

On the Principle of Punishment for Incomplete Forms of Drug Offenses

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Drug crimes are typical examples of abstract danger crimes. The actions at various stages of such crimes pose only an abstract danger to the health of drug users and to public health accumulated as a result, rather than a specific danger. These actions merely create conditions for drug use but cannot realistically harm the drug user's physical health. Furthermore, there is no difference in the social harm caused by the crime at various stages. As a result, there is no distinction in criminal liability for individuals involved in different stages of drug crimes. Therefore, preparatory and attempted drug crimes should, in principle, be punished the same as completed drug crimes, with leniency applied only in exceptional cases.

Keywords: drug crimes, attempted, abstract danger crime, drug trafficking, drug use

Introduction

The Chinese Criminal Law stipulates the principle of lenient punishment for incomplete forms of crimes. In principle, preparatory offenders and attempted offenders should be given more lenient punishment compared to completed offenses, and punishment should only be more severe in exceptional cases.¹ This is because Article 22 and Article 23 of the Criminal Law, which state that punishment “may” be lenient, are inherently tendentious. It implies that, except in a few special cases, lenient punishment should be applied as a general rule, and only in exceptional circumstances should a harsher penalty be considered (Gao & Ma, 2022, pp. 151, 152). In other words, the word “may” in the law expresses a tendency, meaning that when the law provides for such lenient punishment, no further justification is required for imposing it. Conversely, not applying lenient punishment would require special reasons (Zhang, 2021, p. 753). As a scholar has pointed out: “Lenient, reduced, or exempted punishment for preparatory offenders does not require special justification; however, not applying lenient punishment (nor reduced or exempted punishment) to preparatory offenders requires special justification”. Furthermore,

“may” does not mean that judges have arbitrary discretion, but rather that in the case of attempted crimes, lenient or reduced punishment does not require special justification, while not applying lenient or reduced punishment requires an explanation of special reasons. (Zhang, 2021, pp. 435, 454)

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¹ Since the legislative rationale for lenient punishment of the discontinued criminal (i.e., the act of voluntarily halting a crime) differs from that for attempted and preparatory offenses, primarily being a reward for the cessation of criminal conduct rather than a recognition of objectively smaller social harm, this article does not address the issue of the punishment principle for discontinued criminal.

This has led to the deeply rooted belief that the preparatory and attempted offenders should receive lenient punishment. A scholar even argues that, in the case of drug trafficking offenses, whether the crime is considered complete upon purchasing drugs (“purchase completes the crime”) or upon selling drugs (“sale completes the crime”) not only involves the determination of the crime’s cessation but may also affect the offender’s life or death. This is because preparatory offenders are generally not sentenced to death, but in practice, the reason so many death sentences are given in such cases is that many preparatory offenders are classified as completed offenders (Li, 2020, p. 39).

However, drug crimes have their own particularities. If the principle of lenient punishment for preparatory and attempted offenders is applied, it could likely result in ineffective enforcement, leading to strong opposition from practical authorities. At the same time, the theoretical community also argues that preparatory and attempted offenders in drug crimes should be given lenient punishment, creating a sharp conflict between theory and practice. The reason for this is that both sides generally interpret the principle of lenient punishment for incomplete offenses in a broad sense, without considering the varying degrees of social harm caused by the different stages of drug crimes. In reality, because drug crimes are abstract danger offenses, the social harm caused by preparatory and attempted offenses is no different from that of completed offenses. Therefore, the principle of lenient punishment should not apply to preparatory and attempted drug offenses. Instead, they should be punished the same as completed offenses, with leniency only applied in exceptional cases.

The Social Harm of Drug Crimes in Terms of Harm to Legal Interests

The Legal Interests Protected by Drug Crimes

Due to the fact that drug crimes are classified in Chapter 6 of Sub-rule of the Chinese Criminal Law under “Crimes Endangering Social Management Order”, early interpretations in China commonly held that the legal object (or protected interest) of drug crimes was the nation’s drug control system (Gao & Ma, 2022, p. 604). However, this viewpoint fails to explain why the state needs to regulate drugs in the first place. If drugs did not pose a threat to the physical health of drug users and the general public, there would be no reason for the state to impose such strict regulations on them.

The viewpoint that the legal interest protected in drug crimes is the prevention of the proliferation of drugs² also faces the same issue. The reason the state cannot allow drugs to proliferate is precisely because their widespread availability would endanger the physical health of drug users and the general public. If drugs did not have such harmful effects, there would be no reason for the state to intervene and prevent their spread. As a result, many scholars, particularly in recent years, argue that the legal interest protected by drug crimes is the health of the public. This perspective has gained widespread support among Japanese scholars, who generally hold that the primary harm caused by drug crimes is the threat to the physical health of society at large.

For example, Professor Ohtani Makoto believes that crimes related to opium smoking are abstract danger crimes that harm public health (2008, p. 385). Professor Yamaguchi Atsushi argues that the prohibition of the import, manufacture, and sale of opium smoking is primarily aimed at protecting public health (2011, pp. 482-483). Similarly, Professor Nishida Noriyuki contends that the purpose of banning the import and sale of opium

² See Claus Roxin, *Strafrecht Allgemeiner Teil*, Band I, 3. Aufl., C. H. Beck 1997, p. 18.

smoking is to protect the health of unspecified individuals or the majority of people (2013, p. 338). These perspectives reinforce the view that drug crimes, such as those involving opium, are fundamentally aimed at safeguarding public health from the risks posed by drug abuse. By framing these crimes as abstract danger crimes, these scholars emphasize that the threat is not merely theoretical but has real, widespread implications for society's well-being.

