

Exploring the Balance between Justice and Retribution in Victim's Rights

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ABSTRACT

The balance between justice and retribution in victims' rights remains a critical debate in legal and ethical discourse. This study explores the evolving perspectives on justice for victims, examining the tension between punitive measures and restorative approaches. Historically, justice systems have prioritized retributive justice, often overlooking the needs and voices of victims. However, modern legal frameworks increasingly emphasize victim-centered justice, advocating for restitution, rehabilitation, and participation in legal proceedings. The research highlights key theoretical frameworks, including restorative justice, which seeks to repair harm through reconciliation and dialogue, and retributive justice, which focuses on punishment as a means of deterrence. The study also addresses the challenges victims face, such as systemic barriers, secondary victimization, and limited access to justice. The findings suggest that an integrated approach—balancing retribution with rehabilitation—can create a more inclusive and effective justice system. Future legal reforms should incorporate victim perspectives, ensuring that justice serves both societal order and individual healing. Policymakers must prioritize victim participation, trauma-informed legal responses, and broader social support mechanisms to achieve meaningful justice. Further research should explore cross-cultural variations in victim rights and the effectiveness of alternative justice models.

Keywords: Victims' rights, justice, retribution, restorative justice, legal frameworks, victim participation, trauma-informed justice

1. Introduction

When someone speaks of justice, what they usually mean is the punishment of transgressors. But how much of our advocacy for justice is also a desire for retribution? This is a question that many scholars are beginning to ask as increased attention to victims' concerns proliferates. A key part of calls for legal reform and victims' rights in the legal sphere is the claim that it is unjust to victims for offenders to be the sole recipients of punishment. This primarily takes the form of calls for restitution and criminal prosecution of mass human rights violations and rape. Interestingly, the conversation about duties to victims can and does shift to explanations for why victims themselves have a stake in seeing justice achieved. Although the public policy interests and democratic issues related to punishment are vast, many advocate for a justice that also provides recompense for the violated sense of justice in each individual victim (Spencer, 2021).

An important question to ask is, however, what exactly this balance between justice and punishment looks like. To what extent would refusing to assign justice to victims perpetuate non-ideal theory and, through this, facilitate social injustices? A more contemporary understanding of justice contends that retribution or its negation should

rest on the defendant, the state complicit in this decision-making by proxy with respect to victims. This calls into question the use of mass litigation or transparency-oriented court programs, which could be just in their approach to showing accountability. It also calls into question the approach suggested by restorative justice thought, which maintains the intermediary step of rebuilding relationships between parties. Retribution seems to be a less inclusive approach, making clear that the key actor, the defendant, should be the primary focus of punishment. These different orientations can impact the tenor of advocacy the victim receives, which is a listed interest in the Universal Declaration of Human Rights. The unique personhood in these varied manifestations of victimization and ensuing alienation calls for a more fulsome understanding of the harms incurred, not simply for the purposes of recognizing when the law and social actors have failed to uphold our values, but also to understand the normative explanations for why these egregious violations occur today. Can we create a space where not only the harms but also the needs of victims can be explored, for primarily practical reasons but with the possibility of reclaiming a more just, inclusive vision of society?

The section that follows is an abridged version of a paper that argues that attempts to limit or circumscribe victims' rights move towards an exclusive system of justice, effectively silencing the concerns of a marginalized group of victims. It argues that the conflict between retribution and its several negative implications on both an individual and societal basis can be avoided in places such as the European Court of Human Rights, since rights granted are sufficiently limited stylistically to avoid the appearance of impropriety, which in turn ensures the presentation of the defendant as the "legitimate" actor. This inviting approach moves us within the realm of "communicative justice." It also, secondarily, fleshes out and speculates on a distributive injustice in the expungement of justice as an embodied value given the retributive constitutions of human nature, regardless of its practical limitations.

1.1. Background and Significance

Compelled by activism and pressure for reform following the civil rights movement and women's liberation, society has made substantial gains in validating and protecting the rights of crime victims. In just over fifty years, victims' rights and our understanding of them have evolved from the notion of the state as the sole victim to acknowledging victims as deserving of due consideration in our legal processes. The first significant catalytic shifts occurred with the passage of the federal Victims of Crime Act and the California Crime Victims' Bill of Rights in the 1980s, as well as the Parents of Murdered Children lobby for establishing an office for victims' rights in the U.S. Department of Justice. Further evidence of this movement rests in the high number of states that have either written treatments or are contemplating them, and in two United States Supreme Court cases that were argued by victims and survivors of the attack (van Stokkom, 2013).

