

Two Objections to Yaffe on the Criminalization of Attempts

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Abstract In his recent book *Attempts*, Gideon Yaffe suggests that attempts should be criminalized because of a principle he dubs the “Transfer Principle.” This principle holds that if a particular form of conduct is legitimately criminalized, then the attempt to engage in that form of conduct is also legitimately criminalized. Although Yaffe provides a powerful defense of the Transfer Principle, in this paper I argue that Yaffe’s argument for it ultimately does not succeed. In particular, I formulate two objections to Yaffe’s argument for the Transfer Principle. First, I argue that a basic assumption about criminalization, on which Yaffe’s argument crucially depends, is incomplete, and Yaffe’s own attempt to supplement it undermines his argument for the Transfer Principle. Second, I argue that Yaffe’s argument does not properly account for the fact that those who merely attempt a crime and those who complete it might sometimes be responding to reasons in different ways. Accordingly, I conclude that Yaffe has not succeeded in establishing the truth of the Transfer Principle.

Keywords Attempt · Punishment · Censure · Blame · Criminalization · Gideon Yaffe · Transfer Principle · Renunciation · Abandonment · Reconsideration

Gideon Yaffe begins his recent book *Attempts*¹ by offering a novel answer to the question of why we should criminalize attempts at all. Just because murder and theft are properly viewed as crimes, why think the *attempt* to commit murder or theft is properly so viewed as well? After all, while murder and theft clearly involve the imposition of serious harm on others, it’s not clear that the mere attempt to do such things imposes similarly serious harms.

The most direct way to answer this question, of course, would be to offer a theory of criminalization that sets out necessary and sufficient conditions for the permissibility of

¹ GIDEON YAFFE, *ATTEMPTS* (2010).

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