Professor Zhang Mingkai also critically analyzes and challenges the early dominant interpretations in China. Based on this critique, he argues that drug crimes should be classified as abstract danger crimes that aim to protect public health. According to Zhang, the criminalization of drug-related offenses is primarily concerned with the potential threat that drugs pose to the physical well-being of individuals and society at large, rather than solely focusing on the state's control over drugs (2021, pp. 1503-1506). This view aligns with the broader understanding that the legal interest protected by drug crimes is the health and safety of the public. In this sense, drug crimes are seen as abstract danger crimes because they do not necessarily require that harm be directly caused, but rather focus on the potential for harm to public health, making their prevention crucial.

The development of scholarly discourse shows a growing tendency to analyze the essential characteristics and social harm of drug crimes from a substantive perspective. It has increasingly been argued that if drugs do not pose a threat to the health of drug users or the general public, then drug production and trade would not cause harm to the human body, and there would be no justification for criminalizing these activities. As one scholar has pointed out, "Drug crimes infringe upon life and health, which are fundamental to human existence. The 'public health' perspective on the protected legal interest accurately explores the substantive nature of the interest violated by drug crimes" (Su, 2021, p. 277).

Whether it concerns offenses such as the smuggling, trafficking, transportation, or manufacturing of drugs, or the illegal possession, cultivation of drug plants, and other drug-related crimes, the ultimate aim is to protect the health of drug users and the public—not merely to enforce control for its own sake. Therefore, the health of drug users and the public should be regarded as the protected legal interest in drug crimes.

The Characteristics of Abstract Danger Crimes in Drug Offenses

Drug crimes are abstract danger crimes, meaning that no matter the specific type of drug crime, the social harm in terms of health risks to drug users and the general public is fundamentally the same. These crimes represent abstract dangers, rather than posing a realistic, immediate risk of harm to the health of drug users.

Even if one insists that the legal object of drug crimes is the state's control over drugs, this still fails to reflect any real difference in the social harm. This is because all drug-related offenses similarly undermine the state's regulatory control over drugs and disturb public order. For example, there is no reason to believe that drug trafficking is more damaging to the state's drug control system than that of forcing others to use drugs. Both offenses disrupt the state's ability to regulate drugs, and both contribute to a breakdown of social order. As a result, the social harm posed by any drug-related crime is essentially the same, reflecting an abstract danger rather than a concrete, tangible harm that directly impacts the health of individuals in a specific, immediate manner.

In detail, because drug crimes are abstract danger crimes, the various offenses and stages of these crimes only pose a legislative-presumed "danger" to the health of drug users and the general public, rather than having

any real, tangible potential to cause harm to their health. Therefore, the social harm in terms of legal interest violation is identical across different types of drug crimes and at all stages of these offenses.

This reflects the reality as well. While drug crimes are varied in nature, none of these behaviors can directly cause harm to the health of drug users or the public. The only way drug use could realistically harm the health of individuals is through the act of the drug user consuming the drugs. If a person purchases drugs but does not use them, then drugs cannot possibly harm the user's health. In such a case, the harm caused by individual drug users would not accumulate into a broader social harm affecting public health. Without individual harm, there can be no collective harm. In terms of physical or chemical harm, only the act of consuming drugs can damage the user's health. Any drug crimes cannot directly cause physical harm to the body; they only provide the conditions that facilitate drug consumption. Because all stages of drug-related behavior cannot directly harm the user's health, they cannot cause harm to public health either. The concept of "collective legal interests" or "supra-individual legal interests" thus does not apply. This principle applies to crimes closely related to drug use, such as drug trafficking, inducing, inciting, deceiving, or forcing others to consume drugs, as well as crimes more distantly related to drug use, such as illegal cultivation of drug plants, drug smuggling, trafficking, transportation, or manufacturing. All of these crimes, despite varying in nature and proximity to the act of drug use, are equally incapable of causing immediate, tangible harm to public health without the act of drug consumption by the user.

For example, if Person A purchases 50 grams of heroin and sells it to Person B, who then sells it to Person C, who sells it to Person D, and finally Person D is about to sell it to the drug user Wang when they are apprehended by the police, the drug trafficking actions of A, B, C, and D only pose abstract danger to Wang's health. These actions merely create the conditions for Wang to consume drugs, but do not directly cause harm to Wang's health. In terms of the degree of actual danger, it is effectively zero. Therefore, the criminal actions of A, B, C, and D, whether in the preparatory stage, attempt, or completion, do not differ in terms of the social harm regarding legal interests. They all have the same abstract danger in terms of violating public health. Additionally, prior to A's trafficking, in every step of the process, including illegally carrying seeds or seedlings of drug plants, illegally cultivating drug plants, smuggling, transporting, or manufacturing drugs, and illegally possessing drugs, these activities also pose only abstract danger to the health of drug users, such as Wang. None of these actions can directly cause harm to Wang's or any other drug user's health. The harm they cause is theoretical and indirect—merely providing the conditions for drug consumption, but not resulting in immediate, tangible harm.

If one views the legal object of drug crimes as the state's regulatory system for controlling drugs, the conclusion remains the same: All the stages and actions involved in drug transactions similarly disrupt the drug control system, and it is difficult to compare the extent of the disruption caused by each stage. If the social harm of a criminal act were to be determined based on how close the action is to the actual act of drug consumption, one would conclude that D's preparatory action has a greater social harm than the completed actions of A, B, and C. This conclusion, however, contradicts the general legal understanding that the social harm of completed crimes is typically greater than that of preparatory crimes. Furthermore, consider the legal discrepancy: Inducing, inciting, deceiving, or forcing others to use drugs is closer to the act of consumption than smuggling, trafficking, transporting, or manufacturing drugs, yet the law prescribes lighter penalties for these acts. This illustrates that one cannot determine the degree of social harm based solely on how close the action is to the actual moment of

drug consumption. This further reinforces that social harm should be assessed in a broader context, not just based on the proximity to consumption.

