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Erich Fromm's Early Work on Criminal Justice Its Historical and Current Significance

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Introduction

Erich Fromm's work on criminal justice is almost unknown.¹ A not insignificant reason for this seems to me to be that one remains somewhat puzzled after reading it – especially in the light of Fromm's later publications. For the medical practitioner the question of implications for the practical work within the penal system remains unanswered, and for the social scientist the question of their theoretical classification. However, at second glance these publications turn out to be crucial for understanding Fromm's theoretical development in the course of his work. This paper will be dedicated to these questions, and will make suggestions regarding possible answers. After a brief historical analysis (Section 1), I will systematically present Fromm's work on criminal justice and analyze its construction (Section 2). Section 3 traces the historical significance of these works in the context of the development of Fromm's theory. In Section 4 an attempt will be made,

based on this, to reformulate Fromm's underlying ideas for society's current situation.

1. Preliminary remarks

a) Fromm's *œuvre*

The work of Erich Fromm (1900–1980) can be roughly divided into three phases. He became socialized in the tradition of the Jewish religion, studied sociology, and received his doctorate in 1922 from Alfred Weber with a theoretical thesis on the sociology of this religion. This already marked the end of his first work phase. In a subsequent »latency phase« Fromm turned away from Judaism and studied psychoanalysis and Marxism; this culminated in training at the Psychoanalytical Institute in Berlin (M. Schröter, 2015). For Fromm's subsequent work, the encounter with the local left-wing Freudian analysts Siegfried Bernfeld and Wilhelm Reich was formative, as was also the theoretical discussion with some of the lecturers teaching at the Berlin Institute.

Around 1930 Fromm began to construct a theory synthesizing Freud and Marx, and joined the Institute for Social Research (his second work phase). Around the middle of the 1930s Fromm began to »revise« Freud's drive theory. This revision was completed in 1941 in his major theoretical work *Escape from Freedom* (1941a). The early writings of Marx, in particular the »Parisi-

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an Manuscripts« (A. Gallistl, 2012), which were published posthumously in 1932, had a decisive theoretical influence on the revision.

Escape from Freedom was, however, not only a turning point in the construction of theory. The work was done under the influence of the triumphant march of the National Socialists and was the prelude to Fromm's third work phase, which was increasingly characterized by questions of applications in political practice as well as in psychological life practice. From this phase stemmed the popular books with which Fromm is mainly associated. In comparison to these, his publications from the 1930s had a very theoretical perspective.

b) The Work on Criminal Justice in Fromm's Work

Fromm published three (or four, see below) works on criminal justice in the years 1930–1931; these thus fall in the prelude of his second work phase and were influenced by his time in Berlin. When one reads the sources referred to, the connection to the 1929 book *Der Verbrecher und sein Richter (The Criminal and His Judge)* by Franz Alexander and Hugo Staub becomes abundantly clear – both authors were, in all probability, Fromm's teachers in Berlin. In their monograph, Alexander and Staub dealt with the application of psychoanalysis to questions of crime and criminal justice. Fromm refers extensively to this broad and complex work in terms of content and argumentation, and an exhaustive discussion would require a separate paper. I would merely like to refer here to the central dividing lines. The work of Alexander and Staub is ultimately concerned with the question of how psychoanalysis could become useful socio-technically in the fight against and prevention of crime, and moves paradigmatically within the framework of Sigmund Freud's theory of drive and his writings on culture. For Fromm, however, Siegfried Bernfeld's *Sisyphos oder die Grenzen der Erziehung (Sisyphus, or The Limits of Education, 1925)* is the paradigmatic starting point. Bernfeld develops the concept of the hidden educational function of

children's schooling, which in reality does not have the function of conveying knowledge, as had been assumed unquestioningly in debates about appropriate reform proposals, but instead contributes with its competitive and authority structure to the creation of a »capitalist character«. It is important to note that although Fromm at that time already referred to Marx as the central theorist, he was still unfamiliar with at least some of Marx's early writings, so his understanding of Marx was based on the later works of Marx and their reception during that period.

Of Fromm's three writings on criminal justice, the article *Zur Psychologie des Verbrechers und der strafenden Gesellschaft (On the Psychology of the Criminal and the Punitive Society, 1931a)*, published in 1931, is the main one. The article *Der Staat als Erzieher. Zur Psychologie der Strafjustiz (The State as Educator: On the Psychology of Criminal Justice, 1930b)* is a condensed summary of this work in a few pages. In the following I will concentrate on these two works. The very short work *Ödipus in Innsbruck. Zum Halsmann-Prozess (Oedipus in Innsbruck. On the Halsmann Trial, 1930d)*, also published in 1930 is theoretically not innovative, but thematically interesting in so far as Fromm is here, quite practically and in public, committed to an accused murderer who, in his opinion, is a victim of psychiatric misappraisal and threatens to be wrongly convicted, thus creating a bridge to the current research of our Magdeburg research group (J. Frommer, A. Gallistl, F. Regner & S. Lison, 2017).

