Introduction: A New Paradigm?

PHILIPP-ALEXANDER HIRSCH AND ELIAS MOSER

1. Whose Rights are at Stake in Criminal Law?

Consider the following scenario: A hits B in the face, causing a painful bruise. This is undoubtedly an assault and, if found guilty, A is criminally liable. It is clear that A has committed a criminal offence. In turn, B, the victim, is directly affected by this criminal act – she alone suffers from having been inflicted a bruise. Yet the question remains: Who has really been wronged by A's actions? In other words: Whose rights are at stake in criminal law?

The answers to these questions are not immediately obvious. In the painted scenario, it seems natural to consider B the wronged party. Here, A had a duty towards B to avoid causing harm, and B had a corresponding right to expect A to act accordingly. It could be argued that it is B's right to physical integrity that is encroached on as a result of A's wrongful act, and that criminal sanctions are designed to protect B's rights. This perspective is supported by the fact that B could have consented to A's actions, thereby relieving A of her obligations and legitimising what would otherwise be considered a criminal act. However, the physical harm inflicted by A may also constitute a transgression against the legal community or the polity. It could be argued that A had a duty directed towards the state to respect the physical integrity of others, and that the state had a right to demand that A refrain from causing physical harm. After all, it is the state that passes and enforces criminal laws. If we were to consider only B's rights, it would be difficult to justify why crime and criminal justice concern the public at large.

Criminal law scholarship predominantly leans towards the latter view. We believe there are essentially two reasons for this: first, traditional interpretations of criminal law often resist viewing it through the lens of protecting individual rights. On the one hand, many theorists in the Anglo-Saxon world see the role of criminal law in the prevention of harm or moral wrongdoing (e.g. Feinberg 1984; Moore 1997; Alexander and Ferzan 2009; Simester and von Hirsch 2011; Tadros 2016). On the other hand, continental legal scholars often conceive of criminal law's purpose as the prevention of violations of legal goods or interests (Roxin and Greco 2020, § 2). Both schools tend to view the claims that criminal law seeks to protect – and the violations of which constitute crimes – as impersonal. The reasons against criminal behaviour are said to be agent-neutral: the obligation not

to harm others is based on the notion that the causation of harm is intrinsically bad (on moral or legal grounds), regardless of the perspective or status of those affected by it. Thus, even where individual interests are at stake, criminal law theory often does not regard individuals as holders of normative claims (i.e. rights), but merely as beneficiaries of rules.

This traditional interpretation of criminal law may be reinforced by rights-theoretical considerations, in particular a narrow interpretation of the 'will theory of rights' that is widespread in legal theory and doctrine. The theory holds that only those who have the legal capacity (a) to enforce obligations themselves, (b) to release others from these obligations, and (c) to waive a claim to compensation in case of violation are true rights holders (Hart 1982). As victims of crime typically lack these possibilities, will theorists have argued that they should not be considered rights holders (e.g. Kearns 1975; Steiner 1994; Simmonds 1998; Edmundson 2012; Darwall 2013c). Consequently, if criminal law were to assign rights, then only the state could be considered a right holder, as the state alone decides on the prosecution and punishment of crimes – with the victim usually having no say in these decisions. For example, a prosecutor's decisions are not necessarily guided by what she perceives to be in the victim's will (or interest), but by what is deemed necessary to maintain public order (Steiner 1994).