The growth in victim-impact findings, statutory changes, and global attention to the plight of victims serves to extend and emphasize the concern that society make a considered transition into recognizing victims and their trauma as part of the adjudication process. In this light, a growing movement of victim-centered justice sees the essential and therapeutic treatment of victims of violence to be of utmost importance for redeeming the humaneness of justice in society. In this context of

result-driven justice, where some remedies have hidden punitive value, victim-witness participation is fast becoming something more than a cooperative obligation or just a matter of simple respect for individuals wounded by crime. Instead, victims are considered partners in the quest for justice. Such a change illuminates the value of victim-impact evidence disclosure in the verdict process and emphasizes the significance of sentencing all of the offenders' free will to enable a full appreciation of punishment. It underscores societal movement towards recognition of the need to rebalance offender-based justice with broader societal objectives and moves towards a more victim-centered justice system (Roach, 1999).

1.2. Purpose and Scope of the Study

As was mentioned in the introduction, the main goal of this study is primarily to explore the aspects of justice and retribution involved in both gathering a system of victims' rights together and in the workings of those rights when they are put into practice. In addition to this overarching purpose, we tried to develop a set of objectives reflecting a consideration of how to measure the correct balance that such rights should have in these two areas. To obtain insights for the aforementioned goals, we collected data. We proposed criteria to evaluate different programs, points from which these experiences could be compared, and by which internal government guidelines could be established. Furthermore, we determined that the study should not be limited to a European perspective or to federal governments; the U.S. was suggested as a good starting point, as far as constitutions are concerned (Miccio, 2005).

The first purpose of the study is to systematically classify the concerns of both the legal instruments and literature around victims' rights that contain justice within them and criminal responsibility with either retribution. To discern these aspects, we began with the examination of the structures behind both of these values. As a result, we assessed these documents in this matter from a literature database. We analyzed changes in the number of writings concerning victims of crimes within society and the discussion concerning topics such as 'victims' rights' and 'crimes of violence.' In conclusion, we determined that observation can provide insights into the changes taking place in the thoughts behind documents as well as develop suggestions for solutions concerning the improvement of possibilities. We used the discussion of justice and retribution as a single and complex factor that can be detected in the original purposes of rights for tragedy in the Antigone. In this element, we also tried to show a much broader definition of victims concerning the mere fact that they might not be the direct victims of a tort. We stated that this concern becomes much stronger, and it is also important to refer to the complete treatment of secondary victims and onlookers as part of the general topic of victims' rights (Cross, 2016).

2. Historical Perspective on Victim's Rights

In order to understand victims' rights and freedom in the justice system at present, one must go back to what we know about history, particularly history as written by the law. Over several centuries and in the Americas, legal responses to people harmed by an individual's misdeeds have been dictated by societal norms. The legal framework did not evolve into victims' rights as a formal, freestanding entity until society or victims lit it into a corner where it had to grow or swallow its own concept of justice.

What we understand as the victims' rights movement began only in the late 20th century. From a historical perspective, this is only the most recent approach to victim's justice. A number of laws represent legal acknowledgment of the impact of advocates' work. An approach toward giving victims compensatory justice as a means of retribution dates further back still. Indeed, not dissimilar financial grants have been awarded for reparation since the Friendly Societies of Restitution first made grants to victims of violent crime in the nineteenth century. However, the actual purpose of these early grants was not to reparate victims but to pay for medical or funeral expenses so as to protect the social insurance pool of funds for the able-bodied. Moreover, the giving of money to individual victims of crime, as from a government, was in the main resisted. Fears existed then about rewarding, indeed encouraging, 'evil' with financial restitution. In some such ways, historical context remains obscure in the modern way of delivering reparation and reconciliation. The historical context matters as an explanation for why it remains unexplained, and as an insight into why transgenerational victims of transgenerational harms often find significant peace and calm in society's and the courts' silence (Henham, 2004).

3. Theoretical Frameworks for Understanding Victim's Rights

Several theoretical approaches can be used to understand and analyze the 'victims' rights' movement that has evolved in the Western world over the past half-century. The philosophy of 'restorative justice' has collected a large following in recent years because it appears to explain many of the initiatives designed to grant meaningful and practical benefits directly to harmed parties, to criminal justice professionals, and/or to society in general. An alternative view is to test restitutionary practice in the public policy arena by using the much older paradigm of retribution or 'just deserts' justice. This new/old model is described and contrasted with the restorative approach. The first comprehensive victim-oriented approach to understanding the legal response to crime began with the formation of the 'New' or 'Victim' Criminology in the early 1970s in the United Kingdom.