The Viewpoint That Does Not Align With the Characteristics of Abstract Danger Crimes

Some scholars have overlooked the abstract danger crime characteristics of drug crimes and mistakenly analyzed them as specific danger crimes, leading to various theoretical errors. For instance, some scholars argue that buying drugs for the purpose of trafficking, while the drugs are still in the possession of the perpetrator and have not yet been distributed into society, does not realistically harm public health. It only poses a danger to public health, and therefore, the act of purchasing drugs should not be considered as an execution of the crime, but rather as a preparatory act that merely creates the conditions for drug trafficking. These scholars assert that buying drugs for trafficking has not yet resulted in actual harm to public health, and therefore, it cannot be regarded as a completed crime (Li, 2020, p. 38).

The scholar's conclusion about the difference between the preparatory crime and the completed crime is correct, but the reasoning behind it is open to debate for the following reasons:

Firstly, assumption that drugs will “realistically harm public health” once they enter society—this reasoning overlooks the fact that drug crimes often involve multiple transactions and that the harm to public health is not immediate. Moreover, it contradicts the reality that only the drug user consuming the drugs can cause actual harm to their health. Even in the final transaction (the completion of the drug crime), the action still only presents an abstract danger to the user's health; it does not directly harm the user's health until the user actually consumes the drug. If someone buys drugs but later destroys them or hands them over to the police, the drug will never cause harm to that person's health, and it cannot “realistically harm public health”. This emphasizes that the actual damage to health only occurs when the drug is consumed, not merely through its possession or circulation in society.

Misunderstanding of the progression of drug crimes: The notion that a completed drug transaction results in “real harm” to health misinterprets the nature of drug-related offenses. The abstract danger exists throughout the transaction process, even before consumption, but no actual harm is done unless the user engages in drug use. Therefore, the harm to public health remains potential rather than concrete, even in the completed crime.

In summary, while the distinction between preparatory and completed drug offenses in the scholar's conclusion is valid, the underlying justification—based on the assumption of “real harm” once drugs enter society—does not align with the nature of abstract danger crimes. The harm is only realized when drugs are consumed, not when they are merely circulating or exchanged in the market.

Secondly, the concepts of preparatory, attempt, and completed crime are different stages in the development of a direct intentional crime, where the criminal act pauses at various points. The dangerousness of the act in terms of violating legal interests is determined by the physical causal force of the act in bringing about the harmful result. These two factors (the stage of the crime and the degree of harmfulness) are not inherently linked. Therefore, one cannot determine the stage of the crime (whether preparatory, attempted, or completed) solely based on the degree of danger or harm to the legal interest involved.

Moreover, in this case, drug crimes are abstract danger crimes, meaning that all stages of the crime—whether preparatory, attempted, or completed—pose the same level of abstract danger in terms of the violation of legal

interests. In reality, these crimes do not result in specific, tangible harm but only represent a presumed danger created by the law for legislative purposes. The distinction between “real harm to public health” and “only a danger to public health” is, therefore, an artificial legal construct that does not align with the actual nature of the offense.

Thus, the idea that the dangerousness of an act should vary depending on the stage of the crime is inconsistent with the understanding of drug crimes as abstract danger crimes. All stages, whether preparatory, attempted, or completed, carry the same degree of abstract danger, and none of them inherently involve a specific or actual risk to public health unless the drugs are consumed. The legal distinction between “real harm” and “danger” is, in this context, a misapplication of legal reasoning that does not accurately reflect the true nature of the crime.

Thirdly, the view that only real harm to public health can constitute the completion of the crime also lacks a solid basis. It is true that only the final drug transaction will deliver the drugs into the hands of the drug user, and it is only at that point that the drug user’s consumption could result in actual harm to their health. However, it is clearly not practical to wait until the drug user consumes the drug before determining that the crime is complete. In cases where the person who buys the drugs destroys or hands them over to the police and does not consume them, those drugs will never cause harm to the buyer’s health. But it would be unreasonable to conclude that the drug trafficking committed by that person, as well as the prior transactions, did not result in a completed crime simply because the drugs were not consumed. As for the transactions prior to the final one, since the drugs are only circulating between the traffickers and have not yet reached the user, there is clearly no harm being caused to the health of the user at that stage. These actions, like other stages of drug trafficking, merely carry abstract danger, not actual harm. If we were to insist that the crime can only be completed when real harm to public health occurs, then it would mean that all transactions prior to the final one could never be considered completed crimes. This would invalidate the “selling as completion” theory and create an inherent contradiction, as it ignores the fact that drug trafficking at any stage, even before the final transaction, still represents a real legal risk—the abstract danger—to public health.

Therefore, the argument that a crime can only be completed when it actually harms public health is internally inconsistent and does not align with the reality of how drug crimes are structured and defined.

The Social Harm of Incomplete Drug Crimes

The Standard for Completion of Drug Crimes

In the context of drug crimes regulated in Chapter 6, Section 7 of the Chinese Criminal Law, the standard for completion of the crime of drug smuggling has been the subject of significant debate among scholars. Using the example of smuggling drugs into China from abroad, it is important to first distinguish between land border smuggling and sea or air border smuggling. For land border smuggling, the completion standard is typically considered to be the moment the drugs cross the border and enter the territory of China. However, for smuggling via sea or air, there are various perspectives on what constitutes the completion of the crime:

(A) Territorial sea and airspace theory: This view holds that the crime is considered complete when the ship or aircraft carrying the drugs enters Chinese territorial sea or airspace. This view focuses on the geographic point of entry into Chinese jurisdiction.

(B) Landing theory: According to this theory, the crime is completed when the drugs are transferred from the ship or aircraft onto Chinese territory. The focus is on the physical arrival of the drugs on land, which marks the point where the smuggling is completed in a more tangible sense.

