CRIMINOLOGICAL EXAMINATION AS PUBLIC POLICY IN BRAZIL AND THE TECHNOLOGY OFEXAMINATION ACCORDING TO THE STUDIES OF PHILOSOPHER MICHEL FOUCAULT

Laila Maria Domith Vicente[1]

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Abstract: The examination was a disciplinary technology highlighted by Michel Foucault since his studies of the prison system. The examination presented itself as a pointof deviation in the penal reforms of the 18th century, as Foucault shows us, in which the punitive logic moves away from the reformers' proposals to turn to thecorrection of offenders and to the control of virtualites. In Brazil, the so-called criminological examination, an instrument for the insertion of the work of psychology in the prison environment, presents itself as the key piece of this technology of power. Inserted in the national legislation since the Law of Criminal Executions, dated 1984, the criminological exam remains resistant in the penal practices and in the legislative discussions, even though its credibility has been questioned and the arbitrariness of the orientations present in the practice of thereports has been attestedby researches.This is why this article intends to make a historical and social analysis of the insertion of the criminological examination in Brazilian legislation, as well as in judicial practices, taking into account the permanence of the institute, even after the withdrawal of the legal provision in 2003. The methodology used was discourse analysis with a pragmatic and dialectical bias, as well as using documental and qualitative research on laws and bills, in addition to bibliographical research and comparative analysis.

Keywords: criminological examination; law of penal executions; bills; PublicPolicies; Michel Foucault.

INTRODUCTION

> *"An intervention that would not be condemned to alwaysarrive too late because it would be based on a knowledge capable of anticipating the possibility of a criminal act even before it occurs."*

[1] Adjunct Professor at the Federal University of the State of Rio de Janeiro (UNIRIO). Coordinator of the Law Program at the Federal University of the State of Rio de Janeiro (UNIRIO). Professor in the Graduate Program in Law and Public Policy (PPGD/UNIRIO). Holds a Ph.D. in Psychology from the Fluminense Federal University - UFF (2015); Master in Critical Theory and Museum Studies from PEI - Independent Studies Program of MACBA - Museum of Contemporary Art of Barcelona and UAB - Autonomous University of Barcelona (2015); Master's in Psychology from Fluminense Federal University - UFF (2007) and Lawyer.

Robert Castel quoting the psychiatrist Leuret in the case of Pierre Rivière[2](FOUCAULT, 1991, p. 260)

In Brazil, we can identify a possible starting point for the intersection of Law and Psychology through the guiding thread of the institute known as the Criminological Examination. This institute is currently viewed by jurists as an expert examination conducted in the criminal domain, which aims to provide psychological data on the accused of a crime or the convict to support the judgment or decisions related to Penal Execution Incidents, such as the Progression/Regression of the regime and Conditional Release. In the Criminological Examination, the psychologist is seen as a judicial expert who assesses the psychological situation of the convict serving a sentence, or the accused, to support the decisions of the examining judge or the execution judge, who is responsible for decisions concerning people serving a sentence of deprivation of liberty in Brazil.

In this article, we intend to analyze the intricate details that permeate the historyof the Criminological Examination in Brazil to understand how psychologists are called to act within the legal domain, especially Criminal Law, within the judicial system. In this history, we know that the criminological examination remains present, despite being the subject of much criticism and even though its requirement has been removed from legislation. The practice in the daily life of the Courts did not allow the criminological examination to be surpassed, even in the face of protests from the Federal Council of Psychology (CFP, 2010)

The article will be divided into three parts. The first will outline how the criminological examination entered, operated, and functioned within Brazilian legislation and judicial practices. In the second, we will engage with Michel Foucault's thoughts on the purposes of the examination technology in disciplinarysociety and institutions such as prisons. In the third part, we will analyze how, even today, there are bills in both houses of the National Congress that aim to reintroduce the criminological examination as a legislative requirement for regime progression and conditional release in Brazilian law.

THE CRIMINOLOGICAL EXAMINATION AND ITS CONSOLIDATION IN BRAZILIAN CRIMINAL LAW

The formalization and legal provision of the psychologist's work in the context ofpenal execution can be traced back to the Penal Execution Law of 1984, which, inits Article 6, established the Technical Classification Committees (CTC) and in its Article 96, the Criminological

[2] Pierre Rivière was a young French rural man who beheaded his mother, sister, and brother. He became known in France after receiving, during his trial, opinions from the most renowned French psychiatrists of the time, including Esquirol, Marc, and Orfila, who stated that Pierre Rivière was apsychiatric case, not a legal one. They argued that he had a madness without delirium; in other words, even though he was not in a state of delirium, demonstrated by his logical, clear, and even impressive writing for a young peasant, due to various other elements, his mental sanity could not be confirmed. Thus, Pierre Rivière could not be held criminally responsible with the death penalty, which would have been the consequence of his act. Pierre Rivière was a typical case that fell into the gap between crime and madness, between Criminal Law and Psychiatry. Michel Foucault, alongwith other researchers, organized a study on the case, which was published in 1973.

