

# Afterword

*Looking Forward:*

*Redefining Justice for Victims of Crime*

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Over the past generation, we have made enormous progress in developing responses to victims of crime that are more humane and more effective. As detailed elsewhere in this volume, this progress has been remarkably multifaceted. All states and the federal government, either through legislation or constitutional amendment or both, now provide victims of crime with the right to participate in critical stages of criminal proceedings. All states and the federal government now administer compensation programs that reimburse victims for certain losses incurred because of the crime. Many prosecutors' offices, police departments, and corrections agencies now employ advocates to assist crime victims in navigating these bureaucracies. Victim advocacy groups have succeeded in securing changes in sexual assault laws so that the testimony of victims can be given proper weight in criminal prosecutions, ensuring that laws against domestic violence are enforced through mandatory arrest policies, and providing orders of protection so victims of crime are safe during the pendency of criminal proceedings. Through these and innumerable similar reforms, the criminal justice system in America has been transformed in profound ways to recognize victims' interests.

Public sector services and private businesses have also shifted their practices to respond more effectively to the needs of crime victims. A new non-profit sector of victim service agencies has sprung up across the country, providing shelter for domestic violence victims and their families, support for survivors of homicides, and crisis response for sexual assault victims. Hospitals now routinely check for signs of domestic abuse when examining patients admitted for injuries. Businesses now allow crime victims time to appear in court in connection with their cases. College campuses now inform students about date rape and other forms of partner violence.

Victims of crime have also become a potent political force in American life. For example, victims of sexual assault by Catholic clergy have put enormous pressure on the Catholic Church to open up its internal processes for dealing with abusive priests, adopt new protocols for handling victim complaints, and settle lawsuits for substantial amounts of money in recognition of the harms caused to young people in its care. Mothers Against Drunk Driving (MADD) has successfully lobbied for legislation lowering the level of blood alcohol for drunk-driving arrests, and enhancing penalties for this offense. State and federal legislatures have enacted hundreds of laws, named after victims or in response to particularly egregious crimes, including three-strikes laws, sex offender registration statutes, mandatory minimum sentences, and new criminal prohibitions against stalking. These laws have had far-reaching consequences, some more positive than others. What is clear, however, is that most of them have increased levels of punishment and led to more incarceration. In many critical ways, the direction of crime policy in America has been shaped by the voices of victims of crime and their advocates.

As we reflect on these remarkable events, we see the outlines of a broad societal response to victims of crime taking shape. Our response to crime victims now includes several critical building blocks: a more robust role for victims in criminal proceedings, support for victims by advocates within criminal justice agencies, compensation for losses, and increasing support by the non-profit and business sectors. It is appropriate, however, at the end of this volume to look forward, and to ask about the distance yet to be traveled. From this perspective, it is clear that the simple aggregation of sector-level responses, even if better resourced and better coordinated, does not truly constitute the profound shift that is required if we seek justice for victims of crime.

As we look forward, we should envision a fundamentally different societal response. We should imagine that all levels of government, our communities, our neighbors, and individuals see helping victims of crime rebuild their lives as a shared responsibility. We should imagine that criminal justice and social service agencies reorganize their operations to place a high priority on victims' safety and addressing victims' needs. We should imagine that our society views victims with empathy and understands and respects the diversity of victims' experiences.

To make the journey to a society that provides victims with a genuine sense of justice, we must embrace five challenges that will create a fundamentally different response to victims of crime. These challenges are (a) creating a culture of empathy, (b) building support for reintegration, (c) recognizing all victims of crime, (d) promoting legitimacy and truth-telling, and (e) rethinking justice.

## **Creating a Culture of Empathy** \_\_\_\_\_

Too often, victims of crime feel their experiences are trivialized, their views are disrespected, and their needs are ignored. Our society tends to reject rather than embrace victims of crime. They are described as “too emotional”

and are told to “get over it.” Some victims experience outright hostility and ostracism, as though they were carrying a communicable disease. Neighbors, family members, friends, and colleagues find it difficult to talk about victims’ experiences and often do little to directly acknowledge the harm they have suffered. Similarly, criminal justice officials put substantial resources into pursuing and punishing the person who committed the crime, but ignore the practical, emotional, and financial needs of the person harmed by the crime.

