

# The Dangerous Offender as a Problem in Finnish Judicature and Society

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Citation: Bruun Kari (2019) The Dangerous Offender as a Problem in Finnish Judicature and Society. J Forensic Crime Stu 3: 102

## Abstract

In Finnish judicature, as elsewhere, the dangerousness of offenders has gained increasing attention during the past few decades. The question asked in this study is this: what were the knowledge and belief systems, conditions and struggles, in the judicial and societal spheres in particular, through which dangerousness reached its current status in the context of actor-centric prevention of crime? The research data consisted of government proposals, various documents, literature, and newspaper articles on law drafting as well as assessment, prediction, and conceptions of dangerousness. The analysis was done by examining the data discursively, reaching beyond the textual structure towards language-mediated social construction of reality. The analysis lends support to the notion that presumed dangerousness is a condition that is attached to the offender on the basis of certain indications but that it is not always an omen of severe violence in the future. Although the methods of assessing and predicting dangerousness have shown great progress lately, they still prove controversial in regard to an individual person. Also, the notion of decreasing the risk of offender violence by means of treatment is discernibly less emphasized in Finnish judicature than in most other Western countries.

**Keywords:** Assessment of dangerousness; Criminal code; Dangerous offender; Treatment of offenders

## Introduction

The issues of a person's dangerousness and its assessment have been actualized in recent times, especially in criminological contexts. Though the dangerousness of an offender shows up as a judicial question above all, it also has a palpable social-political and moral dimension because of the problematic relationship prevailing between the viewpoint emphasizing the protection of society and the viewpoint emphasizing the implementation of the individual's rights [1]. The attention paid to dangerousness can be seen as an indication that we now regard the protection provided by society for the physical safety of its members as more important than we did before [2]. Accordingly, in forensic psychiatry the assessment of an offender's dangerousness has been regarded as more important than before, whereas the assessment of criminal responsibility, for example, has continued to decrease [3].

The concept of dangerousness, as applied to the individual offender, can be said to have arisen in the 19<sup>th</sup> century, along with the growing significance and use of statistical information on the population [4]. This development meant shifting the attention from the offence to the offender. It also meant a change in legal praxis – practitioners now had to know the characteristics of the individual offender: to know “who he or she was.” By and by, medicine and psychiatry also intruded into legal praxis in the wake of the above change [5].

From the late 20<sup>th</sup> century onwards, the concept of dangerousness, as applied to the individual offender, has mainly been discussed from one of two points of view: either as an issue of advance identification, by means of profiling and assessment, of people liable to commit serious crimes, or as an instrument in the technical and legal-political development of punitive practices [6,7]. The determination of dangerousness has always been affected by the threat felt to be posed by the offender to the values regarded as important for the society. Conceptions of the dangerousness of the offender are thus bound to the culture and the time. In Finland, the clearest indications of the dangerousness of the repeat offender have been seen in homicides and crimes involving serious violence, but at times, repeat perpetrators of crimes against property or narcotics offences have also been regarded as dangerous [1]. When dangerousness as a characteristic of the offender is approached from the social sciences point of view, then the human dimensions, values and attitudes, along with issues of equality and human rights, come to the fore.

Although dangerousness is defined as a dichotomic and absolute concept in the criminal-law system of sanctions, it is actually a relative one. As the consequences are quite heavy for the target person (and, of course, for the community as well), the reliability of the assessment and the methods used become an important issue and may become a problem [8]. The significance of this point is heightened by the clear tightening of the punishment policies that has taken place in several Western liberal democracies during the

past few decades [9-11]. From the point of view of crime prevention, it is problematic that the tightening of punishments does not seem to be functioning as an inhibitor of crimes as intended because the dynamic that guides the offender's action does not usually take the severity of the punishment into consideration [12].

On the other hand, contemporary criminology also offers new approaches, alternative to the traditional punitive and stigmatizing approach and intended to help the offender to pull away from criminal behaviour. At best, pulling away means that no anomalous risk of violence, for example, needs to be attached to the person any longer and that the person will no longer be confronted by the police as a suspect on that count. It seems that the primary way of pursuing that goal is to toughen up the punishments, i.e., to pass longer prison sentences and monitoring sentences. In comparison, the idea of lowering the offender's risk of violence gets hardly any attention in current Finnish criminal law [1]. On the other hand, it is worth noting that the numbers of convicts in Finland are the lowest in Europe and that in the US and Russia, for example, the relative numbers is tenfold in comparison.

