

A New Frontier of Criminal Justice System

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ABSTRACT: *Today we know that the propensity to crime and violence is not only the effect of morphological, psychological and social factors, as believed Lombroso, Garofalo and Ferri, influential members of the Positive School in Italy. The tendency to crime is the product of many components, also biological and genetic roots. To say this thing is Adrian Raine, an eminent psychiatrist and criminologist English, who seeks to recover and reinterpret Lombroso, but especially opens a whole new frontier: the neurocriminology. The idea was to try the basics of anti-social behavior in the folds of the brain, using neuroscience and high tech, until you get to predict the propensity to crime, crossing genetic parameters, biological, but also social. We are currently faced, therefore, with a dilemma that is not easy to solve. It is impossible to think that man's actions are completely dominated by the fatality of destiny - and that, therefore, the offender is an irresponsible - but it is no longer possible refer to the good old concept of "free will" and believe that he is a "subject" in a strong sense, completely free to choose between good and evil. The presence in the courts of neuroscientists and the individualization of punitive sanctions: these are now the most urgent problems that arise in the field of criminal law.*

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I. Introduction

Although criminological positivism is often attributed to the positive school of Lombroso, Ferri and Garofalo, actually the first to apply statistical knowledge to phenomena of "social pathology" was Adolphe Quetelet, who has greatly influenced their science and was considered still alive "the first to make the statistic became a moral science", and Andre Michel Guerry, who in the nineteenth century led extensive research in French statistics on the distribution of crime and the relationship between the crime and numerous environmental and social conditions. While previously the criminality was attributed only to the will of the individual and isolated from the social context of the same, with statistical studies the offense was for the first once also considered as a product or expression of society. Quetelet and Guerry worked out a series of observations about the incidence of criminal phenomena, with regard to age, economic conditions and professions, from which it emerged that the highest rates of crime were connected more with the high levels of inequality between incomes and social classes, instead of with a high level of absolute poverty. Scholars of the crime, since the nineteenth century, realized that the society had to have some dysfunction, which was reflected on the behavior of the individual and then on his criminal conduct. The offense, therefore, was a behavior inserted in a social context and from this in some way affected. Statistical studies lead to the birth of the deterministic view of criminal conduct, namely the change in the liberal conception of the crime to a positivistic perception. With this vision there was a belief that the factors determining the crime had to be found within the company; is denied, therefore, the individual's moral responsibility.

1.1. "Archives of Psychiatry and Criminal Anthropology".

In the context of criminal anthropology, it is of considerable importance "Archives of psychiatry and criminal anthropology", journal founded in 1880 by Cesare Lombroso and Raffaele Garofalo, in which was added, in 1881, even Enrico Ferri. The three famous jurists, despite the inevitable differences, could be regarded as the founders of that great movement of criminal law reform, known as the Italian Positive School. They tried to offer a general response to crime, which was not limited to the ancient postulates of Criminal Science, demonstrating that the new sciences, such as psychology, anthropology and sociology, could be used to understand the phenomenon of delinquency and to defuse the social hazard. The attempt to generalize the phenomenon of crime had resulted to put all criminals on the same level as the society's goal was to neutralize the abnormality, regardless of the typological differences of offenders. The right to punish was thus to assume a social function, which is to eliminate forever or temporarily the criminal and anti-social elements from society. In the "Archive", Lombroso, Garofalo, Ferri and many other jurists and anthropologists examined and defined the character of the various forms of crime, through the study of innumerable concrete cases. The abnormal subjects were studied with great care and precision and the investigation is centered not only on the physical

forms of deviance, but also on family history of alienation and the psychological characteristics of the various subjects. This working method not only led to the creation of categories with well-defined characteristics, but to give an adequate response to any deviation from the society.

