Chapter Three
Criticism to the Opposite Theory-Social Defense Theory

Chapters One and Two have been published in the previous editions.

Section One The Principles and Methods of Criticism

There are many branches with different opinions and grounds of argument within the Opposite Theory. These ideas not only run counter to the retribution penalty theory, but also are filled with internal contradictions. There are such example as the contradiction between the general prevention and special prevention. Owing to the fact that it requires many pages to criticize them respectively, we just make an overall criticism on the most important points shared by all of them.

What is the most important point of Opposite Theory? Of course, the social defense theory. L. A. Harte pointed out: for more than a century, the writers of criminal law in Britain and America were applying, examining and in certain situations extending the criminal conceptions of Bentham. It was regarded as a positive and proactive analytical instrument which aimed to protect the society rather than a negative theory which ensured the punishment that criminals deserved.
Almost all relative theories, including prevention penalty theory, intent penalty theory, protective penalty theory, social defense theory and theory of criminal punishment as a means of education, consider the purpose of punishment is to defense and protect the society, which is their common basic idea and fundamental position. Therefore, we call them “Social Defense Theory”.

While, the only exception is Feuerbach. He pointed up: “the specific purpose of criminal law is to preserve right. It is the object of protective menace of criminal law no matter the right belongs to citizens or the nation (the honorary human).” Therefore, “the violation of freedom which guaranteed by social contract and criminal law is considered as a crime (Verbrechen).” Thus “the highest principles of criminal law are as follows: punishments of every law are composed to maintain the external right; to bring the legal consequence of sensual (internal) evil to criminals.” These famous lines come from Feuerbach 200 years ago, when he still in his twenties. He indeed is worthy of the greatest, epoch-making scholar of criminal law.

Many famous scholars of Opposite Theory have expressed in different ways and vocabularies the fundamental goal of criminal punishment is to defend the society or social defense. While what is “social defense”? The so-called “defense” means protect in Chinese. The “social defense” is equal to “prevent crimes, defend the society”. Ancel said: “the verbal meaning of “social defense” is to protect the society against infringements.”

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1 Social defense theory- a unique branch in Opposite Theory, is supported by numerous famous scholars in criminology and criminal jurisprudence, and many new but contradictory opinions and theories have been set up. Marke Ansaier considered the generation of the positive school as the beginning of the science of criminal policy of the social defense theory (théorie de la defense sociale). He said: we can say that social defense movement has gone through three stages or three connected periods of transition. The first stage was the formative period of the social defense movement during the last 25 years of the 10th century. Social defense movement attempted to get rid of the traditional system of punishment which was always punishing. It chose different ways to fight against different criminals according to their personalities. Thus, a movement of theory system and legislation was formed throughout the very late 19th and early 20th century until the appearance of Belgium social defense law in 1930 and the Switzerland criminal law in 1937. The theories of all scholars which promoted and participated in this movement are generally called social defense theory. Marc Ancel. Social Defense Thought (Chinese version). Hong Kong Cosmos Books Ltd.1990. This work, written by Ancel himself, is called new social defense theory.


The so-called fundamental goal refers to the ultimate goal, which is different from the direct goal. There are several representative theories.

(1) Cesare Beccaria (1738~1794)
Beccaria insisted on the theory of prevention (General prevention/ Theorie der General pr vention and Special prevention/ Theorie der Spezial pr vention). He held: the intent of punishment is not to torment a sensible being, nor to undo a crime already committed. The end of punishment, therefore, is no other, to stop a criminal from infringing on public interests again, than to prevent others from committing the alike offence. 

Although Beccaria was discussing about “to stop a criminal from infringing on public interests again”, he believed: “any crime is an encroachment on society, including the crime infringes upon the rights of individuals”, he advocated: “the harm to society produced by crimes, is the real criterion of crimes.”

Professor Claus Roxin indicated: in the age of Enlightenment, the criminal punish ability was limited in the extent of “social harmfulness” by criminal law. The conception of “social harmfulness” has a great impact on the development of the theory of punishment, and lead to controversies among different points of views. The point of the criterion of Beccaria is that the ultimate purpose of the prevention of crime is to defend society because he insisted that personal safety and liberty, after all, were guaranteed by the safety of the whole society established in accordance with the social contract, and that is represented by the sovereign.

(2) Cesare Lombroso (1835~1909)
The theory of punishment of Lombroso starts from such a fundamental point. He said: “generally speaking, a crime is a natural phenomenon from the angle of statistics and anthropology; as the words of some philosophers, a crime is an inevitable phenomenon just like birth, death and gravidity.

He opposes retributive punishment and any retributive punishment theory (die Vergeltungs-theorie). He criticized the theory of menace severely. Social defense theory is the only theory he supported. He said: “some Italian scholars considered punishments as the legitimate wielding of social rights. Based on these rights, people put certain limitations on freedom according to the need of the reconstruction of legal order. As for these theories,...If it is really just like the interpretation of Mitter-
mayer and Lucas that this definition let people regard punishments as the legal
consequence of the defense of the “order and safety”, in that case ,I am in entire
agreement with it. This probably can be called the defense theory." He made it
clear: “the power of punishment should base on natural necessity and right of self-
defense, without which I do not believe that any theory on the power of punishment
can stand steadily.”

(3) Baron Raffaele Garofalo (1852～1934)

Is it to protect criminals from the trespass of society or to protect society from the
trespass of criminals? The whole punishment theory of Garofalo is based on the
answer to this question. He said: in most people’s point of views, substantive law,
procedural law and judicial power always get together to protect criminals from the
trespass of society, instead of protecting the whole society from the trespass of
criminals. To change this view and prove the legitimate responsibility to fight for
crimes with huge costs are bound to these people who determine the national de-
tiny. He pointed out: “the mission of the 20th century is to eradicate what we called
the primitive savage phenomena of crimes.”

Garofalo emphasized: if the only purpose of criminal penalty is to eradicate the en-
emy of society, if criminal penalty is a direct and special prevention means and if
criminal penalty be seem to the personality of criminals, then criminal penalty is
justice.

(4) Enrico Ferri (1856～1929)

Ferri’s criminology theory determined his basic attitude towards punishment. He
said: punishment is not a panacea for crimes. Punishment is just a secondary
means for the self-defense of society. He firmly criticized the illusion of the classical
school of criminology that punishment is a real panacea for crimes. He opposed to
the traditional prejudice that punishment is the best and most effective means of
the prevention of crimes. He proposed to seek other means of social defense
through the practical researches of crimes and its natural causes. By means of indi-
rect and more effective force we can prevent or diminish this kind of behavior. He
considered these methods of indirect defense as penal substitutes.

Ferri proposed: “as we considered it is necessary in the interests of social self-defense, in the case of criminal law, to combat the individualist excesses of the classical school.”

Ferri asserted: “criminal science only acknowledges two terminologies: crime and punishment. But criminal sociology acknowledges three: crime, criminal and the most suitable social self-defense means.”

Ferri stated: it is necessary to reform the criminal punishment system. Ferri believes, “however, that it is necessary, before laying down practical and detailed schemes, more or less complete, to establish certain general criteria, based upon the anthropological, physical, and social data of crime, thus may lead up to a positive system of social defense.”

Ferri’s theory of punishment was embedded in the general rules of the draft of Italy penal code and its relative reports led by him in 1921. He proposed two outlines as revised principles of criminal law in the edict of criminal laws amended committee lead by him. One is social defense (difesa), the other is the evil nature of offenders (pericolosita del delinquente). Ferri said: “social defense as national affair is a practical one. The state (civitas) defends citizens life against the trespass from crimes. This is the first principle.” “The criminal law formulated by the committee should base on social defense and evil nature of offenders.”

(5) Nikolai Tagantsev(1843~1923)

Tagantsev’s theory of punishment started with the researching of the power of punishment. He said: in all civilized countries, “the social power of punishment is carried by the highest organ of state (civitas) power, or rather the head of the organ which represents the state (civitas).” The highest organ of state (civitas) power

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17 On 9th December, 1919, Ferri delivers a speech for the opening of the university at La scuola positiva (quoted in professor Makino Eiichi’s scheme of amending the positivism of criminal law—penal laws amendment committee).
18 Nikolai Tagantsev—He is a Russian jurist and specialist in criminology, the law professor of royal college and University of St Petersburg and a senator of the Senates criminal appellate department. On 2nd December, 1917, he was elected as an honor member of Russian Academy of Sciences.
exercises its power of punishment through special organs. Then he points out sharply: “[Is this power a right? What is this right in accordance with? In other words, does the state (civitas) have the right to punish criminals?”

Tagantsev said: “In my opinion, it is more correct to prove the state power of punishment on the mission and purpose of social life of legal organisms which form the state.” Any organized society, from its most primitive form to the modern state, would create a social life style to protect the material and spiritual benefits of the society and its members, and adjust the interrelationship of society members in the aspect of these benefits with laws and regulations. Moreover, it employs measures depending on itself to guarantee that all individuals are subject to these regulations and any violation of regulations is not permitted. The society regards certain kind of these trespasses as particularly serious ones and threatens the offenders of these trespasses with punishment.”

“Punishment activity is the method of protecting legal order which constitutes the necessary conditions for the existence and development of the state social life. The question of its basis is just like this.”

Tagantsev said: “After ascertaining the basis of power of punishment, we come to the next question inevitably: why does the state punish?”

Tagantsev said: “I think the content above enables us to believe that the state, in achieving the protection of its legal benefits and applying punishment—one method of protection, not only can but also shall follow a clear and beneficial principle of purpose.” “The state has the right to punish any violations of laws and regulations, because in any violations there are criminal elements inside, as I have briefly discussed earlier that not every criminal behavior is actually punishable. On the contrary, in order to adapt to the requirement of different social interests, the state not only can but also shall conduct criminal law protection in rare individual cases.”

Applying punishment for criminal behavior is the state power which can only be applied to maintain legal order necessarily and appropriately. And we shall always remember all imperfections of the criminal justice and pains which are not

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only pressured under melancholy wheels of Fremoits chariot, but also burden on his families and all the people."25

This is Tagantsev's intent penalty theory: to protect society and maintain legal order.

(6) Keiler Schule26

Keiler Schule criminal law asserted: the formulation of criminal law is for preventing government from personal segmentation, instead of protecting individual rights from governmental violation. Henkel emphasized: “the order of criminal law turns to be....the great charter for the interests of the people and state.”27

Dahm and SchaffStein, representatives of criminal law theory said: the most fundamental and significant value of criminal law is to preserve and defend the state power. Thus for some crimes especially for punishment of serious crimes, there is no need to take into consideration the actors capacity to reform themselves. With a view to the national interests and higher dignity, it is reasonable to abandon those who can still reform themselves, as it is not the national responsibility to redeem every soul.”28

(7) Filippo Gramatica (1901-1979) 29

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26 The so called Kieler Schule (1932-1945) is the product of Nazi regime which politicizes and Nazifies the academic view of Kiel University, so it is merely a tool of fascist dictatorship. Nazi theoretical system of the criminal law first developed at the Law School of Kiel University. The reign of Nazi theoretical system of the criminal law is not limited to the Kiel University. Professor Xu Naiman said:“After Nazi gained the political power, this movement almost completely conquered the stage of legal principle of criminal law.”Written by Xu naiman, Xu yuxiu translated"Introduction to the criminal system",(Taiwan)"Legal Communication"Section 1574.


28 Liberales order autoritares Strafrecht,1933,S 40~44 Liberal or Autocratic Criminal Law.1933.pp.40-44.

29 Filippo Gramatica was a renowned Italian criminal jurist as well as the representative of radical social defense theory. In 1949,he advocated and set up International Society for Social Defense and had been the president for 18 years. His works are Subjective Criminal Law Principle (1933) and Social Defense Theory, which are also available in German, French, Spanish, English, Japanese etc.. In 1935, Gramatica enacted a new draft amendment to Criminal Law for The Republic of San Marino, and he provided suggestions for the amendment to Social Defense Law enacted by Cuba. In 1945, he set up Social Defense Institute in Genoa University, and then in 1949, he advocated and set up International Society for Social Defense, and he assumed the presidency. In 1967 he was named Honorary President.
Gramatica comprehensively discussed his theory of social defense in his works *Subjectivist Criminal Law Principles* (1933) and *Principles of Social Defense* (1961).

Gramatica believed: the issue of social defense is in essence concerning the relations between individuals and the nation, which is not so much an issue of law as the issue related to politics.

“Social defense is the defense of society, aiming at the improvement of more benign, more reasonable subjects, especially preventing the cause leading to individual antisocial nature.” Gramatica criticized the unthoroughness of Positivism. He pointed out: “As the leader of International Criminology Society association, Liszt required a reform on criminal law in the name of social defense doctrine, but he failed to follow Filippo Gramatica and advocate social defense doctrine adequately.” He emphasized: “The term “social defense” can also be called “the law against antisocial nature”.”

(8) Marc Ancel (1902~1990)  
Marc Ancel is the main representative of social defense theory as well as the key leader of social defense movement. In 1954, Ancel published a book entitled *New Social Defense Theory*. He explicitly points out: his concept is different from Prince’s social defense theory in the late 19th century, and also dissimilar to social defense system proposed by Gramatica, so it is called new social defense theory.

New social defense theory is not only concerned with the protection of society, but also advocates adopting various measures to make sure that the targeted people get the uncontroversial interests and people can best adapt to the environment they live; Thus they can get rid of danger of crime and re-crime. The most effective, humanitarian and the best social defense is to safeguard the re-adaptation of society in the way most suitable for persons involved. Ancel pointed out: in terms of the original meaning of social defense, it means protection of society from crimes. In a long period, this kind of social defense is based on the criminal law system which severely fights crimes. Modern social defense movement arose from the humanitarian renaissance in 1945. In the aspect of guidelines; it is influenced by the great liberal thought of French human right declaration in 1788 as well as the traditional Christian charity. It coordinates and combines the two thoughts. Social defense

31 Marc Ancel is the major representative of new social defence theory and the academician of the Institute of France (1970). He had been a professor in the faculty of law of the University of Paris since 1986, and the judge and president of one of the chambers of the Court of Appeals of France. He had also been vice president and president of International Criminal Law Institute as well as president of the International Association of Juridical Sciences (1965-1968). His representative works is New Social defence theory: the movement of humanitarian (1954)
movement attempts to achieve its goal by joint efforts of social harmony and social progress and the function of criminal policy spirit.

In fact, new social defense theory includes maintenance of the traditional statute of criminology, or put it more precisely, maintenance of lowest judicial standards that may resist arbitrary social judicial behavior: define the crime before indictment, prohibit indictment before illegal behavior and refuse unlimited judgment. New social defense theory attempts to abandon classical legal provision such as hypothesis, speculation, negation of research on individual motive, the use of abstract concept of criminal psychology, etc. But new social defense theory does not intend to further eliminate the concept of moral responsibility or liability of fault. It firmly excludes positivist determinism and attempts to rebuild the concept of free will. But here, the concept of moral responsibility neither constitute axioms of criminology nor is its starting point, which is considered the destination and ultimate goal of social anti crime behavior.

Ancel summed up the ideas of social defense movement in the following three points: (1) first, social defense theory carries out a critical study on the existing systems against crimes, and even queries the systems. From the perspective of historical development, social defense theory emerges in such circumstances. Social defense theory is educed directly from the rise of positivist in the late 19th century, and relentless criticism of the existing system is one of the solid content of social defense theory.(2)Social defense theory has always been advocating multi-disciplinary study on criminal phenomenon with all humanities, opposing the traditional concept which emphasizes the study of criminal law and jurists on criminal phenomenon as well as the exclusive right that can solve problem. Social defense theory makes use of its scientific criticism of existing systems and cooperation with humanities, and it also complies with the following two complementary guiding theories, and then a new criminal policy theory is established: on the one hand, it firmly opposes the traditional system of retaliatory punishment, so from the beginning, social defense movement is a movement against criminal law or at least advocating noncriminal law (beyond the criminal law); on the other hand, it resolutely protects rights, human beings and enhances human value, which is the humanism of social defense movement.

Ancel’s great contribution is that he integrated humanitarianism with social defense theory and social defense movement. But he did not yet change the nature of defending the society: to protect the society from the harm of crimes.”

It should be strongly pointed out that, apart from relative theory, the so-called integrated theory, as the compromise between the absolute theory and relative theory, also supports social defense. For instance, Liszt clearly pointed out: penal policy requires social defense. Hart called his Compromised Doctrine as “a middle course stepped out between the theory of pure social defense plans and that of deemed
When criticizing the “correction theory” of Hall and Gluck, Hart said: the primary task of criminal law was “Protecting the community from the evil which is contained in illegal behaviors.” The so-called “the primary task of criminal law” is essentially the primary task of power of punishment, and also the ultimate purpose of punishment. Herein, we criticized the social defense thoughts hold by integrated theory.

