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P.J.A. Feuerbach and Norwegian Criminal Law

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Abstract

This article provides an overview of the reception of Paul Johann Anselm Feuerbach's criminal law thinking in Norwegian criminal law science from about 1800 until today. Feuerbach, who is celebrated in 2025 on the occasion of his 250th anniversary, has had a significant impact on the development of Norwegian criminal law, although this has varied considerably over time. The article shows how Feuerbach became a crucial point of reference in the first half of the 19th century, mediated through the writings of the Danish jurist Anders Sandøe Ørsted, and that Feuerbach's theories on punishment underpinned the Criminal Code of 1842. In the 20th century, Feuerbach remained present in criminal law discourses, but to a lesser degree. In recent years, the discipline has seen a revival of theoretical and normative orientations in general, and Feuerbach again receiving more attention from some scholars. The article concludes by suggesting that future research projects combining historical and theoretical perspectives could potentially also disclose whether there are more 'hidden' influences from Feuerbach in Norwegian criminal law.

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1. Introduction

In 2025, 250 years has passed since Paul Johann Anselm Feuerbach's birth in 1775. Praised as 'the most important German theorist of criminal law'[1] and the 'founder of the modern German criminal law science',[2] it comes as no surprise that Feuerbach's anniversary has been celebrated in Germany, with conferences in both Würzburg and Jena.[3] Feuerbach's fame and historical importance is due to his dual role as a legal scholar and a legislative drafter. In addition to his influential and much read treatises on criminal law from around 1800, he drafted the famous Bavarian Criminal Code of 1813, considered as 'great, groundbreaking and exemplary'[4] and as the 'birth of a liberal, modern and rational criminal law'.[5] In many ways, Feuerbach fused several of the Enlightenment ideas about criminal law, Kantian philosophy, and the political reformism in the wake of the American and French revolutions. He developed criminal law principles and a sophisticated legal doctrine, which he also worked to implement in legislation.

Feuerbach has also had a considerable impact on the criminal law development outside of Germany, and it is telling that both of the aforementioned conferences included talks on his influence within a number of jurisdictions.[6] The topic of this article is as follows: In what ways have Feuerbach influenced *Norwegian* criminal law? It has been remarked that the German criminalist (together with other thinkers) has been a reference point for much criminal law thinking in Norway during the 19th and 20th centuries, because he represents a so-called relative theory oriented towards criminal deterrence that has resonated well with many Norwegian criminalists.[7] It is also quite well-known that Feuerbach's thought inspired the first Norwegian Criminal Code, enacted in 1842, and that he was important for the Danish jurist Anders Sandøe Ørsted.[8] There are, however, no detailed, comprehensive studies of the role Feuerbach has played in the development of Norwegian criminal law.

1 Vormbaum (2014) p. 37.

2 Kubiciel (2014b) p. 2 with further references. In the same vein, Hörnle (2014) p. 120.

3 See 'Würzburger Tagung zu Paul Johann Anselm Ritter von Feuerbach zum 250. Geburtstag', 11–12 April 2025 at the University of Würzburg (https://www.jura.uni-wuerzburg.de/lehrstuehle/hilgendorf/nachrichtenarchiv/single/news/wuerzburger-tagung-zu-paul-johann-anselm-ritter-von-feuerbach-zum-250-geburtstag/, last accessed 17 November 2025) and 'Feuerbach250: Theorie und Dogmatik, Kriminologie und Kriminalpolitik, Geschichte und Rezeption', 19–21 May 2025 at the University of Jena (https://www.rewi.uni-jena.de/12628/feuerbach250, last accessed 17 November 2025).

4 Radbruch (1934/1997) p. 123 ('groß, bahnbrechend und vorbildlich').

5 Cf. Koch *et al.* (2014) ('die Geburt liberalen, modernen und rationalen Strafrechts').

6 On the international reception of the Bavarian Criminal Code, cf. Roth (2014) pp. 529–531.

7 Heivoll (2022) pp. 60 and 64.

8 On the latter, see Gagnér (1980).

The history of Norwegian criminal law in general has not been studied in depth. However, recently, several studies have emerged, contributing important premises also for the following analysis.[9] Given Feuerbach's central place in the history of European criminal law, analysing his influence on Norwegian criminal law should provide a central thread in this canvas that currently is about to be made. And indeed, as this article will demonstrate, Feuerbach has been referred to by every generation of criminal law scholars since the early 19th century. However, the modes and depth of interaction with his thought have – not very surprisingly – changed over the course of time.

Following a brief presentation of Feuerbach and his thinking in section 2, the following sections will address direct encounters with Feuerbach in Norwegian criminal law scholarship and how this has influenced Norwegian criminal law. In section 3, we show how the Danish author Ørsted was an avid reader and a great admirer of Feuerbach throughout his life. Ørsted was in his turn greatly admired in Norwegian legal thinking, and he served as the conveyor who brought Feuerbach to Norway, although in a modified shape. In section 4, we examine how this shaped the drafting of the Criminal Code in 1842. The first half of the 19th century was also the period when a Norwegian criminal law science established itself on its own terms. In the following sections, we divide the development of Norwegian legal science until today into four main periods. The first period, between 1814 and 1870/1880, is discussed in section 5. Here, as we will see, Feuerbach played a significant role. The next period, from 1880 to 1930, discussed in section 6, is marked by a more critical distance towards earlier criminal law theories – but not necessarily with Feuerbach as a direct reference. The third period, discussed in section 7, lasts from the 1930's until the end of the 20th century, where Feuerbach – to a varied degree, of course – has figured as a paradigmatic proponent of theories focusing on general deterrence. Finally, in section 8, we reach our current period, where theoretical and normative perspectives, including those of Feuerbach, are back on the agenda within the discipline. The article ends with section 9, where we will point to the possible hidden influence of Feuerbach, as a basis for a more comprehensive understanding of Feuerbach's importance in a Norwegian context.

A study of Feuerbach's influence on Norwegian criminal law can be conducted in many different ways. First, it is possible to distinguish between his influence on various *levels*, such as the general and ideological principles of criminal law, the methodological and scientific approaches to criminal legal science, and the legal dogmatic content of various concepts and crimes. Second, one might study his influence among various *actors/institutions* in the criminal law system, such as the legislator/law reformers, legal science and courts. Third, it is possible to look for both *explicit* references to

9 See e.g. Flaatten and Heivoll (eds) (2014), Jacobsen (2024) section 2.3; Jacobsen (forthcoming); Kjølstad (2024) chapter 11; Bernssen (2024).

Feuerbach and more *implicit* similarities and possible hidden influences. In this article we will focus mostly on the general and ideological principles, and in particular Feuerbach's justification of criminal law as general deterrence. Moreover, our focus will be legal science, which historically has had a great influence on legislation as well as the practice of criminal law in Norway. We will also, as indicated, specifically trace his influence on the legislative reforms in the first half of the 19th century. Additionally, we will limit ourselves to explicit interactions with Feuerbach in the literature (although suggesting, as already indicated, potential hidden influences in the concluding section). In other words, this article – which covers an extensive period – is merely to provide a first overview of Feuerbach's influence on Norwegian criminal law. As we will suggest at the very end of the article, more studies should be done in the future in order to complete the picture.

2. An Overview of Feuerbach's Life and Works

2.1 A biographical sketch

Feuerbach – whose life has been portrayed in detail by Gustav Radbruch (1878–1979) in his *Paul Johann Anselm Feuerbach. Ein Juristenleben* (1934)[10] – was born on 14 November 1775 in Hainichen, a small village close to Jena. In 1792, he embarked upon studies at the University of Jena, where he would stay as a student and lecturer for about ten years. This was certainly the place to be in the 1790's – Jena was 'the centre of the new revolution in philosophy and in German intellectual life in general', by many contemporaries compared to the classical Athens.[11] And it was most certainly the place to be for Feuerbach, who showed a deep interest in philosophy. He started out with studies in law (as a '*Brotstudium*') but switched to philosophy after a couple of years, before he – upon graduation in philosophy – returned to the field of law, where he graduated in 1799.