During the preparation of this paper, Michael Schröter drew attention to another previously unknown article by Fromm on criminal justice, entitled *Psychologie des Verbrechers und Strafvollzugsreform (Psychology of the Criminal and Penal System Reform, 1930e)*, first published in 1930. To discuss this further work of Fromm in more detail at this point would go beyond the scope of this article, but I would like to make at least a brief comment.

With 12 pages, the article already has a certain size, but does not reach the size of *On the Psy-*



chology of the Criminal and the Punitive Society (1931a). In terms of content, the article is a prelude to the central contribution of 1931 and is recognizably a missing link in Fromm's development from the influence of Alexander and Staub to his own position. It already demonstrated Fromm's concern for socio-economically underprivileged groups. At this time, however, Fromm seems to be still trying to reconcile such a position with the Freudian. Despite the extent of this new work, he formulates social-psychological hypotheses on the function of criminal justice for broad sections of the population only in a brief passage (Fromm, 1930e, p. 515). Although these hypotheses already refer to those set out in *On the Psychology of the Criminal and the Punitive Society* (1931a), on closer examination they are seen to be taken from Alexander and Staub and to still follow the Freudian paradigm of drive theory and cultural psychology. This can also be seen from the strategic orientation, since the article as a whole still sees itself, in the sense of Alexander and Staub, as a contribution of psychoanalysis to the optimization of the existing social institutional structure. In this sense the article resembles more Fromm's *Oedipus in Innsbruck*. *On the Halsmann Trial* (1930d). The genuine (macro-)sociological and, in the sense of the Frankfurt School, »critical« enrichment of socio-psychological questions, which is characteristic of Fromm, is still largely lacking here, although its precursors can be discerned here in a hitherto unique clarity.

2. Fromm's theory of criminal justice

Fromm's contribution *On the Psychology of the Criminal and the Punitive Society* (1931a) first deals with the intrapsychic dynamics and the question of the classification of crimes in a clear reference to Alexander and Staub (1929). Above all, he develops the economic deficiency situation as the driving force in this respect. In addition to the direct connection with »emergency crimes«, Fromm emphasizes that the economic situation also plays a role in »drive crimes« indirectly through socialization in deprived circumstances as well as through the re-

al lack of alternatives to sublimation. In the following he deals with arguments on the effectiveness of the penal system. He enriches this discussion with empirical quantitative material and leads it to the following conclusion:

»Hence, we see that both statistics and the conclusions of leading experts of criminal justice confirm the fact that punishment is an almost complete failure as an effective measure for reform and correction of the criminal, deterrence, and societal security.« (E. Fromm, 1931a, p. 25)

This is where Fromm begins the construction of his own theory, with which he moves out of the clinical and psychological realm:

»If, however, things are such that both today's criminal justice system and the penal system itself are ineffective, and if their own goals cannot be attained, then there must be other reasons as to why society holds on to these ineffective measures with so much determination. Only from an examination of these motives is one led to consider that the criminal justice system has not only the actual criminal as its object, nor only the person who, although with a clean record, might become a criminal unless deterred by example, i.e. the potential criminal. [...] Rather, one of the essential functions of the criminal justice system is its significance for the great mass of non-criminals.« (E. Fromm 1930b, p. 8.)

While Alexander and Staub remain in the Freudian clinical and socio-psychological paradigm, Fromm now questions the decidedly sociological function of criminal justice and applies Siegfried Bernfeld's analysis of the educational system as a paradigm:

»In no way does the stability of the social structure depend solely on the strength of the external instruments of power, which are meant to guarantee the continued existence of the society. To be sure, the police and the military are strong supports for society, but they can – as the history of revolutions shows – fulfill their duties only



when an additional factor comes into play. This additional factor is the psychic readiness of the great majority to adjust to the existing society and to subordinate themselves to the ruling powers. [...] Contemporary society, like all previous ones, is grounded in severe instinctual renunciation on the part of the masses, on the subordination of the masses to the ruling strata, and, from the psychological side, on the belief that existing social relations are necessary, specifically, that they are grounded in the superior insight and wisdom of the rulers. These psychic attitudes have their model and their source in the attitude of the child to the father. The real situation, in which the child is confronted by the father, makes it necessary to fear his physical superiority, to admire and to worship his mental superiority, and frequently the child makes the best of his situation when he succeeds in transforming into admiring worship his aversion toward the forbidding father, who demands instinctual renunciation.« (Ibid., pp. 9 f.)

