

Fifth Edition



Victimology

Legal, Psychological, and Social Perspectives



Harvey Wallace | Cliff Roberson

Fifth Edition

VICTIMOLOGY

LEGAL, PSYCHOLOGICAL, AND SOCIAL PERSPECTIVES

Cliff Roberson

Harvey Wallace



330 Hudson Street, NY NY 10013

Vice President, Portfolio Management: Andrew Gilfillan
Portfolio Manager: Gary Bauer
Editorial Assistant: Lynda Cramer
Field Marketing Manager: Bob Nisbet
Product Marketing Manager: Heather Taylor
Director, Digital Studio and Content Production: Brian Hyland
Managing Producer: Jennifer Sargunar
Content Producer: Rinki Kaur
Manager, Rights Management: Johanna Burke
Operations Specialist: Deidra Smith
Creative Digital Lead: Mary Siener

Managing Producer, Digital Studio: Autumn Benson
Content Producer, Digital Studio: Maura Barclay
Full-Service Project Manager: Anju Baskar
Full-Service Project Management and Composition: Integra Software Services Pvt. Ltd.
Cover Designer: Studio Montage
Cover Art (or Cover Photo): Rawpixel.com/Shutterstock
Printer/Binder: LSC Communications, Inc.
Cover Printer: Phoenix Color/Hagerstown
Text Font: Times LT Pro 10/12

Copyright © 2019, 2015, 2011, by Pearson Education, Inc. or its affiliates. All Rights Reserved. Manufactured in the United States of America. This publication is protected by copyright, and permission should be obtained from the publisher prior to any prohibited reproduction, storage in a retrieval system, or transmission in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise. For information regarding permissions, request forms, and the appropriate contacts within the Pearson Education Global Rights and Permissions department, please visit www.pearsoned.com/permissions/.

Acknowledgments of third-party content appear on page xxi, which constitutes an extension of this copyright page.

PEARSON, ALWAYS LEARNING is exclusive trademarks owned by Pearson Education, Inc. or its affiliates in the U.S. and/or other countries.

Unless otherwise indicated herein, any third-party trademarks, logos, or icons that may appear in this work are the property of their respective owners, and any references to third-party trademarks, logos, icons, or other trade dress are for demonstrative or descriptive purposes only. Such references are not intended to imply any sponsorship, endorsement, authorization, or promotion of Pearson's products by the owners of such marks, or any relationship between the owner and Pearson Education, Inc., authors, licensees, or distributors.

Library of Congress Cataloging-in-Publication Data

Names: Roberson, Cliff, 1937- author. | Wallace, Harvey, author. | Wallace, Harvey. Victimology.
Title: Victimology : legal, psychological, and social perspectives / Cliff Roberson, Harvey Wallace.
Description: Fifth Edition. | Hoboken : Pearson, [2017] | Revised edition of the authors' Victimology, [2015]
Identifiers: LCCN 2017021848 | ISBN 9780134868264 | ISBN 0134868269
Subjects: LCSH: Victims of crimes—United States. | Victims of crimes—Legal status, laws, etc.—United States. | Criminal justice, Administration of—United States.
Classification: LCC HV6250.3.U5 W35 2017 | DDC 362.880973—dc23
LC record available at <https://lccn.loc.gov/2017021848>

*To Paul Harvey Wallace, coauthor, friend, and fellow Marine.
And to Elena Azaola for her tireless and dedicated work on behalf of the many
victims and to promote human rights in North American countries.*

This page intentionally left blank

BRIEF CONTENTS

<i>Preface</i>	xvii
<i>Chapter 1</i>	Introduction and History of Victimology 1
<i>Chapter 2</i>	An Overview of the Justice System 23
<i>Chapter 3</i>	Measurement of Crime and Its Effects 49
<i>Chapter 4</i>	The Consequences of Victimization 63
<i>Chapter 5</i>	Victim Advocacy 86
<i>Chapter 6</i>	Homicide Victims 102
<i>Chapter 7</i>	Sexual Victimization 114
<i>Chapter 8</i>	Intimate Partner Abuse 136
<i>Chapter 9</i>	Child Abuse 154
<i>Chapter 10</i>	Elder Victims 178
<i>Chapter 11</i>	Hate Crimes 192
<i>Chapter 12</i>	Special Victim Populations 206
<i>Chapter 13</i>	Negligence and Intentional Torts 221
<i>Chapter 14</i>	Constitutional and Civil Rights of Victims 232
<i>Chapter 15</i>	Compensation and Restitution of Victims 249
<i>Chapter 16</i>	Victim Impact Statements 260
<i>Chapter 17</i>	International Aspects of Victimology 276
<i>Epilogue</i>	Broad Themes 298
<i>Appendix</i>	Critical Dates in the Victims' Rights Movement 301
<i>Glossary</i>	314
<i>Index</i>	324

This page intentionally left blank

CONTENTS

Preface xvii

Chapter 1 INTRODUCTION AND HISTORY OF VICTIMOLOGY 1

Introduction 1

Who Is a Victim 2

Victimology as a Discipline 3

Social Forces 4

The Feminist Movement 5

Development of Civil Rights Laws 6

Conservatism Regarding Crime 6

The Development of Laws 6

The Code of Hammurabi 6

Other Early Codes and Laws 7

Modern Codes and Laws 8

Early Theories of Victimology and Victimizations 9

Mendelsohn's Theory of Victimization 9

Von Hentig's Theory of Victimization 9

Schafer's Functional Responsibility 10

Wolfgang's Study of Homicide 11

Modern Theories of Victimology and Victimization 11

Karmen's Theory of Victimology 11

Intraindividual Theories 12

Lifestyle Theory 12

Routine Activities Approach 12

Opportunity Model of Victimization 12

Symbolic Interaction Theories 13

Critical Victimology 14

Victim Blaming 14

Victim's Contribution to the Crime 16

The Rise of the Victims' Rights Movement 16

The Beginning of the Movement 16

Gains and Losses 16

Increased Public Awareness 17

Increased Professionalism 18

Additional Laws 18

Summary 20 • Discussion Questions 21 • Endnotes 21

Chapter 2 AN OVERVIEW OF THE JUSTICE SYSTEM 23

The Court Systems 24

Introduction 24

State Court Systems 25

Juvenile Court Systems 26

Federal Court System 27

The Parties 29

- Victim 29
- Perpetrator 30
- Law Enforcement 30
- Prosecutor 31
- Defense Counsel 31
- Courts 32
- Correctional System 32

Criminal Justice Procedures 33

- Foundational Concepts in Criminal Procedure 33
- Outline of Trial Procedure 34
- Pretrial Activities 34
- First Appearance 35
- Preliminary Hearing or Grand Jury Hearing 35
- Arraignment 36
- Jury Selection 36
- Opening Statement 37
- Case-in-Chief 37
- Defendant's Evidence 37
- Closing Argument 37
- Deliberation and Verdict 37
- Sentencing 38

Civil Court Proceedings and Victims 38

- Jurisdiction 39
- Filing a Complaint 39
- Filing a Response 41
- Pretrial Activities 41
- Trial 43
- Verdict 43
- Judgment 43

Juvenile Court Dependency Procedures 43

- Detention Hearing 44
- Adjudicatory or Jurisdictional Hearing 44
- The Dispositional Hearing 44

Restorative Justice 45

- Introduction 45
- Function of a Restorative Justice Program 46
- Victim–Offender Mediation 46

Summary 46 • Discussion Questions 47 • Endnotes 47

Chapter 3 MEASUREMENT OF CRIME AND ITS EFFECTS 49

Measuring Crime 49

- National Incident-Based Reporting System 49
- National Crime Victimization Surveys 51

Official Reports 51

- Uniform Crime Reports 51
- National Incident-Based Reporting System 53
- National Crime Victimization Survey 55
- A Comparison of the Uniform Crime Reports and the National Crime Victimization Survey 57

National Assessment Program	57
<i>Other Reports</i>	58
National Family Violence Surveys	58
Self-Reports of Crime	59
Other Sources of Data on Violence	59
Other Types of Crime Research	59
<i>Summary</i>	61
• <i>Discussion Questions</i>	61
• <i>Endnotes</i>	61

Chapter 4 THE CONSEQUENCES OF VICTIMIZATION 63

<i>Physical Consequences</i>	64
Types of Injuries	64
Medical Aspects	64
<i>Traumatic Brain Injury</i>	66
<i>Mental Consequences</i>	68
Crisis	68
Acute Stress Disorder	69
Post-Traumatic Stress Disorder	69
Long-Term Crisis Reaction	70
Other Mental Disorders	70
Other Effects	71
Traumatic Incident Stress	71
Vicarious/Secondary Trauma to Service Providers	71
<i>Negative Social Consequences</i>	71
<i>Financial Consequences</i>	73
Tangible Losses	73
Intangible Losses	74
Grief	75
Pain and Guilt	75
<i>Costs of Fraud Crimes</i>	76
Distress Situation Fraud	76
White-Collar Crime	77
Organized Crime	77
Identity Theft	78
<i>HIV/AIDS Victims</i>	79
Medical and Psychological Aspects of HIV/AIDS	79
Victim Services Issues	81
Specific Victim Populations	82
<i>Summary</i>	83
• <i>Discussion Questions</i>	84
• <i>Endnotes</i>	84

Chapter 5 VICTIM ADVOCACY 86

<i>Introduction</i>	86
How Advocates Work with Victims	87
<i>Social Media</i>	87
<i>Public Media</i>	88
Relations with the Media	89
Preparing for and Conducting the Interview	92
<i>Legislation</i>	94
The Legislative Process	94
Advocacy	96

<i>Public Speaking</i>	97
Preparing for the Speech	97
Drafting the Speech	98
Some Do's and Don'ts of Public Speaking	98
<i>Fundraising</i>	99
Introduction	99
Types of Fundraisers	99
Summary	100 • Discussion Questions 100 • Endnotes 101

Chapter 6 HOMICIDE VICTIMS 102

<i>Introduction</i>	102
Nature and Extent of the Problem	102
Types and Characteristics of Criminal Homicide	104
Drinking, Driving, and Homicide	107
<i>Responding to Special Needs</i>	109
Family Relationships	109
Mental and Emotional Responses	110
Notification	111
Summary	112 • Discussion Questions 112 • Endnotes 112

Chapter 7 SEXUAL VICTIMIZATION 114

<i>Sexual Assault</i>	114
Definition	114
Theories of Sexual Violence	115
Rape Typologies	117
Sexual Aggression Classifications	117
Extent of the Problem	118
<i>Female Genital Mutilation</i>	119
<i>Stranger Rape or Sexual Assault</i>	120
Definitions	120
Legal Aspects	121
Consent	122
Victim Selection	122
<i>Acquaintance Rape</i>	123
Introduction	123
Definition	125
<i>Marital Rape</i>	126
Historical Perspective	126
Factors Contributing to Marital Rape	127
<i>Stalking</i>	128
<i>Sexual Harassment</i>	130
Introduction	130
Definitions	131
Summary	133 • Discussion Questions 133 • Endnotes 134

Chapter 8 INTIMATE PARTNER ABUSE 136

<i>Introduction to Intimate Partner Abuse</i>	136
Definition	137
Extent of the Problem	138
Dynamics of Battering	140

<i>Theories on Intimate Partner Abuse</i>	142
Social Stress	143
Power	143
Dependency	143
Alcohol	144
Pregnancy	144
Marriage	144
<i>The Criminal Justice Response to Intimate Partner Abuse</i>	145
Introduction	145
Factors Affecting Police Response	146
Arrest of Abusers	148
The Minneapolis Domestic Violence Experiment	148
Other Replications	149
Summary	151 • Discussion Questions 151 • Endnotes 151

Chapter 9 CHILD ABUSE 154

<i>Types of Child Abuse</i>	155
Physical Child Abuse	155
Child Neglect	156
Child Sexual Abuse	157
<i>Extent of the Problem</i>	157
Physical Child Abuse	157
Child Neglect	158
Child Sexual Abuse	159
Child Fatality Review Teams	159
<i>Intergenerational Transmission of Violence</i>	160
Definitions	160
Intergenerational Transmission of Violence and Family Violence	160
Intergenerational Transmission of Violence and Aggression	161
<i>Other Theories Regarding Child Abuse</i>	162
Theories of Physical Child Abuse	162
Theories of Child Neglect	163
Theories of Child Sexual Abuse	164
<i>Special Types of Child Abuse</i>	167
Sibling Abuse	167
Munchausen Syndrome by Proxy	170
Ritual Abuse	171
Child Abuse by Religious Leaders	173
Suspected Child Abuse	174
Reporting Immunity	174
Summary	175 • Discussion Questions 175 • Endnotes 175

Chapter 10 ELDER VICTIMS 178

<i>Elder Abuse</i>	178
Extent of the Problem	178
Definition	180

<i>Theories of Elder Abuse</i>	182
Intergenerational Transmission of Violence Theory	182
Psychopathology	182
Social Exchange Theory	182
Family Stress Theory	183
Neutralization Theory	183
<i>Elder Victimization</i>	184
Sexual Assault	185
Other Violent Crimes	185
Fraud	185
Burglary	186
<i>Combating Elder Abuse in the Future</i>	186
Summary	189 • Discussion Questions 189 • Endnotes 190

Chapter 11 HATE CRIMES 192

<i>Hate Crimes</i>	193
Introduction	193
Legal Aspects of Hate Crimes	195
Identifying Bias Crimes	195
Typology of Offenders	197
Hate Crime Legislation	198
Homeless Hate Crime Victims	200
<i>Cultural Awareness</i>	201
Introduction	201
Cultural Awareness Training	202
<i>Cultural Awareness Case Study</i>	204
Summary	204 • Discussion Questions 204 • Endnotes 205

Chapter 12 SPECIAL VICTIM POPULATIONS 206

<i>Victims with Disabilities</i>	206
Introduction	206
Legal Issues	207
Types of Victimization	208
Emerging Issues	208
<i>Prisoners as Victims</i>	209
<i>Abuse of Students</i>	211
Introduction	211
Causation and Theories	211
Bullying	212
Fighting	213
Gangs	213
Sexual Assault	214
Legislation on School Sexual Abuse	214
Homicide in Schools	215
<i>Workplace Victimization</i>	215
Workplace Violence Warning Signs	216
Forms of Violence Among Coworkers	217
Other Forms of Workplace Violence	217
Summary	218 • Discussion Questions 219 • Endnotes 219

Chapter 13 NEGLIGENCE AND INTENTIONAL TORTS 221*Introduction* 221*Negligence* 223

Introduction 223

Elements of Negligence 224

Wrongful Death 225

The Parties 225

Elements of Damage 225

Assault and Battery 226

Defined 226

Fear Versus Contact 226

False Imprisonment 226

Defined 226

The Confinement Requirement 227

Mental Distress 227

Intent Requirement 227

Conduct Requirement 227

Defenses to Intentional Torts 228

Self-Defense 228

Defense of Others 228

Defense of Property 228

Consent 229

Necessity 229

Authority of Law 230

Summary 230 • *Discussion Questions* 230 • *Endnotes* 231**Chapter 14 CONSTITUTIONAL AND CIVIL RIGHTS OF VICTIMS 232***Introduction* 232*Section 1983 Actions* 233

Introduction 233

Requirement of State Action 234

Scope of Liability 234

Section 1983 Theories of Liability 235

Denial of Equal Protection 235

Failure to Act 236

Violence Against Women Act 237

Background 237

Gender-Based Civil Rights 241

Injunctions 241Background and Use of Restraining
Orders 242

Advantages and Disadvantages 245

Defenses 245

Absolute Immunity 246

Qualified Immunity 246

Summary 247 • *Discussion Questions* 247 • *Endnotes* 247

Chapter 15 COMPENSATION AND RESTITUTION OF VICTIMS 249

Compensation 249

Introduction 249

Program Operation 250

Eligibility 252

Benefits 253

Restitution 254

Introduction 254

History 255

Types of Restitution 256

Problems with Restitution 257

Methods of Collecting Restitution 257

Summary 258 • Discussion Questions 258 • Endnotes 258

Chapter 16 VICTIM IMPACT STATEMENTS 260

History of Victim Impact Statements 260

Purpose 261

Constitutional Issues 261

Use of Victim Impact Statements 265

Law Enforcement 265

Prosecutors 266

Judiciary 266

Presentation of Statement 267

Effect of Victim Impact Statements 268

Victim Satisfaction 268

Sentencing 269

Victim Impact Panels 272

Introduction 272

Procedure 272

Summary 273 • Discussion Questions 274 • Endnotes 274

Chapter 17 INTERNATIONAL ASPECTS OF VICTIMOLOGY 276

Introduction 276

History and Leaders in the Field 277

World Society of Victimology 278

Crime Victim Surveys 278

Globalization of Crime and Victims 280

The United Nations 282

Introduction 282

Victims and the United Nations 283

U.N. Guide for Policymakers on the Implementation of the
Declaration of Basic Principles of Justice for Victims of Crime
and Abuse of Power 283

U.N. Handbook on Justice for Victims 283

The International Court of Justice 284

The International Criminal Court 284

International Victimization 284

Trafficking 285

Parental Child Abductions 286

Abuse of Power 288

Victims of Torture 289

Children as Soldiers 291

War, Natural Disasters, and Other Acts of God 293

Summary 294 • *Discussion Questions* 295 • *Endnotes* 295

EPILOGUE BROAD THEMES 298

Update 298

Lack of Research 298

The Continued Change from a Movement to a Discipline 298

Broadening Horizons to Embrace International Victimology 299

Professionalism in Victimology and Victim Services 299

Victim Advocacy as a Profession 299

Credentials or Authority to Perform the Duties of the
Profession 300

Skills Required for Various Functions Within the Field 300

Ethical Standards for Victim Services Providers 300

Endnotes 300

APPENDIX CRITICAL DATES IN THE VICTIMS' RIGHTS MOVEMENT 301

Glossary 314

Index 324

This page intentionally left blank

PREFACE

The primary goal of the victims' rights movement needs to be to elevate victims' rights to the same status as the rights of the accused

—HARVEY WALLACE, 2005

NEW TO THIS EDITION

The field of victimology is evolving rapidly with new theories and research appearing regularly making it difficult to cover the discipline in one volume. To address this issue and to allow readers to delve deeper into individual topics, new **Research Boxes** have been added to this edition with information regarding online sources for further study.