The philosophical atmosphere in the 1790's was decidedly Kantian, and Feuerbach attended lectures by Karl Leonhard Reinhold (1757–1823), who had popularised Kantian thought through his *Briefe über die Kantische Philosophie* (1790–1792).[12] Feuerbach's immense interest in philosophy materialised in a number of small articles and three books about natural law published within only a couple of years.[13] These

10 For a more condensed overview than Radbruch's, see Walter (2014). In English, see Vormbaum (2014) pp. 37 ff. and Hörnle (2014) pp. 120–122.

11 See Pinkard (2002) p. 88 and Vieweg (2020) ('Welthauptstadt der Philosophie').

12 See Radbruch (1934/1997) pp. 51 f.

13 *Über die einzig möglichen Beweisgründe gegen das Dasein und die Gültigkeit der natürlichen Rechte* (1795), *Kritik des natürlichen Rechts als Propädeutik zu einer Wissenschaft des natürlichen Rechts* (1796), and *Anti-Hobbes oder über die Grenzen der höchsten Gewalt und das Zwangsrecht der Bürger gegen den Oberherrn* (1798, preface dated August 1797).

writings were steeped in the contemporary Kantian vocabulary, revolving around issues such as the epistemological foundations of legal science, the relation between law and morals, and the purpose and function of a state.[14] In his *Anti-Hobbes* from 1798, for instance, Feuerbach formulated the most fundamental principle of justice as follows: 'A reasonable person cannot use his freedom in a way that contradicts the freedom of another reasonable person'.[15] With reference to Rousseau, he also explained that the task was to 'find a state wherein man's freedom is secured, or in other words: a state of security wherein man is as free as he should be, according to his rational nature'.[16]

Upon his graduation in law in 1799, Feuerbach started to teach at the university, and he was eventually appointed as professor. Within a short time, he published his two groundbreaking and famous criminal law treatises: *Revision der Grundsätze und Grundbegriffe des positive peinlichen Rechts* in two volumes (1799–1800) and *Lehrbuch des gemeinen in Deutschland geltenden peinlichen Rechts* (1801).[17] The latter would appear in 14 editions until 1847, after Feuerbach's death published by his famous student Carl Joseph Anton Mittermaier (1787–1867). Additionally, Feuerbach became part of a vivid scientific community within the field of criminal law, and together with Karl Grolman (1775–1829) and Ludwig Harscher von Almendingen (1766–1827), he edited the journal *Bibliothek für die peinliche Rechtswissenschaft und Gesetzkunde* (1797–1804).[18]

In 1802, Feuerbach left Jena for Kiel, and after a couple of years, he arrived at the University of Landshut in Bavaria in 1804. At that time, a criminal law reform was underway in Bavaria, and a draft authored by the criminal law scholar Gallus Aloys Kaspar Kleinschrod (1762–1824) had been published in 1802. In 1804, Feuerbach published a severe criticism of Kleinschrod's draft, and later that year, the task of preparing a new code was transferred to Feuerbach.[19] He completed a draft in 1807 that was published in 1810, and the code was finally enacted in 1813. Together with the French *Code Pénal* (1810), the Bavarian Criminal Code was the internationally most important and influential criminal law legislation for most of the 19th century.

Feuerbach left the university for good in 1805 and became a civil servant in the Bavarian state administration. His departure from the university was to a large extent due to a difficult relation to his colleague Nikolaus Thaddäus von Gönner (1764–1827), who

14 See Brandt (2014) pp. 174 ff. and Michalsen (2008) pp. 163 ff.

15 Feuerbach (1798/1967) p. 13.

16 Feuerbach (1798/1967) pp. 19–20 (emphasis removed).

17 See Radbruch (1934/1997) p. 77.

18 Two other figures in this environment were Carl August Tittmann (1775–1834) and Christoph Karl Stübel (1764–1828). See Radbruch (1934/1997) and Gagnér (1980) pp. 370–371.

19 On Kleinschrod's draft and Feuerbach's criticism, see Kubiciel (2014b) pp. 6–8.

would become 'the *Bad guy* in Feuerbach's life for over two decades'.[20] Gönner was involved in the drafting process of the Criminal Code and was able to have parts of Feuerbach's draft modified. He was then, in company with others (but not Feuerbach!), commissioned to write the official commentary to the enacted code (which was the only commentary to the code that was allowed), and he was also, after a couple of years, given the task of reforming the code.[21] Gönner's draft was published in 1822 (and received a thorough critique from Anders Sandøe Ørsted, cf. below), but in the end, nothing came of it.

In 1814, Feuerbach got into trouble with the king and the government over some of his political writings and he was subsequently deployed as a judge.[22] This was his third role within the legal system, following his positions as legal scholar and civil servant, and he would remain a judge for the rest of his career. Here, he would soon become aware of some of the flaws of his own Criminal Code and already in the autumn of 1814, he wrote two memoranda to the ministry about some of the practical problems.[23]

Although Feuerbach only stayed at the university for a small part of his career, he continued writing until his death. 'I simply cannot live in any other way than with my head in my hands or a feather pen in my hand', he wrote in a letter to his father in 1803.[24] Several publications emerged, and in 1824, he was commissioned to draft a revision of the 1813 Code (he submitted a draft, but the reform process was eventually abandoned).[25] Among his writings are the *Aktenmäßige Darstellung merkwürdiger Verbrechen* (1828–1829, two volumes), which reported from several cases Feuerbach had ruled as a judge – it became a bestseller and was translated into English in 1846.[26] Towards the end of his life, he also got involved in the fascinating mystery of Kaspar Hauser, a young boy who suddenly appeared in Nuremberg in 1828 and claimed that he had been brought up in a dark cell.[27] Feuerbach published several pieces about the case, and he launched what would become a popular and much-debated theory where he claimed that Hauser was a member of the royal house of Baden.[28] Actually, an excerpt from Feuerbach's main text about Hauser was published in the

20 Walter (2014) p. 22 (emphasis in original).

21 See Maihold (2014).

22 See Radbruch (1934/1997) pp. 146 ff. and Walter (2014) pp. 23–24.

23 See Radbruch (1934/1997) p. 152.

24 Quoted by Radbruch (1934/1997) p. 108.

25 See Radbruch (1934/1997) pp. 206–209.

26 See Radbruch (1934/1997) pp. 222 ff. and Hörnle (2014) pp. 121–122.

27 On Feuerbach and Hauser, see Hörnle (2014) p. 122 and Vormbaum (2014) p. 38.

28 This myth has later been debunked after DNA analyses – the last one in 2024. See https://en.wikipedia.org/wiki/Kaspar_Hauser#DNA_analyses (last accessed 17 November 2025).

Norwegian journal *Bien* in 1832.[29] In December 1833, Hauser was stabbed to death, probably a suicide. As a curious detail, the Norwegian daily paper *Morgenbladet* reported in March 1834 that rumours in the wake of Hauser's death would have it that Feuerbach – who had passed away on 29 May 1833 – had died from poisoning![30] This was of course only a rumour, Feuerbach died from a stroke.