Above we listed the basic concepts of nine scholars of relative theory and two scholars of integrated theory, and pointed out their shared opinion: the ultimate purpose of criminal punishment is social defense, in another word, to protect the society. This is their core thought and theoretical basis. Our general criticism towards them is to criticize social defense theory. Once the basis is defied, their all theories shall collapse. The scattered fragments, for sure, if valuable, should be retained as precious theoretical opinions to inherit and absorb. This is our general criticism principle.

The methodology of criticism: the combination of general criticism and penetrating theoretical analysis; the integration between theories and facts; the combination between obvious conclusions and sufficient illustration. Following is our analysis against the social defense theory through its purpose, approaches, and actual harms.

**Section Two The Teleology Fault of Social Defense Theory**

1. **What is Society?**

Social defense theory declares that the purpose of punishment is to protect the society. Thus, we need to clarify what a society is in the first place.

This issue is complicated and of great significance, which relates to our understanding of freedom, democracy and human rights etc. So, illustration is needed.

Academia, in the western world since the 20th century, especially since the end of the second war, has begun to systematically reflect on the traditional civil society theory. Lots of theoretic achievements have been applied to the analysis of the realistic situation, creating the so called “renaissance of the civil society theory”. With regard to what is society, several different views have been put forward as follows:(1) the view embraced by Locke that society is prior to the state and the state is subject to society.(2)the view embraced by Montesquieu that the state and society are separated from each other and enjoy their own autonomy and check, balance each other.(3)the view embraced by Hegel that society is logically prior to the state, but it must develop into a state on behalf of the general interest. (4)the view, contrary to Hegel’s, embraced by Marx that society as the economic foundation determines the state as the superstructure (5)the revised view of the “society-

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state” framework of Hegel and Marxs that the opposites between the civil society and the state within the superstructure is defined outside the basic “economic foundation—the state” framework (6) the new Marxist view embraced by Habermas that draws upon non-Marxism ideological resources, but presents a democratic interpretation of the civil society.  

This article adopts the view of the orthodox Marxism for according to my years’ study, I think that the historical materialism of Marxism is the most scientific social development view. Its rigorous argumentation and scientific analysis of society has been testified by the thousands of years’ historical experience of the development of human society, which cannot be matched by other theories about society.

Society is a general term. It takes various kinds of different social patterns.

The so called society is defined as an interconnected community of human life on the basis of certain material production activities. Marx said that “Society is the unity of single individuals”. “Is the sum of these individuals’ contacts and relationships between each other”. “In a word, the social relations individuals depend on production, namely social relations of production, and vary with the change and development of the material means of production. The sum total of the relations of production makes up the so called social relations, and the so called society which is of unique characteristics at a particular historical period. It is also true of the ancient society, feudalistic society and the capitalist society. Each sum total of the relations of production, in the meantime, is a signal of a special stage in the history of human development.34

Activities in material production are the foundation of human society. Engels says that the essential difference between human society and animal society lies in that animal can at most collect while humans can engage in production. The only yet basic difference alone cannot directly apply the rules in the animal society to the human society.35 Societies vary with the development of the material means of production and the productive forces. Different means of production and productive forces lead to different social patterns.

However, the concept “social pattern” when adopted by the Marxism refers to the sum total of the relations of production at a specific historic period, and also refers

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34 Marxism:wage labor and capital, volume 6, p.487.

35 Engels to Pilate, Pull Just Rove(11th Nov-17th), Karl Marx and Frederick Engels, volume 34, p.163.
to the unification of the economic foundation and the corresponding superstructure. (Our theme report uses the former concept) Economy is the foundation, from which the superstructure of the politics and ideologies all developed and by which they must be explained.

In history, society has different social patterns, which are classified into primitive society, slave society, feudal society and capitalist society by Karl Marx. All these society patterns except primitive society are layered, and each society has its specific classes and strata. There are slave owners, nobles, knights, civilians, and slaves in a slave society, and feudal lord, vassal, the guild master, workers, and serfs in a feudal society. In a capitalist society, there are bourgeoisie and proletariat. It is unequal between these different classes, and there are oppression and exploitation between them.

But this kind of inequality is different in different social forms. In slave society, the slave owners take possession of all the means of production and the slaves; slaves are the items possessed by the slave owners, and they engage in labor and give their fruits of labor to others; there is also petty private owner, or the ordinary civilians. In the feudalist society, the feudal lord is in possession of all the means of production and was in incomplete possession of labors—the serf; the serfs had their own economy and stood dependant on the feudal lords handing in part of their income. In the meantime, there is also individual ownership basing farmers and handicraftsman on their own labor. In the capitalist society, the capitalist class is in possession of the main means of production, but not in possession of production workers. Workers are not in possession of means of production, making a living by selling their labor. That is why they are called wage earners. In the capitalist society, generally speaking, the capitalists are in possession of the main means of production, but not in possession of production workers—workers. Workers possess no means of production, living on selling their labor force. That’s why they are called hired laborers.

In the socialist society, transmitting from capitalism to communism is possessed of all the features characteristics of “transitional”. Thus, in terms of the possession of the means of production, two systems of ownership—public ownership and private ownership coexists, which is complex and is subject to constant changes controlled by the state on behalf of society. It is a severe test for the Chinese communist party’s ability in how to carry out the reform, how to govern the state to control the relationship between public ownership and private ownership and the development,

36 Marx to Ann KeFu (28th Dec., 1846), Karl Marx and Frederick Engels,, volume 27, p. 477.
37 Lenin said: “then what is the meaning of “transition”? Economically, does it mean that within the system there are elements of both capitalism and socialism? Any one will recognize as such.” Lenin, Polnoe sobranie sochinenii (PSS), volume 27, p. 310.
changes so as to propel Chinese society advance along the socialist road with Chinese characteristics continuously and steadily.

Thus it can be shown that different social patterns, with essential differences in between, cannot be mentioned in the same breath. Generally speaking, the successive changes of the five social patterns (the primitive society, the slavery society, the feudalistic society, the capitalist society and the communist society) are a reflection of the development process of human society. Each change is the great progress of society. Therefore, we must perform a deep analysis about the specific structures of the society with different social patterns.

2. Analysis of the slavery society

The slavery society is the product of the development of the productive force of the primitive society. The development of production led to the appearance of the private property and that war slaves was not killed but kept as slaves. Yet such kind of productive force was very low, resulting in a great division of social labor and society divided into the slave class and the slave-owner class. The oldest slavery state occurred in Soumer in the south of Mesopotamia (Tigris & Euphrates). Almost all the slavery states were at the very beginning city-states and later developed into large kingdoms or empires. City-states occurred when city-states were connected with each other around a center. The regime power of the city-state was not only to suppress slaves but also to oppress and exploit the freemen of the lower class. Only some portion of citizens in the city was entitled to civil rights; others are those without civil rights or slaves. For example, before the outbreak of the Peloponnesian War, Athens had a population of 315,000 people, of which 172,000 were those with civil rights, 28,000 without civil rights and 115,000 slaves. The ending result of the long-time war and annexation among civil-states was the expansion of the slavery state land and that large masses of prisoners of war were reduced to slaves and that civil-states developed into kingdoms or empires. Wars, especially wars of aggression between slavery states were exceedingly cruel, cities razed to the ground, most citizens massacred. Slaves not only came from prisoners of war but also from the polarization of wealth among the freemen. Some portions of them are reduced to slaves due to the exploitation and plunder of the slave-owners.

In the prime of the slavery system, the whole world was under the rule of the slavery states- the unabashed rule of violence. The masses of slaves suffer the cruel suppression, oppression and exploitation of the tiny minority of slave-owners. Slaves are not treated as humans, but private property of slave-owners. They have

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38 Some scholars do not acknowledge the law of social development, and that the change in the 5 social forms is human society' progressing course from junior to senior. But it is not only historical fact, but also scientifically proven right by the historical materialism.

no human dignity and even their life is not guaranteed. Slave-owners can sell and massacre them as livestock. The slaves lived a subhuman life of misery.

The slavery society is an unjust society.

3. Analysis of the feudal system in the Middle Ages.

In the 1st century AD, the revolution of the slaves and the colonuses combined with the subjugation of the barbarians, which not only overthrew the Western Roman Empire, but only built a series of barbarian states on its ruins. After Germanic people’s subjugation of the various parts of Roma, the military aristocracy and close soldier was allocated an entire country estate along with slaves and the colonuses, becoming the big landlords. Slaves got lotments from their new employers, paying taxes to their masters and did forced labor, becoming serfs. From then on, Roman slavery came to an end and it was replaced by the feudalist system.

Under the feudalistic system, the foundation of the relations of production is feudal lords ‘possession of means of production and the incomplete possession of production laborers. In the meantime, there was also individual ownership basing farmers and craftsmen on their own labor. Farmers’ personal bondage to landlords is the requirement of the feudalistic system. They are bonded to the land and have to pay tribute to the landlords in the form of labor or production. In cities, what fits with the feudalistic land-possession structure is the Guild ownership, or the feudal organization of the handcraft industry.

Ever since the beginning of the 8th century, the feudal system that prevailed in the Europe is a political system of Power overlap and authority dispersion. Political power was generally kept by individuals. Except the kings, dukes or earls of different power were scattered in various areas. They were in possession of more power and authority than the minor lords and knights. The king or higher-ranking lords enfeoffs to low-ranking lords feifdom (manors), namely the right of governance of different land. Low-ranking lords can enfeoff to lords of lower-rank other parts of fiefdom, which can go on like this endlessly until up to the knights of the lowest level. The increase in the land concentration and the number of farmers bonded to land enables highlords to get hold of more and more power. Feudal lords exercise the power in the administration, judicature finance and the like so as to upheld the independency of the central authority. Up Until the 10th century, feudalistic warlordism in the Western Europe came into being generally, Feudal Monarchy being quite weak. At that time, in addition to the king’s secular rule, there was also the papal rule. The pope established centralized church government and challenged the

40 In the 7th century AD, on the site of the former Roman empire, three kinds of civilization of distinctive characteristics -- Byzantium, Islam and the western Christianity came into being. Here we take the European countries as examples and temporarily Islam civilization and East Asian Civilization are not involved.
king’s dominant position. In the years between 1095 and 1228, they successively launched the crusade six times. The crusades massacred the Jews at home and massacred Muslims abroad, leaving inerasable crimes. The dual rule of God power and imperial power in the Europe not only intensified the complexity of the national sovereignty, but also meant the exploitation and oppression of the dual to the ruled.

After the 14th century, the development of European politics and economy required a powerful centralized government to bring an end to the shocking events and disorder in the cruel age. The kingship which has been ever for some time weakened successively established the state system of despotism (monarch dictatorship) firstly in France, then in Britain and Prussia, etc. in the latter half of the 17th century, feudalism autarchy system reached its peak of development. In 1661, the French king Louis xiv was enthroned, strictly practicing centralism and strengthening state apparatus. He concentrated all the power of finance, justice, police, administration and military in the hands of the state and openly announced that rex et regnum. Bodin’s theory of national sovereignty suited the requirement objectively.

These monarchs, grasping at authority by themselves, ruthlessly suppressed people’s uprising and the aristocratic rebellion at home; wage wars to for expansion abroad. At this time, city industry and commerce began to develop and Seeds of capitalism emerged. Capitalistic relations of production gradually grew up on the basis of the productivity growth of the feudal system. Inside agriculture and industry, capitalist relations of production came into being. Capitalists and hire workers making their appearance. The rise of the capitalism led to Western Europe’s exploration of the new oversee route. In the latter half of the 14th century, Portuguese built two colonies in the Atlantic Ocean, kicking off Europe’s subjugation, plundering and enslavement of the Asia, Africa and America. Colonial people’s society and culture suffered destruction, millions of people massacred.

Foreign wars and the subjugation of the colonies intensified the connection, contradiction and conflicts among different states. “Up to the late 17th century, Europe is no longer a simple joining together of several states. Each state announced the

41 The years between 1050 -1300 were termed as “age of belief”, Christianity became a kind of motivating force.
42 The War of Religion in France, Thirty Years’ War in Germany and the Civil War in Britain all combined to cause great disorder and misery.
43 David Held pointed out that despotism signals the appearance of a kind of state form. It exercises powerful and strong power on the unified territory; implements vigorous system of law and order; relies on the only head of the state to govern the state. The despot is in the peak of the new ruling system, under which the power gradually becomes sovereignty which is inalienable and indissoluble. David Held: democracy and the global order, sovereignty Shanghai People’s Publishing House, 1st edition, 2003, p.37.
inviolability of its own sovereignty, and in the meantime admitted that other states possessed its national ownership and the equal right to gain respect. The development of national sovereignty is part of the process of countries recognizing one another. Each country recognizes the jurisdiction covers all of its territory and society".45

Compared to the slavery society, the feudal society is unquestionably a significant historic progress. Serfs are no longer private property, but human beings, and afterwards turning into a farmer of villain age or farmers. They enjoyed more liberty and rights, their life greatly improved. In spite of those mentioned, they, however, still were subject to cruel suppression, exploitation and plunder. their safety of life and wealth was not guaranteed .their life was still marked by utter misery.46

The feudal society is also an unjust society.

Some of Chinese scholars hold that slavery and feudalism accords with justice. Their reasons are that in terms of theoretical logic, rights and obligation are the reflection of justice in social relations. The view of rights and obligation is based on the view of justice. The relationship between rights and obligations, even regarded as the stark-naked exploitation and oppression by the contemporary people, is also the reflection of the view of justice In those days. Thus, we are expected to have a historical perspective to look at problems; e.g. compared with the act of killing of all the prisoners of war, the slavery indeed accords with justice.; compared with treating slaves as talking livestock, feudalism accords with justice; compared with the autocratic political system and economic system which suppresses personal liberty and fair competition, capitalism accords with justice.47

These viewpoints are open to discussion.


46 In the late 15th century in Germany, masses of farmers, accounting for 80% the total population, was placed at the bottom end of the social ladder. Feudal lords constantly increased land rents, taxes and various kinds of forced labor, randomly Infringing on farmers’ land right of inheritance or shortened the term of land use . they wantonly Occupied subsidiary land of the village, depriving farmers of rights of land-use, forest-use and water-use. Farmers also suffered physical enslavement by the feudal lords. They treated farmers with utter cruelty, unlawfully using various kinds of torture, such as cutting off ears and noses, gouging out eyes, cutting off fingers, breaking off hands and even killing. Farmers also paid tithes to the church. In the trade of farm products or hand-made goods, farmers suffered the intermediate exploitation of the city businessmen.

Rights and obligation are determined by the then mode of production, rather than
the reflection of justice in the social relations since justice and injustice is the moral
evaluation of the good and evil of “rights and responsibility”.

As for the “purely stark-naked relationship of exploitation and oppression between
rights and obligation” is not “the reflection of the view of justice at that time”, either. On
the contrary, we are expected to present a moral evaluation on it based on the
view of justice. Even if we “adopt a historical perspective to look at problems”, we
should not evaluate the slavery, feudal system which abuses human rights and is
dehumanizing as “accords with justice” unless being in the shoes the slave owners
and the feudal lords.(in different class societies, different classes have different
views of justice) sure enough, the masses of slaves and serfs at that time would
not agree with this kind of evaluation. Otherwise, they would not have risen up, not
to mention the uprisings of slaves and serfs.

Theoretic error of this view lies in that it confuses reasonability with justice. Hegel
said that everything realistic is reasonable; everything reasonable is realistic.” The
so called “reasonability” means going along with the rule and the inevitability under
specific historical condition. Engels points out that. In the eyes of Hegel, it is far
from being right that everything that exists is unconditionally realistic. To his mind,
the nature of reality only belongs to something inevitable ;" reality in its unfolding
process proves to be inevitability”; so he does not think that each of government’s
measures has been unconditionally realistic. Yet everything inevitable will in the
final analysis proves to be rational.\textsuperscript{48} whether it is just a kind of moral evaluation on
society. The slave society, the feudal society and the capitalist society are three
phases the development human society must go through. “With a historical per-
spектив to look at problems”, their appearance is inevitable, rational, but far from
being just.

\textbf{4. Analysis of the modern society}

The modern society includes two different types of social patterns: the capitalist
society and the socialist society. The former can be further divided into developed
capitalist society and non-developed capitalist society.

