

ARTICLES

*victim 1: a living being sacrificed to a deity or in the performance of a religious rite
2: one that is acted on and usu. adversely affected by a force or agent...as a (1): one
that is injured, destroyed, or sacrificed under any of various conditions...(2): one that
is subjected to oppression, hardship, or mistreatment... b: one that is tricked or duped.*

—Webster's Ninth New Collegiate Dictionary

VICTIMS & VENGEANCE

Why the Victims' Rights Amendment Is a Bad Idea

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In the language of American politics today, victims of violent crime are accorded uniquely sanctified status. They are elevated to the podium at party conventions and honored at the White House. "I draw the most strength from the victims," Attorney General Janet Reno told a victims' rights conference on August 12, "for they represent America to me: people who will not be put down, people who will not be defeated, people who will rise again and stand again for what is right... You are my heroes and heroines. You are but little lower than the angels."

This is not just rhetoric. Over the course of a year that has brought cutbacks and setbacks to the poor, to immigrants and to African-Americans, victims of violent crime have managed to enhance dramatically both their political status and their share of the federal budget. On Election Day, voters in eight states added victims' rights language to their state constitutions, joining twenty-one others. Carolyn McCarthy, the widow and mother

of shooting victims, won a seat in Congress. Thanks to a wind-fall in criminal fines, the Justice Department doubled its victim assistance budget to nearly \$400 million.

Most significant, President Clinton, standing in the Rose Garden during the presidential campaign in the company of family members of crime victims, declared that "the only way to give victims equal and due consideration" is to amend the Constitution. Bob Dole had already declared his own support for such an amendment. This far-reaching proposal—introduced into the current session by Senator Dianne Feinstein on January 21, with bipartisan promises of quick movement to the floor—must be seriously considered. The so-called Crime Victims Bill of Rights enjoys the backing of legislators ranging from Henry Hyde to Joseph Biden. Its offstage supporters include the law-and-order right and liberal constitutional scholar Laurence Tribe. It's hard to imagine many state legislatures voting this amendment down.

The amendment's express-train momentum reflects the growing political power and savvy of crime-victim organizations. Over the past fifteen years, a handful of self-help and advocacy groups have evolved into a diffuse but effective, well-funded confederation of 8,000 organizations ranging from neighborhood rape crisis centers to Mothers Against Drunk Driving (despite its homey name, MADD last year operated on a \$44 million budget). These groups have become a strikingly influential movement, appearing to confound conventional distinctions between right and left. Any organization claiming to speak for victims can now command the attention of every legislature and news outlet in the nation. But to what end? What do crime victims want?

The constitutional amendment itself is straightforward in its language, if uncertain in implication. As introduced by Feinstein, it would automatically apply only to violent crime (a limitation demanded by Reno's Justice Department, which apparently deems victims of white-collar thuggery less in need of protection). The amendment would grant to the victims of violent crime the right to:

- § a court order of financial restitution from offenders;
- § trials "free of unreasonable delay";
- § register objection to (but not veto) a pre-trial release, proposed sentence or plea bargain;
- § attend the accused's trial and parole hearings;
- § be notified about court dates and other developments in the case, including the transfer or release of prisoners.

When this amendment was first floated last year, I was in a quandary. I harbored civil libertarian suspicions, but I have also spent enough time in courtrooms to know that the interests of lawyers and judicial bureaucrats are not necessarily those of crime victims, any more than the interests of physicians are the same as those of medical consumers. Just as patients are sometimes regarded as ignorant, passive receptacles for pharmaceuticals, so, until recently, were crime victims often treated as nothing more than convenient sources of evidence. So why not spell out some minimal rights?

I was mulling this over when I was invited to participate in the first Connecticut statewide crime-victims' conference last September, a few miles up the road from my home. I had written about my own experience of a near-fatal stabbing [see Shapiro, "One Violent Crime," April 3, 1995], and the organizers asked me to take part in a panel discussion on the subject of crime victims and the media.