We can make little progress as a society in helping victims rebuild their lives until we address these deep-seated cultural obstacles. Put affirmatively, the next generation of progress in achieving justice for victims requires that our society create a culture of empathy for crime victims. Everything flows from this fundamental shift—from a society that exhibits antipathy to victims, not understanding the pain they have experienced and therefore not responding adequately, to a society that shows empathy, understanding the particular experience of victims of crime, responding to that experience in appropriate ways, and embracing the challenge of helping victims rebuild their lives.

The first and indispensable step in creating a culture of empathy is to recognize the profound difference between the experience of victims of crime and people who experience other harmful events, such as illness, accidents, and natural disasters. Like crime victims, people who have been hit by a hurricane or a tsunami or who have lost loved ones to disease may be harmed by trauma and may feel grief, guilt, depression, anger, and confusion. Yet these similarities mask a critical difference: the trauma experienced by victims of crime is caused by human cruelty. As a result, many crime victims suffer profound psychological pain and develop a distrust or fear of others. Crime victims’ trauma is much more likely to result in social isolation and difficulty in personal relationships than the trauma caused by illness or natural disasters.

This dimension of the experience—the role of human cruelty—challenges us to address the human complicity element of the trauma, and to recognize that crime victims, because they may become more isolated, will require more than compassion and resources. Responding to victims of crime effectively will require listening to victims’ deepest questions about how this happened, understanding their anger toward their fellow human beings, and creating pathways to restore trusting relationships. We must learn to listen without judgment, allow victims to tell their stories, acknowledge that what happened to them is wrong, and offer comprehensive assistance.

Often our reflexive reaction to crime is merely to assign blame to the person who is responsible, without a similar impulse to comfort and support the person harmed. While punishment of the offender may be appropriate, punishment alone rarely addresses all the physical, psychological, or financial needs of a victim. A culture of empathy would require not only that we hold offenders accountable, but also that we recognize and fulfill a separate obligation to help victims rebuild their lives.

Creating a culture of empathy necessitates profound shifts in critical cultural institutions such as schools, religious organizations, the media, and families. An effective initiative promoting empathy in schools, for example, would provide young people with the skills to intervene when their friends are being bullied or abused, rather than simply standing by and watching. Religious institutions would embrace and support victims of crime just as they currently assist congregants who are ill or grieving. The media would highlight the full magnitude of the impact of crime, document the shortfall in the societal response, and treat individual victims with dignity and respect. Families would embrace and support their relatives who have been victims of crime rather than blaming them for allowing the crime to happen or insisting they “get over it” before they are ready.

A culture of empathy for victims of crime would have many benefits. In a practical sense, many of the harms now experienced by crime victims would be substantially mitigated. We would see significant improvements in their physical and mental health, financial status, job security, and social reintegration. On a broader level, a culture of empathy would animate a more inclusive concept of justice. Rather than limiting our notions of justice to the arrest, adjudication, and punishment of offenders, we would expand our vision to include helping victims rebuild their lives. An empathetic society would place a high priority on victim safety, create opportunities for victims to describe their experiences and articulate their needs, and make appropriate resources available. Simply put, the foundation for an agenda to provide justice for victims of crime rests on a culture of empathy.

## Building Support for Reintegration ---

A just society is one that promotes the reintegration of crime victims in the aftermath of crime. This social imperative flows naturally from our conception of crime as a violation of the social contract. The commission of a crime gives rise to two distinct societal obligations. The first is to find and prosecute the offender, acknowledge his or her wrongdoing, and determine the most appropriate outcome. The second obligation is to acknowledge the wrong the victim has experienced and do everything possible to address the harm. Society’s goal should be to reintegrate both the offender *and* the victim to productive communal life. Our traditional notions of justice have emphasized the first obligation; a more robust notion of justice would also emphasize our obligations to victims.

