

# A Summary of Ferri's Social Defense Theory from the Perspective of Positivism Philosophy

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**Abstract**—With the further deepening of natural science research, human genetics and biology have developed rapidly. The Italian school of criminals, represented by C. Lombroso, developed rapidly in the 1970s. It believed that crime is an inevitable phenomenon of nature. It put forward the theory of "born criminals" and opened up a precedent for positivism. His disciple, Enrico Ferri, developed the theory of C. Lombroso and belonged to the criminal sociology school. He believed that the reason of crime is not completely determined by the individual's biological genes, but the result of the combination of physiological genes, natural conditions and social environment. From the perspective of positivism philosophy, this paper studies the social defense theory of Ferri, a representative of the criminal society school, in order to better serve the development of punishment and promote the further deepening of the study of penalty theory.

**Keywords**—positivism; social defense theory; social responsibility theory; Ferri

## I. INTRODUCTION

The positivism philosophy originated in England and France in the 1830s and 1840s. The representative figure of positivism philosophy is a French philosopher, A. Comte, the ancestor of sociology, and it is mainly represented by the British J.S. Mill and H. Spencer. Positivism philosophy denies that material is grasped rationally, and it believes that phenomenon research is the foundation of positivism philosophy, emphasizing that knowledge comes from experience. The core of positivism philosophy is the positivism principle, and scientific knowledge is essentially positive knowledge. Comte pointed out that there are still some laws between empirical phenomena, and science is to find them correctly. He also creatively proposes three stages of human intellectual development, namely theology-metaphysics-positivism. The first stage of human intellectual development is the theological stage. At this stage, people can only use their imagination to explain the various phenomena in the world. Religious theology is the product of this stage. But theological explanations are always limited. It is difficult for theology to give a definitive answer to the current state of social life. With the advancement of science and the accumulation of knowledge, human intellect has gradually entered the metaphysical stage. Its essence is still the theological stage of the reinvention. At this stage, people's intellect is still pursuing the essence and reason

behind the primitives and phenomena, and pursuing absolute knowledge; but people replace the supernatural gods with super-experienced abstract concepts (entities), using abstract logical reasoning and the empty speculation to replace the imagination. At this stage, some dogmatism of philosophical systems and theories has been formed, which have destroyed people's firm belief in theology. Through the anatomy of criminals, Lombroso is convinced of the decisive significance of genes for crime. And his theory of natural criminals is essentially metaphysical. This phase was quickly replaced by the empirical phase. In the third stage of positivism philosophy, people take scientific research as their basic feature, respect empirical facts, rely on the power of observation and rationality to illustrate, explain phenomena and discover laws. All knowledge is regarded as the knowledge about the phenomenon of experience, and is confirmed reliably by experience. People also realize that knowledge is closely related to the physical structure and condition of human beings, and thus is relative. In the guidance and influence of empirical philosophy, positivist school emerged. The classical school that favors rationalism is gradually marginalized and helpless in the face of the high crime rate and the endless crime types in the society. The rulers no longer believe in the theory of the classical school, and the positivist school has gradually gained attention and become the best choice for the rulers to solve social problems. In the context of the school confrontation and the prosperity of philosophical thoughts in the latter half of the 19th century, the positivist school continued to develop in the critical debate with the classical school.

## II. THE ORIGIN AND EVOLUTION OF THE CRIMINAL MODERN SCHOOL

The modern school was deeply influenced by the positivist philosophy, and a large number of outstanding criminologists emerged. Lombroso pioneered the study of criminal law with the guidance of positivism with the theory of natural criminals. He was guided by biomedicine and borrowed clinical means. He carried on the anatomy research to the criminal and summarized the commonalities as the main basis for the crime. For the first time, the natural sciences were introduced into the theory of criminology, enriching and developing the research methods and research methods of criminology, so that the boundaries between natural science and social sciences in the field of

criminology are no longer distinct. With the support of a new research perspective, the philosophical revolution in the field of criminology was initiated. However, the theory of Lombroso mechanically attributed the reasons of crime to physiological causes, and it is obviously unscientific to study the common causes of local people to cover the criminal causes of all criminals. The monism of the crimes proposed by him was quickly replaced by the pluralism of criminal reasons proposed by his disciple Ferri.