"Conference" seems too bland, too bureaucratic a word, for such a convocation. About 200 people assembled in one of those suburban Holiday Inn banquet halls typically rented out for high school proms and time-management seminars. To my left sat a couple whose adult son was murdered three months after his father, a minister, completed an alcoholics' treatment program—his first three months of sobriety, he told me, since his son was born. The couple is now active in Survivors of Homicide, a self-help group. To my right was a New Haven social worker. Her job is counseling families whose teenagers have been shot in crack-trade turf wars, or whose daughters, sisters, mothers have been murdered by husbands or boyfriends. Nearby sat a woman whose barely teenage daughter had been raped by a high school student. Because the rapist was a juvenile, his trial was closed to his victim's family; despite warnings from a judge, the rapist's family still periodically taunts members of the girl's household. The mother now volunteers with a sexual-assault services board. Virtually everyone in the room had endured such encounters with violence and human cruelty and was trying to make something useful of that experience.

Much of the two-day gathering (paid for by the Justice Department's Office for Victims of Crime) was devoted to practical subjects like bereavement counseling and domestic violence. But this was not just a skills workshop; it was also a political rally.

The first day's luncheon speaker was Janice Harris Lord, MADD's national director of victim service. Lord launched into a fervent call to arms for what she called "the single most important thing you can be involved in as an advocate": the Victims Rights Amendment.

Some people say, "Don't mess with the Constitution." But the Constitution was formed to be changed. There was a time to abolish slavery, and a time for women to get the vote.... Now is the time to balance the system.

I listened carefully to Lord's talk, hoping that she'd ease my concerns. But she swiftly left behind the specifics of the amendment, instead posing, with evangelical conviction, a series of what-ifs that could define the crime-victim movement's mission. As she did so I found myself growing uncomfortable, then alarmed. While some of the hypotheticals were sensible and humane policy prescriptions—"what if driving drunk with a child



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in the car were considered a form of child endangerment?"—many reflected a radically privatized notion of justice more likely to satisfy a longing for personal vengeance or extract a kind of moral satisfaction than to meet any substantive need:

What if restitution also included a punitive component?... What if every person who kills a parent were compelled to pay child support?... What if every offender were required to put a photo of his victim in his prison cell?... This is what it will take to re-establish a balanced system for victims of crime.

Lord soon left the realm of crime victims altogether; she praised a Texas judge who requires shoplifters to parade with a sandwich board in front of the establishments they steal from, and settled on a condemnation of contemporary American society straight out of the Bill Bennett playbook: "Parents have lost the capacity to raise children with respect for values.... We must acknowledge that some families are rotten to the core."

It's fair to say that Lord speaks from the heart of the victims' rights movement; no organization has put more time or money into the constitutional amendment than MADD. Her comments were typical of language that appears over and over in a movement whose central perception is that criminal justice has evolved to serve everyone—lawyers, government bureaucrats and especially defendants—except victims. A nuanced version of this argument was put forth in Congressional testimony last April 23 by Steve Twist, a former Arizona deputy attorney general and a leading proponent of the amendment. When the Constitution was drafted, Twist said, there were few public prosecutors; victims brought charges themselves. But since then, with the rise of modern bureaucratized prosecution,

the criminal justice system has lost an essential balance.... The victims of crime have been transformed into a group oppressively burdened by a system designed to protect them. This oppression must be redressed.

Usually it is put more bluntly: "I realized that the system wasn't for the victim, it was for the murderer," says Harriet Salarino, a California law-and-order lobbyist whose daughter Catina was murdered in 1979. Not long ago my household received a direct-mail appeal from the family of Ronald Goldman, raising funds for their civil suit against O.J. Simpson:

You see...we continue to get a surprising number of letters from other victims of violent crime. Like us they were victimized a second time by a system that treats criminals better than law-abiding citizens.

