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Short Review

Mark A. Rothstein, J.D., *Behavioral Genetic Determinism. Its Effects on Culture and Law* [in:] R.A. Carson, M.A. Rothstein (ed.), *Behavioral Genetics – The Clash of Culture and Biology*, The Johns Hopkins University Press 1999, pp. 90-115

ABSTRACT:

The paper analyzes genetic (or biological) determinism from legal, ethical and social perspective. Author proposes a thesis that law (and culture) didn't (and does not) resist deterministic pressure that has roots in science, but rather they have facilitated deterministic point of view. Therefore maybe there is really no threat when it comes to behavioral genetic determinism.

STRUCTURE OF THE PAPER

The first part of the paper concerns the cultural history of biological determinism.

In the second part of the paper, author starts analyzing the scientific basis of the contemporary genetic determinism; he asks whether the one's genotype really predetermine one's physiological and even behavioral future. The answer for such stated question is: when it comes to predictive value of a single genetic mutation, we speak using probability language, not deterministic one. Moreover, the link between mutation of a single gene and a very specific behavioral traits is not so obvious as some people (politician, philosophers, lawyers) say it is. The vast impact that determinism could have on society forces the caution with drawing conclusions. Author in this section provides the examples of controversial application of genetic determinism in social sciences (Galton's methodology, R. Herrnstein, C.H. Murray, *The Bell Curve*). We can find here also an analysis devoted to the problems such as alcoholism and "gay gene" conducted in order to established whether there is a link between genes and behavioral traits. At the end of this part of the paper Rothstein asks question which can be easily ascribed to the perennial and ongoing nature-nurture debate.

The last part of the paper focuses on the role of law. It begins with a reminder of the U.S. law system's past errors with regards to eugenics. In the next step the reasonable person assumption in civil and criminal law is presented. The assumption is a fundamental one for both branches of legal system and one can find here a remarks suggesting that discoveries in behavioral genetics will be able to affect this assumption and - in the long run - force lawyers to modify it. The adversary system of legal procedures is under the microscope in the next point of the paper. This principle of a legal procedure requires lawyers to present all possible arguments on behalf of their clients, especially in criminal cases. Author notices that this principle can forces lawyers to use *junk science* and assert behavioral genetic arguments well before there is general support for such views in the scientific community. Judges aren't scientist. This is the next problem linked with the using genetics in courtrooms. How can judges evaluate methodology and validity of a scientific argument presented by plaintiff or a defendant? This is a kind of practical (technical) issue, but still worth of investigating. The last two issues taken into consideration in the paper are the role of law in encouraging risk-averse behavior and the role of law in protecting medical privacy.

The paper ends with a conclusion which states that the role of behavioral genetics in the future can be positive or negative. It depends only on the lawyers, politicians and society understood as whole, whether we will have an enlightened era of genetic marvels or we will face a social disruption.

COMMENTARY

- A very thorough and clearly set out introductory essay.
- The paper provides a large set of the examples of the use of scientific data in legal and social cases in the past, which are – or should be – the point of departure of any modern genetic project.
- The paper however is somewhat ambiguous in discussing particular consequences of biological data in legal science.
- There is no doubt that, at this moment, lawyers cannot assess whether behavioral genetics will be a good or bad thing for their domain, however unfortunately author doesn't clearly states his point of view.
- Biology (in our case behavioral genetics) is already present in courtroom whether we want it there or not. Rothstein teaches his readers that history has already thought us how we should not use biology in legal system

(eugenics, social Darwinism), but we rather should develop a new way of modifying the law through use of behavioral genetics and behavioral determinism which *can* follow.