartman mentioned: «Social utopias always showed way to mankind» [1, c.497]

Corresponding to liberal democracy is the democratic society.

Socio-political processes are not static, but dynamic, that's why the state must always have the aim , the final result. In our opinion, although civil society is opposed to communistic, governing ideas are the same. The main difference is the idea of equality which civil and communistic society are striving for and which is opposite to definition of justice. Such kind of social utopia of common equality was criticized by Friedrich Nietzsche in his work «Thus spoke Zarathustra». [2, c.22]

The idea of equality which is characteristic for communistic and civil society in its essence makes recognition of inborn criminal theory impossible.

For biological determinism characteristic utopia is society of genetic socialism for which elitism is characteristic

The utopia mentioned above may become an ideological foundation for inborn criminal theory. The difference is that liberal and communistic doctrines offer to improve an individual owing to improvement of external social environment. Genetic socialism offers to improve external social environment, i.e. to decrease criminality level owing to improvement of its genetics. The revolutionary essence of genetic socialism is that in sphere of struggle with criminality organs of government are ruled by preventive methods of the founder of inborn criminal theory: to move not from crime to the criminal but vice versa.

That is accentuation of criminological investigation shifts from traditional object of research – criminal event itself to the criminal personality in criminology but it still doesn't investigate the criminal personality in full. In genetic socialism society the priority task of the state is struggle with criminality, which is equal to struggle with degeneration. It should be noted that it doesn't concern encroachment on the rights and liberties of man and citizen that are proclaimed by the Constitution of Ukraine. According to general theory democracy has its varieties.[3] But we consider understanding of democracy, which is the most spread in law is irregular because the term «democracy» is power of people that is law priority of nation. According to modern definition the most essential principle of democracy is law priority of individual over people laws.

In Ukraine it is necessary to recognize representative national democracy which differs from liberal democracy. In liberal democracy civil rights and liberties are considered to be independently individual and superior that's why recognition of inborn criminal theory contradicts the theory of liberal democracy. We consider that to recognize individual rights dominant in comparison with national rights is irregular because the state is not a set of isolated individuals but an organization and thus human rights is a constituent of rights and collective duties of people. The inborn criminal theory can defend national rights and rights of individual belonging to people. The main idea of representative national democracy is interests of majority. Genetic socialism society is democratic because it defends rights of the majority, asocial elements of society – inborn criminals is always the minority. When rights of the individual, especially who may be disposed to criminal behaviour according to anthropological theory of inborn criminal are recognized as dominating the national rights the opposition of private and collective interests takes place. Individual and citizen is a part of nation at a whole. The personality realizes its interests not in itself but as a part of a whole.

The Constitution of Ukraine creates law foundation for ideology of biological determinism. In article 11 of the Constitution it is noted that the state promotes consolidation and development of the Ukrainian nation and the article 5 of the Constitution of Ukraine recognizes nation the only of power i.e. priority of collective interests occurs, also the article 16 of the Constitution of Ukraine recognizes preservation of genofond of Ukrainian nation

as a duty of the state [4]. We consider that preservation of genofond of Ukrainian nation provides the duty of state to struggle with degeneration of the nation that will promote decrease of general level of criminality in the state.

It should be also mentioned that inborn criminal theory promotes approval of the holistic outlook, which is necessary for building the genetic socialism society. Ten principles of science integrity was worked out by German scientist Ernest Creek [5, c.175-177].

1). Principle of dependence of all the sciences from life. According to Creek: scientific cognition passes not only between formal subject (pure mind) and the definite object; scientific cognition is defined by the whole mankind, that cognizes in whole.

We consider that inborn criminal theory takes into account dependence of criminology from natural sciences and all vital factors of influence on the formation of criminal behaviour – both social and biological, i.e. it can research principle of dependence of criminology as a science from life.

2). Principle of dependence of reality and connections with reality. According to definition by Creek there's no any spirit that hovers over reality in separate space and that's why there's no pure cognition. The spirit (mind) is a form of demonstration of life that expresses its form, kind and directivity. The same is with the science.

Sociological theory of criminal behaviour is a refined abstraction, as the theory of pure law by Kelsen because connection of sociology with biology is not taken into account. The personality of the criminal in this case is investigated not as a personality but as a mechanism of a machine that

doesn't have its programme of behaviour given by nature, but is influenced only by the society. The origin of the idea of sociological theory of criminal behaviour comes from mechanical outlook on social phenomena, man and state, which is characteristic for ideas of mechanism by Baruch Spinoza and Isaac Newton who considered that human doesn't differ from machine.

3). Principle of national and racial conditionality of any science. Creek considered that being and formation of every human is connected with the higher whole in which human's life has sense. Thus the nature of his scientific cognition is due to this whole notably – to the nation and its racial background.

During investigation of inborn criminal theory, except physical signs one should take into account that those physical signs that are defined as a norm in one races may be considered as signs of degeneration in other races. According to classification by Gunther European races are divided into Dinaric, Phalian, Norman, Western, Eastern, Baltic. For profound investigation of mentioned criminological theory it's necessary to take into account views of different races on criminal inborn theory.

