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Contrasting the Emergence of the Victims' Movements in the United States and England and Wales

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Abstract: Over the years, the role of victims in the criminal process has considerably evolved in common law jurisdictions, particularly in the United States and England and Wales. These notable developments have varied greatly between these two jurisdictions. These differences are in great part attributed to the different forces and rationales behind the emergence of the early victims' movements in these respective jurisdictions. Indeed, the movements in the United States and England and Wales adopted different philosophies, strategies, and members came from different backgrounds, which can account for the differences in policies. This article engages in a process of comparative distancing between the forces that drove the movements, as well as the context under which they operated in order to understand the different policies, legal responses and debates that relate to the role of victims of crime in the two selected jurisdictions.

Keywords: victims' movements; victim participation; comparative

1. Introduction

The role of victims in England and Wales and the United States emerged from the same historical background and can be traced back to early 13th century societies, which later evolved and developed under a system of common law [1,2]. In effect, in common law, the role of victims in the criminal process has been the subject of many changes throughout the years. Well until the mid-nineteenth century, a system of private prosecutions was in place where victims would directly be involved in decisions to prosecute. Subsequently, since the middle of the 19th century, the state took over the conflict against the accused, and the victim was largely excluded from the criminal process [3–5]. It is only around the last few decades that victims of crime have taken on a more active role in the criminal process. This is particularly prominent in England and Wales and the federal American jurisdiction, where some of the most important changes have taken place to in legislative documents and policies over the years. This piece examines the role of victims in jurisdictions that are rooted in the same common law tradition but nevertheless have evolved differently. These notable differences within a similar legal tradition provide a strong rationale for selecting these jurisdictions for comparative enquiry.

In England and Wales, the development of statutory documents, such as the Domestic Violence, Crime and Victims Act 2004, along with Victims' Charters and eventually Codes of Practices for Victims of Crime, have recognised a number of important rights for victims of crime. Similarly, in the United States, particularly under the federal legislation *Crime Victims' Rights Act*, victims have received a number of legal rights that also include enforcement mechanisms [6]. However, a close analysis of the nature of these rights reveals several notable differences between these jurisdictions [7–9].

Legal scholars have divided victims' rights into two categories, namely service and procedural rights [10] (p. 52) [11]. Service rights are defined as initiatives that aim to provide victims with a better treatment and better experience in the criminal justice system and include, for example, rights to

information/notification about important court dates and about the progress of their case, assistance for vulnerable victims, and compensation. Procedural rights, on the other hand, are more controversial within the adversarial context, since they provide victims with an active role in the decision-making process. They include opportunities to provide information and sometimes their views and opinions to criminal justice agencies and courts on key criminal justice decisions on prosecution, bail/custody, sentence, parole release, and licence decisions, largely by 'victim impact/personal' statements or consultation with prosecutors.

The rights recognised in England and Wales have mainly consisted of service rights. These rights have generally developed outside criminal proceedings and primarily include rights to information and notification about all stages of the process. Rights of assistance for vulnerable victims and compensation schemes have also been recognised in various legislative documents and versions of the Victims Charters and Codes of practices for victims of crime [12–15]. These rights often operate outside of criminal court proceedings and although they create duties upon criminal justice agencies, they rarely conflict with defendants' rights. Similarly, enforcement mechanisms that address cases of victims' rights breaches in England and Wales consist of administrative mechanisms, such as complaints processes, ombudsmen processes [16], and judicial reviews that also operate outside of criminal proceedings [6]. By contrast, although some service rights are recognised in the United States, most rights are classified as procedural rights, notably under the federal *Crime Victims Rights Act*. These rights generally recognise a more active involvement by victims in the criminal process, such as the right to be heard at every stage of the criminal process, including prosecutorial decisions, plea negotiations, bail, and sentencing. Contrary to the English approach, these rights contain enforcement mechanisms that enable victim standing in criminal proceedings as well as remedies that can come into conflict with the rights of the accused [6].

This article aims to explain these notable policy and legislative differences between these two common law jurisdictions by comparing the evolution of the various victims' movements and the way they have shaped these new developments.

The comparative sociolegal literature has recognised 'distancing' as a powerful tool that enables a deeper contextual understanding of the reasons that can explain why a jurisdiction has evolved differently from another [17]. To achieve this endeavour, Dubber argued that concern with history, culture, and social structures are important aspects that can indeed illuminate dissimilarities and sharpen contrasts [18]. Comparative work that achieves distancing pushes beyond a comparative procedural exercise and recognises the importance of social context in understanding laws and policies [17,19]. Further, limiting the comparison to England and Wales and the United States allows for a more in-depth process of distancing, which in turn contributes to a greater understanding of contextual aspects that gave rise to these differences.

