

International Journal of Human Sciences Research

THE FIGURE OF THE PSYCHOPATH IN THE LEGAL ORDER AND THE INDISPENSABILITY OF HARMONIZING THESE COMPONENTS

Natalia Oliveira Martins Scheffer

All content in this magazine is licensed under a Creative Commons Attribution License. Attribution-Non-Commercial-Non-Derivatives 4.0 International (CC BY-NC-ND 4.0).



Abstract: The present work intends to analyze the current position of the psychopath in the Brazilian legal system, and how it fits into the legally described definition of crime, observing whether the positions taken regarding this figure are ideal – and what to do if not –, taking into consideration, what is already known about the topic. The question was approached using the inductive method, with descriptive and explanatory research. In addition, documentary and bibliographic consultations, primary and secondary, were used to reach the conclusion. Case studies were not thoroughly explored, but were used as examples when necessary.

Keywords: Psycho; Legal system; Crime; Ideal positions.

INTRODUCTION

To define exactly what psychopathy consists of is a difficult task for scholars in sectors such as medicine, psychology, psychiatry, and even law. In addition to being a “condition” that in itself requires a long period of time to understand and that has been the subject of debates and discussions for decades, it is a mysterious field that is not yet habitable in many aspects. An example of this is that all measurements on the psychopath’s brain are still in the testing phase and nothing has been proven or postulated as certain.

Based on this, where would psychopaths who commit crimes be classified legislatively? This is a question for which all answers appear to be insufficient. However, if the law does not describe the psychopath and any consequence given legislatively to him, in view of such a gap, is satisfactory, society is not protected to the maximum extent possible against the actions of such figures.

The objectives followed moved towards the analysis of the placement of the psychopath in the Brazilian legal system, so that a range of options can be opened on how the law must

act towards the criminal psychopath and understand the real importance of legislative changes within the scope.

In the first chapter, psychopaths will be highlighted; the beginning of studies on psychopathy, in different areas, and how they influenced what is known today, the psychopathic personality, its characteristics, and the vision of scholarly authors on the subject, and studies carried out by doctors on the psychopath’s brain, so that the existence of psychic changes in him can be ascertained.

The second chapter will be aimed specifically at legal psychology, given its prominence in the field of law and the notoriety with which it identifies psychopathic components, and how much it can help in the evolution of the issue.

The third and final chapter deals with the crime and its elements, highlighting culpability, since it is the scope in which disagreements regarding the figure of the psychopath are involved, and whether he or she would be considered attributable or non-imputable. It is similarly dedicated to the security measure, an alternative to serving a sentence other than deprivation of liberty, to the criminological examination and its notability for the legislative framework of the psychopath, and to the project, number: 6,858/10 by Getúlio Vargas, which aimed to treat psychopaths in a unique way in the legal system.

It is hoped that with the analysis of the content, a range of options can be opened on how the law must act towards the criminal psychopath and understand the real importance of legislative changes for the maintenance of society’s well-being.

CHAPTER 1 - THE PSYCHOPATH BEGINNING OF STUDIES ABOUT PSYCHOPATHY

Since the figure of the psychopath emerged in the context of the professional society of

psychiatry and psychology, its placement on the agenda generates discussions and is the target of several contradictions regarding its conceptualization. One of the reasons for this is that it is present in people who clearly have atypical social behaviors and who, even so, do not show symptoms of mental illness or intellectual disabilities. For this reason, initially, doctors began to analyze the behavior of people who let it appear that something was not right in their psyche. It was not yet known what it was. Concrete cases of crimes began to be analyzed and little by little psychopathy began to be theoretically defined.

One of the first records on the subject was made by the professor of medicine at the University of Pavia, Girolano Cardamo, who died in 1596. His curiosity arose when his son poisoned his wife. He reported that there was no possibility of the boy being completely sane when he committed the act of killing his own mother. Cardamo went in search of answers. (BALLONE and MOURA, 2008)

Another relevant name at the beginning of this search was Pablo Zacchia, considered the founder of medical-legal psychiatry. He made notes that would later become the hallmarks of psychopathy and other personality disorders. (BALLONE and MOURA, 2008)

Philippe Pinel was the one who carried out a behavioral philosophical study to explain the existing medical term of psychopathy (BALLONE and MOURA, 2008). This was due to the perception that some of his patients did not have the ability to distinguish between right and wrong, even though they had the ability to reason. For him, the psychopath's mental alienation presents all aspects of mania, except delirium. To be delirious means to go wild, to remain in a state of hallucination, that is, to be out of your mind (FERREIRA, 2009). The psychopath then, not only would not go out of his way to commit crimes, but would also be aware of what he was doing.

Complementing much of what Pinel said, Prichard stated that insanities were possible that did not interfere with the intellectual scope of the being, but that in a certain way would affect the affective and volitional aspects of it, the latter being the one referring to the will (FERREIRA, 2009). Both Prichard and Pinel concluded that the three mental functions (intellectual function, affective function and volitional function) could be diseased independently. Prichard's work, *Treatise on Insanity and Other Disorders Affecting the Mind* (1835), marked the beginning of studies that would come to produce what is understood today as psychopathy.

That same year, the case of Pierre Rivière, who murdered his mother and two brothers, came to light and was the subject of study and history in a book by Michael Foucault, in the 1970s. One of the witnesses at the crime scene, Marie Riviere, 74 years old, at the time she was interrogated, said she saw Pierre's sister, Victorie, being killed when he hit her in the head with a scythe. When the witness realized what she had witnessed, she found the boy's mother and brother already deceased as well.

Dr. Bouchard's medico-legal opinion at the time was that:

[...] It was impossible for-me to find a disease, whatever it was, that had acted on the brain in such a way as to cause damage to its functions. [...] Nothing in your answers indicates a disorder of intellectual faculties. If we remind him of his crime, he speaks with a kind of tranquility that is almost harmful. (FOUCAULT, 2013, pg. 159)

Morel in 1857, unlike all the aspects seen to date, dealt with psychopathy through a religious premise. For him, since the human being was God's perfect creation, any imperfection turned man into a beast, since "mental illnesses" inverted the natural order of things in which the body was nothing more than the result of intelligence, that is, the body obeyed the mind (BALLONE and MOURA,

2008).

In 1888, Koch addressed what he called psychopathic inferiority. For him, such feelings and perceptions of inferiority were something that the individual was born with. Later, Krapelin linked the term psychopathic personality to immoral characteristics, noting that this was what led certain people to commit crimes. (BALLONE and MOURA, 2008).

Kurt Schneider (1923), bringing the knowledge of ancient scholars, ignored the nomenclatures used to define psychopathy, whether it was a disease or madness, and began to truly treat it as a personality disorder, also discussing the characteristics of psychopaths. It is worth mentioning that these characteristics were considered congenital cerebral inferiorities, but not specifically diseases. The psychopathic disposition, according to him, includes the asthenic psychological types¹.

[...] the impressionable souls, the tearful sentimentalists, the dreamers and the fantastic, the morally scrupulous, the delicate and susceptible, the capricious, the exalted, the eccentric, the vigilantes, the reformers of the state and the world, the proud, the indiscreet, the vain and the presumed restless ones, the evil ones, the collectors and inventors, the failed and non-failed geniuses [...] (SCHNEIDER, 1980 apud BALLONE and MOURA, 2008, s.p.)

Schneider (1980), following his studies, developed a conceptualization of what psychopathic personality is. He covered what he already classified as abnormal personalities, and removed some peculiarities, which for him, did not fit into the new concept to be declared. For example, feelings and the ability to establish emotional bonds.

Those defined as abnormal included groups of hypershy, depressive, insecure, fanatical, needy, emotionally labile, explosive, abolic and asthenic, and also the soulless, a group

in which psychopaths and sociopaths would fit. Emílio Mira y Lopez (2005) also defined abnormal personalities, and they were very similar to those of Schneider (1980).

Following a different aspect of the view so far, Otto Gross (2017) emerged, who explained psychopathic behaviors based on brain phenomena. For him, differences in character are determined by the way and speed with which brain neurons re-stabilize after an electrical discharge. For example, a rapid recovery of neurons characterizes calm and peaceful individuals, and a slow recovery of neurons is what maintains longer neural stimulation, and characterizes more restless and less peaceful individuals, who were already considered to have congenital inferiorities. brain.

It's like saying that the longer it takes the brain to recover from a load of energy, good or bad, whatever it may be, the longer a person is susceptible to performing an action outside of their completely healthy mental state.

The next known scholar on the subject is Cleckley (1976), author of *The Mask of Sanity*. It is, to this day, the basis of modern scientific studies on psychopathy. In the work, criteria were established to diagnose psychopaths, which were soon complemented by the characteristics put forward by Robert D. Hare, Stephen D. Hart and Timothy J. Harpur (1990 apud LOUZÁ NETO E CORDÁS, 2011). Are they:

[...] childhood conduct problems; absence of hallucinations and delusions; absence of neurotic manifestations; impulsiveness and lack of self-control; irresponsibility; superficial charm, remarkable intelligence and loquacity; pathological egocentrism; self-valuation; arrogance; inability to love; great poverty of basic affective reactions; impersonal, trivial and poorly integrated sexual life; lack of feelings of guilt and shame; unworthiness of trust, lack of empathy in personal relationships; manipulating others

¹ Those who “[...] tend to experience symptoms in a passive way” (DALGALARRONDO, 2019, P. 293), that is, depressive.

with deceptive resources; lies and insincerity; specific loss of intuition; inability to follow any life plan; antisocial conduct without apparent regret; suicide threats rarely carried out and lack of capacity to learn from lived experience.” (LOUZĂ NETO E CORDÁS, 2011, p. 12)

To finalize the concept given at the time, Henry Ey (et al 1981), in the book *Manual of Psychiatry*, classified psychopathic personalities within the scope of chronic mental illnesses, considering them, in addition, to be an imbalance.

