Abstract

The rapid development of science and technology in the late industrial society has changed the civilization of mankind rapidly. Especially, due to the development of advanced information and communication technology, the world is free of the barriers between countries so that the word 'global village' disappears. As a result, free movement of people, money, and technology makes economic ripple effect, spreading democracy, I brought it. On the other hand, there are also side effects that can enforce enormous economic damage as well as human life and body, such as the abuse and abuse of nuclear power due to advanced science and technology, serious environmental crimes, unpredictable accidents, It is the dark side of the development of science and technology. The dark side of this technological development is the object that human beings must overcome to exist as human beings and to live a safe life while they exist.

To do this, we examine the emerging risks in the transition from industrial society to late industrial society, and the role of the criminal law in coping with these dangerous people and their changes. In other words, as a means of controlling risk, we have examined the legal response, and the change in the concept of legal benefit through transposition of such a criminality and the expansion of abstract dangerous people are suspected to be effective and may adversely affect the fostering of healthy social communities. In addition, it has been confirmed that it is reasonable to abolish this approach because it is possible to promote the quantitative expansion of the criminal law in a clear sense that it copes with a new phenomenon, rather it may even doubt the effectiveness of the criminal law itself. In addition, the problem of management of the risk source is not socially controlled by the state but it is reasonable to go to the social management based on the social consensus of the concerned civil society and the people who have easy access to the risk source. And the administrative law area, it is reasonable to consider the criminal legal action as the ultimate means.

[Keywords] Risk, Risk Society, Risk Criminal Law, Abstract Legal Interest, Excess of Punishment

1. Introduction

The rapid development of science and technology in the late industrial society has changed the civilization of mankind rapidly. Especially, due to the development of advanced information and communication technology, the world is free of the barriers between countries so that the word 'global village' disappears. As a result, free movement of people, money, and technology makes economic ripple effect, spreading democracy, I brought it. On the other hand, there are also side effects that can enforce enormous economic damage as well as human life and body, such as the abuse and abuse of nuclear power due to advanced science and technology, serious environmental crimes, unpredictable accidents, It is the dark side of the development of science and technology. Furthermore, the threats of genetically modified food and cloned human beings due to the development of biotechnology have not become a problem yesterday, which could shake the foundation
of mankind beyond the problems of individual groups. The dark side of this technological development is the object that human beings must overcome to exist as human beings and to live a safe life while they exist.

The new form of risk that characterizes modern society has been an issue in various academic disciplines such as law, political philosophy, and journalism as well as sociology since the German sociologist Ulich Beck presented the concept of 'risk society'. Discussions on the dangerous society in law have been discussed mainly in the field of criminal law. In order to discuss how to cope with the new types of large-scale risk factors in the late industrial society, I have been actively engaged in discussions. Since the late 1990s, there have been discussions on risky society and dangerous criminal law in the fields of economic criminal law, environmental criminal law, and information criminal law.

In this article, we will examine the role of the law to cope with the dangerous society by looking at the changes of the criminal law that directly governs the new types of risk factors based on the basic understanding of the dangerous society.

2. Concept of Risk Society and Change of Law

2.1. Concept of risk and risk society

It is a difficult problem to define the concept of dangerous society uniquely. According to Beck, a dangerous society is a society in which the dark aspects behind human social development are increasingly dominated by societal debate, namely the possibility of artificial nuclear power, chemistry, ecology and genetic engineering destruction. In other words, it means a contradictory society in which the scientific civilization designed for human convenience threatens human existence itself. According to Beck, ourselves, just as modernization dismantled the feudal society of the nineteenth century and created an industrial society, today's modernization is dismantling the industrial society of the 20th century, and the present society, which dismantles this industrial society, But as a continuation of the continuing development of modernity."[1]. In other words, he is trying to define a dangerous society based on the aspect of society change due to the change of time. However, the notion of such a dangerous society is so abstract that it is not well understood what a dangerous society Beck would like to discuss. Eric Hilgendorf pointed out that the concept of risk society proposed by Beck is quite unclear in terms of philosophical, sociological and legal aspects. He pointed out that the danger society is the destruction of the natural environment due to the rapid development of science and technology in late industrial society And threats to human survival, the disabling of the human sensory system, the assertion of industrial progress, and the arrival of fear society as a result of the collapse of community consensus[2]. The concept of this abstract dangerous society became a hot topic in human society in 1986 when the Chernobyl nuclear reactor incident. Since the development of atomic power in the West in the early 1960s, the introduction of advanced science and technology, including global ecological risk and abuse of nuclear energy, and the social reflection on the danger have begun in earnest in the 1970s and early 1980s but There was little interest to Korea society[3]. However, in the late 1990s, the Korean society, due to the collapse of the Sungsu Bridge, Sampung Department Store, and the oil spill in Taean, reminded society that large-scale disasters could occur due to the adverse effects of these technological and technological developments. The discussion of the mass risk of the form has begun.

