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## **ПРАВОВИЙ ПОЗИТИВІЗМ У КРИМІНАЛЬНОМУ ПРАВІ ТА КРИМІНОЛОГІЇ: РЕТРОСПЕКТИВНИЙ АНАЛІЗ**

**Анотація.** У статті проаналізовано ідеї представників напрямів у позитивістській школі кримінального права та кримінології, а саме: кримінально-антропологічний (біологічний), кримінально-соціологічний (соціологічний), біосоціологічний (позитивістський) напрями. Дослідження вказує на те, що головна особливість кримінально-антропологічного (біологічного) напрямку полягає в тому, що його представники розглядали злочинця як особливий вид людської раси та особливу ненормальну істоту, наділену певними фізичними та психічними аномаліями. Вчинення злочину для такої людини є природною необхідністю. Представники кримінально-соціологічного (соціологічного) напрямку в основному скептично оцінювали висновки прихильників антропологічного напрямку, які шукали причини злочинності саме в соціальних факторах, відзначали важливість взаємодії соціальних, політичних та економічних факторів і висловлювали впевненість, що марно намагатися впливати на злочинність, не змінюючи соціальних умов, що призводять до злочинності. Розглянуто основні ідеї представників різних напрямів у правовому позитивізмі в кримінальному праві та кримінології та визначено їх значення для сучасності. Встановлено, що соціально-філософська методологія характеризується тісним зв'язком між спекулятивними методами пізнання та емпіричними дослідженнями. Зазначається, що вплив суспільного життя на всі сфери є одним із найефективніших способів боротьби зі злочинністю. Усі органи влади, а також науковці мають визначити та проаналізувати існуючі зв'язки між сучасними соціальними змінами та кримінальними процесами, що відбуваються в суспільстві. Комплексний аналіз причин злочинності може допомогти зменшити рівень злочинності

**Ключові слова:** соціологія, злочин, покарання, соціальні фактори, юридична філософія

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## **LEGAL POSITIVISM IN CRIMINAL LAW AND CRIMINOLOGY: A RETROSPECTIVE ANALYSIS**

**Abstract.** *The article analyzes ideas of representatives of the directions in the Positivist School of Criminal Law and Criminology, namely: criminal-anthropological (biological), criminal-sociological (sociological), bio-sociological (positivist) direction. The research indicates that the main feature of the criminal-anthropological (biological) direction lies in the fact that its representatives considered the criminal as a special kind of the human race and a special abnormal creature endowed with certain physical and mental anomalies. The commission of a crime for such a being is a natural necessity. The representatives of the criminal-sociological (sociological) direction mainly skeptically assessed the conclusions of supporters of the anthropological direction, who looked for the causes of crime precisely in social factors, noted the importance of the interaction of social, political and economic factors and expressed confidence that it would be useless to try to influence crime without changing the social conditions that lead to crime. The main ideas of representatives of different directions in legal positivism in criminal law and criminology are considered and their significance for the present is determined. It was established that the socio-philosophical methodology is characterized by a close connection between speculative methods of cognition and empirical researches. It is noted that the impact of public life on all spheres is one of the most effective ways to combat crime. All authorities, as well as scientists, should identify and analyze the existing links between modern social changes and criminal processes taking place in society. A comprehensive analysis of the causes of crime can help reduce crime rates*

**Keywords:** *sociology, crime, punishment, social factors, legal philosophy*

### **INTRODUCTION**

At all times, crime has evoked an acute social response. This is one of the most pressing problems that has produced considerable controversy. Crime is multifaceted and extremely complex in modern society. In the world of science there are many theories and research traditions, which compete and even complement each other. For example, some

scientists consider crime as a sign of a weakened or socially disorganized society. Paradoxical as it may sound, but others believe that criminal behavior within acceptable limits can serve to strengthen the existing legal and social order. However, other scientists examine crime as a socially conditioned result of competition and conflict between

different groups in society, believing that criminal behaviour poses a threat to certain group or class interests. Crime is considered as a recursive product, a relational and conventional social construct and a part of the historical and cultural context within the phenomenology and post-modern criminology [1].

