

Theory of criminal law essay

[Law](#), [Criminal Justice](#)



It is possible to say that without complete considering of the cause of crime and deviance there is no discussion of crime and of the criminal justice. Criminologists seek for answers to the basic questions about what causes crime: Why do criminals commit crime? What are the roots that cause aggression and violence? Is it possible to say that people are genuinely good or they only motivated by self-interest? There are plenty of explanations for crime, like individual psychological differences, genetic abnormalities, some social or mental issues that might cause people to commit crime. In like manner, it is reasonable to consider social institutions such as the family, churches, universities as well as mental and social level of development of an individual for their role in reducing or enhancing the possibility of a criminal activity. Yet still the main question is to seek, why a particular person, committed a particular crime, whether it is possible to find sociological, biological, physiological explanation to his or her actions. According to Frank Schmalleger, there are four basic theories that show why and how the criminal could commit crime: classical, biological, psychological and sociological. (Schmalleger) It is essential to mention that the victimology is a criminological doctrine of victim that considers the features of physical and legal persons, turning them into objects of criminal attacks and determines the nature and extent of their criminal vulnerability, as well as the ability of victims of crime to defend their interests from criminal attacks. Criminological victimology is the independent branch of criminology that studies the nature and behavior of the victim, the communication and relationship with the offender before, during and after the crime. (Viano). Classical theory states that the root of crime could be found in a free will of

an individual. In other words, when a person consciously and deliberately commits a crime, understanding the consequences of his or her actions and considers possible punishment. A product of the Enlightenment then sweeping through Europe, the classical theory required recognition of rational analysis of a person's actions. Most of these theories state that: crime is caused by a person exercise of free will. Punishment is a necessary evil from time to time should be used in order to deter criminal from onward crimes and is a great example for other law violators. In order to prevent crimes, according to Schmalleger, it is essential to provide particular and swift punishment. (Schmalleger)

Victimization has increased marginal's lifestyle (homeless persons, street children, beggars, etc.), immigrants. In the area of family relationships it is an elevated victimization behavior of the family members (spouses, children), that is characterized by immorality, antisocial, a tendency to abuse and harassment of other family members, creating a traumatic situation.

The second theory – biological explains that a criminal might be a criminal because of the “ criminal genes” that cause the deviant behavior. The deviant behavior – is behavior that violates social norms of a particular society. It is expressed in actions, behavior (action or inaction) individuals and social groups, who are retreating from the established law or prevailing accepted norms, rules, principles, models, customs, and traditions in a particular society (Clarke) The main directions of biocriminology include the effect inheritance and biological factors, such as nutrition, certain chemicals or other materials on the person's social behavior.

Main determinants of human behavior, including criminal tendencies, are

constitutionally or genetically based. The basic determinants of human behavior, including criminality, might be transferred from one generation to another. In plain English, if your grandfather was a criminal, you might have these “criminal genes” because of him. Moreover, according to Schmallegger, at least small percentage of person’s behavior may result of biological aptitude that was inherited from less developed species in the process of evolution, so to say the part of an individual that sometimes called “an animal part of a person”. Vice versa, biological theory claim that some people may be more developed and be situated further in the evolutionary process, and that could impact their behavior as well. This theory involves a definition on how a certain behavior might contribute to the victimization of an individual. Behavior that initiates a certain behavior of a victimizer is meant to be a victim precipitation.

The third and extremely important theory is psychological theory. According to Schmallegger, psychological theory explains that a crime is committed due to the inappropriate behavioral condition or when a person is mentally ill. (Schmallegger) The criminal is considered to be the primary unit of analysis. Within the individuals, the personality is the primary motivational element. Dysfunctional or abnormal development of person’s mental state is the main cause for the crimes.

Psychopathology is another bioscience that tries to find the basis of deviant and antisocial behavior in certain mental problems. This means that all the biological approaches focus to find certain biological predispositions and environmental causes that affect one person and enhance their chances to become a criminal. Biological approaches towards the explanation of

criminal behavior prevailed until the XX century. We can tell that from old court cases and old biocriminological publications.