If so, what is the new form of risk that Beck presents? Two aspects of Beck's risk concept are raised in Korea. In other words, it is a discussion of how to distinguish between traditional forms of risk and new forms of mass risk. First, Beck distinguishes 'risk' from 'past' (Gefährdung) and a new form of mass risk (Risiko) It is a personal threat by political power, and the latter is the view that technological-economic development, corporate production, and threats that can arise at the heart of society itself[4]. Risiko is already
aware of the danger of foreseeing the legal interests (i.e., nuclear power plants, genetic engineering, etc.), although it is already aware of the danger. Gefahr is a view that interprets it as a danger of unexpected corruption, and Gefährdung as a traditional danger that means the possibility of infringement of an individual's personal interests [5].

The controversy seems to be that the traditional form of risk (or crisis) is viewed from the same point of view, but the viewpoint of how to look at the new form of risk is different. However, because the concept of Risiko as a social entity is not a concept with its limitations as opposed to the traditional threat (Gefährdung), which means the possibility of infringement of the individual's legal interests by this division, the definition is still unclear. Therefore, the concept of a new type of risk is "expected in human society in the late industrial world, As well as a certain industrial mass risk that appears to be unavoidable in the unprotected personally".

2.2. Characteristics of risk society

It is necessary to examine the conceptual characteristics of risk society based on the concept of risk and risk society discussed above. Based on these characteristics, it is necessary to confirm whether modern Korean society is involved in the risk society proposed by Beck.

First, human beings are aware of the danger through scientific knowledge, because the new form of mass danger is created by humans but is a risk of outgrowing human cognition (think of radioactive hazards). That is, risk can change within the knowledge, be exaggerated, adapt or diminish [6].

Second, the risk is gradually leveled. In other words, in the industrial society, the person who has to recognize and take negative side products of the industrial society has been decided. While traditional risk varies according to the status of the class, the new form of risk is equally applied to the rich and the poor, not to distinguish between rich and poor. As the size of the risk increases, its propagation becomes wider. In other words, new risks lead to the disappearance of the line between the privileged and the non-privileged, which means that all socio-economic differences in terms of 'exposure to risk' have become meaningless due to the strengthening of certain kinds of risks globally. It is not normal but normalized.

Third, the risks in a risk society have boomerang effects that return to those who produce the risk or benefit from the risk. For example, a farmer who produces a large amount of crops through chemical fertilizer will be at an inherent risk of soil erosion on his farm, as well as the side effects of consuming large quantities of lead in his grain.

Fourth, a new form of mass risk becomes a new market for capitalist development. In other words, risk is an avid demand that economists have been waiting for a long time. Hunger can be filled, and destitution can be fulfilled, but the danger of civilization cannot be fulfilled because it has a demand like underneath poison, and it can be infinitely self-produced. It can be said that the legislation like the expansion of the insurance market in economics and the expansion of the abstract risk law for the safety society from the legal point of view shows this.

The discussion of this danger society is that the structural risk factors of the late industrial society, which occurred artificially, will exceed the predictable range of mankind while experiencing the industrial society, and that the survivors' And it is impossible to recover the infringement results [7]. How has the law changed and responded to this mass risk? This is because the necessity of legal interpretation and legal method is constantly raised through reflection on the existing regulatory method as well as the necessity of regulation on the new phenomenon [8].

2.3. Changes in legal functions in risk societies

Why did the discussion of dangerous society occur? Though there may be various perspectives according to the writer, I think it is basically because it prompted the desire of safety for oneself existence. In other words,
the objective aspect of the emergence of new mass risks due to the development of science and technology, and the subjective aspects of increasing the anxiety and fear of the members of society caused by this competition. Of course, it is true that the traditional and natural dangers of our society have been reduced compared to the industrial societies due to such economic growth and development of science and technology. However, this objective safety has increased, but the subjective anxiety that the members of society have in the new form of mass dangerous danger poses a serious threat to objective safety. For this reason, members of our society are demanding active intervention in new risk factors.

