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The Right Definition of the Crime Regarding to Intention

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ABSTRACT

It is well known that the Turkish Penal Code was heavily influenced by continental European criminal law traditions, particularly the Italian criminal law model. Nevertheless, the Turkish legislature and legal doctrine have developed a number of concepts and interpretations that, in certain respects, diverge from the approaches adopted in other jurisdictions. As a result, some aspects of Turkish criminal law may appear unusual or even counterintuitive to scholars and practitioners familiar with other legal systems.

For this reason, a comparative analysis of the stages of criminal conduct under Turkish law is essential, as similarities in terminology do not necessarily imply similarities in legal substance.

As a consequence, the theoretical framework of the Code may at times appear fragmented or internally inconsistent. These doctrinal ambiguities are not merely academic concerns; they can also affect judicial practice by creating difficulties in interpretation and application. Where legal concepts lack coherence or are derived from competing theoretical foundations, courts may encounter challenges in ensuring consistent and predictable decisions.

KEYWORDS: Crime, Attempt, Fikh, Intention

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ESSAY

Sometimes the field of law feels like calling someone's bluff. You face the outcome exactly as you are able to argue it in the legal auditorium, and it gives a sense of power—because the outcome of the case depends on how well you present your case. That is why law is often considered the arbiter of fate on Earth. The problem is that there are thousands, if not hundreds of thousands, of people involved in this process. Well, not all laws are the same. They are distinguished from others by the meaning of their method. Most likely, the Turkish Penal code takes a more lenient approach towards to Attempt of the crime.

It is important to note that Turkish law has gone through many stages and variations. First of all, there is the historical stage, when the Seljuks began to conquer new lands and establish states, whose conquests later developed into the vast empire known as the Ottoman Empire.

The laws of the Ottoman period were borrowed from Arab culture, where jurisprudence, known as **fiqh** فِقْه – in Arabic, was in most cases based on religious

texts, often using the Quran as the primary source. The supremacy belonged precisely to Arab culture among the Ottomans. From this, almost all of the terminology of that period consisted of Arabic words, a practice that, to a greater or lesser extent, continues to this day.

There is historic fact that Turkish Criminal Law was borrowed for several times.

History of Borrowing in Turkish Criminal Law:

- **1858 Ottoman Penal Code:** Largely translated and borrowed from the French Penal Code.
- **1926 Turkish Penal Code:** Borrowed during the Republican period, based primarily on the Italian Penal Code (Zanardelli).
- **2005 Turkish Penal Code (Law No. 5237):** Not a borrowing, but a modern reform law prepared by benefiting from comparative law.

It is, of course, not without consequences and raises many questions regarding the same law.

And in some places, it even gets lost in the main point, for law and rights exist by virtue of action, which is theory combined with action and consequences.

Under the Turkish Penal Code (Türk Ceza Kanunu – TCK), the commission of a criminal offense is generally analyzed through a series of stages. The first stage is the formation of criminal intent or the idea of committing a crime (*suç işleme düşüncesi*). Since thoughts alone do not constitute a legal violation, this stage is not punishable. The second stage consists of preparatory acts (*hazırlık hareketleri*), which are generally not punishable unless the law expressly provides otherwise. The third stage is the attempt to commit a crime (*suça teşebbüs*), which arises when the perpetrator begins the execution of the offense through direct acts but fails to complete it due to circumstances beyond their control. Depending on the conditions prescribed by the TCK, criminal attempts may be punishable but in common considered as non-punishable. The final stage is the completed offense (*tamamlanmış suç*), where all legal elements of the crime are fulfilled, giving rise to full criminal liability.

While this four-stage structure is broadly recognized in many criminal law systems, the Turkish Penal Code adopts several distinctive approaches regarding the boundaries between preparation, attempt, and completion. In certain respects, these distinctions differ significantly from those found in other jurisdictions, reflecting doctrinal choices that are rooted in the fundamental principles and structure of Turkish criminal law.

The Turkish Penal Code differs from many other criminal law systems, sometimes from the very root and core of its doctrinal structure. In certain respects, its approach may even appear absolutely weird when compared with the principles commonly adopted in other jurisdictions. The reasons for this characterization will be discussed in the following sections.

