

ПРЕГЛЕДНИ НАУЧНИ ЧЛАНАК

GERMAN'S BIOLOGICAL THEORIES IN CRIMINOLOGY<sup>1</sup> -  
mapping the beginningsMarina M. Simović<sup>2</sup>*Faculty of Law of „Apeiron“ Banja Luka*Miomira P. Kostić<sup>3</sup>*Faculty of Law, University of Nis*

**Summary:** *In this paper, the author explores the early German criminology, pointing out that it was a result of interests stemming from the legalistic approach to crime. For this reason, the contribution of German criminologists to the development of criminology as an independent science is observed by examining the legalistic, anthropological, biological and sociological approaches to criminology. Each of these approaches is concurrently associated with a particular criminological orientation or a period of predominant influence of some criminological approach in explaining causality. The development of the German criminology at the time was reflected in the efforts of psychiatrists to expand their expertise into the field of criminal behaviour and to offer a medical solution to this problem. Tracing the historical development of the German criminology in the course of three different political regimes (including the German Empire, the Weimar Republic and the period of Nazism), the author of this article has an opportunity to assess the political impact on scientific research and its implications. Finally, the recent revival of the biological and genetic research into crimes makes this historical research into criminal biology (from Lombrose to Nazism) highly relevant. The historiography on crime and criminal justice in Germany is well-developed even though the German literature on these issues is considerably less extensive in volume than the respective literature in France and England. The knowledge of the social history of crime in Germany*

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during the 19th and 20th century is still extremely limited. In the last decade of the 20th century, there were some significant developments in this process.

In mapping the early development of criminology in Germany, Wetzell identifies the following historical periods. The first period is the beginning of the 19th century, marked by the learning of Lombroso on the inborn criminal offender as well as by the growing impact of the new criminal law reform in Germany. The second period involves the impact of the German reception of the Lombroso's theory on establishing criminal psychology in Germany from 1880-1914. The third period reflects the learning of criminal sociology, i.e. accepting the idea on the impact of social conditions on the development of crime. The next period covers the predominant position of the biological research in criminology at the time of the Weimar Republic. Finally, the last period in the development of the earlier German criminology is the period under the Nazi regime (including the sterilization of criminals as well as the Nazi policy of sterilizations of some ethnic groups).

**Key words:** *criminology, criminal biology, eugenics, racial hygiene, postmodernism.*

## 1. INTRODUCTORY REMARKS

Since the 1970s, European historians have expressed particular interest in the history of crime and criminal justice in modern states. Most research in this area has been based on social history, either in the form of quantitative research, aimed at reconstructing the historical development of crime level or local studies, or microhistory, certain criminals or types of crime, especially those related to social conflict. The second group of historical studies focused on the legalistic, institutional, and political history of criminal justice.<sup>4</sup>

Since criminological research is originally interdisciplinary, lawyers who investigated the crime had to „cope“ with the research of psychiatrists and *vice versa*. As a result, criminological research has begun to transform the relationship between psychiatry and the criminal justice system from two opposing sides into one symbiotic. Second, following the development of German criminology through three different political regimes, from Imperial Germany through the Weimar Republic to the Nazi period, one possibility of measuring of political influence on scientific research and its implications is offered. Finally, recent

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<sup>4</sup> See Richard F. Wetzell, *Inventing the Criminal: A History of German Criminology 1880-1945*. (Chapel Hill and London: University of North Carolina Press, 2000), 1.

revivification of biological and genetic research of crime gives the history of criminal biology research, from Lombroso to Nazism, a kind of present relevance.

While research into history of development of British and French criminology has been the subject matter of several books published in the last fifteen years, counting from 2000 onwards, the history of the development of German criminology has largely remained an unexplored area.<sup>5</sup>

A very short dissertation in the field of criminal legislation from 1972 made one initial attempt to determine the development of criminology under the Nazi regime. Then, starting in the 80s of the 20th Century, younger generations of criminologists published a collection of articles on the history of this discipline during the Third Reich. However, Wetzell's book is the first attempt to map the history of German criminology from its inception all the way to the Nazi regime. At the same time, Nicole Rafter calls this criminologist a „pioneer“ of studying Nazi criminology and criminal justice.<sup>6</sup>

Wetzell presents the following periodization in mapping the early development of criminology in Germany. This is, first of all, the beginning of the 19th Century period in which the teachings of Lombroso about the born criminal and the rise of a new penal reform in Germany appeared. Then, the influence of German reception of Lombroso's theory on the creation of criminal psychology in Germany from 1880 to 1914. Then follows the period of accepting the idea of the influence of social conditions on the development of crime, i.e. the development of the study of criminal sociology. Then, the dominance of criminal-biological research during the Weimar Republic and, finally, criminology under the Nazi regime (sterilization of criminals and Nazi sterilization policy).

