Introduction

This book will examine the changing role of victims of crime in the Irish criminal process. Their status has not remained static over time. Rather, it has been subject to a series of ruptures which have dramatically altered their standing. Under the pre-modern exculpatory justice system which existed in the seventeenth and eighteenth centuries, where wrongdoing was understood as a personal altercation, victims were given primacy as decision makers: they could elect to leave matters rest; settle privately; or prosecute, but decide upon the charge. They were, in essence, the principal claims-makers. Their ownership of the alleged wrongs meant that their voices – built largely upon subjective experiences – carried a powerful justificatory force. Personal referents and preferences were actively embraced as a vital currency in criminal relations, one which linked the parties most affected in the conflict to the justice network.

By the mid-nineteenth century, however, the justice system was steadfastly disassociating itself from local and personal determinants. It sought instead to become a more depersonalised, rule-governed affair with the State at the centre. Conflicts were no longer viewed as the property of the parties most directly affected. Victims of crime were increasingly required to fit in to a new architecture of criminal and penal semiotics, one which gave primacy to system relations, emphasising ideals such as rationality, liberalism, uniformity, State power and depersonalisation. Their individual experiences, which provided such a motivating impulse under the exculpatory model, were now increasingly rejected as invalid knowledge, given their personal, irrational, emotive and unconstrained tendencies. Such experiences would now be routed through the medium of the *public interest* and packaged and presented in institutional terms. New imperatives were also foregrounded within this institutional arrangement, particularly those that emphasised procedure, the ideological neutrality and rationality of the process, and its objectivated nature. The singularity of relations which ensued in the nineteenth and twentieth centuries meant that most relevant facts and phenomena were interpreted through a narrow, State/accused lens. The operational

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self-enclosure inherent within this logic of action confined the victim to a peripheral role, one which did not permit or endorse personal claims over the conflict.

In the last four decades, justice systems are partially being reconstructed again, as they demonstrate an increased sensitivity to the needs and concerns of victims of crime. A 'vision of the victim as Everyman' is part of a 'new cultural theme' (Garland, 2001: 12), one which is widely represented in social, political and media circles. It has been suggested that a number of factors has facilitated this increased awareness of victims in Western criminal justice systems (Maguire, 1991: 363–433). To begin with, the introduction of state compensation programmes can be viewed as an early attempt to move victims away from the periphery of the criminal process. In England and Wales, for example, Margaret Fry proposed a scheme of State compensation for the victims of violence as early as 1957. Specific victimological studies became more prominent and began to direct the criminological gaze away from its focus on offenders, towards a typology of victims' experiences of the wrongdoing. These studies, among others, were important in generating academic interest in victims of crime. They were followed up by the introduction of mass victimisation surveys, commencing in the 1970s in the United States (US) before also being employed in the early 1980s in the United Kingdom (UK), which among other things drew attention to the under-recording of crime, repeat victimisation, fear of crime and victims' experiences with various criminal justice agencies such as the police, prosecutors, trial judges and other court personnel.

In the Republic of Ireland, studies such as that undertaken by Breen and Rottman (1984), O'Connell and Whelan (1994) and Watson (2000) all began to highlight the experiences of victims (McCullagh, 1986: 13–14). However, mass crime victimisation studies had a somewhat sluggish trajectory when compared with other jurisdictions (commencing in the US in 1972 and the UK in 1982), hindered no doubt by the absence of a strong criminal justice research culture and successive governments' dismissive attitude towards policy based on crime data and crime statistics (Kilcommins et al., 2004: 72–4; Cotter, 2005: 295). Mass crime victimisation surveys commenced only in 1998, with the introduction of a crime segment into the Quarterly National Household survey.

The growth in the women's movement also, it is argued, 'raised the consciousness of women to the oppression of criminal violence' (Moore Walsh, 2013: 182–9; Young, 2006: 3). More specifically, increased self-activism also ensured that victims of crime became more visible again (Maguire, 1991: 370). The first domestic abuse shelter, for example, was established in 1974 (Moore Walsh, 2013: 188). The first Rape Crisis Centre was set up in Dublin in 1977 and Derek Nally established Victim Support in 1985. Service provision for victims of crime in the Republic of Ireland has expanded in recent decades. The Victims Charter, for

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example, marked an important policy development (McGovern, 2002: 393; Rogan, 2006b: 153). This Charter was produced by the Department of Justice, Equality and Law Reform in September 1999 (and was revised in 2010), reflecting the 'commitment to giving victims of crime a central place in the criminal justice system'. The needs of crime victims are also addressed by a wide variety of victims' organisations, alliances and associations. While a significant proportion are specialised in nature, dealing with specific types of victim or services, there are also some key national groups. For example, the national Crime Victims Helpline, which represents a proactive initiative to support crime victims, was launched in 2005.

