

The ethics of bioanthropological delinquency research in contemporary scientific scene

José Eduardo Ribeiro Balera ¹, Nilza Maria Diniz ²

Abstract

Crime and delinquency were objects of several researches in the order to identify scientific bases for their solution. This paper aims to examine if it would be reasonable, from the ethical point of view, the development of research aimed at investigating elements or bioanthropological delinquency models in the contemporary context. Deductive and comparative methods were applied to verify if research of the same genre, as the study proposed in Brazil in 2008, would have moral support in the current context, in view of the foundations of Bioethical Principlim and reflections of political and legal theory that highlights the fragile state of the individual in the face of punitive state action.

Key words: Bioethics. Research ethics. Juvenile delinquency. Criminology. Vulnerable population.

Resumo

A eticidade de pesquisas bioantropológicas de delinquência no cenário científico contemporâneo

A criminalidade ou a delinquência foram objeto de diversas investigações na busca por bases científicas para sua solução. O presente trabalho objetiva analisar se seria razoável, do ponto de vista ético, o desenvolvimento de pesquisas que visam investigar elementos ou modelos bioanthropologicals de delinquência no contexto contemporâneo. Foram aplicados os métodos dedutivo e comparativo para verificar se pesquisas do mesmo gênero, como o estudo proposto no Brasil em 2008, teriam respaldo moral no contexto atual, tendo em vista os fundamentos da bioética principialista e de reflexões da teoria política e jurídica que destacam a hipossuficiência do indivíduo perante a atuação punitiva do Estado.

Palavras-chave: Bioética. Ética em pesquisa. Delinquência juvenil. Criminologia. População vulnerável.

Resumen

La eticidad de investigaciones bioantropológicas de delincuencia en escenario científico contemporáneo

La criminalidad o la delincuencia fueron objetos de un sin número de investigaciones en la búsqueda de bases científicas para su solución. El presente estudio tiene como objetivo examinar si sería razonable, desde el punto de vista ético, el desarrollo de investigaciones con el fin de examinar elementos o modelos bioanthropologicals de delincuencia en el contexto contemporáneo. Se aplicaron los métodos deductivo y comparativo para comprobar si las investigaciones del mismo género, como el estudio propuesto en Brasil el 2008, tendrían apoyo moral en el contexto actual, en vista de los fundamentos de la bioética principialista y reflexiones de la teoría política y jurídica que destacan la fragilidad del individuo ante la acción punitiva del Estado

Palabras-clave: Bioética. Ética en la investigación. Delincuencia juvenil. Criminología. Población vulnerable.

1. Graduate student j.ribeirobalera@hotmail.com 2. Postdoc nzdiniz@yahoo.com.br – State University of Londrina, Londrina/PR, Brazil.

Correspondence

Nilza Maria Diniz – State University of Londrina, Biological Sciences Center, Department of General Biology, University Campus, Perobal ZIP 86051-990. Londrina/PR, Brazil.

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Throughout history, it has been clearly demonstrated the need to understand human behavior in society, particularly in identifying possible causes of delinquency and, as appropriate, facilitate the development of effective policies to combat criminal violence. In this theme, the most influential theory elapsed from the studies of the Italian Positive School of Criminal Law, devoted to the study of criminology, which sought to relate biological characteristics and the propensity for violent and criminal conduct, a fact that keeps remnants in the contemporary thought and that should be confronted with research ethics' reflections in favor of the humanistic protection of scientific bases.

In order to analyze this issue, at first it will be presented some preceding studies, such as the craniology in the eighteenth century, and the origin and development of positivist criminal school, especially the theory of Cesare Lombroso, which has substantially influenced the criminal policy definition in several countries and embodied relevant facts to the emergence of reflections in the field of bioethics. Subsequently, it will be examined the possibility of performing investigations, in the contemporaneity, similar to those carried out in this earlier period, in which the figure of the delinquent is focused as opposed to the criminal action or omission itself. From these considerations it is possible to observe that such approaches are parallel to the proposed research reported in 2008, which is based on the neuro-behavioral perspective.

In view of this analysis, it will be assessed the targeting of research and the clash of values resulting from projects of the same kind faced with the systematics brought by the bioethical principlism and the political and legal theory.

Method

This work was based on the application of deductive methods and comparison using fundamentals of bioethical principlism, especially the principles of beneficence and non-maleficence, besides critical reflections arising from today's legal theory, specifically the criminal dogmas and the political thought focused on the effectiveness of the democratic state of law.

With a view to developing the study, a literature review was performed in order to understand historical precedents as well as the origin and development of positivist criminology bias, which has

had important implications to the design of modern sciences and criminal policies.

