Foreword

Rare is the study that makes economic crimes by high-status individuals the subject of criminological research and criminal law theory. Rarer still is the study that does so in the context of a globally influential model of economic development in the neoliberal age such as Ireland. When work of this scientific and legal significance is written in an engaging, historically informed narrative that can be accessed by the widest audience of lawyers, criminologists, business leaders and concerned citizens, you have the makings of a future classic. Joe McGrath's study of corporate and white collar crime in Ireland is just that.

This is a study of the evolution of Irish corporate criminal liability, and its enforcement, from independence through the financial crisis of 2008. The author argues that for most of the twentieth century Ireland addressed corporate and business wrongdoing more generally through a model that was heavily reliant on conventional criminal law, policing and prosecution and which, somewhat paradoxically it might seem, were remarkably lenient. Starting in the 1990s, the architecture of enforcement changed. The monopoly of criminal law authorities, the *Garda Síochána* and the government's central prosecution service was broken up in favour of a number of regulatory agencies. This new model was much more reliant on cooperative efforts to encourage compliance, as well as civil sanctions and orders. Paradoxically, the new model also appears to have been more punitive (or at least less lenient) toward corporate wrongdoers (both companies and company officers). This new model is expressly compared to the responsive regulatory model that has been promoted as a restorative justice approach to business crime and which is an innovative international model. Since 2008, the architecture is possibly being shifted once again through the introduction of a layer of new legislation reflecting an expressive objective of denouncing corporate wrongdoers as the moral equivalents of traitors and terrorists, and to highlight the tough on crime credentials of government.

The research behind this monograph is impressive and comprehensive. The author has canvassed the reported case law regarding Company Act enforcements since independence, all the major governmental reports issued concerning corporate or business wrongdoing, all legislation adopted or contemplated concerning corporate criminal liability, and reviewed newspaper coverage of corporate crime in all the major newspapers again since independence. While statistical data about corporate wrongdoing and enforcement is sparse (indeed, the very lack of governmental interest in such statistics is a telling feature of the inertia with which Ireland addressed corporate wrongdoing in the traditional model) the author presents what is available in clear and helpful ways. The author combines legal analysis of the statutory and case law regarding company wrongdoing, including the emerging European law framework, with socio-legal analysis of institutional structures, the historical record of enforcement, and the social and intellectual context in which company law has been formulated and interpreted.

Drawing on a rich body of sociological, criminological and political science literatures concerning crime, risk and governance, the author develops a sophisticated and convincing interpretation of the two models, why the first model remained so stable for so long despite its clear failures, and what has driven the change in the architecture of enforcement. The first model of formally punitive but practically lenient criminal law enforcement belongs, first of all, to an Ireland whose overall political economy is one of austerity, relative isolation from global capital, and a generally constrained and contained corporate sector (especially financial services). The rationalities of governance in the regulatory field reflect a clear priority of reinforcing the sovereignty of the state and guarding against foreign intervention or domestic subversion. The anchoring of enforcement power in the *Garda* and prosecution service is designed to effectuate those ends, and arguably does. If this leaves corporate wrongdoing under-deterred, it is also the case that the corporate sector is minor and within the context of a highly agrarian economy, not of much threat to state stability.

This model begins to come under pressure as Ireland shifts toward economic liberalisation and global trade in the 1970s, but remains largely intact because liberalisation itself is promoted through the premise of a light touch regulatory strategy. Only in the 1990s, when the economic take-off facilitated by liberalisation is in full swing do corporate scandals and the increasing vulnerability of the larger economy to business misconduct begin to problematise the criminal law based architecture of the traditional model. The new model formulated in the 1990s and implemented in the first decade of the twenty-first century is balanced in favour of cooperative regulation and civil enforcement. It reflects a governmental rationality far more attuned with global liberalism and the logic of governing at a distance through embedded actors – what some following Foucault call ‘governmentality’. Most recently this new architecture

is being stressed by the powerful reactive response of the public and politicians to the devastating financial crisis of 2008 and the profound losses it has imposed on the Irish economy overall. Pursuing a pattern observed in the USA and the UK as well, Irish politicians are governing through crime, seeking executive power and legitimacy by expressively denouncing corporate wrongdoers. This may ultimately undermine the new architecture which paradoxically relies on effective but highly constrained criminal law enforcement.

This monograph presents original and well-developed findings that make important contributions to the fields of criminology, criminal law and business law, and the contemporary history of Irish law and governance.

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