CRIMINAL INTERVENTION AND RISKS OF CURRENT SOCIETY: MANIFESTATIONS AND PROBLEMS OF PUNITIVE EXPANSION IN NEW AND TRADITIONAL AREAS OF CRIMINALITY

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Abstract

The exchange of global economic flows and the high degree of development of technological processes have turned globalisation and technical progress into the current pillars of our society. The advantages and opportunities they offer are twofold, since they can both improve the quality of life and serve as an opportunity for unlawful and, specifically, criminal conduct.

The concept of risk has consequently assumed a leading role in shaping the social model of advanced modernity. At the same time, it has given rise, as a normative reaction, to a demand for security on the part of citizens, which in the sphere of Criminal Law is manifested in an expansive tendency in its scope of intervention.

However, the risks we are currently facing have different origins and characteristics, so that the expansive response of Criminal Law is neither unified, nor does it pose the same problems. Thus, based on the characteristics of today"s society and the risks that threaten it, this paper is based on the differentiation of the expansive currents of Criminal Law developed on the basis of new preventive needs. Specifically, it is possible to identify two punitive trends: one, whose function is to respond to new forms of criminality arising in the light of technical and scientific progress; the other, which affects and intensifies criminal intervention in traditional areas of delinquency, linked to marginalisation and social exclusion. Having set out this framework, we will analyse some of the main manifestations of both currents in the Spanish Criminal Code and the problems of legitimisation and attribution of criminal responsibility that they raise.

Keywords: *Criminal Law, social model, risks, punitive intervention, Criminal Policy.*

1. Introduction

This paper addresses the protection that Criminal Law currently grants to society. Its objective is to analyse the political-criminal discourse that has developed on the current social bases and present some of the problems posed by the penal regulation that has given recognition to this Criminal Policy since the adoption of the Spanish Criminal Code in 1995 and the successive reforms that have been expanding its content[1]. Criminal Law is attributed a crime-preventive purpose to protect society. It is, in essence, an instance of social control that establishes its mechanisms for controlling social conflicts. However, it differs from other instances of social control (family, education, social networks, etc.) due to its high degree of formalisation. Criminal offence is a conduct that expresses intolerable social harm and, consequently, requires the most severe state

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response in terms of affecting the rights and freedoms of citizens, fundamentally personal freedom.

Historically, Criminal Law has found its main object of protection in interests of an individual nature, derived from its development within the framework of the Liberal State of the 19th century (life, health, physical integrity, property, honour...). This has conditioned both the criminal policy of its time and the nature and structure of the offences whose commission harms or endangers these legal interests. However, if Criminal Law fulfils a social protection function, it is easy to deduce that it is the specific model of society that will define the scope of protection for the maintenance of peaceful coexistence. Obviously, the characteristics that define the societies of post-industrial countries are very different from those on which classical Criminal Law was based at that time. We are witnessing an unprecedented economic, technological, political, cultural, and social revolution that has put existing legal mechanisms to the test in the face of new realities and, in particular, in the face of the conflicts that arise in this remodelled society. However, as the characteristics of the current social model give rise to new areas of protection, there are growing doubts as to whether criminal intervention is still compatible with the principles that legitimise it.

Within the framework of these considerations, this paper will start with the main defining features of the post-industrial social model and the factors that contribute to the formation and entrenchment of the public"s perception of insecurity or fear. This will lay the necessary foundations for analysing how they have been translated into a political-criminal discourse differentiated according to the origin of the risk and its specific characteristics, which has conditioned Spanish criminal legislative policy too. Some of the examples in which this Criminal Policy is manifested will allow us to expose the main problems faced by Criminal Law in the 21st century. In doing so, this work contributes to the open debate in the specialized doctrine on the legitimacy of criminal expansion in each case, and its compatibility with the indispensable principles and guarantees of any criminal intervention.

