

# THE YOUNG ERICH FROMM'S CONTRIBUTION TO CRIMINOLOGY\*

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Erich Fromm's virtually unknown early writings on crime were published in German in psychoanalytic journals in the early 1930s, but have never been translated into English. In three articles published in 1930 and 1931, Fromm considered the criminal justice system as an important legitimating institution within the capitalist social order. His theoretical contribution to criminology is discussed here as a largely unknown but important chapter in the history of criminology, one which can still speak to us today. I also assess his contribution from several vantage points: (1) its relationship to earlier German liberal criminological reformers such as Liszt and Aschaffenburg; (2) its connection to the Frankfurt School's synthesis of Marxism and psychoanalysis, which underlay their account of the leanings of large sectors of the German population toward authoritarianism; (3) the difference in focus between Fromm's work and that of other psychoanalytic criminologists of the period, such as Alexander and Staub; and (4) comparisons with other leading European radical theorists who subsequently wrote on crime: the Frankfurt School's Rusche and Kirchheimer, the French psychoanalyst Lacan, and the French post-structuralist Foucault. I conclude that Fromm's work contains important insights for contemporary criminology.

The young Erich Fromm's Freudian Marxist critiques of the criminal justice system seem to have disappeared into oblivion. Published in German in leading psychoanalytic journals in 1930 and 1931, Fromm's three scholarly articles on crime constitute an important and original discussion of how the fear of crime and the role of the state in repressing crime support and legitimate the existing capitalist social order. Except for a brief book review published in 1935, Fromm apparently never returned to these issues after 1931. Nor did he include any of his articles on criminal justice

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\* Research for this paper was supported by grants from the German Academic Exchange Service and the Northern Illinois University Graduate School. I would like to thank Rainer Funk of the Erich Fromm Archives in Tübingen, Germany for his help with source materials. I received helpful comments on earlier drafts from Janet Afary, Piers Beirne, Bonnie Berry, George Uri Fischer, Charles Herr, Douglas Kellner, Joel Kovel, Lauren Langman, Marilyn Nissim-Sabat, and Heinz Osterle, as well as research assistance from Marc Rittle and Michelle Sierzega. Earlier versions of some parts of this paper were presented at the annual meetings of the American Society of Criminology, held in Miami in 1994 and in Boston in 1995, and of the American Sociological Association in Toronto in 1997.

in a subsequently published collection in English which incorporated many of his early writings (Fromm 1970).

Still, given Fromm's importance as an intellectual figure in both left-wing and psychoanalytic thought, one might have expected that these early articles would have been addressed somewhere in the scholarly literature. Yet I have found no mention of this early work by Fromm in the criminological literature. Nor have I found any reference in historical accounts of either the psychoanalytic movement or the early Frankfurt School.

With regard to the criminological literature, some accounts of psychoanalytic theories of crime (Gibbons 1982; Mannheim 1965) mention Fromm's *Escape from Freedom* (1941) as a general source on Freudian psychology, but their authors seem unaware of these earlier articles pertaining directly to crime. More recently, a few critical criminologists have begun to apply Fromm's general social theory to the problem of crime and violence (Chancer 1992; Quinney 1995).

In the literature on the Frankfurt School, I have found no mention of the young Fromm's critiques of criminal justice, even though this literature often devotes considerable attention to Fromm's other writings before 1933. Those writings were crucial to the early Frankfurt School's attempt to develop a Freudian Marxism. Almost all of Fromm's writings during the early years of the Frankfurt School, except those on crime, have already been translated into English. Even studies of Fromm's life and thought fail to mention this material on criminal justice, except for a reference in a biographical sketch by Fromm's literary executor (Funk 1983).

In both the criminological literature and the writings on the Frankfurt School, Georg Rusche and Otto Kirchheimer's *Punishment and Social Structure* (1939) is usually viewed as the Frankfurt School's chief contribution with regard to criminology. Yet *Punishment and Social Structure*, despite its originality, remains a fairly orthodox Marxist account of the history of the penal sanction in the West. The book gives no emphasis at all to three issues that differentiate the Frankfurt School's Marxism from more orthodox versions: a renewed emphasis on the Hegelian dialectic, an attempt to combine Marx theoretically with Freud, and a critique of mass culture.

### **CRIMINOLOGY IN PRE-HITLER GERMANY AND AUSTRIA: THE LIBERAL REFORMERS AND THE FREUDIAN SCHOOL**

In his early work on crime, Fromm drew from and critiqued previous scholarship in the field. In that work, Fromm addressed

two schools of criminological thought: the German “modern” or liberal reform school of criminology, as represented in the work of Franz von Liszt (1851-1919) and Gustav Aschaffenburg (1866-1944), and the Austrian school of psychoanalytic criminology, whose main figures, beside Freud himself, included Franz Alexander (1891-1964), Fritz Wittels (1880-1950), and August Aichhorn (1878-1949).

Both Liszt and Aschaffenburg combined elements of biological, sociological, and pre-Freudian psychological positivism in their work. Both pioneered the use of statistical analysis for the study of crime in Germany. Liszt, a law professor, made a great effort to refute what he considered to be the naïveté of the classical school of criminology<sup>1</sup>: That school assumed that the criminal was a rational actor subject to regulation and deterrence by a series of well-calibrated sanctions. According to Liszt, the criminal’s actions were determined not by rational choice but by any number of social factors beyond his or her control. Rusche and Kirchheimer (1939:141) summarized Liszt’s general standpoint as follows: “Liszt, leader of the German reform school [of criminology], defined crime as a necessary product on the one hand of the society in which the criminal lives and on the other of the criminal’s character, partly inherited and partly developed by his experience.”

Liszt believed that crime could be combated more effectively by state policies which worked to reduce poverty, alcoholism, divorce, and other social problems than by deterrence through the threat of punishment. Sometimes this perspective led Liszt to startlingly liberal, even radical views. As early as 1900, he had stated in a famous lecture on juvenile crime: “If a juvenile or an adult commits a crime and we let him go, the probability that he will commit another crime is less . . . than if we punish him” (1905:339). This indictment of the correctional system led Liszt to advocate probation, parole, and other lighter forms of punishment rather than the extremely harsh prison regimen so common in Germany at the turn of the century.

Aschaffenburg, who studied psychology under the famous Richard von Krafft-Ebing, began his career as a prison psychiatrist. The founder, in 1905, of the influential *Monatsschrift für Kriminalpsychologie*, a journal on which Liszt served as an associate editor (Parmelee 1913), Aschaffenburg became the preeminent German criminologist after Liszt’s death in 1919 (Hentig [1954] 1972). He was part of a younger group of researchers, mostly psychiatrists,

<sup>1</sup> Beirne (1993) has shown convincingly that the so-called classical school of criminology is more a myth than a reality, at least in the form presented by Liszt and most twentieth-century criminologists.

who explored issues in social pathology such as crime, juvenile delinquency, and alcoholism. In their studies they used quantitative data fairly extensively in an attempt to create a positivist science of social pathology in which issues such as heredity versus environment could be studied (Schad 1972). Aschaffenburg's most important work, *Crime and Its Repression*, went through numerous editions. In this book Aschaffenburg, following Liszt, viewed crime as a product of social forces: "[I]n most criminals there is no inner impetus toward crime, but merely the inability to withstand the pressure of external driving forces" (1913:15).