3. Changes in Criminal Law as a Means of Controlling Mass Risk and Its Limitations

As we have seen, the new emerging risk factors in late industrial societies require legislation to expand its coverage area based on reflective considerations that it should rethink its existing traditional role. In other words, it is required that the law intervene not only in the conventional role of traditional social deviations, which are traditional roles, but also in the newly emerging (but not presumably illegitimate) forms of elements. This danger law has its significance especially in the field of criminal law, which can be found in the sense that it regulates the inherent characteristics of criminal law, that is, human behavior as punishment. In the following, we examine how the criminal law changes as a control of mass risk in a post industrial society, and examine whether such a change can achieve such a purpose.

3.1. Changes in criminal law in risk society

3.1.1. Macroscopic aspects

The most distinctive feature of Western-style democracy since Charles De Montesquieu’s distinction between the legislative and executive powers of John Locke and the three-divisionist theory was the division of the three factions into the principle of checks and balances. Under such a system of separation of powers, the law was characterized as passive existence. However, the advent of dangerous societies and the active intervention of laws to counteract them have led to a shift in the nature of these laws (or the judiciary). This is because the proposition of the last law of the law has been raised in the past because the human race demands the change of the law through the result of the unforeseeable atypicality and the enlarged risk which is the risk source in the risk society. However, the active involvement of the law in these social disputes is a serious risk, apart from its usefulness, that it is the breakup of the separation of powers that causes the executive power to intervene in the jurisdiction. In other words, it entails the examination and judgment of what is the danger and how to set up the countermeasures, and as a result, it causes the jurisdiction of restraint and judgment of the state power[9].

Also in this case, the role of the administrative office is to intervene in a crisis that can be resolved by social consensus under the pretext of preventive measures against unpredictable risk sources. It is suspected that this is intended to prevent the dangerous society derived from late industrial society from being aimed at the advent of dangerous premises.

3.1.2. Microscopic aspect - the pursuit of social safety through early intervention in criminal law

3.1.2.1. The rise of universal legal interest

Legal interests refer to the interests and values of individuals and communities for which the violation is prohibited by law. Most of the major interpretation work, such as legislative review and legal interpretation as well as the construction of the theoretical framework[10], This is because the law has a clear legal interest to be protected by means of forcible means, the state intends to intervene only for obvious violation of legal interests, and inevitably minimizes the concept of the legal interest that the state intends to protect and maximizes the freedom of community members It can be interpreted as a purpose.
As the post-intervention of the law based on the concept of the traditional legal interest cannot satisfy the new security need of the people in the dangerous society, the preemptive intervention of the law has been demanded, which is a modification of the conventional concept of the legal benefit. In other words, it is difficult or impossible to prevent and eliminate new types of large-scale risks in the traditional legal interest, and it recognizes the prejudiced legal benefits, that is, universal legal benefits, rather than the traditional and individual legal benefits that are traditionally recognized[11]. Recognizing this broad universal legal interest has its own place in protecting the value of the community itself as well as its members[12]. However, this universal benefit has difficulties in practical application of the law because it can not explain to the life loner of the norm what the object of protection is specifically. Furthermore, the concept of foreclosure entails the risk of being filled with non-legal elements that are mixed in our notions of morality and ethics.

3.1.2.2. Expansion of abstract endangerment offences

In the late industrial society, a new type of risk is scattered throughout society, and the production and distribution of such risk is an important task of modern society, and thus a new role of the state and the law is required inevitably. The purpose of this risk penal code is to try to play an active role in resolving the anxieties that the members of society have about the dangers of modern society and try to control the risks that are objectively present through these roles[13].

According to the traditional criminal law theory based on criminal justice, the first consideration in the application of the criminal law is the supplement of the criminal law. However, focusing on these principles of complementarity can not effectively deal with the new types of risks facing mankind, so the criminal law must actively intervene to cope with the new types of crimes that cause these risks. In the area of modern risk, it is difficult to confirm concrete protection law, and if we adhere to the last means of criminal law, which is the basis of modern criminal law, we can not prevent the realization of danger.