Moreover, the revelations brought about as a result of inquiries over the last two decades into Church sexual abuse and institutional abuse – which occurred in the carceral archipelago that emerged post Independence – is now very much part of the *Zeitgeist* (Raftery and O'Sullivan, 1999). The Ryan Report, established to inquire into child abuse in institutions of the State from 1936 onwards, for example, noted in 2009 that: '[c]hildren with a learning disability, physical and sensory impairments and children who had no known family contact were especially vulnerable in institutional settings. They described being powerless against adults who abused them, especially when those adults were in positions of authority and trust. Impaired mobility and communication deficits made it impossible to inform others of their abuse or to resist it. Children who were unable to hear, see, speak, move or adequately express themselves were at a complete disadvantage in environments that did not recognise or facilitate their right to be heard' (Commission to Inquire in to Child Abuse, 2009: 14). Among other things, it has helped to raise experiences of victimhood in the collective conscience, and awareness of illegitimate and abusive hierarchies of dominance. This has, in part, contributed to a growing scepticism about the institutional reification of State functionaries such as the Office of the Director of Public Prosecutions (DPP) and Gardaí (Conway, 2010; Conway, 2013). Given the demands for increased accountability and transparency in decision-making structures, government agencies are no longer as free to set their own imperatives, or to claim absolute immunity from scrutiny. Nor can they so easily defend their actions on the basis of the neutrality of their activities, or hide behind a broad-based appeal to public-interest considerations or respect for institutions of State power.

Increasing concerns about rising crime rates in Western countries from the 1970s onwards, and the perceived failure of correctionalist criminal justice projects to rehabilitate offenders, have also had an impact. It is not surprising, according to commentators such as David Garland, that the 'aim of serving victims has become part of the redefined mission of all criminal justice agencies' (Garland, 2001: 121). Among other things, it has brought into vogue the question: 'What about the victim?' (Maguire, 1991: 368).

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Law has also helped to steer victim reintegration, confirming participation and protection claims for victims, while also seeking to secure the fair administration of justice. Considerations of process fairness now include the victim within its conceptual framework. While previously such deliberations were housed within the more remote medium of the 'public interest', the courts are now becoming more explicit in specifically identifying victims and competing rights. Of course, the regulation of victim experiences in law necessarily involves a level of abstraction and institutionalisation that never fully captures all of the relevant exigencies. Nevertheless, and despite these shortcomings, increasing juridification of the crime conflict is helping to overcome the previous ambivalence towards victims of crime.

Juridification of this kind has also been scaffolded by a number of international legal instruments which have also promoted recognition of the needs of victims within criminal justice systems. The United Nations General Assembly, for example, adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power in 1985 (Aldana-Pindell, 2004: 618; Doak, 2003: 10; Van Dijk, 2005: 202), which include the right to be treated with respect and recognition, to be referred to adequate support services and to receive information about the progress of the case. The Council of Europe also recognised from the 1970s onwards the importance of preventing secondary victimisation. It has done this through the adoption of a series of conventions and recommendations (Muller-Rappard, 1990: 231–45). The European Union has more recently begun to focus on the area of criminal justice. In March 2001, for example, the Council adopted a Framework Decision on the Standing of Victims in Criminal Proceedings, which provides for minimum rights (including the right to be heard and furnish evidence, access to relevant information, the opportunity to participate and the right to compensation) to be ensured in all the territories of the EU. A Directive establishing minimum standards on the rights, support and protection of victims of crime – organised around the tripartite dimensions of information, participation and protection – has been adopted and member states were given until 2015 to transpose it into law. It will result in a more sustained, systematised approach, one where criminal justice agencies are required to take account of the needs and concerns of victims of crime in their decision-making processes. Through its directly binding and enforceable provisions, it will act as an emboldening juristic reference point, ensuring the better accommodation of victims of crime in all criminal processes and practices.

The European Convention of Human Rights acts as another influential normative framework that seeks to extend the reach of rights in the criminal process to include victims of crime. Though the Convention does not explicitly refer to victims of crime, the European Court of Human Rights has placed obligations on member states under Articles 2 (right to life), 3 (degrading treatment), 6 (fair trial) and 8 (private life). Such interpretations help to identify more concrete

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rights for victims of crime, and act as a powerful counterpoint to the hegemonic dominance of State/accused relations.

