**VICTIMS' RIGHTS**

At the end of the twentieth century, a broad movement supporting the rights of victims of crime prospered in the [United States](http://www.encyclopedia.com/topic/United_States.aspx). This victims' rights movement has many facets, including both liberal and conservative components. Sometimes it conflicts with the prosecution, and sometimes it serves as the prosecution's ally.

**Nature of victims' rights movement**

The victims' rights movement includes three major elements. The first is an interest in guaranteeing victim participation in criminal proceedings. This dimension includes notice of proceedings and the right to be present and to be heard at them. This element also champions opportunities for victims to consult with prosecutors regarding whether to charge or to plea bargain with defendants. This set of interests may be called the participatory rights dimension of the movement. A second broad goal of the movement is to secure financial benefits and services for crime victims. This effort has led to restitution orders from perpetrators, which are required in many jurisdictions, and victim compensation programs funded from governmental resources. This focus also seeks to secure other services, such as shelters and support services for domestic violence victims, for certain identifiable groups of victims. A third element consists of efforts to secure more certain and harsher punishment for perpetrators, including restricting pretrial release, free admission of evidence against the accused, and tougher sentencing practices. In these efforts, victims frequently become the allies of prosecutorial and political forces that support a law-and-order agenda.

Sometimes these three aspects overlap as they do with evidence about the crime's impact on the victim or victim's family. Such victim impact evidence permits victims to have a direct voice in the sentencing process, often through in-person statements at sentencing that show the degree of injury suffered, and may aid the sentencer in determining the proper scope of restitution. The general, though not inevitable, outcome of victim impact statements is an increase in sentence severity.

**Origins of the movement**

The motivating force behind a movement that centers on the interests of victims in the criminal justice system has both liberal and conservative roots. Beginning in the 1960s, women's groups and feminists focused on the plight of rape victims. They brought attention to outmoded laws and attitudes toward rape and to the insensitivity of police, prosecutors, and the court system to rape victims. Their target also included lenient treatment of defendants. Later some of these same groups focused on battered women generally as victims, but sometimes as defendants when they responded to battering with self-help violence. Related efforts addressed systemic insensitivity to child abuse, particularly to sexual abuse of children. The leaders of this agenda were predominantly progressive, and they principally attacked conservative attitudes and laws.

A second component of the modern victims' rights movement sprang from conservative roots. In the 1960s the U.S. Supreme Court, under the leadership of Chief Justice Earl Warren, articulated procedural protections for defendants that were grounded in the Bill of Rights. This emphasis on the rights of defendants created resentment in many parts of American society, particularly with some crime victims. The rising crime rate over most of the next thirty years, together with the general rejection of much of liberal thinking regarding the treatment of criminals, such as the declining faith in rehabilitation, deepened those resentments. Victims took for themselves the language of rights that the Warren Court had championed for defendants and argued that such rights were needed to counterbalance the Court's mistakes and excesses and its resulting failures to curb the crime epidemic. Critics were reacting to the perceived failures of liberal treatment of crime and often sought the correction of a perceived imbalance in the criminal justice system that was seen as favoring criminals.

With these roots, the current formulation of much of the victims' rights movement began to take shape in the late 1970s and early 1980s with the founding of several important grassroots victim organizations, such as Parents of Murdered Children and Mothers Against Drunk Driving (MADD). Although having goals similar to those of the broadly focused women's groups that spearheaded the efforts to change rape laws, these organizations were more narrowly concerned with the impact of crime and the criminal justice system.

The movement was given critical shape and a conservative political focus when President Ronald Reagan and Attorney General Edwin Meese convened the President's Task Force on Victims of Crime in 1982. Many beneficial programs and services for victims ultimately flowed from that organizing effort, but an important consequence was to bring victims prominently into the criminal justice debate both as allies and as symbols for law-and-order practices. The effort to amend the U.S. Constitution to grant rights to victims of crime began with the report of the task force.

**Goals and successes**

The victims' rights movement cannot be understood without noting the reactions of individual victims, whose specific stories are a powerful part of the movement's message. These stories involve insensitivity and mistreatment–"a second victimization"–by the criminal justice system and a complaint that the system is designed to protect the perpetrator rather than the innocent victim. The leaders of the movement and those who fill its ranks are generally individuals who have suffered incredible tragedies through crime victimization. They demand respect and dignity from the criminal justice system. They want full participation in, and sometime control over, its processes. They often need financial support and other services. Many of them seek an outcome for perpetrators that is harsh, but there are elements of the movement that advance the goal of restorative justice. Frequently, victims appear to join the movement in hopes of bringing systemic change from their personal tragedy and thereby giving some meaning to that tragedy.