From this historical-comparative study it was possible to assess the research proposal conducted in the state of Rio Grande do Sul and presented in 2008, involving juvenile offenders, based on the theory named neurobehavioral theory, which is considered an important object to the assessment of bioethics, law and politics.

Results and discussion

Historically, human beings have always sought grounds to understand the phenomena occurring around them, initially using mythical constructions¹, as expressed by the Greek's culture and tradition, an then a posterior systematization through the rationality of philosophical concepts and foundations scientific.

The examination of the phenomenon of crime was no different: it enabled the development of different schools and approaches that influence the structure and adoption of theories and criminal policies. But previously to scientific investigations in the criminal field, there were proposals establishing logical relations as to humans' skills, abilities, and choices. Even before the emergence of the Positive School, driven by studies of Cesare Lombroso, Enrico Ferri and Rafael Garofalo, there were several studies in an attempt to relate morphological features, capabilities and skills, even including targeting decisions and behaviors of human beings.

These studies are exemplified by craniology established in the eighteenth century, which aimed to understand the relationship between the structure/conformation of the skull and intellectual capability of individuals². Such analyzes would have served to encourage the criminal legal positivism and the anthropological theory in the nineteenth century developed, largely, in the wake of the colonial enterprise undertaken by Europeans in Africa, the Caribbean and Latin America³.

The work of the Dutch Petrus Camper is one of the most notable examples of a craniology study. In his research, the author examined the morphology of skulls of animals and humans to be convinced of the relationship between brain volume and intelligence mass. The connection of these elements has developed a theory based on the facial angle, which serve to define the "intelligence quotient" of individuals and hierarchical systematization of intellectual development.

These results deduced the biased conclusion of the preeminence of European individuals, beyond the alleged discriminatory similarity between black people and monkeys. Subsequently, Cuvier noted weaknesses in the theory of Camper and proposed his own theory based on the occipital hole. However, both theories would be rejected under the observations of the English Owen, which would have proved the absence of criteria from those previous cranial studies ², showing how the associations were random and inaccurate.

At this stage of investigation, research was also directed to the comparative examination between the cranial structures among different races, alleging the superiority of European people over black people, due to 'a tenth of superiority' difference. This argument has remained intact until the instant of observation that European women also presented cranial structures indicating below average ability, a fact that would equate them to the same level as blacks ^{2,4}. From then on, but very slowly – due to the inherent assumption of gender inequality that have marked morality during that period, including in Europe – the biological criterion has become relativized and decontextualized, both as regarding sex/gender as regarding color/race/ethnicity dimensions ⁵.

Earlier in the nineteenth century, the neuro-anatomist Franz Joseph Gall had gained prominence with the development of phrenology. For him, the brain was composed of organs with different functions, integrated with a system of hierarchical dominance, corresponding to innate skills and abilities that could be observed by the head's external examination ⁶. During that period of time, as highlighted by Maria José Miranda: *The configuration of the skull would reproduce the structure of the brain where it would locate different cognitive functions; thus cranial bulges would constitute indicators of mental faculties' development* ⁷.

Even that phrenology has been abandoned and considered a pseudoscience, Gall's studies were relevant to the discovery of the functioning of different regions in brain activity. His production would influence the Italian criminal school ⁸, resulting on the idea of penal sanction, which would not be depending on the offense, but on the figure of the delinquent. From his research it was enabled the definition of guilt and atonement degrees.

In other words, despite the success garnered by Gall, subsequent research has demonstrated the absence of factual and scientific basis of phrenology –

which lost the achieved prestige. His theory would not be ignored, and much less abandoned by Cesare Lombroso when developing his thesis about the atavistic criminal.

The positive school of criminology

Although previous investigations have been engaged by the discovery of the relationship between the morphology and the capabilities and actions of individuals, the theory of the Positive School made the desire for such deductions become more evident, specifically in the criminal context. The Italian criminology developed in this school has gone through three stages, each one with compelling aspects: it started with the anthropological stage by Cesare Lombroso, followed by the legal stage, especially by Rafael Garofalo, and ended with the sociological stage, headed by Enrico Ferri ⁹. This school would focus on the delinquent concerns, denying free will and strengthening the belief of the criminal conduct predictability, the crime being a pathological symptom of delinquency.

The school has used the empirical-inductive method, known as experimental inductive, constituting the criminal as a subtype of the human being from factual observation and typological research ¹⁰. As it will be seen in details, Lombroso has elaborated a thesis based on his psychiatric experience with criminals and individuals suffering from some dementia. In his studies it is noticeable his belief on the existence of the born, insensitive, unstable, cruel, vain and vindictive criminal.