Observation Center (COC).

The work of the CTCs is based on the principle of the individualization of sentences. In other words, within Brazilian legal discourse, the prevailing understanding is that the sentence should be specifically tailored to the defendantand the type of crime committed, so that the sentence and its execution only affect the assets necessary for the defendant's rehabilitation and the protection ofsociety's legal interests.

According to the explanatory memorandum of the Penal Execution Law, theprinciple of the individualization of sentences aims to avoid the lack of criteria in punishment and the mixing of individuals who committed crimes of varying degrees of severity in penitentiary establishments, which would render the rehabilitation of the inmate a mere fallacy (CÂMARA FEDERAL, 2023). Thus, afterthe individualization of the sentence carried out by the judge at the time of conviction, there would be the "administrative individualization of the sentence" (CARVALHO, 2004) carried out by the CTC teams.

The initial function of the Technical Classification Committees—composed of the Prison Director, two service chiefs, a psychologist, a psychiatrist, and a social worker, as stated by law—was to analyze and classify convicted individuals to guide the application of their sentence, as well as to separate them within the prison facilities. To achieve this, the Committees could request information, interview individuals, and conduct inquiries, in addition to monitoring the fulfillment of the sentence.

On the other hand, according to the legislation, there are Observation Centers thatare specifically designated by law to produce criminological reports and analyseswith the intended purpose of "mapping the criminal personality" and creating profiles that would serve as the basis for judicial decisions on execution incidents, such as conditional release and regime progression/regression.

In this context, following Alvino Augusto Sá (2007), we can identify three types ofwork prescribed by the Penal Execution Law (LEP) before the amendments madeby Law 10.792/2003, which will be analyzed later, to be performed by psychologists within the prison system: the Criminological Examination, the Personality Examination, and the CTC Report.

The Explanatory Memorandum of the Penal Execution Law already made a distinction between the Criminological Examination and the Personality Examination. The Criminological Examination would be included within the Personality Examination, meaning that while the Criminological Examination aims to investigate only the circumstances related to the crime in the convict's life,the Personality Examination would be broader, covering the convict's personality characteristics in various aspects, such as family, social, and educational factors, among others.

The most severe criticisms directed at the work of psychologists within the prisonsystem focus on the Criminological Examination, particularly concerning the requirement for psychologists to make a behavioral prognosis based on the characteristics identified in the examination, predicting whether the convict will reoffend in the future. It is well known that no psychological knowledge can guarantee the prediction of someone's behavior (RAUTER, 2023),

partly due to the impossibility of knowing the circumstances in which the released individual will find themselves outside the prison. Additionally, according to the position of the Regional Council of Psychology of São Paulo, psychologists working in the prison system attest to "the absence of the possibility of scientific rigor to bear the weight of truth attributed to [the Criminological Examination], that is, to tell the judiciary whether the prisoner is fit to live in freedom or whether they pose a riskto society" (CRPSP, 2023, online). Psychologists and scholars warn against this, but it does not prevent various jurists from demanding the examination, seeking behavioral prognosis without any critical questioning[3].

In addition to the Criminological Examination and the Personality Examination, there are also the reports from the Technical Classification Committees (CTCs). The CTCs, formed by an interdisciplinary team, were responsible for monitoring the sentence execution from the very moment they received the convicts and initiated the individualization program. The individualization would actually begin earlier, in the Criminological Observation Centers, where the convicts would undergo the initial Criminological/Personality Examination, determining the location where they would serve their sentence. Upon arrival at the prison wherethe sentence would be served, the work of the CTC would begin. After the routinework that the Committees were supposed to carry out in the day-to-day prison life, the interdisciplinary teams of the CTCs were supposedly qualified to provide the reports stipulated in Articles 6 and 112 of the Penal Execution Law (LEP), in which they would propose to judicial authorities the progression and regression of regimes. This was stipulated in the LEP until 2003, when Law 10.792 removed the requirement for both the CTC's Technical Report and the Criminological Examination, as we will discuss further below.

THE CHANGES INTRODUCED BY LAW 10.792 OF 2003

Much has been said about the changes brought by Law 10.792 of 2003 regarding the abolition of the criminological examination. It is true that the law removed therequirement that regime progression depends on the CTC's report or aCriminological Examination, limiting the requirements for progression to the fulfillment of a portion of the sentence and good prison behavior certified by the Director of the establishment. Before this change, the law explicitly provided in the sole paragraph of Article 112 that good behavior would be certified by the CTC's report and preceded by a Criminological Examination when necessary.