With regard to punishment, a key issue in Fromm's work on crime, Aschaffenburg heaped scorn on what he regarded as the "pathetic" doctrine of retribution (1913:252). The only sphere in which punishment may actually achieve some of its avowed purpose, he wrote, is that of general deterrence, but even here we must remember that "fear of punishment is not sufficient to check crime" because "social causes" are the most important factor (1913:260). As to the notion of deterring the individual offender from future crimes, the policy of punishment "fails utterly," as observed in the high rate of recidivism among former prison inmates (1913:263). Because of the increasing crime rate, some people advocated more frequent use of the death penalty or a return to corporal punishment, both of which he strongly opposed.

In his own work on crime, Fromm used some material from Liszt, Aschaffenburg, and other liberal reform criminologists. In a more sustained fashion, however, he appropriated and critiqued the work of the psychoanalytic school of criminology; he considered himself a member of this school, although as part of a Marxist minority. From the perspective of a critical criminology, the psychoanalytic school represented an advance over the liberal reform school in that it posed an alternative to the prison and the execution chamber as the societal response to crime. This is evident, for example, in the title *A World without the Penitentiary* (1928) of a book published in German by Franz Wittels, one of the school's prominent members, or in *Wayward Youth* ([1925] 1935), Aichhorn's classic discussion of juvenile delinquency. Important as it was to question the prison, however, the alternative proposed by the psychoanalysts was soon found wanting.

That alternative was psychotherapy rather than punishment, for many criminals were now regarded as "sick" people, usually neurotics. Yet this approach, however humanistic its original intent, created several major problems. First, as psychoanalytic criminology took hold in the United States, the procedure, especially for

serious offenses, was not individual therapy but another form of institutionalization. In addition, as suggested by Erving Goffman (1961), Michel Foucault ([1961] 1965), and others, "healing" institutions such as asylums can exert as oppressive and destructive power over the human person as can the penitentiary.

A second problem with the psychoanalytic school was that (at least in its American form) it represented a backward step in that it refocused attention on the characteristics of the individual offender rather than on the broader social environment.

A third problem was the attempt by some of the school's members to use the term *neurotic* so indiscriminately or in so inconsistent a fashion that it became virtually meaningless; this point was raised in the late 1950s by sociological criminologist Michael Hakeem in a debate with psychiatrist Manfred Guttmacher (Guttmacher 1958; Hakeem 1958; also see Hakeem 1957-1958).<sup>2</sup> Freudianism also has been critiqued by some feminists, who argue that it treats the male individual as normal and the female as abnormal (Shoham and Seis 1993). Other feminists, however, have used Freud frequently, although in modified form (Benjamin 1988; Chancer 1992; Mitchell 1971).

Despite these limitations, however, I would argue that Freud's work (along with that of one of his intellectual mentors, Friedrich Nietzsche) remains an important part of the theoretical grounding for criminology because it helps to elucidate the irrational motives that seem to underlie so much of human behavior, especially with regard to crime. Unlike the earlier psychoanalytic school, criminological theory in recent years has tended to emphasize overall societal irrationality more strongly than the irrationality of the individual offender. This, however, does not prevent a contemporary theorist of punishment, such as David Garland, from citing Freud's work when pointing to what he terms the persistence, in modern society, of "an emotionally laden fascination with crime and punishment and sometimes a deep susceptibility for the rhetorical appeals of authoritarian penal policies" (Garland 1990:238).<sup>3</sup> As I discuss below, Fromm differed from most of the other Freudians in his attempt at a broad social explanation of the role of crime and punishment in modern society. Before examining Fromm's work, however, let us consider the most important product of the psychoanalytic school of criminology which preceded Fromm's work: Franz

<sup>2</sup> One of the last major works of liberal psychoanalytic criminology was that of Halleck (1967).

<sup>3</sup> Neil McLaughlin pointed recently to the continuing relevance of Fromm's "insights into the often irrational roots of human motivation" (1996:259). For other recent discussions of Fromm, see Kovel (1994) and Bronner (1994).

Alexander and Hugo Staub's ([1928] 1956) well-known book *The Criminal, the Judge, and the Public*. Fromm both built upon this better-known work in Freudian criminology and, more important, moved decisively beyond it.

One of Alexander and Staub's most frequently discussed concepts is the criminal who acts out of a sense of guilt: the person who commits a crime with the hope of being punished for a forbidden sexual feeling or desire, such as a son's attraction to his mother. This point originally was developed by Freud himself in an article that included a section entitled "Criminals from a Sense of Guilt" (Freud [1916] 1970); there he based his argument in part on Nietzsche. A second type of criminal, rather than acting out of guilt, "carries out in his actions his natural unbridled instinctual drives, he acts as a child would if he only could" (Alexander and Staub [1928] 1956:30). Here the criminal is presented as the usually repressed libido of bourgeois society. In this example the criminal is similar to the noncriminal, except that the criminal lacks a strong superego to control his or her antisocial impulses. These criminals are neurotic persons who "show the presence of an inner conflict between the social and the anti-social tendencies of their personality" (Alexander and Staub [1928] 1956:42). This second group comprises a large percentage of criminals. Members of a third group, larger than the group of criminals who act out of a sense of guilt but smaller than the group of neurotic criminals, exhibit no inner conflict because they possess "a criminal superego" and live within "a special criminal morality" ([1928] 1956:43). Alexander and Staub used these ideas in testimony in several celebrated court cases in Weimar Germany; in some of those cases, the defendant was freed by reason of insanity.

Although these concepts seem to focus mainly on the individual offender, Alexander and Staub also made a few broader societal applications of psychoanalysis to criminology; some of these illustrate the social criticism underlying Central European psychoanalytic criminology in the 1920s. The authors noted, for example, that in revolutionary times, the masses often develop a sense that frequent miscarriages of justice are taking place. In Weimar Germany, the intellectual classes also had begun to question the very roots of the capitalist system by the late 1920s. Discussions of crime became polarized between "law and order" demands by the far right and demands by the far left for radical changes, including scrapping the existing criminal justice system. Although the death penalty was still on the books in Germany, only four executions were carried out in 1932, as against 28 in 1921.

As in the United States in the 1960s, an ex-prisoner's autobiography sparked much discussion by intellectuals. Georg Fuchs ([1931] 1994), author of *We Prisoners: Memories of Inmate No. 2911*, wrote:

War, the death penalty, prison: these are the three moral issues of today, and even more of tomorrow! But basically these are the same problem: does the general public have the right to deprive another human being of his life? . . . The prisoner, whether serving a life sentence or a long-term one, is also deprived of his life, is buried alive. (p. 737)

The prefatory material of Fuchs's book included a letter from Freud; although he declined Fuchs's invitation to lead an international penal reform movement, Freud wrote that the prison system was "an expression of the brutality and lack of judgment that govern our civilization today." In a resigned tone, he concluded that even if the idea of "reform of the criminal justice system" were to gain enough support to become central to political debates, "capitalist society would not have the means to pay for this reform's requisite expenditure" (Freud [1931] 1994:738).

### FROMM'S EARLY FREUDIAN MARXISM

Fromm was the first member of the Frankfurt School to write on Freud and Marx, and the only trained psychoanalyst among their leading lights. Fromm built at least in part on work in the 1920s by two other Freudian Marxists, Wilhelm Reich and Siegfried Bernfeld. As Wolfgang Bonss ([1980] 1984:5) suggests, a complicated debate over Marx and Freud existed in Central Europe, beginning in the early 1920s; it included "the eclectic adaptation of Freud by the Social Democrats, the dogmatic dissociation from Freud of the Communists, and the mediating positions of some practicing psychoanalysts."

