Attempted crime should be punished just as severely as completed crime essay

Law, Criminal Justice

1. 0 Introduction

For an act to be deemed as criminal attempt, the perpetrator must express the intent to commit an act whose result would constitute a crime and take considerable steps towards attaining his goal. For as far back as the 14th century, historians have scattered evidence that there was punishment for attempted felony if there was serious harm incurred in the course of the perpetration of crime. Attempt cases involving coin money, dueling and threats were punished by the Court of Star Chambers in England in the 16th century. It took years for the law to come up with a framework for punishing attempts. However with time, punishment for attempts was enshrined in the law.

Theorists argue that attempts should be punished because the threat of a crime taking place upsets the social equilibrium and results in tension and disorder. This is especially applicable for situations in which the threat is considered highly dangerous and has been widely observed. The punishment in attempt cases is often due to the perceived threat rather than the “ actual harm” or the imbalance posed on the society. The liability in an attempt case is therefore often geared towards the future prospects of crime hence need to deter the criminal, rehabilitate and restrain the dangerous offender who might pose a threat to the society.

Deterrence of crime remains a somewhat controversial aspect of punishment of attempted crime. It is often argued among scholars that the person who is punished was in any case willing to go through the sanctions that are imposed for the completed attempt. Restraint and rehabilitation remain the principal focus of punishment of attempts. A criminal attempt is a

manifestation of a disposition towards perpetration of the actual crime thus should therefore be rehabilitated in order to inhibit future crime. The man who attempts to kill is in essence less dangerous than the one who kills in the first attempt if he is rehabilitated. This paper shall therefore to critically examining the severity of punishment for attempts in comparison to the punishment for completed crimes.

2. 0 Why attempted crime should be punishable

The legal concept of harm should be broadened to include the threat posed if the said crime is carried out to completion. Crimes such as murder, arson, rape, assault were an attack to interests such as property, body integrity and life. Attempted murder, rape and arson however grow from recognition of the intent and conspiracy which therefore places the person in a position to harm the society and threaten the security of those he or she intends to direct his actions towards.

In recent times, the law has been forced to shift its focus from the harm element of the crime and shift towards the idea of the crime. The idea of the crime could emanate from a faulty mental state hence the intent and the attempt of the crime. The law's approach from this angle is to make the society safer by reducing danger. The person actual behavior is therefore only relevant in this case because of the threat it poses to the security of the society; it is an expression of his criminal will. It is therefore imperative that the law steps in and punishes him before he actually he fully perpetrates this will and therefore poses a greater danger to the society. If a person is caught with fake bills, the law has a right to arrest him before he actually circulates the bill to other people.

3. 0 Should Attempted Crimes be Punished Just as Completed Crimes?

In Canada and in many other states, criminal attempts are punished less severely than the completed crimes. However some philosophers and moralists argue that this is unjust and immoral thus the criminal attempts should be punished just as severely as the completed crimes. This is the case because as long as there is intent to cause harm then in practice harm is already caused. If harm has not indeed caused, then what would be the grounds for having the case heard before a court of law. Also, it must be mentioned that most criminal attempts are tried under the private law. In this case, all the plaintiff needs to do is prove their case based on a scale of probabilities. It is only under public law that the prosecutor needs to prove their case beyond reasonable doubt. This implies that based on the aforementioned premise, criminal intent should receive same sanctions meted towards actual criminal acts. For instance, if one learns of an intended threat to their life whether it is a burglary or murder, naturally they will be emotionally disturbed. This is why they go ahead to seek redress from the judicial system. However there are a few instances in which the attempt to commit the crime is a criminal offence while the completed offence is not a criminal offence. For instance in Canada, attempted suicide is an offence while suicide is not an offence.

The school of thought that attempted crime should be punished just as severely the completed crime is supported by several arguments. One of the arguments assumes that there are two individuals who intend to commit a crime. Both are motivated by malice to commit the crime such as murder and have no shred no excuse or justification whatsoever. Both give reason

for other people to fear that they might actually kill in the future. Both are prepared to kill and make every attempt to be successful at it. The difference comes in during the execution of the intent in that one actually murders while the other one fail in the process.

Both perpetrators are equally evil thus punishment for them should not distinguish between the one who attempted the crime and the one who completed the crime. In fact, if the world was ideal, the one who has intent to commit a crime should stiffer punitive measures than their counterpart who actually commits the crime. This is so because, just like everything in life, it is easier to apply preventive rather than corrective measures. Punishing individuals with intent to commit crime not only rehabilitates them but serves as a warning to the rest of the population with similar intents. It is further argued that when the choice between a death sentence and a minor prison term is being made, the decision ought to be free from arbitrariness as possible. By relying on good or bad luck which may have contributed to the incompletion of the crime, arbitrariness is introduced in the picture which therefore impedes the execution of justice.

It is further argued that the person who succeeds in harming someone and one who attempts to do so have the same intent: to harm. Thus when they are being punished no distinction ought to be made between the two individuals. The failure to achieve the intent to harm based on luck, circumstances or any other factor does not make the offense more palatable. However, these arguments are strongly challenged based on several premises as shall be outlined in the next course of this argument.

