

Introduction: The Maturing Victims' Rights Movement

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Readers of this journal have seen many articles discussing the way in which the criminal justice system can be more responsive to crime control or due process concerns. But today new interests are becoming increasingly recognized as important: the interests of crime victims. This symposium provides a glimpse into some of the areas where crime victims are reshaping the criminal justice landscape.

It is becoming harder to ignore victims, regardless of what subject of criminal law is under discussion. A quick review of the papers that have been produced for this symposium reveals an impressively wide range of topics. Mary Margaret Giannini writes about victims' rights in the executive clemency process.¹ Margaret Garvin and Doug Beloof explore recent developments with the military justice system providing attorneys for sexual assault victims.² Mary Graw Leary reviews new forms of victimization, including cyber victimization.³ James Marsh and I review a recent U.S. Supreme Court decision on restitution for child pornography victims and the congressional response.⁴ Warren Binford broadens the focus by reviewing efforts around the globe designed to provide compensation for child pornography victims.⁵ And Marie Manikis wraps up the symposium by offering a comparative perspective on crime victims' rights in Canada.⁶

Of course, the obvious unifying theme of all of the articles is that they have something to do with the rights of crime victims, either in this country or elsewhere. But what is even more intriguing to me is that the articles lack any *other* unifying theme. Instead, what is remarkable is that regardless of whether the focus is, for example, a Governor's pardon power, or sexual assault in the military, or

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¹ Mary Margaret Giannini, *Measured Mercy: Managing the Intersection of Executive Pardon Power and Victims' Rights with Procedural Justice Principles*, 13 OHIO ST. J. CRIM. L. 89 (2015).

² Margaret Garvin & Douglas E. Beloof, *Crime Victim Agency: Independent Lawyers for Sexual Assault Victims*, 13 OHIO ST. J. CRIM. L. 67 (2015).

³ Mary Graw Leary, *The Third Dimension of Victimization*, 13 OHIO ST. J. CRIM. L. 139 (2015).

⁴ Paul G. Cassell & James R. Marsh, *Full Restitution for Child Pornography Victims: The Supreme Court's Paroline Decision and the Need for a Congressional Response*, 13 OHIO ST. J. CRIM. L. 5 (2015).

⁵ Warren Binford, *A Global Survey of Country Efforts to Ensure Compensation for Child Pornography Victims*, 13 OHIO ST. J. CRIM. L. 37 (2015).

⁶ Marie Manikis, *Imagining the Future of Victims' Rights in Canada: A Comparative Perspective*, 13 OHIO ST. J. CRIM. L. 163 (2015).

child pornography sentencing, victims' rights are now an important part of the discussion.

The ubiquity of victims' issues in criminal justice reveals a maturing crime victims movement, both in this country and elsewhere. Here in America, the birth of the movement is commonly traced back just several decades. The most common starting point is pegged at the 1982 publication of the Report of the President's Task Force on Victims of Crime,⁷ although it is possible to trace the roots of the movement back somewhat earlier to feminist efforts in the 1970s to pass rape shield rules or to civil rights efforts in the 1960s to secure effective law enforcement for African-Americans in the South. These early efforts argued that the crime victim was "the forgotten man" of the criminal justice system, "twice victimized, the second time by the very system to which he has turned for justice."⁸ Accordingly, in this "first wave" of the movement,⁹ the victims' rights movement began to push for such statutory reforms as the right to deliver victim impact statements or to receive restitution – narrow toeholds for victims in the criminal justice process.

As the victims' rights movement progressed, a second wave of reforms emerged – specifically, state constitutional amendments protecting a broad range victims' interests. These state constitutional amendments typically protected victims' procedural rights, such as the right to notice of court proceedings, to attend those proceedings, and to be heard at particular proceedings, such bail hearings, plea colloquies, and sentencing. The breadth of the movement is established by the fact that more than thirty states have now amended their state constitutional to include bills of rights for victims¹⁰ and Congress regularly discusses the possibility of amending the U.S. Constitution to add a Victims' Rights Amendment.¹¹

The last decade has witnessed a third wave of victims' rights reform. New statutes and court precedents have improved enforcement mechanisms for victims' rights, including most notably a federal statute – the Crime Victims' Rights Act¹² – containing specific provisions addressing victim "standing" in the criminal proceedings as well a right of judicial review. Against that backdrop, it is perhaps no surprise that in 2014 the Supreme Court for the first time reviewed a victim-

⁷ PRESIDENT'S TASK FORCE ON VICTIMS OF CRIME, FINAL REPORT (1982).