Although Reich's work on Marx and Freud has received more attention in the English-speaking world, Bernfeld's work on this topic, none of which has appeared in English, probably exerted as great an influence on the young Fromm. For example, Fromm made far more references to Bernfeld than to Reich during this period. In addition to the "materialist" character of Freud's concept of sexual drives, a point brought up by virtually all of those who attempted to synthesize Marx and Freud, Bernfeld discerned "dialectical" categories in key Freudian categories; these categories, he argued, worked at "comprehending psychic polar opposites as identities." Bernfeld noted that categories such as "the sexual drives and the ego drives, narcissism and object relations, erotic drives and those toward death, each stand opposed to one another" ([1928] 1970:51-52).

Fromm's first publication on Marx and Freud was a brief article titled "Psychoanalysis and Sociology," originally delivered as a lecture at the inaugural ceremony of the Frankfurt School's Psychoanalytic Institute held on February 16, 1929. Fromm argued, on the one hand, that Freudian psychology would help sociology to remember "that the subject of sociology, society, in reality consists of individuals" ([1929] 1989:37). On the other hand, psychoanalysis needed to be connected to the work of Marx, whom Fromm termed "the greatest sociologist of all" ([1929] 1989:39). With the help of Marxism, Fromm wrote, social psychology could move beyond the limits of studying only the individual or the family and could begin to examine issues such as "to what extent the family is itself the product of a particular social system" ([1929] 1989:38)—that is, capitalism.

Connecting individual concerns to larger social and economic forces was not the sole contribution of Marxism, however. In 1929, Fromm had not yet read Marx's *Economic and Philosophical Manuscripts*, which was not published in German until 1932. Even so, Fromm interpreted Marx in a humanistic, subject-centered manner rather than in that of a deterministic materialism, ending his article with a well-known quote from Marx and Engels's *The Holy Family*: "History does nothing, it possesses no immense wealth, it fights no battles. It is instead the human being, the real living person, who does everything, who owns everything, and who fights all battles" ([1929] 1989:39). Thus, grounding psychoanalysis in Marxism not only brings the social to the fore at a more global level; in addition, Marxism contributes its own humanist and subjective factors to the otherwise more scientific conceptions of psychoanalysis. Here Fromm anticipated the broad humanist themes of his later work on Marx (see Fromm 1961, 1965).

In 1930, psychoanalytic journals printed two of Fromm's articles on crime: "Ödipus in Innsbruck" and "The State as Educator: On the Psychology of Criminal Justice" (to be discussed below). In the following year, 1931, Fromm published "The Psychology of the Criminal and the Punitive Society." This article appeared in *Imago*, the world's most prestigious psychoanalytic journal, which listed Freud as editor-in-chief.

Fromm's second general essay on Marx and Freud, "Politics and Psychoanalysis," appeared in another psychoanalytic journal, also in 1931. As in the 1929 piece on sociology and psychoanalysis, the only political material discussed here was within the Marxian tradition. In a point developed more empirically in his articles on criminal justice, Fromm wrote that although economic factors are certainly crucial, ideology operates somewhat independently of

those factors. Here psychoanalysis can become central for a Marxist analysis of society

because the coherence and stability of society are by no means formed and guaranteed only by mechanical and rational factors (compulsion by state power, mutual egoistic interests, etc.) but also by a series of libidinous relations within society and particularly among the members of the various classes (for instance, the infantile attachment of the petty bourgeoisie to the ruling class and the related intimidation). ([1931b] 1989:216)

Thus, Fromm maintained, some forms of attachment to the dominators by the dominated cannot be explained solely by rational economic or political motives; in this regard, the categories of psychoanalysis can have great explanatory power.

At the level of general theory, Fromm's pre-1933 studies of Marx and Freud culminated in his 1932 essay "The Method and Function of an Analytical Social Psychology: Notes on Psychoanalysis and Historical Materialism," originally published in the Frankfurt School's *Zeitschrift für Sozialforschung*. Freudian psychology is "materialistic," wrote Fromm, because it shows "that our 'moral' and idealistic motives are in some measure the disguised and rationalized expression of instinctual drives" (1970:138). Fromm listed these drives as hunger and love, self-preservation and the libido—in short, the reality principle and the pleasure principle.

Here Fromm also explicitly differentiated his position from that of the later Freud in *Civilization and Its Discontents* ([1930a] 1989), especially from the notion of a death instinct. According to Fromm, aggression and violence spring up not through an instinct for death or destructiveness but by way of sadism. Sadistic impulses grow, he argued, when the basic instinctual drives toward sex and self-preservation are repressed or sublimated and when "instinctual satisfactions of a more positive nature are ruled out on socio-economic grounds." In an apparent reference to fascism and militarism, he wrote: "Sadism is the great instinctual reservoir, to which one appeals when one has no other—and usually more costly—satisfactions to offer the masses; at the same time, it is useful in annihilating 'the enemy'" (1970:141). In drawing these broad social implications from Freudian theory, Fromm rejected what he considered to be Reich's more restrictive view, whereby Freud's usefulness for Marxism was limited to "the sphere of individual psychology" (p. 142). He continued, however, to refer to Bernfeld's work only in positive terms.

Fromm concluded that insofar as Marxism needed a psychology, Freudian theory was the first psychology "that historical materialism can really use." Psychology could be of enormous

assistance to Marxism in describing “empirically the process of the production of ideologies” (1970:155). It could also help Marxism to overcome some of its theoretical problems. One of these problems was accounting for the persistence and even the relative stability of class society. With the aid of Freudian theory, the state and the dominant classes could be seen to operate toward the masses as does a father toward a child in a bourgeois patriarchal family:

Exploring the roots of the majority’s libidinal ties to the ruling minority, social psychology might discover that this tie is a repetition or continuation of the child’s psychic attitude toward his parents, particularly toward his father, in a bourgeois family. We find a mixture of admiration, fear, faith, and confidence in the father’s strength and wisdom, briefly, an affective conditioned reflection of his intellectual and moral qualities, and we find the same in adults of a patriarchal class society vis-à-vis the members of the ruling class. Related to this are certain moral principles which entice the poor to suffer rather than to do wrong, and which lead them to believe that the purpose of their life is to obey their rulers and to do their duty. (1970:159)

In this regard, not only the family but also the “cultural apparatus” of society propagate ideologies that legitimate the existing system of domination. At this point, Fromm referred in passing to two institutions beside the family, “the educational system and other systems (such as the penal system)” (1970:159-60); in an accompanying footnote he mentioned one of his studies of criminal justice (Fromm 1931a).

### FROMM’S THREE ARTICLES ON CRIMINAL JUSTICE<sup>4</sup>

Fromm’s first publication on crime, “Ödipus in Innsbruck,” was written in the tradition of psychoanalytic criminology and focused on the psychology of the individual. It differed from his other two articles on crime because of the absence of the theoretical issues developed in his general writings on Marx and Freud, as discussed above. Also, Fromm’s subsequent critique of Freud’s concept of the Oedipus complex is not yet found in this article; here he relied uncritically on that concept.

The article appeared early in 1930 in a leading Freudian journal, *Psychoanalytische Bewegung*. Apparently building on Alexander and Staub’s notion of the criminal acting out of a sense of guilt, Fromm discussed a well-known Austrian murder case: A young student, Philipp Halsmann, when interrogated by police, stuck stubbornly to the story that his father had died accidentally while the

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<sup>4</sup> Below I give references for these articles to the journals in which they appeared in 1930 and 1931. Funk, however, has republished them, with useful notes, in his ten-volume collection (Fromm 1989).

two of them were hiking without a guide in the mountains, even when he was confronted with physical evidence which seemed to prove that his father had died in a violent encounter and then had fallen down a mountainside. Halsmann, although initially found guilty of murder, was later pardoned. (The initial version of Fromm's article was published in a newspaper in January 1930 in an apparent attempt to influence the outcome of the appeal in Halsmann's favor.) His defense lawyers had attempted to introduce into evidence a garbled version of Freud's notion of the Oedipus complex.

