VICTIMS DESERVE THE BEST: VICTIMS’ RIGHTS AND THE DECLINE OF THE
LIBERAL CONSENSUS

Raphael Ginsberg

A dissertation submitted to the faculty of the University of North Carolina at Chapel Hill in
partial fulfillment of the requirements for the degree of Doctor of Philosophy in the
Department of Communication Studies.

Chapel Hill
2013

Approved by:
Lawrence Grossberg
Wahneema Lubiano
V. William Balthrop
Richard Cante
Julia Wood
ABSTRACT

RAPHAEL GINSBERG: Victims’ Deserve the Best: Victims’ Rights and the Decline of the Liberal Consensus
(Under the direction of Lawrence Grossberg)

The liberal consensus that dominated post-World War 2 politics has declined. Elements of the consensus in decline include a faith in expert knowledge, doubts concerning the universal benefits of unregulated capitalism and the possibility of socioeconomic mobility, and a robust conception of an interconnected society. These elements have been dislodged by a faith in personal experience as a guide for policy-making, the celebration of unregulated capitalism, a belief socioeconomic mobility, and the promotion of the traditional family as the true guarantor of socioeconomic viability, not government.

The victims’ rights movement arose concurrently with the liberal consensus’s decline. Its main goal was to insert victims of crime into the criminal justice process. As a result of the victims’ rights movement, victims can now participate in sentencing hearings, prosecutorial decisions, and parole hearings. In addition, participants in the victims’ rights movement are instrumental in advocating for the passage of tough-on-crime legislation.

The victims’ rights movement buttressed four elements of the attacks on the liberal consensus. First, it elevated the traditional family over other forms of socioeconomic relations, displacing them from the primacy the liberal consensus accorded them. Second, by maximizing victim-input in both the criminal justice and legislative processes, it valorized an experience-based expertise. Third, it denigrated a conception of an interconnected society by
elevating the needs of individual victims of those of society. Finally, by making political stars out of previously unknown victims, it presented a picture of American socioeconomic mobility.

This dissertation links these four developments of victims’ rights to the decline of the liberal consensus. It also looks at how responses to domestic violence initially accorded with the liberal consensus by providing material support for victims, and how this response has been marginalized by the victims’ rights movement. It concludes by examining the ways an alternative conception of responding to victimization, restorative justice, which focuses on dialog rather than violence, complements the liberal consensus’s tenets.
To Emily and Sydney
ACKNOWLEDGMENTS

Thank you to my committee: Julia Wood, Wahneema Lubiano, Bill Balthrop, and Rich Cante for their help and support.

Thanks to my adviser Lawrence Grossberg. It is impossible to imagine a better mentor.

Thanks to Josh Davis, Ari Berenbaum, and Brian Graves for their good humor and friendship throughout this process.

Finally, thanks and love to EC, the number one person in the world.
# TABLE OF CONTENTS

## Introduction

The Bowden Case.............................................................................................................1

A Brief History of Victims’ Rights..................................................................................5

The Liberal Consensus....................................................................................................14

Challenges to the Liberal Consensus.............................................................................16

Role of the Media in Elevating Experience...................................................................27

Theoretical Orientation..................................................................................................28

Cultural Studies and Victims’ Rights............................................................................36

Relationship between Victims’ Rights and Civil Rights and Feminist Critiques..........41

Chapter Summaries.........................................................................................................42

Personal Investment.........................................................................................................51

Chapter One: Victims’ Rights’ Disarticulation of Expert Authority

Introduction......................................................................................................................54

The Contradiction Between Nixon’s Campaign Style and Prison Reform efforts........58

Frank Carrington and the Foundations of the Victims’ Rights Movement.................65

Reagan’s Victims’ Rights...............................................................................................77

Conclusion.......................................................................................................................87
Chapter Two: Victims’ Rights Neutralization of the Threat of Domestic Violence

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>89</td>
</tr>
<tr>
<td>The Evolution of Domestic Violence Policy between 1978 and 1984</td>
<td>93</td>
</tr>
<tr>
<td>The Danger of Domestic Violence to Conservative Discursive Formations</td>
<td>108</td>
</tr>
<tr>
<td>The Democratic Party’s Neglect of Material Support for victims of Domestic Violence</td>
<td>130</td>
</tr>
<tr>
<td>Conclusion</td>
<td>140</td>
</tr>
</tbody>
</table>

Chapter Three: The Power of the Common Man

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>145</td>
</tr>
<tr>
<td>The Victims’ Rights Movement after the 1990s</td>
<td>146</td>
</tr>
<tr>
<td>Mark Lunsford’s Crusade</td>
<td>151</td>
</tr>
<tr>
<td>Lunsford’s Appeal and Conservative Politics</td>
<td>161</td>
</tr>
<tr>
<td>Conclusion</td>
<td>192</td>
</tr>
</tbody>
</table>

Chapter Four: Victims’ Rights and the Denial of Society

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>193</td>
</tr>
<tr>
<td>Society in the Fair Deal, John Locke, and the Victims’ Rights Movement</td>
<td>194</td>
</tr>
<tr>
<td>The Centrality of Society’s Interests and the Absence of Victims’ Interests in Criminological Theory and the History of American Criminal Justice</td>
<td>222</td>
</tr>
<tr>
<td>Victims’ Rights Disarticulation of Locke, Truman, and the “People” Ratified by the United States Constitution</td>
<td>230</td>
</tr>
<tr>
<td>Conclusion</td>
<td>239</td>
</tr>
<tr>
<td>Conclusion: Restorative Justice and the Liberal Consensus</td>
<td>241</td>
</tr>
<tr>
<td>Works Cited</td>
<td>249</td>
</tr>
</tbody>
</table>
Victims Deserve the Best: Victims’ Rights and the Decline of the Liberal Consensus
Raphael Ginsberg

The Bowden Case

In 2009, North Carolina’s appellate courts considered the case of Bobby Bowden, a prisoner convicted of homicide in the 1970s, who had claimed that his sentence had expired. The North Carolina Court of Appeals determined that his sentence, which had been treated as an indefinite ‘life’ term by the Department of Corrections, was actually defined by the legislature as a term of 80 years, to which various sentence reduction credits may apply. When the North Carolina Supreme Court declined to overturn this ruling, the apparent result was that Bowden, along with several other similarly situated prisoners, was entitled to immediate, unconditional release from prison.

These judicial decisions provoked a furious response from Governor Bev Perdue, who blocked the inmates’ scheduled October 29 release by directing the Department of Corrections to deny the inmates their good behavior credits. Concern for victims played a fundamental role in her decision to prevent their release. At a press conference explaining her decisions, Perdue asked, bewilderingly, “What about the victims? Nobody’s talking about the victims.”\(^1\) At the press conference, she was accompanied by the head of a victims’ advocacy

---

\(^1\) Transcript of Bev Purdew’s news conference on file with author
According to news reports, Perdue made the decision “in the face of outrage from victims and their families.”

Mirroring Perdue’s logic, newspapers covering the inmates’ potential release and the Perdue’s intervention into the legal process placed victims’ family members’ and victims’ advocacy organizations’ views at the center of their coverage. Numerous articles noted victim opposition to and outrage concerning the possibility of the inmate’s impending release. The New York Times’ article about the matter included a quote from Thomas Bennett, executive director of the North Carolina Victim Assistance Network, stating “This is an outrage of justice.” A Winston-Salem Journal article also included Bennett’s views that the release of the inmates represented a “miscarriage of justice.”

Two separate articles included quotes from Rick Ehrhart, whose mother was killed by Bowden. The headline of one such article refers directly to him, reading “A Son Fights Inmate Release. Charlotte Man’s Mother’s Killer is up for Release.” In the article, Ehrhart declared that the inmates’ release was “just insane. To go from coldblooded murderer facing the death penalty to the possibility of parole to unqualified release? This is a tragedy of

---


6 Romoser, “3 convicted in Forsyth to be freed.”

errors.”Similarly, in the second article he asked, “Do we do something that doesn’t make sense because of the literal meaning of the words in laws written without an understanding of what they could do?” In addition to his inclusion in news articles, The News and Observer ran an editorial written by Ehrhart, in which he explains his opposition to their release, describing Bowden’s arguments as “solipsistic and specious.” His legal analysis, apparently, was newsworthy.

Though it had previously declined to overturn rulings that deemed Bowden eligible for immediate, unconditional release, the North Carolina Supreme Court ruled in 2010 that Bowden was not entitled to release, siding with Perdue and the Department of Corrections. Supreme Court Justices dissenting from the majority opinion argued that public outrage influenced the court’s reversal of its recent decision. In her dissent, Justice Patricia Timmons-Goodson argued,

This is a hard case. The lives of the victim and his family have been forever changed by Jones’s criminal conduct. Public attention has been excited by the possibility of release of those previously committed to life sentences. The late United States Supreme Court Justice Oliver Wendell Holmes appropriately cautioned against allowing “immediate interests [to] exercise a kind of hydraulic pressure which makes what was previously clear seem doubtful, and before which even well settled principles of law will bend.” Many would argue that the breaking point has been reached in this case.

8 Locke, “A Son Fights Inmate Release.”


As described above, much of the public outrage Timmons-Goodson points to concerned the alleged plight of victims’ families in the wake of the inmates’ release. Timmons-Goodson attributes the majority’s faulty decision to “immediate interests,” including those of victims and their families. Without the involvement of victims, Timmons-Goodson suggests, the majority would have ruled differently. Indeed, the North Carolina Supreme Court ruled to allow the Bowden release to occur in the absence of victim-associated outrage when it declined to overturn the Appeals Court’s ruling in 2009.

In this example, judges and other government officials made legal decisions on behalf of victims, and media outlets complemented this deference by positioning victims at the center of their coverage of the case. In telling the story of the Bowden case, media deferred to the victims’ version of it. Such deference plays a fundamental role in the victims’ rights movement. Throughout its 35-year history, the victims’ rights movement has succeeded in increasing the deference paid to victims by the criminal justice system. Victims now play a direct and influential role in numerous stages of the criminal justice process from which they were previously absent. Laws have been passed in all fifty states guaranteeing victim access to the criminal justice system. Victims also have gained influence over the development and passage of criminal justice legislation and, as demonstrated above, executive and judicial decisions. Many of the ‘tough-on-crime’ laws passed over the last 30 years, including three-strike laws and expansions in the use of the death penalty, were made in the name of the rights of victims or their families. In total, criminal law and the criminal justice system have now undergone a massive transformation as a result of the victims’ rights movement.

The victims’ rights movement emerged in the early 1980s. It consists of numerous non-governmental organizations dedicated to specific criminal justice objectives, which are
primarily led by victims or victims’ family members themselves. The victims’ rights movement has been actively supported by both Republicans and Democrats at all levels of government, law enforcement, and numerous non-governmental organizations, such as the American Psychological Association and the American Bar Association.

Contemporaneous with the ascent of victims has been the decline of the liberal consensus, which commentators agree dominated American politics in the decades following World War Two. Though seemingly unrelated, attacks on the liberal consensus and victims’ rights share assumptions and efforts. Both have successfully compelled government to defer to private interests: victims and their families in victims’ rights, private businesses and free markets in attacks on the liberal consensus. In addition, attacks on the liberal consensus and victims’ rights valorize a conception of the family in conflict with a broader society supported by government. Finally, both victims’ rights and attacks on the liberal consensus privilege experience over knowledge as the proper basis for policy-making authority, consistent with the media’s broader reliance on experience as the foundation and source of knowledge. The similarity between attacks on the liberal consensus and victims’ rights is the focus of this dissertation.

**A Brief History of Victims’ Rights**

In the following history of the American victims’ rights movement, I consider the comprehensive role of advocacy groups, conservative think tanks, professional organizations, and other non-governmental organizations (NGOs) which worked with government to
change criminal laws and policy. I also highlight the speed and enthusiasm with which powerful government actors endorsed and worked to institute victims’ rights measures.

Before the emergence of victims’ rights in the early 1980s, the crime victim’s role was limited to that of witness in America’s criminal justice system. Victims were routinely interviewed by the police, but were otherwise only involved in a criminal case if they were called to testify when a case went to trial. They played no role in plea bargaining, sentencing, or parole decisions. Also, they played no role in the creation of criminal justice policy. All of this changed with the enactment of victims’ rights reforms.

Powerful government actors invoked the term “victims’ rights” in the early 1970s. However, these invocations differed markedly from the meaning connoted by the term “victims’ rights” today. In 1970, Vice President Spiro Agnew lamented that the “rights of the accused have become more important than the rights of victims in our courtrooms.”\(^{12}\) Also in 1970, President Richard Nixon pledged that he would “continue to appoint judges who have an awareness of the rights of the victim as well as the right of the accused.”\(^{13}\) One of Nixon’s Supreme Court nominees, Lewis Powell, proclaimed in an article entitled “Crime Victim Rights of Concern to Powell,” that “the time has come for concern for the rights of citizens to be free from criminal molestation of their persons. In many respects, the victims of crime have become the forgotten men of our society.”\(^{14}\)

Though all three individuals explicitly cite the rights of victims in a manner similar to today’s invocations, the rights they referred to differ from those promoted by victims’ rights


as it exists today. As demonstrated by Powell’s quote, Nixon, Agnew, and Powell all conflated non-criminals, who were in their lexicon all potential victims, with actual victims. They did not assert that crime victims themselves should have due process rights nor that the punishment of offenders somehow reflected on the worth of crime victims, both of which became normative victims’ rights arguments. None made any effort to institute victims’ rights reforms. Instead, they insisted that Supreme Court decisions such as *Miranda* and *Mapp* had demonstrated undue solicitude for defendants by expanding their due process rights, making it harder to prosecute criminals, and leaving them free to victimize law-abiding people, i.e., crime victims anew. Victims’ rights was not yet available as a comprehensive discourse to Nixon, Agnew, and Powell.

Frank Carrington was the pivotal figure in the development of the current concept of victims’ rights. A lawyer, he created the term “victims’ rights” in the early 1970s, disseminating it in newspaper articles and congressional testimony, and fully articulating many of victims’ rights key positions in his 1975 book *The Victims*, published in association with the conservative Heritage Foundation.15 As the leader of the tough-on-crime NGO Americans for Effective Law Enforcement, Carrington testified before Congress in 1972 in support of the death penalty and described his organization as, “Frankly, a victim-oriented organization,” and argued that “perhaps the rights of potential victims and actual victims should be weighed much more heavily in the balance, than the rights of the convicted killers.”16 In *The Victims*, Carrington argued that victims suffered because of their limited


role in the criminal justice process, and that offenders and victims exist in a zero-sum game, articulating due process protections and perceptions of leniency as coming at the expense of victims’ well-being and perceptions of their personal worth. Accordingly, *The Victims* called for increasing the role of the victim in the criminal justice system, limiting defendants’ due process rights, and expanding the use of the death penalty in order, he argued, to affirm the value of the victim’s life.

Carrington quickly garnered institutional support for his victims’ rights ideas, from both conservative political leaders and putatively non-partisan organizations. Carrington’s views were embraced by prominent conservatives. United States Republican Senator James Buckley wrote *The Victims*’ introduction, and read it into the May 15, 1975 Congressional Record. Carrington himself was placed into positions of policy-making power, where he successfully promoted his victims’ rights positions. In 1981, Attorney General William French appointed him to the Attorney General’s Task Force on Violent Crime, assembled three months after Ronald Reagan assumed the presidency.

The Task Force recommended victims’ participation in prosecutorial and sentencing decisions. It also recommended the establishment of a Task Force on Victims of Crime. Formed in 1982, the Task Force on Victims of Crime included prominent law enforcement figures, and, again, Frank Carrington (as well as, interestingly, evangelist Pat Robertson). The release of its ‘Final Report’ is credited as being a “catalyst for a decade of advances in victims’ rights.” According to Carrie Rentschler, “the task force report of 1982 signaled the

---


18 James Buckley, foreword to *The Victims*.

national arrival of victims’ rights, evidence that its discourse and political practice were part
and parcel of a national policy vision of victims.”

In addition to the Task Force on Violent Crime’s recommendations for expanded victim participation, its “Final Report” supported higher bail amounts and the end of the exclusionary rule. It also called for limiting defendants’ due process rights, reasoning that victims benefit from, and should therefore have a right to, the conviction and punishment of offenders. Inspired by the report, in 1982 the United States Congress passed the Victim and Witness Protection Act, which established the right of victims to present their views on sentencing to judges and required prosecutors to solicit victims’ views before negotiating plea deals.

In addition to his work with the Federal government, Carrington worked with influential professional associations to promote victims’ rights. He chaired the American Bar Associations’ (ABA) Victims’ Committee, and in 1985 the ABA issued guidelines concerning the treatment of victims, recommending that victims have the right to confer with prosecutors about plea deals and offer sentencing statements. He participated in a 1983 National Judicial College Conference, in which more than 100 judges met and passed a resolution in support of victim participation in the criminal justice process. Altogether, Carrington was instrumental in incorporating government and important professional organizations into the nascent victims’ rights movement. Carrington’s work had become political doctrine, and his specific notion of victims’ rights continues to dominate victims’ rights discourse.

20 Rentschler, Second Wounds.
A number of NGO’s formed in the late 1970s and early 1980s to promote criminal justice reforms in the name of victims’ rights. Many of these groups were connected to one another and to government. They focused on three primary objectives. First, they worked to provide material and psychological support to victims, an objective that receded in importance as victims’ rights developed. Second, they sought to establish the right of victims to participate in the criminal justice system. Third, they pushed for harsher sentences for offenders. These organizations remain in existence, primarily working to make sentences harsher and maximize victim participation.

An early victims’ rights NGO was Parents of Murdered Children (POMC). POMC was formed in Ohio in 1978 by Charlotte and Bob Hullinger, whose daughter was murdered. It established support groups for families of murder victims around the country and organized annual conventions to allow parents and supporters to network and develop ideas for how to maximize mutual victim support. The organization also advocated for victim participation, such as its Parole Block program, which called for victims’ and victims’ family members to testify in parole hearings, primarily, as the program’s name indicates, to voice their opposition to parole. POMC also had a tough-on-crime agenda. It advocated for limiting death penalty appeals to increase executions. James Knoll, leader of the Houston Chapter of POMC, complained that because of multiple appeals filed by death row inmates, “Death-sentenced people have made a mockery of our system.”

In the same articles his wife added “It’s a just punishment, definitely a deterrent.”

---


25 Ibid.
The most wide-ranging organization is the National Organization of Victim Assistance (NOVA), formed in 1975. NOVA’s initial activism involved organizing conferences about victims’ needs and offering training to those providing services to victims. However, NOVA supported victim-participation in the criminal justice system as well. In 1979, NOVA “incorporated the growing demand for victims to have legitimate access to the criminal justice system into a new policy platform on victims’ rights.” In 1984, Mario Gaboury, NOVA’s legislative specialist, argued that “victims should have a right to participate at any stage of the judicial proceedings, from plea bargaining to parole.”

In supporting both victims’ services and victim participation, NOVA worked to conflate the two. As victims typically sought convictions and harsh punishment through their participation (though not always), the conflation of victims’ services and victim participation led to a second conflation, that between tough-on-crime policies and victims’ services. A logical chain developed in which victims’ services were equated with victim participation, victim participation was equated with punishment and conviction, and, accordingly, victims’ services were equated with conviction and punishment. This chain worked to solidify the most questionable element of victims’ rights: the contention that punishment and conviction themselves are a victim’s right.

Another strand of the emergent victims’ rights movement involved the efforts of victims’ family members to pass legislation making sentencing laws harsher, increasing victim participation, and making it easier to obtain convictions. Victims’ family members

27 Young, “Victims’ Rights,” 197
cited the victimization of their family member to justify the policy and sentencing changes that they sought. An early example is the work of Roberta Roper, who began working to change criminal legislation after her daughter was raped and murdered in Maryland in 1982, and her murderers received sentences Roper deemed unjustly short. In January, 1983, Roper began working to eliminate the use of voluntary drugs and alcohol as a mitigating circumstance in first degree murder cases, to give juries the option of life without parole instead of life with the possibility of parole, to allow coconspirators to be eligible for the death penalty, to make victim impact statements mandatory, and to limit the availability of parole.

Roper claimed that her advocacy made her “the voice and the presence of the victims who cannot be here.”

Passing such laws, she argued, countered the harm inflicted by the crime, as her efforts worked “to make sure that something good will come of this tragedy.”

Such victim-led efforts have been extraordinarily successful. In the Roper case, Delegate Dennis Donaldson said that the Roper legislation is “the kind of thing that you need two or three years to get passed.” Instead, it took three months, as Maryland’s governor signed laws instituting three of the five measures Roper wanted passed in April, 1983. Legislators admitted that the passage of the legislation was not solely dedicated to reducing crime and its

---


30 Feinstein, “Three Bills.”


harm but also “designed to show Roper supporters the legislature was responsive to their concerns.”

Early victims’ rights efforts achieved immediate results. For example, by 1985, twenty-five states had programs that facilitated victim involvement in parole hearings. The victims’ rights movement continues to exist, though many of its goals have been achieved nationally. Thirty-three states have amended their constitutions to include victim participation, such as the right to attend trials, testify at sentencing hearings and parole hearings, and confer with prosecutors, and all fifty states have laws guaranteeing victims such participation rights. Many of the tough-on-crime legislative efforts that resulted in massive prison populations were led by victims and their families. For example, the campaign to pass California’s three-strike law was led by the fathers of two murder victims. Chapter three of this dissertation explores one such victim-led effort at length. In that chapter, I consider the work of Mark Lunsford, who, after his daughter Jessica was murdered by a convicted sex offender, sought to pass laws toughening laws for sex offenders in states across the country.

However, efforts to improve victims’ services have not been a priority for the victims’ rights movement, and consequently, have not been as successful. Victims’ services are not considered a victim’s right. In fact, none of the thirty-three state victims’ rights constitutional amendments include a right to victims’ services, only participation in judicial or parole proceedings. When the term ‘victims’ rights’ is invoked, it typically refers to victim participation and the conviction and punishment of offenders, and not victims’ services, such as time off of work, or medical and psychological treatment on demand.

33 Feinstein, “Three Bills.”
The Liberal Consensus

It is commonly agreed that a specific liberal consensus dominated American politics following World War II. In addition to its commitment to containing communism worldwide, there were four elements of the liberal consensus.

First, the liberal consensus held that American capitalism could provide prosperity for all, but only if assisted by a “degree of economic management by government.” According to historian Iwan Morgan, by Dwight Eisenhower’s 1952 election, “the parties were no longer divided on the issue of whether the government should manage the economy.” Historian Godfrey Hodgson notes that during the predominance of the liberal consensus, even conservative economists noted that “we are all Keynesians now,” committed to using government fiscal spending and tax policy to prevent capitalism’s inherent tendency towards unemployment and inflation. Keynesian policies would enable government to “fly the economy like an airplane, trimming its speed, course, and altitude with tiny movements of the flaps and rudder.” Also, without government assistance, the poor will be trapped in poverty. Law professor Ian Haney-Lopez notes that the notion existed under the liberal

---


35 Morgan, *Beyond the Liberal Consensus*, 10.


37 Hodgson, *America in Our Time*, 79
consensus “since the creation of the modern welfare that large-scale forces immune to personal effort largely trapped the poor.”

A second element of the liberal consensus was the preservation and extension of the New Deal’s government programs, which included federal public housing programs, social security, and unemployment insurance. Accordingly, both Truman and Eisenhower protected and expanded New Deal programs. For example, Truman extended social security benefits and Eisenhower created the Department of Health, Education, and Welfare. A third aspect involved a vision of labor relations. Under the liberal consensus, corporate leaders accepted the power of labor unions, who, in turn, acknowledged management rights and rejected the need for fundamental social and economic change.

The fourth element of the domestic liberal consensus was a faith in scientific knowledge’s ability to solve social problems. According to Hodgson, the liberal consensus held that “[s]ocial problems can be solved like industrial problems: The problem is first identified; programs are designed to solve it, by government enlightened by social science; money and other resources—such as trained people—are then applied to the problem.”

Generally speaking, the liberal consensus had faith in a Keynesian management of the economy, subscribed to the need for a moderate welfare state as well as viable unions, with economic management, welfare, and labor protections obviating the need for fundamental socioeconomic change, and believed in the superior ability of scientific knowledge to address social problems.

---


39 Hodgson, America in Our Time, 76
Challenges to the Liberal Consensus

In the following section I briefly describe four ways in which the liberal consensus has been attacked. First, I describe criticisms of the liberal consensus’s concept of society. Second, I consider the glorification of capitalism and attack on government intervention into the economy. Third, I look at allegations that welfare has destructive effects on the traditional family. Finally, I consider criticisms of expert authority, the conception of authority that underlay liberal consensus policy-making.

The attack on the liberal consensus’s conception of society

Supporters of the liberal consensus vigorously asserted a comprehensive notion of society. Political decisions on issues such as education, healthcare, and welfare assumed an interconnected society in which the fate of each individual is tied to how they are situated within societal relations. For example, a poor person will have difficulty succeeding in the market without government assistance. According to this way of thinking, politicians must attend to the configuration of social relations themselves to enable those in subordinate positions to thrive, even if not at the same level as those in higher socioeconomic positions. Accordingly, Franklin Roosevelt termed insuring the right to an “economic and political life,
liberty, and the pursuit of happiness” a “social problem[]” requiring “social controls.”

Government acted as society’s representative, working to achieve its interests.

Conservative critics have long assailed the importance of society and the need to attend to social relations. According to them, social relations play little role in individual outcomes. In fact, Margaret Thatcher denied the existence of society altogether in 1987, declaring that there is “no such thing as society” there are “only individual men and women, and…families.”

Instead of being dependent on social relations, outcomes are matters of aptitude, determination, and self-interest. Prominent intellectuals argued that there are great costs in attending to social relations, as it necessarily entails limiting individual freedom and the power of self-interest and rationality. In the 1930s, Joseph Schumpeter argued that the space for individual decision-making must be maximized to capitalize on entrepreneurial self-interest and rationality, which are otherwise stunted when social concerns limit their freedom. Also, individuals should have ultimate control over resources, as they will rationally exploit them for their own good. Policies that attend to social relations, such as addressing wealth inequality, substitute inferior social decision-making for superior individual.

In addition to seeing social relations as central to life outcomes and a need to reformulate them, champions of the liberal consensus contended that society is an entity with the right to appropriate individual resources and to redistribute them to its members. Accordingly, politicians must make individual property available for redistribution and to ensure that the appropriated property is usefully distributed. Critics of the salience of society

---


object to the societal appropriation of resources, holding that individuals have a right to their property that is greater than society’s. For example, in *Tax and Spend: The Welfare State, Tax Politics, and the Limits of American Liberalism*, Molly Michelmore describes working class and middle class resentment that their tax dollars were being used to support the poor through welfare programs that emerged in the 1970s. Recently, supporters of the Tea Party movement claim that their property is protected from redistribution by the Constitution of the United States and the principles embraced by the Founding Fathers.  

This privileging of the individual over society dovetails with the ascent of neoliberalism that began in the 1970s. Lawrence Grossberg connects assaults on the concept of society to the promotion of neoliberal capitalism. According to Grossberg, “neoliberals are radical individualists. Any appeal to larger groups…or to society itself, is not only meaningless but also a step towards socialism and totalitarianism.” As John Clarke describes neoliberal thinking, we live in a world “constituted out of individual interests and their interactions in markets,” of “[e]nterprising individuals seeking to provide for themselves and their families.”

Clarke argues that attacks on society seek to renaturalize inequality. Prior to such attacks, opponents of racial, gender, and economic inequality argued that such inequality was a result of social relations, rather than “natural” forces. Clarke suggests that new “‘anti-social’ projects seek to locate differences somewhere other than the ‘social’... [t]hey attempt

---


to locate difference and inequality in discursive realms where they will once again become safe and manageable.” For example, the wants and needs that drive economic decisions are conceived of as natural, as if people have a natural drive to consume and work. Another “natural” characteristic is an individual’s moral character, which is an essential element of any person. Ronald Reagan saw morality as a “natural” factor determining socioeconomic status; he viewed the marketplace as a place that “rewarded good character and punished bad,” and he emphasized “moralistic, individualistic interpretations of a person’s socioeconomic status.”

Biology is another “natural” characteristic cited to explain inequality. For example, if racial minorities and women are either explicitly or implicitly accepted as inferior to white men, their subordination is expected and unproblematic. Altogether, according to “natural” thinking, we are not social creatures, but biological, geographic, or moral creatures. It is not government’s job to disrupt natural differences and the inequality that derives from them. By contrast, those who defend a vigorous concept of society find society to be “unnatural.” In their view, the promotion of “natural” explanations for inequality ignores social explanations for inequality. Such social explanations include, among many others, racism and inferior educational resources. These explanations of inequality underlay the liberal consensus’s welfare policies and economic intervention, which sought to reformulate socioeconomic relations that were detrimental to women, racial minorities, and the poor.

Again, in the liberal consensus, government acts as society’s agent. Without society, government represents nothing, and loses its license to actively address social relations, for

46 Clarke, Changing Welfare, 62.
they do not exist. Accordingly, efforts to disarticulate the concept of society are reflected in changes in governmental policy. Utilities have been privatized, school vouchers introduced, and proposals made to privatize Medicare and Social Security. Welfare is no longer guaranteed for poor people with children and work requirements for recipients have been imposed. These changes to welfare were done in the name of personal responsibility to care for oneself and one’s family, instead of a social responsibility to care for society’s poor who are victims of disabling social relations. If people cannot cope, it is because of natural deficiencies no ‘society’ can ameliorate.

*The celebration of laissez-faire capitalism*

The liberal consensus was supportive of capitalism and critical of socialism and communism. However, it doubted that unregulated capitalism worked to the advantage of the majority of Americans. Therefore, politicians subscribing to the liberal consensus introduced a variety of measures to regulate American capitalism, including welfare, work safety regulations, financial regulations, Medicare, price controls, and labor legislation, between the 1930s and 1970s. These measures sought to limit the excessive concentration of power corporations and other large businesses obtained in unregulated capitalism, and to provide necessary goods, such as unemployment compensation and healthcare, the capitalist market could not guarantee on its own.

Reagan and his ideological allies challenged this consensus. According to Reagan, instead of protecting and supporting Americans, government regulation and spending harmed them. He sought to reduce spending and regulations in order to unshackle the market from
government, and, as he put it in 1981, “Unleash the energy and genius of the American people, traits which have never failed us.”

Reagan “insisted that the market aided the needy more capably than welfare,” generating “jobs and prosperity for all.”

According to Gareth Davies, Reagan thought “poverty could be eliminated, if only capitalism—a universally efficacious and just economic system—were liberated from the leviathan state.”

Rather than concentrating power and depriving Americans of their livelihoods, capitalism comprehensively disseminated prosperity.

Neoliberalism contests the liberal consensus’s insistence on the need for government intervention into the economy. Neoliberalism calls for laissez-faire economic policies, opposing government regulation of industries, and welfare spending, among other forms of government intervention. In the 1990s, neoliberal champion Bill Clinton signed legislation deregulating the financial industry and ending guaranteed welfare for poor people with children. According to neoliberals, government intervention limits the capitalist market’s beneficial capacities. Neoliberals see the market as the most democratic, moral, and rational economic system. According to neoliberals, as Lawrence Grossberg observes, the market is “everything the United States is supposed to stand for, including the very meaning and practice of democracy and freedom.”

Also, contrary to liberal notions that unregulated capitalism rewards avarice, neoliberals find the market to be, according to Grossberg, “an agent of morality, rewarding good behavior and punishing evil.”

---


49 Asen, *Visions of Poverty*, 111, 205


51 Grossberg, *Caught in the Crossfire*, 118.

52 Grossberg, *Caught in the Crossfire*, 118.
Conservatives believe that markets are the most rational mechanism for allocating resources. Government cannot move with adequate speed to account for changing economic conditions, do not have the profit motive that drives the efficiency of private enterprise, and lack the necessary information to make informed choices to account for diverse preferences and interests. Therefore, as much as possible should be marketized, including schools, utilities, prisons, and healthcare, in order to take advantage of consumer expertise and private enterprise’s efficiency. Altogether, because of the market’s immense and obvious virtues, limiting its reach and intervening into its operation is irrational, undemocratic, and immoral.

Welfare’s disruption of the traditional family

Aid to Families with Dependent Children, what welfare was known as before 1996’s welfare reform ended guaranteed welfare payments for poor children, was established during the New Deal. It was expanded throughout the 1960s and 1970s. It was intended to guarantee families with children a sustaining livelihood. However, welfare’s critics argued that instead of improving livelihoods, welfare harmed families’ quality of life.

According to its critics, welfare destroys traditional two-parent families, or prevents their formation in the first place. Critics allege that providing money for each child born to single-mothers welfare provided incentives for having additional children. Also, disqualifying two-parent families creates a financial incentive for parents to not get married. Such arguments gained legitimacy after the 1985 publication of Charles Murray’s Losing Ground, which purported to statistically prove the destructive effects welfare had on two-parent families.
These arguments underlay welfare reform efforts begun in the 1980s and succeeding in the 1990s. Lisa Gring-Pemble found that participants in Congressional hearings and debates that preceded the 1996 passage of the Personal Responsibility, Work, Opportunity, and Reconciliation Act (PRWORA)—which ended welfare’s entitlement status and imposed work-requirements on its recipients—blamed welfare specifically for instituting a vicious cycle of poverty. According to these claims, welfare impaired its recipients’ ability to participate in American economic life because of the injuries it inflicted on the traditional, two-parent family. The Congressional debates sought to affirm marriage as the foundation of society, “the crucible of American civilization: families safeguard core values by transmitting them to their children, a process that ensures a thriving and productive citizenship.”

If the family is interrupted by welfare, so is the transmission of American values necessary for thriving in America, especially in its job market to subsequent generations.

Celebrations of the traditional family became shorthand for attacks on structural efforts made by liberals to reduce poverty and racial inequality. Dana Cloud, examining the rhetoric of both the Democratic and Republican candidates for the presidency in 1992, asserts that the family values arguments that underpinned attacks on welfare had larger goals than discrediting welfare alone, but aimed to “emphasize[] personal responsibility rather than social context,” enabling the argument’s purveyors to reject the “material redress of economic need or the remediation of structural racism.” Instead of being the result of structural forces in society and the economy, welfare’s critics sought to portray the problems

---


of America’s poor as problems with its families. Ruth Sidel argues that “the demonizing of poor single mothers has been an integral part of the recent onslaught on the safety net.”

The crisis of expert authority

Social science research and knowledge underlay many of the liberal consensus’s projects. Political decisions were conceived of as technical and not ideological decisions, based on social scientific findings derived from the rational application of scientific methods. Contesting its purported apolitical character, critics have alleged that the academic knowledge utilized in the liberal consensus’s project was corrupted by academia’s alleged relativism, which accepted all cultures and cultural practices as equal and worthy of respect. Critics charged that by validating alternative worldviews, relativist research abandoned the work of great Western philosophers and literary figures, the ideas of early-American political thinkers, and the basic American traditions of respect for family life and governmental authority, especially the police and military.

There is long history of the denigration of academic knowledge. The ridiculed ‘egghead’ figure emerged in the 1950s, denoting intellectuals, including academics. Aaron Lecklider notes that ‘eggheads’ were constructed as anti-populist and dedicated to attacking traditional value systems. The egghead was also subversive, “so detached from the populist structures of American politics and the day-to-day operations of American industry that he could manage nothing more productive than to take out his frustrations by cooking up nasty

---


theories about the society that sustained him." Vice President Spiro Agnew regularly inveighed against academics in the late 1960s and 1970s. He charged that in academia, “The lessons of the past are ignored and obliterated…a spirit of national masochism prevails, encouraged by an effete corps of impudent snobs who characterize themselves as intellectuals.”

In the decades following Agnew’s vitriol, the academy, especially the social sciences, has been criticized for its alleged relativism and political correctness. According to Allan Bloom, in today’s academy, relativism “is a moral imperative because its opposite is discrimination. This folly means that men are not permitted to seek for the natural human good and admire it when found, for such discovery is coeval with the discovery of the bad and contempt for it.” To its critics, the goal of academic research is to denigrate Western culture and promote leftist politics, minority cultures and alternative lifestyles. Academic critic and Hoover Institution fellow Victor Davis Hanson argues that the academy seeks to demonstrate “that the West—and the United States in particular—is inherently pathological, and has habitually oppressed the ‘other’ (at least when it was not borrowing or stealing the latter’s culture and superior ideas).” Hanson finds that academics resort to unethical means to prove the depravity of the West. They construct this narrative of Western exploitation by

---

57 Lecklider, “Inventing the Egghead,” 262.


“using selective evidence, applying asymmetrical standards of criticism,” and when “facts intervene, they are ignored or explained away.”

Critics charge that academics find fundamental capitalist concepts necessarily exploitative and oppressive. According to Manhattan Institute fellow James Piereson, “our colleges and universities” argue that Western oppression “result[s] in large part [from] the nation’s commitment to property, individual rights, and the free market.” Therefore, allegations of oppression are tantamount to attacks on these concepts as well, enabling unjustified criticisms of capitalism. Hanson sees a tight relationship between attacks on Western civilization and leftist policy efforts. He argues, “Once the anti-Western narrative is canonized, all sorts of curriculum experts, community activists, special consultants, and politicians are needed to translate the new academic wisdom from the university to the pragmatic applications in the real world,” such as welfare and capitalist regulation. Leftist politics are ‘dividends’ of narratives critical of Western exploitation.

According to such critics, these misguided and corrupt academic practices mar the integrity and usefulness of any policy work that emerges from the academy. For example, according to this way of thinking, social science-informed welfare systems that provide money to single parents implicitly denigrate the value of traditional two-parent families. Rehabilitation efforts deriving from psychology and sociology that attempt to engage with the socioeconomic circumstances of offenders’ lives ignore universal standards of conduct.

---

61 Hanson, “History Upside Down,” 192, 195


63 Hanson, “History Upside Down,” 199.
and offer excuses for deviant behavior. Similarly, wrongly blaming capitalism for inequality and suffering ignores its obvious beneficence.

Altogether, academia’s detractors allege that academic experts have abandoned valuable traditions and clear standards of good and bad in their efforts to establish the legitimacy of minority cultures and non-traditional lifestyles in the United States. Critics of knowledge-based expertise have sought to replace expert knowledge with common sense, whose authority derives from life-experience rather than knowledge. Hence, knowledge of family finances provides a similar authority to evaluate macroeconomic policy. “Making it on one’s own” reveals the folly of welfare, and having friends of multiple races shows that racism is over. These views should, it is held, trump academic research, because the lived experience substantiating them cannot be wrong.64

**Role of the Media in Elevating Experience**

Media played a great role in elevating experience above expert knowledge. News accounts of issues and events are routed through individual narratives and confessions. For example, stories about taxes will focus on the condition of one taxpayer and, importantly, his or her feelings about his tax situation, instead of offering a macro-level analysis of tax codes and their history. However, a thinned out version of experience emerges in media accounts, one devoid of the nuance and complexity that expert knowledge, at its best, examines and

---

64 Conservatives have also attacked natural science research emerging from the academy. However, these attacks differ from those I am concerned with in that they pay lip service to the importance and legitimacy of scientific research. Conservatives use marginal scientists who affirm their ideological beliefs, but they still endeavor to establish a scientific veneer to their ideological positions. In the social sciences, trying to establish a scientific authority to social problems immediately delegitimizes whatever findings such efforts assert.
describes. Any individual narrative can be an avenue to understanding social complexity, but that is not the task of individual narratives in current media. Rather, they simply provide anecdote and personal confessions in place of analysis. This trend complements and buttresses victims’ rights efforts to elevate experience over expertise.

Theoretical Orientation

This discussion of my theoretical orientation begins by describing my cultural studies approach, which involves its contextualism, anti-essentialism, and anti-anti-essentialism, its concept of articulation, and an emphasis on the study of conjunctures. I also explore the 1978 book *Policing the Crisis*, coauthored by Stuart Hall, Chas Critcher, Tony Jefferson, John Clarke, and Brian Roberts. This text exemplifies the use of the concept of articulation to examine political change, and serves as an inspiration for this project.

Cultural Studies

Cultural studies uses objects and events to better understand contexts and conjunctures. Lawrence Grossberg describes cultural studies as a radically contextualist project, in which the “context is the beginning and end of our researches.”

65 Examining any object or event is only constructive to the degree that it illuminates the dimensions and relations of a specific context. Contexts are articulated unities of many relations and practices, with articulation understood as the “ongoing effort (or process) to make, unmake,

---

and remake relations, structures, and unity (on top of differences).”

According to Stuart Hall, an articulation is a “form of connection that can make a unity of two different elements, under certain conditions. It is a linkage which is not necessary, determined, absolute, and essential for all time.” The linkages produce the unities, not vice versa, as apparent unities—events, objects, practices—are only articulations of relations. Cultural studies’ understanding of contextualism is defined by the “idea of ‘relationality’, an idea that postulates a relation that precedes—is more fundamental ontologically—that the terms of the relationship.”

In understanding events and objects relationally, cultural studies seeks to avoid universalisms and essentialisms, insisting on the contingency and overdetermined quality of all contexts and the objects formed within them. Cultural studies’ anti-essentialism derives from its acceptance “that there are no guarantees of identity or effects outside of the determinations of a particular context.” Accordingly, any object or event within a context is determined by its relationship with other objects or events; the context can be seen as a unity that can be articulated in multiple ways. Therefore, as the context is continually rearticulated, objects, events, and identities determined by the relations of that context are subject to rearticulation as well.