In 1952, the *Diagnostic and Statistical Manual of Mental Disorders* was published, which underwent changes as the medical society deemed necessary. The most recent version is called *DSM – 5 (Diagnostic and Statistical Manual)*, and was published in 2013 by the American Psychiatric Association. For this edition, psychopathy (as well as sociopathy) is part of the *Antisocial Personality Disorders* framework, and is not a defined illness.

The World Health Organization (W.H.O.) also defines a psychopath as someone who has a *dissocial personality disorder of psychopathy* and the *ICD-10 (ICD-10, 1993)* (International Classification of Diseases, which also includes disorders) speaks of *personality disorder antisocial*. However, the understanding of some authors in the field of psychiatry is different, and the so-called *ASPD (Antisocial Personality Disorder)* would be different from psychopathy (HARE, 2013).

Hare, in 1991, created the so-called *PCL-R (Psychopathy Checklist Revised)*, or *Hare Scale*, a test used to this day in some countries around the world that measures the “degree” of psychopathy in an individual. It is a system that assigns scores. Based on a questionnaire of 20 questions, in which the answer “no” is equivalent to 0, “in some aspect or sometimes” is equivalent to 1 and “yes” is equivalent to 2, the score can reach

up to 40 points, with the questions based on the affective and interpersonal (cruelty, falsehood, lack of empathy, remorse, among others) and behavioral (such as the lifestyle they lead, instability, among others) aspects of being. From a score of 30 (TRINDADE, BEHEREGARAY, CUNEO, 2009), the agent can already be considered a psychopath.

Hare (2013), who used the method he developed to estimate the degree of anti-sociality of an individual, concluded that individuals who properly configured psychopathy also met the existing criteria for antisocial personality disorder, however, not all Those who demonstrated that they had the disorder completed the test by measuring psychopathic characteristics. Therefore, psychopathy would be one of the existing spheres of what was considered *Antisocial Personality Disorder*.

Ilda Morana (2003) is the psychiatrist who validates the PCL in Brazil, with the definitions of each disorder having great importance in relation to society and ways to more efficiently avoid levels of criminal recidivism.

The Hare PCL – R – Psychopathic Checklist Revised – scale fills this diagnostic difficulty. It allows, through a determined cut-off point, the identification of personality characteristics compatible with the concept of psychopathy, characteristics understood as morbid conditions that presuppose destructive anti-social behavior and a high tendency for criminal recidivism. Therefore, psychopathy is included among the antisocial personality disorders as the most serious form of manifestation. Such severity is understood as less possibility of rehabilitation, difficulty adjusting to the prison institution, recurrence of crime and violence. (MORANA, 2003, p. 35)

For her, there is no method in force that is completely free from inaccuracies in determining criminal psychopaths, but the checklist discussed here is a great tool to help reach a diagnosis free of doubts.

PSYCHOPATHIC PERSONALITY

“Psychopaths believe they have the right to have whatever they want, no matter the price, and often have violent and uncontrolled outbursts when they are criticized or frustrated” (DAYNES and FELLOWES, 2012, p. 22).

Psychopaths can be people of any race, gender, economic class. These are people who, from a young age, demonstrate behaviors that are incompatible with the socially ideal, which give evidence that they have some type of personality deviation. An example of conduct to watch out for is animal abuse. There are many cases in which, before starting to cause suffering in people, the psychopath harmed animals, without feeling any remorse afterwards. It is based on this that the United States is one of the countries that applies the most severe and differentiated penalties to those who mistreat animals, with the aim of preventing future catastrophes.

An extremely relevant attribute of this group is the ability to make others go through suffering and pain without the slightest empathy. They are people incapable of feeling emotion or caring about other people's feelings; for them, others are practically irrelevant when it comes to their desires. They are perverse beings who act with extreme coldness, putting everything and all their objectives ahead of them. These objectives are sometimes economic, sometimes social, among others. The psychopath can be moved by multiple scopes.

Some psychopaths believe they find themselves in the position of society's vigilantes, targeting people they consider immoral, and having the responsibility to eliminate such people from the world. Based on this and their lack of guilt, they manipulate their victims in order to make them feel guilty for going through one situation or another,

doing this or that. Others carry with them devastating memories of a specific person and end up “persecuting” throughout their lives all those who, physically or internally, remind them of them.

When it is said that these individuals do not have a conscience, it is stated that the basic sense of ethical and social responsibility that any human being must have to live and coexist in a social environment does not exist. However, psychopaths are rational people.

Manipulation and dissimulation are one of their most important characteristics. They deal with everyday situations or those that outline the achievement of their goals with a charm and superficiality capable of dominating individuals and convincing them of what they want. They tend to be extroverted and use their victims' tastes to seduce them, whatever the seduction may be.

According to Araújo (2016), psychopaths, in a prison environment, deceive prison officers and manipulate inmates, having control of rebellions both inside and outside prisons.

Lies are habitual actions, with psychopaths having the ability to fool even lie detectors. Gary Ridgway made the front page of newspapers in the United States when he confessed at least 48 times that he was guilty of murdering several women² and yet, one of the “serial killers” with the highest number of murders recorded in the USA passed the FBI's lie detector test for at least twice before the confessions and was ruled out as a suspect in crimes being investigated at the time. Often, the psychopath ends up believing in that fantasy world that he created, which is completely different from reality.

Furthermore, the psychopath is both calculating and impulsive, as he needs to feel immediate pleasures. He is passionate about the adrenaline of always being in danger, as he operates with other people's lives at all times,

2 Information about Gary Ridgway's biography available at: <<https://is.gd/yg2efu>>

and does not know how to deal with boredom, looking for situations that can bring some adventure to his daily life. The people around them are mere characters who can provide them with such moments of adventure, with the “rules of the game” being just the rules it stipulates.

Psychopaths can go unnoticed by society for a long time and their characteristics related to deception are part of the process that guarantees their survival. They do not always exhibit visibly psychopathic behavior, and they are actually quite normal. The majority study, work, form families and acquire a good profession. The author Ana Beatriz Barbosa Silva, in the work *Dangerous Minds: the Psychopath lives next door* (SILVA, 2008, pg. 218), states that such survival instincts make them similar to human beings.

This occurs due to its ease in lying, placed elsewhere, and its freedom about internal or social constraints. They are people clearly driven by destructive impulses, according to the author.

Psychiatrist José Eduardo Pereira Nora (2013), trained and specialized at USP and current director of Clínica Prisma in the city of São Paulo, states that there are degrees of psychopathy, ranging from mild to severe, with the majority of psychopaths falling into the degree light, with the reality of the theme being dissimilar to what laypeople imagine it to be.

Forensic psychiatrist Michael Stone (Columbia University, USA) developed a calculation method to assess the degree of evil in murderers, taking into consideration, the motivation, method and cruelty involved in these massacres. From level 9 onwards, cruelty already shows signs that its author presents psychopathic signs (APA, 1980).

In the first two levels with these signs, 9 and 10, abnormal traits of anger and revenge are present, which become ways of living

and unleash dark desires. From the next level onwards, individuals are deliberately psychopathic, with almost no shred of doubt. (APA, 1980)

Level 11 encompasses psychopaths who murder potential obstacles to their goals. Level 12 psychopaths kill people more frequently and easily, as they use murder as a means to maintain their power in any situation and when they feel threatened, they see it as a way to reestablish that power. The next level involves psychopaths who, as soon as they have a tantrum, act extremely violently and end up killing people, without feeling the slightest bit of remorse. It is not necessary for something to actually happen, but rather for him to feel anger through any spark generated at a given moment. (APA, 1980)

Level 14 addresses psychopaths who murder for their own benefit, whatever it may be, including a simple “no”. Psychopaths versed at level 15 are those who have a thirst for killing and do so to satisfy their own pleasures. The next level deals with psychopaths who act very violently, but over long periods of time. Apparently, they are more calculating and planned beings, as they do not act in a sequence of acts and make it difficult for them to be linked to the crimes committed. The next level encompasses “serial killers” with sexual perversions.

Level 18 includes torture killers, while 19 deals with psychopaths who only generate suffering, but not necessarily death.

Those sufferings include intimidation, sexual attacks and even terrorist aspects. Level 20 psychopaths’ main purpose is to make other people suffer. They are sadistic people. Level 21 is very close to this, but there is the issue of extremism. An example of this is kidnapper Cameron Hooker, who kept a 23-year-old girl trapped in a box under her bed for 22 hours a day. The next and last level are similar to these two, however, the end they aim to achieve is

death, and the suffering of others is the means. (APA, 1980)

According to the Diagnostic and Statistical Manual of Mental Disorders (2014), the diagnosis for psychopathic antisocial personality disorder must begin when the subject presents at least three of the characteristics that will be presented below:

- Non-compliance with social and legal norms, which ends up generating continuous rebellious behavior.
- Ease and endless motivation to deceive, deceive, lie and deceive people, in order to obtain personal advantages from this.
- Inability to worry about the future, since your momentary pleasure is what matters.
- Irritability and aggressiveness.
- Irresponsibility for one's own safety.
- Inconsistency in honoring work or financial obligations.
- Lack of remorse or guilt.
- Indifference to the fact of mistreating or hurting people or animals.