The logical and initial interpretation given to this legislative change was that the criminological examination and the CTC report were no longer requirements for regime progression and conditional release. Thus, only the initial criminological/personality examination, used for the individualization process, would be conducted. This would leave prison psychologists with more time to develop other activities and work beyond the crime-delinquent binary.

[3] Rauter (2003) presents us with the historical conditions that gave rise to discourses such as criminology and penal psychiatry, helping us understand how these discourses became useful andeffective despite their lack of legitimacy or even scientific coherence.

Augusto Alvim de Sá (2007), who worked as a psychologist and prison superintendent for many years, argued that the criminological examination should be abolished, as it functioned as a prognostic tool that could do nothing butreproduce social prejudices—a fact confirmed by research conducted by Cristina Rauter (2003).

The researcher conducted a study analyzing 120 reports from the former EVCP[4] (Examination for the Verification of Cessation of Dangerousness), carried out at the Nelson Hungria Classification Institute between 1968 and 1972. The research demonstrated that these examinations were nothing more than reproductions of common prejudices and stereotypes, lacking any scientific basis. "They (the examinations) constitute a poorly made collage of techniques from various origins: psychological, psychoanalytic, judicial, and police, which form a device with its own characteristics" (Rauter, 2003, p. 85). The study showed that the examinations condemned individuals based on justifications rooted in a mixture of personal histories where 'the past condemns,' families deemed dysfunctional, and cultures from rural or community settings. Here are some excerpts from the examinations analyzed by the author:

> *"By exchanging rural life for life in the big city, he lost the ability to control his aggressiveness, which until then he had used in the rough tasks of tilling the land" (EVCP 1-1968). (Rauter, 2003, p. 109).*
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> *"The children of disharmonious couples usually suffer from emotional deprivation because they are the outlet for their parents... this desire for retaliation for the losses suffered actedinternally as a driving force for their actions..." (EVCP 45- 1969). (Rauter, 2003, p. 108).*
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> *"The inmate developed his personality in an environment lacking a father and mother... the presence of a father and mother is important for a young person who is growing up... another factor was that his parents had started new families. The experience of rejection must have been intense... His descent into a life of delinquency may be linked to the desire to attract his parents' attention... with his incarceration, he mobilized his parents' attention"* (EVCP 39-1968). (Rauter, 2003, p. 108).

This issue, involving the criticisms of the Criminological Examinations conducted,along with questions regarding the professional ethics of psychologists, especially through statements from the Federal Council of Psychology (2010), contributed to the removal of the requirement for a criminological examination for regime progression from the text of the LEP (Penal Execution Law) by Law 10.792 of 2003, as we have already pointed out. Thus, the objective requirement of

[4] "The EVCPs were part of the legal provisions of the 1940 Penal Code. They were conducted at theend of the terms established for the security measures imposed on those with diminished responsibility or on convicts deemed particularly dangerous. These security measures, imposed incombination with sentences, were supposed to be served in special facilities where the intended treatment would be carried out. Since these facilities did not actually come into existence in most cases, sentence and security measure were practically the same thing" (Rauter, 2003, p. 85). In practice, the Criminological Examinations that emerged with the Penal Execution Law (LEP) and replaced the EVCPs have retained the same logic as described by the author in the current examinations.

the timeserved, followed by good behavior certified by the Director of the establishment, would be sufficient criteria for granting this right to incarcerated individuals in Brazil.

However, this was not how the judges, along with legal scholars in general,interpreted the law. They continued to request reports to support judicial decisions regarding parole or regime progression, thereby shifting the burden of maintaining incarceration or granting freedom from themselves after prisoners had passed through the Brazilian penal system, which is already known for its violations of the rights and dignity of those under state custody[5]. We can hear Michel Foucault from the 1970s describing how the justice system distances itselffrom the responsibility of punishment:

> *This indecent to be punishable, but hardly glorious to punish (...) There is in modern justice, and among those who dispense it, a shame of punishing, which does not always exclude zeal; it constantly increases: upon this sore, psychologists and the minor officials of moral orthopedics proliferate* (Foucault, 2001,p.13).

THE DISCUSSION ON RESOLUTIONS 9 AND 12 OF THE FEDERAL COUNCIL OF PSYCHOLOGY(CFP)

As Sônia Altoé (2001) points out, psychology, as an autonomous discipline, shouldbe able to define the practices that are possible and desirable in its interaction with Law or any other interdisciplinary field. However, this does not seem to be the view of the Higher Courts in Brazil. Let us look at this recent history of the encounter between Law and Psychology.