In this article Fromm (1930a:76) asked "[O]n what grounds does the accused represent things which are false as facts, obstinately holding fast to such 'facts'?" Court-appointed psychiatrists claimed that Halsmann was mentally ill because he was stricken with the Oedipus complex and "therefore" may have killed his father. Fromm refuted such a view, arguing that the Oedipus complex, with its intense father-son hostility, "is not abnormal . . . but it does not normally end with actual murder." Normally it is repressed; otherwise "most men would become murderers of their fathers" (1930a:77). In the Halsmann case, the father's brusque behavior, rooted in part in his experiences as a physician in the military, created much tension with his shy and self-absorbed son. Some of this underlying hostility, Fromm wrote, was illustrated by a joke the father told just before they left for their risky mountain-climbing trip. The father reportedly joked that if an accident were to happen, his son would become his heir sooner rather than later. In a typically Freudian manner, Fromm commented that this joke was more than just a joke; it was "a sign, even if an unconscious one, of a hostile tension" between father and son (1930a:78).

Fromm hypothesized that the shock of hearing the father fall to his death after a violent encounter (apparently with someone other than the son) called forth two types of feelings in the young Halsmann. On the one hand, because of the shock of his father's sudden demise, a feeling of triumph over the father welled up from his unconscious, the expression at the conscious level of the deep-rooted, aggressive Oedipal wish. On the other hand, strong feelings of guilt followed almost immediately. Philipp Halsmann, when he became conscious of his Oedipal wish to see his father killed, was stricken with severe guilt, especially now that his father was dead. To assuage these intense guilt feelings, Fromm hypothesized further, young Halsmann repressed the memory of what had really happened on the mountain. He concocted for himself and then came to believe the story of an "accidental" death. The young man repressed all memory of the violent encounter that apparently had

caused his father's death—not because he himself had killed his father, but because, in this way, “all guilt, including the guilt of another party, is wiped away” (1930a:79).

Whereas Alexander and Staub had detected the criminal acting out of a sense of guilt, here Fromm apparently found a variation on this theme: one who denies, out of a sense of guilt, that a crime has taken place. Although this article broke no new ground in terms of Freudian Marxism, it used psychoanalytic categories with some effectiveness to call into question a common assumption: that a defendant's demonstrably false account of how the crime took place should be considered part of the proof used to convict that defendant. In this sense, Fromm's article questioned and undermined the normal workings of the legal system.

In a brief note published in *Psychoanalytische Bewegung* some months later, Freud himself took up the Halsmann case, but without referring to Fromm's earlier piece. Proceeding more cautiously than Fromm, Freud argued that the Oedipus complex probably had little effect on whatever did or did not happen on the mountain: “Precisely because it is always present, the Oedipus complex is not suited to provide a decision on the question of guilt” (Freud [1930b] 1961:252). In contrast to Fromm, Freud concluded that if Halsmann had repressed the memory of his father's violent death because of guilt feelings, this would be “a rarity of the first order” in “an adult who gives no indication of severe neurosis” ([1930b] 1961:253).

Had Fromm's work on crime stopped here, there would be no reason to consider it anything more than a footnote, written by a subsequently famous psychologist, to the better-known writings of figures such as Alexander and Staub. Fromm's second article on crime, however, also published in 1930, was highly original on two counts. One, for the first time it extended the categories of Freudian Marxism (not merely Freudianism) to the study of the crime. Second, rather than focusing on the individual offender or even on criminals as a social group, it centered on crime as an issue in society as a whole; Fromm concentrated on how the dominant classes use the threat of punishment and the public preoccupation with crime for their own purposes of social control over the mass of the population.

This second article, “The State as Educator: On the Psychology of Criminal Justice,” appeared in the psychology of education journal *Zeitschrift für psychoanalytische Pädagogik*. This journal, whose chief editors were the prominent Freudians Heinrich Meng and Ernst Schneider, also included on its masthead the well-known names August Aichhorn, Siegfried Bernfeld, Marie Bonaparte,

Sandor Ferenczi, Anna Freud, Jean Piaget, and Fritz Wittels. A year earlier, in a 1929 call for papers, the journal had listed the psychology of punishment as one of several topics of interest, referring especially to the relationship between punishment and the psychoanalytic concept of repression.

In "The State as Educator," Fromm began his discussion of criminal justice by referring to the growing interest in psychoanalytic approaches to understanding crime and criminals. Even though many members of the educated public had embraced psychoanalytic concepts, the legal system itself had shown little inclination to change from its older punishment-oriented approaches centering around deterrence and rehabilitation after punishment. Fromm briefly reviewed the discussion surrounding psychoanalysis and crime. Then he wrote that despite the merits of the new proposals to do away, in many cases, with punishment in favor of therapy, there was "considerable skepticism regarding the prospects for such efforts in contemporary society" (1930b:6).

At this point, Fromm moved away from the issues that had preoccupied the psychoanalytic criminologists and began to concentrate on a social psychological analysis of those forces and groups which support and maintain the criminal justice system in its present form:

Modern criminal justice thinks of itself as a form of pedagogy. It officially renounces the thought of revenge and maintains that its intention is to reform the criminal and that on the whole its methods are a useful means toward reform of the offender. It tries to achieve this reform in two ways: negatively, it believes that it can intimidate and deter through punishment, so that henceforth the offender will be a quiet, well-behaved citizen; positively, it labors to create a system of finely-layered rewards for good behavior through the compulsion to work, or through "uplifting" words of encouragement from a clergyman as well as other devices, all in order to educate the criminal on how to become a socially useful person. (1930b:6)

Such methods, he wrote, "are having little success." This was not a temporary aberration, however; "theoretical analysis shows that these methods *can* have little success" (1930b:6).

The criminal justice system, wrote Fromm, fails to carry out its stated goals for two reasons. First, crimes committed to fulfill the offender's elementary survival needs cannot easily be deterred by legal means alone: "In these instances the only possibility is an improvement in the economic situation of the 'criminal' to the point where his situation is so secure that committing a crime to gratify elementary needs is unnecessary" (Fromm 1930b:6). Second, the more expressive types of crimes are, he argues in the tradition of

the Freudian school, rooted in unconscious motives. Here “the contemporary penal system may on the whole be considered to have just as little effect” because behavior rooted in unconscious drives cannot “be prevented by influencing people at the conscious level” (1930b:6).

At this point, Fromm asked a very profound question, which broke new ground in the criminological thought of his time. If the criminal justice system has so little effect on the crime rate, and if this is well known to both policy makers and social scientists, why then does “society hold on to these ineffective measures with such determination” (1930b:7)? More is at stake here than either the deterrence and punishment of offenders or the more general deterrent effect of the criminal justice system on “the potential criminal” (1930b:7). The criminal justice system in fact has a far broader social significance.

Here Fromm began to use some of the theoretical insights he had developed in his more general discussions of Marx and Freud, written in the same period. He stated that the social system does not survive only through the raw exercise of power by institutions such as the police and the military. “[A]s the history of revolutions shows,” these repressive bodies are not omnipotent; they can successfully defend and prop up the system only if an “additional factor” is present, “the psychic readiness of the great majority to adjust to the existing society and to subordinate themselves to the ruling powers” (1930b:7). Bernfeld already had raised this point in discussing how educational institutions legitimate existing social structures, but Fromm now wished to include the criminal justice system as another important agent of legitimation.

