

# **The Deconstruction and Reconstruction of Abstract Offence of Endangerment**

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## **Abstract**

In recent years, legislators in our country have extensively employed abstract offence of endangerment concepts in formulating new laws, which has led to controversies in application that neither legal doctrine nor practice can fully resolve. To systematically address the issues related to abstract offence of endangerments, this paper reexamines important scholarly perspectives from Germany. It is discovered that views on abstract offence of endangerments have shifted away from treating them as a singular type of crime in the past, towards merging considerations of protecting legal interests with criminal structures. There is a trend towards categorizing abstract offence of endangerments and seeking respective justifications for their bases. It is acknowledged that the general riskiness of behavior to legal interests should be considered a core element of abstract offence of endangerments.

Based on this trend, this paper firstly asserts that within a risk society, criminal law indeed needs to, under the premise of safeguarding the subjective autonomy of potential actors, to some extent limit their ability to manage risks. In this context, the subject matter that abstract offence of endangerment laws should address is the determination and implementation by individuals of typical risks that are impermissible. Depending on the individual and social attributes of risks, abstract offence of endangerments can be differentiated into types that protect individual and collective legal interests, respectively considering their legitimacy and structural design.

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Especially from a constitutional perspective, abstract offence of endangerment concepts should only be applied in cases involving complex attribution of individual risks or harm to systemic legal interests, as these are the situations where specific harm offenders or concrete dangerous offenders struggle to be effective. Additionally, the constituent elements structure of offenses of suitability should serve as a regulatory form, most in line with the principle of appropriateness. As for the three subtypes discussed in the literature — risk offenses, preparatory offenses, or cumulative offenses — all lack sufficient legitimacy, and their practical application requires restrictive interpretations.

**Keywords:** abstract offence of endangerment, offenses of suitability, risk offenses, cumulative offenses, preparatory offenses, risk, risk society