1.2. The Work “Criminology”.

The term “criminology” was coined in 1885 by Raffaele Garofalo, who used it to name the discipline that studies the crimes and their perpetrators and for the objective and extrajudicial definition of crime. Today criminology is the discipline that deals with studying the authors of deviant behavior, their psychological and physical appearance, their motivations and the biological and social conditions in which the story takes criminal place. The field of criminological investigation is the study of phenomena of deviance from the rules of society. It analyzes the characteristics of offenders and antisocial behavior in its various forms, from the simple mismatch to the most serious forms of antisocial behavior, up to criminal behavior. The crime is the most serious form of deviant behavior. Also according to David, the criminal can be interpreted as a *sui generis* form of interpersonal relationship, a kind of human behavior aimed at the evil that follows the violation of the law. But only meaning the crime as result of the environment in which they live the thug, crime assumes the character of a social phenomenon, an expression of discomfort and malaise of society that tries to fight, treat and prevent by means of legislative reforms with a view respect for Human Rights. Raffaele Garofalo, in his famous work “Criminology”, shifts the focus from mere anatomical analysis of the offender carried out by Cesare Lombroso, to analyze its possible psychological abnormalities. He introduces, in criminal anthropology, the argument that the essence of the offender is not always linked to abnormal anatomical features, as did the Lombroso’s theory, but also to mental or psychological characteristics of patients without somatic and psychiatric abnormalities. With this setup, the Italian Positive School is emancipated from the born criminal theory, to explore a number of criminal psychological types. Garofalo adheres to determinism understood as a universal principle, and moving from deterministic assumptions attaches to criminal sanction a single function, consisting in the company’s defense purposes. The deterministic option of Garofalo erases any possibility of distinction between abnormal and normal subjects, between the criminally insane and self-possessed individual. According to the famous Italian criminologist, the penalties must be fully replaced by security measures, designed such as crime control measures, because it is not possible to find a dividing line between delinquent-born and delinquent sick. The global approach of Garofalo is well founded around the social representation of the crime, that is as offense against the collective consciousness of *pietas*.

1.3. The Rupture between Lombroso, Ferri, Garofalo.

The 1894 showed a rather sharp crisis that breaks the association between Garofalo, Lombroso and Ferri. Garofalo had followed the “Archive” with intense activity for fourteen years, so he closed his relationship with affectionate words and saying:

“Serious occupations do not leave me more time to take part effectively in the Archive works... if today many ideas divide us, I’ll never forget those in which we were united to found a work that perhaps will not remain sterile”.

The reasons for the failure are to be found in the different political bodies of the three members of the Archive. In those years Ferri already visibly distant from the political thinking of Garofalo. In fact, just in 1894, he published “Socialism and positive science”, trying to prove that Marxist socialism was the fruitful continuation of positivism. In the early nineties officially he joined the newborn Socialist Party, with a decision likely to have strong repercussions on the “Archive” events and the positions of the School of Lombroso, marking an increasingly evident disagreement with the positions of Garofalo. In 1893 Lombroso he enrolled in the Turin section of the Socialist Party of Italian workers and joined those intellectuals who would have spoken out against the special laws, militarism, colonialism, corruption of the political class. Garofalo responded, the following year, with the volume “The Socialist superstition”, to convince that all the bourgeois socialist movement was become “irresistible and inevitable”. With this book, Garofalo proved the right wing of the Positive School for which the Darwinian theory of the struggle for existence had a policy tendency that “could only be aristocratic, never democratic, let alone socialist”. “The Socialist superstition” is a more important work than it seems, because is “one of the most tightened bourgeois-aristocratic intelligentsia efforts to counter socialism”. He showed immediately skeptical about the biological causes of crime, arguing that the civilized peoples nourish themselves of deep values about life, human rights and property. The absence of these feelings indicated a lack of involvement towards other human beings, so those who showed no disturbance for the pain inflicted on others were to be considered mentally abnormal. He said it is the lack of morality that makes the human being free to commit the crime and right from the definition of the moral sense derives the concept of natural crime. Like Lombroso, he believed the crime was an event that can seriously jeopardizing the survival of

the company because it is an injury of that part of the moral sense, which consists in the fundamental altruistic sentiments of piety and probity that are found in the higher races, as a necessary condition for the individual's adaptation in the society. Consequently, the criminal is a person unfit to live in community, because its moral is so far from that of the society in which it is to be greatly disturbed consciences. Garofalo did not attribute great importance to economic and education factors, family complexity, social and economic situation of life; for him it was secondary the psychological and moral examination of the delinquent. He considered psychology a science through which it was possible to penetrate the soul of the criminal and give results easily translatable into a suitable regulatory system to fight crime, that is, moral values that determine the crime as "offense to the profound and instinctive feelings of a sociable man".