"Victimized a second time." "The system wasn't for the victim, it was for the murderer." "Lost an essential balance." These are articles of faith of the victims' rights movement and of the campaign for a constitutional amendment. If those articles of faith and the amendment itself seem to blur easy distinctions, it is because today's crime-victim lobby draws water from several divergent streams of grass-roots activity going back to the sixties. A Quaker social worker in New Zealand pioneered crime-victim

compensation. Feminists articulated the essential awareness that women are often re-victimized by police and the courts. In the mid-seventies, the federal Law Enforcement Assistance Administration began funding the first generation of professional victim-services providers. The late seventies saw the emergence of self-help groups for crime victims and their next of kin. All these efforts reveal victims' deep hurt at how they were depersonalized in the criminal justice system, and they led to valuable campaigns for reform.

What first gave the movement distinct political momentum, however, was not grass roots at all; it was patronage by Ronald Reagan and other conservatives, who saw crime victims as a crucial wedge against liberals.

In 1982 Reagan and Attorney General Edwin Meese convened a President's Task Force on Victims of Crime. The task force issued a report still cited as the movement's watershed

event; in fact, it was that report that first proposed a constitutional amendment. It was also notable for its emotional language and absence of verifiable data—an

important precedent for a movement that still largely relies on the politics of the anecdote. Its centerpiece was an undocumented nine-page "composite" describing an imaginary 50-year-old rape victim who is betrayed by hospitals, police, judges, every conceivable social institution:

Having survived all this, you reflect on how you and your victimizer are treated by the system...called justice...[while the rapist] had a free lawyer; he was fed and housed; given physical and psychiatric treatment...support for his family, counsel on appeal.

That report inspired Congress to launch an Office for Victims of Crime in the Justice Department and establish a mechanism for funding valuable victim services. Unnoted at the time, however, was its political impact. The language of the report, and subsequent Reagan patronage, were designed to draw politically diverse victim advocates securely within the compass of the right.

Today one significant slice of the victims' rights movement explicitly remains a vengeance-rights lobby, demanding faster executions and longer prison sentences and practicing a particularly vindictive brand of electoral politics. (Last June in Tennessee one victim-advocacy group, You Have the Power, orchestrated a campaign that drove from office state Supreme Court justice Penny White, solely for concurring in overturning a single death sentence. "Victims' rights advocates are the sleeping giant in this state," an exultant assistant D.A. said.)

Often presenting itself as a grass-roots victims' campaign, the vengeance-rights lobby is in fact integrally tied to right-wing funders and politicians. California's Doris Tate Crime Victims Bureau—the driving force behind the state's "three strikes" law—gets 78 percent of its funding, along with free office space and lobbying staff, from the California Correctional Peace Officers Association, the prison guards' union, which has an obvious interest in longer, meaner sentences and is a key ally of Governor Pete Wilson. The same jailers' association provides 84 percent of the funding for a "Crime Victims United" PAC headed by the

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aforementioned Harriet Salarno, which gave \$80,000 to Wilson's 1992 campaign. Salarno, in turn, has seen her influence magnified thanks to Wilson's patronage. She was a delegate to the Republican National Convention; in 1995 he named her to California's powerful Commission on Judicial Performance; the year before that, he appointed her to a board overseeing San Francisco's juvenile justice system.

By no means is everyone in today's crime-victim movement a political conservative or in thrall to the G.O.P. There are feminists and liberal social service advocates; there are moderate Democrats like Marc Klaas, who, though supporting capital punishment, opposed "three strikes" and lent his name to a campaign called "Fight Crime, Invest in Kids." Some advocates like the idea of "restorative justice," suggesting that victims' needs are ill served by the retributive focus of current law.

Yet even compassionate voices in the movement have over the past fifteen years been subtly manipulated into a political bargain that severely limits the dialogue about crime victims and society. The vehicle for this bargain is the mechanism for funding victim services around the country: Where most strands in the frayed social safety net are paid for with hard-fought Congressional appropriations, victim programs are supported entirely from fines levied against those convicted of federal crimes.