The empirical argument for reintegration of crime victims is compelling. Addressing the needs of crime victims will likely prove cost-beneficial to society as victims experience fewer of the negative consequences of crime detailed throughout this volume. An effective response to crime victims would reduce a wide range of social ills, including drug use, mental illness, homelessness, and PTSD.

Yet the argument for policies supporting reintegration is more than a matter of dollars and cents. Because crime is a violation of the social contract, supporting crime victims restores a fundamental sense of trust and reciprocity in our society. Because people who experience crime are at greater risk of repeat victimization, we have a special obligation to protect them in the aftermath of crime. Furthermore, because the implicit element of human cruelty often leads to victims' social isolation, a consequence of crime particularly damaging to community efficacy, our society should take special steps to counteract these reactions. The particular experience of each crime victim calls for customized responses, and in some instances calls for special allowances in the delivery of social services to address their distinctive needs.

Crime victims should have opportunities to articulate their individual needs for reintegration. While most victims share the desire to be safe, recover from the trauma, and regain control of their lives, every victim has specific needs and priorities. Victims should be able to explain their concerns to officials who acknowledge that what happened to them was wrong and can coordinate assistance for them. These officials must be empowered to draw upon government resources and ensure that victims are given priority access to services.

Finally, support for reintegration of victims of crime will promote the important social goal of public safety. Making victims' safety a high priority, and decreasing repeat victimization, will provide both short- and long-term public safety benefits. Studies show that victims of child abuse and neglect are more likely to engage in delinquency and criminal behavior when they grow up (Widom, 1989), and violent victimization occurring in adolescence increases violent offending behavior as well (Siegfried, Ko, & Kelley, 2004). Recent research indicates that offenders who experience violent victimization in prison or while under community supervision have higher recidivism rates than those who do not (Zweig, Yahner, & Rossman, in press). Accordingly, attending to the needs of these victims is also likely to reduce subsequent offending. Interestingly, supporting victim reintegration may prove to be one of the most effective methods of crime control.

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## Recognizing All Victims of Crime

Unfortunately, over the last 40 years, as we have raised national consciousness about victims of crime, we have also created hierarchies and distinctions among victims. For example, even though three-fourths of the victims of crime in America are victims of financial crime, some states have created participation rights only for victims of violent crime. Victims of financial crime in these states have no right to appear in court, make a victim impact statement, or confer with the prosecutor before a plea agreement. They may also be denied access to victim compensation.

These distinctions in the category of crime do not reflect differences in the experiences and expectations of the victims. Victims of both violent and

financial crime are interested in the adjudication of their cases. Both need to have their economic losses and psychological and healthcare needs addressed.

Other distinctions among crime victims are even more invidious, and they are deeply embedded in our culture. Victims with criminal records are often ignored, sometimes on the grounds that they are not “innocent” victims of crime. We pay little attention to criminal victimization that occurs in prisons, mental institutions, or homeless shelters, reflecting a general societal marginalization of those populations. Even though it is clear that the highest rates of violent victimization are experienced by young men of color living in the poorest urban communities in America, resources devoted to victims of violent crime are not proportionally allocated to those in greatest need.

Embracing the challenge of recognizing all victims of crime requires discarding these hierarchies and obliterating these distinctions. An effective response to all victims of crime means seeing them as individuals, and not superimposing external constructs or policy agendas on them. Crime victims are not monolithic. There is a common belief, however, that victims of crime are uniformly retributive in their attitudes toward punishment. This belief leads to reckless public statements about “what victims want” that belie the actual diversity of victims’ views on sentencing. Certain prosecutors have denied victims their right to make impact statements at sentencing because of the victim’s opposition to the death penalty. These decisions reflect the misguided view that all victims support the death penalty, and that people opposed to it should not be allowed to represent a “victim perspective.”

Just as we should make no assumptions about victims’ views on policy issues, we should not presume to know their individual needs or their personal pathways to reintegration. The imperative that we build support for reintegration carries a corollary, that we individualize our responses to their experiences. To do this, we must recognize all victims of crime, and make no categorical distinctions that exclude any group of crime victims from an experience of justice.