Violent crime in Finland is very endemic – for one example, in the homicides perpetrated in the years 2003-2015, 93 per cent of the suspects were Finnish citizens born in Finland. A Finnish offender regarded as dangerous has most commonly committed a violent crime with the consequence or aim of the victim's death. Only 7 of the 73 offenders suspected to be dangerous during the period of 2003-2015 had committed some other sort of crime regarded as dangerous, such as rape, aggravated robbery, assault, or negligent homicide. For serious capital crimes, the sanction is usually a life sentence. Its mean length in Finland is now 14 years according to our Criminal Sanctions Agency [1, 13]. The purpose of a prison sentence, however, is not only to punish but also, and more importantly, to build up the offender's capacity for life without crime [14]. It is therefore well-founded to continuously assess the effectiveness and reasonableness of the proceedings undertaken in regard to the offender in connection with, and as a consequence of, their being classified as dangerous.

My intention in this study was to do a critical tracing of how we have arrived at the current situation. I asked how the issue was problematized as a legislative and societal question in particular, what schools of thought and legislative changes these problematization were associated with, and how offenders deemed dangerous were treated.

In Finland, the guise and the treatment of the dangerous offender, mainly from the judicial point of view, has been studied to an appreciable extent by Annakaisa Pohjola only [1,15]. As to other Finnish studies that have provided some background for this study, those worth mentioning include Marjatta Kaijalainen's [16] report on lifers and their recidivism and Heikki Pihlajamäki's [17] report on how offenders get selected for preventive detention. The Finnish studies conducted in the past few decades from the point of view of medicine and psychology include at least Jarno Paanila's [18] and Juhani Mattila's [19] studies on the recidivism of released lifers deemed dangerous and the possible reasons for it. Mattila also retraced the social background of the perpetrators in his study. Out of more recent studies that touches on criminal psychology and, importantly, dangerousness as a characteristic of the offender, Jaana Haapasalo's *Kriminaalipsykologia* [20], a seminal Finnish work in the field, deserves a mention. The assessment of the risk of offender violence has also been discussed by Gitta Weizmann-Henelius & Arja Konttila [21].

As to non-Finnish literature that has guided this study, there have been plenty of studies available on the problematization of dangerousness and on the various options of dealing with the dangerous offender. A mention is deserved by the book *Dangerous Offender* [22], in which different writers discuss topics such as the history of social threats, the prediction of dangerousness, and legislative reactions to violent behaviour. Clive R. Hollin [23] has edited a book by the name of *The Essential Handbook of Offender Assessment and Treatment*, in which specialists in the field discuss the assessment of the risk of offender violence and the possibilities of rehabilitating the offender. John Pratt [24] has traced the origin of the concept of dangerousness and discussed the phenomenon as a state government problem in his book *Governing the Dangerous*. The equity issues associated with dangerousness have been discussed, among others, by Jessica Black [25]. Black argues that people are also classified as dangerous for safety's sake and ends up calling for more care and deliberation with assessments of dangerousness and with the preventive measures taken against those deemed dangerous. The dangerous offender and the protection of society from the point of view of the social contract have been discussed, among others, by Caitlin Taylor & Kathleen Auerhahn [26]. They level criticism at the failure to make use of unofficial social networks in the work towards improving public safety and consider that, as a result, the protection of society and the selective imprisonment of dangerous offenders have resulted in a partial failure. In close connection with the above, Clare-Ann Fortune et al. [27] present the most eminent two theories about the ways of rehabilitating offenders into full members of the society and bringing them to give up crime. The writers lay special emphasis on the role of the community in the rehabilitation.

## Exploring the problematics of the offender's dangerousness

Dangerousness can be seen as a construction that can be analysed by examining and analysing the discourses and practices associated with it. To trace how the treatment of the dangerous offender has reached its current state in the legislative and criminological contexts, I composed my data out of administrative documents, such as government proposals from the year 1931 to the present,

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<sup>1</sup> The theories are the Risk-Need-Responsibility Model (RNR) and the Good Lives Model (GLM). A substantial feature in both models is the idea that the offenders should not be treated merely as risk persons but rather, their rehabilitation should mainly rest on their strengths from the point of view of returning to the community [27].