The earliest attempts to subtract different features that characterize a criminal and develop a system of these features belong to Cesare Lombroso. In the late 1800s this criminologist became scandalously popular for his research. Lombroso claimed that people who have a certain appearance (like large jaws and sloping foreheads, for instance) have primitive brains and are committing crimes involuntarily, not being able to evaluate their own behavior critically. “ His chief contention was the existence of a hereditary, or atavistic, class of criminals who are in effect biological throwbacks to a more primitive stage of human evolution.” Lombroso’s theory of anthropological criminology was soon mixed up and was aided Mussolini in his racist dictatorial regime. Although, it’s necessary to say that “ Lombroso tried to reform the Italian penal system, and he encouraged more humane and constructive treatment of convicts through the use of work programs intended to make them more productive members of society.”

In contrary to Lombroso’s plans of using his theory, XX century dictatorial regimes used anthropological criminology to use in eugenics. Based on the principles of his studies thousands if not millions of people were sterilized under the purpose of their criminal inheritance. These tortures, conducted under the name of biological criminology shifted the majority of scientists towards the sociological perspective on criminology.

Active precipitation appears when the victim uses fighting words or threats, or even acts provocatively. Menachem Amir in 1971 suggested, that female victims while making the relationship with the rapist or dressing

provocatively - contribute to their attacks. The findings are significant, but courts continued to provide not-guilty verdicts in the rape cases if the actions of a victim can be defined as consenting to sex. So, for example, if a woman walks in a short dress late in the evening – she should not sue the rapist, because she knew what she did.

And the last but not the least, is the sociological theory. These theories are massively a contribution of American criminologists to the crime causation study. In the beginning of 20th century, the famous Chicago School of sociology provided one with the information that crimes are result of social influence of the person. Social theory states that various social institutions and groups provide one with enough information to focus for criminological studies. Moreover, essential factors contributing to the outspread of criminal behavior are the structure of the community, and the relative degree of the social organization. Social theories also connect cause of crime with the existence of various subcultures and organizations that may in some way promote criminal activity. (Schmalleger)

Unlike criminology, criminal law and other sciences are dealing with deviant behavior from the perspective of violations of the law. Deviant behavior as a phenomenon, that has certain historical roots, is characterized by stability and mass. The emergence of new laws and regulations entails new types of deviations. Reasons for deviation various theories are explained differently. The process of formation of deviant behavior is directly related to the process of socialization, although it is sometimes difficult to find factors of socialization. The first attempts to explain the various forms of deviation were biological. Brock French argued that in the structure of the skull and

brain criminals he sees features that distinguish them from law-abiding population. Italian criminologist Cesare Lombroso, who worked in the 70-ies of the XIX century, came to the conclusion that some people are born with criminal tendencies, and they belong to a primitive human type. According to him, criminal types can be identified by the shape of the skull.

However, the deviation is related not to the physiological or psychological characteristics of man and cross the concrete historical environment in which it exists. Most developed various aspects of sociological explanations of deviant behavior are in the theories of Durkheim, Parsons and RK Merton. They turn their attention to the process of " successful" or " unsuccessful" socialization. In other words, if a polite positive family moves to the criminal area of the city, they should not be surprised if their children's behavior will change and becomes criminal.

Groundbreaking changes are required to the structure of our community to eliminate crime; there is no doubt about that. However, it is possible to say that in general, criminal law is able to deter the criminal conduct, regardless of the cause of the crime. With the help of swift and certain punishment, or behavioral therapy that can redirect the aggression the crime situation itself could be redressed. (Schmallegger) Moreover, criminal law allows the government to apply various effective social policies that can change in patterns of socialization. The criminal law can see to it that punishment is proportionate to the crime, and with the he help of finding the root or the cause of the crime, it is possible to find the right course of actions for the criminal.

Hence, one can come to the conclusion that there are 4 theories that can

explain, why a particular person, committed a particular crime. With the help of thorough consideration and weighted analysis one can understand the very first reason why an individual has committed a crime. By doing that, it would be possible to apply a disciplinary measure according to the root of the crime's purpose.

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