In the legal stage, Rafael Garofalo is responsible for structuring the school's ideas and is considered one of the creators of criminology as a science. He bases responsibility on the idea of dangerousness and the penalty as the special prevention purpose. From the application to the social context of the Darwinian theory of natural selection, Garofalo has defended an extremist position in favor of the death penalty and removal of offenders, given the distrust in the possibility of rehabilitation and resocialization ⁹.

In sociological phase, Enrico Ferri acknowledges that the offense is motivated by several anthropological and social factors, but still denies free will. For him, the work of a man does not follow the way you think, but how you feel. Ferri assigns to society partial blame for the criminal offense practice, as isolated he would not be the idea of responsibili-

ty. His theory has contributed to the elaboration of the theory of penal substitutes, understanding that the sanction shall aim to replenish life in society¹¹.

According to the positivist thought, the sanction aimed to ensure the prevention of 'abnormal' individuals who would be responsible for the assault and rape of socially recognized values. This preventionist character, which remains in contemporary criminal law, does not refer to mere compensation for a legal offense to the good of society, but the deterrence of future crimes and repression of criminal potential risk factors¹².

Lombroso and the born criminal

Born in Verona, Cesare Lombroso is perhaps the most controversial author of the positivist school, which research drew attention by scandalizing the scientific ambit and by innovating it. He has presented an approach based on his extensive experience as a research psychiatrist, relating delinquency and dementia. For him, the individual who committed crimes was not normal, he lived an anomaly by the lack of moral sense – however, at the time, social factors were reputed in a limited way, almost imperceptible at first.

Lombroso produced a vast work, among which it stands out *Genius and Madness* (1870), *The White man and the Man of Color* (1871), *Delinquent Man* (1876), *The Crime* (1891), *Criminal Woman, the Prostitute and the Normal Woman* (1893), *The Anarchists* (1894), *Crime: Its Causes and Remedies* (1894)¹⁰. Among these, *Delinquent Man* is the book that evidences more pragmatically the bioanthropological delinquency model. For the author, there is a similarity between the animal and plant world, because the delinquent's action can be compared to the apparent crimes of plants and animals, a manifestation of primitive origins, as the seduction and the murderous practices of carnivorous plants, the dispute and death for females use, for defense or covetousness, which occur naturally among animals¹³.

Lombroso has stated that the childhood would be the clearest example of the remnants of savagery, because at this stage it would prove a natural propensity to moral insanity and elements of the criminal individual. As to his observation in many cases, he has concluded that in major criminals' early childhood it is already manifested a union of criminal disposition and mental dementia¹³. Ac-

ording to the Lombrosian thesis, as highlighted by Pierre Darmon², *the germs of moral insanity and crime can be normally found in the child, just as in the embryo there are certain shapes that, in adults, are another monstrosities*¹⁴. Thus, while in Rousseau's statements the man is born good and is further corrupted by society, for Cesare Lombroso the reverse occurs: the man is born bad and civilized society would inculcate in him notions of good and evil, annihilating the traces of savagery and atavism that could turn him into a 'primitive bloodthirsty'. In short, the born criminal behavior is the result of his degeneration, as well as individual's development interruption still in the infant stage².

His theory was based on the analysis of hundreds of cases and has established behavioral tendencies of most demented and therefore delinquents: frequently performing tattoos (with different meanings, many times obscene); excessive vanity; laziness; insensitivity to pain; no sense of morality; sexuality vices; deviations and excessive impulses in their conduct; among other features. Always denying free will and therefore reinforcing determinism, Lombroso's theory has intended to interpret the social behavior from physiological and biological characteristics¹³.

The author also provides an analysis of the pathological anatomy of the delinquent, even establishing an anthropometry. Among the most striking characteristics of the delinquent, he highlighted the lower cranial capacity compared to a "normal and honest" man, even establishing parameters according to each criminal type's propensity. Other characteristics were highlighted, such as the skull's asymmetry and flattening, besides elements which included a depressed forehead and large proportions jaw, as well as the epileptic basis. In his thesis, in most cases, a delinquent man would be devoided of beard, while a delinquent woman would present robust and advanced hairiness¹³.

Lombroso have also emphasized that the born criminal would possess an oblique face, giving as an example the Roman Caesars. Another common element in the characterization of the delinquent was the use of jargons and slangs as a language itself, which would end up hindering the identification of information when the individual was not a practicing member of the crime. Based on these characteristics he prepares his typological study as if criminals could be classified into categories as delinquents, whether motivated by passions, moral insanity or due to the occasion¹³.