2.2 The main elements of Feuerbach's criminal law theory

Feuerbach's criminal law theory was developed around 1800, before it was sought implemented in the Bavarian Criminal Code in 1813. The theory he outlined was complex and contained several different aspects. In the following, we will give a brief overview of four of the most important elements: his theory of general deterrence, or more precisely 'psychological coercion' as the objective of punishment; his principle of *nulla poena sine lege*; his concept of crimes; and his strict sentencing principles. Overall, one could say that there are both liberal and authoritarian traits in Feuerbach's theory – symbolically illustrated, as Gustav Radbruch has suggested, in the coat of arms of the Feuerbach family, which shows a lion holding a sword in one hand and a heart in the other.[31]

Although Feuerbach developed a theory of punishment that differed from Kant's writings on criminal justice, his entire theory was founded upon general Kantian ideas about law, state and individual. There is a strong link between Feuerbach's criminal theory and his political philosophy, which demonstrates very clearly a general pattern in this period: criminal theory was mainly part of state theory. For Feuerbach, the state was, as already his *Anti-Hobbes* demonstrated, established to secure the rights of the citizens vis-á-vis each other. Punishment was one of the means by which the state could achieve this purpose. The 'legal basis' ('*Rechtsgrund*') for punishment was simply the state's right to protect its citizens ('*Recht der Sicherung*').[32]

More precisely, Feuerbach referred to punishment as a specific *means* for the state to achieve its aim: it was an instrument of 'psychological coercion' ('*psychologischen Zwang*').[33] This idea was based on two premises. First, he considered *physical* coercion to be inadequate to ensure the appropriate protection of rights – it was simply impossible to lock up and chain every potential future perpetrator. Secondly,

29 See Feuerbach (1832a). The excerpts are from Feuerbach (1832b).

30 *Morgenbladet*, 30 March 1834. Searches in the newspaper database at www.nb.no show that the Hauser affair was widely reported on in Norwegian newspapers at the time.

31 Radbruch (1934/1997) p. 125.

32 See Feuerbach (1799/1966) p. 38, also the following pages. See similarly Feuerbach (1826) p. 16.

33 Feuerbach (1799/1966) p. 40, and Feuerbach (1826) p. 18 (also for the following quote).

he claimed that all crimes were committed because of psychological mechanisms in terms of desire and lust, in this regard emphasising humans as *phenomenal* beings.[34] Thus the need for a psychological counterweight, to neutralise the desires, because

> 'everyone knows that their offence will inevitably be followed by an evil which is greater than the displeasure resulting from the unsatisfied drive motivating the offence'.

It was precisely this idea that would lead Hegel to remark that Feuerbach's theory of punishment was similar to 'the act of a man who lifts his stick to a dog'.[35]

A crucial element in Feuerbach's theory was to distinguish between the *threat* of punishment ('*Androhung*') and the *execution* of it ('*Zufügung*').[36] The execution itself was insufficient as a psychological threat, because the citizens were entitled to know the 'legal-mandatory consequence' of their offence – punishment without a proper legal basis would amount to using people as a means, not as an end in itself, which was of course unacceptable for a Kantian. Thus, the threat of punishment had to be communicated through a legal statute, with the purpose of deterring the citizen from the prohibited action. At the same time, a legal prohibition alone was also insufficient. It would be an empty threat unless it was backed by an actual execution of the punishment. The key, then, was the combination of a law-based threat and execution.

Feuerbach's development of this theory of general deterrence based on a statutory threat was at the same time a critique of other positions. In his *Lehrbuch*, he listed four theories that had to be rejected: 1) the idea of special prevention in order to avert future crimes by a specific individual ('*Prävention*'); 2) the idea of moral retribution ('*moralische Vergeltung*'); 3) the idea of immediate deterrence of others through the pains inflicted upon a perpetrator when executing the punishment ('*unmittelbare Abschreckung*'); and 4) the idea of moral improvement of the perpetrator ('*moralische Besserung*').[37] In particular, Feuerbach challenged Grolman's emphasis on the execution and special prevention of the perpetrator – the former's insistence on placing the *statute* at the forefront of his theory of criminal law was obviously a response to his colleague.[38]

34 See Greco (2009), for instance p. 44: 'Nach Feuerbach interessiert sich das Recht also nur für den *homo phaenomenon*, für den Mensch, der nicht aus Achtung für das moralischen Gesetz, sondern ausschließlich aus seiner *Sinnlichkeit* heraus handelt'.

35 Hegel (1821/1942) p. 246 (§ 99).

36 For the following, see Feuerbach (1799/1966) pp. 46 ff., and Feuerbach (1826) pp. 20–21.

37 See Feuerbach (1826) p. 21. The criticism was developed more thoroughly in Feuerbach (1799/1966), see pp. 14 ff. and 74 ff., as well as in articles.

38 See Radbruch (1934/1997) p. 78.

Feuerbach highlighted two major implications of his theory of psychological coercion. The first one was that all punishment required a legal basis in statutory law.[39] This was stated very clearly in Feuerbach's *Lehrbuch* as a principle of '*nulla poena sine lege*', and although the idea is much older, Feuerbach was the first to introduce this dictum in a legal context in such a precise and distinct way.[40] For Feuerbach, the principle was first and foremost connected to the idea that an effective threat required that the punishment was communicated in statutory form, but it is also possible to see it as an expression of a rule of law-based ideology.[41]

The second implication highlighted by Feuerbach was that the state could only punish violations of rights ('*Rechtsverletzungen*'), and only in their capacity as such.[42] In other words, violations of rights constituted Feuerbach's concept of crimes. This excluded purely ethical considerations as justification for criminalisation. The crucial element for criminalisation was not the transgression of duties or the sinfulness of an act, but merely the danger and harmfulness to the legal rights of others. Feuerbach distinguished between violations of the rights of the state (public crimes) and violations of the rights of other persons (private crimes), a distinction that was also implemented in the Bavarian Criminal Code. All 'police offences', i.e. actions that (merely) posed a risk to public order, but without directly violating any rights, were to be kept outside of the criminal code, and in the Bavarian Code, a number of religious and sexual offences that traditionally were considered crimes, were omitted.[43] A famous quote on blasphemy from Feuerbach's *Lehrbuch* reads as follows: 'That the deity [*die Gottheit*] should be insulted, is impossible; that it because of defamation should take revenge on people, is unthinkable; that it has to be reconciled by the punishment of its insulter, is foolishness'.[44] Because of the Code's approach to sexuality and religion, it has been referred to as 'applied Enlightenment' and a 'liberal quantum leap'.[45]

Whereas the focus on *nulla poena sine lege* and the limitations on criminalisation were liberal traits, Feuerbach's criminal theory also contained repressive elements. In particular, the sentencing principles in the Bavarian Code, which were supposed to implement the theory of psychological coercion, were rigorous.[46] First of all, the Code set rather harsh, some would say draconic, sentences, the idea being that effective psychological coercion required severe penalties. The stronger the wicked drives in a

39 Feuerbach (1799/1966) p. 63.

40 See Hörnle (2014) p. 131 with further references.

41 Cf. Jacobsen (2009) p. 375 with further reference.

42 Feuerbach (1799/1966) pp. 65–66. See in more detail Hörnle (2014) pp. 136–139 and Jakobs (2014).

43 On this, see Kubiciel (2014a) pp. 402–406.

44 Feuerbach (1799/1966) p. 250.

45 Kubiciel (2014b) p. 10 (with further reference to Hull (1996)).

46 See Greco (2014).

person were, the heavier counterweight was needed. Secondly, the scope for judicial discretion and adjustments was restricted, a legislative technique that was connected to Feuerbach's idea that the criminal law should communicate a clear and foreseeable threat to the citizen.

Given the combination of liberal and more repressive traits, it is no wonder that the opinions about Feuerbach have varied. The sentencing principles in the Code were soon considered a flaw, sparking reform debates. On the other hand, the liberal principles have continued to be a source of inspiration for many criminal law theorists – and the principle of legality has become an essential feature of modern criminal law systems. In the following, we will trace these reactions to Feuerbach in Norway.