On the basis of his teacher Lombroso's theory of born criminals, Ferri enriched and developed the monism of physiological reasons through empirical research methods based on observation and experience. For the cause of crime, he introduced external social factors and considered that the cause of crime is a product of a combination of genetic, physiological factors and social factors. Ferri pointed out that "No matter what kind of crime, from mild to cruel, it is no more than the result of the interaction of three factors: the physical state of the criminal, his natural condition, and the social environment in which he was born, living or working." Ferri's claim explains the criminal reason of the criminal more scientifically. Focusing on the causes of human crimes, he conducted more evaluations from external social factors and advocated empirical and natural scientific research on crime countermeasures. He developed Lombroso's criminal physiology monism to the pluralism of criminal reasons.

Raffaele Garofalo is also a representative of the criminal positivist school. Unlike Ferri, he developed the theory of the natural criminals of Lombroso. Starting from the social psychological factors of crime, he established the cause theory of crime with the theory of natural crime as the core. He believes that crime is not a violation of individual rights, but a personal emotional violation. For personal feelings, he believes that it includes crimes that hurt people's lives, body and other feelings of mercy, as well as crimes that hurt people's property rights and other legitimate feelings. Garofalo's point of view does not divide the crime from the nature of the infringed rights, but distinguishes the type of crime from the emotions hurt by the crime. It is more advanced than the classical school, but still has great defects.

The German criminal jurist Liszt integrates many disciplines of criminology, penology, and criminal execution, and puts forward the concept of total criminal law, which greatly broadens the research boundary of criminal law. More importantly, the empirical man advocated by Liszt replaced the rational man of the classical school. He believes that individuals whose experience is constrained by various social experiences and social policies must follow social experience and no longer have full freedom of will. On this basis, his research on criminal policy is also further deepened, advocating the use of research methods and from a scientific perspective, to establish a real sense the science of criminal policy. It has a very significant impact on criminal legislation.

### III. THE BASIC POSITION OF FERRI'S CRIMINAL SCIENCE: SOCIAL DEFENSE THEORY

For the criminal responsibility of the doer, Ferri has creatively proposed the theory of social defense. The basis of

social defense theory is the personal danger of the individual. Different from the moral responsibility theory emphasized by the classical school, the moral responsibility theory mainly emphasizes the free will. It is believed that individuals who have reached a certain age of criminal responsibility have the power and ability to make their own decisions and are responsible for their actions. The violation of social order based on their free will must be blamed and condemned by the law. Lombroso's theory of born criminals provides the basis for the establishment of moral responsibility theory. It believes that criminals are a very special group, and their physiological structure and body shape are the inevitable factors determining their crimes. Although Ferri does not recognize that physiological factors are the root cause of crimes, he also advocates that crime is an inevitable social phenomenon that formed under the combined effects of certain social factors, natural factors and anthropological factors. On this basis, he also puts forward the crime saturation theory, pointing out that the number of crimes and the type of crime are relatively stable under certain development conditions. However, the theory of criminal saturation is still discussed under the premise of a criminal determinism, and it is still a variant of determined criminal. Ferri's point of view sees the social reasons of the criminal, and it is because of the great importance attached to social causes that Ferri is also known as the representative of the criminal sociology school.

The negation of the theory of criminal inevitability of libertarianism makes social responsibility theory a concept corresponding to moral responsibility theory and legal responsibility theory, because libertarianism is the fundamental basis of moral responsibility theory and legal responsibility theory. Ferri and others attacked libertarianism with the aim of destroying the moral responsibility theory based on libertarian theory and creating conditions for the theory of social responsibility theory. Ferri believes that an individual is naturally a part of society with no obligation to endanger society and should be responsible for his own actions that endanger society. The imputation should be based on the criminal's objective behavior regardless of the subjective mental factors of the criminal, and he also believed that the psychopath should also bear the criminal responsibility. Ferri declared: "The achievements of scientific truth will turn criminal justice into a natural function to protect society from the disease of crime." He regarded social defense as the starting point of criminal justice activities and believes that it is the emergence and existence of crimes and criminals that prompts the society to constantly produce a variety of self-defense methods, and the self-defense methods are also consistent with the development of crime. On this basis, Ferri proposed a double preventive measure: "One is to improve the social environment so that the crime does not have the social conditions for it to occur, and the second is to eliminate the criminals permanently or temporarily." It roughly illustrates the two characteristics of social defense theory, suppressing crime and correcting criminals. It is worthy of recognition that Ferri has demonstrated the legitimacy of punishment based on the needs of social defense theory. The crime prevention thought contained in it is also very useful for

reference today. From the perspective of positivist philosophy, Philippe systematically constructs a systematic structure of crime prevention from social, natural and personal reasons. Pragmatism runs through his penalty system, and the proposed criminal countermeasure theory is also enduring.