2. Some keys to understanding today"s society

2.1. Risk society, knowledge society and exclusion society

As stated in the introduction, it is not possible to understand the Criminal Policy that has guided the reforms of the Spanish Criminal Code over the last 25 years without considering the social scenario in which it has developed. This is the result of the profound changes that have shaped the way we understand and relate to the world.

Briefly, the exchange of global economic flows and the development of technological processes have enabled the development of weightless and intangible activities characteristic of the global economy[2]. This produces both benefits and opportunities, as well as generating risks, new or more potentially damaging than those known in the past. Consequently, we live in a "risk society", where the processes of globalisation and technological progress affect the way we understand interpersonal

[2] Colina Ramírez, E.I. Sobre la legitimidad del Derecho penal en la sociedad del riesgo. Barcelona: J.M. Bosch, 2014, 52.

relationships and the physical-spatial space in which they unfold[3].

Derived from above, today"s society is also set up as a "knowledge society", due to the leading role that new information and communication technologies play in it. ICTs are fundamental tools for social development that aspire to the global democratisation of knowledge. A paradigm of this is the Internet, the global network, where space and physical barriers disappear, and access to information is instantaneous, despite the physical distance between the event or sender of the information and its receiver. We live in the physical world, but also in the virtual world, which is as real as the physical world[4].

There is another facet of the current social model, which defines it as a society of exclusion or a "two-tier society"[5]. The positive effects of the opening up of economic networks, favoured by new technological channels, have a well-defined geographical scope. But they maintain, or even aggravate, social inequalities between countries and within their borders. The outbreak of the 2008 economic crisis is a good example of what the global economic order based on the rules of neoliberalism has led to and what it has meant in social terms. Today, the health crisis caused by Covid-19 has also shown that those who are suffering the most from the economic and health consequences are the most disadvantaged groups, as well as the poorest countries in terms of access to vaccines.

2.2. The birth of the insecurity society or fear community

The social scenario that has just been synthetically described is the basis for understanding another defining feature of the social system of our time. Economic development and technological progress are giving rise to risks that may even threaten the whole of humanity. They are latent risks, since it is difficult to specify when they will be translated into concrete damage, their magnitude and place of production, as they are not subject to physical limits[6]. It is also complex to establish a direct relationship between the victim and the origin of the damage, given the complexity of the production and management processes, as well as the exact mechanism and cause of the damage. Given these factors, the citizen acquires the impression of invisibility in the face of the danger, its agent and the extent of its repercussions[7].

Thus, the "community of fear"[8] or the "society of felt insecurity"[9] emerges. Obviously, the insecurity that a society manifests depends on the extent to which it

[3] Beck, U. La sociedad del riesgo. Hacia una nueva modernidad. Barcelona-Buenos Aires-Mexico: Paidos, 1998, 25. Beck understands risk in a realistic or objective sense, i.e. assessed according to objective parameters of scientific knowledge.

[4] Almonacid Lamelas, V. & Sancliment Casadejús, X. "El impacto de las TIC en la configuración clásica del derecho. Especial referencia al principio de territorialidad". Revista de Tecnología, Ciencia y Educación, 4 (2016): 13.

[5] Bergalli, R. "Libertad y seguridad. Un equilibro extraviado en la modernidad tardía". In El Derecho ante la globalización y el terrorismo, coordinated by M. Losano y Muñoz Conde, F. Valencia: Tirant lo Blanch, 2004, 71.

[6] See Silva Sánchez, J.M. La expansión del Derecho penal. Aspectos de Política criminal en las sociedades postindustriales. Montevideo – Buenos Aires: BdeF, 2006, 27; Mendoza Buergo, B. "Gestión del riesgo y política criminal de seguridad en la sociedad de riesgo". In La seguridad en la sociedad del riesgo. Un debate abierto. Edited by C. Da Agra, J. Domínguez, P. Hebberecht & A. Recasens. Barcelona: Atelier, 2003, 69.