## 2. ORIGIN OF MODERN CRIMINOLOGY IN GERMANY

German criminology emerged as a recognizable scientific field in the last quarter of the 19th Century, as a result of three related developments: the emergence of new German criminal reform movement; publishing and accepting Lombroso's theory of the born criminal and due to the increased interest in criminological issues among German psychiatrists.

A brief overview of criminological research in the first three quarters of the 19th Century is important, because knowledge of that part of the past is essential for correctly determining the development that rampant towards the end of the 19th Century. On the other hand, the existence of bio-medico-biological

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<sup>5</sup> *Ibid.*, 2-3.

<sup>6</sup> See Nicole Rafter, „Criminology's Darkest Hour: Biocriminology in Nazi Germany“, *The Australian and New Zealand Journal of Criminology*, 41, 2 (2008): 287-306. <https://journals.sagepub.com/doi/10.1375/acri.41.2.287>, accessed on: 22.4.2019.

explanation for crime in the earlier period of the 19th Century indicates that Lombroso was not the first to offer that explanation. On the other hand, the essential effort in the field of „moral statistics“ and the subculture of professional criminals shows that 19th Century researchers showed much greater interest in social than the biological causes of crime. Only if these two moments are well understood, a drastic shift from the emphasis on social to medical-biological explanations of crime that appeared before the end of the 19th Century can be explained.

By the way, at the turn of the 19th Century into the 20th Century, articles were even taken over in the daily press in the United States, which referred to the influence of German criminologists' teachings on the effects of external, cosmotelurist factors on crime. That is why it is an illustrative example of explaining the increase of crime on the streets of major US cities under the influence of the summer months, in line with teachings of „German criminologists“. Dr. Placzek, one of the greatest authorities in this field in Germany, as reported by *The New York Times* on 2 August 1907, argued that „it is not only the heat of the sun that influences human passions, which are responsible for a specific crime, but also different social and working conditions. For example, much more alcohol is consumed during summer than winter, and alcohol is always the root cause of crime“. In addition, according to *The Times*, Dr. Placzek's opinion is that „life in the summer takes place in the open and in accordance with other possibilities, which together enables the commission of crimes with a fatal outcome“.<sup>7</sup>

### 3. CONSOLIDATING APPROACHES - BACK TO THE BEGINNING

The development of German criminology from the 19th century to 1945 was marked by the predominance of research into biological causes of crime over research into social causes of crime. The predominance of criminal-biological approach is clear if we keep in mind that most criminological researches were conducted by psychiatrists.

Penal system reformers, gathered around Franz von Liszt, viewed criminological researches as something that would provide scientific funding for penal policy. Although reformers of the penal system tended to pay more attention to social rather than biological factors of crime, in practice research in criminal sociology stayed far behind research in criminal biology, because German sociologists showed little interest in crime and because the reformers

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<sup>7</sup> See „Crime increases in summer“. *The New York Times*, 2. August 1907. <https://query.nytimes.com/mem/archive/free/pdf?res=F30F16FE3B5A15738DDDAB0894D0405B878CF1D3>, accessed on: 7.3.2020.

of penal system reluctantly agreed to accept research in the field of criminal sociology. This situation changed after the World War I, when a number of lawyers, such as Exner and Liepmann, began to accept research in the field of criminal sociology.

