

The Brain as an Object of Surveillance: Neuroscience in Criminal Law and Criminology

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Contemporary neuroscience and the advanced technology of neuroimaging has increasingly permeated the field of criminal law and criminology. This technology is extremely useful in medicine, but its critics warn of hasty, simplified, or potentially misleading interpretations of such displays of brain activity. The precise images and empirical measurements of brain pathology led to the rapid growth in the field of neurocriminology. Its paradigm recalls the heritage of positivistic biological theories of criminality in the late 19th and early 20th century, which was largely abandoned in the second half of the 20th century. Neurocriminology explores the connection between an individuals' structural or functional brain anomalies, and their antisocial behaviour. By identifying pathological brains, it strives to recognize potential risks in the social body and react accordingly. Indeed, rigorous use of the most advanced neuroscientific technologies in criminal law promises efficient and reliable shortcuts to solving criminal cases. Such techniques include detecting deceit, and so-called "brain fingerprinting" (looking for memory traces). These approaches, initially used in pre-trial investigations, quickly found their way into the criminal courts in India and the United States. In spite of strong critiques from both the legal and neuroscientific communities, they now have full probative value. Modern neuroscientific techniques within the context of criminology and criminal law can therefore be perceived as an efficient surveillance mechanism – a tool to recognize the criminal in the brain and to reveal the crime from the brain.

Keywords: neuroscience, neurocriminology, new biocriminology, criminal law, surveillance

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