Foreword to Special Edition of the I.J.L.S. on the Presumption of Innocence

The Hon. Mr. Justice Adrian Hardiman*

Some years ago I had the pleasure of writing a foreword to Dr. Claire Hamilton’s book on *The Presumption of Innocence* (Dublin: Irish Academic Press, 2007). That book gave rise to the seminar in the winter of 2010 at the Dublin Institute of Technology at which the papers which make up this volume were read and discussed. The papers are now themselves being published in the present volume.

I very much welcome this development in the hope that it will further focus the attention of practitioners and academics on the presumption of innocence. It is a central value in our criminal law and is in my view central to the concept of a trial “in due course of law” which our Constitution requires. But the law, and especially the criminal law, is replete with phrases which are so much used that they are in danger of becoming just that, merely a phrase whose content and implications are not fully thought out. My principal wish for a symposium like this is that it would encourage legal practitioners and academics, and the legislators, to rethink the meaning of the presumption of innocence and to reassert our commitment to it.

The papers contained in this volume convey an idea of the breadth of the implications of the presumption of innocence. Mr. David Langwallner’s paper on Miscarriages of Justice in Ireland is a very timely one. For quite a while the phrase “miscarriages of justice” conjured up, for most Irish people, notorious cases in the neighbouring jurisdiction such as the Birmingham Six, the Guildford Four and the Maguire family’s case. It is, of course, much easier to contemplate and to acknowledge miscarriages of justice in another jurisdiction or in another time. But the cases mentioned in this paper make it clear that our system, too, can produce miscarriages of justice. Each and everyone of these cases requires analysis to see how

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precisely established miscarriages of justice have taken place and what can be done to prevent them in the future.

Dr. Mary Rogan’s paper on the “Innocence Rights of Sentenced Offenders” is a very novel one dealing in the main with orders pursuant to s.26 and 26A of the Criminal Justice Act 2007, of which place restrictions on the activities or movements of a person after his release from prison. Both the statute and Dr. Rogan’s analysis represent new departures in Irish law.

Dr. Michael Naughton, apart from being an English academic, is the founder and Director of the Innocence Network U.K. and of an Innocence Project at the University of Bristol. In a challenging article he argues that the effect of the presumption of innocence is to “render suspects of crime passive, which simultaneously justifies minimal resources to the defence, while the ‘burden’ places pressure on, and directs the bulk of the resources to, the police and prosecution to chip away at the presumed innocent status and construct cases from only incriminating evidence that might obtain a conviction, rendering innocent victims vulnerable to wrongful convictions”. It is not necessary to agree Dr. Naughton’s arguments or conclusions to recognise that his views challenge an entire basis on which criminal trials and investigations take place both here and in the United Kingdom and merit our careful attention.

Dr. Claire Hamilton’s own paper is a careful analysis of the effect of the presumption in practice. She refers to the “growing insignificance of the presumption of innocence for accused persons”. Her article contains a significant critique of certain judgments which appear to “read down” the presumption of innocence by a reversal of the onus of proof in certain circumstances. This is plainly a significant area but further comment by me will have to await a case which raises these issues.

All in all, these papers represent a refreshing, sometimes challenging, attempt to analyse the position of the presumption of innocence in our law and the effect which it is permitted to have in practice.