The successes of the movement are impressive. The one that is the most pervasive, and perhaps the most difficult to document fully, is the increased level of respect and dignity given to victims in the criminal justice system. Until the rise of the victims' movement, victims were relatively ignored in most court systems by the professionals who process criminal cases. Victims were sometimes important witnesses, but little more, and the demands of victims were often seen as an inconvenience. The movement has changed much of that picture. As the century ends, prosecutors' offices in most jurisdictions spend far greater time than they did twenty years earlier giving notice to victims and consulting with them about decisions in their case. Victim/witness coordinators and advocates are a part of the staff of many prosecutors' offices and court systems. They are charged with the general responsibility of shepherding victims through the intricacies of the criminal justice system. For example, they provide notice of proceedings, explain the system's operation, and help secure protection for threatened victims and services and compensation for those who have suffered harm. Laws have been changed to allow victims to be present throughout trials in a number of jurisdictions. Victims' information or their direct voices are heard in court, particularly at sentencing, and frequently at the time guilty pleas are received. In sum, both in giving greater respect and dignity to victims and in honoring their participatory interests, great strides were made during the 1980s and 1990s.

Success has occurred in terms of achieving the basic rights to restitution from defendants and to compensation from governmental funds. Beginning in the 1980s, most jurisdictions enacted laws that provide these benefits. Despite the creation of programs that provide benefits, the issue of restitution remains problematic. Most defendants have few financial resources to provide in restitution, and many governmental compensation programs, which are often tied to revenues from the criminal justice system, are inadequately funded.

The impact of victims' groups can be seen in many of the other changes in the criminal justice system in the 1980s and 1990s. Rape shield laws, which restrict access to and use of the sexual history of rape victims, have been broadly enacted to encourage victims to come forward. Similarly, young victims of crime are often able to testify outside the presence of the accused. Community notification laws regarding the release of sex offenders, called Megan's law in memory of a child-victim of predatory violence, have been enacted under federal encouragement across the nation. Mandatory arrest and prosecution laws have been implemented in many jurisdictions for domestic violence cases because of the belief that such policies reduce such violence. These are just a few of the laws relating directly to the treatment of victims or potential victims that have been enacted through the advocacy of particular victims' groups. Somewhat related is the broad acceptance of "battered woman syndrome" evidence to support the defense of abused women who resort to self-help violence.

Changes in criminal law enforcement have made conviction more likely and punishment harsher, but some question whether such changes properly relate to victims' rights and whether they are wise. Many of these changes have been labeled by their supporters as part of victims' rights, and victims' groups have often been important to their passage. Tougher drunk driving laws represent one of the clearest example of the impact of victims' groups. Other changes less directly related to the interests of any particular victims' group include preventive detention laws, mandatory sentencing provisions (e.g., mandatory minimum sentences and three-strikes laws), and the abolition of parole. One significant feature associated with the rise of the conservative political component of the victims' rights movement is the role of victims, particularly victims of notorious crimes, in giving tragedy a human face for the public and spearheading a push for tougher law-and-order enactments.

The successes of the movement have been substantial across all three of the interests identified at the outset of this entry, although providing the financial and other services for victims remains problematic. Some argue that a conflict exists between the emphasis on tough crime control goals that focus on punishing defendants and success in securing resources for victims.

The new concentration on victims has been a contributing factor to a growing interest in exploring alternative ways of settling criminal cases. Viewing victims' interests as central to the criminal case means that mediation efforts are sometimes seen as reasonable alternatives to governmental prosecutions, particularly for minor crimes and crimes involving victims and perpetrators from the same community. Mediation efforts are controversial with some victim advocates because of the required contact between victims and those who did them harm, and the pressure placed on victims to compromise. Some victims' groups have pushed even beyond mediation for understanding and healing between victims and perpetrators in a movement called restorative justice, which presents an interesting alternative to traditional prosecution and dovetails with some communitarian justice movements. Here, too, the greatest likelihood of success exists in minor criminal cases, and perhaps juvenile delinquency matters.

**Victim impact statements**

A major interest of the victims' rights movement has been to have the opportunity to describe at sentencing the harm caused by the crime. Victim impact evidence was quickly accepted in non-death penalty cases. The interests of victims in participating in the process and in providing information to calculate appropriate restitution are generally acknowledged as providing adequate justification for receiving such information. Victim impact statements may be received in written form directly from victims or survivors, may be transmitted through presentence reports, or may be delivered in person at the time of sentencing.