The capitalist society is the inevitable result of the decisive victory won by the in-
dustrial revolution and the capitalist mode of production. It leads to the overthrow of
the feudal countries and the rise of the capitalist countries. Its direct source is the
two successive great revolutionary struggles. the first is the great Enlightenment
Movement and the Bourgeois Revolution in the 17\textsuperscript{th} and 18\textsuperscript{th} century, whose prod-

\textsuperscript{48} Engels: Ludwig. Ludwig Feuerbach and the End of Classical German Philosophy, selected from
Karl Marx and Frederick Engels, volume 21, p.301-352. Marx and Engels: Selected Works,
p.215-216.
uct is Modern developed capitalist countries and the capitalist society. The second is the anti-feudalism to anti-imperialism war in the 19th and 120th century, or the great nationalist movement, which leads to the rise of the non-developed capitalist countries and the capitalist society. The third is the great proletarian revolution, whose product is the socialist society and the socialist countries.

(1) Developed Western Capitalist Society

The Bourgeois Revolution in the 17th and 18th century overthrew the countries of feudalistic autocracy, abolishing the feudalist land system and established the bourgeois republic the ruling power (national sovereignty) Fell into the hands of the capitalists and the New Aristocracy. (Thebourgeoisified aristocracy. The years between 1850 and 1870 are when the Europe established the modern nation-state. After the repeated fights between restoration and anti-restoration, a group of capitalist countries, such as Britain, France, Germany and the like were established. Here what should be pointed out is the Specificity of America, Japan and Russia in the Bourgeois Revolution.

North America has long been the colony of various European nations. The moment the colonists arrived in America, they begun to slaughter the local Indians, taking their land by force and practiced the Savage slavery. Except for a tiny portion of white “contract slaves”, the overwhelming majority were the black slaves transported from Africa. Up to the year of 1773, Britain had occupied 13 colonies along the Atlantic coast of America. Britain’s brutal suppression and exploitation consequently led to the outbreak of American Revolution led by Washington as commander in chief. This war is both fight for national independence and bourgeois revolution. However, the republic build upon the victory of the war is a regime under the joint dictatorship of the big bourgeoisie and the slaves. The Profound contradiction and conflict between the capitalist system and the slavery ultimately incurred American civil war from 1861 until 1865, which was the second bourgeois revolution in America. Slavery as a social system has been destroyed. America became a bourgeois republic in the real sense.

At the beginning of the 19th century, capitalist states of Europe and America began to invade Japan which was almost reduced to a colony. The Meiji restoration movement in 1868 was signaled by the overthrow of Tokugawa Shogunate. It was an incomplete bourgeois revolution. The character of the regime after The Meiji restoration movement was a coalition of the land lords and the capitalist. Yet it ac-

49 In order to collect money, Many poor immigrants sold themselves into slavery, becoming Voluntary contract slaves, or for the reason of debts or being sentenced to servitude, ended up being Forced contract slaves.

50 In the year of 1775 the number reached 550,000, accounting for 50% of the total population.
tively implemented the policy of sweeping off the obstacles of feudal system and
developing the capitalist system, contributing to the development of the capitalist
mode of production and freeing Japan of the danger of being reduced to a colony.

Russian serfdom is not abolished through the bourgeois revolution but through the
decree issued by Czar Alexander II in 1861. It served as a turning point in Russia’s
transition from the feudal mode of production to the capitalist mode of production,
marking the change of Russia from the feudal society to the capitalist society. Since
the reform of Russian bourgeoisie was implemented by the serf owners, Russia
after it lots of remnants of feudalism still remained in Russia.

All the capitalist countries and society that grew from feudal autocracy at the very
beginning, all belong to the modern mode of production combing the most advanced
productive force and relations of production in terms of social-economic
structures though they differ from each other in the times, the pace and the specific
course of their development As far as the political system is concerned, they are
all bourgeois democratic Republic established holding high the banner of liberty,
equality, fraternity The biggest difference between the republics and the Autocratic
countries is the democratic system.

Up till today, democracy has developed into a universally acknowledged Legal form
of government. Undermining democratic regime will be subject to condemnation
and repulsion. in a democratic system, people enjoy more rights and liberty, live a
life far better than ever before. However, these bourgeois democratic Republics
were in essence capitalist states which maintained the capitalism and resorted to
oppression and exploitation of the working class and the people. And they success-
ively developed into imperialistic countries which invaded, oppressed, exploited
and plundered the colonial and semi-colonial countries in Asia, Africa and Latin. To
redivide up the colonies, sphere of influence and Contest for world hegemony, they
launched two world wars, bringing human beings Huge disaster and pain.

Then let’s dissect two sparrows: the social structures of America and Britain

Based on Karl Marx’s analysis, Max Weber (1864-1920) supplemented and im-
proved Marx’s theory. In Weber’s view, social stratification was not only relative to
classes, but also relative to status and political parties. He identified three key
dimensions of social stratification, which are usually expressed by Weber terms
after amendments. Theses dimensions are wealth and income economic sta-

51 Max Weber French Auguste Comte (1798-1857) who created the term “sociological”, French
Emile Durkheim (1858-1917) and German Karl Marx (1818-1883), are called the founders of socio-
cology by western scholars.

52 Weber pointed out that political parties formation was an important aspect of power, and it was
independent of impacts that classes and statuses might bring to social stratification, and political
parties might destroy class boundaries. For example, political parties might be created on basis
of religious sects or ethnic ideals.
Subsequent sociologists\textsuperscript{53} inherited, enriched and developed Karl Marx and Max Weber's social stratification theories, with which they analyzed contemporary society. Social stratification means inequality (the famous contemporary British sociologist Anthony Giddens said that structural inequalities between people was the simplest definition to stratification). The outstanding American contemporary sociologist David Popenoe pointed out that “people born to face inequality in all societies, that is, it lacks equal access to get goods to meet desires provided by society”\textsuperscript{54}

In modern society, the most common hierarchical system is the class system, which is a relatively open stratification system on the basis of economic status. Class system is characterized by the less strict boundaries between slavery, caste system and hierarchy. Popenoe also pointed out that hierarchical system changes as history and economic structure develop. The most important stratification categories are slavery, caste system, hierarchy and class system. Slavery is an extreme unequal hierarchical system, in which some social groups have no freedom and some can possess others who are not treated as human beings. Slavery is the most prominent layering character during the first 200 years of American history. Caste system requires numerous repressive social control organs. Slavery was abolished 125 years ago, but its influence still exists in the form of racism and discrimination to Aframerican in America.\textsuperscript{55}

The cast system is the most common type of stratification, which in the main takes the economy as the basis.\textsuperscript{56}

David Popenoe also devoted to an analysis of American class system. He said that “social scientists generally believed that there are five main classes in America as follows: lower class, working class, lower middle class, upper middle class and up-

\textsuperscript{53} During 20\textsuperscript{th} century, numerous sociologists emerged all around the world, especially in America, where sociology was most developed. And in America, the most famous sociology school is the University of Chicago’s “Chicago School”, whose leader is Robert Parker (1864-1944). Additionally, there are also Talcott Parsons (1902-1979) who is one of founders of Harvard sociology, Robert K.Merton (1910-), C. Wright Mills (1916-1962) and so on. Sociology also developed largely in British, France, China and other Western countries, such as the British Anthony Giddens.

\textsuperscript{54} David Popenoe: Sociology (10th edition). Renmin University of China Press, August 1999, 1\textsuperscript{st} Edition, p.239.


per class, whose members have huge differences in wealth, power and prestige."  
For details see attached table (Table 6-1, differences of American five classes in wealth, prestige, power and other aspects).

58 David Popenoe: Sociology (10th edition). Renmin University of China Press, August, p.267,
<table>
<thead>
<tr>
<th>Class (and proportion of total population)</th>
<th>General</th>
<th>Income</th>
<th>Property</th>
<th>Occupation</th>
<th>Education</th>
<th>Individual and family life</th>
<th>Offspring’s education</th>
</tr>
</thead>
<tbody>
<tr>
<td>Top class (1%—3%)</td>
<td></td>
<td>Top incomes, mainly from assets</td>
<td>Immense amount of treasure, original richer, control investors</td>
<td>Managers, professional technical staff</td>
<td>Freelance artist</td>
<td>Stable family life</td>
<td>Sons and daughters all owning University education</td>
</tr>
<tr>
<td>Upper and middle class (10%—15%)</td>
<td></td>
<td>High incomes</td>
<td>Accumulating property by saving</td>
<td>High-level citizen, military officers, lowest unemployment rate</td>
<td>With excellent education background, specialized training</td>
<td>Physically and mentally healthy</td>
<td>Choosing the education system they are interested in</td>
</tr>
<tr>
<td>Lower and middle class (30%—35%)</td>
<td></td>
<td>Middle-level income</td>
<td>Few fixed assets, some savings</td>
<td>Small enterprise’ owner, farmer, low-level specialized staff and employees</td>
<td>Some have university or senior high school education background</td>
<td>A long life expectancy</td>
<td>Labor and worker class, own high opportunities to enter university</td>
</tr>
<tr>
<td>Worker class (40%—45%)</td>
<td></td>
<td>Low income</td>
<td>No fixed assets</td>
<td>Skilled worker, crude labor, high unemployment rate</td>
<td>Education backgrounds of senior high school, junior high school, elementary school, illiteracy</td>
<td>Unstable family life, single parent family</td>
<td>Tend to accept occupation training plans</td>
</tr>
<tr>
<td>Low class (20%—25%)</td>
<td></td>
<td>Poverty</td>
<td>No savings</td>
<td>The highest unemployment rate, surplus labor force</td>
<td>Illiteracy in function</td>
<td>Submissive personality, bad health of body and mind, short life expectancy</td>
<td>No interests in education, high dropout rate</td>
</tr>
<tr>
<td>Class (and proportion of total population)</td>
<td>Prestige</td>
<td>Power</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>------------------------------------------</td>
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</tr>
<tr>
<td></td>
<td>Occupation Prestige</td>
<td>Subjective development</td>
<td>Consumption</td>
<td>Group activities</td>
<td>Political participation</td>
<td>Political attitude</td>
<td></td>
</tr>
<tr>
<td>Top class (1%—3%)</td>
<td>High occupation prestige</td>
<td>Consistent attitude</td>
<td>A good taste of consumption</td>
<td></td>
<td></td>
<td>Believing in utilities of political activities</td>
<td></td>
</tr>
<tr>
<td>Upper and middle class (10%—15%)</td>
<td>Integrative self perception</td>
<td>Wealthy and comfortable</td>
<td>High participation in family, religion, race and utility groups’ activities</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lower and middle class (30%—35%)</td>
<td>Middle life level, enjoy materials and own mental faith</td>
<td></td>
<td></td>
<td></td>
<td>Opposing governmental economic intervention, opposing benefits program</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Worker class (40%—45%)</td>
<td>Low occupation prestige</td>
<td>Inconsistent attitude, unpractical self perception</td>
<td>Low level consumption</td>
<td>Few participation in group activities</td>
<td></td>
<td>Bargaining in political activities, majority(except minorities) opposing civil rights</td>
<td></td>
</tr>
<tr>
<td>Low class (20%—25%)</td>
<td>No value in labor force market</td>
<td>Easy to get mental disease</td>
<td>Material poverty, severe economic worries</td>
<td>Social isolator</td>
<td>Tend to no participation in voting and other political activities</td>
<td>Holding more nationalism foreign policy, governmental economic aid plan and security plan</td>
<td></td>
</tr>
</tbody>
</table>
After analyzing the social class difference of present western society, Anthony Giddens said definitely that wealth had been concentrated in minor people’s hands. For example, in UK, the top 1% people own 17% personal wealth (owned by individuals rather than by organizations) of all. The richest 10% people occupy half of the total wealth, while the poorest 50% people only have 8% of the total wealth. For details see attached table (Table 6-2 “wealth distribution in UK”).

The distribution of wealth in Britain

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1% the richest</td>
<td>21</td>
<td>19</td>
<td>18</td>
<td>17</td>
<td>19</td>
<td>19</td>
</tr>
<tr>
<td>5% the richest</td>
<td>38</td>
<td>36</td>
<td>36</td>
<td>35</td>
<td>39</td>
<td>38</td>
</tr>
<tr>
<td>10% the richest</td>
<td>50</td>
<td>50</td>
<td>50</td>
<td>47</td>
<td>52</td>
<td>50</td>
</tr>
<tr>
<td>25% the richest</td>
<td>71</td>
<td>73</td>
<td>73</td>
<td>71</td>
<td>74</td>
<td>73</td>
</tr>
<tr>
<td>50% the richest</td>
<td>92</td>
<td>92</td>
<td>90</td>
<td>92</td>
<td>93</td>
<td>92</td>
</tr>
</tbody>
</table>

Proportion of exchangeable wealth minus housing values

| 1% the richest                   | 29   | 26   | 25   | 29   | 29   | 27   |
| 5% the richest                   | 47   | 45   | 46   | 51   | 53   | 51   |
| 10% the richest                  | 57   | 56   | 58   | 64   | 66   | 64   |
| 25% the richest                  | 73   | 74   | 75   | 80   | 83   | 81   |
| 50% the richest                  | 88   | 87   | 89   | 93   | 94   | 93   |


Herein, I want to say that the introduction of Anthony Giddens analysis should be meaningful for us because of its representativeness; we can see a similar situation in other countries, including China.

For its representation, we can see a similar situation in other countries, including China in Anthony Giddens’s analysis For details see attached table (Table 6-1, differences of American five classes in wealth, prestige, power and other aspects).

In Giddens’ view, ”rich man” was not a homogeneous group and did not constitute a static category. Individuals gain or lose wealth through different ways. Some rich men were born

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rich for their rich family, while other rich men accumulated wealth successfully from a humble beginning by “self-struggle”. Next to the aristocratic family, the second richest group is the upstarts, whose representatives are music and movie stars, athletes and others arising with the emergency and development of computer, telecommunication and internet. “Self-reliance millionaire” seems to possess a high proportion in the richest individuals. In 2000, over 70% of the 1000 top rich British men created the wealth by self-reliance rather than inheritance. Some self-reliance millionaires earned money in the “new economy” of software, media, internet, and telecommunication and so on. Many of the richest men are as young as twenty to thirty years old. In 2000, there were 17 richest Britain who were under the age of 30, who owned over 30 million fortunes. With the policy to encourage entrepreneurs in 1980s and the emergence of information technology in the 1990s, the men who gained fortune by business and technological advance gradually became the upper class, which had become a new wave at that time. For details see attached table (Table 6-3, “Ten Top Rich Men in Britain”\textsuperscript{60}).

**Table 6-3 Ten Top Richest Men in Britain**

<table>
<thead>
<tr>
<th>Ranking</th>
<th>Name</th>
<th>Assessed net assets (trillion pound)</th>
<th>Source of wealth</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Hans Rausing</td>
<td>4.0</td>
<td>Food packaging</td>
</tr>
<tr>
<td>2</td>
<td>Duke of Westminster</td>
<td>3.75</td>
<td>Real estate</td>
</tr>
<tr>
<td>3</td>
<td>Sir Richard Branson</td>
<td>2.4</td>
<td>Tourism, retail, mobile phone</td>
</tr>
<tr>
<td>4</td>
<td>Lord Sainsbury and Family</td>
<td>2.2</td>
<td>Foodstuff</td>
</tr>
<tr>
<td>4</td>
<td>LaKSHMI Mittal</td>
<td>2.2</td>
<td>Steel</td>
</tr>
<tr>
<td>6</td>
<td>Joseph Lewis</td>
<td>2.0</td>
<td>Finance and internet</td>
</tr>
<tr>
<td>6</td>
<td>Bernie and Slavica Eccleston</td>
<td>2.0</td>
<td>Automobile racing</td>
</tr>
<tr>
<td>8</td>
<td>Sri and Gopi Hinduja</td>
<td>1.95</td>
<td>Trade and manufacture</td>
</tr>
<tr>
<td>9</td>
<td>Bruno Schroder and Family</td>
<td>1.5</td>
<td>Bank</td>
</tr>
<tr>
<td>9</td>
<td>Philippe Foriel-Destezet</td>
<td>1.5</td>
<td>Recruitment service</td>
</tr>
</tbody>
</table>


Anthony Giddens also analyzed the lower class. He pointed out that the term “the lower class” was used to describe the people who were in the lowest position of the class structure. The lower class is a marginalized group in the society, who live in severe adverse conditions. The living standard of the lower class is significantly lower than that of the majorities. With multiple disadvantages, many people in this class are unemployed for a long term, or do not have stable jobs. Sometimes they have job, and sometimes they don’t.

Some are homeless or have no permanent residence. The lower class is usually described as the “marginalized group” or the “out group” who lack of the lifestyles of most people.\textsuperscript{61} They live in poverty. But, what is poverty? How shall we define it?