This definition of anti-essentialism accepts that identities and effects exist, even if they are neither permanent nor essential. Paul Gilroy terms this insistence on identity and effects anti-anti-essentialism. In *The Black Atlantic*, Gilroy utilizes the concept to reject both essentialist notions of a pure reproduction of an absolutely exceptional black culture as well as efforts to totally dismiss and deconstruct black culture itself. In the former, the effects are guaranteed across contexts; in the latter, by contrast, the effects of blackness are dispelled in all contexts. In contrast to both positions, Gilroy’s anti-anti-essentialism finds blackness to be a “coherent (if not always stable) experiential sense of self,” that is “the product of social practices.” Although lacking an essence, blackness exists by virtue of the consistency of social practices, developed in response to, among other things, racism. Denying blackness’s existence is, according to Gilroy, a denial of “the undiminished power of racism itself and forsaking the mass of black people who continue to comprehend their lived particularity through what it does to them.”

As with Gilroy’s understanding of black racial subjectivity, the victims' rights movement itself and the victims articulated within the victims' rights movement are articulating relations and practices, rather than expressing a natural response to victimization or of the needs of a natural victim him/herself. The questions and problems of victims' rights movement’s addresses and shapes could be articulated differently, with, consequently, the victim produced in the victims' rights movement differing as well. For example, victims' rights could have been articulated in terms of social support for victims. Also, victims could have been articulated as psychologically unaffected by the criminal justice system’s

---


treatment of offenders. As Hall puts it, there is “no necessary, intrinsic, transhistorical” content to either the category victims or the victims’ rights movement. Nevertheless, following Gilroy’s anti-anti-essentialism, there is a consistent set of social practices in the victims' rights movement itself that produces a coherent victimhood and brings real political and social effects. In the victims' rights movement, victims expect and pursue participation, prosecution, and punishment. These expectations and the actions that seem to necessarily follow create a stable victim-identity, one who needs participation in the criminal justice system and harsh punishment of offenders to heal from the crime.

Understanding the articulation of victims’ rights enables a more nuanced diagnosis of the current conjuncture. A conjuncture, like a context, is “a complex overdetermined and contingent unity.” In a conjunctural moment, the social formation is “fractured and conflictual.” In such a moment, one in which an accumulation of contradictions puts the social formation as a whole into crisis. According to Hall, understanding conjunctures has been the central task of cultural studies. As quoted by Grossberg, Hall says that the ‘‘commitment to understanding a conjuncture is what from the beginning we thought cultural studies was about.’’

This dissertation examines how victims’ rights was articulated to and operated within the struggle between the liberal consensus and its conservative critics in the current conjuncture. The struggle over the liberal consensus has cast into doubt the role of government in supporting the poor, with its critics maintaining that government’s role in

72 Grossberg, “History, Politics”, 54.
74 Grossberg, “Does Cultural Studies have a Future,” 4.
75 Grossberg, “Does Cultural Studies have a Future,” 4
assisting the poor should be minimized. Victims’ rights coheres with numerous elements of attacks on the liberal consensus. It valorizes an experienced-based conception of authority; it promotes a conception of the traditional family as one that guarantees socioeconomic viability, yet whose integrity is threatened by government programs; victims’ rights presents an egalitarian picture of socioeconomic relations; finally, it is an attack on the integrity of the concept of society. Each of these elements of victims’ rights contradicts the liberal consensus, thereby bolstering conservative critics in their struggle with the liberal consensus in the current conjuncture.

_Policing the Crisis_

_Policing the Crisis_’s primary analytical focus is the discursive articulations of crime, culture, and politics. Focusing on Britain between the mid-1960s and mid-1970s, it describes the crisis of the post-war consensus of social welfare spending and government economic intervention. It examines a series of articulations of varying scales, beginning with the articulation of a supposed epidemic of muggings committed by black youths in the early-1970s. Muggings were seen, for example in the newspaper _The Daily Mirror_, as a “frightening new strain of crime.” Superscript 76 This “epidemic” was all the more frightening because the perpetrators of these muggings were assumed to be black, who were relatively recent arrivals to Britain, and perceived as threatening to white British identity.

However, _Policing the Crisis_ demonstrates that far from being a new phenomenon, mugging was simply a new label for a crime that had existed for a century: robbery or assault with intent to rob. Also, the book explains that the rate of increase in its occurrence was

---

slowing when the problem was purportedly emerging. *Policing the Crisis*’s authors conclude, “The facts about the crimes which both the police and the media were describing as ‘novel’ were not new; what was new was the way the label [mugging] helped to break up and recategorize the general field of crime.”77 It was the way in which it was articulated as an epidemic, not the crime itself, which emerged in the early 1970’s.

Judges, politicians, and the police argued that the mugging epidemic was caused by the criminal justice system’s lenient treatment of criminals. Their analysis of mugging’s causes and the argument for solving mugging was as follows: “rapid increase in crimes of violence plus ‘soft’ sentencing policy equals need to return to traditional ‘tough’ or deterrent measures.”78 The answer to mugging was to get tough on muggers, through enhanced police tactics and longer prison sentences.

This approach to mugging implicitly defended a specific construction of British identity, threatened by criminality itself. Criminality signaled the decline of a certain tough British identity characterized by “self-reliance, self-control, the self-sacrifice for long-term goals and the competitive struggle which alone yields reward for the individual and the family.”79 Criminals, by contrast rejected self-reliance and self-control, taking the easy route to quick money by preying on other people rather than working for themselves, gaining rewards “without a day’s honest toil.”80 By being tough on them, the criminal justice system insisted on the virtue of disciplined self-reliance and self-control.

77 Hall et al., *Policing the Crisis*, 29.
78 Hall et al., *Policing the Crisis*, 9.
79 Hall et al., *Policing the Crisis*, 143.
80 Hall et al., *Policing the Crisis*, 61.
Muggers represented a double threat to British identity, as they not were not just criminals, they were black criminals. Blacks were seen as inferior to whites as a result of England’s colonial history, which had conquered “barbaric” peoples around the globe. The same people the British had colonized had, however, recently begun to arrive to live in England, disrupting the purity of white England.\textsuperscript{81} The press readily identified muggers with these immigrants, by identifying both the muggers as black and the areas in which the muggings occurred and the muggers lived as black. Black muggers represented a two-fold assault on British identity: both on its superior whiteness and its virtue of self-control and self-reliance.

\textit{Policing the Crisis} describes the supposed mugging “epidemic” as just one of many articulations of the crisis of the post-war British consensus. In addition to criminals subverting British self-reliance and self-control, anti-war protesters were taking over university buildings; political militants spoke of “bringing the war back home;”\textsuperscript{82} rock stars and the counter-culture were glorifying sex and drugs and degrading the traditional family; miners were constantly on strike; and welfare recipients indolently wiled their days away. Mary Whitehouse, a Christian conservative and leading critic of the so-called ‘permissive society,’ articulated the aforementioned challenges together:

The ‘Permissive Society,’ with its much vaunted ‘freedom,’ is now seen for what it is—a bitter and destructive thing. The arts are degraded, law is held in contempt and sport fouled by outbreaks of vandalism and violence. The national purse takes the strain of a health service overburdened with increasing abortion, drug addiction, mental disturbance, alcoholism and an epidemic of venereal disease.\textsuperscript{83}

\begin{flushleft}
\textsuperscript{81} Hall et al., \textit{Policing the Crisis}, 147
\textsuperscript{82} Hall et al., \textit{Policing the Crisis}, 291.
\textsuperscript{83} Hall et al., \textit{Policing the Crisis}, 287
\end{flushleft}
Just as the government needed to get tough on criminals, it needed to get tough on strikers, the counterculture, and welfare recipients. The problem with governing according to the post-war consensus, the nascent conservative wing of the Conservative Party held, was the inability to be tough on any of these groups. Accordingly, Conservatives proposed cracking down on pornography, organized labor, and drug addicts, and instituting special courts with limited due process rights for countercultural political groups.

In addition, resolving the crisis of the postwar consensus required getting tough on the British economic system itself. Under the post-war consensus, the government intervened into the economy in many ways, such as, for example, setting wages and prices and directly owning and managing industries. It also distributed welfare to the poor and expanded infrastructural and educational resources. In doing these things, it protected both businesses and the poor from the vicissitudes of the free market. However, this British social-democratic version of capitalism appeared to be in crisis, mired in a recession, with the post-war consensus seemingly without social-democratic options to lift the economy out of recession. It could not raise taxes without antagonizing the middle class, it could not cut spending without losing union support, but could not stay the course regarding spending without losing international credit. The Conservative Party’s solution included the painful measure of “deep surgical incisions” of welfare cuts.\textsuperscript{84} It also called for a “return to the discipline of the free market” by ending price controls and government subsidies.\textsuperscript{85} Without government’s assistance, businesses would fail and the poor would suffer, but the self-reliant and self-

\textsuperscript{84} Hall et al., \textit{Policing the Crisis}, 313.

\textsuperscript{85} Hall et al., \textit{Policing the Crisis}, 315.
disciplined Brit articulated by the Conservative Party would weather the storm and be the stronger for it.

_Policing the Crisis_ is an exemplar for this dissertation’s project. It demonstrates the articulated character of social phenomena. The so-called mugging epidemic did not reflect statistical or historical reality. Instead it was an articulation of a new, ominous development—mugging—in British life. Similarly, victims do not appear in their natural form in victims’ rights, but are articulated as wounded, vengeful people. Both the mugger and the victim could be articulated differently; indeed, both have been at different historical junctures. _Policing the Crisis_ also shows the centrality of articulatory work in political struggle. In order to advance their political and economic agenda, British conservatives articulated a series of sites as in crisis and then articulated them together to create the impression of a general crisis in the direction of the country. My dissertation describes some of the articulatory work done by American conservatives to achieve their goals. The promotion of victims’ rights stresses the importance of deference to individuals, not society. Finally, the British post-war consensus and the American liberal consensus shared many features, including support for organized labor and government interventions into the economy. In this dissertation, I endeavor to discuss the decline of the liberal consensus through victims’ rights just as _Policing the Crisis_ examines the crisis of the post-war British consensus through the mugging “epidemic.”
Cultural Studies and Victims’ Rights

There has been limited cultural studies work on victims’ rights. Two books offer cultural studies analysis of victims' rights. Both share the assumption that victims and victims’ rights are articulations rather than expressions of or a response to some sort of natural victim-identity. Carrie Rentschler’s *Second Wounds: Victims’ Rights and the Media in the U.S.* however, for the most part, does not link victims’ rights to other political movements, as I attempt to do. In the other, *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear*, Jonathan Simon devotes one chapter to linking victims’ rights to other political developments, specifically attacks on the liberal consensus.

*Carrie Rentschler’s Second Wounds: Victims’ Rights and the Media in the U.S.*

Carrie Rentschler’s *Second Wounds: Victims’ Rights and the Media in the U.S.* considers the work of non-governmental organizations devoted to advancing victims’ rights, by examining materials such as their websites and media training materials distributed to journalists. She focuses on the work of what she terms “secondary victims,” close family members of murder victims and others directly harmed by the criminal act. Rentshcler seeks to account “for how people come to occupy the political subject position of victim when they are the secondary victims of crime,” and the discursive dimensions of that occupation.86 She finds that the secondary victim phenomenon has expanded the forms of victimization. It is no longer only those who were directly victimized who count as victims in the criminal justice

---

and political systems, but their family members as well, who now influence legislation and participate in the criminal justice system.

For example, Rentschler looks at victims’ rights organizations’ training materials about engaging with the press and finds that they construct encounters with the press as both therapeutic for and potentially destructive to secondary victims. Also, she points out the ways that the portrayal of child victims of the Oklahoma City bombing in *The Oklahoman* mirrors the rhetoric of the anti-abortion movement by focusing on the untimely death of innocent victims. In this latter example, Rentschler links victims' rights discourse to seemingly unrelated discourse, that of the anti-abortion movement. This maneuver of articulating seemingly unrelated discourses is one I also attempt in my dissertation, linking the victims' rights movement to neoliberalism and the decline of the liberal consensus. However, such linkages are not the focus of Rentschler’s book, as her analysis primarily involves the ways various types of victims' rights materials provide a language of secondary victimization.

We share the assumption that the victims' rights movement is an articulated discourse rather than a natural response to victimization. We both assume that victims constructed by the victims' rights movement are articulations rather than natural expressions of victimization. She argues against victims’ rights assumptions of the natural vindictiveness of victims by focusing on the works of victims’ organizations critical of the tough-on-crime orientation of the victims’ rights movement, such as Murder Victims Families for Reconciliation. These organizations deny that the use of violence enables secondary victims to heal from the crime’s trauma, a central tenet of victims’ rights.

*Jonathan Simon’s Governing Through Crime*
Jonathan Simon’s *Governing Through Crime* shares my approach and focuses on the decline of the liberal consensus. In it, Simon argues that beginning in the 1960s, federal legislation valorized the crime victim as a figure worthy of concern and respect, making the crime victim, in Simon’s words, an “idealized political subject.” By “idealized political subject” Simon means a figure that demarcates the “proper scope and approach of government,” “whose circumstances and experiences have come to stand for the general good.”87 Simon argues that in American politics, how government addresses the plight of crime victims now sets the terms for how government should address other political issues.

According to Simon, the construction of the crime victim as an idealized political subject began with the 1968 “Omnibus Crime Control and Safe Streets Act,” which, among other provisions, authorized wire-tapping without a court order under certain circumstances and provided millions of dollars in grants to law enforcement agencies to develop new law enforcement programs. He argues that “Crime victims themselves remain just beneath the surface of the 1968 Act.”88 Simon’s evidence for the presence of crime victims in the legislation is Lyndon Johnson’s repeated expressions of concern for crime generally, rather than any provisions addressing victims in the legislation or explicit references to victims in political discourse. Talking about crime, Simon suggests, is tantamount to talking about victims, a conflation frequently made by politicians beginning in the late 1960s.

By the 1990s, the victims’ rights movement was firmly established. Simons notes that in contrast to the 1968 “Safe Streets” act, crime victims are explicitly addressed in 1994’s “Violent Crime Control and Law Enforcement Act.” The act provided victims and their

---


families the right to make statements concerning sentencing and parole decisions, “equivalent to the opportunity accorded to the offender to address the sentencing court or parole board.”  

Simon suggests that the act promotes a certain kind of victim voice, that of “extremity, anger, and vengeance.”  

Victims, in Simon’s view, are not only angry with offenders, but with the alleged treachery of liberal government that enables victimization. Liberal government’s due process protections, “adversary process, bail, and parole [allows] people known (or believed) by the police to be criminals to leave prison early (or evade it altogether)” to victimize anew.  

This analysis did not always prevail. Simon discusses how civil rights advocates and feminists blamed racial and sexual violence on racial and gender domination. The state’s failure to prosecute racial and sexual violence “constituted searing proof of the extreme asymmetries of race and gender relations, forms of violence that belied the claims of a moral foundation to existing hierarchies.” By contrast, victimization after victims’ rights has nothing to do with social domination, but is concerned with “big government itself,” its “elitism, poor morals, and perhaps corruption.”  

Racism and sexism are discarded as explanations in favor or liberal treachery and decadence.

Once differentiated from the civil rights’ and feminist critiques of social hierarchies, the crime victim is easily linked to another ‘victim’ identity: that of the taxpayer outraged by liberal government, who is “victimized by government, threatened with the loss of wealth


and even the ability to own a home by an avaricious political establishment.”

This linkage makes the besieged taxpayer an idealized political subject, whose interests are of paramount importance. Just as politicians have sought to align themselves with crime victims, lawmakers have striven to “never appear adverse to the interests of a political subject that is both taxpayer and (potential) crime victim.” Simon argues that crime victims “are in a real sense the representative subjects of our time. It is as crime victims that Americans are most readily imagined as united.” Political movements that link to victims’ rights capitalize on the universality of the crime victim subject, thereby universalizing their interests as well.

Simon emphasizes the linkages between crime policy and larger American political formations. In examining the link between victims’ rights and the articulated plight of the American tax payers, Simon indirectly illuminates the connection between victims’ rights and the decline of the liberal consensus. As discussed above, critics of the liberal consensus argued that its efforts to redistribute resources via taxation violated the rights of taxpayers, a contention that implicitly questioned the salience of the concept of society underlying liberal redistributive efforts. This type of linkage is precisely what I attempt to expose throughout my dissertation.

But Simon devotes just one chapter of his book to questions of crime victims. My analysis considers many elements of the victims’ rights movement that Simon does not, including the phenomenon of famous victims and prosecutors and judges making legal decisions on behalf of victims. I also examine articulations of crime victims, specifically

---

victims of domestic violence, before the ascent of victims’ rights. Finally, I look at several other ways victims’ rights relates to the liberal consensus, including its impact on the status of authority, and its articulations of the traditional family and socioeconomic mobility.

**Relationship between Victims’ Rights and Civil Rights and Feminist Critiques**

At first blush, victims’ rights shares elements with feminist and civil rights critiques. All are concerned with gaining power for populations that previously lacked it. Also, all called for ameliorating the harm caused by victimization. However, victims’ rights and feminist and civil rights critiques actually share very little. For victims’ rights advocates, crime is committed by bad people only because they are bad. This analysis negates political and social analysis along the lines of feminist and civil rights critiques, as it roots the causes of victimization in the evil of perpetrators and nothing more. Further, victims’ rights advocates are aligned with tough-on-crime advocates, who blame crime problems on a criminal justice system that is insufficiently harsh on criminals by wrongly focusing on rehabilitation. Rehabilitation ideas are to some degree consistent with strains of feminist and civil rights thought, as all endorse providing socioeconomic resources to change life chances. Therefore, the victims’ rights movement opposes fundamental aspects of feminist and civil rights critiques.
Chapter Summaries

The dissertation proceeds chronologically through the development of victims’ rights. Chapter one focuses on the 1960s, 1970s, and 1980s; Chapter two describes the 1970s, 1980s, and 1990s; chapter three examines the 2000s, and chapter four the 2000s and 2010s.

Chapter one details the epistemological assumptions underlying the victims’ rights movement. The rest of the dissertation moves from private to public spaces. Chapter two focuses on the ways the family is configured in anti-domestic violence activism, and the rejection of that configuration in current anti-domestic violence policy framed by the victims’ rights movement. This vision of the family contrasts with the victims’ rights vision of family relations I examine in chapter three. In addition to the examination of the victims’ rights family, chapter three discusses the public space of broader political and economic relations between the dominant and subordinate classes in America. Finally, chapter four focuses entirely on public relations: the centrality of the concept of society in the liberal consensus and theories of punishment, and its absence in victims’ rights.

The discussion of the liberal consensus does not move chronologically like my discussion of victims’ rights. I examine Lyndon Johnson in chapter three, who served as president after Harry Truman, who is discussed in chapter four. This non-chronological order preserves the movement from private to public spaces in my dissertation.

Chapter One

Chapter one examines the rearticulation of the liberal consensus’s knowledge-based conception of authority by the victims’ rights movement between 1968 and 1983. In the
liberal consensus, authority in government was presented as if it was based on expert knowledge, founded on and gained through, primarily, academic education or professional experience. For example, a sociologist has authority to produce anti-poverty policy after studying poverty for years. By contrast, victims’ rights rearticulated authority as properly based on life experience rather than knowledge. Under this conception, experience gives people expertise in a specific area even without any specific knowledge of that area. For example, if one knows how one’s household spends money, one has authority about national fiscal policy.

I begin the chapter by comparing Richard Nixon’s articulation of authority in his 1968 presidential campaign to his articulation of authority as president. During his 1968 campaign, Nixon deployed the experienced-based articulation of authority, by arguing that Americans understood both the dimensions of and necessary solutions to America’s crime problem merely because they live in the United States. As president, however, he articulated authority as being properly based on expert knowledge, relying on experts to improve prisoner rehabilitation efforts in the federal system. Such experts included psychiatrists, criminologists, and sociologists.

This reliance on expertise stood in contrast to the work of another figure, Frank Carrington, discussed in this introduction, supported punishment as the proper solution to victimization. Carrington’s term “victims’ rights” was virtually absent from news coverage of crime victims in the 1970s, except in connection to him. Carrington utilized the experience of actual victims for his tough-on-crime advocacy.

Carrington generally advocated increasing the role of the victim in policy decisions and in individual cases. He valorized the evidentiary value of victims’ experience, and
dismissed social science research precisely because it is based on knowledge rather than the experience of victims. I examine the continuities between Carrington’s work and the Reagan Administration’s Task Force on Victims’ of Violence, on which Carrington served. The Task Force released its influential report in 1982, the first major political document supporting the nascent victims' rights movement. The report, which covered a wide range of topics, including bail decisions, criminal procedure, and sentencing laws, was based primarily on the views of crime victims. Adopting Carrington’s logic, the report argues that victims should have more influence over sentencing decisions than social workers and psychiatrists because such experts lack the experience of victimization, making them illegitimate authorities. The report constitutes a fitting end to the chapter, as it demonstrates the increased acceptance of the authority of experience. Reagan, like Nixon, advocated for experience-based authority as a presidential candidate. However, unlike Nixon, he also utilized it as president. The chapter concludes by considering ways that the attack on authority dovetails with new conservative articulations.

Chapter Two

Chapter two examines a response to victimization rejected by the victims’ rights movement: comprehensive material services for victims. Bypassing material services preserves notions of the inherent goodness and self-sufficiency of the family, which is used as the basis of attacks on one of the central elements of the liberal consensus: the need for a (modest) welfare state. In this chapter I discuss a type of victimization that indicates that the family is not necessarily good or self-sufficient: domestic violence, a type of victimization that necessitates material support for victims. However, domestic violence policy developed
in such a way as to silence critiques of the traditional family and its attendant calls for material support. I suggest that this course of development was due to the hegemony of the victims’ rights’ model that privileged criminal justice responses to victimization over material support. Chapter two describes a path not taken in responding to victimization. My consideration of this unchosen path sets the stage for my discussion of the path chosen—victims’ rights—described in chapter three, which not only preserved the traditional family, but glorified it.

In chapter two, I describe how early-domestic violence activism in the 1970s rooted domestic violence in traditional gender roles and the socioeconomic subordination of women. It held that men were socialized to enforce their authority in the traditional family through violence, and that women were unable to escape abusive situations because they did not have the material resources to live independently of their abusers. Anti-domestic violence activists proposed providing comprehensive social welfare resources to victims to enable them to live independently of their abusers.

This version of the family contests the conservative articulation of the traditional family. Conservatives articulate the family as a self-sustaining unit, able through its normal operation to materially and emotionally provide for its members. The gravest threat to this self-sustaining family is welfare, which, according to conservatives, provides incentives for women to have illegitimate children and fathers to leave families. Welfare and the family exist in a zero-sum game; supporting welfare enfeebles the traditional family, and strong traditional families make welfare programs obsolete. Accordingly, attacks on welfare since the 1980s focus their criticisms around its allegedly destructive effects on the family.
By contrast, for anti-domestic violence activists, the family was often a self-destructive unit. Also, welfare enhanced the health of family damaged by domestic violence, and did not compromise it. It would appear that the anti-domestic violence articulation of the family had a strong case: millions of incidents of domestic violence occur annually, and many incidents are repeat victimizations. Conservatives, heading off the threat of anti-domestic violence activism, fashioned their own domestic violence rhetoric, which absolved traditional family norms and female subordination of any responsibility for domestic violence. Instead, according to a 1984 report issued by the Reagan Administration, domestic violence was due to aberrant assailants, who commit assaults for no discernible reason but malevolence, a malevolence best remedied through aggressive prosecutions and sanctions. This version of domestic violence has carried the day, as even anti-domestic violence policy championed by Democrats—who are presumably more amenable to welfare support for victims—follows the Reagan report’s template of minimal welfare support for victims and vigorous enforcement of criminal violations. This version of domestic violence preserves the self-sustaining mythos of the family that underlies conservative attacks on welfare.

I assert that the criminal justice emphasis in domestic violence policy receives political support because of the dominance of victims’ rights. Like conservative domestic violence policy, victims’ rights attributes violence to aberrant individuals rather than socioeconomic causes, and responds to victimization through harsh sanctions, rather than material support for victims. The early anti-domestic violence and victims’ rights approaches are fundamentally incompatible: only one could emerge as the response to victimization. Similarly, welfare and valorization of the traditional family are incompatible articulations, and only one could become the dominant way of addressing family structure. In the chapter’s
conclusion, I note that both victims’ rights and its valorization of the traditional family have carried the day.

Chapter Three

In chapter three, I examine the Mark Lunsford narrative, a victims’ rights crusader whose daughter Jessica was raped and killed by a previously-convicted sex offender. Since his daughter’s death in 2005, Lunsford crusaded across the country demanding that states pass ‘Jessica’s Law,’ which dramatically lengthens prison terms and intensifies post-prison surveillance, mandating lifetime registration and electronic tracking. He has been very successful: over 40 states have passed versions of ‘Jessica’s Law.’ Through his campaign Lunsford became a media celebrity and has been treated as a policy authority by media outlets and powerful politicians.

Lunsford is a novel political advocate. At the time of his daughter’s murder he was a high school dropout and dump-truck driver living with his parents in a trailer home in rural Florida. He presented himself as a tough-talking, salt of the earth motorcycle enthusiast, with long hair, jeans, and an ever-present baseball cap. Despite his socioeconomically subordinate location, Lunsford gained access to the highest levels of political power, meeting with powerful figures and playing a central role in the passage of sex offender legislation across the country. He embodied the possibility of socioeconomic mobility typically unavailable to the socioeconomically subordinate poor and working class. If Lunsford can reach such heights, perhaps socioeconomic subordination is not a barrier to enjoying socioeconomic mobility.
This chapter addresses the disarticulation of the liberal consensus’s contention that forms of capitalism can immobilize Americans and its attendant doubts about the necessary beneficence of unregulated capitalism. I contrast the optimism of the Lunsford narrative with Lyndon Johnson’s and Franklin Roosevelt’s descriptions of the inegalitarianism and immobilizing effects of the American economic and political system, and with the policies they put in place to minimize these effects. Roosevelt posited that without government intervention, big business would paralyze workers and consumers in their socioeconomic locations. Johnson argued that the poor would not be able to escape poverty without government assistance. By contrast, Republicans reject the position that unregulated capitalism necessarily immobilizes subordinate populations, most recently by advancing a ‘job creator’ discourse that denies the adversarial character of capitalism and silences concerns about the exploitative character of big business and the inability of capitalism to ensure mobility. I argue that narratives like Lunsford’s strengthen discourses celebrating the socioeconomic mobility of capitalism by articulating an egalitarian political system in which economic subordination is no obstacle to socioeconomic mobility, and in which the rich and poor have identical socioeconomic and political objectives. It also advances this contention by glorifying family relations, which, as discussed in chapter two, are arranged in a zero-sum game with government socioeconomic support. In this instance, the discourse valorizing Lunsford’s fatherhood weakens the need for welfare.

Chapter Four

In chapter four I explore the absence of society from victims’ rights discourse. I utilize two different victims’ rights practices to make this case. The first is the practice of
enabling indirect and direct victims to view executions; my examples are John Ashcroft’s 2001 decision to allow victims or victims’ family members to view McVeigh’s execution, and the Texas Board of Corrections 1996 decision to allow indirect victims to view executions. I examine the absence of any concept of ‘society’ from discussions of both decisions. The second practice I consider is that of inviting victims to influence prosecutorial and judicial decisions. I provide numerous examples from North Carolina and South Carolina between 2009 and 2012 in which prosecutors and judges cited victims’ interests as justification for their pleas or sentencing decisions. Society is not discussed when the propriety of victims participation is addressed; as a result of this absence, it is treated as if it had no interests in the course of the criminal justice system, and, ultimately, does not exist as a consideration.

I argue that this excision of larger social concerns from criminal justice is unprecedented. Social needs have always been the central consideration in penological theory, from Kant and Hegel to recent conservative criticisms of rehabilitation. Whether punishment is justified in order to rehabilitate offenders, achieve retribution, deter future offending, or incapacitate dangerous offenders, society’s interests are central. I describe the ways that American criminal justice has historically used punishment to advance societal aims, to demonstrate society’s historical centrality in penological practices.

I counterpose the absence of society in victims’ rights to its centrality in two other discourses: Harry Truman’s Fair Deal and John Locke’s conception of political society. I conclude by arguing that, without the consideration of social needs or a conception of society, neither the liberal consensus nor the United States Constitution as a document
founding a political society are possible. In the latter case, the result is that the Constitution is reduced to a ratification of an economic community.

Conclusion

My conclusion presents restorative justice as an alternative to victims’ rights, one that accommodates the tenets of the liberal consensus. Restorative justice takes many forms, but generally is a response to victimization in which offenders, victims, and members of the community meet to discuss the best way to repair the harm caused by the offender’s victimization of the victim. There are many types of repairs, including restitution, apologies and the assumption of responsibility by offenders, and psychological, medical, and other types of material support. Restorative justice valorizes knowledge-based authority, rejects the existence of unlimited socioeconomic mobility, endorses a strong view of society, and asserts that the nuclear family is not enough to ensure the care of its members, all positions that accord with the liberal consensus.

Personal Investment

Both of my parents were public defenders when I was very young, and their representation of indigent defendants lingered in my head as a crucial method of protecting poor people as I was growing up and in college. In 1979, my mother appeared in a film entitled The Shooting of Big Man, which documented a criminal trial from the defendant’s arrest through his acquittal. My mother was one of his lawyers. Part of his defense involved
bringing the jury to the scene of the crime, a seedy hotel filled with drug addicts and violent crime, in order for the jury to understand the defendant’s state of mind when he shot the victim, a fearsome predator who robbed people and sexually assaulted women. By doing this, she assumed that the jury’s perception of the defense’s case depended on where the jurors were when they heard it. An assault that may have seemed unjustified when described in a courtroom appeared justified when portrayed in the Pearl Hotel. Who the jurors were, whether they were people who were going to convict or acquit, depended on where they were and what they were doing. No concrete juror essence transcended all contextual specificity. By contrast, the victims' rights movement insists on a concrete victim essence that exists outside of any specific context in which victims appear.

Sadly, my mother was dead before the film was aired on ABC. After college, I worked as an investigator for the same public defender agency my parents served in the 1970s. I interviewed hundreds of victims, asking every one of them, “What would you like to see happen in this case?” All almost of the victims answered this question in one of two ways. Some said they wanted the defendant to get help. Others said they thought the defendant should be punished so they would learn their lesson and not commit further criminal acts. Never did a victim tell me, “I want him to be punished because it would make me feel better,” or any other statement that connected their well-being to the defendant’s sentence. These anecdotes suggest that victimization does not create a concrete essence demanding punishment, as the victims' rights movement asserts.

Perhaps, many—if not most—of them may have just been saying what they thought I wanted to hear, and they would tell the prosecutor something completely different. This raises the question, who was the real victim, the one who wanted the defendant to reform
their behavior or the one that sought punishment to make themselves feel better? It is impossible to know. In each context victims, for understandable reasons, performed their victimhood differently depending on the demands of the situation. Victimhood, accordingly, was dynamic and contingent, and not the everlasting essence victims’ rights advocates articulate.

Victims’ rights advocates cite this foundational victimhood to justify inflicting great amounts of pain on defendants and offender. While it never makes this aim explicit, the victims’ rights movement is primarily dedicated to increasing violence, through increasing prison sentences, making prison conditions harsher, and enabling more executions. Its justifies these increases in violence by citing their analgesic effect on victims, suggesting that a victim’s well-being depends on the suffering or death of another human being, a perverse and pathetic formulation.
Chapter One: Victims’ Rights’ Disarticulation of Expert Authority

Introduction

In *Nixonland*, Rick Perlstein argues that Richard Nixon’s political style fractured the United States into two opposing political formations. One formation, which Nixon termed the ‘Forgotten Americans,’ were white members of the working class, who supported the military, police, and traditional sexual and cultural mores, and also believed in the concept of American exceptionalism. Elites, on the other hand, were liberal city-dwellers and workers in the media and academy, corrupted by moral permissiveness, who held naïve political views that failed to account for the evils of communism and the counter-culture. They questioned the virtue and legitimacy of elected political leaders, the traditional family, and America’s role in the world, including its waging of the Vietnam War. According to Nixon, elites looked down upon Forgotten Americans for their “simple faiths of ordinary folk, their simple patriotism, their simple pleasures.”

To exploit this opposition, Nixon refrained from promising Forgotten Americans the educational or cultural resources needed to become elites. Instead, he pledged to stifle the elites’ insidious influence by celebrating traditional values and using them to shape federal policy. That is, he elevated Forgotten Americans above elites. Nixon and his allies

---

continually argued that the characteristics that seemingly marked elites as superior decision-makers—their education and worldliness—were precisely what disqualified them as legitimate wielders of authority.

Perlstein terms these two opposing formations, the Forgotten Americans and elites, the Orthogonians and Franklins, adopting these terms from the names of social groups at Nixon’s alma mater, Whittier College. At Whittier, Nixon was one of the Orthogonians, who were poorer, commuted to school, and continually strove to improve their social and academic position. Franklins, on the other hand, were Whittier’s “well-rounded, graceful” upper social caste, arriving at Whittier with the social and economic capital Orthogonians lacked. According to Perlstein, Nixon concluded that Orthogonians outnumbered Franklins at Whittier and in the United States, and a political candidate could win their support by appealing to their wounded pride and resentment for the imagined insults hurled and injuries inflicted by Franklins, rather than projecting a political vision in which Orthogonians endeavored to become Franklins themselves.

Nixon successfully deployed this political strategy and won two presidential elections, the second in a landslide. However, Nixon’s attitude towards the opposition between Forgotten Americans and the elites was fundamentally different while he was president, when he depended on the elites he had previously denigrated to develop policy initiatives. This shift represents Nixon’s oscillating attitude towards the proper concept of authority, and this oscillation mirrors the larger struggle for the dominant articulation of the concept of authority between two opposing views. The first articulates authority as a properly based on life experience. The second articulates authority as properly based on knowledge

obtained through research and education. As a campaigner, Nixon valorized the first articulation; as president, he utilized the second.

As in Nixon’s first victorious president campaign in 1968, Ronald Reagan’s successful 1980 presidential campaign appealed to authority predicated on experience rather than knowledge. For example, in his 1980 Republican nomination acceptance speech, he argued that the experience of economic hardship renders academic economic analysis obsolete: “Ours are not problems of abstract economic theory. Those are problems of flesh and blood; problems that cause pain and destroy the moral fiber of real people who should not suffer the further indignity of being told by the government that it is all somehow their fault.”98 In the same speech, he elevated the everyday knowledge of the people over that of economic experts and government bureaucrats by pledging that his economic policy will not be based on “any new form of [economic] tinkering or fiscal sleight-of-hand. We will simply apply to government the common sense we all use in our daily lives.”99 However, Reagan did not adopt Nixon’s shift to knowledge-based authority after his election, as evidenced in his promotion of victims’ rights early in his first term in office. Since its beginnings in the 1970s, the victims’ rights movement has relied upon experience-based conception of authority. In victims’ rights advocacy, victims themselves, whose authority is derived from their victimization, are the primary authorities, rather than academics or lawyers whose authority derives from knowledge gained through education or professional endeavors. Reagan embraced this conception of authority as both candidate and president.

---


99 Reagan, “Acceptance Speech.”
In this chapter, I examine the changing articulations of authority in American politics between 1968 and 1982 that resulted in the dominance of experience-based authority in the victims’ rights movement. I begin by examining the contradiction between Nixon’s campaign-style, predicated on experience-based authority, and his major criminal justice policy initiative, prison reform, which was guided by knowledge-based authority. I then look at the work of Frank Carrington, a lawyer whose writings, published in the 1970s, pioneered much of the discourse of the victims’ rights movement and set the stage for its emergence in the 1980s. In addition to privileging victims’ opinions, he also condemned the philosophical and ethical foundation of knowledge-based authority, a condemnation he extended to a wide variety of actors, including social workers and professors whom he termed ‘anti-victim.’ The chapter ends with a discussion of Reagan’s 1982 Task Force on Victims of Crime, examining the similarity between the articulation of authority in the Task Force’s report and that used by Nixon in his 1968 campaign.

In this chapter, I want to suggest that the adoption of an experience-based concept of authority by a sitting president and not merely a presidential candidate reflects the increased hegemony of the articulation of experience-based authority in many political issues, a change whose consequences are examined at the end of the chapter, and a change that works to promote conservative policy positions.
The Contradiction Between Nixon’s Campaign Style and Prison Reform Efforts

*Campaigning on Experience-Based Authority*

Nixon aggressively articulated the Franklin/elite versus Orthogonian/Forgotten Americans binary in his discussion of criminal justice during his 1968 presidential campaign. Criminal justice was central to Nixon’s 1968 presidential campaign. The *Chicago Tribune* declared “Crime is Nixon’s Prime Issue.” Nixon’s Vice Presidential nominee Spiro Agnew repeatedly assailed Hubert Humphrey and Democrats for being ‘soft on crime’ and proclaimed that “the words ‘law and order’ are going to ring through the campaign…Richard Nixon uses the term as a pledge, as a commitment to America.” Nixon magnified the consequences of crime by tying them to America’s foreign policy prestige. In his 1968 Republican nomination acceptance speech, Nixon claimed, a “nation that can’t keep the peace at home won’t be trusted to keep the peace abroad.”

He used issues such as ‘law and order’ to flatter the Forgotten Americans’ acuity, and held that Americans accurately evaluated problems of ‘law and order’ in the course of their everyday lives. The extensive measures Americans took to avoid victimization accurately reflected the severity of ‘law and order’ problems themselves, instead of representing a distortion of the problem. Accordingly,

> It is not a Great Society when millions of women refuse to walk in their neighborhood or visit their parks after dusk—out of fear. It is not a Great Society when millions of men buy locks for their doors and watchdogs for their homes and rifles and pistols for themselves—out of fear.

---


101 Staff, “‘Law and Order’ to be Big Issue, Agnew Says,” *Los Angeles Times*, September 5, 1968.

fear. The American people are bolting their doors and arming themselves because they are rapidly losing confidence in the capacity and determination of government to defend them and their families and their property from crime and criminals.\textsuperscript{103}

For Nixon, the fact that Americans thought there was a crime problem proved the existence of a crime problem and the risk of victimization, and thus demonstrated the need for Nixon’s aggressive ‘law and order’ policy proposals.

Nixon articulated the magnitude of the crime problem as one immediately accessible to all Americans merely through their hearing and vision. In his 1968 Republican nomination acceptance speech, Nixon surmised, “As we look at America, we see cities enveloped in smoke and flame. We hear sirens in the night.”\textsuperscript{104} Witnesses to this battleground included “the great majority of Americans, the Forgotten Americans, the non-shouters, the non-demonstrators.”\textsuperscript{105} Forgotten Americans, \textit{qua} Forgotten Americans, had not gone to school to learn criminology, nor had they worked in the criminal justice system. Instead, they “work in American factories, they run American businesses. They serve in government; they provide most of the soldiers who die to keep it free. They give drive to the spirit of America.”\textsuperscript{106} In specifying vocations that do not require post-secondary education, Nixon implicitly confirms the authority of those without such an education, who authority is possible precisely because of that lack of advanced education.


\textsuperscript{104} Nixon, “Acceptance Speech.”

\textsuperscript{105} Nixon, “Acceptance Speech.”

\textsuperscript{106} Nixon, “Acceptance Speech.”
According to Nixon, the Forgotten Americans also had the ability to execute authoritative legal analysis. In his nomination acceptance speech he proclaimed, “Let us recognize that some of our courts in their decisions have gone too far in weakening the peace forces against the criminal forces in this country,” referring to 1960s Supreme Court decisions protecting due process rights. His use of the word ‘recognize’ suggests that Forgotten Americans reach undeniable legal conclusions rather than subjective conjectures. Forgotten Americans see, not interpret. This estimation of Forgotten American’s legal acumen exemplifies Nixon’s flattering of layman authority. During his speech, Nixon shifted from referring to Forgotten Americans as ‘they’ to ‘us,’ thereby including himself among the Forgotten Americans critical of the Supreme Court. Criticisms of the Warren Court were common from conservative legal practitioners, academics, and politicians, a group that included Nixon. However, he conflates the Forgotten Americans’ legal sensibility with that of conservative legal elites by using ‘us’ in the above quote. Forgotten Americans, he asserts, are as ‘elite’ as these elites.

Nixon’s aggrandizing of the Forgotten Americans’ authority occurred through the end of Presidential campaign. It became, as the New York Times noted, his “usual apostrophe.” 107 In early September Nixon contrasted “working men” with “shouters and protestors and demonstrators,” the latter a catch-all category that included academics, civil rights leaders, celebrities, and anti-war protestors; in other words, Franklins. 108 In late September, Nixon pledged to “hear not only the clamorous voices of the organized, but also the quiet voices, the inner voice—that voices that speak from the heart and the conscience. These are the voices


that carry the real meaning and the real message of America."\textsuperscript{109} In October, he dismissed liberal and left-wing portrayals of America as a ‘sick’ society by arguing that the Forgotten Americans “weren’t sick…or if they were sick, they were sick because of what’s happened in the last four years [under Lyndon Johnson].”\textsuperscript{110} Their own health, rather than the pronouncements of experts, stood as the testament to the direction of the country. Altogether, every invocation of Forgotten Americans by Nixon glorified their epistemological authority cited in his nomination acceptance speech.

\textit{Governing with Expert Authority}

The valorization of experienced-based authority in Nixon’s campaign was contradicted by the articulation of authority guiding his criminal justice policies while president. Despite Nixon’s assertions during his campaign that personal experience and observation constitute the proper basis for policy-making authority, his prison reform effort, begun in 1969, relied primarily on the work of academics, attorneys, psychiatrists, and social service providers. Such figures’ authority derives from knowledge and expertise, and the legitimacy of their authority was compared unfavorably to the Forgotten Americans during his campaign.

