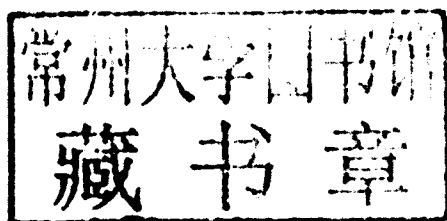


DANGEROUSNESS,
RISK AND THE
GOVERNANCE OF
SERIOUS SEXUAL AND
VIOLENT OFFENDERS
KAREN HARRISON

DANGEROUSNESS, RISK AND THE GOVERNANCE OF SERIOUS SEXUAL AND VIOLENT OFFENDERS

Karen Harrison



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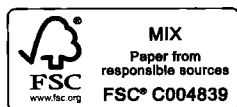
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In loving memory of Janet Harrison,
although you are no longer with us,
your influence and encouragement live on

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PREFACE

Notwithstanding changing social constructions and understandings, the dangerous offender is arguably one of the most persistent moral panics (Cohen 1972) of the late twentieth and early twenty-first centuries. While there are comparatively few dangerous offenders in terms of the total offender population, the potential harm and subsequent long-term impact that their offences can cause have the potential to be disproportionately high, especially when compared to property offences and crimes not committed against the person. Public protection, governance and the sentencing of these offenders is consequently of prime importance, and due to the high stakes involved, it is imperative that both policies and systems set up to deal with this risky group of offenders are both appropriate and effective. With this backdrop in mind, the aim of this book is to assess the governance of dangerous offenders within England and Wales by providing a critical evaluation of the policies, procedures and institutions involved. In short, it questions whether dangerous offenders are appropriately labelled, detained and managed within the penal system, and whether enough is being done to not only effectively reduce the risk of reoffending but also to ensure public protection.

The first issue that must be decided upon in a book of this nature is who the dangerous offender is and, indeed, this was not an easy task. When the book was first conceptualised, it was intended that it would cover a number of different 'types' of dangerous offender including, but not limited to, terrorists, would-be terrorists (especially due to the significant problems of assessing the risk that would-be terrorists pose), prolific offenders (based on the number of offences that they commit) and the more traditional serious sexual and violent offenders. As the book began to take shape, however, it was realised that, due to space, it would be impossible to include all of these different types. For this reason, it was therefore decided to concentrate solely on serious sexual and violent offenders, although it is freely acknowledged that other dangerous offenders exist and, in some cases, these types may actually pose more of a risk to the public.

By concentrating on just serious sexual and violent offenders, it is thought that this gives the book a better structure and a clearer purpose. Indeed, as each chapter was embarked on, it was realised that, in many cases, a whole book could have been written on each chapter heading, rather than a mere 10,000–14,000 words. Although it has therefore been necessary to be brief in some areas, it is nevertheless hoped that the book still provides sufficient material to not only explain and begin to evaluate the issues involved, but also to provoke thought, discussion and further reading on this important subject. In order to ensure that sufficient breadth was covered, the book is divided into nine chapters. Chapter 1 begins by considering what a dangerous offender is and provides a brief historical account of how the label has been used for different types of offender over the last three or four centuries. It further explains why the book concentrates solely on serious sexual and violent offenders, although notes the many other different types that exist. This is then followed by Chapter 2, which considers sentencing policy in addition to early and current dangerousness legislation. In particular, it evaluates the available sentences specifically designed for dangerous offenders and assesses their use and appropriateness. In order to come within current dangerousness legislation, the offender must have been ‘assessed as dangerous’ and, following on from sentencing policy, Chapter 3 looks at the role of risk-assessment tools, considering what risk assessment is, the way in which it works and how, over recent times, it has become more reliable and valid.

Chapters 4 to 6 then look at the practical realities of how serious sexual and violent offenders are dealt with by the penal system in England and Wales. This includes a chapter on the use of imprisonment, a chapter on strategies of risk management and a chapter on interventions designed to reduce risk. Within each chapter, specific methods, regimes, programmes and strategies are outlined, with efficacy evaluated and commented on. Gaps within the system are also identified. Finally, within Chapters 7 to 9, specific offender groups are considered, including female offenders, children and young people, and mentally disordered offenders (MDOs). Each chapter considers whether there are any differences in terms of policy, assessment and management strategies when sentencing and managing each distinct group; and, if not, whether any such modifications are required. In all three of these final chapters, the general theme is the same: if the individual is not a sane adult male, then there needs to be recognition of this in every process and procedure undertaken.