3. A.S. Ørsted and his Theses on Feuerbach

As we will return to in section 4, Feuerbach strongly influenced the Norwegian Criminal Code of 1842. This influence is in large part due to his equally strong influence on the Danish jurist Anders Sandøe Ørsted (1778–1860). Ørsted was an extremely influential writer in Denmark and Norway at the beginning of the 19th century, and transmitted Feuerbach's criminal law theory to the Norwegian legal community – in, as we will see, a modified version. The relation between Feuerbach and Ørsted has been studied in detail by the Swedish legal historian Sten Gagnér (1921–2000) in his article 'Ørsted's Science, the German Criminalists and the Natural Law Doctrine' ['*Ørsteds vetenskap, de tyska kriminalisterna och naturrättsläran*'] from 1980. Gagnér concluded that German criminal law scholarship from around 1800 had a lasting impact on Ørsted's legal thought – not only in terms of substantive criminal law, but more fundamentally in terms of his view upon the proper role and function of legal science. As Gagnér notes, Feuerbach was by far the most important source of inspiration for Ørsted.[47]

There are some interesting parallels between Feuerbach and Ørsted, who belonged to the same generation (Feuerbach was three years older). Both had philosophical inclinations, and both were influenced by the Kantian movement in the 1790's. Like Feuerbach, Ørsted spent his career both as a judge and in the corridors of the state administration. But whereas Feuerbach spent at least some years as a professor, Ørsted never got a university position – which is remarkable, given his enormous publication activity.[48] Most of all, however, they shared a profound interest in criminal law.

47 Gagnér (1980) e.g. p. 374. For a recent account, see Kjølstad (2024) p. 590 ff.

48 Ørsted's bibliography counts 314 entries (of which many were minor pieces). See the appendix in Tamm (ed.) (1980).

During his career, Ørsted wrote four reviews of works by Feuerbach – this is in itself illustrative of Feuerbach's importance to the Danish legal author. The reviews dealt with Feuerbach's critique of Kleinschrod's criminal law draft (1805), his *Themis, oder Beyträge zur Gesetzgebung* (1813), his *Über das Geschwornen-Gericht* (1815), and his *Betrachtungen über die Öffentlichkeit und Mündlichkeit der Gerichtspflege* (1822).[49] In addition come the numerous works on criminal law where Ørsted discussed and commented upon Feuerbach's ideas and views.

Ørsted was obviously a great admirer of Feuerbach, referring to him as a 'famous reformer of criminal law' and a 'clear-sighted thinker',[50] a 'profound examiner of the first principles of the science of criminal law and a considerable civil servant [who] has obtained the most distinguished and well-deserved reputation',[51] and an author characterised by 'the same degree of logical stringency, practical knowledge and calm impartiality'.[52] When Feuerbach was attacked by the rising star Mittermaier around 1820, Ørsted defended his idol from what he perceived to be unfair and one-sided criticism.[53] Even more significantly, Ørsted published an extensive review (approximately 370 pages) of Gönner's aforementioned draft for a new criminal code in 1823, which was also translated into German the same year (approximately 430 pages).[54] The translation was the most significant review of Gönner's draft in the German legal discourse at the time, and it provoked a bitter response from Gönner.[55] Again, Ørsted defended Feuerbach, and characterised the Criminal Code from 1813 as 'the ripest fruit of the criminal theoretical insights of our age' (notwithstanding its flaws and mistakes):

> 'This Code distinguishes itself by its sharp perception of both general concepts and principles as well as the nature of the various crimes, and by consistency and proportionality in its provisions. It combines concise brevity with an unparalleled completeness. It can neither be rejected as a kind of strictness that does not fit the opinions of the time, rather causing impunity than guarding the social order, nor for an exaggerated leniency that weakens public morality and undermines civil safety. It

49 Ørsted (1805), Ørsted (1813), Ørsted (1815), and Ørsted (1822).

50 Ørsted (1817) pp. VI and VII–VIII (preface).

51 Ørsted (1815) p. 2.

52 Ørsted (1822) p. 3.

53 Ørsted (1820) pp. 4 and 8.

54 Ørsted (1823b) and Ørsted (1823a).

55 See Maihold (2014) pp. 507–509. According to Maihold, the reception of Ørsted's critique was predominantly enthusiastic (whereas Maihold himself is seemingly not impressed by the quality).

> sticks to the middle ground between the one extreme where everything is left to the subjective conceptions of the judges, and the other one, where the hands of the courts are tied to such a degree that it is impossible to adapt the penalties according to the severity of the crimes and the culpability of the various offenders.'[56]

In other words, Ørsted showed great respect for Feuerbach's criminal law project. It is probably not a coincidence that after Feuerbach in 1812 had published a collection of texts titled *Themis*, Ørsted a few years later named his own similar text collection *Eunomia*. Eunomia was, as Feuerbach explained in his preface, one of the daughters of Themis in Greek mythology. And indeed, Ørsted was a child of Feuerbach. As is probably the case in most child–parent relationships, the admiration was not unconditional. Already from his earliest encounters with Feuerbach's thought, he made it clear that he could not agree with all of Feuerbach's claims.[57]

The disagreements are found at two levels. On the level of justification of punishment, Ørsted agreed with Feuerbach that general deterrence ('*Afskrækkelse*') was the main purpose of criminal law.[58] As such, he rejected the Kantian absolute theory of retributive justice and opted for a relative theory.[59] Ørsted could not, however, agree with Feuerbach that individual deterrence ('*Prævention*') should be completely excluded as a legitimate aim of punishment.[60] His conclusion, then, was a theory of general deterrence combined with elements of individual deterrence as a supplementary aim. As we will see, exactly this combination would soon become popular in the Norwegian criminal law discourse.

The second level was a more general, theoretical one, or at least, this was how Ørsted himself framed it: according to himself, the differences between him and Feuerbach sprang from diverging views about a more fundamental issue. Ørsted explained this to his readers in the preface to his 'On the Fundamental Principles of Criminal Legislation' (1817), his major contribution to the theory of criminal law, a work he also translated into German the following year.[61] The backdrop is that Ørsted started out in the late 1790's as a great admirer of Kantian natural law, then turned to Fichte's natural law, before he eventually left the camp of critical philosophy in the years after 1800. Now, he sharply rejected the Kantian/Fichtean ideas about law and state, and argued for a closer relationship between law, morals and religion. This

56 Ørsted (1823b) (part I) pp. 178–179.

57 Ørsted (1802) pp. 176–177 (footnote).

58 Ørsted (1817) pp. 39 ff.

59 Ørsted (1817) pp. 12 ff.

60 Ørsted (1817) pp. 46 f.

61 I.e. Ørsted (1818).

abrupt turnabout might have been influenced by the emerging political romanticism, although there are several different interpretations of the nature of Ørsted's theoretical rebirth.[62] In any case, the dismissal of the Kantian natural law tradition influenced the way he characterised Feuerbach. Ørsted wrote:

> 'Feuerbach's system originates from a time where the practitioners of legal science strived for the most complete independence of legal science. Everything was about making the task of law – both in terms of its content, the basis for this content, as well as the means to fulfil this task – independent from all religious and moral ideas and motives. The external social order was to be yielded by force; nothing should be based upon fear of God, love, righteousness, or sense of honour; instead, peace and order among the co-existing human beings was supposed to be imposed by a psychological mechanism aligning the self-interest of everyone with the external compliance with the laws necessary to uphold society. Within this mechanism, fear of punishment had to be the main wheel.'[63]

According to Ørsted, Feuerbach's project had been all about achieving criminal law's 'independence' from morals and religion. For Ørsted, this was the source of several flaws in Feuerbach's system, for instance his rather narrow scope for judicial discretion (a field where Ørsted himself was way more flexible).[64] He recognised that Feuerbach had adjusted his course in later writings – probably due to his practical experience as a civil servant and a judge, according to Ørsted (who himself had held both of these positions) – but without making a thorough overhaul of his system. Ørsted claimed that with his own approach, which was more inclined to take into consideration moral and religious aspects, he gave the criminal law system a different 'colour and direction'. As Gagnér has pointed out,[65] Ørsted's style of writing could be quite self-gratulatory at times, and he claimed that with his 'modification of Feuerbach's system', the objections to be made against Feuerbach could all be dismissed.