The primary goal of Nixon’s prison reform proposals was to improve the effectiveness of rehabilitation efforts for prisoners in federal custody. His proposals utilized a variety of resources, including educational opportunities, psychological therapy, and drug


and alcohol addiction treatment. Nixon argued that improving rehabilitation efforts would both benefit federal inmates and serve as a model for state and municipal prisons. Speeches delivered by Nixon, Congressional testimony by members of his cabinet, and the report of a Task Force on Prisoner Rehabilitation convened by Nixon called for expanding scientific research into correctional methods, and cited research findings demonstrating the existence of successful rehabilitation methods to justify an increase in resources devoted to such programs.

In his November 13, 1969 “Statement Outlining a 13-Point Program for Reform of the Federal Corrections System,” his first statement on prison reform, Nixon proclaimed:

Many correctional programs are based more on tradition and assumption than on theories which have been scientifically tested. Few of our programs have been closely studied to see just what results they bring. Clearly the poor record of our rehabilitative efforts indicates that we are doing something wrong and that we need extended research both on existing programs and on suggested new methods.\[111\]

The difference between experience-based authority and knowledge-based authority is evident in this starting point of his prison reform effort. It derogates an emphasis on “tradition” and “assumption,” both hallmarks of the ways the Forgotten American makes political decisions.

At the conclusion of his speech, Nixon directed his Attorney General, John Mitchell, to organize a task force to find ways to improve rehabilitation and report back within six months. Mitchell did not look to Forgotten Americans for input on ways to improve rehabilitation. Instead, the Task Force on Prisoner Rehabilitation was composed entirely of professional, medical, and academic experts, whose work and political positions utilized knowledge gained through research. Task Force members included: Emroy Hodges, a

---

psychiatrist who examined methods of predicting juvenile delinquency; Karl Menninger, a
psychiatrist who argued that criminality could be reduced via psychiatric treatment and
criticized punishment-based correctional models; and criminologist Norval Morris, an
innovator of methods designed to improve prisoners’ outcomes upon their release.

The Task Force released a report in April, 1970, entitled “The Criminal Offender—
What Should Be Done?” The report opens with an unequivocal endorsement of the value of
research in improving correctional policy: “We concluded early that there was no need for us
to search for new ideas about rehabilitating prisoners. The voluminous literature on the
subject overflows with excellent ideas that never have been implemented nor, in many cases,
even tested.”112 The report attributes the failure to implement and test such ideas to the
“almost total lack of basic data about offenders,” preventing “precise knowledge about what
kinds of correctional programs succeed with what kinds of offenders.”113 It goes on to argue
that “we are sure that many ongoing correctional programs would be strengthened or altered
or abandoned, and many new ones would be organized, if correctional authorities knew a
little more about the way offenders of various kinds respond to treatments of various
kinds.”114

In addition to calling for increasing the amount of data on prisoners available to
researchers, the report endorses the utilization of existing knowledge in developing new
correctional facilities and programs. Its recommendation of specialized mental and narcotics
treatment prisons called for compliance with best practices and a reliance on the United

112 President’s Task force on Prisoner Rehabilitation, “The Criminal Offender: What Should be Done?”


States Public Health Service, because of the “great amount of knowledge it has acquired over the years from operating its institutions for addicts.”

Lastly, the report endorses rehabilitation methods developed through years of research, application, and evaluation. For example, the report calls for expanded community corrections programs, which bypass adjudication and imprisonment in order to provide access to “community pre-adjudication services of many kinds: diagnostic, therapeutic, counseling and guidance, educational, employment, the entire spectrum.” The Forgotten American was not involved in the development of the disciplines on which these services are predicated. The Forgotten American’s common sense method of analysis does not resemble that required to develop, for instance, therapeutic techniques. Business owners and factory workers could not, without education and training, provide many of the services available through community corrections programs.

The report complemented additional efforts by Nixon’s cabinet members to implement prison reforms, which were similarly predicated on the authority of expert knowledge and scientific research. In a 1971 speech to the first National Conference on Corrections, Attorney General John Mitchell proposed establishing a National Corrections Academy, which would serve as “center for correctional learning, research, executive seminars, and development of correctional policy recommendations,” that “cover the whole range of correctional disciplines” and “[p]rovide a continuing meeting ground for the exchange of advanced ideas on corrections.” He also described the groundbreaking of a

---

federal corrections facility in Butner, North Carolina that would “provide treatment for and research on special groups of offenders, including the mentally disturbed.”

Mitchell’s successor, Richard Kleindienst, continued such efforts into Nixon’s second term, including the wider use of rehabilitative techniques. Norman Carlson, Nixon’s director of prisons, testified before the Subcommittee on National Penitentiaries in 1972 that “Recent research indicated that one third of all offenders being committed to Federal institutions have serious histories of drug usage. We now have ten intensive programs in operation for the treatment of these offenders,” which are directed by “professionals in behavioral science…such as psychiatrists.” The reliance on traditional experts in Nixon’s prison reform program was characteristic of his approach to addressing criminal justice issues while in office.

Frank Carrington and the Foundations of the Victims’ Rights Movement

The work of Frank Carrington in the 1970s cleared the ground for the emergence of victims’ rights and the Task Force in 1982. Carrington valorized the authority of victims’ experience and he excoriated various figures involved in the criminal justice system, such as attorneys, judges, social workers, and prison reformers for being, as he saw it, anti-victim, because, in part, they valued knowledge more than victim experience. In opposing victims to

---

118 Mitchell, “New Doors, Not Old Walls. 45662


121 “Statement of Norman Carlson” 108.
such professionals, he replicated the opposition between Forgotten Americans and elites Nixon articulated during his 1968 presidential campaign.

Before becoming Executive Director of the Americans for Effective Law Enforcement (AELE), an organization devoted to a range of conservative criminal justice objectives, Frank Carrington worked as both a treasury agent and a legal advisor to the Denver Police Department. Throughout the 1970s, he worked at various non-governmental organizations advocating for new legal and policy responses to criminal victimization. As described in the introduction, Carrington promoted his policy ideas in newspaper editorials, law review articles, as well as *The Victims* (1975) and *Neither Cruel Nor Unusual* (1978), books presaging many of the victims’ rights arguments that eventually achieved dominance. His victim advocacy proposals challenged criminal defendants’ due-process rights and called for tougher sanctions, and he vigorously celebrated and promoted the death penalty.

Carrington was an early pioneer of the term ‘victims’ rights’ to refer to the disparate efforts described below; it was not—and is not—a term anti-domestic violence or anti-rape activists utilized in their efforts to prevent victimization and improve post-victimization experiences. Carrington’s prominence as a victims’ rights warrior throughout the 1970s led to his inclusion on the 1982 President’s Task Force on Victims of Crime, which I examine later in this chapter.

Carrington called for changing both civil and criminal laws to assist victims. While his ideas about criminal and civil law differed from one another regarding the treatment of defendants and offenders, in both contexts Carrington sought to reduce the power of judges, attorneys, and prison officials. Carrington championed the use of civil suits by victims to obtain financial damages. In such suits, victims did not sue offenders, but third-parties who
enabled their victimization. For example, a child’s family sued the State of Washington, alleging that it acted improperly when a psychiatric institute placed a patient on out-patient status who subsequently molested and murdered their child.\textsuperscript{122} In another, a woman successfully sued a motel chain who provided faulty door locks.

Similar to the Forgotten Americans’ resentment of institutional, knowledge-based expertise, Carrington viewed successful suits against businesses and state institutions as a way of holding “faceless bureaucrats” accountable for the consequences of their decisions, “to force them to confront the now remote and anonymous victims of wrong decisions.”\textsuperscript{123} Through these types of lawsuits Carrington sought to bring elites face to face with the ugly truth of their complacent business practices and naïve institutional investment in scientific knowledge: they can lead directly to rape and murder. Carrington hoped that through successful victim lawsuits against third parties, institutions would learn to keep the specter of victims’ suffering foremost in their decision making, rather than deferring to business considerations or the dictates of psychiatric practice.

In addition to promoting the use of civil suits, Carrington also advocated changing how defendants’ and offenders’ due process rights were adjudicated in order to, as he saw it, increase victims’ well-being and respect previously unrecognized victims’ rights. Carrington’s connection between, on the one hand, victim well-being and the integrity of their rights, and, on the other, the criminal justice system’s treatment of offenders, was cemented in the 1970s, and remains hegemonic today. For Carrington, the two terms exist in a negative relation with one another: strengthening victims’ rights necessarily weakens

\begin{flushright}
\end{flushright}

\begin{flushright}
\end{flushright}
offenders’ and defendants’ rights, and, conversely, vigorously protecting defendants’ and offenders’ due process rights compromises victims’ rights and harms victims.

Carrington began articulating policies tough on offenders and defendants to victims’ rights and well-being in the 1970s, long before any explicit victims’ rights discourse or legislation emerged. His early victim advocacy took the form of attacks on offenders and defendants. For example, Carrington devoted a chapter of his book *The Victims* to criticizing the exclusionary rule, asserting that any protections defendants derive from the constitutional protection against illegal search and seizure result in injuries to the victim.\(^{124}\) In 1972 Congressional testimony, he described the AELE, primarily dedicated to promoting tough crime policies, as “frankly a victim-oriented organization.” In a 1976 article, Carrington argued, “Everything we do is geared to the victims of crime. We are seeking a balance between the rights of victims, who are primarily ignored, and the accused.”\(^{125}\)

Carrington saw a criminal justice system suffering from a tremendous imbalance in defendants’ and offenders’ favor. In a 1972 letter to the *New York Times* concerning the California Supreme Court’s decision to outlaw the death penalty, Carrington alleged that the court’s ruling “exhibits a total contempt for the actual and potential victims of murderers.”\(^{126}\) In his advocacy, Carrington shift the balance of rights, privileges, and protections in the victims’ favor. In 1972 Congressional testimony he argued, “Perhaps the rights of potential victims and actual victims should be weighed much more heavily in the balance, than the rights of the convicted killers… [the AELE] believe[s] that many of those who advocate for

---

\(^{124}\) See Chapter 7 of Carrington, *The Victims*.


the abolition of the death penalty evidence a highly unrealistic and loftier disregard for the plight of the actual victims of countless murderers.”

In his journalism and Congressional testimony, Carrington never spelled out the specific ways that defendants’ and offenders’ rights diminish whatever rights victims possess. Journalists writing about Carrington and his efforts similarly failed to explain the opposition between defendants’ and offenders’ rights and victims’ rights. For example, in a 1976 article, Carrington states his intent to “balance” victims’ and offenders’ rights, by, among other things, fighting against the exclusionary rule. The articles make no attempt to explain the link between due process protections and victims’ rights and well-being. A 1977 article discussed Carrington’s promotion of civil suits, stating, “It should be noted that…Carrington may not be overly preoccupied with the rights of criminals,” citing his “disinterest in talk of criminals’ rights or rehabilitation if it takes precedence over victims’ rights.”

Though at the time of its publication the concept of victims’ rights was novel and not widespread, the article failed to explain how rehabilitation and due process rights affect victims, or how they in any way could take precedence over victims’ rights. This omission was characteristic of journalism covering the early-victims’ rights movement, an omission that surely eased the emergence of victims’ rights on a broader platform in the early 1980s.

Carrington’s writing and advocacy articulated a series of antagonisms dividing American culture and politics in the 1970s. These antagonisms varied in scope, starting on a micro-level antagonism between individual victims and offenders and defendants (Carrington conflated offenders and defendants), and expanding to cohere with the national dichotomy Perlstein described in his *Nixonland*: Franklins versus Orthogonians, i.e., the Forgotten

---

127 Carrington, “Statement before House Subcommittee.”

Americans besieged by crime versus the elites whose policy positions and scientific attachment allegedly nurture criminality.

In American law, criminal cases are termed state v. defendant and not victim v. defendant. This formulation follows from the thought of John Locke. As recounted in greater detail in chapter four, Locke’s social compact theory held that exiting the state of nature and creating society requires the state to assume prosecutorial and punishment responsibilities from individuals. According to Locke

> all private judgment of every particular member being excluded, the community comes to be umpire, by settled standing rules, indifferent, and the same to all parties; and by men having authority from the community, for the execution of those rules, decides all the differences that may happen between any members of that society concerning any matter of right; and punishes those offences which any member hath committed against the society, with such penalties as the law established.\(^{129}\)

Therefore, historically, the fundamental antagonism in American criminal cases is between defendants and the state, rather than defendants and victims. Nevertheless, Carrington treated as axiomatic that the fundamental antagonism is, in fact, between defendants and victims.\(^ {130}\)

Carrington posited a second antagonism, one between victims of capital murder and their families on one side and capital punishment’s opponents on the other. In arguing that capital punishment abolitionists oppose victims, he reduced debates about capital punishment to the stark question “who are you for, the criminal or the victim?” and concluded that

\(^{129}\) John Locke, *Two Treatises of Government* and *A Letter Concerning Toleration* (New Haven: Yale University Press, 2003), Section 87

\(^{130}\) Carrington conflation of offenders and defendants enables his argument that protecting due process rights essentially amounts to letting criminals free.
abolitionists are for the criminals and against victims. Carrington conceded that many abolitionists may reject the anti-victim label and abhor the crimes committed by those on death row and the suffering caused by those crimes. However, it is “utter nonsense” that one can be both anti-death penalty and supportive of victims, for “if you go to bat for the ‘sanctity’ of the life of a murderer, you are by definition taking a stance completely opposed to his victims.” What, according to Carrington, prevents an abolitionist from being both supportive of and sympathetic to victims and against capital punishment? According to Carrington, because abolitionists “fight so tirelessly to spare the life of Richard Speck” who murdered eight women in 1966, “they are at the same time saying that the lives of [his victims] are of little consequence.” He asked, “Were the lives of those eight student nurses worth nothing more than an easy jail term?” According to Carrington, abolitionists have the power to establish the ‘worth’ and “consequence” of a victim’s life, and by opposing the death penalty they devalue those lives. In other words, an offender’s death is a form of currency, exchangeable for the ‘lives’ of the deceased victims. As a result of this, not executing the offender establishes that victims’ lives are worthless.

Because victims of capital crimes are dead, the meaning of a victims’ life is not, strictly speaking, meaningful for the victim him or herself. Instead, the worth and consequence of a deceased victim is only meaningful to the friends and family of the victim. Accordingly, the antagonism is between abolitionists and the victims’ friends and family.

---


132 Carrington, *Neither Cruel nor Unusual*, 135. As he does throughout his career, here he proffers a reason death penalty abolitionists oppose the death penalty, without citing any abolitionists who employ the argument quite the way he says they do. Often, the reasons he cites are propitious for his counter-arguments.

133 Carrington, *Neither Cruel nor Unusual*, 135.

The rationales underlying each sides of the antagonism Carrington constructs are fundamentally different. For abolitionists, their advocacy is based on the acceptance of a set of abstract principles concerning justice. For them, killing someone is wrong, even if they hate the person on death row. For family members, their opposition to abolitionists is predicated solely on love for their dead family member. In framing the issues of capital punishment by setting up an antagonism between abolitionists and family members, Carrington forced the question of the basis on which policy decisions should be made: abstract principles or felt emotions.

Carrington’s third antagonism existed between those who advocated for due process protections for defendants and victims themselves. He described it as a “common-sense thesis…that the victims of crime should have some rights too, but that their rights have become more and more attenuated as our criminal justice system pursues its single-minded concern for the rights of criminals.”135 The ‘victims’ Carrington referred to here are not the same victims as those in the first antagonism, who have already been victimized. Instead, Carrington employed a dynamic temporal framework by including in the category ‘victim’ both those who have been the victims of a crime and those who may, in the future, be a victim of a crime. Those who insist on constitutional rights for the accused, Carrington claimed, enable guilty people to escape conviction if their rights are violated during the crime’s investigation; those guilty then proceed to commit more crimes and produce more victims. That is, even if you have not been victimized yet, you are already a victim.

The final antagonism Carrington articulates is between those he termed ‘permissivists’ and, again, victims. ‘Permissivists,’ for Carrington, not only advocate for robust due process rights, but are also critical of the American criminal justice system’s

135 Carrington, *Neither Cruel nor Unusual*, 29.
racial disparities, abysmal prison conditions, or excessive focus on punishment as a primary correctional objective. Carrington belittles a 1973 Wisconsin bill that proposed limiting imprisonment to only those offenders whose record indicates that there is an imminent danger of substantial physical harm if released, effectively eliminating punishment as a justification for imprisonment. He argues that the rejection of the permissivist ideas would enhance future victims’ rights and well-being. Crime will be reduced through, “in large measure, the removal of the contrived and artificial rights for the criminal…the cessation of excessive and unwarranted leniency towards those accused or convicted of crimes on the theory that society should ‘take a chance’ with the safety of society in the hope that the object of leniency will not victimize again. [The end of leniency] will produce a corresponding increase in the rights of a law-abiding citizen not to be victimized.”\footnote{Carrington, 	extit{The Victims}, 23.}

Carrington anticipated the dismissal of his pro-victim position as a “mindless, simplistic, or an extremist solution” to crime.\footnote{Carrington, 	extit{The Victims}, 25.} Of course, Carrington saw his pro-victim stance as anything but simplistic, mindless, or extremist, and claimed that enhancing the rights of the victim at the expense of the rights of criminals “is mindless, simplistic, or extremist only if it can be correctly stated that the attitudes and convictions of the great majority of the United States are mindless, simplistic or extremist.”\footnote{Carrington, 	extit{The Victims}, 25.} This analysis is quintessentially Nixonian, as the imagined criticisms of permissivists do not weaken but substantiate the rightness of pro-victim forces. The facts that permissivists disagree with them shows that the pro-victim forces are correct. Carrington characterizes positions held by elites that were contrary to his as referendums on the superior intellectual and moral instincts.
of the pro-victim, Forgotten Americans. Elites not only promoted policies that let robbers run wild, but their promotion of these policies proved that they thought pro-victims forces were, as Carrington put it, mindless, simplistic, or extremist. Again, to Carrington, being thought of in this manner actually proved the correctness of his positions.

According to Carrington, the divide between pro-victim and anti-victim forces is due to the differences in each side’s profession, and the concomitant differences in the sensibilities of those in each profession. Carrington argued that his position that “[c]riminals cause crime. It’s as simple as that” is one that is “not fashionable among certain liberal social scientists.” However, liberal social scientists who advocate for criminal justice reform fail to reduce crime because of the inherent limitations of their social location: “those willing to take a chance with the security of the law-abiding are generally social tinkerers who view the problems of crime and criminals from relatively safe, ivory-tower positions: the courts, the higher echelons of the corrections establishment, the quiet meeting rooms of special commissions and study groups, and the college campuses.” Carrington approvingly cites Winston Moore, executive director of the Cook County Department of Corrections, who noted that “some administrators unwisely fall victim to self-appointed ‘experts’ who lack pragmatic knowledge about and experience with inmates or institutions. But these experts’ have obtained funding from foundations, government, and private sources to conduct ‘social experiments’ with inmates.”

Articulating these people to the wider cultural struggles


141 Carrington, The Victims, 168.
exploited by Nixon in his 1968 Presidential campaign, Moore claims that “these are the same people who were helpless in attempts to control campus unrest in recent years.”\textsuperscript{142}

Carrington’s list of anti-victim permissivists reads like a murderer’s row of Franklins, including

Composer Leonard Bernstein, who threw a fund-raising part for members of New York’s Black Panther party, ‘a group of racists, many of whom advocated criminal activity’; radical firebrand lawyer William Kunstler, who denounces ‘respected political figures’ like Nelson Rockefeller; New York Times associate editor Tom Wicker, ‘the voice of permissiveness for that permissive newspaper’; former Attorney General Ramsey Clark, ‘prophet and public relations front man,’ whose book about crime was the ‘bible of permissiveness’; and Daniel Ellsberg, ‘the admitted thief of the Pentagon Papers.’\textsuperscript{143}

This anti-victim mafia is contemptible to Carrington not just because of what they do or say, but who they are. They are representatives of the left-wing intelligentsia and artistic elite, the well-born, and the defenders of the Warren Court’s legal decisions. Carrington presages the rhetorical style of the Reagan’s Task Force on Victims of Crime’s report by extensively using anecdotal accounts of everyday victims to substantiate his arguments. Dozens of detailed accounts of horrible crimes appear throughout both The Victims and Neither Cruel Nor Unusual. In one twelve page section in The Victims dealing with the Miranda Rule, Carrington recounts the murders of Doris Murphy, police officer Earl Berendes, a girl shot to death by a sniper, the shooting of Senator John Stennis, a knife attack in New York requiring 150 stitches, and the kidnapping of a waitress by a marine. This approach enables Carrington to avoid making difficult, logical arguments by offering anecdotes as arguments in themselves; it also works to marshal the power of blood-and-guts imagery, whose visceral

\textsuperscript{142} Carrington, The Victims, 168.

\textsuperscript{143} Summarized in Andrew Karmen, “The Victims by Frank Carrington (book review),” Contemporary Crises 6 (1982): 308.
impact desiccates the competing rhetorical force of statistical or theoretical analysis. Finally, orienting a tough-on-crime argument around innocent victims creates an adversarial rhetorical situation in which the victim is on the tough-on-crime side, which forces the liberal side to oppose not only tough-on-crime arguments but the victim him/herself.

These anecdotes offer an intentionally unwieldy form of truth that may in fact prove very little but work to affectively overwhelm arguments made by experts whose authority is based on knowledge. Anecdotal examples and victim testimony offer both experience and the body itself as vehicles of a form of truth lacking in scientific or legal analysis. In his introduction to *The Victims*, which he entered into the May 15, 1975 Congressional Record, Senator James L. Buckley celebrated the superiority of bodily and experiential truth over statistical and scientific evidence and abstract philosophical systems. In the beginning of the introduction, Buckley produced statistics purporting to demonstrate increased levels of criminal activity in the United States. He subsequently devalued the informative value of these statistics by claiming

> But one cannot fully appreciate the meaning of these figures until they are understood and seen in human terms, in terms of the victims of these crimes: the store clerk murdered in a holdup, the young girl raped on her way home from school, the elderly widow whose purse and monthly social security check were stolen, the young couple who returned to find their apartment ransacked and their significant possessions taken, or the body of the slain policeman…the ultimate reality of crime can only be felt when it reaches out to touch us, or when we see the bodies or look into the faces of the victims of crime.\(^{144}\)

Buckley argues that crime’s “ultimate reality” is only detectible through the victims’ bodies and testimony, suggesting adequate and responsible criminological analysis requires bodily examination and personal testimonials. This requirement implicitly limits or even disqualifies

\(^{144}\) James Buckley, Foreword to *The Victims*.
analyses that attempt to aggregate, quantify or abstract crime issues and otherwise disembody crime, as they necessarily obscure access to crime’s ‘truth.’

Altogether, Carrington’s work forces liberals to answer the question, ‘can experience be wrong?’ He argued that anti-rehabilitation positions are based on the raw experience of victimization, and a pro-death penalty position on familial love. To insist on rehabilitation or oppose the death penalty suggests, as Carrington saw it, that familial love is not real and the victimization did not occur. Victims’ rights’ use of victims’ experiences forces politicians to choose between the obviousness of families’ and victims’ injuries and abstract arguments and statistics, and they have consistently chosen familial love and physical pain.

Reagan’s Victims’ Rights

Ronald Reagan won the California governorship in 1966, running an unapologetically conservative campaign assailing soft-on-crime governance and the emergent counter-culture. In 1968, he received substantial support to be the Republican Party’s Presidential nominee. While Nixon ultimately won the nomination, for conservative activists such as William Rusher, “the Reagan momentum…offered evidence ‘that the troops are in good shape for the

\[145\] As with victims, Carrington finds anecdotal accounts from prisoners more convincing than statistical evidence. Carrington testified at a 1972 Congressional hearing concerning the abolition of capital punishment. He argued that capital punishment should be retained because of its deterrent effect. In support of this claim, he presented results of 99 interviews of arrestees completed by the LAPD, in which 50 out of the 99 reported that they did not carry or use a weapon because of their fear of the death penalty. Confronted with evidence that state murder rates did not vary when capital punishment was outlawed, Carrington pointed to the LAPD as conclusive evidence, arguing that instead of statistics, “I think perpetrators of crime are indeed in the best position to know whether or not they were deterred from killing rather than the asceptic (sic) statistics we have had.”
future.’”146 In 1976, Reagan mounted an unsuccessful challenge to incumbent Gerald Ford for the Republican nomination, portraying Ford’s foreign policy as soft and emphasizing his own social conservatism. Between 1976 and 1980, Reagan sought to reorganize the Republican Party’s appeal, moving it away from its country-club image to attract “the man and the women in the factories, for the farmer, for the cop on the beat.”147 Reagan believed he could use social conservatism to win working class support for economic conservatism, thereby breaking the new deal coalition.

Reagan’s 1980 campaign represented the success of his efforts to reorganize American politics. He attracted working class support through his social conservatism and hawkish foreign policy, while advocating for a newly emergent supply-side economics, which argued that tax cuts would pay for themselves by creating economic growth. His faith in tax cuts was accompanied by a contention that no matter the virtue of their intentions, government programs had baleful consequences; in his 1981 inaugural address he declared “government is not the solution to our problems, it is the problem.”148

As described in the beginning of this chapter, Reagan’s 1980 campaigning style resembled Nixon’s 1968 campaigning style in its glorification of the wisdom of the American people gained simply through their experience of living in America, implicitly denigrating knowledge-based authority in the process. However, unlike Nixon, Reagan continued to glorify the epistemological value of experience after assuming the Presidency.

---


An example of this glorification of layman authority was his victims’ rights efforts. Reagan established the President’s Task Force on Victims of Crime by executive order on April 23, 1982, declaring “the innocent victims of crime have frequently been overlooked by our criminal justice system, and their pleas for justice have gone unheeded and their wounds—personal, emotional, and financial—have gone unattended.”149 The Task Force’s final report was released in December, 1982.

The President’s Task Force on Victims of Crime differed in two significant ways from Nixon’s 1970 Task Force on Rehabilitation discussed above. The first difference was the composition of the Task Force. The members of the Task force on Rehabilitation included corporate attorneys and anti-poverty activists, but most were academics. By contrast, the Task Force on Victims of Crime was composed primarily of law enforcement personnel, including four prosecuting attorneys, a police chief, a former treasury agent (Frank Carrington), and a psychiatrist who worked with the FBI. In general, the Task Force on Rehabilitation’s members were not directly involved in the administration of prisons; by contrast, the majority of Task Force on Victims of Crime’s members were directly involved in the criminal justice process.

The second and more significant difference concerned each Task Force’s methodology. The Task Force on Rehabilitation primarily utilized existing research findings to arrive at and justify its findings and recommendations. Similarly, The Task Force on Victims of Crime’s stated methodology included “compiling and analyzing as much printed material as we could acquire from governmental, academic, professional and private

sources.” However, despite this statement, little analysis of relevant printed material appears in the report. The “most important” element of the Task Force on the Victims of Crime’s methodology was talking to victims. According to the Report, “crucial to our approach, however, was the concept that it was necessary to hear directly from those whose lives have been touched by crime. Therefore, we spoke at length and in great numbers with innocent people who have been victimized.” To accomplish this task, the Task Force on Victims of Crime convened hearings in six cities, during which they received testimony from dozens of victims.

The Task Force’s process of hearing testimony and translating it into findings and recommendations is entirely unclear. Quotations from victims are absent from the main section of the report detailing the Task Force’s findings and recommendations. However, quotations presumably obtained from transcripts of these hearings appear throughout the report in the literal margins of the main text. The victims quoted in the margins are primarily unidentified, as are the hearings in which they testified. The quotations themselves typically, though not always, bear a thematic relationship with the passage they appear alongside, offered as evidence to substantiate whatever claim the Task Force is making at that point in the report. For example, next to the report’s recommendation that judges limit continuances at the victim’s request is a quotation from an unnamed victim, “People have to realize that emotional scabs are constantly scraped off as you appear time after time in court” because of delays at the defendant’s request.

---


151 President’s Task Force on Victims of Crime, 118.

152 President’s Task Force on Victims of Crime, 118.
The cumulative effect of these quotations is to evoke a world in which people are perpetually at risk of becoming victims of amoral criminals, after which they will enter an inhumane and bizarre criminal justice system devoid of common sense principles of truth and justice. These quotations operate in multiple rhetorical modes. Some describe the crime and the mortal danger it presented: “He said, ‘Move or yell and I’ll kill you.’ I didn’t doubt his word.” —a victim.\textsuperscript{154} Others lament allegedly senseless procedural elements: “I just couldn’t believe that the judge could actually suppress evidence. It’s like it really didn’t happen…it just seems very unfair that something so crucial could just be eliminated.” —a victim.\textsuperscript{155} Others recount horror stories from the investigation or trial: “It took me a long time to get my 8-year old daughter to sleep that night, but finally I did. Later I got a call that the molester had been arrested, and that my daughter and I had to go down to a police line-up at 1:00 a.m. We did go, but it was very traumatic for her.” —a victim’s mother.\textsuperscript{156} Other quotations were maxims about the nature of justice for victims: “Justice does not bring one’s son back, but it is the closest thing to what is right.” —a victim’s father.\textsuperscript{157} Finally, these quotations include normative claims about the criminal justice changes necessary to achieve justice for victims: “Shouldn’t we be notified if the killer was out on bond, or if he is about to come up for a parole hearing? Had my son lived through the assault on him, would he not be entitled to this information? He didn’t live through this, and I think

\textsuperscript{153} President’s Task Force on Victims of Crime, 75.
\textsuperscript{154} President’s Task Force on Victims of Crime, 3.
\textsuperscript{155} President’s Task Force on Victims of Crime, 28.
\textsuperscript{156} President’s Task Force on Victims of Crime, 5.
\textsuperscript{157} President’s Task Force on Victims of Crime, 26.
that I am entitled to ask it for him and for all the victims who don’t survive.’—a victim’s mother.”

This mosaic of quotes articulates crime victims and their families as street-smart survivors, whose lay understanding of the law is offended by bizarre procedural technicalities, who are injured by the crime yet resiliently participating in the criminal justice system, sober-minded ethicists, and selfless crusaders sublimating their rage into advocacy for the dead victims unable to advocate for themselves. These are formidable figures, whose qualities merit great deference in criminal justice policy. Arranging these quotes in the margins of the main text lend the victims’ prestige and supposed infallibility to the policy recommendations alongside of which they appear.

The victim authority encapsulated in these quotations serves as the Task Force report’s main source of evidence. The report makes further claims about victim authority: in addition to their status as authorities working on criminal justice policy, they are authoritative participants in the criminal justice process itself. Many of the report’s recommendations would maximize victims’ decision-making influence in the criminal process, such as including victims’ statements at sentencing hearings and requiring prosecutors to consult with them on both bail and plea decisions. The report argues that a victim’s superior sense of fairness warrants increased victim participation. For example, the report recommends that parole be abolished, because specific parole outcomes may violate victims’ ideas about appropriate sentences. According to the report, it is “important that the victim and the community know what the sentence actually means—how long the defendant will be

158 President’s Task Force on Victims of Crime, 35.
incarcerated.”\textsuperscript{159} Parole prevents this certainty by enabling the release of the offender long before the end of his sentence. The actual time-served of the sentence indicates the ‘fairness’ of the sentence, and a shorter sentence, according to the report, is an unfair sentence for victims. Why? Because “their own sense of justice dictates that the person who directly caused them so much agony receive a fair punishment.”\textsuperscript{160} Whatever the source of this sense of justice, the benefits of unleashing its infallible acuity merits the destruction of the American parole system, long the bedrock of American penological theory, predicated on decades of psychological, educational, and medical discourses.

In addition to the victim’s superior ‘sense of justice,’ the report also ascribes to victims the power to predict the offender’s future behavior. According to one recommendation, victim impact statements should be mandatory at sentencing hearings because “a judge cannot reach an informed determination of the danger posed by a defendant without hearing from the person he has victimized…Others may speculate about the defendant’s potential for violence; it is the victim who looked down the barrel of the gun, or felt his blows, or knew how serious were the threats of death that the defendant conveyed.”\textsuperscript{161} Accordingly, the victim’s encounter with a defendant enables him or her to predict what the defendant will do at the conclusion of his sentence, whether that is in 10 days, 10 months, or 10 years. Victims can apparently penetrate the overdetermined circumstances—psychological, economic, and social—structuring the offenders’ current and future life, to perceive and predict the offender’s capacity for violence.

\textsuperscript{159} President’s Task Force on Victims of Crime, 30.
\textsuperscript{160} President’s Task Force on Victims of Crime, 30.
\textsuperscript{161} President’s Task Force on Victims of Crime, 77-8.
The report avers that the victim’s “sense of justice” and predictive power demand longer prison sentences for offenders. Her sense of justice violated, a victim’s mother laments, “[f]or killing my son he only does one and a half years!”162 Prohibited from participating in the parole hearing where he could deploy his predictive power to oppose a parole board’s predictable malfeasance, a victim contends “[t]he Parole Board that let him out did an awful, ignorant, foolish thing. They just turned their back on society, they just didn’t care about the public.”163 This demand for longer sentences ran contrary to that of contemporary rehabilitation advocates—such as those on Nixon’s Rehabilitation Task Force—who continued to promote indeterminate sentencing structures, in which an inmate can be released whenever a parole board deems him or her rehabilitated, rather than only after completing a determinate sentence.

This opposition is consistent with the general opposition articulated in the report between victims and knowledge-based authorities. In her “Statement of the Chairman” preceding the report, Lois Harrington describes victims who expect that the criminal justice system will “do what a good government should—protect the innocent”164 It turns out, according to Herrington, that “somewhere along the way, the system began to serve lawyers and judges and defendants, treating the victim with institutionalized disinterest.”165 In other words, the interests of lawyers, defendants, and judges run counter to those of victims, and

162 President’s Task Force on Victims of Crime, 52.
163 President’s Task Force on Victims of Crime, 54.
164 President’s Task Force on Victims of Crime, VI.
165 President’s Task Force on Victims of Crime, VI. Referring to the mistreatment of victims in this sentence as the mistreatment of “the victim” is consonant with the report’s tendency to individualize and de-institutionalize the treatment of victims in the criminal justice process.
accounting for the rights and interests of these parties necessarily injures victims. This shift is the perversion of justice its recommendations aim to rectify.

According to the report, this perversion manifests in the disproportionate focus on the defendant during the sentencing process, at the expense of proper attention to victims, who wish for but are denied the opportunity to give a statement to the judge. The introduction of the report is a purportedly representative composite of victim experiences, based on testimony gathered at hearings. According to the report, “this victim is every victim; she could be you or related to you.”166 The report includes a hypothetical scenario, told from the victim’s point of view; in it, the defendant has been convicted of the rape of a 50-year old woman, and is awaiting sentencing. A pre-sentencing report prepared for the defendant “delves into his upbringing, family relationships, education, physical and mental health.”167 Also, judges will send the “defendant to a facility where a complete psychiatric and sociological work-up is prepared.”168 By contrast, the victim (referred to as you in the report) is “amazed that no one will ever ask you about the crime, or the effect it has had on you and your family. You ask permission to address the judge and are told that you are not allowed to do so.”169

This hypothetical scenario aligns psychological, educational, and sociological resources with defendants, who presumably utilize them to advocate for lighter sentences. And, this is exactly what happened in this narrative, as the defendant received a three-year

166 President’s Task Force on Victims of Crime, 3.
167 President’s Task Force on Victims of Crime, 10.
168 President’s Task Force on Victims of Crime, 10.
169 President’s Task Force on Victims of Crime, 10.
sentence for rape, “less than one year for every hour he kept you in pain and terror.” According to the report, the participation of knowledge-based authorities in the criminal justice process obstructs victims’ participation and violates their interests, and accordingly harms the criminal justice process overall.

The arguments for increasing victim participation found in the report typically denigrate the validity of the participation of such figures as psychologists and social workers. The Task Force calls for victim impact statements to counter those who advocate for defendants. The Task Force describes these participants, such as the psychologists and sociologists who developed the pre-sentencing report, the defendant’s lawyer, and the defendant himself, as “Others [who] may speculate about the defendant’s potential for violence.” Describing these contributions as ‘speculation’ suggests that they are little more than guesswork of questionable legitimacy. By contrast, victims experienced their victimization, and their expertise derives from those experiences. They “looked down the barrel of the gun, or felt his blows, or knew how serious were the threats of death that the defendant conveyed; it is the victim who can tell of the defendant’s response to his pleas to be spared, to be hurt no further. It is the victim who knows how the defendant said he would avoid capture or dupe the judge if he were caught”.

This section, and the report overall, articulates a clear opposition between experience-based authority and knowledge-based authority.

This is the precise opposition Nixon articulated in his 1968 campaign. In the Reagan Task Force report, victims are the forgotten majority, while the social workers, judges,

---

170 President’s Task Force on Victims of Crime, 11.

171 President’s Task Force on Victims of Crime, 77-8
psychologists, and defense lawyers in the criminal justice system represent the naïve and ineffectual elite. However, though the articulation is identical, the conditions of the articulation are dramatically different. The Task Force was a product of a governing president, not a presidential candidate. It was not Reagan the presidential candidate that assembled a Task Force that embraced authority as experience, but Reagan the president. Under Reagan experience-based authority assumed policy making dominance.

Conclusion

This shift from campaign strategy to governing principles indicates the increased power of authority as experience. This ascent signaled the successful attack on knowledge and expertise. An important part of the liberal consensus was faith in both of these concepts. As John W. Murphy argued, the liberal consensus assumes a “difficult, complex, and gray world that requires careful thought, extensive research, and prudent acts. It therefore puts a premium on rational argument [and] scientific evidence.”¹⁷² The ascent of authority as experience enables a range of discourses impossible when authority as knowledge was hegemonic as it was in the liberal consensus. People can reject climate change when they find themselves stuck in the snow. Macroeconomic policy can dissolve into microeconomic policy, as critics of government spending allege that families and small businesses know how to spend money more wisely than government bureaucrats. Other can reject the need for welfare because they themselves have worked hard in their lives, which proves that individual effort ensures self-sufficiency, no matter what the statistics say.

On a more general level, conservatives impugn the wisdom of liberal policies simply because they are grounded in research findings. Any government efforts to help poor people that are predicated on research are cancerous. They do not emerge from life and experience itself, but from research that is alien to life, and, when implemented, feed on what is good and vital about Americans and the American experience.

Finally, this assault on authority and knowledge also represents an attack on the institutions that serve as the sources and guarantors of both. If knowledge lacks authority, so do the institutions that produce it. Indeed, Lawrence Grossberg argues in *Caught in the Crossfire* that “the prestige of universities, schools, and the media as the ‘guardians’ of legitimate knowledge and knowledge production has significantly declined.” The guiding frameworks of welfare programs, efforts to provide medical care to underserved communities, and educational policy have emerged from university departments such as public health, sociology, and social work. It seems that any effort to achieve progressive political goals, environmental, economic, public health, and others, requires knowledge produced by institutions, which requires knowledge to have authority. After the successful assault on knowledge-based authority described in this chapter, such goals appear evermore remote.

---

Chapter Two: Victims’ Rights Neutralization of the Threat of Domestic Violence

Introduction

Like all political developments, the political struggle over victimization has not arrived at victims' rights according to an uncontested linear path. Instead, there have been the moments of struggle over the meaning of victimization, in which alternative models of responding to victimization were proposed, which were consistent with the liberal consensus. The struggle over the proper responses to domestic violence is one such moment, and it is the focus of this chapter. Understanding the dynamics of the struggle over the meaning of domestic violence sheds light on the responses to victimization that were bypassed in favor of victims' rights, and examining alternative conceptions of victims’ needs and the causes of victimization provides a more precise delineation of victims' rights itself. This chapter discusses the ways that anti-domestic violence activism configured the family, a central front in the struggle over the liberal consensus. This discussion sets the stage for chapter three, in which I examine the ways victims’ rights configures the family, and how that configuration is connected to the struggle over the liberal consensus.

Victims’ rights focuses primarily on crimes committed by strangers. The crimes that catalyze major victims’ rights legislation were all committed by strangers. Famous victims’ rights advocates were victimized by strangers or had family members victimized by strangers. By contrast, non-stronger crime, domestic violence, receives little attention from the victims’ rights movement. Victims’ rights advocates are not victims of or family
members of victims of domestic violence. Legislation produced by the victims’ rights movement is not named for domestic violence victims. Prominent pieces of domestic violence legislation, such as the Violence Against Women Act (VAWA), are not named after victims or considered victims’ rights legislation. In news accounts of VAWA and related domestic violence initiatives, no victims’ rights advocates are quoted. Altogether, anti-domestic violence activism and victims’ rights activism are treated as distinct and essentially unrelated.

Victims’ rights and strains of anti-domestic violence activism diverge over the status of the family bond. In focusing on strangers, the victims’ rights movement does not implicate the family in the commission of violent acts. In fact, as we shall see in chapter three, victims’ rights works to valorize the goodness and self-sufficiency of the family. Anti-domestic violence activism, by contrast, deeply implicates the family in the commission of violence. The family itself is either the source of violence, or it is incapable of protecting its members from violence, and preventing violence requires external intervention.