Most criminological researches, during that period, was conducted by German psychiatrists. Vetzell gives several reasons for this. First, at the end of the 19th Century, the wave of interest of the medical profession in etiology of crime came due to the influence of Lombroso's idea of a born criminal, which improved biological explanations of crime, in which German doctors, especially prison doctors, found their ground for research. And when Lombroso equated his native criminal with psychiatric diagnosis of „moral insanity“, psychiatrists finally decided they needed to react to these theories.<sup>8</sup>

Second, the reaction to Lombroso's theory came at a time when German psychiatry was expanding its professional territory, outside the area fully filled with mental illness in the sphere of „border area“ of mild mental illness (now called „personality disorder“), which Koch calls „geistige Minderwertigkeiten“, and Kraepelin and Schneider later called them „psychopathic personalities“. Since these states of soul were associated with deviant behavior, including crime, psychiatric interest in inhabiting this vast space of new frontier line of „abnormality“ also directed their interest in criminological research.

Third, psychiatrists focused on investigating victims of crime, because they realized that they could extend the role of psychiatry to the criminal justice system. This ambition found its earliest and most radical expression in Kraepelin's „Die Abschaffung des Strafmaßes“ (1880), in which he called for the abolition of fixed prison sentences in favor of indefinite, individualized treatment and reorganization of the penal system towards psychiatric clinics. In his first works, Kraepelin confirmed the role of criminal psychology in establishing the line between crime and madness. In explaining the category of habituary criminals, Kraepelin pointed out their lack of awareness of morality. Since Kraepelin's scheme was aimed at eliminating the difference between punishment and medical treatment, it emerged as a controversial issue of legal responsibility, so the psychiatrists should no longer serve as expert witnesses in situations where an excuse for insanity arises. As a result, traditional conflicting relationship between criminal justice and psychiatry, in which lawyers often „take for evil“ psychiatrists for „releasing criminals“, had to be transformed into a symbiotic relationship, in which psychiatrists play a key role in determining appropriate individualized treatment for each individual criminal. Although most psychiatrists did not accept Kraepelin's denial, but the distinction between legally

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<sup>8</sup> Wetzell, *Inventing the Criminal: A History of German Criminology 1880-1945*, 295.

responsible and irresponsible perpetrators, they all share the same ambition - to expand the role of psychiatry through the criminal justice system. The whole idea behind research in the field of criminal biology was that psychiatric evaluation should play a role in determining the individualization of penal treatment of convicts.<sup>9</sup>

Finally, the resentment of the psychiatric profession to play a key role in criminal justice was closely linked to another characteristic of German psychiatry in the late 19th and early 20th Century: its tendency to put interests of society above the well-being of the patient – individual. This view was clearly reflected in discussions before 1914, during the presentation of „diminished responsibility“, in which psychiatrists used the „abnormality“ of Minderwertige to confirm their vague determination to protect society, but without insisting that the same „abnormality“ qualifies Minderwertige for weaker medical treatment and that it frees them from rigorous regimes and the stigma of detention. Exactly the same position was adopted with its extremely explicit wording, when Aschaffenburg defended psychiatrists against the accusation that their „extremely broad humanitarianism“ had, in fact, in his subconscious, criminal justice. Psychiatrists, as he insisted, routinely „deprive patients of their freedom in order to protect society“ and that they were well aware that „the interests of the patient must come second in relation to the interests of the community“.<sup>10</sup>

Beginning with the acceptance of Lombroso in the late 19th Century, biological explanations of crime, offered by German psychiatrists, took the form of two different paradigms. Although at the turn of the Century, the pioneers of German criminal psychology were unanimous in rejecting Lombroso's claim that a born criminal represents a different anthropological type, the explanations of criminal behavior they offered divided them in two directions.

Representatives of what can be called Kraepelin's paradigm have removed anthropological characteristics from Lombroso's theory of a born criminal and redefined a born criminal into a pure psychiatric term for someone who is „morally defective“.

After the World War I, this paradigm lived in the form of what Birnbaum and Schneider called *gemütlos* (compulsive) or amoral psychopaths. The most valuable feature of this paradigm is its unification of moral and medical norms. Thus, Kraepelin defines „moral madness“ as „the lack or weakness of the feelings that reject the ruthlessness of satisfying egoism“.

What is noteworthy is that even Schneider, who criticized the unification of medical and moral criteria of Kraepelin's definition and made a special effort to

<sup>9</sup> See Peter Becker and Richard W. Wetzell, ed. *Criminals and Their Scientists*, (Publications of the German Historical Institute, 2006). <http://books.google.com/books?id>, accessed on: 17.11.2021.

