

From Forked Tongues to Tinkerbell Ears: Rethinking the Criminalization of Alternative Body Modification in the UK

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Abstract : The criminal law of England and Wales currently deems that a person cannot consent to the infliction of injury upon their own body, where the level of harm is considered to be Actual or Grievous. This renders the defence of consent of the victim as being unavailable to those persons carrying out an Alternative Body Modification procedure. However, the criminalization of consensual injury is more appropriately deemed as being categorized as an offense against public morality and not one against the person, which renders the State's involvement in the autonomous choices of a consenting adult, when determining what can be done to one's own body, an arbitrary one. Furthermore, to recognise in law that a person is capable of giving a valid consent to socially acceptable cosmetic interventions that largely consist of procedures designed to aesthetically please men and, not those of people who want to modify their bodies for other reasons means that patriarchal attitudes are continuing to underpin public repulsion and inhibit social acceptance of such practices. Theoretical analysis will begin with a juridical examination of *R v M(B)* [2019] QB 1 where the High Court determined that Alternative Body Modification was not a special category exempting a person so performing from liability for Grievous Bodily Harm using the defence of consent. It will draw from its reasoning which considered that 'the removal of body parts were medical procedures being carried out for no medical reason by someone not qualified to carry them out' which will form the basis of this enquiry. It will consider the philosophical work of Giorgio Agamben when analysing whether the biopolitical climate in the UK, which places the optimization of the perfect, healthy body at the centre of political concern can explain why those persons who wish to engage in Alternative Body Modification are treated as the 'Exception' to that which is normal using the 'no medical reason' canon to justify criminalisation, rather than legitimising the industry through regulation. It will consider, through a feminist lens, the current conflict in law between traditional cosmetic interventions which alter one's physical appearance for socially accepted aesthetic purposes such as those to the breast, lip and buttock and, modifications described as more outlandish such as earlobe stretching, tooth filing and transdermal implants to create horns and spikes under the skin. It will assert that ethical principles relating to the psychological impact of body modification described as 'alternative' is used as a means to exclude person's seeking such a procedure from receiving safe and competent treatment via a registered cosmetic surgeon which leads to these increasingly popular surgery's being performed in Tattoo parlours throughout the UK as an extension to other socially acceptable forms of self-modification such as piercings. It will contend that only by 'inclusive exclusion' will those 'othered' through ostracisation be welcomed into the fold of normality and this can only be achieved through recognition of alternative body modification as a legitimate cosmetic intervention, subject to the same regulatory framework as existing practice. This would assist in refocusing the political landscape by erring on the side of liberty rather than that of biology.

Keywords : biopolitics, body modification, consent, criminal law

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