Conservatives deny both aspects of this characterization of the family. According to conservatives, the family is a nurturing and safe space. Also, the family is self-sustaining, enabling its members to manage life’s challenges without external intervention. This vision of the family has been used to challenge government programs that support the poor. These programs, conservatives charge, harm families, which provide the only spaces in which people grow to be successful socioeconomic actors. According to conservatives, government support programs, such as welfare and Medicaid, must be reduced or eliminated in order to protect families and, in turn, strengthen individuals.
The struggle over domestic violence policy turned on these conceptions of the goodness and self-sufficiency of the family. In holding that the traditional family was inherently violent and material deprivation increased victimization, early anti-domestic violence activists promoted material support for victims that the family itself could not provide. They also advocated for reconfiguring family dynamics by rejecting the conception that men were the natural authority figures in families. In response, conservatives fashioned responses to domestic violence which articulated the family as both safe and self-sufficient. This struggle over the familial bond in domestic violence reflects the larger struggle between the liberal consensus and its detractors. The liberal consensus held that there were forces beyond the individual’s control that shaped his or her socioeconomic chances. Similarly, anti-domestic violence discourse holds that the family is subject to material forces that prevent it from being able to prevent and eliminate domestic violence on its own. These forces create the need for government intervention to prevent further domestic violence incidents. However, as the victims’ rights movement gained strength and power, politicians came to focus on punishing offenders rather than providing government support for victims. In focusing on punishment rather than addressing familial material dynamics, politicians, both Democratic and Republican, produced a conception of the safe, self-sufficient family amenable to conservative attacks on the liberal consensus.

The chapter begins by tracking changes in the federal government’s domestic violence discourse between 1978 and 1984. In 1978, domestic violence was attributed to traditional gender norms and male socioeconomic domination, and solving domestic violence required material change and altered familial relations. By 1984, domestic violence was articulated as a matter of aberrant acts disconnected from gender roles and any
socioeconomic context. Accordingly, an act of domestic violence was presented as being no different than an act of stranger violence, and material and familial change was unnecessary. This position became dominant in mainstream politics, and what was potentially a bad issue for conservatives, one that challenged the goodness and self-sufficiency of the familial bond, was neutralized.

After tracing the evolution of domestic violence discourse between 1978 and 1984, the chapter’s second part look at ways in which the traditional family is positioned as the central element of conservative welfare discourse, and how domestic violence troubles that positioning. Conservatives argue that the absence of traditional families leads to welfare, and, in turn, welfare destroys traditional families. However, contrary to these articulations, domestic violence in the traditional family impairs the victim’s ability to participate in the economy, and responding to domestic violence requires the types of welfare programs conservatives allege weaken the traditional family. These understandings of domestic violence challenge conservative attacks on welfare and affirm the liberal consensus. The most important factor in preventing revictimization is material autonomy, precisely what the liberal consensus held as requiring government assistance. I end section two by examining the ways the Reagan Administration’s 1984 Task Force on Family Violence managed that challenge in its “Final Report.”

The chapter’s third and final part examines responses to domestic violence crafted by American liberals in the 1990s and in force today. They rely on the criminal justice system instead of material support for victims to address domestic violence, thereby mirroring conservative domestic violence discourse developed in the 1980s. Robust empirical evidence indicates that relying on the criminal justice system is an inadequate way to reduce domestic
violence. I assert that absent any conceptual or empirical basis for relying on the criminal justice system at the expense of material support for victims, it is the ascent of the victims’ rights movement that disabled efforts to respond to domestic violence with material support. Victims’ rights has set the terms for how government responds to victimization, privileging punishment and marginalizing material responses to both stranger crime and domestic violence. In so doing, victims’ rights has preserved the family as the location of the primary and favored social bond. This valorization is considered at greater length in chapter three, as are the ways that valorization is articulated to broader conservative discourses.

The vision of the family active in anti-domestic violence discourse largely cohered with the liberal consensus. That vision was negated when material responses to victimization were bypassed in favor of punishment. Chapter three describes the victims’ rights vision of the family that came to dominate responses to victimization, one that complements attacks on the liberal consensus.

**The Evolution of Domestic Violence Policy between 1978 and 1984**

In the following section, I examine four texts to demonstrate the evolution of federal domestic violence discourse between 1978 and 1984. The first is the transcript of a 1978 conference put on by the United States Civil Rights Commission entitled “Battered Women: Issues of Public Policy Consultation,” which featured representatives of the battered women’s movement, a forerunner of subsequent progressive anti-domestic violence activism. While some called for strengthened law enforcement responses to domestic violence, many
of the Consultation’s participants emphasized the need for reoriented attitudes about gender roles and the need for material support and equality for women in order to reduce domestic victimization. The second text is a 1982 report released by the Civil Rights Commission entitled “Under the Rule of Thumb,” which departed from the views of the Consultation’s participants by ignoring questions of material equality and gender norms and focused instead on changing the criminal justice system and providing emergency aid to victims. The third “text” is a series of statements critical of federal anti-domestic violence efforts made by prominent conservatives. By 1980, conservatives had managed to derail federal efforts to provide funding for domestic violence programs, alleging that such programs were anti-family. Finally, I examine the 1984 “Final Report” of the Reagan Administration’s Task Force on Family Violence, which purportedly offered comprehensive methods to respond to domestic violence, but rejected critiques of traditional gender roles and the material inequality between genders while insisting on the prestige of the traditional family, thereby accommodating conservative criticisms of federal anti-domestic violence efforts.

1978’s “Battered Women: Issues of Public Policy” Consultation

According to activist and scholar Susan Schechter, the term ‘battered women’ reached public consciousness by 1977. In her 1982 history of the battered women’s movement, Women and Male Violence: The Visions and Struggles of the Battered Women’s Movement, Schechter argues that the movement operated from a feminist, grassroots orientation, critical of common gender roles in which males perceived their dominant position in family life as a license to abuse, and women, because of their material

subordination, had difficulty escaping such abuse. It raised awareness about domestic violence through forming consciousness raising groups to publicize the pervasiveness of and condemn domestic violence, which was otherwise tolerated as a private family matter in which violence was the male’s prerogative. Also, activists contested the lax enforcement of criminal law when it came to domestic violence, advocated for the creation of civil protection orders, established shelters for battered women to go to escape abuse and receive long-term material assistance, and created mechanisms through which victims could receive emotional support and counseling, often from other victims of domestic violence.

The 1978, the United States Civil Rights Commission sponsored the “Battered Women: Issues of Public Policy” Consultation which was the first federally-sponsored examination of domestic violence. Why it was named a “Consultation” instead of a conference is, upon reading its transcript, odd, as it resembled a standard conference, composed of presentations and question and answer sessions.

The event included over 30 presenters and occurred over two days. Its purposes were to identify sound, existing research data, as well as research gaps, and consequently to consider research strategies; to identify necessary State legal and law enforcement reform; to identify needed short- and long-term support services for battered women; to identify, in all of the above, the appropriate Federal role; to facilitate communication among researchers, activists, policymakers, and others; and to inform the public.¹⁷⁵

As this summary makes clear, law enforcement was only one of many issues addressed in the Consultation. Participants included grassroots activists, academics, and representatives from a wide range of institutions, including doctors, lawyers, social workers, and representatives of members of the United States Congress. Many participants offered feminist, class-based

critiques of domestic violence, rooting its causes in economic inequality and traditional family roles in which men have authority over women and exercise it through violence.

Though only one event, the Consultation is representative of and important to the battered women’s movement for four reasons: first, because of the large number of participants; second, because of the wide array of disciplines, professions, and institutions present; third, the National Coalition Against Domestic Violence, which continues to be a central anti-domestic violence organization, was formed as a result of the conference; and finally, and most importantly, many of the leading activists in the battered women’s movement participated, including Del Martin, Lisa Lehnorn, and Lisa Richette, and leading scholars of the time, including Morton Bard, Murray Strauss, and Lenore Walker.

Throughout the Consultation, participants referred to major efforts to change the treatment of and outcomes for battered women. For these reasons, the 730-page transcript of the Consultation serves as an important document of the 1970s battered women’s movement, a movement that proved anathema to conservatives and was ultimately abandoned by the Democratic Party in its efforts to address domestic violence.

Many of the Consultation’s participants attributed domestic violence to traditional gender roles. In its opening session, Martin, a leading anti-domestic and sexual violence activist, argued that patriarchal family relations are the cause of women battering. She averred “marriage is the institutional source and setting in which the violence is carried out. Although many try to avoid its implications, to me, domestic violence cannot be fully understood without examining the institution of marriage itself as the context in which the violence takes place.”176 She described American gender relations as a “patriarchal structure” in which the “dominant group [men] define acceptable roles of subordinates [women],”

176 Battered Women: Issues of Public Policy, 3.
whose survival “depends on the subjugation and control of women and uses marriage as a routine means of enforcement.”177 This arrangement defines masculinity as “strong, active, rational, aggressive and authoritarian” and femininity as “submissive, passive, dependent, weak and masochistic.”178 Marriage, according to Martin, is the arena in which “women and men are socialized to act out dominant-submissive roles that in and of themselves invite abuse. Husbands/assailants and wife/victims are merely the actors in the script that society has written for them.”179

In her presentation, Judge Richette agreed with Martin and proposed eliminating the husband as “head of the family” from its “continuing presence in the law, in religion, in administrative procedure, and a taken for granted aspect of family life…Full sexual equality is essential for the prevention of wife-beating.”180 Leghorn stressed the need for replacing male domination with female solidarity, hailing support services provided to abused women by previously abused women. Doing this weakens male domination, fosters “new ways of living,” the kinds “of transformation in their lives [that] is not only possible, but also necessary,” a transformation that often ends the family unit the woman was a member of before she entered the shelter.181

Some participants rejected policies specifically focused on battered women, and instead advocated for comprehensive material redistribution for all. Monica Erler argued, “Abused women don’t need treatment programs. They, like other women, need fair income

for their labor, decent housing at an affordable price, competent legal advice, dependable child care and other assistance with child rearing. Government policy and funding should take these needs seriously.” Solving domestic violence, then, requires, not only contesting the traditional family, but challenging capitalism itself. As Leghorn argued, ending domestic violence demands “[a] massive restructuring of our priorities. We would be forced to address the tremendous question of human needs and human rights, rather than the violation of those needs by a merciless and irresponsible system based on private profit.” Altogether, it is easy to see why conservatives would be alarmed by the Consultation’s critique of the family and calls for thorough economic redistribution.

While it goes far beyond the liberal consensus in its critiques of capitalism and traditional gender norms, the Consultation affirms the its contention that forces beyond a person’s control trap people in socioeconomically vulnerable situations, which in this instance contributes to domestic violence victimization. As we shall see, the conservative response to the Consultations’ critiques erased the importance of these material forces in domestic violence victimization.

1982’s Under the Rule of Thumb

Such solutions proved to be far too progressive and comprehensive to be a tenable framework for federal action, especially once Reagan assumed the presidency in 1981, and lost their centrality in federal anti-domestic violence discourse, as represented by their important role in the Consultation. Accordingly, in 1982, the United States Civil Rights

182 Battered Women: Issues of Public Policy, 113.
183 Battered Women: Issues of Public Policy, 113.
Commission issued the report “Under the Rule of Thumb: Battered Women and the Administration of Justice,”\textsuperscript{184} which, though issued by the same institution that released the Consultation, moves away from the Consultation’s critiques of capitalism and the traditional family and focuses almost exclusively on the criminal justice system. In addition to using materials from the Consultation, “Under the Rule of Thumb” held hearings in Pennsylvania and Arizona in which members of the Civil Rights Commission met with legal and law enforcement personnel.

The report’s preface states that its findings were “partially built upon” the Consultation.\textsuperscript{185} However, the report’s arguments and policy proposals differs substantially from those found in the Consultation by granting the criminal justice system the central role in addressing domestic violence and displacing the Consultation’s insistence on the need for economic redistribution and the reformulation of the traditional family. “Under the Rule of Thumb” was “designed to elicit further information on the nature and extent of law enforcement practices that treat battered women differently from other assault victims,”\textsuperscript{186} and rejects the need for social and economic change. The gender and structural analysis permeating the Consultation is absent from the report. The contributions of the Consultation’s anti-battered women’s movement’s participants, including Martin, who provided the Consultation’s keynote address, are nowhere reflected in “Under the Rule of Thumb,” nor did members of the battered women’s movement participate in the 1981 public hearings upon which the report’s findings, along with the Consultation, are based. Instead,


\textsuperscript{185} United States Commission on Civil Rights, \textit{Under the Rule of Thumb}, iv.

\textsuperscript{186} United States Commission on Civil Rights, \textit{Under the Rule of Thumb}, v.
the public hearings’ participants were prosecutors, law enforcement personnel, and members of the judiciary.

“Under the Rule of Thumb’s” preface refers to the Consultation and claims, “Although speaking from a wide variety of backgrounds and perspectives on the problems of battered women, these experts [in the Consultation] were united by their conclusion that the legal system’s response to women victims of domestic violence and their abusers differs markedly from its typical response to other assault victims and perpetrators.” 187 This statement implies that all of the Consultation’s participants suggested that the legal treatment of DV victims should resemble that of other assault victims, and that these arguments constituted the thrust of the Consultation.

This is untrue, as all of the Consultation’s participants, including prosecutors and law enforcement personnel, agreed that domestic violence victims need resources beyond those that the criminal justice system can provide, and in so doing rejected the idea that domestic violence and non-domestic violence should be treated identically by the legal system. For example, in the 1978 Consultation, Milwaukee District Attorney Charles Schudson stated that the “battered women’s problem is one that is helped by a coordination of many components, only one of which is the criminal justice system.” 188 Contrary to this statement by District Attorney Schudson, the chapter on prosecutorial conduct in “Under the Rule of Thumb” contains no discussion of coordinating with social service providers and finding ways to provide material support to victims. Instead, the chapter focuses on how to increase

---


188 United States Commission on Civil Rights, *Under the Rule of Thumb*, 92.
the conviction rates of domestic violence offenders. The chapters on the judiciary and the police similarly omit discussion of coordinating with domestic violence service providers.

Altogether, most of “Under the Rule of Thumb” criticizes the criminal justice system’s failure to effectively arrest and prosecute domestic violence offenders. Its chapters include: “The Law”, which gives an overview of civil and criminal responses to battered women; “The Police,” “The Prosecutors,” “The Courts,” and “Diversion Programs.” In emphasizing the criminal justice system, the report focuses primarily on offenders rather than victims. Its discussion of material support for domestic violence victims is wholly confined to one chapter, “Shelters and Social Services.” This chapter prescribes far most modest material remedies than those offered in the Consultation, including changing welfare rules to expedite applications from battered women, engaging shelter personnel in sensitizing police officers on the unique dimensions of domestic violence, and coordinating, but not increasing, shelter and victims’ services funding sources. It focuses on providing services to victims made destitute by leaving abusive situations, rather than changing power and economic relations between men and women to avoid destitution in the first place.

In attending to material support and social services while ultimately emphasizing law enforcement, “Under the Rule of Thumb” functions as a halfway point between the structural focus of the Consultation and the heavy emphasis on law enforcement of Reagan’s Task Force on Family Violence. These changes likely reflected Reagan’s 1980 election, and his decision as president to close the Office of Domestic Violence, opened by Jimmy Carter in 1977. Notably, because of Reagan’s stated opposition, legislative efforts to establish federal funding for domestic violence services had been defeated and ultimately abandoned by the time “Under the Rule of Thumb” was released.
1980 Conservative Opposition to Federal Domestic Violence Assistance

Significant conservative opposition to the battered women’s movement emerged during the time period between the Consultation and the publication “Under the Rule of Thumb’s.” According to historian Elizabeth Pleck, in the late 1970s and early 1980s, “The New Right identified domestic violence legislation with feminism, which in turn they associated with an attack on ‘motherhood, the family, and Christian Values.’” These views were presented during Senate and Congressional debates about federal domestic violence legislation in 1980, efforts made while Carter, who said he would sign federal domestic violence legislation, was still president. In 1980, the Moral Majority worked with Republican Senators to defeat legislation that would have provided $65 million in grants to domestic violence shelters and programs over three years. The Moral Majority and its conservative supporters argued that the legislation attacked the sanctity of the traditional family and they rejected any government role in addressing domestic violence or even the use of material resources overall to reduce it.

In Senate floor debate, Senator Gordon Humphrey asserted that the domestic violence shelters which would receive federal money under this legislation were “opposed to traditional families.” Jesse Helms complained that domestic violence shelters will “encourage the disintegration of thousands of American families.” Referring to calls in the Consultation for the removal of the husband as “head of household,” Helms argues, “This


191 Congressional Record 1980, 24120
type of social engineering does not command the support of the majority of the American people and I suspect this is the primary reason why these centers have not been able to generate sufficient financial support within their local communities and now seek federal tax dollars.”

He concludes by stating “I cannot support legislation which gives every indication of supporting activities which can only further undermine the ability of many families to resolve their problems while preserving their unity.”

Senator Strom Thurmond asked, “Who can seriously argue that the Federal Government is better suited than family and friends, churches and community groups to cure this social ill?” He feared that the legislation “would result in dividing the family rather than uniting the family and curing domestic violence.”

If passed, The Moral Majority lobbyist argued, “Radical feminists” will “be coming to the federal trough for a $65 million feed.” Howard Phillips, head of the Conservative Caucus, argued that the “federal government has no business regulating the relationship between a man and his wife.” In addition to his philosophical objections, Phillips rejected the federal government’s involvement on practical grounds, suggesting that domestic violence was adequately addressed by civil society. He asked, “How do you suppose the matter has been taken care of

---

192 Congressional Record 1980, 24120.
193 Congressional Record 1980, 24120.
194 Congressional Record 1980, 24123.
195 Congressional Record 1980, 24128.
the last 200 years? It’s been largely taken care of by private organizations, religious groups, by families.”

The 1984 Family Violence Task Force Final Report

Despite this conservative opposition to federal anti-domestic violence efforts, in 1983 Reagan created the Task Force on Family Violence, whose “Final Report” contained dozens of recommendations for federal, state and local governments. In contrast to the composition of the 1978 Consultation, members of the Family Violence Task Force were primarily associated with law enforcement or the nascent victims’ rights movement. Members of the Family Violence Task Force included William Hart, chief of the Detroit Police Department, Missouri Attorney General John Ashcroft, Ursula Meese, wife of law and order conservative United States Attorney General Ed Meese, Ruben Ortega, chief of the Phoenix Police Department, Newman Flanagan, Suffolk County, Massachusetts District Attorney, Clyde Narramore, founder of the Narramore Christian Foundation, a Christian mental health organization, and Frances Seward, Mareese Duff and Catherine Milton, all victims’ rights activists.

Like the Victims’ Rights Task Force discussed in chapter one, the report is a product of hearings held around the country featuring law enforcement, academics, advocates, and victims. A small number of the listed witnesses appeared in both hearings held before the Task Force and the Consultation. As a whole, however, these hearings included far fewer grassroots activists than the Consultation, and far more law enforcement personnel and people associated with religious organizations. Also, while numerous Consultation

\[198\] Mann, “Help for Battered Women.”

104
participants were victims of abuse, each had assumed some sort of advocacy position after their victimization, and therefore testified as both victims and domestic violence advocates and/or service providers. By contrast, in the Task Force hearings, no victims were identified as having engaged in any anti-domestic violence work. Therefore, the Task Force hearing’s victims testified only in their capacity as victims. In fact, the Final Report lists the witnesses who testified in front of the Task Force, including, if they had one, their institutional affiliation. Many witnesses were simply identified as “victim” without any institutional affiliation.

Parts of the report are consistent with portions of the 1978 Consultation and the “Under the Rule of Thumb” report. The Task Force takes positions domestic violence activists had held since the mid-1970s: the widespread prevalence of domestic violence; the unique challenges it presents in comparison to violence committed by strangers; and the need for adequate criminal justice responses. Addressing the issue federally at all, and adopting positions held by feminist activists, seems, on its face, a dramatic departure from existing conservative thought on the federal government’s role in addressing domestic violence. However, this apparent change did not ultimately represent a political orientation different from conservative celebrations of the traditional family on display during the 1980 Senate debates. Instead, consistent with conservative opposition, the Task Force excised critiques of the traditional family and the material subordination of women found in the 1978 Consultation.

Accordingly, gender relations do not frame the report’s analysis, which lacks any feminist critiques of domestic violence. The report omits discussion of the need for comprehensive socioeconomic change to reduce domestic violence. There is no discussion of
women’s economic subordination and its impact on women’s ability to leave abusive relationships, or of the need to provide substantial material support for victims to enable them to leave abusive relationships.

Far from condemning the traditional family, the report repeatedly proclaims its virtues and the necessity of its promotion and preservation. The Report’s introduction argues that “the family is the cornerstone of the American community. Preserving valuable traditions and nurturing the country’s children, families are the nation’s greatest strength and hope for the future.”\textsuperscript{199} And, the Report’s conclusion proclaims, “America derives its strength, purpose and productivity from its commitment to family values.”\textsuperscript{200} Thus, according to the report, “As important as our families are to us individually and to the health of the nation, it is crucial that public policy support and strengthen family values and family well-being.”\textsuperscript{201}

The report privileges criminal justice responses to domestic violence, arguing that the lax punishment of offenders causes domestic violence, not gender inequality or the dominant male role in traditional families. It contains over 20 recommendations for the criminal justice system, all of which aim to increase prosecution and conviction rates and intensify criminal sanctions. For example, the report recommends requiring law enforcement agencies to establish arrest as the preferred response to family violence incidents (instead of mediation or the separation of parties in the incident), abolishing the requirement for victims to testify at


preliminary hearings, and promoting prison terms as the only appropriate sanction for perpetrators of family violence. The report claims that

Penalties imposed by the court [in domestic violence cases] do not reflect the severity of the injury or the number of prior conviction for the same offense. This under-enforcement of the law tells victims and assailants alike that family violence is not really a serious crime, if a crime at all. It is this widespread perception that has contributed to the perpetuation of violence within the family.202

It suggests that judges, prosecutors, and law enforcement agencies increase their cooperation with one another, because “a consistent coordinated approach will more effectively deter recurring family violence and allow for more successful prosecutions.”203 Even those sections of the report not expressly dedicated to criminal justice are dominated by criminal justice concerns. Many of the recommendations in sections titled “Data Collection,” “Research,” and “Prevention” aim to increase prosecutions and convictions. For example, the report recommends compelling drug and alcohol treatment providers to report any time a patient admits to child abuse, a practice which was at that time prevented by federal law.

Between 1978 and 1984, the progressive politics of federal anti-domestic violence discourse disappeared and were replaced by tough-on-crime ideas, which attributed domestic violence to insufficiently harsh criminal sanctions. As we shall see, those progressive politics have never reappeared. The next section argues that their suppression was necessary for the viability of conservative criticisms of welfare, and describes the ways that the Task Force on Violence’s Final Report provided the template for that suppression.


The Danger of Domestic Violence to Conservative Discursive Formations

As described above, anti-domestic violence activists asserted that without the provision of comprehensive material resources, domestic violence victims may not escape abusive situations. Activists also asserted that domestic violence reveals that the traditional family can be a source of misery and physical danger that is irremediable by the family itself. According to these activists, domestic violence indicates that the family alone does not have the resources to ensure security for domestic violence victims, and may be the source of the danger to their security in the first place. Consequently, activists called for the reformulation of the traditional family, and the robust provision of welfare resources for domestic violence victims and their families.

The idea that the traditional family needed reformulation and that it alone cannot ameliorate and prevent misery compromises core conservative principles and the policy positions they buttress. Conservative support for the traditional family is articulated as existing in a zero-sum game with government programs that provide material support to non-traditional families. In other words, when conservatives argue that the traditional family is good they are also saying that government programs such as welfare are bad. According to former Education Secretary and current conservative activist William Bennett, “We believe our families to be the first, the best and the original department of health, education, and welfare.”204 With their ability to promote the traditional family at the expense of social

---

welfare programs on the line, it is crucial that the dangers of domestic violence to conservative discourse be silence, and it has, by domestic violence discourse itself.

In the following section I first review the antithetical relationship between welfare and the traditional family articulated by conservatives, who argue that society’s fundamental security and prosperity depend on the widespread prevalence of two-parent households.

Second, I demonstrate the ways that the Final Report of the Family Violence Task Force provides a template for dismantling domestic violence’s dangers to conservative articulations of the traditional family. In section three, I describe the ways Democrats have adopted this template as their own.

Conservative Articulations of Welfare and the Traditional Family

A number of feminist legal scholars have identified the traditional family as a central element of conservative politics, noting how American poverty is attributed to the decline of married, two-parent households in the United States. Martha Fineman argues that “images of the traditional family pervade contemporary discourse” attacking welfare and other social spending programs, and “it is the intimate unit in policy and legal discussions that is exclusively designated as what is normatively desirable.”205 Melissa Murray suggests that commentators argue that the function that the “family serves is that privatization of care for dependent members, usually children. The family—and parents, particularly—takes on this task, so that it is not primarily the public responsibility of the state.”206 Ariela Dubler argues,

---


“To many lawmakers, female poverty resoundingly signals the failure of marriage.”

Tonya Brito notes that “the mother-child family is perceived as inherently suspicious and, unless, a man is brought into the family, it is undeserving of public support.”

Vivian Hamilton notes that “government [has] explicitly embraced marriage as a facet of antipoverty policy.”

Judith Koons asserts that justifications for welfare reform and welfare reauthorization “are anchored in moral discourse that is rife with family imagery.”

The following section elaborates upon these scholarly assertions. Since the 1960s, conservatives valorized the traditional family and denigrated families headed by unwed mothers. According to conservatives, such families cripple the socioeconomic viability of their members, who, consequently, do not become educated, get and hold jobs, and frequently commit crimes. The traditional family, for these observers, is a sort of training ground for family members, especially children, inculcating them with the values necessary for success in the free market economy. Without such training, members of non-traditional families are doomed to socioeconomic failure.


Group on the Family entitled “The Family: Preserving America’s Future.” It continues by examining Francis Fukuyama’s work on the relationship between social capital and traditional families. The section then details past Republican claims about the destructive effects welfare has on the traditional family, discusses the ways religious groups connect welfare to the destruction of the traditional family, and concludes by describing how contemporary conservatives portray the negative relationship between government programs and the traditional family.

An early connection between the non-traditional family and socioeconomic failure was made by the 1965 Moynihan Report, completed while Moynihan served in the Johnson administration’s Department of Labor. Its introduction declared that the prevalence of mother-led family structure meant that “the Negro family in the urban ghettos is crumbling,” and, as long as that is the case, “the cycle of poverty and disadvantage will continue to repeat itself.”211 The family, the report argues, “is the basic social unit of American life; it is the basic socializing unit. By and large, adult conduct in society is learned as a child.”212 The report proceeds to offer many dismal statistics attributable to mother-led families, including high crime rates and low test scores. It alleges that the mother-led families affect temperament, reporting that blacks “are not able to absorb setbacks. Minor irritants are rebuffed and magnified out of all proportion to reality.”213 Altogether, moving out of poverty and into a free market economy is difficult if one is raised in a mother-led family.


212 Moynihan, Chapter II.

213 Moynihan, Chapter IV
Despite being produced by a Democratic administration supportive of civil rights, the report was criticized by many civil rights leaders, including Bayard Rustin, Martin Luther King, and the leadership of the NAACP. Critics alleged that it blamed black culture instead of America’s history of racism and its relationship with black economic deprivation, and ignored the importance of economic conditions generally. King worried that as a result of the report, “problems will be attributed to innate Negro weaknesses and used to justify neglect and rationalize oppression.”214 Rustin argued against focusing just on blacks, saying “we must talk about the poor family, not simply the Negro family.”215 By contrast, conservatives supported its findings. William F. Buckley said that the report is “imperative reading for liberals and conservatives alike, to say nothing of those who seek to advance the cause of Negro equality free of the shackles of ideological dogma.”216 Moynihan said, “My god, I was not a racist, [while] here was this fellow [William] Buckley saying these thoughtful things. [Nathan] Glazer and I began to notice that we were getting treated in National Review with a much higher level of intellectual honesty [than in liberal publications].”217 Criticized by liberals and hailed by conservatives, the report is one of the founding lamentations of the destructive effects of mother-led families.

Two texts released during Reagan’s presidency echo Moynihan’s concerns about non-traditional families. Political scientist Charles Noble describes the publication of Charles Murray’s 1984 book Losing Ground as a “watershed in the debate on the welfare state.

---


Murray succeeded in recasting what had been easily dismissed as an ideological fantasy into a social scientific critique.²¹⁸ In Losing Ground Murray links changes in federal social welfare programs to changes in black poverty and family structure. Murray claims that various developments in social welfare programs have de-incentivized men and women from working and marrying. For example, because welfare provides women with additional money for each child they have, it provides incentives for increased out-of-wedlock childbirths. Murray attributes the fact that there were more female-headed households in 1980 than in 1950 to federal social welfare programs. To counteract this trend, Murray proposes the elimination of all forms of federal assistance for working-age adults.

What, for Murray, is so destructive about female-headed households that call for the radical step of eliminating all federal social welfare programs? First, female-headed households offend middle class American standards. Having children within marriage was “the only system that the white American middle class and working class accepted as valid.”²¹⁹ More concretely, such families are destructive for children, as “poor, uneducated, single teenage mothers are in a bad position to raise children.”²²⁰ He speculates that such families are prone to poverty because a “single-female head of household is untrained to work at a well-paying job, because of her need to stay home and care for the children, or


²²⁰ Murray, 129. In a footnote he admits that “the roles of the specific components of the familial situation—parents IQ and education, income, presence of two parents, and host of other resources—on the child’s development are the subject of a large and inconclusive literature.” (286). This inconclusiveness compromises the certainty of his condemnation of female-headed households and the deleteriousness of welfare policies.
because of chronic unemployment for other reasons.” According to Murray, without a husband, women and children are doomed to inescapable poverty.

Such ideas also emerged from within the administration itself. In 1986, the Reagan Administration formed the ‘White House Working Group on the Family,’ which released its report, “The Family: Preserving America’s Future,” in December of that year. It was chaired by Gary Bauer, who later headed the Family Research Council, a major conservative Christian organization allied with James Dobson’s Focus on the Family, and described as a “political arm to spearhead a fight for the restoration of traditional ‘family values’ in the United States.”

“The Family: Preserving America’s Future” argues that “the family can generate and nurture what no government can ever produce—Americans who will responsibly exercise their freedom and, if necessary, defend it.” According to the report, the family is “the central unit for launching the education of children, for character formation, and as the moral agent of society.” Families ensure socioeconomic mobility by serving as a training ground, preparing their members for “individual responsibility, for self-sacrifice, for seeking a common goal rather than self-interest,” all of which are necessary for socioeconomic mobility. Conversely, the free enterprise system allows for the existence of the traditional family, as its “devotion to human freedom, its creation of wealth, and its demand for personal

221 Murray, 133.

222 James Patterson, Freedom is not Enough: The Moynihan Report and America’s Struggle over Black Family Life—from LBJ to Obama (New York: Basic Books, 2010), 139.


responsibility—made the modern family possible.” Therefore, free enterprise and the family are mutually constitutive. Under a different economic system, the traditional family would not exist, and, without the traditional family, there would be no free enterprise.

The report argues that welfare disrupts the mutually constitutive relationship between the family and free enterprise. According to the report, “[w]elfare contributes to the failure to form the family in the first place,” by preventing men from living in the home of women receiving welfare payments and providing additional welfare funds for each child, which ultimately leads to mother-led families and absent fathers. Without fathers, children are not trained to develop the traits necessary for the robust economic existence identified above, increasing the chances of being trapped in poverty and dependent on welfare. Those on welfare do not labor in the free market, and the report suggests that this lack of labor would harm the traditional family structure, as the free market is the source of the traditional family. Altogether, the report describes welfare and the end of the traditional family as mutually constitutive.

Despite the professed grandeur of the free enterprise system, millions of Americans are on welfare. Therefore, the incentives of going on welfare are for many greater than participating in the free enterprise system. However, the report suggests that welfare’s incentives are in fact less powerful than those of the free enterprise system, as it denies that poor economic conditions and subordinate socioeconomic location make welfare and its attendant destruction of the traditional family more attractive than the free market.


227 White House Working Group on the Family, The Family, 15. The report does not try to make it clear why this is the case.
It offers the following vignette to illustrate this argument: a “father who works two low-paying jobs so that a son can go to college, the penniless immigrant who teaches himself English and ultimately begins his own business—these success stories are not an elaborate myth. They are possible because the people who are the main actors in them believe that personal effort, sacrifice, perseverance and hard work will result—if not today, then tomorrow; if not for them, then for their children—in a better life. It is the embracing of this belief that makes success possible.”

Those who receive welfare lack this belief, but the report does not identify what is the source of this belief or its lack; judging by the pervasiveness of welfare, it cannot be the American free enterprise system itself that provides the belief in a better life achieved through participation in the free market, as many people simply lack the belief and go one welfare. The document both highlights the family’s vulnerability to welfare while simultaneously glorifying the family and free enterprise. The family is both fallible and infallible, flimsy and all-powerful.

In the late 1990s, influential intellectual Francis Fukuyama argued that families are essential for the development of what he calls social capital, which he defines “simply as a set of informal norms shared among members of a group that permits cooperation among them.”

Fukuyama reports that the “decline of nuclear families in the West had strongly negative effects on social capital and was related to an increase in poverty for people at the bottom of the social hierarchy, to increasing levels of crime, and finally to declining trust.”

According to Fukuyama, “There is a strong relationship between families and social

---


230 Fukuyama, 115.
capital.” In other words, they are where social capital is acquired. Social capital such as “honesty, reciprocity, and keeping commitments…help the groups that practice them achieve shared ends,” such as the economic activity necessary for socioeconomic viability.

Illegitimate birth rates result in the failure of the development of social capital, opening the door to criminal activity and other anti-social behavior. He reasons that “the central problem that any society faces is controlling the aggression, ambition, and potential violence on the part of its young men, directing it into safe and productive channels.” He contends that this process requires the acquisition of social capital, which is best accomplished within the family, imparted by fathers who “can encourage, discipline, serve as role models, and otherwise socialize sons.”

This concern about the absence of fathers in the nuclear family appears in attacks on welfare. The passage of the Personal Responsibility and Work Opportunity Act (PRWOA) of 1996 was accompanied by continuous articulations of welfare to the decline of traditional families. One of the welfare system’s primary sins, it was argued, was its supposed catastrophic effect on the traditional family. Accordingly, proponents of the act, primarily Republican, used the language of “Family-driven welfare reform,” which was necessary

---

231 Fukuyama, 36.
232 Fukuyama, 36.
233 Fukuyama, 14.
234 Fukuyama, 83.
235 Fukuyama, 82.
because welfare has “destroy[ed] traditional families.” PRWOA itself provided money to states to encourage marriage and two-parent families and its text explicitly stated that one of its goals was to encourage marriage.

In 1994, during debates about welfare reform, Congressman and future United States Senator Jim Talent argued, “By subsidizing out of wedlock births, the system rewards young men for being irresponsible and lures young women into a course of action that is destructive for them, their children, and society.” He glorified the traditional family in language reminiscent of Reagan’s Family Violence Task Force: “the traditional family has always been the primary institution in America which transmits the values necessary for people to live together.” He lamented “it has now for the most part disappeared in our low-income communities” because of welfare. An editorial in the Utah newspaper the Deseret News (Utah’s oldest newspaper with the second largest circulation in the state) articulates families to economic prosperity: “Strong, traditional families remain the most reliable bulwarks against poverty and despair. The only way to design a successful welfare system is to make work and family the centerpiece. Families instill self-esteem.”

During welfare debates, Republicans were particularly anxious that welfare “trapped” people by harming families. In an editorial published in 1995, Speaker of the House of Representatives Newt Gingrich used the word trapped five times to describe those on


239 Statement of Jim Talent.

240 Statement of Jim Talent.

welfare, as the “welfare state...breaks up families.” In 1996, Michigan Governor John Engler argued that welfare recipients are “trapped in poverty, caught in a failed welfare system that discourages work, penalizes marriage and rewards irresponsible behavior” such as having children out of wedlock.

In 1997, California Assemblyman Bill Campbell argued that welfare recipients are kept “trapped in poverty” because the welfare system tells “young men: You can father children and walk away—the government will take care of them. We have told young women: You don’t need a husband—the government will take care of you. The result: One in seven children in the United States is living on AFDC.” Also in 1997, California governor Pete Wilson asserted that politicians “must end a welfare system that undermines the work ethic, that has trapped generations in dependency that drives fathers out of homes and encourages out-of-wedlock births.”

Finally, in 1994 Virginia governor George Allen alleged that welfare has “trapped many Virginians and their families in a saga of dependency,” and his solutions squarely addressed the absence of two-parent families, including forcing mothers to identify the fathers of their children before receiving benefits.

Contemporary conservative figures also criticize the non-traditional family’s deterioration under welfare. Explicitly religious groups such as Focus on the Family and the


Family Research Council make similar connections between the need for minimalist government and traditional families. Both organizations contend that traditional marriage is under attack by welfare, as is the spiritual and economic health of the United States. Both incorporate concerns about welfare’s relationship to poverty into their opposition to gay marriage, gay adoption, cohabitation, single-parent families, and divorce. According to the article “Why Marriage Should be Privileged in Public Policy” by Bridget Maher on the Family Research Council website, “Marriage is the best antidote to poverty and welfare dependency.”

According to Maher, “Welfare reform should aim to strengthen marriage, because the breakdown of marriage is a root cause of poverty, as most welfare recipients are never-married or divorced mothers.” The Focus on the Family website’s section on marriage argues that “families are the building blocks essential to a formation of a community, and strong social structure arises from the foundation many families provide.” It claims that “divorced and unwed childbearing cost U.S. taxpayers more than $112 billion a year.” The page links to an report completed by the American Values Institute, which argues that family-fragmentation leads to increased poverty, resulting in increased criminal justice costs, welfare payments, housing assistance, Medicaid, and other costs.

According to contemporary conservative leaders, the traditional family ensures socioeconomic viability. It is the space where individuals develop the personal responsibility necessary to successfully function in the free market economy. Former Arkansas governor


248 Maher, “Why Marriage Should be Privileged.”

249 Maher, “Why Marriage Should be Privileged.”

and presidential candidate Mike Huckabee argues that children of absentee fathers “are not raised to be ethical and productive citizens.”\footnote{Editorial, “How Huckabee Might Beat Obama in 2012,” \textit{The Christian Science Monitor}. February 24, 2011.} Furthermore, conservatives believe that the ultimate viability of a free-market economy itself depends on the formation of traditional families. According to former Ohio lieutenant governor and current senior fellow at the Family Research Council Ken Blackwell, “If we balance the budget and rein in government but do not rebuild and protect families, then the popular will for government intervention will irresistibly grow over time.”\footnote{Robert Knight, “Debt’s not all folks; Leaders needed to repel the left’s assault on morality as well as economy,” \textit{The Washington Times}, July 18, 2011.} Huckabee argues “no government program can do what parents must do in teaching the kind of personal responsibility that is essential to creating a good economy.”\footnote{Editorial, “How Huckabee Might Beat Obama.”}

The family could only fill this organizing function if it was outside of economic relations. Accordingly, in conservative discourse, the quality of family life is articulated as having no relation to a family’s socioeconomic location. Love, support, guidance—the elements of the family valorized in conservative politics for enabling socioeconomic mobility—are independent variables that are not socioeconomically-specific.

Texas governor Rick Perry celebrates the irrelevance of wealth to the quality of his family life as a child: “we didn’t have much in the way of material goods, but we were sure rich. We were rich in spirit. We were abundant in faith. And we were devoted to family.”\footnote{Rick Perry “Remarks by Texas Governor Rick Perry” Value Voters Summit, October 7, 2011. Available at http://thepage.time.com/2011/10/08/perry-values-voter-summit-transcript/.} For parents of all socioeconomic locations, achieving these elements within one’s family is
mandatory, and is not contingent on socioeconomic variables. Also, the traditional family is a precondition for and guarantor of children’s economic success. Huckabee argues, “two thirds of children who live in poverty wouldn’t be in such a plight if their parents were married.”

That is, marriage prevents poverty, overpowering socioeconomic conditions. Thus, the importance of socioeconomic location is erased twice: first, it does not affect parenting and the formation of a nourishing family unit; second, traditional families negate the disadvantages of subordinate class locations.

Contrary to these contentions, a parent’s ability to be dedicated and supportive is directly connected to socioeconomic location. For example, time with one’s children is a luxury for many parents. Parents working evenings and weekends may not be able to eat dinner with their children or attend extra-curricular activities. Also, engaged parenting cannot erase disadvantages of material deprivation. No matter the extent of parental support and dedication, a poor child in Flint, Michigan still lives somewhere without jobs or institutional resources to enable them to succeed socioeconomically. Class is significant in family life and family is of limited relevance in class relations.

Nonetheless, conservatives criticize government efforts that attempt to address the deleterious consequences of class subordination. Government support and families exist in a zero-sum game, in which government support necessarily comes at the expense of family life. Congressman and 2012 Republican Vice Presidential nominee Paul Ryan complains that “Americans have been lured into viewing government—more than themselves, their families, their communities, their faith—as their main source of support.”

---

Government programs have destructive consequences for the traditional family’s ability to develop the autonomy necessary to compete in capitalism, and must be reduced to improve family life. Ryan’s budgetary plans reflect this position, proposing comprehensive reductions in federal welfare programs in favor of free-market economic policies, including the end of Medicare as an entitlement, reduction in Medicaid funding, food stamps, and housing aid, and dramatically lowered income tax rates. These measures aim to reduce dependence on the government and to increase dependence on the family, a shift that will strengthen individuals. Without minimizing government material support through reducing or eliminating programs, they will perpetuate and proliferate, as, by weakening families, government programs increase the need for government programs. Ryan argues that “government’s expansive reach too often undermines non-governmental institutions better suited to assist individuals in need, because it substitutes federal power in their place.”

Government power grows as family power recedes, which cements the need for government power.

According to this way of thinking, the traditional, two-parent family is the fundamental and consequential network of relations, rather than legal, economic, educational or other socioeconomic relations. Indeed, as Perry argues, “the fabric of our society…is the family.” Perry and other conservatives privilege the interests of the traditional family, as they define them, over other relational networks: “the most basic unit of government is the family. And as a conservative, I believe with all my heart that the government closest to the

---


257 Perry, “Value Voters.”
people is the best for the people.”258 Government, according to Perry, should cede space to familial decision-making, by, for example, reducing the social services that supposedly interfere with familial decision-making. This contention runs counter to the liberal consensus, which held that government and not just family, is necessary for socioeconomic sufficiency and autonomy.