<sup>10</sup> Wetzell, *Inventing the Criminal: A History of German Criminology 1880-1945*, 296.

establish an objective psychological criterion for his „psychopathic personality“, made the same mistake when defining *gemütlos* or amoral psychopathic type, as a lack of „pity, shame, honor, repentance, conscience“. The inclusion of moral criteria in psychiatric diagnosis largely develops the risk of tautological thinking, in which the deviant or criminal behavior of an individual has become a medical symptom of psychopathy, simply because it violates conventional moral and social norms.<sup>11</sup> However, Schneider designed ten different types of psychopaths. Antisocial and asocial tendencies are connected in different forms of psychopathy, which is the subject matter of interest of criminology. Types of psychopaths, according to Schneider, include, in fact, persons who suffer from their abnormalities and persons from whose abnormalities suffers society. Only this second group of psychopaths is important for criminology. This group includes explosive (impulsive) psychopaths.<sup>12</sup>

Since Schneider and Birnbaum viewed *gemütlos*, or the type of amoral psychopath, as a small minority among criminals, the scope of Kraepelin's paradigm was grossly diminished from the Weimar Republic period onwards, allowing for a „competing of paradigm with the resulting phenomenon“.

At the turn of the Century, another group of psychiatrists, including Aschaffenburg and Näcke, rejected the existence of „moral defect“ and took a much more complex view of the interaction between inheritance and environment. They established the „Aschaffenburg paradigm“, which was dominated by the view that many criminals suffer from general mental abnormality (described in terms of degeneration, *Minderwertigkeit* or psychopathy), which makes them much more liable to living a criminal lifestyle, under unfavourable external circumstances - not because that these abnormalities were directly criminogenic, „but because they hindered the development of their career in social and economic life“.<sup>13</sup>

Since the Weimar Republic period, the Aschaffenburg paradigm has become predominant. Practically, every biologically oriented criminologist in the period between the two World Wars, including those most committed to researching genetic factors, such as Lange and Stumpfl, agreed, except in rare cases of *gemütlos* psychopaths, that congenital or genetic factors, which had a share in criminal behavior, did not consist of some criminogenic „moral defect“, but of various abnormal traces that are not hereditary criminogenic, but could develop criminogenic potential in a certain combination and under certain external circumstances.

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11 Wetzell, *Inventing the Criminal: A History of German Criminology 1880-1945*, 297.

12 See Stephan Hurwitz, Karl O. Christiansen. *Criminology*. (1983). 114, <http://books.google.com/books?id>, accessed on: 12.5.2011

13 Wetzell, *Inventing the Criminal: A History of German Criminology 1880-1945*, 297.

The most important contribution of the Aschaffenburg paradigm was in the complex perception of the interaction between inheritance and environmental influences, which promoted the emergence of methodologically and conceptually closer definition. In fact, Aschaffenburg accurately described the division of the causes of crime into two large groups: social causes and individual causes. The first group considers only external conditions of „general fluctuations that affect the occurrence of crime“; the second group of conditions always leads, when examining the individual’s personal inclination to crime, to the „bilge“ from which the individual originated, and this „leads directly back along the path towards social causes“ of crime.<sup>14</sup>

If we compare research from the Weimar Republic period and the period before the World War I, there is no doubt that the work of Birnbaum, Schneider, Gruhle and Lange was more clearly defined in its approach on the interaction between inheritance and environmental influences, than the pre-war theories of Kraepelin, Bleuler, Ashchaffenburg and Nacke. As can be seen, the long-standing trend of growing methodological purification has continued in most, but not all, criminal-biological researches, even during the Nazi regime. At that time, these theorists had already clearly defined criminology as a medico-psychiatric specialty and established psychiatrists as authorities in the field of public health and regulation of deviance.<sup>15</sup>

Stumpfl had a much greater reach in the methodological issues of the twin studies than Lange in his work, all the way to Exner’s 1939 criminological study, which was a visible improvement over Aschaffenburg’s standard 1903 work. This growing specificity of the methodology has further immensely complicated the complicated task of biologists. As their understanding of interaction of inheritance and environment became more complex, their goal, which was to identify criminogenic genetic factors and separate repairable and irreparable, became even more „elusive“.