and the legislation that has come about as a result of the proposals. In terms of content, these documents can be regarded as a good vantage point for problematizing the offender's dangerousness, for the underlying ways of thinking and their rationalizations are set out fairly comprehensively, and the documents thus give a good general view of the treatment and the guise of the dangerous repeat offender in different periods. A good reason for starting the tracing from the year 1931 is that our system of preventive detention for confining dangerous offenders/repeat offenders came into being in the year 1932; as stated above, dangerousness *per se*, as a characteristic of the offender, has been debated since the 19<sup>th</sup> century at least [1]. Out of the large collection of digitalised parliamentary documents, I found 45 government proposals that dealt with or touched on the issue and could be regarded as both political and partly juridical documents. Out of those 45, I regarded about ten proposals as focal in that they referred to turning points that had led to changes in the manner of speaking about the issue.

Another salient body of data was formed by the writings on dangerousness published in the newspaper Helsingin Sanomat (HS) and the literature dealing with the issue. The choice of Helsingin Sanomat for a source was justified by its prominence in Finnish journalism. From the archives of Helsingin Sanomat I found a total of 97 texts by using the key word "vaarallinen rikoksenuusija" ('dangerous repeat offender'). Out of all those hits, however, as many as 43 were irrelevant for this study, for they did not associate dangerousness with an offender but with things such as traffic and various appliances. The newspaper material included relevant news and articles by quarters such as prison authorities, members of the Supreme Court, lawyers, the general public (letters to the editor), and one by the President.

By running searches with phrases such as "Assessing Dangerousness" and "Dangerous Offender", I looked for international psychological and psychiatric guidebooks and studies dealing with the assessment of dangerousness, mainly from the year 1930 onwards. If the title promised information that seemed relevant for my research questions, I included the text in the material describing the assessment of dangerousness and the treatment of the repeat offender.

The multi-level power relationships associated with the social structure (of which the offender's dangerousness is a part) are arguably constructed and maintained through discourse [28-30]. According to Norman Fairclough [31], discourse can be understood either in the linguists' way as social action and interaction or in the post-structural way as a social construction of reality and a form of knowledge. In this context I understand discourse mainly in the latter way, but often also in reference to the text type. In this study, then, discourse does not refer to textual material only but refers more widely to the connection of language with social structure and power. The problematization of the offender's dangerousness is associated with a certain kind of overall logic, which naturally also includes other dimensions than those conceivable as discursive. Even so, my understanding is that they, too, have discursive connections. The gestalt of the dangerous repeat offender has come about over time and is formed jointly by a large number of discourses plus institutions, practices, emphases, prioritizations, insights, challenges, intersecting power relationships and so forth – all described by means of discourses. That also means that the "facts" presented are always in the nature of constructions, more or less.

The critical premise of this study is that the relationships of power and subordination associated with the dangerous repeat offender are real and bring about changes in the notions and assumed characteristics of dangerousness. In such a study, a critical approach to discourse, containing elements from both social-scientific and linguistic theories, functions as a research method in itself [32]. The idea is to ferret out of the material everything that is essential from the point of view of the research theme, i.e., the discourses in which dangerousness, its assessment, and the dangerous repeat offender him/herself are problematized vis-à-vis the law, different institutions, and the society in different periods and different aggregates of discourses. Discourses guide both individuals' and collectives' imaging of reality and vice versa [28]. In this way one can piece together the framework in which the dangerousness of the repeat offender has been problematized and which has brought us to the current situation. For research purposes I divided the ways of speaking about dangerousness into two main categories: legislative discourse and assessment-of-dangerousness discourse. Thus the study also contributes to the discussion about the tension prevailing between protecting the society and guarding the individual's rights.

### The conception of the offender's dangerousness and its development in law discourse

From the late 19<sup>th</sup> century on, the dangerousness and other characteristics, the "temper and character" [33] of the offender, started to arouse interest as part of the grounds for meting out the punishment, also in Finland. In the aftermath of the 1918 civil war, with Prohibition also being in force, there was a rapid increase in crime towards the late 1920s. The idea of regarding people who had repeatedly committed crimes as "dangerous repeat offenders" and confining them was finally realised in the early 1930s, in the atmosphere that also brought about restrictions of citizens' rights (such as banning communists' activities) and a general toughening up of punishments [34]. In this article, however, the examination of dangerousness is limited to its assessments in Finnish criminal law, so that dangerousness associated with political action or mental illness, for example, is not discussed. As an independent concept, the concept of the dangerous offender/repeat offender appeared in our legislation in 1932 [35]. The introduction of the institution of preventive detention into Finland's system of punishments in the same year was based on the notion of the incorrigibility and dangerousness of some offenders. "Incorrigible repeat offenders, who were a danger to public and private safety" had to be made harmless by isolating them from the society, over and above the punishment, into preventive detention for an indefinite time [36]. The legislative amendment was noteworthy in that along with it, the concept of dangerousness as a discursive concept affecting both legislation and punishment practices was included in our system of punishments. A corresponding law on confinement practices for repeat offenders had been brought into force in Sweden and Norway in the late 1920s, in Denmark in 1930, but in England as early