We are convinced that criminality is a combination of crimes of one or several types, which are widespread and are regularly repeated in a country or in a particular region over a certain period of time. Crime is an integral part of human relationships. It accompanies society at all stages of its development and reflects the behaviour of individuals that are perceived as crimes by other members of society. However, it is not a social phenomenon. The authors, who consider crime as a social phenomenon, often rely only on the fact that crime is a feature of society that naturally gives rise to individual crimes. Nevertheless, the concept of “social phenomenon” does not contain the characteristics of the object that characterizes. In this case, we are not talking about crime, but about its causes and factors. In addition, a phenomenon in philosophy is a manifestation and expression of what the essence is manifested in [2].

A specific crime can be recognized as a social phenomenon. At the same time, not every crime is a necessarily consequence of relations between people. It can even be a psychological need of an insane person. The preliminary relationship between people in the case of a careless crime is out of question. The multiple offenses and their repetition are the most essential features of crime. Any one crime, for example, fraud cannot be classified as criminality just because it has become widespread. It is only a widespread fraud. However, criminality includes repeated multiple frauds, robberies, murders, etc. Therefore, it will not be correct to claim that crime is a social phenomenon. It is a set of social phenomena [3].

Modern criminology is widely based on legal, sociological, psychological and biological knowledge and the achievements of other sciences about society and man. In addition, it is rapidly developing. It is also no coincidence that discussions still continue in this field of knowledge [1]. The process of finding responses to the challenges of science is stimulated by practice and by the needs of everyday life. The global process of criminalization of society, which is aggravated every day in the world, is also palpable in Ukraine [4; 5]. The report of the Cabinet of Ministers of Ukraine states that “the number of particularly serious crimes have decreased by 17% compared to the previous year in Ukraine for 2019. A total of 142,500 cases were recorded. The number of other crimes has also decreased: crimes related to theft of vehicles have decreased by 17% (5400); crimes against property, traffic safety and the operation of transport vehicles have decreased by 15% (289000)” [6]. The crime situation remains quite alarming despite a slight decrease in the crime rate compared to 2018. Perhaps not every person in Ukraine can feel safe. A citizen usually remains defenseless in the face of criminality, and criminals are not always punished. This fact

forces modern science to turn to understanding a number of pressing problems of criminal law and criminology from the point of view of social philosophy, which considers social structures, systems and processes at the macro level and combines speculative methods of cognition with empirical research.

The philosophical study of issues related to the existence of crime, its causation, attitude to law, as well as the problems of the relationship between crime, morality and retaliation, is rooted in ancient times. The ontological problems of evil have already been mentioned in the works of famous thinkers of the ancient world, the Middle Ages and the New Age. Radical changes in the field of philosophical and world view ideas have always led to the emergence of new directions in the development of social sciences. It is known that the subject-methodological relationship of philosophy and social sciences is one of the conditions for the progress of these sciences. This relationship applies to both legal science in general and criminal law and criminology in particular, the development of which is directly related to the development of philosophy and sociology. Combating crime requires appropriate knowledge of the factors that affect it and the causes of a particular crime. It is impossible to obtain such knowledge without philosophy, because any particular scientific problem can not be solved without understanding the general problem. The study of the scientific heritage of our predecessors, who developed or used in their research a methodology borrowed from philosophy, helps to find new ways of developing modern legal science in terms of asserting the priority of individual rights and recognizing its place in a civilized society [7].

Modern scientists have already addressed the works of representatives of the Positivist School of Criminal Law and Criminology. According to N. Medvedeva, the Positivist School of Criminal Law has filled the “gaps” of the Classical school, bringing its vitality and prospects. The ideas and theories of this school should be approved in the sciences of the criminal cycle, criminal law and the practice of combating crime in accordance with the progress of the sciences that study man and society [8]. A. Sitkovskaya also states that the ideas of positivism are recognized by science and are widely used in practice [9]. M. Kostitskiy, who critically assesses the positivism of legal practice, took quite the opposite view. He noted that it is necessary to revise the methodology, both in theory and in practice, in jurisprudence. Not only practitioners, but also theorists operate with “dead” information, as a result of which life, the functioning of society, the state and law is reduced to simplified logical schemes in which real life is not visible. Practical jurisprudence degenerates into dogma and scholasticism, and the main task for lawyers is to combine the diversity of social life with ready-made schemes and standards [10]. A. Kostenko highly criticized positivism [11].