At this point, Fromm's later theory of the social character, which deals with the question, known as the micro-macro problem, of why members of a society like to do and passionately want to do what they *should or must* do from an objective »sociological« point of view, can already be found in his approach. This is the paradox that the seemingly free decision of will proves to be determined by foreign powers when viewed scientifically. In contrast to Alexander and Staub, Fromm ultimately attributes the origin of this determination not to unconscious psychological structures, but to a hidden social structure, or sees individual psychodynamics as determined by it. He thus questions the framework of Alexander and Staub's existing discussion and reveals that reformers find themselves in the situation of a Sisyphus under the given conditions:

»It is clear therefore why there must be a criminal justice system, quite independently of its impact on criminals. It is

an institution through which the state imposes its will as a father image on the unconscious of the masses, in which it repeats an important function of the father, his power to punish and to threaten.« (Ibid.)

Up to this point, Fromm's analysis ultimately remains in the field of psychological emancipation, with the special feature that this emancipatory impetus is not directed primarily at the patient, but at the seemingly liberated – because analyzed – practitioner and researcher. However, his analysis is not yet complete here:

»In addition to this 'educational purpose', punishment has another socio-psychological function [...]. Punishing the criminal provides a form of gratification for the aggressive and sadistic drives of the masses, which are thereby compensated for the many renunciations forced upon them. Punishment makes it possible for them to transfer their aggression against the oppressive and ruling class onto the criminal, and thereby to find release for this aggression.« (E. Fromm, 1931a, p. 27.)

The »artificial fixation« in the state of inability to criticize the existing system robs the members of society of their intellectual development potential. Moreover, criminal justice still has the function of redirecting the »natural«, »revolutionary« aggression against the ruling class into a system-stabilizing aggression against the system deviator.

Here we already find Fromm's theory of the authoritarian character who loves the powerful and hates the weak. It is not only a matter of robbing possibilities of development, but of creating a twist, a deformation, a perversion of the original human being. From a psychoanalytical perspective, this is already a pathological fixation, since the drive is discharged, while its immanent target is systematically missed.

Fromm closes the article with recommendations for the practice of criminal justice. In order to classify these correctly, the following



passage from Fromm's simultaneously published article *Politik und Psychoanalyse (Politics and Psychoanalysis, 1931b)* should be kept in mind:

»The mass is not a neurotic. Certainly it displays strong emotional reactions of various types, such as love, hate, reverence, scorn, joy, sadness, and others. Certainly, also, the emotional attitudes of the mass can be interpreted as a continuation and repetition of certain attitudes formed in childhood. But what emotional attitude is dominant among the members of a group at a particular time, depends on the real living conditions among the masses and the changes in those conditions. [...]...it is not neurotic for a repressed class to rise up against its oppressors and actuate strong sadistic impulses in this struggle. [...] The quasi-neurotic behavior of the masses, which is an appropriate reaction to current and real, though harmful and unsuitable, living conditions, cannot then be 'cured' by 'analyzing' them. Instead, it demands the transformation and elimination of those very living conditions.« (E. Fromm, 1931b, pp. 35 f.)

Here Fromm in fact pleads for a return of aggression against the original drive target, i.e. against the ruling class. It becomes clear that at this point he is attached to the revolutionary theory of Orthodox or Leninist Marxism (Fetscher 1968). He thus sees the attainment of psychological and social emancipation in the proletarian revolution and represents this position with a certain radicality.

Fromm concludes his work on criminal justice with reflections on the extent to which psychoanalysis can help the judiciary. Psychoanalysis will not be able to provide basic help under existing conditions of criminal justice. One exception is the question of fact-finding. In this context see the conclusion in his article *Oedipus in Innsbruck. On the Halsmann Trial*:

»If psychology is used to clarify the facts of a case, then it must be demanded that at

least part of the expertise is required from an expert, as is self-evident in the case of a chemical or medical problem. But even this rather modest demand is for the time being only a utopia – and not only in Innsbruck«. (E. Fromm, 1930d, p. 136.)

Fromm is more optimistic about the usefulness of psychoanalysis in shaping a new legal practice:

»Cases in which the improvement of the criminal's economic situation is enough to end his criminality would be eliminated. This would apply to cases of pure economic emergency or to cases in which the possibility of sublimation, or the substitution of other instinctual gratifications, would lead to the cessation of criminal behavior. This research will also cooperate in the creation of methods through which the easily curable criminals could be corrected in a suitable form of re-education [...]. For criminals that cannot be corrected by such methods, psychotherapy, i.e., the discovery of the unconscious motives of their actions, would be the only effective form of influencing them. However, for those whose constellation of drives cannot be changed even by analytical therapy, in other words, for the incurable, even psychoanalysis would not be able to give any other advice than preventive detention as long as they are dangerous. It must not be forgotten, however, that 'dangerous' is a relative term whose meaning depends on the social system and the assessments it produces.« (E. Fromm, 1931a, pp. 29 f.)