as 1908, in France in 1885, and in Australia in 1905. There were similar legislative proposals pending at least in Germany, Austria, Switzerland, Czechoslovakia, and Belgium. The descriptions of the legal practices of the above countries given in the Government proposal speak of an aspiration to harmonise Finnish legislation with those of other Western countries. The grounds for confinement varied somewhat amongst the countries, but a frequently expressed rationale was “necessary protection of the society” against crime or protection against “generally dangerous” crime [36]. What the above legislative practices had in common was the adoption, over rather a short period of time, of the principle of confining, for an indefinite period of time, offenders deemed dangerous. It is noteworthy that crimes against people’s life and health were not presented as separate arguments for regarding the offender as dangerous, which shows up as a significant difference from our current way of problematizing dangerousness. In England, for example, the discourse on dangerousness emphasized the treacherousness of certain criminals and the costs they caused to the society [24].

The government proposal made a significant definition of policy in the following explicit appraisal: “Practice has shown that it is impossible in most cases to reform repeat offenders” [36]. The formulation can be understood to refer to the reasoning that committing a crime is a rational act, so that the crime takes place as a result of a rational choice and free will. According to this line of thinking, crime prevention succeeds best when the punishment follows the same principle, i.e., is meted out in relation to the severity of the crime and the damage caused [37].

On the other hand, the mere schematic punishment was not considered to be efficient in preventing recidivism. In international discussion in particular, criticism was levelled at the whole prison system for the treatment of the convicts and for the poor preparation of them for civilian life. A system that emphasized punishment was not seen to promote refraining from repeat offending [38]. In the seeking of solutions to the problems caused by crime, a mindset based on rehabilitation of the repeat offender can be said to have pushed its way alongside the mentality emphasizing punishment and confinement, while psychological theories also began to enter into the process of assessing the offender’s behaviour [37,39,40]. As a result, the concept of rehabilitative therapy entered into the discourse on the offender [37].

The legislation concerning the dangerous repeat offender was amended and particularised in 1953 and 1971. The way dangerousness was problematized and the view of the purpose of preventive detention changed somewhat. In the government proposal on this issue [40] it was argued that the society would not be adequately protected if preventive detention were not used more effectively and that normal punishments were not sufficiently effective for those guilty of repeated crimes against property [41]. It was regarded as necessary to protect the society from such “dangerous repeat offenders”, among others, as continuously make themselves guilty of thievery, even if the crimes are not aggravated. These criminals are mostly drifters who lead slothful lives and have sunken down to abuse of intoxicants and other wicked behaviours, and whose isolation from society as soon as their criminal past has shown that punishments have no effect on them would be entirely in order [41].

The 1953 law [42], passed on the basis of the government proposal, described dangerousness as repeated crime, which specifically included crimes against property. In the text, the reflection of moral disapproval and fear of thieves who lead slothful lives as “dangerous repeat offenders” is surprisingly strong from today’s point of view. Citizens had to be protected against all sorts of crimes against property, which were regarded as such a threat to safety and wellbeing that an indefinitely long prison sentence for hard-core recidivists was necessary. The same view was common in other Western countries, too [24]. Dangerousness as a characteristic of the repeat offender was still based on the criminal record, and even petty crimes against property, if repeated, indicated dangerousness and a need to place the offender in preventive detention. The grounds presented for the need to increase preventive detention sentences included comparisons of the legislations in other Nordic countries and the need to get our legislation sufficiently in line with those of other Nordic countries [41].