The person cannot obtain such a diagnosis before the age of 18, according to the World Health Organization and APA (American Psychological Association), even if they may have previously been identified as a potential psychopath.

What generates many doubts regarding the topic is whether the environment in which the person lives can alter their psychopathic characteristics. There are those who disbelieve that there is any solution to dealing with such people, such as Ilana Casoy (2014), who states that there are two cures for psychopaths: prison or death.

THE PSYCHOPATH'S BRAIN

Some studies have already corroborated to prove that the brain of a psychopath is physically different from the brain of a non-psychopath. However, they are still in the experimentation phase.

The lack of ability to feel empathy or care about the suffering of others is due to a lack or reduction in activation of the part of the brain that deals with moral and sentimental considerations. This occurs because the connections between the cerebral amygdala – responsible for sensations such as fear and anxiety – and the prefrontal cortex – the part responsible for senses such as empathy and guilt – are not sufficient to create identification and affinity with other people. Images recorded with diffusion tensor, a type of magnetic resonance imaging that highlights biological tissues, prove that communication between these brain structures is not integrated as would be ideal.

The images cited elsewhere come from a study coordinated by the University of Wisconsin-Madison, in the United States, in which the brains of 40 inmates were analyzed, with 50% of them diagnosed as psychopaths, and the rest not. It is worth noting that the researchers took care to evaluate individuals who committed similar crimes.

Michale Koenings, professor of psychiatry at the School of Medicine and Public Health at the University of Wisconsin, and Joseph Newman, professor of psychology, in a previous study published by the Journal of Neuroscience, had already found that the attitudes of psychopaths were close to the attitudes of victims of accidents that resulted in damage to the prefrontal cortex, which was concluded by the new study elucidated above. It was from the Phineas Gage case³ which brain regions are put at stake with regard

3 Phineas suffered an accident at work in which an iron rod permeated his brain. Even though he remained lucid after what happened, without losing any movement, memory, among others, his personality went from balanced, responsible and meticulous to disrespectful, with high rejection when faced with frustrations and certain difficulties. to adapt to norms that

to antisocial behavior. Studies and reports regarding war veterans provide the same information, that injuries to the frontal cortex end up resulting in impulsive, aggressive and antisocial behaviors (BROWER and PRICE, 2001). The title of Acquired Sociopathy was given to cases like Phineas’.

Psychiatrist José Eduardo Pereira Nora (2013) states that drug addicts can also develop “a certain psychopathy”. In the same way that the accident reported above corrupted the brain function connection responsible for empathy, the notion of right and wrong, among others, some drugs have this same capacity. For this reason, it is common to see drug users in the news stealing items from their own home, harming their family and those they claim to love, demonstrating that they matter little. There are drugs and degrees of use that can lead the individual to have this brain connection damaged to the point of not exempting any feelings for others.

The selfish person, in turn, cannot be seen and considered as a psychopath, because when his actions are pointed out and some situations are explained, he has the ability to “[...] step out of himself and look at the other, perceive the other [...]” (NORA, 2013, n.p.), while the psychopath cannot practice this under any circumstances. Currently, medicine and psychiatry argue that psychopathy is not curable, as no means have yet been found to reestablish the brain connections necessary for good social interaction with a basic sense of respect for others.

Other studies, using exams obtained through fMRI (functional magnetic resonance imaging), which detects variations in blood flow when neural activity acts in response to a stimulus, demonstrated that criminal psychopaths “responded” in a more attenuated way during processing of negative terms and situations. It was also found that the brain of both psychopaths and people previously seemed basic and usual. (Damasio, 1994)

with other antisocial personality disorders needs additional effort to process negative emotions. Furthermore, “[...] it was observed that patients presented an increase in signal intensity in the amygdala and dorsolateral prefrontal cortex, going in the opposite direction to controls.” (FERNANDO, 2017, s.p.).

However, as already mentioned, studies on the psychopath’s brain are still experimental, and (Séguin 2004 apud DEL-BEM, 2005) adds that there is a need to carry out more studies, as well as evaluations with more similar groups of people, with not so broad focuses. Furthermore, it must be highlighted that most of the studies and research on the subject use violent people, and that the results, at times, may have been more due to their impulsiveness and aggressiveness, since they are brutal, and not to the psychopathy in question. yes.

Another essential element identified as lacking in the neurological system of a psychopath is 5-hydroxytryptamine or serotonin (5-HT), a mechanism that guides mood, sexual activity, sensitivity to pain, among many other items. The reduction of this function, called serotonergic, generates aggression and impulses, including in other antisocial personality disorders (FAIRBANCKS et al., 2001; DOLAN et al., 2001) and even in animals (CHEREK and LANE, 1999).

It is interesting that, analyzing the plasma levels of free tryptophan in a psychopath, it was suggested by researchers and scholars that in quantities higher than the ideal, it would be possible to identify possible criminal behavior in the future (VIRKKUNEN et al, 2003).

In the Netherlands, researchers from the Nijmegen Medical Center, Radboud University, in the work published in Social Cognitive and Affective Neuroscience, evaluated 34 people, 14 of whom were diagnosed psychopaths – and had committed

crimes – and 20 were potential psychopaths, and had never had committed any crime. Exams similar to those referred to here were carried out and it was concluded that the brain regions of the brains of the two groups differed not in the prefrontal cortex, which controls impulses, as stated above, and it is stated that this is because his that non-criminal psychopaths were successful in containing their impulses and regulating their behaviors and criminal psychopaths were not.

Complementing what has been mentioned so far, a study led by the University of Montreal and King's College London placed 32 men convicted of a crime involving violent conduct for inspection. Of them, 12 were psychopaths and 20 were simply considered antisocial.

The test consisted of a memory game, in which the rules were constantly changed and the aim was to observe how each person adapted to the changes. While they played, an MRI was performed so that their brains could be analyzed.

As a result, psychopaths had more difficulty than mere antisocial (not synonymous with antisocial personality disorder, where psychopaths fit in) in learning from their mistakes and acting about them. As a rule, the brain, when faced with a mistake, captures the message and stops repeating the pattern that caused it to be punished. With psychopaths this didn't seem to be so clear.

According to the researchers, the study “[...] challenges the view that psychopaths have low neural sensitivity to punishment.” Furthermore, they made it possible to claim that “[...] there are changes in the information processing system responsible for learning” in the brain of a psychopath. (PSYCHOPATHS can ‘recover’ after being penalized? 2015, n.p.)

In addition to the neurological issue, constant symptoms of psychopathy can develop throughout life, but this does not necessarily make the individual who develops

them a psychopath. It is a recurring situation, including with children who have a past of abuse, whatever it may be, neglect or recklessness, suffering. Some children tend to create walls that distance them from society, causing them to have serious trust issues and difficulty approaching other people. They are generally not skilled at capturing other people's emotions, but they can be taught, for example, to look into others' eyes, which increases empathy and expands emotional bonds.

When psychopathic symptoms exist, but it is observed that some situation occurred in the past and this may have been the trigger for certain inappropriate behaviors, the symptoms can be treated. When these traumas are defined in advance, the intervention can be more powerful and generate more positive consequences.

A situation that could fit into this situation is that of Elizabeth Thomas. She lost her mother when her brother was born, and her father sexually abused and neglected her brother. Both were adopted. Beth presented, over time, signs that were atypical for a child her age. She hurt herself and animals (she even killed small animals, like birds), as well as constantly hurting her brother (poking him with needles, for example) and made it clear, in the documentary *The Wrath of an Angel*, that she wanted to stab her parents.

She was diagnosed with Reactive Attachment Disorder and everyone was completely sure that she was also a psychopath. However, the fact could only be proven when she was 18 years old. While still young, she went to an institution specializing in treating children with similar problems. Today, it is known that thanks to this, she lives a normal daily life and works as a nurse. Furthermore, she and her mother created a clinic for children with behavioral disorders.

It is true that the disorders with which she

was diagnosed, at the time, do not have a full cure, but as stated elsewhere - and adding the positive interference of psychology in the formation of a citizen -, it is known that she managed to adapt in society and not but do evil.

CHAPTER 2 - LEGAL PSYCHOLOGY

Separating the word “psychology”, we have that “logy” is the study and “psycho”, from “psyche”, is the “soul”, therefore, psychology has as its research object the human being and everything what surrounds you, from your behavior to the feelings and thoughts that influence you. Gaining space in science only at the end of the 19th century, it studies the relationship between body and mind and the control that one exercises over the other. It is also a medical science, as it studies psychic processes and what they generate, and works in psychopathology, dealing with deviant personalities.