Anthony Giddens also pointed out that there are two different categories of poverty, the absolute poverty and the relative poverty. Based on subsistence concept, absolute poverty refers to the basic conditions that must be met for the physical health. It is in the absolute poverty when the people lack basic living necessities of human existence, for example, lacking adequate food, housing and clothes. Herein, poverty concept is universally applicable. However, relative poverty concept seems more complex. The main point is that the understanding to relative poverty should change with the development of the society. The more affluent the society becomes the higher standard the relative poverty should be. It is true that the families with the lowest income can enjoy more goods and services than what they could 20 years ago. However, it is wrong to assume that poverty does not exist any longer. When the whole British society becomes much richer, the difference between the richest and the poorest also becomes increasingly evident.\textsuperscript{62}

Anthony Giddens said that there is an official “poverty line” in the America and many other countries, while there is not an official definition about poverty in British. Therefore, when measuring poverty level, the criterions we usually use are below the average (middle) income, equal to the average (middle) income, and less than half of the average income. According to this definition, the population who lived in poverty or poverty boundary increased dramatically in 1980s, and more and more children were involved. In 1979, 10% children lived in families which were below 50% of the national average level. By 1991, this proportion rose to 31%. Poverty increased dramatically throughout the whole 1980s. Data of the late 1990s indicate that nearly 10.7 million British people lived by less than half of the average income. Taking housing costs into account, this figure rose to 14 million.\textsuperscript{63}

(2). Socialist Society

The first socialist society was the result of the Russian October Revolution. Without precedent, socialist society was a new thing. What is socialist society? Studies of such questions were continuously carried on. Therefore, we can see that the structure of the socialist society is significantly different in various socialist countries during different history periods.

The first emerging socialist country was that of the Soviet model, which once gained huge success and attracted over 15 countries to use its model in the world. However, for the fatal flaws in its internal structure, the Soviet Union was disintegrated and the socialist system collapsed in the late 1980s and the early 1990s. And only 5 of the original 15 socialist countries survived. These disappeared socialist countries proved Hegel’s famous remark “all reality is reasonable” from the opposite aspect. The changing from “real” to “unreal”

proved the irrationality of the Soviet model in the socialist country. Among the existing 5 socialist countries: China, Korea, Vietnam, Laos and Cuba, and the internal structures of these countries are different. It is unnecessary and impossible to analyze them one by one, and the best method is to analyze China representatively.

The disintegration of the Soviet Union caused cheers in the Western world. Represented by Fukuyama\textsuperscript{64}, a group of short-sighted western scholars claimed socialist society’s “end in history” and the complete victory of capitalism in haste. However, the rapid rise of China and America’s simultaneous decline gave them a heavy blow, which strongly proved the advantages and the persistence of the socialist system.

China started to rise from the December of 1978, when the CPC held the Third Plenary Session of the Eleventh Central Committee. This committee ended the Soviet model which had tortured Chinese society for over 20 years. Four years later, the 12th CPC National Congress clearly stated the grand objective of “building a socialism country with Chinese characteristics”, but it did not give a stated model. The world giant, Deng Xiaoping’s famous saying “groping the way across the river” became the basic method to achieve this goal. This saying’s basic meaning is to explore and innovate new ways continuously according to China’s actual conditions.

China has gained great success after 30 years’ efforts and taken a crucial step on the road to the great rejuvenation of Chinese nation. China carried through a world’s largest economic revolution, and economy and society developed constantly and rapidly. With average annual growth of 9.8%, which ranked first in the world, economic aggregate rose to 7th in 2000 from 11th before the reform and opening up. And economic aggregate rose to 6th in 2002, and then rising to 5th in 2004, rising to 4th beyond France in 2005, rising to 3rd beyond Germany, and rising to 2nd beyond Japan by 2010, when China had become the world’s second largest economy body. However, the model of “socialism with Chinese characteristics” has not yet completely formed. China’s construction and reform are in exploring stage, “We never think China’s development has been a model.” (Wen Jiabao)

There are still serious problems in China’s economic system, political system and cultural institutions, which needs our ongoing reforms. “Reform is the eternal theme of history.”(Wen Jiabao)\textsuperscript{65} Thus, though “equity and justice are the essential characteristics of so-

\textsuperscript{64}In the summer of 1989, Fykuyama published The End of The History in the National Interests magazine. He holds the point that liberty and democracy has overcome its greatest enemy—the Soviet Union, which has become the ultimate government form of human beings. The system of liberty and democracy may be “the end of the development of human ideology and the last human dominate form, hence “the end of the history”. Few years later, he wrote the book The End of History and the Last Man, further elaborate his theory. On November 11, 2012, he was interviewed by the journalist of the Global Times, during which he still held the point that the liberate and democratic capitalism is the ultimate gold of the history.

\textsuperscript{65}On November 21, 2012, the State Council held the Conference on the Pilot Work of the National Comprehensive Reform. Li Keqiang emphasized in the meeting that reform is the greatest benefits for China at present. He said that we are not narrowly pursuing the increase of GDP, because we are going to experience a mild increase period, during which the increasing speed is hard to keep at a two number increase rate. But if we could hold on to a 7% increasing rate, there is a great chance that we could realize our goal of building a moderately prosperous society by 2020. To achieve this goal, we should depend on the
cialism” (Wen Jiabao)\textsuperscript{66}, it is far from being realized. The most prominent problems are serious corruption and widening wealth gap, which are closely relative to the social structure system of China’s socialist society. As China’s sociological research is far behind that in America and other western countries, therefore, we can only use some immature and incomplete research data as grounds of argument.

The “Political Sociology” published in 2001 has researched social stratification in the contemporary China. In this book, the author pointed out that the society emerged a new social stratification after the 1990s. “The peasantry, the working class, cadre class and intelligentsia which existed before the reform have gradually differentiated in the new situation. And the social stratification system also developed from original single political identity to diverse stratifications of economy, prestige and power. More and more farmers became township entrepreneurs, who became the farmer entrepreneurial class. Millions of farmers came to work in cities and became workers in township enterprises, which expanded the working class ranks. Cadre status declined in social Stratification for its economic status declined relatively. Official rank standard of the hierarchical structure began to shake when the cadre class became differentiated. Self-employed workers and entrepreneurial class emerged and expanded gradually. With high economy income, entrepreneurial class’ social and political positions were also increasingly improved.”\textsuperscript{67}

Some scholars suggested “Social stratification should be divided on the basis of vocation classification, according to the standard of possession of organizational resources, economic resources and cultural resources.” According to this stratification principle, there are 10 social classes and 5 social statuses in China’s stratum structure. These 10 social classes are administrator class of the state and the society, managerial personnel class, private enterpriser class, professional technical staff class, clerical personnel class, individual businessman class, business service staff class, industrial worker class, agricultural worker class and the urban unemployed and semi-unemployed class. (1) Administrator class of state and society refers to cadres who exercise real administrative power in the CPC, government, institutions, social organizations and official organs. People of this class live in the highest or higher position of social stratification. Benefited more form the economic reform and growth, this class is one of the dominant classes in stratum structure, possessing 2.1% of all people. (2) Managerial personnel class refers to senior and middle management staff that does not have owner identities in large-scale and middle-scale enterprises. Dominating lots of economic resources, with higher political and social statuses, members of this class is one of the dominating classes, possessing 1.5% of national population. (3) Private enterpriser class refers to the people who own a certain amount of private capitals or fixed assets and take profits by investment, possessing about 0.6% of the


national population. (4) Professional technical staff class possesses 5.1% proportion. (5) Clerical personnel class refers to the full-time official staff who assist department managers to deal with daily administrative affairs, possessing about 4.8% of national population. (6) Individual businessman class refers to the people who own few private capitals and live on investing in production, circulation, service and other financial activities or financial bond market. This class possesses 4.2% of national population. (7) Business service staff class refers to the non-professional, non-manual and manual staffs who work in commercial and service sectors, possessing about 2% of national population. (8) Industrial worker class refers to physical, semi-manual production workers, building industry workers and relative personnel who serve in the secondary industry, possessing about 22.6% proportion. (9) Agricultural workers class refers to the farmers whose sole or main incomes are from industries of agriculture (forestry, animal husbandry and fishery) by contracting collective plowlands, possessing 44% of laboring population. After the middle 1980s, interests of this class were gradually damaged. (10) The urban unemployed and semi-unemployed class refers to the group of people who have no fixed occupations and in an unemployed or semi-unemployed situation. This class possesses about 3.1% proportion.68

Some scholars pointed out that the income of members from different classes were largely different, which caused the wealth gap. China’s present Gini coefficient which reflects the gap between the rich and the poor reached 0.45 and is significantly higher than the international warning line. The 2006 World Wealth Report published by the U.S. Boston Consulting Group claimed that assets of the rich family have increased by 18% from 2004 to 2005 in mainland China. And 0.4% families (about 1.5 million) possessed 70% wealth of the country. Additionally, according to the report of the Xinhua net on October 30, 2007, in mainland China, the number of rich families that possess over 1 million dollars financial assets increased from 124000 in 2001 to 310000 at the end of 2006, in accordance with the Report. This number in China ranked fifth in the world following the United States, Japan, Britain and Germany. Quoting from BCG wealth management market statistics database, the report stated that the amount of these “upstart families” is just equivalent to one thousandth of all the Chinese families; however, they possessed about 41.4% national wealth. Additionally, the number of the “Rich families” owned over 5 million dollars financial assets rose from 14000 in 2001 to over 48000 in 2006. Meanwhile, the assets proportion of national wealth in the hands of the “Rich families” also rose from 13.3% to 21.1%. According to media report, China’s rich men owned 80% national deposits at least and the Chinese society has become a pyramid. 3 million rich people are in the apex of the pyramid, each of them possesses assets of over 1 million dollars, and about 1 000 of them possess over 100 million dollar assets.69

New Fortune announced the list China’s top 500 rich of the year 2010 on May 15, 2011. This list indicates that:

1. China’s wealth is rapidly concentrated to fewer people much. The total wealth of top 500 rich men reached RMB 2875.65 billion, increasing by 76.6% from RMB 1,628.56 billion in 2009. The per capita assets of top 500 rich men rose from 3.26 billion Yuan in 2009 to 5.75 billion Yuan, and the list threshold also has been heightened from 1.34 billion Yuan to 1.92 billion Yuan. The number of the super richer also increased substantially. The number of super richer who possess over 30 billion Yuan assets reaches 8; and the number of super richer who own about or over 20 billion Yuan is 22, while there was only one super rich in 2009. There are also 68 Ten billion Yuan richer, which reached a historical peak.

2. The phenomenon that the richer gets much richer continues to be dominant. And the total wealth of the top 100 rich men amounted to 1470.63 billion Yuan, which possessed 51.1% of top 500’s total assets. It was higher than the proportion 44.9% in 2009. In contrast, the last 100 super rich men owned 215.77 billion Yuan assets totally, only possessing 7.5% of the whole. And it was below to 9.1% of last year. Data in 2010 shows the wealth Matthew Effect again. China’s wealth is concentrated to fewer people’s control much rapidly and the gap between the rich and the poor is further widened.

3. In the list of “New Fortune Top 500 Rich List”, 88 came from real estate industry, possessing 17.6%. Their total assets amounted to 649.08 billion Yuan, and average per capita wealth was 7.38 billion Yuan, which had nearly doubled that of last year. Meanwhile, Wang Jianlin, the first one of this year also came from real estate industry. Excessive interests in real estate industry are attracting more and more rich men from other industries. In this list, among these rich men whose main business are not real estate industry, 50% of them have involved in real estate industry and doubled their wealth through this industry. Mighty forces entered into the real estate industry, which has resulted in the worrisome tendency of the real estate economy.

The American Forbes magazine announced the ranking list of 2011 annual billionaires in September 2011 in New York.

1. Both the number of worldwide billionaires and amount of their total assets recorded a new high. 1210 rich men were on the list, rising from last year’s 1011. And the total sum of all rich ones on the list reached a new record of 4.5 trillion dollars, which was more than Germany’s gross domestic product. And the per capita wealth reached $ 3.7 billion, which increased $ 200 million than last year.

2. The total sum of billionaires in America is 413, and America is still the top country which owns the largest number of billionaires.

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The Matthew Effect means the phenomenon where the good turns better, the bad turns worse, the much turns more, and the little turns few. The term was coined based on a fable in The Bible-Matthew, “Whoever has will be given to him, and sent him to spare; whoever does not have, even what he has will be taken away”. In 1968, Robert Merton, an American researcher of the scientific history, provided this term summarizing a social psychological phenomenon: “Contrasted to those nameless researchers, famous researchers always gain more reputation, even though their achievements are alike or the same, or in the same field, the reputation is always for the famous researchers. For example, the price is always rewarded to the most famous researcher, even though all the work was carried out by a post graduate student.” This reflects the inequality of income distribution in the economics.
3. There are 115 billionaires from mainland China on the list, and this number almost doubled in 2010. Moreover, there are 54 billionaires from mainland China were listed for the first time. The number of billionaires from mainland China almost doubled to 115 from 64 in 2010.

4. There are 37 people from Hong Kong China, and 25 people from Taiwan China.

After analyzing the rich in China, we shall analyze the poor.

The Poor, his name is poverty.

Anthony Giddens pointed out that there were two categories of poverty: absolute poverty and relative poverty. Absolute poverty is the lack of basic necessities for human existence, such as without adequate food, housing and clothes. Herein, we analyzed absolute poverty.

“How many poor people are there in China? ...” In his book China’s Grand Strategy, Ye Zicheng stated that about 200 to 300 million surplus rural labor force did not have the job opportunities. And 60 million people were still in poverty. They lived in starvation, lacked of clothes and were houseless.

“Some experts think that there are three parts in China: the ten million ‘China’s wealthy people’...about 500 million ‘China’s middle class’....and over 700 million poor people, who live in hard lives.”

“According to statistics of relevant government departments in 2004, over 62 million poor people in China, 12 million live in the urban areas and 49.77 million people live in the rural areas....Chinese Poverty Alleviation and Development Report released by State Council Leading Group Office of Poverty Alleviation and Development on October 17, 2007, shows that 21 480 000 people (2 500 million in 1978) still live in absolute poverty by 2006, who have not solved food and clothing problems. 35.5 million Lower income people have adequate food and clothing, but they are still in low development level. In totally, there are 56.98 million poor people in China, possessing 6% of the total rural population, and this proportion is as high as 13.7% in China’s western regions.

“By now, we are still using the poverty criterion of 688 Yuan per person per year, which has been used for decades. Urban minimum living standard is less than 2 000 Yuan per person per year...According to the Blue Book of Fairly Well Off released by China for the first time, there are 48 million poor people under China’s national poverty line, possessing 3.7% of the total population. However, estimated by the World Bank, about 100 million people still live under the international poverty line, possessing 10% of the total population, according to the international standard that less than $ 1 per person per day is in line with poverty.”

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“For our own situations...if calculated by the World Bank’s standard of $ 1 per person per day, there are 200 million rural poor population and about 50 million urban poor population (the poor population in the rural areas is generally 4-5 times of that of the urban areas) in China. In total, over 250 million poor people are existing in China.”

The statistical analysis is scientific, abstract, and lacking of perceptual knowledge, therefore, it lacks sympathetic feelings about the seriousness and harm the problem of poverty has caused to the society. Recently, I read a news from the newspaper, and hope it may complements the disadvantages of the statistical analysis.

The Living Time of the Five Suffocated Children in Guizhou Province: Only Fed by Porridge with Salt at Home

Main story: on November 16, five boys were found died in the dustbin on the street of Bijie, Guizhou Province. Of them, Tao Zhonglin (13 years old) is the son of Tao Jinyou, the second brother of the Tao family; Tao Zhongjin (12 years old) and Tao Zhonghong (11 years old) is the children of Tao Xueyuan, the fourth brother of the Tao family, Tao Chong (12 year old) and Tao Bo (9 years old) is the children of Tao Yuanwu, the fifth brother of the Tao family. Tao Jincai said that the family is very poor, and the five boys are fed only with salt porridge at home. The bodies of the boys were collected by the truck, ‘not the hearse, but the garbage truck. The lid of the dustbin was closed and they were carried away.’ The boys were treated as garbage.” (Shanghai East Moring News, November 2012). This is the tragedy of the five homeless boys. It is the inequality in the social distribution which deprived them their precious and beautiful lives.