The work of psychologists within the legal system, particularly in the penal system, has generated what Esther Arantes (2008) termed "discomfort" among psychologists. This discomfort mainly stems from the lack of autonomy in their work and the limitation of their roles, which are often reduced to evaluative activities that support judicial decisions. As we have discussed here, it is likely thatthe greatest discomfort is caused by the fact that the knowledge of psychology is not aimed at what is expected of it: prognostic analysis or, in other words, the practice of futurology.

Thus, in 2010, the Federal Council of Psychology, feeling supported by the legal amendment of Law 10.792 of 2003, decided through two resolutions that psychologists could no longer conduct criminological examinations without violating the ethics of the profession. Resolution 09/2010 of the CFP stated the following:

ART. 4 - REGARDING THE PREPARATION OF WRITTEN DOCUMENTS:

> *a) As indicated in Articles 6 and 112 of Law No. 10,792/2003(which amended Law*

[5] Only as an example, we can point to the United Nations study published on the Chamber of Deputies website, which shows that torture is a structural problem in Brazilian prisons. Available at: https://www.camara.leg.br/noticias/809067-onu-ve-tortura-em-presidios-como-problema- estrutural-do-brasil/.

No. 7,210/1984), psychologists working in prison establishments are prohibited from conducting criminological examinations and participating in actions and/or decisions involving punitive and disciplinary practices, as well as from preparing written documents derived from psychological evaluations intended to support judicial decisions during the execution of a convict's sentence;

b) *Supported by Law No. 10,792/2003, psychologists working in the prison system should only carry out evaluative activities aimed at the individualization of the sentence at the time of the convict's entry into the prison system. When there is a judicial order, the psychologist must explain the ethical limits of their role to the court and may issue a statement as per the Sole Paragraph.* (emphasis added)

At first, the Federal Council of Psychology suspended Resolution 09/2010 for six months due to a recommendation from the Public Prosecutor's Office of Rio Grande do Sul, pending a public hearing scheduled for further debate on the matter. However, the Supreme Federal Court, during its discussion on the law regarding heinous crimes, clarified the matter by issuing Binding Precedent 26, the text of which is as follows:

Binding Precedent 26[6]:

> *For the purposes of regime progression in the enforcement of sentences for heinous crimes, or those treated as such, the execution judge shall observe the unconstitutionality of Article 2 of Law 8,072 of July 25, 1990, without prejudice to assessing whether the convicted individual meets the objective and subjective requirements for the benefit, and may order, on a well-founded basis, the conduct of a criminological examination for this purpose (emphasis added).*

In the judiciary, there were numerous reactions against the abolition of the Criminological Examination as a prerequisite for the granting of execution benefits, as determined by the law. As a result, through Habeas Corpus 82,959 in 2006, the Supreme Federal Court was called upon to rule on the matter, along with the decision on regime progression in cases involving heinous crimes. Thus, in 2010, the Court decided in a binding manner that the correct interpretation of Law 10792/2003 should allow for the examination in cases where judges deemed it necessary. Therefore, in practice, the old law continued to be applied.

When we examine the reasons that led the Supreme Federal Court justices to consolidate Binding Precedent 26, we see that they indeed consider the criminological examination as a tool capable of understanding the internal state of incarcerated individuals, and from this, determining the capacity they have acquired within the prison system for social reintegration. Let's take a look at Justice Rosa Weber's opinion on the matter:

> *It is unjustifiable to risk reintegrating into society someone who has committed very serious crimes and is still unprepared for social interaction. Therefore, the requirement for a criminological report, through a well-founded decision, as a preliminary measure to judicial valuation regarding regime progression, is not ilegal.* [HC 111.830, opinion by Justice Rosa Weber, First Panel, judgment on 12-18-2012, DJE

[6] According to Article 9 of the Federal Constitution, the Supreme Federal Court may issue Binding Precedents that compel all judicial bodies, as well as public administration bodies, after repeated decisions on the same issue and with the vote of three-fifths of its members.

31 of 2-18-2013] (STF, 2016, p.134)

As Rauter (2003, p. 87) would say, “More and more, there is an attempt to judge and condemn an individual with the supposedly neutral and secure backing of a science”.

LAW 13,964/2019 OR THE ANTI-CRIME PACKAGE

However, it is well-known that in law, each of the three branches has a function that is limited in its scope by the others, which is called the system of checks and balances, aimed at preventing any one branch from accumulating the functions and powers of the others and centralizing decisions about the democratic order and the lives of citizens. Thus, the function of innovating in the legislative order, or in other words, legislating, belongs to the Legislative Branch and not the Judiciary, whose role is to resolve disputes in concrete cases.