This article achieves this 'distancing' by mapping the different historical sociolegal contexts, institutional settings, strategies and rationales that have been part of the development of victims' movements in England and Wales and the United States. The article does not intend on being exhaustive by analysing all factors and differences but rather explores the most influential ones and the extent to which there was variation between these jurisdictions during the movement's first developmental period (1960s–1980s). These contextual comparisons provide a substantial contribution to the literature on comparative victims' rights and victim participation, as they explain some of the foundational variations between the legislative and policy schemes that are found in more recent victim-related policies.

The first section of this article describes the emergence of the victims' movement in the United States by considering the forces behind it, the methods that were used, as well as their goals. The aim of this section is to provide a descriptive account of the victims' movement in its early stages (1960s–1980s) within the broader cultural context at the time. By examining the evolution that took place over these earlier years, it brings into focus the historical, political and social context in which the victims' movement in America arose. This section contains much more background and historical descriptive

information than the second section as it intends, pursuant to legal comparative literature, to provide an overview of the American system that achieves distancing for readers from a different legal culture. The information was obtained from mixed sources, including interviews and discussions with early participants in the movement, governmental documentation, reports, secondary sources such as academic writings and historical documents.

The second section examines the movement's development in England and Wales during the same period (mainly the 1970s and 1980s) by explicitly contrasting its main influences with those on the American movement, as detailed in the first section. The information obtained on England and Wales also derives from mixed sources, including government documents, discussions with key participants, as well as secondary sources. This analysis provides an important contribution to the victims' rights literature by enabling distancing between both jurisdictions as well as clarity on why certain approaches to victims' rights and enforcement developed in one jurisdiction but not in the other, or, alternatively, responds to why they developed differently.

A. The Victims' Movement in the United States (1960s–1980s)

Several elements have contributed to the emergence of the victims' movement in the United States. The following section examines the most influential factors and forces behind this movement, the way they developed and their aims until the 1980s. These elements and forces include the development of victimology; the increase of crime rates; the Federal Government's early and continuous intervention in crime and its pursuit of criminal prosecutions, which includes victim policies; as well as the feminist movement and grassroots victim organisations. These forces developed in parallel and created strategies to achieve their goals, which will be explored below.

2. The Early Developments of the Victims' Movement (1960s–1970s)

2.1. The Federal Government's Intervention in the Politics of Crime and the Pursuit of Victim Collaboration to Criminal Prosecutions

Many factors have played a crucial part in developing the victims' movement in America, one of them being the federal government's early, substantial and continuous intervention in the politics of crime since the 1960s and its response by pursuing prosecutions [20]. Indeed, during that period, the increase in crime rates—particularly the frequency of violent offences—ultimately created a new interest in the pursuit and prosecution of crime and victimisation. The fear of crime was slowly emerging, and thus, political forces felt a need to mobilise around the 'war against crime' [21,22] and on the side of crime victims [23] (p. 91). In the context of this 'war', and in order to respond to this growing crime rate, President Lyndon B. Johnson created the President's Commission on Law Enforcement and Administration of Justice in 1965 to examine both the extent and causes of crime and ways to address it [23] (p. 91) [24] (p. 7) [25]. Thus, the first national household victimisation survey was established under this Commission in 1966 and revealed that the estimated crime rates were substantially higher than the ones reported by the Uniform Crime Reports [24] (p. 7). This survey also revealed that a significant percentage of crime victims did not report their victimisation to the police [26]. The Commission's final report attempted to elucidate the reasons behind the low crime reporting rate [27]. It was found that victims suffered from numerous losses, including economic, physical and mental, and had several needs for services. In order to increase victim reporting and victim cooperation as prosecutorial witnesses, it was therefore necessary to respond to these needs.

As a response, the Commission proposed the introduction of a supplementary system of victim compensation, where the government would provide payment to the victim for unrecovered losses. Securing compensation required victims to report crimes and, therefore, direct collaboration in the criminal justice system [28]. Based on the federal Commission's report, States also began to explore the idea of restitution as well as compensation. Compensation programmes were 'among the first tangible responses to the renewed concern about crime victims during this period' [24] (p. 8).