Bock, Furtado and Teixeira (2002), stated that psychology analyzes singular and generic manifestations of conduct, in which the first works with the individualism of each person and the second with the being as part of a social whole. It is a study triggered precisely by the fact that human beings are unpredictable and their behaviors and social interactions are subject to change at all times. The whole question of psychology is subjective. Each one is the result of what they build internally and socially, being the result of biological experiences and constitutions.

As it developed, psychology began to operate in different areas, such as education, and it would be no different in law. Legal psychology came from social psychology, around the 18th century, when it was seen that the connection between regulatory norms and the human being itself acted together.

Since the beginnings of society, rules

of good coexistence have been established between different people and standards of conduct have always been followed. This, in addition to mentioning just one means of establishing good coexistence, is closely linked to law, since it is the law that regulates any standard of coexistence. In Brazil, however, the relationship between psychology and law was born only in the 20th century, when several studies on crime, based on mental and biological foundations, in depth in areas such as legal medicine, criminology and forensic psychiatry, began to emerge. It was there that a connection was established between what an individual's psyche could influence in the commission of a crime, for example.

According to Cohen et al (1996), legal psychology arose from the need to create specific and unique legislation to cover crimes committed by people with some type of mental “illness”. From that moment on, several specific institutes to treat mentally ill people as criminals came into existence. An example of this is the Judiciary Asylum, created in 1921, in Rio de Janeiro, designed by psychiatrist Heitor Carrilho. He took a position that argued that crime occurred based on the individual aspects of the person, and not social ones. He was in favor of positive law, that is, the norm, and intended to develop a study on the “psychologization”/ individualization of the criminal act. His speeches took on such proportion and importance that he participated in the case of “Febronio Indio do Brasil”, who was the first person to be considered unaccountable in a trial in Brazil.

In the report made by Carrilho, Febronio was crazy, delusional, and was strongly moved by allegorical convictions. When arrested in 1926, some people reported that he had walked the streets naked, with a yellow sash around his waist and a sword. He claimed to be there at Lucifer's request because he was

going to duel someone. In the book he wrote, *Revelations of the Prince of Fire*, he mentioned that the world would be freed from the end of times if three children were sacrificed. Febronio was also known for tattooing his victims with the same drawing he carried with him. (DECLERQ, 2017).

Garcia (2004), based on the traditional definition of Law and Psychology, stated that these areas have points of convergence, starting with duties and rights and the motivations and mechanisms specific to human beings. According to the author, Law can be considered as a set of laws, precepts and rules that subject men to certain behaviors. Legal psychology would be responsible for dealing with psychological phenomena within the scope of justice, and being incisive in the field of psychological investigation with regard to behaviors incompatible with the law.

Still in this line of thought, the psychology of testimony was developed, which aimed to verify the reports of subjects involved in crimes and the analysis of their psychological processes, as well as their veracity, based on experiments. This moment was one of the first that contributed to legal psychology being validated, says Brito (2005).

In the mid-1980s, psychologists volunteered to guide people referred by social services, mainly regarding family issues and neglect. Later, the Code of Civil Procedure established the presence of psychologists in certain cases and in 1985 a project was presented that created a position for a judicial psychologist.

Currently, their operations are much broader and the contexts in which they work are very different. Psychologists work, for example, in conflict mediation, development of public policies that correspond to the demands required by society, assistance to Justice Organizations and care for citizens' rights, according to what each person's

psychological state demands.

In addition, they work providing psychological support to legal practitioners themselves, such as judges and civil servants.

Psychology can also be fundamental before committing an offense. Children who are born into homes where family neglect or recklessness is constant are at great risk of having their development affected, and may grow up rebellious and the path of rebellion may attract their attention. In this sense, the Structural-Functional Theory of Deviance was developed, which confirms the role of the social environment in the formation of an individual's character. The Social Control Theory returns to the same side, stating that people who have gone through precarious family or upbringing situations, in some way, tend to have less discipline. Psychological support for a child or young person who faces any type of emotional problem while growing up can immensely influence their actions as adults. Teresa Carvalho, psychoanalyst and teacher trainer in early childhood education, states that "treating psychopathology is the most effective prevention against a bad outcome". (HOSHINO, 2018)

Not only that, the psychologist is one of the figures who helps the incarcerated person to develop conditions to return to integration outside of their cells. Furthermore, psychologists, together with other professionals, evaluate situations of regime progression and analyze the behavior of the prison population.

LEGAL PSYCHOLOGY IN PRACTICE

Psychology is included in law in different ways and can act on a wide range of possibilities that may sometimes not be recognized by society. An extremely important area of this action is prevention.

It is common to hear that people who are attacked can become aggressors, and this

statement is duly proven. A study carried out by the University of São Paulo brought together interviews with four thousand people in eleven capitals of the country and concluded that, of the people who stated that their children's bad behavior would result in severe physical punishment, 70% said they had experienced this when child, with 20% being attacked daily. Most of the interviewees were even punished with sticks, sticks, slippers, among others, instruments that in themselves generate repulsion regarding the aggressiveness they represent. (DONATO, 2012)

The researcher at the USP Violence Center, Renato Alves, is certain that those who are treated this way as children tend to repeat such behavior, especially because they see it as something acceptable and learn to resolve conflicts this way. He also adds that if there are no other examples throughout life, the aggression tends to be repeated even more. (DONATO, 2012)

Luiz Carlos Ditomazzo, judge of the Children and Youth Court of the São Paulo Court of Justice, defends the creation of a law that, in addition to imposing punishment on the aggressor, also obliges him to undergo psychological or psychiatric treatment (DONATO, 2012). Psychology must be present in "contexts such as detention centers, victim support centers, mental health or prison centers, higher education institutions and several others" (Juridical Psychology, 2018, n.p.).

The psychology of crime, inserted in legal psychology, is one of the branches that works with the aim of involving the "science of offender behavior". She studies the origin of certain behaviors in her patients, whether they are acquired, evoked, learned, born with it, whether they are influenced or not and if so by what. It covers examinations and assessments, intervention strategies,

prevention and "reduction of criminal behavior and personality disorder" (Juridical Psychology, 2018, s.p.). In Brazil, criminal psychologists have a large role in social assistance, in situations of violence against minorities, child and domestic abuse.

One of the existing assessments is the forensic psychological assessment, which aims to observe methods of applying knowledge of forensic psychology in practical cases. It aims to describe patterns of behavior and associate the individual with responsibility for their actions. Furthermore, it brings legal operators, such as lawyers, judges, prosecutors, among others, closer to this reality so that the judgment is directed towards a better decision for the future of the individuals involved in the specific case to be assessed.

There is also psychology applied to the correctional system and prevention programs, which is included in the psychological monitoring of inmates. It is the psychologist who also works with inmates regarding their rehabilitation for their return to society and tries to minimize "the effects of incarceration".

It is argued that prevention programs "could be the solution to crime delinquency, as long as it was possible to change the primary environment of the aggressors, through prior identification and prevention of antisocial behaviors" (Juridical Psychology, 2018, s.p.).

However, both the application in Basic Education and the work of psychologists in variables related to crime are limited, making prevention ineffective. Therefore, it is only through research in the area that prevention has been timidly sown. (Juridical Psychology, 2018, s.p.).

Another field in which psychology is extremely important is in police practice. Here, the psychologist works alongside crime-fighting teams on the ground, tracing profiles and personalities, identifying points of stress, resilience, among others. They also work on mental prevention for the team itself,

providing psychological support to them and helping to deal with the pressure suffered while carrying out their role.

CHAPTER 3 - CRIME AND ITS ELEMENTS

Criminal Law establishes different concepts of crime, with the definition of the formal, material and analytical concept. For the first, crime is “the mere violation of the criminal norm”. The material concept defines crime as “human behavior that offends or exposes to danger legal assets protected by criminal law” (SALIM, 2018, p. 444). Finally, analytical crime does not have an exact and concrete definition, as the term opens up space for different theories discussed on the topic.

Alexandre Salim (2018) states that crime, by its legal definition, “is a criminal offense punished by imprisonment or detention”, which is spelled out in article 1 of the Penal Code Introduction Law. The author (SALIM, 2018) continues dealing with elements of crime, explaining that, between the bipartite concept and the tripartite concept, this is the one that predominates in Brazil, and considers that the elements of crime are the typical fact, illicitness and culpability. This is the understanding adopted by the Superior Courts. It is worth mentioning that without any of these compositions, it does not constitute a crime.

There are several theories that aim to explain what would be the best way to treat the criminal act, its elements, its assumptions and everything that surrounds it, since the entire criminal legislative system is based on this definition. Brazil adopts the Causalist or Naturalistic Theory, which places the three previously mentioned foundations as elements of crime. Therefore, any typical, illicit and culpable act constitutes a crime.

The first element, typicality, refers to the principle of anteriority contained in the

Federal Constitution (BRAZIL, 1988, Article 5º, XXXIX) that “there is no crime without a previous law that defines it and no penalty without prior legal punishment”. Illegality is the failure to comply with duties imposed by rules of public law, which contravene norms of good social coexistence. It is any action or omission that generates social and legal imbalance, which when it occurs is rejected by specific and predetermined penalties, analyzing the circumstances of the specific case. Finally, culpability relates to the degree of blame that the agent takes for his action or omission and what is criminally attributed to him as a result.