It is necessary to state our point of view regarding the main ideas of the supporters of legal positivism in criminal law and criminology and determine their significance for

the present, taking into account the different positions of modern scholars in connection with the methodology of positivism (from strong approval to critical assessments) and different interpretations of its significance for theory and practices of combating crime.

### 1. LEGAL POSITIVISM AS A SPECIAL COURSE OF LEGAL PHILOSOPHY: EMERGENCE AND EVOLUTION

The methodology of knowledge occurred in the the 30s-40s of the 19<sup>th</sup> century. The French philosopher and sociologist Auguste Comte (1798-1857) is considered to be the founder of positivism. A. Comte's work coincided with a period of profound social changes, which he perceived as a general moral, intellectual and social crisis. The scientist saw the reasons for this crisis in the destruction of traditional institutions and spiritual foundations of society and in the absence of a system of beliefs and views that would correspond to new social requirements, which could become the ideological basis for future social transformations. According to Auguste Comte, the transition of society to a new state cannot occur without the active participation of a person and his determined and creative efforts [12].

Auguste Comte sought to theoretically synthesize "positive knowledge" and substantiate the principles of sociology as a new science about society. The term "positive knowledge" was introduced into scientific parlance by Comte, who created sociology by analogy with the exact sciences, proving that this science should study the objective laws that govern the phenomena of reality. In his opinion, science should dispense with such provisions that cannot be verified. The person should be guided by the following three basic principles of sociology: empiricism, positivism and physicalism to obtain reliable knowledge. Empiricism means that the only source of true science about the world is experience. Positivism considers that the subject of science is only facts. Physicalism claims that the most perfect are the concepts that are created by physics. Positivism explains only the knowledge that is obtained through the method of observation and experiment. The task of the researcher is to explain the essence of phenomena and to establish causal relationships between them, but not to describe facts and build theoretical constructions that have nothing to do with real life. A. Comte notes that "the human spirit recognizes the impossibility of achieving absolute knowledge, refuses to study the emergence and purpose of the existing world, knowledge of the internal causes of phenomena, and, correctly combining judgments and observations, strives for knowledge of the real laws of phenomena, i.e., their constant relations of sequence and similarity in a positive state" [12]. The legal science of the 19<sup>th</sup> century was influenced by the ideas of A. Comte about the need of the researcher to identify the laws of the historical process and to study social institutions and structures. The understanding of society as an organic whole, the differentiation of the laws of functioning and the laws of development of society, and the search for factors of integration and stability became

useful in the scientific and cognitive terms. Two tendencies of positivist methodology occurred on the basis of the philosophy of positivism: legal positivism (formal-dogmatic) and sociological positivism (based on positivist methodology and sociology).

The ideas of positivism found resonance and further development among representatives of the science of criminal law in the last third of the 19<sup>th</sup> century. The essence of the positivist approach was the use of experimental researches in the study of crimes and penalties. The applying of this approach was prompted by the needs of practice that suffered from the inability of the Classical school (C. Beccaria, I. Bentham and others) to offer society effective ways to combat crime. Representatives of the Classical school associated the choice of behaviour only with the fact how a person learned the moral rules of life, considering a crime as a consequence of the conscious behaviour of a person who has complete free will and chooses options for his actions at his own discretion. They did not pay enough attention to both the personality of the offender and the objective social factors that determine this behaviour. Crime prevention was limited only to measures of upbringing and education, which did not give the expected results. Therefore, there was a need to determine the reasons that led a person to commit a crime.

The Positivist School of criminal law, the ideas of which were widespread in European countries, was formed in Italy in the 70s-80s of the 19<sup>th</sup> century. The name of the school is associated with the use of a positivist (experimental) approach in studies of criminal phenomena, the personality of the offender as a biosocial creature and the influence of punishment on him. This scientific school was based on the recognition of social and biological determinants of crime and called for the use of data from various sciences (sociology, psychology, biology, physics, etc.). The Positivist School demanded a reform of criminal legislation in order to create an effective system of measures to protect society from crime, ensure its safety and prevent offences. Moreover, the Positivist School of criminal law has been represented by three main scientific areas: criminal-anthropological (biological), criminal-sociological (sociological) and bio-sociological (positivist) [8].

