

Legal psychology from social psychology. historical introduction of forensic psychology

Abstract

The importance of legal psychology at the international level has gained ground in the last ten years due to the increase in criminality within the so-called transnational organized crime. Drug trafficking, money laundering, human trafficking, femicides, migrant smuggling, and genocide are examples of criminal behavior that crosses borders between countries. The social, cultural, political and economic implications that these antisocial behaviors entail makes it necessary to implement specialized and trained professional teams for the identification and management of criminal profiling, where Legal Psychology as one of the applications of Social Psychology entails a great weight and implies the clear delimitation of its functions and the conceptual theoretical structure that grounds it as a science. The objective of this work is to publicize the importance of this behavioral science in the legal field, dimensioning its characteristics and applications. Highlighting the broad development of forensic psychology, the delimitations of criminological psychology, the overwhelming future of criminal and victimological psychology, and the deficits in the field of judicial and legal psychology are some of the issues that are reflected in this brief historical introduction.

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Introduction

Humans are social beings that form part of a culture wherein social psychology plays a paramount role by dealing with social factors, which influence the behavior of each person. Social psychology is a basic science that studies the human being as a social entity. This branch is related to society, mass movements, and social issues as it approaches the development and the attitude changes, group dynamics, competitions, cooperation, difficulties, and social influence. All of this is reflected in the relationships between individuals, and also in the relationship individual-society. Social psychology is particularly interested in describing the characteristics of people, such as their values, behaviors, attitudes, beliefs, habits, expectations, cognitions, among others.¹ Moscovici (1994) and Martín-Baró (1987) agree on the fact that what concerns social psychology is the study of the ideological and communication elements of social beings both as individuals and as part of a group. These phenomena are characterized because they comprise behavioral and attitudinal systems wherein the individual is integrated. As an example, we can mention families, industries, hospitals, prisons, among many others, within which exist social interaction and the exchange of signals, symbols, emotions, feelings, and cognitions, assigned by contents historically referred and valued. Thereby, these components become part of the psychosocial factors that affect the development of the construction and the behavior of people (In Porras, 2009).

One of the application areas of social psychology that presents a higher specialization is the one applied to law. Muñoz, Bayés y Munné² consider that psychology and law are social and human behavior sciences. Therefore, they converge on the fact that both share the same intervention object: human behavior. Historically, we can highlight the works of Stern, Binet & Münstererger³ related to the truthfulness of testimony, where psychology was used to provide elements for legal procedures. Subsequently, we can refer to the insertion of psychology into the work of judges, who established the importance of the juridical psychologism due to the extensive number of terms and psychological behaviors that were described on the laws.

And finally, the development of forensic psychology in the 1970s, which resulted in an increase in the number of publications related to the creation of personality profiles of criminals, juridical evaluations of mental weaknesses, the crime and testimony psychology, and the insertion of psychology professionals into the penitentiary sectors. The application of psychology into the juridical area gave rise to Legal Psychology, defined as the study, explanation, promotion, evaluation, prevention, counseling and treatment of the psychological, behavioral and relational aspects which impact on the legal behavior of people through the use of scientific methodology for the assistance, improvement, and justice application.⁴

Garzón⁵ mentions that Legal Psychology is a philosophical conceptual framework that establishes the psychological and social procedures of the law, allowing its understanding and application into the real criminal behavior field. However, the applied branch of legal psychology is the forensic one, which functions are to provide support for law enforcement by assisting the judge, and helping to clarify the judicial facts and acts. Urra & Vásquez⁶ define Forensic Psychology as the science that studies the psychology application into the justice-related problems and that cooperates with its management for a better law enforcement. Forensic psychology goals are to find out the reasons which induce a person to commit a crime, what are the meanings of the criminal's behavior, the lack of concern in being punished, and the inability to give up those behaviors. Therefore, its main function lies in drafting forensic reports, which according to Muñoz, Bayés y Munné² are objective and unbiased opinions issued by the legal experts, specialized in their science and skills, who through their scientific, artistic, or practical knowledge, attest the existence of a fact and its nature. The forensic report issued by the legal expert concerning its main expertise field is a piece of evidence within judicial procedures (legal, civil, family, or labor law) that needs to be examined by a judge who will enter a judgment. Thus, we can say psychology professionals are critical in assessing human social behaviors, their motivations, and consequences according to the litigation process.⁷

The importance of professional ethics and a high-quality execution in the forensic evaluation lies in the social impact that the psychologist has. The psychologist has the obligation of keeping updated the professional, scientific, and legal development knowledge within his specialty, as well as having the highest ethical standards of his profession. As mentioned by Serrano⁸ his significance in the forensic field forces the psychology professional to comply with his obligations in order to avoid incurring on a corrective, criminal or legal responsibility. Psychology experts perform their role as jurists' collaborators, being experts who counsel judges to enter judgments about a fact (persons or situations) on his area of expertise. Therefore, the specialization in law and criminology scopes will be fundamental for their professional exercise. So far, we have addressed the legal psychology exclusively from a forensic perspective; however, this is not the only application specialists can execute, but it is the most common.

Garzón⁵ mentions that it was approximately in the late 20th century when relations between law and psychology began to be formalized through the human behavior analysis applied to the judicial context. In this sense, he defines Forensic Psychology as responsible for judicial procedures and its relation with the individual psychological processes. In this respect, it is a broad term that encompasses all the possible application approaches of the psychology knowledge towards the specialization area of the judge, even beyond the administration of justice and the action areas within the courts. Forensic psychology will provide to the lawyer, public prosecutor, judge, court clerk, and other public officers the psychological concepts and technical instruments they need in order to improve their judicial performance, and consequently, they will deliver a better management of justice. This way, prison psychology gradually begins to emerge, as well as the psychologists assigned to the family courts or who act as specialist witnesses on oral trials, the expert legal counselors who prepare the dispute for both contending parties at the justice courts, and also as support for the juries.

