

The inclusion and juridification of victims on the island of Ireland

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Introduction

Concern for crime victims has been a growing political issue in improving the legitimacy and success of the criminal justice system through the rhetoric of rights. Since the 1970s there have been numerous reforms and policy documents produced to enhance victims' satisfaction in the criminal justice system. Both the Republic of Ireland and Northern Ireland have seen a sea-change in more recent years from a focus on services for victims to a greater emphasis on procedural rights. The purpose of this chapter is to chart these reforms against the backdrop of wider political and regional changes emanating from the European Union and the European Court of Human Rights, and to critically examine whether the position of crime victims has actually ameliorated.

While separated into two legal jurisdictions, the Republic of Ireland and Northern Ireland as common law countries have both grappled with similar challenges in improving crime victim satisfaction in adversarial criminal proceedings. This chapter begins by discussing the historical and theoretical concern for crime victims in the criminal justice system, and how this has changed in recent years. The rest of the chapter is split into two parts focusing on the Republic of Ireland and Northern Ireland. Both parts examine the provisions of services to victims, and the move towards more procedural rights for victims in terms of information, participation, protection and compensation. The chapter concludes by finding that despite being different legal jurisdictions, the Republic of Ireland and Northern Ireland have introduced many similar reforms for crime victims in recent years.

Epistemic Shifts in knowing the Victim in the Criminal Process

The status of the crime victim in the criminal process has altered and changed over time, moving from a central to peripheral role, and gradually now, once again, re-entering more mainstream criminal justice discourse and practice. In the 18th century victims of crime were the principal investigators of crime and the key decision-makers in the prosecution process (Hay 1983: 167). Victims could elect not to invoke the law and let the criminal act go unpunished; they could engage in a personal settlement or private retribution; or they could prosecute and shape the severity of any criminal charge (capital or non-capital) through their interpretation of the facts (Christie 1977: 1-15; King 2000: 22-23). Conflicts remained therefore the property of the parties personally affected and this often involved recourse to informal dispute settlement.

In contrast, the story of criminal justice and criminal law for much of the 19th and 20th centuries might best be told as the rise of institutionalised justice whereby the State gradually monopolised investigative and prosecutorial functions and colonised 'ownership' of the wrongfulness of criminal wrongdoing (Vaughan and Kilcommins 2010: 65-68). Gradually the criminal complex was redrawn as a new statist administrative machinery emerged for investigating, prosecuting and punishing crime. Subjects increasingly ceded 'their authorisations to use coercion to a legal authority that monopolises the means of legitimate coercion and if necessary employs these means on their behalf' (Habermas, 2008 repr: 124). Too much, it was thought, had been conceded to localism resulting in a 'badly regulated distribution of power' (Foucault 1979: 79). In many instances the actions of victims were seen as vengeful, capricious and open to intimidation and blackmail, 'resulting in the shameful perversion of the criminal trial for private ends' (quoted in Rock 2004: 338). The penal field increasingly dissociated itself from the local, personal and arbitrary confrontations that governed

criminal relations in the eighteenth century and became a more depersonalised, rule-governed affair with the State at the centre. Private disputes and vendettas were thus gradually monopolised by the State apparatus¹ and rerouted into the courtroom. This, as Lea suggests, helped mark a transition from *sovereignty* to *government*, ‘from a world in which crime was simply a wrong, a personal interaction between individuals or individuals and their superiors, to one in which crime was disruption, in which an offence against the criminal law was a disruption of the public peace and of the effective working of society’ (Lea 2004). A society in which ‘the law operates more and more as the norm’ (Foucault 1979: 144) slowly emerged—reflecting the ‘public interest’ and the ‘will of the people’—in which the temptation to commit crime would no longer be countered by a sovereign will to command and a display of terror (McGowen, 1986: 313-317). When this process was completed, ‘sovereign power was transformed into a public power’ (Garland, 2001: 30). Within such a society, executive arbitrariness and discretionary power abuses were constrained, egalitarianism advocated, and procedural justice increasingly promoted in addition to substantive justice.

In distilling the criminal process into a more monopolised state-accused event, an ‘equality of arms’ framework was created as part of a broader rule of law value system. This addressed the problem of the previously ‘bad economy of power’ which vested too much...on the side of the prosecution... while the accused opposed it virtually unarmed’ (Foucault, 1979: 79). Redistributing this economy of power meant an expansion in the exclusionary rules of evidence that could be employed by the defence against the prosecution case, clearer and greater obligations imposed on the State to prove its case against the accused, better opportunities afforded to the defence to prepare its case and test the prosecution case, and the removal of any obligation of self-exculpation on the accused. Even when the case was proved against the accused, he or she was subjected to a new power to punish in which ‘an economy of continuity and permanence ...replace[d] that of expenditure and excess’ (Foucault, 1979: 87).

This new institutional pattern quickly transcended the victim’s interaction with the crime conflict and re-shaped how it was presented, addressed, legitimated and concluded. Within such a depersonalised, bureaucratised system, the victim was displaced, confined largely to the bit-part role of reporting crime and of adducing evidence in court as a witness, if needed at all. The victim’s space for negotiation and participation in pursuing his or her own interests was thus dismantled by an increasingly state/accused centred logic of action. From being a cornerstone in the regulation of relations concerning the conflict, victims increasingly found their individual experiences (such a vital currency in the pursuit of justice in the pre-modern era) assimilated into general group will – the public interest. The latter was validated through the institutional architecture of a criminal justice system whereas the former was increasingly viewed as invalid knowledge given its partiality, subjectivity, emotiveness and unconstrained dimensions, all of which were filtered out by the operations of a justice system. In the course of the 19th century, the individual victim’s experience was increasingly rendered as part of the collective public interest and packaged and presented in institutional terms. This marked the shift from victim-mediated justice to bureaucratised, state/accused mediated justice.

Victims were thus written out of the State-accused justice system, their absentee status quickly acquiring a relative permanence, ‘fixity’ and immovability. Their experiences were rooted exclusively through this ‘equality of arms’ epistemic framework, ensuring that they were interpreted and

¹ It remains possible to initiate a private prosecution under the common law in both jurisdictions. In Northern Ireland, victims can bring private prosecutions but serious offences require the consent of the Director of Public Prosecution to proceed to criminal trial under section 33 Justice (Northern Ireland) Act 2002 (Dickson 2013: 238). In the Republic of Ireland, see *Kelly v District Court Judge Ryan* [2013] IEHC 321 where Hogan J. noted that the underlying purpose of a private prosecution was to draw the public prosecutors’ attention to the case. Once the matter comes before the District Court, the continuation of the prosecution rests with the DPP who must consent to a summary trial or direct that it be prosecuted on indictment. See also Osborne (1993: 119).

understood around an axis that focused on the accused and his or her safeguards. Their voices were not heard—and were not capable of being understood—given the commitments, value choices and governing principles of this institutional arrangement. In the last four decades, however, victims are again returning to centre stage in western jurisdictions. Justice systems are partially being reconstructed as they demonstrate an increased sensitivity to the needs and concerns of victims of crime. As Garland has noted: ‘The victim is no longer an unfortunate citizen who has been on the receiving end of a criminal harm, and whose concerns are subsumed within the public interest...The victim is now...a much more representative character, whose experience is taken to be collective, rather than individual and atypical’ (2001:11). This ‘vision of the victim as Everyman’ is part of a ‘new cultural theme’, a ‘new collective meaning of victimhood’ (2001: 12) that is increasingly represented in social, political and media circles. The pattern of the representation of the victim is broadly accurate as it relates to Ireland. Victims of crime are now re-emerging again as important stakeholders.

This has 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. It has been described as providing ‘a benchmark for victim-friendly legislation and policies’ (Van Dijk 2005: 202; Doak 2003: 10). The Declaration set forth a number of non-legally binding rights (Aldana-Pindell 2004: 618), 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 European Convention on Human Rights has also been interpreted in ways that began to afford rights to victims of crime. Though the Convention does not explicitly refer to victims of crime, the jurisprudence of the Court has placed obligations on member states to criminalise wrongdoing, ‘to take preventive operational measures’, to investigate and give reasons, and to adequately protect victims and witnesses at various stages in the criminal process. In 1996, for example, the Court in *Doorson v The Netherlands*² expanded its interpretation of Article 6, primarily concerned with the rights of defendants in criminal proceedings, to take account of the rights of vulnerable witnesses and victims. It noted:

It is true that Article 6 does not explicitly require the interests of witnesses in general, and those of victims called upon to testify in particular, to be taken into consideration. However their life, liberty or security of person may be at stake, as may interests coming generally within the ambit of Article 8 [right to a private life]. Such interests of witnesses and victims are in principle protected by other, substantive provisions of the Convention, which imply that Contracting States should organise their criminal proceedings in such a way that those interests are not unjustifiably imperilled. Against this background, principles of fair trial also require that in appropriate cases the interests of the defence are balanced against *those of witnesses or victims called upon to testify* (our emphasis).