All of this impetus is largely inclusionary. The 'axis of individualisation' in the criminal justice process – which for so long was directed only at accused/offenders, the causes of their wrongdoing (including 'othering') and their right to protection from the State – has now bifurcated to embrace the multi-faceted experiences of victimhood. This of course disturbs older, hegemonic ways of doing things (an accused/offender organising logic that infused a police–public interest–prosecutions–prisons model of justice) and the reified, exclusive voices of certain actors that were central to that process (prosecution and defence lawyers, policing authorities and judges). Its recent emergence must be seen much more as a response to a previous scandalous neglect, as a justified attempt to correct an imbalance in which the victim was constituted as a 'silent abstraction, a background figure whose individuality hardly registered' (Garland, 2001: 179).

While it is clear – particularly when viewed over a long past – that victims are re-emerging as important stakeholders, it would be unwise to over-sentimentalise the progress that has been made, or to take the view that there are no more challenges ahead. Many advancements, particularly in Ireland, have been piecemeal in nature, their presence often the product of fortuitous, but isolated, determinants. Sustained progress has been hampered by the absence of any unified field about the plight of victims of crime in the criminal process. This may in part be attributable to the almost inevitable lack of resources, the constant dissonance that exists between criminal justice policy and practice (Hamilton, 2014: 55), and various embedded practices and institutional ways of doing things. The importance of adversarialism, for example, became deeply ingrained from the middle of the nineteenth century as the appropriate means of resolving criminal disputes. This deep commitment to the reception and observation of unmediated *viva voce* testimony is grounded in the need to uphold the integrity of the adjudicative process and minimise the risk of mis-decision. Its reification as the only way of 'doing justice', however, conceals the extent to which it is rooted in a State/accused logic of action, one which is unwilling to countenance the discriminatory assumptions and biases inherent within such an epistemic paradigm. In addition to the obstacles posed by embedded practices, progress has also been stymied by the unwillingness of the body politic, particularly since the late 1990s, to put the inclusion of victims at the centre of the criminal justice agenda, preferring instead to pursue an expressive agenda of 'governing through crime', with its micro focus on the technologies of protection and the adoption of repressive laws against the outside 'enemy' (Hamilton, 2014: 31–55; Vaughan and Kilcommins, 2010: 132–4).

There are also more specific challenges for the Irish criminal process. A lack of knowledge among criminal justice agencies and actors about the needs of

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victims of crime remains a central issue. There are also many reported difficulties with the provision of information to victims and with the under-reporting of crime. Other issues that cause concern to victims include: a fear of crime, intimidation by the process, attrition rates, a lack of empathy and understanding in reporting a crime, the lack of private areas in courts, difficulties with procedural rules and legal definitions and directions (e.g. consent in rape cases), delays in the system, the lack of protection and security offered by the criminal justice system, the lack of opportunity to participate fully in the criminal process, under- and over-criminalisation, overcrowded courtrooms and an inability to hear the proceedings, low levels of awareness of victim support groups, a lack of information on claiming witness expenses and inadequate support services.

The lack of recognition of vulnerable witnesses in Ireland has also been identified (Bacik et al, 2007: 10–11). Victims of crime with disabilities, for example, remain largely invisible, not least because of the difficulties in relation to information gathering and fact finding for an adversarial justice system which for the most part refuses to engage with the ontological dimensions of disability. A recent study undertaken on victims of crime with disabilities found, for example, that people with disabilities 'are not being strategically identified as a victim group, either by victim support organisations, or those engaged at a central government policy level in dealing with victims' issues' (Edwards et al., 2012: 100). The Irish court process also remains epistemically rooted in mainstream accounts of victims' needs and concerns. Such victims fit more easily within an adversarial paradigm of justice.

This book is aimed at documenting the variety of ways in which victims of crime are now being written into the criminal process discourse and practice in Ireland, while taking account of existing challenges. By being anchored initially in the monopolistic purity of State/accused relations which existed for most of the nineteenth and twentieth centuries, it takes a long view. It will seek to show how the justice system is emerging from hegemonic dominance of that kind. Although the book is about the practices and discourses which are crystallising around this re-emergence, it is not a standpoint perspective. It does not attempt to contend with the lived experiences and realities of victimhood or with the typologies of crime which occur in Ireland. It is a desk-based project which attempts initially to map the systematic exclusion of victims of crime. It then proceeds to examine the conditions which have made their re-emergence possible and the commitments, practices and strategic priorities shaping this inclusionary momentum. By focusing on broad historical changes in the assumptions and realities that have governed victim relations, our modest ambition for this book is that it will help to amplify the dynamics and principles that shape and determine our current arrangements.

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