(C) Customs line theory: This theory suggests that the crime is completed when the drugs are transferred from customs-controlled areas, such as free trade zones or bonded areas, to areas outside the customs jurisdiction. The key point here is that once the drugs have moved past the customs control line, the smuggling is considered to have occurred.

(D) Possibility of removal theory: This theory holds that the smuggling crime is complete when the ship or aircraft carrying the drugs arrives at a port or airport, and the drugs are in a state of being able to be removed from the vessel or aircraft. The emphasis here is on the possibility of removing the drugs from the transport vehicle once it reaches the destination, even if the transfer has not occurred yet.

(E) Arrival theory: According to this view, the crime is completed when the ship carrying the drugs reaches a port in China, or when the aircraft reaches Chinese territory. The focus here is on the arrival of the vehicle or transport means, signaling the completion of the smuggling act.³

These differing theories highlight the complexity and nuance of determining when a drug smuggling offense is completed. The various perspectives consider different stages in the smuggling process, from the initial entry of the vessel into national waters or airspace to the physical unloading of the drugs onto land or passing through customs controls. Each theory reflects different interpretations of when the smuggling act can be considered to have materialized in a way that meets the criteria of completion under Chinese law. However, regardless of which point in time is chosen as the completion standard, it cannot change the fact that the smuggling of drugs into a country still only constitutes an abstract danger to the health of drug users. At the stage of smuggling, the drugs have not yet been consumed, so there is no direct harm to the health of users. There are often additional steps in the process, such as the sale of the drugs to the users, and the user's consumption of the drugs, before any real harm to health can occur. If the person who acquires the drugs destroys or surrenders them to the authorities without consuming them, then those drugs will not cause harm to their health. This also means that there will be no accumulation of individual health damage that could contribute to broader public health harm. Therefore, simply smuggling the drugs into the country does not directly harm health and only creates the potential for harm, as the drugs need to pass through additional stages (such as being sold to users and consumed) before any tangible harm to health can be realized. This underscores the idea that, in the context of drug crimes, particularly smuggling, the criminal act creates an abstract danger to public health, but actual harm depends on subsequent actions that bring the drugs to users and involve their consumption.

While there are inevitably some differing viewpoints, in general, the completion and attempt standards for various drug crimes can be distinguished as follows:

(A) Drug transportation: The crime is considered complete when the drugs leave their original location or are moved to a different place. For example, it is already completed when the package containing drugs is handed over to the post office or courier company, or when a vehicle carrying drugs departs from its starting point (Zhang,

³ See Ryuichi Hirano, *Annotated Special Criminal Law 5-II*, Aobayashi Shoin, 1992, p. 33.

2021, p. 1514). The crime does not require that the drugs be transported to their final destination—just initiating the transportation process is enough to constitute completion.

(B) Drug manufacturing: The crime is complete when the drugs are actually manufactured, whether as finished products or as semi-finished products. The focus is on the actual production of the drugs (Zhou, 2021, p. 507).

(C) Illegal possession of drugs: The crime is complete when the person actually controls or has dominion over the drugs. Possession is determined not only by physical control but also by the authority to manage the drugs (Su, 2021, p. 278).

(D) Allowing others to use drugs: The crime is complete once the individual has allowed others to consume drugs at his residence. This does not require the actual consumption by others, but rather the act of permitting it.

(E) Illegal provision of narcotics or psychotropic drugs: The crime is considered complete when the controlled substances are given to the other person. No further act, such as consumption, is required for the crime to be complete.

(F) Illegal production, sale, transport, or smuggling of precursor chemicals: The standards for completion are similar to those of drug smuggling or trafficking crimes. Completion occurs once the precursor chemicals are in motion or involved in the process of drug production.

(G) Illegal buying, selling, transporting, carrying, or possessing drug-related plants: The completion standard here can follow the reasoning for drug smuggling or possession crimes. It's completed once the individual controls or transports the plants that can be used for drug production.

(H) Illegal cultivation of drug-related plants: The crime is complete when the cultivated plants have reached a stage where they can be used to produce drugs—typically when they have matured and can actually be harvested for drug manufacturing (Peng, 2007, p. 11).

(I) Inducing, instigating, deceiving, or forcing others to use drugs: The crime is complete when the other person has actually consumed drugs or injected them. The action is considered finished when the person has been induced or forced into the act of using drugs (Zhang, 2008, p. 53).

These standards generally align with the concept of completion in Chinese Criminal Law, where the crime is recognized as complete when the act has reached a point where it can be deemed to have created the dangerous consequences for which the law punishes, even if some steps of the process are still ongoing. For example, in drug smuggling, simply initiating the transportation process can be seen as completing the crime, even if the drugs have not yet reached the final user.

However, regardless of which completion standard is adopted, the social harm of these various drug crimes at different stages (e.g., preparatory, attempted, or completed) is essentially the same, because they all only pose an abstract danger to the health of drug users and the public, without any specific risk of harm. There may only be a question of whether the act itself can be determined or not. For example, if a drug user intends to purchase a large quantity of drugs, but is caught by the police before obtaining them, this person has intended to possess the drugs but has not actually possessed them, so the action remains incomplete. This stage involves no real harm, as the drugs have not been acquired or consumed. Similarly, if someone agrees to allow a friend to use drugs at his home, but the friend dies in a car accident on the way to his house, the person has intended to permit drug use, but has not yet committed the act of allowing it. Thus, no harm to health has occurred at this stage. Even if

such intentions are treated as preparatory actions, they still only present an abstract danger to the health of the drug user, as no real harm has yet been inflicted. The mere intention or attempt to engage in drug-related behavior is not enough to cause concrete harm to the health of others. Therefore, at all stages leading up to the completion of the crime, the social danger posed remains largely the same—merely an abstract risk to health, rather than an actual, tangible danger.