Also new to the Fifth Edition

- The inclusion of a glossary
- Discussion on Mandatory Victim Restitution Act
- Discussion on the Victims' Rights Law Center
- Discussion on the fundamental concepts in criminal procedure
- Discussion on how advocates work with victims
- Discussion on situated transaction homicide theory
- Discussion on the issue of increasing criminal homicide rates
- New discussion on female genital mutilation
- Discussion on why the crime of rape is so underreported

INTRODUCTION

Welcome to the fifth edition of *Victimology*. Victimology is a relatively new discipline. The volume of research on this discipline has increased considerably since the introduction of the first edition. In this, the fifth edition, I have attempted to explain the general concepts of victimology with particular attention paid to the causes and consequences of victimization. The text is designed as a one-volume comprehensive discussion on the discipline of victimology.

Harvey Wallace was the sole author of the first edition of *Victimology*. Because of health problems when he was revising the textbook for the second edition, he asked for my assistance. We both assumed that his health problems were temporary. Little did we know that it would be one of the last projects that we would work on together. Harvey and I were friends and fellow Marines. We coauthored 10 books over a 16-year time span. Harvey died shortly after completing the second edition. Before his death, he was teaching in the Victim Services Summer Institute presented by California State University, Fresno.

My first involvement with victim issues came in 1981 when the State Bar of Texas appointed a committee on victim issues. I was fortunate to be appointed to that committee, which was chaired by Dean John Douglas. During 1983–1984, when I served as the Director of Programs for the National College of District Attorneys, the DAs college began holding classes for career prosecutors on victim issues. For the college, victim issues were advocated by Norman S. Early, Jr., the then district attorney for the Second Judicial District in Denver, Colorado; Spencer Lawton, the then district attorney in Chatham County, Georgia (Savannah); and Michael Turpin, the then Attorney General of Oklahoma. In 1984, when I took over as

Director of the Justice Center, California State University, Fresno, I authorized funds to hold a training course on victim services. The only reason that I authorized the funds was that I was being pressured to do so by Professor Steven Walker. It was easier to agree than to disagree with Stephen. Years later as a faculty member at Washburn University, I attended a conference in Kansas City on victim services. It was at this conference that the American Society of Victimology was founded and I joined as a life member. Unfortunately, the society has not been very active in recent years.

The study of victimology is in its infancy. However, the plight of victims of crime has been discussed for centuries. In our early history, victims were an integral part of the criminal process. We then moved away from that model, and the state became the representative of the victim. Finally, we are again moving toward acknowledging the rights of victims of crime. This shift has caused scholars to reexamine the victim–offender relationship in more detail.

Victimology as a discipline is an outgrowth of law, sociology, psychology, and criminology and as such has its distractors as well as its advocates. It will continue to grow and take on more substance with the passage of years. Any attempt to list those topics that are critical to the study of victimology is bound to generate controversy. Most textbooks on the market today include sections dealing with family violence issues. That may be because we have more information regarding the victim–offender interaction in these areas or because many scholars believe these are critical issues in the study of victimology. We have included a number of these same topics in this textbook.

We have also attempted to take a global perspective on the study of victimology. Chapter 1 introduces the reader to the discipline of victimology, a brief history of it and victimological theories. Chapter 2 presents an overview of the justice system. Chapter 3 discusses the measurement of crime and its effects. The consequences of victimization are discussed in Chapter 4. Chapter 5 examines the empowerment of victims. Next, homicide victims are discussed in Chapter 6, followed by a discussion in Chapter 7 on sexual victimization. Intimate partner abuse, child abuse, and elder abuse are discussed in Chapters 8, 9, and 10. Chapter 11 looks at hate crimes, and in Chapter 12, special victim populations are discussed.

Chapter 13 explores tort actions. The constitutional and civil rights of victims are discussed in Chapter 14. Chapter 15 explores compensation and restitution for victims. The legal issues involved with victim impact statements are covered in Chapter 16. The final chapter examines the international aspects of victimology, and the textbook concludes with discussions on the discipline.

This is not to say that we have covered all these topics adequately. First Harvey and now I have attempted to present an overview of some complex and controversial subjects and to supply the reader with resources in the form of references and readings that allow for more in-depth study and research of these areas. Omission of some topics, such as robbery, burglary, kidnapping, and others, does not mean that they are unimportant. Victims of these crimes would argue that they have suffered just as much as other victims. Space limitations, however, preclude discussion of every crime and its implications for victims. The crimes that are discussed, along with the broader topics such as the consequences of victimization and victims' rights, can be generalized to varying degrees to apply to all victims.

Just as we are becoming more interested in the study of family violence, so are increasingly more universities offering classes on victim issues. These classes will become more popular as students, the general public, and the various professionals who deal with victims become aware of their availability. It is a young discipline that continues to grow, and it is exciting to be present to watch that growth. Someday, maybe the victim will have as many rights as a defendant in a criminal case.

INSTRUCTOR SUPPLEMENTS

Instructor's Manual with Test Bank. Includes content outlines for classroom discussion, teaching suggestions, and answers to selected end-of-chapter questions from the text. This also contains a Word document version of the test bank.

TestGen. This computerized test generation system gives you maximum flexibility in creating and administering tests on paper, electronically, or online. It provides state-of-the-art features for viewing and editing test bank questions, dragging a selected question into a test you are creating,

and printing sleek, formatted tests in a variety of layouts. Select test items from test banks included with TestGen for quick test creation, or write your own questions from scratch. TestGen's random generator provides the option to display different text or calculated number values each time questions are used.

PowerPoint Presentations. Our presentations are clear and straightforward. Photos, illustrations, charts, and tables from the book are included in the presentations when applicable.

To access supplementary materials online, instructors need to request an instructor access code. Go to www.pearsonhighered.com/irc, where you can register for an instructor access code. Within 48 hours after registering, you will receive a confirming e-mail, including an instructor access code. Once you have received your code, go to the site and log on for full instructions on downloading the materials you wish to use.

ALTERNATE VERSIONS

eBooks. This text is also available in multiple eBook formats. These are an exciting new choice for students looking to save money. As an alternative to purchasing the printed textbook, students can purchase an electronic version of the same content. With an eTextbook, students can search the text, make notes online, print out reading assignments that incorporate lecture notes, and bookmark important passages for later review. For more information, visit your favorite online eBook reseller or visit www.mypearsonstore.com.

ACKNOWLEDGMENTS

On behalf of Harvey Wallace and me, I would like to express our appreciation to a number of individuals for their support, guidance, and advice during the time it has taken to complete this project. First and foremost, I would like to thank the editor, Gary Bauer, who provided support for this project. I would also like to thank Anju Baskar, project manager, for her assistance in creating the final product. Christine Edmunds, Anne Seymour, Ellen Alexander, Skip Sigmon, Trudy Gregorie, Janice Lord, Dan Eddy, Dean G. Kilpatrick, Jane Burnley, and other friends associated with various victim organizations provided their advice and guidance regarding a number of issues. Mario Gaboury, University of New Haven, and Steve Walker, California State University, Fresno, provided us with invaluable suggestions and corrections that helped improve this textbook. A special thanks to a friend and a tireless worker for victim rights, Stephanie Frogge, University of Texas at Austin. Thanks to the following reviewers: Brian Follett, College of Central Florida; Sheryl VanHome, Eastern University; Brown, Kathleen, University of Pennsylvania; Muscat, Bernadette T., California State University, Fresno; Tolbert, Tracy F., California State University, Long Beach; Zimmerman, Gregory, University at Albany, SUNY; Deborah Barrett, Rowan-Cabarrus Community College; and Patrick Harvey, Slippery Rock University. So many of Harvey's friends, colleagues, and students have helped me with this revision, I cannot begin to name them all. Some have been there to offer words of encouragement and support: Tom Dull, Otto Schweizer, and Arthur Wint are those good friends. Many professionals, colleagues, and academics have offered advice or suggested changes that have resulted in a better product: Thomas Underwood for his suggestions about discussing more theories and Steve Walker for his update on the history of victimology are just two of those professionals. Of special note is John Dussich, who made substantial suggestions regarding the textbook. John went through every page and updated or corrected the first edition. Most of those changes were incorporated into the second and third editions. Most important, there have been a number of students who have helped me in a variety of ways. Many graduate students, including Lindsey Fausett and Stephanie Fratto, were of great assistance in gathering various research materials for this textbook. Shiho Yamam, another graduate student, was also of invaluable assistance. She conducted much of the early research and was always there to assist in any manner. Finally, the many students who used this textbook in classes across the nation have contributed to its content with suggestions, questions, and comments. The nice thing about publishing with Pearson is working with professionals such as Gary Bauer, Lynda Cramer, Elisa Rogers, Johanna Burke, Jennifer Sargunar, and Vern Anthony.

During the revision of the text for the 5th edition, I discussed with John Dussich on some of the issues and his insight and suggestions are appreciated.

This page intentionally left blank

Introduction and History of Victimology

Chapter Outline

Introduction

- Who Is a Victim
- Victimology as a Discipline

Social Forces

- The Feminist Movement
- Development of Civil Rights Laws
- Conservatism Regarding Crime

The Development of Laws

- The Code of Hammurabi
- Other Early Codes and Laws
- Modern Codes and Laws

Early Theories of Victimology and Victimization

- Mendelsohn's Theory of Victimization
- Von Hentig's Theory of Victimization
- Schafer's Functional Responsibility
- Wolfgang's Study of Homicide
- Modern Theories of Victimology and Victimization
- Karmen's Theory of Victimology
- Intraindividual Theories
- Lifestyle Theory

- Routine Activities Approach
- Opportunity Model of Victimization
- Symbolic Interaction Theories
- Critical Victimology
- Victim Blaming

Victim's Contribution to the Crime

The Rise of the Victims' Rights Movement

- The Beginning of the Movement
- Gains and Losses
- Increased Public Awareness
- Increased Professionalism
- Additional Laws

Summary

Discussion Questions

Endnotes

LEARNING OBJECTIVES

After reading this chapter, you should be able to:

- Analyze the issues involved in determining who is a victim
- Compare the differences between criminology and victimology
- Explain how laws have affected victims and victims' rights
- Evaluate the social forces that have impacted the development of victimology
- Evaluate and analyze the various victimology theories

INTRODUCTION

Victimology in its most simple form is the study of the victim or victims of a particular offender. Victimology first emerged in the 1940s and 1950s, when several criminologists (notably Hans von Hentig, Benjamin Mendelsohn, and Henri Ellenberger) examined victim–offender interactions and stressed reciprocal influences and role reversals.¹

Homicides in San Francisco

Coauthor Cliff Roberson in his PhD dissertation researched into the criminal homicides in San Francisco for the calendar years 1970 to 1972. In his research, he noted that there were two small convenience stores on one block in the city. One store had been robbed three times and each time an individual was murdered. The other store, which was across the street, had been robbed twice and no one had been injured in the

robberies. While this is a very small sample and therefore any research conclusions would be suspect, it did raise the question of why the level of violence was much higher in one store than in the other similar store on the same block. This is the type of research that is of interest to researchers looking into the second component of victimology.

Victimology as an academic discipline is a relatively new concept in the United States. The first academic institution in the United States to offer a bachelor of science degree in criminology or criminal justice with a victimology option was the California State University at Fresno in the late 1990s.

The discipline of victimology can be divided into two separate components. One component deals with the injuries or harm suffered by victims, how to reduce victimization, how to assist the victim, and actions to be taken against the victimizer. This component will receive the vast majority of attention in this text. Too often when we talk about victims, we limit our discussion only to victims of crime. In this text, we also include victims of other activities such as child abuse and bullying. The second aspect of victimology deals with the victim–victimizer relationship. In this component, the victim’s role in being selected as the victim is examined. Some individuals will claim that the second component is nothing but a “blaming the victim” approach. However, it is not so. The second component merely tries to understand why one person was selected over another person by the victimizer.

Who Is a Victim

In *Kelly v. California*, 129 S. Ct. 564 (U.S. 2008), Associate Supreme Court Justice John Paul Stevens stated:

These two capital cases raise questions concerning the admissibility of so-called “victim impact evidence” during the penalty phase of a capital trial. The term is a misnomer in capital cases because the evidence does not describe the impact of the crime on the victim—his or her death is always an element of the offense itself. Rather, it describes the impact of the victim’s death on third parties, usually members of the victim’s family.

To most of us involved in victimology, the members of a murder victim’s family are more than a “third party.” To researcher Andrew Nash, the definition of “victim” is a slippery concept. Nash notes that as a matter of law, whether someone is a victim of a crime may depend, among other things, on the type and extent of injury sustained, the tenuousness of the connection of injury to the offender’s conduct, and whether the victim was at fault in the criminal transaction. Nash also notes that the term “victim” is inconsistently applied in the various arenas of federal criminal law. While the definitions of “victim” found in the federal restitution and victims’ rights statutes are functionally identical, the Federal Rules of Criminal Procedure define “victim” differently. It is interesting to note that the Federal Sentencing Guidelines do not define the term “victim,” leaving the federal courts to sketch out the contours of its meaning.²

Consider the following two scenarios:

- Ruth and her husband are enjoying a relatively happy marriage until one night that an unknown offender brutally rapes Ruth. Clearly, Ruth is a victim of the crime. After the rape, she does not want to have sexual relations with her husband. After several years, the couple separate and eventually divorce. Under these circumstances is the husband also a victim of the rape?
- Susan was a fourth-grade teacher in a local elementary school. She was very popular with her students. She was shot and killed by a robber when she stopped at a convenience store on her way home. Her students were very upset when informed of her death. Are the students victims of the murder?

According to the Canadian Department of Justice, a victim is a person who has suffered physical or emotional harm, property damage, or economic loss as a result of a crime.³

The following people can exercise a victim's rights if the victim is dead or not able to act on his or her own behalf:

- A victim's spouse
- A common-law partner who has lived with the victim for at least one year prior to the victim's death
- A relative or dependent of the victim
- Anyone who has custody of the victim or of the victim's dependent
- A person who has been charged, convicted, or found not criminally responsible due to a mental disorder for the offense that resulted in the victimization is not defined as a victim. For example, if a parent has been charged with abuse of a child, that parent will not be allowed to exercise the child victim's rights or their own rights as a parent.

The U.S. government and the vast majority of states in the United States use a similar definition as set forth by the Canadian definition. In most situations, the classification of who is a victim is determined by state statutes. The states of Florida and Rhode Island provide no limitations on who may be considered as a crime victim. Three states—California, New Jersey, and South Carolina—extend the definition of who is a victim to all individuals suffering physical, psychological, or financial harm from crime.

The Maryland statute provides the following definition of a victim:

Annotated Code of Maryland § 11–601.

(j) “Victim” means:

- (1) a person who suffers death, personal injury, or property damage or loss as a direct result of a crime or delinquent act; or
- (2) if the person is deceased, the personal representative of the estate of the person.