This remark becomes understandable when one considers that Fromm is looking at a post-revolutionary society (perhaps even following the Soviet model). This is the only explanation for the very conventional recommendation on »preventive detention as long as they are dangerous«, which apparently contradicts the previous style. The formulation is presumably deliberately ambiguous and refers less to criminals in the conventional sense than to the Marxist dialectic, which sees the actual crime in



property law, for which the existing legal system increasingly negates itself in its development. According to this, in the sense of the dictatorship of the proletariat, the defenders of the old order should be overthrown and interned until the establishment of the new social structures has been completed.

3. Historical significance

a) Significance for the Frankfurt School

The historical significance of Fromm's work in the early 1930s lies in the fact that he formulated the theories of the social character and the authoritarian character for the first time, thereby already laying the foundations for a critical theory that questions the social framework of social science theory construction. Equally innovative is the underpinning of hypotheses with material from the field of empirical social research. At the same time, the roots are still recognizable: the Freudomarxist paradigm of Bernfeld is applied to the Freudian psychoanalytic social psychology of Alexander and Staub. From this perspective, Fromm's theory of criminal justice is indirectly influential in shaping an epoch through its influence on the Frankfurt School. Beyond the academic milieu, I suspect that the effects on society as a whole are also considerable, indirectly through the effect on Herbert Marcuse and his broad cultural influence in the 1960s and 1970s. Marcuse's programmatic work *Repressive Tolerance* (1965) is a direct continuation and clarification of Fromm's early works on criminal justice. Despite all the differentiated expansion of theory, Marcuse still adopts in part the orthodox revolutionary paradigm that was hidden in Fromm's recommendations for practice at the time – although it now appears in a less aesopic formulation:

»It should be evident by now that the exercise of civil rights by those who don't have them presupposes the withdrawal of civil rights from those who prevent their exercise, and that liberation of the Damned of the Earth presupposes sup-

pression not only of their old but also of their new masters.« (H. Marcuse 1965, p. 121.)

In view of Marcuse's critical distance to authoritarian Soviet Marxism (Marcuse 1958/64), however, the reference to revolutionary theory no longer has any direct political implication. Despite the militant style, Marcuse's psychoanalytic provenance of psychological emancipation remains recognizable, since the attack is ultimately directed against the unquestioned established moral and superego structures of the bourgeoisie. The critique of an unquestioned pseudo-identity of social structure, law, morality and superego becomes clearer with Marcuse:

»Law and order are always and everywhere the law and order which protect the established hierarchy; it is nonsensical to invoke the absolute authority of this law and this order against those who suffer from it and struggle against it [...]. There is no other judge over them than the constituted authorities, the police, and their own conscience. If they use violence, they do not start a new chain of violence but try to break an established one. Since they will be punished, they know the risk, and when they are willing to take it, no third person, and least of all the educator and intellectual, has the right to preach them abstention.« (Ibid., pp. 127 f.)

b) Position in Fromm's Oeuvre

Although Fromm already developed central aspects of his theoretical concepts in his work on criminal justice, these do not fit seamlessly into Fromm's complete oeuvre, precisely because of their radical nature, and they contradict his later work. I have already been able to show elsewhere that Fromm in the controversy with Marcuse is in some respects in contradiction with himself, insofar as Marcuse's works represent a continuation of Fromm's early work (A. Gallistl, 2014). In my opinion, this problem can be explained by two developments of Fromm, (1) by the shift from Orthodox Marxism



to the Marx of the early writings within the second work phase, which leads to the revision of psychoanalytical anthropology, and (2) by a »paradigmatic shift« of Fromm from Karl Marx to Max Weber in the third work phase.

In the theory of criminal justice, Fromm still adheres to the paradigm which, according to Michel Foucault, is now called the »repression hypothesis«: The foundations of resistance to repression and alienation are biologized in the innate drives. He only turns Freudian anthropology around to the extent that the aggression or death drive no longer represents something destructive which endangers society, but on the contrary functions as the instrument of social progress. Fromm's revision will later consist in sociologizing all instincts:

»It is not as if we had on the one hand an individual equipped by nature with certain drives and on the other, society as something apart from him, either satisfying or frustrating these innate propensities. Although there are certain needs, such as hunger, thirst, sex, which are common to man, those drives which make for the *differences* in men's characters, like love and hatred, the lust for power and the yearning for submission, the enjoyment of sensuous pleasure and the fear of it, are all products of the social process. The most beautiful as well as the most ugly inclinations of man are not part of a fixed and biologically given human nature, but result from the social process which creates man. In other words, society has not only a suppressing function—although it has that too—but it has also a creative function. Man's nature, his passions, and anxieties are a cultural product; as a matter of fact, man himself is the most important creation and achievement of the continuous human effort, the record of which we call history.« (E. Fromm 1941a, p. 224.)