One aspect of this process is the way in which the state projects itself as a father figure to the mass of the population through the criminal justice system. In this way, the belief is instilled in the population that “existing [social] relations are necessarily grounded in the superior wisdom of the rulers.” The child fears and resents the father’s physical and mental superiority, which leads to tension and conflict, but “frequently the child makes the best of his<sup>5</sup> situation when he succeeds in transforming into admiring worship his aversion” for the father (1930b:7).

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<sup>5</sup> Here and elsewhere in these essays on crime, Fromm appears to treat the father-son Oedipal conflict as the norm, as if crime is entirely a male issue. He might have overcome this serious limitation in his writings on crime, had he been able to incorporate his later critiques of Freud’s Oedipus complex and his own writings on gender and patriarchy (Fromm 1970; also see Kellner 1992). As previously noted, however, Fromm never wrote directly on the subject of criminal justice after 1931.

This is the very attitude “that the state desires and considers necessary among the great mass of its citizens” (1930b:7). The state attempts to project itself as a “father image . . . in the unconscious of the masses” (pp. 7-8), and does so in various ways. In a monarchy, the king is simply revered as the father of the nation. The criminal justice system is another way of projecting such a father image into the unconscious of the masses.

A key aspect of the father role is the father’s physical superiority, his ability to threaten punishment and to carry out this threat if necessary:

Moreover, it is [here] in principle of as little decisive importance whether the threat of punishment is carried out, as it is in the case of the masses with regard to the state authority. The ability to threaten and to punish is decisive. It is precisely this ability which constitutes a father as the father of the child in the specific psychological sense that is under discussion here, and [it also constitutes] the state, or the class ruling in and by it, as a reflection of the father. (Fromm 1930b:8)

A prime example of the state’s projecting itself as a father image is its use of the death penalty. In modern political systems, the head of state usually has the power to pardon those sentenced to death and is therefore “the symbolic embodiment of paternal authority” (Fromm 1930b:8). Thus the criminal justice system legitimates state power as a whole. Fromm concluded: “It is therefore clear why there must be a criminal justice system, quite independent of its effect on criminals” (p. 8).

Fromm then illustrated his argument about the criminal justice system’s legitimating role by referring to a second unstated function: In carrying out punishment, the state “provides the masses with gratification of their sadistic impulses.” Alexander and Staub already had made this point, but they did not take the step that Fromm now took, namely connecting this notion with the Marxian concept of class conflict. Fromm remarked that these sadistic impulses among the masses are thus “diverted” from a possible targeting of the state itself.<sup>6</sup> Instead the criminal becomes the target of the masses’ pent-up rage, stemming from their forced renunciation of their instinctual drives for sexual and economic well-being and fulfillment. In applauding the severe “justice” carried out against the criminal by the state, the masses can gratify their sadistic impulses “in a manner that is harmless for the state”

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<sup>6</sup> It is doubtful that Fromm implied here a general disparagement of the masses as sadistic, because, as noted above in the discussion of Fromm’s general writings on Marx and Freud, he regarded oppressed groups’ sadistic impulses toward their rulers as normal and ubiquitous.

(1930b:8). Such a display of anger and hatred at the time of executions or notorious public trials is not only harmless for the state, but actually legitimates the state. War, Fromm wrote, serves a similar function in legitimating the state.

Therefore, Fromm concluded, exposés of the criminal justice system's failure to control or stop crime will not necessarily lead to changes in the system, even if such critiques become widely accepted. This is because the modern state needs a punishment-centered criminal justice system "for purposes which have nothing to do with effective approaches toward the criminal" and everything to do with "influenc[ing] the masses psychologically in the sense desired by the rulers" (1930b:9).

Fromm's third and last criminological article, "On the Psychology of the Criminal and the Punitive Society," was published in 1931 in a special issue of the flagship Freudian journal *Imago*, devoted to criminology. This issue also included articles by Alexander, Staub, and Bernfeld. Fromm's article, which ran some 25 printed pages, was probably related to a course of the same title that he taught in the fall 1930 semester at the University of Frankfurt (Funk 1983:59). In the article, Fromm surveyed critically a large amount of contemporary criminological theory and research before setting out, in the concluding pages, his own Freudian Marxist perspective.

Fromm began by quoting Liszt to the effect that "each crime is the product, on the one hand, of the individual characteristics of the criminal and, on the other hand, of the social conditions and environment of the criminal at the time of his deed" (1931a:226). Then he cited some economic data on crime causation, drawn from Aschaffenburg and others, and sketched out the theories of Alexander and Staub. From the beginning, Fromm argued that those scholars' psychoanalytic perspective on crime needed to be "turned around":

Instead of asking why a layer of people, whose economic situation does not allow them gratification in a legal manner of their normal needs, commits crimes that make possible the gratification of these needs, it is more appropriate to turn around the question and ask: Why do most people in precisely this economic situation commit *no* crimes in order to obtain gratification of needs that another layer of society can obtain legally? The answer to this question is very simple. Society achieves this through a certain type of education and through a layer of other social institutions which implant among the propertyless masses ideals which most of the time make it possible to prefer poverty to dishonesty. Criminals are those among whom this super-ego formation succeeds not at all or only partially. (1931a:231)

This turning around of the way in which traditional criminology asks questions seemingly brings us back to the Marxist themes of Fromm's earlier article, "The State as Educator," which focused on the legitimating functions of the criminal justice system for the capitalist state. Fromm, however, did not yet refer to any Marxist categories. Instead he challenged the Freudian school's typology, which recognizes two main types of crime: unconsciously motivated sexual crimes and crimes of necessity. Both types of crime, Fromm argued, involve the rejection of social norms such as honesty and obedience to law. Both involve unconscious factors. Therefore, instead of rushing to create categories of criminals, psychoanalytic criminology must examine "the specific mixture of irrational, instinctual motives and rational ego-based motives" (1931a:232) that characterize of modern society.

Even social and class differences, wrote Fromm, have not only economic but also psychological implications. Impulses toward crime can be blocked by renunciation, repression, or sublimation. To be sure, the propertied classes have many more ways available by which to sublimate their unconscious impulses. Historically, however, the masses have also received opportunities to sublimate their unconscious drives toward sex and self-preservation: "The circuses which the Roman Empire gave to the masses, and the burning of heretics during the Middle Ages belong in this category, as do soccer matches and movie theaters" (1931a:237). Fromm developed at some length a theory of the different psychological motivations toward crime among the contemporary upper and lower classes. He argued "that the question as to whether crime can be explained primarily from economic or instinctual motives is posed wrongly" (p. 239).

In the concluding pages of his article, Fromm began to make a Freudian Marxist critique of the criminal justice system as a whole, asking "What is the purpose of punishment?" Then, footnoting Liszt, he answered: "It should serve the purposes of deterrence, rehabilitation and [societal] security" (1931a:242). With regard to rehabilitation, Fromm cited a sharp 1905 denunciation, by Liszt, of a situation in which, "with every criminal sentence, the inclination toward crime grows." This situation, Liszt had continued, proves "the ineffectiveness of our present criminal justice system" (p. 243). Fromm also cited supporting empirical data on recidivism from Aschaffenburg.

What about deterrence, whether specific or general, the second stated purpose of the criminal justice system? In answering this question, Fromm cited Aschaffenburg at some length; the latter had written with regard to general deterrence that "when one examines

the statistics in an unprejudiced manner," one soon concludes "that the expected [deterrent] effect occurs either not at all or in a very limited manner" (1931a:243-44). On specific deterrence, Fromm again quoted Aschaffenburg, who had written that the high rate of recidivism refuted this notion.