The 1953 interpretation, i.e., that repeated crimes against property indicated that the offender was dangerous, was soon called into question [43,44]. What was called for now, instead of talking about property criminals, was to talk about repeat offenders that were truly dangerous for the society, which meant people guilty of violent crimes or offences against the victim’s life and health [45]. The same shift in the manner of speaking about dangerousness was seen in other Western liberal democracies as well [24]. Furthermore, the liberal welfare-state ethos and the belief in the potential of community planning, characteristic of the politics of the time, showed up in both official reports and journalistic texts:

“The root causes of disturbances in public order and safety can be tackled through measures of social and public policy only. It is arguably possible to greatly reduce violence and breaches of the peace by means of community planning, social welfare services, public housing, and alcohol policy.” [4, 46]

“When a person commits a crime, it is a matter of illness or circumstances.” [47]

“- - by influencing the social factors we can hope to reduce violent crime also - -” (President Kekkonen at the Annual Police Event, Helsingin Sanomat 23.9.1974) [48].

The delimitation of dangerousness to violent crimes and offences against the victim’s life and health is to be regarded as a clear shift in the problematization of dangerousness: firstly, dangerousness now meant a threat to another person’s *life or health*; secondly, the assessment of dangerousness shifted to clearly and explicitly assessing the person’s likelihood of doing serious violence *in the future* [45,49]. An interesting sideline in the planning of the amendment was that the whole existence of the system of confinement was called into question in some contributions [45,50]. Similar lines of thinking were presented again later by Mr Olavi Heinonen, President of the Supreme Court [51], and by Mr Matti Laine, Senior Lecturer in Criminology [52]. This time, the reasons given were firstly the difficulty in defining the concept of dangerousness and secondly the confined offender’s right to due process.

In the 1970s, some signs began to appear in the Western countries<sup>2</sup> suggesting a shift in criminal policy towards tightening the systems of control and sanctions. Tapio Lappi-Seppälä [11] has referred to the phenomenon as a “punitive turn.” In Finland the shift did not show up clearly until the late 20th century, but as early as 1977 Mr Sulo Laine, Prison Warden [53], for one, proposed shifting to “real-time punishments” and abandoning conditional release. If the “incompleteness” of the society had been regarded as an explanation for crime for some time, now the society began to be regarded rather as a victim of the harm caused by crime [4]. To reduce the harm caused by crime, the researcher Juha Kääriäinen proposed, against the zeitgeist perhaps, that the prisoners be treated differently. By attending to their intoxicant abuse problems and coaching them better for freedom, Kääriäinen believed the numbers of prisoners could be halved [58].

Government proposal 262/2004 marked a new turning point in the judicial-administrative discourse on the dangerousness of the offender [59]. The groundwork for it comprised Committee report 2001:6, which had made preparations for an overall reform of the enforcement of prison sentences and implementation of pretrial detention [60]. The most substantial yield of the committee report and the government proposal from the point of view of the present issue was the proposal that the system of preventive detention be abolished and changed for serving the whole sentence in prison if the prisoner was regarded as very dangerous to someone’s life, health, or freedom. By the new Imprisonment Act, passed as a consequence of the government proposal, the system of preventive detention was officially relinquished on 1<sup>st</sup> October 2006 and replaced with a procedure in which prisoners regarded as dangerous serve their whole sentence in prison.

One starting point and objective of the reform was said to be the need to legislate about the rights and duties of prisoners and about restrictions to their fundamental rights explicitly and precisely. One argument for the reform was the obligations posed by conventions on human rights [60]. Potential social causes of dangerousness were not considered in any depth, nor were any new, essentially divergent ways of problematizing the issue conceived.

As regards the effect on the offender of being condemned to preventive detention, in the Finnish practice that mainly meant nothing more than prolongation of the term of punishment. In other Nordic countries the institutions of confinement were mainly in the nature of psychiatric treatment institutions [59]. In Finland the emphasis has been more clearly on effective management and incapacitation of the bunch of prisoners regarded as dangerous, rather than focusing on the therapeutic protocols of individual offenders [52, 62].