Cesare Lombroso (1835-1909) was an Italian psychiatrist, professor of psychiatry and criminal anthropology, and a prominent representative of this school. He is regarded primarily as the author of the theory of the biological predisposition of certain people to commit crimes. His theory laid the foundations for modern criminal anthropology and criminal psychology. C. Lombroso was one of the first to place the individual himself in the center of the study of deviation from the stand point of his bodily and anthropological characteristics in his work "The Criminal Man" (1876). He was a born collector and actively engaged in this issue, but neglected to systematize the accumulated knowledge. He collected and studied those aspects that did not interest others wherever he went, whoever he communicated with, in whatever scientific discussions he

participated, in cities and villages, in prisons and abroad, and thus, accumulated many curiosities which true value was unclear even to himself. However, all this knowledge was somehow associated with already done or upcoming research in his mind. He was sent skulls, brains, skeletons, photographs of criminals, madmen and epileptics and samples of their work, as well as graphs and diagrams that clearly represented the criminal development of Europe". According to the description of his contemporaries, the "material basis" of criminal anthropology was formed in this way. For a long time C. Lombroso served as director of a psychiatric clinic in Pesaro and often communicated with criminals who were brought in for examination. Therefore, based on rich factual material, he was one of the first to use the method of anthropometric measurements in criminological practice. According to C. Lombroso, it is possible to determine whether a person has criminal inclinations by the appearance of this person (by the shape of the face, the shape of the eyes, the shape of the nose). C. Lombroso believed that based on the identified features, it is possible not only to identify the "criminal element" of society, but also to distinguish between the types of criminals, namely: murderers, thieves, rapists, [13]. C. Lombroso and his followers focused on the personality of the criminal for the first time. Thanks to the efforts of this school, the theory of clinical criminology (dangerous state of personality) became widespread that explained criminality as a propensity to offences inherent in individuals. According to representatives of this school, correction of the behavior of potential or real criminals can be carried out using electroshock, surgery, sterilization, medication, etc.

Raffaele Garofalo (1851-1934), an Italian lawyer and criminologist, was one of the most famous representatives of this school and the student of C. Lombroso. R. Garofalo considered the reasons for the crime in the offender himself, who, like a virus, began to commit increasingly dangerous acts when he got into the appropriate environment. According to the scientist, the defectiveness of the offender's moral feelings and the lack of compassion and honesty lead to a crime. A criminal is a person who cannot adapt to normal life, and a crime is only a symptom of this abnormality. R. Garofalo believed that there was no need for society to spend funds for maintaining the courts and on attempts to change the criminal. The commission of experts should identify the degree of danger of the offender to society and impose a punishment that can isolate him from society (death penalty, hard labor, refusal of conditional sentences). The purpose of punishment was to neutralize or destroy criminals [14; 15].

The concept of mental retardation of criminals, substantiated by psychologists R. Dugdale (1841-1883) and G. Goddard (1866-1957) and the concept of hereditary predisposition (A. Kinberg, A. Longuet, etc.) was similar in content and meaning to the theory of C. Lombroso. Thus, R. Dugdale established the relationship between intellectual and mental disabilities with a propensity to crime on the basis of a study of the genealogies of mentally

retarded families. They found that a significant proportion of relatives in some families were socially unadapted individuals for several generations. The research of these scientists laid the foundations for studying the hereditary nature of dementia and other psychological defects, but they could not convincingly explain the reasons for the commission of crimes. The downside of all these teachings was precisely that they did not take into account the social factors of crime [16].

The head of the Russian branch of the Positivist criminal-anthropological school Dmitry Dril (1846-1910) substantiated his version of the anthropological theory. He criticized the extremes of this theory, such as the typology of "born criminals", but highly appreciated the spirit of the "natural-scientific" study of crime using precise scientific approaches applied to study the very fact of criminal behaviour, its causes, conditions and consequences, as well as the subjective and personal element of the crime. D. Dril fully shared the views of those Western scholars who named social problems and, first of all, poverty as the root causes of crime. However, in his opinion, the sociological school almost completely ignores the question of whether these factors "produce psychophysical changes in an offender who gradually prepares to commit a crime" [17]. D. Dril believes that "there is no doubt that the supposed social factors gradually produced all these organic and, at the same time, mental changes in the nature of the personality unfavorable for the person himself and people around him. However, having understood the nature of the necessary consequences of the influence of these unfavorable social factors, he asks a fair question about whether these changes, in turn, become the direct producing reasons for the commission of crimes of a given person...?" In answering this question, the scientist formulates one of his main theses that man, like all other beings, is constantly influenced by external conditions, which are social ones. The person gradually more or less, positively or negatively changes under these conditions, both during the life of rising generations and during his personal life. We do not know a person outside the influences of society and, therefore, cannot reason about him. If the surrounding conditions are unfavourable, but they have not yet become bad and vicious, then there is no predisposition to crime. However, if bad and vicious character traits have already been developed by the influence of a social factor, then they are a more remote cause of crime. In this case, some external conditions play the role of repulsive and prompting reasons. Thus, we should not accept one-sided theories (exclusively social or organic), but we can turn to the socio-organic approach, in which both interacting factors coexist. D. Dril emphasized the importance of individual crime factors, which, in contrast to Western European anthropologists, were completely subordinated by social factors. In his point of view, the source of crime is always two main factors – private and social, and the second factor determines the first one [17].