Therefore, even though decided by Binding Precedent, it is debatable whether theSupreme Federal Court’s interpretation alters the legislative amendment to Law 10,792 of 2003, a matter that becomes even more controversial when, in 2019, Law 13,964 makes extensive changes in the field of criminal procedure, includingArticle 112, which before 2003 required the criminological examination, and does not reinstate the provision for the Criminological Examination in the legislation. In other words, the legislature does not consolidate the understanding of Binding Precedent 26 on the matter. Thus, we question why the criminological examination, even though it was expressly removed from the legislation, continues to persist and remain present in judicial practices?

THE CURRENT RELEVANCE OF THE EXAMINATION TECHNOLOGY IN THE BRAZILIAN PRISON SYSTEM

> *The proliferation of evaluations prompted by the advent of criminology does not serve the purpose of individualizing the sentence or implementing new treatment technologies for offenders. It would not be inaccurate to say that the main effect of these new technologies in the Brazilian context is the increase of the old prison sentence* (Rauter, 2003, p. 11).

The examination was a disciplinary technology highlighted by Michel Foucault inthe studies conducted by the philosopher on the prison system. The examination emerged as a turning point in the penal reforms of the 18th century, as Foucault (2002) presents to us, where the punitive logic diverged from the reformers’ proposals, focusing instead on the correction of offenders and the control of potentialities. In this article, we propose that the judiciary’s insistence on the criminological examination demonstrates the ongoing relevance of disciplinary technologies in our society.

We will begin the debate with the historical fact that imprisonment is a relatively recent punitive institution. Michel Foucault (2001) shows us that it became consolidated in the 19th century. Previously, the manifestation of punitive powerwas concentrated in sovereign kings, and

the spectacles of public torture and executions, the apex points of medieval punishment, served as affirmations of the monarch's power. The primary mode of punishment was focused on the condemned person's body as a manifestation of the crime and the king's revenge. Acts worthy of punishment were those that threatened the king's power, but the punishment was excessive in its rituals and costly, which made it only sporadically applied.

Alongside this ritualistic excess and scarcity in application, voices began to criticize both the excessive cruelty of punitive tortures and the disproportion between the punishment and the conduct that provoked it. Foucault (2003) described the penal reformers of the 17th century as strictly legalistic. They argued that the law should explicitly define what would constitute infractions, as well as the punishments, which, besides being predetermined, should be strictly necessary to repair the harm caused. But, most importantly, the reformers argued that punishments should be diverse and, in some way, should correspond to the crime committed.

However, the consolidation of imprisonment as a penalty presents a deviation from the criticisms leveled against previous punitive forms, as mentioned above. According to Beccaria (2000), one of the most acclaimed reformers, the punishment should be proportional to the crime; it should directly relate to it, even in the way society as a whole would identify with it, aiming to dissuade the commission of infractions. In Beccaria's renowned book, On Crimes and Punishments (2000), this proposition is made very clear: for each crime, and its severity, a proportional punishment should be inflicted, one that corresponds to the crime and should not be excessively cruel or costly, as were tortures and executions. Therefore, various punishments were thought of, proposed, and programmed that bore no resemblance to imprisonment, which Michel Foucault (2003) distinguishes into four types: the penalty of exile and banishment, in which the person who breaks the social pact must leave the community; the second would be public shaming, where the individual's wrongdoing would be marked among those in the offender's circle; the third form of punishment would be reparation, where the social harm would be repaired—this is where forced labor was included; and, finally, the principle of talion, where the response corresponding to the act should prevent the infraction from recurring, an eye for an eye, a tooth for a tooth.

As we can see, imprisonment was entirely foreign to the reformers' and even the legislators' proposals, who sought the end of cruel punishments. Nevertheless, in a few years, imprisonment became established in direct contradiction to these principles[7]. Michel Foucault (2003, p. 85) points out that

The great notion of criminology and penal theory at the end of the 19th century was the scandalous notion, in terms of penal theory, of dangerousness. The notion of dangerousness means that the individual should be considered by society based on their potentialities and not their acts; not at the level of actual infractions against an actual law, but at the level of potential behavior they represent.

[7] It is beyond the scope of this article, but it is worth noting that, according to analyses also by Michel Foucault (2001), imprisonment met, due to its characteristics, the specificities of modern production relations, where wealth became concentrated in labor, in the production of goods, and in stocks. It was necessary that even minor infractions be punished. For more details, consult FOUCAULT, Michel. **Discipline and Punish:** The Birth of the Prison. 24th ed. Petrópolis: Vozes, 2001.