Even after recognizing the role of both genetic and environmental factors in the genesis of criminal behavior, most criminal biologists have consistently put genetic factors first and emphasized that genetic factors are still primarily important. Such a claim would be justified only if it was shown that genetic factors often lead to crime, without any visible cofactors from the environment, or that the criminogenic power of these genetic factors was not usually yielding to rehabilitation measures. In fact, it was widely recognized that there was

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14 See Gustav Aschaffenburg. *Crime and Its Repression*. (Montclair, New Jersey: Patterson Smith, 1968), 15

15 Nicole Rafter. „Criminology’s Darkest Hour: Biocriminology in Nazi Germany“. *The Australian and New Zealand Journal of Criminology*, 41, 2, (2008), 287-306. <http://www.atypon-link.com/AAP/doi/pdfplus/10.1375/acri.41.2.287?cookieSet=1>, accessed on: 12.4.2011.



no visibility for such a proposal.<sup>16</sup> Contrary to that, Lange acknowledged that environmental factors played a role in the cases of all the criminal twins he investigated, while Schumpfl estimated that a maximum of 20% of criminals could be considered irreparable.

Therefore, the question remains, why did most criminal biologists claim that genetic factors prevail? The answer lies in several bases and assumptions that characterized German psychiatry during the research period.

First, German psychiatry, during that period, was preoccupied with a strong bias towards inheritance, which, while accepting that individuals differ, including mental illness, was primarily caused by genetic factors. This position toward hereditaryism partly arose from the failure of psychiatry to make progress in the treatment of mental illnesses. Unable to cure most of their patients, psychiatrists were tempted to explain their therapeutic failures by attributing the cause of mental illness to invariable genetic factors. Although research into human genetics remained at a primitive level throughout the first half of the 20th Century, hereditaryism was supported by rediscovery of Mendel's laws, sometime between the turn of the 19th and 20th Centuries.

Second, by the mid-1920s and beyond, the vast majority of German physicians and psychiatrists were enthusiastic in their support for eugenics, at least in principle. This latter qualification is important because the details of practical implications, including the question of who should actually be sterilized, have again led to disagreement. However, almost universal enthusiasm for eugenics among German psychiatrists clearly indicates why they have accepted research on genetic factors.

Finally, although most criminal biologists acknowledged the role of social crime factors, they were generally pessimistic about the possibility of changing the social conditions that affect so many persons to enter a criminal career. Over and over again, the greatest advocates of criminal biology, including Aschaffenburg, Nacke and Wiernstein, and even Rüdin, who advocated a hard line, have clearly acknowledged that in many cases changes in social milieu of recidivists could, in principle, prevent new criminal behavior. But, such perceptions have always been accompanied by the qualification that such an environment, in practice, could not be changed, so these criminals in question should be considered „irreparable“. In other words, predicting incorrigibility was not based on the belief that individual's criminal behavior resulted from the incorrigibility of genetic factors, but from the belief that it was simply too difficult to change social factors that contributed to it.

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<sup>16</sup> Wetzell, *Inventing the Criminal: A History of German Criminology 1880-1945*, 298.

Although Liszt and his reformist followers often stressed the importance of the role of social factors, their reform proposals focused on individualization of punishment, and this was more focused on change in perpetrators rather than social change, which would be the most important crime prevention strategy. From that perspective, criminal biology was welcome because it provided knowledge about the individual criminal - individual, which was essential in the reform whose efforts were focused on the perpetrator - individual.

However, research in the field of criminal biology has raised some objections to beliefs regarding the inheritance of criminal dispositions, which has led some psychiatrists and lawyers to emphasize the importance of environmental factors. Among psychiatrists who have followed research in criminal biology, Hans Gruhl has remained highly critical of genetic explanations for crimes and highlighted the role of social factors, including social class affiliation. Even criminologically oriented lawyers, such as Exner and Liepmann, sought to give equal importance to biological and sociological factors in their approach to the etiology of crime.