Legal and social repercussion of Positive School

Despite the undeniable discriminatory appeal, theories developed by the Positive School and its predecessors brought a large contribution, as the creation of criminology as a branch of causal-explanatory science, encouraging the development of relevant penal institutions for appropriate action in accordance with the guilt and other criminal circumstances, for example, the idea of a safety measure, the probation, the parole and the tutelary care or treatment of the minor, the inclusion of concerns regarding the individuals involved (the offender and the victim), besides an expansion of understanding reality as it concerns to the law and legal medicine ¹¹.

Conducting bioanthropological studies has not only produced benefits, reifying myths and prejudices. In the nineteenth century, for example, the scientific enthusiasm entered the courts making the condemned to death as objects of interest to medical researchers. The idea of dignity was denied, coming to vivisection experiences with the heads of murderers, experiments founded on the misconception idea of restoring or signs of life in hewed heads ².

According to Lombroso, the delinquent is a patient who cannot fight and resist their impulses and predispositions, but still shall be blamed; he is a risk to society and shall be segregated from it. The author does not quite indicate the death penalty as a solution, but by the content of his ideas we might believe he could have considered it understandable as well as life imprisonment ^{10,13}. Thus, associated with the Darwinian evolution, the bioanthropological elaborations of crime have influenced the theoretical construction of several other authors that would have intensified segregation and discriminatory positioning related to ethnic and social minorities, influencing governments, legislators and judges from various countries – being expressed even in the definition of criminal policies.

In 1909, the doctor Viaud-Bruant, influenced by these theories, advocated a “social hygiene” through the castration of all antisocial, like an alternative sentence with the biggest advantages compared to the death penalty, prison cell or even forced labor ². And this is not an isolated example. In the United States of America (USA) where the explicit and systematic racial segregation was influenced by authors such as Davenport, Laughlin and Goddard, eugenic policies have become visible, especially as a means of protection against the immigration movements and individuals considered “Genetically de-

generate”. This process of exclusion condemned the mixing of races and defended reproductive control to safeguard the “race” [white] and also as a means of crime control ²:

In the U.S., in 1889, numerous cases of vasectomy in young inmates living in reformatories were registered in the state of Indiana, and in North Carolina, in the 50s of the 20th century, the sterilization of people with mental problems. The compulsory eugenic sterilization and in many other U.S. states until 1971 reinforces the selectivity against mental cases, epilepsy, recidivists and those affected by sexual deviations diseases, although later a judicial authorization has begun to be required ¹⁵.

The adoption of sterilization laws of madmen, criminals and recidivists was expanded. In 1907 and 1929, the cantons of Wyll and Vauld, Switzerland, have also adopted such practices, especially for the sterilization of abnormal people ^{2,14}. In Denmark it was accepted chemical castration, by the use of drugs, to recidivists in the practice of rape ¹⁴. In Germany it was no different: the anti-Semitic policies adopted around 1920 became more evident with the rise of the Nazi movement. Eugenic practices, among which the involuntary sterilization, were adopted for individuals with physical or mental diseases and criminals who were considered highly dangerous, as a mean of avoiding degenerative and hereditary defects ^{2,15}.

Other instruments were also incorporated into the legal system. The law of castration, in November 1933, served to serious sexual crimes cases and also to recidivism cases of crimes against moral and customs. To this law it was added the legislation that would authorize the use of sterilization methods for all individuals considered degenerate. Within the concentration camps, Jews, blacks, disabled people, gypsies and many other “categories” seen as lower were exterminated; from the perspective of that German society those “threatened” the “undeniable” Aryan superiority ².

The bioanthropological speech today

As mentioned before, Lombroso’s theory and the positivist school would have great influence in the Brazilian legal doctrine. The highlights are the typological elaborations of delinquency and studies developed by authors such as Pedro Lessa, Viveiros de Castro, Sílvia Romero and Tobias Barreto, among others ¹⁰.

It is inevitable to recognize that bioanthropological investigations brought advances, as manifested in the attempt to analyze the criminal and the criminal conduct on a scientific basis. However, it is unquestionable that the achievements of science and technology as well as the deepening of criminological studies allowed the observation that the occurrence of a crime cannot be solely attributed to a biological tendency. The positivist school has expressed a determinism that ignores other factors related to the crime, which now is not more accepted without any opposition.

At present, due to the existing range of knowledge and scientific production, it is disproportionate to affirm the existence of an atavistic criminal, who is naturally linked to the criminal practice. However, it is not possible to sustain that the bioanthropological vision has totally been abandoned. The attempt to discover new grounds for the criminal "vocation" persists, now based on genetic, neurological and physiological bases, with the complementary application of technological tools.