Foucault shows us how, dispersed throughout society, disciplinary power examines and scrutinizes potentialities through techniques, including the examination, in schools, hospitals, the military, factories. Power that not only excludes, censors, represses but power that produces, produces realities, fields ofknowledge, "fields of objects and rituals of truth" (FOUCAULT, 2001, p. 161).

The delinquent subject, therefore, emerges as an effect of incarceration, the scrutiny of bodies and minds, and the strictly recorded surveillance technologies of the examination. Thus, we return to the analysis of how in Brazil the criminological examination remains a fundamental and essential component in criminal decisions.

THE CRIMINOLOGICAL EXAMINATION: THE MOMENT WHEN CONDUCT CEASES TO BE THE PENAL FOCUS AND IT BECOMES THE CRIMINAL AND THEIR INTERIORITY

> *"Having been in prison for almost eight and a half years,remains a working element... is fully adapted to the penitentiary, where he works as a cook... the time is sufficient for a new placement and adjustment of aggression, reflection.He is ready. Dangerousness ceased"* (EVCP 255-1972)[8].

Cristina Rauter (2003) provides a historical analysis of how criminology, understood here as the discourse that studies the biological and hereditary aspects of criminality in humans, brings to criminal law the need to evaluate whatwas later called "dangerousness," that is, that there are individuals who are"abnormal" concerning the crimes they commit, and therefore would not be subject to liberal criminal law, which aims to punish fairly and rehabilitate those who violate the social contract. For born criminals, or highly dangerous criminals,criminal law would not apply. "The criminal was not addressed by liberal law, except as an agent of transgression of the law" (Rauter, 2003, p. 25). But isn't thatexactly what they are? Just an agent of transgression of the law?

The history of Positivist Criminology shows us how a twist was made in the purposes of Classical Criminal Law, intending not only to punish acts committed against the law but to punish the dangerousness that certain agents supposedly had ingrained in their being. For this, historically, it was necessary to link psychiatry and the criminal field and the assumption that every criminal act was also the remnant of a madness in the person who committed it.

At this point, according to the principles of law, all citizens submit to the Social Contract, as they freely agree to it, deeming it legitimate, and must be heldaccountable if, exercising their free will, they transgress the law. Only the insane or children considered not criminally responsible would be exempt from this accountability. According to the discourse of Positivist Criminology, in criticism of the so-called "Classical Criminal Law": "laws do not have the same effect of intimidation and coercion on all men, for there are those who are true enemies ofthe legal order, being insensitive to punishment" (Rauter, 2003, p. 27).

[8] Rauter (2003, p. 111).

Thus, the focus of the law should shift from the study of "crimes and punishments," referring to the title of the principal book by Cesare Beccaria, a major reference in Classical Criminal Law, to the analysis and study of the delinquent individual and the characteristics of their personality. "The insane person is someone potentially capable of committing a crime—such has always been the lesson of alienists" (Rauter, 2003, p. 41).

In Brazilian Criminal Law, we see how the 1940 Penal Code openly incorporates the principles of positivist criminology (Bicalho and Reishoffer, 2017), as it explicitly addresses the criminal's personality, their background, social conduct, and motives for the crime in determining the penalty by the judge. Article 59 of the Penal Code explicitly provides this, as we can see:

> *"**Article 59** The judge, considering the culpability, the background, social conduct, personality of the agent, motives, circumstances, and consequences of the crime, as well as the behavior of the victim, shall establish, as necessary and sufficient for reproach and prevention of the crime: I - the applicable penalties among those provided; II - the quantity of the applicable penalty, within the limits provided; III - the initial regime for serving the sentence of deprivation of liberty; IV - the substitution of the sentence of deprivation of liberty imposed, for another type of penalty, if applicable."* (emphasis added)

The research presented by Rauter (2003) shows us some issues that are persistently present in the reports: 1) the criminal's prior history, or as she ironically notes, "the past condemns," as one of the main procedures of psychologists in the prison environment is to collect the subject's life history; 2) Disrupted Family; 3) A culture different from the dominant one, considered as subculture, with examples brought by the author being people from favelas or institutions like FUNABENS[9].

Psychoanalytic theory, like any other psychological theory we know, does not authorize us to make predictions about behavior or about health or illness. By reconstructing the past, as it was inscribed in memory and in someone's unique experiences, some light can be shed on the nature of their current conflicts. Psychoanalysis is always retrospective. The past to elucidate the present (Rauter, 2003, p. 91).

In most cases, the reports will be favorable if the inmates cooperate with the interview and unfavorable if they do not. "Collaboration, respect for norms and institutional hierarchy, yes, constitute signs of normality and regeneration." (Rauter, 2003, p. 101).