*Family Violence Task Force’s Management of Domestic Violence’s Challenge to the Family*

Domestic violence turns the argument that traditional families obviate the need for government programs inside-out. Traditional families in which abuse occurs create the need for government programs, precisely the types of comprehensive programs Ryan accuses of cultivating indolent helplessness: long-term housing; economic support; healthcare; and others. In addition, a traumatized, physically injured wife or child is intellectually and emotionally compromised, compromising their ability to thrive educationally and professionally, making them problematic economic subjects. If the traditional family has functioned as the guarantor of individual preparedness and the inclination to participate in the economy, as Huckabee, Ryan, and Blackwell argue, how do conservatives respond when the traditional family itself creates the need for the government programs that destroy, in their way of thinking, individual economic ability and inclination? This situation seems to demand the solution the liberal consensus proffered of broader material assistance.

Reagan’s Family Violence Task Force Final Report protects the prestige of the family and denies the need for comprehensive resources for victims by omitting any analysis

---

258 Perry, “Value Voters.”
of domestic violence’s causes. The report does not discuss economic inequality or critique traditional ideas of men holding positions of authority in households and exercising that authority through violence, both central arguments of the battered women’s movement. In addition, the report fails to discuss material causes of domestic violence, such as unemployment, drug and alcohol abuse, or homelessness, an omission that preserves the fantasy of the family as a self-sufficient haven that shields its members from outside threats such as the multiple deleterious physical and psychological consequences of poverty, a fantasy crucial to a discourse glorifying the traditional family and critical of social welfare programs.

The Task Force Report de-contextualizes domestic violence by relying on a criminal justice response that does not treat domestic violence differently than non-domestic violence, thereby omitting any discussion of the dynamics of the traditional family that give rise to domestic violence. It argues, “The legal response to family violence must be guided primarily by the nature of the abusive act, not the relationship between the victim and the abuser.” That is, a crime is a crime, a stance that ignores the context in which many acts of domestic violence occur, the traditional family. The criminal justice system treats family violence as aberrant acts, rather than, as the battered women’s movement would have it, as characteristic of problems with the configuration of the traditional family itself. Also, it presumes that prosecution and punishment will reduce further victimization better than providing resources to victims to enable them to live independently of their abusers.

The Final Report is consistently vague in its descriptions of what victims’ services programs do. For example, while its “Victim Assistance” chapter names various forms of victims’ assistance, such as “family violence prevention and intervention,” “victim assistance

programs,” and “victim assistance services,” it rarely specifies the purpose of such programs, or even what victims’ needs they fulfill, thereby avoiding discussing what needs domestic violence victims have.\textsuperscript{260} Also, the report identifies the need for a complex coordination of resources between the criminal justice system and service providers, explaining that “[l]aw enforcement officers must know where victims can be referred for emergency aid… [j]udges must be familiar with the services that can be employed as alternatives to traditional dispositions… [s]ervice agencies must know who to call at the police station.”\textsuperscript{261} However, it fails to define any of the previous passage’s key terms, such as service agencies, emergency aid (presuming that means more than medical attention), and alternatives to traditional dispositions (that may involve counseling for offenders rather than punishment). This vagueness, again, obscures what service agencies do and the problems to which they respond. Altogether, a careful reading of the report reveals little about who any one of these figures would call to accomplish the stated tasks of finding emergency aid and coordinating social services, and one is left with little idea about what problems of victims’ needs demand these types of resources.

The report’s “Education and Training” chapter is similarly vague. It recommends that a wide range of institutions provide training in family violence intervention. Such institutions include professional schools (medical, law, divinity, education, etc.), federal, state, and local government agencies, and national professional organizations. However, besides alerting law enforcement, the report fails to identify the specific dimensions of this proposed training, or how exactly someone in one of these institutions seeking to intervene could or should

\begin{footnotesize}
\begin{footnote}
\end{footnote}
\end{footnotesize}

\begin{footnotesize}
\begin{footnote}
\end{footnote}
\end{footnotesize}
respond when encountering domestic abuse. Overall, the report offers no direction as to how institutions outside of the criminal justice system can improve their responses to domestic violence.

In contrast to its vagueness about victims’ services and civil society’s response to domestic violence, the Final Report offers many specific recommendations for the judiciary, police, and prosecutor’s offices. For example, the report recommends barring law enforcement agencies from interviewing children more than once. In being specific about criminal justice responses but remaining vague on social service resources, the report works to constrict the problem’s scope to bad men who will hopefully learn their lesson through being punished. By delimiting and obscuring solutions, the report delimits and obscures the problems those solutions presuppose. The Final Report’s emphasis on prosecuting and punishing offenders enables it to treat domestic violence as isolated acts outside of any socioeconomic and gender relationality, thereby preserving the family’s autonomy and prestige, enabling its continuing utilization as the basis of attacks on the welfare state.

Conservative victims’ rights criminology advocates focusing on and punishing acts rather than on the socioeconomic conditions that enable criminal acts, decontextualizing violence just as the Task Force does. For conservatives, crime has nothing to do with where either the victim or criminal lived, how they got around, their mental health, what drugs they were on, or what school they went to, only the defective moral character of perpetrators. By contrast, mainstream criminological scholarship does not merely focus on the criminal justice system and criminal justice institutions, but on a wide array of institutions and dynamics, including schools, drug addiction, medical resources, prison rehabilitation programs, and city planning. Conservative criminology ignores such analysis, emphasizing the offender’s
punishment after they have committed the crime rather than any conditions that preceded it.

262 Accordingly, the paradigmatic crimes for ‘tough-on-crime’ victims’ rights advocates are rapes, murders, or robberies committed by strangers, in which no relationship existed between the offender and victim before the incident, and no relationship will exist after.263

Domestic violence complicates this conservative picture. In contrast to stranger violence, domestic violence occurs in a relationship with a future. Like stranger crime, conditions at the time of the incident (such as homelessness, unemployment, or previous abuse, among many others) provide insight into why the incident occurred. Unlike stranger crime, the alteration or continued existence of these conditions affect whether the violence will reoccur. That is, a robbery victim is no more likely to be robbed than someone who had never been robbed at all, while a domestic violence victim is far more likely to be reassaulted than someone who had never been a domestic violence victim, unless there is a change of family dynamics. Of course, the criminal justice system alone is ill-equipped to examine and respond to those conditions on its own; hence, there is a need for vigorous cooperation with support for social service resource to provide housing, money, and employment for battered women, which the 1978 Consultation’s participants demanded and the Reagan Task Force ‘Final Report’ remained silent about. Ignoring the victim’s context may not engender further victimization for those previously victimized by strangers, but it will for victims of domestic violence. The Task Force on Family Violence erased the difference between stranger crime

262 See, James Q. Wilson, Thinking about Crime (New York: Vintage Books, 1985). In it, Wilson asserts the existence among some offenders of an inherently criminal temperament, rejects economic and sociological explanations for criminal offending, and advocates for deterrent and incapacitative responses to crime that do not address the offender’s socioeconomic context.

263 However, the victims’ rights movement has promoted measures that increase contact between victims and offenders; allowing victims to testify at parole hearings and view executions effectively extends relationships for years, if not decades.
and domestic violence, thereby suppressing the notion that treating them identically leaves
domestic violence victims vulnerable in ways stranger victims are not.

Conservative criminology holds that focusing on domestic violence as isolated
criminals acts and ignoring socioeconomic complexity will be beneficial for victims, as
incarcerating offenders incapacitates their ability to further victimize, enhancing domestic
violence victims’ security. However, if a domestic violence policy’s success is measured by
the connected goals of reducing future victimization and enhancing victims’ life chances, it is
counterproductive to ignore the offenders’ and victims’ socioeconomic conditions. For
domestic violence policy to be effective, it must respond to the specific socioeconomic
conditions of victims and offenders. Consider that couples exist in economic relationships
with shared parenting responsibilities. Removing an abusive husband from the home for a
year-long prison term—in the event of the type of prosecution and incarceration the Task
Force promotes—profoundly changes the victim’s economic situation and her ability to care
for her children. If the assaultive husband was the household’s sole source of income, the
battered wife will not have money to pay the household’s bills, leading directly to hunger,
homelessness, and lack of healthcare. Also, the possibility of the victim’s re-victimization is
related to their socioeconomic situation. If the victim remains destitute at the end of the
offender’s incarceration, she will be more likely to return to the offender, thereby making
herself subject to further abuse. In such a situation, the criminal justice system alone is
incapable of solving problems arising from domestic violence, and, in light of the female’s
imminent poverty without the husband’s income, it may be a destructive response to
domestic violence. The liberal consensus would hold that this situation demands government
assistance to liberate the female from the forces that contributed to her economic dependency on her husband or male partner that enabled future victimization.

Domestic violence policy that provides housing, employment, and financial assistance presume that victims are situated in economic, geographic, professional, social, and familial relations, and thereby point to the manifold webs of relationality that exceed the family relations conservatives treat as autonomous and determinative. Such solutions look beyond the family to a semblance of a welfare state that provides material resources, as other elements of civil society popular among conservatives—neighborhoods, churches, families—have demonstrated their inadequacy at meeting victims’ basic needs.

The Democratic Party’s Neglect of Material Support for Domestic Violence Victims

Of course, Reagan’s was a conservative administration, and the Family Violence Task Force Final Report reflects that conservatism in glorifying the traditional family and emphasizing criminal justice responses to domestic violence at the expense of social welfare responses. One may think that domestic violence policy crafted by liberals would include solutions addressing the victim’s socioeconomic context by providing material resources to enable a victim to survive independently of his or her abuser, thereby mirroring liberal views on the need for government support generally. However, the Democratic Party’s primary federal policy response to domestic violence, the 1994 Violence Against Women Act, mirrored the Task Force on Family Violence’s vigorous reliance on criminal justice solutions and meager provision of material resources.

VAWA created two new federal crimes: crossing state lines to commit acts of domestic violence and crossing state lines to violate protection orders. It also mandated that
any civil protection order receive full faith and credit in every state. While the 1994 Act and the most recent version of VAWA both contain money for social services, the vast majority of VAWA money is dedicated to the criminal justice system. VAWA funding supports state and local law enforcement agencies’ mandatory arrest policies, changes in domestic violence investigation procedures, the development of prosecution and police units dedicated solely to crimes against women, and the creation of more comprehensive databases for crimes against women. For example, the 2005 version of the act contained $75 million per year for encouraging mandatory domestic violence arrest practices, $55 million per year for rural domestic violence and child abuse enforcement grants, and $225 million per year for Services and Training for Officers and Prosecutors (STOP) grants. By contrast, VAWA contained no money for temporary shelters, only $40 million per year for transitional housing, and $10 million for grants to coordinate development of long-term housing for victims.264 In the fiscal year 2012, the amount available for transitional housing declined to $25 million. Considering that in 2000 there were 1,887 domestic violence shelters and many more transitional housing programs, federal funding makes up only a tiny portion of shelter and transitional housing program budgets.265

Perhaps these law and order elements of VAWA were included to satisfy tough-on-crime Republicans, and they ensured VAWA’s passage and its continued authorization. In other words, through the course of the legislative process, Democrats sacrificed their liberal emphasis on domestic violence victims’ material conditions to compromise with Republicans and get the bill passed. However, the evidence shows that providing material resources was


131
never VAWA’s emphasis from the beginning of its legislative history. From its 1990 introduction by Senator Joseph Biden, VAWA shared the Task Force on Family Violence’s emphasis on criminal justice solutions to domestic violence. The strong majority of VAWA money in the 1990 legislation went towards increasing the number of police and prosecutors focused on domestic and sexual violence, encouraging mandatory arrest policies, and training police and prosecutors to improve conviction rates, all elements of the final 1994 VAWA bill. Comparatively few resources were devoted to ameliorating the material conditions of battered women, primarily funding for temporary shelters. Absent from VAWA are long-term housing, employment, medical care, mental health care, transportation, substance abuse treatment, financial, or child care resources for victims, all necessary for a victim to live independently of her batterer.

The rhetoric of prominent Democrats during Congressional hearings about VAWA demonstrates a commitment to the Task Force on Family Violence’s emphasis on criminal justice responses to domestic violence. For example, in the 1990 Senate Judiciary Committee hearing concerning VAWA entitled “Legislation to Reduce the Growing Problem of Violent Crime Against Women,” Biden argues that his bill “uses federal grant money to encourage States to treat domestic violence as a crime and not as a quarrel.”266 In a 1991 Senate Committee on the Judiciary hearing “Violence Against Women: Victims of the System,” Biden offered the following statistic to suggest that arrest, prosecution, and conviction were central to reducing domestic violence “Last year, according to one study, an abusive spouse was arrested in less than 15 percent of the cases where his victim was bleeding from an open

wound.” In 1994 statement provided to the House Subcommittee on Crime and Criminal Justice of the Committee on the Judiciary hearing “Domestic Violence: Not Just a Family Matter,” Biden argued, “For too long, violence in the home has not been treated as seriously as violence in the street...while a stranger might serve a lengthy jail term for an assault, a spouse of boyfriend will all too often be neither arrested nor prosecuted for the very same conduct.” Similarly, in his speech opening the 1994 “Domestic Violence: Not Just a Family Matter” hearing, Representative Charles Schumer hailed the criminal justice orientation of the pending VAWA legislation, declaring, “if there is one message I would like everyone to hear today it is that batterers must be treated like the criminals they are.”

By insisting on the commensurability of domestic and stranger violence, Biden and Schumer bracket out socioeconomic context from domestic violence analysis. Accordingly, entirely absent from Schumer’s and Biden’s speeches is any discussion of the material deprivation that contributes to the inability of women to live on their own because of a lack of material resources, which, in turn, increased their vulnerability to further victimization. Instead, they, like the Task Force on Family Violence, focused on the criminal justice system’s treatment of the batterer, presumably because they determined that convicting and imprisoning offenders is the proper focus of anti-domestic violence efforts, and that incarcerating offenders alone will sufficiently reduce future victimization and improve battered women’s lives.

267 Statement of Joe Biden.


The equation between domestic violence and stranger violence in VAWA was not total. In funding domestic violence advocates employed by prosecutors’ offices, the legislation recognized the unique difficulties domestic violence victims have in participating in the criminal justice system. However, these measures still worked to increase prosecutions and punishments, demonstrating the same reliance on and faith in criminal justice responses to domestic violence. In VAWA, helping women meant helping them prosecute and punish their batterers and little else.

Their statements not only mirror the Task Force on Family Violence’s reduction of domestic violence to stranger violence, but also the language of Republicans participating in the same hearings in which they were presented. Republicans participating in VAWA hearings offered the same solutions to domestic violence as those they advocated for in addressing stranger violence: prosecution and harsh penalties. VAWA was part of a larger crime bill, the Violent Crime Control and Law Enforcement Act, which was emphatically tough-on-crime, including, among other measures, billions of dollars for states to build prisons if they promised that offenders would serve at least 85% of their sentences.

Republican Senators and Representatives made no distinction between domestic violence and bank robberies and drug-related murders addressed in other parts of the larger crime bill. For example, in the 1991 “Violence Against Women: Victims of the System” hearing, Republican Senator Chuck Grassley said, “We must impose swift, sure, and strict punishment for criminals at least as tough as the crime itself,” and “getting tough on the crime means getting tough on the criminal.”\(^\text{270}\) In the same hearing, Strom Thurmond demanded that “vicious acts against women be dealt with by enacting tough crime penalties

which harshly punish perpetrators and deter these violent crimes.”

In the 1994 “Domestic Violence: Not Just a Family Matter,” Representative Steven Schiff echoed the ‘crime is a crime’ ethos by referring to his previous experience as a district attorney: “one of the first actions I took was to issue instructions to our office and law enforcement agencies in our district that domestic relations violence was violence. In other words, a charge of assault and battery should be treated like a charge of assault and battery and the relationship between the accused and the victim were (sic) not relevant.”

It is mysterious why Democrats would adopt wholesale conservative domestic violence discourses. The absence of comprehensive funding for victims’ services cannot be attributed to an absence of research demonstrating the central role socioeconomic status plays in determining the frequency of domestic violence victimization and the ability of victims to leave abusive situations, or an absence of research demonstrating a need for and the benefits of comprehensive domestic violence victims’ services. Law professor and social worker Donna Coker argues that inadequate resources are a primary reason women do not leave abusive situations, and battering itself can have a catastrophic effect on women’s economic well-being, compromising educational opportunities, employment, and housing status.

Suzanne Wenzel, Barbara Leake, and Lillian Gelberg demonstrate that the severity of

---


272 Hearing before the Subcommittee on Crime and Criminal Justice, Committee on the Judiciary House of Representatives, Domestic Violence: Not Just a Family Matter. 103rd Congress, Statement of Steve Schiff, June 30, 1994, 5

homelessness is a major predictor of domestic violence.\footnote{Lillian Gelberg, “Risk Factors for Major Violence Among Homeless Women,” \textit{Journal of Interpersonal Violence}. 16 (2001).} Chiquita Rollins reports that “the perceived and actual availability of safe, affordable housing and programs in the community to assist survivors of IPV [intimate partner violence] in accessing housing is also linked to women’s decision and ability to safely leave an abusive relationship.”\footnote{Chiquita Rollins, “Housing Instability is as Strong a Predictor of Poor Health Outcomes as Level of Danger in an Abusive Relationship: Findings from the SHARE Study,” \textit{Journal of Interpersonal Violence} 27 (2012): 627.} Jody Raphael argues that “women with no financial resources are more vulnerable, easier to dominate, and unable to leave their abusers.”\footnote{Jody Raphael, \textit{Saving Bernice: Battered women, welfare, and poverty}. (Boston: Northeastern University Press, 2000), 34.}

Responding to the evidence of a relationship between a lack of material resources and domestic abuse, Coker proposes submitting every anti-domestic violence law and policy to a “material resources test,” which will ascertain whether a specific policy “improves women’s access to material resources.”\footnote{Coker, “Shifting Power for Battered Women,” 1009.} She reasons that “inadequate material resources render women’s choices more coerced than would otherwise be the case.”\footnote{Coker, “Shifting Power for Battered Women,” 1020.} Ultimately, “the obvious impact of applying the material resources test is to shift significant monies to direct aid for victims and to target more significant aid to poor women and especially poor women of color” from law enforcement and incarceration expenditures.\footnote{Coker, “Shifting Power for Battered Women,” 1052.} Instead of costly
mandatory arrest policies, she recommends transportation, housing, childcare, and food assistance.\textsuperscript{280}

Despite the emphasis on criminal justice responses in VAWA and the Family Violence Task Force Final Report, Coker’s material resources test reveals that criminal justice responses may offer fewer resources than social service responses for women of color and immigrants. Also, mandatory arrest policies carry two risks for these women. First, forcing police to choose someone in arrest in chaotic and contested circumstances because of mandatory arrest policies may result in the battered woman’s arrest, which could catalyze severe financial and parental consequences. Second, if the victim or offender is undocumented, initiating contact with law enforcement may cause either the batterer or the battered to become enmeshed in the immigration system, ultimately leading to one or the other of them being deported. Both scenarios carry significant adverse material consequences, which, according to Coker, outweigh the material benefits of having the batterer arrested.\textsuperscript{281}

Affirming Coker’s arguments, studies have demonstrated that access to material resources effectively reduces the chances for violent revictimization. Domestic violence programs that explicitly address a victim’s socioeconomic condition have succeeded in reducing the recurrence of violent victimization. Studies indicate that employed victims with stable housing are considerably less likely to suffer future victimization by their batterers, for the simple reason that they are materially capable of staying away from them. For example, Neil Websdale documents a Kentucky project in which women in domestic violence shelters

\textsuperscript{280} Coker, “Shifting Power for Battered Women,” 1053.

\textsuperscript{281} Coker, “Shifting Power for Battered Women,” 1042-1049.
received employment training, housing support, and other forms of services. He found that only 2.4% of women who participated in the project and subsequently secured housing separate from their abuser suffer further victimization, compared to 86.4% of those who do not. Christin Gibson-Davis et al. examined two programs to discern the relationship between employment and victimization. The first program, the Minnesota Family Investment Program, offered wage supports and job-training to single mothers. The second, the federal National Evaluation of Welfare-to-Work Strategies, required welfare-recipients to work or receive job training. They found that each program increased the employment of their participants. According to their study, increased employment brought a 6-8% decline in domestic abuse. Also, Gibson-Davis, et al found that both programs “reduced reports of domestic violence, even though these programs did not include services to directly address domestic abuse.”

Tellingly, Melissa Richter and Karen Rhodes found that domestic violence victims endorsed economic support and mental and medical health care rather than law enforcement responses. According to their study, 88% of victims expressed interest in health care, 72% in mental health treatment, and 77% in economic assistance (including cash payments, housing assistance, and employment assistance), while 56% wanted law enforcement assistance. The disparity between law enforcement and services was greater concerning what victims


said they needed. While 76% said they needed financial support, only 47% said they needed law enforcement. Richter and Rhodes posited that preference for services may be due to law enforcement being perceived as acting “as a temporary ‘Band-Aid’ for acute circumstances but are not viewed as useful for long-term protection. Without means for gaining independence from the partner, some women will not be able to safely escape the violence.” Deborah Bybee and Cris Sullivan studied whether assistance from advocates trained to help domestic violence victims would reduce future victimization for those victims. She found that 25% of domestic violence victims who received assistance with housing, employment, and other services experienced no further abuse after two years, while that was true for only 10% of those who had not.

Altogether, considering these studies, no good policy reasons exist for a lack of victims’ services. Unsurprisingly, a lack of financial resources impairs the ability of service providers to enable victims to avoid future victimization. The primary complaint of North Carolina domestic violence shelters and services providers is the perpetual lack of funding. In a study completed by Rebecca Macy, the directors of domestic violence agencies repeatedly said that transitional housing and transportation were crucial for victims. However, they “reported that their agencies were unable to offer long-term transitional housing for survivors or to help survivors with transportation needs. In addition, few affordable housing resources and low-cost transportation systems existed in their agencies’


289 Rebecca Macy et al., “Domestic violence and sexual assault service agency directors’ perspectives on services that help survivors,” Violence Against Women, 16 (2010).
In 2011, the National Network to End Domestic Violence completed a census of 1,726 domestic violence programs across the nation. The census recorded the requests for services each program reported within a 24-hour period. It found that within that 24-hour period there were 10,581 requests for services that the domestic violence programs could not meet, including over 6,714 requests for housing. The report notes that programs could not meet these requests because “programs did not have the resources to offer these services.” The report further indicated that only 35% of the programs offered transitional housing, 22% offered employment assistance, and 18% offered medical care and advocacy, among many other services important for women to avoid further victimization only a minority of shelter programs offered.

Considering the research indicating that there is need for and manifold benefits to victims’ services funding, the constraints limiting domestic violence services are not immanent to domestic violence discourse and policy itself. Therefore, the constraints come from outside of domestic violence discourse, from other normative discourses concerning ways of responding to victimization.

## Conclusion

The struggle over domestic violence was an important moment in the development of the politics of victimization. Domestic violence policy could have developed in a different

---


way, such as focusing on services instead of punishment. In so doing, it would have offered a clear alternative to the victims’ rights model of responding to victimization. However, the victims’ rights model has prevailed. Domestic violence service providers have not been able to obtain the resources to offer the comprehensive services necessary to prevent victimization and revictimization. By contrast, the victims’ rights movement is extraordinarily successful in its efforts to dramatically increase sentences for numerous crimes, such as the three-strikes law in California. Such campaigns that are conducted in victims’ names have resulted in billions of dollars of annual government spending to incarcerate prisoners, dwarfing what government expends on domestic violence services.

In the victims’ rights model, victims need nothing more than prosecution and punishment. In the anti-domestic violence model, victims need services as much or more than punishment. Victims in stranger crimes do not have the same needs as domestic violence victims. However, contrary to the victims’ rights model, they do have needs beyond punishment for criminals. For example, a victim injured during a robbery may need counseling, medical care, time off of work, and financial assistance in order to cope with and recover from their victimization. Adopting the anti-domestic violence paradigm would not just be a matter of adding to services government provides victims, but in complexifying the concept of victims’ needs, displacing punishment and prosecution from its centrality in American responses to victimization.

It is impossible to separate stranger violence and domestic violence so completely that responses to victimization in one would not affect the other. It is difficult to imagine one system of governmental responses to victimization that can include such antithetical approaches as victims’ rights and domestic violence services, and America’s responses to
victimization have almost exclusively privileged the victims’ rights approach. Perhaps the absence of domestic violence funding can be attributed to the victims’ rights movement’s preeminence. In the 1990s, Democrats chose to model domestic violence responses according to the victims’ rights paradigm.

Domestic violence provided a test case of the ability of American political and criminal justice system to fashion responses to victimization that consider socioeconomic context and presume a broad sociality of an interconnected whole rather than responses that treated crime as committed by atomized individuals. If any type of crime was going to impel material responses, it would be domestic violence, because of the undeniable importance socioeconomic context in the commission of the offense (the family) and the social service responses it demands to avoid further victimization (housing, food, money). But, victims’ rights criminal justice responses that deny the importance of socioeconomic relations have carried the day.

Domestic violence policy focuses of perpetrators and not victims in a manner identical to the victims’ rights movement. As a result, a conservative vision of the family has prevailed, spared the comprehensive critique levied by the battered women’s movement. It remains intact as the nurturing and self-sustaining entity conservatives require for their attacks on welfare and government support generally. As chapter three shows, victims’ rights affirms the conception of the nurturing and self-sustaining family promoted by conservatives.

It is obvious why conservatives advocate for victims’ rights approaches to domestic violence: it protects their articulation of the family as the fundamental force shaping socioeconomic relations, which has undergirded conservative Republican attacks on the welfare state. The victims’ rights family represents a unification of conservatism’s cultural
politics and neoliberalism’s economic agenda. For conservatives, the health of the family depends on the health of capitalism, and vice versa. By contrast, insisting on the importance of socioeconomic forces in the commission and prevention of domestic violence necessarily asserts the importance of social forces beyond the family, dislodging the family from its fundamental position. This affirms the liberal consensus’s contention that forces beyond the family’s control call for assistance from government to ensure socioeconomic viability.

The failure of Democrats to support comprehensive domestic violence victim services seems to contradict the liberal consensus’s assertion of the importance of broader social forces affecting families. Advocating for comprehensive victims’ services would call into question the self-sustaining traditional family, thereby contesting the foundation of conservative attacks on welfare. By contrast to their tepid support for comprehensive domestic violence victims’ support, Democrats supported and continue to support victims’ rights measures, at times enthusiastically. When it comes to responding to victimization, then, Democrats are not progressive, or even liberal, but conservative.

The success of victims' rights relative to the failure of domestic violence service acquisition mirrors the ascendance of conservative attacks on government’s responsibility to care for the poor. Conversely, the failure to achieve plentiful resources for domestic violence mirrors the demise of the liberal consensus’s commitment to helping poor people affected by socioeconomic forces beyond their control. The failure to legislate comprehensive victim support coincided with the success of attacks on social welfare programs predicated on glorification of the traditional family. For example, VAWA was passed in 1994, while the Personal Responsibility and Work Opportunity Act ended welfare as an entitlement in 1996. Both measures were led by Democrats.
As conservatives increasingly attack the liberal consensus and demand budget cuts targeting welfare and other social spending instead of tax increases to balance the federal budget in the name of the traditional family, we will see on what basis those inclined to protect the poor mount their defense of such spending. Such efforts may be impossible without an assertion of broad social forces and the fallibility of the traditional family comprehensive domestic violence services advocates asserted. They abandoned such an assertion by choosing victims’ rights, leaving liberals defenseless in their fight, if they choose to wage it, to protect government support for the poor.
Chapter Three: The Power of the Common Man

Introduction

“We’ve got the power to do whatever we want. All we have to do is just do it.”
Mark Lunsford

Previous chapters about the American victims’ rights movement have examined the victims’ rights work of the Reagan Administration and the victims’ rights orientation of domestic violence policy in the 1990s. This chapter focuses on more recent victims’ rights activism, providing an overview of the work of current victims' rights organizations generally, and a case history of the work of one leading victims' rights activist, Mark Lunsford, who between 2005 and 2011 successfully advocated for the passage of harsher sexual offender sentencing laws across the United States, named Jessica’s Law for his murdered daughter.

This chapter will explore the appeal of victims' rights, using the work of Stuart Hall to argue that its appeal derives from the current socioeconomic conditions of its supporters. It also examines the victims’ rights movement’s disarticulation of two discourses that have cemented the post-World War Two liberal consensus. First, that government must ameliorate poverty’s psychological damages and devote resources to enable socioeconomically subordinate populations to function economically and professionally in American capitalism. The second assumption is that unregulated private economic enterprise corrodes the

possibilities of socioeconomic mobility for all. Together, these two assumptions suggest the impossibility of social mobility for Americans without government intervention. I cite these discourses in the political work of Franklin Roosevelt and Lyndon Johnson, two great champions of the liberal consensus. Both of these assumptions are undercut by the victims' rights movement’s articulation of the family, one very different than the family articulated by the anti-domestic violence activism described in chapter two.

The Victims’ Rights Movement after the 1990s

As discussed in chapter one, the Reagan Administration released a report on crime victims in 1982. The report continues to be cited by victims’ rights activists and the few academics sympathetic to victims’ rights as the template for victims’ rights philosophy. The report primarily calls for increased victims’ participation in the prosecution of defendants and the determination of offenders’ sentences; it devotes little attention to the provision of medical, financial, and psychological resources to victims. For a short period after the release of the report, legislation addressing crime victims focused on establishing government administered financial compensation schemes for victims, rather than on inserting victims into the criminal justice process.293 Victims' rights took the qualitative shift to offender-oriented policy found in the Task Force Report in the early 1990s, when states across the country passed laws guaranteeing victims’ rights to participate in and receive information about criminal justice cases. By 1997, 44 states had laws guaranteeing victims access to criminal trials, and 33 had passed constitutional amendments guaranteeing such access.

293 Rentschler, Second Wounds, Part One.
These and other victims’ rights efforts have been led by an array of non-governmental organizations who work with local, state, and federal governments, many of which are described in the introduction. As the movement has evolved, groups focusing on punishment and the treatment of offenders have come to dominate the victims’ rights movement. Some are dedicated to increasing victims’ ability to participate in the prosecution and punishment of offenders, and also work to lengthen prison sentences for offenders. In addition, these groups, such as Justice For All, Crime Victims United, and Crime Victims Action Alliance, support increasing the number of crimes eligible for the death penalty, call for an expanded use of mandatory minimum sentences, and oppose any legislation or court-orders reducing prison populations. These groups also seek to reduce the quality of life of prisoners, reasoning that victims’ and offenders’ well-being exist in an inverse relationship to each other. For example, in 1994, Justice for All’s Pam Lychner, a crime victim, sued to overturn a federal settlement between Texas prisoners and the Texas Department of Corrections which granted inmates certain living standards, limited the use of tents to house prisoners, and mandated certain staff to prisoner ratios. Lychner protested, we “are demanding respect. We won’t tolerate inmates laughing at us anymore.”

Altogether, they are tough-on-crime and tough on criminals, purportedly for the sake of crime victims.

Other groups are dedicated to specific offender populations and sentencing issues. For example, the National Organization of Victims of Juvenile Lifers works to defeat any efforts to repeal life sentences without parole for people convicted of a murder committed when they were minors, arguing that allowing those convicted as juveniles to leave prison after 25 years

---

instead of requiring them to die in prison harms victims or their families, and is thus unacceptable.\textsuperscript{295}

In the 1990s, amidst a wave of legislative changes that dramatically increased the United States’ prison population—such as the passage of three-strikes laws—legislators developed the practice of naming many ‘tough-on-crime’ legislative measures after specific victims. In other words, such legislation is passed ‘for’ and in honor of these victims. Legislation named after crime victims typically bore some relation to the type of crime the victim had endured. For example, New Jersey’s Megan’s Law is named after Megan Kanka, who was murdered by a man with two previous convictions for sexually assaulting young girls. The law requires sex offenders to register with local police departments and for their registration to be publicly available. A pattern was established for the development and passage of these bills. First, the victim him/herself or the victim’s family (most bills were named after deceased victims) lobbied for the bills, testifying in state legislatures or in the United States Congress, and expressing their support in the media. After bills were passed by legislators, governors and presidents typically held signing ceremonies with the victim and/or the victim’s family in attendance. The governor or president frequently embraced the victim or victims’ family members, congratulating them for the bill’s passage. Politicians and family members assert that these legislative efforts provide justice for the named victims, ensuring that they did not suffer in vain.

This practice of naming legislation after people not involved in writing it is unique in criminal justice. Laws have long been named after people, but they are typically named for the lawmakers who wrote the act, not non-politicians associated with the legislation. To

follow the victims’ rights’ example, the Wagner act, named for Senator Robert Wagner, would be named after a striking worker exploited by his employer.

There are dozens of laws named after victims, including Caylee’s Law (passed in multiple states; first passed in Florida in 2012), Jessica’s Law (passed in multiple states; first passed in Florida in 2005), Amber’s Law (passed multiple states and federally; first passed federally in 1996), Megan’s Law (passed in multiple states; first passed in New Jersey in 1994), Jacob’s Law (passed federally in 1994), Ashley’s Law (passed in Virginia in 2011), and Chelsea’s Law (passed in California in 2010), among others. All make life harder for those convicted of the types of crimes addressed by the laws by lengthening sentences, making post-release conditions stricter, increasing surveillance of ex-offenders, or increasing the information about offenders available to the public. There are demographic similarities among the victims for which the bills are named. All of the victims are white; most are children. Of these children, most are girls. Most of them were victims of crimes committed by a stranger.

For many, the particular horror of the crimes that catalyzes vigorous legislative responses is due to the victim’s socioeconomic location. Most of these victims belonged to socioeconomic classes typically insulated from everyday criminal victimization. They were not homeless or addicted to drugs, did not live in high crime areas, were not a member of a racial minority (crime rates for racial minorities are much higher than for whites), were not involved in criminal activity themselves, and did not possess any other socioeconomic or behavioral factors that predict one’s vulnerability to victimization. The absence of socioeconomic risk factors enhanced the unique innocence of the victims these bills were
named for. It was not their socioeconomic location that placed these victims at risk, but the evil of the offenders. In that sense, these were classless crimes.

The absence of risk factors, many socioeconomic, mirrors the absence of the provision of socioeconomic resources to address these risk factors in the legislation named for crime victims. Such legislative measures are primarily dedicated to extending prison sentences and making post-release surveillance stricter. However, while the victims may not have had any socioeconomic risk factors, there were often such risk factors for the offenders. Many were mentally ill, homeless, or drug addicts, all factors that increase the likelihood of their reoffending. Legislation named for crime victims does not direct material resources to address these issues for these offenders.

Similarly, while the victims the bills are named for were not at socioeconomic risk for victimization, many victims are. Nothing in the legislation named for victims addresses the socioeconomic factors that contribute to criminal victimization. A female homeless drug-addict is much more likely to be sexually assaulted than someone with safe, stable housing. Providing safe, stable housing would prevent victimization, a professed goal of the victims’ rights movement. However, emphasizing the socioeconomic contributors to the commission of crime and criminal victimization would, perhaps, function as a critique of the legitimacy of America’s class structure, and such a critique would be anathema to the conservatives who vigorously advocate for victims’ rights. In fact, as we shall see, victims' rights works to cement the legitimacy of the class structure.
Mark Lunsford’s Crusade

The following section will focus on Jessica’s Law, named for eight year old Jessica Lunsford, who was murdered by a sex offender in Florida in 2005. Following her death, her father, Mark, crusaded across the country advocating for the passage of versions of Jessica’s Law, a crusade that garnered him great power and prestige.

Jessica Lunsford disappeared from the home she shared with her father and paternal grandparents in Homosassa, Florida, a rural community 75 miles north of Tampa, early Thursday morning, February 23, 2005. By Friday, her disappearance had become a national story. Starting that day, Mark Lunsford met frequently with the press, describing his efforts to find Jessica and his family’s emotional state. His comments were covered in national newspapers such as USA Today and The New York Times and he appeared on CNN, NBC News, ABC, and CBS. Though hundreds of law enforcement personnel and volunteers searched for Jessica Lunsford, the search was unsuccessful, and its scope was reduced over the next three weeks, while the police investigation into her disappearance continued. On March 18, Citrus County police traveled to Augusta, Georgia to interview John Couey, a convicted sex offender who lived near the Lunsford house and left the state following Jessica’s disappearance. During the interview, Couey confessed to murdering Jessica, and subsequently directed the police to her body, which was buried behind his house. In 2007, Couey was convicted of murdering Jessica, and sentenced to death. Lunsford had said that he would like to administer Couey's lethal injection himself, but, to his dismay, Couey died of
natural causes in 2009. Lunsford complained, “My daughter’s murder died today. And it wasn’t by our hands. John Couey got off easy.”

On March 20, two days after Couey confessed to killing Jessica Lunsford, Lunsford began work to pass legislation making laws for sexual violence harsher, passing out petitions to lengthen sentences for sexual violence and make ankle monitoring systems for sex offenders mandatory. He declared, “She’s home now. Now we have a new struggle. I need people to support me to help change things.”  Elected officials immediately went to work drafting legislation matching Lunsford’s proposals. On March 23, Florida State Representative Charles Dean said he would introduce legislation that would extend sentences and mandate lifetime electronic monitoring for offenders, which was ultimately written by State Senator Nancy Argenziano and Jeff Dawsy, the Citrus County sheriff who investigated the Lunsford case. Lunsford dictated that any version of Jessica’s Law “needs to mirror the Senate Bill that Nancy Argenziano and Jeff Dawsy put together.”  Lunsford spent March and April lobbying state senators and representatives and giving interviews in support of the bill. On April 20, the Florida Senate passed the Jessica Lunsford Act. Political activity concerning Jessica’s Law was not confined to the state level. On April 9, United States Congressional Representative Ginny Brown-Waite introduced a federal version of Jessica’s Law, unveiling it at a press conference attended by Lunsford.

The Jessica Lunsford Act was signed by Florida Governor Jeb Bush on May 2, 2005, just six weeks after Couey confessed to murdering Jessica Lunsford and one month after the

---


legislation was introduced. It increased penalties for sex crimes to 25 years for a first offense, required lifetime electronic monitoring for sex offenders, expanded death penalty eligibility, and made failing to register a third degree felony. This was the first of many legislative accomplishments credited to Lunsford. According to CNN’s Susan Candiotti, the bill was passed “at the request of the victims in this case, the surviving victims in this case, to get a push to do something to toughen up the law in the state of Florida. And clearly, that is what has taken place.”299

Mark Lunsford was a novel political advocate. At the time of his daughter’s death, he was a 41-year old part-time truck driver, divorced, father of four, with a ninth grade education, who lived with his parents. He was skinny, with a gaunt face typically fixed in a morose, dead-eyed expression. He had tattoos, long hair, and a wispy goatee. When interviewed and testifying during his crusade, he usually dressed-down, wearing a baseball hat, motorcycle t-shirts, mirrored, wrap-around sunglasses, blue jeans, and work boots.

He referred to himself as a redneck. His grammar was decidedly nonstandard. Interviewed standing outside his home, from which he could see where Couey was living when Jessica Lunsford was murdered, Lunsford told Larry King, “I’m trying not to look at these people’s house, and I mean, this ain’t right. This ain’t right at all.”300 He swore during televised interviews. He was a proud motorcyclist, and branded his motorcycle colleagues ‘Jessie’s Riders,’ organizing memorial rides, and received the gift of a custom built Harley-Davidson with his daughter’s face framed by angel wings painted on its body. Lunsford celebrated the loyalty and street-smarts of his fellow truckers and bikers. When his daughter first disappeared, Lunsford “did what he thought was best, calling on bikers and truckers to


lead the search…Sometimes they see things nobody should see. Tattooed guys with beer bellies hit the road in droves.”

301 Despite being praised by politicians and media figures for his dignity, composure and tolerance, Lunsford continually expressed hatred and bloodlust for Couey and his hopes that he will “rot in hell.”

302 Lunsford declared, “I just want to see him die. I want to watch him. I want him to look me right in the eye when he dies.”

303 Lunsford also espoused vigilante justice, complaining “It’s a shame we have to defend people who commit murder. We ought to take them out and just hang them.”

304 At a Jessica Lunsford Memorial Motorcycle Ride, Lunsford read a poem he composed entitled “Predators Forewarned”: “Your time is short, your shelters few/ Jessie’s Riders are coming for you.”

Lunsford utilized his lack of education and unskilled employment to maximum political effect. He began speeches by declaring his lack of education and political accomplishment. Urging a group of Floridians to pressure lawmakers to pass additional sexual offender legislation in 2006, Lunsford said, “Let them know this is important. I don’t know much. I’m just a truck driver. But I know I want this legislation.”

305 Newspapers described how “he has somehow found an everyman’s eloquence that resonates with the public,” and praised his “down-home manner.”

