

Law

by Xxx Xxx

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With reference to selected theories of criminalisation, discuss whether, in your view, consensual body modification of adults should ever be criminalised, and, if so, under what circumstances.

Introduction

When it comes to the legal definition of an adult, the term refers to a person regarded as legally competent in managing their affairs at the age of 18. To be compelled by numerous contracts and agreements and participate in other legal activities, such as voting and marrying, a person must reach the age of legal responsibility. Each county and even each state has a different age at which a person is considered an adult, depending on the nature of their acts. In England and Wales, the age of criminal responsibility is ten, whereas the age of the legal majority is eighteen. On June 8, 2019, the minimum legal age of Consent in Scotland will rise from twelve to sixteen years old. However, this article will examine whether an adult's agreement to physical alteration may be used as a defence, utilising two distinct techniques.¹ It is assumed that the state can protect individuals from self-harm, which makes adult consent invalid in the eyes of paternalistic ideology. Secondly, I will show how Mill's damage principle, which supports the notion that a person is sovereign over himself, demonstrates the validity of adult consent². While some experts believe that permission is only legitimate if it does not cause substantial bodily injury or falls inside an exemption, this article will reveal that this topic is still being discussed among experts. Finally, this article will show that this subject is still being debated among specialists, with some agreeing that permission is only valid if it does not result in serious physical harm or comes within an exception, such as in *R v Brown*.

¹ Paul Roberts (n 18) and David Ormerod (n 18).

² *R v BM* [2018] EWCA Crim 560.

The remote harm to society is that limited healthcare resources are now being wasted on unjustified and wasteful procedures. It is a trade that causes long-term harm by consuming significant medical supplies that may be used wisely elsewhere. Non-therapeutic cosmetic surgery can be damaged directly by causing physical harm and indirectly by reinforcing false prominence or racism.³ However, When the unnecessary non-therapeutic surgery is acceptable in that it does not cause long-term harm and enhances the consentor's liberty preferences, as is the case with milder forms of body beautification operated on consenting adults, the surgeon might have a defence. If the procedure has a low chance of causing unintentional injury, would it be considered appropriate?⁴

The main themes in legal precedent are that a putative medical service that causes substantial injury must entail actual therapeutic medicine (medical necessity) or fall under the generic defence of necessities. The potentially bodily severe injury should not be passed off as medical Treatment.⁵ Unnecessary cosmetic surgery with a high risk of long-term injury has been urged to be criminalised since it causes unjustified harm. When there is a high likelihood of significant complications, it is dangerous. The harm may not manifest itself for years after the medical operation has been completed in certain circumstances. It is unjust because the surgeon is aware of the medical field, is aware of the potential rate of problems, is aware that it is unneeded, is aware that it bears a high risk of significant harm, and is aware that it is non-therapeutic, yet chooses to harm just for profit. There appear to be cases in which the legality of the consentor's approval is disputed due to misrepresented information used by decision-makers to decide to have surgery. Irrational decisions can be caused by misinformation and

³ D. Baker, *New Criminal Law Review* 587. Also in Bansal, D. (2018) 'Bodily Modifications and the Criminal Law'.

⁴ J.S. Mill. 1998. Orig. 1859. On Liberty. Also, *BM* [2018] 3 W.L.R. 883 at [40].

⁵ **2** Brown [1994] 1 A.C. 212 (HL) at 266. Also, see the comments of Lord Mustill in *Airedale NHS Trust v Bland* [1993] AC 789 at 891.

irrational social influences.⁶ However, in the instances detailed above, the Consent is believed to be genuine because it came from an autonomous adult. Because of their intellectual immaturity, which is not; therefore, Consent from such an adult should not be used to defend healthcare professionals who produce plastic surgery that is medically unnecessary and demonstrated to carry a significant chance of causing unnecessary harm.⁷