At first glance this scheme seems sensible and fair—even inspired. Fines from crooks go to compensate those injured by crime, and victim aid gets its own self-sustaining cash stream. (Let me be clear: I value these programs deeply, indeed have benefited from them myself.) But this appealing formula locks victim advocates into a dangerous dependence on the country's law-and-order climate. If the war on drugs, for instance, were to be modified, the financial impact on victim-services funds would be catastrophic. Few victim advocates challenge even the most extreme demands of the vengeance-rights lobby; "don't bite the hand that feeds you" is the rule.

Even more important, this artificially sequestered budget isolates crime victims politically, effectively segregating their interests from all other recipients of social services, from any common struggle for safe cities or access to health care. (How many tens of millions of dollars in federal assistance now going to pay for medical care to uninsured victims would be unnecessary in a single-payer system?) Congress and the public avoid a direct tax-dollar commitment to crime victims, while the vic-

tims' rights movement may forever see itself as an island.

This isolation mirrors a vision that cloisters crime from broader social or economic forces. At the Connecticut conference, victims and their advocates heard for two days about the erosion of authority in society, about the need to make offenders more accountable to victims. Economics and race were simply not on the table—particularly notable at a conference whose participants were, like the victim movement nationally, overwhelmingly white, suburban and middle class, even though crime in Connecticut, as it is nationally, is overwhelmingly a problem faced by cities and the poor.

I felt obliged to mention this when it came my turn to speak. Afterward a half-dozen conference participants approached me to voice agreement. But my remarks were the only time such sentiments were heard from the government-sponsored podium.

Might there still be some merit in the victims' rights amendment, despite such vexing parentage? Laurence Tribe put it this way on *The Charlie Rose Show*:

There are more than just a few stories that are troubling. A woman in Florida isn't even notified when the man convicted of raping her is released and then he finds her, hunts her down and kills her. A woman in Maryland wants to attend the trial of the gang accused and ultimately convicted of murdering her husband and, in fact, there is a provision of state law that says she has a right to do it, but because there's a chance she might be called as a witness, the defense manages to keep her out of the trial....

I think it is possible, with enough care, to craft a modest amendment that would be enforceable.... It can be done in a way that balances the rights of the accused. And it represents a fundamental principle, not just a policy preference.

Tribe's arguments are compelling. Anyone who has placed her or his own desire for justice and safety into the hands of an impersonal, slow-moving and overburdened court system knows how it can leave a victim feeling uninformed, voiceless and frustrated. There seems little reason victims should not have some right to be heard in court, and certainly no reason states can't make a good-faith effort to notify victims when their assailants are released.

Yet this amendment still seems to me a dangerous route. For one thing, it upends the historic purpose of the Bill of Rights. As President Reagan's own Deputy Attorney General, Bruce Fein, told the Senate Judiciary Committee last April, crime victims, whatever their grievances, "have no difficulty in making their voices heard in the corridors of power; they do not need protection from the majoritarian political process—in contrast to criminal defendants whose popularity characteristically ranks with that of General William Tecumseh Sherman in Georgia." Organized victims have no difficulty persuading Congress to pass reforms.

I also fear that most of this amendment's well-meaning provisions would at best accomplish little and at worst make the lives of victims more difficult. Consider one clause that exemplifies these dangers: constitutionally mandated restitution. Under the amendment, all convicted offenders would become debtors to their victims. Most states now permit (rather than require) judges to impose restitution as part of a sentence or a condition of probation, a sensible way of recognizing the victim's individual injury.

But constitutionalizing restitution is another matter. The problem with restitution today is not the Constitution, it is collections.

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Most defendants are poor, and are likely to remain so. The U.S. Attorney's Office in Chicago, investigative journalist Deborah Nelson reported in the *Chicago Sun-Times* in 1995, collects just 4 cents on every fine-and-restitution dollar owed. The collections record of state courts is even worse. Not even a constitutional amendment can get blood from a stone.

Many criminal justice professionals are convinced an inflexible constitutional mandate will make the situation worse—and ultimately make the streets more dangerous. Tom Rue, a psychologist and former New York State probation officer, wrote me recently that if constitutionalized restitution becomes a condition of release or probation, “a greater number of indigent defendants will spend time behind bars than ever before.... Many of these are folks who could otherwise be considered good risks for community-based supervision.” Federal Judge Maryanne Trump Barry, president of the American Judicial Conference, recently warned Congress that inflexible restitution would so raise the stakes for probationers as to cause “greater rates of recidivism and more crime.”