It is worthy of emphasizing that China’s current socialist system is neither absolute public ownership, nor pure private ownership. It is an ownership model of “public ownership as the main body, various economic elements develop together”. Chinese government clearly stated that “We must consolidate and develop the public economy, meanwhile, support, encourage and guide the development of non-public economy entities”, which is the “two unwavering approaches” principle. According to the actual development situation, "It is true that both state-owned economy and private economy have greatly developed since the reform and opening up 30 years ago. In 1997, there were 7 922 900 industry enterprises in China, including 23.5% public-owned enterprises and 76.5% private enterprises. Of them, there were only 1.1% state-owned enterprises, while individual enterprises accounted for 75.5%. Of all created industrial output values, public-owned industries possessed 63.6, while private industries possessed 36.4% and 25% industries were state-owned. Of all total industry employments, public industries possessed 86.4%, which included 65% (about 2/3) state-owned industries, and private industries possessed 13.6%. Industry outputs and employments were dominated by the public-owned ownership, while enterprise number was dominated by nonpublic ownership. Of 13.96 million retail outlets of consumption goods, there were only 6.7% from the public-owned ownership, while private ownership industries possessed 93.3%, which contained 1.9% state-owned ownership and

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92.3% individual ownership. Obviously, the main outlets quantities in this industry were from private industries.\textsuperscript{74}...Private investment has exceeded 50% of the national fixed assets investment. In industrial enterprises, private enterprises have outnumbered state-owned industries in terms of quantity, output value, gross assets and employees’ amount. Although its proportion has reduced, but state-owned economy still holds the country’s economic lifeline.\textsuperscript{75} The existing private ownership represents the existing of exploitation. It is the inequality in the systems and it is unavoidable. Only the socialist society could eliminate exploitation and remove the roots of inequality in the society.

\textbf{(3). Undeveloped Capitalism Society}

Most of the emerging countries\textsuperscript{76} in Asia, Africa, and South America were established in the two periods of country-founding in the twentieth century. “Firstly, in the years after the First World War, as the Hapsburg Empire, the Ottoman Empire and the Romanov Empire gradually disintegrated, the political map of Europe and the Middle East was widely redrew in accordance with the ethnic boundaries; secondly, after the 1945, with the European powers mentioned above retreated, the process was expanded to Asia, Africa, the Caribbean area and the Pacific area.”\textsuperscript{77}

The appearance of these emerging countries increased the number of the world country three times in nearly a decade, rising from 51 at the beginning of the 20\textsuperscript{th} century to 185 at the end of the same century (the data here may varies due to different statistical methods)\textsuperscript{78}. The appearance of these countries is the result of the invasion of the imperialism countries and the decolonization\textsuperscript{79}, or more particularly, the result of national independent movement against the imperialism. Due to the difference of their inherent nature of society, political system, and cultural heritages, and the difference of their nationalism developed in the imperial period, the process and results of their decolonization varies enormously.

The appearance of these countries is the result of the national independent movement against the imperialism. Pressed and exploited by the imperial countries for a long time, the productive forces of these countries are relatively low, and they are in the society of undeveloped capitalism. The so-called “undeveloped capitalism society” has two basic


\textsuperscript{75}Premier Wen Jiabao, Answer to questions of two sessions’ reporters in 2011, Compilation of Special Events of National Two Sessions’ Reporters in 2011, People’s Publishing House, March 2011, 1st Edition

\textsuperscript{76}Howard J. Wiarda, the American scholar researching the developing countries pointed out that the term “emerging countries” makes no sense to the South American, for ever since 1820, most countries in the South America had gained their independence for half a century.


\textsuperscript{78}Until 1945, the United Nations had 51 member countries; that number increased by 28 from 1990 to 1994; until 1994, the number reached 185. Regardless of the space of their territory and their previous status, the 133 new member countries of the United Nations showed their wishes to gain their own place in the present world.

\textsuperscript{79}It is not particular to the modern times, the invasion of the imperial countries and the decolonization had appeared in the ancient empires some thousand years ago.
characteristics: “capitalism” and “undeveloped”. The former refers to the capitalist mode of production, whereas the later shows that it still stays in a low level. At to the situations of these countries, American Scholar Howard J. Wiarda provided a brief but comprehensive and in depth analysis in his book The Development on Politics of the Emerging Countries: Is the Third World still there? This is the best book that I encountered analyzing the Third World. Several excerpts are showed below from which we can catch a glimpse of the book.

“The early 60s is a positive and inspiring time for both the development and the democracy. However, in the blink of the eye, the Argentina democracy was overthrew by a military coup in 1962, the next year, the military coup in Honduras of the Dominican Republic eliminated democracy, and the major country Brazil was also took over by the military authorities in 1964. In the following years, other countries such as Chile and Uruguay where the democracy developed quite well also lost their stand. Until the middle 70s, there were 12 South America countries---Argentina, Bolivia, Brazil, Chile. while in the other five countries—Dominican Republic, Mexico, Haiti, Cuba and Nicaragua—the civil officials were still in power, but the soldiers had a close relationship with power. Under this situation, it didn’t make any difference to distinct the civil regimes from military regimes. Meanwhile, the authoritarianism clearly got an upper hand. Then, just three countries were democratic(Columbia, Costa Rica and Venezuela), and these three countries were usually regarded as the democratic countries governed by the elite, not the real democracy or the democracy system in which the masses can participated.”

“The situation in Sub-Saharan Africa was almost the same. It was also filled with optimism in the early 1960s. During the year of 1959, 1960 and 1961, colonialism was overthrown and many emerging African countries appeared in the world. Almost all these countries made new constitution, organized political parties (usually single-party system), arranged the civil officials to take office and these countries started to emerge as democratic countries which were independent and hopeful. However, these new constitutions, political parties and democracy were specious and transitory. These systems which were mainly introduced from the outside can hardly permeate into the African soil, let along the African culture and ideology.

“The most typical examples of the Asian bureaucratic authoritarian regime were the Philippines governed by Ferdinand Marcos(1965——1986), the Indonesia governed by Raden Suharto(1966——1998) and the Pakistan governed by Ayub Khan(1958——1969) and the following Muhammed Zia-u1-Huq (1977——1989). Recently, Pakistan was governed by Pervez Musharra. Moreover, Taiwan which was governed by Kuo Min Kang(KMT), Singapore which was under the domination of the authoritarian leader Li Guangyao and the Korea


which was under the joint regime of all kinds authoritarian civilians and armymen/soldiers all might belong to the category of bureaucracy—authoritarian regime. 

"Authoritarianism which replaced with the democracy became the main governments and political forms in the third world." 

"However, authoritarianism was collapsed in the late 1970s and 1980s. A new wave of democracy swept from the whole world. It originated from the South-East Europe (Greece, Portugal and Spain which was once the typical authoritarian country) in the middle of 1970s. Then, it influenced Latin American in the late of 1970s and 1980s, followed by some Asia countries and regions (Philippines, Korea, Taiwan, Indonesia and other countries). Because of the Soviet empire's collapse, democracy began to appear in middle and eastern European countries which were once under the control of Soviet Union. As time went on, Russia and the members of Commonwealth of the Independent States began to transform to democracy at least to some extent. Subsequently, democracy rooted in African. However, generally speaking, democracy was relatively fragile in Africa and the good system was not established. In many African countries, democracy alternated with authoritarianism in power, or coexisted with each other very unsteadily. Even in Middle Eastern countries and Islamic countries which may not suitable for democracy, politics became more and more open. However it was hard to treat them as well established democratic institutions, since three quarters of Islamic countries were in authoritarian regime." 

"The next area of democratization or re-democratization was Latin America. This democratization originated from Ecuador and Dominican Republic in 1978, influenced these relatively big countries such as, Argentina Brazil in the early1980s, and in the middle and late 1980s, it swept all the countries in Latin America. In 2000, the opposition candidate's election in Mexico was the symbol that this country's democratization reached its climax. Until then, 19 countries (except Cuba) of the 20 countries in Latin America had established the democracy. It seemed that the "democracy" established in many countries of this area was kind of form rather than the real democracy. Therefore, the democracy in Latin America was in big trouble. However, this was the most extensive transition from Authoritarianism to democracy and it was (also is) very remarkable around the world." 

"In 1980s, the democratizing countries and regions in Asia were the Philippines in 1986, the Korea in 1987 and the Taiwan in 1988... In 1998, as the autocrat Suharto was expelled, Indonesia also joined the democracy party. However, Malaysia and Singapore were still governed by Semi-authoritarianism ...However, the Middle East and Sub-

Saharan Africa were the two regions that didn't not experience the wave of democratization around the world… Among all the Middle Eastern countries, only Israel was completely democratic…. In the rest of the countries where most people were Islamic people, only a few of them can be regarded as partly democratic countries. Among these countries, Turkey was the most democratic one … Other countries like Algeria, Tunisia, Jordan, Kuwait, Iran and Lebanon … were not fully democratic. The other 80% countries in Middle East were even not faintly or partly democratic.\footnote{Howard J.Wiarda, Political Development in Emerging Nations- Is There still a Third World?, p102-104, Peking University Press, June 2005, first edition.}

"Sub-Saharan Africa was a region that made the supporter of democracy disappointed. In there, after the authoritarianism and the bureaucratic authoritarian regime in 1960s and 1970s, the authoritarianism revived instead of establishing democracy... South Africa was a democratic nation, but it was a special case. It was an outpost of the western countries in Africa... Other countries which can be regarded as partly democratic countries were Malawi, Botswana, Mali, Namibia, Nigeria, Senegal, Tanzania and Kenya... Most African countries (39 countries of the 48 countries) were still not democratic.}\footnote{Howard J.Wiarda, Political Development in Emerging Nations- Is There still a Third World?, p104, Peking University Press, June 2005, first edition.}

Howard Wiarda indicated that authoritarianism usually provided the order, discipline and stability (and objection to communism), and these were the most developing countries (also America) needed. However, authoritarianism oppressed democracy and often trampling on human right. Without the checks and balances and the political plurality, corruption and inhumanity often appeared within the authoritarian regime. Moreover, there was no error correction mechanism. Thus, although it could provide the necessary stability, most authoritarian countries were immersed in chaos at last in the long run. These were the notorious autocrats in Latin America, Rafael Trujillo, Anastasio Somoza, Vulcan Theo. Both Batista and Alfredo Stroessner were the cruel and corrupt tyrants. However, their countries developed a lot before they were immersed in chaos during their long reign\footnote{Howard J.Wiarda, Political Development in Emerging Nations- Is There still a Third World?, p63, Peking University Press, June 2005, first edition.}.

In terms of democracy, Howard Wiarda pointed out that the supporting rate of democracy was decreasing recently in most developing countries. Because democratic system didn't operate well in Latin America, Asia and Africa, the belief in democracy was disillusioned. Due to the prevailing of corruption, privilege, nepotism and patron-client ties, the organizations in the democratic system cannot fulfill their main responsibility. The democracy didn't promote the reform and development of the society and economy as soon as possible just as the people had expected. In spite of this, no one in the developing countries wanted to back to the old ages of the brutal military dictatorship which means suppression, brutality, no human right and political right, isolation and sanction from international community, no right of speech, publishing, assembling and organizing the associations. Therefore, de-
mocracy was not good all the time, but it was the best choice for the most majority people.\textsuperscript{89}

Howard Wiarda also pointed out that there was a close relationship between the society's economy development and democracy. Democracy was based on the lowest social, economic and systemic foundation. In those countries with low literacy rate was and education level, undeveloped economy and lacking of organization and institutions (civil society, political party, honest and effective bureaucracy), the democracy cannot thrive, even cannot survive. However, we should not give up implementing democracy in poor countries, we should aware that the help we provided was limited. It was proved in these poor countries like Haiti, Somalia, Ethiopia, Uganda, Albania, east Timor and Afghanistan that it was very hard or even cannot establish democracy in the poorest regions.\textsuperscript{90}

Howard Wiarda's book was published in 2005, and these countries have changed rapidly. It is impossible for me to describe these changes comprehensively, so I just analyse some typical examples. For sake of the multi-purpose of the theme report, we just select the following three countries which are involved in "Arab Spring".

(1) Tunisia

The Arab upheaval in 2011 was originated from Tunisia. On January 4, 2011, a riot broke out in Tunisia and the old regime was substituted by a new one just with 29 days.

Tunisia, a country with the population of 10.4 million, social stability and increasing economy, was one of the most vibrant countries in North Africa in the respect to development. According to the Report of the Global Competitiveness in 2010-1011 which was published by World Economic Forum, the global competitiveness of Tunisia was the 32th around the world.\textsuperscript{91} During the past ten years, the economy of Tunisia kept a stable increase; the average increase speed was up to 5.68%. The GDP was 8627 U.S. dollars (based on purchasing power parity to calculate).\textsuperscript{92}

However, the economic growth didn't benefit all the people equally. The gap between the rich and the poor was very serious in Tunisia. The social wealth was hold by a few of rich people and the ordinary people's life didn't improve as the economy increased. The current gini coefficient of Tunisia is 0.1 which is above the International Warning Line. For a long time, the influential officials group whose core figure was Ben Ali occupied too much economic resources. According to the calculation of the Transparency International, Tunisia was a corrupt country. In the end of the 2010, Wiki Leaks exposed a confidential cable of Robert Goldstein (the American ambassador to Tunisia), called Tunisian's Corruption: what are yours are mine. It was said that no matter what the members of the president's family want, for example: gold, land, house even the yacht, they would get it at last in this article. Another cable directly described Tunisian as the "policeman's country", and re-


\textsuperscript{92} EIU, Country Report: Tunisia, May 2011, p. 16.
garded Ben Ali's family as the "Quasi Mafia", the core of the Tunisian's corruption. Just because of the corruption and social inequality, the Jasmine Revolution broke out.

(2) Egypt

Egypt was the second dominoes after the falling of Tunisia two month ago. The revolution in Egypt just took eighteen days to pull down the president Mubarak who had governed the country steadily for 30 years. Social injustice and corruption was one of the important reasons.

Egypt has more than 100 million square kilometers of land, more than 80 million people and has the population of 79.5 million. As an emerging market country, Egypt's economic development was very outstanding in the Middle Eastern countries. Thus, it was enlisted on the Next Eleven. In 2010, the economic growth rate was more than 4.5%. However, during the course of manufacture, agriculture, commerce and other industry's development, those people in power focused more on the upper class's interest instead of the lower classes. The website of the Times commented that Mubarak's "long reign brought unprecedented wealth and material benefits to the middle class. He promoted the development of private business, but he enlarged the gap between the rich and the poor. He excluded one generation from the political responsibility. He fostered corruption and made everyone in Egypt bribe so as to survive." Moreover, "he only listened to the "praise" from the privilege class of commerce and the sycophant instead of listening to the negative opinions of the younger generation." A report published by the World Bank indicated that the number of the poor people in Egypt was 28 million which accounts for 40.94% of the total population. Among the people, 2.6 million of them were in extremely poverty and it accounts for 9.3% in the poor people. According to the Associated Press's report on may 6, 2005, the current population in Egypt was 80 million and 40% of them lived below the poverty line or near the poverty line. Recently, the gap between the rich and the poor was increasingly enlarged, the social wealth was growing concentration in a few of rich people. A sociologist in American University in Cairo Amin pointed out that the population in Egypt can be divided into three levels. The first level is the rich. The rich people were just 20.94% that of the total population, but they occupied 55% of the entire social wealth. These people were either government officials or businessmen. They had a great amount of money and spent money extravagantly. They possessed luxury cars and beautiful villas, some of them even had mega-yachts and private planes. The second level was middle class. The proportion of the middle class was 20.14%, they occupied 27% of the entire social wealth. The third level was poor people. They accounted for 60.94% of the total population, while occupied 18% of the social wealth.

(3) Libya

On February 6, 2011, protests and conflicts broke out in Libya's second largest city Benghazi. In the late August of the same year, the capital of Libya was occupied by the enemy and Qaddafis became fugitives. The 42 years regime was completely overthrew within eight months.

The social structure in Libya was very special.

On September 1, 1969, the 27-year-old platoon leader of the communication launched a coup and succeeded. Libya's army scale was small at that time. There were just five thou-
sand people and the highest rank was captain. After the coup, Qaddafi took the office. After Qaddafi was in power, he unified the country with force and governed Libya’s 100000 people army. He ruled the country for 42 years and created a set of system. There was no parliament or government, no president he exercised the similar powers as in the name of the leader of the revolution or committee. Based on the Third Universal Theory, Qaddafi implemented a series of political and economic reforms and made a great difference. Libya became one of the largest oil-producing countries. The government also built a lot of houses, schools and hospitals, all the people benefited from them. In 1973, Qaddafi took back the controlling interest of all oil companies and established Libya’s National Oil Corporation. After that, he strove to develop oil-production and the oil output was 2% of the total global output. Thus, Libya became one of the largest oil-producing countries. At the same time, the government also strengthened the investment in manufacturing departments, reducing the national economy's dependence on oil. The modern industries developed from nothing. So far the industry system was primarily built, which including petroleum refining, steel, Smelting aluminum, and fertilizer and building materials. People’s life was obviously improved. The government built a large number of houses, schools and hospitals, people enjoyed the free medical treatment, education and house. School-age children enrollment rate was 99%. The highest average income once reached 12,000 U.S. Dollars; it was the highest in Africa. Cars, televisions and radios owned by per person were also the top in Africa. In 1978, Qaddafi appealed the Belgium worker to “get rid of the enslavedness”, to grasp the public and private means of production", become the formal partner of the production. He also announced that “there was no salary-earner but partner in the future”. Thus, almost all the government-owned and private companies (except the oil department) were governed by "people's council" which was composed by the workers.