[7] The invisible nature of risk in the technological society is one of the theses Beck puts forward to explain his theoretical model of the "community of fear". In this sense, see La sociedad del riesgo…, op. cit., 28 y 59.

[8] Beck, U. *La sociedad del riesgo*…, op. cit., 56.

[9] Silva Sánchez, J.M. *La expansión del Derecho penal*…, op. cit., 32.

is at the mercy of these "modern" risks. But it is also profoundly conditioned by citizens" subjective perception of risk, which influences what they are willing to tolerate[10]. What factors contribute to the formation and entrenchment of the social sense of insecurity?

First, the knowledge and information society contains a paradox of its own. The generation of scientific knowledge, subject to strict rules of testing and verification, gives rise to new areas of ignorance and potential risks[11]. Knowledge offers security, but also uncertainty. On the other hand, the danger of the introduction of false or insufficiently verified news or information into the global network has devastating effects on citizens" perception of risk. Today"s society is a society of information and communication, but this does not determine either the quality or the veracity of its content.

Second, changes in everyday life occur at a dizzying speed, leaving the individual with little time, and sometimes capacity, to adapt and assimilate them. This heightens the sense of fear about the repercussions on their professional work, private life, or leisure time[12].

Thirdly, the media play a very important role in shaping people"s perception of reality. The proliferation of programmes that magnify the dangers we have to live with and the sensationalist way of dealing with the news widen the gap between objective risk and people"s subjective feeling of fear.

Fourth, economic power groups have a strong influence on the generation and dissemination of information through their control of the media. For their part, political parties also contribute to shaping public opinion, since the discourse of the power groups is ascribed to a certain political ideology. But political parties are also recipients of public opinion. The demand for security appeals to the political power for quick and apparently effective action, which is introduced into the political agenda of all parties as a fundamental electoral weapon.

The variables analysed are key to establishing the equation between risks and citizens" perception of security/insecurity, as we have seen. However, the social significance of the risks derived from globalisation and technological progress, on the one hand, and the existence of social inequalities and exclusion, on the other, is quite different. And it could be said that some of the influencing variables described above would have a greater impact on the latter social aspect. In the latter case, we are dealing with the citizen"s fear of being a direct victim of crime, in the framework of a political, economic, and social context that is already very agitated by essential issues (employment, access to health care, social benefits, housing, etc.). It is not the insecurity generated by the secondary or collateral consequences of technical, scientific or financial progress, but the insecurity that arises as a direct result of these processes in the generation and stratification of poverty and marginalisation. The risk arises from the "other" who is not the same as us, because he or she is a non-included in the system. The fog surrounding the perpetrator/victim and cause/harm relationship in a complex web of tasks, functions and chains of responsibility clears to make way for a face-to-face between the citizen and this visible and easily

[10] Colina Ramírez, E.I. *Sobre la legitimidad del Derecho penal*…, op. cit., 36.

[11] See Mendoza Buergo, B.: "Gestión del riesgo y política criminal…", op. cit., 68.

[12] Similar to this, noting the increasing difficulty of adapting to societies that are constantly accelerating, Silva Sánchez, J.M. *La expansión del Derecho penal*…, op. cit., 32.

identifiable "other". And so, the citizen is less willing to tolerate these dangers with which he or she has to live.

It is enough to review the selection of daily news items to see which ones capture the attention of the media and, in their role of shaping public opinion, of the public. They are particularly violent and bloody, with an excessive use of drama, morbidity, and even bad taste[13]. This emphasises the apparent seriousness of the situation and the need to act forcefully in the face of it. To a greater or lesser degree, the citizen internalises the language of communication, which introduces value judgements from the moment a news item is selected[14]. The importance of the role of information in this area lies in instilling in citizens a certain perception of the phenomenon of crime, modulating their attitude towards it[15], regardless of its real incidence according to seriously elaborated statistics[16]. Moreover, it consolidates the impression that the apparent increase in crime is caused by someone different or alien to the majority of citizens[17], especially immigrants, drug addicts, the unemployed, beggars, the socially maladjusted, the mentally ill, etc., who are socially identified as the culprits of public fear. The above discourse is once again used by the power groups and political parties to support their political action programmes, in the same terms as mentioned above. Security is demanded and consequently security is offered, a balm for social fear and the key to political success.