In general, criminal law is realized through the infringement of legal interests, which means personal or social / national goods or functions that are worth protecting, but illegal acts caused by new mass danger of modern industrial society must be violated. It does not[14]. However, since the occurrence of 'concrete risk' in these specific dangerous beings depends on the accidental factor, the vicious circle is extended again by the second stage, in other words, in order to actively reduce and prevent the new massive risk, it is necessary to intervene in advance at the early stage of the culpability, so that any act that has a certain possibility of risk creation irrespective of the concrete result of the act is subject to punishment. An abstract risk taker who does not require a causal relationship between the act and the outcome of the infringement by taking is introduced by the legislator. However, the expansion of such an abstract dangerous criminal has a problem that it is placed with the modern law thought that causal relation of action and result is the premise of responsibility. In the description of the selection and constitutional requirements of criminal acts, the abstract risk to legal interest is only a matter of legislative or criminal policy considerations, thus raising criticism as a serious violation of accountability[15]. In addition, despite the fact that the expansion of abstract endangerment offence is a countermeasure against future risks, there is a question about whether the preventive effect is effective.

3.2. Possibilities and limitations of security guarantees through the criminal law - the pains of criminal law in a risk society

In such a dangerous society, criminal law is expanding its temporal and spatial scope through its active role, but there are many perspectives on the change of such criminal law.

Of course, as Hegel puts it, law can not be meaningful because it is influenced by that age and the state of society belonging to it. The law is a means of solving social conflicts,
not a self-existent being. In this regard, legal interpretation (as well as legislation) to respond to the massive risk factors in late industrial societies should reflect changes in the times.

In the risk society, what the social community demands of the criminal law is prevention of the risk occurrence through the control of the risk source, which means safety from the mass risk. But before we cry out for safety from the danger, we should consider what safety is. Safety means a state free from danger or a source of danger. These hazards were safety from nature, which was largely a force majeure before industrialization, safety from poverty in industrial society, and safety from mass danger in late industrial society. In other words, it means that only incomplete safety has been maintained before the full-scale risk society has arrived, and the concept of safety means relative. In what ways can safety be secured in modern society? There are many forms of risk in a dangerous society, but in order to prevent this type of danger and ensure safety, infringement of the fundamental rights of the people is a necessary phenomenon. In other words, the relationship between freedom and safety is inversely related, which means that the higher the desire for safety, the greater the violation of fundamental rights.

Here we can reconsider the existence of criminal law in late industrial society. In the past, citizens who have been favored by civil society as a means of securing citizens' freedom and rights are forced to perform an excessive role (and criminalization) in order to achieve the same goal as before. In addition to the protection of citizens from such risk sources, the government is also suffering from the task of ensuring maximum freedom of citizenship. However, in a dangerous society, freedom and security are inevitable core values for community members. If so, then there remains the question of whether to enjoy relative safety and absolute freedom, or else to enjoy absolute safety and relative freedom. At the crossroads of this choice, we think that the basic principles of criminal law (as well as law), such as the principle of clarity, the principle of responsibility, the principle of proportionality, and the principle of complementarity are necessary.

4. Outro

We have briefly reviewed the emerging risks in the course of transforming from the industrial society to the late industrial society, and the role of the constitution and criminal law in response to these dangerous people and their changes. The changes in the legal functions in the dangerous society confirmed that there is a destination to the liberation from the risk, that is, to the safe social orientation, by preparing against the new type of risk. For constitutional aspect, it examines from the aspect of constitutional theory and guarantee of basic rights where the responsibility of the state for securing the safety of members of community is derived, and examines the legal response as a means of controlling such risk sources. The change of the concept of the corporation and the expansion of the abstract dangerous beans through the transposition of this verbal nature are suspected to be effective and the possibility of adversely affecting the fostering of healthy social community is examined. In addition, it is reasonable to abandon this approach because it is possible to promote the quantitative expansion of the criminal law in a clear sense that it copes with a new phenomenon, rather it may even doubt the effectiveness of the criminal law itself. Therefore, even in a dangerous society, the interpretation of the Constitution and the law should be done within the scope of not harming the rule of law and national tradition. In addition, the problem of management of the risk source is not socially controlled by the state but it is reasonable to go to the social management based on the social consensus of the concerned civil society and the people who have easy access to the risk source. And the administrative law area, it is reasonable to consider the criminal legal action as the ultimate means.

This requires a new analytical model for the distribution and management of mass risk while maintaining the legal basis of the legal system in legal interpretation. This is the role
required for all of us living in the late industrial society. It will be a way to minimize.

6. References

6.1. Journal articles


6.2. Books


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