The ideas of the outstanding Italian criminologist

and politician Enrico Ferri (1856-1929), who proposed to consider all these areas as the Positivist school, were the connecting link between the views of the supporters of the anthropological and sociological schools in criminal law. E. Ferri, as a follower of C. Lombroso, developed the ideas of the anthropological orientations in criminal law, slightly corrected them and emphasized the importance of the interaction of social, political and economic factors. His teaching was based on three postulates: 1) free will disappears with the transformation of criminal law into self-defense techniques of society from criminals, and therefore, there can be no moral responsibility; 2) the offender is a member of the human race and an abnormal being; 3) punishment does not affect the decrease or increase in crime. He proposed the following classification of criminals: 1) "born criminals" (the term by C. Lombroso) with pronounced physiological deviations; 2) criminally insane; 3) criminals with acquired habits, which are most influenced by social factors; 4) criminals due to addiction (hate, revenge, jealousy, love); 5) accidental criminals [18].

It should be noted that following the ideas of C. Lombroso about "born criminals", E. Ferri emphasized that such a criminal is not a person fatally doomed to a criminal path, but a being who is prone to crime to a certain extent. There is a possibility that such a person will never commit a crime. However, it is also possible that a crime will be committed by a person who does not have any signs of a "born criminal". Madness and neurosis will cause crime until the degeneration caused by material and moral problems is eliminated. E. Ferri opposed the death penalty and argued that the cruelty of punishment never led to a decrease in crime. He insisted on improving the social conditions of a person's existence. At the same time he proposed to introduce a system of repressive measures, applied depending on the nature of the offender, but not the crime. He argued that the conditions corresponding to the characteristics of the offender are the most suitable for criminals of a particular type. For example, a criminally insane needs a "criminal house for the insane"; a "born criminal" should be isolated from society; it is necessary to apply measures of public influence, temporary removal from the community and work in agricultural colonies for a criminal with acquired habits; there must be a mandatory monetary reward for damages or work in favor of the state or community for an accidental criminal. A criminal due to addiction, according to E. Ferri, should not be punished at all [19]. The last statement of the scientist gives us serious reasons for doubt. From E. Ferri's point of view, punishment is not the only weapon in the fight against crime. First of all, social preventive measures against crime factors are needed. It is advisable to create such social conditions under which a person would have the opportunity to satisfy his needs honestly, and not to take the path of crime [20]. He saw the solution to the problem in overcoming economic inequality. E. Ferri is a founder of the theory of "social defense" that provides for the creation of a special integrated system to combat crime, which should include both social crime prevention

measures and administrative legal, civil legal and criminal legal measures aimed at ensuring the safety of society and its protection from crime. According to this theory, security measures can be applied to a person only if he has already committed a crime, but not before committing it.

## 2. ANALYSIS OF SOCIOLOGICAL ASPECT INFLUENCE IN CRIMINAL LAW

The sociological direction in criminal law and criminology was formed by the end of the 19<sup>th</sup> century and beginning of the 20<sup>th</sup>. The French and Belgian astronomer and mathematician Adolphe Jacques Quetelet (1796-1874) was one of the founders of the sociological direction. He explained the influence of various social and biological factors on the criminal behaviour, and found that numerous crimes demonstrate the same pattern as natural phenomena. The number of crimes and their nature does not change from year to year. A person's actions, which supposedly depend on his free will, in fact, are not. They are influenced by certain laws that operate independently of human desire and will [21; 22]. A.J. Quetelet came to the conclusion that society itself has the makings of a committed crime, because there are conditions in society that contribute to its development, and a person is only an instrument for its implementation. Each social formation determines a certain number and types of crimes, as a necessary consequence of its structure.