For other crimes such as burglary, arson, bigamy, trespass, dealing in fake

currency, kidnapping, the completed crime and the attempted crime have completely different sequence of action. For instance for burglary, the complete offence requires that the perpetrator breaks and enters a premise then proceeds to take property within the premise. On the other hand, for attempted burglary the perpetrator does not have to enter the premise. This can be because he was not able to, got distracted in the process or was deterred in the process. Another example would be sexual assault whereby in attempted sexual assault does not involve sexual intercourse while sexual assault involves sexual intercourse.

The law further supports the distinction in that it recognizes that criminal attempts fall short of the complete crime. This is because it is not easy to ascertain whether the criminal intent has matured beyond the formulation stage. Thus before prosecuting a criminal for a crime they intend to commit, it is necessary that it be proven that they have begun the " crime proper" process rather relying on the subjective decisions reached by judges and jurors. For instance the Model Penal Code requires that a " substantial step" ought to be taken towards committing the crime. The Russian Legal System on the other hand states that for a serious offence, the criminal ought to have done some form of preparation. Successful crime perpetrators therefore do more than the successful attempters. The law also requires different requirements in classifying an act as an attempt or the complete crime. For instance, the crime of money laundering requires that some money is actually stolen while an attempt to launder money does not require this. The evidence e. g. the stolen money would provide the police with evidence during the prosecution. Many would be attempters therefore

cannot be deemed as successful since they did not complete their task.

The reason as to why an attempt of crime may fail is not entirely pegged on luck. There are several reasons as to why a possible crime may remain an attempt instead of a complete crime. For instance, in the course of committing a murder the would- be murderer might misfire the gun or leave the label of the poison he intends to use for the victim to see. He might also find the victim in the company of an unexpected guest forcing him to back away from his plans. It is also possible that he changes his mind on moral grounds. Another example that supports this is suicide. Statistics indicate that there are more attempts by females as compared to males but the successful suicides are often committed by males. If the success was entirely dependent on luck then the statistics would indicate that an almost equal number of females successfully commit suicide. These two instances amongst many more allude to the fact that whether a crime is committed or remains intent is dependent on many factors rather luck alone.

In addition to this, apprehending someone based on intent to commit a crime can be almost impossible. This is because, if any alleged criminal has a lawyer worth their salt, they can easily prove that the accusations lodged against their client are false. In such circumstances, either the prosecutor or plaintiff will have a difficult time proving their case against the alleged perpetrator. Also, an intended crime can be difficult to sue one under public law based on the nature of the intended crime. This is attributed to the challenges posed in proving the case beyond reasonable doubt. To this effect, there are three categories of attempted crimes: complete, incomplete and impossible attempts. A complete attempt is whereby a perpetrator goes

ahead to commit a crime but due to some reason, the attempt is unsuccessful. For instance, in the case where by a gun misfires in a murder scenario. In this case, it is ethically acceptable to punish the perpetrator. An incomplete attempt exists whenever a criminal attempt surpasses the elementary stage but does not mature to a practical offense. Finally an impossible attempt exists whenever the preparation of a criminal attempt can never result to a crime whether incomplete or complete. Thus, before punishing a perpetrator the category of the intended crime needs to clear to assess the nature of punishment necessary.

REFERENCES

Bittner, T. (2008). Punishment for Criminal Attempts: A Legal Perspective on the Problem of Moral Luck. Canadian Journal Of Philosophy Volume 38, Number 1, March 2008,, 51-84.

Chapman, B. (1988). Agency And Contigency: The Case Of Criminal Attempts. University Of Toronto Law Journal, 38, 355.

Cushman, F. (2008). Crime and punishment: Distinguishing the roles of causal and intentional analyses in moral judgment. Cognition 108 (2008), 353-380.

Hershenov, D. B. (2000). Punishing Failed Attepmts Less Severely Than Successes. The Journal Of Failed Inquiry 34: 2000, 479-489.

Kremintzer, D. M. (1990). Is There a Rational Justification for Punishing an Accomplished Crime More Severely Than an Attempted Crime: A Comment on Prof. Dr. Bjorn Burkhardt's Paper; Kremnitzer, Mordechai . 4 BYU J. Pub. L. 81 (1990) , 81.

Love-Bhabuta, O. (2010). Why Should An Attempt To Commit A Crime Be

Fully Punished? Should Attempts Be Punished Evenly As The Full Force? Law Essay, 1-7.

Moses, R. (2004). Inchoate Crimes And Complicity. Silver Bullets III.

Oswald, M. E., Orth, U., Aeberhard, M., & Shneider, E. (2005). Punitive Reactions To Completed Reactions Vs Accidentally Uncompleted Crimes. Journal Of Applied Social Psychology 2005: 35(4), 718-731.

Rothbard, M. N. (1977). PunishmenT And Proportionality in Assessing the Criminal: Restitution, Retribution, and the Legal Process,. In M. N. Rothbard, PunishmenT And Proportionality in Assessing the Criminal: Restitution, Retribution, and the Legal Process, (pp. 259-270). Cambridge: Ballinger Publishing.

Schulhofer, S. J., & Kahan, D. M. (2002). Attempt. Encyclopedia of Crime and Justice.

White, T. J. (2004). Essay: Does Attempted Murder Deserve Greater Punishment Than Murder? Moral Luck And The Duty To Prevent Harm. Notre Dame Journal of Law, Ethics & Public Policy 419.