A literal, formalistic approach to the Convention has been rejected in favour of a broader reading that encompasses principles which command, that ‘rules in the rule book capture and enforce moral rights’ (Dworkin 1985: 11-12). Such an expansionary interpretation acts as a counterpoint to the hegemonic dominance of state/accused relations and the exclusiveness, in particular, of accused rights as ‘trump cards’. Facilitated by this human rights jurisprudence, we are thus witnessing a very gradual concretisation of the rights of victims of crime (Emmerson, et al 2007, 741-784; Doak 2009; De Than 2003), which governments are required to respect ‘case by case, decision by decision’ (Dworkin 1998: 223). This jurisprudence has been referred to in the Irish Courts. For example, Charleton J. in examining the exclusionary rule in *People (DPP) v Cash*³ in the Republic of Ireland noted that ‘the entire focus is on the accused and his rights; the rights of the community to live safely have receded out of view’. He drew attention to the European Convention on Human Rights, and particularly the decision of *X and Y v The Netherlands* ((1986) 8 E.H.R.R. 235), which suggests that rules which

² [1996] 22 EHRR 330.

³ [2007] IEHC 108.

hinder a fair prosecution may be incompatible with the Convention. He then emphasised the following principle:

Criminal trials are about the rights and obligations of the entire community; of which the accused and the victim are members...The cases of *J.T.* [discussed below] and...*X. and Y.* make it clear that the victim, being the subject of a crime, can have interests which should be weighed in the balance as well of those of the accused.

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 (for example, *The Convention on Action against Trafficking in Human Beings 2005*) and recommendations (Muller Rappard 1990: 231-145). Recommendation (2006)8, for example, provides that ‘States should ensure the effective recognition of, and respect for, the rights of victims with regard to their human rights; they should, in particular, respect the security, dignity, private and family life of victims and recognise the negative effects of crime on victims’ (Article 2.1). Recommendation Rec (2006)8 on assistance to victims of crime sets out various provisions and recommends that member states be guided by them in their domestic legislation. These provisions relate to the role of public services and victim support services, the provision of information to victims, the right to effective access to other remedies, state compensation, insurance, protection of physical and psychological integrity, confidentiality, and training.

The European Union has more recently begun to focus on the area of criminal justice. In March 2001, 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. Based on a proposal from the EU Commission, the Council also adopted on 29 April 2004 a Directive on *Compensation to Crime Victims* which is designed to reduce the disparities in the compensation schemes of various member States.⁴ More recently the European Commission has identified as a strategic priority the protection of victims of crimes and the establishment of minimum standards. A draft 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 are given until 2015 to transpose it into law.⁵ This Directive, it is submitted, marks the endpoint of a somewhat haphazard transitory phase, commencing in the 1970s. From November 2015, a more sustained, systematised approach is demanded, 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.

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). Writing victims into the criminal justice story necessarily creates disturbances and establishes competing tensions (Kilcommins *et al.*, 2004: 150). Most people would accept that these tensions and disturbances are necessary so as to create a more communicative process, one which permits victims to recover, to some extent, their centrality in ‘the conflict’. Some commentators, however, urge caution, pointing to the power inherent

⁴ 2004/80/EC.

⁵ 2012/29/EU.

in the image of the ‘suffering victim’ and its potential to embrace punitiveness’ (O’Flaherty 2002: 375; Fennell, 2001: 54). As McCullagh has noted, ‘victim discourse in Ireland has achieved the status of being both unchallenged and unchallengeable’ (McCullagh 2014). These concerns about the coercive potential of victim discourse are, of course, real. We should be wary of the possibility of political or media manipulation, or the depiction of the criminal justice system as a ‘zero-sum game’ where gains for victims must be at the expense of those accused of crime. That said, we should also be mindful that victim ideology is not just the manifestation of a sinister state or the product of media-exaggerated alarm about law and order. Instead 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).

The Experience of Crime Victims in the Republic of Ireland

I. The return of the victim

It has been suggested that a number of factors facilitated an increased awareness of victims in western criminal justice systems in the mid to late twentieth century. To begin with, the introduction of state victim 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. In 1964, a Criminal Injuries Compensation Scheme actually came into operation following the publication of a White Paper, *Compensation for Victims of Crimes of Violence*. Specific victimological studies became more prominent and began to direct the criminological gaze away from its focus on offenders, towards the victim’s experience and responsibility (Von Hentig 1948; Mendelsohn 1958; Wolfgang 1958). These studies, among others, were important in generating academic interest in victims of crime. They were followed up by the introduction of mass victimization surveys, commencing in the 1970s in the US before also being employed in the early 1980s in the UK (Hoyle 2012), which among other things drew attention to the under recording of crime, repeat victimization, fear of crime, and victims’ experiences with various criminal justice agencies such as the police, prosecutors, trial judges, and other court personnel (Henderson 1985: 937-1021).

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: 72-74; Cotter 2005: 295).⁶ Notwithstanding such inertia, mass crime victimisation surveys commenced in 1998 with the introduction of a crime segment into the Quarterly National Household survey (follow up studies were conducted in 2003, 2006 and 2010). Since 2002, Garda public attitude

⁶ This apathy towards research driven policy initiatives is evident, for example, in the response given to a parliamentary question in 1992 suggesting the need to undertake a comprehensive survey about attitudes to crime. The then Minister for Justice, Pádraig Flynn, provided the following shallow, though strongly indicative, reply (Dail Debates, Vol. 423, Col. 1554, October 15, 1992): “I believe that it is extremely important that ..I am in tune with how the public have been affected by and view the crime problem. For this reason since coming into office I have adopted as far as possible an open door policy in terms of listening to and responding to the community’s concern about and attitudes to crime. I have availed of various opportunities to involve myself in forums of public debate on crime-related issues. In March of this year I appeared on the “Late Late Show” which was devoted to the crime problem, so that I could hear at first hand people’s experiences of and attitudes to crime...I am, therefore, very much aware of the public attitude to crime and while I appreciate that there may indeed be a value in more academically based and structured surveys, my priority at present is to use all available resources on more practical and effective measures to prevent and detect crime.”

surveys have also been conducted (though they are not annual); they focus, among other things, on individuals' experiences and fears of crime.

The growth in the women's movement also, it is argued, 'raised the consciousness of women to the oppression of criminal violence' (Young 2006: 3; Moore Walsh 2013: 182-189).⁷ 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 (Cohen 2006; Coffey 2006; McGovern 2002; Rogan 2006b; and Cotter 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* (Rafferty and O'Sullivan 1999). Among other things, it has helped to raise experiences of victimhood in the collective conscience, and awareness of illegitimate and abusive hierarchies of dominance. Finally, as a result of 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, 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' (2001, 121).⁸ This has resulted in a partial reorientation of the criminal justice system as it 'reinvents itself as a service organisation for individual victims rather than merely a public law enforcement agency' (ibid, p. 122; Goodey 2005: 35). This new emphasis on victims is evident for example in comments by the then Minister for Justice, Equality and Defence, Alan Shatter, who stated:

The victims of crime and their families must no longer be silent partners in the criminal process. It flies in the face of justice to shut victims of crime out of the very process that is designed to address the wrongs they have suffered. Giving victims a real voice in the criminal process is vital because it contributes to dignity, self-esteem and the potential for moving on with one's life.⁹

Whilst it is clear – particularly when viewed over a long past – that victims are re-emerging as stakeholders, it would be unwise to over sentimentalise the progress that has been made. Many advancements have been piecemeal in nature, their presence often the product of fortuitous, but isolated, determinants. These included the existence of effective lobbyists and claims-makers, the cooperation and commitment of key individual 'voices' in various criminal justice and voluntary support agencies, outlying examples of expansive judicial interpretation, and the enactment of various disparate legislative provisions. 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 (or the excuse thereof) (Grozdanova and De Londras 2014), 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 over the last 150 years as the appropriate means of resolving criminal disputes (Damaska 1986: 88). 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 misdecision. 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

⁷ The Irish Women's Liberation Movement was established in 1970, for example, and the Council for the Status of Women was formed in 1973. See Smyth (1993).

⁸ By 1970 in Ireland, over 30,000 indictable crimes were recorded, representing a doubling up over a ten year period. As a result, 'the state penal system grew in both importance and scale in managing deviance' (Kilcommins *et al* 2004, 87). Recorded indictable crime rates continued to rise, reaching circa 89,000 by 1981.

⁹ Speech given by Alan Shatter at the fifth meeting of the Victims of Crime Consultative Forum, Ashling Hotel, Parkgate Street, Dublin, available at <http://www.justice.ie/en/JELR/Pages/SP11000031>

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’ (Vaughan and Kilcommins 2010: 132-134; Hamilton 2014: 31-55).

II. Accommodating victims through service provision

Service provision for victims of crime in the Republic of Ireland has expanded in recent decades. The Victim’s Charter, for example, marked an important policy development (McGovern 2002, 393; Rogan 2006a, 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. It sets out the entitlements a victim has from various services such as the DPP, but it does not confer legal rights.¹⁰ The needs of crime victims are also addressed by a wide variety of victims’ organisations, alliances and associations. These operate both at the national and local level and include organisations such as Advic, Amen, Victim Support at Court, National Crime Victims’ Helpline, National Sexual Violence Helpline, National Domestic Violence Helpline, Rape Crisis Network Ireland, Support after Homicide, Children At Risk in Ireland (CARI), Irish Tourist Assistance Service, One in Four, Sexual Violence Centre Cork, and Women’s Aid. Whilst 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. Similarly Victim Support at Court provides support to witnesses and victims both before and during court proceedings, including pre-trial visits and court accompaniment during proceedings. The Victims’ Rights Alliance, which was launched in November 2013, is an amalgam of victims’ support and human rights organisations with the purpose of ensuring that the new Victims’ Rights Directive is implemented within the proposed time frame (November 2015). SAFE Ireland is an organisation established to raise awareness about the prevalence of domestic violence and to advocate on behalf of its victims. Other associations and groups include, for example the Irish Road Victims Association (established in 2012) and the PARC road safety group (established in 2006) which offer support to road traffic victims and their families.