Ørsted's criticism of Feuerbach on such fundamental points should not, however, overshadow the fact that Ørsted largely relied on his idol. Indeed, Ørsted made several substantial adjustments, but his criminal law theory had received its most significant impulses from Feuerbach, who made a lasting impression on Ørsted, just like he himself would have an impact on Norwegian criminal law for many decades.

62 The link to political romanticism has been suggested by Kjølstad (2024) chapter 2, section II.3 § 1. For an overview of previous literature, see pp. 112 ff.

63 For this and the following, see Ørsted (1817) pp. VI ff. (preface).

64 Cf. Björne (1995) pp. 333–335.

65 Gagnér (1980) pp. 400–402.

4. Feuerbach and the Norwegian Criminal Code of 1842

When Feuerbach was able to transform his ideas from books to action, this was in part because of a general reformist mood around 1800. The desire to reform criminal law followed in the wake of both considerable criticism of penal practices during the Enlightenment period as well as the general *Zeitgeist* after the American and the French revolutions. The Bavarian *Strafgesetzbuch* and the French *Code Pénal* (1810) would serve as practical sources of inspiration. In Denmark-Norway, preparations for a general reform of criminal law had been made at the turn of the century, and when Norway gained its independence in 1814, the new Constitution proclaimed that 'a new, general civil and criminal code shall be published at the first, or, if this is not possible, at the second National Assembly' (Art. 94).[66] This proved to be rather ambitious, as it would take almost 30 years before the new Criminal Code was adopted in 1842.

The Constitutional Assembly gave a legislative committee the task of preparing the required legislative reforms. The responsibility for the criminal code was given to the lawyer and politician Christian Krohg (1777–1828). Krohg had launched the law journal *Juridisk Arkiv* in 1803 (where he would soon be succeeded by Ørsted as editor), and in the first volume, he had translated an article on the death penalty by Feuerbach.[67] He was, in other words, actively following the theoretical developments in German criminal law around 1800. In 1814, following preliminary discussions within the committee, Krohg drew up some 'Fundamental Principles for a Criminal Code', where the influence of Feuerbach – through Ørsted – is evident in the way the object of punishment is defined. 'The theory of general deterrence combined with the theory of individual deterrence is […] to be followed', it was stated in Article 6, after the theory of retribution had been rejected in Article 4.[68]

Krohg was eventually unable to deliver a draft for a new code, but the reform received a new impetus when Parliament re-organised the legislative committee in 1827. The committee (referred to as a 'commission' from 1828 onwards) published a first draft in 1831 but was then ordered by Parliament to provide explanatory notes to it. Such 'motives' were published in 1835 alongside a revised draft. In these drafts, the code had more or less found its form, and later revisions up until its enactment in 1842 were primarily adjustments. As such, the 1835 motives are the most important preparatory works.

66 For a thorough overview, see the contributions in Sandvik and Michalsen (eds.) (2013). An overview of the enactment process of the Criminal Code is provided by Kjølstad (2024) chapter 11.

67 See Feuerbach (1803) (originally published in Almendingen, Grolman and Feuerbach's *Bibliothek für die peinliche Rechtswissenschaft und Gesetzkunde*).

68 The 'Fundamental Principles' are printed in Sandvik and Michalsen (eds.) (2013), Appendix 4 (pp. 340 ff.).

The motives were actually, in a fascinating manner, translated into German and distributed among leading German law scholars, along with a prize reward for the best comments.[69] Several German reviews were published, among them a brief article by Mittermaier and a more extensive book by the Hegelian criminalist Julius Abegg (1796–1868).[70] This orientation towards the German criminal law discourse is indicative of the overall project and, more generally, the state of Norwegian legal science in this period. It is also illustrating that the motives contain a reference to the Bavarian Code (alongside the French *Code Pénal*) on page 2. According to a contemporary commentator, the most important source material for the commission was a draft criminal code for the Kingdom of Hanover (1826/1828),[71] drafted by Anton Bauer (a follower of Feuerbach) and modelled on the Bavarian Code of 1813. Ørsted actually commented on an early Norwegian draft in 1831, where he assumed that a couple of provisions (which he criticised for being too detailed) were taken from the Bavarian code and the Hanoverian draft.[72]

The commission devoted a few pages to discuss various theories of punishment.[73] Here, they clearly followed the path of Ørsted and thus, indirectly, of Feuerbach. The committee started out by rejecting the 'absolute theory', clearly referring to a retributive view ascribed to Kant. Then, they proclaimed adherence to the 'theory of general deterrence combined with the theory of individual deterrence', where general deterrence was considered the main element, while individual deterrence was a supplementary aim. According to the commission, this was in line with the existing Danish-Norwegian criminal law. Moreover, the commission underlined that their theory did not imply use of draconic punishments, which would lack support in the public opinion and thus turn out to be counterproductive to the aim of deterrence. These arguments were taken directly from Ørsted.[74]

In sum, it seems fair to conclude that the Norwegian Criminal Code of 1842 was inspired by the Bavarian and Feuerbachian model to a great extent. In addition to the theory of punishment, the code itself generally resembled the Bavarian code. There were of course differences, for instance regarding the level of systematic and conceptual sophistication. In addition, one must take into consideration that the Norwegian code was drafted when the Bavarian project during the 1820's had been

69 See Kjølstad (2024) pp. 612–613. For the German motives, see *Motive* (1835).

70 See Mittermaier (1835). Cf. also Mittermaier (1844). See further Abegg (1835).

71 Schweigaard (1844) p. 2.

72 Sandvik (2017) pp. 48 and 56.

73 *Motiver* (1835) pp. 17–20.

74 Cf. Ørsted (1826) pp. 30–31 and 44 ff.

subject to criticism. When the commission emphasised that the theory of general deterrence could be combined with a rather moderate level of punishments, this must be seen in light of this criticism. Nevertheless, the two projects can certainly, in a historical perspective, be classified as belonging to the same category of codes. In other words, Feuerbach can be seen as the ideological source of the first Norwegian criminal code, but conveyed through the writings of Ørsted.

5. Feuerbach and the Emerging Norwegian Criminal Law Doctrine 1814–1880

The next period we will look into is the period from about 1814 until about 1870/1880. A university on Norwegian soil was first established in 1811, and following this, it took some additional decades before a Norwegian criminal law literature emerged. In fact, given the common Danish-Norwegian criminal law tradition, Ørsted's writings served as the relevant literature until the new code was enacted in 1842. Even though there was basically no criminal law literature before the 1840's, preserved lecture notes demonstrate that Ørsted's Feuerbach-inspired views gained ground among the university teachers in Oslo from at least around 1830, if not even earlier.

When the university lecturer Frederik Stang (1808–1884) held lectures in natural law in 1830–1831, his part on criminal law was taken more or less directly, in some parts almost verbatim, from Ørsted.[75] Stang explained that 'the state imposes the coercion (the psychological one) when the threat of punishment is communicated', and he rejected the theory of special prevention – although it could be a supplementary aim. Stang was the son-in-law of Bredo Henrik von Munthe af Morgenstierne (1774–1835), one of the members of the Criminal Code commission, and later in the 1830's, he would become a member of a commission revising the draft. Stang's colleague Ulrik Anton Motzfeldt (1807–1865) lectured on natural law in 1835 and 1839/1840, and his reasoning follows the same pattern: He started out by rejecting theories on retribution and moved on to claim that the criminal law system is a 'psychological means' to influence the behaviour of the citizens. Special prevention was also accepted as an objective, but only a secondary one.[76] Again, the theory was completely in line with Ørsted's views.