In a comparative sense, the development of German criminology was not unique. Recent research on the history of French criminology development has found that the differences between Italian anthropological school and French sociological school were overemphasized, and that even after the French, like the Germans, rejected born criminal as an anthropological type, they still advocated many of Lombroso's assumptions related to basic inheritance. In the same way, Charles Goring wrote his famous book „The English Convict“ (1913) and rejected Lombroso's teaching on the born criminal, but advocated a theory linking criminal behavior to mental weakness, similar to Aschaffenburg's view.<sup>17</sup>

Finally, 20th-century American criminology contains a powerful thread that Nicole Rafter called „eugenic criminology“, which gave the United States a „dubious distinction of not being among the first countries in the world to sterilize criminals (began in 1907), a practice that continued until 1945“. However, Nicole Rafter connects her explanations of eugenics to the period of the rule of the Third Reich in Germany in the period 1933-1945. She states that at the time, the leader in eugenic research, dr. Eugen Fischer, claimed that „there was a rare and especially good opportunity for theoretical science to advance at a time when the prevailing ideology supports it, and her discoveries can immediately serve the state's policy“. In that sense, two scientific programs within the framework of Nazi-oriented criminal biology were developed - eugenics and racial hygiene. These terms are often used as synonyms. The eugenic project had the aim to improve the quality of the race („human race“) by encouraging superior people

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<sup>17</sup> *Ibid.*, 299-300.

to reproduction („positive eugenics“) and discouraging inferior people („negative eugenics“) by: forced exile, marriage ban, locking down or elimination. In the most general sense, eugenics should prevent the reproduction of all those people who have hereditary defects - for the benefit of all. During the 1930s, Jews were among those involved in the eugenics movement in Germany or elsewhere, which, criminologically speaking, led to identification of hereditary criminals of all races and entities, which would prevent their further reproduction. The racial hygiene movement, on the other hand, was aimed at identifying ethical and racial group of people, such as Jews or Romas, for example, in favor of returning Germany to Aryan currents. From a criminological point of view, racial hygiene coincides with eugenics in that part when specific racial-ethnic groups are identified as genetically criminal.<sup>18</sup>

#### 4. CONCLUSION

These statements, as well as many other questions, such as: how the ideas of criminal biology fit into the explanations of crime during Nazi era; what were the consequences of „Nazi“ criminology, etc. are, obviously, still insufficiently researched area of development of criminology as a science in general, not only in Germany. However, an insight into earlier periodization of the development of criminology in Germany, it is clear that there is no single definition of the concept and subject of its study, except for precisely determined individual aspirations, i.e. directions. Therefore, there remains a methodologically clear position that determining the exact dominant direction or entirety of this science is always colored by „determination of the content of its subject, methods used in the studying of the subject, different ideological concepts and approaches in studying of natural and social phenomena, as well as its independence in the system of sciences“.<sup>19</sup>

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## ЊЕМАЧКЕ БИОЛОШКЕ ТЕОРИЈЕ У КРИМИНОЛОГИЈИ<sup>20</sup> - мапирање почетака

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**Апстракт:** У раду су ауторке истакле да развој њемачке криминологије рефлектује утицај напора психијатријске професије да прошири своју експертизу на криминално понашање и да понуди медицинску солуцију у односу на питања криминалитета. У литератури се износи следећа периодизација у мапирању раног развоја криминологије у Њемачкој. То је, најприје, почетак периода 19. вијека у коме се јавља учење Ломбросоа о рођеном злочинцу и уздизање нове казнене реформе у Њемачкој. Затим, утицај њемачке рецепције теорије Ломбросоа на стварање криминалне психологије у Њемачкој од 1880. до 1914. године. Онда слиједи период прихватања идеје о утицају друштвених услова на развој криминалитета, односно развој учења криминалне социологије. Потом, доминација криминално-биолошких истраживања за вријеме Вајмарске Републике и, коначно, криминологија под нацистичким режимом (стерилизација криминалаца и нацистичка политика стерилизације).

**Кључне ријечи:** криминологија, криминална биологија, еугеника, расна хигијена, постмодернизам.

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20 \* Овај рад представља резултат теоријског истраживања, као рад на пројекту „Одговорност у правном и друштвеном контексту“, који се реализује на основу Одлуке Наставно-научног вијећа Правног факултета Универзитета у Нишу 01-3342/29, од 24. децембра 2020. године.

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