

## Consent to bodily injury and the criminal law

Proposed supervisors: Professor Sally Kyd & Dr Daniel Bansal

The project will critically review the legal framework on consent to bodily injury in English criminal law and suggest reform proposals. The project will, where appropriate, draw on other jurisdictions to achieve these aims.

The current position in England provides that a person (A) cannot consent to another (B) causing them bodily injury unless it falls within a recognised lawful activity (Brown [1993] UKHL 19). Parliament has recently codified the common law by enacting the Domestic Abuse Act 2021, s.71, which provides that A cannot consent to B causing bodily harm for sexual gratification. However, this provision extends to other areas of our lives. This category-based approach has resulted in the unprincipled development of legal doctrine.

For example, bodily harm caused during cosmetic genital surgery, decorative piercing, and contact sports are lawful; however, FGM, non-surgical body modification, and BDSM is not. Such examples highlight the incoherence of current doctrine and its failure to balance personal autonomy with the criminal law's paternalistic role in limiting the approbation of the law for significant violence—if indeed that is the criminal law's role. The law lacks clarity and has failed to keep pace with changing public attitudes to body modification, horseplay, and BDSM. Parliamentary reform is overdue.

The project will draw on the common law, Law Commission proposals, and academic literature to provide a doctrinal and theoretical analysis of consent to bodily injury in English criminal law. It will focus on how (and whether) the criminal law should recognise a person's factual consent to being harmed, where limits to consent ought to be set, factoring the nuanced scope in which harm may be caused to another. The project will provide reform proposals to address these significant concerns. This topic has not received a dedicated and thorough academic examination, for which a doctoral thesis would provide the perfect opportunity to do.

Given the breadth of this topic, the project would, depending on the candidate's interests/preferences, focus explicitly on one of the following - consent to bodily injury in criminal law and:

- Body modifications.
- Rough sex and BDSM.
- Religious and cultural practices.

The methodology for this project will be primarily doctrinal. Doctrinal research focuses on the letter of the law to compose a detailed analysis of legal rules in primary sources (case-law/statutes) to identify the underlying themes and how each source is connected. This approach provides a solid basis for constructing a doctoral thesis.

The candidate may draw on other jurisdictions to inform their doctrinal analysis. Comparative legal research involves analysing different bodies of law to examine how the legal issues could be different under each set of laws. Comparative research allows the candidate to explore how other legal systems have handled the same issue, helping to find solutions to the problems identified.

The candidate may also examine reported cases (including sentencing cases). Qualitative empirical legal research involves extracting information from the text of legal judgments, then interpreting and organising the findings into categories, and using that information to identify patterns.