The criticism of Fromm now was that his theory, with the revision, no longer had an authority that defended itself against repression and alienation, and that he therefore had to resort to

metaphysical explanations in order to maintain the Marxist position (such as a natural preference of man for the »productive« or »good«).

If there are no innate drives anymore that are »naturally« directed against the oppressive and ruling class and are misdirected or perverted by the ruling order, if there is no natural critical-intellectual cognitive potential of man that is suppressed, then Fromm's theory of criminal justice seems to have indeed taken away the normative ground.

I tried to prove (A. Gallistl, 2012) that Fromm does not anchor these revolutionary potentials metaphysically after the revision; rather, he transfers them from the biological sphere to the economic sphere through the revision. Such an attitude becomes particularly evident in his essay *Man's impulse structure and its relation to culture* from 1937, which was published only in 1992 but is essential for understanding his theoretical development:

»Nevertheless, it is unavoidable that the ideological influences have but a limited effect on the forming of the character's structure. This is derived, to such a great extent, from the actual life relations of people that the enduring success of an ideology conflicting with these relations is doubtful. Human solidarity, such as develops under the circumstance of numerous workers laboring together on great projects; a certain intellectual level, such as the activities of a qualified worker inculcates; a feeling for individuality, such as comes about in a manner of production in which the individual must accomplish quite complicated feats – are not easy to destroy with ideological influences of an opposing nature.« (E. Fromm, 1992e [1937], p. 168.)

The needs (formerly »drives«) for solidarity, intellectual activity and individuality are inherent in the modern production process. In this respect, they must be produced socially, and they emerge in a dialectical process of development as weapons against the order that produces



them. Structurally, the paradox arises that a social system must suppress properties and abilities that it generates and needs itself.

Fromm's achievement thus goes beyond reconciliation between Freudian and Marxist anthropology. Based on the early Marx, he establishes his own paradigm of the generation of human consciousness through the perception of communicative contradictions and, derived from this, a clinical theory of the emergence of suffering through this, as well as the psychological necessity to dissolve or »answer« these contradictions – even if it is illusionary.

The starting point is the dialectical anthropology of the Paris manuscripts: The proletariat builds palaces and lives in caves (cf. K. Marx, 1844, p. 88), but in contrast to the »savage« »he knows the quality of his dwelling in contrast to the human dwelling on the other side, residing in the heaven of wealth« (ibid., p. 132).

For Fromm, the anthropological constant does not consist in certain innate needs, but in an entity which recognizes contradictions presented to it and suffers from them. Only on the basis of this genuinely social generation of consciousness and reason immanent in the economic system can Fromm's anthropology be understood. Based on this, this anthropology can then unfold dynamics that crisscross social system necessities:

»Gifted with self-awareness and reason, man is aware of himself as a being separate from nature and from others; he is aware of his powerlessness, of his ignorance; he is aware of his end: death. Self-awareness, reason, and imagination have disrupted the 'harmony' that characterizes animal existence. Their emergence has made man into an anomaly, the freak of the universe. He is part of nature, subject to her physical laws and unable to change them, yet he transcends nature. He is set apart while being a part; he is homeless, yet chained to the home he shares with all creatures. Cast into this world at an accidental place and time, he is forced out of it

accidentally and against his will. Being aware of himself, he realizes his powerlessness and the limitations of his existence. He is never free from the dichotomy of his existence: he cannot rid himself of his mind, even if he would want to; he cannot rid himself of his body as long as he is alive – and his body makes him want to be alive. Man's life cannot be lived by repeating the pattern of his species; *he* must live. Man is the only animal who does not feel at home in nature, who can feel evicted from paradise, the only animal for whom his own existence is a problem that he has to solve and from which he cannot escape. He cannot go back.« (E. Fromm, 1973a, p. 203.)

c) Excursus: Erich Fromm and Max Weber

Fromm's elaborated anthropology leads him to the meaning of passionately occupied value systems as an »answer« to the problem of human existence, and thus its influence on the social process. I have already found elsewhere that Fromm's third work phase is characterized by an increasing paradigmatic shift of emphasis from Marx to Max Weber and thus to an increasing preoccupation with ethical rather than economic questions. In contrast, Fromm's works in his second phase are characterized by his taking account of Max Weber also; however, he still serves here only as a »theoretical quarry« for enriching a Marxist theoretical framework. This was associated with the realization that Max Weber's influence on Fromm is considerable and has been neglected in previous research (cf. A. Gallistl, 2014).