3. Risk, security, and Criminal Policy

On the basis of the social mosaic presented, an analysis will be made of the political-criminal trends that have been the basis of the reforms of the Spanish Criminal Code since its promulgation in 1995. It is possible to identify two main trends: one, oriented towards the "modern" risks of today"s society; the other, focused on the punishment of poverty and marginality.

3.1. The expansion of "modern" criminal law in the face of risk society

The binomial of risks derived from progress/citizen insecurity has brought the implementation of preventive policies by the State into the social and political landscape. Obviously, the greater the distortion between objective risk and subjective feeling of insecurity, the greater the demand by citizens for public action to avoid the actual harm of a possible threat. Even ahead of the birth of the threat of harm itself. A "preventive State" or a "vigilant State"[18] appears, which anticipates the danger in order to prevent it from arising[19].

In the field of Criminal Law, previous public policies have given rise to the so-called phenomenon of the "expansion of Criminal Law". In fact, this phenomenon spills over into other areas of criminal intervention, but here the approach is as follows: economic and technical

[13] See Soto Navarro, S. "La influencia de los medios en la percepción social de la delincuencia". *Revista de Ciencia Penal y Criminología*, 07-09 (2005): 12-15 (http://criminet.ugr.es/recp).

[14] Fuentes Osorio, J. "Los medios de comunicación y el Derecho Penal". *Revista Electrónica de Ciencia Penal y Criminología*, 07-16 (2005): 5 (http://criminet.ugr.es/recp).

[15] Hassemer, W. *Persona, mundo y responsabilidad. Bases para una teoría de la imputación en Derecho Penal*, Valencia: Tirant lo Blanch, 1999,19.

[16] See the research by Benito Sánchez, D. *Evidencia empírica y populismo punitivo. El diseño de la política criminal*. Barcelona: J.B. Bosch, 2020, *passim*.

[17] Fuentes Osorio, J. "Los medios de comunicación…", op. cit.,17.

[18] Silva Sánchez, J.M., *La expansión del Derecho Penal*…, op. cit., 138-139.

[19] Mendoza Buergo, B. "Gestión del riesgo y política criminal…", op. cit. 75.

development produces new areas of risk that affect new interests of protection or interests that were previously protected but are threatened by new forms of aggression. It is justified, then, that Criminal Law should review its contents and adapt them to the circumstances of a world that is very different from that of barely half a century ago.

According to the above, several areas of criminal expansion can be identified in relation to the "modern" risks of the globalised and technified society[20].

A first group focuses on the phenomenon of the globalisation of criminality in the commission of crimes. Here the "risk" lies primarily in the transnational or aterritorial nature of its commission, as well as in the greater material resources offered by the organisation for the perpetration of the offence. In addition to the increased penalties for certain offences when committed within the framework of a criminal organisation, the main manifestations of this group of expansion are, in my opinion, two: the criminalisation of the offences of belonging to an organisation and criminal group (Articles 570 bis and 570 ter, respectively), and the provision for the criminal liability of legal persons (Article 31 bis) and other groups without legal personality (Article 129).

A second group brings together a catalogue of offences in which very different legal interests are protected. However, they share common elements: a) in general, the collective or supra-individual nature of the protected legal interests and its protection against conduct that endangers them, without the need to actually harm them; b) the subsidiary nature of criminal protection compared to the protection offered by other legal sectors; c) the gradual assumption in criminal typification of the administrative mode of management, i.e., preventing conduct that only cumulatively generates damage[21]. A large part of the content of economic Criminal Law belongs to this heterogeneous group. Among others, offences relating to the market and consumers (Articles 278 to 288 of the Criminal Code), corporate offences (Articles 290 to 297), environmental protection (Articles 325 to 331), offences relating to the protection of flora and fauna (Articles 332 to 227), or urban planning offences (Articles 319 and 320).

