



Positivistic Criminology in Brazil: Prejudice and Criminal Selectivity

Pessoa JD*

International Researcher at the Center for Criminology Research, University of South Wales, Brazil

*Corresponding author: Jonathan Dantas Pessoa, International Researcher at the Center for Criminology Research, University of South Wales, Civil Police of the State of Pernambuco, Brazil, Email: jonathan.pessoa@policiacivil.pe.gov.br

Opinion

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Opinion

Positivist criminology, represented by the figures of Lombroso, Ferri and Garofalo, can be considered as the great historical milestone in the foundation of criminology as an empirical and multidisciplinary science that aims to explain the determining factors of crime and the most effective ways to face this social problem, definitively moving away from the philosophical-legal ideals that until then tried to explain crime and the ways of responding to this phenomenon.

We can initially intuit that criminological positivism was diametrically opposed to the Classical School, represented by names such as Beccaria, Bentham and Carrara (Gonzaga [1]) who argued that crime was a moral choice of the criminal, where this, using his free will, opted for criminal practice as a way of meeting his desire or interest [2].

Thus, for the classics, punishment would serve as a way of preventing crime, since, if the criminal practice aimed to meet the criminal's desire, to counterbalance this harmful behavior, and avoid antisocial practices, it was enough to repay the criminal behavior with another bad one (the penalty) to make this criminal understand that the criminal practice would bring him harm, which would serve both as a special prevention, preventing the criminal from committing crimes again, and a general prevention, as all members of society would understand that the behavior criminal would be repaid with legal punishment [3].

In opposition to this doctrine, the positivist criminological school repudiated the idea that the criminal was an ordinary individual, much less that he was led to crime by a mere moral option, making use of his free will. For positivists, there was a biological determinism that compelled the individual to commit criminal practices, with the criminal being an individual biologically distinct from the individual who respected the laws, and it was even possible to identify the criminal by his physical traits.

In view of this criminal determinism, the penalty, in the form predicted by the classics, would not be effective, as criminal law would be responsible for excluding this being biologically inclined towards criminal conduct from social life, with a view to defending society, and promoting the appropriate treatment of this individual, if it were possible [4].

Although the positivist school owes itself the merit of creating criminology as an autonomous science, with its own research method (in this case the empirical method), it is clear that its ideological abuses, which are limited to explaining crime by biological factors, ended up causing positivist ideas to be overcome in Europe, and it was at this time of decline of Lombrosian theories in the old world, that positivist theories began to take shape in Latin America, and especially in Brazil.

In our country, initially, there was great confusion between terminologies exported from positivist criminology, primarily because the terms anthropology and criminal sociology were used as synonyms, which proved to be wrong, given that the first was created by Lombroso and

aimed to explain criminal behavior through physically visible biological difference between criminals and non-criminals, with crime being motivated by biological determinism, and the second that had as its precursor Enrico Ferri, also a member of the Positivist School, who added to biological determinants those of a social nature that drove individuals to commit antisocial conduct, and criminal sociology gained a lot of space in the last century in the United States with the development of several sociological theories to explain the phenomenon of crime [1].

A major discussion that was initially established in Brazil with the arrival of criminology was whether factors of a biological or social nature are predominant in criminal behavior, a discussion that to this day is raised by criminology theorists, where we believe that the complexity of behavior Criminal behavior is due to biopsychosocial factors, which intertwine in a complex way to determine deviant behavior.

However, if there is a truth about the birth of criminology in Brazil, as well as about the theory of positivist criminology in national lands, it is that it was used to defend racist values [4], notably as a way for political, economic and social elites to maintain control over the poor and black people, based on the social changes that Brazil was experiencing at the end of the 19th century.

In the aforementioned period, two major changes of a social nature were bringing major transformations in Brazilian society, namely the abolition of slavery and the increase in population in large centers as a result of the rural exodus. The end of slavery in Brazil proved to be a great social evolution, however this change did not guarantee the black population any type of integration into Brazilian society, nor the possibility of greater social and political participation, leaving newly freed black people without enjoying integration. Effective in our society, being marginalized.

On the other hand, the migration of the rural population to large centers that did not have the structure to receive the large flow of people from the countryside, ended up creating great social disorder, with an increase in poverty and marginalization of these people, creating the first slums in the large centers of the country, places devoid of minimum state services, with the populations of such locations being denied the most basic social rights, a social problem that we live with to this day.

In this context, the elites of that time saw in positivist ideas ways of justifying unequal treatment of people who did not fit into the parameters of these elites, which was done both by criminalizing behaviors typical of the marginalized population, as occurred in the case of capoeira, and by

selecting the targets of the criminal justice system among the poor and black population.

Thus, it is evident that as a result of these social factors, positivist criminology was used to justify the unequal treatment given to black and poor people in Brazil, which has been occurring to this day, and created true criminal legal racism.

Not without reason, if we currently analyze the demographic profile of prisoners in Brazil, we will find that 61.67% of the prison population is made up of black and brown people, when this population corresponds to 53.63% of the general Brazilian population, demonstrating that black and brown people brown women are overrepresented in the prison environment. Furthermore, the vast majority of Brazilian prisoners are poor, and 53% of prisoners in Brazil have incomplete primary education [5], demonstrating that the prison population is selected from the most needy and socially marginalized population.

In fact, it would be easy for Lombroso to study the profile of Brazilian prisoners and based on such numbers to conclude about the existence of a predisposition of the poor, black and brown population of Brazil to commit crimes, however this conclusion would be erroneous, firstly because it does not takes into account important social factors for the criminal behavior of our population, such as the social marginalization that many of the individuals trapped in our social system are victims of, such as the lack of social structure (family, community) to follow pro-social behaviors and the denial to populations lacking basic social rights and the means to guarantee these means to survive in a dignified manner and to evolve personally, morally and socially.

And we go further, the data presented above do not take into account the selective and prejudiced nature of the criminal justice system, which has as its main target of state repression the already socially marginalized population, as well as the low level of crime (difference between crimes that actually occurred and those that were reported to members of the criminal justice system) which is important data to understand the criminal phenomenon more completely, considering that official data ends up being contaminated by the criminal system's own selectivity and prejudice [6,7].

Here we realize the importance of carrying out criminological research that makes use of information collected directly from people who have been victims or who have committed crimes, but without the need for them to have been selected by the criminal justice system, because, as we have made clear, the data Officials often end up vitiated by the prejudices typical of formal social control.

In view of the above, the importance of criminology to understand the criminal phenomenon in a more complete and real way is evident, with a view to both understanding the aforementioned phenomenon and creating efficient means of responding to criminal conduct, but equally capable of promoting more social changes. profound, with the aim of guaranteeing the most basic rights to all people, both the right to security, which ends up being a requirement for the defense of the most elementary rights of society, and the right to life, property, freedom, among others, as well as the right to equality, especially to equal treatment before the criminal justice system, which should be a guide to follow in every minimally civilized society.

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