At first glance, Max Weber does not seem to play a role in the work on criminal justice, but Weber's influence on Fromm is already clearly evident here. This becomes clear when one looks at the synthesis of Marx and Max Weber from 1941, which Fromm empirically proved in 1970:

»What is the nature of social selection? In a relatively stable society (or class) with its typical social character, there will always



be deviant characters who are unsuccessful or even misfits under the traditional conditions. However, in the process of socioeconomic change, new economic trends develop for which the traditional character is not well adapted, while a certain heretofore deviant character type can make optimal use of the new conditions. As a result, the 'ex-deviants' become the most successful individuals and the leaders of their society or class. They acquire the power to change laws, educational systems, and institutions in a way that facilitates the development of the new trends and influences the character formation of succeeding generations. Thus the character structure is the selective factor which leads to the successful adaptation of one part of the population and the social failure and weakening of another. The 'superior' sector will have the advantage of greater wealth, better health and better education, while for the 'defeated' sector the opposite will be true. The stability of such characterological classes will, of course, be all the greater the longer the period of social stability. But however long it is, historical evidence shows that deviant and secondary trait personalities never fully disappear and hence that social changes always find the individuals and groups which can serve as the core for a new social character.« (E. Fromm & M. Maccoby, 1970b, p. 478.)

According to Fromm, the social character is only indirectly determined by economic conditions. The immediate formation of the social character arises through the social institutions – and above all through the educational system and the legal system which silently affect the secondary socialization – and via the influence on the parents also on the primary socialization. These institutions in turn, however, are a coagulated expression of certain value attitudes, of a certain »spirit« of the rulers. I have already been able to show that Fromm here takes up Weber's idea that in times of crisis »charismatic« leader personalities reach their

leadership positions through their personal aura and from here »stabilize« their charisma by casting it into legal forms and thus transforming »charismatic domination« into »legal domination«. However, Fromm here remains within the Marxist theoretical framework because he sees success in the »competition of ideas« as determined by whether the ideas fit the objectively given economic conditions. The changed character of socialization brought about by the institutions effects a change in the life activity of the population in the economy and thus in turn changes the economic basis, which leads to new dialectical movements. The influence of the institution of law on the emergence of the social character thus turns out to be a central Weberian theoretical element in the theory of criminal justice.

On closer inspection, it even turns out that this Weberian theoretical element is already present in Fromm's dissertation (1989b [1922]), i.e. in his first work phase. Here Fromm states that the reason for the coherence of the group of Jewish people in the diaspora is Jewish law. Fromm's work on criminal justice thus forms a starting point for the investigation of his first phase of work, which has so far been largely unresearched. In his dissertation, Fromm already refers to Max Weber's sociology of religion as the main reference and here already considers the changes in religious ideas and, as a consequence, in the law as reactions to changes in the economic process, and Fromm's critical attitude to capitalism is already found here. Elements of the later Fromm can already be seen here.

An exhaustive discussion of Fromm's first work phase is still pending and cannot be pursued within the framework of the present contribution, but a central difference can be traced precisely in relation to Fromm's theory of criminal justice: In his dissertation Fromm traces the ultimately unreflected practice of Jewish law as something worth preserving, since it is the prerequisite for a living religious experience, and sees in turning away from it a submission to the dictate of instrumental rationality. This subtext



of the theory has diametrically changed in Fromm's theory of criminal justice, as well as his entire second work phase. The preoccupation with religious contents no longer plays a role in the second work phase. Religion remains a topic, but in an exclusively sociological approach under Marxist-religion-critical imprint. Also the concept of the dominance of instrumental rationality gives way to the concept of alienation. On the other hand, Fromm in 1922, still had a negative attitude towards Karl Marx and the socialist idea (1922a). Instead, his social criticism had a conservative Weberian influence. This position disappears in the second work phase, but reappears in the third work phase, in which Fromm again deals with religious experience contents and ethical questions. In this respect I have tried to show that this change in Fromm's attitude has nothing to do with an arbitrary mixture of religious and sociological questions, but is an expression of a paradigmatic orientation towards or – as it turns out on closer examination of Fromm's dissertation – a recollection of Max Weber, whose theoretical paradigm permits a completely different confrontation with religious contents and personal value attitudes and also ascribes to them a significance in the social development process different from the paradigm of Marx (cf. A. Gallistl, 2014).

Taking this shift in focus into account, it is possible to reconstruct a coherence of position between Fromm's theory of criminal justice and his later work, albeit with a changed direction of intervention:

»For centuries kings, priests, feudal lords, industrial bosses and parents have insisted that *obedience is a virtue* and that *disobedience is a vice*. In order to introduce another point of view, let us set against this position the following statement: *human history began with an act of disobedience, and it is not unlikely that it will be terminated by an act of obedience.*« (E. Fromm, 1963d, p. 367.)

4. Significance for today

a) Crime from Fromm's point of view of further theory development

Fromm's theory of criminal justice remains a fragment of his theoretical development, which he later no longer refers to. The question of its significance for today cannot be answered entirely independently of Fromm's further theoretical development, insofar as this was a reaction to new social developments in which he noted a transition from authoritarian to conformist or marketing oriented character.