Psychologists' reports and opinions within the judiciary also carry the characteristic, according to the same study, of believing in the effectiveness of incarceration and resocialization. This is an interesting perspective from professionals who often live in the prison environment and

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[9] The reports analyzed were from a historical moment in Brazil when the Code of Minors and the theory of irregular situation prevailed, meaning that childhoods considered to be in an irregular situation (poverty, abandonment, infractions, unaccompanied street presence) would result in institutionalization, regardless of infractions, as is the case today with the Statute of the Child and Adolescent. In this context, FUNABEM is the acronym for the Foundation for Child Welfare, where children would go if they were in an irregular situation. For an analysis of the Codes of Minors, see Nascimento, Maria Lívia (Org). **Pivetes: The Production of Unequal Childhoods**. Rio de Janeiro: Oficina do Autor/Intertexto, 2002.

witness the conditions to which inmates are subjected, yet still express such views in their reports. "Prison is often described as the place where a transformation in the prisoner's personality will occur" (Rauter, 2003, p. 102).

At this point, we now need to analyze how this issue is being debated within the Brazilian legislative framework and whether there is a prospect of the criminological examination making a triumphant return to national legislation.

LEGISLATIVE DISCUSSIONS IN THE HOUSES OF THE CHAMBER AND SENATE

In the Chamber of Deputies, there are forty-seven bills that, in some way, address the topic of the Criminological Examination, and since 2010, the year when Binding Precedent 26 was published, thirty-five bills have addressed the topic of the Criminological Examination[10].

Of the total, seven bills that address the return of the criminological examination are still under consideration, with Bill 583/2011 approved in the Chamber of Deputies and sent to the Federal Senate. The most recent of these bills dates back to 2022 and, among other measures, refers to the need for a criminological examination for the progression of regime in cases of violence against women. Below is a table with the summary of the eleven bills under consideration in the Chamber of Deputies:

Bill	Year	Status	Summary
PL 1906/2022	2022	Awaiting Creation of a Temporary Committee by the BOARD	Amends Laws No. 7,210, of July 11, 1984 – Penal Execution Law, No. 8,112, of December 11, 1990 – Statute of Federal Public Civil Servants, and No. 13,869, of September 5, 2019 – Law of Abuse of Authority, in order to comply with the provisions of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women and the Convention on the Elimination of All Forms of Discrimination Against Women, to which Brazil is a signatory, providing for measures that

[10] To reach this number, research was conducted on the Chamber of Deputies' website using the search term "Criminological Examination" at: https://www.camara.leg.br/busca-portal?contextoBusca=BuscaProposicoes&pagina=1&order=relevancia&abaEspecifica=true&q=Exame%20criminológico&tipos=PL .

			reinforce the prevention and combat of violence against women, including in their workplace.
PL 4056/2020	2020	Awaiting Opinion from the Rapporteur in the Health Committee (CSAUDE)	Amends Law No. 7,210, of July 11, 1984 (Penal Execution Law), to allow the criminological report to be conducted by a psychiatrist, psychologist, or psychosocial assistant.
PL 1437/2019	2019	Attached to PL 5673/2009	Amends Law No. 8,069/90 (Child and Adolescent Statute) to equate the duration of the socio-educational measure of detention to the penalty duration provided for the type of crime committed by the ofender,
PL 997/2015	2015	Attached to PL 8045/2010	Amends Law No. 8,072 of July 25, 1990, Decree-Law No. 2848 of December 7, 1940 - Penal Code, Law No. 7,210 of July 11, 1984, Law No. 8,666 of June 21, 1993, and Decree- Law 3,689 of October 3, 1941 - Code of Criminal Procedure and provides other measures.

PL 7868/2014	2014	Awaiting Appointment of Rapporteur in the Committee on Constitution and Justice and Citizenship (CCJC)	Penal System Reform to increase its effectiveness in combating violence, corruption, and impunity, lending it greater systematization, creating new offenses, aggravating penalties and raising their limits, simplifying procedures without prejudice to the right of defense, making prescription more difficult, expanding the possibility of ordering pre-trial detentions, and establishing more stringent requirements for conditional release and progression of sentence regime.
PL 583/2011	2011	Awaiting Consideration by the Senate	Provides for monitoring by geolocation instruments for individuals subject to the Federal Union penitentiary system. New Summary of the Text: Amends Law No. 7,210, of July 11, 1984 (Penal Execution Law), to provide for the electronic monitoring of inmates, require a criminological examination for regime progression, and abolish the benefit of temporary release.
PL 470/2011	2011	Awaiting Creation of a Temporary Committee by the BOARD	Provides for tax incentives for cooperation in the rehabilitation of inmates and the reservation of jobs for inmates and former inmates in service contracts by the Public Administration, amending Law No. 7,210, of July 11, 1984 - Penal Execution Law.

