

Chapter 1

I suspect that if many people were asked at the end of their lives what had caused them the most harm it would not be those things that concern the criminal law but issues such as broken relationships, which are not covered by the criminal law. Does this mean that the law needs to rethink its understanding of harm?

It is notable how readily the criminal law is willing to criminalize the slightest touching of a body, but unwilling to deal with injuries to feelings, unless they amount to psychological disorders. One explanation could reside in the difficulties of proof. Proving one has a physical injury is straight forward, proving one is emotionally distressed is not. A different explanation is that there are many good reasons why one person might cause emotional distress to another: a teacher may have to tell a student that their work is sub-standard; someone may have to decline to go on a date with someone; a shop assistant may have to reveal the price of a beautiful outfit. By contrast the circumstances in which touching another is justified is more limited and arguably can be defined with sufficient precision. While defining the circumstances in which one person may upset another would be extremely difficult, if not impossible.

On the other hand it might be argued that the law here is showing a male bias in its description of harms. Are physical injuries what threaten the archetypical man, while he cannot be emotionally harmed, at least not seriously? Whatever the explanation it will be interesting to see if the criminal law is used to deal with "emotional injuries" to a greater or lesser extent in the future.