The major area of controversy involved victim impact evidence in death penalty cases. In *Booth v.* [*Maryland*](http://www.encyclopedia.com/topic/Maryland.aspx), the U.S. Supreme Court decided in 1987 that the Eighth Amendment's prohibition on cruel and unusual punishment barred the presentation of such information because it created a substantial risk that the decision would be rendered arbitrarily. However, four years later in *Payne v.* [*Tennessee*](http://www.encyclopedia.com/topic/Tennessee.aspx), the Court reversed its position and concluded that the Eighth Amendment imposed no restriction on this evidence. While it cautioned that victim impact statements could still be excluded if excessively prejudicial, the Court's majority made clear that it had heard and accepted the voices of the victims' rights movement with respect to the theoretical and practical importance of impact information. The decision in *Payne* represents one of the movement's most impressive victories.

**U.S. Constitutional protection for victims**

The first serious effort to amend the U.S. Constitution on behalf of crime victims emerged from the efforts of the President's Task Force on Victims of Crime in 1982. The group's report, which is often cited as the watershed event for the victims' rights movement, inspired Congress to create an Office of Victims of Crime in the Justice Department. The Task Force also proposed adding a victims' rights provision to the Sixth Amendment, which otherwise guarantees the rights to the accused in criminal cases, such as the rights to a speedy and public trial and to counsel. It proposed an additional sentence: "Likewise, the victim, in every criminal prosecution shall have the right to be present and to be heard at all critical stages of judicial proceedings." The task force argued that only an amendment would secure the treatment and respect victims deserve.

Direct efforts to amend the federal Constitution were not begun immediately. Instead, supporters worked to build political momentum through victims' rights amendments in the states. Beginning slowly, these efforts have proved very successful. Between 1982 and 1989, five states approved victims' rights amendments. By the end of 1994, the number was twenty, and by the end of the decade, over thirty states had successfully adopted such amendments.

In September 1995, given the successes in amending state constitutions, the National Victims' Constitutional Amendment Network (NVCAN), an umbrella group representing the major victims' rights organizations, adopted specific language that it proposed be added to the Sixth Amendment. This marked the beginning of a serious effort to amend the U.S. Constitution on behalf of crime victims.

The amendment NVCAN proposed was much more complicated and far-reaching than the task force's simple sentence. Although subsequently modified, it provided a general outline for the serious consideration of an amendment. Beginning in 1996, Senators Jon Kyl of [Arizona](http://www.encyclopedia.com/topic/Arizona.aspx) and Dianne Feinstein of [California](http://www.encyclopedia.com/topic/California.aspx), two leading congressional proponents, introduced a proposed amendment in Congress, and its proponents pressed it forward in subsequent sessions. In July 1998, it was approved by the Senate Judiciary Committee.

Drafted as a separate amendment, Senate Joint Resolution 3 (1999) would guarantee the following rights to victims of violent crime in federal and state criminal and juvenile proceedings:

* to reasonable notice of, and not to be excluded from, any public proceedings relating to the crime;
* to be heard, if present, and to submit a statement at all such proceedings to determine a conditional release from custody, an acceptance of a negotiated plea, or a sentence;
* to the foregoing rights at a parole proceeding that is not public, to the extent those rights are afforded to the convicted offender;
* to reasonable notice of and an opportunity to submit a statement concerning any proposed pardon or commutation of a sentence;
* to reasonable notice of a release or escape from custody relating to the crime;
* to consideration of the interest of the victim that any trial be free from unreasonable delay;
* to an order of restitution from the convicted offender;
* to consideration for the safety of the victim in determining any conditional release from custody relating to the crime;
* and to reasonable notice of the rights established by the amendment.

The amendment would give victims standing to enforce its provisions but would not authorize a suit for damages against any governmental unit. Congress would have power to enact enforcement legislation, and exceptions could be created only when necessary to achieve a "compelling interest."

The proposed amendment is controversial on a number of dimensions. The proponents argue that it is warranted because only a federal constitutional amendment can assure uniformity. Also, they believe an amendment is required to prevent the rights of victims from being over-ridden by rights of the defendants and excessive judicial deference to those rights. Moreover, they argue that the participatory rights guaranteed in the amendment are appropriate subjects for federal constitutional protection, similar to right of the press to access to judicial proceedings under the First Amendment. Finally, proponents believe that enshrining the rights in the Constitution is the only way to give victims full rights in the criminal process and thereby bring the system, which they contend currently favors the criminal defendants, into essential balance.