On the third stated purpose of the criminal justice system—protecting the public against crime—Fromm noted that if the penal system simply produced recidivists, it obviously did nothing to protect the public.

Fromm then moved into a discussion similar to that in "The State as Educator," but more pointedly and in greater detail: "What can it mean when society clings to measures [against crime] whose ineffectiveness in attaining their stated purpose has been clearly proved? It is probable that the criminal justice system has another, as it were hidden function that it performs satisfactorily and with precision (1931a:245). The first of these hidden functions is one of legitimating the state in the eyes of the population:

Every class society is characterized by the domination of one class by another, or more precisely, of the great mass of the propertyless by the thin layer of the propertied. The means by which this domination is exerted are quite varied. Among the most visible ones are the means of physical violence, as represented by the military and the police. But these means are in no way the most important ones. With them alone the continuity of domination cannot be accomplished. Much more important are psychological means of domination, means which require the open use of force only in exceptional cases. These psychological means place the masses in a situation of having an emotional tie to and being dependent on the ruling classes . . . (1931a:246).

The criminal justice system, stated Fromm, is an important factor in this process. It helps the members of the dominated classes to live out a "transference or projection" [*übertragen*] of their infantile attitudes of obedience toward their fathers, forming similar attitudes toward the rulers. Just as the child, fearing the father, makes a mental adjustment and internalizes that fear as a sense of duty and obligation toward the father, so the transference of these feelings toward the "ruling classes and their representatives" is "one of the most important requirements for the preservation of social stability in a class society" (1931a:247). The criminal justice system is "one of the means of achieving this, and not a negligible one," because it reproduces both physically and psychologically the father's punitive role. Here Fromm cited his earlier article, "The State as Educator."

In addition, Fromm wrote, the criminal justice system has a second hidden function. Citing Alexander and Staub as his source, Fromm stated: "Punishment of criminals represents gratification of the aggressive and sadistic impulses of the masses" (1931a:247). It compensates for the instinctual deprivation that the masses suffer daily. This point helps to explain why the modern criminal justice system, despite its rationalist talk of deterrence and rehabilitation, operates so often in a vengeful, retributive manner.

Thus a twofold process is at work. On the one hand, the state assumes the role of a punishing father figure to the masses. On the other hand, through its punishment of criminals, the state allows the masses' sadistic impulses to be identified and expressed in a manner harmless to the state. This twofold process "is an indispensable psychological requirement for a class society, and only in this manner can one grasp the [reasons for] the contradiction that has appeared between the awareness of the [criminal justice system's] ineffectiveness and the holding onto these ineffective measures by prominent correctional and criminal justice officials" (1931a:248-49). Because of this situation, Fromm concluded, the new insights into criminals' motivations developed by psychoanalysis will not have a major effect on the workings of the criminal justice system. Psychoanalytic criminology, however, must build on the previous work of the progressive school of criminology, as exemplified by Liszt.

### SITUATING FROMM'S CONTRIBUTION TO CRIMINOLOGY: COMPARISONS WITH RUSCHE AND KIRCHHEIMER, LACAN, AND FOUCAULT

While Fromm was developing his critiques of the criminal justice system, Georg Rusche was beginning his own work on crime. Rusche's first article on this topic, "Prison Revolts or Social Politics: On the Events in America,"<sup>7</sup> was published on page 1 of Germany's leading newspaper, the *Frankfurter Zeitung*, in 1930. It was this article that probably brought him to the attention of the Frankfurt School, resulting in their financial support over several years for his work on what would become *Punishment and Social Structure*, co-authored with Otto Kirchheimer.

Like Fromm, Rusche argued that the true purpose of the modern criminal justice system was other than its stated goals of deterrence and rehabilitation. Rusche believed that the system's true

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<sup>7</sup> I detail some of its contents here because this article has never been translated into English, and because it illustrates Rusche's concern for the prisoner as a human subject; this does not emerge so clearly in his later work.

purpose was control over the labor force. Thus, whereas Fromm stressed the criminal justice system's role in generating cultural and psychological support for the capitalist system among the masses, Rusche emphasized economic factors. In this sense, Rusche's work tended to follow the lines of an orthodox, economic Marxist; this may account for his surprising failure to cite Fromm.

The hard-hitting radicalism of Rusche's early-1930's analysis of crime and punishment was greatly muted by the circumstances in which his work was subsequently published in the U.S. in 1939. Under the cautious direction of Max Horkheimer and on the advice of several American criminologists, Kirchheimer had been assigned in Rusche's absence to rework the manuscript for publication. He removed Rusche's critical references to the U.S. penal system from the 1939 published version of *Punishment and Social Structure* Wiggershaus [1986] 1994). This action was particularly ironic and caused a serious distortion of Rusche's perspective, because the American situation was the starting point for his critique of the criminal justice system.

Rusche's original 1930 article, "Prison Revolts or Social Politics," began with a description of uprisings in American penitentiaries, which were suppressed very harshly. In combination with the 1930 fire in Columbus, Ohio, argued Rusche, in which more than 300 prisoners were killed, these events pointed to a move away from earlier approaches in America. Those approaches had stressed parole, juvenile courts, and other measures, which had given American criminal justice the status of "the unsurpassed model of humanitarianism" (1930:1). The shift toward harsh repression was rooted in "certain changes in the social structure of America" (p. 1), including the catastrophically high unemployment rates of the Great Depression combined with a lack of social welfare programs on the same scale as in Europe. The American public, wrote Rusche, is not so much conscience-stricken as "of the opinion that those who honestly want to work can find work." Further,

The public reacts to the rising crime rate with indignation, and demands more severe punishment for criminals. Propaganda concerned with these issues denounces immigrants and Negroes, and right-thinking nationalism recalls the "un-Americanness" of criminals. So originates the agitation against those at the bottom of society, and attention is turned away from the real causes. (1930:2)

The results were newer, harsher sentencing policies, prison overcrowding, and even recommendations of a return to physical punishment. The economic crisis, wrote Rusche, created a sense of "hopelessness and despair," which "has led to this series of prison revolts" (1930:1).

The 1930 article also developed in preliminary form some of Rusche's arguments regarding economic conditions and penal policy, which he stated more fully in his 1933 article "Labor Market and Penal Sanction."

Rusche's key point was that penal sanctions vary according to economic conditions—the general level of prosperity, the unemployment rate, and the type of labor needed by the dominant classes—but he also adopted implicitly some elements of a fairly traditional deterrence model. Criminal law, he said, is aimed almost exclusively at the lower classes, and one constant appears in various types of economic structures: "If penal sanctions are supposed to deter these strata from crime in an effective manner, they must appear even worse than [their] present living conditions" ([1933] 1978:3). Rusche reached the chilling conclusion that there is a social and economic ceiling above which penal reform cannot go: "One can also formulate this proposition as follows: all efforts to reform the punishment of criminals are inevitably limited by the situation of the lowest socially significant proletarian class which society wants to deter from criminal acts" ([1933] 1978:4). Therefore, in a modern capitalist society that relies on prison as its principal means of punishment, prison life must be below that level if it is to have a deterrent effect.