Regarding the completion standard for drug trafficking crimes, although there is significant conflict between the theoretical and practical circles, there is generally more consensus within each.

In the theoretical community, the majority support the “sale-only completion” theory, which argues that the completion point of the crime is when the seller actually delivers the drugs to the buyer, and the act of buying drugs for the purpose of trafficking is only a preparatory act (Li, 2020; Wen, 2018; Wu, 2016). The advantage of this view is that it aligns better with the general theory of cessation patterns of crime, where the crime is completed only when the drugs are actually sold, not when they are merely acquired. The downside of this theory is that it does not effectively address the practical need to prevent and combat drug crimes. This is because it remains focused on a general theory of criminal cessation patterns, without thoroughly analyzing the social harm at each stage of the crime. It mistakenly assumes that preparatory and attempted drug trafficking crimes should also be punished more leniently under the principle of reduced punishment for incomplete crimes, without considering the substantial harm caused by drug trafficking, even at earlier stages. Moreover, due to the high dark number (unreported or undetected) of drug-related crimes, many drug trafficking acts go undetected. If the sale-only completion theory is applied strictly, it could fail to meet the practical need for a severe response to drug trafficking, as many crimes would not be identified or penalized until they reach the point of completion, thus leaving much of the problem unchecked.

In practice, there has been a longstanding adherence to the “purchase equals completion” theory, which holds that the crime is considered complete once the drug is bought for the purpose of trafficking, or even when the purchase is in progress. This theory includes views such as “purchase-in-progress equals completion”, “purchase-completed equals completion”, and “sale-in-progress equals completion”. Examples of this theory can be found in legal documents such as the 2000 opinion issued by the Shanghai High People’s Court on the application of laws in drug crime cases, the 2011 guiding opinion issued by the Jiangsu Provincial High People’s Court, Jiangsu Provincial Procuratorate, and Jiangsu Provincial Public Security Department, and the 2017 joint meeting summary by the Liaoning Provincial High People’s Court, Liaoning Provincial Procuratorate, and Liaoning Provincial Public Security Department. Its advantage is that it is more favorable for preventing and combating drug crimes, as it ensures that those engaged in drug trafficking are punished as soon as they take significant steps in the trafficking process, even before the drugs are actually sold or consumed. This approach aims to address drug crimes before they escalate further. Its disadvantages are that it clearly violates the theory of criminal cessation patterns and the principle of legality (i.e., that penalties must be based on clearly defined and established laws). By applying this theory, most preparatory offenses, attempted crimes, and discontinuation offenses will be treated as completed crimes. This undermines the proper distinction between different stages of criminal conduct. For instance, actions such as raising funds, finding sellers, or traveling to a transaction location (before any formal drug sale occurs) may be wrongly classified as preparatory acts, and once the formal transaction begins, it is immediately considered a completed crime under this theory. After the purchase, even if

the buyer destroys the drugs or hands them over to the authorities (thus abandoning the crime), the act will still be considered completed because the purchase itself is seen as the completion. This renders the concept of discontinuation of offense or attempted crime essentially useless, as the crime is already regarded as completed. Thus, the application of this theory disregards both the criminal cessation pattern theory and the principle of legality, essentially treating preparatory and attempted actions as completed crimes without proper analysis or justification. This leads to a violation of due process and the protection of human rights, as it eliminates the opportunity for fair and proportionate legal reasoning based on stages of criminal activity.

The Connection Between the Social Harm of Drug Crimes and Their Termination Stages

According to the principle of adaptation of crime, responsibility, and punishment, the severity of the penalty mainly corresponds to the social harmfulness of the crime, not to the form of crime cessation. Although, in general, the form of crime cessation and social harmfulness are closely related—for example, killing a person to die versus the victim not dying, obtaining stolen property versus not yet obtaining property—the social harmfulness is obviously different. However, this is a characteristic of result crimes: When a result occurs, it is naturally more socially harmful than when it does not occur. But if a certain crime cannot produce a result, then whether or not a result occurs naturally cannot affect its social harmfulness.

The principle of lenient punishment for incomplete forms of crime stipulated in Chinese Criminal Law is based on crimes that produce results and fails to take into account crimes that do not lead to results, particularly neglecting the existence of abstract endangerment crimes. The special characteristic of drug-related crimes is that all drug crimes are abstract endanger crimes, where each stage of conduct poses only an abstract danger—which serving as a legislative rationale—to the health of drug users and the general public, without creating a concrete danger. Acts such as drug trafficking themselves do not directly harm the health of drug users or the general public, and the social harmfulness of each stage of conduct in other aspects is difficult to substantiate. As a result, there is little connection between the social harmfulness of drug crimes and the forms of crime cessation, and the social harmfulness of attempted or preparatory drug crimes is not necessarily less than that of completed drug crimes.

For example, since drug trafficking poses only an abstract danger—serving as a legislative rationale—to the health of drug users and does not create any concrete danger, actual harm can only arise when drug users themselves engage in drug consumption. This results in no difference in social harmfulness concerning the infringement of legal interests across different stages of the crime. Whether it is a drug manufacturer or a seller, whether it is a first-hand dealer, a second-hand dealer, a third-hand dealer, or a fourth-hand dealer, and whether the crime is completed, attempted, or preparatory, all these stages remain in the “preparatory” phase before the drug user actually consumes the drug. For real harm to be inflicted on the health of the drug user, the user must start consuming the drug. If someone purchases drugs but later destroys, discards, or surrenders them to law enforcement without using them, the related drug-trafficking act cannot cause any harm to their health.

Thus, abstractly applying the principle of lenient punishment to preparatory and attempted offenders in drug crimes is inappropriate, as it overlooks the fact that every stage of such crimes poses only abstract danger without concrete harm to the health of drug users. Similarly, although crimes such as illegal possession of drugs, illegal cultivation of drug-producing plants, and providing premises for drug use theoretically have completed and attempted forms, they only pose abstract danger rather than a real possibility of harming the health of drug users.