Analyzing the criminal conduct of psychopaths, it can be stated that two of the necessary compounds are configured, the typicality and the illicitness of their actions. However, what remains in question is whether the requirement of culpability is met when a psychopath acts in violation of the norm, giving greater focus to imputability.

GUILT IN THE LEGAL ORDER

Eugenio Raul Zaffaroni and José Henrique Pierangeli (2019), in their work, *Manual of Criminal Law: General Part*, highlight that culpability is the element of the crime that is based, in the concrete situation, on the range of possible attitudes that the agent could have taken and taken, what was required or accepted to do at a given time. Until 1984, intent and guilt were situated in culpability (causal theory of action and psychological theory of culpability), but today, they are part of the typical fact, together with conduct (finalist theory of action). In legal terms, guilt is the lack of intention to commit a certain act and intent is precisely the ambition to commit it or run the risk of committing it (direct intent) while being fully aware that it may occur (eventual intent).

Observing the individual's intention

to commit a criminal offense, some rules were established, throughout the study on culpability, for a crime to be consummated.

Firstly, the action or omission that led to the commission of a criminal act must be voluntary and spontaneous, that is, the agent must have intended to commit them, or have run the risk of them happening. Cases in which there was coercion, whatever its nature and aspect, force majeure or unforeseeable circumstances, for example, among other situations in which the agent cannot take control of the situation, there is no imputation of crime to him, as the criminal practice does not. It was voluntary nor spontaneous. Thus, without one of its requirements, culpability is not verified, and without culpability, there is no crime.

Imputability is “the possibility of someone being held responsible for committing a criminal act” (MICHAELIS, 2019, s.p.).

Article 26 of the Brazilian Penal Code determines that the beings that would qualify as non-imputable, that is, not capable of being held responsible for their acts, are mentally ill people or those with delayed or incomplete mental development who were entirely incapable of associating the action or omission at the time of execution of an illegal act, minors under 18 years of age, and “[...] the agent who, due to complete drunkenness, resulting from unforeseeable circumstances or force majeure, was, at the time of the action or omission, entirely incapable of understanding the illicit nature of the fact [...]” (BRAZIL, 1940, s.p.).

The law adds in its spelling that the sentence can be reduced by one to two thirds in the case of mental health disturbance or incomplete or delayed mental development, which at the time of the crime, “was not entirely capable of understanding” its illicit nature.

Those who act under the influence of passion or emotion and drunkenness are

charged, but have a reduced sentence. Some exceptions may occur, such as complete drunkenness resulting from unforeseeable circumstances or force majeure, in which the penalty may be exempt.

Secondly, the agent must be aware of the illegality. The potential awareness of illegality involves the psychic capacity of the agent to absorb and interpret the illicit nature of his action or omission, knowing that it has an anti-legal nature. According to Mirabette, the subject of the act must:

[...] have awareness and will within what is called self-determination, that is, if they have the capacity to understand, given their psychic conditions, the anti-legality of their conduct to adapt this conduct to their understanding. (2012, p. 87)

Without this notion, the individual, when committing the crime, normally acted in accordance with what he believed to be regularized in society. Furthermore, such awareness is fundamental in the judgment of reprehensibility, because if the agent considered his action authorized and honest, the “guilt” that falls on him can even be socially disregarded.

An example of this is the Dutchman who comes to Brazil and lights a marijuana cigarette as soon as he steps on Brazilian soil. Here, marijuana is not legalized, but in its country of origin it is. For him, smoking marijuana on the street is so common and commonplace that at no point did he imagine that it wouldn't be the case in any country in the world. He had no idea of the illicit nature of his actions here. This person is not considered culpable.

The third and final requirement of culpability is the demand for different conduct. Guilt ceases to exist when, in the eyes of society, at the time of the illicit action or omission, the agent could not have acted in any other way. Enrique Cury Urzua, being cited by Alberto Silva Franco, states that “the more abnormal

the concomitant circumstances, the more tenuous the culpability” (FRANCO, 1987. p. 43.).

This means that, depending on the situation in which the agent finds himself and its abnormality, it is not viable to require him to have acted in accordance with the legal system. It is not possible to blame him, since in this specific case, it would hardly have occurred to an average man to act differently.

It can be stated that culpability constitutes yet another condition for the subject’s defense, and the Universal Declaration of Human Rights itself declares that “[...] every human being accused of a criminal act has the right to be presumed innocent until his guilt has been proven [...]” (UN, 1948). If the legal system adopted the bipartite concept, many practical cases would have been resolved in an alternative way, putting people behind bars who did not benefit from such consequences.

Francisco de Assis Toledo attests that:

[...] Within a legal conception, action is, therefore, human behavior, dominated or dominated by the will, directed towards the injury or exposure to the danger of injury to a legal asset, or, even, to the cause of a possible injury to a legal asset. (TOLEDO, 2000, p. 83)

There are trends that consider that culpability incorporates the judge’s discretionary power, since he is the one who verifies its existence in the specific case. As already mentioned, the agent’s imputability, his understanding or lack thereof that the act was in fact illegal, and whether in the situation arising it was possible that another attitude would be required, must be analyzed. It is worth highlighting that once these elements are placed on the agenda, the State’s power to penalize is limited, while there are numerous situations in which a crime can occur and that everyone has the right to have all their

conduct thoroughly analyzed before being targeted. of a penalty that may not match the truth of the facts.

Furthermore, the analysis of culpability makes mention of the principle of human dignity, since ignoring or extrapolating places man as a vehicle to demonstrate to society that the state’s duties towards crime and the criminal are achieved.

Ronald Amaral Júnior (200?) states that culpability is not only inserted in the legal sphere of analyzing the case so that the sentence can be determined, but also in the social and personal sphere of that person. As stated, one of the components of culpability is the fact that the agent is aware of the illegality. However, someone’s knowledge essentially depends on the environment in which they live, their educational level, social life and economic situation, in addition to other socio-economic levels that could be mentioned. The same can be said about the requirement for different conduct. In a situation of danger and high adrenaline, not every average man⁴ has enough skill to detect the least harmful solutions in the disorder that is before him. For this reason, there are many cases in which the most serious solution is chosen.

Culpability is currently guided by three theories that have been developed throughout studies, the Psychological Theory, the Psychological-Normative Theory and the Pure Normative Theory of Culpability. The first involves intent and guilt as modalities and imputability as a conjecture. For its main authors, Franz von Liszt and Ernst von Beling, the psychological aspect of the agent is the basis of culpability.

According to the authors, “[...] every anti-legal action rests on a resolution by the author, in the sense of voluntariness to move the body, or to want it to remain still, otherwise there would be no action.” (BELING, 2002, p. 72).

⁴ The term ‘average man’, which has become a parameter in law, refers to the common person, not very intelligent, not very foolish, who does not know all the law, but has already heard something about it. It is a legal abstraction.

This means that the action that leads the agent to be criminally attributable corresponds to an intentional or culpable action, generated in his psyche, whether by intention or impulse. Bettiol (2000) continues the theme by stating that intent and guilt are the means by which culpability is externalized.

The second theory discussed here is the Psychological-Normative Theory of culpability, brought to the legal system by Reinhard Frank (2004) and improved by James Goldschmidt (2002) and Berthold Freudenthal (2003). For this aspect, culpability has as its pillars imputability, intent and guilt, it is worth highlighting that even before a legitimate doctrine existed in this regard, courts in the German Empire already used the unenforceability of different conduct in trials, which is a reason exclusion of culpability in many cases.

For Fernandez (2004,) other casualties work to make the criminal offense result, these being the so-called concomitant circumstances. These manifests themselves at the same time as an attitude of intent or guilt, and must be considered in the same way when analyzing the fact.

Frank (2004) assures that psychological aspects alone are not sufficient to assess someone's culpability, and that normative aspects are also necessary. He also adds to the standard discussed above, the issue of reprobability.

The so-called reprobability boosted studies on the definition of the theory of crime. For Frank (2004), reprobability is what makes it possible to carry out a negative assessment of conduct defined as a crime by law. In a practical case, it would be how society would face a certain action and how reprehensible it would be. For example, a man who attacks an individual who murdered his son did not perform an action as reprehensible as someone who attacks him over a traffic fight. It can be

said that the first justification is more plausible and capable of being understood at social and customary levels, and that the consequence of this is a mitigation of the sentence.

Freudenthal (2003) argues that the analysis of concomitant causes helps in reaching the end of justice in the specific case, since by analyzing them, it can be concluded whether or not there was resistance that could be demanded from an ordinary person. If there is no way to demand different conduct, there is no talk of disapproval of the conduct, and then there is no talk of culpability.

Goldschmidt (2002) indicates four criteria that differ the degrees of disapproval of the agent's conduct, namely: the severity of the consequences that will be generated or may be generated, the ease with which the result can be predicted, the absence of disturbing influence from the environment and the insignificance of the motivation for the crime.

The third and final theory listed on culpability is the Pure Normative Theory of Culpability. Applied in the Brazilian criminal system, it is structured by imputability, potential awareness of illegality and demand for different conduct.