Other application area is the one related to the penitentiary field, where the psychology professional analyzes and applies the inherent evaluation and treatment procedures for people who are under prison custody, as well as the procedures for those ready to be reintegrated to society.⁹ It is also relevant to highlight the contribution of psychologists in the criminology area. Garrido¹⁰ states criminological psychology intends to understand the crime, its causes, and its authors so to provide tools that help prevent it. Its performance takes place within the forensic world (prisons, police departments, and courts), and in the community itself by trying to prevent delinquency, and through the intervention in civil organizations as well. It has a close relationship with clinical, community, and social psychology, but that does not impair its singularity concerning the severity and extension of the problem that is being confronted and the outlined methods for these tasks.

On the other hand, Chargoy¹¹ defines criminological psychology as the study of antisocial behaviors, and as a part of the criminal sciences. We can classify these behaviors in two categories: criminal and non-criminal behaviors. Criminal ones are included in the penal code and therefore, they are punishable; non-criminal behaviors are mostly associated with non-tolerated conducts by society because they trespass the established social rules. If we focus on criminal behaviors, we can place criminological psychology as part of legal psychology and criminal law. If classified as non-criminal instead, it is placed within the criminological sciences and therefore, it involves more socio-cultural elements.

One of the most successful psychology fields applied to the legal area, developed during the 20th and 21st centuries, is the one of criminal profiling or criminal psychology, defined as a process to identify and provide a general description of the psychological traits of an individual by analyzing the crimes this person has committed. In other words, criminal profiling is a psychological technique that draws the psychosocial traits of the victims, the forensic findings and the author motivations based on the psychosocial aspects of human behavior and the crime scene in order to elaborate the statistical data which allows their classification into relatively homogenous groups of people, with the ultimate objective of cooperating with the investigation or helping to provide evidence of guilt.^{9,12}

The profiler must evaluate a series of essential elements that will lead to the identification of the responsible for the criminal behavior. Garrido¹⁰ considers that first of all, a victim analysis is needed: gender, age, ethnicity, habits, and appearance. Afterwards, the places where the victim established contact with the offender are studied, and also if the victim was transported to another location where the crime took place, in which case we are talking about two crime scenes. A third one could even exist if the offender hides the victim at a different location in order to try to conceal evidence against him. Nevertheless, many times the crime happens suddenly in a random, unplanned place, where the victim is left. The reconstruction of the crime scene comes later. This is done by describing how the facts occurred based on the assault sequence, the *modus operandi* of the offender, the response from the victim, among other factors. Finally, the criminal profile is created, which describes the criminal through the analysis of demographic data, educational level, criminal records, family history, habits and interests, the vehicle used to commit the crime, personality characteristics, and possible psychiatric conditions.

The psychology of criminal investigation is a brand-new area in continuous growth. Its main contributions are linking different crimes to a particular offender, inferring the characteristics of offenders from the behavioral cues of the crime scene, guiding the techniques for interviewing victims, witnesses, and suspects, and supporting the decision-making of case investigators. Therefore, it covers a wide range of investigation areas: the different aspects of criminal behavior (crime psychology, criminal behavior analysis, criminal careers, criminal narratives, crimes against property, violent crimes, and organizational crimes), investigation procedures (decision-making, information sources, computer systems, police interrogation methods, psychological autopsies), and recently, the inclusion of psychological evidence from crime scenes at the courts of justice.¹² Lastly, one of the newest application areas of legal psychology is victimology, whose professional development is in its initial stages. This area studies the behavior of the victims before, during, and after the trauma event, taking both crime victims and other kinds of victims into consideration.

One of its best performances with the support of behavioral clinic psychology is the specialized psychological care given at the assistance centers for victims of crime at the Attorney's offices that provide crisis assistance, emergency telephone assistance, and psychological evaluations focused on the truthfulness of legal testimony, as well as crime and victim prevention. Acting ethically within the legal framework requires knowing the environment wherein the professional will be working, and recognizing the characteristics, concepts, and procedures of the judicial structure of our country. Subsequently, the psychologist needs to acquire the professional skills, training, and experience within this area in order to achieve ethical and professional performance. To that end, the principles of the behavioral theory, along with the criminological theories, will be the conceptual basis of the specialized knowledge

of the area. Furthermore, the methodological procedures of social psychology will be relevant to the creation of special abilities required in this application area. Finally, the methods, tools, techniques, and processes of forensic evaluation (not only clinical) will be part of the essential elements for the development of professional skills in the forensic practice.

The social demands for the implementation of forensic evaluations grow day after day, enhancing the possibilities of professional development. Some of the applications might be as an evidentiary technique on the criminal, labor, family, civil, and inheritance law, through the evaluation of victims of crime, witnesses, plaintiffs, the alleged perpetrators of crimes, child protection, psychological damage, moral damage, and accreditation of un-imputable cases due to mental disorder, accreditation of parental alienation in custody cases, among others. And last but not least, we must keep in mind that the role of forensic psychology in the juridical field is currently under conflicts and a fight for power, making the appropriate use of forensic reports within the legal system impossible. Therefore, it becomes necessary for psychology professionals to differentiate between ethical and legal obligations, as well as knowing the limitations and procedures that their profession involves.^{13,14}

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Conflicts of interest

The author declares there is no conflict of interest.

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