The significance of dangerousness in the assessment of the offender gained further weight in Government proposal 279/2010 and amendment 737/2011 [63,64]. The passing of the amendment was most clearly influenced by the publicity aroused by a threefold homicide<sup>4</sup> committed by a person released from a life sentence. From then on, the practice of making a forensic psychiatric assessment on the *risk* of the prisoner perpetrating an act of violence in the future (instead of just speaking of dangerousness), already in use for prisoners serving the whole sentence, was extended to the release deliberations of lifers as well. The concept of risk is suitable for anticipating different events. Randy K. Otto [66] regards the replacement of “dangerousness speech” with “risk speech” as an indication of increased consideration given to factors operating outside the person in the assessment of the person’s dangerousness. The assessment now gives more weight to dynamic factors as opposed to the static classification into dangerous or not dangerous, which is mainly based on historical factors. What was thought to exist only inside the individual’s personality is now understood to be the sum of interactions amongst numerous internal and external circumstances. Robert Castel [67] addresses partly the same sort of difference: instead of the individual person, the risk discourse emphasizes many different factors that are recognizable as risks and originate from a variety of sources (circumstances of childhood and youth, other personal history, the surrounding culture, and so forth). At the same time, the assessment now gives a more ‘sterile’ classification, distancing itself from the person assessed and her or his feelings.

When a prisoner serving the whole sentence was released for good, it was noticed that he or she was hardly monitored or supported at all after that [68]. Accordingly, Government proposal 268/2016 proposed the adoption of a combination sentence for dangerous repeat offenders [69]. That should comprise unconditional imprisonment and after that, a compulsory one-year monitoring period. The personal responsibility for one’s behaviour now comes to the fore, as the support given is mostly in the nature of control, “monitoring the adjustment to the society” [69].

The monitoring period of the new combination sentence [70] is an addition to the prison sentence proper. Thus the inception of the new law means factual toughening of the punishment of those who serve their whole sentence. It also increases the possibilities of authorities to steer their lives and intervene in it. Also, opportunities will open for the approach that emphasizes rehabilitation and support if there is a will to seize the moment.

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<sup>2</sup>In the US, for instance, the results of an extensive opinion poll carried out in 1995 may be said to be a manifestation of the punitive turn. When asked whether it would be more worthwhile to focus administrative efforts against crime on punishing the offenders or rehabilitating them, 59 per cent of the respondents supported punishment and 27 per cent rehabilitation [55]. Earlier on, between the years 1968 and 1982, the support for demands of effective protection of “the society” or “the general public” against crime was reported to have risen in the US by 166 per cent [56].

<sup>3</sup>Demands for adoption of a system of real-time punishments have been occasionally presented later, too. For example, Mr Mika Niikko, MP, has proposed that prison sentences be always served from the first to the last day (HS, Letters to the editor, 1.11. 2012). That is what usually happens, too, if the prisoner is assessed by experts to be dangerous for others [57].

The significance of dangerousness as a characteristic of the offender seems to have seen continuous growth since the early 2000s. At the same time, the approach seeking to apply positive action<sup>5</sup> towards rehabilitating violent offenders with high risk potential does not seem to have gained much ground in Finnish discourse in the wake of the view emphasizing the protection of the society and the individual.

### The discourse on the assessment of dangerousness and the methods thereof

The weight given to medical science in the discourses and practices of dangerousness assessments has grown considerably since the early days of preventive detention. In the beginning, medical knowledge was represented in the confinement process by just one physician, who was conversant with the treatment of mental patients and was a member of the four-member prison court that was responsible for the duties associated with the enforcement of prison sentences [72].

Figure 6 highlights the environmental factors that influencing someone to join gang groups. Based on experts' professional experience with gangsters, experts suggested that gangsterism was influenced by peer motivation and neighborhood or living environment, influenced by movies and influenced by their own individual characteristics. Besides that, some teenagers wish to lead a luxurious life and need instant easy money that made to join the gangs. Unemployment, lack of education, peer motivation, some of the school environments is other influencing factors to join gangs. As mentioned that media plays an important role in influencing the teenagers' mindset and one of the experts said that media constantly portrayed gangsterism as a hip and 'cool culture' which will inevitably misleads the teenagers to think that it is cool to be a gangster.

Interest in using psychological and psychiatric expertise in the assessments began to grow around the middle of the 20<sup>th</sup> century [21]. Proper psychological and psychiatric dangerousness assessments, however, were not yet carried out as such at the time, though there was a great deal of interest in human personality and, as a side product, the assessment of aggression, aroused by the intensive development of various trends in psychology. One topic in international debate was the "projective tests"<sup>6</sup> used in studies of human personality. The optimism that prevailed in the discourse on assessing the offender's future behaviour at the time is reflected in a statement by Mr Martti Kaila, Prison Psychiatrist [73], to the effect that the offender's future behaviour was predictable "with a very high degree of probability." The American Frederic C. Thorne [74], for one, concluded that "The trained mind is the most efficient intuitive and rational analyser of other minds." Later on, the clinical method in question was empirically found to be comparable to tossing a coin [75].