Hans Welzel (1997), his promising one, analyzed the idea of an entirely normative system in the work: ``*Studien zum System des Strafrechts*`, which published in 1939, means Studies on the Penal System. For him, the elements of guilt and intent were not well allocated in previous theories, both belonging to the typical fact. Guilt, considering the relocation of these components, would be free from any psychological residue and would constitute exclusively a judgment of motivation. He explains that:

[...] It is in the author's power to motivate himself and act in accordance with the norm, related to the configuration of his anti-legal will, that the essence of culpability lies. This is where the basis for the personal disapproval that is formulated in the

judgment of the author's culpability for his anti-legal conduct lies. (WELZEL, 1997, p. 166)

Welzel (1997) still believed that culpability must be expressed and defined, not being so vague and subject to different interpretations and scores, and for this reason, he defined that disapproval occurs when the author can act in accordance with the law and even so does not do so, choosing to act in a way that goes against the principles of law.

In short, this theory states that culpability must not be characterized through guilt and intent, as all human action is directed towards an end, and its means can indeed be separated from it. Furthermore, it is worth noting that, observing another element of culpability, imputability, only those who have the capacity and conditions to recognize that their conduct was illegal can be considered guilty. In this sense, the exclusions of culpability follow.

Called exculpatory causes, direct causes or exculpatory causes, they exclude some of the elements of culpability, meaning that it does not exist and its hypotheses are provided for by law.

Imputability is not characterized when the agent has a mental illness or incomplete or delayed mental development, due to complete drunkenness caused by unforeseeable circumstances or force majeure or when the act is carried out by a minor.

The potential awareness of illegality ceases to be characterized when there is an inevitable error regarding the putative discriminant and an inevitable error regarding the illegality of the action. The first, set out in article 20 of the Penal Code (BRAZIL, 1940, s.p.), mentions an error "fully justified by the circumstances". This means that, in the concrete situation, the agent acts believing that he is guaranteed by the legislation, when in reality, the situation that he believes to be true and in fact occurring does not exist. An example of

this is putative self-defense (when someone who is not under attack believes they are and defends themselves, without anything actually happening). The second error, present in article 21 of the same code (BRAZIL, 1940, s.p.), is the situation of the Dutch tourist with marijuana in Brazil described above.

It is worth mentioning that, if the error regarding the illegality of the action was inevitable, there is exemption from penalty, and if avoidable, according to the law, the penalty is applied, but with a reduction of one-sixth to one-third.

As for what excludes the third element, the requirement of different conduct, there is the occurrence of irresistible moral coercion or hierarchical obedience. Irresistible moral coercion excludes culpability in the sense that one would not be able to act otherwise. In situations like this, the coercer suffers from moral duress and a serious threat so grotesque that he sees no other choice but to do or not do what his coercer imposes on him.

The hierarchical obedience discussed here, according to Fernando Capez, focuses on the link of subordination between internal relations of the Armed Forces and its various levels. According to article 38, paragraph b, of the Military Penal Code, "whoever commits the crime is not guilty: in strict obedience to the direct order of a hierarchical superior, in matters of service" (BRAZIL, 1969). In these cases, the person responsible for the crime is the author of the order. If the purpose of the action is to "practice a clearly criminal act", the inferior party, the one who committed the action or omission, is also liable, and he or she also responds if he/she acted excessively in acts or in the form of execution. In addition, article 24 of the COM places hierarchical superiors as those who exercise authority over another, even if they are of equal rank or rank (BRAZIL, 1969). In cases where only the author of the order is punishable, the Mediate

Authorship Theory is adopted.

This theory occurs when a person uses another person as a means to reach a certain desired end. This person is the author of the action, even if he does not carry out the act personally. An example of this is the doctor who, with bad intentions towards a patient, orders the nurse to take certain measures to achieve the objective of such intentions.

Those who may have their crimes imputed to them are subject to a penalty written in the Penal Code, supported by the Code of Criminal Procedure. However, the legal system protects those considered semi-imputable and non-imputable in the same way, attaching the security measure to them.

SECURITY MEASURE

There are several criminal measures imposed by the State, one of them being the security measure, which is different from detention, or any other custodial sentence described in the Penal Code. The penalty system adopted by Brazil is vicarious, in which there is no possibility of combining the penalty and security measures.

For Capez (2005), the security measure is preventive and concerns the criminal treatment of the semi-imputable and non-imputable - while the imputable would have the application of the sentence as a consequence of their acts - which present potential risks to society, which According to the criminal practice committed, they are seen as capable of committing new damages.

Greco (2006) states that the unaccountable person, who must be acquitted (improper acquittal), according to the law, must have a security measure applied if the expert report states that he suffers some type of mental disorder, especially because there, the dangerousness that represents is assumed. The semi-imputability, in turn, must be evaluated, and both the penalty and the security measure

can be applied to it, given that in cases of semi-imputability, both implications are possible.

Security measures can be, for Capez (2005), hospitalization in a hospital for custody and psychiatric treatment, which is provided for in article 97 of the Penal Code, or outpatient treatment. The first step is mandatory when the sentence imposed is imprisonment, and can be determined for an indefinite period of time, and must be reviewed between 1 and 3 years after being imposed, and there must always be a finding declared by medical expertise. This is extremely important, since during this time the agent's dangerousness may even cease. The custody hospital can never be a common jail, but rather an establishment that resembles a hospital, with hospital characteristics, or in the absence of a specific location, a common hospital.

Outpatient treatment is a slightly milder measure, but can be transformed into hospitalization if it is not proving to be sufficient. For Capez (2005), the conversion of hospitalization to outpatient treatment does not occur, as it is not provided for by law, however, the opposite does, since hospitalization has curative purposes.

According to Jader Melquíades de Araujo (2014), the security measure has special cure and prevention scopes. It intends to treat the unattributable, and prevent the occurrence of a new illicit act or any type of danger by avoiding contact between the agent and the social environment.

While the security measure has the purpose of preventing some insolent situation, the penalty serves to punish and create an individual capable of being integrated into society again. According to Rene Ariel Dotti (2004, s.p.), "penalty does not prevent, does not cure, does not defend, does not treat, does not resocialize, does not rehabilitate, it only punishes [...]." Rene Ariel Dotti (2004) states that the penalty presupposes culpability,

while the security measure only presupposes dangerousness. Furthermore, the penalty is expected to end, since the law itself specifies the period that must be applied, and the security measure, despite having a minimum period of 1 to 3 years to be in force, does not have a maximum duration, and must last as long as there is danger.

This is not enough, the penalty is individualized, and is applied and determined according to the personal conditions of the agent and the specific case, while the security measure is generic and only follows the conditions linked by law regarding hospitalization and outpatient treatment. While the penalty is applied only to those attributable and semi-imputable, the security measure is only applied to non-imputable and semi-imputable individuals, and can be detention or restrictive.

The Detention Security Measure is a sentence of detention, as the agent's freedom is limited. This deprivation of liberty occurs through hospitalization in a custodial hospital and psychiatric treatment, and is intended, obligatorily, for the non-imputable and semi-imputable. (SILVEIRA, 2014).

The Restrictive Security Measure is based on the treatment of the patient's "illness", and occurs when the patient's non-imputability is confirmed. It consists of hospitalization or outpatient treatment – the person is sent to an ideal place for treatment during the day, taking into consideration, the cases already discussed above. According to Álvaro Mayrink Costa (2007), this treatment method brings improvements to the agent's condition, and its progressiveness must always be observed so that the measure does not end up becoming at some point incompatible with the real existing needs (COSTA, 2007).

Eduardo Szklarz (2009) follows a divergent line of reasoning, as he states that outpatient treatment must be considered null, as it does

not work. For him, "these criminals do not have the slightest possibility of resocialization." Furthermore, he considers that the treatment would not work either because there is no pathology to be treated. (SZKLARZ, 2009, online).

CRIMINOLOGICAL EXAMINATION AND PROJECT 6,858/10 AND 3/07: AMENDMENT OF LAW NUMBER: 7,210/84

Article 5 of the LEP (Penal Executions Law – Law Number: 7,210/84) states that those convicted will have their criminal execution determined individually (Principle of individualization of the sentence in the executive phase), which will be implemented by the Technical Classification Committee (CTC), through individualizing penalty setting programs, as provided in article 6 of the same law mentioned above. These programs are formed from the criminological examination, which consists of "[...] research into the personal, family, social, psychic and psychological background of the convicted person, to obtain data that can reveal their personality" Bitencourt (2013, p 459). The author continues by stating that the exam:

It is an examination, although the LEP does not say so, it seeks to discover the condemned person's ability to adapt to the prison sentence regime; the probability of not offending; the degree of probability of reintegration into society through a genetic, anthropological, social and psychological examination (Bitencourt, 2013, p. 461).

Aiming to establish for each individual a condition for serving a sentence appropriate to their particular needs and obligations, it must be understood that, despite appearing similar, it is not an examination that occurs in the same way as the examination to verify the cessation of dangerousness in measures of security, although it can also be carried out to

analyze the regression or progression of the sentence serving regime.

Since 2003, with the entry into force of Law Number: 10,792, the criminological examination is no longer mandatory, which ends up removing from society one of the biases that ensured a better establishment of the legal consequence to which each criminal who was considerable would be entitled. imputable.

Of such importance in the case of psychopaths, who cannot be considered attributable or non-imputable, surrounding a middle ground that is not perfectly suitable for them, would more often prevent the measure not applicable to criminal psychopaths from being taken.