A third group of offences incriminate the dangers arising from technical and scientific progress: genetic manipulations (Articles 159 to 162), use of nuclear energy and ionising radiation (Articles 341 to 345) and some offences against public health (Articles 364 and 365). In addition to these offences affecting health and/or the very existence of mankind, cybercrime can also be included in this group[22]. In a broad sense, it covers a wide range of situations of criminal relevance. In some cases, due to the fact that the use of computers or ICTs offers a new channel for committing traditional offences (fraud, coercion, threats, disclosure of secrets, harassment, child pornography, crimes against intellectual property, terrorism, hate speech, etc.) in which

[20] It is not possible to draw a clear dividing line in each case, but the initial systematisation proposed by Mendoza Buergo is followed here (*El Derecho Penal en la sociedad del riesgo*, Madrid: Civitas, 2001, 41-42), complemented by this paper´s author with provisions introduced in the Spanish Criminal Code following successive reforms.

[21] Martínez-Buján Pérez, C. *Derecho Penal Económico y de la empresa. Parte General*. 5ª edición. Valencia: Tirant lo Blanch, 2016, 88.

[22] Cybercrime also fits into the two previous groups, since the use of ITC´s can serve as channel or instrument for the commission of the offence.

different legal interests are protected, mostly of individual nature (property, personal freedom, sexual freedom, privacy, etc.). In other cases, what is incriminated is a new criminogenic reality, in which Criminal Law assumes the protective role of the computer resource itself. An example of this are the offences of computer damage (Article 264) and denial of service (Article 264 bis). Also, the offences of hacking, computer intrusion or interception of data (Articles 197 bis and 197 ter), in which a new type of legal interest is protected, namely computer freedom.

Many of the incriminations representative of the modernisation of Criminal Law that have been highlighted have their origin in an international normative instrument that seeks the approximation of national criminal laws. Initially, the attempts by states to seek a common response to common problems are to be welcomed. But it also opens up the debate as to whether the expansion of criminal law into new areas or areas that have traditionally been alien to it is not affecting the foundations of its own legitimacy. Added to this are the specific substantive and procedural problems particularly posed by the crimes that guide "modern" Criminal Law, such as that relating to the determination of the applicable Criminal Law when it is not possible to apply the principle of territoriality in the face of borderless crime.

In accordance with the principle of proportionality, criminal intervention is legitimised to the extent that it is an *ultima ratio* response for the protection of legal interests. According to this principle, the criminal protection afforded to legal interests of a collective nature, far from the individual referent on which liberal Criminal Law was built, raises the question of whether genuine criminal legal interests are really being protected, or on the contrary certain institutional functions traditionally protected by Administrative Law[23]. This is where the discourse on the legitimacy of a large part of economic and business Criminal Law comes into play. In addition to this, precisely, the subsidiary nature of criminal intervention and the coexistence of sanction regimes, with the consequent possibility of incurring in a *bis in idem* or a double sanction prohibited for the same conduct in the criminal and administrative spheres.

Even recognising the need to protect social realities of collective nature previously outside the scope of Criminal Law (environment, reasonable use of land...), the equalisation of the penalties to which the legislator sometimes resorts to punish situations with different effects on the protected legal interest is questionable. Thus, for example, certain conducts affecting the environment are punished with the same penalty whether they cause actual damage or "may cause damage" (Articles 325.1 and 326.2, 326 bis). This can only be understood from the perspective of the precautionary principle that guides Administrative Law, which has a wider scope of application than criminal prevention. There are also cases in which the same penalty is applied to the completion of the offence and to certain preparatory acts for the subsequent commission of the offence, such as the protection of computer freedom (Article 197 ter), computer-related damage (Article 264 ter), child grooming (Article 183 bis) or the counterfeiting of non-cash means of payment (Article 400), among others. On the other hand, the criminalisation technique followed in some cases clashes with the rule of law, in particular with the mandate of clarity or specificity of criminal legislation, due to the

[23] Silva Sánchez, J.M. *La expansión del Derecho Penal*…, op. cit.,123, 138-141.

frequent use of normative elements or blank criminal laws, which require a strict standard of constitutionality to be met.