The tendency to maintain those assumptions in contemporary times is exemplified by the proposal hatched by researchers in 2008 from two remarkable institutions of research and education of Rio Grande do Sul, which were proposed to develop a controversial project in order to investigate the neurological foundations of violence in 50 juvenile offenders, aged between 15 and 21 years, who were inmates of the Foundation for Socio-Educational Care (FASE, in Brazil). The research was performed by MRI, aimed at mapping the brain of the juvenile delinquents in search of evidence to demonstrate a tendency to criminal practice^{16,17}.

Several reasons have been adduced in favor of the research; among them the possibility to know how the brain structure is involved in the processes that would lead to violence and also how neurobiology can contribute to the development of behavioral studies of humans. This research, inspired by studies of Damasio^{18,19}, seeks to relate problems of sociability with the occurrence of lesions in the prefrontal cortex¹⁷. Additional studies would be carried out through psychological evaluations involving their precedents, family and school records, and information from their childhood, verifying the possibility of conditions for the development of psychopathologies and a prone to violent behavior, besides DNA analysis from all participants¹⁷.

According to a newspaper article about the study, one of the researchers – Jaderson Costa – has

affirmed at the time that, in reality, it is a project that really aims to see the neurobiological, neurological and genetic foundations, but does not neglect the neuropsychological, psychiatric, emotional and social aspects¹⁶. He argues that criticisms would be misplaced to accuse the research of reductionism, even when comparing it to the Lombrosian thinking, and that in fact they would arise from the resistance to the application of neuroscience in behavioral studies.

In contrast, many professionals, especially psychologists linked to the protection of the rights of children and adolescents, have repudiated the proposal based on arguments that the research would stigmatize groups and would represent a regress to the determinism of the Positive School, especially the Lombrosian theory¹⁶. The psychologist Ana Luiza Castro¹⁶, who works with the Children and Juvenile's Court in Porto Alegre, said: *We understand that it hurts the Statute of Children and Adolescents and violates human rights because it comes from this principle: to connect violence to a particular social group*. From there, due to the opposition of existing values, the controversy of the ethicality of such a study with those young offenders at FASE arises; besides the implications upon their acceptance, which should come to the social and legal spheres.

Bioethical principlism reflections and interdisciplinarity

When it was proposed to carry out a research in a bioanthropological criminal realm, as in project conducted in the state of Rio Grande do Sul, an ethical issue arose and it became clear the clash between different values existing in this plural and more complex society than that existed in the eighteenth and nineteenth centuries. On one hand there is the desire to discover elementary aspects to understanding the criminal phenomenon, often justified by the interests of ensuring a system that defends more efficiently the existing social legal assets, plus an expected application of technological and scientific tools in the prevention and suppression of criminal practices. On the other hand, it is possible to observe the resistance that is based on values of social inclusion, inclusive justice and non-discriminatory scientific progress, as well as on the fear grounded in the colonial enterprise's situations of discrimination and in the barbarism of the concentration camps and other forms of population groups' exclusion and elimination.

It is irrefragable that the current society is more aware of the fact that conclusions such as Lombroso's represent an unconscionable exaggeration and that no researcher would engage in defending a radical thesis as the existing in the origins of the positivist school of criminology. The current analysis of biological elements for crime, as in this case, is committed to other causes and circumstances of reality, as it shall consider social, historical and economic aspects. However, it cannot be ignored the influence of the deterministic conceptions' common sense, such as those related to genetics, which are superficially and in a distorted way disseminated, eventually reinforcing prejudices.

Based on the contributions of bioethical principlism it is necessary to observe some existing aspects. Initially, it is worth remembering that the individuals involved in the research are young offenders inmates of the Foundation for Socio-Educational Care of Rio Grande do Sul, which is a special circumstance given that they are under state supervision, aiming at future reintegration into society. Therefore, the alleged autonomy of the research subjects is restricted and the scope of the free and informed consent shall involve, besides the adolescents, professionals and organs responsible for them.

In the analysis of autonomy in conducting research and other scientific procedures, although the competent authority or even the parental authority may issue the consent in lieu of the minors under their responsibility, it is essential to consider their will, when they are able to express it. As noted by Teresa Rodrigues Vieira, *whenever possible, in cases of children and adolescents, it shall be asked their opinion as to participate or not in the research, although the consent under the legal point of view is a parent or guardian's responsibility*²⁰ – same reasoning applies when the individual is in a position of reduced autonomy. But even if it were possible to assume the existence of free and informed consent to perform the research in the Rio Grande do Sul state, it would be necessary to conduct a critical analysis risks and benefits from the beneficence and non-maleficence principles.