4). Principle of historical conditionality of any science. According to Creek any human lives in definite epoch. Realia of this epoch and its tasks define the nature of questions that it asks the world and also the method and the direction of scientific cognition. The possibility of cognition itself – a part of life as a whole is defined by its character and interaction with it in process of historical changes.

The criminal inborn theory answers to the realia of the present from the point of

achievements of genetics and necessity of using achievements of natural sciences in struggle with criminality. Sociological methods of upbringing, humanization don't reach their aim notably – decrease of general crime rate, thus socio biological methods must replace them.

5). Principle of independence of any science from territory. In Creek's opinion: any human according to questions he asks the world and the character of his scientific cognition is connected with conditions of his Motherland, his origin, profession, religion and etc. Hence it appears the variety of possible and changing formulation of questions, initial points, scientific views.

Thus while introducing criminal inborn theory it's necessary to take into account views of different religious confessions, professions must answer to the interests of the whole society, the state as a whole and top value that proclaims rights of the Nation, and the criminal inborn theory itself serves not the individual but the interests of majority – the Nation.

If any religious confessions or trade unions don't admit this criminological theory they contradict interests of the whole society.

Ukraine, to the great extent, is a Christian state, and the criminal inborn theory is also mentioned in biblical stories about Cain's descendants. Thus some signs of inborn criminals are also called «the brand of Cain».

6). Principle of international importance and historical nonresistance of scientific achievements. Creek considered that the possibility of international exchange, mutual understanding and friendship, and creation of international unifications, churches and etc. is based on biological unity of all

mankind, notwithstanding the racial and national differences and historical changes. Therefore the results of scientific cognition which are received in definite national, racial and historical changes. Therefore the results of scientific cognition which are received in definite national, racial and historical conditions rest real for international cultural circles until these circles are developing in one direction.

It should be noted that the final aim of inborn criminal theory is the struggle with the process of biological degeneration in society and as consequence of social degeneration that promotes criminal behaviour – is an indispensable scientific direction of criminology development for all mankind.

7). Principle of integrity of any science. In Creek's opinion the aim of any science whatever special problems it studies - the world and the mankind is a unit. According to the definition given by German scientist: science is a method of formatting the picture of the world. Each branch of science has its own view on the world and mankind as a whole and thereby it is organically included into ideological space of science. The scientist considered that there's only single science with variety of aspects, branches and special initial points.

The approval of inborn criminal theory in criminology will promote the reduction of this science according to the general principle of integrity of sciences. Inborn criminal theory overcomes the dualism of terms of biological and social while investigating the criminal personality and regards the human as an integral system of socio biological origin.

8). Principle of connection of any science with outlook. Creek considered that unity of science with variety of its aspects, branches and initial points becomes possible and has sense in separately defined outlooks which is defined by fate of the whole cultural circles versus its racial and national type, its historical situation and tasks.

Any outlook is a system of ideas. The ideological background of the inborn criminal theory is biological determinism mentioned above, which was the result of all European science. It should be noted that biological determinism doesn't refer only to inborn criminal theory, but it's a complex entire system of ideas (holistic outlook) on individual, society and state.

9). Principle of modernity of any science. In Creek's opinion: scientific cognition of remotest and the most detached things is conditioned by actual problems, i.e. depends on conditions in a denoted vital space, its situations and tasks, its political and vision choice. Thus the scientist came to the conclusion, that scientific cognition may unite past and future with the present, to give them the general sense and the general direction.

We consider, societies that solidified as «blank forms» are doomed to perish. Sociological theory, that dominated with Marxism and was inherited from soviet communism to modern Ukrainian democracy is blank abstract form, that demonstrate its discrepancy to the present by example of disintegration of Soviet Union. Inborn criminal theory, taking into account its formation and development, combines past and present with the help of own methods from the point of modern genetics that can prove the

majority of points of Italian school of criminal anthropology, laws of heredity by Mendel, achievements criminal anthropology school of times of the Russian Empire, investigations by Galton and etc.

10). Principle of science as force, that forms the future. According to Creek: science is becoming the force that accompanies the future. Inborn criminal theory proposes the new type of social organization – genetic socialism. Genetic socialism unlike existing ideas of social models of the society such as communistic and civil society may not only lead the achievements of natural sciences to concordance to common social interests but also to consider the future tendencies of development of natural sciences and their influence on judicial sphere.

In realization of principles of genetic socialism in sphere of law sciences by means of holistic outlook of ten principles of E.Creek instead of separated from reality theory of pure law by Kelsen that makes impossible the recognition of inborn criminal theory the leading of live law is necessary, foundations of which were made by Hans Hartman. It's always important not the judicial formality and the idea of impersonal order but interests of people. The theory of living law which ideological foundation is biological

determinism and the priority of rights not of state but of people is opposite to dualism of terms «biological» and «social» in individual, thus it creates necessary ideological foundation for the theory of biological criminality its following introduction to judicial general law sciences and criminal law sciences.

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