Rainer Funk (2019) aptly characterized the context of the criminal in today's society as being different from Fromm's former world. Subsequently, the change in the figurative embedding of crime and criminal justice could be described as follows: In an authoritarian society the breach of the law represented an attack on the claims of the rulers, the criminal was therefore a malicious and subjugatable object; crime was still very close to a dogmatic concept of sinful guilt. In my opinion, this particular charge can be explained by the fact that, from a sociological perspective, crime was a questioning of the authoritarian expectation of unreflected adherence to rules on which the social structure was based.

In modern competitive society, on the other hand, the criminal represents the »spoilsport« and is labelled as the »loser« (ibid.) who cannot keep up with the competition and therefore behaves »unfairly« towards his competitors. Crime therefore no longer has the character of guilt, but rather that of shame. Sociologically, crime is now more of a danger to the social structure, because it represents a questioning of several systemic basic assumptions of competition-oriented societies, such as that the competition rules imposed on the individual would apply equally to all competitors and market sides, that all market participants would behave »fairly« or that the market and legal structure would lead to fair and just distributions reflecting one's own performance. In this context, the state's dealings with criminals are



no longer aimed so much at demonstrating the absolute power of rulers as at demonstrating the fairness and social orientation of the existing order.

Fromm's theory of criminal justice in the 1930s is formulated against the background of authoritarian claims to power, which in this form has little to contribute today. From the perspective of the above-mentioned dialectical elements of communication and contrast theory of his later theory of relatedness, however, this looks different. An interesting starting point for Fromm's later theory seems to me to be the implication that, if criminal justice in its function has nothing to do with fighting crime, but serves as an instrument of socialization, the existing society not only does not prevent crime, but must first produce it for this purpose.

An early formulation of the psychoanalytic theory of criminal justice, which is probably not quite coincidentally in agreement with Fromm's later theory, can be found in a 1931 contribution by Bernfeld, who was already identified as the paradigmatic source for Fromm's early works. Bernfeld sees one of the essential social causes of crime in the »tantalus situation« with which he describes »the fate of a very large part of today's humanity, which can satisfy its vital oral needs very inadequately, while its neighbour has to suffer no privations whatsoever« (S. Bernfeld, 1931, p. 262). At the same time »school, press, cinema [...] industry and commerce ensure that the culture of the ruling class becomes generally known and stimulating« (ibid., p. 264). The market-liberal suggestion of general accessibility with appropriate effort or »adaptation« is necessary for a certain economic structure, but contradicts the reality of life of broad sections of the population, provided by the same economic structure itself (ibid., pp. 264 f.). This builds up a social impulse that can be discharged in crime or leads to psychological decompensation:

»People who are constantly deprived of the satisfaction of their vital and especially oral needs, without experiencing this deprivation as an absolute necessity and im-

posed on all people in the same way, develop a series of traits known to psychoanalysis as symptoms of oral libido structure or as neurotic and depressive mechanisms.« (Ibid., p. 266.)

b) From the analysis of individual deviation to the analysis of collective deviation

The theory of the structural generation of suffering through the experience of communicative contradictions is already updated (directly or indirectly) in the characterization of times that follow Fromm. The structural contradiction already applied by Bernfeld has an even stronger effect today. On the one hand, contemporary culture, based on the new media, suggests the immediate availability of all satisfactions by mouseclick. On the other hand, this dislimitation of needs is diametrically opposed by the dislimitation of existential working conditions promoted by the same media development: It is »taken for granted that the working day no longer has 8 but instead 24 hours and that the influenza that is just starting is no reason to end work earlier or even to leave it« and: »whoever enters working life today must reckon with several career changes and a change of employer or »project« at ever shorter intervals, as well as with phases of unemployment« (R. Funk, 2011, p. 53). If this already applies to the academic sector, this situation will become even more acute in non-academic occupations: The reality of life in the new class of the »service proletariat« is characterized by a real danger of relegation despite an increasing workload without social recognition (H. Bude, 2015). Increasing illusory satisfaction of needs is in contrast to increasing real deprivation, and »demands for delimitation and offers of delimitation« (R. Funk, 2011, p. 151) are developing in opposite directions. Jörg Frommer, using Weber and Sennett, sums up this structural change in the psychological reality of life as follows:

»Just as in the developed industrial age man was forced to submit to the iron cage of rationality in his gainful employment, so



in the late modern age man is trapped in the glass cage of the renunciation of his intimacy, where everything seems to be available and yet nothing is attainable.« (J. Frommer, 2008, p. 50.)