Beneficence requires compliance with its obligation to maximize the alleged benefits while minimizing the possible damages. Additionally, respect for non-maleficence will be achieved by compliance with the obligation not to cause harm or damage to the person²¹. From an a priori examination it is not possible to observe the research's direct benefits to the subjects involved. However, there would be the possibility that the results would help in the near

future, to development socioeducational measures more appropriate to the young offenders' reintegration into society.

Also, it is clear that the means applied in the Rio Grande Sul study would not offend the physical integrity of the participants, as it would be used MRI scans in addition to investigations of the individuals' family and historical precedents. Despite the apparent compliance with the principles of research ethics, a proper evaluation requires considering whether any harm would befall either from moral, social or legal effect. In this regard, it is necessary to understand the contemporary order involved.

Today's criminal theory has treated the crime beyond the individual who practices it, because censure on the criminal law shall be focused on the conduct to be restrained and not singly on the individual: *the offense comes to be any typical, unlawful and culpable act or omission*,¹¹. Thus, it is inherent in the offense: 1) atypical: abstract description of a conduct that law wants to restrain and prohibition must occur in reality through a proper characterization of action and omission to the criminal provision in the legal system; 2) unlawfulness: the conduct must be contrary to law, a mismatch between conduct and norm, besides injury or threat of injury to a subordinate legal interest; and 3) culpability: to exist a disapproval of the typical and illegal conduct, being the agent free and responsible for the same¹¹.

The criminal sanction, as a result of the criminal conduct's completion, must be in line with the precepts of the ideal of a democratic state of law and constitutional order. The penalty application transcends the mere idea of retribution or compensation faced with the damage caused – seconded by absolute conceptions in the theory of punishment based solely on the need to prevent the commission of future crimes, as highlighted by the theories concerning this subject – and should combine these elements to the restoration and maintenance of social order¹¹, but it must be fair, according to the author's degree of culpability, and proportional to the severity of the damage and the unjust caused, for the accomplishment of Federal Constitution's Article 1, item III, which establishes the dignity of the human person as the foundation of the Federative Republic of Brazil.

In this context, it is possible to recognize the incompatibility between the current concept of crime and the one intended by the Rio Grande do Sul study, which seems to ignore such pleas of legal doctrine and encourage the construction of discri-

minatory stereotypes incompatible with the ideal of contemporary democratic state of law. It is extremely important to emphasize that, concerning the law, there is a difference between young offenders and the criminal itself, as law demonstrates a concern in developing educational measures aimed at the recovery of children and adolescents who have committed the misconduct in view of the fact that they are in the construction process of their discernment and personality. In this case, from the moment in which it is defined a weakened social group to be investigated, the young offenders at FASE, you create an expectation towards a discovery that negates the supposed probability of social reintegration.

It is also interesting to warn that Brazil is a country with large inequalities and groups which are marginalized, under circumstances of extreme poverty; they are the biggest “customers” of the States’ right to punish by the application of criminal sanctions. It is from this scenario of social and economic exclusion, arising from the persistent and substantial feature of inequality, which people undergoing extreme poverty suffer from invisibility, concurrently with the process of demonization of those who were willing to challenge the system and the immune ones with their privileges, undermining the impartiality of the law ²². According to Oscar Vilhena Vieira ²², profound inequality and its perpetuation deteriorates the state of law’s integrity so that the rights and the law itself can be seen under these circumstances as farces in which prevails the question of power: those who are among the more prosperous can negotiate the extent of their relationships with those excluded.

Therefore, the attempt to give primacy to biological elements of the active agent of crime is to corroborate, in scientific foundations, to inequality and the subversion of the democratic state. Bioanthropological studies, as the one proposed in 2008, reinforce the creation of the enemies’ human image, reproduce inequality and social exclusion in the scientific environment and are tools in the process of demonization of groups. According to Vilhena Vieira’s teaching, demonization is the social process of deconstruction of the human image and its enemies, indicating those who are not entitled to the protection of the law. It is the definition of a ‘torturable class’, which makes legitimate and legally immune any act to eliminate or face the demonized ²².

This focusing on the agent and in his characteristics only contributes to what the doctrine calls criminal law of the enemy ^{23,24}, i.e., the attribute of certain individuals or groups that pose a threat to

society, leaving to the criminal law the responsibility to act against those individuals in order to neutralize them – in the case of this research, those who have committed an offense. In this sense, the democratic state of law requires a direction contrary to the criminal law of the enemy, to the expansion process of the criminal law and the jurisdiction of criminal justice, even if contrary to the sense of revenge commonly contained in public opinion, media and laws formally valid, even though dissonant the constitution. Thus, contrary to the trend of increasing the powers of the criminal sphere, the substantive content of the democratic order requires the extension of the duties of the State and the rights of citizens, with the maximization of freedom and mitigation of the State power to punish ²⁵.