The social harmfulness of different stages of these crimes is entirely the same in terms of legal interest infringement. The belief that the completed crime is significantly more harmful than the attempted or preparatory stage is merely a perception that does not align with reality.

The Reality of Multiple Transactions in Drug Trafficking Should Not Be Ignored

Some scholars believe that whether drugs are actually delivered significantly affects the degree of legal interest infringement on public health caused by drug trafficking and determines whether the act is substantively and genuinely completed. Before actual delivery, the degree of legal interest infringement caused by drug trafficking does not meet the qualitative requirement of a completed crime. Only actual delivery can elevate the degree of infringement to the level required for a completed offense (Zhang & Yu, 2011, p. 157).

This viewpoint clearly overlooks the reality that drug trafficking often involves multiple transactions and successive transfers. It takes for granted—or deliberately assumes—that drug trafficking consists of only a single transaction, which can only be a direct sale from the drug manufacturer to the user. This assumption is obviously unrealistic. In practice, a batch of drugs typically undergoes multiple transactions and transfers before reaching the hands of users; direct sales from manufacturers to users are extremely rare.

According to this scholar's viewpoint, consider a scenario where A sells a 50-gram bag of heroin to B, B sells it to C, C sells it to D, and D finally sells it to the drug user E. Since A, B, and C's actions do not directly cause the "degree of legal interest infringement required for a completed crime" on E's health, their drug trafficking activities would have no completed form; it is obviously unreasonable. However, if one were to rely solely on the formal act of drug delivery as the criterion for completion, it would contradict the scholar's assumption that only acts causing harm or a threat to public health can be considered completed crimes. For example, in the scenario above, if A has already delivered the drugs to B, but B has not yet delivered them to C, A's act would be considered completed, while B's act would only be attempted. This would force the conclusion that A's act caused a greater "degree of legal interest infringement" than B's act, which is clearly unrealistic—B's act is actually closer to facilitating drug consumption.

Moreover, since any specific drug trafficking act can only potentially harm an individual drug user's health rather than public health as a whole, following the scholar's viewpoint would mean that no drug trafficking acts could ever be considered completed crimes; it is obviously unreasonable. Furthermore, other drug-related offenses should not require actual delivery to a drug user to be considered completed, yet their "degree of legal interest infringement" is still recognized as meeting the standard for a completed crime; otherwise, no drug-related crime could be acknowledged as completed.

Therefore, the argument that only actual drug delivery determines the true completion of the act and marks the degree of legal interest infringement required for a completed crime is insufficiently justified.

The Social Harmfulness of Drug Crimes in Other Aspects

The Social Harmfulness of Drug Crimes Manifests in Multiple Aspects

Although the primary legal interest protected by drug crime laws is public health, the social harmfulness of drug crimes is not limited to the infringement of this legal interest alone. It extends to multiple aspects, including harming the health of drug users, disrupting social order, fostering organized crime, endangering national morale, and jeopardizing the future of the nation.

This is because drug use not only leads to the drug user's financial ruin, physical deterioration, and loss of labor capacity but also has a high concurrence with drug-related crimes, economic crimes, violent crimes, and organized crime. As some scholars have pointed out, the reason criminal law prohibits the manufacture, trafficking, transportation, and use of opium and other drugs is that drug use not only harms the health of the user but also breeds other crimes, thereby endangering social peace, order, and the future of the nation (Lin, 2012, p. 365).

For example, drug users may commit robbery or murder to obtain money for drugs, drive under the influence and cause traffic accidents, or experience drug-induced hallucinations leading to intentional crashes. Drug traffickers may use their illicit profits to establish armed forces, separatist movements, or even terrorist organizations.

Drug traffickers seek enormous profits through drug sales, and in order to resist government crackdowns, some drug cartels develop into anti-government armed groups with significant economic, military, industrial, and organizational capabilities, posing a severe threat to social stability. This in itself is a key reason why national legislation aims to crack down on drug trafficking. Moreover, large drug cartels grow from smaller trafficking networks, which is why combating drug-related crimes must emphasize early intervention and suppression at the grassroots level. The idea that buying drugs without yet selling them lacks social harmfulness simply because the drugs have not yet reached users is misguided.

Although this aspect of social harm is often overlooked in criminal law theory, it is precisely why judicial practice has long treated all stages of drug trafficking—whether completed, attempted, or preparatory—as completed crimes. This demonstrates that the social harm of drug abuse extends far beyond harming an individual user's health; it is a major issue affecting public safety and the future of the nation. Therefore, drug-related crimes should not be regarded as merely posing an abstract danger to public health. Instead, their social harmfulness should be assessed comprehensively, considering real-world social conditions.

It is precisely because drug crimes have multiple aspects of social harmfulness that different statutory penalties can be prescribed for different drug-related offenses. Otherwise, if the penalties were based solely on the infringement of legal interests related to the health of drug users and the general public, there would be no justification for differentiating statutory penalties among various drug crimes, as they would all pose only an abstract danger.

It Is Difficult to Identify the Social Harm of Drug Crimes in Other Aspects

Although the social harm of drug crimes is also reflected in other aspects, the extent of such harm in these aspects cannot be proven or identified, especially when it is difficult to demonstrate that different termination forms of the same crime exhibit differences in social harm in other aspects.

First, in theory, it is impossible to propose a specific set of identification standards. Second, in practice, there is no corresponding evidence to verify such claims. For example, it is nearly impossible to prove the specific impact of a particular drug-related crime on harming national spirit, endangering the future of the nation, or disrupting social order. Similarly, it cannot be demonstrated that the social harm of drug smuggling, transportation, trafficking, and manufacturing is significantly greater than that of coercing others to use drugs.