Furthermore, as far back as 1974, a Criminal Injuries Compensation Tribunal was established by the then Government to administer a scheme designed to alleviate some of the financial difficulties experienced by victims of violent crime and their families. The purpose of this scheme was to compensate individuals for losses arising from personal injuries as a result of violent crime or acquired while assisting another individual in preventing a crime or saving a human life. Individuals eligible to apply for compensation under this scheme include the injured person(s), the immediate family of the injured person(s) if the victim has died as a result of the crime, or those responsible for looking after the injured party. The Office of the Director of Public Prosecutions has also been active in respect of victims’ needs and concerns. A *Reasons for Decisions* pilot project, for example, commenced in Ireland in October 2008. Ordinarily the DPP is under no obligation to give reasons in respect of a decision not to prosecute, as established in cases such as *The State (McCormack) v Curran*¹¹ and *Eviston v DPP*.¹² The project, however, reverses this rule as it relates to homicide offences such as murder, manslaughter, infanticide, fatalities in the workplace, and vehicular manslaughter.

¹⁰ As part of a *Justice for Victims Initiative* designed to increase the level of support to victims of crime have also been implemented, a new executive office in the Department of Justice was established to support crime victims (September, 2008); a reconstituted Commission for the Support of Victims of Crime was introduced (September, 2008); and a forum for victim support organisations was created to put forward the views of victims with a view to shaping strategy and policy initiatives (2009).

¹¹ [1987] ILRM 225.

¹² (Unreported, 31 July, 2002). On the right of a victim to have a case prosecuted, see *Fowler v Conroy* [2005] IEHC 269.

The Courts Service offers referral, liaison and support services to victims and has issued a number of publications including *Going to Court* and *Explaining the Courts*. The Committee for Judicial Studies also recently published a guide for the Irish judiciary, entitled *The Equal Treatment of Persons in Court: guidance for the judiciary* (2011). A pilot pre-trial procedure, aimed at alleviating the trauma for witnesses by reducing delays and adjournments in trials was commenced in Dublin Circuit Court, and in the Midland and South Eastern Circuit Courts in 2013. The introduction of restorative justice in Ireland can also be seen as a response to the dissatisfaction experienced by victims under the ordinary adversarial justice system. Part of its attractiveness is its potential to refocus the problem of crime to the harms caused to individual victims and local communities. By divesting the state of ownership of the crime problem and through dismantling the ‘equality of arms’ conflict approach, the restorative justice process is designed to empower victims and local communities to give their accounts in their own terms free from the strictures of formal adversarialism (Kilkelly 2006: 77-84).

The Gardaí have likewise given a number of commitments to victims of crime including an assurance regarding the provision of information on the progress of a case and on the prosecution process, as set out in its *Charter for Victims of Crime*. The Garda Victim Liaison Office, for example, is responsible for developing Garda Policy on victims of crime, and for ensuring the implementation of the Garda aspect of the Victims’ Charter. Garda Family Liaison Officers have been introduced to keep crime victims informed of developments and provide support to those affected by traumatic crimes such as homicide or kidnap, where this is deemed appropriate by the local Superintendent. Garda Ethnic Liaison Officers are trained to provide specific support and advice to victims of racist incidents, and a liaison scheme is also provided to Lesbian, Gay, Bisexual and Transgender Community. The Gardaí have also recently adopted updated policies on domestic violence and on sexual violence, including the sexual abuse of children.

III. The juridification of victims’ inclusion

In recent years the courts and legislature in the Republic of Ireland have begun to pay greater attention to the interests of victims of crime, though admittedly the trajectory is a fragmented one rather than constituting anything resembling a concerted practice or strategic vision. In detailing examples one can refer to the introduction of live television links in the courtroom;¹³ the admission of video-recordings, depositions and out of court statements in certain circumstances;¹⁴ greater flexibility on the rules relating to eye witness identification of the perpetrators of crime;¹⁵ a more secularised and (somewhat) inclusionary interpretation of the rules relating to the competency of

¹³ See, for example, s. 13 of the Criminal Evidence Act 1992, s. 39 of the Criminal Justice Act 1999, and s. 67 of the Criminal Justice (Mutual Assistance) Act 2008. The use of such provisions has been contested in the Irish courts in the cases of both *Donnelly v Ireland* [1998] 1 IR 321 and *White v Ireland* 1995] 1 IR 268. Under s. 14 (1) of the Criminal Evidence Act 1992, witnesses may also in certain circumstances be permitted to give evidence in court through an intermediary.

¹⁴ See s. 16 of the Criminal Evidence Act 1992, for example. See also (LRC 2011, pp. 191-192; Delahunt 2010).

¹⁵ This can be very traumatic for witnesses, particularly those who are the alleged victims. There are no one-way mirror identification systems in Garda stations, and very often the victim may find himself or herself in the same room as the accused. Moreover, at a pre-trial identification parade, the witness will according to the Garda Síochána *Criminal Investigation Manual* generally be asked to ‘place his/her hand on the identified person’s shoulder’ though fortunately it is now that case that this practice has been relaxed and the witness can, if he or she requests, make the identification by pointing and describing the person in question (Walsh 2002, para 6.55). Making an identification in court can also be difficult for a witness. More recently efforts have been made to alleviate this trauma by not requiring witnesses giving evidence via television link to identify the accused at the trial of the offence if the accused is known to them (unless the court in the interests of justice directs otherwise). Moreover evidence by a person other than the witness that the witness identified the accused at an identification parade as being the offender shall be admissible as evidence that the accused was so identified.

witnesses to testify at trial;¹⁶ and less rigidity and exclusionary bias in the circumstances in which the spouse of an accused could give evidence for the prosecution in a case (Jackson 1993: 202).¹⁷ Over the years the common law also devised particular corroboration rules in respect of certain categories of ‘suspect’ witnesses such as sexual complainants, children, and accomplices. The previously fossilised exclusionary assumptions underpinning the perception of some victims/witnesses in the Irish criminal justice system is evident, for example, in the law on the corroboration of sexual complaints. In the past the evidence of a complainant in a sexual offences case required a mandatory warning to the jury on the dangers of acting on such evidence alone. This rule was justified ‘by the fear that complaints of sexual offences may sometimes be the product of spite, jealousy, psychological denial of having consented, or a reaction to having been jolted; that women with nothing to lose might seek to subject a man of high social standing to blackmail; and that the accusation of rape is easily made, but difficult to defend’ (Healy, 2004: 157). More recently, however, these essentialised notions about the traits and motives of sexual complainants have largely been abandoned and the trial judge now has discretion whether or not to give such a warning to the jury.¹⁸

In more recent years the system has also witnessed a greater awareness of the reasons why a complainant may not have made a complaint of a sexual offence at first reasonable opportunity but still avail of the doctrine of recent complaint;¹⁹ a relaxation of the exclusionary rule on opinion evidence in certain circumstances;²⁰ the introduction of a provision which makes it clear that the absence of resistance by a victim in a rape case does not equate with consent;²¹ tighter restrictions that offer victims better protection against unnecessary and distressing information being raised about their sexual histories;²² separate legal representation for sexual offence complainants where an application is made to admit previous sexual history;²³ the abolition of the marital exemption in relation to rape;²⁴ court accompaniment in sexual offence cases;²⁵ greater protection of the identity of victims²⁶ and witnesses²⁷ in criminal cases; the introduction of measures to restrict unjustified imputations at trial against the character of a deceased or incapacitated victim or witness;²⁸ the creation of a statutory offence of intimidation of witnesses or their families;²⁹ the ability of the DPP to

¹⁶ See ss. 27 and 28 of the Criminal Evidence Act 1992.

¹⁷ Traditionally the spouse of an accused was not competent at common law to give evidence for the prosecution in a case, except in the case of rape or violence perpetrated on that spouse. The constitutionality of this rule was challenged in *People DPP v JT* (1998) 3 Frewen 141, a case which Charleton has described as laying ‘the foundation stone of a victim’s charter’ in Ireland (1990: 143). It was held that the application of the rule to the facts of the case would be in violation of Article 41 of the Constitution which protected family rights. See also s. 21 of the Criminal Evidence Act 1992, as amended.

¹⁸ See s. 7 Criminal Law (Rape) (Amendment) Act 1990.

¹⁹ See, for example, *People (DPP) v DR* [1998] 2 IR 106; Leahy (2008: 203-212).

²⁰ Section 3(4)(b) of the Domestic Violence Act 1996, for example, permits an applicant for a barring order to provide opinion evidence that he or she has a legal or beneficial interest in the place of residence that is not less than that of the respondent

²¹ S. 9 of the Criminal Law (Rape) (Amendment) Act 1990.

²² S.3 of the Criminal Law (Rape) Act 1981, as amended, now provides that, except with leave of the court, no questions shall be asked in cross examination about the sexual experience of a complainant. Previously in a rape case where the defence was one of consent, the trial judge was obliged ‘to allow unpleasant charges to be made against the complainant in connection with her past; he should not indicate to the jury that he disapproves of this being done’. See *People (DPP) v McGuinness* [1978] IR 189.