On the other hand, Libya was one the countries in which the corruption was the most serious. Qaddafi himself had billions of dollars saving in foreign countries and many villas, his family usually used the money along with the nation. Qaddafi’s children controlled national economy's lifeline. His eight sons and one daughter sat foot in oil, gas, hotel, media, circulation and social infrastructure industries. The wealth produced by oil was actually mastered by the Qaddafi family. Since the crisis broke out in Libya, the international media reported the assets of the Qaddafi family. The data indicated the huge assets owned by the Qaddafi family cannot be estimated. The asset seized in America alone was up to 30 billion U.S. dollars. And they owned Canada $ 2.4 billion, Austria $ 1.7 billion. In Britain, the British “Daily Telegraph” said that the house property Qaddafi family owned in West End was 455 million U.S. dollars, they also possessed Pearson stock and they were the owner

93 “The third universal theory” (also called "The third international theory" or the "third theory") ; it is proposed by Qaddafi, it doesn't mean that the theory is the third in the whole world, the theory is about the third world or the theory about three worlds. In order to distinct from the existed two theories - western capitalism and eastern Marxism, it is called the third universal theory. The core of Qaddafi’s the third universal theory is to build a “Standard socialist” which is between exploitative capitalism and centralized communism and is based on Islamic and Arab traditions. Actually, it is Arab Nationalism with strong Islamic characteristics.
of the Financial Times and The Penguin Press, all these were up to 325 million U.S. dollars. Qaddafi’s son Saif Qadhafi had an independent villa in the north of London which worth 15 million U.S. Dollars. The villa with eight bedrooms, the facilities of sauna, swimming and bodybuilding was brought in 2009. According to the rough statistics, the asset owned by the Qaddafi family in Britain was up to 10 billion U.S. Dollars. Of course, parts of the assets belonged to national assets.

Lybia was actually the kingdom ruled by the Qaddafi family. In this kingdom, people had more freedom and equality and they had a better life. However, the greatest disparities were behind these outside illusions. That was the Qaddafi and his family’s absolute domination in politics, economy, even the ideology. For Qaddafi, the country is his own home.

5. A Brief Conclusion

How to evaluate these different social formations?

The two key concepts in ethics are right and good. These are also the two aspects for us to evaluate the moral in different social formations. "The relation between these two concepts has become an important problem in ethics and the two major schools—teleological theories and deontological theories' dividing is related to this problem in the history of western ethical thoughts. The teleological theories think that good is independent of right and more preferential. Good is the basic standard (a teleological standard) for us to judge the right from wrong. Right which depends on good maximally increases the good or corresponds with good. Because of the different analysis of good, there will be different teleology, like utilitarianism, hedonism, self-actualization theory, perfectionism and so on. Deontological theories are contrary to the teleological theories. They think that right is independent of right and more preferential. Kant is a typical representative of deontological theories. Rawls thoughts that his theory of justice as fairness was also a kind of the deontological theories in the sense of non-teleological theories, which focused on the right's independence and preference."94

Justice can be regarded as a sub-category of right.

Therefore, John Rawls95 pointed out in A Theory of Justice that “Justice is the first virtue of social institutions”.96 “Our topic, however, is that of social justice. For us the primary subject of justice is the basic structure of the society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation. By major institutions I understand the major political constitution and the principal social and economic arrangements. The basic structure is the primary subject of social justice because its effects are so profound and present from the start. The intuitive notion here is that this structure contains various and social posi-

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95 John Rawls, a famous American philosopher, ethicist, born in Baltimore in 1921, graduated from Princeton University in 1943, got the doctor degree in Princeton University in 1950, then being a professor in Princeton University, Cornell University, MTI, Harvard University, passed away on Nov 24, 2002
tions and men born into different positions have different expectations of life determined, in part, by political system as well as by economic and social circumstances. In this way, the institutions of society favor certain starting places over others. These are especially deep inequalities. Not only are they pervasive, but they affect men's initial chances in life; yet they cannot possibly be justified by an appeal to the notions of merit or desert. It is these inequalities, presumably inevitable in the basic structure of any society, to which the principles of social justice must in the first instance apply. These principles, then, regulate the choice of a political constitution and the main elements of the economic and social system. The justice of a social scheme depends essentially on how fundamental rights and duties are assigned and on the economic opportunities and social conditions in the various sectors of society." 97

The reason why I cite Rawls' this paragraph is that he gives a clear answer for the question I ask at first. How to evaluate these different social formations?

According to the analysis and evaluation of the basic structure in different social formations, we can draw the conclusions as follows:

From the ancient times until now, thousands of years has passed. Except the primitive society, from the slave society, the feudal society to modern capitalist society, socialist society, the social structure's inequalities and the serious gap between the rich and the poor exist in any kind of social formation or any kind of society. However, the inequalities of different social formation are different essentially, and the inequalities' degrees of severities are various.

(1) The slave society and the feudal society are unjust societies.

(2) The developed capitalist society is not the completely just society. Here, I used Rawls' concept "the completely just society", Rawls also points out that "the nature and the object of a completely just society are the basic constitute part of the theory of justice." 98

(3) China's socialist society is not the completely just society either. But it is different from the developed capitalist society's essentiality. The difference is just like child lacking of teeth and the old whose teeth are taking off

(4) The emerging countries in Asia, Africa and Latin America which are undeveloped capitalist societies shall be analyzed particularly. Some of them are not completely just societies, some are completely unjust societies. 99

So far, in the currently existing and once existed societies, some are unjust and some are not completely just. Because of the unjust nature of the society, the purpose of the penalty of the penalty is unjust. If we regarded society defense as the purpose of the penalty, the just nature of the penalty will not exist.

99 This depends on whether their rulers' regimes are autocratic or democratic and what social institution they established. The history has proved that a completely unjust societies will extinct sooner or later, because it has lost what Hegel talked the rationality (according with the reason) and the legality in the western political philosophy.
From this we can see that the Penalty Teleology proposed in Social defense theory is a wrong theory. We can call it the error of the Penalty Teleology in Social defense theory.

In addition, based on Rawls' opinion "the nature and the object of a completely just society are the basic constitute part of the theory of justice", there is something about the completely just society I want to talk about:

The so-called completely just society is the "global society" which is formed in the globalization era. This society is without of class and exploitation in which people can be fully developed and liberated. For thousands of years, people has dreamed in different ways to establish this kind of ideal society, such as, "The Republic" "Utopia" "The beautiful Garden" "The Ethnicity", the "Heaven" in Christian and the "Pure Land" in Buddhism, all these are illusion and speculation. Only Marx with his remarkable scientific prediction calls it communism. To realize communism is the Chinese communist party's highest ideal and ultimate goal. The road of socialism with Chinese characteristic is the only way to achieve communism. It is also the only to realize the "completely just society", this will be a long term. Before this, China's socialist society is not the completely just society.

Section Three Social Defense Theory is Incorrect in Its Approaches Methodology.

1 Various Penalty Approaches in Social Defense Theory

Marks marked, “Penalty is nothing but an approach to defend the existence of the society.” To achieve such purpose, social defense theory gives “penalty” the approach various researches, having raised up different theories.

(1) Beccaria

Beccaria said: the more harmful the crime to the public interests is and the more powerful the force which causes crimes, the stronger the means which deters crime should be. Consequently, he established the principle that the intensity of punishment is proportional to the severity of crimes.

(2) Bentham

Bentham insisted that the principle of utility provided a natural method for the achievement of some kind of rational theory of punishment. The natural method comes from the principle that punishment is evil after all, since it results in pain. Therefore, it can be proved to be just only when it is preventing or going to prevent a greater evil or when it is able to remedy an existing evil. In order to proportionate punishment to crimes and to prevent or rescue harm effectively, the theory of criminal law should provide a similar classification on punishment. It should be this way on principle: the pain caused by punishment must exceed the benefit getting from the crime, and generatel create as few evil as that created by the crime.

Bentham insisted that the prime direct intention of punishment includes:(1) to control criminals ; (2) to control others. The former is called “special prevention", and the later “general prevention".
“Special Prevention” (to control criminals) can be further divided into: (1) to influence the wills of criminals: “to reform” (2) to influence the abilities of criminals: “to disable”.

“General prevention” (to control others) has only one method: to influence the will, it serves as a warning. This is the uppermost one in all these intentions.

The indirect intentions of punishment: (1) provides a kind of happiness or satisfaction for victims (retributive or compensatory satisfaction); (2) provides a kind of happiness or satisfaction for people irritated by crimes.

(3). Feuerbach

The theory of punishment in the age of Enlightenment developed into a new level due to Feuerbach. Feuerbach made an attempt to connect with the ethics of Kant rather than following the classical theory of utility of Beccaria and Bentham. Through the general prevention of psychological compulsion, the effect of menace should be achieved.

The reason why psychological compulsion can work this way is: any illegality has its psychological causes in sensibility since the greed of human can be intensified by the fun of the behavior or the fun produced by the behavior to some degree. This kind of inner motivation can be eliminated in this way: to make sure everybody knows that there is an evil waiting for him and this evil is greater than that of his unsatisfied motivation.

Feuerbach pointed out: the evil prescribed and punished by law is secular punishment (die buergerbche Strafe, poena forensisy). The basis of the necessity and existence of punishment (including the punishment provided by law and the punishment of itself) is necessary for the maintenance of the freedom between each other. This object is achieved by eliminating the motivation of illegality. 100

Feuerbach stated that the purpose of the menace of punishment is to menace and warn the potential criminals; the object of punishment is to prove that the menace is effective; Therefore, the ultimate purpose of punishment is also to menace.

Feuerbach firmly repudiated the theory of special prevention and the retributive punishment theory (die Vergeltungs theorie). He sharply criticized the theory of special prevention of Klein, Grolman and others whose theories were dominated in the field. 101 He pointed out that the starting point of the principles of criminal law is to establish the penal statutes which menace the potential criminals. The goal of the nation is to guarantee the freedom among the people, in order to achieve this goal, the criminal law ought to declare that criminals must be punished, and it is necessary to make the people clear about the pain and

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101 In 1798, the 24 years old lecturer Groellmann published the book: The Fundamental Principle of Criminal Law and proposed the theory of special prevention which contended that the intention of punishment is to have an impact on criminals and prevent the potential crimes of them. He insisted that the general prevention or the menace to the potential criminals is unnecessary. At that time, the 23 years old lecturer Feuerbach criticized the theory of special prevention of Groellmann in his The Fundamental Principle and Concept Research of Settled Criminal Law.
evil caused by punishment. Punishment should expressed by penal statutes, the species and range of punishments take behaviors as the standard only and have nothing to do with the personality of the criminal. The punishments which do not exist in criminal law should not be admitted, and it violates the idea of Guarantee of Human Rights if the punishments are established according to the personality of the criminal. He said that to prevent the potential crimes of a certain criminal, moral retribution and to menace criminals through the pain produced by evil were not the intention of punishment or the basis of law.

(4) Lombroso

Lombroso opposed retributive punishment and any retributive punishment theory. He also opposed the correction theory and said: repentance is always or almost always an exception, while the phenomenon of relapsing into crime is universal. Prisons that do not put criminals in solitary confinement will make criminals worse rather than reformed.

He criticized the theory of menace severely: our predecessors once built the pole of shame, cut the noses and ears of criminals, torn their bodies to shreds, boil them in oil or water, drip the hot liquid lead on their necks and cut their lumbar muscle off. But what came after? There were more crimes which were much crueler. The frequent and severe punishment makes people numbing. In the age of Robespierre, even children played the game of guillotine. He thrown sharp questions: if these are the results of the large numbers of torture of our forefathers, then, what can we get from these uncompleted measures when there is no torture anymore and prisons have turned into comfortable hotels? He criticized redemption theory as well: the notion of redemption comes from religion; it depends on the voluntary behaviors of human. While criminals are killed by force, can it be regarded as voluntary?

Social defense theory is the only theory he supported. He made it clear: the power of punishment should base on natural necessity and right of self defense, without which I do not believe that any theory on the power of punishment can stand steadily.

Even so, based on the inevitability of crimes, he always adheres to the standpoint that punishment is invalid. He said: the point of view that prison and education were panacea for treating and curing crimes was fantasy. On the contrary, reality tells us that no matter what kind of prison system is adopted, the phenomena of recidivism occurred constantly. The more important is that all prison systems provide a place for new crimes. Hence, he holds that the way of non-punishment is more important to prevent and cure crimes. Punishment is just one of the numerous defenses means.

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102 In their age, the idea of Groellmann is in accordance with the thought of police state. The thought of police state was not as attractive as the thought of law state of Feuerbach. That is the reason why he failed. As to Kline, he was the authority of German criminal law, 55 years old. He was the chief representative of the thought of police state of Germany.


(5) . Garofalo

Is it to protect criminals from the trespass of society or to protect society from the trespass of criminals? Garofalo posed this penetrating question and his answer was to protect society from the trespass of criminals. Hence, in order to eradicate what we called the primitive savage phenomena of crimes, we should exclude them from the circle of society. Society should expel those offenders whose individual behaviors explain clearly that they are lack of the adaptable ability. As to “to exclude crimes from social life” or “to deprive someone’s right of social life”, he summarized all of them as eradication.

Garofalo classified the eradication into two kinds: absolute eradication and relative eradication. In the case of the typical criminals who have no adaptability, we can reach the aim of selection through absolute eradication. As to those who may have re-adaptability, by relative eradication to complete the purpose of relative selection, that is to isolate them from relative environment.

Garofalo posed that the response of society to crimes should be one of the following three forms: (1) completely eradicate, to deprive crimes all contacts with society (death penalty). (2) partly eradicate, to isolate crimes from the unsuitable and special environment (determinate imprisonment). (3) Forcing crimes to compensate for the damage caused by illegal conducts. Ferri summarizes the repression system put forward by Garofalo as following form 3-1.

Determinate imprisonment is applied to some crimes such as forgery, riot (sedition). Or the alternative measures of compensation or forcing labor ban on working some occupations and expelling from office.

Garofalo emphasized: if the only purpose of criminal penalty is to eradicate the enemy of society, if criminal penalty is a direct and special prevention means and if criminal penalty be seem to the personality of criminals, then criminal penalty is justice.

(6) . Ferri

When expounding the criminal punishment theory, Ferri firstly analyzed the distinction of the principle of the theory of punishment between classical school of criminology and positive school of criminology.

He said: that historical mission of the classical school of criminology is the commutation of penalty...the actual brilliant achievement of classical school of criminology is to propagate the abolishment of the most barbaric punishment such as capital punishment, cruelty torture and physical punishment. The positive school of criminology shoulders a more noble and productive mission that is, to commute penalty and reduce crime at the same time.
To oppose the medieval excruciation is a noble mission, but the prevention of crime is nobler than that.\textsuperscript{109}

The classical school of criminology only keeps an eye on punishment and determines repressive measures by means of all kinds of terror consequences in mental and material aspects after crimes happened. The positive school of criminology considers that criminal code is far from the means to cure crimes...criminal code has no effect on treating crimes. For the sake of eradicating the root of crimes; the social sanitary regulations should be applied by legislators (\textit{legislatoris}). That requires legislators (\textit{legislatoris}) devote themselves to the legislative reform of individual and social life in the spheres of economy, morality, politics and culture. The positive school of criminology comes to the fundamental conclusion that what happened to the medical community, will also happen to criminology.\textsuperscript{110} As for the social ills, we should seek social treatment (\textit{Prince}).\textsuperscript{111}

Ferri proposed to seek other means of social defense through the practical researches of crimes and its natural causes. By means of indirect and more effective force we can prevent or diminish this kind of behavior. He considered these methods of indirect defense as penal substitutes.\textsuperscript{112}

After proposing a train of penal substitutes in economy, political, scientific and culture, legislative and administrative, and education spheres, Ferri pointed out that it must nevertheless be borne in mind that all this will have to be done apart from the penal code; for it is true, however strange, that history, statistics, and direct observation of criminal phenomena prove that penal laws are the least effectual in preventing crime, whilst the strongest influence is exercised by laws of the economic, political, and administrative order. It is precisely on this point that the practical, rather than the merely theoretical, differences between the positive and the classical schools of penal law become evident.\textsuperscript{113}

As to the theory of punishment methods, Ferri said that criminal sociology acknowledges three: crime, criminal and the most suitable social self-defense means. From now on, apart from trying crimes it is necessary to trying criminals. Crimes are just the basis of contentious procedure and a symptom that manifests the depravity and re-adaptability of criminals. Ultimately, the center of criminal theory and juridical trial is still offenders.\textsuperscript{114}

The crime will always be the object of criminal law, but the criminal himself is the true and living subject of the trial...