According to Mill, Individuals, not the state, seem to be better suited to make decisions over their own life. Allowing individuals to make their own decisions will maximise happiness since everyone understands more about what is in their own best interests than the state does, and each individual cares more about their own best interests than the state. "**Over himself, the individual is sovereign over his own body and mind**"; therefore, it should not be criminalised.⁸ Meanwhile, it was argued that the behaviour should be allowed since it "protects his consumers' autonomy." Individuals 'are generally the best judges of their interests, and if they willingly consent to injury, there is typically no justification that why the law should preserve them more according to this alternative interpretation of societal gain.⁹ A judge who values liberty could well have recognised this argument and decided that the concept of social good entails respecting and supporting people' autonomy to make changes to their bodies. As a result of this view, the law might be shifted towards a more type of "permission that genuinely respects personal sovereignty."¹⁰ As a result, individuals' benefits can be interpreted in many formats, which will be used to support the expansion of the exclusions that permit Consent to be used as a defence. Mill is mainly concerned with legal matters. He limits the scope of

⁶ J. Roberts, 'Body Modification Practices and the Medical Monopoly' (2019).

⁷ DPP v Smith [1961] AC 290; R v Cunningham [1982] AC 566.

⁸ J.S. Mill. 1998. Orig. 1859. On Liberty.

⁹ Burrell v Harmer [1967] Crim LR 169.

¹⁰ R v Richardson [1998] 2 Cr App R 200.

permissible legal interference to acts that harm others. Upon the basis, one may argue that autonomy and bodily modifications are legitimate as they only affect the person.

Interventions in bodily autonomy by others are permitted according to Mill if they have been carried out with the affected person's full Consent as everyone is seeking their own happy life, everyone has the right to determine for themselves what is excellent for themselves.¹¹ Everyone capable of making decisions on these issues may not be restrained, even if their chosen path leads to mishaps. However, Mill's fundamental perspective, which is mainly anti-paternalistic but once again appears to permit such interventions through circumstances in which someone goes over his own most fundamental self-interest, may support this argument against severe body modifications.¹² Consensual enslavement was a case to be examined here that Mill opposes.

At this point, he appears to deploy a transcendent logic, much to Kant. This would be illogical, according to Mill, to apply a concept that should protect individual freedom as much as reasonable in a method that weakens the very conditions of exercising individual freedom. Furthermore, convincing proof establishing the psychological benefits of cosmetic surgery could show that relatively safe cosmetic surgical procedures should not be criminalised. The psychological gain may be sufficient to warrant the patient taking a significant risk of being damaged in a minor way due to the cosmetic surgery. The science may also show that the operation is medically necessary since the patient could experience substantial mental harm if the surgery is not performed.

Scholars have often questioned whether an individual can consent to (severe) bodily injury. The authors debate whether permission eliminates the violation's essence or serves as a

¹¹ D. Lyons. 1994. Rights, Welfare, and Mill's Moral Theory.

¹² Mill, *op. cit.* Note 26, p. 113ff.

defence for doing such damage. Apart from the hypothetical, a judicial viewpoint on this subject enriches the debate. In certain instances, the court has accepted Consent as a defence against inflicting physical damage. Two 12-year-old boys had tattoos, a qualified practitioner performed minor treatments, and the defendant's wife branded her buttocks with a hot knife. *R v Brown*, a House of Lord's judgement, is the most authoritative source on the subject. Permission was required to defend against an allegation of inflicting (severe) bodily damage while engaging in sadomasochistic behaviour.

The judgment was partly predicated on Lord Lane CJ's comment that allowing individuals to inflict serious bodily injury on one another without justification was not in the public interest. To be lawful, an action must fall inside a recognised exemption from Consent to physical damage. According to Lord Slynn, permission is a defence against physical damage in four key areas: surgery, local sports, child punishment, and tattoos and ear piercing. Each of the three components is subjected to a different amount of force. Apart from the question of whether it is lawful to criminalise sadomasochistic behaviour between adults, the law governing Consent and the infliction of physical damage is well established. Additionally, Lord Templeman argued in *Brown* that Consent should be delegated to Parliament, which could "consult physicians, psychiatrists, criminologists, sociologists, and other specialists, as well as hear and weigh public opinion." His Lordship, on the other hand, had not considered the possibility of introducing new exclusions.