---

305 Elena Lesley, “Jessie’s Riders tell Couey to Beware” St. Petersburg Times, April 21, 2007.
Lunsford acknowledged the unlikeliness of his newfound access to power and the elite approbation he received. But he took it in stride, stressing that his political effectiveness and vernacular sensibilities rightfully brought social approbation from wealthy, powerful elites:

[Jeb] Bush joked with Mark that day, asking where his famous baseball cap was. Mark took a liking to the governor. He says he’s the kind of guy who would watch your back. Sometimes, Mark thinks about taking up golf; he knows Jeb likes to play. Maybe they could hang sometime, wouldn’t that be funny. A white collar guy hanging with a guy who isn’t even a blue collar. Hell, I’m a no collar, he says, tugging on his T-shirt.309

Despite being a political ingénue, his often-bombastic proclamations covered a dizzying array of topics, and were treated by the media and politicians alike as worthwhile contributions to discussions about sexual violence. Such topics included abnormal psychology (claiming “never in the history of mankind has anyone been reformed”310 who was convicted of a sex offense), ethics (the justness of capital punishment for a wide range of crimes), public policy (bemoaning funding cuts to prosecutors’ offices), even the pros and cons of different GPS technologies. In a letter to the Florida Corrections Secretary concerning the state’s GPS technology choice, Lunsford expressed “shock and disappointment” that the state opted for one company’s technology over Lunsford’s preferred choice, writing “(We) endorse what we believe to be the latest and best technology in the one-piece BluTag device.”311

---


Lunsford’s political crusading regularly brought him into contact with powerful political figures. He routinely met with governors and state legislators in states where he was lobbying for the passage of versions of the Jessica Lunsford Act. For example, Lunsford met President George W. Bush on July 26, 2006 at a White House bill signing ceremony of the Adam Walsh Child Protection and Safety Act. Also, Lunsford was joined by Arnold Schwarzenegger and Rudy Giuliani when campaigning in California for its version of the Jessica Lunsford Act.

These political figures lauded Lunsford. Jeb Bush praised Lunsford’s efforts at the Florida Jessica Lunsford Act’s signing ceremony. At the ceremony, Bush said, “I appreciate the fact that Mark Lunsford is here, and as well as Kelly May [the mother of another murder victim active in victims’ rights]. Their daughters did not deserve the incredible treatment they received. Their deaths, however, weren’t in vain. And I just appreciate it so much; I appreciate it so much that you’ve come to participate in this bill signing.” Afterwards, Bush hugged Lunsford. Also, after meeting Lunsford, former United States Attorney General Alberto Gonzalez praised him as uniquely heroic and a personal example and inspiration for him. He proclaimed,

Listening to Mark Lunsford last night, I realized that had his story been about one of my sons, I doubt I could stand up and tell that story. And of course telling the story is nothing, compared to actually living through the loss of a child at the hands of evil…So I am humbled when I see people who have suffered so much able to stand up and take action. It makes me even more determined to do whatever I can, too. When people like Mark dedicate themselves to preventing other Listening families from experiencing the pain his family has

experienced, it would be shameful for the Department of Justice not to be truly dedicated to the same goal.\textsuperscript{313}

At the beginning of a 2009 Congressional hearing in which Lunsford, along with other witnesses, including a police officer and a Department of Justice attorney, testified, Congressman Ted Poe singled him out, saying “I appreciate all of you being here, especially Mark Lunsford.”\textsuperscript{314} In the 2006 Texas gubernatorial race, candidate Lieutenant Governor David Dewhurst included Lunsford in his campaign advertisements.\textsuperscript{315} Attorney General Charlie Crist filmed a campaign commercial containing a testimonial from Lunsford urging people to vote for Crist because he is responsive to Lunsford, saying “if I need Charlie, he’ll pick up his phone.”\textsuperscript{316}

In addition to his access to and approbation from powerful politicians, Lunsford was a central participant in legislative processes across the country. As mentioned above, he testified in front of the House Judiciary Committee, offering his views on federal funding for sex offender monitoring programs. He testified frequently in front of state legislatures, including those of Florida, Washington, Maryland, Kansas, Wyoming, and Rhode Island. When he travelled to a state to lobby for the passage of Jessica’s Law and did not testify, he frequently met with legislators, gave speeches, and conducted press conferences to pressure politicians to pass the legislation.


His manner during his state and federal testimony was, to put it lightly, forthright. He chastised legislators whom he deemed insufficiently faithful to his legislative demands. Decrying a proposed version of Jessica’s Law in Washington State that waived mandatory minimum sentences in certain situations, Lunsford inveighed, “I get very angry sometimes when I hear the things we think are protecting our children… This is absurd, and it’s an insult to my daughter’s name, and with all due respect sir, please do not name this bill after my daughter.”317 His testimony was also theatrical. He spoke in soft, somber tones and routinely broke down into tears. He wore jackets with pins signifying his daughter’s life and ties with her picture on them. In his testimony before the Washington State Legislature, Lunsford held up a watch with his daughter’s picture on its face and said, “This is my watch, this is my daughter. This is the only time I have with my daughter.”318

His legislative advocacy was immensely successful. As of March, 2011, 44 states have passed versions of Jessica’s law. His advocacy is often credited for the bill’s passage. According to a Utah legislator, “If Jessica’s Law is to make it through the Utah Legislature, her father might be one of the reasons.”319 In New York State, the Republican-led State Senate deployed Lunsford to persuade Democrats to pass Jessica’s Law. According to Republican Charles Nesbitt, “To have Mark here articulating on behalf of people’s children is very powerful.”320 In 2008, North Carolina passed its version of the Jessica Lunsford Act. North Carolina Governor Mike Easley “applauded Mark Lunsford’s effort, calling him a

---


‘great negotiator’ with a common sense proposal.”

United States Congressman Lamar Smith said that the passage of versions of the Jessica Lunsford Act in states across the country was a “credit to him.” Legislators around the country found themselves negotiating directly with Lunsford and seeking his approval. During efforts to pass the Jessica Lunsford Act in Massachusetts, Lunsford became, in effect, an unelected chief executive, vetting potential sexual violence legislation. According to Therese Murray, President of the Massachusetts State Senate, “Lunsford urged Massachusetts to follow the Florida example…But in the end he agreed to the modified version.”

In addition to his political power and prestige, Lunsford received extensive and positive media coverage. Lunsford appeared on national news shows dozens of times between 2005 and 2011. Invariably, interviewers adopted an adulatory stance towards him. Paula Zahn told Lunsford “we have all been heartened to see how you have taken your own pain and loss and turned it into action, actually helping other families who are going through similar losses,” and lauded Lunsford for “so valiantly looking for your daughter and now taking on this issue.” CNN’s Rita Cosby gushed about Lunsford and another victims’ rights crusader, “Everyone is so proud of you. You all really are incredible people, and I applaud all the efforts that you’re doing for the all the kids and parents out there.”

MSNBC’s Dan Abrams commended “you’re a smart guy, you’re a committed guy, and you


know I think people around this country respect and look up to you for what you are doing." In an interview the evening that Florida’s Jessica Lunsford Act was passed, Bill O’Reilly congratulated Lunsford, telling him “I don’t know how you compose yourself, sir. I really respect you,” and “I want you to maintain the dignity that you have and the fairness that you have.” CNN correspondent Fredericka Whitfield described Lunsford’s “amazing composure” through Couey’s trial: “this man has showed remarkable resolve and tolerance through this entire procedure.” Court TV’s Lisa Bloom said, “He is an astonishing person to me.” Larry King succinctly told him, “You’re a great man, Mark.”

His crusading earned him the 2006 Jacqueline Kennedy Onassis award, a national award for outstanding public service benefiting local communities. By 2007, his media and political success grew to where he enlisted the William Morris agency to represent him on potential book and film deals. He was urged to run, and considered running, for the Florida House of Representatives. Citrus County GOP Secretary Richard Windle suggested, “An awful lot of people are tired of professional politicians…He doesn’t have any political background, but that could be a plus.” Lunsford had contemplated politics much earlier. In 2005, Lunsford said he was “thinking about finding a way off the dump truck, and that way might be politics.” As Tampa Tribune journalist Donna Koehn put it, “Yeah, he’s only got a

327 “The O’Reilly Factor,” Fox News, May 2, 2005. During this program, Lunsford was repeatedly praised for not trying to beat up Couey in the courtroom.
ninth-grade education, but he’s smart, with a sly wit and self-deprecating humor. Important people are listening to him.”

Despite his apparent unanimous and immediate political support, his crusade was represented as one in which he took on established, powerful interests and the characteristic gridlock of the legislative process. Explaining Democratic resistance to implementing every one of Lunsford’s legislative demands, Massachusetts State Senator Scott Brown (until 2012, a United States Senator) argued, “The trial lawyers' lobby is pretty strong, but we're going to try to crack it.” Bill O’Reilly described a menagerie of villains opposed to Lunsford’s crusade: “Many trial lawyers object because they want the ability to plea bargain. Some judges dissent because their egos are bruised. They are taken out of the equation after a child predator is convicted. And many in the left-wing media object to Jessica’s Law on the grounds that it is cruel and unusual punishment; these people want rehabilitation for violent sexual offenders who brutalize children.” This, for many, was a struggle not only between Lunsford and sex offenders, but also between Lunsford and the self-serving legal establishment and soft-hearted liberals.

Lunsford’s Appeal and Conservative Politics

It seems strange to treat an unemployed truck-driver as an authority on criminal justice policy and to articulate his bloodlust as noble and heroic. However, this valorization

332 Koehn, “Living Without Jessie.”


derives from the direct connection between his narrative and the material conditions of his supporters, making their support perfectly rational. His quick transformation from being a quintessential nobody to a political power indicates the possibility of socioeconomic mobility and the existence of the American Dream, a potent narrative for the tens of millions of Americans who, as I argue below, lack such mobility, and, consequently, are unable to live the American dream.

This section begins by describing Stuart Hall’s assertion of the rational and material core of political decision-making, even decision-making which appears irrational or contrary to the decision-maker’s interests. This framework helps to explain the rational core of Lunsford’s support. It continues by considering the rational and material basis of Lunsford’s appeal—his apparent socioeconomic mobility—while explaining the ways that his program does nothing to enhance it for those without it. It concludes by looking at the ways Lunsford’s narrative buttresses conservative discourses concerning the ability of the family and the free market—if only unburdened from government taxation and regulation—to ensure socioeconomic mobility.

The Lived Experience Underpinning Lunsford’s Support

Stuart Hall’s 1979 essay “The Great Moving Right Show” provides a conceptual framework with which to understand the existence of the political and material conditions that grounded Lunsford’s popular appeal. Written after Margaret Thatcher’s election as prime minister of Great Britain, Hall rejects notions promulgated by the British left that the Conservative Party’s success was due only to their deployment of “rhetorical device[s] or trick[s]” which “duped unsuspecting folk” and had nothing to do with voter’s lives and
problems. Instead, Hall argues that the Conservative Party articulated their positions to existing material and political conditions—including Labour’s political practices and Britain’s crime problems—in ways that directly connected their discourse to the lives of ordinary Britons. These conditions provided a “material and rational core” for conservative support. Hall argues that the Conservative Party’s success was due to their ability to “address real problems, real and lived experiences, real contradictions.”

For example, Hall notes that when in it was in power during the 1960’s and 1970’s, the Labour government worked closely with capital to manage the British economy by setting wages and prices, and influencing investment decisions, and directly subsidizing them. In so doing, it aligned itself with capital and the power bloc. Hall argues that there is always a “contradiction between popular interests and the power bloc,” between “popular needs, feelings, and aspirations” and “the state of monopoly capitalism.” According to Hall, because Labour failed to fully mobilize popular interests to participate in democratic processes, it appeared to be with big capital, who, again, are in a contradictory relationship with the people. The Labour-led government, therefore, was aligned with capital against the people. Hall argued that the alliance between Labour and capital in opposition to popular interests enabled Thatcher and Conservative Party to be “undividedly, out there ‘with the people’” in ways that were impossible for Labour.

Such contradictions are not the only things that drive political support; articulations undoubtedly matter. In “The Great Moving Right Show,” Hall spends significant time explaining the power of the Conservative Party’s articulations. For example, Hall describes their articulation of the crisis of law and order, their use of “the great syntax of ‘good’ versus ‘evil,’ of civilized and uncivilized standards.”

In articulating the crime problem as such, the Conservative Party gained a “grasp on popular morality and common sense conscience.” However, Hall points out that however they articulated it, the Conservative Party did not create this problem out of thin air; their articulations touched “concretely the experiences of crime and theft, of loss of scarce property and fears of unexpected attacks in working class areas and neighborhoods.” The experience of crime and the fear of crime provided a rational basis of support for the Conservative Party’s articulation of crime, no matter how perverse and inane the British left found these articulations.

Overall, according to Hall, Labour was in an open and comprehensive relationship with capital because it set prices and wages, influenced investment decisions, and subsidized businesses, a relationship which set it opposition to the people, and crime was a problem in working class areas. Under these conditions, it was rational for voters to support the Conservative Party, who promised to protect them and their property and work against rather than with capital by withdrawing state support for corporations. Hall stresses in “The Great Moving Right Show” the ways real, material contradictions in British life existed no matter
how they were articulated. The Conservative Party “operat[ed] on genuine contradictions” in Britons’ experiences.  

Similarly, Lunsford’s appeal and success is not due merely to the rhetorical power of victims’ rights. Instead, like Thatcher’s Conservative Party, Lunsford and his crusade connected to the real and lived experiences and material conditions of his supporters. When Lunsford proclaims, as he did early in his crusade, that “we’ve got the power to do whatever we want. All we have to do is just do it,” it speaks to those who do not have the power to do whatever they want, whose real and lived experiences include socioeconomic immobility. While feelings of powerlessness have long existed, victims’ rights provides people with a new vocabulary to express them while retaining a commitment to American socioeconomic relations as they exist today.

News coverage of Lunsford articulated an investment in him that was rooted in feelings of powerlessness. As mentioned above, Lunsford worked as a truck driver at the time of his daughter’s murder. Articles about the initial search for his daughter noted this working class identity. As his advocacy for harsher sex offender sentencing laws continued over the next six years, this socioeconomic location remained integral to his political identity. For example, he was identified as a truck driver in 36 articles about his advocacy. This articles identified him as a truck driver long after he ceased being a truck driver in order to work on his crusade full-time. Lunsford never became simply an activist; he always a truck driver/activist.

---


Over and over his lack of socioeconomic status was emphasized. In addition to being referenced as a truck driver, Lunsford was referred to as blue collar.\textsuperscript{345} Attorney General Alberto Gonzales described him in an editorial in \textit{USA Today} as being as “typical as any American I’ve ever met,”\textsuperscript{346} while another article described him as “an ordinary man.”\textsuperscript{347} Articles mentioned his only having a high school diploma, and his failed ambitions of being a mechanic.\textsuperscript{348} Another article offered conflicting information concerning his level of education, though to identical effect, noting that Lunsford described himself as “a single parent and a truck driver with a 10\textsuperscript{th} grade education.”\textsuperscript{349} Lunsford himself said he would “rather drive a truck” than be a tough-on-crime advocate.\textsuperscript{350} \textit{America’s Most Wanted} host John Walsh described Lunsford saying to him “‘John, I’m just a simple truck driver.’”\textsuperscript{351} An article described the ways that he was “thrust out of his quiet life as a divorced single parent” when his daughter was murdered.\textsuperscript{352} In a public event Lunsford said “I don’t know much. I’m just a truck driver.”\textsuperscript{353} His manual labor background was emphasized through references to his lack of technological knowledge: “He had to buy a BlackBerry to keep up with his e-

\begin{footnotesize}
\begin{enumerate}
\item Alberto Gonzales, “Target Sexual Predators—We owe it to our children to protect them. New, tougher laws would help do that,” \textit{USA Today}, May 14, 2008.
\item Vansickle, “From Unknown”; Frank, “Lunsford Foundation Troubled.”
\item Laviana Hurst, “Daughter’s Rape, Murder Haunt Dad,” \textit{The Wichita Eagle}, December 14, 2005.
\item Frank, “Lunsford Group Troubled.”
\item Deborah Cearnal, “Dad asks for Action on Safety.”
\end{enumerate}
\end{footnotesize}
mails. He says he gets several hundred a month. His cell and his parents' phone ring constantly. He's not tech-savvy, though. He keeps a handwritten list of phone numbers folded in his pocket. ‘It's awful because I don't know nothing about computers.’

Lunsford traversed political and socioeconomic boundaries, but remained rooted in his original location. Far from diminishing his political stature, these descriptions served to enhance it. The regularity of his identification as truck driver-activist indicates an investment in and an affirmation of his working class location. This pattern implies a class consciousness, as Lunsford was celebrated not just for his political success, but for being successful while being a member of the working class, triumphing over the socioeconomic barriers to political power. This discourse celebrating this triumph indicated a cognizance of the otherwise existing socioeconomic barriers. In making his ascent a cause for celebration, the discourse implicitly lamented the norm: the perpetual failure of the working class to achieve political power.

Lunsford himself was an exponent of these feelings of powerlessness. In 2007, contemplating a run for the Florida House of Representatives, Lunsford asked, “What about the average person, the middle class or below-middle class? They have a voice, too, and nobody's hearing them.” In endorsing Charlie Crist as the 2006 Republican nominee for Florida governor, Lunsford said, “How many blue collar workers can pick up the phone and call the attorney general? And Charlie Crist answered for me.” As quoted earlier in the chapter, Lunsford noted the rarity of social interaction between the rich and working class,

354 Vansickle, “From Unknown to Advocate.”


when, as told by *Tampa Tribune* journalist Donna Koehn, he mused about his relationship with former governor Jeb Bush: “Maybe they could hang sometime, wouldn't that be funny? A white collar hanging out with a guy who isn't even a blue collar. Hell, I'm a no collar, he says, tugging on his T-shirt.”357 His apparent glee at the prospect of such a social occasion implied despair about its typical impossibility.

The socioeconomic powerlessness that provides the rational and material core of Lunsford’s appeal is intensifying. The institutions necessary for socioeconomic mobility and an equitable distribution of political power are increasingly weakened. The percentage of Americans without healthcare increases annually.358 Education is increasingly unattainable, as public school funding is cut and university tuition and fees increase.359 Finally, political campaigns have become increasingly expensive, while limits on campaign contributions have been virtually eliminated, making politicians increasingly dependent on corporate and wealthy donors while reducing the power of small contributors. Contrary to the notion that socioeconomic mobility is a uniquely American phenomenon, according to five recent studies examined by *The New York Times*, “Americans enjoy less economic mobility than their peers in Canada and much of Western Europe.”360

Does, contrary to my claims, the Lunsford narrative prove the existence of socioeconomic mobility available for all Americans? Does he demonstrate that despite the

357 Koehn, “Living Without Jessie.”

358 See Dramatic Increase in the Uninsured Rate in Every State. Found at www.americanprogress.org/05/uninsured_increase_map.html.


dismal list in the previous paragraph, socioeconomic mobility is available for all? No.
Lunsford’s crusade would have been impossible without help from powerful groups who saw
his crusade benefitting their interests. It was not a grassroots campaign that succeeded
because of the power of the people. Political and business interests offered immediate and
substantial support. Across the country, legislators enthusiastically wrote and passed
legislation matching his specifications. Legislators and police chiefs lauded his work and
appeared with him in support of the legislation. Lunsford also received financial support
from a business that would potentially benefit from his crusade. He received more than
$100,000 per year from a computer database company, Technology Investors, which
develops tracking software for use by criminal justice agencies.361 Tellingly, information
about these payments did not surface publicly until 2008, long after most of his political
work had been completed.

Lunsford’s appeal derives from his story of a powerless man seizing power and
socioeconomic mobility. Did Lunsford advance his supporters’ political project by
advocating a program that addressed socioeconomic immobility, thereby fulfilling his
oppositional appeal? Did he champion their cause? Again, no. Lunsford worked to
accomplish the opposite: the consolidation of power for those who already possessed it,
without increasing it for those who did not. Surely, the ability of the criminal justice system
to wield political and create political change increased. However, the longer sentences,
stricter post-prison surveillance, and expanded use of the death penalty mandated by the
Jessica’s Law do nothing to reduce socioeconomic immobilization and political
disenfranchisement. As criminal victimization is directly connected with a lack of

November 6, 2009.
socioeconomic power, ameliorating socioeconomic deprivation would be a logical place to address victimization. Or, many offenders struggle with drug and alcohol additions, and offend when intoxicated, as Couey did. Accordingly, mandatory, fully-funded drug treatment may reduce sexual victimizations.

Instead of such measures, Jessica’s Law’s provisions only enhance the state’s repressive capacities, increasing the power of law enforcement, prison and probation institutions, and prosecuting attorneys, doing nothing for those who victimize or are victimized as a result of socioeconomic immobility. In addition, the criminal justice system consumes huge amounts of government resources. As of August, 2012, the state of Florida incarcerated 100,272 inmates, at an annual cost of over 2 billion dollars. Jessica’s Law will lead to the incarceration of more people for longer periods of time, taking money away from institutions that promote mobility, such as schools and public health organizations.

Lunsford’s appeal demonstrates a yearning for socioeconomic mobility, one with potentially political effects. For Lunsford supporters without socioeconomic mobility, seeing their negative image in him may catalyze the recognition of the lack of socioeconomic mobility they and millions of Americans experience. This recognition functions as a register of discontent with their immobility and the corresponding desire for mobility, or, as Dana Cloud puts it, an “acknowledgment of the limits of what exists and gesture toward what could be different.” This may foster—though this is the challenge facing all groups opposing powerful interests—first, a critical consciousness concerning their immobilization, and, second, political activity addressing the conditions of their immobilization. Successfully

---

362 See Florida Department of Corrections, Quick Facts about the Florida Department of Corrections. Found at http://www.dc.state.fl.us/oth/Quickfacts.html.

working to change the socioeconomic conditions of that immobilization would inevitably require sacrifices by those with socioeconomic power. Lunsford’s political work actually helps to neutralize such possibilities by advancing a project that reduces socioeconomic mobility as the response to a desire for mobility. In so doing, he satisfied the latent critical stance found in the yearning for socioeconomic mobility, without actually increasing it. Altogether, the oppositional elements of Lunsford’s narrative were canceled out by the politically-dominant elements of his political program, rendering his overall narrative amenable to the interests of those with socioeconomic power. Lunsford’s narrative engages this critical consciousness of socioeconomic immobility, but satisfies it by increasing exactly what fuels it.

*Lunsford Disarticulating Lyndon Johnson and Franklin Roosevelt*

In addition to offering a general defense of socioeconomic hierarchy, Lunsford’s narrative also complements specific conservative endorsements of capitalism’s and the family’s role in enabling socioeconomic mobility, articulations directly contrary to those of the liberal consensus as articulated by Franklin Roosevelt and Lyndon Johnson. Roosevelt argued that without government intervention and regulation, capitalism constricts socioeconomic mobility. Johnson held that the family and capitalism are not enough to ensure socioeconomic mobility, and government support was necessary for those who would otherwise be immobile. For both, government functions as the guarantor of socioeconomic mobility, not capitalism or the family. By contrast, conservatives argue that capitalism, together with the family, ensures socioeconomic mobility.
Franklin Roosevelt and Lyndon Johnson presided over two robust liberal legislative periods in American history. Roosevelt’s New Deal vastly expanded government intervention into the economy. Legislation was passed regulating agricultural prices, labor relations, banking, the stock market, utility companies, and industrial production. The New Deal also provided resources directly to Americans, including Social Security, Aid for Dependent Mothers and Children, and unemployment insurance. Johnson’s Great Society programs expanded the federal government’s provision of resources to poor people and communities, including healthcare for seniors and the poor, pre-kindergarten enrichment programs, and legal aid.

Throughout their New Deal and Great Society efforts, Roosevelt and Johnson, with different emphases, suggested that economic relations derived from unregulated capitalism lead to conflict, political corruption, and human suffering. Their policies sought to mitigate what they saw as the negative effects of capitalist economic relations on socioeconomic mobility. Despite these concerns, both were pro-capitalist and repeatedly professed faith in the beneficence of free enterprise in speeches about policies that were designed to regulate it, and deferred to business sensibilities even when instituting precedent-breaking policies. Their critiques, however mild, of capitalist economic relations stand in stark contrast to political discourse in the 2010s, which emphatically denies the debilitating consequences of capitalist economic relations in the United States on socioeconomic mobility and quality of life.

During the first five years of Roosevelt’s presidency, in the midst of the Great Depression, when his efforts to pass New Deal legislation were at their most successful, Roosevelt and members of his administration portrayed America as embroiled in economic
and political warfare, waged between big business and the American people. In these portrayals, Roosevelt and his administration decried the consequences of the accumulation of wealth during under-regulated capitalism. In 1936 Roosevelt argued that the “concentration of wealth and power has been built upon other people’s money, other people’s business, other people’s labor. Under this concentration independent business was allowed to exist only by sufferance. It has been a menace to the social system as well as to the economic system which we call American democracy.”

The events of the late 1920s and early 1930s demonstrated that “government by organized money is just as dangerous as government by organized mob.”

Roosevelt saw this struggle in stark terms, as one between big business and humanity itself. In responses to speeches made by members of the United States Chamber of Commerce critical of his economic policy, Roosevelt argued, “I don’t think there was a single speech which took the human side.” In 1937, Roosevelt’s Secretary of the Interior Harold Ickes, according to the New York Times, suggested that the conflict was between the rich and democracy itself, and constituted a “struggle for power, for control of lives, labor and possessions of whole peoples.” According to Ickes, “economic power in this country does not rest in the mass of the people as it must in a democracy,” and “the new America must be a land of free business, not of ruthless business—a land of free men, not of

---


economic slaves.”\textsuperscript{368} To dismantle these slave relations, Roosevelt signed a raft of regulations, on utility companies, banks, and others, and passed protections for labor unions.

In speeches advocating for Great Society programs, Johnson did not blame capitalism or class relations for poverty. According to Johnson, “For so long as man has lived on this earth poverty has been his curse. On every continent in every age men have sought escape from poverty’s oppression.”\textsuperscript{369} In fact, according to Johnson, the bountifulness of post-World War Two American capitalism dramatically reduced poverty, and Johnson argued that his proposed tax-cut would spur greater growth and poverty reduction. Also, instead of class conflict, Johnson saw unanimous dedication to ameliorating poverty among all sectors of the American economy: “Today, more than at any other time in our history, labor and business, city and farm, rich and poor share a common interest in the progress of all of our people.”\textsuperscript{370} Accordingly, Great Society programs aimed to train the poor to participate in American capitalism, rather than to alter its operation by using government to create jobs or directly redistribute wealth.

Despite this commitment to American capitalism, Johnson stressed the disabling consequences of poverty amidst capitalism:

It means a daily struggle to secure the necessities for even a meager existence. It means that the abundance, the comforts, the opportunities they see all around them are beyond their grasp. Worst of all, it means hopelessness for the young. The young man or woman who grows up without a decent education, in a broken home, in a hostile and squalid environment, in ill health or in the face of racial injustice—that young

\textsuperscript{368} Harold Ickes, “Lawless Big Business Must be Controlled to Save Democracy,” The Progressive, January 8, 1938.


man or woman is often trapped in a life of poverty. He does not have the
skills demanded by a complex society. He does not know how to
acquire those skills. He faces a mounting sense of despair which drains
initiative and ambition and energy.\textsuperscript{371}

In this passage, Johnson laments the inadequate availability of institutional resources, and,
delicately and compassionately, attributes poverty to the poor’s ignorance and laziness
resulting from material deprivation. Johnson argues that socioeconomic location conditions
the possibilities of economic autonomy. Government’s role was to counteract the
deprivations of poverty by providing institutional resources, thereby interrupting the cycle of
inadequate institutional resources causing dysfunctional personalities. Without government
action, this cycle would continue unabated.

For both Johnson and Roosevelt, unregulated capitalism and passive government
created misery and exploitation. Both were concerned about the distribution of economic and
political power under capitalism and its effect on socioeconomic mobility. Johnson thought it
difficult for the poor to obtain mobility without government assistance. Roosevelt held that
without economic regulations, big business would accumulate excessive power, and wield it
to immobilize small businesses, workers, and consumers, who cannot improve their quality
of life when big business controlled their livelihoods. For both, having economic power was
a prerequisite for mobility, and, conversely, a lack of economic power ensured a future
without it. Power was not only unequally distributed, but that unequal distribution ensured
the exacerbation of immobility. This represented a departure from the rhetoric of presidents
from Washington to McKinley, which held that men were the masters of their own fates.

\textsuperscript{371} Lyndon Johnson, “Special Message to the Congress Proposing a Nationwide War on the Sources of
Interestingly, it is 18th and 19th century figures like Washington and McKinley that current conservative turn to when justifying their austerity policies.³⁷²

These critiques of unregulated capitalism that supported intervention formed two of the primary components of the liberal consensus, and conservatives have endeavored to disarticulate these positions. Lunsford’s narrative buttresses conservative efforts to disarticulate LBJ’s and FDR’s rhetoric in three ways: first, the glorification of Lunsford’s fatherhood; second, the rejection of the notion that poverty impedes socioeconomic mobility; third, the articulation of the possibilities of obtaining socioeconomic mobility within current American political and economic relations, which are egalitarian in the Lunsford narrative.

First, the glorification of Lunsford’s fatherhood defines family relations and not class relations as the determinative force in social and economic life, rendering arguments of the need for government to intervene into the economy untenable. This limitation of the scope of government is antithetical to the liberal consensus, as reflected in Lyndon Johnson’s contention that government spending was necessary to lift people out of poverty. Liberalism articulates family relations as often inadequate in providing socioeconomic mobility, hence the need for government support. Nevertheless, arguments of the need for social spending demand that government encompasses units bigger than family relations. This position requires that there are other important social relations besides the family that make up the bonds that justify government. The family’s privileged status in political discourse must be dislodged to justify social spending that presumes other forms of relationality. The Lunsford narrative firmly privileges the family over other social relations.

As a divorced father, Lunsford and his daughter did not live in a traditional family, at first blush failing to embody the familial ideal conservatives promote in their attacks on social spending. However, in other ways, Lunsford fulfilled that ideal. First, he and Jessica’s mother were originally married. It is the unmarried and not divorced family that is the primary source of conservative consternation. Second, Lunsford was the dominant familial figure in her life; conservatives are most anxious about the absence of fathers, not mothers. A single father with sole custody of his child is novel, heroic even, assuming enhanced responsibility that other men willingly cede to mothers. Third, a father seeking vengeance for his daughter fueled by his tender love for her affirms many traditional gender roles. Fourth and most importantly, Lunsford lived with his parents in order to capitalize on their ability to help care for Jessica, enabling him to avoid government support, which is the ultimate familial sin for conservatives.

Emphasizing the force and grandeur of Lunsford’s fatherhood complements conservative efforts to privilege family over other forms of relationality, and glorifies the conceptual framework in which family precedes and organizes class relations described in chapter two, a framework which negates class analysis itself. The incessant appeal to Mark Lunsford’s fatherhood in the Lunsford narrative emphasizes the centrality of family relations rather than other forms of relationality, including residential, social, political, economic, and racial relations. While the crusade’s success would not have been possible without Jessica, a sympathetic and unusual victim, the central figure around which the narrative was organized was Mark Lunsford. Lunsford cultivated this emphasis on his fatherhood in his interviews and statements to the press. He rarely discussed her, but instead focused on his relationship with her and the loss’s effect on him. After Couey was arrested, Lunsford said, “I’ve raised
kids all my life and someone has taken that from me.”

He took the opportunity at his daughter’s memorial service three days later to repeat this introduction and reiterate his fatherhood: “Who am I? My name is Mark. I’ve led a simple life…I’ve worked, and I’ve raised kids, and someone has taken that from me.”

Standing with members of the United States Congress, Lunsford lamented, “I will never get to see Jessie go on her first date. I will never be a grandfather to her children. Eight weeks ago a convicted sex offender stole this life away from me.”

Lunsford’s was treated as a trusted source of fatherly wisdom. In a statement given the day Couey confessed, he declared “Jessie is home now, and she is right here with me…And all the parents out there, I know everybody does, but do it more often, make sure you get that hug and kiss every day before you leave that house. I did. I got mine. You just make sure you get yours. And remember, love your children this much, and no one or nothing will come between you and them.”

There were continual efforts to establish ways for viewers qua parents to identify with Lunsford qua parent. In response to the above statement, CNN anchor Tony Harris said, “And I think the sound bite there, the quote that’ll break a lot of fathers’ hearts, mothers’ hearts, parents’ hearts, ‘Jessie’s home now.”

Another CNN anchor, John Zarrella, described his difficulty in reporting on this case: “As a father myself with two little girls, it really does hit home, and it makes it very difficult.”

---


374 Vansickle “Bush Signs Jessica Lunsford Act.”


Lunsford characterized his political and legal crusade as stemming from the emotional bond he continued to have with his daughter after her death. Imploring the New Jersey Legislature to pass harsh sentencing laws, Lunsford, with tears in his eyes, brandished a picture of his daughter and said “This is not a way to remember your daughter. This is not how it’s meant to be.” He explained his decision to attend Couey’s trial by saying “I’m not going to leave my daughter to go through this alone. I mean, she already had to be alone when she was with him.” In 2007, questioned by CBS how he will compose statements he was scheduled to give during Couey’s trial, Lunsford answered, “Well, I don’t plan on doing anything different than what I’ve been doing for the last two years when I testify. You know, I ask God and Jessie for the things to say, and I say it.” Asked by CBS News what Jessica Lunsford would think of his activism Lunsford said, “She’d be proud of me, I know that.”

Headlines of news articles about Lunsford’s crusade emphasized Lunsford’s identity as a father. For example, “Father Pleads for Action on Bill to Track Sex Offenders,” “Dad seeks tougher Sex Offender Laws,” “Victim’s dad pushes boost in sex-offender penalties,” “Father Pushes ‘Jessica’s Law,’” “Daughter’s Rape, Murder, Haunt Dad,”


383 Brand, “Father Pleads.”


“Jessica’s Dad: Get Tougher on Freed Pervs,”388 and “Murder Victim’s Father Begs for Sexual Predator Legislation,” all from 2005.389 Altogether, Lunsford’s emphatic fatherhood complements conservative efforts to privilege the two-parent family over other socioeconomic forces in their efforts to delegitimize welfare.

The victims’ rights movement generally uses family members as it primary exponents. Mothers, father, sisters, and brothers are the primary victims’ rights advocates. Like Lunsford’s advocacy, this approach valorizes familial relations, deemphasizing other forms of relations. When a mother successfully utilizes her relationship with her son to push for radical pieces of criminal justice legislation, that relationship is granted significant power, elevating family relations over other socioeconomic relations. In the current political context in which familial relations are used as the foundations of attacks on welfare and other forms of socioeconomic support, victims’ rights buttresses that foundation and functions as a critique of such socioeconomic support. Lunsford’s family relations and the victims’ rights family generally stands in stark contrast to the anti-domestic violence family, which demanded that familial relations be subordinated to broader socioeconomic relations. Without this subordination, anti-domestic violence activism holds, revictimization is possible.

A second front of the conservative assault on the post-war liberal consensus abetted by the Lunsford narrative is the denial of LBJ’s contention that poverty immobilizes the poor. On August 23, 2011, United States Senator Marco Rubio delivered a speech at the Ronald Reagan Library, in Simi Valley, California. At the time of the speech, Rubio was a

---

387 Hurst, “Daughter’s Rape.”


389 Mcguire, “Murder Victim’s Father Begs for Sexual Predator Legislation.”
rising star of the Republican Party, and rumored to be a vice-presidential pick in the 2012 election. In it, he offered a grim assessment of the damage the federal government had done to the American people. He began his analysis by affirming the American commitment to individual responsibility and personal fortitude, which, he argued, ensures socioeconomic mobility:

[Americans] want our nation to be…a place where your economic hopes and dreams can be accomplished and brought up to fruition. That through hard work and sacrifice you can be who God meant you to be. No matter who your parents were, no matter where you were born, no matter how much misfortune you may have met in your life, if you have a good idea, you can be anything if you work hard and play by the rules.  

Rubio reports that this vision has been thwarted by presidential administrations of the previous 80 years, which, with the exception of the Reagan administration, promoted policies that presumed “yes, we’ll have a free economy, but we will also have a strong government, who through regulations and taxes will control the free economy and through a series of government programs, will take care of those in our society who are falling behind.”

Unfortunately, the programs established to take care of those falling behind—including Social Security, Medicare, and Medicaid—were doomed to fail from the start. Government programs replaced the “institutions and society” that previously provided care for the needy: “We took things upon ourselves and our communities and our families and our churches and our synagogues…. If someone was sick in your family, you took care of them. If a neighbor met misfortune, you took care of them. You saved for your retirement and your future because you had to.” Policy-makers have wrongly cast their lot with the non-human,

---

forgetting “that the strength of our nation begins with its people, and that these programs actually weakened us as a people,”\textsuperscript{391} who, he suggests, toughen up when struggling with poverty.

Rubio’s conception of the role of government and the strength of the poor is the opposite of Lyndon Johnson’s. Johnson argued that being poor in a capitalist economy is immobilizing, as it “drains initiative and ambition and energy.”\textsuperscript{392} Accordingly, Johnson tasked government with providing that energy through job programs and community development. By contrast, Rubio sees poverty as invigorating, as people have to pull themselves up by their bootstraps and organize efforts to help each other out. By contrast, governmental attempts to assist the poor cultivate indolence, as they allow people to sit back, relax, and wait for government to solve their problems. The GOP uses conceptions like Rubio’s to orient their budget and policy proposals. Paul Ryan structured his Roadmap for America's Future around life-enhancing austerity, an “approach draws from, and reinforces, the most real source of America’s strength: its people, acting through family, community, vocation, and faith—with a limited government supporting the growth of these most important institutions.”\textsuperscript{393}

Democrats, to varying degrees, defend the social safety net, relying on the type of analysis LBJ presented to demonstrate its necessity. The struggle between Rubio, Ryan and other critics of the social safety net and those who wish to protect the idea that government must intervene into poverty will not be decided solely by who has the more persuasive policy

\textsuperscript{391} Rubio, “Speech at the Reagan Library.”

\textsuperscript{392} Johnson, 1964, “Remarks upon Signing the Economic Opportunity Act.”

documents and speeches. Instead, the struggle also depends on the outcomes of struggles in other parts of society. The valorization of the Lunsford narrative bolsters Rubio’s contention that government institutions are unnecessary for economic viability and self-sufficiency. Lunsford did not require unions, universities, food or residential subsidies, or social justice groups—or any other institutions which demand tax dollars or limits on private enterprise to function—to ascend to political power. His previous socioeconomic subordination had no apparent detrimental effect on his socioeconomic mobility. Nor did he utilize such institutions during his life before Jessica’s death, when, despite his poverty, he lived a dignified life as a father, laborer, and motorcycle rider. Also, he moved to Florida to live with his parents who assisted him in caring for Jessica, performing Rubio’s ideal of informal or familial networks providing for those with material needs, not government. In this sense, his socioeconomic subordination and immobility did not preclude familial, professional, and sentimental mobility.

The legislative activity since the GOP assumed control of the House of Representatives in 2010 demonstrates this conviction that government support is not necessary for ameliorating poverty and ensuring socioeconomic mobility. The Fiscal Year 2012 Republican budget reduces government spending that promotes a basic standard of living and enhances poor peoples’ ability to participate in the economy. It calls for cutting Pell Grants and capping the total Federal funding for food stamps and housing aid, even if the number of people eligible for it increases. It also imposes time limits and work requirements for Federal housing and food assistance, to “encourage recipients of federal housing aid to lead lives of increased self-sufficiency.” In other words, Republicans call

[^394]: House Budget Committee, “Fiscal Year 2013 Budget Resolution,” 41
for reducing the protections of government and increasing the role of the market and familial, neighborhood, and religious relations in poor people’s lives. In April, 2011, in response to Republican threats to shut down the Federal government unless budget cuts were enacted, Democrats agreed to cut over one billion dollars to public and low income housing, and the Women, Infant and Children nutrition program for low-income mothers was cut by $500 million, an action that presumably will “toughen up” the women, infants, and children who lost access to the program as a result of the cut. 396

The third way in which Lunsford abets Republican disarticulations of the liberal consensus is by articulating the existence of socioeconomic mobility within American political and economic relations. This strain of the disarticulation is best captured in current Republican “job creator” discourse, which stands in contrast to FDR’s criticisms of unfettered capitalism. Lunsford is an example of extreme socioeconomic mobility, having transformed himself from a quintessential nobody into a political icon, indicating that mobility is possible within the current American political and economic systems.

Today’s GOP hopes to expand the freedom of capitalism by dismantling the types of regulations Roosevelt introduced. According to House Speaker John Boehner, “We need to liberate our economy from the shackles of Washington. Let our economy grow!”397 Boehner conflates private business with “the people,” contrasting both with the government. Instead of relying on federal agencies to regulate economic activity, “We need to trust in the good


judgment of the American People.” In this sense, socioeconomic mobility is unnecessary, because all Americans—corporations, the unemployed, the middle class, etc.—are in the same place: part of “the people.”

Far from being made up of fearsome corporate machines, the free market is composed of upstanding and reasonable people, whose decisions are beneficial to us all and guarantee socioeconomic mobility. Accordingly, government regulations are unnecessary because of this beneficence. Mitt Romney argues that far from suspiciously scrutinizing and vigilantly policing businesses, “government and regulators have to be allies of business, not foes.” In addition, workers, in this way of thinking, do not require labor unions to protect them from rapacious corporations. In his jobs plan “Believe in America,” Romney suggests that as businesses are composed of people, labor unions are outmoded because people prefer the natural conviviality of personal relationships rather than the impersonal, adversarial union-employer dynamic. He attributes the decline in union participation to “the fact that American workers are more inclined toward a cooperative one-on-one relationship with their employer than the distant, combative relationship all-too-often encouraged by organized labor.”

Conservatives modulate their rhetorical enthusiasm for unregulated economic activity by generally avoiding naming corporations as objects of concern and beneficiaries of their economic programs in debates and economic proposals. Instead, they use the term “job creators.” For example, the 2011 Republican House job creation proposal was titled, “The

---

398 Boehner, “Address to the Economic Club.”


Contesting the wisdom of Barack Obama’s calls for raising taxes on and eliminating tax breaks for the wealthy, Republicans argue that such measures would harm “job creators,” thereby harming those with or looking for jobs. The “job creator” solutions proposed by Republicans follow a simple pattern: give businesses more money and deregulate them (allowing them to pollute more, for example) and people, both job creators and job receivers, will prosper.