Ferri stated: it is necessary to reform the criminal punishment system. It is necessary to establish certain general criteria before laying down schemes.

a. No fixity in the periods of segregation of criminals. It should be based on the question whether by the actual conditions (breach of law or infliction of injury) and by the personal conditions (the anthropological type of the criminal) it is necessary to separate the offender from his social environment for ever, or for a longer or shorter period, according as he is or is not regarded as capable of being restored to society, or whether it is sufficient to exact from him a strict reparation of the injury which he has inflicted. The positive system of punishment is based on the principle of an unfixed segregation of the criminal.\(^\text{115}\) Hence, he strongly advocated the indeterminate sentence. Ferri said that the concept of indeterminate isolation was put forward by Swiss prison reform association for stubborn prisoners in 1867. Since that the concept gets developed greatly especially in England and America...since in London prison meeting, the indeterminate sentence which was approved in Cincinnati national prison meeting last year was discussed, this theory gets a great development later. In 1880, Mr.Garofalo and I both agreed that indeterminate isolation should only be used for the stubborn recidivisms.

b. The social and public character of the exaction of damages. Namely, it is the principle indemnification for damage.

c. The adaptation of defensive measures to the various types of criminals, including penalty, corporal punishment, exile, imprison for life-long or a period of time.

Ferri’s theory of punishment was embedded in the general rules of the draft of Italy penal code and its relative reports led by him in 1921.\(^\text{116}\) The main standpoints are as following:

Ferri emphasized that the old law only has punishment, but the new legislation or draft has security punishment besides punishment. The old law only knows that law has moral responsibility while the new law acknowledges that moral responsibility coexist with evil nature of offenders. The new Italy Act is based on the legal responsibility to make criminal punishment and security punishment unification and simplification and integrate both as the sanction of criminal law, i.e. the sanction of criminal law is not only for crimes, but should take corresponding treatments which are appropriate for offenders’ personality.\(^\text{117}\)


\(^{116}\) On 14th September,1919,Italy constitutes penal laws amendment committee (Commissione per la riformadelle leggi penali) to amend criminal law. The justice minster orders to implement the amendment according to the opinion of positive school and appoints Ferri as the chairman. On 9th,December,1919,Ferri delivers a speech to briefly state the amendment of criminal law by the committee at a university. On 21\(^{\text{st}}\) January,1921, the penal laws amendment committee proposes the general principles (as for the crime in the draft of general principles of penal code) and reports to Italian justice minister.

\(^{117}\) On 9th December, 1919, Ferri delivers a speech for the opening of the university at La scuola positive (quoted in professor Makino Eiichi’s scheme of amending the positivism of criminal law—penal laws amendment committee).
Ferri said: the lightest sanction is the so called pardon (perdono giudiziale) that is to say though the sanction convicts someone, he or she is granted impunity. The sanction should be divided into different kinds from impunity to the heaviest imprisonment. Imprisonment should not be fixed term. There is no distinction between criminal punishment and security punishment in essence. Hence, security punishment should belong to the authority of courts to guarantee private freedom...the short-term punishment against liberty advocated early by myself is meaningless. It should be replaced by other various means. For example, indemnity for damage on account of crimes.\textsuperscript{118}

Ferri pointed out: under the reform of criminal justice, the right of judge is expanded...legislators (\textit{legislatoris}) set sanctions on account of crimes, but judges should make corresponding adjudication according to sundry offenders. The individualization of penalty is beyond legislators’ ability. Legislators (\textit{legislatoris}) only can list types of offenders. Individualized treatment for offenders should be the job of judges.\textsuperscript{119}

With regard to the offender and his evil nature, Ferri said: as offenders who violate provisions of law are called crimes. It is rather for offenders. It is not means to ignore the criminal offences. The criminal offence is not only the important element for the applicable law, but the criterion to judge the evil nature of offenders.

With regard to legal responsibility, Ferri said: in the case of the two principles of social defense and evil nature of offenders, the traditional concept of criminal responsibility must change drastically...Italian school initially advocates the theory of social responsibility...Every man lives in society, its benefit only protected. Without doubt, individual behavior should be responsible for society that is the social responsibility.

With regard to sanction, Ferri said: As for those people who cannot adapt to social life, the indeterminate sentence should be absolutely for them...Determinate sentence is also replaced by the indeterminate imprisonment. The system of indeterminate sentence can be divided into absolute one and relative one.

With regard to security punishments, Ferri opposed the distinction between punishment and security punishments, as criminal punishment is not the retribution of moral fault. Punishment and security punishments have the same mission and nature...ending the security punishment as a sanction, adjudicating offenders a punishment and giving an indeterminate security punishment, meanwhile, putting the punishment under the judicial power.\textsuperscript{120}

Ferri pointed out in this way to transfer the main point of criminal law from crimes to offenders. The kinds of sanctions are various. Though for the same crime, different and appropriate measures should be made according to the different situations of offenders.

\textsuperscript{118} On 9\textsuperscript{th} December, 1919, Ferri delivers a speech for the opening of the university at La scuola positive (quoted in professor Makino Eiichi’s scheme of amending the positivism of criminal law—penal laws amendment committee).

\textsuperscript{119} On 9\textsuperscript{th} December, 1919, Ferri delivers a speech for the opening of the university at La scuola positive (quoted in professor Makino Eiichi’s scheme of amending the positivism of criminal law—penal laws amendment committee).

\textsuperscript{120} On 21\textsuperscript{st} January, 1921, the report was proposed to justice minister by the penal laws amendment committee. A collection of sketches of law (Japanese), no.1. vol 24, 1921.
(7) Franz von Liszt

As to the theory of punishment methods, Liszt pointed out that, for the crime, “The state enforces a total unprecedented measure which has formed through several centuries: As a deserved penalty for the criminal, it should sentence punishments which include the punishment of criminal, punishment against liberty, punishment of honor or property related punishment and then execute them.” Liszt claimed that “the main purpose of punishment (to impose a punishment or had been punished) consists in general prevention and special prevention.” “Punishment has the effects of warning and threatening.” The deterrent effect of punishment is mainly to all members of society. “On the one hand, it suppresses criminal tendency through deterrent powers; on the other hand, it strengthens and stabilizes citizens’ legal consciousness through repeating and increasing emphasizing censures.” That was the general prevention. “For the criminals, the task of the punishment is that it reforms criminals to useful ones for the community (unnatural and artificial adapted to the community) by deterring (increasing fear) and rectifying (transforming their characters).” In addition, Punishment also could “deprive the possibilities of continuing offens of those criminals who are useless to the community and remove them away from the community (artificial selection) eternally or in a certain period of time. It is what people say making crime no longer a dangerous element to the community.” That was the special prevention.

Liszt’s punishment theory is related to his criminal policy theory. The followings are his main points:

(1). Modern criminal policy developing with social policy was produced in the last 25 years of the 19th century. However, the mission of social policy is to eliminate and to limit the social conditions which commit a crime. But the criminal policy fights against crimes through exerting influence on the individual criminal. Generally speaking, criminal policy needs social defense, especially the intent penal criminal punishment which matches the characteristic of criminals in the kinds of punishment and range of punishment, so it can prevent the criminal from committing crime. “The modern criminal policy has two basic demands: to educate the criminals who can be controlled and to let the criminals who have committed severe crimes not harm society. Intent penalty must make different rules and development according to different criminal types.”

(2). Modern criminal policy research finally has reached such a consensus: “the criminal punishment is not the only and the safest measure when fighting against the criminal. We should critically evaluate the efficiency of the criminal punishment.” So except the criminal

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123 Liszt demonstrated and developed his criminal policy thinking in “the purpose of thinking of criminal law” in Marburg Plan in 1882 and the book “the task of criminal policy” during 1889 to 1892. Firstly, he required the scientific research of cause of crime, so it can find the right niche for the criminal measures which fight with crime. He abandoned the conception of “Born criminal” in human crime school in which Lomбросo was the representative. He thought that crime rooted in the community.
punishment, we should also set up the security punishment.\textsuperscript{125} It is a complicated problem about the concept and relationship of the punishment and security punishment. Liszt pointed out that, punishment was that judge of criminal law exerted the penalty (Uebel) to criminals, according to the existing law to express the negative evaluation which the community valued the behavior or the actor. security punishment was like this, The purpose is that either let the individual adapt to the community, (educational or correction action) or keep those who cannot adapt to the community away. (narrow protection and or security punishment). That security punishment was not necessary connect with penalty which should be punished and exceeded the conception of punishment: to put the children who had no dry nurse but had not committed a crime into the asylum, or to put those mental patients who were danger to the community but had not committed a crime into the madhouse. That was the case. However, if we related the security punishment and the implement of behavior which should be punished, so, it had the characteristic of punishment, as well as in position of the material retribution theory. If the punishment could reach the purpose of realizing rectification and the security measure, the punishment involved the content of the of security measure. The relation of the two legal systems looked like two circles overlapped: deterrent punishment (Retributive punishment) stood oppose to security punishment; In their same section, security punishment could replace the deterrent punishment (‘substitute’ with punishment), and also punishment could replace the deterrent punishment (the security of punishment).\textsuperscript{126}

\( \text{3) } \) We should not sacrifice individual freedom without principles, in order to safeguard public interests. “In a state ruled by law, only by the perpetrator’s hostile thinking expressed in the express provision, can we punish him.” In order to protect law abiding citizen to fight against crime consciously, if you let the judge determine “whether” to punish the criminal strictly or not, so, he can choose “which kind of punishment” more freely.

\( \text{4) } \) The legislation should treat legal concept among people as a factor which contains influence and value, and it cannot break from such legal concept suddenly. ....The legislation is able to lead and to culture people’s legal notion cautiously.

\( \text{5) } \) It will bring about calamitous effect if we overemphasize the thought of modification to the people’s legal consciousness and to the survival of the state.

\( \text{6) } \) Crime rooted in society, the faith of “the responsibility for an offence of the whole society” makes a beforehand confining the punishment power of the state. No matter to the individual or to society, preventing crime is more valuable and more important than punishing the crime which has already occurred.\textsuperscript{127}

\( \text{(8) Tagantsev} \)

As to the theory of punishment methods, Tagantsev pointed out that the state has the right to punish any violations of laws and regulations, but not every criminal behavior is actually punishable. The state only conducts criminal law protection in rare individual cases be-

\textsuperscript{125} Franze.Von.Liszt"German Criminal law Text Book"Lawpress China 2000,May,1st edition,pp.6-7
cause the punishment itself is painful and in most cases the pain and suffering are similar to that of victims: the death penalty and murder, imprison and deprivation of liberty itself which is the same with deprivation and elimination of individual rights. Therefore, just as Bindinge pointed out, punishment was a double-edged sword without the handle. The state brings pain to the victims; at the same time, the state more or less takes certain costs, including the material cost of judicial application and punishment implementation. Offender’s bearing punishment is a kind of heavy pain, and the employment of power of punishment by the holder is an oppressive obligation. The obligation is fulfilled only when it is needed, that is, only if the criminal behavior is more serious than sufferings caused by punishment to the state, it is applicable.”

Tagantsev analyzed some theories as following:

(1) The theory of threat.

The oldest representative theory of the first type is the theory of threat. According to this theory, the ultimate purpose of punishment is to make offenders no longer damage the society and to warn others through the application of punishment. The state shall make use of harsh punishment to eliminate the harmful effects caused by crimes. Based on this, the punishment shall not only terrify offenders by its cruelty, but also implement penalty with its outside execution. The offender and his criminal behavior are not the basis of punishment. No mercy and forgiveness are given to the defendant; Because of this, Burnet, an English judge, sentenced a horse stealer to death punishment, and the stealer thought the punishment to him was too harsh and unreasonable, but Burnet said to him: “Your sentence to death is not because you steal a horse, but to prevent you from stealing other horses in the future.” Or even, strictly speaking, the application of punishment does not necessarily rely on proving the defendant’s crime, because the application of punishment doesn’t depend on this condition at all. German scholar Mittelstadt (Миттельштедт) said that a national system should have certain purposes. In fact, there are two kinds of such purposes—correction and intimidation.

But the first one with the nature of the penalty is mutually exclusive, and therefore cannot be achieved. Therefore, the state applicable penalties to reach the sole purpose are to intimidate. Penalty only and should be just an evil, it is a kind of torture and suffering this pain depends on the severity of penalties. All countries apply punitive measures shall comply with such a request.

(2) Prevention theory

The intimidation theory suggests that the the penalty objective consequences and penalties for the impact on others, and therefore is usually referred to as the theory of general prevention. In contrast, the subjective consequences of a penalty, is acting on the crime itself, called the theory of personal prevention. The theory of Graumann (Грольман) is that, when all citizens have the will is not in violation of the law, the legal order to become


a strong fortress. The law can and should require that every citizen has a legal will of, who does not have the will, without regard to whether the person has a motive to prevent violations of the law and is opposed to the legal order status, can be applied in order to deal with the people mandatory. Therefore, punishment for not crime, but revealed the offender criminal. In determining the limits of liability, Graumann claimed in the first aspect the perpetrator's unlawful intention, the theory of the prolonged nature of the crime. In this regard, Graumann is the pioneer of contemporary human school, which is characterized in that, his theory is built on the basis of a priori principles - an evil, never so, the correctness of the principles in the general form is not confirmed for the experience.130

(3) Correction of theory
Correction theory is relatively common, (Протагорос) the penalty definition of similar trees bent merits try, principle that penalty correction. Prevention theory refers only to deter crime will the correction of the significance of the theory of crime will corrective to morphological changes. Steyr Zell said, the purpose of punishment can only be a - correction of the offender, his own initiative to abandon harmful to social stability behavior. Of course, the state can only provide for legal redress, that the offender comply with the legal requirements in the development of behavior people sense of the will and law obedience.131

(4) Damage to soothe theory
The real task is to punish the more encompassing various attempts of utilitarianism - Hybrid Theory. The genre in the ancient and worthy of special attention theory is the theory of the so-called damage compensation or damages soothing. The basic idea of this theory is that, the nonself-material damage caused by the offender to the state penalty to soothe. The extremely important representatives of this doctrine is Weilikeer. Weilikeer in applicable penalties, the country should strive to achieve the legitimate purpose of the present or future punishment such rationality is determined by the nature of the crime. A criminal capacity, implemented in their true consciousness dominated by willful infringement of the legal relationship of behavior, causing damage to the legal order, then, his primary legal obligations and compensation for the damage he caused to become to survive in social conditions.132

(5) Yanka (Янк) and Liszt (Лист), social defense theory
Yang card said the overall purpose of the penalty is through to stop crime in the first place to protect the legal interests, or can be forced body, deprived of the possibility of harm to the body by the offender, or possibly through the psychological impact, by overcoming criminal tendencies, and (or) the impact on everyone, especially people with criminal tendencies can be achieved.

Liszt argued that the legal order of protection is achieved by the use of penalty mandatory. Penalty forces can be attributed to two factors: direct, indirect psychological forces, this is no longer a crime stimulate offender resulting motivation to achieve, through the correction, that correction develop egoism motivation, or through intimidation, that is, to develop or consolidate selfish motives, but because of the conflict with altruism, or through direct mechanical forced through the prosecution of crime, making it harmless, or imprisonment, or sanctions offender. Thus, correction, intimidation, criminal harmless aim to protect the legal order in the form of a direct result of a penalty. That in order to intimidate, correction and criminal harmless, this punishment is just and necessary. The limits of the penalty decided by its purpose.133

Through research and critical analysis of the above theory, Tap Gancai Fu said: "I think above content enough to the base that the countries, not only to the law on their own interests to protect and take as protect one sentence when and should follow the obvious useful purpose principle, the concept on a subconscious and instinctive nature of national activities, as aggregates of human society must be the rational, reasonable form of contemporary national idea is not consistent of."134

Alexander Gan tower said: "applicable penalties for criminal acts is the power of the state, the state only can be applied to the power necessary for the maintenance of the legal order and the appropriate time, and from time to time to remember all of the imperfections of the criminal justice, all painful, they not only pressure Fei Mite dismal war wheel and pressure in the body of his loved ones and all the people."135

(9). The Kiel School (1932 ~ 1945)

For the Kiel school sentence means, German Nazi Criminal Law elite Graf • Z Dona (Graf zu Dohna) written declaration of its the 1933-6-1 signed the International Federation of the criminal policy of the German club's board claimed: "political and ideological unity and Nazism advocated national concept of longing has been very clear that the performance of a plan and the possibility of an effective fight against crime. belief in powerful countries, suitable for reforming grip on the judge hands of, and rooted in the national consciousness in the penalty, the penalty The sanctions are based on the legal form of the expression of national will of state power now often the industry guilty and recidivist "is firmly determined to mercilessly destroy this Declaration on behalf of the mainstream view of the German criminal law scholars. The Nazi Criminal Law scholars advocate: the formulation of criminal law is not to protect the rights of individuals against government abuse ...... but to pro-

tect the government from individual partition. Henkel (Henkel), stressed: “The criminal law order becomes ...... national and state interests of the Magna Carta.”