North Carolina's restitution statute authorizes an award of restitution to a crime victim, who is defined as “a person directly and proximately harmed as a result of the defendant's commission of the criminal offense” (N.C. Gen.Stat. § 15A–1340.34(a) (2007)).

The federal Crime Victims' Rights Act defines victims as follows:

18 U.S.C.A. § 3771 (2):

- (A) In general.—The term “crime victim” means a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia.
- (B) Minors and certain other victims.—In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim's estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim's rights under this chapter, but in no event shall the defendant be named as such guardian or representative.

A few states limit their definitions of victims to violent crimes; the federal Crime Victims' Rights Act does not restrict or limit the federal crimes to which it applies.

Victimology as a Discipline

An academic discipline or field of study is a branch of knowledge that is taught and researched as part of higher education. A scholar's discipline is generally defined and received by the university faculties to which he or she belongs and the academic journals in which he or she publishes his or her research in the discipline. There are no formal criteria for defining an academic discipline. Many scholars have questioned whether or not victimology should be considered as a separate discipline from criminology. Currently, victimology is being accepted as a separate discipline by more scholars and academic institutions.

The Birth of Criminology

According to Adrian Raine, the scientific study of crime started one morning in November 1871 in Italy. Cesare Lombroso, a psychiatrist and prison doctor at an asylum for the criminally insane, performed an autopsy on an infamous criminal named Giuseppe Vilella. During the autopsy, Lombroso discovered an unusual indentation near the base

of Vilella’s skull. Based on this single observation, Lombroso concluded that criminals were physically different from non-criminals.

Source: Adrian Raine, *The Anatomy of Violence: The Biological Roots of Crime* (Random House, New York) 2014.

Criminology is the science upon which victimology is founded. Criminology itself is a relatively new discipline, and there are those who argue that it is not a true academic discipline or science, but rather a subspecialty of sociology.⁴ However, there is an abundance of current literature and research to support the proposition that criminology is a science.

In 1947, Edwin H. Sutherland, an eminent criminologist, set forth the following definition:

Criminology is the body of knowledge regarding crime as a social phenomenon. It includes within its scope the process of making laws, of breaking laws.... The objective of criminology is the development of a body of general and verified principles and of other types of knowledge regarding this process of law, crime, treatment, or prevention.⁵

Criminology is the study of crime as a social phenomenon. Scholars have looked at several aspects of criminology, and several have presented definitions of victimology, which will be examined in detail later in this chapter. For purposes of clarity, however, the following definition of victimology is offered: **Victimology** is the study from the victims’ perspective of the victim, the offender, and society. This definition can encompass both the research or scientific aspects of the discipline and the practical aspects of providing services to victims of crime. This combined definition allows for a wide-ranging examination of various issues affecting victims of crime.

A complete and accurate understanding of the concepts inherent in victimology can only be attained by a review of the development of law, its history, and its philosophy. Modern criminal law is the result of an evolutionary process in the development of law that has attempted to deal with deviant behavior in society.

SOCIAL FORCES

A number of forces in the past several decades have contributed to the development of victims’ rights. The major contributing forces have been the feminist movement, the development of civil rights laws, and a growing conservatism regarding crime.⁶

FOCUS

Critical Dates in the History of Victimology

1750 B.C.—Code of Hammurabi adopted	1996—U.S. constitutional amendment proposed
1200 B.C.—Mosaic Code established	2003—American Society of Victimology established
450 B.C.—Twelve Tables written	2004—Crime Victims’ Rights Act, which provides for fair treatment and opportunities for input in federal court proceedings, enacted by Congress. Office of the Victims’ Rights Ombudsman was also established by the act.
529 A.D. Roman Empire—Justinian Code drafted	2004—The “Justice for All” Act was signed into law on October 30, 2004. The law includes a modified version of Senate Bill 2329, the statutory alternative to the Federal Crime Victims’ Rights Amendment.
1066 A.D.—Norman Conquest of England	2013—The Violence Against Women Act is reenacted and is expanded to protect individuals involved in same gender relationships, in questionable immigration status, and individuals on American Indian reservations.
Middle Ages—Development of common law	
1215—Magna Carta signed	
1787—U.S. Constitution created	
1965—First victims’ rights law passed	
1976—NOVA established	
1979—World Society of Victimology created	
1985—United Nations Declaration	

The Feminist Movement

The feminist movement alerted us to centuries of discrimination and violence directed against women. By speaking out, feminists forced us to realize that women were victims not only of violent crime on the streets of cities but also of sexual harassment within the work environment and family violence within the home. Although men may also become victims of crime and violence, the types of crimes suffered by women are distinct from those suffered by men.

Many of these crimes, although sexual in nature, are in fact nothing more than aggressive assaults that have little to do with sex. Sexual assaults are in reality a way for the perpetrator to control, dominate, and humiliate the victim.

Three works by feminist authors and researchers set the stage for the beginning of our awareness of the sexual victimization of women. Millett's *Sexual Politics*, Griffin's article "Rape: The All-American Crime," and Brownmiller's *Against Our Will: Men, Women and Rape* each raised our consciousness regarding the domination of women by men.⁷

Sexual Politics examines the concept of patriarchy, which Millett claims is a social and political system utilized by men to control women. She argues that patriarchy is a feature of all past and present societies and exists across cultures and socioeconomic systems today. Millett concludes that power and coercion are central features of patriarchy and are used to control women's sexuality.

Griffin's short article, "Rape: The All-American Crime," contains numerous themes. One important theme concerns the nature of the crime of rape. Griffin argues that rape is not a sexual act but rather a violent, political act. She concludes that the threat of rape is used as a method of social control and affects all women.

Brownmiller discusses the history of rape. She asserts that rape is an act used by men to maintain their dominance over women through the use of force. She expands on both Millett's and Griffin's works and concludes that the threat of rape creates a climate of fear. It is this fear that acts as a form of social control that benefits men.

Kelly, in her book *Surviving Sexual Violence*, reviewed these early feminist approaches to sexual abuse and concluded that sexual violence is based on three concepts: power, sexuality, and social control.⁸

Power in the feminist analysis is not police or political power; rather power is defined in terms of a relationship that structures the interactions between men and women. Power therefore is not a property right, but a personal force that establishes male control and dominance over women. This power is multifaceted and thus quite complex. It not only is present in interpersonal relationships but also extends to society's social structure and beliefs.

Sexuality has two aspects: First, male control of women's sexuality is a key factor in women's oppression; second, sexuality is defined by men's experiences that legitimize the use of force or coercion in intimate relationships. There is some conflict among feminists regarding the issue of sexuality and whether it has the same significance for women in all cultures.

Social control is the outcome of power and sexuality. The mere threat of sexual violence may result in women developing strategies for self-protection that will limit their mobility, work, or advancement. The reality of sexual violence not only impacts women in intimate and work relationships but also spills over into an environment that was previously thought safe: the campus setting. Many colleges and universities now provide "escort services" for women who attend evening classes. This measure speaks volumes for the fear that exists in all areas of our lives.

Millett, Brownmiller, Griffin, and other feminists laid the foundation that allows us to more fully understand the concept of sexual violence and women. The first concrete effort by feminist groups in the United States to help women who were victims of crime was the establishment of rape crisis centers in Berkeley, California, and Washington, D.C., in 1972. These centers have spread rapidly and are now an integral part of the criminal justice system. In 1976, the federal government established a comprehensive research program, the National Center for the Prevention and Control of Rape, within the Department of Health, Education, and Welfare (this agency is now called Health and Human Services).

The feminist movement not only attacked society's perceptions regarding victims of sexual assault but also focused its efforts on educating the public regarding domestic violence. It is important to note that at the same time battered women's shelters were being established, there was a growing awareness that victims of crime, as a class of citizens, were being treated unfairly by the criminal justice system. This awareness coincided with changes within the judicial system.

Development of Civil Rights Laws

During the 1960s and 1970s, a series of U.S. Supreme Court decisions established certain principles regarding the constitutional rights of individuals. These decisions were in the areas of both criminal procedure and civil rights. The Supreme Court established constitutional safeguards for those accused of crime. By interpreting the Constitution as applying to each and every individual, the court required that society afford those accused of crime certain procedural and substantive rights. These rights embraced the entire spectrum of liberties, including freedom from unreasonable search and seizures, the right to an attorney, and fundamental fairness during a criminal trial. By adopting a philosophy that individuals carried with them certain inalienable rights, the court was poised to expand this concept in the area of civil rights.

The Supreme Court acted to enforce both statutory and constitutional provisions during the 1960s and 1970s in the area of civil rights. These decisions allowed a black man to attend a previously all-white university, maintained that police officers could be held liable for use of excessive force, and required that all persons be treated equally under the law. As a result of these and other decisions, cases such as *Thurman v. City of Torrington*⁹ (discussed in Chapter 14) were decided in favor of victims of family violence.

Conservatism Regarding Crime

Another factor that contributed to the awareness of the plight of victims arose as a result of a change in attitude in America. In the 1980s and 1990s, society became more conservative and concerned about crime in general. This law and order movement was a result of citizens becoming more fearful of violent crime and of many groups consequently calling for more stringent punishment of those who violate the law. In addition, the victims' rights movement was gaining momentum. Imprisoning offenders was viewed as a way of vindicating victims of crime. Victim organizations began lobbying for changes in the criminal justice system. These changes were aimed at making the system more victim-oriented. The rights of victims of family violence began to grow and expand as our society became more aware of this type of violence.

These forces brought about awareness on the plight and the dilemma of victims of crime.¹⁰ As a result, victims began to realize that they could have an effect on sentencing in criminal cases and could pursue civil litigation to recover for damages they suffered as a result of the perpetrator's actions.

THE DEVELOPMENT OF LAWS

Primitive law was a system of rules used by preliterate societies to govern the tribe, clan, or other gathering of individuals. These rules or regulations represent the foundation upon which the modern legal system is built. Primitive laws usually contained three premises: (1) acts that injured others were considered private wrongs, (2) the injured party was entitled to take action against the wrongdoer, and (3) this action usually amounted to in-kind retaliation. These types of laws encouraged blood feuds and revenge as the preferred methods of making the victim whole.

As society continued to evolve, we learned the art of reading and writing. One result of this evolution was the development of written codes of conduct. An example of an early written code was the Code of Ur-Nammu, which dates back to the twenty-first century B.C. Many of these codes treated certain wrongs, such as theft or assault, as private wrongs, with the injured party being the victim.¹¹

The Code of Hammurabi

The Code of Hammurabi is considered one of the first known attempts to establish a written code of conduct. King Hammurabi ruled Babylon at approximately 2000 B.C. He was the sixth king of the First dynasty of Babylonia and ruled for nearly 55 years. Babylon during that period was a commercial center for most of the known and civilized world. Because Babylon's fortune lay in trade and other business ventures, the Code of Hammurabi provided a basis for order and certainty. The code established rules regarding theft, sexual relationships, and interpersonal violence, and it was intended to replace blood feuds with a system sanctioned by the state.¹²

The Code of Hammurabi had five sections:

1. A penal code listing the acts that were considered as criminal
2. A section containing instructions for judges, police officers, and witnesses
3. A section on the rights and duties of husbands, wives, and children
4. Regulations establishing wages and prices
5. An ethical code for merchants, doctors, and officials¹³

The code established certain obligations and objectives for the citizens of Babylon to follow. These included the following:

1. An assertion of the power of the state. This was the beginning of state-administered punishment. Under the code, the blood feuds that had occurred previously between private citizens were barred.
2. Protection of the weaker from the stronger. Widows were to be protected from those who might exploit them, elder parents from sons who would disown them, and lesser officials from higher ones.
3. Restoration of equity between the offender and the victim. The victim was to be made as whole as possible and in turn forgave vengeance against the offender.

Of noteworthy importance in the code was its concern for the rights of victims.¹⁴ In reality, this code may have been the first “victims’ rights statute” in history. However, it was relatively short-lived. Victims were again to be neglected in society’s rush to punish the offender with the result that victims’ rights would not resurface again until the mid-twentieth century.¹⁵

Other Early Codes and Laws

The Mosaic Code, which is based on the assumption that God entered into a contract or covenant with the tribes of Israel, had a long-lasting impact on our collective consciousness. According to legend, Moses returned from a mountaintop carrying the Ten Commandments, which were inscribed on two stone tablets. These commandments subsequently became the foundation of Judeo-Christian morality. The Mosaic Code also became the basis for many of the laws in our modern society: The prohibition against murder, perjury, and theft was present in the Mosaic Code thousands of years before the founding of the United States.¹⁶

Another important milestone in the development of American law was early Roman law. Roman law was derived from the Twelve Tables, which were written around 450 B.C. These laws had existed for centuries as unwritten law and applied only to the ruling patrician class of citizens. A protest by the plebeian class, who were the workers and artisans of Rome, caused commerce to come to a standstill. These workers wanted the law to apply to all citizens of Rome.¹⁷ As a result, the laws were inscribed on 12 wooden tables and prominently displayed in the forum for all to see and follow. These tables were a collection of basic rules relating to the conduct of family and religious and economic life.

In the middle of the first century, England was conquered by Roman legions. Roman law, customs, and language were forced on the English people during the next three centuries of Roman rule.

In 529 A.D., Emperor Justinian I codified Roman laws into a set of writings. The Justinian Code, as these writings became known, distinguished between two major types of laws: public laws and private laws. Public laws dealt with the organization and administration of the Republic. Private laws addressed issues such as contracts, possessions, and other property rights; the legal status of various persons such as slaves, husbands, and wives; and injuries to citizens. It contained elements of both our civil and criminal law and influenced Western legal theory into the Middle Ages.

Prior to the Norman Conquest of 1066, the legal system in England was very decentralized. There was little written law except for crimes against society. As a society, we had forgotten or moved away from the teaching of the Code of Hammurabi, and crimes during this period were again viewed as personal wrongs.

When an offense was committed, compensation was paid to the victim or to the victim’s family. If the perpetrator failed to make payments, the victim’s family could seek revenge, usually ending in a blood feud. For the most part during this period, criminal law was designed to provide equity to what was considered a private dispute.

The Norman Conquest under William the Conqueror established royal administrators who rode circuit and rendered justice. These royal judges would use local custom and rules of conduct as a guide in rendering their judgments. This system, known as **stare decisis** (Latin for the phrase “to stand by the decided law”), would have far-reaching effects on modern American criminal law.

The next major development in the history of law was the acknowledgment of the existence of common law. Early English common law forms the basis for much of our present-day legal system.¹⁸ Common law is a traditional body of unwritten legal precedents created by court decisions throughout the Middle Ages in England. During this period, when cases were heard, judges would start their deliberations from past decisions that were as closely related as possible to the case under consideration. In the eleventh century, King Edward the Confessor proclaimed that common law was the law of the land, and subsequently court decisions were recorded and made available to lawyers who could then use them to plead their case. This concept is one of the most important aspects of today’s modern American law.

Modern Codes and Laws

The Magna Carta of England and the U.S. Constitution both stand as great documents and great moments in the history of American law. The Magna Carta was signed on June 15, 1215, and was later interpreted to grant basic liberties for all British citizens. The U.S. Constitution established certain individual rights, defined the power of the federal government, and limited punishment for violation of laws.

American law combines both common law and written statutes. Statutory laws are enacted by state legislatures and Congress and are the major source of American criminal law today. These laws are usually compiled in various codes and are subject to revision by the legislatures.

An offshoot of written law, **administrative law** is made up of rules and regulations adopted by governmental agencies at the federal, state, and local levels. Many governmental agencies are invested with the power to pass regulations that prohibit certain types of conduct. Some of these regulations provide for fines rather than imprisonment of the offender.

In 1787, the U.S. Constitution was adopted. Constitutional law is another source of American criminal law. The Constitution does not define new crimes (the only crime defined in the Constitution is treason); rather it sets limits on other laws as they apply to individuals. An example of this principle is the U.S. Supreme Court ruling that flag burning, which was proscribed as criminal conduct by a state statute, is protected under the First Amendment right of freedom of expression. As noted in Photo 1-1, observing violence can frighten children.



Photo 1.1 Is this young girl who just witnessed a violent crime a crime victim?

Maxim Ibragimov/123RF

EARLY THEORIES OF VICTIMOLOGY AND VICTIMIZATIONS

As with any new profession, many of victimology's early thinkers proposed theories or concepts that, on further study, were revealed as incorrect. However, by examining these early efforts, we can better understand the growth and present status of victimology. From its inception in the 1940s to the present day, victimology, like family violence, has been an interdisciplinary approach to violence and its effect on victims.