To Conclude, Bodily modification is the deliberate alteration of human anatomy or appearance for aesthetic purposes. Tattoos and piercings are two of the most common types of body modification. They are viewed by society as a form of art, expression, and diversity. While Consent has been granted to the use of force against an individual, the question of whether he or she should be protected from the criminal law of such breaches has been a

challenging one for courts to resolve. As courts adopt a paternalistic approach, adults are protected against harming themselves, limiting their autonomy in return for protecting them.

According to the ¹House of Lords, *R v Brown* remains the most crucial case to this point. The House held that causing (severe) physical harm while indulging in sadomasochistic behaviours could not be defended with permission. Also, the decision in *R v BM*, which reaffirms the *R v Brown* ratio, indicates that an adult's Consent is not a defence to causing severe physical damage in the context of bodily modification. Because of the alteration in societal expectations and demonstrations of uniqueness, bodily changes are likely to persist. However, some argued that the Consent must be valid. Since Mill believes that individuals make better decisions regarding their own lives than the state, letting individuals make their own decisions will maximise happiness. Because everyone understands more about what is in their interest than the government does, allowing individuals to make their own decisions will maximise happiness, mainly anti-paternalistic. However, an activity must fit inside an exemption that grants Consent to physical injury. Accordingly, surgery, regulated sports, the chastisement of children, and tattooing and ear-piercing are the four broad categories where Consent allows physical injury.

We frequently see our bodies as natural resources. Our bodies are cultural artefacts. Human bodies are remodelled by all cultures. To make the body beautiful, to indicate group membership, social position, and to convey information about an individual's attributes or accomplishments. Know that we alter our bodies in many ways, such as neck lengthening and tooth filing. Tattooing, body piercing, and scarification are growing increasingly popular in the West.

It's typical to want to "fix" or "perfect" one's looks. But this isn't always the case. Also, certain biological alterations may have unintended effects. Body modification is done for several reasons today. Mouth filing in Bali, female and male circumcision all around the world are instances of body modifications. History's most famous alterations include foot binding and corseting. Between the ages of 3 and 7, foot binding was a common practise in China. All save the big toe were fractured. He wrapped his foot. Assisting with pressure changes bandages. Women's feet were usually just a couple inches long. Men liked her little feet, swishy stride, and seeming frailty. Foot binding left women crippled, yet parents kept it going to help their daughters find a husband. During China's 1950s Westernization, this system perished.

Today, Western women and girls are taught to regulate their bodies via strict diets and fitness regimens. Cosmetic surgery, piercing, tattooing, and tanning are becoming popular among both women and men. In 2008, the American Society for Aesthetic Plastic Surgery reported 10.2 million cosmetic procedures. Despite women receiving the bulk of cosmetic procedures, males have increased their use by 20% since 2000. Dermis surgery is fiercely discussed. Some claim cosmetic surgery may improve self-esteem and body image. The societal focus on youth, sexuality, and looks above experience, character, and content has some critics. They also mention the risks of cosmetic surgery. Unexpectedly, there is a correlation between cosmetic surgery and suicide. Body modification is done for several reasons today. Mouth filing in Bali, female and male circumcision all around the world are instances of body modifications.

A voluptuous feminine form with broad hips and a 12 inch waist was essential in the Victorian era. Corseting was a lifelong change. The ribs and internal organs finally adapted. Inhalation and prolonged standing were difficult for many women with tight lacing, reflecting and adding to ideas about women's inherent frailty. Today, Western women and girls are taught

to regulate their bodies via strict diets and fitness regimes. Cosmetic surgery, piercing, tattooing, and tanning are becoming popular among both women and men. The American Society for Aesthetic Plastic Surgery reported 10.2 million cosmetic procedures in 2008. Trotz global economic crisis, cosmetic surgery has grown dramatically in the last decade. Despite women receiving the bulk of cosmetic procedures, males have increased their use by 20% since 2000.

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