It is still possible to analyze the long-term issue, considering the hypothesis that it has really existed determinant biological foundations demonstrating the inclination to crime, such as neurological or genetic origins deformations, it would arise the difficult question of what the “destination” of those individuals should be. It would be undeniable, at first, conclusions as isolation or other measures aiming to remove the risk to society, even with suggestions to rescue eugenic alternatives, among other practices which are features of a state of exception.

Thus, it is not possible to state that no harm could come out of such research, because there is a contradiction between today’s legal system structure and the direction of the survey conducted in the state of Rio Grande do Sul, marked by a discriminant analysis that would place the involved subjects in disadvantage positions in the social and legal fields, and which represents a regress that would benefit the development of the criminal law of the enemy.

Final Considerations

Based on the foregoing, it is clear that the research carried out throughout history have had great importance in scientific and legal development observed today in fact, but also brought huge losses, for example, to influence the definition of discriminatory criminal policies such as those based on castration, sterilization and strengthening of a criminal isolationist position.

The proposal made by the researchers of Rio Grande do Sul appears to be of great value, in particular due to the neuroscience contribution and the use of science and technology in order to develop a more effective preventive system than criminal

investigations. But it should also be necessary to pondering the different values at stake and the consequences of admitting or not their studies.

The acceptance of this study may generate greater losses than advantages as individuals compose a portion of society marked by fragility and inequality, the greatest victims of a system of social exclusion. This fact would only exacerbate a process of demonization of groups, which distorts the ideals of a democratic state of law and foster the development of a criminal law centered on the delinquent individual and not on the conduct to be restrained, a characteristic encouragement to the creation of a legal censure closer to what is called *criminal law of the enemy*, which ignores the placement as citizens and assigns to the criminal a role of object of incidence of legal sanction and perhaps the resumption of measures closer to the ancient practices of “social hygiene”.

Thus, it is evident the non-observance of the principles of beneficence and non-maleficence, not with immediate effect, but due to the fact of not having contributed to the achievement of social justice and the ideal of the “recovered” criminal agent reintegration to society and to the tutelage of law. Consider that there would be no direct benefit to

the research subjects, condition defined by national regulations, such as the Resolution 466/12 of the National Health Council, but a risk of stigmatization of the group. According to this resolution, it shall be: *n) ensured to research participants the benefits of the project, in terms of social return, access to procedures, products or research agents*²⁶.

It seems questionable whether there is a direct benefit to the subject and even more troubling the possible stigmatization of the group. Furthermore, that same resolution provides that the research must: *j) preferably be carried out in subjects with complete autonomy. Vulnerable individuals or groups should not be research participants when the desired information can be obtained by participants with full autonomy, unless the research can bring benefits to the vulnerable individuals or groups*²⁶.

It seems also questionable in the case of the study on screen, the development of such research in institutionalized individuals with reduced autonomy. Since there is no observation of the principles of beneficence, respect for research subjects and possible stigmatization of individuals with possible exclusion from society, we believe that this type of research guided by the legal positivism and biological determinism would not be sustainable morally.