3.2. The expansionist punitive trend in the face of social exclusion and marginalisation

Criminality that has its origins in poverty and, on a larger scale, in social marginalisation, is not new. What is really "new" in relation to the apparent "risks" generated by the exclusion society is the current way of perceiving and understanding this criminality, in accordance with the influencing factors outlined previously. Security is demanded and security is offered. And what is the better way to achieve both objectives than through the criminal justice system, the State"s most repressive instrument. The current political-criminal trends in citizen security in Spain and other countries, focused mainly on the popular vote, fit into this context.

The content of these political-criminal guidelines is a faithful reflection of the "law and order" and "zero tolerance" policies that began in the United States in the early 1990s and rapidly spread to other countries[24]. The basis of these policies lies in the gradual destruction of the welfare State following post-industrial and neoliberal postulates. Thus, the progressive widening of the economic inequality gap and the social insecurity it generates find their counterpoint in the criminalisation (or rather, re-criminalisation) of poverty and marginalisation. The priority action of the public authorities therefore consists of repressing the disturbances of the "populace" through a policy of uncompromisingly dealing with the delinquency that disturbs the tranquillity of the middle and upper classes, since the latter make up the bulk of the electoral body.

This drift towards a progressive hardening of the criminal response in traditional areas of delinquency linked to poverty and social exclusion can be clearly seen in the successive reforms of the 1995 Spanish Criminal Code. The common element in all of them is the introduction of legal provisions that seek to isolate the offender from society for as long as possible. Examples of this are: (a) the introduction of revisable permanent imprisonment (2015 reform); (b) the reduction of the minimum limit of the custodial sentence from six months to three months (2003 reform), despite the null preventive effectiveness they exert; (c) the incorporation of the aggravating circumstance of qualified recidivism, which allows the sentence to be increased by one degree regardless of the concurrence of another or other aggravating circumstances (2003 reform); d) the provision of a regime of aggravating penalties for habitual and repeated offences (2003 and 2010 reforms), and subsequently for minor offences of minor theft and minor theft of use of motor vehicles or mopeds (2015 reform).

Apart from these legal provisions, the policy of law and order and zero tolerance can also be seen in the abolition of misdemeanours that took place with the 2015 reform. The LO 1/2015, of 30 March, repealed Book III of the Criminal Code, where misdemeanours were defined. The suppression was apparently justified by the legislator for reasons of minimum intervention, but in reality it has produced a

[24] See, mainly, Wacquant, L. *Las cárceles de la miseria*. Buenos Aires: Manantial, 2000,101-156. See also Wacquant, L. "La tormenta global de la ley y el orden: sobre neoliberalismo y castigo". In *Teoría social, marginalidad urbana y Estado penal. Aproximaciones al trabajo de Loïc Wacquant*. Edited by I. González Sánchez (203-228). Madrid: Dykinson, 2012.

generalised hardening of the criminal response, particularly in relation to small-scale property crime[25]. The 2015 reform has consolidated a particularly repressive and detailed regulation of minor theft, the prototype of petty crime, increasing the penalty for petty minor theft[26] (heir to the old misdemeanour) and incorporating new aggravations of the penalty that have also increased the penalty. The same fate has befallen street vending, in the context of offences against intellectual and industrial property. Moreover, in this case, the legislator has displayed a deficient legislative technique. In consideration of the characteristics of the perpetrator and the small amount of profit obtained, an alternative penalty is provided for to the attenuated or mitigated criminal offence (one to six months" fine or community service of thirty-one to sixty days). However, depending on the penalty imposed, the offence will be minor or less serious according to the classification established in Article 33 of the Spanish Criminal Code, with the substantive and procedural consequences resulting from it[27].