This approach (hereafter referred to as 'victimology') emphasized the occurrence and prevention of victimization, denouncing legal ideas, mechanisms, and procedures that were unconcerned with the plight of the actual sufferers of crime. Contemporary victimology has developed a research-based ethical or normative philosophy with suggested practical results for people who experience pain and loss directly or indirectly due to infringements proscribed by governments. Several layers of theoretical analysis in the discussion of a victims' legal rights philosophy are distinguished. The literature on the rights of 'victims' following crime is varied, and diverse 'meta-narratives' that are consistent with restorative-retributive and the victimological points of view are given. Each has strengths and weaknesses, is empirically testable, and has various useful logical implications. Key questions arising from the debate over the validity of particular theoretical approaches include the actual outcomes for satisfaction or dissatisfaction of 'victims' with the justice or 'service' they receive. In section 3.1, we examine the elements and qualifications of two polar paradigms for understanding 'victims' rights': restorative justice (and restitution in particular) and retributive justice or, for some, non-restitution justice. Subsequent sections qualify and contrast theory with examples of public policy responses to the problem of crime victimization. Running through these arguments is

the complexity of 'victims' and their multifaceted ambivalence between what they may construct as interests in being the beneficiary of justice and/or retribution or vengeance. Most contemporary restorative, retributive, and victimology paradigms generally fail to give enough credence to a serious deconstructive critique of the human subject such that their worlds are reconstructed and reunderstood through their experiential being in factologies (Bukuluki et al., 2017).

4. Challenges and Controversies in Victim's Rights

Victims' rights are a domain filled with challenges and controversies. The victim of a crime and the accused are usually on opposing sides of the criminal process. Consequently, victims' interests and rights may conflict with the rights of the accused or defendants. Moreover, there is an ongoing ethical debate about whether victims should be given a dominant voice in the criminal justice process. This is problematic because of the power dynamics at play in the legal system. Victims of crime continue to face systemic barriers such as trauma, stigma, the fear of not being believed, secondary victimization, and lack of access to services. The rights and needs of potential and actual victims are not purposefully taken into account in criminal law and procedure, providing them with no avenue for legal protection outside of basic human rights (Gruber, 2020).

Moreover, while various legal frameworks exist, none fully take into account the complex needs of victims of crimes. Social divisions by gender, ethnicity, disability, age, and sexuality can all influence the manner in which a crime or acts of retaliation are experienced by a victim. Some of these factors also place the victim at risk of being 'victimized' by the very systems and agencies that are meant to support them. There is also no single universally representative view of what 'justice' looks like. There are different ideological perspectives on how best 'justice' should be achieved and whether it should be via retributive justice or restorative justice. These perspectives do not meet at a halfway point. Similarly, cultural orientations and dynamics can change the narrative of both victimization and how victims seek justice. Not all victims, cultures, communities, or societies view justice as one of punishment or retribution. They seek recompense of a different kind – restitution, restoration, and healing – either on an individual or a collective basis (Downs, 1998).

5. Conclusion and Future Directions

This study began with an inquiry into the balance between justice and retribution in victims' rights. It has presented the need to consider power and ownership of stories when the objective is to recognize the individual experience of victims and empower them in the delivery of their own version of justice through societal participation. Key to this is that in the event of a violation or harm, we cannot assume victims will seek to restore their losses with revenge. As much as we assume retribution is satisfying to victims, it is equally plausible that the administration of retributive justice is retraumatizing. It is important to solve this balance between recognition, empowerment, and freedom to affect the decreasing of state violence in revictimizing. The paper proposes the need for ongoing dialogue and legal research with victims in order to ensure the justice system evolves on the basis of the relevant needs and values of society.

The role of a victim in the administration of justice – either as a source of evidence or in the relaying of their story – means the justice system must carefully navigate the

balance of dual complexities: the social standpoints of mob justice and victim testimony to deflect from the repeat trauma of reliving their story. This paper integrates insights from the disciplines of psychology, law, and social work to provide insights into the complex operation and underpinning of these common victimization experiences. The conclusion is that both mob justice and the assumption of retribution are as dangerous as the lack of social support provided to victims in shaping society's approach to punishment and protection. With insight into the nature of the complexities facing victims, policy reforms that target both legal accountability for revictimization alongside support mechanisms to counter revictimization are warranted.

In conclusion, it must be remembered that while the provision of legal protections against retraumatization is imperative, victims cannot be simply imagined into policy reform. In order to make a difference, legal professionals, psychologists, and social workers must continue to develop research dialogue and work alongside those with lived experience in order to move closer toward victim-envisioned, trauma-informed, multi-disciplinary policy. We must begin work to inhibit harm where and when we can: in the creation of an updated justice system that is intended to both represent and work for those within it. Moreover, researchers should regularly survey members of society who have been victimized to ensure the views of society are being included in current policy development and assessments to meet the needs of society and marginalized victims. The best hope for law is that it is grounded in citizens' base values and experiences of harm and justice. To do this, researchers must embrace empirical evidence from citizens in society and survivors from times in human history when they were disenfranchised and, in some cases, legally disarmed.

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