The eminent scientist French sociologist and criminologist Jean Gabriel Tarde (1843-1904) was a well-known representative of this trend. He considered crime and criminality in historical development and in connection with the evolution of society and social relations. In addition, Gabriel Tarde focused on the study of the personality of the criminal. He studied with representatives of the Italian anthropological school, but had diametrically opposed views. Like the Italians, J. G. Tarde is a determinist in some aspects in the science of criminal law, but he is not a fatalist. He is a sociologist [23-25]. As a result of a comprehensive analysis of the anatomical, physiological and psychological characteristics of criminals, he came to the conclusion that "its (crime) origin is primarily historical and its nature is primarily social." [26; 27]. According to J.G. Tarde, no one is born to kill, burn and steal from people. However, there are such concepts as natural inclinations and natural influences, which can lead to crime, because they are a form of social influence. According to J.G. Tarde, a criminal is a person who is forced to be removed from his environment by a properly organized society. The criminal is both a social and a natural being. We can say that this is a social experiment. It is common for prisoners to be ruthless, irritable and vengeful, as a result of a lifestyle that includes the following: visiting bad company; creating conditions for the development of pride, vanity, envy, anger and laziness; insensitivity to tender feelings and a tendency to strong feelings; suffering in childhood (beatings, abuse, physical torment); indifference to evil, insensitivity [28]. In considering the problem of neutralizing crime, J.G. Tarde was rather skeptical about the opinion of his contemporaries

that labor, general welfare and education can be preventive social measures of crime. After all, the spread of education and the accumulation of wealth just contributes to the emergence of new opportunities for enrichment, including illegal. J.G. Tarde saw the way to solve the problem of crime prevention in the expansion of human communication and in its globalization. He argued that the positive and constructive activity of the state is an important condition for the prevention of crime [28].

Behaviour that is harmful to society and the state should be eradicated from the very beginning, i.e., from the moment the personality is formed. Hans Jurgen Eysenck (1916-1997), a famous British psychologist and founder of the factor theory of personality, argued that criminal behaviour is nothing more than a consequence of the interaction of a particular human psychotype with its habitat. Meanwhile, crime cannot be predetermined only by biological factors and genetics, as well as by environmental circumstances. H.J. Eysenck explained why some people commit crimes, while others do not by the fact that the latter have formed conditioned reflexes to social rules and norms from childhood, which they simply cannot violate. This fact indicates the importance of social factors in determining the causes of criminal behaviour. The obvious ineffectiveness of the methods used to predict and prevent criminal behaviour indicates the need to pay attention specifically to the study of the motivating factors of social significance, because "crime, as well as society is eternal... The more complex it becomes, the more difficult it is for an individual and the more frequent its breakdowns are. The huge numbers of sanctions and laws that must be respected only exacerbate the evil" [29; 30].

The well-known Russian and later American philosopher, sociologist and culturologist Pitirim Sorokin (1889-1968) approached the consideration of crime from a psychological point of view. He interpreted crime on the basis of the classification of "patterns" of people's behaviour in society and the forms of response to them, considered it as a psychological phenomenon that arose in social relations. He found the main reason for the crime in the differences in the "patterns of behavior" of various groups of the population, united (most often as a result of a victorious war of conquest) into a single "group with collective consciousness". However, different people choose different patterns of behavior [31]. P. Sorokin proposed to classify the act as criminal on the basis of specific experiences of the person, as a result of which the individual himself considers the act to be criminal. At the same time, taking into account the social and political practice at that time, P. Sorokin admitted that at present a crime is an act (action) that is prohibited by the existing law, namely, violating the norms protected by the criminal law. He considered crimes as public evils, and believed that the whole society should fight them. From the point of view of P. Sorokin, crime and punishment are the implementation of certain behavioral patterns, which differ from each other in that crime is the cause, and punishment is the effect. The function of punishment is to motivate

people's behaviour by threatening future disadvantages. P. Sorokin suggested that the role of punishment, as well as reward, is to create, maintain and strengthen solidarity within a group or between groups.