Opponents counter each of these arguments. They contend that uniformity is neither necessary nor appropriate given the youthful state of victims' rights and the traditional interests of the states in criminal law enforcement, which means the amendment would both inhibit experimentation and infringe upon traditional federalism concerns. Critics argue that reported cases show no tendency for courts to defer to defendants' rights by overruling victims' rights in statutes and state constitutional provisions. They believe that participatory rights, to the extent they do not conflict with the rights of the accused guaranteed by the Bill of Rights, can be fully protected by statutes and state constitutional provisions. They contend that to the extent that victims' rights conflict with defendants' rights, they are not the appropriate subject of a constitutional amendment, which should be reserved for protecting those unable to secure protection through democratic action, such as racial minorities and despised groups like those accused of crime, not to further the interests of politically popular victim groups who exercise power successfully through traditional methods.

One area in which the conflict between the traditional values of the criminal justice system and those supported by the amendment can be most clearly seen is in the amendment's constitutional guarantee of a right of victims to be present during all public proceedings. The conflict is most pronounced when several apparent victims are also the only witnesses to an alleged crime. Under longstanding sequestration rules in most U.S. jurisdictions, witnesses may be excluded upon request until it is time for them to testify to prevent the conscious or unconscious tailoring of their testimony to fit that of those who testify earlier. Under the proposed amendment, alleged victims cannot be excluded even though guilt has not yet been determined and their status as true victims therefore not decided. Such difficult cases include self-defense cases and those where charges of assault upon a police officer are countered with claims by the defendant that instead the crime involved is excessive force by the police. Opponents of the amendment argue that the constitutional right of such witnesses to remain in the courtroom undermines justice. Proponents counter that such cases are rare and that traditional truth-seeking tools such as cross-examination and jury argument and the existence of independent evidence in many cases eliminates or reduces the potential problem.

The major objection of opponents to the amendment, however, is conceptual. They argue that to the extent the amendment would affect outcomes in criminal cases it begs the essential questions of who is a true victim and whether the particular defendant is the responsible party. While the identity of the accused is clear at trial, the question of whether the apparent victim should have rights against the accused cannot be known until the verdict. Accordingly, in contrast to rights at sentencing, victims' rights that affect the outcome of the case are illegitimate. Aspects of the amendment that may have such effect include the right of victims to be present throughout the trial, noted above, and the right to affect pretrial release decisions and the decision whether proceedings should be delayed. However, the most significant impact would occur if the amendment was seen as changing the fundamental concept of criminal trials—from one in which the Constitution gives procedural rights to the defendants to protect them against erroneous convictions and to guard against abuses of governmental power, to one that involves a contest between a victim and a defendant both protected by constitutional rights. Rather than error in favor of acquittal of the accused citizen being accepted as the price of limiting governmental over-reaching, any errors in result might now constitute a violation of the government's constitutional duty to one of its citizens who stand on both sides of the case. Moreover, the rights of victims might been seen as added to the prosecution side of the litigation.

Amendment proponents label these last set of arguments as both overblown and misguided liberalism. The amendment's supporters nevertheless have the political attractiveness of the victims' rights concept on their side, which makes the enactment of the proposed constitutional amendment a real possibility.

**Conclusion**

The victims' rights movement, although a politically powerful force, remains in its infancy. In little over two decades of active life, it has changed the perception and status of victims in many American courtrooms. A respect and dignity is given to them that was absent a generation earlier. Victim services, compensation, and restitution are increasingly available. Another undeniable consequence of the movement has been tougher criminal sanctions.

Given its relative youth, the ultimate impact of the victims' rights movement cannot be easily foreseen. As it matures, that impact will no doubt become both more pervasive and more nuanced. The movement, regardless of its ultimate shape, is certain to be a major force in determining the development of the criminal justice system in the early decades of the new century.

Robert P. Mosteller

*See also* [Capital Punishment: Legal Aspects](http://www.highbeam.com/doc/1G2-3403000034.html); [Capital Punishment: Morality, Politics, and Policy](http://www.highbeam.com/doc/1G2-3403000035.html); [Criminal Justice Process](http://www.highbeam.com/doc/1G2-3403000070.html); [Dispute Resolution Programs](http://www.highbeam.com/doc/1G2-3403000095.html); [Domestic Violence](http://www.highbeam.com/doc/1G2-3403000096.html); [Informal Disposition](http://www.highbeam.com/doc/1G2-3403000142.html); [Police: Community Policing](http://www.highbeam.com/doc/1G2-3403000182.html); [Prosecution: History of the Public Prosecutor](http://www.highbeam.com/doc/1G2-3403000209.html); [Prosecution: Prosecutorial Discretion](http://www.highbeam.com/doc/1G2-3403000210.html); [Restorative Justice](http://www.highbeam.com/doc/1G2-3403000222.html); [Shaming Punishments](http://www.highbeam.com/doc/1G2-3403000248.html); [Victims](http://www.highbeam.com/doc/1G2-3403000271.html).

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