Mendelsohn's Theory of Victimization

Benjamin Mendelsohn was a practicing attorney. In the course of preparing a case for trial, he would conduct in-depth interviews of victims, witnesses, and bystanders.¹⁹ He would use a questionnaire that was couched in simple language and contained more than 300 questions concerning the branches of criminology and associated sciences. The questionnaire was given to the accused and all others who had knowledge of the crime. In 1963, on the basis of these studies, Mendelsohn came to the conclusion that there was usually a strong interpersonal relationship between the offender and the victim. In an effort to clarify these relationships further, he developed a typology of victims and their contributions to the criminal act.²⁰ This classification ranged from the completely innocent victim to the imaginary victim. Mendelsohn classified victims into six distinct categories:

1. **The Completely Innocent Victim.** This victim may be a child or a completely unconscious person.
2. **The Victim with Minor Guilt.** This victim might be a woman who induces a miscarriage and dies as a result.
3. **The Victim Who Is as Guilty as the Offender.** Those who assist others in committing crimes fall within this classification.
4. **The Victim More Guilty Than the Offender.** These are persons who provoke others to commit a crime.
5. **The Most Guilty Victim.** This occurs when the perpetrator (victim) acts aggressively and is killed by another person who is acting in self-defense.
6. **The Imaginary Victim.** These are persons suffering from mental disorders such as paranoia who believe they are victims.

The classifications are listed in Table 1.1 so that the reader has an overview of Mendelsohn's typology.

Many scholars credit Mendelsohn with coining the term *victimology*, and still others consider him the father of victimology.²¹ His typology was one of the first attempts to focus on victims of crimes rather than to simply examine the perpetrator. However, Mendelsohn was only one of two early scholars who explored the relationship between victims and offenders. The other noted early researcher in victimology was Hans von Hentig.

Von Hentig's Theory of Victimization

In 1948, in an early classical text *The Criminal and His Victim*, von Hentig explored the relationship between the "doer" or criminal and the "sufferer" or victim.²² Von Hentig also established a typology of victims.²³ This classification was based on psychological, social, and biological factors. Von Hentig established three broad classes of victims: the general classes of victims, the

TABLE 1.1 Mendelsohn's Victims' Classification

	Victim's Role in the Crime
Innocent victim	Completely innocent
With minor guilt	Minor involvement
As guilty as the offender	Assisted criminal in committing the crime
Guiltier than offender	Provokes others to commit a crime
Most guilty	Victim acts aggressively in the crime
Imaginary victim	Person pretends to be a victim

psychological types of victims, and the activating sufferer. His classification identified victims by examining various risk factors. The typology includes a general class of victims, the psychological class, and activating sufferer class.

The general class included the young, the female, the old, the mentally defective, and a group that consisted of minorities, immigrants, and weak individuals. The psychological class included the depressed, the lonely or heartbroken, the wanton, the acquisitive, and the tormentor.

Von Hentig theorized that a large percentage of victims, because of their acts or behavior, were responsible for their victimization.²⁴ This concept has since been repudiated by modern studies that have more closely examined and defined the relationship between the victim and the offender. Table 1.2 lists the victims using Von Hentig's general classifications. Note: In several classifications, the language was updated to currently used descriptions.

Schafer's Functional Responsibility

In 1968, using von Hentig's approach, a third scholar was also instrumental in establishing another classification of victims. Stephen Schafer examined both Mendelsohn's and von Hentig's work in his text *The Victim and His Criminal* and attempted to classify victims on the basis of responsibility instead of risk factors.²⁵ Schafer believed that the study of the criminal–victim relationship indicated an increasing recognition that the criminal justice system must consider the dynamics of crime and treat both criminals and victims.

Schafer went on to state that “the study of criminal–victim relationships emphasizes the need to recognize the role and responsibility of the victim, who is not simply the cause of, and reason for, the criminal procedure, but has a major part to play in the search for an objective criminal justice [system] and a functional solution to the crime problem.”²⁶ He stated that responsibility is not an isolated factor in society; rather it is an instrument of social control used at all times by all societies to maintain themselves.²⁷ Schafer believed responsibility was a critical issue in the problem of crime.

According to Schafer, crime was not only an individual act but also a social phenomenon. He believed that not all crimes simply “happen” to be committed, but that victims often contribute to crime by their acts of negligence, precipitate actions, or provocations. Schafer concluded

TABLE 1.2 Hans von Hentig's Classification of Victims

Victim Type	Example
Young victim	A young girl who is sexually abused
Female victim	A woman who is raped
Elderly victim	A person on Social Security who is the victim of a financial fraud
Mentally ill victim	A person with mental illness who is victimized
Immigrants	Robbery of an individual who is unfamiliar with the culture
Minorities	Victimizing a person because that person is a member of the minority class
Persons with below average intelligence	An individual who is victimized because of his or her low intelligence
Depressed person	A victim who was depressed at the time of the crime
Acquisitive person	A victim who was victimized because of his or her greed
Wanton victim	A victim who is promiscuous
Lonesome and/or heartbroken victim	A victim who is victimized because of his or her status in mourning
A victim who is a tormentor	An abusive parent
A blocked, exempted, or fighting victim	A victim of blackmail or extortion

TABLE 1.3 Shafer's Typology of Victim-Precipitated Crimes

Unrelated victim	Crimes in which the victim was simply the unfortunate target of the crime
Provocative victim	Crimes in which offender was provoked by the victim
Precipitative victim	Crimes where the victim has placed herself or himself in a dangerous position or has acted in a method to encourage victimization such as making inappropriate remarks
Biologically weak victim	The victim is elderly, young, or due to a physical condition that appeals to an offender
Socially weak victim	Individuals who are not adequately integrated into the culture
Self-victimizing victim	A victim who is involved in the crime such as in prostitution or gambling
Political victim	Victims who are victimized because they oppose those of in power or of the dominant culture

that the functional role of a victim is to do nothing to prevent others from attempting to injure him and at the same time to actively prevent such attempts. In other words, this is the victim's functional responsibility.²⁸ Shafer developed a typology of victim-precipitated crimes as set forth in Table 1.3.

Wolfgang's Study of Homicide

From 1948 to 1952 in Philadelphia, Marvin E. Wolfgang conducted the first major study of victim precipitation.²⁹ He focused on homicides, studying both the victim and the offender as separate entities and as "mutual participants in the homicide."³⁰ Wolfgang evaluated 588 homicides and found that 26 percent (150) of all the homicides studied in Philadelphia involved situations in which the victim was a direct positive precipitator in the crime—the first to use force during the acts leading to the homicide.³¹ Wolfgang's study and other theories of homicide are addressed in Chapter 6.

MODERN THEORIES OF VICTIMOLOGY AND VICTIMIZATION

A number of more recent theories regarding victimology and victimization have emerged. Starting in the late 1970s, researchers began to examine victims and victimization from different perspectives and to also examine lifestyles and activities of potential victims. Many of the theories that developed from such research seek to examine the convergence of time, offenders, lack of guardians, and victims as the cause of victimization. Others look at society as a major factor in crime and victimization. This section briefly examines some of these newer victimology and victimization theories.

Karmen's Theory of Victimology

Scholars have continued to expand their scope of inquiry and explore other aspects of the victim's role in society. Karmen discusses the development of victimology and points out that those who study this relatively new discipline have three main areas of concentration:

1. Victimologists study the reasons (if any) for why or how the victim entered a dangerous situation. This approach does not attempt to fix blame on the victim; rather it examines the dynamics that resulted in the victim being in the risky situation.
2. Victimology evaluates how police, prosecutors, courts, and related agencies interact with the victim. How was the victim treated at each stage in the criminal justice system?
3. Victimologists evaluate the effectiveness of efforts to reimburse victims for their losses and meet the victim's personal and emotional needs.³²

Karmen correctly points out that victimologists view the dynamics of the victim's role in society from a multidisciplinary perspective. There is still debate among scholars, however, regarding the correct or predominate role for the victimologist. Similar to the development and

study of criminology, a number of different perspectives regarding victimology have also developed throughout the years.

A number of more recent theories regarding victimology and victimization have emerged. Starting in the late 1970s, researchers began to examine victims and victimization from different perspectives and to also examine lifestyles and activities of potential victims. Many of the theories that developed from such research seek to examine the convergence of time, offenders, lack of guardians, and victims as the cause of victimization. Others look at society as a major factor in crime and victimization. This section briefly examines some of these newer victimology and victimization theories.

Intraindividual Theories

Intraindividual theorists contend that the cause of deviant behavior lies within the individual. Frequently, the intraindividual theories are referred to as psychopathological theories or mental imbalances theories. These theories focus on what is wrong with the individual that caused the deviant behavior. In other words, according to these theories, the individual is sick or disturbed.³³

Lifestyle Theory

Hindelang and his colleagues examined exposure and guardianship as they relate to victimization. They call this theory the lifestyle approach to victimization, which argues that the likelihood of becoming a victim depends on an individual's lifestyle. In other words, various changes in everyday life and lifestyles are assumed to present a criminal opportunity by enhancing exposure and proximity of victims or targets to motivated offenders.³⁴

Using the principle of homogamy, Hindelang argues that people are more likely to be victimized the more often they come into contact with groups that contain a larger share of potential offenders. For example, young persons are more likely than older persons to be victimized, since the young are more likely to come into contact with other youths who are disproportionately involved in crime or violence.

Routine Activities Approach

One of the more popular criminology theories dealing with crime trends and victimization was advanced by Cohen and Felson.³⁵ They argue that a "routine activities approach" should be used in analyzing crime trends and victimization. Routine activities are recurrent, prevalent activities that provide for basic population and individual needs. Routine activities may occur at home, in the workplace, or in other settings.

These researchers examined the circumstances surrounding a crime by looking at the convergence of space, time, motivated offenders, suitable victims or targets, and absence of capable guardians. Criminal violations are treated as routine activities that will occur when a set of circumstances converges. Cohen and Felson emphasized that the lack or absence of any of the three factors (offender, victim, and guardian) would probably prevent any criminal activity.

Opportunity Model of Victimization

Cohen and several other associates later combined the lifestyle and routine activities theories to explain why income, race, and age affect the likelihood of victimization.³⁶ This approach examines five factors: exposure, guardianship, proximity, attractiveness of targets, and definitions of specific crimes. According to this theory, exposure and guardianship, which are aspects of the lifestyle theory, are not sufficient to establish a formal theory of victimization.

The opportunity theory links dimensions of social inequity to criminal victimization. It involves exposure to potential offenders; proximity between where victims or targets reside and where potential offenders are found; guardianship, which involves the effectiveness of persons or objects in preventing crime; target attractiveness, which is the desirability of persons or property to potential offenders; and definition of certain crimes, which establishes the difficulty in committing certain acts. For example, thefts are easier to commit than burglaries.

It is significant that Cohen does not blame persons for being victims. Rather, he and his associates approach the study of crime and victimization from the perspective that a number of factors cause crime, not just the victim.

Symbolic Interaction Theories

The symbolic interaction (SI) approach to deviant behavior views behavior as the result of interactions between two or more persons. The interaction between individuals sets expectations and behavior. How an individual sees himself or herself is determined by how that person thinks others see him or her.

The phrase “symbolic interaction” was coined by Herbert Bloomer in 1937 as he was studying the works of George Herbert Mead. SI theories focus on situations and interactions with society leading up to the crime rather than on the differences or defectiveness of the offenders.³⁷ The two major crime causation theories based on the concepts of SI are differential association and labeling. Both theories are currently very popular in the United States. The SI theories look at the process of becoming a criminal. They are based on the following assumptions and principles:

- The symbols we learn and use become our social reality.
- We become socialized by the people with whom we associate.

Approaches to Victimization

It is often difficult for the reader to distinguish between the routine activities approach to victimization, the lifestyle theory, and the opportunity model of victimology. The three theories of victimization are similar and tend to build on each other. To help distinguish between the theories, a short statement on each is attached.

Routine Activities Approach

Routine activity theory is a subdivision of the crime opportunity theory. The theory focuses on situations of crimes. For example, you are more likely to be robbed or become a victim of assault on a city street than when you are in the safety of your home. For crime to be committed, three factors are needed: (1) a motivated offender, (2) a suitable target, and (3) the convergence at a time/place. The routine activity theory premise is that crime is relatively unaffected by social causes such as poverty, inequality, and unemployment.

Lifestyle Theory

Lifestyle theory focuses on crime victims rather than perpetrators. The main issue is that crime victims often become victims because of their own choices as to where to live, how to socialize, and other lifestyle-related variables.

Opportunity Model of Victimology

The opportunity model of victimization approach considers the time–space relationships in which victimization is greatest. The risk of criminal victimization is seen as largely dependent on the lifestyle and routine activities of persons that bring them and/or their property into direct contact with potential offenders in the absence of capable guardians who could potentially prevent the occurrence of a crime (Table 1.4).

TABLE 1.4 Summary of Victimology Theories

Intraindividual Theories	Cause of behavior lies within the individual.
Symbolic Interaction Theories	Behavior is the results of the interactions between people.
Karmen's Theory of Victimology	Victimologists study how or why victim entered dangerous location, how agencies interact with the victim, and evaluates the efforts to compensate the victim.
Lifestyle Theory	Stresses the importance of three aspects of exposure: persons, locations, and time periods. Lifestyle refers to attitudes and behaviors of people and how they spend their time and money and the social roles they play.
Routine Activities Approach	Stresses interactions of three variables: existence of motivated criminals, availability of suitable targets, and the presence or absence of guardians.
Opportunity Model of Victimization	Combines the lifestyle and opportunity theories to explain why income, race, and age affect the likelihood of victimization.
Critical Victimology	Critical of what actions are defined as criminal and the abuses of power by those in control of the government.
Victim Blaming	Blaming the victim for being at the location, or providing the opportunity for the criminal.



Photo 1.2 It appears that the opportunity model of victimology would apply to this situation. The victim is clearly in direct contact with her husband, who appears to be a potential abuser.

EJ White/Fotolia

Critical Victimology

Mawby and Walklate have proposed a view of victimology that they call critical victimology.³⁸ They define critical victimology as “an attempt to examine the wider social context in which some versions of victimology have become more dominant than others and also to understand how those versions of victimology are interwoven with questions of policy response and service delivery to victims of crime.” They question why certain actions are defined as criminal

and others are not. These scholars rightfully point out that many “crimes” committed by wealthy or powerful individuals or even by nations are not considered crimes. For example, genocide has occurred and is occurring in some countries, yet we do very little about it. Rape as a weapon of war has been reported in several countries. Abuse of power by those in control is very seldom mentioned as a crime in the media or other sources.



Photo 1.3 Young lady holding a sign that states: My body, my rules.

astridsinai/123RF

Victim Blaming

One of the most controversial areas of victimology has been and continues to be the concept known as victim blaming, victim responsibility, or victim perception. As discussed earlier in this chapter, some of the world’s most prominent victimologists established classifications that included victims as a cause of criminal acts. Mendelsohn, von Hentig, Schafer, and Wolfgang all classified victims as having some form of causation in the commission of the crime. The Photo 1-3 provides a current example of women who feel that their bodies are subject to their rules.

The concept of victim perception was first used by Wolfgang in his study of homicide victims and later by Amir in one of the first studies of rape.³⁹ Wolfgang’s interpretation dealt with situations in which the victim was a direct participator in the crime, while Amir’s focused on the offender’s perception of the victim’s willingness to participate in the sexual act.

Wolfgang’s study of homicide involved examination of homicide records in Philadelphia from 1948 to 1952. He reviewed these files and found that one out of four victims initially used force against their

perpetrators. He also found that many of the victims were acquainted with the perpetrator. Amir was a student of Wolfgang, and in fact, Wolfgang wrote the introduction to Amir's text, *Patterns in Forcible Rape*. It is therefore hardly surprising that Amir would follow the same reasoning as his mentor, Wolfgang, when he analyzed the dynamics of rape.

Psychologist William Ryan has the distinction of coining the phrase "blaming the victim."⁴⁰ In his book, *Blaming the Victim*,⁴¹ Ryan argues that the concept of victim blaming arose in the American middle class. This group of people is aware of the benefits they have and that others do not share these entitlements. This awareness creates a need to reconcile their status with others who are not as fortunate. One way to accomplish this is to accept the fact of violence and crime but blame the victim for letting it happen. This approach, argues Ryan, does not directly threaten the middle class and allows them to propose changes in society to address victimization. For example, poverty is caused under this victim-blaming approach because poor people share cultural values that make them poor and not because of any structural flaws that cause inequities in the distribution of income. The solution to poverty, according to Ryan, is to educate the poor people so that their values become more like those of the middle class.