Constitutionalized restitution, in other words, is a set-up: It's guaranteed to fail, and that failure will further amplify victims' sense of betrayal by the criminal justice system. The same is true for most of the amendment's other provisions; their emotional resonance masks some irrational and counterproductive consequences.

I have also come to oppose this amendment because of those articles of faith, those movement mantras that lie behind it: “Victimized a second time.” “The system wasn't for the victim, it was for the murderer.” “Lost an essential balance.” There is a certain emotional truth to such statements. The harrowing disillusionment of the Brown and Goldman families is a reminder of the suffering perpetuated when any violent crime goes unresolved. Yet emotional and factual truth are not necessarily the same thing; and constitutional amendments based on sentiment rather than fact are dangerous business—witness the disaster of Prohibition. (The language of moral reform that permeated the Connecticut conference bears more than a passing resemblance to the temperance crusade.)

Recall, for instance, the assertion that victims' rights have “lost an essential balance” since the colonial days of private prosecution. In fact, as legal historian Lawrence Friedman notes, private prosecution meant victims paid for the case out of their own pocket; far from balanced, it “bent the administration of justice toward the interests of the rich and powerful.”

It is even harder to find a factual basis for the sentiment that today's system is “for the murderer” rather than the victim. Certainly the nation's million-plus imprisoned offenders and 500,000 defendants jailed awaiting trial would have a hard time seeing it that way. Every day the overwhelming force of the state—police, prosecutors, courts, prisons, parole officers—is used to redress violence committed against people. Those accused of crime, on the other hand, get only the guarantee of an overworked public defender and an ever-shrinking handful of procedural rights.

As attorney and political philosophy professor Joy Gordon of California State University, Stanislaus, pointed out to me, victims' rights literature almost never mentions one well-established

privilege, at least for those victims who can afford a lawyer: the right to sue even an unconvicted criminal—even someone who has been *acquitted*, like O.J. Simpson—in civil court for wrongful death or injury. As anyone who has heard a thirty-second update on the Goldman-Simpson civil suit knows, victims can prevail in civil court with a far lower standard of proof than in any criminal trial. “There's not an ‘imbalance’ if you look at the whole structure,” Gordon says. Any system giving victims such a wide-open second shot—whether for money or moral vindication—is hardly “for the murderer.” (How many of the politicians trumpeting their “victims' rights” records have offered to spend money on court-appointed lawyers for indigent victims in civil suits?)

These unquestioned myths allow politicians to tap into victims' extreme vulnerability. It is certainly true, and understandable, that survivors of crime often feel “victimized a second time” by reporters, police, judicial bureaucrats and defense lawyers.

Yet it is equally true and understandable that in the chaotic wake of criminal violence, anger at those we wish had done a

better job of protecting us can be experienced well out of proportion to the actual scope of a betrayal.

I claim no special immunity to such emotions. When

I wrote about the attack in which I was injured, I recounted shouting to a woman who saw the incident from her window, and how she refused to come to the street. “Victimized a second time” pretty accurately describes my feelings at the time. Not long ago, I met someone who by chance knew that woman. Although I didn't see it, she did come down to the street; in fact, she ran frantically in search of help. My perceptions were limited, and my sense of betrayal aggravated, by the extreme circumstances.

It's natural, maybe even inevitable, that extreme violence or loss can provoke a feeling of extreme betrayal. But those distortions are being exploited and perpetuated by politicians and victims' rights lobbyists. It is also politically relevant—I say this uneasily—that the angriest voices in the victims' rights movement, and especially in the vengeance-rights lobby, are not those who physically endure violent crime but their families. Sometimes, of course, that's because a loved one has been silenced by death, or because traumatized victims may find it difficult to speak for themselves.

