

## More Attempts: A Reply to Duff, Husak, Mele and Walen

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**Abstract** In this paper, I reply to the very thoughtful comments on my book by Antony Duff, Doug Husak, Al Mele and Alec Walen.

**Keywords** Attempt · Intention · Criminalization · Risk · Harm

I am enormously grateful to my four commentators, Antony Duff, Doug Husak, Al Mele and Alec Walen, for their challenging, careful, thoughtful and charitable remarks. Because there are several overlapping themes in the commentaries, I've elected to organize my responses by topic rather than by commentator.<sup>1</sup>

The first section concerns the commentators' remarks about the Transfer Principle, according to which an attempt to engage in a form of conduct is legitimately criminalized if that form of conduct is legitimately criminalized. Both Walen and Husak raise concerns about my argument for this principle. Walen thinks that the argument falters thanks to a simple logical error. I try to show he is mistaken. Husak, by contrast, thinks that the Transfer Principle is false, or, more carefully, that it ought to be limited in scope. I try to explain how the principle should be understood so as to accommodate his putative counterexamples to it.

In the book, I claim that the Transfer Principle is essential to the justification for criminalizing attempts. My first and central point is that the wide variety of reasons we have for criminalizing certain forms of completed conduct bear on the criminalization of

<sup>1</sup> The commentaries all concern Gideon Yaffe, *Attempts: In the Philosophy of Action and the Criminal Law*, Oxford: Oxford University Press, 2010. References to this book are made by page number. The commentaries are Antony Duff, "Guiding Commitments and Criminal Liability for Attempts" in *Criminal Law and Philosophy*, 2012; Doug Husak, "Why Punish Attempts at All?: Yaffe on the Transfer Principle" in *Criminal Law and Philosophy*, 2012; Alfred Mele, "Crimes of Negligence: Attempting and Succeeding in *Criminal Law and Philosophy*, 2012; Alec Walen, "Potholes on the Path to Purity: Gideon Yaffe's Overly Ambitious Attempt to Account for Criminal Attempts" in *Criminal Law and Philosophy*, 2012.