The process of victim blaming has severe consequences for both the victim and society. For example, if the victim feels or perceives that he or she will be blamed or condemned by other members of society, the victim may not file a report of the crime. He or she may believe that the social cost of reporting the crime is too high a price to pay. Victims of certain crimes may also believe that reporting the offense may subject them to further victimization at the hands of the perpetrator. This is particularly true for crimes such as family violence, including incest, sexual assault by an acquaintance or relative, spousal abuse, and elder abuse. This failure or reluctance to report victimization is not confined to individuals. Corporations or other companies may feel pressurized to not report crimes so as to avoid bad publicity and a possible drop in their stock prices. Our society suffers severe consequences when crimes are not reported, investigated, and prosecuted.

There is also a great deal of controversy surrounding the media's role in victim blaming—a debate that promises to be eternal. The media argue that they must represent the general public, and the public has a right to know all the facts surrounding any incident. Such facts may include the identity of the victim of any crime, including sexual assault. Victim advocates argue that exposing the identity of sexual assault victims increases the chances of their being revictimized. Some newspapers will not reveal the identity of sexual assault victims, while others may actually print their names or allow information to be broadcast or printed that will lead to their identification. As in so many areas of victimology, we are making progress, but we have a long way to go.

There are a number of other problems with victim blaming. First, victim blaming assumes that some victims share certain physical or psychological characteristics that cause them to be victimized. Others assume there is some sort of continuum that ranges from the totally innocent victim to the completely guilty victim.

American society is concerned with the rights of those who are accused of crimes. The first nine amendments to the U.S. Constitution focus on individual liberties and attempt to ensure that the government does not infringe upon these individual rights. However, the rights of victims of crime are not mentioned in these amendments. Kelly and Enez describe the evolution of the crime victim role as one moving from an eye-for-an-eye, in which victims were expected to deal with their perpetrator directly, to a system in which the king dispensed justice, and finally to its modern-day form in which the people of the state or federal government are the "victims," and the injured person is relegated to that of a witness.⁴²

Emilio C. Viano, a prominent victimologist, has suggested that the victimization of individuals is better understood if we shift away from analyzing what they did, where they were, and how they reacted to the incident to looking at the cultural, social, and economic factors that support a view allowing for victim blaming. He argues that sexism, racism, and ageism are not always acknowledged to exist, and some would rather deny the existence of these forces and continue to blame the victim. He concludes that changing the focus of the inquiry will lead to a different understanding of what causes certain individuals or groups in society to be victimized.⁴³

The movement away from victim blaming to victim protection is a relatively new process. We must continue to educate the professionals in the field as well as the general public about the dynamics of victimization to move away from this backward and harmful process of victim blaming.

VICTIM'S CONTRIBUTION TO THE CRIME

As noted in the preceding section, often a victim is blamed or seen as responsible for the crime. Many victim compensation programs either reduce or deny compensation if the victim contributed to the crime in any manner. For example, South Dakota Crime Victims' Compensation Program states: "The victim cannot contribute to the crime or the injury nor have committed a crime at the time of the incident. Claims may be reduced or denied based upon contribution/conduct." The problem with assessing the victim's contribution to the crime is that the contribution is being judged or assessed after the fact. Often, we take actions without thinking about them and later wish we had done something differently. A negligent act by a victim should not be considered as an invitation to be a crime victim.

As noted by Lynne Henderson, a determination of "relative badness" of the crime resembles the concept of comparative negligence and can produce unpredictable results. She notes that in one case, the defendant, convicted of driving under the influence and of manslaughter, received a minimal sentence for killing two drunken pedestrians, despite the arguments by the next of kin at sentencing for a harsh penalty. The sentencing judge observed that the pedestrians were "more to blame" than the driver for their deaths. Apparently, the judge did not appreciate the danger of driving under the influence.⁴⁴

THE RISE OF THE VICTIMS' RIGHTS MOVEMENT

As the various social forces were developing, a series of events took place that began to raise the consciousness of the victims themselves regarding their impact on the criminal justice system.

The victims' movement, which gained momentum in the United States in the 1980s, continues to gain strength across the country. States continue to enact laws giving victims of crime more opportunities to participate in the criminal justice system. Therefore, those individuals who work or interact with victims need to understand the legal, psychological, and social aspects of victimology. While the victims' movement has advanced considerably since the 1980s, we still have a long way to go, as noted in the following excerpt from a victims' service provider.

Currently, more than 50 academic institutions offer courses of study in victimology. In addition, some universities offer courses that examine various aspects of the victim-offender relationship. These courses are typically found in sociology, criminal justice, social work, criminology, and psychology. Victimology is a discipline that combines theoretical research with practical experience. Although there is some interaction between these two groups or approaches, there is still much to learn from the combination.

The Beginning of the Movement

During the late 1960s, victims of crime began volunteering to serve within various victim assistance programs. As these crime victims continued to speak out, states and the federal government reacted by establishing commissions to study crime and its consequences.

There were two federal responses to crime victimization during this period. One was the establishment of the National Crime Survey, which is discussed in more detail in Chapter 3. The second major action on the part of the federal government was the establishment of the Law Enforcement Assistance Administration (LEAA). This agency provided funds to law enforcement agencies for a variety of purposes, including the establishment of victim-witness programs.⁴⁵ LEAA's role in fundraising is discussed in Chapter 5.

In 1974, the LEAA called a meeting in Florida of various victim advocates to discuss methods of increasing victims' rights. One consequence of this meeting was the formation of the National Organization for Victim Assistance (NOVA) in 1976. NOVA is considered one of the leading victims' rights organizations in the world.

Gains and Losses

During the late 1970s and early 1980s, the movement foundered. Lack of funding by the federal government caused many community-based victims' organizations and service providers to cease operations. In addition, within the movement, issues such as professionalism and training caused increasing divisiveness. The movement began to separate into specialized groups that focused on specific issues. Several organizations to address issues of sexual assault and domestic

violence, such as the National Coalition Against Sexual Assault, were established to address the specific needs of those victims.⁴⁶

Although there was tension among various service providers because of diminishing funding and disagreement regarding specific goals, there was also progress in other areas of the victims' movement during this time period. Parents of Murdered Children (POMC) was founded by Robert and Charlotte Hullinger in 1978, and Mothers Against Drunk Driving (MADD) was founded by Candy Lightner in 1980. Both of these organizations continue to have an impact on the victims' rights and the victims' movement. In addition, Congress passed a federal Victims' Bill of Rights. By 1990, two-thirds of the states had enacted similar types of laws for protecting victims.

In what may become one of the most critical dates in the history of victims' rights, on June 25, 1996, President Clinton proposed a Victims' Rights Constitutional Amendment to the U.S. Constitution. In a speech made in the Rose Garden announcing the Victims' Rights Constitutional Amendment, President Clinton stated:

Having carefully studied all of the alternatives, I am now convinced that the only way to fully safeguard the rights of victims in America is to amend our Constitution and guarantee these basic rights—to be told about public court proceedings and to attend them; to make a statement to the court about bail, about sentencing, about accepting a plea if the victim is present, to be told about parole hearings to attend and to speak; notice when the defendant or convict escapes or is released, restitution from the defendant, reasonable protection from the defendant and notice of these rights.⁴⁷

The Victims' Rights Constitutional Amendment faces a long and complex process before it becomes law. It must be adopted by three-quarters of the states to become part of the Constitution. It is not something that will happen in a few weeks or months, and there are those who already claim that the proposed amendment is too detailed and should be made broader. No matter what the outcome, the simple fact that such an amendment has actually been proposed is a significant acknowledgment of the plight of victims of crime.

Increased Public Awareness

During 1982 through 1986, victims' organizations began to use the media to increase public awareness of crime victim issues. President Ronald Reagan, and Congress, responded to this heightened awareness with actions that would eventually have long-term consequences for the victims' movement. In 1982, President Reagan appointed a Task Force on Victims of Crime. This task force published a report that has since become a foundational platform for victims' rights.⁴⁸ The Office for Victims of Crime (OVC) was created in the Department of Justice to implement the task force's recommendations.

In 1984, another key event took place when Congress passed the Victims of Crime Act (VOCA).⁴⁹ This act established the OVC in the Office of Justice Programs, Department of Justice. The OVC provides grants to states for programs with direct services for victims of all crimes.

Victims' Rights Constitutional Amendment

Section 1

To ensure that the victim is treated with fairness, dignity, and respect, from the occurrence of a crime of violence and other crimes as may be defined by law pursuant to section two of this article, and throughout the criminal, military, and juvenile justice process, as a matter of fundamental rights to liberty, justice, and due process, the victim shall have the following rights: to be informed of and given the opportunity to be present at every proceeding in which those rights are extended to the accused or convicted offender; to be heard at any proceeding involving sentencing, including the right to object to a previously negotiated plea, or to a release from custody; to be informed of any release or escape; and to a speedy

trial, a final conclusion free from unreasonable delay, full restitution from the convicted offender, reasonable measures to protect the victim from violence or intimidation by the accused or convicted offender, and notice of the victim's rights.

Section 2

The several states, with respect to a proceeding in a State forum, and the Congress with respect to a proceeding in a United States forum, shall have the power to implement further the rights established in this article by appropriate legislation.

Source: OVC, U.S. Department of Justice, Washington, D.C., 1996.

VOCA also established the Crime Victims Fund to provide money to local victim assistance programs and state victim compensation programs. The fund receives money from federal criminal fines, penalties, and bond forfeitures. VOCA's operation is further examined in Chapter 15.

Increased Professionalism

From 1984 to the present, the victims' movement has been characterized by an increase in the professionalism of the victims' service advocates and providers. In previous times, the victims' movement was heightened by strong dynamic leaders with vision and determination. At present, the movement has expanded beyond the ability of any one person being able to influence its direction. It is now a national movement with a tremendous influence on local, state, and national politics.

Universities are expanding their victim-related courses. Various victims' organizations are offering increased training opportunities, and in 1995, the U.S. Department of Justice sponsored the first National Victim Assistance Academy in Washington, D.C. This academy was repeated in 1996 and 1997 using distance learning technology to link other universities in a joint academic effort.

The public awareness of victim issues continues to grow, and victim advocates have become an acknowledged force in modern politics. Victim services providers are realizing that their profession requires training that is multidisciplinary in nature. There is a growing awareness that to be accepted by other professionals requires continuing education, certifications, or other acknowledged credentials. This increased professionalism should translate into more sophisticated interventions and a faster rate of progress within the victims' movement.

Additional Laws

Increased professionalism also means increased knowledge and insight into the problems of victims. In 1994, Congress enacted the Violent Crime Control and Law Enforcement Act. Title IV of that law is entitled the Violence Against Women Act (VAWA). Congress mandated that various professions form partnerships and work together to respond to all forms of violence against women. The VAWA was reenacted and expanded in 2013. See the discussion on it later in this chapter.

The attorney general is required to make a report to Congress annually on the grants that are awarded under the act and ensure that research examining violence against women is encouraged. The report must include the number of grants, funds distributed, and other statistical information. In addition, the report must assess the effectiveness of any programs that are funded under VAWA.

The act provides funding for a variety of research-based studies. It also requires that federal agencies engage in research regarding violence against women. For example, the National Institute of Justice is mandated to conduct four important projects: (1) the development of a research agenda that will address violence with particular emphasis on underserved populations; (2) the assessment of establishing state databases to record the number of sexual and domestic violence incidents; (3) a study to determine how abusive partners obtain addresses of their victims; and (4) the examination with other agencies of the battered woman syndrome.⁵⁰

Crime Victims' Rights Act of 2004

The Federal Crime Victims' Rights Act of 2004, 18 U.S.C. § 3771, provides that officers and employees of the U.S. Department of Justice shall make their best efforts to see that crime victims are notified of, and accorded, the following rights:

- The right to be reasonably protected from the accused.
- The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.
- The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the

victim would be materially altered if the victim heard other testimony at that proceeding.

- The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
- The reasonable right to confer with the attorney for the government in the case.
- The right to full and timely restitution as provided by law.
- The right to proceedings free from unreasonable delay.
- The right to be treated with fairness and with respect for the victim's dignity and privacy.

MANDATORY VICTIM RESTITUTION ACT (MVRA): 18 U.S.C. § 3664

(partial) (enacted as part of the federal Crime Victims Act of 2004

18 U.S.C. § 3664. Procedure for issuance and enforcement of order of restitution.

- (a) For orders of restitution under this title, the court shall order the probation officer to obtain and include in its presentence report, or in a separate report, as the court may direct, information sufficient for the court to exercise its discretion in fashioning a restitution order. The report shall include, to the extent practicable, a complete accounting of the losses to each victim, any restitution owed pursuant to a plea agreement, and information relating to the economic circumstances of each defendant. If the number or identity of victims cannot be reasonably ascertained, or other circumstances exist that make this requirement clearly impracticable, the probation officer shall so inform the court.
- (b) The court shall disclose to both the defendant and the attorney for the Government all portions of the presentence or other report pertaining to the matters described in subsection (a) of this section.
- (c) The provisions of this chapter, chapter 227, and Rule 32(c) of the Federal Rules of Criminal Procedure shall be the only rules applicable to proceedings under this section.

The Federal Crime Victims' Rights Act has altered the landscape of federal criminal law. In addition, many states are following suit. For example, in May 2008, Oregon passed two constitutional amendments, affording victims legal standing to assert (rights of a party) and seek enforcement of their rights.

The 2009 case of *United States v. Okun* is an example of how the Crime Victims' Rights Act (CVRA) has altered proceedings in federal court.⁵¹ In *Okun*, the government moved to permit up to 577 victims to be present at trial (eight of whom the government intended to call as witnesses at trial). The defendant opposed the motion and argued that the victim/witnesses do not qualify as victims under the CVRA because the defendant had not yet been proven guilty. The court held that this argument was "simply incorrect" because it would "eviscerate the rights given under the CVRA to victims in any preconviction proceeding." Next, the defendant argued that the victim/witnesses should be excluded under Federal Rule of Evidence 615, which allows the court to exclude witnesses from the courtroom at the request of a party. The court disagreed, noting that the federal rules provide an exception if the potential witness is authorized

by statute to be present. The court noted that the CVRA provides just such an authorization for victims of the crime being tried unless the defense makes a showing that the victim/witness's testimony would be "materially altered." Finally, the defendant argued that because of the number of victims, permitting them all to attend trial would be impractical. The court rejected this argument as well, finding it premature because there was no evidence that an unmanageable number of victims would attend the trial. The court noted that alternative means to attending trial—such as arranging for a closed-circuit television broadcast, webcast, or audio broadcast of the trial—could be considered, but that these alternate means would not be to exclude victim/witnesses based on the large number of victims.

Victims' Rights Law Center

It is estimated that one in eight women will be harmed by a crime involving sexual violence. As most researchers agree, an act of sexual violence generally devastates and derails the victim's life. The impact is long-lasting. As public support grew regarding this sexual violence and the resulting public support to pass a Victim's Rights law, the Victim Rights Law Center (VRLC) was established in 2003 as the first nonprofit law center in the nation solely dedicated to serving the needs of rape and sexual assault victims. Through direct legal services, the center and pro bono attorneys help restore victims' lives after an attack, ensuring that they may stay in school; protecting their privileged and confidential mental health, medical and education records; preserving their employment; maintaining safe housing; securing or maintaining their immigration status; and swiftly accessing victim compensation and other benefits.

Office of the Victims' Rights Ombudsman

The CVRA of 2004 also established the Office of the Victims' Rights Ombudsman. Accordingly, a crime victim may file a complaint against any employee of the U.S. Department of Justice who violated or failed to provide the rights established under the CVRA of 2004, 18 U.S.C. § 3771. The Department of Justice has established the Office of the Victims' Rights Ombudsman to receive and investigate complaints filed by crime victims against their employees and has implemented procedures to promote compliance with Crime Victims' Rights Obligations, 28 C.F.R. § 45.10.

A crime victim for the purposes of this act includes any person who has been directly and proximately harmed as a result of the commission of a federal offense or an offense in the District of Columbia. An employee of the Department of Justice includes any attorney, investigator, law enforcement officer, or other personnel employed by any division or office of the Department of Justice whose regular course of duties includes direct interaction with crime victims (not including a contractor).

Violence Against Women Act of 2013

In February 2013, the U.S. Congress recognized the continuing need to prevent domestic abuse and the need for a national strategy with the reenactment of the Violence Against Women Act (VAWA) originally enacted in 1994.