²³ S. 34 Sex Offenders Act, 2001.

²⁴ S. 5 of the *Criminal Law (Rape) (Amendment) Act 1990*

²⁵ S. 6 of *Criminal Law (Rape) Act 1981*, as substituted by s. 11 of the *Criminal Law (Rape) (Amendment) Act 1990*.

²⁶ See, for example, s. 7 of the Criminal Law (Rape) Act 1991, as amended; s. 11 of the Criminal Law (Human Trafficking) Act 2008; and s. 252 of the Children Act 2001.

²⁷ See s. 181 of the Criminal Justice Act 2006.

²⁸ S. 33 Criminal Procedure Act 2010.

²⁹ S. 41 of Criminal Justice Act 1999, as amended. More generally, see s. 7 of Garda Síochána Act 2005

appeal unduly lenient sentences;³⁰ the right to return of property to be used as evidence;³¹ and provisions for the payment of compensation to victims through a statutory scheme introduced under s. 6 of the Criminal Justice Act 1993 (Rogan, 2006a: 202-208; Fennell 2010:250-260; Vaughan and Kilcommins 2010).

Along with the above evidential changes, the introduction of victim impact statements has helped to reduce victim alienation. Section 5 of the Criminal Justice Act 1993, as amended, permits the court to receive evidence or submissions concerning any effect of specified offences on the person in respect of whom an offence was committed. These offences relate to most sexual offences and offences involving violence or the threat of violence to a person. Section 5 initially presupposed that the victims of these offences were capable themselves of giving evidence of the impact that the crime had on them (O'Malley 2009: 885). To combat the narrowness of this presumption, the Irish courts began, as a practice, to admit the evidence of family members of homicide victims.³² Section 4 of the Criminal Procedure Act 2010 provides that a 'person in respect of whom the offence was committed' now includes a family member of that person when that person has died, is ill or is otherwise incapacitated as a result of the commission of the offence.

IV. Continuing problems and repeat victimisation

Notwithstanding the increased recognition of victims in the criminal process, it remains the case that many of the needs of victims continue to be unmet. To begin with, there are many reported difficulties with the provision of information to victims. The European Commission suggested in 2004 that the provision of information was not secured by 'simply issuing information booklets or setting up websites, without the authorities actively providing individual victims with information' (2004: 5). The Irish Council for Civil Liberties (2008: 21) takes a similar position noting the 'lack of initiation on the part of the State actors in their role as information-providers' to victims of crime.³³ Similarly the SAVI (Sexual Abuse and Violence in Ireland) Report in 2002 identified barriers for accessing law enforcement, medical and therapeutic services for those abused and their families. Lack of information from the Gardaí and medical personnel was the main source of dissatisfaction with the services provided. Specifically, the Gardaí were seen to provide inadequate explanations of procedures being undertaken, and medical personnel were seen as needing to provide more information regarding other available services and options. In relation to counselling services, time waiting to get an appointment was the major source of dissatisfaction. A lack of knowledge among criminal justice agencies and actors about the needs of victims of crime also remains a central concern. For example, a study by McGrath showed that 51% of members of the legal profession were unfamiliar with the provisions of the Victims Charter (2009).

There also remains a problem with the under-reporting of crime. O'Connell and Whelan, for example, in a study in Dublin in the early 1990s noted that 19% of those surveyed did not report the crime (1994: 85). In a follow-up study a few years later, the figure was reported at 20% (Kirwan and O'Connell 2001: 10). The Quarterly National Household Survey in 2010, which asked 39,000 households about the experiences of crime among those over 18 years of age in the previous 12 months, found that 25% of burglaries, 36% of violent thefts, 45% of assaults, and 45% of acts of vandalism (it fell to 45% in 2010) were not reported (CSO 2011). The SAVI Report into sexual abuse and violence in Ireland noted in 2002, after carrying out a study involving 3,120 participants, that disclosure rates to the Gardaí were very low (McGee *et al*, 2002: 128-132). Regarding experiences of adult sexual assault, only one per cent of men and eight per cent of women had reported their

³⁰ S. 2 of the Criminal Justice Act 1993, as amended.

³¹ S. 35 Criminal Procedure Act 2010.

³² See *DPP v O'Donoghue* [2007] 2 IR 336.

³³ See also part 7 of the Garda Inspectorate Crime Investigation Report on victims of crime (2014: part 7: 1-11); Victims Rights Alliance (2014: 11); and Grozdanova and De Londras (2014). In respect of the Criminal Injuries Compensation Tribunal, for example, it was noted in 1991 that 'it trundled along, almost unheard of, almost inaccessible, almost in secretive silence, behind a door which did not open and where somebody spoke to you through an answering machine' (Seanad Debates Vol 129 No 5, col 452, May 29, 1991, as quoted in Moore Walsh (2013: 135).

experiences to the Gardaí (six per cent overall). Only eight per cent of adults reported previous experiences of child sexual abuse to the Gardaí (ibid: xxxvii).

Other issues that cause concern include the level of violence against women,³⁴ fear of crime (Butler and Cunningham 2010: 429-460); intimidation (Hourigan 2011); victimisation by the process (Kelleher *et al* 1999; Riegel 2011: 200); attrition rates (Leane *et al* 2001; Hanly *et al* 2009; O'Mahony 2009; Leahy 2014; Bartlett and Mears 2011; Hamilton 2011); the lack of private areas in courts; difficulties with procedural rules, legal definitions and directions (Bacik *et al* 1998; Cooper 2008; Leahy 2013); delays in the system (Hanly *et al* 2009); the lack of protection and security offered by the justice system (Spain *et al* 2014); the lack of opportunity to participate fully in the criminal process; the lack of information on the progress of criminal prosecutions (Watson 2000); an over-emphasis in some instances on adversarialism and its morphology of combat and contest (Keenan 2014; Kilcommins and Donnelly 2014); under- and over-criminalisation (Kilcommins *et al* 2013; Schweppe *et al* 2014); a lack of empathy and understanding in reporting a crime (Guerin Report 2014, 335-336); overcrowded courtrooms and an inability to hear the proceedings; low levels of awareness of the Crime Victims Helpline; a lack of information on claiming witness expenses (Kilcommins *et al* 2010); a lack of training of stakeholders, such as legal practitioners, who come in to direct contacts with victims (Kilcommins *et al* 2013); and inadequate resources (Grozdanova and de Londras 2014) and support services (Bacik *et al* 2007; Mulkerrins 2003; Deane 2007; Irish Council for Civil Liberties 2008, Cooper 2008).

The lack of recognition of vulnerable witnesses in Ireland has additionally been identified (Bacik 2007, 10-11; Spain *et al* 2014). Victims of crime with disabilities, for example, remain largely invisible, not least because of the difficulties they pose 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 (Kilcommins *et al* 2013). A recent study undertaken on victims of crime with disabilities found that they '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 that emphasises orality, lawyer-led questioning, observation of the demeanour of a witness, the curtailment of free-flowing witness narrative, confrontation and robust cross-examination (Kilcommins and Donnelly 2014). Many of these issues have been reflected in the experienced north of the border.

The Experience of Crime Victims in Northern Ireland

I. The return of the victim

The Northern Irish criminal justice system is shaped by its unique historical, political and constitutional context. Before partition, the island of Ireland had a shared legal system that mirrored the English court structure (Dickson 2013: 77-78). With partition the Government of Ireland Act 1920 established separate legal systems for the newly created Northern Ireland and the Irish Free State. However, Northern Ireland remained within the United Kingdom with its final appeal to the UK House of Lords (now the Supreme Court). This autonomy was disrupted with the outbreak of the Troubles/conflict and the inability of the domestic political process to cope with the violence, resulted in direct rule from London being reintroduced in 1972. Thus while Northern Ireland is a separate legal jurisdiction, it remains strongly influenced by developments in the rest of the UK.

Crime victims are easily overlooked in Northern Ireland, with victims of political violence being a more visible and vocal constituency that attracts greater political and academic attention. Although

³⁴ Almost one in three Irish women (31% or 470,157 women) have experienced some form of psychological violence by a partner and 15% of Irish women (227,495 women) have experienced physical or sexual violence by a partner (European Union Agency for Fundamental Rights 2014).

political violence has marred Northern Ireland's recent past, the country has relatively low levels of crime in comparison to its neighbours (Van Kesteren *et al* 2000; PSNI 2014). Victims of crime in Northern Ireland have been historically satisfied with the criminal justice system (Mawby and Walklate 1994: 29). Yet, the Troubles/conflict did change the criminal justice system. Courts and police stations were often targets of paramilitary attacks, becoming heavily guarded fortresses and the police more militarised (Ellison and Smyth 2000). Moreover, the Royal Ulster Constabulary (RUC), a predominantly Protestant police force, was perceived as only serving the Unionist community meaning that satisfaction with the police amongst Protestants (over 80%) was notably higher than that amongst Catholics (less than 50%) (Patten Report 1999: 3.4; Van Kesteren *et al* 2000). Individuals were also reluctant to testify in criminal trials, owing to fear of intimidation or retaliation from paramilitary groups (Amelin *et al* 2000). Added to this, high levels of political violence and no-go areas prevented the police from detecting crimes in certain locales.