In general, the “job creator” discourse offers a simple vision of economic relations. The prime factors affecting job creation, according to Republican policy statements, are government regulations and taxation. This “job creator” discourse institutes two equations. First, all jobs are identical, and, second, so are all employers (except government, which, though it employs millions of people, is not included in the term “job creator”). A minimum wage job at Wal-Mart is, in this way of thinking, equivalent to a highly-skilled craftsman position. Republicans do not put pressure on job creators to be “good-job creators.” In addition to these equations, it obscures the adversarial relationship between labor and business (business will always pay labor as little as possible), suggesting they have common cause in seeking tax cuts and government deregulation.

Altogether, the multitude of variables that shape which businesses offer employment, what types of employment is offered, and the conditions of that employment, are suppressed. Instead, an image of a felicitous situation emerges, in which, given capital and freedom, businesses will create jobs, and their functional allies, the unemployed, will take them. Employers, while not selfless, are nevertheless munificent, and depend on the steadfast industriousness of the American worker. Romney highlighted the united interests of all

---

elements of the American economy, when, in response to the nascent Occupy Wall Street movement, he argued in October, 2011, “The best way to create greater income and greater jobs for all of America is not to attack one part of America or another, but instead to pull together and find how we can do a better job of competing globally.”

All of this, of course, is a highly contestable description of economic relations. Corporations, a type of “job creator” Republican economic legislation benefits, are, by law, not job creators but profit maximizers. Corporate executives have a fiduciary duty to maximize returns for shareholders, even if it means cutting jobs or reducing wages and benefits. As a result, time and again, the drive to maximize profits directly leads to job elimination. Furthermore, accepting the contention that tax cuts and deregulation empowers job creators to create jobs for the good of all obscures the adverse consequences of deregulation and tax cuts; as a result, environmental damage, the loss of government funds for socioeconomic programs, and other adverse consequences are bracketed out of the conversation. To the extent that the Republican “job creator” discourse suppresses the consequences of deregulation, the antagonistic character of labor relations, and the poor quality of many of the jobs created, the more successful Republican economic policy will be.

Hence, there is a struggle to maintain the simplicity and legitimacy of the “job creator” discourse. The Lunsford narrative is well-suited for providing sustenance to this simplicity and legitimacy. Lunsford’s socioeconomic mobility is evidence of the truth of the “job creator” discourse. Just as it was possible for a truck-driver to become a powerful advocate in American politics, it is possible for members of the lower and middle classes to advance in a capitalist economy, if it is unburdened by high taxes and regulations.

---

Furthermore, Lunsford obscures the complexity of the political process, just as the “job creator” discourse obscures the complex reasons for when, where, and which jobs are created. Time and again, Lunsford stormed into a state and left days or weeks later with the Jessica Lunsford Act passed. By contrast, most substantive legislative changes take years to achieve. If the economic system is as simple as the political system was in the Lunsford narrative, it would be a much more comprehensible system, exactly the type of simplistic thinking on which the “job creator” discourse depends, which reduces economic analysis to deregulation and tax cuts.

In these ways, Lunsford’s political articulations mirror “job creator” articulations. Like “job creator” discourse, Lunsford helps the powerful at the cost of the decreased mobility of those who already lack it. Republican “job creator” economic proposals give corporations more money and reduce regulations at the expense of social services and labor and environmental protections. Likewise, Lunsford’s efforts increased the power of the police, prosecutors, and department of corrections to arrest, prosecute, and imprison people, also at the expense of social services for the broader public and for victims themselves (if being tough-on-crime is conceived of as the best response to victimization instead of victims’ services).

The two discourses have one important difference between them. Lunsford’s political success was predicated, as argued above, on a class consciousness, i.e., the novelty of a truck driver becoming a powerful political actor. His supporters’ experience of socioeconomic immobility and powerlessness provided the ground for his appeal. By contrast, while the “job creator” discourse offers visions of plenitude attractive to those without mobility, one of its primary objectives is to erase the notion of class altogether from its analysis. The “job
creator” discourse intentionally speaks to everyone as if they were situated identically, while Lunsford’s narrative speaks directly to those without power *qua* people without power.

However, while the Lunsford narrative was grounded in class consciousness, his political agenda effaced it by promoting a program that did not attend to unequal class relations; instead, it gave power to the powerful as if class was not a concern. He capitalized on class consciousness while simultaneously liquidating it. While the “job creator” discourse ignores class consciousness, Lunsford’s narrative invokes then destroys it, a more comprehensive approach to dismantling class consciousness than simply ignoring it altogether. Perversely, Lunsford satisfied class consciousness by exacerbating the conditions that give rise to it.

In addition to concealing the complexity of the political process, the Lunsford narrative obscures the difficulty and rarity of those without power achieving political success, which is equivalent to a denial of socioeconomic immobility. He, a person without power, got things done as he wanted them done. In addition to asking people to trust the police, Lunsford articulated a picture of American politics in which the people without power can trust the political system, just as the GOP asks voters to trust unfettered capitalism.

The Lunsford narrative made the political process seem non-adversarial. In so doing, it obscured the notion that the reason that people without socioeconomic power rarely achieve political success is that they often, though he certainly did not, advocate for socioeconomic policies that serve their economic and political interests, which are contrary to the interests of those with socioeconomic power. Policies that increase socioeconomic mobility for those who do not have it only are instituted when such an increase does not compromise the mobility of those who do.
Contrary to what emerges from the Lunsford narrative, the political process is fundamentally adversarial, with the interests of the rich opposed to those of the middle class and poor. In the 2012 political context, the opposition between the poor’s interests and the rich’s are stark. Mitt Romney’s economic plans assails efforts to raise taxes on the rich (in fact, proposing massive tax cuts disproportionately benefitting the wealthy), while demanding cuts to services for the poor. Many argue that the rich have more power in the political process than the poor, and thereby their interests are advanced at the expense of the poor’s. Naftali Bendavid, a correspondent for the pro-business Wall Street Journal, admitted as much on the PBS News Hour. In response to a question asking how a program as seemingly unobjectionable and crucial to a vulnerable population’s well-being as the Women, Infant, and Children nutrition program could be cut, as it was in April 2011, Bendavid answered that welfare is perpetually vulnerable to cuts, because it is “a program that helps the poor. Those often do have less of a powerful constituency than other programs.”  

The Wall Street Journal is a pro-capitalist publication, whose editorial board would reject the notion that economic inequality would impair the poor’s political mobility. The Lunsford narrative counters the implications of immobility implicit in Bendavid’s answer, as Lunsford’s economic subordination did not impair his political program. Accordingly, the poor, in Lunsford’s world, have the same power as the wealthy to make political change, enjoying socioeconomic mobility.

More importantly, in addition to indicating the poor are at a disadvantage in the American political process, Bendavid’s answer also admits that poor people and rich people have different political and economic interests; this statement is evidence of the fact that as

---

political interests conflict and diverge, so do economic interests. This is a notion the “job creator” discourse must suppress, so that the rich and the poor appear to have the same interest in expanding the marketplace through tax cuts and deregulation. The Lunsford narrative buttresses the “job creator” idea of unified interests by suggesting that everyone has the same interest in prosecuting and harshly punishing sex offenders. In this instance, poor interests and rich interests coincided; the more poor and rich interests are articulated as coincident, the stronger the “job creator” discourse becomes.

The words written above, “everyone has the same interest in prosecuting and harshly punishing sex offenders,” even strikes me as reasonable, whether it is or not. This is the beauty of tough-on-crime policies generally for conservatives: they give the appearance of unified interests, and a government working on behalf of everyone’s interests. Roosevelt strenuously denied that anything resembling unified interests exist. Conservatives have promoted tough-on-crime policies not just to capitalize on American racism and fear of crime, but to promote visions of unified interests, i.e., the erasure of class consciousness.

In summary, Lunsford’s political crusade buttresses the purported felicity of labor, economic, and political relations under pro-capitalism governance. Because his crusade seems to have nothing to do with economic and political policy as such, its amenability goes undetected, and Democrats who may support the social safety net and economic regulations embrace him and his legislation, even if the implications of Lunsford’s crusade undermine the political possibilities of the economic regulation and welfare spending of the liberal consensus.
Conclusion

While I am arguing that Lunsford’s ascent from powerless to powerful served conservative interests, I am not claiming there is anything intrinsically conservative about this narrative of the economically subordinate pursuing and achieving such political power and mobility. Indeed, socioeconomic reorganization depends on those without power obtaining and exercising it. But Lunsford’s goals had nothing to do with socioeconomic change. The appeal deriving from his socioeconomic location did not match his political agenda, which did not seek to redistribute power in order to end socioeconomic immobility and inequality. This demonstrates the simple point that there is no guaranteed correspondence between specific populations and any one political agenda. A socioeconomically disadvantaged political advocate may not necessarily work to redistribute wealth, just as the poor do not necessarily support programs that endeavor to redistribute wealth. Nevertheless, having a enthusiastically subordinate and immobile person advocate for policies that materially and ideologically benefit the powerful seems an effective political strategy for the powerful to deploy.
Chapter Four: Victims’ Rights and the Denial of Society

Introduction

In a speech televised live hours after the United States military killed Osama Bin Laden, Barack Obama declared, “And on nights like this one, we can say to the families who have lost loved ones to al Qaeda’s terror: Justice has been done.” While elsewhere in the speech Obama asserts that Bin Laden’s death advances the interests of the nation as a whole, he identifies victims’ families, not the nation generally, as the entity in whose name justice had been done. That justice is a matter concerning individual victims and victims’ families rather than society as a whole is the language of victims’ rights.

This chapter considers the impact of articulating justice as a matter for victims rather than society. What if a victim’s or victims' family members’ conception of justice differs from that of society? Whose view of justice, on both a macro- and micro-level, is privileged? Could it be that society today does not determine justice, but that, instead, victims make those determinations on a case-by-case basis?

If victims’ views have gained ascendance, what salience and agency does the articulation of society have? If society does not establish justice’s dimensions, how has the articulation of society been compromised? In what diminished form does society exist? If the

---

lack of agency demonstrated by its diminished role in shaping justice was extended into other economic, political, and cultural contexts, what would be the consequences? What would the consequences of the disarticulation of society be for the liberal consensus forged between the 1930s and 1960s, specifically its advocacy for a welfare state?

This chapter examines these questions. In it, I describe Harry Truman’s conceptions of a robust sociality, which underlay his national health insurance proposals. This sociality has been a conservative target, and I demonstrate how victims' rights provides a template for the conservative disarticulation of Truman’s articulation of American interconnectedness. I examine the central role of society in John Locke’s conception of punishment. The chapter details the omission of societal considerations in two prominent victims’ rights practices: inviting victims’ and their family members to view executions and allowing them to participate in prosecutorial and judicial decisions. I describe the ways that this absence of societal considerations in victims’ rights departs from historical understandings of punishment, which saw such considerations as paramount. Finally, I attempt to demonstrate that victims’ rights undermines the elements of John Locke’s political society found in the United States Constitution. In so doing, it brackets political society out of the Constitution, reducing it to an economic document of minimalist government as articulated by the Tea Party.

**Society in the Fair Deal, John Locke, and the Victims’ Rights Movement**

This section compares the articulation of society in the victims’ rights movement to the articulation of society found in the work of Harry Truman and John Locke. It begins by
examining the articulation of society in Harry Truman’s advocacy for his Fair Deal policies and John Locke’s conception of political society, one taken up by early-American political figures. I then look at the articulation of society operative in two different victims’ rights practices: inviting victims’ family members to view executions and allowing victims to guide prosecutorial, police, and judicial decisions. In these practices, societal concerns are deemed unimportant. I trace theories of punishment and their role in American criminal justice history, arguing that society has been an ever-present consideration until the advent of victims’ rights.

**The Fair Deal’s Articulation of Sociality**

While Lyndon Johnson and Franklin Delano Roosevelt are often treated as American Liberalism’s great champions, Truman represented the high-water mark of the liberal consensus. Truman attempted to institute measures Franklin Roosevelt supported but never saw realized, such as full-employment policies and more robust social security programs. The entirety of Truman’s political activity lay in promoting the “leftist” elements of the liberal consensus, while much of Roosevelt’s presidential activity was dedicated to establishing the rudiments of the liberal consensus before abandoning efforts such as the Economic Bill of Rights, which would have guaranteed, among other things, employment with a living wage, housing, and medical care, because of congressional opposition and World War Two.

Truman advocated for the liberal consensus in the absence of the economic crisis in which Roosevelt’s New Deal was forged. Without the crisis of the Great Depression, Roosevelt may not have had the justification for reshaping the federal government’s role in
the economy. Roosevelt’s liberal achievements and advocacy may reflect less about the hegemony of liberal ideas in the 1930s, but more about the unique political conditions wrought by the Depression. Truman, on the other hand, advocated for a strong version of the liberal consensus in the absence of any economic crisis, pushing a version of the Economic Bill of Rights even as the post-war economy improved. His advocacy indicated that no matter the economic conditions, the Democratic Party stood for a robust liberal consensus, demonstrating the strength of the liberal consensus by the late-1940s.

Though Lyndon Johnson’s legislative efforts were more successful than Truman’s, Truman’s policy proposals were much more progressive than Johnson’s. For example, Truman advocated for health insurance for all Americans. Johnson advocated for health insurance only for senior citizens. Also, Johnson’s advocacy for his version of the liberal consensus was not rooted in a robust conception of an interconnected society with heterogeneous, conflicting interests. Instead, Johnson framed his Great Society programs as helping out those in need who were unable to escape poverty without government assistance, who were decidedly “other” to the middle- and upper-class Americans who were to pay for those programs. The poor, in the Great Society, resembled charity recipients. By contrast, Truman consistently articulated his agenda as deriving from the interconnectedness of all Americans, who all had claim on the nation’s wealth. It was not charitable impulses that animated the Fair Deal, but rather the notion that the poor are poor because of the rich’s appropriation of resources, and government properly assists the poor through disciplining the wealthy.

In his first State of the Union address after winning re-election in 1948, Truman introduced a group of policy proposals he termed “the Fair Deal,” declaring that “[e]very
segment of our population and every individual has a right to a fair deal.”405 This set of policies included

Anti-inflation measures, a more progressive tax structure, repeal of the Taft-Hartley Act, a higher minimum wage, a farm program based on the concepts of abundant production and parity income, resource development and public power programs, expansion of social security, national medical insurance, federal aid to education, extensive housing legislation, and civil rights bills.406

In addition, Truman advocated a Full Employment Act, which would have required the federal government to enact spending measures and tax cuts to counteract economic signals that employment was going to drop in the future, in order to achieve the full employment the bill mandated. These measures were not only progressive for the time, but appear even more radical according to today’s standards. The utter implausibility of the implementation of a Full Employment Act today indicates the success of conservative attacks on the liberal consensus.

In advocating for these Fair Deal policies in his State of the Union, Harry Truman made five assertions relevant to my discussion of the relationship between victims’ rights and sociality. First, he asserted the existence of a national whole, with its own set of interests, which can be counterposed to any specific economic or political interest, and which is represented by the government: “The people of this great country have a right to expect that the Congress and the President will work in closest cooperation with one objective—the


welfare of the people of this nation as a whole.”\textsuperscript{407} The second assertion, also contained in this quote, is that the interests of the national collective trump any specific economic or political interest in governmental decision making. In directing government to work for the whole, Truman implicitly identified the danger that government may work for only part of that whole. Third, he argued that “the economic system should rest on a democratic foundation and that wealth should be created for the benefit of all.”\textsuperscript{408} In other words, the organization of the economic system affects the entire American population, no matter where they are located within that system.

His fourth claim is that the nation’s wealth is collectively held by the American population, Americans have claim to that wealth, and government must work to allocate that wealth to achieve egalitarian results. For example, consider his use of the word ‘our’ in the following statement: “Government must see that every American has a chance to obtain his fair share of \textit{our} increasing abundance,” and his use of the phrase “the fortunes of the nation” in his argument, “We have rejected the theory that the fortunes of the nation should be in the hands of a few.”\textsuperscript{409} Fifth, he claimed that the “American people have pledged our common resources to help one another in the hazards and struggles of individual life.”\textsuperscript{410}

These five themes frame and justify his policy proposals. In arguing for federal financial aid for schools and prepaid medical insurance for all Americans he declared, “In a nation as rich as ours, it is a shocking fact that tens of millions lack adequate medical

\textsuperscript{407} Truman, “Annual Message to the Congress.”
\textsuperscript{408} Truman, “Annual Message to the Congress.”
\textsuperscript{409} Truman, “Annual Message to the Congress.”
\textsuperscript{410} Truman, “Annual Message to the Congress.”
Such a claim only makes sense if the people of the United States exist as a nation as a whole with a set of interests (in this instance in healthcare and education), the economic system is working in such a way that some have healthcare and education and other do not, and the American population can make a collective claim on the nation’s wealth. Thus, according to Truman, the American population’s interest in having healthcare trumps the healthcare industry’s interest in profits and wealthy Americans interest in low taxes.

**John Locke and the Founders on Punishment and the Emergence of Society**

According to many, John Locke had a massive influence on American Revolutionary and Constitutional thought. Law professor David A. Richards argued that both “the American revolutionary and constitutional minds…framed their enterprises on the basis of Lockean political theory.” Law professor Donald Doernberg claims that “[i]t would be difficult to overstate John Locke’s influence on the American Revolution and the people who created the government that followed it.” Historian Ralph Ketcham argued, “The debt which nearly all the Founding Fathers owed to the political philosophy [of Locke] has long been acknowledged.” Political scientist Gary McDowell notes that “The Americans took the teachings of Locke and the Lockeans seriously when it came to their own thinking about the

---

411 Truman, “Annual Message to the Congress.”


nature and extent of fundamental laws or constitutions and how such laws could be made to fit within the American political context.”

The mechanics of punishment, both of who may punish and who may decide punishment’s proper form, is central to Locke’s conception of political society outlined in his *Second Treatise of Government*. Locke argues that a viable civil society requires people to relinquish their right and power to punish as it exists in a State of Nature. In a State of Nature, which precedes the formation of civil society, people are in “a state of equality, in which no one has more power and authority than anyone else,” and “are perfectly free to order their actions, and dispose of their possessions and themselves, in any way they like.”

In this state, people possess the right to protect their “lives, liberties, and estates,” and thereby have the freedom to “judge of, and punish the breaches of that law in others, as he is persuaded the offence deserves, even with death itself, in crimes where the heinousness of the fact, in his opinion, requires it.”

Despite this right to punish, in a state of nature “the enjoyment of [freedom and property] is very uncertain, and constantly exposed to the invasion of others…however free.” Locke surmised that people will pursue their own interests and use violence to fulfill them, and in a state of nature, people have no protection from violence but through whatever means they can muster on their own. Accordingly, the state of nature “is full of fears and

---


416 Locke, *Two Treatises*, Section 101.

417 Locke, *Two Treatises*, Section 136.

418 Locke, *Two Treatises*, Section 136.
continual dangers.” According to McDowell, “the state of nature would inevitably degenerate into a state of war.”

In response to this danger, people join into society with other people in order to gain the protection of established law, impartial judges, and the certain ability to punish violations of the law, freeing them of the hazardous task of attempting to exact punishment on their own. Entering into society enabled their “comfortable, safe, and peaceable living, one amongst another, in a secure enjoyment of their properties, and a greater security against any that are not of it.” However, in exchange for these protections, “The power of punishment [is] wholly give[n] up.” People cannot simultaneously act as judge in their own matters and enforcer of those judgments while also preserving uniform law and punishment. Accordingly,

all private judgment of every particular member being excluded, the community comes to be umpire, by settled standing rules, indifferent, and the same to all parties; and by men having authority from the community, for the execution of those rules, decides all the differences that may happen between any members of that society concerning any matter of right; and punishes those offences which any member hath committed against the society, with such penalties as the law established.

419 Locke, *Two Treatises*, Section 154
420 McDowell, *The Language of Law*, 149.
421 Locke, *Two Treatises*, Section 142
422 Locke, *Two Treatises*, Section 130
423 Locke, *Two Treatises*, section 137
The purpose of judgment and punishment in society is “directed to no other end, but the peace, safety, and public good of the people.”\(^\text{424}\) Locke argues that the existence of civil and political society depends on the relinquishment of the power to both punish and decide on punishment: “Where-ever therefore any number of men are so united into one society, as to quit everyone his executive power of the law of nature, and to resign it to the public, there and only there is a political, or civil society.”\(^\text{425}\) The government in political society possesses the “power of making laws: that is, the power to set what punishments are appropriate for what crime that members of the society commit.”\(^\text{426}\)

According to Locke, the formation of political society through the uniform abdication of the executive power requires the establishment of a government through which society determines laws and punishments, and enforces the former by administering the latter. As he put it, “the beginning of politick society depends upon the consent of these individuals to joyn and make one society; who, when they are thus incorporated, might set up what form of government they thought fit.”\(^\text{427}\)

In rejecting British colonial rule, Americans asserted themselves as a political society. They then, according to Richards, were “free to decide whether to continue as a political community and to frame a new form of government or to disband. Americans, of course, enthusiastically invoked their Lockean right to frame constitutions.”\(^\text{428}\) The United States Constitution represented consent to a particular governmental configuration and the

\(^{424}\) Locke, *Two Treatises*, Section 157

\(^{425}\) Locke, *Two Treatises*, Section 137-8

\(^{426}\) Locke, *Two Treatises*, Section 137

\(^{427}\) Locke, *Two Treatises*, Section 146

ratification of American civil and political society itself. It was the work of a sovereign, discrete people who alone were capable of delegating the necessary powers to the government to ensure their freedom and liberty. In a sense, it was an assertion of the “peopleness” of Americans.

As a work of sovereign people that ratified the existence of a political society, the Constitution necessarily presumed Locke’s insistence that individuals relinquish privileges of the law of nature, including their right to punish and prosecute. Otherwise, without this presumption, there would have been no society that agreed to the Constitution in the first place. Relinquishing the power to punish and prosecute represents a loss of individual liberty, but that loss is the price of political society and a necessary condition for agreements like the Constitution. George Washington, the President of the Constitutional Convention, argued that government’s work is to “secure all the rights of independent sovereignty to each, and yet provide for the interest and safety of all,” but “individuals entering into society…must give up a share of liberty to preserve the rest.”

Ample evidence demonstrates that early American political and legal figures accepted Locke’s position that the creation and maintenance of society required individuals to give up their personal right to prosecute and punish. Ronald Pestritto’s analysis of early-American theories of punishment, *Founding the Criminal Law: Punishment and Political Thought in the Origins of America*, reveals that the leading political thinkers of the time widely accepted political society’s requirement that people give up the right to administer or decide punishment. His review of the theories of punishment of Thomas Jefferson, George

---


Washington, Alexander Hamilton, and James Madison indicates that they were preoccupied with the ‘natural versus positive law’ debate, regarding whether criminal sanctions should achieve utilitarian goals or be derived from timeless standards of justice and morality; that the state, not citizens on their own, should solely have the power to prosecute and punish in the United States was treated as a settled matter. In fact, Madison, in The Federalist Papers number 10, declared “no man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity.”

Furthermore, early commentators on Constitutional law acknowledged that the power to punish belonged solely to the state and not to individuals. William Blackstone, a distinguished 19th century legal commentator who wrote an early definitive analysis of American law, explained “crimes and misdemeanors…are a breach and violation of the public rights and duties, due to the whole community, considered as community, in its social aggregate capacity.” Blackstone echoes Locke when he explains:

It is clear, that that right of punishing crime against the law of nature, as murder and the like, is in a state of mere nature vested in every individual…in a state of society this right is transferred from individuals to the sovereign power; whereby men are prevented from being judges in their own causes, which is one of the evils that civil government was intended to remedy. Whatever power therefore individuals had of punishing offenses against the law of nature, that is now vested in the magistrate alone; who bears the sword of justice by consent of the whole community.


James Kent, another early American legal authority who became a Supreme Court Justice after his academic career, makes a clear distinction between the public nature of crime and private injuries. He argues

Every person is also entitled to the preventive arm of the magistrate as a further protection from threatened or impending danger; and, on reasonable cause being shown, he may require his adversary to be bound to keep the peace. If violence has been actually offered, the offender is not only liable to be prosecuted and punished on behalf of the state, but he is bound to render to the party aggrieved, adequate compensation in damages.”

Kent explains that in American law that it is only in the civil system that individuals act in their own names. In the civil system individuals can pursue personal damages from offenders, but the pursuit of damages are separate from prosecution and punishment, which is the domain of the state. In the criminal justice system conceived by Kent, Locke, Washington, Jefferson, Hamilton, Madison, and Blackstone, the punishment of the offender is not considered compensation for a victim’s injuries. Instead, it is compensation for societal harm.

This distinction between the civil system, in which individuals pursue damages in their own names, and the criminal law, in which the government pursues punishment in society’s name, is central to the existence of political society. If a crime is treated by the criminal justice system as something committed against an individual victim and not society, and if it is victims and not society that influences and then distributes punishment, Locke’s society does not exist. To grant executive powers to victims represents a return to a state of

---

nature, and this return brings severe consequences for ‘the people’ ratified by the United States Constitution.

*The Status of Society when Inviting Victims to View Executions.*

In the following section, I make two observations about inviting victims to view executions salient to the disarticulation of the concept of society accomplished by both victims’ rights and conservative politics. First, possible justifications for allowing victims’ family members to view executions that cite society’s interests actually serve to diminish the salience of the concept of societal interests. Second, in any case, arguments for inviting victims’ family members to view executions do not cite society’s interests to justify the practice of inviting victims’ family members to view executions. Instead, print and television news media ground justifications for inviting victims to view executions in the desires of victims alone, and remain silent on how the policy does or does not promote society’s interests. Society is therefore represented as having no interests in how punishment is administered, a dramatic departure from longstanding and prevailing theories of the relationship between punishment and society. In the following pages, I will examine the articulation of society in two instances involving victims’ family members viewing executions: first, the federal government’s facilitation of victims’ family members viewing Timothy’s McVeigh’s execution; second, the Texas Board of Corrections 1995 decision to invite victims’ family members to view executions, which Board guidelines previously did not allow.

Though it is never coherently argued as such, it is possible to present an argument that inviting victims’ family members to view executions advances society’s interests, an
argument that would, perhaps, preserve the salience of society. Simply put, it is a matter of justice, and society has an interest that its criminal justice system promote justice. This argument has three steps. The first is that it is in the interests of justice to enable victims to gain closure through watching the condemned die. Second, it is in the interest of society that its criminal justice system promotes justice. Third, because it promotes justice, the policy of allowing victims to view executions is in society’s interests.

United States Attorney General John Ashcroft, briefly and incoherently, gestured to such an argument when explaining his decision to facilitate the viewing of Timothy’s McVeigh’s execution for survivors of his 1994 bombing of the Oklahoma City Federal Building and family members of victims who were killed. At an April 11, 2001 news conference in which he announced his decision, Ashcroft cited society’s interest in justice to justify the Justice Department’s facilitation of the viewing. According to Ashcroft, allowing victims to view McVeigh’s death was something that “justice required” and, therefore, was “an appropriate thing for the Justice Department to carry out” because certain victims’ family members were not able to see the remains of family members who were buried underneath the building’s rubble. As a result of never seeing their family members’ remains, victims’ family members were unable to reconcile themselves to what happened; they, as Ashcroft put it, experienced an “absence of closure.”

Ashcroft reported that victims’ family members said it “was as if my family left one day and never came back.”

---


436 Ashcroft, “Press Conference.”
“It is with that in mind that frankly my intention to accommodate the victims was galvanized.”

He arrived at this conception of the justice of allowing victims to view McVeigh’s death after meeting with 150 survivors and victims’ family members the day before he announced his decision to allow victims’ family members and survivors to view McVeigh’s execution. According to CNN correspondent Gary Tuchman, at the meeting “everyone told [Ashcroft] they want the chance to watch this on closed-circuit television.” Ashcroft described his meeting with victims and victims’ family members as a transformational event, “My time with these brave survivors changed me…I hope that we can help them meet their need to close this chapter in their lives.” He said this meeting made the attack “a reality to him in an emotional way that sort of displaced in many respects the intellectual understanding.”

Ashcroft’s explanation for his decision indicated that it was victims’ desires—and nothing else—that constituted justice and influenced his decision to facilitate victims viewing McVeigh’s execution. Victims said as much. Doris Jones, mother of a bombing victim, said “He addressed our issues. I strongly believe that he is doing everything that he possibly can to accommodate us, and I certainly appreciate it.” If victims had said something else, his and victims’ family members’ logic suggested, Ashcroft would have conceived justice

---

437 Ashcroft, “Press Conference.”

438 “CNN Live This Morning” CNN. April 12, 2001.

439 “CNN Live This Morning” CNN. April 12, 2001.

440 “CNN Live This Morning” CNN. April 12, 2001.

differently and arrived at an alternative decision concerning whether to screen McVeigh’s execution.

Ashcroft’s deference to the wishes of victims’ family members degrades the concept of society. It was not just that victims’ rather than society’s interests were treated as the only salient consideration in his decision, but victims’ interests were defined by victims themselves. In this articulation, society’s interests are whatever victims deem their own interests to be. Accordingly, society had no interests independent of whatever victims wanted for themselves. This is a meager conception of society’s interests, and, as I will argue, one that would be catastrophic for any efforts to promote Fair Deal policies in other political and economic contexts. But, in invoking justice in his news conference, Ashcroft at least nods to the existence of society and society’s interest in some form.

However, as articulated in media accounts, society’s interests are not relevant to inviting victims to view executions. Considerations of justice or any other societal interest are absent from news stories about victims viewing McVeigh’s execution. Instead, the sole consideration cited by supporters of inviting victims to view executions is that viewing executions will make victims feel better. And, for the most part, neither television interviewers nor print journalists challenged this. Also, critics of the decision primarily based their opposition on the argument that it would not actually help survivors and victims’ family member constructively deal with their trauma, and not because viewing executions may violate society’s interests.

For example, media coverage of Ashcroft’s decision to allow victims to view McVeigh’s death omitted any discussion of Ashcroft’s or any other invocation of justice, but focused on victims’ desires and putative psychological needs. Much of the coverage
consisted of victims explaining why they wanted to see McVeigh killed. Some felt it important to be near the community of people who survived or had family members killed in the bombing. Sharon Medearis, whose husband was killed in the bombing, said “I want to be around people who understand what we’ve been through” during his execution.\textsuperscript{442} Bombing survivor Priscilla Salyers stated, “I need to be there for my support of other family members and survivors.”\textsuperscript{443} Viewing the execution would, various victims predicted, “give me peace knowing he will be eliminated,”\textsuperscript{444} allow one to “let go of that chapter of my life,”\textsuperscript{445} “have the leg up” on McVeigh,\textsuperscript{446} and enable victims to “gain back some of the things that have been lost.”\textsuperscript{447} Victims feared that their suffering would continue without seeing McVeigh die. Katherine Treanor, whose son and in-laws were killed in the bombing said, “If I don’t visibly see this man take his last breath, I will not be able to let go of that chapter of my life.”\textsuperscript{448} Diane Leonard, whose husband was killed in the bombing, reported that she was not allowed to see her mother after she committed suicide, and subsequently had terrible nightmares. As a result of that experience, she concluded that she must watch McVeigh die. She reasoned, “I have not wanted to avoid anything [regarding McVeigh]…Otherwise, my mind fills in the blanks. And reality is better than what my mind can do.”\textsuperscript{449} Psychologist and bombing


\textsuperscript{443} “CNN Live Event,” \textit{CNN} April 12, 2001


\textsuperscript{445} Eggen and Roman, “For McVeigh’s Victims.”


\textsuperscript{448} Eggen and Romano, “For McVeigh’s Victims.”

\textsuperscript{449} Eggen and Romano, “For McVeigh’s Victims.”
survivor Paul Heath, after conducting his own research into victims viewing executions, claimed that he and other victims “want to be able to tell others in the future that they knew and were present at the time on the calendar and on the clock when this individual could never get out of prison, escape from prison, or hurt anybody else in their family or anybody else’s family.”

Politicians and commentators agreed that victims’ desires should strongly influence whether or not they can view McVeigh’s execution. Asked why he supported victims’ viewing McVeigh’s execution, then-Oklahoma governor Frank Keating succinctly stated, “Because that’s what the families want.” Keating also thought that it would “provide the kind of moral closure needed,” and satisfy those who “want to make sure he’s dead.” Columnist and host of CNN’s Crossfire Robert Novak suggested that “it would provide [victims] a little comfort to ease their pain.”

On rare occasions, interviewers invoked the question of society, questioning supporters of victims’ family members viewing executions if there were adverse societal consequences to allowing these viewings. In response, supporters avoided discussing society, focusing on their own pain and desires, and interviewers let such explanations stand without challenge. For example, former Today and The CBS Early Show host Bryant Gumbel asked Dan McKinney, the husband of a bombing victim, “[w]hat do you say to the idea that once

you start televising it for the family members of the victims, it becomes more about revenge than punishment?\textsuperscript{454} McKinney answered

That's a hard question to answer. As far as the term revenge, I don't--I don't look at this as revenge. And as far as viewing this, I know this is a new avenue that we're pursuing, but I don't see any recourse other than do that for the people that's (sic) lost so much to try to gain back some of the things that they have lost. We can't--we can't deal with it on an everyday basis with him still here.\textsuperscript{455}

\textit{CNN Crossfire} host Bill Press asked Governor Keating, “are we feeding revenge here or justice?”\textsuperscript{456} Keating described support for victims viewing executions as a “common viewpoint” among victims. Keating said that victims, in their words, “need to make sure this execution takes place, and I want to make sure I see that the person who killed my wife doesn’t walk again.”\textsuperscript{457}

The McVeigh execution was an exceptional event, as McVeigh had bombed a federal building for political reasons and killed 168 people. Was the discourse of Ashcroft’s decision to allow victims to view executions also exceptional, differing in significant ways from articulations of decisions to allow execution viewings by family members of victims of more conventional crimes? A useful comparison is the 1995 Texas Board of Correction’s decision to allow five members of the victims’ family to view an execution, a decision supported by the state’s Attorney General as well as then-Governor George W. Bush.

There are four major differences between the circumstances surrounding Ashcroft’s decision and the Texas Board of Corrections’ 1995 decisions. First, the Texas decision was


made by state and not federal officials. Beginning with Louisiana in 1984, numerous states
have changed their execution protocols by inviting victims’ family members to view
executions. Today, in addition to Louisiana, victims’ family members can view executions in
Texas, Indiana, Tennessee, Alabama, North Carolina, Missouri, Oklahoma, Georgia, Florida,
Arkansas, California, Delaware, Kentucky, Mississippi, Ohio, Nevada, South Carolina,

Second, the Texas Board of Corrections made a policy change affecting hundreds of
cases rather than a decision affecting one execution. Third, the inmates whose executions
were to be affected had committed non-political crimes. Fourth, Texas had been regularly
executing inmates before the 1995 decision, while the McVeigh execution was the first
federal execution since 1963. Despite these differences, the justifications for inviting victims’
family members to view executions were identical, demonstrating the pervasiveness of the
absence of society in articulations of policies allowing victims to view executions. These
were not historically unique victims deserving of special treatment, as McVeigh’s victims
were articulated; yet they still were privileged over society.

Many victims’ family members attended the Board meetings in which the changes to
the viewing policy were discussed. Media coverage of the Board’s decision included
numerous quotes from victims’ family members. All of the victims quoted supported the
change, presenting a wide array of justifications for inviting family members to view
executions and why they themselves would want to watch someone killed. Invariably, just as
it was with McVeigh’s execution, the justifications were based on their own desires and
interests, rather than any benefits of the practice to society generally.
Some family members said they would view the execution on the deceased’s behalf: “It would be one of the last things I could ever do for Elizabeth,” said Melissa Pena, whose daughter Elizabeth was murdered. Matthew Herden said that it would “give [him] the opportunity to stand in for my mother.” Others predicted that watching the killing would make them feel better about their relative’s death. Thomas Dillon argued, “To have that final closure, we need to look into the eyes of the man who did it.” Some did not specify any reason to watch an execution, but justified their support for the decision by simply describing their pain and anger. Elsie Carey stated “I have anger. I’ll always have anger because someone was taken from me. They tried to play God. I would like to go to the execution.” Another argued that allowing victims’ family members to attend was a matter of fairness: “Our loved one had no choice. Their lives were taken. I’m begging, I’m asking, I am pleading. Give the victims—the survivors—that choice.”

Another relative expressed a desire to occupy the same position at the execution that the convicted murderer held at the time of the crime, in order to subject the murderer to the same treatment the family member received. A victim’s father proclaimed, “They looked in my daughter’s eyes when they murdered her. I want to look in their eyes when they are punished for their crime. I live for the day they die.” Finally, one victim averred that by allowing victims’ family members the option to view the execution, you provide an element

---

458 Christy Hoppe, “State Panel might lift ban on Victims’ Families viewing execution; Relatives lobby to have access to death chamber,” The Dallas Morning News, September 14, 1995.

459 Christy Hoppe, “State Panel might Lift Ban on Victims’ Families.”

460 Christy Hoppe, “State Panel might Lift Ban on Victims’ Families.”

461 Christy Hoppe, “State Panel might Lift Ban on Victims’ Families.”

462 Christy Hoppe, “State Panel might Lift Ban on Victims’ Families.”

of agency for victims, and with this agency “you don’t feel you’re in such a deep, dark hole.”

Quotes from influential non-governmental organizations, members of the board, and high-ranking government officials cement the notion that this decision was for the victims’ benefit alone. Gary Sykes, director of the Southwestern Law Enforcement Institute, an organization that advises police departments, argued that allowing victims to view executions would make the criminal justice system a warmer and more inviting place for victims: “people feel the state has become impersonal and bureaucratic. Viewing an execution gives the individual the feeling that they’re again part of the process.” Board member Ellen Halbert said the decision was a testament to the board’s devotion to and high regard for victims: “It really sends a message about how the board thinks about victims and how we really want to help with the healing in any way we can.” Attorney General Dan Morales’s justification suggested that the state would go to any length to serve victims’ therapeutic needs: “If it helps bring some closure to the tragedy and trauma experienced by the victim’s family, then we must allow it.”

In both Ashcroft’s decision to allow victims’ family members and survivors to view McVeigh’s execution and the Texas Board of Corrections’ decision, society was simply bracketed out of the discourse. The beginning and end of both issues is that it will satisfy a variety of victim desires. Changing criminal justice policy to increase the satisfaction of


[467 Christy Hoppe, “Kin given ok to view executions; Morales says victims’ families need closure,” The Dallas Morning News, September 27, 1995.
victim desires has been the central goal of the victims’ rights movement, which generally expresses no concern for society. Indeed, in the article “Allowing Victims’ Families to View Executions: The Eighth Amendment and Society’s Justifications for Punishment” in the *Ohio State Law Journal*, Douglas Janicik asserts that “strong arguments exist that right to view statutes are a result of the victims' rights movement. Both originated in the same time period, and the rationales behind the legislation appear to be similar—to give the victim a sense of justice that has been missing in the American criminal justice system.” Following Janicik, in his article “A Victim’s Right to View: A Distortion of the Retributivist Theory of Punishment” in the *Journal of Legislation*, Brian Skaret summarizes arguments victims’ rights advocates use for allowing victims to view executions. Inviting victims to view executions

(1) provides victims' families with a sense of justice that lacks (sic) throughout the criminal justice process; (2) the right to view an execution provides victims' families with a sense of closure because they participate in the final sentence of the criminal; and (3) the right to view enables victims’ family members to "ensure the prisoner pays for what he did."

In this discourse, the only interests discussed are victims’, and society, for all intents and purposes, does not exist.

---


The Articulation of Society in Inviting Victims to Make Prosecutorial, Judicial, and Law Enforcement Decisions.

Before examining the ways in which inviting victims to view executions departs from previous justification of punishment, disables Truman’s Fair Deal discourse, and Locke’s conception of political society, I will describe another way in which the articulation of society has been weakened in the criminal justice system, and in so doing, indicate the ways that the erasure of society permeate countless decisions made by American criminal justice institutions. Members of police departments, prosecutors, and judges are nominally agents of society. The ostensible embodiment of society in the criminal justice system is demonstrated by the terminology used in criminal cases, in which the two parties are identified as the geographic entity and the defendant, as in the People of North Carolina v. David Hopkins. However, because of victims’ rights, criminal justice professionals function not as agents of society but as agents of victims and their families, and their role as agents of victims trumps that of agents of society. Examining media accounts of the criminal justice system in South Carolina and North Carolina between late 2009 and early 2012, one finds numerous examples of criminal justice professionals representing victims, not society, pursuing outcomes that may be counter to society’s interests in order to satisfy victims. My hope in detailing examples drawn from a short period of time and limited geographic area is to demonstrate the ubiquity of the subordination of society to victims’ wishes in the criminal justice system.