According to the Congressional hearings, VAWA has improved the criminal justice response to violence against women by

- holding rapists accountable for their crimes by strengthening federal penalties for repeat sex offenders and creating a federal "rape shield law," which is intended to prevent offenders from using victims' past sexual conduct against them during a rape trial;

- mandating that victims, no matter their income levels, are not forced to bear the expense of their own rape exams or for service of a protection order;
- keeping victims safe by requiring that a victim's protection order will be recognized and enforced in all state, tribal, and territorial jurisdictions within the United States;
- increasing rates of prosecution, conviction, and sentencing of offenders by helping communities develop dedicated law enforcement and prosecution units and domestic violence dockets;
- ensuring that police respond to crisis calls and judges understand the realities of domestic and sexual violence by training law enforcement officers, prosecutors, victim advocates, and judges; VAWA funds train over 500,000 law enforcement officers, prosecutors, judges, and other personnel every year;
- providing additional tools for protecting Indian women by creating a new federal habitual offender crime and authorizing warrantless arrest authority for federal law enforcement officers who determine there is probable cause when responding to domestic violence cases.

There was testimony at the Congressional hearings that VAWA has ensured that victims and their families have access to the services they need to achieve safety and rebuild their lives by

- responding to urgent calls for help by establishing the National Domestic Violence Hotline, which has answered over 3 million calls and receives over 22,000 calls every month; 92 percent of callers report that it's their first call for help;
- improving safety and reducing recidivism by developing coordinated community responses that bring together diverse stakeholders to work together to prevent and respond to violence against women;
- focusing attention on the needs of underserved communities, including creating legal relief for battered immigrants so that abusers cannot use the victim's immigration status to prevent victims from calling the police

or seeking safety, and supporting tribal governments in building their capacity to protect American Indian and Alaska Native women.

Testimony presented at the hearing indicated that since VAWA was originally passed, the following progress has been made:

- Fewer people are experiencing domestic violence.
- Between 1993 and 2010, the rate of intimate partner violence declined 67 percent.
- Between 1993 and 2007, the rate of intimate partner homicides of females decreased 35 percent and the rate of intimate partner homicides of males decreased 46 percent.
- More victims are reporting domestic and sexual violence to police, and reports to police are resulting in more arrests.
- States have reformed their laws to take violence against women more seriously.
- All states have reformed laws that previously treated date or spousal rape as a lesser crime than stranger rape.
- All states have passed laws making stalking a crime.
- All states have authorized warrantless arrests in misdemeanor domestic violence cases where the responding officer determines that probable cause exists.
- All states provide for criminal sanctions for the violation of a civil protection order.
- Many states have passed laws prohibiting polygraphing of rape victims.
- Over 35 states, the District of Columbia, and the U.S. Virgin Islands have adopted laws addressing domestic and sexual violence, and stalking in the workplace. These laws vary widely and may offer a victim time off from work to address the violence in their lives, protect victims from employment discrimination related to the violence, and/or provide unemployment insurance to survivors who must leave their jobs because of the abuse.

Summary

The history of victimology is in many ways the history of our world. As long as there has been crime, there have been victims who have suffered. Early law viewed crime as a personal act that required response by the victim or by the victim's family. The Code of Hammurabi, although harsh and violent, recognized victims as injured parties and may have been the first victims' rights law. Other codes and laws evolved throughout history to shape our modern concept of justice.

A number of social forces affected the development of victimology. The feminist movement raised our awareness of the plight of women. The civil rights movement resulted in a number of laws being passed that afforded individuals certain rights. As crime increased, our society became increasingly conservative and became more aware of the trauma suffered by victims of crime.

Theories regarding victimization have undergone a subtle but encouraging change. We have moved from the victim being the cause of the crime to studying how crime occurs

and how persons are selected as victims. These newer theories include lifestyle theory, the routine activity approach, and opportunities model of victimization. It is a major accomplishment within victimology that we are developing our own theories as they relate to victimization.

The victims' rights movement began as a small group of volunteers who themselves were crime victims and who had been victimized a second time as a result of their involvement with the criminal justice system. This small group of volunteers has grown and become a powerful force in America that continues to expand and change the way we view victimology.

The CVRA of 2004 provided certain rights to victims involved with the federal criminal justice system. The act also established the Office of the Victims' Rights Ombudsman. In 2013, the Violence Against Women Act was reenacted and expanded to protect victims in same gender relationships, victims in questionable immigration status, and victims on American Indian reservations.

Discussion Questions

1. Explain why some authorities call the Hammurabi Code the first victims' rights law.
2. What was the most significant event in the development of law that has affected the victims' movement?
3. Is the feminist movement still important to the victims' movement? Why?
4. Compare and contrast von Hentig's and Mendelsohn's theories of victimology.
5. Why is Schafer's theory of functional responsibility important?
6. Wolfgang studied homicide; how does this relate to the study of victimology?
7. Discuss the other theories of victimology.
8. Has the victims' movement reached its full potential? Name three specific goals that the movement should strive for in the next ten years.
9. What guidelines should be used to determine who is a victim?
10. Explain how a critical criminologist would approach issues involving victimology.

Endnotes

- 1 "Victimology," *Encyclopædia Britannica*. Encyclopædia Britannica Online (April 6, 2009); available online: www.britannica.com/EBchecked/topic/1246187/victimology.
- 2 Andrew Nash, "Victims by Definition," 85 *Washington University Law Review*, 1419 (2008).
- 3 Information adapted from the Canadian Department of Justice's Victims' website at <http://www.justice.gc.ca/eng/cj-jp/victims-victimes/rights-droits/who-qui.html>. Accessed on November 29, 2016.
- 4 For an excellent discussion of criminology as a science, see G. B. Vold and T. J. Bernard, *Theoretical Criminology*, 3rd ed. (Oxford University Press, New York) 1986.
- 5 Edwin H. Sutherland, *Principles of Criminology*, 4th ed. (Lippincott, Philadelphia, Pa.) 1947.
- 6 A. Karmen, *Crime Victims: An Introduction to Victimology*, 2nd ed. (Brooks/Cole, Pacific Grove, Calif.) 1985.
- 7 K. Millett, *Sexual Politics* (Abacus, London) 1972; S. Griffin, "Rape: The All-American Crime," 10(3) *Ramparts*, 26–35 (1971); and S. Brownmiller, *Against Our Will: Men, Women and Rape* (Penguin Books, New York) 1975.
- 8 L. Kelly, *Surviving Sexual Violence* (University of Minnesota Press, Minneapolis, Minn.) 1988.
- 9 595 F. Supp. 1521 (Conn. 1984).
- 10 G. D. Gottfredson, "The Experiences of Violent and Serious Victimization," in N. A. Weiner & M. E. Wolfgang, eds., *Pathways to Criminal Violence* (Sage, Newbury Park, Calif.) 1989, pp. 202–234.
- 11 Sir Henry Summer Maine, *Ancient Law*, 10th ed. (John Murray, London) 1905.
- 12 S. Schafer, *The Victim and His Criminal* (Random House, New York) 1968.
- 13 R. Masters & C. Roberson, *Inside Criminology* (Prentice-Hall, Englewood Cliffs, N.J.) 1985.
- 14 H. Gordon, *Hammurabi's Code: Quaint or Forward Looking* (Rinehart, New York) 1957.
- 15 G. O. Mueller & H. H. A. Cooper, "Society and the Victim: Alternative Responses," in I. Drapkin & E. Viano, eds., *Victimology: A New Focus*, vol. 2 (D. C. Heath, Lexington, Mass.) 1974, pp. 85–102.
- 16 S. A. Cook, *The Laws of Moses and the Code of Hammurabi* (Adam and Charles Black, London) 1903.
- 17 O. W. Mueller, "Tort, Crime and the Primitive," 43 *Journal of Criminal Law, Criminology, and Police Science*, 303 (1955).
- 18 S. T. Reed, *Criminal Justice*, 3rd ed. (Macmillan Publishing Company, New York) 1993.
- 19 B. Mendelsohn, "The Origin and Doctrine of Victimology," 3 *Excerpta Criminologica*, 239–244 (June 1963).
- 20 Schafer, *The Victim and His Criminal*.
- 21 B. Mendelsohn, "Rape in Criminology," *Giustizia Penale*, 1940.
- 22 Hans von Hentig, *The Criminal and His Victim* (first published by Yale University Press, New Haven, Conn. 1948 and republished by Schocken Books, New York 1979) (Hereafter *The Criminal and His Victim*).
- 23 Some scholars have subdivided von Hentig's original typology (probably for ease of understanding). See, for example, Doerner and Lab, *Victimology* (West Publishing, St. Paul, Minn.) 1994, where the authors list 13 classifications. They arrive at this number by listing immigrants, minorities, and dull normals as separate categories instead of one subdivision as von Hentig did.
- 24 von Hentig, *The Criminal and His Victim*.
- 25 Schafer, *The Victim and His Criminal*.
- 26 *Ibid.* at p. 5.
- 27 *Ibid.* at p. 139.
- 28 *Ibid.* at p. 152.
- 29 M. E. Wolfgang, *Patterns of Criminal Homicide* (University of Pennsylvania Press, Philadelphia, Pa.) 1958.
- 30 M. E. Wolfgang, *Analytical Categories for Research in Victimization* (Kriminologische Wegzeichen, Munich, Germany) 1967, p. 17.
- 31 *Ibid.* at pp. 24, 72.
- 32 Andrew Karmen, *Crime Victims: An Introduction to Victimology*, 2nd ed. (Brooks/Cole, Pacific Grove, Calif.) 1995.
- 33 D. Brookman, *Drugs, Alcohol, and Domestic Violence* (U.S. Department of Justice, Washington, D.C.) 1997.
- 34 M. Hindelang, M. Gottfredson, & J. Garofalo, *Victims of Personal Crime: An Empirical Foundation for a Theory of Personal Victimization* (Ballinger, Cambridge, Mass.) 1978.
- 35 L. E. Cohen & M. Felson, "Social Change and Crime Rate Trends: A Routine Activity Approach," 44 *American Sociological Review*, 588 (1979).
- 36 L. E. Cohen, J. R. Kluegel, & K. C. Land, "Social Inequality and Predatory Criminal Victimization: An Exposition and Test of a Formal Theory," 46(5) *American Sociological Review*, 505 (1981).
- 37 Cliff Roberson & Harvey Wallace, *Introduction to Criminology* (Copper House, Incline Village, NV) 1998.
- 38 R. I. Mawby & S. Walklate, *Critical Victimology: International Perspectives* (Sage, Thousand Oaks, Calif.) 1994, p. 21.
- 39 M. Amir, *Patterns in Forcible Rape* (University of Chicago Press, Chicago) 1971.

- 40 L. W. Kennedy & V. F. Sacco, *Crime Victims in Context* (Roxbury Publishing, Los Angeles) 1998.
- 41 W. Ryan, *Blaming the Victim* (Vintage Books, New York) 1976.
- 42 R. C. Davis, A. J. Lurigio, & W. G. Skogan, eds., *Victims of Crime*, 2nd ed. (Sage, Thousand Oaks, Calif.) 1997, p. 232.
- 43 E. C. Viano, "Victimology Today: Major Issues in Research and Public Policy," in E. C. Viano, ed., *Crime and Its Victims: International Research and Public Policy Issues* (Hemisphere, New York) 1989, pp. 3–14.
- 44 Lynne Henderson, "The Wrongs of Victim's Rights," 37 *Stanford Law Review*, 957 (1985).
- 45 Emilio C. Viano, *Victim/Witness Services: A Review of the Model* (GPO, Washington, D.C.) 1979.
- 46 M. Largen, "Grassroots Centers and National Task Forces: A Herstory of the Anti-Rape Movement," 32 *Aegis*, 46–52 (Autumn 1981).
- 47 "Remarks by the President at Announcement of Victims Constitutional Amendment," *Press Release* (The White House, Office of the Press Secretary, Washington, D.C.) June 25, 1996, p. 2.
- 48 *President's Task Force on Victims of Crime* (Final Report, GPO, Washington, D.C.) December 1982.
- 49 Victims of Crime Act of 1984, 42 U.S.C. Section 10601 (1984).
- 50 Jeremy Travis, "Violence Against Women: Reflections on NIJ's Research Agenda," 230 *National Institute of Justice Journal*, 21–35 (February 1996).
- 51 Crim. No. 3:08cr132, 2009 U.S. Dist. LEXIS 24401 (E.D. Vir. March 24, 2009).

An Overview of the Justice System

Chapter Outline

The Court Systems

- Introduction
- State Court Systems
- Juvenile Court System
- Federal Court System

The Parties

- Victim
- Perpetrator
- Law Enforcement
- Prosecutor
- Defense Counsel
- Courts
- Correctional System

Criminal Justice Procedures

- Foundational Concepts in Criminal Procedure
- Outline of Trial Procedure
- Pretrial Activities
- First Appearance
- Preliminary Hearing or Grand Jury Hearing
- Arraignment
- Jury Selection
- Opening Statement
- Case-in-Chief
- Defendant's Evidence

- Closing Argument

- Deliberation and Verdict

- Sentencing

Civil Court Proceedings and Victims

- Jurisdiction

- Filing a Complaint

- Filing a Response

- Pretrial Activities

- Trial

- Verdict

- Judgment

Juvenile Court Dependency Procedures

- Detention Hearing

- Adjudicatory or Jurisdictional Hearing

- The Dispositional Hearing

Restorative Justice

- Introduction

- Function of a Restorative Justice Program

- Victim–Offender Mediation

- Summary*

- Discussion Questions*

- Endnotes*

LEARNING OBJECTIVES

After reading this chapter, you should be able to:

- Analyze the principle of federalism and how it affected the structure of our court system
- Evaluate how the dual system of state and federal courts functions
- Describe the characteristics of the American court system
- Explain how the juvenile court system functions
- Analyze the roles and responsibilities of each party in the criminal justice system
- Describe the various steps in the criminal justice process
- Explain the differences between the various types of pleas a defendant may enter

- Explain the basic differences between a criminal and a civil trial
- Differentiate the concepts of negligence and intentional torts
- Describe the various stages of a civil trial
- Discuss the phases of a juvenile dependency hearing

THE COURT SYSTEMS

Introduction

The U.S. Constitution is the supreme law of the land in the United States. It creates a federal system of government in which power is shared between the federal government and the state governments. Due to federalism, both the federal government and each of the state governments have their own court systems.

Understanding the role and functions of the various court systems in the United States provides professionals with a solid foundation for understanding the dynamics of the law. It is a complex aspect of our legal system that can be confusing and frustrating to victims when they are first exposed to it. Understanding the rationale behind its present-day structure may help victims understand more clearly the manner in which laws operate and interact.

To comprehend the role of federal and state law, it is essential to have a firm grasp of the principles of how the American justice system functions. For a victim of crime, it is the most confusing, frustrating, and complex environment to navigate. This section will provide a brief overview of the court systems in the United States.

The court systems in the United States are based on the principle of federalism. The first Congress established a federal court system, and the individual states were permitted to continue their own judicial structure. There was general agreement among our nation's founders that individual states needed to retain significant autonomy from federal control. Under this concept of federalism, the United States developed as a loose confederation of semi-independent states having their own courts, with the federal court system acting in a very limited manner. In the early history of our nation, most cases were tried in state courts. It was only later that the federal government and the federal judiciary began to exercise jurisdiction over crimes and civil matters. **Jurisdiction** in this context simply means the ability of the court to enforce laws and punish individuals who violate those laws.

As a result of this historical evolution, a dual system of state and federal courts exists today. Therefore, federal and state courts may have concurrent jurisdiction over specific crimes. For example, a person who robs a bank may be tried and convicted in state court for robbery, then tried and convicted in federal court for the federal offense of robbery of a federally chartered savings institution.

Another characteristic of the American court system is that it performs its duties with little or no supervision. A Supreme Court justice does not exercise supervision over lower court judges in the same way that a government supervisor or manager exercises control over employees. The U.S. Supreme Court and the various state supreme courts exercise supervision only in the sense that they hear appellate cases from lower courts and establish certain procedures for these courts.

A third feature of the U.S. court systems is one of specialization and occurs primarily at the state and local levels. In many states, courts of limited jurisdiction hear misdemeanor cases. Other state courts of general jurisdiction try felonies. Still other courts may be designated as juvenile courts and hear only matters involving juveniles. This process also occurs in certain civil courts that hear only family law matters, probate matters, or civil cases involving damages. At the federal level, there are courts such as bankruptcy that hear only cases dealing with specific matters.

