

# Dangerousness and dangerous offenders



**ASSIGN  
BUSTER**

## **Dangerousness and Dangerous Offenders.**

Analyse the concept of dangerousness and critically evaluate its usefulness for the criminal justice system.

Dangerousness, is the concept of criminology that is used to attribute those offenders who are deemed to pose a significant risk to the general public but whose actions cannot be made attributable to a specific mental illness. This therefore means that the administration of their criminal punishment is, by law, to be dealt with by the penal system as opposed to the medical profession. This paper analyses this concept of dangerousness, which will predominantly take into consideration the difficulties of creating an adequate legal definition for the use of the “ dangerousness” concept as a tool within the modern criminal justice system. In particular, critical assessment of a possible use for a dangerousness concept will be analysed with reference to difficulties of categorisation of dangerous behaviour and possible usefulness. Once a use for dangerousness has been identified, this will be analysed with reference to possible impacts on the modern Human Rights regime. These findings will be cross referenced with the work of the Multi-Agency Public Protection Arrangements (MAPPA) and the Multi-Agency Public Protection Panel (MAPPP) in order to determine whether there really is a use for an all encompassing ‘dangerousness’ concept in Criminal Justice.

### A. Definition of the Concept of Dangerousness

Research into the dangerousness concept reveals that it is a character that is attributed to certain criminal offenders. Floud and Young therefore describe dangerousness as:

<https://assignbuster.com/dangerousness-and-dangerous-offenders/>

*“ a pathological attribute of character: a propensity to inflict harm on others in disregard or defiance of the usual social and legal constraints... ”*

The first revelation of the concept of ‘ dangerousness’ is, therefore, that it is a notion aimed at the criminal offender.

A second aspect of the concept is that the offender need not be suffering from any form of mental illness. This does not pose huge problems for the criminal justice function of sentencing, since mental illness is indicative of insanity, which when averred in a court of law, has the effect of acquitting the offender on account of lack of mens rea to commit the crime. The insane are therefore dealt with by the medical profession on a strictly subjective level in a way that the penal system would be ill equipped to provide. This was evident in the case of Peter Sutcliffe, the Yorkshire Ripper, who, after a period of time in prison due to a failed plea of diminished responsibility, was eventually found to be mentally unsound and was placed into psychiatric care.

Finally, a third aspect, or perhaps a problem associated with the above definition is that there is little guidance on the classification of behaviour that can be deemed as dangerous. This will be dealt with below. In relation to this, there is no assistance in the determination of the boundaries between dangerous and non-dangerous offenders.

## B. Dangerousness as a useful tool for the criminal justice system

### 1. Definition of Criminal Justice

In order to assess a potential tool for the Criminal Justice system, it is essential to know exactly what Criminal Justice is in order to identify its specific requirements for potential, useful tools.

Criminal Justice is highly complex for the simple reason that it is a system operated by various institutions including the police, the crown prosecution service, the criminal defence service, the courts, the probation service and the prison service to name but a few. Sanders and Young have however identified one key principle of all institutions that are instrumental in the Criminal Justice system, which is to regulate:

*“ potential, alleged and actual criminal activity within procedural limits supposed to protect the citizen from wrongful treatment and wrongful conviction... ”*

## 2. Requirements for dangerousness to be a useful tool

Dangerousness, as a tool within this system, therefore requires to be instrumental in the regulation of alleged and actual criminal activity.

Dangerousness itself would fit into the criminal justice modal as a legal term for the attribution of certain offenders but, in doing so, it must have a functional use beyond mere classification. As a tool within a fair legal system that is governed by the Human Rights Act 1998, it is also necessary that the definition of dangerousness is clear and precise so that offenders are given the benefit of full transparency of the law.

## C. A function beyond mere classification?

What is the function of dangerousness? In 1981, Fleud and Young presented their publication on the discussion of dangerousness as a classification of individuals for the purpose of imposing predictive judgements:

*“...for sentencing purposes a man should only be judged ‘ dangerous’ if it can be predicted that he will commit a future offence with something like the degree of particularity and certainty with which we could reckon to establish the fact that he committed a past offence... ”*

While this is certainly a function for the tool of ‘ dangerousness’ in the criminal justice system, ‘ dangerousness,’ as a designation that leads to predictive judgement, is a blatant attack on the concept of ‘ innocent until proven guilty’. This is clearly pronounced by the fact that all criminal acts are determined in a court of law using the standard of ‘ beyond reasonable doubt,’ and that the evidential burden of proof lies with the prosecution as opposed to the defendant.

This also profoundly supported by Article 6 of the European Convention of Human Rights (ECHR) which categorically stipulates the right to a free trial.

In addition, our current criminal justice system employs initiatives that are geared towards the rehabilitation of the offender, which means that modern day imprisonment is not only a fulfilment of the requirement to protect the public, but is also a means of educating the offender for the purpose of development of re-integration into society. The premise for preventative detention would suggest that the offender is past hope for such rehabilitation.

Any form of incarceration for reasons other than the determined sentence administered through the channel of a fair trial must be given the most absolute and strict scrutiny. This is the basis upon which the extended detention of forty-eight hours under s 41(3) of the Terrorism Act 2000 is based and, under strict circumstances laid out in Schedule 8, this period of detention may be extended. The significance for 'dangerousness' is that, as a concept of criminal justice that facilitates extended incarceration, there would require to be a clear, precise and strict declaration of parameters to determine the situations that would give rise to 'dangerousness' without which there can be no certainty in the law governed by Human Rights concepts.