While these observations may explain why individual rights have traditionally played no prominent role in considerations about the nature of criminal law, this paradigm has, of course, not remained unchallenged. 'Impersonal' approaches in criminal law theory, such as the 'harm principle', have been criticised for theoretical inconsistencies and explanatory deficits (e.g. the problem of harmless wrongdoing) and for disregarding the legal status of victims in the theoretical understanding of crime. By contrast, a rights-based approach has been promoted as an alternative that addresses these shortcomings (e.g. Dan-Cohen 2002; Ripstein 2006; Stewart 2010; Renzikowski 2012; Hörnle 2014b; Moser 2019; Hirsch 2021: 85–132). Indeed, a rights-based approach provides an alternative normative principle for criminalisation that recognises the moral significance of violating individual autonomy. It offers a framework explaining why individuals can nullify another's criminal law obligations through valid consent. Thus, a rights-based approach – especially within a will-theoretical framework – allows to attribute a central explanatory function to one's normative standing as an autonomous person in criminal law theory. Last, but not least, a rights-based perspective on criminal law potentially justifies new prosecutorial elements (e.g. procedural rights for victims, Cavadino and Dignan 1997) and crime rectification strategies (e.g. restorative justice, Zedner 1994; Ashworth et al. 2005), which are difficult to accommodate under an impersonal view of criminal law.

However, the justificatory and explanatory benefits of a rights-based approach may come at a cost. They challenge the 'public wrong' conception of crimes, which

holds that criminal law, unlike other legal areas, addresses illegal conduct on behalf of the entire legal community – in contrast to civil law, which deals with private wrongs on behalf of individuals (e.g. Pawlik 2004; Lamond 2007; Husak 2008; Edwards and Simester 2014; Duff 2011; 2013; Stevens 2014; Lee 2015). If criminal law were to be redefined as a domain governed by individual rights, the extent to which crimes and criminal justice should remain a public matter and the state's concern would be unclear. We might risk the 'privatisation' of criminal prosecution and punishment. Moreover, the ability of a rights-based approach to distinguish crime from tort and criminal law from civil law, as well as its treatment of victimless crimes, remains largely unresolved.

A rights-based approach might also be a conceptual challenge to the traditional offender-centric foundation of criminal law. In particular, Anglo-American criminal law theory understands criminal liability and criminal culpability broadly in terms of 'reason-responsiveness' (e.g. Alexander 2000; Brink and Nelkin 2013; Husak 2016; Yaffe 2018; Antill 2022). Crimes tend to be identified based on an assessment of the offender's quality-of-will or her dispositions to respond to moral or legal reasons. In contrast to the offender-centric foundation, a rights-based account of criminal law introduces a fundamentally victim-centric (or at least interpersonal) perspective. It is yet to be investigated how this will affect the understanding of criminal law, which has hitherto focused exclusively on the intentions and attitudes of the offender. Finally, going beyond these questions of criminal law theory, it remains largely unresolved what normative implications a rights-based approach to criminal law might have for substantive criminal law (e.g. for the doctrine of consent, cf. Moser 2019) and criminal procedure (e.g. victim impact statements or victims' procedural rights, cf. Hirsch 2021: 250–66 and 312–19), and how strengthening the normative standing of the victim requires a counterbalancing of the rights of the accused.

Last, but not least, it is an open question whether there is *the* rights-based approach to criminal law, or whether one should rather speak of a plurality of – potentially incompatible – rights-based approaches in criminal law theory. For example, individual rights may 'merely' function as the protected goods of criminal law provisions (e.g. Ripstein 2006; Renzikowski 2007), without implying an individual right of the victim correlating with a duty whose violation is worthy of punishment. At best, this would have implications for the theory of criminalisation because the 'harm' principle would ultimately be replaced by a 'rights' principle. On this account, the state's monopoly on criminal prosecution and sanction would remain unaffected. The state's authority would only be challenged if the duty (whose violation is punishable) is itself understood as the correlate of an individual right (e.g. Moser 2019; Hirsch 2021). Only then does the question arise whether victims of crime should not also be more closely involved in criminal conflict resolution (e.g. prosecution and sanctioning). A rights-based approach to criminal justice is therefore far from being clearly defined and firmly established in theory.