Every effort has been made to ensure that this book details the most up-to-date processes, procedures and interventions, and HM Prison Service has been particularly helpful in this regard. The law is stated as at 10 December 2010.

Karen Harrison
Hull
December 2010

LIST OF ABBREVIATIONS

AIM	Assessment, Intervention, Moving-on
ATC	Association of Therapeutic Communities
AUC	area under the curve
CALM	Controlling Anger and Learning to Manage It
CARAT	Counselling, Assessment, Referral, Advice and Throughcare
CARE	Choices, Actions, Relationships and Emotions
CDA	Crime and Disorder Act
CEOP	Child Exploitation and Online Protection
CJA	Criminal Justice Act
CJIA	Criminal Justice and Immigration Act
COSA	Circles of Support and Accountability
CPA	cyproterone acetate
CPS	Crown Prosecution Service
CSC	close supervision centre
CSCP	Cognitive Self-Change Programme
C-SOTP	Community Sex Offender Treatment Programme
CTO	community treatment order
DPP	Detention for Public Protection
DSPD	Dangerous and Severe Personality Disorder
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ERASOR	Estimate of Risk of Adolescent Sexual Abuse Recidivism
ERU	Exceptional Risk Unit
FTO	Foreign Travel Order
GPP	Generic Parole Process
GPS	Global Positioning System
GSM	Global System Mobile

xiv Abbreviations

HCR-20	Historical, Clinical, Risk Management-20
HMCIP	Her Majesty's Chief Inspector of Prisons
HMIP	Her Majesty's Inspectorate of Prisons
IDAP	Integrated Domestic Abuse Programme
IMB	Independent Monitoring Board
IPP	imprisonment for public protection
i-SOTP	Internet Sex Offender Treatment Programme
J-SOAP	Juvenile Sex Offender Assessment Protocol
LHRH	Luteinizing Hormone-Releasing Hormone
LISP	Life and Indeterminate Sentence Plan
LS/CMI	Level of Service/Case Management Inventory
LSI-R	Level of Service Inventory-Revised
LSP	life sentence plan
MAPPA	Multi-Agency Public Protection Arrangement
MAPPP	Multi-Agency Public Protection Panel
MBU	Mother and Baby Unit
MCBS	Managing Challenging Behaviour Strategy
MDO	mentally disordered offender
MHA	Mental Health Act
MHTR	mental health treatment requirement
MPA	medroxyprogesterone acetate
NO	Notification Order
NOMS	National Offender Management Service
NPS	National Probation Service
N-SOTP	Northumbria Sex Offender Treatment Programme
OASys	Offender Assessment System
OGRS	Offender Group Reconviction Scale
OMA	Offender Management Act
OVP	OASys Violence Predictor
P-ASRO	Prison-Addressing Substance Related Offending
PCL-R	Psychopathy Checklist-Revised
PTD	personal tracking device
RHSO	Risk of Sexual Harm Order
RM2000	Risk Matrix 2000
SARN	Structured Assessment of Risk and Need
SAVRY	Structured Assessment of Violence Risk in Youth
SFO	serious further offence
SOA	Sexual Offences Act
SOPO	Sex Offences Prevention Order
SOTP	sex offender treatment programme
SSRI	Selective Serotonin Reuptake Inhibitor
STC	secure training centre
TC	therapeutic community
TV-SOTP	Thames Valley Sex Offender Treatment Programme

UN	United Nations
ViSOR	Violent and Sex Offender Register
VOO	Violent Offender Order
WCP	Women's Community Project
YJB	Youth Justice Board
YOI	young offender institution
YOT	Youth Offending Team

Publications

<i>Acta Neurochir Suppl (Wien)</i>	Acta Neurochirurgica Supplement (Wien)
<i>Ann. N.Y. Acad. Sci</i>	Annals of the New York Academy of Sciences
<i>Arch. News</i>	Archbold News
<i>Bull. Am. Acad. Psychiatry Law</i>	Bulletin of the American Academy of Psychiatry and the Law
<i>Crim L.R.</i>	Criminal Law Review
<i>J. Forensic Sci.</i>	Journal of Forensic Sciences

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1

DANGEROUSNESS AND THE DANGEROUS OFFENDER

Introduction

Although the terms danger, dangerous and dangerousness are used in common parlance, their actual precise meanings in criminal justice terms is much more elusive, with Shaw arguing that ‘the problem of “dangerousness” is [in] its definition’ (1973: 269). Considering the nature of this book, it would seem appropriate that the first task is to decide on, or at least attempt to define, what such concepts mean and appraise their use in the context of historical, political, legal and social perspectives. Such an assessment, albeit in brief, is the main aim of this chapter (for a fuller discussion, see Rennie 1978; Pratt 1997, 2000).