A priori, the security measure would be imposed on them, according to the perceptions of the convicted person and the events of the case that occurred, however, the judge's discretionary power prevails here, when psychopaths are observed being punished as an imputable criminal. In cases like this, the Penal Code is applied, with the general part of 1984, which in article 97, establishes that if the crime committed is expected to be punished with detention, the judge can order outpatient treatment (BRAZIL, 1984, s.p).

Aiming at the time what is currently intended, in the 1930s, Getúlio Vargas promulgated Decree number: 24.559/34, with the intention of dealing with the figure of the psychopath and all the nuances that involve him in a specific way, based on the knowledge that was available at the time on the subject. Some of the articles contained in the project were:

Article 3. § 1: Psychopaths must be kept in public or private psychiatric establishments, or hetero-family assistance from the State or at home, from their own family or from another, whenever the necessary care can be given to them there;

Article 4th. For the purposes of this decree, psychiatric establishments are considered to be those intended for the hospitalization of mentally ill people and special sections, for the same purpose, of general hospitals, old people's homes, educational institutions and other social assistance establishments. Single paragraph. These psychiatric establishments, public or private, must: [...] be conveniently located in suitable buildings, with dependencies that allow patients complete separation of sexes, convenient distribution also according to their psychopathic reactions and the possibility of living and occupying the open air free; Article 10. A psychopath or suspected individual who tries on his own life or that of another, disrupts order or offends public morals, must be taken to a psychiatric establishment for observation or treatment; Article 26. Psychopaths, so declared by medical expertise carried out in a regular manner, are absolutely or relatively incapable of personally carrying out the acts of civil life. (BRAZIL, 1934, s.p.)

Considering that the project was developed almost a century ago and that there was not as much knowledge on the topic as there is today, what was covered continues to be current and necessary.

The decree's main intention was to open up the possibility of the psychopath being treated in law as a mentally ill person or any other sick person. Other records that cannot be ignored in the decree are also the mention of the creation of an examination or expertise that would, in fact, determine whether the subject is a psychopath or not, and also the creation of a suitable, safe and healthy place for them, which differed from the common penitentiary and from some types of security measures.

With this idea in mind, UNI-RN student Wendell Henrique Silva Santana (2016) created a project called Containment Measures, which would have exactly the function discussed above, of sending psychopaths to an ideal place for their mental conditions, which at

the same time at the same time removed him from social life, but still kept him in a prison sentence regime.

The civil police chief of Rio Grande do Norte, Alexandro Gomez Bezerra dos Santos, in 2014, proposed some suggestions about the student's project and then, the possibility of a true project about such measures and a possible inclusion of these precautions in the Penal Code emerged. Brazilian. It would be ideal, in fact, for measures like this to be taken, always aiming to maintain the fundamental rights of the psychopath, as well as an imaginable return to society, depending on the results demonstrated throughout the "treatment".

CONCLUSION

Observing the definitions presented throughout the writing, framing the psychopath in the legal system can be done more accurately, however, considering that psychopathy is complex and still very enigmatic, there is a lot of contradiction about it, with regard to its imputability.

According to tests and studies that have been carried out, the psychopath deals with some brain dysfunctions, but is not considered ill, as such dysfunctions would not characterize an illness. Not being ill, a psychopath does not exclude criminal liability and cannot be considered imputable. Even if he were considered a sick person, he would not meet the requirement of nullifying the agent's mental faculties, since he acts with full awareness of his actions and even desires and premeditates them. Meeting all the requirements of culpability, and also understanding the typical and illicit nature of his actions, the psychopath meets all the conditions to be considered imputable.

However, if after trial he is placed in a common prison environment, in addition to not receiving adequate treatment for his

personality disorder and his conditions of thought and action, the psychopath, who cannot be reintegrated, embarrasses the system as a whole and frustrates the resocialization of other inmates, through riots and bad influences that it causes in the environment.

If we analyze the aspect that your brain works differently from what is expected, and that the brain changes that affect it end up generating behavioral chaos, then it could not be absolutely criminally attributable. On the other hand, classifying it as non-imputable would not be viable either. Stating that the psychopath, because there are jurisprudential opinions alleging that his mental capacity is reduced, does not present sufficient cognitive and arbitral perceptions and, therefore, classifying him as unaccountable, would be a way of favoring his conduct and enabling his anti-legal behavior to persist.

The middle ground found in the face of the problem is to consider the psychopath as semi-imputable. However, the current measures in place to deal with a semi-attributable, in the same way, would not fulfill their purposes.

There are few existing solutions to treat criminal psychopaths, and it is notable that the means created to date do not represent the appropriate measures at the level of judgment and sentence execution.

But given that your position is reckless to society, new means of curbing its actions and engagements must be proposed.

Firstly, the consequences of the crime committed by a psychopath, depending on their level of disorder, must be applied immediately after their trial. In states of law, the broad defense, the degrees of jurisdiction and resources that can be reached open a vast space between the sentence and the execution of the sentence in the specific case, which makes it lose its archetypal character. In the violating world, the consequence follows the action quickly, and therefore the code of

conduct in this environment is commendable. This is one of the reasons for the effectiveness of the PCC command (Primeiro Comando da Capital – criminal organization), for example.

The shorter the sentence is applied, the more correlated the cause and consequence will be, and the more discouraged the practice of acts similar to those that led to the conviction will be. The death penalty can be cited in the United States. Although some crimes, depending on how they are carried out, can result in death, criminal rates there exceed those in Brazil. Although the result may be death, the penalty is not immediate.

At the same time, the ideal is the creation of special places, legally bound, that could involve criminal psychopaths. These environments must be removed, be it a clinic, a specialized prison, but by no means the common prison,

together with non-psychopathic inmates who are capable of being manipulated. It is worth mentioning that, a priori, keeping the psychopath in this location must have a perpetual temporal scope. As we have seen, psychopathy has no cure. There are countless barriers faced until the necessary system is developed and countless studies are involved in generating such a program, but, even though the topic of the psychopathic criminal is quite controversial, the analysis of his personality and the confirmation of his diagnosis are fundamental and initial steps towards appropriate treatment progress for the criminal psychopath. The more accurate the verification of the consistency or otherwise of psychopathy in the criminal agent, the better the precautions taken and the safer the society will be covered.

REFERENCES

AMARAL JÚNIOR, R. *Culpabilidade como princípio*. IBCCRIM. (200?). Disponível em: <<https://www.mundojuridico.adv.br>>. Acesso em: Jun 2019

APA, *American Psychiatric Association. Diagnostic and statistical manual of mental disorders (DSM-5)*. Org. JUKIC, V. e ARBANAS, G. Jastrebarsko: Naklada Slap, 1980. 936 p.

ARAUJO, J. M. de. *Da aplicabilidade da medida de segurança aos psicopatas: um estudo à luz do parágrafo único do artigo 26 do Código Penal Brasileiro*. Trabalho de Conclusão de Curso (graduação em direito) – Universidade Estadual da Paraíba, centro de ciências jurídicas, 2014.

BALLONE, G. J. e MOURA, E. C. *Personalidade Psicopática*. 2008. Disponível em: <<https://is.gd/UmXdeP>>. Acesso em: Jun. 2019.

BELING, E. V. *Esquema de derecho penal: La doutrinha del delito-tipo*. Buenos Aires: Libreria “El foro”, 2002.

BETTIOL, G. *Direito Penal: parte geral*. São Paulo: Red Livros, 2000.

BITENCOURT, C. R. *Tratado de Direito Penal. Parte Geral 1*. 19. ed. São Paulo, 2013.

BOCK, A. M.; FURTADO, O.; TEIXEIRA, A. de L. T. *Psicologias uma introdução ao estudo de psicologia*. 13ª ed. São Paulo: Saraiva. 2002.

BRASIL. [Constituição (1988)]. *Constituição da República Federativa do Brasil de 1988*. Brasília, DF: Presidência da República, [2016].

_____. Decreto number: 2848, de 07 de dezembro de 1940 - Código Penal. Disponível em <<https://is.gd/9RcK12>>. Acesso em: 29 jun 2019.

_____. Decreto number: 7209, de 11 de julho de 1984. Altera dispositivos do Decreto-Lei number: 2.848, de 7 de dezembro de 1940 - Código Penal, e dá outras providências. Disponível em <<https://is.gd/9RcK12>>. Acesso em: 29 jun 2019.

_____. Decreto number: 1001, de 21 de outubro de 1969. - Código Penal Militar. Disponível em <<https://is.gd/E3bPOx>>. Acesso em: 29 jun 2019.

_____. Lei number: 7.209, de 11 de julho de 1984. Altera dispositivos do Decreto-lei number: 2.848, de 7 de dezembro de 1940 - Código Penal, e dá outras providências. Disponível em: <<https://is.gd/vPLYlh>>. Acesso em: 29 jun 2019.

_____. Decreto number: 24.559, de 3 de julho de 1934. Dispõe sobre a profilaxia mental, a assistência e proteção a pessoa e aos bens dos psicopatas, a fiscalização dos serviços psiquiátricos e dá outras providências. Disponível em: < <https://is.gd/NLIQDO>>. Acesso em: 29 jun 2019.

BRITO, L. M. T. Reflexões em torno da psicologia jurídica. In: CRUZ, R. M.; MACIEL, S. K.; RAMIREZ, D. C. *O trabalho do psicólogo no campo jurídico*. São Paulo: Casa do Psicólogo, 2005. p.9-17.