2. Mapping the Field of a Rights-Based Approach to Criminal Law

These questions about the nature of a rights-based approach to criminal law, its explanatory power, and its normative conclusions when held against competing paradigms for assessing criminal wrongdoing and criminal law remain underdiscussed. This theoretical disinterest notably bucks a trend, as the issue of rights has increasingly found its way into moral philosophy, legal theory, and doctrinal jurisprudence in recent decades. It is hardly surprising, given that individual rights are crucial for safeguarding personal freedom, upholding democratic governance, protection against authoritarianism, and promoting social progress. Rather than representing mere legal entitlements, rights are intimately tied to ethical principles and political philosophy. By recognising individual rights, legal systems acknowledge the inherent worth and agency of an individual, enabling her to make decisions about her own life within a realm of guaranteed freedoms.

Despite the undeniable significance of individual rights and the resultant scholarly interest, a comprehensive and unified discussion of the role of individual rights in criminal law (beyond procedural rights) remains conspicuously absent.[1] This gap is particularly surprising given the considerable potential that the perspective of individual rights has been demonstrated in other fields. At best, critical discussion of the role of individual rights in criminal law is fragmented. Where it has occurred,[2] it has sometimes been idiosyncratic, failing to engage with other rights-based approaches. At other times, the debate has been confined to academic (sub)disciplines, despite the fact that the issue is prevalent in all legal systems and raises interdisciplinary questions in various branches of legal theory and criminal law, from criminalisation to doctrinal issues of substantive criminal law or procedural law.[3]

The purpose of this book is to fill this research gap and – by cutting through different disciplines and jurisdictions – to examine the merits of the concept of individual rights for assessing criminal wrongdoing and criminal law. It aims to make a compelling case for a rights-based approach to criminal law by exploring the essential questions that emerge from conceptualising normative relations in

[1] It goes without saying that many of these issues have been addressed in the literature on the theory of criminal law and theories of rights; yet there is no single volume that attempts to bring them together in a concise and comprehensive manner. In particular, no comprehensive efforts have been made to link rights theory and criminal law theory and substantive law and criminal procedure.

[2] Some noteworthy examples are Ellis (1994); Steiner (1994); Dan-Cohen (2002); Ripstein (2006); Renzikowski (2007); Bergelson (2009); Stewart (2010); Edmundson (2012); Hörnle (2014b).

[3] On the one hand, whether and how criminal law can take into account the violation of individual rights depends to a large extent on the underlying description of the nature of rights – a concept that is not only controversial but also discussed against different backgrounds in moral philosophy and legal theory. On the other hand, the (ir)relevance of rights in criminal law depends on the historically developed particularities of either Anglo-American or continental European criminal law doctrines, which must be taken into account.

criminal law through the lens of individual rights: How can the theory of rights and the theory of criminal law inform each other? Who does and who should hold a right not to be wronged by others: the victim or the state? Is it the violation of individual rights, rather than harm, that provides a basis for criminalisation? What are the concrete consequences of these questions for substantive criminal law and criminal procedure? We also strive to define the limits of a rights-based approach to criminal law and reveal its weak spots: Can a rights-based approach convincingly depict all forms of criminal wrongdoing? Does the notion of interpersonal legal relations entail a problematic departure from an offender-centric foundation of criminal law, and does it contradict the public character of criminal law? Would it even lead to an undue predominance of the alleged victim in substantive and procedural law at the expense of the possibly innocent defendant?

At any rate, this list of questions is not exhaustive when considering the issue of a new paradigm in criminal law theory. Moreover, many (if not all) of the above questions would justify a separate study that could fill another book. Nevertheless, the lack of a comprehensive and unified discussion of a rights-based approach justifies a broader perspective. In particular, we believe that the debate will gain from a pioneering attempt to draw an explanatory line all the way from the theory of rights to criminal law theory, to the doctrine of substantive law and criminal procedure. The following chapters of this book are dedicated to achieving this goal.

2.1. Conceptualising Rights in Criminal Law

Part I starts off with two chapters that address fundamental methodological concerns in the analysis of rights in criminal law. In Chapter 1, dealing with different theories of rights and their application to criminal law, Elias Moser (University of Graz) outlines different understandings of individual rights with regard to their elements. Based on this analysis, he asks the crucial question of how consenting to otherwise criminal conduct can be best conceptualised in a theory of rights. He defends the thesis that classical rights theories – the interest, the will theory, as well as recent proposals of a hybrid account (Sreenivasan 2005) – are in need of adaptation if the aim is to serve as an explanation of the ability to consent to criminal wrongdoing. Building on this discussion, he then outlines the conditions of a successful theory of rights which is capable of making sense of consent in criminal law.