In the rest of this 1933 article, Rusche sketched in abbreviated form the central arguments of what would become *Punishment and Social Structure*. Crime control in Europe, he stated, had passed through several historical stages. First, there was the use of penance, fines, and the relatively mild punishments of the early medieval period. Second, in the later Middle Ages, as the development of capitalist agriculture drove peasants off the land, vast unemployment and poverty among the masses necessitated extremely harsh physical punishments if criminal sanctions were to have a meaningful deterrent effect. Third, emigration to the colonies reduced the number of the unemployed, resulting in a system of workhouses in which scarce labor was forced into service. Finally, the industrial revolution created new dislocations and once again, by the middle of the nineteenth century, vast unemployment and poverty. The result was a return to frequent executions and very severe punishment, this time by making the new penal institution, the penitentiary, harsher. Physical punishment was not restored, but only because "hard-earned humanitarian ideals hindered it and political wisdom kept the ruling classes from overstraining an already revolutionary situation with such open provocation" ([1933] 1978:6). Recapitulating his 1930 article, Rusche also discussed briefly the

somewhat later turn toward harsh punishments in the United States.

Twenty years ago, Dario Melossi critiqued the economism of *Punishment and Social Structure*, arguing that it limited the authors' effort to "account for the adoption of imprisonment per se by the new society arising from the ruins of feudalism" (1978:75). Unlike Fromm, Rusche and Kirchheimer played down the ideological dimension. Whereas Fromm viewed the whole spectacle of crime and punishment as a means of "educating" the masses into the values of the capitalist system, and of diverting their resentment into a direction harmless to the state, Rusche and Kirchheimer showed the rational economic purposes that the structures of punishment served, at least for the dominant classes, while also providing a needed historical perspective on these issues. A more adequate Marxist theory of punishment might have combined elements from Fromm and from Rusche and Kirchheimer in keeping with Horkheimer's notion of an interdisciplinary critical theory, but this apparently was never attempted.

Also during the early 1930s, the French psychoanalyst Jacques Lacan began to elaborate his unique form of Freudianism. Lacan's work, so central to both structuralism and post-structuralism, has been discussed recently by some critical criminologists (Henry and Milovanovic 1991; Milovanovic 1995). Less known to most American criminologists is the fact that crime is a focus in Lacan's still-untranslated early writings, as in Fromm's. In his doctoral dissertation on paranoid psychosis, Lacan ([1932] 1975) discussed at great length a celebrated 1931 incident in which a female postal clerk<sup>8</sup> attempted, for no apparent reason, to stab an actress. Lacan described this as a case of paranoia. A year later, he wrote on the much more controversial 1933 case of the Papin sisters, two live-in servants who suddenly, and without apparent provocation, brutally murdered their employer's wife and daughter. As Lacan's intellectual biographer Elisabeth Roudinesco notes, the criminal justice system and public opinion called for the Papin sisters' execution. This view was supported by three psychiatrists, who, after examining the sisters, pronounced them completely responsible for their actions. One dissenting psychiatrist was Benjamin Logre, who courageously termed the sisters insane, but on different grounds than those set forth by Lacan. The case was also taken up by artists and writers on the left. The surrealists Benjamin Péret and Paul Éluard, for example, wrote of the Papin sisters' years of servitude, in which "they endured criticism, demands, insults," which they

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<sup>8</sup> Here and elsewhere in his work, Lacan addressed prominently the psychology of women; this distinguishes him from many other Freudians.

“paid back—in coins of red-hot iron” (cited in Roudinesco [1986] 1990:125).<sup>9</sup>

Lacan disagreed with both Logre and the surrealists. In an article published in the surrealist journal *Le Minotaure*, he began to develop what Roudinesco terms a “new conception of the relations between psychiatry, criminology, and penal justice” ([1986] 1990:127). As in his dissertation, Lacan regarded paranoia as the central factor, but now he was also influenced by Marx and especially by Hegel, whom he had begun to study in Alexandre Kojève’s famous seminar.

In his article, Lacan showed some sympathy for the Papin sisters, although in a reserved manner. Apparently he agreed with the view that their employers “seemed to lack human sympathy toward” the sisters and that, in a way, “the servants did no more than respond to that attitude” (Lacan 1933:25). Lacan also touched very briefly on more macro sociological issues; he referred to “the reaction of society to the crime of paranoia, an ambivalent reaction, in a double form, which creates the emotional contagion of this crime and the punitive demands of public opinion” (p. 26). The bulk of his article, however, was devoted to a more individual-centered analysis of the Papin sisters: their paranoia, their “need for self-punishment,” their need “to resolve . . . the human enigma of sexuality” (p. 28), and their apparent narcissistic identification with their victims.

Roudinesco summarizes Lacan’s position: “The true motive of the crime was not class hatred, but the paranoid structure through which the murderer struck at the ideal of the master within herself. . . . His diagnosis . . . was paranoia and self-punishment” ([1993] 1997:64).<sup>10</sup> Here the relation of Lacan’s criminology to Hegel’s famous dialectic of the master and the slave in the *Phenomenology of Spirit* is apparent; this theme pervaded all of his work.

Like Fromm, Lacan in his early writings on crime attempted to connect psychoanalytic theory to critical social theory—in Lacan’s case, more to a leftist Hegelianism than to Marxism. Unlike Fromm, however, not to mention Rusche and Kirchheimer, Lacan analyzed crime mainly at the level of the individual offender. He did not (as did Fromm) move from the analysis of the individual criminal’s motives toward a macro analysis of the functions of the criminal justice system in a modern capitalist society.

<sup>9</sup> The case continued to resonate in French culture. A decade later, the avant-garde writer Jean Genet used the Papin sisters’ crime as the theme of his 1946 play *The Maids*.

<sup>10</sup> Also see Salecl (1993), who presents Lacan’s position slightly differently.

After 1945, Lacan turned his attention away from crime, and at a methodological level he added an engagement with Heidegger as well as structural anthropology and linguistics to his earlier concern with Hegel and Marx. He presented one more paper on crime, however: a long and somewhat discursive contribution to a 1950 conference of French psychoanalysts which has been translated into English only recently. In the tradition of Durkheim, Lacan began his 1950 paper by warning that crime is a normal social phenomenon and that it is socially defined: "Neither crime nor criminals are objects that can be conceived outside their sociological reference" ([1951] 1996:13). He touched on a number of broad societal issues such as rape in wartime and the Nuremberg trials of Nazi war criminals. In an acerbic and well-aimed critique that also made clear his continuing leftist bent, Lacan argued that Lombrosian biologism,<sup>11</sup> in which the criminal was viewed as a regression to primitivism, "reveals above all a much more real philosophical regression in its authors . . . its success can be explained only by the satisfactions that a dominant class can require, as much for its intellectual comfort as for its bad conscience" (p. 18).

As in his 1932-1933 writings, however, Lacan did not focus primarily on such macro sociological issues.<sup>12</sup> He used his attack on Lombroso to distance himself from all means of explaining criminal behavior by large-scale social factors alone, a process he termed essentialism. In this way, he wrote, "psychoanalysis resolves a dilemma of criminological theory: in de-essentializing the crime, it does not dehumanize the criminal" ([1951] 1996:18). Although his argument is often quite obscure, Lacan seemed to believe that society once again needs to learn to hear the criminal, not to cut him or her off from society, or to reduce the causes of crime to forces external to the individual. He also suggested that we must admit that violence and aggression are characteristic forms of human behavior. In an apparent synthesis of Freudian thinking with Hegel's notion of the fight to the death of two opposing consciousnesses, which in the *Phenomenology* precedes immediately the discussion of slavery, Lacan stated that "it is in the fight to the death that humans make themselves recognized by other humans" (p. 24). Despite its sometimes telling insights, this 1950 essay does not really develop a

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<sup>11</sup> As noted by Beirne (1993), however, Lombroso's later writings offered a more complex explanatory structure than his earlier biologism; most of his subsequent critics apparently were not aware of this.