Similarly, in the Federal Senate, in addition to Bill 583/2011, which has now been numbered as PLS 2253/2022, there are seven other bills that address the topic of the criminological examination, all of which, in some way, aim to bring the criminological examination back into legislation. The most notable is PLS 55/2015, which proposes the provision of the criminological examination in the Statute of the Child and Adolescent.

We present the bills in the synoptic table below:

Bil	Year	Status	Summary
PL 2253/2022	2022	Awaiting Designation of Rapporteur	Provides for monitoring by geolocation instruments for individuals subject to the Federal Union penitentiary system. NEW SUMMARY: Amends Law No. 7,210, of July 11, 1984 (Penal Execution Law), to provide for the electronic monitoring of inmates, require a criminological examination for regime progression, and abolish the benefit of temporary release.
PLS 75/2007	2007	FORWARDED TO THE CHAMBER OF DEPUTIES Received the number PL 1294/2007	Amends Law No. 7,210, of July 11, 1984, to require a criminological examination for regime progression, conditional release, pardon, and commutation of sentence when the inmate has been convicted of a crime committed with violence or serious threat to a person.
PLS 55/2015	2015	Dismissed and filed.	Amends Law No. 8,069, of July 13, 1990 – Child and Adolescent Statute –, to require a criminological examination, extend the period of detention, and prevent the automatic release at 21 years of age of an adolescent who committed an infraction equivalent to a heinous crime or similar offense.
PLS 190/2007	2007	Filed at the end of the legislative session	Amends Law No. 7,210, of July 11, 1984, to require a criminological examination for regime progression, conditional release, pardon, and commutation of sentence.
PLS 499/2015	2015	Filed at the end of the legislative session	Amends Article 112 of Law No. 7,210, of July 11, 1984 (Penal Execution Law), and Article 2 of Law No. 8,072, of July 25, 1990, to reinstate the criminological examination and extend the deadlines for regime progression.

PLS 104/1995	1995	Filed in the revising house under the number PL 4500/2001	Amends the provision of the Penal Execution Law regarding the criminological examination and the progression of the regime for serving sentences of deprivation of liberty, and provides other measures.
PLS 421/2008	2008	Filed at the end of the legislative session	Amends the Penal Code, the Penal Execution Law, and the Law of Heinous Crimes to make the progression between prison regimes and the granting of conditional release more stringent.

FINAL CONSIDERATIONS

But if you think I'm defeated

Know that the dice are still rolling

Because time, time doesn't stop.

Cazuza, in the song "O Tempo Não Para" (Time Doesn't Stop)[11].

As we learn from Michel Foucault (2005), power relations are always unstable, even if they appear rigid, as they are woven together by various relations of force that sometimes tighten, sometimes loosen, sometimes move, or remain still for a while; "it is not that life has been exhaustively integrated into techniques that dominate and manage it; it constantly escapes them" (Foucault, 2005, p. 134). What we perceive from the study conducted in this article, regarding the institution of the criminological examination in Brazilian legal and legislative relations, is that the outcome of this form of disciplinary technology of power is still undetermined in Brazil. Many power relations are observed. On one hand, wesee the judiciary calling for knowledge that can "scientifically attest" to decisions related to deprivation of liberty. On the other hand, psychology, through Federal and Regional Councils, vigorously asserts that psychological knowledge cannot attest to what is required in these examinations. Likewise, many psychologists directly involved in the judiciary express discomfort (Arantes, 2008) with havingto act in a way contrary to what they believe to be the ethics of the profession. Wealso have the Legislative Power, which decides to end the criminological examination and removes its provision from the law. In the amendments broughtby Law 13.964/2019, when they had the opportunity to revisit this removal and follow the understanding of the Higher Courts, the legislature still decided to maintain the absence of the

[11] BRANDÃO, Arnaldo. CAZUZA. **O Tempo não Para.** Album: O Tempo não Para. Universal Music, 1998.

criminological examination in the legislation.

However, since 1995, the criminological examination has remained present in legislative debates, with a numerical increase from 2010 onwards, with proposals,debates, and bills on the subject, most of which aim to return the criminological examination as a requirement for regime progression, conditional release, and other mechanisms of exit from the prison system, such as pardon or commutationof the sentence, as proposed by PLS 190/2007, for example.

Thus, what we can conclude, partially and provisionally, from the research is thatthe legal and legislative discourses that touch on the criminological examination in Brazil are still in dispute. Even though Law 10.792 of 2003 revoked the need forthe examination for the granting of regime progression and conditional release, the criminological examination continues to be required in many cases, and the legislative debate remains present and persistent.

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