But there's more to it than that. Dr. Frank Ochberg, a psychiatrist, victim advocate and nationally recognized specialist in post-traumatic stress disorder, has written, “Survivors often do less hating than one might expect.... The co-victims, the next of kin of the injured and dead, are more often the ones moved to rage and vengeance, if not hatred.” Ochberg is profoundly concerned about where such sentiments may lead: “Obsessive hatred,” he writes, “is a corrosive condition.”

Corrosive, and ultimately self-defeating. In her book *Dead Man Walking*, Sister Helen Prejean recounts her unlikely but deep friendship with Vernon Harvey, whose daughter Faith was brutally murdered by a young man named Robert Willie. Harvey campaigned hard for Willie's execution, while Prejean counseled the murderer on death row. Prejean recalls her visit to Harvey in 1986, two years after Louisiana killed Willie in the electric chair:

We need to recognize that crime victims' suffering, whatever its emotional appeal, does not trump all other social and political claims.

Vernon begins to cry. He just can't get over Faith's death. It happened six years ago but for him it's like yesterday.... He had walked away from the execution chamber with his rage satisfied but his heart empty. No, not even his rage satisfied, because he still wants to see Robert Willie suffer and he can't reach him anymore. He tries to make a fist and strike out but the air flows through his fingers.

Prejean's humane attempt to find common ground between the survivors of crime and those who speak for perpetrators suggests another reason I find this proposed amendment dangerous: It reinforces a constricted definition of who crime victims are, and of what our political goals might be.

An order of restitution, or the right to comment on a sentence, may sometimes prove healing or morally satisfying. But those benefits—involving a victim's individual relationship to an assailant—are for the most part speculative and intangible. On the other hand, all survivors of crime have an immediate and concrete need for medical care, or for lost wages, or for psychotherapy for themselves and their families, or for legal counsel. Why not fight to guarantee those far more substantial social rights, which join our needs to the broader community (including, sometimes, offenders and their families)? Could it be because the crime-victim movement's patrons in government, as well as the corporations that pour funding into groups like MADD by the barrowload, prefer it that way?

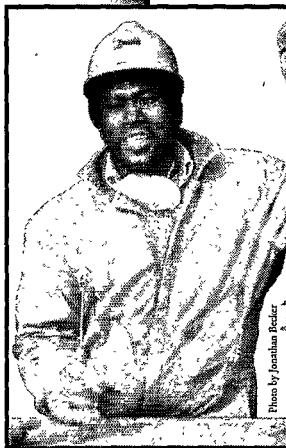
In fact, a substantial number of victim advocates privately question whether this constitutional amendment is, as MADD's Janice Lord put it, "the single most important thing you can be involved in as an advocate." So do many prosecutors and elected officials—though such is the moral sanctity of the victims' rights lobby, and so fearsome its political clout, that few are willing to express their unease publicly.

There are also crime survivors turned activists who reject both the movement's isolation and its self-perpetuating rage at defendants' rights. There is, for instance, Murder Victims' Families for Reconciliation, which campaigns against capital punishment. There are Freddie Hamilton and Katina Johnstone, two women who lost, respectively, a son and a husband to semiautomatic gunfire; a lawsuit they filed together in Brooklyn federal court is threatening gun manufacturers with unprecedented exposure of their corrupt marketing practices. "You are not worthy of my time or thoughts or energy," Carolyn McCarthy said to Colin Ferguson when he was sentenced for the murder of her husband and others on the Long Island Rail Road; she left the courtroom to fight the N.R.A. and run for Congress. How different from the prescriptions offered by Janice Lord, which reinforce victim status and preserve in an attenuated way the relationship between victim and assailant.

It is possible for those injured by crime to embrace a far more expansive political identity—but only if we recognize that crime victims' suffering does not trump all other social and political claims. And as emotionally appealing as the victims' rights amendment may seem, let us recognize that its principal beneficiaries will be not survivors of violent crime but politicians. It is time to exchange sainthood for solidarity across the breadth of social issues, and to refuse being drafted into the vengeance-rights battalion. ■

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