

BOOK REVIEWS

***Indirect Criminalisation*, by Stavros Demetriou, Hart Publishing 2023**

This is a book on a topic which matters, yet has had little academic attention. It is based on Stavros Demetriou's PhD thesis, and is the first detailed study of 'indirect criminalisation' – the legal treatment of anti-social behaviour through civil preventive measures such as the Anti-Social Behaviour Orders (ASBOs) and Anti-Social Behaviour Injunctions (ASBIs) in England and Wales.

The book examines whether the implementation of injunctions under Part 1 of the Anti-social Behaviour Crime and Policing Act 2014 resulted in the indirect criminalisation of certain kinds of anti-social behaviour (ASB). Injunctions and other civil preventive measures aim to prevent certain kinds of unwanted and troublesome behaviour. What is problematic about civil preventive measures is that they introduce means of circumventing the enhanced procedural and evidential protections afforded to those facing criminal prosecution. From being civil preventive measures they thus become a form of indirect criminalisation.

Anti-social behaviour (ASB) affects the health and wellbeing of millions of people. During 2022, England & Wales's police forces received 1,039,579 reports about anti-social behaviour. This is a decrease of 27 per cent from 2021's figure of 1,416,946 reports of anti-social behaviour, giving an overall rate of 17 per 1,000 people in 2022 and a rate of 24 per 1,000 people for 2021.¹

A powerful report broadcast on BBC Radio 4 *File on Four* on 6 June 2023 (<https://www.bbc.co.uk/programmes/m001mlth>) vividly illustrated some aspects of this multi-faceted problem:

1. The dreadful damage that ASB can inflict on an area, in this case an attractive park in an area short of green spaces, which was trashed and rendered unusable;
2. How anti-social behaviour reflects the poverty and deprivation of the poorest areas of our cities;
3. That positive measures – for example, organising activities for young people, arranging for the supply of food, school uniforms, toys and other goods – can lead to lower levels of anti-social behaviour and the development of pro-social attitudes and behaviour among those young people who previously caused so much damage and destruction in their home area.

This book is of special interest to me. For the past three years I have been studying judgments published by the judiciary² of decisions made by county courts where ASBIs have been breached, reporting the sanctions imposed, in particular, imprisonment.³

Since the 1990s many Western jurisdictions have introduced a range of civil preventive measures aimed to prevent and deal with various types of nuisance and criminality. Although the stated objective of these interventions is the prevention of crime, their implementation can result in the imposition of restrictions akin to criminal punishment, leading to the indirect criminalisation of certain kinds of behaviour.

The purpose of Demetriou's study is to apply a working definition of criminalisation to examine whether the implementation of the injunction introduced under Part 1 of the Anti-social Behaviour,

¹ Defining and measuring anti-social behaviour United Kingdom Government
<https://assets.publishing.service.gov.uk> > dpr26

² <https://www.judiciary.uk/judgments/>

³ See: <https://www.thejusticegap.com/anti-social-behaviour-law-punishing-the-poor-and-vulnerable>
and <https://www.crimeandjustice.org.uk/resources/go-directly-jail-shouting-begging-and-rough-sleeping>

Crime and Policing Act 2014 led to the indirect criminalisation of certain kinds of anti-social behaviour (ASB).

A Public Spaces Protection Order has much in common with an Anti-Social Behaviour Injunction. Recent research on the application of these measures was published in 2022. Peter Squires writes in the preface to the research report: *Living within a public spaces protection order: the impact of policing ASB on people experiencing street homelessness* (Vicky Heap Sheffield Hallam University, and colleagues):

Hermann Mannheim, perhaps the first criminologist to establish a distinction between ‘crime’ and a less precisely defined notion of ‘anti-social behaviour’ (Mannheim, 1946), noted that the latter concept was most frequently invoked to castigate the *behaviours* of the poorest (drunkenness, disorderliness, vagrancy). His own view implied that the *decisions* of the rich and powerful (tax evasion, exploitation, wealth hoarding) were at least as deserving of attention. Of course, such distinctions about the impact of legal regulation only reiterate wider criticisms regarding the overall effect of criminal law enforcement: one law for the rich, as the saying goes.

Having contributed to several textbooks, criminological dictionaries and encyclopaedias, and frequently pointing out that the precise appeal of anti-social behaviour (ASB) powers to enforcing authorities lay in their flexibility and utility, I was led to conclude, on several occasions, that the first generation ASB provisions would only be replaced when more insidious, nuanced and flexibly deployable powers became available. Having closely observed the Sheffield Hallam University (SHU) research from the beginning, as a member of the project steering group, I’m inclined to believe that both Mannheim and I had it correct.

This comment provides a good introduction to the topic of Demetriou’s monograph.