In Chapter 2, Matthew Dyson (University of Oxford) analyses the concept of rights from a legal perspective and queries whether rights, duties, interests, and related concepts exist independently of being clothed in categories such as 'criminal' or 'tortious'. He criticises the belief that the concepts of rights and duties can be uniquely assigned to one area of law – for example, private law, or criminal law. Neither should deal exclusively with rights and interpersonal duties. Dyson claims that that there is no conceptual advantage in such a distinction. Instead, it

would be theoretically productive to conceive of rights as existing separately from any one area of law. Doing so would offer opportunities to show why rights are more easily identified at some points of criminal law, but not at others. It might also allow us to see whether, like in tort law, criminal law in practice includes non-rights-related doctrines, or whether they are merely doctrines that happen not to be formulated in terms of rights.

2.2. Rights and the Assessment of Criminal Wrongdoing

In Part II, the book shifts its perspective from methodological concerns to implications of rights for the assessment of criminal wrongdoing. Starting with the nature of criminal wrongdoing, Ivó Coca-Vila (Pompeu Fabra University Barcelona) observes that standard conceptions of criminalisation are commonly regarded as insufficient for encompassing all types of criminal wrongdoing. In Chapter 3, he argues that too little attention has been paid to an alternative proposal to the mainstream theories of criminalisation, namely the theory of the violation of individual rights. After critically analysing the various existing efforts to limit criminalisation to the violation of rights, Coca-Vila shows that this approach is a good starting point for thinking about criminalisation in liberal states. To this end, he outlines the core features of what he calls a "thin rights-centred theory of criminalisation". This monist theory draws on a supra-positive and far-reaching conception of rights as a *pro tanto* reason for criminalisation.

Following Coca-Vila's reflections on criminalisation, Galia Schneebaum (Reichman University) exemplifies the possible advantages of a rights-based approach by pointing to sexual offences in Chapter 4. According to her, the field of sex offences challenges the standard view of criminal law dealing with public, rather than private wrongs. For, as widely accepted, the main purpose of the prohibition of sex offences is to vindicate individuals' rights to sexual autonomy (rather than to defend some idea of public morals or maintain public order). However, she picks out a host of newly emerging criminal offences she calls 'abuse offences' (e.g. domestic violence or abusive, rather than non-consensual, sex in hierarchical relationships) to scrutinise a binary division of public vs private wrongs (Tadros 2005; Schneebaum 2015). Schneebaum suggests a neo-republican conception of a right to freedom from domination: Domination presupposes structures of power and is hence distinct from a mere offence aimed at autonomy. She concludes that abuse offences can neither be reduced to private wrongs nor be solely considered public wrongs; instead, elements of both are relevant.

In Chapter 5, Tatjana Hörnle (Max Planck Institute for the Study of Crime, Security and Law) broadens the perspective by mapping the landscape of how the concept of victims' rights can be meaningfully applied to other areas of criminal law theory. After anchoring a rights-based approach in the constitutional guarantees of liberal states, which are committed to normative individualism, she identifies possible implications of a rights-based approach for criminal

punishment, criminalisation, doctrinal criminal law and criminal procedure. In particular, Hörnle argues that such an approach challenges the adequacy of traditional ways of evaluating criminal wrongdoing that rely on basic categories such as the harm principle (Anglo-American tradition) or non-individualistic perspectives (German tradition). In particular, she criticises the prominent role of referring to an 'evil mind' in standard offender-centric foundations of criminal law and advocates for paying more attention to the impact of criminal behaviour on victims and their rights.