Existing definitions

The *Oxford English Dictionary* (2009a) currently defines dangerous as ‘fraught with danger or risk; causing or occasioning danger; perilous, hazardous, risky, unsafe’, and danger as ‘power (of a person, weapon, or missile) to inflict physical injury’ (*Oxford English Dictionary* 2009b). *Webster’s New World College Dictionary* (2009a, 2009b) correspondingly defines dangerous as ‘involving an active threat’ and danger as ‘the general term for liability to injury or evil, of whatever degree or likelihood of occurrence’. It is worth noting that, while contemporary definitions appear to focus on physical concepts, this is not where the term danger originates from. Rather, its linguistic roots come from the Latin derivative *dominium*, which meant lordship or sovereignty. Sarbin therefore argues that the real meaning of danger is power, where danger is ‘a symbol denoting relative power in a social organisation’ (1967: 286).

Over the last half century, there have been a number of reports and studies that have attempted to define these terms, particularly for legal and clinical purposes. One of the first looked at the difference between violence and danger, arguing

2 Dangerousness and the dangerous offender

that, while 'violence denotes action; danger denotes a relationship' (Sarbin 1967: 285). Dinitz and Conrad note that, although violence can occur from organic, psychological or situational factors, 'danger is a function of social structure' (1978: 100). Furthermore, Sarbin argues that danger and violence are connected, as an offender will often 'use violence to change the [social] system when no other alternatives are available for maintaining an acceptable social identity' (1967: 293). This, he argues, is dangerous conduct because it threatens the *dominium*.

For policy purposes, however, reference is more commonly made to the term dangerousness, although we still refer to offenders as dangerous. In 1975, the Butler Report argued that dangerousness was 'a propensity to cause serious physical injury or lasting psychological harm' (Home Office and Department of Health and Social Security 1975: xiii), equating dangerousness with a physical disease, but not further defining what it meant by either 'serious' or 'lasting'. Consultant Forensic Psychiatrists in the same report argued that it was 'unwanted behaviour which is threatening or disturbing to the public and may require that the offender be placed in custody to protect the public' (ibid.: 59). Earlier, but in the same year, the Scottish Council on Crime provided a slightly tighter test, defining dangerousness as 'the probability that he will inflict serious and irremediable personal injury in the future' (Scottish Council on Crime 1975: para. 122). Two years later, it was held to be 'an unpredictable and untreatable tendency to inflict or risk serious, irreversible injury or destruction or to induce others to do so' (Scott 1977: 128), and a year after this the dangerous offender was viewed to be that 'repetitively violent criminal who has more than once committed or attempted to commit homicide, forcible rape, robbery or assault' (Dinitz and Conrad 1978: 99). In the 1980s, dangerousness was defined as 'a pathological attribute of character: a propensity to inflict harm on others in disregard or defiance of the usual social and legal constraints' (Floud and Young 1981: 20), with an acknowledgement that 'violence is almost universally regarded as the hallmark of dangerousness' (ibid.: 7). Interestingly, it was also recognised that 'dangerousness inheres in situations, not in persons; that there are no "dangerous persons", but only dangerous situations, harmful behaviour and unacceptable (or, at least, unaccepted) risks' (ibid.: xvi). This was further emphasised by Floud, who argued that 'there is no such psychological or medical entity as a "dangerous" person and that "dangerousness" is not an objective concept' (1982: 213). Furthermore, Gunn, a year later, argued that dangerousness is made up of a number of elements, of which he felt three stood out the most: 'destructiveness, prediction and fear' (1982: 7).

Current academic interpretations include Holmes and Soothill (2008), who state that it is a pathological attribute of character (although, as offenders labelled in this way are rarely constantly dangerous, they warn that it should not be viewed as a character trait), and Thompson, who classifies it as 'a concept that hints at an inherent and immutable individual characteristic' (2007: 85). In fact he argues that the term no longer actually exists, being replaced rather by the concept of 'risk of serious harm' (ibid.). Additionally, a more recent interpretation is that dangerous offenders are 'those who commit the most serious acts of physical and sexual violence'

(Hebenton and Seddon 2009: 343). Recent policy and strategy documents also contribute to, or perhaps further muddy the water when seeking, a clear definition. HM Prison Service's Dangerous Offender Strategy, for example, states that a dangerous offender is

someone with convictions for sexual or violent offences who is assessed as presenting a high or very high risk of serious harm . . . a risk which is life threatening and/or traumatic and from which recovery, whether physical or psychological can be expected to be difficult or impossible.