Indeed, far from protecting them, to many people the criminal justice system itself was seen as a source of victimisation with thousands of young men interned in the 1970s, notable miscarriages of justice such as the Guildford Four, allegations of torture and ill-treatment brought to light before the European Court of Human Rights in the *Ireland v the United Kingdom* case (which Ireland has requested to be reopened after new evidence emerged in 2014)³⁵, and claims of collusion between the police and paramilitaries (Dickson 2010; Quirk 2013; Cadwallader 2013). Together these issues undermined trust in the criminal justice system, prompting reform as part of the peace process to prevent future secondary victimisation.

In the rest of the UK, attention to the needs of victims in the 1990s was marked by improving their engagement with the criminal justice system through Victim Charters and enunciation of rights. The purpose of these developments was to 'rebalance the criminal justice system' and take victims' interests into account, in turn reducing crime and bringing more offenders to justice (Home Office 1998 and 2002). These policies reflect politicians advancing retributive agendas through the utilisation of victims in reporting crimes and providing evidence (Karmen 2010: 147). In 1998 the Northern Ireland Office, drawing on the experience in the UK, introduced *Victims of Crime: A Code of Practice*, setting out the services available to victims and commitments by the relevant criminal justice agencies, paving the way for greater attention to be paid to this area. While such policies can be discerned in Northern Ireland as having a retributive and functional aspect, reform of the criminal justice system has been part of a wider dissatisfaction with the system in the aftermath of the Troubles/conflict.

As part of the Good Friday Agreement the Criminal Justice Review Group (CJRG) was established to consider improving the 'responsiveness and accountability of, and any lay participation in the criminal justice system', which they interpreted to include the needs of victims and witnesses (2000:13.1). The Review Group found in its public consultation that a common theme was a need to ensure better respect for victims, as they were 'not high enough on the agenda', 'ignored', 'not given a voice in the adversarial system' and had to 'prove their case' (2000: 3.17). That said those consulted recognised the sensitive nature of the issue and the need to ensure the presumption of innocence of the accused. The Review Group itself acknowledged that victims are integral to the functioning of the criminal justice system, but its traditional focus on punishment of the offender had done little to alleviate their suffering and distress (2000: 13.9). Many victims felt 'alienated' from the system, with the state more interested in securing a conviction, than establishing the truth (CJRG 2000: 13.30). This was in part based on the lack of information and assistance, which left victims feeling re-victimised. The Review Group recommended that greater provision should be made to keep victims informed of proceedings, release of prisoners, and available assistance; prosecutors should explain decisions not to prosecute to victims and their families; and individuals should have greater access to make impact statements in sentencing.

³⁵ [1978] 2 EHRR 25. See Henry McDonald, Ireland to clash with UK at human rights court over hooded men judgment, *The Guardian*, 2 December 2014

A number of the Review Group's recommendations were introduced into law through the Justice (Northern Ireland) Acts 2002 and 2004. Criminal justice agencies themselves have also been reformed, the most noticeable being the change from the Royal Ulster Constabulary (RUC) to the Police Service of Northern Ireland under the Police (Northern Ireland) Acts 2000 and 2003, following the recommendations of the Patten Commission (1999). The reformed institutions, such as the PSNI and Public Prosecution Service, have developed their own codes of practice towards victims. These institutional reforms and the decreasing activity of paramilitaries have encouraged more people to report crime to the police in the past few years, as confidence in the PSNI increases, raising the level of reported crime (PSNI 2007). Further devolution agreements have further embedded victim-orientated reform, with the 2010 Hillsborough Agreement, on the devolving of policing and justice powers, outlining that the interests of victims and witnesses are key in developing domestic governance of the criminal justice system (section 1, para.6).

Since the initial reforms of the criminal justice system, the Criminal Justice Inspectorate (CJINI) has carried out a number of reviews into the care and treatment of victims. The CJINI provides an important independent oversight and monitoring function in the continued development of criminal justice reform. While a Victims' Commission was created in England and Wales to oversee reform and advocate for victims' rights within the criminal justice system, this was felt unnecessary in Northern Ireland for the time being, given that it would duplicate the work of Victim Support, the Department of Justice (DoJ) and the CJINI. The current reforms in the proposed Justice Bill 2014 are part of the efforts by the DoJ to bring the Northern Irish criminal justice system in line with the EU Victims' Directive, as mentioned above, which requires Member States to pass legislation to bring its provisions into effect by the November 2015. This complements the Department of Justice's Victims and Witnesses Strategy, which intends to streamline service provision to victims by being more responsive to their needs and to improve their experience of the criminal justice system (DoJ 2012). However, as the next section will discuss, there remains room for improvement to be compliant with the EU Directive 2012.

II. Provisions for victims and witnesses of crime

Since 2002 there has been a proliferation of legislation related to reforming the criminal justice system. Within these reforms a number of new legal provisions have been created for victims and witnesses of crime, which seek to express more shared values, rather than responsive victim redress and legal entitlements (Ashworth 1998; Doak 2009). Victim provisions introduced in Northern Ireland in the past few years have mirrored legislation in England and Wales, and have addressed issues such as victim impact statements, 'service rights'. Doak suggests that continuing reform in this area, in light of human rights, has seen a move towards more 'procedural' rights where victims can access proceedings and their interests are considered in decisions which affect them (2009:17). This section will discuss in particular the provisions for victims of crime on information, participation, protection and compensation. These provisions broadly reflect victimological research on crime victims' needs (Walklate 1989: 133-136; Maguire 1991). In closing this section, we examine the nature of victims' rights in Northern Ireland.

A. Information

There are some legal provisions that entitle crime victims to certain information, such as requesting information about the discharge or release of a prisoner under s. 68 of the Justice (Northern Ireland) Act 2002. However, this does not apply to juvenile offenders and the Justice Minister can decline a victim's request, making such a right not absolute or substantive, but more procedural. The information scheme is run by the Northern Ireland Prison Service under its Prisoner Release Victim Information Scheme (PRVIS) established in 2003, for adult prisoners sentenced to six months or more, which until 2010 had 653 victims registered. To complement this programme, in 2005 the Probation Board Northern Ireland established Victim Information Schemes (VIS) under the Criminal Justice (Northern Ireland) Order 2005 to inform victims about the discharge or release of offenders. Under this scheme victims are not only informed of releases, but their information is confidentially

used and with their consent to develop appropriate risk assessment and management plan for prisoners released on parole (CJINI 2011: 65). Both of these are voluntary opt-in schemes, requiring victims to fill out applications.

Wider concerns for information to victims were part of the negotiations around the devolution of policing and justice powers to Northern Ireland. One of the provisions in the 2010 Hillsborough Agreement outlined the need for the Department of Justice to develop a Victims Code of Practice, which would set out a minimum standard of service that criminal justice agencies should provide. The Code, which was published in 2011 as a 78-page guide to the criminal justice system, explains victims' role in the system, relevant agencies, progress and outcome of proceedings, and special measures that may be employed in the proceedings such as testimony via video link. CJINI practice inspections have found that providing regular information updates and communication remains difficult amongst different criminal justice agencies (2005; 2008; 2011).

The continuing focus on improving information is evident in the proposed Victim Charter under the Justice Bill 2014: one of its themes is enhancing communication between criminal justice agencies and victims. More specifically, s. 28(3) of the Bill stipulates that victims are to be informed about available services, progress of relevant proceedings, special measures if called as a witness, the opportunity to make a personal statement on sentencing, and an independent complaints body.

B. Participation

As the Northern Ireland criminal justice system is based on an adversarial trial model, victim participation is limited to that of witness, to maintain the equality of arms between the defence and prosecution on contesting evidence. Given the victim's lack of input into decisions to prosecute, greater emphasis has recently been given to the right for victims to review the decisions of the prosecution not to prosecute. This follows jurisprudence in the English Court of Appeal in *R v Killick*³⁶ as well as Article 11 of the new EU Victims' Directive. Victims of the Troubles/conflict have long sought to review decisions not to prosecute on the basis of the Human Rights Act 1998 and an effective investigation under Article 2 of the right to life. Most of these cases have been unsuccessful due to the passage of time.³⁷

In the more recent case of *Mooney's (Christopher) Application*,³⁸ the applicant punched another man who in response broke his jaw. While both men were charged with offences and the other man charged with more serious assault occasioning bodily harm, the prosecution of both of them was discontinued. The applicant claimed that his interests had not been considered in the decisions not to prosecute the man who broke his jaw. Considering the Prosecution Service's Victims and Witnesses Policy the Northern Irish High Court quashed the prosecutor's decision not to prosecute, as he had failed to take into account the victim's interests. Accordingly although victims are not explicitly legally entitled to have their views considered, the courts are willing to hold criminal justice agencies to account to their codes of practice if they do not contemplate victims' interests.

The increasing role of the courts in defining victims' rights can be further seen in sentencing. Although victims may not be able to participate as parties, since the 1980s Northern Ireland criminal court and appeal judges have used victim reports from medical professionals and statements from victims or their immediate family. These confidential victim reports and impact statements assist judges to understand the harm caused by the crime so as to impose a proportionate punishment on the

³⁶ [2011] EWCA Crim 1609.