However, Gregory Antill (Columbia University) is critical of such a departure from the offender-centred view. In Chapter 6, he observes that a rights-based account of criminal law with its attendant normative structure of privileges, claims, powers, entitlements and duties would present a far different kind of normative conceptual apparatus than is typically used by philosophers of criminal law to account for criminal culpability and criminal liability. Rather than a rights-centred normative structure, criminal law should typically be understood in terms of reason-responsiveness. Culpability, he states, is an assessment of the offender's quality-of-will or dispositions to respond to reasons. Antill suggests that, at least in the context of criminal law, a rights-based account (which leads to a fundamentally victim-centred understanding of criminal law) is at odds with this 'standard' offender-centred foundation of criminal law. Based on this diagnosis, he criticises the rights-based approach, by outlining the dramatically different outcomes to which it would lead in criminal law doctrine.

In the same vein, Mark Dsouza (University College London) examines, in Chapter 7, the (ir)relevance of victims' rights in justifications in terms of a rights-based understanding of consent. According to Dsouza, victims' rights usually play a crucial role in justifications, since, on most accounts, a justification denies both that the victim was wronged, all things considered, by what the defendant did, and that the defendant was culpable. The former denial usually depends on the claim that the victim somehow waived her relevant rights, and thereby became liable to victimisation. Accordingly, justifications are sensitive to victims' rights in that a justification is only available if the rights were not violated, all things considered. Where that is not the case, a defendant can, at best, be excused. Dsouza, however, tries to show that the predominant theories of justification often fail to convey the necessary information about the all-things-considered wrongness of the deed. Therefore, he argues, a theory of justification should focus solely on providing information about an offender's blameworthiness, which in turn centres on her guilty mind.

2.3. Individual Rights and Public Sanctions

Based on the debate illustrated above, Part III discusses whether a rights-based approach leads to a problematic privatisation of criminal law. The assumption that the violation of individual rights is constitutive of criminal conduct and thus

justifies criminalisation seems to be at odds with the common conviction that the power of criminal prosecution and the imposition of criminal sanctions is the exclusive right held by the state and not the right of the injured person. In Chapter 8, Philipp-Alexander Hirsch (Max Planck Institute for the Study of Crime, Security and Law) attempts to demonstrate that there is no contradiction here. He draws on Stephen Darwall's (2006; 2013) conception of second-personal normativity. His argumentative starting point is the power of consent in criminal law, which serves as a piece of evidence for the claim that the normative authority to decide on the (non-)existence of a criminal duty lies with the potential victim. Therefore, crimes are primarily a violation of individual rights, the distinctive feature of criminal liability (as distinguished from civil liability) being that the offender culpably disregards this particular *individual authority*. However, this individual authority to consent is vested in the individual by the legal community. It can exist only if there is also a *shared authority*, which the potential victim possesses together with third parties. This explains why crimes necessarily possess both: a supra-individual and an intersubjective dimension. The former justifies the state's right to public prosecution, the latter justifies victims' participation in criminal proceedings.

The possible consequences of such a view for the rectification of criminal wrongdoing are illustrated by Michał Derek (Jagiellonian University Cracow) in Chapter 9. He considers whether a reconciliation between the victim and the offender can be a sufficient response to a crime. As a piece of evidence, he introduces the example of Article 59a of the Polish Criminal Code, which was introduced in 2015 and repealed ten months later. He portrays a conception of 'reconciliation' between offender and victim as an implication of the victim's right to decide on her interests and argues that the victim's power of consent – which is universally recognised despite the differences between liberal, paternalistic and communitarian models of criminalisation – extends to the post-crime behaviour between victim and offender. According to Derek, the victim has the right to prevent punishment by means of reconciling with the offender in a number of crimes, even if this might contradict public interests.

