

From the Editors

This symposium issue presents the results of research conducted in connection with a joint American-German research project dedicated to a fundamental reconsideration of the role of the victim in penal law.*

It addresses one central question: how can the penal law in all of its aspects—from the definition to the imposition and the eventual infliction of its norms—legitimately and competently incorporate the victim? The various responses to this question published here should go a long way toward grounding and focussing the highly politicized and insular debate over “victims’ rights” in the United States. In particular, they should make it easier to distinguish those elements of the diffuse victims’ rights agenda that properly fall within the realm of the penal law from those that do not. Over the past two decades, that agenda has come to engulf such diverse causes as the reform of the law of evidence, the passage of draconian criminal statutes of all sorts (including, among many others, repeat offender statutes, the indefinite confinement of so-called sexual predators, and community notification of the residence of released sex offenders), the right of the relatives of murder victims to witness the murderer’s execution, the acceleration of the appellate review of death sentences, and the provision of a whole range of services to victims (ranging from reimbursement for travel and funeral expenses to mental health counseling). Conversely, several victim-related issues have yet to be recognized as such, including the significance of victims in the substantive criminal law, the enhancement of criminal penalties for race-motivated crimes, the discrimination against minority victims in the application of death penalty laws, or the interference with the discretion of victims of domestic abuse not to press charges against their abuser.

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The American debate about the role of victims in penal law would benefit from a look at the German approach to the victim problem for two reasons. First, the German approach represents a refreshing alternative to the American focus on procedural rights and the related tendency to view the distribution of criminal process rights among offenders and their victims as a zero sum game. Second, in the procedural realm, German law has implemented a series of measures to bolster the victim's role in the criminal process, ranging from the victim's replacement of the public prosecutor at the criminal trial to the replacement of the trial itself with an alternative process of victim-offender mediation.

The present collection, however, strives to do more than provide a comparative perspective on a central and difficult question of American penal law, and modern penal law in general. It brings together thoughtful treatments of that question by American and German scholars of penal law and of economics without regard to national or disciplinary boundaries.

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