It can be said, therefore, that Garofalo was a statesman in the judicial and criminal area and never had the constitutional sensitivity for the protection of individual rights, which so characterized the Liberal School of criminal law, while he was an individualist in economic and social fields, convinced that free unfolding of individual energies would emerge in the best way and would be beneficial to the development of society as a whole, according to the Anglo-Saxon model.

1.4. Garofalo Against Lombroso's Theories

Studying the criminal phenomenon with psychology, according to Garofalo, it was possible to outline the characteristics of offenders and classify them into certain types. Instead Lombroso, with his anthropology, could not connect scientific applications to legal ones. So he could not define with certainty the criminal phenomenon. Garofalo, therefore, although starting from the ideas of Lombroso to develop his theory, broke away from a strictly anthropological strand. The only study of physical abnormalities was not sufficient for him to define the offender, who is a deviant person not so much in appearance, but primarily in the soul, in his feelings and in his habits, in different way of staying in society and public perception of essential values.

The penalistic criminological theories of Lombroso, then, aroused enthusiasm, but at the same time they did not go free from criticism. Many were lawyers who were able to translate the proposals made by Lombroso in a criminal law reform program, and many, however, were even those who protested. These authors, while approving the use of the experimental method to identify the material causes of crime, did not share its justification on a purely biological basis, preferring an explanation of the etiology of the crime based on social and economic reasons. The same students of Lombroso, Enrico Ferri and Raffaele Garofalo, while agreeing on the importance of research carried out by their master and recognizing his merit of having opened a new way of seeing reality and, with it, a new way of thinking about crime, abandoned his plan and created new currents.

II. Criminal Anthropology And The Face Of Man

The criminal anthropology of Cesare Lombroso, therefore, as it is known, was the first to state the belief that the face wrote the nature of man. He based his ideas on the fact that there were criminals by birth and that the propensity to violence could be seen, for example, in the shape of the skull, in the width of the nostrils, in an abnormal row of teeth, in various different traits and physiological deviations from normality. A group of critics was formed by the positivists, whose activity was aimed to identify the material and social causes of crime. Among them stands out above all Filippo Turati, who with an essay entitled "The crime and the social issue" of 1882, criticizes Lombroso's theory of atavism, while sharing in general the scientific method through which the well-known psychiatrist had attempted to analyze the characteristics of offenders. Another group of critics was formed by supporters of "free will", namely the heirs of the classical school and Beccaria, as Francesco Carrara, who firmly believed that man was endowed with freedom in his choices. They were opposed to theories of Lombroso, who believed that the offender is not responsible of his shares. A harsh criticism was also made by Agostino Gemelli, member of the Catholic front, who expresses a feeling of condemnation against the science in general and, especially, against the experimental methods of criminal anthropology. But the biggest opponent of the lombrosian works was Gabriel Tarde, father of criminology French of the nineteenth century, who, in 1885, published "The criminal type", a lucid critique of the theory of the delinquent-born.

2.1. The Neurocriminology as a New Frontier of Penal System.

Then came the modernity, the positivism crisis, the rejection of all those theses labeled as racist, but in all these years, criminology has made his rounds and now, at least in part, gives reason to its founder Cesare Lombroso. "Today we know: the propensity to crime and violence is not only the effect of social factors, but is the product of many components, also biological and genetic roots". To say this thing is Adrian Raine, an eminent psychiatrist and criminologist English, who seeks to recover and reinterpret Lombroso, but especially opens a whole new frontier: the neurocriminology. The idea was to try the basics of anti-social behavior in the folds of the brain, using neuroscience and high tech, until you get to predict the propensity to crime, crossing genetic parameters, biological, but also social. Raine proposes a "bisociale" model. The model is defined such because it intends to shed light on inclination to violence with two intertwined causes, genetics and environment. On the