Sören Lichtenthäler (Johannes Gutenberg University Mainz) however, is highly critical of reconstructions such as those by Hirsch and Derek. In Chapter 10, he asserts that the specific task of criminal law, as distinguished from other parts of the legal order, implies taking a position in the debate on the meaning and purpose of punishment. Lichtenthäler notes that none of the predominant theories associates punishment with the infringement of individual rights. Regarding the preventive or consequentialist theories, this conclusion arises from the fact that the crime committed is not an essential element of the justification of punishment. According to these theories, punishment is imposed to prevent future crimes, so that individual rights are only relevant insofar as the rights of all members of society as potential victims of crime are concerned. Retributive theories, he argues, are not concerned with the individual rights of the victim either. Even retributive theories that include the victim in the justification of punishment do not claim that punishment essentially responds to the infringement of the victim's rights, but rather to the inherent attack on her status as a free and equal legal person.

In Chapter 11, Markus Abraham (Hamburg University) tries to reconcile the two contrary positions. Drawing on a social contract account, he argues that the state's right to criminal sanctions is primarily justified based on the existence of irresolvable private conflicts, i.e. the violation of rights, and thus the victim's claim against the perpetrator who transgressed a norm. The state's assertion of competence to resolve the conflict or to deal with the violation of rights, on the other hand, is, in Abraham's words, an additional 'accessory competence'. By appropriating the right to a criminal sanction, the state at the same time assumes the duty to protect citizens from crime and – in the event that it does not fulfil its duty to protect – a subsidiary duty vis-à-vis the injured person to effectively rectify crimes that have occurred. Based on this argumentation, Abraham identifies two different rights of the individual that underlie the state's right to criminal prosecution and to criminal sanctions: a primary right vis-à-vis the offender and a secondary right vis-à-vis the state.

2.4. Criminal Law in a Rights-Based Legal Order

Part IV of this volume raises the question to what extent criminal law can serve as an instrument for the protection of individual rights. Hamish Stewart (University of Toronto) observes in Chapter 12 that, in the last two decades, rights have increasingly entered the stage of criminal law theory. Several accounts (e.g. Farmer 2016; Duff 2018a; Thorburn 2020a) understand the role of criminal law as part of a rights-based legal order, i.e. an institutional structure that is not instrumentally directed at the achievement of any particular good (e.g. assigning just desserts) but, instead, is designed to enable free and equal persons to interact rightfully. Although he agrees with the latter conception, he pushes back against the idea that a rights-based account provides a justification of criminal sanctions. Stewart holds that such an approach cannot help to identify any characteristic that makes conduct inherently deserving of punishment. Instead, he argues, it is better to understand criminalisation and punishment as instruments for discouraging conduct and thereby as making an instrumental contribution to the legal order's non-instrumental task of constituting and preserving a rights-based civil order.

In Chapter 13, Joachim Renzikowski (Martin Luther University Halle) agrees with the view that criminal law makes an instrumental contribution to constituting a rights-based civil order. He suggests, however, that understanding crimes as rights violations may well be central to criminalising human behaviour. Following an analysis of the logical relations between rights and duties, he states that punishment for unlawful conduct logically presupposes norms from which the unlawfulness results. These norms are defined by prohibitions imposed by the authorities, which entail duties, the violation of which may be punishable. Since duties usually correspond to rights, the question arises: What is ontologically prior – the right or the duty? If it were the duties, it would be (as in Bentham's imperative theory) the state assigning rights to individuals by enacting commands backed up by criminal sanctions. In a liberal legal system, however, fundamental rights are

not created by the state, but are assumed to precede it. They are grounds for duties that are given legal form in the civil law system. Such a view, however, sets limits to criminalisation, since the state may criminalise only the violations of individual rights which are already recognised by civil law.

Departing from this, Malcolm Thorburn (University of Toronto) shows in Chapter 14 that in such an instrumental rights-based approach, the justification for state punishment is ultimately grounded in the state's right to rule. The state's central justifying purpose is to provide a single set of shared terms of social cooperation, which stands in contrast to the unilateralism characteristic of the 'state of nature'. According to Thorburn, criminal wrongdoing consists in violating that very authority of the state to establish and preserve that framework. This, in turn, puts the state in the legitimate position to take action against the accused and, ultimately, to impose punishment. For Thorburn, it is an essential feature of any legal order that it threatens and sometimes imposes coercive sanctions on those who undermine the state's rule of law by unilaterally imposing one's own terms on others. Therefore, both criminal wrongdoing and criminal justice are about the state's sole authority to make the legal rules.