## Promoting Legitimacy and Truth-Telling ---

Too often, victims report that the public officials to whom they turn for help—police, prosecutors, judges, and probation and parole officers—are rude, dismissive, disrespectful, and generally unhelpful. For our society to demonstrate empathy, commitment to the reintegration of crime victims, and recognition of the needs and concerns of all crime victims, we must pay attention to the everyday experiences of victims with those public officials. These are the “retail” interactions that, taken together, define how we respond to some of the most vulnerable members of our society, and thereby reflect our most basic values.

Over the past several years we have seen the emergence of scholarly literature on the concept of “legitimacy” in the context of enforcement of the law.

This literature shows that the interactions between the government employee enforcing the law and the citizen suspected of violating the law, if carried out respectfully, with opportunities for exchange of ideas and an explanation of the reasons for the government action, can enhance the respect for the rule of law on the part of the citizen and, in the longer term, can result in greater compliance with the law (Meares, 2008–2009; Tyler, 2004).

Although the research on legitimacy has not yet been extended to cover the experiences of victims, it is a reasonable hypothesis that respectful treatment of crime victims would also enhance respect for the rule of law. The legitimacy literature lends support for efforts to provide victims information about the criminal justice process, respect their legal rights, create opportunities for them to explain what happened to them, acknowledge that what happened to them is wrong, and respond by providing meaningful assistance.

To meet the challenge of enhancing the legitimacy of the government in the eyes of crime victims, it is essential that we recognize the value of truth-telling in the criminal justice process. For most victims of crime, it is critically important that, if offenders are identified, they take responsibility for their actions. The criminal justice process, as currently structured, actively discourages this result, and instead promotes posturing, concealment, and gamesmanship. Even the language of the justice system reflects misplaced values—the imposition of a criminal sanction is often called “accountability,” whereas true responsibility for one’s actions is stripped out of the process and accountability becomes just another word for punishment.

The culture of the courtroom often deepens the divide between process and truth. Though our adversarial system is touted as the search for the truth, lawyers often engage in jousting designed to suppress or twist the truth. When defendants plead guilty, the highly choreographed colloquy rarely includes a statement to the victim detailing what actually happened or acknowledging the harms caused. If the defendant is sentenced to community supervision, most probation and parole departments do not encourage discussion of the crime, and few have any programs guiding participants to take responsibility for their actions. Similarly, the prison culture rarely provides any emotional space for incarcerated people to come to terms with the crimes they have committed or the impact of those crimes on others.

Promoting legitimacy in the eyes of victims will require focused attention to truth-telling at critical stages of the justice process. Too often, our adversarial process encourages expressions of remorse by offenders only in circumstances that undermine the sincerity of the statement. For example, some parole boards consider expressions of remorse in determining parole eligibility. Because of the benefit offenders hope to gain, crime victims often see these statements as disingenuous, part of gaming the system. There is no context to these statements, no explanation of the journey that led to them. Similarly, expressions of guilt in the context of a guilty plea, although welcome admissions, are usually not the same as taking responsibility for what actually happened.

Recently, restorative justice practices have provided opportunities for more nuanced acknowledgments of responsibility and harm. These processes can be more meaningful for victims and can therefore enhance the legitimacy of the system. Because these alternative programs are available to limited numbers of victims, however, we must continue to develop programs and procedures within the traditional criminal justice process that actively encourage people who have committed crimes to take responsibility for their actions.

Finally, promoting the legitimacy of the justice process will require developing the metrics of success as well as a practice of transparency. As with any complex service delivery system, it is important that the government establish clear metrics to measure performance in the interactions between crime victims and justice agencies.

Many cities have moved toward citizen surveys to measure victims' attitudes toward the police. This is a good beginning, but much more needs to be done. Justice agencies should be held accountable for the respectful treatment of victims, for financial support to reimburse victims for crime-related expenses, for helping victims access needed services on a priority basis, and for meaningful victim participation in criminal justice proceedings. Governments should also be held accountable for the effectiveness of programs designed to help victims of crime. These metrics will allow victims of crime, and the general public, to know whether their public servants are meeting the highest standards in responding to crime.