The fourth characteristic of the American court systems is its geographic organization. State and federal courts are organized into geographic areas. In many jurisdictions, these are called judicial districts and contain various levels of courts. For example, on the federal level, the U.S. Court of Appeals for the Ninth Circuit has district (trial) courts that hear matters within certain specific boundaries and an appellate court that hears all appeals from cases within that area. Several studies have been conducted regarding the differences in sentences for the same type of crime in geographically distinct courts. For example, in Iowa the average sentence for motor

vehicle theft is 47 months, whereas the average sentence for the same offense in New York is 14 months.¹ This and similar discrepancies may reflect different social values and attitudes within specific geographic areas.

State Court Systems

Historically, each of the 13 original states had its own unique court structure. This independence continued after the American Revolution and resulted in widespread differences among the various states, some of which still exist today. Because each state adopted its own system of courts, the consequence was a poorly planned and confusing judicial structure. Several reform movements have attempted to streamline and modernize this system. These reforms have resulted in many of the state court systems adopting a three-tier judicial system.

Most state courts are now divided into three levels:

- Trial courts
- Appellate courts
- State supreme courts or state courts of last resort

TRIAL COURTS **Trial courts** are courts where civil and criminal cases start and finish. The trial court conducts an entire series of acts that culminate in either the defendant's release or sentencing. State trial courts can be further divided into courts of limited or special jurisdiction and courts of general jurisdiction. The nature and type of case determines which court will have jurisdiction.

Courts that only hear and decide certain limited legal issues are courts of **limited jurisdiction**. These courts hear and decide issues such as traffic tickets or set bail for criminal defendants. Typically, these courts hear certain types of minor civil or criminal cases. There are approximately 13,000 local courts in the United States. They are called county, magistrate, justice, or municipal courts. Judges in these courts may be either appointed or elected. In many jurisdictions, these are part-time positions, and the incumbent may have another job or position in addition to serving as a judge. However, simply because they handle minor civil and criminal matters does not negate the fact that these courts perform important duties. Often, the only contact the average citizen will have with the judicial system occurs at this level.

In addition, courts of limited jurisdiction may hear certain types of specialized matters, such as probate of wills and estates, divorces, child custody matters, and juvenile hearings. These types of courts may be local courts or, depending on the state, courts of general jurisdiction that are designated by statute to hear and decide specific types of cases. For example, in Texas a district court is considered a court of general jurisdiction; however, certain district courts are designated to hear only juvenile matters, thereby becoming a court of limited jurisdiction when sitting as a juvenile court.

Courts of **general jurisdiction** are granted authority to hear and decide all issues that are brought before them. These courts normally hear all major civil or criminal cases. They are also known by a variety of names, such as superior courts, circuit courts, district courts, or courts of common pleas. Because they are courts of general jurisdiction, they have authority to decide issues that occur anywhere within the state. Some larger jurisdictions such as Los Angeles or New York may have numerous courts of general jurisdiction within the city limits. These courts also hear the most serious forms of criminal matters, including death penalty cases.

Courts of general jurisdiction traditionally have the power to order individuals to do, or refrain from doing, certain acts. These courts may issue injunctions that prohibit persons from performing certain acts, or they may require individuals to do certain functions or duties. This authority is derived from the equity power that resides in courts of general jurisdiction.

In some states, like California, there is a unification movement which merges the inferior courts and the courts of general jurisdiction into one court that handles matters that were in the past handled by either the inferior courts or courts of general jurisdiction. The unification movement is an attempt by states to reduce the costs of their justice systems.

Equity is the concept that justice is administered according to fairness, as contrasted with the strict rules of law. In early English common law, such separate courts of equity were known as courts of Chancery. These early courts were not concerned with technical legal issues; rather they focused on rendering decisions or orders that were fair or equitable. In modern times, the power of these courts has been merged with courts of general jurisdiction, allowing them to rule

on matters that require fairness as well as the strict application of the law. The power to issue temporary restraining orders (TROs) in intimate partner abuse cases comes from the equitable powers of the court.

Appellate jurisdiction is reserved for courts that hear appeals from both limited and general jurisdiction courts. These courts do not hold trials or hear evidence. They decide matters of law and issue formal written decisions or “opinions.” There are two classes of appellate courts: intermediate, or courts of appeals, and final, or supreme courts.

COURTS OF APPEALS The intermediate appellate courts are known as courts of appeals. Approximately half the states have designated intermediate appellate courts. These courts may be divided into judicial districts and will hear all appeals within their jurisdiction. They will hear and decide all issues of law that are raised on appeal in both civil and criminal cases. Because these courts deal strictly with legal or equitable issues, there is no jury to decide factual disputes. These courts accept the facts as determined by the trial courts. Intermediate appellate courts have the authority to reverse the decision of the lower courts and to send the matter back with instructions to retry the case in accordance with their opinion. They may also uphold the decision of the lower court. In either situation, the party that loses the appeal at this level may file an appeal with the next higher appellate court.

SUPREME COURTS Supreme courts or courts of last resort are the highest state appellate courts. They may be known as supreme courts or courts of last resort. There may be five, seven, or nine justices sitting on this court depending on the state. Final appellate courts have jurisdiction to hear and decide issues dealing with all matters decided by lower courts, including ruling on state constitutional or statutory issues. Their decision is binding on all other courts within the state. Once this court has decided an issue, the only appeal left is to file in the federal court system. Note that appeals from a state court system to the federal court system may only be made if there is a federal issue involved. If there are no federal issues involved, then the highest state court is the final decision maker. There are two state court systems in which the state supreme courts do not hear criminal cases. In Oklahoma and in Texas, there is a separate state criminal court of appeals that decides appeals only in criminal cases.

Juvenile Court Systems

Because of the significant increase in the importance of juvenile crime in our society, a brief overview of juvenile courts is warranted. Although there are some differences, both federal and state systems were initially founded on the concept of rehabilitating young offenders. In addition, both systems wanted to shield juveniles from public scrutiny; therefore, each contained provisions for keeping matters confidential.

The present-day American state court system of dealing with children involved in crimes began in 1899 when the state of Illinois passed the Illinois Juvenile Court Act. It was at that time that the juvenile court system as we know it today came into existence.² This statute separated the juvenile court system from the adult criminal system. It labeled minors who violated the law as “delinquents” rather than criminals and required that juvenile court judges determine what “is in the best interests of the minor” in rendering their decision.

The juvenile court system is guided by five basic principles:

1. The state is the ultimate parent of all children within its jurisdiction, the doctrine of *parens patriae*.
2. Children are worth saving, and the state should utilize nonpunitive measures to do so.
3. Children should be nurtured and not stigmatized by the court process.
4. Each child is different, and justice should be tailored to meet individual needs and requirements.
5. The use of noncriminal sanctions is necessary to give primary consideration to the needs of the child.³

It is important to note that each state determines its own jurisdictional age of minors who are handled by its juvenile system. Most involve children who are under 18 years of age. A few states use higher ages, up to 21. Three states cover children up to 15 years of age and adjudicate 16-year-olds in adult criminal courts.

Although these principles were originally adopted for delinquents or minors who committed criminal acts, they have been broadly applied to proceedings involving children who are victims of abuse.

Understanding the criminal court system is only the beginning of appreciating the complexity of the American criminal justice system. Professionals working in this area must also understand the parties involved in the criminal justice system. The different parties that comprise our system are reviewed in the following sections.

The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics.

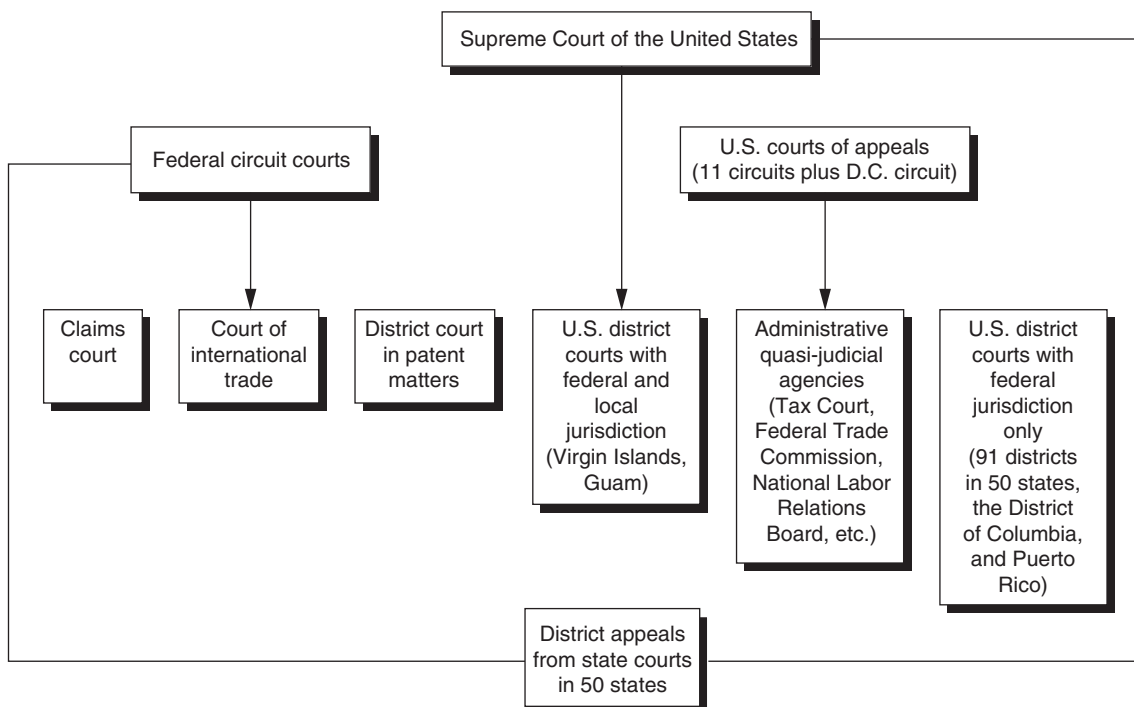
—OLIVER WENDELL HOLMES, *THE COMMON LAW*, 1881

Federal Court System

Whereas state courts have their origin in historical accident and custom, federal courts were created by the U.S. Constitution. Section 1 of Article 3 established the federal court system with the words providing for “one Supreme Court, and . . . such inferior Courts as the Congress may from time to time ordain and establish.” From this beginning, Congress has engaged in a series of acts that has resulted in today’s federal court system. The Judiciary Act of 1789 created the U.S. Supreme Court and established district courts and circuit courts of appeals (later known as the U.S. Courts of Appeal). There are some federal courts, like the U.S. Court of Military Appeals, that were enacted by legislation and are considered as legislative courts and not “Article III” courts. Figure 2.1 provides an overview of the federal court system.

FEDERAL DISTRICT COURTS Federal district courts are the lowest level of the federal court system. These courts have original jurisdiction over all cases involving a violation of federal statutes. District courts handle thousands of criminal cases per year. The U.S. District Courts are the primary trial courts in the federal system. There is at least one district court in each state. These courts are defined by the geographical label of the state they are located in, for example, U.S. District Court for the Southern District of New York.

FIGURE 2.1 Structure of the Federal Court System



U.S. COURTS OF APPEALS The U.S. Courts of Appeals are the intermediate appellate-level courts within the federal system. These courts are also referred to as circuit courts because the federal system is divided into eleven circuits. A Twelfth U.S. Court of Appeals serves the Washington, D.C., area. These courts hear appeals from the district courts and habeas corpus appeals from state court convictions. These appeals are usually heard by panels of three appellate court judges rather than by all the judges of each circuit.

U.S. SUPREME COURT The U.S. Supreme Court is the highest court in the land. It has the capacity for judicial review of all lower court decisions, as well as state and federal statutes. By exercising this power, the Supreme Court determines what laws and lower court decisions conform to the mandates set forth in the U.S. Constitution. The concept of judicial review was first referred to by Alexander Hamilton in the *Federalist Papers*, in which he described the Supreme Court as ensuring that the will of the people will be supreme over the will of the legislature.⁴ This concept was firmly and finally established in our system when the Supreme Court asserted its power of judicial review in the 1803 case of *Marbury v. Madison*.⁵

The U.S. Supreme Court and the lower federal courts have jurisdiction only in federal issues. There must be a federal issue before a federal court has jurisdiction in criminal matters. For example, if an accused is convicted in a state court for robbery, before the U.S. Supreme Court can consider his or her case, there must be a federal issue, for example, the search of his or her home violated the Fourth Amendment of the U.S. Constitution.

Although it is primarily an appellate court, the Supreme Court has original jurisdiction in the following cases: cases between the United States and a state; cases between states; cases involving foreign ambassadors, ministers, and consuls; and cases between a state and a citizen of another state or country.

The Court hears appeals from lower courts and the various state courts of last resort (generally the state supreme courts). If four justices of the U.S. Supreme Court vote to hear a case, the Court will issue a **Writ of Certiorari**—an order sent to a lower court requiring the records of the case to be sent to the Supreme Court for review. The Court meets on the first Monday of October and usually remains in session until June. The Court may review any case it deems worthy but in actuality hears very few of the cases filed. Of approximately 8,000 appeals each year, the Court agrees to review fewer than 150; however, it may not issue an opinion on each case.

To find out more on the federal court system, Google or search the website of the U.S. Court System (uscourts.gov)

THE FEDERAL COURT JUVENILE SYSTEM When Congress addressed the issue of juvenile offenders, it established two alternatives for their prosecution:

- The juvenile can waive personal rights to be treated as a juvenile, or
- The juvenile can have the matter treated as a civil proceeding called *juvenile adjudication*.

If the court finds that the juvenile committed the offense, that individual faces a series of federal sanctions, including incarceration. There is a federal preference for state prosecution of juveniles, because there is no separate federal juvenile court judge or juvenile detention system. If adjudicated to be a delinquent, the juvenile is placed in a state juvenile facility. The federal government contracts with states for this service.

Under our doctrine of federalism, federal courts have limited jurisdiction. Their jurisdiction over juveniles or adults must be based on a federal issue such as the violation of a federal law or an act committed on federal property.

Until the passage of the Crime Control Act of 1990, the federal government prosecuted only juveniles who committed crimes on federal reservations, where the states had no jurisdiction. The Crime Control Act added two other categories of juveniles who fall under federal juvenile court jurisdiction: Juveniles who commit felony crimes of violence and juveniles involved in certain drug felonies. Similar to most state court systems, federal law allows for the transfer or certification of a juvenile to “adult status.” This procedure allows juveniles to be tried as adults in either the state or the federal court system.

Under federal law, juveniles are those persons under 21 who commit a federal offense before their 18th birthday. A federal judge acts as the federal equivalent of the state juvenile

FIGURE 2.2 Comparison of the Two Court Systems in the United States

The Federal Court System	The State Court System
Article III of the Constitution invests the judicial power of the United States in the federal court system. Article III, Section 1, specifically creates the U.S. Supreme Court and gives Congress the authority to create the lower federal courts.	The Constitution and laws of each state establish the state courts. A court of last resort, often known as a Supreme Court, is usually the highest court. Some states also have an intermediate Court of Appeals. Below these appeals courts are the state trial courts. Some are referred to as Circuit or District Courts.
Congress has used this power to establish the 13 U.S. Courts of Appeals, the 94 U.S. District Courts, the U.S. Court of Claims, and the U.S. Court of International Trade. U.S. Bankruptcy Courts handle bankruptcy cases. Magistrate Judges handle some District Court matters.	States also usually have courts that handle specific legal matters, for example, probate court (wills and estates), juvenile court, and family court.
Parties dissatisfied with a decision of a U.S. District Court, the U.S. Court of Claims, and/or the U.S. Court of International Trade may appeal to a U.S. Court of Appeals.	Parties dissatisfied with the decision of the trial court may take their case to the intermediate Court of Appeals.
A party may ask the U.S. Supreme Court to review a decision of the U.S. Court of Appeals, but the Supreme Court usually is under no obligation to do so. The U.S. Supreme Court is the final arbiter of federal constitutional questions.	Parties have the option to ask the highest state court to hear the case.
NOTE: Only certain cases are eligible for review by the U.S. Supreme Court.	

court judge. The proceedings are confidential with no member of the public or press in attendance. Federal jurisdiction in juvenile matters is established when:

- the state does not have jurisdiction;
- the state does not have programs or services available for juveniles; or
- the offense charged is a violent felony or drug offense, and there is a substantial federal interest in the case.

A juvenile proceeding is initiated by the filing of an “information.” In most cases, the U.S. attorney must file a certification stating there are grounds for federal jurisdiction. The hearing in federal court is very similar to a court trial.

