

Tattoos, Body Piercing and Cosmetic Surgery: Mere Personal Adornment or Non-fatal Criminal Offences?

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This discussion poses the simple question: to what point do tattoos, body piercings, cosmetic surgery and other body adornments depart from mere body art and become non-fatal criminal offences, such as assaults, wounding, or grievous bodily harm? Central to this question is the issue of consent and whether one can indeed legally consent to such things when to do so would appear to be unacceptable levels of 'harm'. A second normative question is posed asking 'should' such practices be allowed?

It is asserted that the law has reluctantly come to accept many of these practices so long as valid consent is evident. The reasons for this it seems is because courts are reluctant to rule on possible infringements of fashion 'sense' so long as the acts are consented to by the individual and impacts little on others, despite the possible 'offensiveness' to others – which is not a valid consideration, it seems.

Body adornment, a collective term used to describe practices such as tattooing, body piercings and cosmetic surgery, has existed in various forms for centuries throughout all societies. Researchers such as anthropologists, psychologists and sociologists have attempted to explain the reasons why such behaviour exists and deduce a number of explanations that centre on the need for differentiation within the group. Traditionally, the more overt forms of body adornment, such as tattooing and piercings have mostly appeared throughout indigenous cultures in varying degrees for varying reasons. However over the centuries a number of practices have been adopted within non-indigenous cultures to the point where activities such as tattooing, are now widely embraced into the realms of mainstream acceptability. A cursory glance at the number of tattoo establishments and surgeons who are engaged in cosmetic procedures, not to mention their outputs, is evidence of the popularity of these practices.

But what of the more extreme forms of body adornment – are these also acceptable? Can all body art and surgical procedures be acceptable when to do so might accept that those who are participating in such activities are actually engaging in 'harmful'

behaviour? The issue then becomes whether such actions do indeed fall within the reach of the criminal law and are therefore worthy of criminal sanction.

Traditionally the way the criminal law has dealt with such issues is to categorise the behaviour and the consequences of that behaviour within the boundaries of non-fatal offences such as assaults, wounding or grievous bodily harm. Of central importance for assault-based offences is the issue of consent so it could be argued that there could never be an assault so long as the person gives lawful consent to the procedure. The question is less clear when one observes certain types of piercings, for example, which might constitute a more serious offence such as a wound or a grievous injury. These group of offences, the question of consent is not generally an element of the offence and is therefore irrelevant when determining criminal responsibility. Despite this, the lack of prosecutions involving those who engage in these activities might indicate that the law is still recognising that consent does play a part in relieving criminal culpability to what would otherwise be a serious criminal offence.

The two central questions posed for this discussion are whether a person *can* and *should* be able to consent to some or all types of body adornment thus relieving liability to the perpetrator of these acts? These questions are premised on the supposition that, to accept that a person can and should be able to deal with their body for the purpose of adornment, could indeed 'offend' a central tenet of the criminal law, which is to protect individuals and society from physical harm. The two questions are differentiated on the basis that the former deals with the current state of the law as regards specific offences dealing with physical harm such as assaults, wounding and grievous bodily harm to mention a few. This question simply looks at the current state of the law and tries to ascertain how courts and legislatures have dealt with the issue to date. Such an understanding of the way legal institutions have considered the issue is informative since it provides some direction on the current underlying jurisprudence.

The second question, however, seeks to frame the issue of 'harm' in a normative context by seeking to understand whether the law *should* intervene with an individual's right to do as they please when it comes to cosmetic adornment. Put another way, whether the state has an interest in regulating against those who engage in acts that might be seen as constituting 'harm'. Naturally, this question raises a number of complex and possibly, contentious positions since the idea of regulation could be seen by some as being an anathema to the rights and freedoms

of individuals to do as they please when it comes to 'fashion' and such an incursion into the private realms of the individual may well be unacceptable incursions into the rights of the individual of which the state has no interest.