#### IV. THE PENALTY REFERENCE OF SOCIAL DEFENSE THEORY

##### A. *The Return of Perpetrator-centered Penalty Principle*

The perpetrator-centered penalty principle refers to the full consideration of the personal risk factors of the perpetrator in the process of imposing penalties on the perpetrator. The criminal sociology view holds that there is a contradiction between sentencing criminals and reforming criminals to prevent their recidivism. If the personal danger of the criminal has not been eliminated after the expiration of the sentence, the purpose of the penalty has not been reached, and the criminal still has personal danger. The idea of indeterminate sentence proposed by Garofalo was unanimously supported by Ferri and Liszt. From the philosophical perspective of positivism, the positivist criminologists propose that the prisoners who commit serious crimes should be separated from each other at irregular intervals until their physical danger is eliminated and they can be safely and peacefully integrated into social life. Judges are required to regularly assess prisoners' personal risk during their sentence. Ferri believed: "For genetic or congenital criminals, or major crimes committed by people who are prone to crimes due to habit or mental illness, positivist criminology advocates irregular segregation for in the case of the dangerous degenerated who have committed major crimes, it is not reasonable to set a time limit in advance." Ferri also pointed out that the object of using irregularity should be the dangerous degenerated who committed a major crime. From the reality of criminal justice, minor criminal cases were excluded, which was operational at the time. Ferri also proposed a reduction control for personal harm, and the means of punishment should be constantly adjusted. When those who are punished have the possibility of correction, it is necessary to guide them to goodness through reforms such as education, punishment, and psychological counseling. When those who are punished do not have the possibility of correction, it is necessary to extend the penalty period in time within the statutory time limit of the free penalty. When the personal risk is weakened, the time limit for the penalty should be properly adjusted. As a sub condition, the probation system does not impose a statutory sentence on criminals who do not possess personal dangers in the execution of criminal acts, and avoids unnecessary penalties for criminals who are not personally dangerous. The conditional early release of criminals in parole system can effectively avoid the unnecessary punishment after the danger of criminals themselves is eliminated. On the other hand, it is also an effective means to reasonably evaluate whether the danger of criminals themselves is eliminated or not.

The types of criminal crimes are endless, and the consequences of crime are extremely harmful. When imposing penalties on criminals, it is necessary to fully consider the personal danger of the criminal and use it as a fundamental evaluation criterion for the recidivism of the perpetrator and no longer regard the execution of the penalty as the sole evaluation criterion. The premise is to explore the establishment of a statutory free punishment test system, and to set a minimum penalty standard and a maximum penalty standard for serious criminal offenders with greater personal risk. And it is necessary to set a test period for a certain period of time on this standard. When the criminal reaches the minimum penalty standard, the personal risk can be comprehensively considered in combination with the subjective and objective conditions, such as the rehabilitation situation, the type of crime, and whether the criminal has criminal record before. If the personal danger has not been eliminated, the penalty should be extended to the maximum penalty. In order to meet the requirement that the crime and the punishment should be matched, when the criminal has completed the highest penalty, even if his personal danger has not yet reached the standard of adapting to normal society, he must be released according to law. For example, Z was sentenced to 10 years for rape, and the judge set the free trial period to 2 years when he was sentenced. In the 8th year of his sentence (if there is no commutation), he can be conducted repeatedly with a personal risk assessment with a certain period of time. If he does not meet the criteria of adapting to normal society, he must also be released until the tenth year of his sentence.

##### B. *The Reference and Development of Security Disposition Theory*

The security disposition theory is a compulsory punishment to make up the penalty advocated by the school of modern criminal science. Its essence is a method of crime prevention. The unified theory of security measures and penalties proposed by Ferri in his later years has far-reaching implications. From the perspective of social defense, Ferri believes that whether it is punishment or security measures, its purpose is to prevent criminals from committing crimes again and to protect society from crimes. Its purpose and effectiveness are the embodiment of social defense measures. Ferri advocates the concept of risk and sanctions to replace liability and punishment, and advocates the monism of punishment and security measures. Today, when the requirements for comprehensive management of social security are constantly improving, enough attention should be paid to the value of the security disposition theory. For those who are physically or medically dangerous, it is necessary to formulate preventive measures for compulsory medical treatment or segregation of medical care. For minors with personal dangers, it should be handled through preventive measures such as juvenile education schools and regular psychological counseling. It is also necessary to organically integrate with judicial activities, which can not only reflect humanitarian humanistic care, but also effectively prevent crime and maintain social stability.