³⁷ See, for example, *Re Marie Louise Thompson* [2004] NIQB 62 and *Re Julie Doherty* [2004] NIQB 78. For instance, in the *McCabe* case [2010 NIQB 58], the claimant's wife while walking down a street was killed by a plastic bullet, fired from a police land rover during a civil disturbance in west Belfast in 1981. The court held that twenty-five years after the decision not to prosecute 'it was neither fair nor reasonable that the integrity and competence of the original decision-makers should be open to attack so many years after the relevant event'.

³⁸ [2014] NIQB 48.

convicted person. However, they generally have a low uptake amongst victims (DoJ 2011b: 17) with some 435 made between 2006 and 2012 (O’Connell 2012: 9), mostly for serious offences such as sexual or violent crimes.³⁹

As in the RoI, victim reports and impact statements do not determine or bind judges in deciding appropriate sentences.⁴⁰ This finding would suggest that victim impact statements constitute a procedural right rather than encompassing any legal entitlement to seek specific substantive outcomes. It is also worth noting the research by Doak and O’Mahoney, which intimates that victims do not always prefer harsher sentences in such situations (2006). Accordingly, there is a balance to be struck by judges between victims’ interests, the rights of defendants and the public interests in determining appropriate sentences. There have been recent changes to formalise victim impact statements in Northern Ireland towards a procedural right. This is a result of case law developments in the English Court of Appeal decision in *Perkins and Others v R*⁴¹, which found that victim impact statements are a ‘right’ and is a form of evidence to be heard in open court, but excludes victims’ opinion on the type or amount of sentence. Following this judgment impact statements in Northern Ireland are now termed ‘victim personal statements’(VPS), adopting the points in the *Perkins* case, i.e. victims can now personally present their views in open court, but can also be cross-examined (proposed under Part 4 of the Justice Bill 2014). While VPS enable victims’ greater agency to present their interests as a legal entitlement in the determination of sentencing, they come with the responsibility that their contents will be contested as evidence.

In relation to crimes committed by juveniles a separate system of Youth Conferencing has been devised on the basis of recommendations by the Criminal Justice Review Group. Youth Conferences use restorative justice to confront the juvenile offender with the consequences of their actions, through the participation of a facilitator and victim to consider how they ought to be dealt with for an offence. Orders can include an apology, reparations or compensation to the victim.⁴² There have been reports of high victim satisfaction, particularly where victims felt their views had been taken seriously (Campbell *et al.* 2005). Campbell *et al* note that in 87% of conferences the juvenile apologised to the victim, with 76% of orders including reparations to the victim or community. However, earlier data should be treated with care as victims can include not just the direct person harmed, but family members and community representatives (DoJ 2011a). In some conferences direct victims did not participate directly, but rather a victim representative informed the conference of the impact of victimisation (some 60%) (Campbell *et al.* 2005: 51-53; Doak 2009: 260).

After a review by the CJINI in 2011, it was recommended that the Youth Justice Agency, which coordinates Youth Conferences, should record the participation and satisfaction of direct victims, rather than other ‘victim’ stakeholders. This target was achieved in a further review in 2013 (CJINI 2013: 27). The Youth Justice Agency in the year 2012/13 reported that 49% of direct victims attended Youth Conferences with a high satisfaction rate of 94%. For those direct victims who do participate their reasons for doing so are to ‘help’ the young person, suggesting at least for non-serious juvenile offences retribution is not a priority (some 87%) (Doak and O’Mahoney 2006). Doak and O’Mahoney suggest that individual participation of different communities in youth conferencing can promote peacebuilding in Northern Ireland, by reducing divisions and othering (2011). The community based nature of many of the groups involved in youth conferencing has helped to reduce victims’ fear of crime and provide them with some support (Eriksson 2009: 104). The use of restorative justice to deal with juvenile crime offers a more participatory role for victims in the criminal justice system. That said it remains only for juvenile crimes and for non-serious offences. In all, victim participation in Northern Ireland, outside of restorative justice and statements on sentencing, remains very much limited to that of a witness in comparison to international practice (Brienen and Hoegen 2000; Moffett 2014a).

³⁹ *R v Valliday* [2010] NICC 14 [18] per Justice Hart.

⁴⁰ See, for example, *Wilson v United Kingdom* (App. No. 10601/09, 23 October 2012) and Bettinson (2013).

⁴¹ [2013] EWCA Crim 323.

⁴² S. 57, Justice (NI) Act 2002.

C. Protection

Greater protection of vulnerable witnesses and victims has been a growing concern in the past 15 years in Northern Ireland. Reform of criminal proceedings in this area has mirrored developments in the rest of the UK in the late 1990s. In 1998 the Home Office report *Speaking up for Justice* called for greater protection of vulnerable witnesses, including victims, to ensure their 'best evidence'. As a result, the Youth Justice and Criminal Evidence Act 1999 was passed in Westminster for England and Wales, with similar legislation passed in the Criminal Evidence (NI) Order 1999 to apply to Northern Ireland. The purpose of this legislation was to offer vulnerable witnesses better protection in criminal proceedings so as to facilitate their testimony and to minimise secondary victimisation.

Under the Criminal Evidence (NI) Order 1999 vulnerable witnesses include those under the age of 18, with mental or physical incapacities, or on grounds of fear or distress, with sexual violence complaints presumed eligible (Articles 4(1) and 5(4)). If an individual is eligible the court can order a special measure(s) for them to give their testimony including: screening a witness from the accused; allow evidence by live video link; allow evidence in private; removal of wigs and gowns; allow a video recording as evidence in chief; and provide aids to communication (Articles 11-18). In addition, under Article 22 a defendant may be prevented from cross-examining the complainant of sexual offences and children; but this operate only at the judge's discretion, rather than providing any legal right to a victim. Article 28 also restricts defence counsel from asking about the victim's sexual behaviour.

Improving protection has been an ongoing process, by offering better protection to vulnerable witnesses without undermining the rights of defendants. Anonymity for witnesses can be ordered by the court, such as a pseudonym or withholding their identity, if there is a reasonable fear of death or injury (s.86-90, Coroners and Justice Act 2009). The Department of Justice in 2013 began piloting the use of intermediaries, allowing specialists to help victims, vulnerable witnesses and children understand questions and give answers. In addition, the proposed Justice Bill 2014 hopes to remove the need for victims and witnesses to provide oral evidence and be cross-examined in committal hearings, given the trauma it can cause to victims and save them from having to give evidence more than once (Part 2).

In more procedural terms, the ordering of special measures is at the discretion of the court and has to be raised by a party to proceedings or a judge, making it not a right for victims to claim or seek redress if it is not ordered. The identification of vulnerable witnesses in the early stages of the criminal process in Northern Ireland also remains a concern (with less than half being so identified), echoing the experience in England and Wales (CJINI 2012; Burton et al 2006). The CJINI inspection of special measures in Northern Ireland found that greater communication to vulnerable witnesses and better understanding amongst practitioners was needed. In addition, the CJINI inspection discovered that early decisions of measures did not occur, meaning that most were last minute and did not offer protection which responded to vulnerable witnesses' specific needs. This practice falls short of Article 21 of the new EU Victims' Directive, which requires individual assessment of victims to identify their specific needs. The proposed Witness and Victim Charter in the Justice Bill 2014 does emphasise greater information delivery to vulnerable witnesses and victims of available measures, but it does not stipulate a more responsive individualised approach. Since the Criminal Evidence (NI) Order 1999 greater attention to protection needs of victims has contributed to improving their satisfaction in the way in which they are treated (70%) and most would testify again (56%) (DoJ 2014). However, only 33% of victims felt defence cross-examination was courteous towards them (DoJ 2014); enacting the unused Article 16 provision on video live-link cross-examination may help to improve victims' satisfaction (McNamee et al 2012; Hayes et al 2011). Article 25 of the EU Victims' Directive 2012 requires training of practitioners, including lawyers, police officers and court staff, to receive both general and specialist training to increase their awareness of victims' needs and to treat them with dignity and respect. This requirement may demand further engagement with legal practitioners to minimise secondary victimisation and improve victim satisfaction with cross-examination.

D. Compensation

There are three compensation schemes available for crime victims in Northern Ireland: compensation orders; the Criminal Injuries Compensation Scheme; and compensation for criminal damage. Another compensation scheme is provided for those who suffer loss or damage to property as a result of activities by the security forces in tackling terrorism under the Justice Act 2007. With the first of the schemes available for crime victims, compensation orders these are made by the court on application by the prosecution under Article 14 of the Criminal Justice (Northern Ireland) Order 1994. A compensation order obliges a convicted person to pay compensation to a victim for any injury, loss or damage caused by a crime. However, not every perpetrator will be identified, prosecuted and convicted, which is necessary to make a compensation order (Bloomfield 1998). The majority of compensation to victims of crime is awarded through the tariff based Criminal Injuries Compensation Scheme or for criminal damage under the Criminal Damage (Compensation) (NI) Order 1977. Both of these schemes and compensation under the Justice Act 2007 are managed by the NI Compensation Agency, mirroring provisions in the rest of the UK (Miers 2014). The Compensation Agency has its own Customer Charter outlining its commitments and ‘rights’ for victims. Although these rights are more values than legal entitlements, they do permit victims to request a review or lodge an appeal if they are unhappy with a decision.⁴³

It is worth discussing in further detail the Criminal Injury Compensation Scheme. Historically, it was a source of controversy for excluding victims who had criminal records or failed to report the crime to the police, reinforcing the ‘ideal’ victim as a good citizen (Bloomfield 1998; Miers 2014: 251). The scheme is now governed by the Criminal Injuries Tariff Compensation Scheme (2009). It no longer excludes individuals who have criminal convictions, but instead reduces compensation based on the passage of time and seriousness of their conviction. The reason for this is to reflect that these individuals caused harm and distress to other individuals and cost the criminal justice system for their previous offences (DoJ 2009: 8.15). This signifies that victims not only have rights, but are also responsible, at least morally, for their past actions. Nonetheless, this stance perhaps does not reflect the non-discriminatory approach exhibited in international human rights law, at least for serious victimisation and the role of the law in offering protection and remedy to all citizens (Moffett 2014b).