For example, Moore County (NC) Superior Court judge Stuart Albright rejected a plea deal for Tyler Whitaker that would have resulted in a probated sentence after “one victim said his family would rather see the young man accused of assaulting him go to prison
rather than receive $41,000 in medical bills."\textsuperscript{470} Instead, Whitaker went to prison and owed $41,000 to healthcare providers and not the family. Cumberland County (NC) Superior Court Judge Gregory Weeks delayed signing an order determining that Marlon Curtis McKenzie would not face the death penalty “until prosecutors could speak with the family of the victim,” who “wanted to discuss the issue before a final decision was made.”\textsuperscript{471}

Lee County (NC) District Attorney Susan Doyle justified a plea deal for Edward Rivera by saying “I hope the victim’s family can now move forward with their lives knowing that the defendant pled guilty and will be punished for his crime.”\textsuperscript{472} Alleghany (NC) County Assistant District Attorney Nancy Lamb agreed to a plea deal with Herbert Wilson that involved dropping an attempted murder charge because it was something the victim could “live with.”\textsuperscript{473} Greenwood, South Carolina prosecutor agreed to a plea deal with Edward Lee Elmore that resulted in his release from prison after 30 years because the victim’s sister “asked him to end three decades of uncertainty and phone calls from reporters and other people she doesn’t want to talk to. ‘I want peace, I need peace. Can you get me peace?’ the prosecutor recalled her saying.”\textsuperscript{474}

Wake County (NC) District Attorney Colon Willoughby decided to pursue the death penalty for Jason Williford, charged with killing Kathy Taft, because of the “sentiments of


\textsuperscript{473} Cathy Wilson, “Wilson pleads guilty, sentenced to 35 years in prison,” \textit{The Elizabeth City Advance}, December 7, 2011.

the victim’s family.” In February 2011 in Durham, North Carolina, Isaac Stroud was sentenced to life in prison instead of death when a judge determined he was not mentally capable of assisting with his defense. Durham County District Attorney Tracy Cline agreed to Stroud’s mental illness claim, but only “with consent from the victim’s family.”

Prosecutors often feel that they have failed families, and not society, when juries opt for life and not death sentences. For example, after failing to convince a jury to sentence Samuel J. Cooper to death for five murders, Wake County, North Carolina prosecutors “apologized to the [victims’] families after the case.” When prosecutions are successful, prosecutors, the news media, and victims suggest that the success was on the victims’ behalf.

Forsyth County (NC) Prosecutor David Hall agreed to a plea deal with Kate Hofmann because the victim’s mother, Nellie Snow, “was in very poor health and might not survive. It was her wish that this be concluded very soon. I respect that, so we acquiesced.” Snow reported that “she was pleased that prosecutors had listened to her wishes.” After Ernest Nichols pled guilty and was sentenced to at least 18 years for statutory rape, the Mecklenburg (NC) County Assistant District Attorney said, “The victim and her family supported the plea offers and wanted to avoid the trauma that a trial might bring.”


479 Sexton, “A Long Wait for Little Justice.”

480 Courtney Ridenhour, “Former Teacher Sentenced for Rape. He’ll serve at least 18 years for raping son’s teen girlfriend,” The Charlotte Observer, August 6, 2011.
Victims also exert control over police decisions. Columbia, South Carolina police let a murder suspect, Wayne ‘Chicken Wing’ Mobley, free on bond in the hopes that he would lead them to another suspect. While free, Mobley allegedly killed Bobby Edwards. According to Columbia Police Chief Randy Scott, the “family of the [original] victim, Hector Carreon-Hernandez, also agreed to let Mobley go to try to nab the real killer.”481 Scott explained, “We do things like this. At the end of the day we have to do justice for the victim and the victim’s family.”482

In all the above cases, judges, prosecutors, and police departments justify their decisions by positioning themselves as agents of the victims. Even those media accounts of individual cases that lack explicit admissions from prosecutors, judges, and law enforcement that they have acted as agents of victims implicitly affirm that relationship. For example, after Dallas Bullock pleaded to second-degree murder, an article noted that murder-victim Joseph Wells’ family “expressed relief the case would soon be wrapped up.”483 The headline of an article detailing the plea bargain agreed to by Robert James Moyer read simply “Shooting Victim’s Mother Objects to Plea Bargain.”484 All in all, according to Charlotte Observer writer Franco Ordonez, “Prosecutors are often viewed by families as someone who will bring justice for their loved one.”485

---


482 John Monk, “Did Freeing Accused Killer Lead to Murder?”


prosecutor’s presentation of his case against the man charged with killing her daughter, Lucy Johnson, Michele Dye lamented, “Lucy is not getting proper representation.” 

This view extends beyond the choices of criminal justice professionals in individual case to criminal justice legislation. According to news accounts, legislation to redress past racism in the use of the death penalty as well as broader sentencing legislation should reflect the opinions and interests of individual victims. An article about the proposed repeal of elements of the Racial Justice Act in *The Fayetteville Observer* included a section titled “Victim’s Sister Speaks,” in which Bobbie Tornblum decried the law and the effect it may have on the sentence received by the person sentenced to death for killing her brother. 

Also, media accounts often suggest that broader sentencing legislation should embody victims’ family members’ views. In a 2011 article titled “Second-degree murder terms decried,” Mary Lyons Felton, whose son was murdered in 2006, was the decrrier. She demanded that North Carolina extend prison sentences for second-degree murder, declaring, “Someone with no criminal record can get as low as eight years as a result of a plea…that sends the wrong message to the victim’s family members.” 

In other words, as the above examples demonstrate, the criminal justice system’s job is to satisfy those family members by structuring elements of the system according to victims’ family members’ specifications.

In each of the above cases, society had interests contrary to the victims’ interests to which prosecutors and judges deferred. In some cases, society’s interest would call for harsher sanctions; in others, lesser. For example, in the Dallas Bullock case, the victims’

---

486 Ordonez, “Lucy Johnson’s parent says Prosecution Failed Case vs. Michael Mead.”


interest in a speedy resolution to Bullock’s case resulted in Bullock receiving a lighter sentence than what he would have received if he had been convicted of his original charges. Society has an interest in keeping crime levels as low as possible, and releasing a murderer years before he otherwise would have been because of victims’ desires puts that interest at risk. Society may also have had an interest in offenders receiving lesser sanctions. Incarcerating prisoners requires taxpayer money, money that could either be devoted to other programs or remain the taxpayer’s. For example, Tyler Whitaker was denied probation at a victim’s request, and ultimately was sentenced to prison. Perhaps Whitaker would have observed his probation conditions and not committed further crimes, an outcome that would have saved the state of North Carolina tens of thousands of dollars of prison costs. Altogether, victims’ interests and society’s interest’s do not naturally cohere. When they diverge, over public safety or prison costs, choosing a victim’s position violates society’s interests.

The Centrality of Society’s Interests and the Absence of Victims’ Interests in Criminological Theory and the History of American Criminal Justice

Is it possible for society to simply have no interest in how its criminal justice system operates? That contention represents a clear departure from historical conceptions of the relationship between punishment and society. It also differs markedly from punishment practices operative throughout American history, including revolutionary-era history, a time period glorified by the conservatives who spearhead victims’ rights efforts and have disarticulated the liberal consensus.
Philosophies of Punishment

The interests of society are central in the four dominant theories of punishment that have guided criminal justice since the 18th century: retribution, incapacitation, deterrence, and rehabilitation. Not only are societal interests central to these theories, but victims’ interests are uniformly absent.

Both Immanuel Kant and G.W.F. Hegel promoted retributive approaches to punishment. Kant claimed that he was not concerned with society, writing that “[j]udicial punishment can never be used merely as a means to promote some other good for the criminal himself or for civil society.”489 However, punishment served a social purpose for Kant, as he asserted that the punishment of criminals was essential to prevent the degradation of society, as without “legal justice…it is no longer worthwhile for men to remain alive on this earth.”490 However, he was not concerned with victims either. He argued that justice, a categorical imperative, required society to uphold justice, “the principle of equality…the principle of not treating one side more favorably than the others.”491 Thus, what one does to another, the same is done to him (he holds, for example, that murder must be punishable by death), and “everyone will duly receive what his actions are worth.”492 Hegel valued the expressive value of retributive punishment, arguing that punishing the criminal represents


491 Kant, “The Penal Law,” 32.

492 Kant, “The Penal Law,” 33
“the cancellation of the crime, which would otherwise be regarded as valid, and the restoration of right.”

Such retributive theories of punishment presume that punishment functions as society’s condemnation of the violation of social norms and an effort to cancel the advantages accrued by the defendant in the commission of the crime. Punishment stands, according to Stanley Grupp in his introduction to the book *Theories of Punishment*, “as an orderly, collective expression of society’s natural feeling of revulsion toward and disapproval of criminal acts.” Grupp maintains that retributive punishment “vindicates the criminal law and in so doing helps to unify society against crime and criminals.” Society is not the only entity served by retributive punishment, offenders are as well. According to leading retributivist Andrew Von Hirsch, the role of retributive punishment is recognizing and “addressing the offender as a moral agent, by appealing to his or her sense of right and wrong.” By addressing the offender as a moral agent, retribution respects the offender’s moral agency, and facilitates the offender’s reentry into the community of moral agents once retribution has been exacted.

Incapacitation, deterrence and rehabilitation are all utilitarian conceptions of punishment. Utilitarian theories originated in the work of Jeremy Bentham and Cesar Beccaria in the 18th Century. Bentham held that “the business of government is to promote

---


the happiness of society, by punishing and rewarding.”  

Beccaria argued that society must be defended against the “private usurpation by [criminals], each of whom always tries not only to withdraw his own share but also to usurp for himself that of others.” The only way to defend society is by imposing punishments that “directly strike the senses” and “counterbalance the powerful impressions of the private passions that oppose the common good.”

Deterrence presumes that people are pleasure-seeking and pain-avoiding. Penalizing offenders will make clear the potential costs of crime to those convicted of crimes as well as potential offenders, thereby deterring both groups from committing crime out of fear of its consequences. It is based, according to Grupp, following Bentham and Beccaria, on the utilitarian concept of achieving “the greatest happiness for the greatest number.”

Deterrence theories presume that deterrence will increase the well-being of all by reducing the criminal behavior all would otherwise be subject to.

Incapacitation lacks retribution’s ethical dimensions. It presumes that offenders will commit crimes in the future and, according to criminologist Cyndi Banks, should be “placed into custody, usually for long periods of time, to protect the public from the chance of future offending.” Finally, rehabilitation works to enhance society’s safety and the “the greatest happiness for the greatest number” by providing treatment and other resources to enable


offenders to live future crime-free lives.\textsuperscript{502} According to Banks, this theory presumes that rehabilitative techniques can result in a “change in the offender’s values so that he or she will refrain from committing further offenses, now believing such conduct to be wrong.”\textsuperscript{503}

While the relative popularity and utilization of these approaches to punishment has changed over the centuries, all presume that punishment should advance society’s interests. Obviously, this presumes the existence of society. Victim influence over the mechanics of punishment is fundamentally incompatible with all of the above theories of punishment. Victim involvement alters the calculations used to establish deterrent, incapacitative, rehabilitative, or retributive punishment, introducing arbitrary data that perverts these calculations and prevents their intended benefits. As detailed in chapter one, victims’ rights proponents posit that victims, as a result of their victimization, have a capacity to influence punishment equal to or superior to that of society. That, however, has never been the thinking of philosophers and criminologists contemplating punishment. Altogether, each theory of punishment detailed above holds that society’s interests cannot be dictated by and are not reducible to those of the victim and victim’s family. The privileging of victim’s interests is a dramatic departure from the major theories of punishment.

\textit{History of society in American criminal justice}

Not only are victims’ desires absent from major philosophies of punishment, there is little historical evidence that the American criminal justice has been organized to service victim’s demands until, roughly, the last twenty-five years. The three accounts of colonial

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{502} Banks, \textit{Criminal Justice Ethics}, 117.
\item \textsuperscript{503} Banks, \textit{Criminal Justice Ethics}, 116.
\end{itemize}
\end{footnotesize}
and post-revolutionary punishment detailed below arrive at different conclusions about the purposes of punishment, but in all three accounts, victims played no direct role in either imposing or determining it, nor was punishment imposed in the name of victims.

Lawrence Friedman provides a comprehensive account of the uses of punishment in American history, from the colonial period through the 1980s. His chapters on the colonial and revolutionary periods make no mention of crime victims playing any role in the prosecution and punishment of defendants and offenders. Justifications for punishments did not cite victims, and victims were not given special preference in attending executions.504 Instead, offenses were conceived of as sins against god, not individual victims. The object of punishment was both educative and religious, and confession was central to the criminal justice process. Friedman argues that the “point in punishing was repentance” to god and a “good swift lesson.”505

Historian David Rothman details the advent of institutions to care for criminals and the insane in colonial and post-revolutionary America in The Discovery of the Asylum. In his book, colonial and post-revolutionary punishment was not intended to match victims’ desires, nor imposed to redeem or make individual victims feel better. Instead, the range of punishment methods was designed to maintain order and “rehabilitate or intimidate or detain the offender.”506 Rothman explains that after the Revolution, in a “burst of enthusiasm, Americans expected that a rational system of correction, which made punishment certain but humane, would dissuade all but a few offenders from a life in crime.”507

505 Friedman, Crime and Punishment, 37.
In the essay “‘An Extraordinarily Beautiful Document’: Jefferson’s ‘Bill for Proportioning Crimes and Punishments’ and the Challenge of Republican Punishment,” Law Professor Markus Dubber argues that early-American law was deeply patriarchal, “in which the sovereign disciplines wayward members of his state household if, and as, he sees fit, without meaningful constraints on his punitive discretion.” Whatever reforms took place after the revolution and the creation of the Constitution were animated by religion, “the driving force behind actual reform.” It was not eye-for-an-eye vengeance that animated these religious reforms, but rather “Christian benevolence” that motivated the construction of penitentiaries where offenders could repent and morally improve themselves.

The absence of society existed throughout American history until the last 25 years. In his introduction to his edited collection Why Punish? How Much?, law professor Michael Tonry tracks the history of punishment in the United States, a history in which victims played no part in punishment. Tonry argues that utilitarian approaches to punishment dominated criminal justice until 1960, when state and the federal government began to move away from utilitarian approaches such as rehabilitation. According to Tonry, utilitarian ideas were replaced by retributive ideas, which influenced the institution of sentencing guidelines that established uniform sentences and the abolition of parole through the mid-1980s. Following

---


512 Tonry, “Introduction,” 32.
the mid-1980s, the United States Congress and state legislatures departed from retributive ideas by introducing mandatory minimum sentencing schemes and three-strikes laws that led to draconian punishments that made no retributive sense. Instead, these laws reverted back to utilitarian justifications, which are, again, utilitarian, and have nothing to do with victims of crime.

These tough-on-crime changes were promoted by conservatives, who have spearheaded the victims’ rights movement. However, influential strains of conservative criminology have had nothing to say about victims. In his review of conservative criminology in the *American Journal of Criminal Justice*, criminologist Richard Kania does not mention victims. The work of perhaps the most influential tough-on-crime intellectual, James Q. Wilson, also does not propose victim participation in fashioning sentencing policy or individual sentences. Wilson served on the Reagan administrations’ 1981 Attorney General’s Task Force on Violent Crime, which proposed limiting habeas corpus hearings and the exclusionary rule and abolishing parole. He attacked the effectiveness of addressing crime through social investment and prisoner-rehabilitation works, and instead advocated more certain and severe punishment to deter would-be offenders. In addition to his support for deterrence, Wilson supported incapacitating offenders.

In his book *Thinking about Crime*, in which he articulates his support for deterrence and incapacitation, he does not advocate any role for victims in the criminal justice system. He explains his support for deterrent punishment by explaining “I believe that the weight of the evidence…supports the view that the rate of crime is influenced by its costs.”

---


Therefore, raising the costs of punishment will reduce crime rates. He also supports incapacitation because “[w]hen criminals are deprived of their liberty, as by imprisonment, their ability to commit offenses against citizens is ended.”

Altogether, there has never been a criminological or philosophical theory of punishment that sought to find ways to reduce crime or make punishment more just that elevated the desires of victims over those of society. The pervasive deference to victims’ desires therefore marks a significant departure from previous philosophies of punishment and criminology. The consequences of that rearticulation are explored in the concluding section of this chapter.

**Victims’ Rights Disarticulation of Locke, Truman, and the “People” Ratified by the United States Constitution**

I begin this section by considering whether Truman’s liberal consensus can remain viable if victims’ rights sets the discursive conditions for articulations of society, and find that it cannot. I note that Democrats, the putative defenders of the liberal consensus, have themselves eviscerated the articulation of society necessary for the liberal consensus by supporting victims’ rights.

I end the chapter by examining whether Locke’s conception of political society is also disarticulated by the ascent of victims’ rights. I find that victims’ rights undermines Locke’s conception of political society, a conception that partially underlies the purpose of the United States Constitution. The “people” that come into being through the formation of political

---

514 Wilson, *Thinking about Crime*, 145.
society in order to ensure their own personal safety are one of two “peoples” that make up those who are constituted by the Constitution. Victims’ rights effectively disarticulates that people. The other “people” are those who come together to establish the conditions necessary for economic activity. Victims’ rights does not disarticulate that ‘people,’ and thus renders the Constitution merely an economic document, rather than one that constitutes a political society. This maneuver complements those made by current conservatives, led by the Tea Party, to redefine constitutionality as minimal government intervention.

The Disarticulation of the Fair Deal and the Liberal Notion of “society”

In his Fair Deal advocacy, Truman argued that an American national whole—society—existed. This society had a set of interests, and these interests were in a countervailing relationship with individual interests, primarily those of the wealthy. Truman held that government was responsible for privileging the interests of society over those of individual interests, even at the expense of those individual interests, and fulfills this responsibility by providing such goods as labor protections, quality education, protection from racial discrimination, and medical care, among other elements of Truman’s Fair Deal.

Victims’ rights renders Truman’s Fair Deal articulations untenable. According to victims’ rights, government is not responsible for the welfare of the American people as a whole. Moreover, according to victims’ rights, the American people as a whole—society—do not exist. The robust conception of a society of interconnected Americans—referred to in his 1949 State of the Union Speech as “the nation as a whole,” “the American people,” and the “our” in “our increasing abundance”—is invalidated.
By contrast, victims’ rights articulates government as properly providing for only the welfare of individual victims, not society. For example, a prosecutor who declines to pursue the death penalty in an individual case at a victim’s family member’s behest may violate society’s standards for retribution, marring the criminal justice system’s integrity. Needless to say, victims themselves will not assume government’s responsibility for the welfare of society. In victims’ rights discourse, victims themselves have no responsibility to maintain or improve the welfare of society through their criminal justice decision-making. Accordingly, victims’ rights advocates rarely try to articulate victims’ rights policies in terms of the benefits the policy will bring to society. Instead, as seen above, the benefits are articulated as being for victims and victims alone.

If society does not exist, compromising private interests is without justification. As discussed above, victims’ advocates and their political allies consistently bracket out societal considerations in criminal justice policy discussions, thereby erasing society. The media affirms this erasure by ignoring societal concerns when covering victims’ efforts to increase their participation in the criminal justice system and direct legislative activity about due process and criminal sanctions. Without society, there is no “nation as whole” to care for or appropriate private wealth. In other words, government cannot provide for or enhance the welfare of a non-entity.

An example of a Fair Deal program incapacitated by victims’ rights is Truman’s national health insurance proposal, which presumed that society existed and government should privilege its interests over private interests. Truman justified the program by stating
“the health of all its citizens deserves the help of all the nation.” In his insurance scheme, which never passed, the federal government would have dictated how much doctors could charge for their services, potentially reducing their profits. Under this model, society would have gotten health care, and doctors’ profits would have been compromised by society’s interest in health care. If society’s interests could not be privileged over private interests, doctor’s interests in maximizing their profit would carry the day. If society did not exist at all, there simply would no entity with countervailing interests to oppose to doctors’ that government should privilege. Individual patients, of course, have interests, but the nation’s patients are not identical to “society.” Instead, patients are individuals who pursue their interests by using their judgment to find the best doctor for the least money. They are not included in “all of [America’s] citizens [that] deserve[] the help of all the nation,” as quoted above.

The logic of victims’ rights would similarly devastate the discursive foundations of current government welfare programs such as cash and healthcare assistance for the poor, section 8 housing, food stamps, nutrition programs for infants and pregnant women, even public education. Each of these programs depends on the notions that society exists, government is responsible for its care, even if fulfilling that responsibility requires choosing society’s interests over private.

Democrats have a long tradition of defending a notion of a society of interconnected individuals. For example, on November 30, 2011, in a statement reminiscent of Truman’s 1949 State of the Union speech, Barack Obama declared “you guys know that what America is about is that we’re all in this together; that each of us has to do our own individual part, but

we also have to be looking out for one another.”516 One wonders about the conviction of that articulation when leading Democrats have supported victims’ rights since the 1990s. Indeed, in a 2012 statement proclaiming National Victims’ Rights Week, Barack Obama hailed “advocates from every corner of America have worked to reinforce rights, services, and support for victims of crime,” and described Victims’ Rights Week as a time to “rededicate ourselves to securing the full measure of justice for every crime victim.”517 In 1996, then-United States Attorney General Janet Reno told a victims’ right conference that she drew “most of my strength from victims, for they represent America to me: people who will not be put down, people who will not be defeated, people will rise again and again for what is right…You are my heroes and heroines. You are but little lower than angels.”518 The same year, Bill Clinton asserted that “[w]hen someone is a victim, he or she should be at the center of the criminal justice process, not on the outside looking in,” and pledged his support for an amendment to the United States Constitution guaranteeing victims the right to participate in every aspect of the criminal justice process, including plea deals, and parole, sentencing, and bail hearings.519 In his 2000 Presidential campaign, Al Gore also pledged his support for a Victims’ Rights amendment.520 In 1998, Joe Biden co-sponsored a resolution calling for the


Victims’ Rights amendment.\textsuperscript{521} All in all, it is hard to understand how Democrats can defend the welfare state when their support for victims’ rights actively works towards its dismantlement.

\textit{The End of Locke’s Political Society and \textquotedblleft the People’ of the United States Constitution\textquotedblright}

Locke is clear on the relationship between judgment and punishment on one hand and political society on the other: “there can’t be a political society except where every one of the members has given up [their] natural power” to judge and punish, “passing it into the hands of the community in all cases.”\textsuperscript{522} This power to judge and punish ceded to government by private individuals constitutes political society and includes “the power to set down what punishment was appropriate for what crimes.”\textsuperscript{523} This is the power victims have successfully appropriated through the victims’ rights movement. Thus, according to Locke’s logic, victims’ rights represents the dissolution of political society.

As a result of the victims’ rights movement, a discrete segment of society, victims, have obtained the power to make prosecutorial and judicial decisions and influence punishment. As the above examples illustrate, victims, not the community, direct what is the appropriate punishments for specific crimes. Victims strongly influence whether or not someone should die, which crimes individual defendants are guilty of, even whether accused


\textsuperscript{522} Locke, \textit{Two Treatises}, 136-7.

\textsuperscript{523} Locke, \textit{Two Treatises}, 137.
killers can be released without bail in order for law enforcement to advance victims’ interests. Judges, prosecutors, and law enforcement agencies—who ostensibly represent society’s interests—frequently defer to victims’ wishes. Also victims play a determinative role in fashioning legislation defining crimes and establishing criminal sanctions. Altogether, victims have achieved a great deal of executive power, and that achievement signals the end of uniform law and punishment and a return to the state of nature.

My analysis may seem to overstate things. Perhaps political society remains partially intact after victims’ rights, as government still functions as the umpire and retains executive power in legislative, prosecutorial, and judicial decisions. While highly influential, victims do not control the legislative process. Legislators have the power to vote against victims’ sentencing law demands, and a handful do whenever sentencing changes advocated by victims are debated. Voters can vote against popular initiatives to add victims’ rights amendments to state constitutions supported by victims, and, typically, 20-30% of voters do vote against such amendments. For example, North Carolina’s Victims’ Rights Amendment passed 78-22% in 1996.

In addition, there are many constraints on a victim’s ability to judge defendants and influence punishment for offenders. Conduct must fit specific criteria to qualify as a specific crime. Also, the severity of the criminal sanction is legislatively indexed to the seriousness of the crime. Thus, a victim cannot charge a car thief with murder, and a car thief cannot be put to death for his crime, as would be possible in the state of nature. Also, while victims assume executive power, they do not assume any executive responsibilities. They do not learn police practices or legal procedure in order to investigate and try cases, nor assume the risk of
arresting whomever they conclude victimized them. They enjoy some of the privileges of executive power without its corresponding burdens.

It seems that, on the one hand, victims have executive power in their ability to influence such prosecutorial decisions as whether or not to pursue the death penalty; on the other hand, victims are constrained on a range of other punishment, judicial, and legislative decisions, and do not assume executive responsibilities. Altogether, it seems that the United States has partial uniform law, which, per Locke, corresponds to a partial existence of political society. Can there be a partial political society? Can people partially agree to unite with one another to form a government to represent them? It is an odd formulation, especially considering that the lack of political society concerns one of society’s gravest decisions: whether to kill one of its members. What sort of agreement to exist in a political society would include an agreement to dissolve society when it faces its gravest decisions?

Economic changes and technological advancements have enabled this partiality. The federal and state governments can apparently afford to grant victims executive power and accede to their expensive, punitive demand to incarcerate offenders without requiring victims to assume the costs of executive responsibilities. The physical dangers that compelled Locke to assert the need for a political society no longer exist. The consistent punitiveness of victims creates a functional uniformity in the criminal justice system, if not the type of community-determined uniformity Locke envisioned.\textsuperscript{524} Victims put themselves at no risk by holding partial executive power. Altogether, public safety is possible, if not maximized, under victims’ rights, and political society as Locke theorized it is not necessary to ensure it.

\textsuperscript{524} Acknowledging the consistently punitive behavior by victims does not mean I see that behavior as a natural response to victimization. Because their involvement is facilitated by the prosecutors’ office and law enforcement, the primary subject position available to victims is that of the vengeful victims seeking prosecution and punishment.
Nevertheless, while the criminal justice system remains functional, much harm has been done to the conceptual basis of political society, or, in other words, “the people.” Locke knew who the people were: those who thought their safety would be enhanced by the creation of the government, the creation of which constituted them as a people. What is the status of Locke’s people today? It seems that “the people” are those who will continually deny their peoplehood in deference to victims. This perpetual transience of “the people” indicates that they never realize a stable form or location.

Locke’s idea that people form governments to enhance their personal safety is the basis of the American Constitutional agreement. As outlined in its Preamble, personal protection of the people is the central purpose of the Constitution: “We the people of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution.”525 Arguably, the rest of the Constitution, such as its description of the separation of powers, is dedicated to describing how government will accomplish the goals of the Preamble. Victims’ rights has inaugurated a strange state of affairs. In the name of public safety, it eviscerates “the people” of the Constitution’s Preamble, the protection of whom gives rise to “the people” in the first place. As I have attempted to demonstrate, the Preamble’s objectives can now be achieved without the people constituted in the Preamble, making that constitution unnecessary. In the moments when victims influence the course of the criminal justice system, it is they, not government, who ensure the objectives of the Constitution’s Preamble, placing both the Constitution and political society in abeyance.

However, the Constitution does more than establish protective conditions for the people of the Preamble. It also contains provisions to establish and maintain an orderly economy. For example, the Constitution provides Congress the power to regulate commerce with foreign nations, fix weights and measures, and establish currency. Since the government delegates public safety obligations to victims and public safety no longer requires a consistent and coherent notion of “the people,” it seems that “the people” are strictly oriented around economic activity. That is, “the people” are economic actors who form government to promote and ensure the conditions necessary for economic activity.

Perhaps it can be said that before victims’ rights, the Constitution constituted two ‘peoples’: those seeking to ensure their personal safety through the creation of government and uniform law and those seeking to ensure economic activity. Victims’ rights eliminates the former while preserving the latter. “The people” are rearticulated as a confederation of economic actors, and the Constitution is rearticulated as a statement of economic principles, primarily of minimal government economic activity and intervention. As a result, measures that implicitly or explicitly articulate “the people” as more than economic actors are unconstitutional or non-constitutional, and are outside the proper scope of Constitutional governance.

Conclusion

American liberal politics appear badly compromised. Though many Americans lack essential medical, financial, and housing resources, politicians of both parties appear prepared to reduce social welfare programs. In advocating for such reductions, politicians

---

526 *Constitution of the United States.*
attack the viability of the articulation “society,” promoting in its place familial, professional, or religious relations. Also, conservatives vociferously allege that many forms of government activity, including environmental and economic regulations and welfare spending, are unconstitutional, articulating the Constitution as a merely a document organizing economic relations.

This paper has attempted to demonstrate the felicity of victims’ rights to the decimation of liberal politics. Criminal justice is a potent presence in American life, pervading news media, film, and television. Therefore, its rearticulation played, and continues to play, a central role in the rearticulation of broader American politics.
Conclusion: Restorative Justice and the Liberal Consensus

Before the institutionalization of victims’ rights, the victim’s role within the criminal justice system was confined to that of witness. They provided evidence through their testimony, but had no opportunities to influence or participate in prosecutorial, sentencing, or parole decisions. Also, victims and victims' family members did not exploit their victim-status to lead tough-on-crime campaigns. As I have attempted to demonstrate, all of this has changed. Victims and victims' family members participate in the criminal justice system in comprehensive ways, and are America’s foremost tough-on-crime warriors.

Victims’ rights has penetrated many important American institutions, including academia, judicial organizations, professional organizations, law enforcement, the federal government, and media. Lewis and Clark Law School houses the National Crime Victim Law Institute. The federal government has an Office for Victims of Crime, dedicated to providing hundreds of millions of dollars in grants for victims’ organizations to provide victims’ services, and working to guarantee victims participatory rights through an amendment to the United States Constitution. Every state government has offices dedicated to crime victims. The American Bar Association has a victims’ committee, which has promulgated guidelines advocating for victims’ rights to participation. The American Psychological Association established a Task Force on Victims of Crime, whose report was
strongly supportive of victims’ rights. The APA works with victims groups to study the benefits of victim participation in the criminal justice process. Prosecutor’s office employ victims’ advocates to engage with crime victims and ensure their legal rights are protected. Police departments have officers and outreach workers specifically dedicated to crime victims, and the International Association of Chiefs of Police also has a victims’ committee, which supports a victims’ rights amendment to the United States Constitution. Finally media personnel receive training concerning the most sensitive ways to interview victims. Judging by the ways that concern for and engagement with victims permeates these institutions, victims appear to be a permanent presence in American politics, media, and criminal justice.

I have argued that victims’ rights runs stands as a rejection of the liberal consensus. As it seems that victims are here to stay, defenders of the liberal consensus must promote a response to victimization that coheres with its tenets. It must base authority on knowledge, incorporate a robust conception of society into its precepts, insist on larger systems of relationality than that of the family, and counter narratives of socioeconomic mobility.

One approach that gives victims a central role in the criminal justice process whose assumptions are consonant with those of the liberal consensus is restorative justice. John Braithwaite, one of restorative justice’s leading advocates, offers a provisional definition: “Restorative justice is a process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its


528 See Rentschler, Second Wounds.
implications for the future.” What is restored through restorative justice practices are “whatever dimensions of restoration matter to the victims, offenders, and communities affected by the crime…deliberation determines what restoration means in a specific context.” In contrast to the traditional criminal justice system, restorative justice is not adversarial, and victims, the community, and offenders creates sanctions, not judges. Because restorative justice conceptualizes sanctions as reparative rather than punitive, incarceration, which victims may not see as reparative, is rarer. Generally, it seeks to maximize compassion and human connection, rather than the alienation of victim and offender instituted by the conventional criminal justice system under victims’ rights.

An example of restorative justice is “family group conferences” in New Zealand. Such conferences are possible after both violent and non-violent crimes. After a crime is committed and wrongdoing is admitted, victims and their supporters meet with offenders and their supporters, a meeting of “two communities of care.” The group discusses what happened and the harms suffered by the victim, the victim’s family, the offender, and the offender’s family. The group then discusses how to repair such harms. A successful family group conference concludes with the group creating a plan of action to repair each party’s


532 Braithwaite, “Restorative Justice,” 17.
harm-repairing measures include financial compensation for victims, victims’ services, and apologies from offenders to victims.

Restorative justice coheres with each of the tenets of the liberal consensus I discuss in my dissertation. Chapter one argues that victims’ rights has effectively silenced societal interests in favor of those of atomized individual victims. This runs contrary to the political statements of Truman, who predicated his political agenda on the existence of an American society. In contrast to victims’ rights, restorative justice is socially focused through its emphasis on community participation and well-being. Crime is seen as a breakdown in pre-existing social relationships that need repair through the restorative justice process. Repairing such relationships benefits the parties to the restorative justice proceeding themselves, as well as enriching community and improving social harmony overall. Restorative justice aims to achieve, according to the introduction to the anthology *Restorative Justice: Critical Issues*, the “strengthening of institutional relationships; the enhancement of processes of public participation; the development of the capacity for self-help, mutual responsibility and self-regulation; and the promotion of structures of empowerment, connectedness and cohesion” and “the re-establishment of social bonds.”533 Thus, in many restorative justice iterations, representative of the community at large, even those unaffected by the victimization itself, are involved in the restorative justice process.

In addition to its efforts to harmonize communities through its practices, restorative justice relies on societal support to achieve its aims. A central element of repairing the harm of victimization is providing victims’ services. According to Gordon Bazemore, restorative justice programs “give first priority to meeting the needs of crime victims” who are referred.

---

“for needed help and assistance,” to service providers who receive resources from societal contributions, primarily taxation.\textsuperscript{534}

Chapter two argues that Mark Lunsford’s narrative suggests that socioeconomic mobility is possible in the United States for those without power, contrary to Roosevelt’s and Johnson’s skepticism about the possibilities of socioeconomic mobility for those without power. I argue that Lunsford’s crusade was only successful because it served powerful interests. Restorative Justice, which increases socioeconomic mobility through the reduced use of incarceration and enhanced victims’ services, serves no powerful interests and has failed to become institutionalized on any significant basis in the United States. It functions as the negative image of Lunsford in two ways: first, in its failure relative to his success; second, its egalitarianism compared to his hierarchical, punishment-focused policies. The failure of the institutionalization of restorative justice counters the implications of the Lunsford narrative by demonstrating that criminal justice measures must meet powerful interests to succeed. In other words, those without power need help from those in power to achieve mobility.

This was precisely Johnson’s and Roosevelt’s point, and they both attempted to distribute power to those without it to enable widespread mobility. Roosevelt feared that serving the interests of those in power would never result in increased mobility for those without it. The difference between the minimal success of efforts to institutionalize restorative justice and Lunsford’s comprehensive legislative accomplishments confirm Roosevelt’s fears. The policy that served powerful interests succeeded, yet with decreased mobility for those who lacked it. The policy that serves no powerful interests failed, at the

expense of increased mobility. This example is evidence that those with power dominate
economic and political life at the expense of the socioeconomic mobility of those who lack it.
Restorative justice demonstrates that Roosevelt’s concerns about the relation between power
and socioeconomic mobility still hold true.

Chapter three discusses two connected conservative arguments. First, that relations
between family members in two-parent households guarantee their well-being and self-
sufficiency. Second, conservatives allege that welfare programs undermine the solidity of the
two-parent family unit. In so doing, they have successfully attacked justifications for and
weakened the welfare state, one of the central elements of the liberal consensus. However,
the prevalence of domestic violence within the nuclear family suggests that family dynamics,
in fact, can be a threat to its members. Victims’ rights-influenced domestic violence
discourse has silenced concerns about the family by positing that domestic violence is
committed by bad actors for unknown reasons, who need punishment in order to be cured of
their violent tendencies. In other words, conservative discourse about victims’ rights holds
that the family is not the problem.

Restorative justice counters the conservative glorification of the family by alleging
that the family is not enough to ensure well-being, as community involvement is necessary
when domestic violence occurs. According to criminologist Lois Presser, it “builds on the
community focus of the shelter movement,” which has worked to establish an array of
victims’ services, including subsidized housing and legal assistance to enable the abused to
live independently of their abuser.535 The community itself participates in restorative justice

535 Emily Gaarder et al., “Can Restorative Justice Reduce Battering? Some Preliminary
Considerations,” Social Text 27 (2000), 186.
proceedings, attempting to rectify abusive behavior by expressing their disapproval of it.\textsuperscript{536} Altogether, care for the couple comes from outside of the nuclear family, with the nuclear family itself treated as inadequate to the task of repairing the harm of and preventing future victimization. Because welfare rhetoric also holds that community care is necessary to supplement or stand in for familial support, restorative justice works to buttress welfare arguments.

Chapter four provides a history of the articulation of authority in governmental responses to victimization in the 1970s and 1980s, concluding that an articulation of authority as properly based on experience emerged as hegemonic in victims’ rights. At first glance, restorative justice may appear even more deferential to victims’ authority than victims’ rights. It grants them wider decision-making power than they have under victims’ rights. Victims can influence more than just the dimensions of defendant’s punishment, but also whether the offender apologizes to them or does reparative labor to attend to the harm inflicted. In restorative justice, however, victims’ knowledge is only privileged when it concerns themselves, either the harms they have sustained or the measures they propose to repair them. It does not extend to the offenders’ future danger to society or conceptions of the justness of the offender’s sentence, which are conjectures frequently made by victim ‘experts’ in victims’ rights.

In addition to the experienced-based authority victims wielded within the criminal justice system, the victims’ rights movement granted victims immense authority during policy discussions and legislative processes. Many tough-on-crime efforts were spearheaded by victims. By contrast to victim-led tough-on-crime advocacy, restorative justice advocates have typically been academics or criminal justice professionals. In fact, many justifications

\textsuperscript{536} Gaarder, “Can Restorative Justice Reduce Battering,” 177.
for restorative justice draw on “extensive anthropological sources” to argue that “restorative methods of conflict resolution were dominant in non-state, pre-state and early state societies.”537 No victims or victims’ family members have been prominent advocates for the institution of restorative justice measures. Beyond these differences in their backgrounds, the evidence marshaled by restorative justice and victims’ rights advocates qualitatively differs. Victims’ rights advocates who are victims or victims’ family members root their views in their emotional desires or broad conceptions of justice. By contrast, when restorative justice’s non-victims make arguments, they are based on evidence of historical conflict resolution practices, established ethical systems, and empirical evidence of victims’ and offenders’ well-being.

Restorative justice responds to each of the criticisms of the liberal consensus implicit in victims’ rights. Also, restorative justice is a more humane response to victimization. It utilizes government resources to care for people who cannot care for themselves, not just to inflict pain. Restorative justice offers compassion to victims and victims’ services. By contrast, victims’ rights offers victims punishment and little else. Restorative justice sees victims as capable and beneficiaries of compassion, an altogether more complex vision of their humanness than the one-dimensional vengefulness of victims’ rights.

Works Cited


Congressional Record, 1980.


Florida Department of Corrections. Quick Facts about the Florida Department of Corrections. Found at http://www.dc.state.fl.us/oth/Quickfacts.html.


---.Statement of Charles Grassley.

---.Statement of Charles Schumer.

---.Statement of Steve Schiff.

---.Statement of Strom Thurmond.


---.Statement of Lamar Smith.


Hewlett, Michael “Shooting Victim’s Mother Objects to Plea Bargain,” The Winston-Salem Journal, June 11, 2010


Hoppe, Christy. “State Panel might lift ban on Victims’ Families viewing execution; Relatives lobby to have access to death chamber.” The Dallas Morning News, September 14, 1995.
---.“Kin given ok to view executions; Morales says victims’ families need closure.” The Dallas Morning News, September 27, 1995.


Ickes, Harold. “Lawless Big Business Must be Controlled to Save Democracy.” The Progressive, January 8, 1938.


Knight, Robert. “Debt’s not all folks; Leaders needed to repel the left’s assault on morality as well as economy.” The Washington Times, July 18, 2011.


Lawrence, Brian. “Victims of abuse demand action.” The Everett Herald, January 13, 2006


---.“A Son Fights Inmate Release. Charlotte Man’s Mother’s Killer is up for Release. He was once sentenced to death.” The Charlotte Observer, October 29, 2009.

---.“Lifers’ Fates Rest with the N.C. Supreme Court.” The News and Observer, 17 February 2010.


Perez, Mabel. “A Time for justice. With Confession out, physical evidence is key to case against John Couey.” Ocala Star-Banner, July 9, 2006


Ridenhour, Courtney. “Former Teacher Sentenced for Rape. He’ll serve at least 18 years for raping son’s teen girlfriend.” *The Charlotte Observer,* August 6, 2011.


Staff, “‘Law and Order’ to be Big Issue, Agnew Says,” *Los Angeles Times*, September 5, 1968.


Truman, Harry. “Special Message to the Congress Recommending a Comprehensive Health Program.” November 19, 1945. Available:
http://www.presidency.ucsb.edu/ws/index.php?pid=12288&st=&st1=#axzz1xVEBu2ND.

---. “Annual Message to the Congress on the State of the Union.” 1949. Available at
http://www.presidency.ucsb.edu/ws/index.php?pid=13293&st=&st1=#axzz1xVEBu2ND.


29, 2005.

United States Commission on Civil Rights. Battered Women: Issues of Public Policy. A
Consultation Sponsored by the United States Commission on Civil Rights. United States

United States Commission on Civil Rights. Under the Rule of Thumb: Battered Women and

United States Department of Justice. New directions from the field: victims' rights and
Programs, 1998.


---. “From Unknown to Advocate.” Mobile Register (AL), January 22, 2006.

Von Hirsch, Andrew. “Proportionate Sentences: A Desert Perspective.” In Why Punish?

Washington State House Criminal Justice and Corrections Committee, Hearing concerning
hearing on file with Author.

Weaver, Warren. “Agnew Deplores ‘Permissiveness.’ Says his Political Mission is to Arouse


CNN Live This Morning. CNN, April 12, 2001.


CNN Nancy Grace. CNN, April 12, 2007.


CNN the Point with Greta Van Sustern. CNN, April 10 2001.


The Early Show. CBS, April 13, 2001.

The Early Show. CBS, May 11, 2005.


Paula Zahn Now. CNN, April 21, 2005.

The O’Reilly Factor. Fox News, May 2, 2005