2.5. Individual Rights in Criminal Procedure

If public prosecution is understood as a right of the state – as in Thorburn's account – this naturally leads to the question of how to understand the individual rights of participation of the accused and possibly the victims in procedure. In Part V, Antony Duff (University of Stirling) considers in Chapter 15 how the procedural rights and guarantees of the accused could be adequately conceptualised. He opposes the view that offenders enjoy such rights parasitically (i.e. that rights properly belong to the innocent, and are only enjoyed by the guilty because they must be presumed innocent until proven guilty). On his account, procedural rights properly belong to all defendants, by virtue of their role as citizens who are called to answer a charge of criminal wrongdoing. Therefore, according to Duff, the rights to 'effective participation' as stated in Article 6 of the ECHR belong to both innocent and guilty defendants for the same reason: they enable them to discharge their civic duty to take part in their trial.

Complementary, Robyn Holder (Griffith University) emphasises in Chapter 16 that the participation of victims in proceedings can also be understood as civic action. She argues against the idea that people who are victims of crime and violence enter the public space of criminal justice only in pursuit of private ends, without social and political status as members of the public. Instead, Holder shows that victims are better understood, first and foremost, as citizens who have a political relationship with the state and its criminal justice agents. They have interests in criminal justice that emerge as participatory practices of democratic citizenship. In this way, the 'public space' of criminal justice becomes both a place where victims or defendants appear as citizens

with rights, and a realm in which state agencies carry out their duties to respect and uphold those rights.

Lastly, in Chapter 17, Michelle Coleman (University of Swansea) addresses the resulting tension between the participation of victims in proceedings and the legal status of the accused. According to her, the increasing interest in a rights-based approach to criminal law has led to an expansion of victims' rights and agency within criminal procedure. She shows that this expansion of rights can come into conflict with the existing rights of accused people. She identifies a particular risk with regard to the presumption of innocence, which is commonly seen as a fundamental right of the accused person and a bedrock to ensuring that individuals are not punished without conviction. The chapter outlines areas where victims' rights and the presumption of innocence might clash.

With this collection of original texts on various aspects of the possibilities and limitations of a rights-based approach, we hope to contribute to the descriptive assessment and normative evaluation of the normative structure of criminal law and procedure. Both the defence and the critique of such an approach should encourage a rational discourse on the nature and characteristics of criminal wrongdoing and criminal law, but also on how the role and powers of the state and the individual in criminal justice might be shaped in the future. It is left to the reader to decide to what extent this new view of criminal law – a rights-based paradigm shift – should be adopted and pursued. We invite you to engage with these ideas, to continue the discussion, and to explore the potential of a rights-based approach in shaping the future of criminal justice.

3. Acknowledgements

In preparation for this volume, we held a three-day conference at the University of Graz from 6 to 8 July 2022. It was made possible through finanical support from the Referat Wissenschaft und Forschung of the County of Styria (Austria) and the Max-Planck Institute for the Study of Crime, Security, and Law (Freiburg i.Br., Germany). The conference was essential for the analysis of the role of rights in criminal law, as it brought together philosophers and legal scholars to explore all the questions that arise from conceptualising normative relations in criminal law through the lens of individual rights. We would therefore like to begin by thanking the speakers at the conference for their presentations and the participants for their lively discussions. We would also like to express our gratitude to all the authors for their contributions to this volume and for their patience with the long production time. We gratefully acknowledge the financial support for the Open Access publication provided by the Max Planck Institute for the Study of Crime, Security and Law and the University of Graz. Last, but not least, we would like to thank the members of the independent research group 'Criminal Law Theory' at the Max Planck Institute for the Study of Crime, Security and Law for their assistance in preparing the manuscript, in particular Patrick Joseph Siegle.