E. Support services

Northern Ireland has one of the highest coverage rates for specialised support agencies for crime victims with 21%, following New Zealand (24%) and Scotland (22%), in comparison to 17% in England and Wales (van Dijk et al 2007: 119). Following the creation of Victim Support in Bristol in 1974, it grew throughout England and Wales in the late 1970s, and became funded by the state (Mawby and Walklate 1994: 112). Victim Support Northern Ireland (VSNI) was established in 1981. .and provides emotional support, information and practical assistance to victims of crime. It has some 60 paid staff and 200 volunteers. The Department of Justice funds the VSNI to the value of £2.1 million annually (DoJ 2014).

The VSNI also runs more specific support services for witnesses and victims claiming criminal compensation. The VSNI Witness Service operates out of six courthouses, offering information to witnesses on court proceedings, familiarisation with the court layout, counselling, and court accompaniment, as well as practical help in filling out forms and liaising with the PPSNI. In 2012/13 the Witness Service supported 11,954 victims, witnesses and family members during court proceedings. The National Society for the Prevention of Cruelty to Children (NSPCC) similarly delivers a Young Witness Service for those under the age of 18 and their parents and carers who testify in criminal proceedings (Hayes *et al* 2011). In relation to the Criminal Injury Compensation

⁴³ In 2011-12 the Compensation Agency made 5,352 decisions and paid out £11.9 million in compensation under the tariff scheme. It dealt with 747 claims and awarded £6 million for criminal damage in the same period (Compensation Agency 2012). These awards represent a fraction of those victimised, as during the same period there were 165,000 crime incidents, including 4,064 violent crimes and 8,567 criminal damage offences (Toner and Freel 2013).

Service, the VSNI offers free advice and assistance to victims in claims through the Compensation Agency. In 2012/2013 VSNI helped 1,858 people claim £4.8 million in compensation (Victim Support 2013). In all the VSNI has a high satisfaction rate amongst victims of 90% (DoJ 2014).

III. The juridification of victims' inclusion

Since the signing of the 1998 Good Friday Agreement there has been a swathe of legislation and policy introduced to shape the Northern Irish criminal justice system more to victims' needs. Many of the provisions and policy documents introduced have mirrored developments in England and Wales, such as special measures. The impetus for initial reform post-Agreement came from the Criminal Justice Review Group, but in subsequent years the influence of the rest of the UK, European Court of Human Rights (ECtHR) jurisprudence and EU legislation has continued the reform momentum. With increasing legal regulation in this area, the Northern Irish government has at times used a rights discourse to legitimise these reforms. However, these 'rights' have not emerged as justiciable ones where victims have legal standing to hold criminal justice agencies to account for failing to consider their interests or challenge decisions of a court. Justiciable rights have only materialised through the courts in cases of prosecutors failing to take into account victims' interests in decisions not to prosecute, reflecting the more binding influence of the ECtHR through the Human Rights Act 1998 in judicial interpretation, rather than wider legal entitlements.

Instead 'service rights' take centre stage in Northern Ireland where crime victims are seen as consumers with policies shaped to improve their satisfaction. Ashworth believes that victims' rights should remain service in nature so that they do not impinge upon the rights of the accused or undermine certainty in sentencing decisions (1998). Yet as Doak points out, treating victims as consumers suggests there is a free market and choice (2009:10). In reality the criminal process has not been fundamentally altered, with victims only allowed limited entitlements without risking the adversarial trial and the rights of the accused. Victims continue to be functional in providing evidence to help the state secure convictions. The government's concern for improving the satisfaction of vulnerable witnesses attests to this functional motivation, which may only be a small number of victims who engage with the system (Hall 2009). Hall suggests that a more holistic change in practice and culture of practitioners is needed, alongside enabling victims a more narrative input in testifying in criminal proceedings (2009). To a certain extent the EU Victims Directive 2012 encourages a more procedural rights perspective, where victims' interests are considered in appropriate proceedings and decisions, as well as standing to complain if agencies do not abide by their obligations, making such rights more justiciable than service provision.

Reform of the Northern Ireland criminal justice system has to an extent been influenced by human rights norms, in particular the 1985 UN Basic Principles on Justice for Victims of Crime and Abuse of Power and jurisprudence of the European Court of Human Rights (ECtHR). This is evident with the proposed Northern Ireland Bill of Rights recommended in the Good Friday Agreement, which would safeguard all sections of the community and their relationship with the government. Despite development by the Northern Irish Human Rights Commission and Consortium of civil society groups, the Bill remains contested and in draft form. It nevertheless adopts human rights norms for legislation to be passed to give effect to crime victims' right to treatment with dignity and respect; obtain redress; investigation; information; and assistance (Article 8(b)(2)). The Northern Ireland experience in moving from political violence to a settled, peaceful democracy, has had teething problems in creating a criminal justice system which is responsive to victims' needs. While crime may be lower in Northern Ireland in comparison to other neighbouring countries and general victim satisfaction high at 70% in recent years (DoJ 2014), in some deprived areas this is not the case. By way of example, Ellison *et al* highlight that in the New Lodge in North Belfast prevalence of victimisation and fear of crime remains high, despite reform of the police service and the criminal justice system (2012: 496-7). New crimes such as human trafficking and hate crimes are becoming more prevalent in Northern Ireland, previously hidden or minimised due to the Troubles and low levels of immigration. More historical crimes are also coming to light, such as historical institutional child abuse in state and religious care homes (McAlinden 2012). There is ongoing room for further

reform in this area to shape the criminal justice system more to the changing nature of crime and victimisation. Although this section has concentrated on crime victims, it is worth discussing outstanding issues of victims of political violence in Northern Ireland, whose unresolved issues in dealing with the past continue to cast a long shadow over the criminal justice system.

IV. Continued Problems

The Troubles/conflict in Northern Ireland between 1969 and 1998 resulted in the deaths of over 3,500 people, with over 40,000 seriously injured (Thornton *et al*; Fay *et al*; Sutton; Breen-Smyth 2012; CVSNI 2014). The majority of violence was committed by non-state actors, with Republican paramilitaries responsible for 60% of killings, Loyalist groups for 30%, and state actors causing 10%. Most of the victims were civilians, with over 1,800 killed, followed by the loss of 1,100 members of the security forces, and 570 paramilitaries. Such violence has had a ripple effect on families, communities and society in Northern Ireland whether through loss, caring responsibilities, mental health issues, or damaging economic development (Bloomfield 1998; CVSNI 2012). Only in 2012 was a needs-based assessment carried out by the Commission for Victims and Survivors (2012) finding that many victims, as well as their carers, continue to have social support, mental health, chronic pain management, and financial needs and an ongoing desire to seek truth, justice and acknowledgement.

Contention remains around the definition of who is a victim. Section 3 of the Victims and Survivors (Northern Ireland) Order 2006 defines victims for the purpose of service provision as ‘someone who is or has been physically or psychologically injured, [provides substantial amount of care for such a person], or [bereaved] as a result of or in consequence of a conflict-related incident’. Psychological injuries include those who witnessed or provided medical or other emergency assistance to an individual in connection with a conflict-related incident. This definition has been criticised as too broad, by including those paramilitaries and members of the security forces who victimised others, but were also victimised themselves. Recognising such individuals as victims is seen by some to absolve perpetrators of their responsibility in causing harm to others. Some groups have sought to distinguish civilians who were caught up in violence as ‘innocent’ or ‘real’, thereby being more deserving of victim status and to benefit from remedies (Morrissey and Smyth 2002: 4). The controversy over the definition of victimhood has inhibited conversations on more substantive issues of redress for victims, such as reparations.

The Good Friday Agreement states that it is ‘essential to acknowledge and address the suffering of the victims of violence as a necessary element of reconciliation.’ Moreover, it provided for victims’ ‘right to remember as well as to contribute to a changed society’ and recognised that the ‘provision of services that are supportive and sensitive to the needs of victims will also be a critical element’. These ambiguous phrases do not provide any sort of justiciable rights for victims, but rather make the acknowledgement and remembrance of the past the private act of individuals, rather than a publicly engaged transitional justice process. Since 1998 this discrete service-based approach has defined assistance to victims and survivors of the Troubles/conflict. Services provided to victims are funded now through the Victims and Survivors Service (VSS), and reviewed through the Commission for Victims and Survivors under its role to promote the interests of victims and survivors.⁴⁴ In terms of accountability, such measures do not publicly acknowledge individuals as victims, as service provision loses the recognition, entitlement and responsibility aspects associated with reparations through their delivery by groups. In terms of remedy, services provided have been criticised for their access issues, location, standard of provision, and ability to respond to victims’ needs (CVSNI 2007).