The scientist considered the main source of crime to be social division into classes, which leads to an uneven distribution of wealth, as a result of which some classes receive an excess of wealth, while others are doomed to poverty and need. Hunger, uncertainty about the future, fear for themselves and their children instills enmity in society, leads to despair and drunkenness. This is a constant source of crime. Referring to statistical research, P. Sorokin argued that there is a direct relationship between the state of life of various segments of the population and crime. The main source of crime is the economic poverty of the lower strata of the population. It entails the inability to get a decent education, lack of rights, wildness, lack of reasonable and useful entertainment. A person who once embarked on the path of crime, mechanically continues to commit crimes, goes off the deep end, and finally turns into a confirmed criminal "who can only be corrected by a grave lost in the taiga or in a convict cemetery." [32]. According to P. Sorokin, fight crime by punishment alone is a hopeless case. In general, punishment should assume a complementary role. The system of punishment itself should be radically changed in the direction of reducing cruelty, abolishing the death penalty, and changing the regime of prisons and other educational institutions, which finally deform a person's consciousness, but do not correct "miserable outlaws of life who are called criminals" [33]. It is rather difficult for us to agree with the last quoted phrase of P. Sorokin. This assessment is not acceptable to all criminals. We share the opinion of P. Sorokin that the state should make efforts to deter crime. These efforts should be multifaceted and concern not only the usual measures of criminal law to combat crime, but also extend to all spheres of public life.

The Ukrainian legal scholar Mikhail Chubinskiy (1871-1943) was the representative of sociological positivism in criminal law and criminology, who emphasized the need to study the causes of crime. The person cannot change the consequences without knowing the causes and without influencing them. He called for paying more attention to the objective side of the crime. In his opinion, the objective side of the crime is most pronounced when we pay attention to the interests of the victim. If material damage is caused to the victim, then it is enough to compensate for the damage for his satisfaction, and punishment may imply only the protection of public interests. If the victim suffered moral damage, then only the punishment of the guilty person can be compensation for him in this case: this punishment must be consistent with the objective side of the crime, and not only with considerations of public interest [33]. Taking this fact into account, M. Chubinskiy shared the point of view, according to which the main goal of the state's punitive activities should be the protection of public interests [34].

Many changes have taken place in the criminal behaviour research methodologies since the time of the Classical school. Most modern criminologists have no doubt that the nature of a person's criminal behaviour is profoundly social. Thus, the individual, as a fundamental unit of society, and his behaviour (criminal in particular) is a reflection of this society and its rules. Moreover, if at the dawn of criminology, biological indicators were mainly taken into account, then they began to gradually recede into a secondary plan against the background of social indicators with the further development of science and society [30].

### CONCLUSIONS

We can draw the following conclusions. The Positivist School of Criminal Law and Criminology relied on the results of a statistical analysis of crime, the social characteristics of a criminal's personality, and took into account environmental factors affecting crime. Each direction of this school has made its contribution to solving the problem of combating crime. Proponents of legal positivism in criminal law and criminology explained mainly the reasons for criminal behaviour, but not the reasons for crime. Socio-philosophical methodology is characterized by a close connection of speculative methods of cognition with the results of empirical research. The main feature of the criminal-anthropological (biological) direction lies in the

fact that its representatives considered the criminal as a special kind of the human race and a special abnormal creature endowed with certain physical and mental anomalies. The commission of a crime for such a being is a natural necessity. Sociological and biological theorists equated social factors of crime with biological ones. The representatives of the criminal-sociological (sociological) direction mainly skeptically assessed the conclusions of supporters of the anthropological direction, who looked for the causes of crime precisely in social factors, noted the importance of the interaction of social, political and economic factors and expressed confidence that it would be useless to try to influence crime without changing the social conditions that lead to crime. However, sociological theories have not found an explanation for the fact that different people demonstrate fundamentally different behaviour under the same social conditions. The methodological basis of the socio-philosophical study of crime should be a synthetic approach based on a combination of various methodologies and allowing to consider all known factors of crime in interrelation and interaction. The impact of public life on all spheres is one of the most effective ways to combat crime. All authorities, as well as scientists, should identify and analyze the existing links between modern social changes and criminal processes taking place in society. Only a comprehensive analysis of the causes of crime can help reduce its rates.

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