Legislators primarily set the statutory penalties for drug smuggling, transportation, trafficking, and manufacturing crimes significantly higher than those for coercing others to use drugs based on common experience and legal intuition. Meanwhile, judicial and enforcement agencies merely apply the statutory penalties without deliberately considering the extent of social harm in other aspects for each crime.

Therefore, although different acts of drug-related crimes and various stages of these acts may have differences in their social harm in other aspects, such differences are difficult to prove. As a result, from the perspective of litigation proof, it can only be regarded as if no such differences exist. This is also the main theoretical reason for the lack of emphasis on the social harm of drug crimes in other aspects.

The Principle of Equal Punishment for Preparatory, Attempted, and Completed Drug Crimes

Reasons for the Principle of Equal Punishment

Since different transactional stages and termination forms of the same drug-related crime do not differ in terms of their harm to legal interests, and their social harm—such as destabilizing social order, fostering organized crime, harming national morale, and endangering the future of the nation—is extremely difficult to determine, it is theoretically challenging to establish a systematic framework for assessing the degree of social harm. Moreover, it is difficult to argue that different stages of drug crimes vary in severity concerning these aspects, and in practice, it is hard to find effective evidence to support such distinctions.

As a result, both in theory and practice, there is no definitive proof that the social harm of preparatory and attempted drug crimes is necessarily less than that of completed drug crimes. Therefore, applying the principle of lenient punishment to preparatory and attempted drug crimes lacks substantial justification, and they should be punished equally to completed crimes.

For example, in a case where A sells the same bag of drugs to B, B sells it to C, C sells it to D, and D sells it to the drug user E, it is difficult to prove that A's or B's drug trafficking is more socially harmful than C's or D's. Likewise, the fact that D's drug trafficking is closer in time to E's drug consumption does not necessarily mean that D's drug trafficking is the most harmful.

Similarly, it is impossible to prove that the social harm of preparatory and attempted drug trafficking is necessarily less than that of completed drug trafficking. In other words, since the different termination stages of drug crimes either do not differ in their degree of social harm or such differences are difficult to determine, preparatory and attempted drug crimes should be punished equally to completed crimes. Equal punishment is the principle, while lenient punishment is the exception, which is the opposite of crimes like intentional homicide, where preparatory and attempted offenses are generally subject to lenient punishment.

The view that preparatory and attempted offenses of drug trafficking should generally be punished leniently often overlooks the reality that drug trafficking typically involves multiple successive transactions. In these repeated transactions, only the final transaction transfers the drugs into the hands of the drug user, making it the only instance where drug consumption may directly harm the user's health. In contrast, all prior transactions merely involve the circulation of drugs among traffickers.

As a result, there is no difference in the level of danger to the drug user's health between earlier and later transactions, nor between preparatory, attempted, and completed acts in each transaction. The only risk involved

is a legally presumed danger used as a legislative justification, rather than an actual, concrete danger. Furthermore, given that other aspects of social harm among these transactions are either nearly identical or difficult to prove, there is no justification for differentiating punishments between preparatory, attempted, and completed offenses during sentencing. Instead, they should be punished equally.

Application Rules of the Equal Punishment Principle

In applying this principle, two key considerations must be taken into account:

On the one hand, since the protected legal interests of drug crimes are the health of drug users and public health, it is theoretically necessary to first assess the degree of risk that each stage of the crime poses to these interests in order to determine the level of social harm. However, as previously discussed, all stages of drug crimes carry only an abstract danger rather than a concrete danger, and there is no difference in their harm to legal interests.

On the other hand, because the social harm of drug crimes manifests in multiple aspects, a comprehensive evaluation of the impact of each stage on these other aspects is required. However, since such harm is extremely difficult to determine, it is impossible to prove that the social harm of preparatory and attempted crimes is necessarily less than that of completed crimes. This lack of evidence eliminates any substantive justification for applying the principle of lenient punishment to preparatory and attempted offenses. As a result, they should be punished equally to completed crimes, with lenient punishment being applied only as an exception.

When applying this principle in practice, two key points should be noted.

1. Proper application of the criminal termination theory in identifying termination forms of drug crimes:

The identification of termination forms in drug crimes should still adhere to the criminal termination theory and must not wrongly classify preparatory and attempted offenses as completed crimes simply for the sake of cracking down on drug-related offenses. Doing so would not only undermine the consistency of the termination theory but also violate the principle of legality by failing to properly apply Articles 22 and 23 of the Criminal Law.

In other crimes, especially result crimes, the strict distinction between termination forms is necessary because the degree of social harm differs significantly at different stages. For example, in intentional homicide, the social harm of successfully killing a person is obviously much greater than that of an attempted killing where the victim survives. As a result, the criminal liability of the perpetrator varies greatly depending on the termination form.

However, in drug crimes, since there is no difference in social harm among different termination forms, there is also no difference in the criminal liability of the offenders at each stage. Therefore, equal punishment should be the principle, and lenient punishment should be the exception.

Given this, why is it still necessary to accurately identify the termination forms? The main reason is to preserve the uniformity of the termination theory and ensure consistency in its application across different crimes. This prevents the creation of a separate termination theory for drug crimes that deviates from general criminal law principles while also upholding the principle of legality.

For example, in drug trafficking crimes: If an individual purchases or is in the process of purchasing drugs for the purpose of selling them but has not yet begun contacting potential buyers, they should be classified as a

preparatory offender. If an individual has started contacting buyers but has not yet completed the transaction or is apprehended before the transaction is completed, they should be classified as an attempted offender. Only when the drugs have been actually delivered to the buyer can the crime be classified as completed. For offenders who voluntarily cease their criminal actions before delivering the drugs, they should be classified as discontinued criminal. However, they should be considered as discontinued criminal who have already caused social harm, rather than offenders who “have caused no harm at all”. This is because purchasing drugs and attempting to contact buyers provide drug funds to suppliers and disrupts social order, meaning their actions should not be regarded as harmless.