In the 1840's, two authors published books on criminal law: the university professor and politician Anton Martin Schweigaard (1808–1870) and the Supreme Court justice (later Chief justice) Peder Carl Lasson (1798–1873).[77] Schweigaard's 'Commentary to the Norwegian Criminal Code' (*Commentar over den norske Criminallov*, two

75 See Kjølstad (ed.) (2023) pp. 182 ff. and further Kjølstad (2023) p. 66.

76 See Motzfeldt (*National Archives*).

77 On the relation between the two and their books, see Michalsen (2013) pp. 126–142.

volumes: 1844–1846) was a black-letter law commentary to the new Criminal Code, without any theoretical framework.[78] Lasson, on the other hand, engaged with criminal law theory both in his 'On the Property Violations and their Punishment' (*Om Eiendomsindgrebene og Straffene derfor*, 1842) and in particular in his 'Handbook on Criminal Law. General Part' (*Haandbog i Criminalretten. Den almindelige Deel*, 1848). Lasson (who was the brother-in-law of Frederik Stang and the second son-in-law of the criminal law drafter Morgenstierne) followed what was now a standard pattern: He rejected the absolute theories of retribution and adhered instead to the relative theories, favouring a combination of general deterrence and special prevention.[79] Lasson told his readers that 'it was Feuerbach's merit to have grasped the principle of deterrence in its purity and applied it consistently', although the idea itself was much older and could be found in authors like Grotius and Pufendorf. Ørsted had, however, demonstrated the one-sidedness of Feuerbach's theory, and added special prevention as a supplementary objective of punishment. In general, one can see from Lasson's footnotes that he relied heavily on Ørsted's criminal law writings, which seem to be his most important source of theoretical inspiration. At the same time, it is interesting to note that in the two subsequent volumes of Lasson's *Haandbog*, on crimes against public and private interests respectively, there are quite some references to Feuerbach in the footnotes.[80] In many of the cases, these are accompanied by references to Ørsted, and it is thus an open question to what extent Lasson himself had read Feuerbach's works. Nevertheless, it shows that Feuerbach was a crucial point of reference also on a legal dogmatic level at this time – his criminal law treatises were simply the international standard works within the field.

Feuerbach continued to be a crucial reference point for at least a couple of decades, as illustrated by the legal historian Fredrik Brandt's (1825–1891) minor piece 'Overview of the History of Criminal Law' from 1863–1864, based on his lectures in criminal law.[81] According to Brand, Feuerbach had brought about a 'transformation within the criminal law science', and none of the other criminal law theories 'have justified punishment with the same correctness and consequence as Feuerbach's theory'.

78 A brief remark in Schweigaard's infamous 'Considerations of the current State of Legal Science in Germany' (1834), where he cursed German legal thinking in the most furious manner, might, however, be understood as an adherence to Feuerbach's views. Here, he deplored those who rejected Feuerbach's criminal law theory because it allegedly violated the 'supreme idea of law', even though it had useful functions, see Schweigaard (1834) pp. 327–328.

79 Lasson (1848) § 5 (pp. 12 ff., see p. 21 on Feuerbach).

80 See e.g. Lasson (1850) pp. 4, 44 and 51. Based on searches in the digitalised version at www.nb.no, there are at least 20 references in the two volumes taken together.

81 Brandt (1863–1864), for the following, see pp. 332–335. Brandt gave lectures on criminal law in the autumn semester of 1863 and the spring semester of 1864, cf. *Det Kongelige Norske Frederiks Universitets Aarsberetning* for 1863 and 1864.

Moreover, in Feuerbach he found 'this humane tendency to strengthen man's good drives by putting up a counterforce to the bad ones'. Still, Feuerbach was too rigorous, and the Bavarian Code proved itself impractical, which had fuelled a more 'eclectic' approach within criminal law thinking – to which he counted both Ørsted and the Norwegian Criminal Code (the latter through the influence of the Hanoverian code).

6. Feuerbach in the Period of Reform 1880–1930

Towards the end of the 19th century, the landscape of criminal law and theory changed significantly. A 'sociological', 'social', 'realist', 'modern' or 'positivist' school of criminal theory emerged, which must be seen in the light of broader intellectual and scientific trends (the rise of positivism and new disciplines such as sociology and criminology), increased industrialisation, an emerging working-class movement, and the social and political attention devoted to 'the social question'.[82] In Germany, the so-called *Schulenstreit* between Karl Binding (1841–1920) and the 'classical school' on the one hand, and Franz von Liszt (1851-1919) and the 'modern school' on the other, was the focal point of the debates. The ideas from the 'social' school spread to Norway and influenced the reform of criminal law, which led to the Criminal Code of 1902 – the successor of the 1842 code.[83] The two main actors within the criminal law discourse were the drafter Bernhard Getz (1850–1901) and the law professor and politician Francis Hagerup (1853–1921).

To what extent and how the criminal law reforms around 1900 were actually a departure from classical thinking à la Feuerbach, is certainly debatable.[84] If we start by looking at Getz – who was by the way not very theoretically oriented, and who left few writings touching upon fundamental principles – he criticised the 'formalism' of the current criminal legislation.[85] For Getz, formalism meant that the legislation was merely concerned with the *penal* aspects of combatting crimes. As the existing Criminal Code of 1842 had roots in Feuerbach's ideas, this was of course to some extent an indirect critique of his theories, or at least the paradigms from the first half of the 19th century (as far as we can see, Getz never directly addressed Feuerbach's works and viewpoints). However, Getz underlined that it was not really the *criminal code* ('*den egentlige Straffelov*') he was criticising, but the lack of legislative interest more generally in measures that would prevent crime. The 'penal' aspect had to be accompanied by legislative measures combatting the causes of crime, such as child neglect, vagrancy, vagabonding, and alcoholism. Worth mentioning in this regard is

82 For an overview, see Vormbaum (2014) § 4, especially section I. On the '*Schulenstreit*', see also p. 128–131.

83 For a thorough overview, see the contributions in Flaatten and Heivoll (eds) (2014).

84 See Jacobsen (2014).

85 Getz (1894) p. 5.

also that Getz was instrumental in having removed the distinction central to Feuerbach, between crimes and police offences, in Norwegian criminal law. Thereby Getz paved the way for a broad concept of punishment that would result in an extensive use of punishment as sanction for administrative offences of various kinds.[86]

For Hagerup, who was more theoretically inclined and engaged with the contemporary German criminal law science through numerous book reviews and more, the staging of a farewell to earlier criminal law thinking is more outspoken. Hagerup recognised the importance of Feuerbach, speaking of him as 'the founder of the newer criminal law science' and, in his obituary when Getz passed away already in 1901, as 'the most outstanding criminal law scholar of the period'.[87] However, like Getz, he claimed that the 'classical' school focused solely on the 'juridical' side of crimes, and he added that it was nourished by 'the prevailing speculative philosophy in the first half of the 19th century, which favoured the construction of abstract, a priori concepts'.[88] He did not refer explicitly to Feuerbach in this regard, but to Kant and Hegel.[89] He did, however, point to the connection between Feuerbach and the Criminal Code of 1842, which he described as having 'a highly doctrinal character with partly artificial and intricate concepts'.[90] Moreover, he described Feuerbach's theory about psychological coercion as one of the most influential relative theories of punishment, which had been followed by Ørsted and the drafters of the Criminal Code, before he criticised its flaws. The theory was, so Hagerup claimed, one-sided because it saw psychological coercion as 'the sole fundament of criminal law and leaves the execution of punishment completely out of the picture, whereby it becomes incomprehensible why punishment is inflicted when the threat has proved ineffective in the specific case'.[91] Given the fact that Feuerbach had stressed emphatically that only the *combination* of a threat and the execution of punishment could be the fundament of criminal law, it is unlikely that Hagerup had actually read his theoretical outline, and how well-informed he was through secondary

86 See Jacobsen (2017). Getz was not the only contributor in this regard, see Heivoll (2017), where the break with Feuerbach is explicitly noted, see p. 202.