These findings therefore show that preventative detention can now never take place in line with Human Rights but does this mean that dangerousness is a concept that is fully obsolete? This is not the case when we examine the operation in the modern era of the organisation of MAPPA, which was set up in 2001 under the authority provided by the Criminal Justice and Court Services Act 2000. MAPPA is a supervisory, regulatory body that monitors offenders that are deemed to be dangerous to the public.

Far from being a hindrance to the Human Rights concept, MAPPA bridges the gap between, the right to Liberty of the offender who has served time in prison, and supervision for the protection of the public. MAPPA is also a clever way of allowing for the continued adherence to Article 5 (ECHR) by facilitating the monitoring function of MAPPA as justified by the fact of a right to liberty and security of person under Article 5 for the general public. This is given priority over an absolute right to Article 5 protection for the

dangerous offender. The approach is therefore intended to be the proportionate measure that finds adequate compromise between the rights of the general public on the one hand, and the offender on the other. This therefore allows for qualified freedom within a more specialised version of the traditional practice of probation.

#### D. Finding parameters for dangerous behaviour

As a premise from which to determine the ‘dangerousness’ in behaviour, types of criminal behaviour that fall into this category would be all forms of criminal offence that would be considered as creating risk of ‘grave harm to others’. A traditional viewpoint for this concept is to include such violent crimes as murder, rape and all other forms of assault. In addition, this umbrella can also include crimes where there is a less direct aim at bodily harm, such as dangerous driving, arson and other wilful destruction of property. However, the list can be endless!

The problem of attribution of dangerousness to specific crimes is solved under the MAPPA model by limiting the supervisory scheme to violent and sex offenders. In addition, the high risk offenders are referred to the more specialised MAPPP. The powers of both organisations are found under the Sexual Offences Act and Criminal Justice Act 2003, in which the responsibility for supervision of dangerous offenders is granted to the Police, Prison and Probation Services who are collectively referred to as the ‘Responsible Authority.’

This model does however leave open two ongoing problems.

1. Dangerous behaviour is still not necessarily confined to violence and sex offences

From a criminal justice point of view, the focus on specific types of behaviour, although initially pointing to violent crimes, does ignore the fact that grave harm can be inflicted in other ways such as the committal of fraud, embezzlement and money laundering. In fact, these types of crimes have the potential of creating far more widespread harm than that of conventional acts of violence. There is equally a distinct social difference between the physically violent spectrum of criminal behaviour and the so-called white-collar criminal activity involved in crimes of deception. This first problem therefore reveals that ‘dangerousness’ should not be limited to acts of violent and sexual nature but it continues to reveal the fact that any potential list of ‘dangerous crimes’ must be finite in order to preserve certainty in the law.

2. Vast focus on the offender ignores the social context of crime

Not only is it clear that dangerous crimes need not be exclusively of the violent and sexual nature, but the focus of ‘dangerousness’ is wrong in that it draws attention to the criminal and the crime as opposed to the social problem that generated the criminal behaviour. As shown via illustration of the problem associated with the classification of ‘dangerous’ crimes, there are many social contexts that are capable of creating certain criminal activity. A mere focus on the offender does nothing to hit hard at the root of the problem and the criminal justice system simply continues to imprison and punish offenders from the breeding grounds of, on the one hand, deprived and poverty stricken areas, and on the other, hand, corrupt

<https://assignbuster.com/dangerousness-and-dangerous-offenders/>



administrative institutions. Dangerousness therefore not only ignores problems in society, but in doing so, it misses out on the wide variety of types of criminal activity that can be generated across the spectrum of social environments.

### 3. Counter arguments

It must however be remembered that there are other forms of supervisory mechanisms in place for the future prevention of non-violent and dangerous crimes such as embezzlement. These include the striking off of Directors from the board of directors following criminal activity. Furthermore, in relation to the targeting of social problems associated with specific areas of the country, John Prescott is currently heading one of the most comprehensive and widespread re-generation programs in UK history.

### Conclusion

Dangerousness, as a legal concept, has extremely limited scope and the MAPPA model is merely a Human Rights friendly method of supervision that has utilised the word dangerous to describe violent and sex offenders. While the dangerousness concept has the potential to go far further than this small window of crimes, it is as a result of the complexities inherent in dealing with various crimes and their diverse social backgrounds that dangerousness cannot become a single operation within the criminal justice system. Instead, its usefulness is merely that of a non-legal but linguistic adjective to different crimes that require diverse preventative measures.

### Bibliography

<https://assignbuster.com/dangerousness-and-dangerous-offenders/>

## Legislation

Sexual Offences Act 2003

Criminal Justice Act 2003

Terrorism Act 2000

Human Rights Act 1998 (European Convention of Human Rights)

## Case Law

R v Sutcliffe, The Times, 23 May 1981

## Textbook Publications

J Floud and W Young, “ Dangerousness and Criminal Justice,” (Cambridge Studies in Criminology XLVII, 1981)

A Ashworth, “ Principles of Criminal Law,” (Oxford University Press, 4th edition, 2003)

A Sanders and R Young, “ Criminal Justice,” (Butterworths, 2nd edition, 2000)

## Web Resources

The Labour party: [www. labour. org. uk/jpbattlebus](http://www.labour.org.uk/jpbattlebus)

The Home Office: [www. probation. homeoffice. gov. uk](http://www. probation. homeoffice. gov. uk)