<sup>12</sup> At one point, however, he wrote: "Here the psychoanalyst can indicate to the sociologist the criminogenic functions proper to a society that . . . requires an extremely complex vertical integration of the social collaboration that is necessary to its production" (Lacan [1951] 1996:23).

critical theory of criminal justice. At best it offers us some materials from which such a theory might be constructed. Here Lacan did not work out (as did Fromm earlier) a theory of the psychosocial functions of crime in modern society.

Another French theorist, Michel Foucault, himself a product and then a critic of structuralism, developed a more global theory of the functions of criminal justice, which also critiqued Rusche and Kirchheimer. Although Foucault's *Discipline and Punish* ([1975] 1978) contains only a few references to those thinkers, the references are significant. In addition, he made several key references to their earlier work in his other writings during the 1970s. As in the 1920s in Germany, the 1960s and 1970s saw an outpouring of personal testimonies by prisoners in the United States, France, and other Western countries. In addition, a number of highly politicized prison revolts occurred, most notably at Attica in 1971. In this atmosphere Foucault began his work on the prison.<sup>13</sup>

Marxists such as Rusche and Kirchheimer viewed the prison ultimately as a superstructure resting on an economic base, the developing capitalist mode of production. Foucault, in contrast, from the beginning of his work on the prison, regarded it as much more:

I don't think that the penal system forms part of the superstructures. In reality, it is a system of power which penetrates deeply into the life of individuals and which bears on their relationship to the apparatus of production. In this way, it is not at all a superstructure. In order for individuals to constitute a labor force available to the apparatus of production, a system of constraints, coercion, and punishment, a penal system and a system of penitentiaries are needed. ([1973] 1994:430)

Here prison becomes almost a necessary condition for a capitalist economy, rather than a product of the rise of capitalism.

In 1975, in the text of *Discipline and Punish*, Foucault distanced himself even further from Marxism, especially from what he viewed as Marxism's primacy of the economic. His critique of Marxism also flowed from his political commitments at that time. Foucault was very active in the Prison Information Group, an organization that expressed solidarity with prisoners' revolts and worked closely with prisoners. In 1972 he complained that even groups to the left of the Communist Party failed to recognize, as he put it, that the prisoner is "the marginal [element] of capitalist society" and that "today, in our system, marginalization is achieved by

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<sup>13</sup> In the following account, I emphasize some of Foucault's shorter writings and interviews, which are currently available only in French and which predate *Discipline and Punish*, to illustrate more clearly his political commitments and his relationship to Marxism. Also see his interviews on Marxism (Foucault [1981] 1991).

the prison" ([1972] 1994:306). He implied that the prisoners, not the workers, were the truly exploited and potentially revolutionary group in modern capitalist society. David Macey, a sympathetic biographer, wrote that during this period "Foucault himself was at times prepared to describe criminality as a form of political revolt and to quote from Victor Hugo's *Les Misérables*: 'Crime is a coup d'état from below'" (Macey 1993:265; also see Foucault 1974:161). At that time, such notions were not unique to Foucault; they were common among many members of the New Left, which viewed the Attica prisoners or groups such as the Black Panthers, themselves composed in part of former prisoners, as the revolutionary vanguard.

Toward the end of *Discipline and Punish*, Foucault asked what the hidden, unstated functions of the modern prison might be. One of its functions, he wrote, is to isolate criminals from the social classes from which they have emerged, in order to forestall wider social rebellions. Another is the use of ex-convicts as informers, helping the police to control and administer illegal industries such as prostitution. A third, closely related function is the use of criminals against revolutionary and labor organizations—as informers, as agents-provocateurs, and as thugs and goons employed in repressing strikes and demonstrations. Not only state power but also social scientific knowledge is crucial here because, more generally, prison sets up a mechanism of surveillance, "producing the delinquent as pathologized subject" ([1975] 1978:272). The disciplinary techniques developed by the state for the surveillance of criminals lead in turn to "perpetual surveillance of the population" (p. 281) by the police and the criminal justice system. Curiously, however, and in part because he rejected the Marxist concept of ideology, Foucault here gave little attention to what Fromm considered central: the ways in which the criminal justice system is used ideologically to legitimate the social order in the eyes of the masses.

Throughout *Discipline and Punish*, and in numerous other works published during the 1970s, Foucault argued that prison is only one example of a certain type of disciplinary power which has arisen since the early modern period; other examples include the mental asylum, the educational system, and the modern military with its Prussian-style discipline. These institutions operate through "a technique of constituting individuals as correlative elements of power and knowledge" ([1975] 1978:194).

Like post-structuralist thinkers in general, however, Foucault, despite his criticisms of the prison and other repressive modern institutions, could not provide any solid reason why these institutions

should be changed or abolished. (I employ the term *repressive* deliberately because I do not share his rejection of the concepts of repression and ideology.) This is true even though Foucault, more than Fromm or Rusche and Kirchheimer, looked at the repressive institutions of criminal justice from the standpoint of those subjected to them, such as the prisoner or the mental patient. For Foucault, this direct concern with the prisoner included conducting clandestine surveys of French prisoners and organizing meetings and publications where their voices could be heard. Yet because Foucault rejected another humanist concept, that of the subject, he had insufficient philosophical grounds on which to pose alternatives.<sup>14</sup>

Even if one does not accept entirely the psychoanalytic apparatus underlying Fromm's youthful writings on criminal justice, one can recognize that his conceptualization of the problem of criminal justice in capitalist society has some advantages over Foucault's. Fromm's formulations, rooted in a dialectical and humanist perspective, point beyond the existing state of affairs toward a more peaceful, more humanistic society that is free of repression, where social relationships are transparent rather than masked by ideology, a society in which human beings can freely exercise their creative capacities. From this vantage point Fromm mounted a radical critique of the criminal justice system under a class society. In the hard-nosed and cynical 1990s, Foucault's nonhumanist perspective has a certain appeal. For that very reason, however, it should be questioned, because its wide adoption may indicate critical intellectuals' resigned acceptance of a retrogressive social reality.

Yet even if we do not wish to use Fromm to question Foucault and post-structuralism, I believe that we still need to rediscover Fromm's early critiques of the criminal justice system as an important part of the heritage of criminology.<sup>15</sup> Fromm, like Foucault and like Rusche and Kirchheimer, asked "What are the real functions of a criminal justice system that clearly has little or no effect on crime itself?" At a time when the United States is incarcerating people on an unprecedented scale, and when African-American males in particular are being demonized and targeted for imprisonment and execution, we must examine closely how this cruel, irrational system not only perpetuates itself but also serves as a major source of legitimation for the dominant classes. During a period

<sup>14</sup> See Fraser (1989) for a useful although somewhat hesitant critique of these limitations in Foucault's thought.

<sup>15</sup> This article is part of a larger effort to draw on Fromm's work for critical criminology today. Essays by several other criminologists, a translation of Fromm's early essays on crime, and a longer version of this article will appear in Anderson and Quinney (forthcoming).

when the social and economic lot of the populace has been deteriorating, or at best has remained stagnant, and when the political system cannot deliver even on basic issues such as national health care, highly ideological wars against crime, immigration, single motherhood, and welfare dependency are major themes in political and cultural debate. These "wars" help to cover up the fact that even the dominant classes do not know how, in the present economic system, the wrenching structural changes in the world economy can provide an adequate standard of living to the population of the industrially developed lands, much less those of the Third World or the former Communist bloc. It is a sobering fact that Fromm wrote his critiques of the criminal justice system on the eve of Hitler's coming to power, especially when we recall that "law and order," the cry so beloved of our politicians today, was also a central item in Nazi propaganda.

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