Virtually all modern criminal law systems, including Turkish criminal law, recognize a similar sequence of stages in the commission of a criminal offense. These stages are largely comparable across jurisdictions, reflecting a common legal heritage rooted in Roman law. Traditionally, the development of a crime is conceptualized through a progression from *cogitatio* (the conception or thought of committing an offense), to preparatory acts, to *attemptus* (criminal attempt), and finally to *consummatio* (the completed offense). It is upon this classical framework that the general formula of criminal conduct has been constructed and subsequently adapted by modern legal systems.

The stages of criminal conduct recognized in Turkish criminal law are not unique to the Turkish legal system. Similar stages can be found in most contemporary criminal law traditions, as they originate from the conceptual foundations of Roman law. The classical Roman model distinguished between *cogitatio* (criminal intent or thought), *attemptus* (attempt), and *consummatio* (completion of the offense). Although modern legal systems have refined and expanded these categories, the basic structure of criminal liability continues to be based upon this traditional formula.

In order for conduct to constitute a criminal offense, the legally required stages of the criminal process must be present. Virtually all criminal law systems recognize a sequence of stages through which criminal conduct develops, and the existence of these stages is essential for the establishment of criminal liability. As a general rule, if one of the necessary stages is absent, the conduct cannot be regarded as a completed crime.

For this reason, criminal law distinguishes between mere intention, preparation, attempt, and the completed offense. The absence of a required element prevents the conduct from reaching the legal threshold of criminality. For example, the mere intention to commit a crime, unaccompanied by any external act directed toward its commission, does not constitute a criminal offense. Criminal liability arises not from thoughts alone but from conduct that manifests itself through legally relevant actions.

Consequently, the characterization of an act as a crime depends upon the fulfillment of the conditions prescribed by law and the progression of the conduct through the legally recognized stages of criminal activity.

A crime may be understood as a process rather than a single isolated act. This process unfolds through a series of legally significant stages, recognized in almost all criminal law systems. If one of the essential stages is missing, the criminal process remains incomplete, and the conduct may fail to qualify as a completed offense. Thus, the mere existence of criminal intent, without any act directed toward the realization of that intent, cannot in itself be regarded as a crime. However, my position differs from this traditional approach. I believe that legal attention should not be limited only to completed acts or externally visible conduct, but should also take into account the main idea of the person—their thoughts and intentions. In practice, legal systems tend to exclude intention alone from criminal responsibility, mainly due to concerns about manageability, the large number of individuals, and the difficulty of controlling and assessing internal mental states in a consistent and fair way.

Nevertheless, I argue that the importance of intention should not be ignored in principle. The core issue is that greater attention should

be given to the internal direction of a person's mind—their thoughts and intent—even if current legal systems face practical difficulties in doing so. While it is clear that implementing such an approach raises serious challenges in terms of control, assessment, and legal certainty, the fundamental idea remains that human intention should have a more significant place in evaluating criminal behavior than it currently does. The difficulty, and at the same time one of the distinctive features of the Turkish Penal Code, is that the legal treatment of these stages sometimes differs significantly from that found in other criminal law systems. Although the general framework of criminal conduct—consisting of intent, preparation, attempt, and completion—is widely recognized, the boundaries between these stages and their legal consequences are not always defined in the same manner.

It is well known that the Turkish Penal Code was heavily influenced by continental European criminal law traditions, particularly the Italian criminal law model. Nevertheless, the Turkish legislature and legal doctrine have developed a number of concepts and interpretations that, in certain respects, diverge from the approaches adopted in other jurisdictions. As a result, some aspects of Turkish criminal law may appear unusual or even counterintuitive to scholars and practitioners familiar with other legal systems.

For this reason, a comparative analysis of the stages of criminal conduct under Turkish law is essential, as similarities in terminology do not necessarily imply similarities in legal substance.

As a consequence, the theoretical framework of the Code may at times appear fragmented or internally inconsistent. These doctrinal ambiguities are not merely academic concerns; they can also affect judicial practice by creating difficulties in interpretation and application. Where legal concepts lack coherence or are derived from competing theoretical foundations, courts may encounter challenges in ensuring consistent and predictable decisions.

From this perspective, the complexity of the Turkish Penal Code is not limited to its substantive provisions but extends to the broader conceptual structure upon which criminal liability is constructed.