Regardless of whether an offender is a first-tier trafficker, second-tier trafficker, or third-tier trafficker, their termination form should be correctly identified in accordance with the criminal termination theory. The legal classification should not be intentionally manipulated to impose harsher punishments simply for the sake of cracking down on drug crimes.

However, for crimes that carry lighter statutory penalties, such as: Illegal trading, transporting, carrying, or possessing drug plant seeds or seedlings, allowing others to use drugs, the preparatory and attempted offenses may not be punished, as the need for strict enforcement is lower in these cases.

2. The need for strict punishment despite the abstract danger of drug crimes:

Although the actions at each stage of a drug crime only pose an abstract danger rather than a concrete danger to both the health of drug users and public health, they still severely disrupt social order, trigger other crimes, and cause numerous secondary consequences. Therefore, a strict crackdown remains necessary.

For completed offenses at various stages of drug crimes, if differences in criminal roles can be distinguished, sentencing should reflect these differences. For example, in cases involving drug smuggling into the country and domestic drug trafficking, offenders who play particularly severe roles, such as: leaders of organized crime groups or drug cartels, armed drug traffickers, participants in organized international drug trafficking, repeat offenders or those dealing in exceptionally large drug quantities. Those who violently resist inspection, detention, or arrest offenders who target juveniles for drug trafficking may be sentenced to immediate execution of the death penalty in accordance with the law.

For preparatory and attempted drug crimes, while the general principle is to punish them equally to completed offenses, sentencing should still account for legal intuition and public perception. To limit the use of the death penalty, immediate execution is generally not advisable for these offenders.

Additionally, offenders who smuggle or traffic drugs out of the country do not pose a direct threat to the health of Chinese citizens. Therefore, their punishment should be more lenient, or in some cases, their actions should not be criminalized.

Conclusion

The rationale for applying lenient punishment to preparatory and attempted offenses is based on the idea that, in result crimes, incomplete offenses generally cause less social harm than completed ones, leading to lower criminal liability for the offenders. As a result, criminal law establishes lenient punishment as the principle and equal punishment as the exception for such offenses.

However, given the diverse nature of crimes, there are cases where preparatory and attempted offenses may have no significant difference in social harm compared to completed crimes, or where such differences are difficult to determine. In these situations, rigidly applying the principle of lenient punishment for preparatory and attempted offenses would contradict the principle of proportionality between crime, responsibility, and punishment and deviate from the legislative intent of relevant provisions in criminal law.

Due to the multiple aspects of social harm caused by drug crimes, which include not only the harm to the health of drug users and the accumulated damage to public health, but also the disruption of social order, induction of other crimes, threats to national security, and danger to the future of the nation, it is crucial to:

Correctly identify the termination form of specific actions to maintain the consistency of the termination theory and the principle of legality: Preparatory and attempted offenders should not be classified as completed offenders.

Comprehensively evaluate the social harm of specific actions: Under the guidance of the principle of proportionality between crime, responsibility, and punishment, appropriate penalties should be imposed on preparatory and attempted offenders.

Since the social harm caused by different stages and termination forms of the same drug crime in terms of legal interest infringement and other aspects is almost identical, preparatory and attempted offenders should be punished equally to completed offenders. The principle here is equal punishment, with lenient punishment being the exception. This approach contrasts with the lenient punishment principle typically applied to incomplete forms in other crimes, particularly result crimes. Therefore, the punishment theory that mainly applies to result crimes should not be directly applied to drug crimes.

References

- Gao, M. X., & Ma, K. C. (2022). *Criminal law* (10th ed.). Beijing: Peking University Press and Higher Education Press.
- Li, L. Z. (2020). Reflection on the criteria for completion of drug trafficking. *Journal of East China University of Political Science and Law*, 23(1), 26-39.
- Lin, S. T. (2012). *A treatise on the various offences of criminal law (lower volume) (Revision 5)*. Beijing: Peking University Press.
- Nishida, N. (2013). *Japanese criminal law various treatises* (6th ed.). (Z. W. Wang & M. X. Liu, Trans.). Beijing: Law Press.
- Otani, M. (2008). *General introduction to criminal law lectures* (new 2nd ed.). (L. Hong, Trans.). Beijing: People's University of China Press.
- Peng, F. L. (2007). Study on the criminal form of the offence of illegally growing drug plants. *Journal of Guizhou Police Officers' Vocational College*, 20(3), 10-12.
- Su, X. (2021). Study on the determination of illegal drug possession offence. *Social Science Front*, 44(11), 275-280.
- Wen, D. P. (2018). On the completion and attempt of drug trafficking crimes. *Journal of Shandong Police Academy*, 30(3), 21-31.
- Wu, Q. S. (2016). On the three controversial issues of the determination of drug trafficking crimes. *Journal of Fujian Police Academy*, 30(1), 10-18.
- Yamaguchi, A. (2011). *Criminal law lectures on various treatises* (2nd ed.). (Z. W. Wang, Trans.). Beijing: People's University of China Press.
- Zhang, H. C. (2008). Discuss on the offence of inducing, abetting and deceiving others to take drugs. *Journal of Hebei Vocational College of Public Security Police*, 8(3), 50-53.
- Zhang, J., & Yu, X. H. (2011). The rectification of the completed standard of drug trafficking offence. *Law Science*, 56(3), 150-160.
- Zhang, M. K. (2021). *Criminal law* (6th ed.). Beijing: Law Press.
- Zhou, G. Q. (2021). *Various treatises on criminal law* (4th ed.). Beijing: People's University of China Press.