The political-criminal ideology that underlies the previous regulation has long opened up a heated debate in the specialised doctrine as to whether the legislative reforms of the last two decades have given rise to a Criminal Law focused on fighting against another who is not a citizen, but an enemy. Thus, there is talk of a Criminal Law of the enemy, which is largely rejected by the specialised doctrine. From the set of legal provisions that have been highlighted above, one can observe an intensification of the use of custodial sentences with a primary purpose of neutralising the offender, sometimes with neo-retributionist roots according to the (subjective) general opinion of the citizen. This calls into question whether this type of penal regulation is compatible with the resocialising orientation of custodial sentences in Article 25.2 of the Spanish Constitution.

Furthermore, these legal provisions go down the dangerous path of forgetting the *ultima ratio* nature of *Ius Puniendi* and the criterion of proportionality that legitimises it. Solving the problem of social differences caused by the global society by re-criminalising poverty does not seem to be the right way to go, and appropriate preventive social policies should be adopted for this purpose. The Spanish criminal legislator has distanced itself from this idea, since the progressive dismantling of the Welfare State has been accompanied, in an inversely proportional relationship, by an extensive and intensive punitive interventionism that does not produce dissuasive or resocialising effects. What it does produce is a placebo effect on the citizen, since it conveys the impression that something is being done to solve the structural problem behind the discourse of citizen security, above all because of the electoral advantage it offers.

4. Conclusions

This paper concludes that the Criminal Policy of a given historical moment can only be understood from the social foundations on which it is developed. In this sense, it has

[25] See Faraldo Cabana, P. Los delitos leves. Causas y consecuencias de la desaparición de las faltas. Valencia: Tirant lo Blanch, 2016, passim.

[26] Article 234.2 punishes with the upper half of the penalty of the minor offence in cases that are usually committed in clothes shops or supermarkets: "when in the commission of the act the alarm or security devices installed on the stolen goods have been neutralised, eliminated or rendered useless by any means".

[27] Martínez Escamilla, M. "La venta ambulante en los delitos contra la propiedad intelectual e industrial", InDret-Revista para el análisis del Derecho, 1 (2018), 11.

been analysed that the risks arising from the social fabric of post-industrial countries do not have the same meaning and characteristics. Nor do the set of factors that condition the citizen"s perception of insecurity have the same impact. Thus, the aim of this paper has been to show the double face of citizen insecurity and the risks that have caused it.

First, the risks that have genuinely driven the development of a "modern" Criminal Law are those deriving directly from the productive processes of economic globalisation and technological progress. This is the area in which Criminal Law has taken on a necessary extensive role, not without difficulties and problems that arise when it comes to making the protective function of Criminal Law compatible in the light of a society that is different from the one on which classical Criminal Law was based. The compatibility of criminal incrimination with the principles of legality, proportionality and culpability that determine the canon of constitutionality of criminal intervention is one of the fundamental challenges facing specialised doctrine and the work of judicial bodies.

Secondly, social threats rooted in marginalisation and social exclusion have emerged as a perverse effect of the above processes. However, they do not represent new risks for Criminal Law. What is new in the political-criminal discourse that responds to them is the gradual hardening of repression in this area, with an extension and intensification of custodial sentences. This punitive interventionism is dominated by "more of what is already known", with a clearly neutralising purpose, to the detriment of the aspiration of re-socialisation proclaimed in Article 25.2 of the Spanish Constitution. This is not the modernisation of Criminal Law to which we should aspire, that is difficult to fit into the framework of a Social and Democratic State under the Rule of Law such as Spain.

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