BROWER, M. e PRICE, B. Neuropsychiatry of frontal lobe dysfunction in violent and criminal behaviour: a critical review. *J Neurol Neurosurg Psychiatry*, v. 71, n. 6, p. 720-726. 2001

CAPEZ, F. *Curso de Processo Penal*. 12. ed. São Paulo: Saraiva, 2005.

CASOY, I. *Arquivos Serial Killers - Made In Brazil e Louco ou Cruel*. Editora Darkside Books, 2014.

CHEREK, D.R.; LANE, S.D. Effects of d,l-fenfluramine on aggressive and impulsive responding in adult males with a history of conduct disorder. *Psychopharmacology (Berl)*, v. 146, n. 4, p. 473-81. 1999.

Cleckley, H. M. *The Mask of Sanity*. 5ª ed. Georgia: C.V. Mosby Co., 1976. 485 p.

COHEN, C.; FERRAZ, F. C.; SEGRE, M. *Saúde Mental Crime e Justiça*. São Paulo: EDUSP, 1996. 286 p.

DALGALARRONDO, P. *Psicopatologia e Semiologia dos Transtornos Mentais*. 3. ed. São Paulo: Artmed Editora, 2019.

DAMASIO, A. R. *Descartes' error: Emotion, reason, and the human brain*. New York: Grosset/Putnam, 1994.

DAYNES, K.; FELLOWES, J. *Como identificar um psicopata: cuidado! ele pode estar mais perto do que você imagina*. Tradução Mirtes Frange de Oliveira Pinheiro. São Paulo: Cultrix, 2012.

DECLERCQ, Marie. *Eis o Filho da Luz: o homem que tatuava suas vítimas: Febrônio Índio do Brasil foi o primeiro criminoso a ser julgado como louco no país*. 2017. Disponível em: <<https://is.gd/Lj8UYs>>. Acesso em: 05 ago. 2019.

SILVEIRA, D. *Conceito e aplicação das medidas de segurança no direito brasileiro*. Disponível em: <<https://is.gd/mV5C1Z>>. Acesso em: 11 ago. 2019.

DEL-BEM, C. M. Neurobiologia do transtorno de personalidade anti-social. *Rev. psiquiatr. clín.*, v.32, n.1, p. 27-36. 2005.

DOLAN, M.C.; ANDERSON, I.M. The relationship between serotonergic function and the Psychopathy Checklist: Screening Version. *J Psychopharmacol*, v. 7, n. 2, p. 216- 22. 2003.

DONATO, V. *Vítimas de agressão na infância podem se tornar adultos violentos*. 2012. Disponível em: <<https://is.gd/0qHGtQ>>. Acesso em: 08 ago. 2019. DOTTI, R. A. *Curso de Direito Penal*. Rio de Janeiro: Forense, 2004.

FAIRBANKS, L. A. et al. Social impulsivity inversely associated with CSF 5-HIAA and fluoxetine exposure in vervet monkeys. *Neuropsychopharmacology*, v. 24, n. 4, p. 370-8. 2001.

FERNÁNDEZ, G. D. La Fundación de la Teoría Normativa de la Culpabilidad. In: FRANK, R. *Sobre la estructura del concepto de culpabilidad*. Buenos Aires: Julio César Faira, 2004.

FERNANDO, S. *Mentes perturbadas: o cérebro do psicopata*. 2017. Disponível em: < <https://is.gd/iYwZjb>>. Acesso em: 26 ago 2019.

- FERREIRA, A. B. de H. *Novo dicionário Aurélio da língua portuguesa*. 3 ed. São Paulo: Fundação Dorina Nowill para Cegos, 2009.
- FRANCO, A. S. *Código Penal e sua interpretação jurisprudencial*. 2ª Ed. rev. e ampliada, São Paulo: Editora Revista dos Tribunais, 1987.
- FRANK, R. *Sobre la estructura del concepto de culpabilidad*. Buenos Aires: Julio César Faira, 2004
- FREUDENTHAL, B. *Culpabilidad y reproche en el derecho penal*. Buenos Aires: Julio César Faira, 2003
- GARCIA, C. *Psicologia jurídica: operadores do simbólico*. Belo Horizonte: Del Rey, 2004. 160 p.
- GOLDSCHMIDT, J. *La concepción normativa de la culpabilidad*. Buenos Aires: Julio César Faira, 2002.
- GRECO, R. *Curso de direito penal: parte geral*. 6. Ed. Rio de Janeiro: Impetus. 2006.
- GROSS, O. *Por uma psicanálise revolucionária: ensaios*. Orgs. CHECCHIA, M.; SOUZA JR, P. S.; LIMA, R. A. Trad. P. S. Souza Jr. São Paulo: Annablume, 2017.
- EY, H.; BERNAD, P.; BRISSET, C. *Manual de Psiquiatria*. Trad. Paulo Cesar Geraldés, Sonia Ioannides. São Paulo: Masson, 1981.
- HARE, R. D. *Manual for the Hara Psychopathy Checklist-Revised*. Toronto: Multi- Health System, 1991.
- HOSHINO, C. *Agressividade na infância deve ser valorizada, diz psicanalista*. 2018. Disponível em: <<https://is.gd/qwaBjR>> Acesso em: jun. 2019.
- LOUZÁ NETO, M. R. e CORDÁS, T. *Transtornos da Personalidade*. 1ª ed. Porto Alegre: Artmed, 2011. 358 p.
- MDETM. *Manual diagnóstico e estatístico de transtornos mentais: DSM-5*. In: American Psychiatric Association. Trad. Maria Inês Corrêa Nascimento et al. 5. ed. Porto Alegre: Artmed, 2014.
- MICHAELIS. *Moderno Dicionário da Língua Portuguesa*. 2019. Disponível em: <<https://is.gd/ueb4Me>> Acesso em: jul 2019.
- MIRA y LÓPEZ, E. *Manual de psicologia jurídica*. 2 ed. atualizada. Campinas: LZN, 2005. 421 p.
- MIRABETE, J. F. *Manual de Direito Penal, volume I: parte geral, arts 1º a 120 do CP/Júlio Fabrini Mirabetem Renato N Fabrini*. 28 ed. São Paulo: Rev. E atual. 2012.
- MORANA, I. C. P. *Identificação do ponto de corte para escala PCL-R (Psychopathy Checklist Revised) em população forense brasileira: caracterização de dois subtipos da personalidade; transtorno global e parcial*. 2003. 35 f. Tese de Doutorado (Doutorado em Psiquiatria) – Curso de Medicina, Faculdade de Medicina da Universidade de São Paulo. São Paulo, 2003.
- NORA, J. E. P. *Saiba tudo sobre psiquiatria. Produção: Rede Vida*. Rio de Janeiro. 2013. Disponível em: <<https://is.gd/qHgJGH>>. Acesso em: jun 2019.
- ONU. *Declaração universal dos direitos humanos. Assembleia Geral das Nações Unidas em Paris*. 10 dez. 1948. Disponível em: <<https://is.gd/FeBdDm>>. Acesso em Jul/2019.
- PRICHARD, J. C. *A Treatise on Insanity and Other Disorders Affecting the Mind*. Digitalizada em: 19 abr 2006. Sherwood, Gilbert e Piper, 1835. 483 p.
- PSICOLOGIA Jurídica: o guia completo sobre essa área de atuação. IDE Cursos. 2018. Disponível em: <<https://is.gd/7OcTjG>>. Acesso em: 19 jul. 2019.
- PSICOPATAS podem 'se recuperar' ao serem penalizados?. Revista Galileu, Rio de Janeiro, 21 mai. 2015. Disponível em: <<https://is.gd/XwMi8q>>. Acesso em: 01 set. 2019.
- SALIM, A. *Legislação Penal Especial*. In: LENZA, P. *OAB Primeira Fase Esquemático*. 3ª ed. São Paulo: Saraiva. 2018. p. 365-473.

SANTANA, W. H. S. *Direito Penal Brasileiro e psicologia jurídica: uma análise sobre os casos de psicopatia*. 2016. Disponível em: <<https://is.gd/1HsJZu>>. Acesso em: 19 jul. 2019.

SCHNEIDER, K. *Las personalidades psicopáticas*. 8º ed. Madrid: Edições Morata, 1980.

SILVA, A. B. B. *Mentes perigosas: o psicopata mora ao lado*. Rio de Janeiro: Objetiva, 2008.

TRINDADE, J.; BEHEREGARAY, A.; CUNEO, M. R. *Psicopatia: a máscara da justiça*. Porto Alegre: Livraria do Advogado, 2009.

TOLEDO, F. de A. *Princípios Básicos de Direito Penal*. São Paulo: Saraiva. 2000.

VIRKKUNEN, M. et al. Total plasma l-tryptophan, free l-tryptophan and competing amino acid levels in a homicidal male adolescent with conduct disorder. *Acta Psychiatr Scand*, v. 08, n. 3, p. 244-6. 2003.

WELZEL, H. *Derecho Penal Alemán*. Santiago: Editorial Jurídica del Chile, 1997

ZAFFARONI, E. R.; PIERANGELI, J. H. *Manual de direito penal brasileiro: parte geral*. 11. ed. São Paulo: Revista dos Tribunais, 2015. 796 p