References

1. Aranha MLA, Martins MHP. *Filosofando: introdução à filosofia*. 2ª ed. São Paulo: Moderna; 2002.
2. Darmon P. *Médicos e assassinos na “Belle Époque”*: a medicalização do crime. Rio de Janeiro: Paz e Terra; 1991.
3. Villas Bôas Filho O. A constituição do campo de análise e pesquisa da antropologia jurídica. [Internet]. Prisma Jurídico. 2007;6:333-49. Disponível: http://www.uninove.br/pdfs/publicacoes/prisma_juridico/pjuridico_v6/prisma_v6_5d24.pdf
4. Citeli MT. Fazendo diferenças: teorias sobre gênero, corpo e comportamento. [Internet]. Rev. Estud. Fem. 2001;9(1). Disponível: <http://dx.doi.org/10.1590/S0104-026X2001000100007>
5. Laraia RB. *Cultura: um conceito antropológico*. 14. ed. Rio de Janeiro: Zahar; 2001. p. 17-22. (Coleção Antropologia Social).
6. Caldas AC. O desafio das neurociências. [Internet]. Cadernos de Saúde. 2010 (acesso set. 2013);3(1):7-17. Disponível: <http://repositorio.ucp.pt/handle/10400.14/10928>
7. Miranda MJ. A inteligência humana: contornos da pesquisa. Paidéia. 2002 (acesso set. 2013);12(23):19-29. Disponível: <http://www.scielo.br/pdf/paideia/v12n23/03.pdf>
8. Enzo A, Carvalho B, Barreto I, Leal J, Figueiredo L, Mendonça M et al. O uso de perfis genéticos para fins de prevenção criminal. [Internet]. Revista do Curso de Direito da Unifacs. 2002 (acesso set. 2013);(142). Disponível: <http://www.revistas.unifacs.br/index.php/redu/article/view/2048/1530>
9. Zambam NJ, Ickert AJ. A democracia brasileira e a pena privativa de liberdade: alternativas que preservam a dignidade humana. Revista Brasileira de Direito Imed. 2011;7(2):152.
10. De Molina AGP, Gomes LF. *Criminologia: introdução aos seus fundamentos teóricos: introdução às bases criminológicas da Lei 9.099/95, lei dos juizados especiais criminais*. 4ª ed. São Paulo: Revista dos Tribunais; 2002.
11. Prado LR. *Curso de Direito Penal: Parte Geral – arts. 1º a 120*. 9ª ed. São Paulo: Revista dos Tribunais; 2010. v. 1. p. 91.
12. Ribeiro HB. A necessidade de superação do paradigma criminológico tradicional: a criminalidade crítica como alternativa à ideologia da “lei e ordem”. [Internet]. Anais do XIX Encontro Nacional do Conpedi. Fortaleza; 2010 (acesso nov. 2011). Disponível: <http://www.conpedi.org.br/manaus/arquivos/anais/fortaleza/3268.pdf>
13. Lombroso C. *O homem delinquente*. In: Roque SJ, tradutor. São Paulo: Ícone; 2007.

14. Darmon P. Op. cit. p. 53.
15. Diniz MH. O estado atual do biodireito. 4ª ed. São Paulo: Saraiva; 2007.
16. Sociedade Brasileira para Progresso da Ciência. Psicólogos tentam impedir pesquisa com homicidas. [Internet]. Jornal da Ciência. 2008 jan. (acesso nov. 2011). Disponível: <http://www.jornaldaciencia.org.br/Detalhe.jsp?id=53818>.
17. Universidade Federal de Campina Grande. Estudo vai mapear cérebro de homicidas. [Internet]. São Paulo: Folha de São Paulo; 2011 (acesso jun. 2013). Disponível: http://www.ufcg.edu.br/prt_ufcg/assessoria_imprensa/mostra_noticia.php?codigo=6271
18. Damásio AR. O erro de Descartes: emoção, razão e o cérebro humano. São Paulo: Companhia das Letras; 1996.
19. Damásio A. Em busca de Espinosa: prazer e dor na ciência dos sentimentos. São Paulo: Companhia das Letras; 2004.
20. Vieira TR. Bioética e direito. 2ª ed. São Paulo: Jurídica Brasileira; 2003.
21. Conselho Federal de Medicina. Iniciação à Bioética. In: Costa SIF, Oselka G, Garrafa V, coordenadores. Brasília: Conselho Federal de Medicina; 1998.
22. Vieira OV. A desigualdade e a subversão do estado de direito. In: Vieira OV, Dimoulis D, organizadores. Estado de direito e o desafio do desenvolvimento. São Paulo: Saraiva; 2011.
23. Gomes LF. Reação de Zaffaroni ao direito penal do inimigo. [Internet]. (acesso nov. 2011). Disponível: <http://www.juspodivm.com.br/novo/arquivos/artigos/penal/reacao-zaffanori-dp-luiz-flavio.pdf>
24. Gomes LF. Direito penal do inimigo (ou Inimigos do direito penal). [Internet]. Conteúdo Jurídico. 2010 (acesso set. 2013). Disponível: <http://www.conteudojuridico.com.br/?artigos&ver=2.29698>
25. Medeiros JGP, Silva Neto NM. Democratização da justiça penal: a política criminal no estado democrático de direito. [Internet]. Anais do XIX Encontro Nacional do Conpedi. Fortaleza; 2010 (acesso nov. 2011). Disponível: <http://www.conpedi.org.br/manaus/arquivos/anais/fortaleza/3396.pdf>
26. Brasil. Conselho Nacional de Saúde. Resolução nº 466, de 12 de dezembro de 2012. Aprova as diretrizes e normas regulamentadoras de pesquisas envolvendo seres humanos. Diário Oficial da União. 13 dez. 2012 (acesso out. 2013);(12):seção I, p. 59. Disponível: <http://conselho.saude.gov.br/resolucoes/2012/Reso466.pdf>

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