

Die Quelle der Theorie von „der Gefahr und der Verwirklichung der Gefahr“ in der Kausalität (1)

— Zum Anlass der Überprüfung über die
Theorie von Karl Engisch —

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The theory of “the danger and the realization of the danger” (der Gefahr und der Verwirklichung der Gefahr) trends to be the main stream of the causation in Japanese Criminal Law. However, this formulation connotes a kind of ambiguous logic. Especially the judgment of the danger and the realization of the danger is divided on the basis of *ex ante* or *ex post*, and yet the difference between “danger” and “risk” is not clear. This difference trends to be influenced by the opinions, which attach importance to the fact in cases or not.

This theory originates from Karl Engisch, who was German criminalist and published the book “Die Kausalität als Merkmal der strafrechtlichen Tatbestände, 1931”. Therefore this paper focuses the analysis of his original logic and try to find a hint to the solution to some problems on the vagueness of this logic in two installments. Firstly, the part 1 focuses the analysis of his theory “die Formel der gesetzmäßigen Bedingung”.