For a brief comparison between the federal and state court systems in the United States, see Figure 2.2.⁶

THE PARTIES

Seven parties are involved in the criminal justice process: the victim, the perpetrator, the law enforcement, the prosecutor, the defense attorney, the courts, and the correctional system. Each of these parties or organizations has different goals and needs. Not all emotions or objectives are the same for all the parties. It is obvious, for example, that the prosecutor and defense attorney will have different perspectives on the outcome of the trial. Those who work in this area must be familiar with the various responsibilities of each of these parties and be able to explain their functions to those who are involved in the criminal justice system.

Victim

The victim of any crime is often the forgotten party in the criminal justice system. For many years, victims were perceived as simply another witness to the crime. The prevailing attitude was that the real victim was the “People of the State” in which the crime was committed. Families of murder victims could not obtain information regarding the case and were often ignored by overworked and understaffed criminal justice personnel. Within the last 40 years, this attitude has begun to change as we become more aware of the needs and desires of crime victims.



Photo 2.1 Two criminalists working on a crime scene.
Dmitri Ma/Shutterstock

Professionals dealing with crime victims should understand that they may be suffering emotional and/or physical trauma as a result of the offense.⁷ Care must be taken to ensure that victims understand how the process works and what their rights are. It is also important to realize that individuals other than the original victim may have an interest in the process. These parties include the victim's family and friends, and in some situations the victim's employer. All appropriate parties should be notified of every significant event within the criminal justice process. Victim services providers must also respect and protect the victim's right to privacy if that is the victim's desire.

Victims of crime will normally have a number of questions and concerns regarding the court system and their involvement in it. One frustrating aspect of this process is that victims often perceive that the defendant has more rights and faster access to the courts than they do. Other chapters of this textbook examine in detail

the rights of victims of crime during the criminal justice process. Photo 2.1 depicts officers investigating a murder. In cases similar to this, it is often difficult to determine who should be included as a victim of the crime.

Perpetrator

The perpetrator of a crime is guaranteed certain rights within our form of government. Many aspects of the criminal procedure process are controlled by the U.S. Constitution, specifically the Bill of Rights (the original ten amendments to the Constitution). These federal constitutional protections concerning individual rights are, for the most part, binding on state courts.⁸

These rights attach to the perpetrator early in the criminal procedure process, and violation of these rights may result in the case being dismissed. For example, if the perpetrator confesses to the crime of murder, and that confession is obtained in violation of the person's constitutional rights, it may be suppressed.⁹ If the confession is the only link connecting the defendant to the crime, the case may have to be dismissed. When these types of incidents occur, it is difficult for the victim to understand why the defendant goes free when there has been a confession. If this happens, professionals working with victims must attempt to offer other alternatives such as availability of filing civil lawsuits against the perpetrator.

Law Enforcement

One law enforcement role in the criminal process is to apprehend the perpetrator.¹⁰ Although this may seem to be a simple concept, understanding the organization and function of law enforcement agencies in the United States can be an exercise in frustration. American law enforcement activities take place on three independent levels: federal, state, and local. There is little uniformity among these entities. In addition, each of these agencies may enforce different criminal laws based on different jurisdictional authority. For example, the U.S. Customs Service may arrest individuals who violate federal laws regarding the importation of goods into the United States, the state highway patrol may be tasked with enforcing traffic laws on highways and streets, and the local police department may be engaged in tracking down a serial rapist.

To confuse the issue further, there is another emerging form of law enforcement activity in the United States whose activities are expanding. Private protective services have been defined as "those self-employed individuals and privately funded business entities and organizations

providing security-related services to specific clientele for a fee...in order to protect their persons, private property, or interests from various hazards.”¹¹ Normally these firms are employed by corporate clients to protect private interests. They act as private citizens and may make arrests for violations of crimes committed in their presence.

Prosecutor

The prosecuting attorney is a familiar individual in the criminal justice process. The office of the prosecuting attorney is known by a variety of names, including district attorney, county attorney, commonwealth attorney, and, at the federal level, the U.S. attorney. The prosecutor plays a critical role in the criminal process for a variety of reasons. That person is the go-between for law enforcement and the courts and decides what type of charges to file, whether to plea bargain a particular case, and how to present the case to the court or jury. The primary duty of the prosecutor is to promote justice, not just to prosecute.

One hotly debated issue surrounding the prosecutor’s function concerns plea bargaining.¹² From a criminal justice perspective, a plea bargain serves several purposes: A defendant may receive the opportunity to plead guilty to a lesser charge that will reduce the time spent in jail or prison, or the prosecutor may have a weak case and a plea bargain may ensure that the defendant is convicted of something rather than walking free after an acquittal. Also, from the judge’s perspective, a plea bargain eliminates one more case.¹³ A plea bargain may also benefit a victim in several ways: A plea to a lesser offense eliminates the requirement that the victim relive the crime by testifying in court and, similar to the prosecutor’s position, a plea bargain guarantees that the defendant is convicted of some crime. Conversely, many victims resent plea bargains because they believe that a jury should decide the case, and that if the perpetrator is guilty, he or she should be punished to the maximum extent allowed by the law.

Another controversial aspect of plea bargaining is that some prosecutors fail to notify the victim of their intent to reduce or dismiss some of the charges in exchange for a plea of guilty. There are victims who have found out about the plea bargain at the time the prosecutor called to inquire about the status of the case. If plea bargaining is to occur, the preferred method is to fully involve the victim in the decision-making process. If the victim is adamantly opposed to the reduction or dismissal of charges, the prosecutor should seriously consider not going forward with the plea bargain.

The prosecuting attorney is the representative of the people of the state or of the United States. This person is not the crime victim’s personal attorney. This aspect of our criminal justice system is very troubling to many victims. However, a prosecutor who is sensitive to the needs and concerns of victims of crime can help reduce these concerns and many of the other traumas suffered by these individuals.

Defense Counsel

The defense counsel represents the rights and interests of the perpetrator. Unlike the prosecutor who is concerned with justice and fairness, the defense attorney’s obligation as established by the American Bar Association’s General Standards of Conduct is to use all available courage, devotion, and skills to protect the rights of the accused. Many defense attorneys interpret this obligation as requiring that they do everything possible to obtain an acquittal even if they know that the defendant in fact committed the offense. Unlike the prosecutor, the defense counsel, even though an officer of the court, has no duty to promote justice. The defense counsel has the primary duty to advocate for the best interests of the accused.

The Sixth Amendment to the U.S. Constitution requires that those who are accused of crimes have a right to be represented by an attorney. The Supreme Court in the landmark case of *Gideon v. Wainwright* established the principle that all defendants have a right to counsel in all felony cases even if they could not afford to hire their own attorney.¹⁴ The court extended this concept to misdemeanor cases in *Argersinger v. Hamlin* holding that absent a waiver no person may be imprisoned for any offense, either misdemeanor or felony, unless represented by an attorney.¹⁵

There are basically four types of defense counsel: public defenders, contract defense services, assigned defense counsel, and private defense counsel. Public defenders are hired and paid for by the government and are appointed to represent those persons charged with crimes who cannot afford to hire an attorney for representation. Many counties have public defender’s offices that are staffed by very able, aggressive attorneys. However, there are instances when, for a variety of reasons, the public defender’s office has a conflict of interest in a case. For example,

this may occur if there were two defendants in one case. In this situation, the court may appoint an attorney from the contract defense services to represent one of the two defendants. Contract defense services are normally composed of a group of attorneys who have entered into an agreement with the county to represent indigent defendants for a specified amount of money.

Assigned defense counsel exists in the majority of the counties in the United States.¹⁶ Many of these counties are small and cannot afford the cost of maintaining a public defender's office. Under the assigned defense counsel format, the court maintains a list of attorneys who are willing to be appointed to represent indigent criminal defendants. When a defendant appears in court, the judge appoints the next attorney on the list to represent the perpetrator.

Another category of defense attorney is the private defense counsel. These attorneys usually represent those defendants who are capable of paying for their services. Not only do perpetrators have a right to an attorney, the courts have held that the attorney must be competent.¹⁷ Although the Constitution requires competent counsel who will vigorously defend the perpetrator, there is no requirement or right to have an attorney who will knowingly present perjured testimony. In *Nix v. Whiteside*, the defense attorney, upon learning that his client was going to take the stand and commit perjury, informed the client that he could not permit such testimony and if the client insisted on going forward and giving this testimony, the attorney would disclose the perjury and withdraw from the case. The perpetrator testified and did not commit perjury; however, he did file an appeal claiming ineffective counsel. The court disagreed, holding that attorneys who follow their state's rules of professional (ethical) conduct do not violate the Sixth Amendment right to counsel.¹⁸

Courts

Both the structure and organization of the court system were explained earlier in this chapter. Here it is only necessary to explain that the courts play a critical role in the criminal justice process. They bring an impartiality and formality to the system that provides it with balance, and hopefully justice.

Correctional System

One of the least discussed entities in the criminal justice process is the correctional system. Victims' involvement with perpetrators does not end at the conviction and sentencing phase. Many victims must appear each year and offer evidence as to why a certain perpetrator should not be released from custody. Therefore, it is necessary for any professional involved with victims to understand the role and responsibilities of the various correctional institutions.

There are two basic types of penal facilities: jails and prisons. **Jails** are operated by local agencies such as cities or counties. Jails are used for pretrial detention, holding after sentencing, and for incarceration of those persons who are not being sentenced to prison. Normally these are individuals who have been convicted of misdemeanors and will serve up to one year of imprisonment. Some jurisdictions use jail "boot camps" where the inmates undergo rigorous mental and

At What Point Must the State Appoint an Indigent Defendant Counsel?

In *Rothgery v. Gillespie County* 128 S. Ct. 2578, 2008 U.S. LEXIS 5057 (2008), Justice David Souter delivered the majority opinion in which the Court held that Rothgery had been denied his right to be appointed counsel at the initial hearing of the trial court.

In his opinion, Justice Souter notes that the Sixth Amendment right of the "accused" to assistance of counsel in all criminal prosecutions is limited by its terms: It does not attach until a prosecution is commenced. He states that the Court has, "for purposes of the right to counsel, pegged commencement to the initiation of adversary judicial criminal proceedings—whether by way of formal charge, preliminary hearing, indictment, information, or arraignment." He continues as follows:

[T]he rule is not "mere formalism," but recognition of the point at which "the government has committed itself to prosecute," "the adverse positions of government and defendant have solidified," and the accused "finds himself faced with the prosecutorial forces of organized society, and immersed in the intricacies of substantive and procedural criminal law."

The Court held that a criminal defendant's initial appearance before a judicial officer, where he learns the charge against him and his liberty is subject to restriction, marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel. The Court concluded that the county had violated Rothgery's right to appointed counsel at the initial hearing.

physical training during their incarceration. **Prisons** are administered by states or by the federal government and are reserved for the more serious offenders. There are various types of prisons that range from minimum-security institutions to those that house the most violent predators in society.

There are three types of persons involved in the corrections field: probation officers, parole officers, and correctional officers. Probation is a distinctly American institution. It began with John Augustus, who in 1841 asked a Boston judge to permit him to sponsor an offender. The court agreed to his request, and the perpetrator was sentenced to Augustus's custody instead of jail. (Augustus is considered the father of probation.) **Probation** is a conditional release of the offender after he or she has been found guilty. It is traditionally used on misdemeanor or other low-level crimes. It allows the perpetrator to remain free so long as that person meets certain conditions. Probation officers are those persons employed by the local jurisdictions to supervise these offenders. Many different forms of probation services are offered in the United States, and there is a continuing debate on which one is the most effective.

Parole is the conditional release of an inmate back into the community from a prison or other form of correctional institution. Many jurisdictions allow for the parole of offenders, which normally occurs after a board or commission has made a determination that the prisoner would benefit from early release. Victims may appear at these hearings and oppose the release of those predators. The victims are especially those who have been sexually assaulted themselves or those whose loved ones had been killed. These hearings are held every year in many jurisdictions with the result that the victim must relive the crime annually in an attempt to keep the perpetrator incarcerated.

Correctional officers are those persons who are hired to maintain security in jails or prisons. Many of these positions require only a high school education and a clean criminal background. Some states are beginning to impose more educational requirements on applicants, and several states have upgraded their training for correctional officers.

The court system and the parties involved are only a small part of the entire criminal justice system. Victim advocates must also be familiar with the criminal justice process. The next section examines the various steps in this system.

CRIMINAL JUSTICE PROCEDURES

Foundational Concepts in Criminal Procedure

As an introduction to the study of criminal procedure, the foundational concepts in criminal procedure below should be considered.

- The guarantees of the bill of rights in the U.S. Constitution apply directly only to the federal government.
- The due process clause of the Fourteenth Amendment by selective incorporation applies most of the rights contained in the bill of rights to the states.
- State constitutions may provide rights to citizens in addition to those provided for in the U.S. Constitution, but may not restrict the rights granted by the federal constitution.
- The following are the two basic questions regarding the burden of proof in criminal procedure: (1) Who has the burden of proving an issue? (2) What is the magnitude of the burden? The magnitude may be (1) proof beyond a reasonable doubt, (2) clear and convincing evidence, or (3) preponderance of evidence. On issues relating to the guilt of a defendant, the burden is proof beyond a reasonable doubt and that burden rests on the prosecutor or state.
- Charges in a criminal trial must first be formalized either by an indictment returned by a grand jury or by information prepared by a prosecutor.
- Prior to trial, both the prosecution and the defense may submit pretrial motions, and both have discovery rights imposed on them.
- Our system of criminal procedure is based on the adversarial process.

Two famous quotes from former U.S. Supreme Court Associate Justice Oliver Wendell Holmes should be noted:

- Whatever disagreement there may be as to the scope of the phrase “due process of law,” there can be no doubt that it embraces the fundamental conception of a fair trial, with opportunity to be heard.
- “The life of the law has not been logic; it has been experience.”¹⁹

Outline of Trial Procedure

In order that the reader may better understand the trial procedures, an outline of the general procedure in a criminal trial is included here. Depending upon the jurisdiction, there may be some slight deviation from the procedures set forth.

- Presentation of indictment or information
- Selection of jury
- Swearing in of jury (trial technically begins at this time)
- Reading of charge and plea
- Opening statement by prosecuting attorney
- Opening statement by defense (this may be waived entirely or until prosecution rests)
- Calling of first prosecution witness and administration of the oath
- Direct examination
- Cross-examination (may be waived)
- Redirect examination (may be waived)
- Recross-examination (may be waived)
- Calling of additional prosecution witnesses, administration of oath, direct examination, and other procedure as in case of first witness
- Prosecution rests
- Motion for judgment of acquittal by defense (if denied, then the following procedure)
- Opening statement by defense (if not previously given)
- Calling of first defense witness and procedure followed as in case of first prosecution witness
- Defense rests
- Rebuttal presentation by prosecution
- Closing arguments by prosecution and then by defense
- Rebuttal closing argument by prosecution
- Instructing the jury
- Deliberation
- Return of the verdict (if guilty verdict returned, then the following procedure)
- Request for new trial by defense (if denied, then the following procedure)
- Sentencing hearing
- Sentencing the defendant

A criminal proceeding involves many steps. **Adjudication** includes all the formal and informal decisions and steps within the criminal proceeding process. It is important to remember that in criminal cases, the government has the burden of proof. At each stage in the proceedings, the accused is afforded certain rights that are guaranteed by both federal and state constitutions. These constitutional protections have shaped the way in which our criminal process functions. From the first encounter to the execution of an inmate, certain constitutional protections mandate that law enforcement officers and those representing the government carry out their duties in certain ways. These constitutional mandates have resulted in a complex series of hearings and/or actions that must occur during any criminal proceeding. The examination of this process starts with the first formal court activity; that is, those pretrial activities associated with bringing an accused into the system.

Pretrial Activities

Pretrial activities include a variety of acts, including the arrest, the booking, and the filing of a complaint. An **arrest** is taking a suspect into custody in a manner prescribed by law. An arrest usually occurs in one of two ways: When a warrant of arrest has been issued by a magistrate or when an officer has probable cause to believe that the suspect has committed a crime. Arrest usually involves transporting the suspect to jail so that charges regarding the offense can be filed. In misdemeanor or infraction cases, instead of taking the suspect to jail, the officer may simply issue a citation to the suspect. A **citation** is an order to appear before a judge at a later time. An example of a citation is a traffic ticket issued by an officer to a person who violates the vehicle code laws.

When the officer transports the offender to the local police station, the booking process begins. **Booking** involves entering the suspect's name, offense, and other information into the police records. The suspect is also fingerprinted and photographed at this time. The suspect is