87 See Hagerup (1911) p. 57 and Hagerup (1901a) p. 345.

88 Hagerup (1911) p. 58.

89 Hagerup (1901b) p. 206.

90 Hagerup (1911) p. 66. Hagerup was, however, a constructivist, but in this regard, it was Rudolf von Jhering (1818–1892) who was his primary reference. Cf. Hagerup (1888).

91 Hagerup (1911) p. 28.

literature is also questionable.[92] He also seemed unaware of the fact that both Ørsted and the Criminal Code had modified Feuerbach's theory by adding special prevention as a supplementary objective of punishment – which had been repeated over and over again in previous literature.[93]

On the other hand, there are obvious similarities between Hagerup's own theory and Feuerbach's views.[94] He claimed, for instance – with reference to Ørsted – that 'the sole, but also sufficient ethical justification of punishment lies in its necessity for a well-ordered society'.[95] While this was not far from viewpoints one can find in Liszt's works, Hagerup, who was a highly influential Conservative politician, displayed an unwillingness to embrace the more radical implications of for instance Liszt's positivism. Hagerup accused the 'social' school of criminal thought for certain exaggerations, and not the least for ignoring the importance of the 'threat of punishment' ('*Straffetruselen*'), whose function it was to 'generate motives to avoid crimes'.[96] Thus, one could, as already mentioned, question the *actual* rupture between earlier thinking and Hagerup. His writings display an initial enthusiasm towards the new wine of positivism, but then more and more reservations, moving him back towards the classical fold and thereby also Feuerbach. But in any case, it is of course interesting that this was the way he staged his own position. In Hagerup's writings, one senses, at least to some extent, a pattern that was widespread around 1900: that writing about the '19th century' was mostly about constructing a picture to which one's own thinking could serve as a contrast.[97]

7. Feuerbach in the Pragmatist Period 1945–2000

While the 1842 Code was in force, there was a direct ideological connection between the applicable law and Feuerbach. When the 1902 Code was enacted, which would serve as the legislative fundament of criminal law for the following century (until it was replaced by a new Code in 2005), a new paradigm was in place, the paradigm of Getz and Hagerup. With this legislative change, the position of Feuerbach would also be transformed.

92 He referred in a footnote to Feuerbach's *Revision* (1st volume) – but, quite tellingly, without any page reference.

93 As an aside: Hagerup underlined the importance of studying specific cases in order to understand the psychological dimensions of crimes, and in this regard, he made a reference to Feuerbach's above-mentioned *Aktenmäßige Darstellung merkwürdiger Verbrechen*.

94 Cf. also Jacobsen (2014) p. 66.

95 Hagerup (1911) p. 17.

96 Hagerup (1893) pp. 10–11. In his memorial speech for Bernhard Getz, Hagerup also praised him for having taken such considerations into regard in his reform of the criminal code of 1902. See Hagerup (1913) p. 12.

97 This is one of the main topics in Preuss (2024).

This change is visible in the next major contribution to the criminal law literature following Hagerup, a textbook published by the law professor Jon Skeie (1871–1951) in 1937. Skeie belonged to a new generation of legal scholars, whose need to distance themselves from the past was not as strong as for Getz and Hagerup. In Skeie's textbook, Feuerbach was historicised in a more neutral way, and in the extensive historical overview of various theories of punishment, he was awarded a separate sub-section between Kant and Hegel – as the main proponent of the idea of general deterrence. Skeie also pointed out the connection to the Criminal Code of 1842.[98] Moreover, it is interesting to note that Skeie had a section on constitutional limitations on criminal law, where he highlighted Feuerbach as a proponent of the principle of legality in criminal law.[99]

After the second world war, the leading figure in Norwegian criminal law was Johs. Andenæs (1912–2003). In his first major work, a treatise on punishable omissions from 1942, he pictured Feuerbach as the founder of a theoretical doctrine about omissions in criminal law.[100] The book shows that Andenæs had familiarised himself with Feuerbach's works. Primarily, Feuerbach is addressed in a thorough historical overview of foreign law on omissions, but also for instance in the analysis of 'principled viewpoints'.

A decade later, Andenæs published his *General Part of the Criminal Law* (*Alminnelig strafferett*, 1956), a central work that would be re-issued in several new editions.[101] Here, Feuerbach was treated as the most significant proponent of criminal law theories on general deterrence (and the main source of inspiration for the 1842 Code).[102] Feuerbach's emphasis on general deterrence was in accordance with Andenæs' general view of criminal law and criminal law scholarship, which was of a positivistic and pragmatic kind.[103] Discussions about the nature and meaning of punishment were limited to viewpoints of a utilitarian kind, emphasising, notably, general deterrence. Theoretical perspectives on criminal law were not an important part of Andenæs' intellectual profile – his own research interests turned instead towards empirical studies. Andenæs' works on general deterrence were primarily formed in regard to Anglo-American criminological discussions.[104]

98 Skeie (1939) pp. 33–34 and 187.

99 Skeie (1939) pp. 204.

100 Andenæs (1942) pp. 47–49.

101 The sixth edition was published in 2016, by Georg Fredrik Rieber-Mohn and Knut Erik Sæther.

102 Andenæs (1956) pp. 69–70.

103 See e.g. Jacobsen (2011).

104 See for instance Andenæs (1975).

Correspondingly, Andenæs did not probe much into the theoretical basis for Feuerbach's viewpoints. However, there are some remarks of interest. According to Andenæs, Feuerbach had developed and improved the theoretical tradition by shifting the focus from the execution of the punishment to the threat. But on the other hand, the tradition had developed further since Feuerbach's days and supplemented the idea about pure deterrence with the view that criminal law could also create moral restraints within the individual – it could be seen as 'moral propaganda' or even 'public education', and ideally, it would create a mere habitual obedience to the law.[105] Moreover, Andenæs questioned Feuerbach's presumption about a rational perpetrator who calculated benefits and losses, and pointed instead to the irrational motives for many crimes.[106] In one article, Andenæs mentions Feuerbach, together with Bentham, in terms of 'the extreme theories of general prevention', which were 'based on a shallow psychological model in which the actions of men were regarded as the outcome of a rational choice whereby gains and losses were weighed against each other'.[107] Still, there could be areas where such a rational calculation actually *was* the case, such as economic crimes, and in such instances, Andenæs considered Feuerbach's theory to be relevant.[108]

In the late 20th century, Feuerbach continued to be referred to in various works.[109] One work worth mentioning as part of the pragmatist period is 'Necessity in Criminal Law' (*Strafferettslig nødrett*) from 1999 by Kjell Andorsen (1953–2020), where the author discusses the historical development of the doctrine of a 'legal good' ('*Rechtsgut*') – a doctrine that was developed as a reaction to Feuerbach's theory on 'violations of rights' ('*Rechtsverletzungen*') as the only legitimate actions to punish.[110] Andorsen's interest in such notions points, as we will see, forward to the next period we will look into.

The most thorough treatment in the pragmatist period, however, was provided by Ragnar Hauge (1933–2021) in 'The Justifications of Punishment' (*Straffens begrunnelser*) from 1996. Hauge was a lawyer and a criminologist, and his book was an extensive overview (approximately 360 pages) of criminal law theories from the Middle Ages until the present. In Hauge's scheme, Feuerbach was portrayed as a representative of the 'rationalist neo-classicism' (together with Johann Gottlieb Fichte

105 On criminal law as 'public education', see e.g. Andenæs (1962) p. 113.

106 See Andenæs (1962) p. 113 and Andenæs (1974) p. 40.

107 Andenæs (1966) p. 955.

108 See Andenæs (1956) p. 74 and Andenæs (1962) p. 119.

109 See Bratholm (1980) p. 114 (*en passant*); Røstad (1993) pp. 70–71 (briefly about the principle of legality in criminal law); and Leer-Salvesen (1991) pp. 241 and 252 (briefly about Feuerbach and general deterrence).