### C. *Establishing a Joint Prevention Mechanism Combining General Prevention with Special Prevention*

The security disposition theory of the modern criminal school is to supplement and improve the penalty from the perspective of social defense. The individual prevention theory advocated by it is that it is advisable to see the particularity of individual crimes for crime prevention of specific groups. However, it is difficult to achieve the effect of overall prevention. It is necessary to actively promote general prevention on the basis of Ferri's trialistic theory of the causes of crime. Special precautions should be also given to criminals or potential criminals with greater risk. It is necessary to take general prevention as the main principle, special prevention as the auxiliary principle, combined with the trialistic theory of Ferri's crime cause for comprehensive consideration.

First, from the perspective of physiological genes, for those who are incapable of mental illness or those responsible for some behavioral abilities, special prevention should be mainly adopted, supplemented by general prevention. It is needed to joint community, hospitals, schools, police stations and other parties to build a comprehensive three-dimensional prevention and control system. It is also needed to actively introduce modern technology such as GPS positioning system, 110 alarm systems, etc. to maintain social peace and stability as much as possible while actively transforming potential criminals. In addition to the above-mentioned people with high natural social risks, it is also necessary to actively prevent the emergence of people who are likely to have potential risks of crimes. The first category is orphans, who lack warmth from their families and are easily influenced by criminals. The government must actively purchase public services and assume corresponding social responsibilities to ensure that young children can be raised, educated, and taught. The second category is the so-called "factual orphans", that is, parents are unwilling to support or unable to support their children for various reasons, for example, parents are serving prison sentences, working outside for a long time, and not willing to support abandoned children. In addition to the necessary living security, the government should also pay attention to their mental health and ensure their healthy and happy growth through various forms of psychological activities. The government should minimize or even eliminate the possibility of crimes, especially for the children of prisoners, the government needs to actively carry out humanistic care, which not only helps the prisoners to serve prison terms with peace of mind, but also helps to cut off the intergenerational transmission of the factual orphan crime. The third category is the social paranoid personality, antisocial personality, abnormal personality and other potentially dangerous people formed by various factors after they were born. The government should adopt the means of joint social organization proposal intervention, close control, and influential education to guarantee social stability subjectively and objectively. In particular, the public security organs should set up documents and issue cards for key groups and key targets to maintain stability.

The second is to start from the natural conditions and achieve targeted prevention work for different regions and different types of crime. It is recommended to furthest change and even to destroy the natural conditions in which crime occurs, just as Ferri said: "The way to build a railway can destroy the criminal behavior of the bandits in the original forest". For rural areas where theft and other security cases are frequent, it is necessary to establish an all-round monitoring and defense system to ensure that there is no dead space for monitoring and to ensure the safety of the people's property; for remote areas with inconvenient transportation, it is necessary to actively channel the road to furthest ensure that the police force can arrive at the crime scene and reduce crimes; in the dark areas where robberies are frequent, the street lights should be installed and the number of patrols should be increased to reduce the natural causes of crime. It is necessary to adjust measures to local conditions, combine with local actual conditions, rationally design the natural environment that breeds crimes within the scope of manpower, focus on the perspective of solving practical problems, and integrate the aspects worthy of reference from the pragmatic philosophy throughout the work.

Thirdly, starting from the social environment, it is necessary to actively resolve conflicts from the perspective of effectively fighting crimes and maximize social well-being in a fair and just manner. The people's public security should implement the theory of crime prevention into the daily work practice, actively carry out legal popularization and public opinion surveys, and focus on the key populations with high social harmful factors in their respective jurisdictions. For the problem of high crime rate of certain types, it is necessary to actively find out the social causes of crime risks and hidden crimes, avoid the rise of crime rates caused by social environmental factors, fully improve existing security measures, and minimize the social dangers of criminal behaviors and achieve the shift from a major attack to a scientific penalty concept based on prevention.

## V. CONCLUSION

Ferri's view of social defense has made important contributions in the field of crime prevention. His ideas about crimes, crime prevention, and security sanctions still have strong vitality. It is necessary to dialectically view the opinions of the modern school of the form, draw on the useful viewpoints, and inject new vitality into the concept of punishment in China.

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