

Consent and the Construction of Unlawfulness

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Abstract : The context of this study revolves around the theme of consent and the construction of unlawfulness in judicial decisions. It aims to explore the formation of societal perceptions of unlawfulness within the context of consensual sexual acts leading to harmful consequences. This study investigates how judges create legal rules that reflect social solidarity and protect against violence. Specifically, the research aims to understand the justification behind criminalising consensual sexual activity when categorised under different offences. The main question addressed in this study will evaluate the way judges create legal rules that they believe reflect social solidarity and protect against violence. The study employs a historical genealogy approach as its methodology. This approach allows for tracing back the original formation of societal perspectives on unlawfulness, thus highlighting the socially constructed nature of the present understanding. The data for this study will be collected through an extensive literature review, examining historical legal cases and documents that shape the understanding of unlawfulness. This will provide a comprehensive view of how social attitudes toward private sexual relations influenced the creation of legal rules. The theoretical importance of this research lies in its contribution to socio-legal scholarship. This study adds to the existing knowledge on the topic by exploring questions of unconscious bias and its origins. The findings shed light on how and why individuals possess unconscious biases, particularly within the judicial system. In conclusion, this study investigates judicial decisions concerning consensual sexual acts and the construction of unlawfulness. By employing a historical genealogy approach, the research sheds light on how judges create legal rules that reflect social solidarity and aim to protect against violence. The theoretical importance of this study lies in its contribution to understanding unconscious bias and its origins within the judicial system. Through data collection and analysis procedures, this study aims to provide valuable insights into the formation of social attitudes towards private sexual relations and its impact on legal rulings.

Keywords : consent, sexual offences, offences against the person, legal genealogy, social construct

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