Interestingly, the efforts to assess dangerousness and develop methods for it escalated in the late 1970s, i.e., at the same time as a systematic toughening of the policies of control started in Western industrialized countries (on the toughening, see Kekkonen [76]). As a result of these efforts, structured actuarial methods of dangerousness assessment, based on statistical modelling and combining certain observations and information on (mostly stable historical) target persons, started to become common in the 1980s [79]. This meant that the genre of the discourse on dangerousness turned to a significant extent into a positivistic 'genre of hard sciences.'

Round the turn of the millennium, so-called structured clinical assessment methods (Structured Professional Judgement, SPJ) began to be deployed. They seek results by combining clinical and dynamic risk management variables with relatively stable historical variables [8, 67]. On the other hand, some of the earlier, more clearly actuarial methods are still in use also. There is a group of specialists working on the development and use of measuring instruments. These specialists, profiled as separate from the legislature, emphasize the connection of the measuring of dangerousness with the behavioral and medical sciences:

As the law has turned to the behavioural and medical sciences to improve the prospects for accurately appraising and managing the risk of violent behaviour, the past twenty years in particular have witnessed the development of specialized tools for the prediction and management of certain kinds of serious violence and criminal offending' [80].

The handbooks of assessing the risk of violence present a variety of measures used for that purpose. What surprise the reader are the attitudinal differences amongst the researchers presenting the different measures. These differences come forth between the representatives of SPJ-type and actuarial-type of methods of measurement in particular. Discursively, the descriptions of the measures, presented as scientific and neutral, are actually building conceptions that compete against each other. One gets the impression that the focus of the discussion is on the strong attitudinal differences associated with the assessment practices, not on the advancement of the research on dangerousness [81].

In the discourses on methods of assessment, the controversies crystallize into a problem typical for the humanities and social sciences – the operationalization of observations and the possibility of presenting them numerically. Some debaters even ask whether there is any reason to even to aim at numerical presentation [82]. The basic problem is that the world of humanities and social sciences is more or less "construed in the mind" [83] and, as such, difficult to present in objective and unambiguous ways, such as absolute figures or probabilities.

<sup>4</sup> The homicide took place in the city of Porvoo, where a person who had just served a life sentence for murdering his wife lost his temper and shot three people dead after a quarrel on the drive-through of a fast-food restaurant [65].

<sup>5</sup> During the past ten years, England and Wales have relinquished the characterization 'dangerous and severe personality disorder (DSPD)' to describe offenders and started using the shorter description 'offender personality disorder (OPD)'. The change of terms is associated with the new joint programme of strategy, services, and action (called Pathway) of the health and judicial authorities, which is still partly in the pilot phase and is targeted to offenders with high risks of recidivism [71].

In Finnish practice there are no unambiguous criteria for expert knowledge and for assessing it, which may weaken the equality of considerations of dangerousness. On the other hand, expert knowledge can be used as a basis of the assessment of dangerousness only after normative consideration by a court [1]. The latter condition has given rise to some critical voices.

## Discussion and conclusions

The above examination started with the situation in 1932, when a concrete new practice, the system of preventive detention [35], created for recidivists regarded as dangerous, appeared in the legislation. According to the 1932 legislation, repeat offenders had to serve their sentence confined in preventive detention. In the early years of the institutions of preventive detention, the explicit designation of dangerousness could be attached to repeat offenders regarded as “incurable.” Particular concern was aroused by crimes against life and bodily integrity, but later on, perpetrators of repeated crimes against property were also liable to be appraised as dangerous. Nowadays dangerousness is associated only with such perpetrators of serious violence as are regarded as liable to commit a similar crime again. The path from the 1932 situation to the current reading of the nature and the treatment of the dangerous repeat offender seems to have gone through five pivotal turning points. The first one was the law passed in 1953, whose explicit purpose was to particularize the principles of committing a prisoner to preventive detention. The aim of the particularizations was thought to be improving the “effectiveness” of preventive detention by explicitly coupling dangerousness also with repeated offences against property, even petty ones. The amendment was also rationalized by referring to comparisons with the judicial practices of other Nordic countries, Germany, and England [41].