Greater legitimacy will enhance our democracy in important ways. It will promote reporting of crime, because victims will believe they will be treated respectfully and that justice will be done. Beyond reporting, legitimacy will encourage individuals to continue to participate in the justice process, rather than withdraw because they lack respect for criminal justice officials.

Increased respect for victims, compassion for their plight, opportunities for their meaningful involvement in the justice process, truth-telling, and support for victims' reintegration will increase the legitimacy of the system and promote a deeper sense of justice.

## **Redefining Justice**

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In the next phase of our work redefining justice, we must strive to create a unified vision of justice, one that embraces justice for victims and justice for offenders. In my view, the concept of Parallel Justice, which I have developed over the past several years, provides a useful framework for thinking about justice for victims of crime (Herman, 2010). Parallel Justice is not an alternative to the justice system. Rather, it envisions an additional, often contemporaneous set of responses that occur both within and outside the criminal justice process. Parallel Justice responses begin whenever a crime is reported and do not depend on the identification and arrest of the offender.

The overarching principle of this concept is that every victim deserves justice. In this way, the concept of Parallel Justice elevates the goal of helping victims rebuild their lives to a fundamental component of justice. Parallel Justice places a high priority on victims' safety, opportunities for victims to be heard and acknowledged, and comprehensive victim assistance.

As we face the next generation of our evolving response to victims of crime, we can be guided by Parallel Justice principles to articulate a concept of justice for victims. Yet we must also explore the common ground between the justice interests of victims and the justice interests of offenders. We can begin by recognizing that many victims have also been offenders, and that the designation of "victim" or "offender" often depends on the coincidence of timing in a particular incident. Many people who commit crime have been victims of crime at earlier times in their lives. In fact, many prisoners cite an earlier victimization as greatly influencing the course of their lives.

Beyond these overlaps between the populations of victims and offenders, we should recognize the significant common ground between their respective justice interests. Safety is important for victims who are at risk of repeat victimization as well as for offenders who must be protected from vigilantism and prevented from inflicting further harm. Our societal response to offenders seeks accountability with guarantees of due process. Similarly, victims' legal rights should be implemented and enforced. Offenders are offered a forum to hear the accusations against them, tell their version of the facts if they wish, and hear the government's reaction to their wrongdoing. Victims should be offered a separate forum in which to describe the impact the crime had on their lives, seek the resources and services they need, and hear the government's acknowledgment that what they experienced was wrong.

The most fundamental similarity between the justice goals of offenders and victims is that they both aspire to reintegration. Accordingly, all criminal justice policies and practices should be designed to promote this goal. For offenders, the path to reintegration may include punishment, a period of incarceration, or time under community supervision to meet societal interests in appropriate criminal sanctions. This journey might also involve programs that encourage personal reflections on the crimes committed and coming to terms with the harms they caused. In the best of circumstances, offenders would complete this journey and become responsible members of the community.

Victims may also travel a difficult road to reintegration, marked by periods of physical or mental distress, isolation, health issues, or serious financial problems. Some victims will never recover from the trauma of the crime, and others may suffer lifelong injury, but for all victims, the societal goal is the same: to achieve—to the extent possible—reintegration as full members of the community.

Developing a unified vision of justice built on common ground between the justice interests of victims and offenders will require creativity and fortitude. Too often, victim advocates and criminal justice reform advocates

see themselves at odds with each other. They view reform as a zero-sum game: a victory for offenders is seen as a loss for victims, and vice versa. A longer view, however, reveals substantial common interests. If we can redefine justice in this way, we will have created a new yardstick for justice reform. All new proposals for criminal justice policies and initiatives would then be examined to determine the impact they would have on both victims and offenders.

Looking forward, we must redefine justice to consider society's obligations to victims of crime and our separate obligations to offenders, and where those justice interests overlap, we must always be mindful to seek justice for all.

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