One of the most controversial issues in criminal law concerns the point at which conduct should be regarded as criminal and therefore deserving of punishment. Considerable debate exists regarding the legal significance of the various stages of criminal conduct: whether a mere idea may constitute a crime, whether preparatory acts should be punishable, and whether an unsuccessful attempt should give rise to criminal liability. With the exception of the completed offense, these stages are characterized by the absence of a fully realized criminal result, which has generated extensive theoretical and practical discussions in many legal systems.

In Turkish criminal law, these debates are particularly significant. Both legal theory and judicial practice reveal numerous controversies concerning the classification of conduct and the boundaries of criminal liability. One of the most illustrative examples is the doctrine of *elverişsiz teşebbüs*, commonly translated as "impossible attempt" or "inept attempt."

An impossible attempt occurs when an offender intends to commit a crime but the offense cannot be completed because the means employed are objectively incapable of producing the intended result or because the object of the offense is unsuitable. For example, a person may attempt to poison another individual but mistakenly administer sugar instead of poison. Although the offender possesses a clear intent to kill, the result is impossible to achieve because the means used are incapable of causing death.

Under the traditional approach adopted in Turkish criminal law, such conduct is **generally not punishable** as an attempt because the completion of the offense was objectively impossible from the outset. However, this approach remains controversial. From a subjective perspective, the offender has demonstrated a **criminal intention** and has undertaken actions directed toward the commission of a serious offense. The failure of the crime results not from the offender's law-abiding behavior or voluntary abandonment, but rather from a **factual mistake** regarding the means employed.

For this reason, some scholars argue that the non-punishability of impossible attempts inadequately reflects the offender's culpability. Had the offender used a genuinely lethal substance rather than an ineffective one, the crime could have been completed. Accordingly, the impossibility of the offense stems from external circumstances and factual error rather than from the absence of criminal intent. This debate highlights a fundamental difference between legal systems that emphasize the objective danger created by the act and those that place greater weight on the offender's subjective criminal intent.

In Russian criminal law, such conduct is generally classified as an **impossible attempt** (*негодное покушение* or *непригодное покушение*).

Impossible attempts are traditionally divided into two principal categories:

Attempt with inadequate means (*покушение с негодными средствами*) occurs when the offender employs a means that is objectively incapable of producing the intended criminal result. Examples include administering sugar while believing it to be poison, or firing an inoperable weapon under the mistaken belief that it is functional.

Attempt against an unsuitable object (*покушение на негодный объект*) occurs when the object of the offense is absent or lacks the characteristics assumed by the offender. A classic example is shooting at a person who is already dead while mistakenly believing that the person is alive.

The case of administering sugar instead of poison, while genuinely believing it to be a lethal substance, constitutes a classic example of an attempted murder with inadequate means, that is, *покушение с негодными средствами*, a form of *негодное покушение*.

From the perspective of Russian criminal law doctrine, such conduct is generally regarded as a **punishable criminal attempt** because the offender has formed the intent to commit murder and has commenced the execution of that intent. The objective impossibility of completing the offense, resulting from a mistake concerning the properties of the means employed, does not in itself exclude criminal liability.

This issue illustrates one of the **fundamental differences** among criminal law systems. Russian criminal law traditionally places considerable emphasis on the offender's criminal intent and the direction of that intent toward the commission of an offense. Other legal systems, by contrast, may place greater emphasis on the objective suitability of the means employed and the actual danger created by the conduct. Consequently, the punishability of *негодное покушение* remains one of the most debated issues within the General Part of criminal law. The complexity surrounding the concept of attempt in Turkish criminal law stems, at least in part, from the reception of doctrines developed within German criminal law. In particular, the doctrine of *Untauglicher Versuch* recognizes situations in which the commission of an offense is objectively impossible because of an unsuitable object or inadequate means. Under this approach, certain forms of attempted conduct may be regarded as non-punishable despite the existence of a clear criminal intention.

The question, however, is whether such an approach is entirely appropriate within the framework of Turkish criminal law. In our view, the answer is negative. **Legal doctrines are products of particular historical, philosophical, psychological, and social traditions. German criminal law reflects the intellectual foundations of German legal thought and has developed within a specific cultural and societal context**. Consequently, legal concepts originating in that context cannot always be transferred into another legal system without creating conceptual difficulties.