More substantive redress and accountability has been piecemeal. In 1999 the Independent Commission for Location of Victims’ Remains was created by the British and Irish governments to

⁴⁴ Recent reviews initiated by the Commission has found more systemic problems with the funding and assessments carried out by the VSS. See *The Victims and Survivors Service: An Independent Assessment*, WKM, 2014; and *Independent assessment of the Victims and Survivors Service*, The Chartered Institute of Public Finance and Accountancy, (2014).

locate the remains of the 16 disappeared by republican paramilitaries during the conflict. Ten of the disappeared have been recovered based on anonymous information, offering some closure to their relatives. A number of Northern Irish cases before the European Court of Human Rights have found that the UK government violated its obligations under Article 2 on the right to life, by failing to conduct effective, independent and prompt investigations into on contentious deaths by state forces. In order to comply with these judgments, the Office of the Police Ombudsman was created to independently investigate complaints against the police; the PSNI established the Historical Enquiries Team (HET) in 2005 to re-investigate all conflict-related deaths, with over 2,000 unsolved, so as to provide a measure of 'resolution' to those families of the victims and encourage confidence in the wider community (HET 2005: 2.2); and the coroner continued to conduct inquests into contentious deaths, including a number of referrals by the Attorney General (McEvoy 2014).

The Article 2 framed approach to dealing with the past in Northern Ireland is imperfect. The state-centric nature of investigations has been disparaged by concentrating too much on the responsibility of state actors and not the atrocities committed by paramilitaries. The Police Ombudsman, while responsible for investigating contemporary complaints against the PSNI, is also responsible for investigating over 120 historical cases. It has also been censured for its lack of independence from the PSNI and interference by police officers in withholding information into historical investigations, and it remains under examination by the Committee of Ministers for its compliance with Article 2 (McEvoy 2014). In July 2013 the UK government was found again in violation of Article 2 with ongoing delays in coroners' inquests over failing to disclose relevant material. The HET has been condemned for its lack of independence from the PSNI, the absence of transparency, incomplete disclosure, and more favourable treatment for those individuals in the security forces involved in a killing (Lundy 2012). An inspection by Her Majesty's Inspectorate of Constabulary found that the HET was unlikely to satisfy the requirements of Article 2 of an effective, independent and transparent investigation into deaths caused by state forces (HMIC 2013). As of October 2014 only three convictions have been secured on the work of the HET. The limited nature of disclosure, delays and requirement of beyond reasonable doubt for convictions have caused families to turn away from the criminal justice system and seek redress through civil litigation, such as case against the Real IRA for the Omagh bombing and ongoing proceedings by families of the Loughinisland massacre against the PSNI and Ministry of Defence. With funding cuts to the police service, the HET and the Ombudsman's historical investigations ended in 2014.

The shortcomings of this piecemeal approach has seen growing support for more comprehensive approaches to deal with the past, such as proposed by the Consultative Group on the Past and more recent talks facilitated by Dr Richard Haass and Professor Megan O'Sullivan. In 2009 the Consultative Group on the Past (CGP) was established to develop recommendations on dealing with the legacy of the past in Northern Ireland. The Group recommended the establishment of a Legacy Commission, which would function as a truth-recovery mechanism and involve four strands including community issues arising from the conflict, a review of historical cases, a process of information recovery, and thematic or linked cases emerging from the conflict. The CGP also recommended a recognition payment of a 'one-off ex-gratia recognition payment' of £12,000 be paid to the relatives of those killed during the conflict, to acknowledge the loss they have endured and the shortcomings of previous compensation schemes (2009: 92). However this recommendation was found to be abhorrent to a number of people, as families of paramilitary group members who were killed would be eligible, equating their suffering with those of 'innocent' civilian victims. Moreover, the payment overlooked a wider group of victims who had been seriously injured and have ongoing support needs. As a result of the protests to the recognition payment, all of the recommendations of the Consultative Group were rejected.

The Haass-O'Sullivan all-party talks at the end of 2013, established to break the deadlock around parades, flags and dealing with the past, offered some new proposals in remedying victims' suffering (Anthony and Moffett 2014). It proposed that there would be a truth recovery process through the Independent Commission for Information Retrieval (ICIR) and an independent Historical Investigations Unit (HIU) to continue historical investigations into unsolved deaths and serious

injuries. The proposals noted at the outset that support for victims is the ‘first requirement’ in comprehensively dealing with the past, with two tasks of providing a range of high-quality services and promoting understanding of such services, with the VSS to continue its work in this area. While these services help those physically harmed, a new Mental Trauma Service was suggested to meet the needs of those who continue to suffer from psychological harm. More substantive measures to deal with the past included those responsible to acknowledge the wrongfulness of their actions, more than an apology, as an ‘unqualified acceptance of responsibility, express an understanding of the human consequences for individuals and society, and include a sincere expression of remorse for pain and injury caused.’ However, such proposals sought to avoid contention by omitting reference to reparations or ‘rights’ for victims; nor did they reach consensus on who should be recognised as a victim. Despite the progress of some of these proposals, the talks broke down at the end of 2013 after the parties failed to reach consensus.

The current situation means that victims are reliant on support from the VSS, which is currently operating on a reduced budget and in the absence of a chief executive or chairman of the board, and the position of Commissioner for Victims and Survivors remains vacant. WAVE a cross-community victim group has proposed a pension for those seriously injured and their carers, but it has already become politicised by the issue of which individuals will be recognised as victims. Although crime victims and political victims in Northern Ireland have differing needs, the failure to deal with the past is having a detrimental impact on both. Treating political violence of the Troubles/conflict as ordinary crimes remains reliant on the criminal justice system to deal with the past in Northern Ireland, which is burdening the limited resources of the police and prosecution service, and their ability to address contemporary crimes. For ordinary crime victims, being less politically contentious, there have been a plethora of developments that have to some extent improved their position in the criminal justice system. For victims of the Troubles/conflict their needs remain unsatisfied, and their rights unacknowledged. There is an acute need for public consciousness to be awakened to this travesty of justice. A more comprehensive approach to dealing with the past that incorporates victim participation and their rights to truth, justice and reparation is crucial to remedy the past and allow justice for the present. The Stormont House Agreement in late 2014, a reboot of the Haass-O’Sullivan proposal, aspires to provide a comprehensive approach to the past. Yet the agreement continues the language of victim ‘services’, rather than acknowledging victims’ rights to truth, justice and reparation. It remains to be seen if this new agreement can substantively reimagine and deliver redress for the past.

Conclusion

The past few decades have seen a noticeable shift towards being responsive to victims’ needs in the criminal justice system. Much of the impetus for this change has been driven by the need to remedy the neglect generated through a State-accused logic of action which acted as an epistemic lodestar in the criminal process for close to 150 years. The often piecemeal changes that have occurred over the last 40 years or so are rooted in the need to more accurately depict the shared reality of any crime conflict by embracing, in different ways, *all* of the effected parties. Though the changes are designed to alleviate the ‘outsider’ status of victims, they have not sought to dilute the values and principles of fairness and justice for the accused/offender or to compromise the integrity of decision-making in the criminal process. No doubt, in some instances the momentum generated has been manipulated for punitive purposes, and has assisted in ratcheting up the stakes in political and media circles. In the main, however, the constitutive threads of the shift have been inclusionary rather than exclusionary in orientation, designed to remedy previous appalling inattention by embedding victims of crime as stakeholders in the criminal process.

This narrative of increased accommodation for victims is true of both jurisdictions, though the pathways in securing it have not always been the same. Northern Ireland, for example, has had to deal more directly with legacies from the Troubles/conflict, including the suffering of victims of violence,

reconciliation, resolutions, and truth recovery mechanisms. The justice system itself was seen as a source of victimisation throughout the Troubles/conflict. This set the antennae quivering more acutely, increasing mindfulness about the importance of lay participation and the accommodation of witnesses and victims. This has resulted in the institutional and cultural reform of criminal justice agencies such as the PSNI and the PPSNI, designed to facilitate confidence-building, participation and legitimacy. Northern Ireland was also aided by the strong influence provided by changes in England and Wales, a much larger jurisdiction encountering more victim-related issues at policy, legal and academic levels. In all both at the community and national level victims of the Troubles/conflict have been a source of concern in improving their legal position in criminal investigations and trials, which has split over in advancing procedural justice for crime victims.

The causal flow in the Republic of Ireland has been different. It has not overhauled or re-examined the cultural or institutional configuration of criminal justice agencies as a result of the Troubles/conflict. It has also operated in the absence of a strong criminal justice research culture and successive governments' apathy towards policy based on crime data and crime statistics. Nevertheless change has occurred through, for example, various legal reforms, many of which were introduced in the early 1990s; the work of victim support organisations which were established initially in the 1970s and 1980s; and government initiatives, such as the establishment of a Victims of Crime Office in the Department of Justice and Equality in 2008. A cultural shift among stakeholders in relation to engagement with victims as stakeholders has taken more time given the embedded nature of old practices and ways of doing things. The new EU directive will aid change in this area by demanding that such stakeholders re-examine the nature of their engagements with victims of crime. Though Northern Ireland and the Republic of Ireland continue to encounter difficulties in recognising the needs and concerns of victims, it is clear that over the past 40 years both jurisdictions have moved significantly in the direction of creating a more communicative criminal process which better embraces their experiences and voices. It is a trend that is likely to continue as part of a new 'economy of power' in both jurisdictions.

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