⁸ William F. McDonald, *Towards a Bicentennial Revolution in Criminal Justice: The Return of the Victim*, 13 AM. CRIM. L. REV. 649, 650 (1976).

⁹ See generally Douglas E. Beloof, *The Third Wave of Crime Victims' Rights: Standing, Remedy, and Review*, 2005 BYU L. REV. 255, 257-58 (helping identifying three waves of crime victims' rights efforts).

¹⁰ See Paul G. Cassell, *The Victims' Rights Amendment: A Sympathetic, Clause-by-Clause Analysis*, 5 PHOENIX L. REV. 301, 304 (2012).

¹¹ See *Hearings: H.J. Res. 45, The "Victims' Rights Amendment: Hearings Before the Subcommittee on the Constitution and Civil Justice of the H. Comm. on the Judiciary* (May 1, 2015) <http://judiciary.house.gov/index.cfm/hearings?ID=B855D611-BAC2-4F83-9D95-29A2873851D9>.

¹² 18 U.S.C. 3771.

initiated appeal¹³ – as discussed at greater length in James Marsh and my article below.¹⁴

In light of all this activity expanding victims' rights, the breadth of the articles in this symposium becomes much easier to understand. For example, Giannini's article discussing the "messy intersection" of victims' rights and the pardon practice¹⁵ would have made little sense several decades ago when victim exclusion from the process was the norm. And the very idea that sexual assault victims might regularly receive legal counsel in criminal cases would have seemed revolutionary just a few years earlier, but it is now part of the military justice system as explored in the Garvin and Beloof paper here.¹⁶ And it now makes sense to think about reorganizing our crime codes so that it fully protect victims against all dimensions of victimization – including digital victimization – as Leary argues here.¹⁷

Another intriguing aspect of the symposium is the extent to which victims' rights is now part of a truly international dialog. For example, Manikis' article compares the American victims' rights protections with those in Canada, drawing instructive insights into comparative strengths and weaknesses of the two systems.¹⁸ And Binford reviews a survey of country reports of state who are parties to an international agreement on child pornography that obligates countries to report the steps they are taking to protect victims' rights.¹⁹ Her article fits into a larger pattern of assessment of crime victims' rights against international human rights standards by Human Rights Watch and other similar organizations.²⁰

These discussions of victims' rights proceed from the increasingly-shared premise that victims have important issues that must be protected in any fair criminal justice system. In 1982 the President's Commission on Victims of Crime decried the fact that "[s]omewhere along the way, the system began to serve lawyers and judges and defendants, treating the victim with institutionalized disinterest."²¹ Today, the system no longer ignores victims, but instead is grappling with the task of how to provide appropriate protection for victims without compromising other interests. The crime victim is no longer the "forgotten man" but a person seated at the criminal justice table, asking for fair accommodation in the process.

¹³ *Paroline v. United States*, 134 S.Ct. 1710 (2014).

¹⁴ Cassell & Marsh, *supra* note 4, at 5.

¹⁵ Giannini, *supra* note 1, at 89.

¹⁶ Garvin & Beloof, *supra* note 2, at 67.

¹⁷ Leary, *supra* note 3, at 139.

¹⁸ Manikis, *supra* note 6 at 163.

¹⁹ Binford, *supra* note 37.

²⁰ See, e.g., HUMAN RIGHTS WATCH, MIXED RESULTS: U.S. POLICY AND INTERNATIONAL STANDARDS ON THE RIGHTS AND INTERESTS OF VICTIMS OF CRIME (2008), <https://www.hrw.org/report/2008/09/23/mixed-results/us-policy-and-international-standards-rights-and-interests-victims>.

²¹ PRESIDENT'S TASK FORCE ON VICTIMS OF CRIME, FINAL REPORT vi (1982).

Ultimately the study of criminal justice questions is the study of the kind of a society that we want to live in. Increasingly the answers to criminal justice questions reflects the fact we want to live in a society that provides fair protection for crime victims. The papers in this symposium help to illuminate some ways to move towards achieving that important goal.