The doctrine of *Untauglicher Versuch* provides a clear example. Where an individual intends to commit murder and proceeds to act upon that intention, the failure of the offense may result solely from a mistake concerning the means employed. For example, a person may administer sugar while believing it to be poison. In such a case, the impossibility of the offense arises not from the absence of criminal intent but from the offender's factual error. Had the offender possessed a genuine poison rather than sugar, the crime could have been completed.

For this reason, the non-punishability of such conduct appears problematic. The offender has demonstrated a criminal intention and has undertaken concrete actions directed toward the realization of that intention. The impossibility of the result does not negate the existence of the criminal will. The incorporation of the doctrine of *Untauglicher Versuch* into Turkish criminal law has therefore introduced a concept that does not always correspond to the practical realities and social conditions of Turkish society, thereby creating inconsistencies in the assessment of criminal liability. The development of Turkish legal terminology and doctrine reflects the complex historical evolution of the Turkish legal system. A significant portion of legal vocabulary used in contemporary Turkish law originates from Arabic, largely due to the influence of Islamic jurisprudence (fiqh) on the legal structure of the Ottoman Empire. As a result, many legal concepts, definitions, and terms continue to bear linguistic and conceptual traces of that tradition.

This legacy presents both advantages and challenges. On the one hand, the preservation of historical terminology contributes to a deeper understanding of the etymological origins of legal concepts and provides continuity with earlier legal thought. On the other hand, the coexistence of terminology derived from Islamic legal culture and doctrines borrowed from modern European legal systems may create conceptual inconsistencies and interpretative difficulties.

The modern Turkish legal system was largely reconstructed during the Republican era through the reception of European legal models, particularly those influenced by French, Italian, Swiss, and German law. Consequently, contemporary Turkish law often combines legal terminology rooted in a different historical and intellectual tradition with substantive rules and theoretical frameworks originating from continental European jurisprudence. This dual inheritance can occasionally generate tensions between legal language and legal doctrine, as concepts developed within distinct legal cultures do not always align perfectly with one another.

Such an approach would not require abandoning either the historical legacy of Islamic legal thought or the achievements of European legal modernization. Rather, it would involve developing a legal system capable of integrating these influences into a more consistent and context-sensitive jurisprudential framework that responds effectively to the needs of contemporary Turkish society.

A notable characteristic of Turkish criminal law is the continued use of legal terminology derived from Arabic, a legacy of the historical influence of Islamic jurisprudence on the Ottoman legal tradition. Fundamental concepts employed in contemporary criminal law—including **kusur** (قصور), **kast** (قصد), **niyet** (نية), **teşebbüs** (تشبث), and **suç** (جرم, historically also associated with concepts of criminal wrongdoing in Islamic legal terminology)—remain deeply embedded in legal discourse despite the extensive reception of European legal doctrines during the modernization of the Turkish legal system.

These concepts constitute some of the foundational elements of criminal liability. However, an important theoretical issue arises from the relationship between their linguistic origins and their contemporary legal meanings. When one examines the etymological roots of terms such as **kusur** (قصور), **kast** (قصد), and **niyet** (نية), it becomes apparent that their original semantic content differs, at least in part, from the technical meanings attributed to them in modern criminal law doctrine. Through processes of legal development, codification, and doctrinal interpretation, these terms have acquired specialized meanings that often extend beyond, modify, or even depart from their original usage.

As a result, Turkish criminal law operates with a conceptual vocabulary whose historical and linguistic foundations originate in one legal and intellectual tradition, while its substantive doctrines and systematic structure are largely derived from continental European legal systems. This duality may generate conceptual ambiguities and interpretative challenges, particularly when the historical meaning of a term and its contemporary doctrinal function do not fully coincide.

Accordingly, the issue is not merely one of language but also of legal methodology. The persistence of inherited terminology alongside imported legal theories may create tensions within legal reasoning and doctrinal coherence. A critical examination of these concepts, taking into account both their etymological origins and their current juridical functions, is therefore essential for a more

systematic understanding of Turkish criminal law and its intellectual foundations.

The result would be neither a reproduction of European law nor a return to pre-modern legal structures, but the emergence of a distinctly Turkish legal doctrine grounded in its own conceptual foundations.[1]

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1. Turkish Penal Code, Law N: 5237.