From this point, an update of the theory of criminal justice and an updated socio-psychological explanation of individually committed violations of the law could now be constructed. To restrict oneself to this area, however, seems anachronistic to me insofar as on closer examination Fromm already gives a concrete paradigmatic elaboration for the characterization of times outlined in *Escape from Freedom* (1941a), which can also be understood as a further development of the content of the work on criminal justice. The object of investigation there shifts from the individual deviation to the collective deviation, i.e. to an anomie theory: Fromm locates the emergence of authoritarian aspirations in a seemingly paradoxical way in times of social progress. His interpretive-understanding-oriented sociological analysis of the emergence of Protestant ethics shows, however, that the authoritarian aspirations were the necessary consequence of a figuration marked by contradictions in which the petty bourgeoisie found itself in the late Middle Ages: In reality, the emerging hopes for material increases in prosperity through the dawning of capitalism were countered by the danger of economic decline and even threat to existence caused by economic structural change. The fear of freedom that grew up in this context and the subsequent flight into an authoritarian, workaholic, security-related, ascetic and world-escaping doctrine of ideas that followed it emerge as individual irrationality or illusion, but, from a collective point of view, can be recognized as a rational and necessary adaptation to a destructive change in social life situations for certain social and economic groups (A. Gallistl, 2014).

The conceptual idea in the theory of criminal justice, namely that aggressive and »unlawful« actions are socially generated and from the point of view of individual psychodynamics are

merely a reaction to the experience of »injustice« that is already taking place, thus finds its perfection in Fromm's main sociological theory.

In the basic idea of a social dynamic that is driven by the systematic violation of systematically generated validity claims, Fromm's theory is thus ultimately very close to the modern Frankfurt School with its guiding concept of »paradox« (A. Honneth, 2002, p. 9) and here in particular to Honneth's theory of recognition and justice (A. Honneth, 2003) and, beyond its connectivity, can be a substantial enrichment thematically in today's questions of collective deviation such as terrorism and new right-winged movements.

5. Conclusion and outlook

The origin of Fromm's theory of criminal justice has proved to be an application of Bernfeld's paradigm to the psychoanalytic work of Alexander and Staub. This combination can be seen as the birth of Fromm's general theory of the social character, as well as the special theory of the authoritarian character. In the question of practice, Fromm reveals, under the guise of psychoanalytic reform proposals, his affinity to the Marxist revolutionary theory in a Leninistic interpretation. This paradigm indirectly had considerable effects on the 1968-movement and thus on today's zeitgeist through its immediate continuation by Herbert Marcuse. Under the impression of Marx's early writings, Fromm himself turned away from the orthodox revolutionary paradigm and developed a theory of the individual suffering from socially generated communicative contradictions. While in his publications on criminal justice he still deals with the question of individual deviation, in his main work he will change the focus of analysis to the questions of collective deviation under the impact of the rise of National Socialism. In this respect, Fromm's works on criminal justice remain fragmented in content. If one is interested in concrete recommendations for the practice of the modern penal system, one must necessarily categorize them as useless or contradict them, since their paradigmatic intention



is to highlight such an interest in knowledge as problematic. From a sociological perspective, however, Fromm's work on criminal justice is the starting point of his theory development and his engagement with questions of aggression, destruction, pathology and normality. Their reception makes not only the late Marcuse more understandable. The presence of central theoretical elements in these early works by Fromm allows a contrast to be made with his later theory and can make clear the importance of Marx's early writings for Fromm's later theory development and his turning away from drive theory. On closer examination, the work on criminal justice also reveals elements of Max Weber's theory of domination and in this way also reveals a thematic proximity to Fromm's as yet largely unexplored 1922 dissertation on Jewish law. A first attempt at consideration of this supports my previously expressed hypothesis that Max Weber has so far received too little attention as the third central source, alongside Marx and Freud, for Fromm's theory.

Since Fromm does not co-revise his work on criminal justice in the course of his theory development, a current analysis of criminal justice in the Frommian sense of today's Western societies requires an even more precise theoretical update in advance. The starting point for this could be the changes in the function of criminal justice in the transition from authoritarian to competition-oriented societies, which are outlined in the present article following Funk, and the corresponding changes in the dominant social character orientations. Foucault's *Discipline and Punish* cannot be disregarded in such an undertaking, and Fromm's indirect influence on it via *Punishment and Social Structure* by Rusche and Kirchheimer would have to be examined (K. Anderson, 2000). A re-reading of the Freudian criminal law theorists Alexander and Staub would have to be considered in this context as well as the inclusion of current empirical material. The analysis of »institutional failures«, such as judicial and expert misjudgment in connection with compensation for political imprisonment in the GDR on the

one hand (J. Frommer et al., 2017), and dealing with those affected by today's judicial errors on the other (A. Hoffmann & F. Leuschner, 2017), could serve as starting points for the latter.

At this point, the relevance of Fromm's work on criminal justice becomes clear on a higher methodological level beyond the individual findings: Fromm's characteristic methodological paradigm is already fully developed in them, in that he dissolves the disciplinary boundaries of sociology, psychology and clinical psychopathology – using empirical material – in a transdisciplinary manner that still sets standards today.

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