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## **Incivilities: Regulating Offensive Behaviour, Andrew von Hirsch and A.P. Simester (eds.) (2006), Oxford and Portland Oregon: Hart Publishing.**

There are many things that offend me, however I would not like to live in a society where my beliefs on acceptability are not challenged, where I am not offended. This is a standard liberal take on modern living and, one would hope, has some sway in most liberally-leaning democracies. As Paul Roberts states in Chapter one of this volume, "...one should seriously entertain the possibility that to be offended from time to time, even wrongfully offended, might be socially beneficial and healthy for personal growth and well-being" (p19). In putting this book together, Andrew von Hirsch and AP Simester have focused on an important area for research - one that extends beyond penal theory and ethics to wider philosophical, jurisprudential and criminological study. Quite simply, what actions or speech can be regarded as uncivil or offensive, to the extent that they necessitate criminalisation or regulation? The volume covers some fundamental questions for criminologists - that perhaps do not get asked as often as they might - regarding wrongfulness, intent, harm, injury, disgust and, of course, offence. The focus is on incivility and, drawing on recent policy and politics in the UK, anti-social behaviour; yet many of the book's discussions have a broader impact.

The book is an edited volume that had its origins in two colloquia held in Cambridge in 2002 and 2003. Ten chapters are provided by an interesting mix of criminologists, legal philosophers and lawyers covering such delights as, "*How offensive can you get?*" (Duff and Marshall, Chapter 2), "*Disgust: Metaphysical and empirical speculations*" (Husak, Chapter 3) and "*'No spitting': Regulation of offensive behaviour...*" (Burney, Chapter 8). Some of the chapters are on the lengthy side. For instance, a very detailed introduction is provided by Roberts in Chapter 1 and, at 56 pages, it would have benefited from tighter editorial control. Nonetheless, I found his arguments fascinating and intelligent (and certainly thorough). One minor query, in talking about what is, or is not, morally wrong to criticise (p16), I'm not sure religion comes under the umbrella of "unchosen and permanent characteristics" in the same way as, for example, skin colour. That said, these are important questions to consider. In Chapter 2 Duff and Marshall focus on the criminalisation of offensiveness. They make some useful observations, especially relating to the use of contracts in the UK, for instance the Acceptable Behaviour Contract (ABC). Their point that Anti-Social Behaviour Orders (or ASBOs) are "morally unacceptable" (p88) could be over-stating it however. For Chapter 3 Douglas Husak asks the question, has offensiveness itself increased? This is something that is not easy to answer, although being a Professor of Philosophy, Husak makes some interesting speculations. I struggled in places, but this was perhaps my lack of philosophical nous, rather than the fault of the author. One thing is clear, reading this book has confirmed the benefits of reading beyond the usual criminology fare – how else would I have discovered "the metaphysics of disgustingness"? (p96)

In Chapter 4 von Hirsch and Simester provide some principles for penalising offensive behaviour, including insulting conduct, infringement of anonymity in public spaces, pre-emptive public behaviour, exhibitionism and sensory affront, along with other "multifarious grounds for offence" (pp120-122). This is a useful discussion of ideas, and the notion that people have a "right to be left alone" (p121) is an attractive one, especially in some of my

grumpier moments. Ways of mediating – or perhaps avoiding – offence are suggested, including an interesting account of “social tolerance”.

Like many other contributors, Tatjana Hörnle relates her work in Chapter 5 to Feinburg’s study of the moral limits to criminal law. Hörnle brings a useful German perspective and relates discussion of criminalisation to the violation of *Rechtsgut* or legal good (p134). In Chapter 6 John Tasioulas offers some shared features of crimes of offence: they are wrongful; they are experienced (actually or threatened); and they occur in public rather than private space (pp150-151). Moral significance and context are also considered. For the British reader Chapter 7 by Simester and von Hirsch is of particular interest as it covers the ‘two-step prohibition’ – a high profile example of which is the ASBO. Such orders are ‘two-step’ in that they are civil remedies in the first instance designed to restrict future behaviour; however the breach of an order is criminal and can lead to a prison sentence. The attractiveness of such an approach is discussed, along with some legal problems, for instance whether such orders are prohibitive or act as a penalty, and whether they come with adequate safeguards.

The following chapter by Elizabeth Burney starts by giving an interesting account of how the same behaviour – in this case spitting – can be acceptable or offensive to the point of being criminal, depending on context and cultural norms. Burney provides a very readable and useful historical account of the regulation of offensive behaviour in England and Wales. Examples are provided from the fourteenth century through to what she calls the “new wave of behaviour control” under New Labour (p214). In Chapter 9 Bryan Tuner considers the relevance of social capital and trust to discussions of offence, and the final word is offered by Tony Bottoms (Chapter 10) who offers empirically-based advice for policy for engendering social order in public places. This draws heavily from recent work in the UK on Reassurance Policing and the extensive North American literature on incivilities and “Broken Windows”.

For a book about offence I would like to have seen more on humour. Also, as much of the content is based on UK experiences, reference to the current “Respect” agenda would have been interesting. That said, the writing largely pre-dates these developments. There is some obvious overlap between chapters, although this isn’t necessarily a problem as the contributors cover differing perspectives. It is a pretty serious book and not for the faint hearted. However, it certainly advances discussion on incivility and offence and, for those with an interest in questioning standard limits of acceptable behaviour, and the criminalisation of incivilities and anti-social behaviour, it is a very well written, interesting and useful volume.

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