Along with the amendment of 1971, the dangerousness of the offender began to be thought of in terms of the offender’s *true* dangerousness, propensity for aggression, and the threat posed to fellow human beings’ life and health, while the weight given to offences against property diminished in the discourse on dangerousness. A special feature in the discourse associated with this turning point was the liberal-flavoured belief in the possibilities of a developing society to curtail crime. Crime was thought to be partly a reflection of the “incompleteness” of the society.

One might have expected the punitive turn in the late 20<sup>th</sup> century and the scanty pro-treatment tradition (in comparison with other Nordic countries) to have had a toughening effect on the punishments along with the amendments that resulted in the abolition of preventive detention in 2006 and changing the preventive detention sentences of dangerous repeat offenders into injunctions to serve the whole sentence. Instead, the discourse was penetrated by intensified demands in the domain of human rights policies, and those demands seem to have raised a sort of counter effect. Preventive detention was regarded as overly stigmatizing, and in its stead, the offenders deemed dangerous in the assessment that had now become statutory were sentenced to serve their whole punishment in prison. However, uniform national directions on the assessment practices are still lacking [67].

The shooting incident that took three lives in Porvoo on 6<sup>th</sup> July 2010 on the drive-through of a fast-food restaurant accelerated the next amendment [63], which gave more weight to dangerousness. There were two significant changes: first, assessments of dangerousness began to be also conducted on lifers about to be released on parole; second, the discourse on dangerousness changed into discourse on the risk of violence more clearly than before. The discourse emphasizing dangerousness and the risk of violence seemed to gain ground in the profiling of offenders.

The latest turning point, the third significant amendment in this millennium, was the adoption of a combination sentence for dangerous offenders [69,85]. Besides being committed to serve the whole sentence in prison, those deemed to be dangerous had to serve a one-year monitoring period, which was enforced electronically. The Act obligates the controlees to work, attend supervision appointments, or take part in rehabilitation, action programmes, or other comparable activities. The discourse emphasizes control rather than treatment.

According to this study, the dangerousness of the offender is currently to be understood as a condition or characteristic of the person or an unpredictable potential to commit evil and violent acts. It has proved difficult to define dangerousness as a concept and in particular to classify a person rather categorically as a dangerous or not dangerous. Also, the capability of different methods of assessment to predict people’s risk of violence seems to remain a bone of contention. At the same time, the focus of the assessment has shifted away from the person. One does not concentrate directly on the personality of the individual as much as before; rather, one emphasizes certain factors that can be understood as risks, can be associated with the person assessed, and correlate with propensity for violence.

Although the current approach to the offender is rather technical, an approach that is taken within the framework of criminology and the law is apt to individualize dangerousness [7]. Dangerousness is regarded as a characteristic of certain persons, such as some offenders or mental patients, and is reacted to by shutting the person out of the community. In particular, the media commotion raised by serious crimes against life seems to give an impetus to demands for intensifying the policy of confinement.

<sup>6</sup> The idea of projective tests is to draw conclusions about the personality of the examinee (such as propensity for impulsive or aggressive behaviour) on the basis of the ways they express themselves or perceive what is shown to them. Well-known projective tests include the Rorschach test (RCS) and the TAT test (Thematic Apperception Test) [77, 78]. Such tests are still in use on Finland, too, as part of assessments of the offender’s personality.

<sup>7</sup> The empirical evidence comprised the so-called Baxström and Dixon cases in the 1970. The court released these two patients from the involuntary treatment to which they had been committed on account of their alleged aggression. On the same grounds, about 1000 other patients had to be released because they did not prove to be anomalously dangerous after all [20].

Over the decades, though, some variation has been seen in the degree of individualizing dangerousness: in the 1960s and 1970s for example, i.e., the heyday of the welfare-state policy, the individual was seen as a more integral part of the society, not just a contracting party, as seems to be the case now. At the time, then, the responsibility for crimes was considered to be shared between the individual perpetrator and, partly, the society. Traditionally, left-wing parties have accentuated the responsibility of the state and the society for the well-being of individuals more than right-wing parties have. The school of thought emphasizing therapy and, along with it, the partial responsibility of the society and the surrounding community has actually lived alongside the punishment practices, only its support has varied, thus being a sign of the instability of crime prevention [86]. Discussion and application of therapeutic procedures more inclusive than the mere punishment of prisoners deemed as dangerous has been rather slight in the Finnish system. The typical response to failures of the judicial system in curbing crime has been demands for tougher punishments. This remedy, however, cannot be justified endlessly by reference to the severity of the crime or even to the projected dangerousness of the offender.

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