As befits a PhD thesis it is a very thorough account of the literature on ASB and introduces the reader to the term ‘indirect criminalisation’. This is the process by which behaviour which is commonly agreed to be anti-social (such as playing loud music at night and in other ways disturbing one’s neighbours, directing obscene and abusive language at neighbours, being drunk and disorderly in public, allowing a flat in a communal building to become dilapidated thus encouraging infestations of vermin, etc.) becomes criminalised. This happens when the civil courts impose injunctions prohibiting such behaviour, and then later when the behaviour continues, deal with breach of injunctions. Although heard in civil courts under civil law, the penalty can be up to two years in prison.

Dr Demetriou outlines the empirical research he carried out during his PhD studies. Civil preventive measures which have been widely introduced in the past two decades, such as those coming within the Anti-Social Behaviour, Crime and Policing Act 2014 and the Terrorism Prevention and Investigations Measures ‘fall into a legal lacuna with fewer rights and less protection than those prosecuted for a criminal offence’, and this is important because these measures ‘allow for the imposition of severe restrictions on the liberty of those against whom they are used. These restrictions can be so severe that they can amount to a form of criminal punishment resulting in the indirect criminalisation of the behaviour regulated.’ His research set out to establish whether the injunctions under the 2014 Act (Anti-Social Behaviour Injunctions, ASBIs) resulted in the indirect criminalisation of anti-social behaviour (ASB). He sought to determine whether the ASBI operates as a *de facto* criminal measure, and if so, what kinds of behaviour are criminalised through this procedure. He found the enforcement agents - that is those dealing with complaints of ASB (police and housing officers) - used a range of informal interventions, such as sending out warning letters and engaging those involved in mediation and restorative justice procedures, before applying to a court for the issue of an injunction. There was a belief amongst local enforcement agents that in order for interventions to be successful in the long term, they needed to address the underlying causes of the perpetrators’ behaviour, ‘their behaviour is often the product of deep-seated socio-economic issues’.

Dr Demetriou explains that the research he conducted could be used by those who make laws and decide policy to adopt a more welfarist as opposed to a more punitive approach to ASB. This would incorporate

adopting a multi-agency approach and increasing efforts and resources to address the underlying causes of ASB as well as paying more attention to the potential impact of enforcement measures on those on whom they are imposed. ‘That is, whether the requirements local enforcement agents sought to obtain would *unjustifiably* interfere with the perpetrators’ liberty’. Dr Demetriou has now published a guide for the enforcement of ASBIs.⁴

The author cites the interesting study by J Donoghue who found that many members of the judiciary were concerned about the fact that they could only impose negative obligations on those against whom an ASBO was to be issued; she reported that judges were aware of the underlying causes of perpetrators’ behaviour such as alcohol and drug addiction, and that the imposition of bland prohibitions could not permanently address the behaviour at issue. That study was published in 2010, this book was published in 2023, so it is surprising that at this point the author does not mention the report issued by the Civil Justice Council in 2020 on the sanctions imposed by the county courts for breach of ASBIs.⁵ The CJC working party investigated punishment for breaches of ASBIs and noted how little or nothing was to be found in the way of referrals to agencies to help perpetrators deal with the underlying causes of anti-social behaviour. The CJC report found the current system to be profoundly unsatisfactory, frequently imposing disproportionate punishments on defendants who were often not in court and not represented. The CJC made 15 recommendations⁶: none have so far been implemented. ‘Civil Justice Council’ cannot be found in the index: a very surprising omission.

There is much to praise in this erudite tome. However, the book is not easy to navigate. There is no bibliography, so one cannot search for a researcher’s name to see how their work fits into the author’s analysis. Furthermore, there is no list of cases. There have been few reported cases where decisions on sanctions for breach of ASBIs have been challenged in the higher courts. Those that do exist are significant – but there is no way to find references to them in this book. To conclude: this monograph gives a detailed and scholarly account of indirect criminalisation. It is an important book on an important topic: every university library should have a copy.

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⁴ Demetriou, Stavros and Lukera, Mary Frances (2022) *Addressing anti-social behaviour: a guide for local enforcement agents*. Technical Report. SRO, Sussex. License Creative Commons Attribution.
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⁵ Anti-social behaviour and the Civil Courts, Civil Justice Council October 2020
<https://www.judiciary.uk/guidance-and-resources/anti-social-behaviour-and-the-civil-courts/>

⁶ See: R Epstein, The rich go to rehab, the poor go to prison: imprisonment for contempt of court, January 2022
<https://crimetobepoor.org/2022/01/05/the-rich-go-to-rehab-%e2%88%92-the-poor-go-to-prison-imprisonment-for-contempt-of-court/>