110 Andorsen (1999) pp. 80 ff. Andorsen briefly referred to Feuerbach (indirectly, through Hagerup's writings) also in his study of mistake of law, see Andorsen (2005) p. 21.

(1762–1814)). This tradition differed from both the general 'classical school', which for Hauge was the criminal law thinking of the Enlightenment, and the 'dogmatic neo-classicism' of Kant and Hegel and later Karl Binding. Hauge wrote approximately seven pages about Feuerbach, where he gave a general overview and then presented Feuerbach's views of the relation between law and morals, his concept of punishment, his theory about psychological coercion, and the Bavarian Code.[111] Additionally, Hauge addressed the relation between Feuerbach, Ørsted and the 1842 Code. In total, Hauge devoted quite some space to Feuerbach's position, and his account is perhaps the most detailed account of Feuerbach given in Norwegian literature during the 20th century.

8. Feuerbach in the Return of Theory and Normativity in Norwegian Criminal Law Science

Towards the end of the 20th century, theoretical and normative perspectives regained relevance to the Norwegian criminal law doctrine. Among the works initiating this development, was the study of Erling Johannes Husabø on right to self-chosen end of life from 1994 (*Rett til sjølvvalt livsavslutning?*). Here, discussions of the principles of criminal law and its underlying values relating to, for instance, human dignity, are central. In that regard, Husabø, partly through Ørsted's writings, connects to viewpoints in Feuerbach's *Lehrbuch*, and describes him for instance as seeking to 'combine the natural law tradition with the new view of punishment', emphasising a difference between whether something is against reason and whether it should be subject to punishment.[112] Also, in his study of criminal attempts, Husabø connects in his historical outlook to Feuerbach.[113]

Some years later, Jørn Jacobsen discussed Feuerbach on two levels in his dissertation 'Fragments for an Understanding of the Rule of Law-Based Criminal Law' (*Fragment til forståing av den rettsstatlege strafferetten*). The first level concerned the relation between the theory of general deterrence and the principle of legality – a question where Feuerbach was a natural starting point, given his connection to both of the elements.[114] Secondly, Jacobsen discussed whether Kant and Feuerbach could serve as starting points for a reconstruction of the rule of law-based criminal law.[115] As for Feuerbach, Jacobsen argued that his theory had repressive elements, was built upon a problematic understanding of the free will of human beings, and was more generally too bound up with its own times to be applicable today. Still, Jacobsen saw Feuerbach's

111 Hauge (1996) pp. 127–134.

112 Husabø (1994) p. 92, see also pp. 163–164.

113 Husabø (1999) p. 275.

114 Jacobsen (2009) pp. 374 ff.

115 Jacobsen (2009) pp. 493 f.

theory as a liberal, rule of law-based project where *some* of the fundamental principles are still relevant for theoretical developments today. Moreover, in a different work, Jacobsen refers to Feuerbach in regard to his methodological viewpoints.[116] In a more recent book, Jacobsen has first and foremost highlighted Kant's relevance.[117]

In 2016, Husabø and Jacobsen, together with Linda Gröning, published a textbook on Norwegian criminal law (*Frihet, forbrytelse og straff*, 3rd edition from 2023). Here, the authors also refer to principles and doctrinal viewpoints by Feuerbach at various points in their analysis of the doctrine of criminal responsibility in Norwegian criminal law.[118]

9. Conclusion

What is the relevance of Feuerbach in Norway today, 250 years after his birth? To claim that he is an important figure in current criminal law would certainly be an exaggeration, but he is nevertheless part of the legal-cultural heritage.[119] As we have shown, every generation of criminal law scholars since Ørsted have occupied themselves with Feuerbach, although, of course, to a varied degree. Overall, one could say that the 1902 Code represented a turning point, as until then, there had been a direct connection between Feuerbach's theory and the applicable criminal law. In other words, after 1902, the reception and use of Feuerbach would necessarily have to serve a different function than during the 19th century. If we look at how the 20th and 21st century contributors to Norwegian criminal law science have referred to him and his works, we see that this depends on their own intellectual profile and viewpoints; for those in the pragmatist tradition, Feuerbach has been an important reference point due to his works on general deterrence, whereas for others, with more emphasis on theoretical and normative perspectives, other aspects of his works are taken into account.

However, as the analysis in this article also has shown, the references to Feuerbach are generally fairly superficial, and – after Ørsted, before the Norwegian criminal law science established itself as a discipline of its own – there seems to be no deeper engagement with Feuerbach's work. Especially the doctrinal and methodological aspects of his works seem understudied in Norwegian criminal law science. There

116 Jacobsen (2010) p. 16.

117 Jacobsen (2024). On Feuerbach, see in particular p. 181–182.

118 See Gröning, Husabø and Jacobsen (2023) e.g. pp. 35–36, 57, 131, 212, 288, and 359.

119 Outside the field of criminal law, which is the focus of this article, it is also worth mentioning that the legal historian Dag Michalsen has recently analysed Feuerbach's ideas about legal theory and legal science. See Michalsen (2008) pp. 163 f. and Michalsen (2026, forthcoming) section 3.4.

may be various reasons for this lack of thorough engagement with Feuerbach's works, including a longer period of disinterest in criminal law philosophy. This, but to some extent also the dual traits in Feuerbach's writings pointed to in section 2.2 above, has allowed Feuerbach to be a symbolic reference point for different scholarly projects.

If we look to Germany, the situation is quite another. In his seminal study from 2009, Luís Greco tried to sort out what is 'living' and what is 'dead' in Feuerbach's theory,[120] and at the bicentennial of the Bavarian Criminal Code some years later, a comprehensive study on Feuerbach and the code was published.[121] The two conferences in 2025 marking his 250th anniversary show that Feuerbach is definitely present in the current German criminal law discourse.

As this article has shown, Feuerbach has not been, however, a mere German affair in the past – and he should not be so, neither today nor in the future. One should be cautious to take the lack of thorough engagement with Feuerbach as evidence of him not being important for the understanding of contemporary Norwegian criminal law science. On the contrary, the success of Feuerbach's project and its lasting influence may very well be found in the way his works shaped Continental, Nordic and Norwegian criminal law science more broadly. It can at least be questioned if not Feuerbach is well alive also in Norwegian criminal law science, but then at a paradigmatic level of the discipline, in terms of a set of key criminal law ideas and notions, and some key methodological starting points, which precisely for that reason are not made subject to rehearsal repeatedly. One obvious example is the principle of *nulla poena sine lege*, which is today a cornerstone of the concept of rule of law. This principle, which has even extended to a more general basic principle that all state action must have a formal legal basis, has a many-faceted and complex history that goes way beyond Feuerbach, but his contribution has nevertheless been significant.[122]

The only way to find out more about Feuerbach's influence on Norwegian criminal law is through more theoretical and historical research. As we noted in the introduction to this article, recently, there has been an increase in interest in the history of criminal law in Norway. This corresponds with the return to more theoretical and normative perspectives within the criminal law discipline since the 1990's. This article has attempted to fuse these two lines of development, and hopefully, we can see more cooperation between historical and theoretical perspectives in the coming years that will provide important perspectives on the history of Norwegian criminal law science and its current development.

120 Greco (2009).

121 Koch *et al.* (eds.) (2014).

122 In a Norwegian context, it is worth pointing out the adoption of the principle in Article 96 of the 1814 Constitution. Feuerbach was obviously part of the landscape that shaped the minds of the Founding Fathers in 1814, see Jacobsen (2021) section 2.3 and Michalsen (2008) section 5 and pp. 180–181.

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