(HM Prison Service 2004: para. 2)

Likewise, the Criminal Justice Act (CJA) 2003 states that an offender is dangerous if he has previously been convicted of a specified offence (which can include any one of 88 sexual offences and 65 violent offences), and the court decides that there 'is a significant risk to members of the public of serious harm occasioned by the commission by him of further such offences' (s. 229 CJA 2003). Serious harm is categorised as 'death or serious injury whether physical or psychological' (s. 224(3) CJA 2003).

There are consequently several definitions from which to choose from, although with little consensus between them they do not really help to decide what category of person is or should be seen as dangerous, although clearly the more modern definitions appear to concentrate on just sexual and violent offenders. Perhaps, then, the task for this chapter is not so much about how dangerousness is defined, but rather what is meant by the term dangerous offender. As outlined in more detail below, the meaning and understanding of the term has changed over time, with changing notions and hence constructions of who is perceived to be dangerous. The next section, therefore, looks at the historical and sociological constructions of the dangerous offender.

Historical and sociological constructions of the dangerous offender

The concept of dangerous types is not new. For example, in biblical times, the first Christians were seen as dangerous, as too were thousands of women who were accused of being witches in the late Middle Ages (Rennie 1978). Furthermore, in medieval times, the label was given to the landowner, who had power over slaves, peasants and vassals and the authority to control every aspect of their lives. Dangerousness, in this sense, was therefore connected with ownership and power (Dinitz and Conrad 1978). Elizabethan times, however, saw the dangerous offender being defined for the first time. This included:

scholars going about begging; all seafaring men pretending losses of their ships and goods on the sea; all idle persons going about either begging or using any subtle craft or unlawful games and plays, or feigning to have knowledge

4 Dangerousness and the dangerous offender

in physiognomy, palmistry or other like craft science; . . . all jugglers, tinkers, pedlers and petty chapmen; all wandering persons and common labourers refusing to work for the wages commonly given; . . . [and] all persons who wander abroad begging.

(An Act for the Punishment of Rogues, Vagabonds and Sturdy Beggars, 39 Elizabeth c. 4 (1597–98), cited by Rennie 1978: 7)

A clear shift was thus seen from the all-powerful, to those classified as members of an underclass, 'feared not because of their power but because of the lack of it' (Dinitz and Conrad 1978: 129). The dangerous were henceforth seen as the poor: beggars, vagabonds, escaped servants, strangers and gypsies, and, although previously seen as just a social nuisance, those who could be viewed as wanderers were additionally classified as dangerous by the sixteenth century (Rennie 1978).

In the eighteenth and nineteenth centuries, the dangerous were those who were challenging authority's power, with examples including French revolutionists, the Italian Carbonari and, in England, working men's associations created at the time of the Industrial Revolution (Rennie 1978). These people were thought to possess a power of destruction, not just of property, but, more worryingly, against tradition, order and the law. Categorisation of dangerousness was therefore based on civil disobedience rather than any other maxim (Pratt 1997). Individuals thought to be dangerous at this time were people such as Karl Marx, Friedrich Engels (Marxism) and Mikhail Bakunin (anarchism). Indeed, in modern-day China, dangerous offenders are still defined to include political activists and counter revolutionists (Epstein and Hing-Yan Wong 1996).

Other mentions of dangerousness in the nineteenth century related not to dangerous offenders per se, but rather to the dangerous classes. These included dispossessed agricultural workers, trade unionists, political agitators, criminals (Pratt 2000) and the poor. These were often referred to as the proletariat, being only fit to reproduce (Rennie 1978). In 1840, Fregier, for example, spoke about an underclass that included both the virtuous (working) poor and the vicious (idle) poor, of which it was the latter who were the objects of fear (Dinitz and Conrad 1978). Brace, moreover described them as the 'ignorant, destitute, untrained and abandoned youth' (Rennie 1978: 4). Membership of the dangerous classes was based on a lack of wealth rather than behaviour, with the premise being that the labouring class, a term used synonymously with dangerous, would inevitably have some lapse in moral integrity due to their economic state and dispossess honest citizens of their money (Rennie 1978). This was also seen in literature, with Dickens, in *Oliver Twist*, describing the criminal poor as the dangerous classes of Victorian London, with similar references made by Victor Hugo in *Les Misérables*.

Radzinowicz likewise describes the portrayal of the dangerous classes as 'a race apart, morally depraved and vicious, living by violating the fundamental law of orderly society, which was that a man should maintain himself by honest, steady work' (1966: 38–9). Brace argued that: