Fundamentals Of Victims’ Rights: A Brief History of Crime Victims’ Rights in the United States

I. Victims’ Rights at Common Law

At common law, it was well recognized that victims played a central role in the criminal justice process. The practice of private prosecution, whereby the crime victim initiated and controlled criminal prosecutions, dates back to the Middle Ages. Although notions of prosecuting on behalf of the Crown began in the eleventh and twelfth centuries, even at that time most crime was viewed as a wrong against the individual victim rather than against the King or society as a whole. A crime victim’s right to initiate and conduct criminal proceedings remained the norm in England well into the nineteenth century. The rationale for this victim-centered approach to criminal justice was the view that crime was a harm inflicted primarily against the individual. Gradually, this view shifted and crime was seen as a harm against the individual and the state. Although no longer the norm, private prosecution continues in England today.

II. Victims’ Rights in the American Criminal Justice System

As with English common law, the concept of private prosecution became part of early American jurisprudence, and the American criminal justice process began as one in which crime victims controlled the investigation and prosecution of the crimes against them. This system of victim as private police and prosecutor existed as the norm in the United States through the 19th century. The United States Supreme Court has acknowledged this private prosecution model as the foundation of our criminal justice system.

By the early 20th century, however, the American system had evolved to one in which crime victims were no longer central players in most jurisdictions, and a public prosecution system became the norm. The victims’ role progressively reduced until they essentially had no formal legal status beyond that of witness or piece of evidence. At one point, the United States Supreme Court observed in dicta that “in American jurisprudence at least, a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another.”

Starting in the late 1970s, a strong victims’ rights movement developed, and changes began to be made to state constitutions, statutes, and rules, as well as federal statutes and rules, to define and afford explicit legal status to crime...
victims. This movement emerged in response to the observation of many that somewhere along the way, the American criminal justice system had become “appallingly out of balance,” “serv[ing] lawyers and judges and defendants, [while] treating the victim with institutionalized disinterest.”

Since then, more than 30 states have amended their constitutions to afford victims’ rights, and all 50 states along with the District Columbia and the federal government have enacted statutory and rule-based protections for victims. The scope of these protections varies considerably from jurisdiction-to-jurisdiction, but all are aimed at re-integrating the victim into the criminal and juvenile justice systems in a manner more closely aligned with the more victim-centric approach in existence at the founding of the American justice system.

---

2 See id.
4 See Cardenas, supra note 1, at 359-60.
5 See, e.g., 4 William Blackstone, Commentaries on the Laws of England *5 (“In all cases the crime includes an injury: every public offense is also a private wrong, and somewhat more; it affects the individual, and it likewise affects the community.”); Cesare Beccaria, On Crimes and Punishments 8 (David Young trans., 1986) (“Here then, is the foundation of the sovereign’s right to punish crimes: the necessity of defending the depository of the public welfare against the usurpations of private individuals.”).
6 See O’Neill, supra note 3, at 673.
7 See id. at 673-77; Davis, supra note 1, at 9-10; Douglas E. Beloof and Paul G. Cassell, The Crime Victim’s Right to Attend the Trial: The Reascendant National Consensus, 9 Lewis & Clark L. Rev. 481, 484-87 (2005); Cardenas, supra note 1, at 366-68.
8 See O’Neill, supra note 3, at 673-77; Roger A. Fairfax, Delegation of the Criminal Prosecution Function to Private Actors, 43 U.C. Davis L. Rev. 411, 422 (2009); Beloof and Cassell, supra note 7, at 486-87; see also, e.g., Robert M. Ireland, Privately Funded Prosecution of Crime in the Nineteenth-Century United States, 39 Am. J. Legal Hist. 43, 49 (1995) (observing that by the end of the 19th century, courts of last resort in 15 states had affirmatively sanctioned privately funded prosecutions); People v. Black, 282 N.Y.S. 197, 201 (N.Y. Cnty Ct. 1935) (allowing prosecution of misdemeanor case by non-attorney inspector and noting: “If it were intended that every time a rabbit be snared or a frog speared after dark that the heavy artillery of the offices of the Attorney General or the district attorney be wheeled into action, then the said Legislature was flying in the face of common sense and upsetting a century-old institution.”). Up through the 19th century, another norm for crime victims was the navigation of one formal criminal justice system regardless of the age of the offender; the first juvenile court system in the country was adopted in 1899, bringing changes to the societal concept of justice when the offender was a juvenile. See Application of Gault, 387 U.S. 1, 14-16 (1967) (exploring the historical foundation of the juvenile justice system and observing that the early reformers believed that “society’s role was not to ascertain whether the child was ‘guilty’ or ‘innocent,’ but ‘What is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career[;]’...[and]...the rules of criminal procedure were therefore altogether inapplicable”).
concurring) (noting private prosecution history and quoting I J. Stephen, History of the Criminal Law of England 493 (1883)).

10 See O’Neill, supra note 3, at 681-82.

11 See O’Neill, supra note 3, at 681-82; Cardenas, supra note 1, at 371-72. This transformation led one scholar to observe in 1976 that the crime victim was “seen at best as ‘the forgotten man’ of the system.” William F. McDonald, Toward a Bicentennial Revolution in Criminal Justice: The Return of the Victim, 13 Am. Crim. L. Rev. 649, 650 (1976).

Scholars have offered different explanations for what caused this evolution. See, e.g., O’Neill, supra note 3, at 681-83 (offering several plausible explanations, including “the democratic impulse, economic factors, or the mounting complexity of the law”); Abraham S. Goldstein, Defining the Role of the Victim in Criminal Prosecution, 52 Miss. L.J. 515, 549-50 (1982) (arguing that the present “‘monopoly’ of criminal prosecution by the district attorney is more the result of a misunderstanding of history than of explicit legislative direction”). See generally Douglas E. Beloof, Paul G. Cassell and Steven J. Twist, Victims in Criminal Procedure 11-17 (3d ed. 2010) (excerpting from scholarly works that provide various explanations).

12 Linda R.S. v. Richard D., 410 U.S. 614, 619 (1973) (holding that the victim of criminal non-payment of child support lacked standing to challenge the constitutionality of the state’s refusal to prosecute the non-paying parent). Nevertheless, today some states still permit victims to conduct private prosecution of crimes. See O’Neill, supra note 3, at 683-99 (discussing examples and noting some limits and restrictions). Two years after the Linda R.S. opinion, Congress adopted the Federal Rules of Evidence, and Rule 615 as initially drafted allowed for exclusion of crime victims from the courtroom unless their “presence is . . . essential to the presentation of a party’s cause[;]” thereafter, a majority of states adopted rules that were similar or identical to Federal Rule 615. Beloof and Cassell, supra note 7, at 498, 502. In practice, these rules of evidence “effectively exile[d] most crime victims from the courtroom.” Id. at 502.


See generally Cassell, supra note 13, at 865-70 (discussing events leading up to the passage of the federal Crime Victims’ Rights Act in 2004); U.S. Department of Justice, Office for Victims of Crime, New Directions From the Field: Victims’ Rights and Services for the 21st Century 3-37 (1998), available at https://www.ncjrs.gov/ovc_archives/directions/pdftxt/direct.pdf (examining the progress made in the previous two decades on the establishment of victims’ rights laws and policies in the country and identifying recommendations to ensure the expansion and enforcement of victims’ rights in both the adult and juvenile justice systems).
NCVLI’s Tools: Legal Advocacy, Training & Education, and Public Policy

**Legal Advocacy.** We fight for victims’ rights by filing amicus curiae (friend of the court) briefs in victims’ rights cases nationwide. Through our National Alliance of Victims’ Rights Attorneys (NAVRA), we also work to pair crime victims with free attorneys and work to ensure that those attorneys can make the best arguments possible. We do this by providing the attorneys with legal technical assistance in the form of legal research, writing, and strategic consultation.

**Training & Education.** We train nationwide on the meaning, scope, and enforceability of victims’ rights through practical skills courses, online webinars, and teleconferences. We also host the only conference in the country focused on victim law.

**Public Policy.** We work with partners nationwide to secure the next wave of victims’ rights legislation — legislation that guarantees victims substantive rights and the procedural mechanisms to secure those rights.

---

**Get Involved**

**Donate to NCVLI.** You can make a difference in the life of a victim today by supporting our work. Your gift will support programs that protect and advance crime victims’ rights and the pursuit of a more fair and balanced justice system. Visit the “Get Involved” page of our website, www.ncvli.org, to learn more.

**Join NAVRA!** The National Alliance of Victims’ Rights Attorneys (NAVRA) is our membership alliance of attorneys, advocates, and other persons committed to the protection, enforcement, and advancement of crime victims’ rights nationwide. Basic membership includes access to a wealth of victims’ rights educational information and enhanced membership includes access to NAVRA’s searchable database of hundreds of amicus briefs, case summaries, and sample pleadings, as well as past trainings on victims’ rights law. Visit www.navra.org to learn more.

**Volunteer.** Volunteers are a crucial component of NCVLI’s work on behalf of crime victims. NCVLI has a variety of volunteer opportunities available ranging from serving as local co-counsel on amicus briefs, to law student internships, to event planning assistance. Visit the “Get Involved” page of our website, www.ncvli.org, to learn more.

**Get Informed.** NCVLI offers a number of legal publications covering a wide range of victims’ rights issues as well as communications to stay up to date on happenings in the victims’ rights community. Please visit our website, www.ncvli.org, and contact us to sign up to receive any of our publications and communications designed to keep you informed of important developments in victim law.