The famous German criminal law scholar Edmund Matzig, supported the so-called protection of the Nazi concentration camps (Konzentrationslager) imprisonment (Schutzhaft) system, he said: “Over the past few decades, especially in the criminal law of the over-stressed Prevention Education Idea already at low tide, even if it is not fully disappear ...... of the purpose of punishment itself includes two tasks: the reconstruction of personal responsibility for the national community, and excluded from Community penalties and security actions should be reported in the new nation in the overall national ethnic and racial harmful ingredients ... A co proposition. “

Siegert (Siegert) even openly advocated the killing of "non-viable the value (Lebensunerwerter), he said:" A worthless because our thinking is the offender for the public is worthless, the state has the right to exclude him. Perhaps that is the most humane, to the public’s money to him in an isolation care until death, but to take care of the race on the nation’s valuable part of the required more important ...... rather than let the nation seedlings being neglected, it is better to killing non-viable The value of those while the exclusion outside the national community, or the survival of the nation will be more tragic fate. “

Edmund Matzig life behavior guilt "theory, in an attempt to Offenders type law into traditional incrimination principles. He believes that the free molecules of antisocial drag on the society, the reason they should be punished not just because of their individual behavior, but more because of their antisocial ... there, they are not penalized because of their antisocial, but because of their "sinful life".

Representative of criminal law theory, Dam and Scharfstein (Dahm und Schaffstein) said: "The criminal law is the most fundamental and the most important value is as a means to preserve and defend the state power" for some crime, in particular, is the major criminal penalties, improve the ability to consider the behavior of people do not have to have reason to give up to the national interest and a higher dignity remain to improve the ability of people to save - a soul is not the task of the national.

(10). Filippo Gramatica (1901~1979)
Filippo Gramatica proposed Social Defence Act to replace the "Criminal Law, antisocial concept to replace the concept of" responsibility "to cancel the penalty of cancellation of a judge and replaced by experts, the ultimate aim of enabling individuals to re-socialization, personal be improved.

Filippo Gramatica said "abandon the 'behavior' linked 'criminal responsibility' concept, to be replaced in a very broad sense, but also close to the concept of human reality and so-

136 Im neuen Staat the strafrichter und Gesetz, 1934, S 48 new national criminal judge and the law “, 1934, page 48.
137 Kriminalpolitik, 1934, Vorwort, auch S 203 ("criminal policy" in 1934, Preface and 203).
138 Der EinfluB der Strafzwecke the auf Schuld und StrafmaB, ZStrW 54 (1934), S 425 (penalty purposes responsibilities and punishments ",” Criminal Law Journal 54 (1935), page 425.)
139 Liberales order autoriares Strafrecht,1933,S 40~44
cial reality, which is the 'main' social or anti-social concepts. "As a result, the new system must make fundamental changes. 'penalty', has been unable to meet the standards and functional."  

"As a country, not to have the power of punishment, but to assume the obligations of society social work should not be a penalty to achieve, and to achieve social defense sanctions to preventive, educational and therapeutic social defense action should be based on each person's personality (subjective antisocial) necessary to apply to him, and should not be related to its relationship with the occurrence of the damage (crime) (responsibility) applies. "

Strictly speaking, social defense theory is not a penalty theory, but to deny the theory of punishment.

(11). Marc Ancel (1902~1990)
Ancel raised a new social defense on behalf of, the movement's main leaders of the defense of the new society. In 1954, Ancel published writings entitled "new social defense theory, he made it clear that his concept of both social defense theory of the end of the 19th century Prince, the social and defense system different. They have been called the "new social defense theory".

Ancel said: "new social defense theory, in principle did not completely abandon the retaliatory punishment ...". "Social defense" is not only concerned with the protection of society, it advocated the measures taken (regardless of the penalty, or the Security Measures) should be non-controversial interests "as its goal" should be to make "can best adapt to its environment deserve to live, to get rid of the risk of crime or recidivism."

Ancel emphasized the individual legal entity rather than being punished object, emphasizing the importance of a broader, more freedom necessary penalties importance of personal, which necessarily requires judges to be given adequate sentencing powers, requiring judges the natural protection of the civil rights of God through the so-called judicial intervention in new areas such as the execution of punishment. Traditional punitive measures, social defense movement firmly opposed to the death penalty, a respect for the individual, the protection of human life, human evolution, self-confidence, the protection of human social value-added is based on the establishment of the society, the death penalty is definitely not should exist; growing dissent, the prison sentence last resort after the deprivation of freedom penalty only does not work in any other ways and means to fight crime. Although not the abolition of the prison sentence, but at least it is from the official, common, widely practiced penalties become an exception to the penalty; fines, efforts to reduce its disadvantages. In general, social defense movement advocated a non-criminal and non-criminal law of the criminal policy of the Commission on Crime Prevention to establish a set of integrated and dispersed to reduce and limit the range of punishment.

Ancel said: "No matter how people's subjective desire, all methods of fighting crime in the following two different roads must choose one: or go punish road to wipe out the crime that daunting penalty: Walking has always been based on the ideological foundation to promote human progress (crime) prevention, protection (the victim) and resettlement (crime) road course here also take into account those incorrigible criminals. The social defense motion early in its a time when you choose the second path."¹⁴²

(12). Hart

Hart analyzed the definition of sentence, five factors to define the standard constitutes a "penalty" five factors: the penalty must include pain or other consequences are generally considered unpleasant. The sentence must be imposed because of some kind of violation of legal rules violations. The penalty must be an actual or presumed criminals targeting illegal offenders. Penalty must be other people other than the offender intends to implement. 5 penalty must be determined by the offenses are in violation of that legal system, an authority to impose and execute.¹⁴³

Hart insisted punishable behavior must be a voluntary moral evil, and severe punishment with the evil of the crime must adapt."¹⁴⁴

2. Penalty Means on Classification

The above penalty means can be divided into three categories:

(1) On the Extreme Penalty Means

This theory advocates:

1. To defense the society is the highest, and the individual is negligible.

Garofalo said, "In order to eradicate the original barbaric phenomenon that we call the crime." Should they "excluded from the social circle". Clear signal "that individual behavior shows that they lack the ability to adapt to the crime expelled."., Rejection of social life, deprived of their rights of social life, the famous German criminal law scholar Metz chariot Edmund Mezger said: the purpose of punishment includes two tasks: reconstruction of personal responsibility for the national community, and excluded from Community harmful ingredients to ethnic and racial another German scholar Siegert even openly advocated the killing of "no survival value" (Lebensunwerter), he said: "a worthless ideological offenders, the public is worthless, the state has the right to exclude him from" killing survival value to exclude outside to the national community."

2. Social defense can justify the means. Therefore, they advocate a harsh, cruel, inhuman penalty.

¹⁴²Ansel forward to: the social defense Thought "(Chinese translation of" new theory of criminal law "), Hong Kong Cosmos Books Ltd., 1990.
¹⁴⁴H L A Hart book: “Punishment and Responsibility”, 223 to 224,
Garofalo proposed: of crime in society’s response should be for the following three forms: to deprive the guilty with all social exchanges (such as the death penalty); criminals inappropriate to isolate special environment (such as periodic imprisonment); damage offense compulsory compensation criminals. His penalty: death, exile, deprivation of liberty and permanent exile, a period of exile, periodic imprisonment, exile to the agricultural colony from one street to move out.

Phillips said: "Empirical penal system should be built on top of the implementation of basis of unscheduled isolation principle of offenders, strongly advocated by the unscheduled punishment is necessary to bring offenders to permanent, long-term or short-term, isolated, defensive measures are applicable to a variety of criminals. These defensive measures include death, to lifelong exile and occasional isolation.

German the Nazi Criminal Law elite Graf Z Dona (Graf zu Dohna) declared: "The penalty for using the legal form of the expression of national sanctions will of. Determined state power mercilessly destroy often the industry guilty and recidivist ". The famous German criminal law scholar Metzger Edmund Mezger support the Nazi concentration camps, the so-called protection of imprisonment (Schutzhaft) system, Siegert (Siegert) even openly advocated the killing of "no survival value. Fulaisile (Freisle) said: "Do you want to be endangering the Community molecular life imprisonment, without having to worry about".

(2) On the General Penalty Means.
This theory advocates:

① Defense community is the ultimate goal, you can take a variety of means to achieve this goal. Many new penalties and defense and social measures are the product of this theory.

Liszt pointed out that, for the crime, "the state's power to take a whole new measures after a few centuries: sentenced to the punishment of criminals or free criminal the honorary punishment or property punishment and execution of these penalties, as a country of criminals should be punished, "Lisz advocated penalty (to be Branch at already Branch at penalties), the main aim of general prevention and special prevention. "The penalty warnings and threats." 145 Penalty's deterrent role of all members of society, "which on the one hand by threatening forces suppress criminal tendencies, on the other hand by the repeated and increasingly intense censure, strengthen and stable legal awareness of citizens". This is the general prevention. "For the perpetrator, the task of the penalty deterrence (Enhanced the criminals fear) and correction (change its character) criminals transformed into a socially useful only (unnatural, artificial social adaptation). penalty 'forever, or within a certain period of time, from the body deprived of the possibility of continuing criminal socially useless criminals out to be excluded from social (human screening), which is what they say perpetrators of harm to society 'special precautions. "modern criminal policy has two basic requirements:" can correct the offender should be corrected; criminals should not now corrected so that it no longer harm society. Purpose of punishment must be based on different types of crime and for different regulations and development ".

The penalty can be severe, a kind of torture and suffering, but not unlimited.

Bentham said, "punishment is always an evil, because the punishment will lead to pain, and therefore it is only in or evil to prevent a greater future, or be able to relieve them an evil case can be proved as legitimate criminal law theory must provide a similar punishment classification order sin sentencing, and as effectively as possible to prevent or relief harm principle should be: the pain of punishment must be more than the interests of crime (the pain of punishment must exceed the profits of crime), but must also be as little as possible over the evil crime ".

Feuerbach said: "from the country by law and in accordance with the Law Division at the evil that is secular penalty (die buergerbche strafe, poena forensisy). Let everyone know that there must be an evil behavior after waiting and this evil greater than from unmet motives evil. "

German scholar Mittelstaedt "to be achieved by the country in the applicable penalties sole purpose is to intimidate the penalty only and should be just an evil, it is a kind of torture and suffering, this degree of pain Depending on the severity of penalties. "

Hart adhered to the "punishable behavior must be a voluntary moral evil, while the harshness of punishment must fit with the evil of the crime".

Generally, however, they are advocates severe penalties. As noted, the purpose of the original meaning of the term "social defense", it is to protect society from crime Ansel. A very long period of time, this social defense has been built on the basis of the criminal justice system to crack down on crime.

(3) The Humane Society Defense Theory
Advocated humanitarian injected Criminal Law.

Representatives Ansel

Ansel pointed out that: "social defense" is not only concerned about the protection of society, it advocated the measures taken (regardless of the penalty, or the Security Measures) "as its goal" should be to obtain indisputable interests , it should be so that people can best adapt to its environment deserve to live, to get rid of the risk of crime or recidivism. "Most effective" the most humanitarian best social defense, it is most suitable for parties personality way to protect this social re-adaptation.

Social defense movement stressed the focus on individual legal entity instead the object importance of being punished, emphasized a broader, more freedom necessary penalty personal importance of adequate sentencing powers, asking the judge granting judges, which necessarily requires God through the natural protection of the civil rights of so-called judicial intervention in some new areas such as the execution of punishment. Traditional punitive measures, social defense movement firmly opposed to the death penalty, a respect for the individual, the protection of human life, human evolution, self-confidence, the protection of human social value-added is based on the establishment of the society, the death penalty is definitely not should exist; growing dissent, the prison sentence last resort after the deprivation of freedom penalty only does not work in any other ways and means
to fight crime. Although not the abolition of the prison sentence, but at least it is from the official, common, widely practiced penalties become an exception to the penalty; fines, efforts to reduce its disadvantages. In general, social defense movement advocated a non-criminal and non-criminal law of the criminal policy of the Commission on Crime Prevention to establish a set of integrated and dispersed to reduce and limit the range of punishment.

3. Brief Conclusion

Ancel advocated everything on sentence means of social defense theory, as the defense of the social means of penalty, must obey the request of the defense of society, in all ways, to achieve the purpose of the defense community, the evil, the penalty only penalty in evil system and an evil, is a pain, the penalty must be severe, even cruel, inhumane.

This is a means of social defense theory on error.

Section Four General Critique of Social Defense Theory

Reversing people and society’s relationship, thinking of society prior to people, this theory regards society as the foundation, purpose as well as the highest value of all values. As the means to achieve the highest value of society, not the foundation or purpose in the theory, human, compared to society, are small and insignificant. All these said above are social defense theory’s fundamental errors and deep-rooted ideology for thousands of years. The ideology, in the punishment theory, is social defense theory. In the theory, defending society is treated as the fundamental purpose of punishment, while punishing people is the means to achieve this purpose, for which it may use any kind of measures unscrupulously. This is also the deep-rooted punishment ideology, which has the same long history as thought of retribution of punishment.

However, in the class society, the society is divided into classes, and for the class dominating economically and politically, society is the foundation for the ruling class to establish and maintain their sovereignty. Therefore, the so-called “defending the society”, is to defend the sovereignty and interests of the ruling class.

In order to achieve the purpose, it may use any kind of measures unscrupulously. And this is exactly the theories of national sovereignty by Machiavelli, Jean Bodin and Hobbes derived from the same origin and also the concrete reflection of punishment right in the theory. Machiavelli advocated: the goal of politics is the protecting and expanding of political power regardless of the measures and we do not have to make up our minds in advance whether it is brutal, faithless or illegal and even do not have to worry about whether it is immoral. He publicly urged: in order to achieve the purpose, any means such as perfidy, murder and other cruel means are admitted. He declared: the matters of justice or injustice, humanity or inhumanity and honor or shame should be ignored when the security of the nation is determined by the decision-making. Other factors are set aside because the
overriding consideration should be: how to ensure the freedom and existence of the nation? How to defend the society is the only consideration of social defense theory.

For the social defense theory, it will never take human and human into consideration.

The so-called protective custody (Schutzhaft) in Nazi criminal law is a striking example. On November 24, 1933, Hitler enacted the German Law against Dangerous and Habitual Criminals and Security Measures (Gesetz gegen gefährliche Gewohnheitsverbrecher und über Maßregeln der Sicherung und Besserung, which normalized the concentration camp system in the name of protective custody (Schutzhaft).

The Allied forces found eighteen Nazi concentration camps as well as five extermination camps a few months after the liberation of Auschwitz camp. On April 12, 1945, the Buchenwald concentration camp, one of the earliest established concentration camps, was liberated by the U.S. Army, with a total of 50,000 prisoners killed. Six million Jews were killed throughout the Nazi period. Jews under Nazi rule and from the Europe, as well as the undesirable were driven into one place, and then transported to the concentration camps by ship. Those who lingered out their life under the atrocity of concentration camps were sent to extermination camps, where they were poisoned and cremated. In Auschwitz and Treblinka concentration camps, there were at least two million Jews killed in Mechanized mass killings. Apart from the mass killings, Nazi unscrupulously extorted wealth, whose means used were more outrageous: with mattress stuffed by human hair, fertilizer made from human bones as well as the gold and silver of the dead melted down for the financial support of the war.  

After all, a few changes have been reflected from the Ancel’s new social defense theory, which however do not change the essence of social defense theory. We are hoping for a fundamental change, which, in other words, is subversion of social defense theory.

The Chapters four to six will be published in the following editions; the content will be:

Chapter 4  Anachronism of Traditional Punishment Theories
Chapter 5  The Age of Globalization and Updates on the Criminal Penalty Ideology
Chapter 6  Human Rights Defense Theory

147 Legendary Calligraphy Editorial Board. Stunning Inside Story and scandal, Beijing Institute of Technology Press, 2010, p.203-204.