one hand there are genes and chromosomes, on the other the social context. The eminent psychiatrist shows how the mutated gene “Mao-A” interfere with the functions of neurotransmitters and is associated with impulsivity and other vulnerable components. He indicates other genes - “5htt62”, “Drd263”, “Dat164” and “Drd465” - to be connected to the anti-social and criminal behavior, as they regulate serotonin and dopamine, and then comes to the Lombrosian part of his study, which tries to read in brain shape the attitude of violent criminal. It goes so far as to associate with antisocial behavior a number of mental abnormalities, making the brain scans of detainees and applying functional neuroimaging even to abusive husbands. The researcher believes that the root of brain anomalies is located in genetic causes but also in environmental causes, that is external. He then focuses on the early years of a person’s life, that determine how it will be the adult of tomorrow and the good or bad road that will take. Raine argues that social factors such as malnutrition or maternal neglect can determine the existence of one or more brain defects. So much so that, as the scholar says, the signs of violence are spreading especially in the prenatal period. There is a relationship between smoking in pregnancy and violence by adults, as there is also a report on fetal alcohol syndrome. Smoke or drink alcohol during pregnancy exposes the unborn baby to brain damage involving antisocial behavior.

III. The Prefrontal Cortex Serves To Keep Emotions Under Control

All men have violent instincts, and the prefrontal cortex would serve their to keep them under control, unless it is broken. Raine would have discovered that some criminals suffer from deficits of emotional capacity, identifying some of that, more than not distinguish right from wrong, they don’t understand good or evil because of a reduced function of the amygdala. According to Raine, it would be appropriate to control the brain until from childhood to prevent criminal instincts, even if the brain of infants is fortunately malleable and, therefore, for a certain period of time, preserves the possibility of change. Most of the problems are already present during pregnancy, then the research was carried out on Danish prisoners, with mothers who smoked or drank during pregnancy, some born in forced mode or with lack of oxygen, others abandoned. Another factor found, always of biological origin, is the total absence of fear in the thought process, which can sometimes help (as in the case of athletes), but, along with other factors, it may become another serious threat to the release of criminal instincts. Beyond the various nuances about his investigations, for Raine, however, there is no automatism. He does not believe that crimes are a direct result of bad genes or brain abnormalities, but it is certain that the concepts of free will and responsibility seem resized. Such a thing, however, could lead some scholars to a wrong conclusion, how to believe in the existence of an indelible mark that distinguishes those who are genetically or biologically inclined to crime. The new knowledge should lead then to invest and pay more attention to the early years of children’s lives, especially in stage of motherhood, and it is also necessary to review the concept of justice because not all men are created equal and can enjoy environmental and social equal conditions. We now know that not all men are born equal, says the resercher, and some criminals are not going behind their faults, but what they have written in the brain. “The twenty-first century justice can still ignore all this?” asks Raine. But here it opens a question that is difficult to solve: what is about the idea of responsibility?

IV. Conclusions. Responsibility And Punishment In The Current Criminal Justice System

We are currently faced, therefore, with a dilemma that is not easy to solve. It is impossible to think that man’s actions are completely dominated by the fatality of destiny and that, therefore, the offender is an irresponsible, but it is no longer possible refer to the good old concept of “free will” and believe that he is a “subject” in a strong sense, completely free to choose between good and evil. Individualization of punitive sanctions: this is now the most urgent problem that arises in the field of criminal law. The Criminal Court, having wide powers of surveillance, verification, decision, is placed in a position to follow the course of the punishments that it inflicted, and can update the results obtained in the soul of the condemned during their fulfillment. This is the condition that allows a work of rehabilitation and re-education not limited to an exclusively administrative and penitentiary problem. The criminal justice system, therefore, can proceed and go forward only with the aid of judges able to assign “individualized” penalties to offenders, and with the help of studies and advances in medical and scientific field of neuroscience.