LEAA and the Law and Order Agenda

Further, the Commission's final report resulted in the creation of the Law Enforcement Assistance Administration (LEAA) in 1968, which received substantial funds—primarily through block grants [23] (p. 94) by the federal department—to pursue research, as well as fund and advise programmes developed to reduce and prevent crime [24,29].

Research in victimology, sponsored by LEAA, provided additional justifications for facilitating the victim's experience in the criminal process [30]. Indeed, research highlighted that 'the largest cause of prosecution failure was the loss of once-cooperative witnesses who simply stopped helping a justice system that was indifferent to their most basic needs' [23,31]. It was also argued that victims suffered from 'secondary victimisation' and without them reporting their crimes and testifying, prosecutions would be hindered [32].

LEAA's arguments, which initiated and greatly influenced the victims' movement, portrayed victims as 'ideal victims'—innocent and vulnerable individuals, forgotten and revictimised by insensitive, bureaucratic and busy criminal justice professionals that went about their jobs ignoring victims' needs and feelings [33] (p. i).

Financial resources were therefore directed at finding ways to respond to victims' unmet needs by justice professionals, in order to encourage them to report and cooperate with the justice system as witnesses. To increase victim cooperation, LEAA funded victim and witness assistance programmes within local prosecutors' offices and law enforcement agencies. Thus, government agencies within states began to re-evaluate their victims' services and demonstration projects emerged in New York and Arizona in 1974 to provide better notification and support for victims and witnesses once criminal prosecutions had been initiated. For instance, prosecutor-based staff within prosecutorial offices received training in crisis intervention, and some offered on-scene crisis services to victims to encourage arrest and prosecution [34]. A notable aspect of these victim/witness programmes is that they borrowed ideas about services from grassroots programmes but were based within criminal justice institutions. The aim was to propel collaboration between victims, victim grassroots groups and prosecutions.

As highlighted by Kolanda, director of a victim/witness assistance demonstration programme, it was not uncommon for victim grassroots groups to use political tactics and adopt a law and order discourse to gain attention and funding from the LEAA. Conversely, it was not unusual for prosecutorial offices to hire non-lawyers and non-bureaucratic agitators from grassroots that would become invested in finding creative ways to attract funding and assist victims to increase prosecutions [35].

2.2. *Feminism and Victims' Grassroots Groups*

Feminism was another central force that led to the development of the victims' movement in America. Leaders of the women's movement were often victims of sexual crimes and domestic violence that focused on the criminal justice system's poor response towards these offences. They portrayed women as vulnerable, powerless and without influence since they lacked status in the criminal process [28] (p. 196) [24] (p. 8). Vulnerability itself provided a powerful image of the victim that needed a voice in the system.

In the absence of resources, feminist and victim grassroots groups heavily relied on volunteers and in the 1970s became more organised. Janice Rench, part of the Oral History Project interviews, described this period as a 'time of excitement, it was a time of passion And so it was the victims themselves, I believe that really started this field and certainly it was the sexual assault field in the seventies that did it' [34]. As a result of this advocacy, the first rape crisis centre was created in 1972 as well as the first rape crisis hotline, and a task force to research battering in 1976 [29] (pp. 16, 54).

Victims themselves contributed to the early development of the victims' movement. Politically mobilised victims were primarily victims of violent offences and as a result of their networking at the local level in the early 1970s created organisations such as Families and Friends of Missing Persons (1974) and Mothers Against Drunk Drivers (1978). These organisations generally comprised survivors

of crime, family members, victim service and support providers, as well as powerful victim advocates that successfully fought for legislation in several states.

Most grassroots groups had separate aims from one another and targeted specific groups of victims, but they generally called for better treatment of victims by criminal justice agencies, and equal rights with the defendant. The narrative of equal rights with the defendant can be understood as a dialectical response to the rights recognised under the Warren Court [36] and the campaign for prisoners' rights that waged in the 1960s and 1970s [37]. Indeed, following the constitutional protections offered to the accused by the Warren Court, there was a sense—often brought forward by law enforcement and crime control ideologies—of a severe imbalance in favour of the rights of the accused over the rights of those victimised by crime and the public at large. Hence, some of these groups developed a narrative premised on the idea that the Warren court's implementation of the exclusionary rule and Miranda requirements were interfering with efficient law enforcement and crime control [36,38].

Despite their different aims, their methods for reaching public awareness were similar. Indeed, they did not shy away from the media and were very vocal with their experiences—bearing in mind that if they were to make things better for other victims, their own private experiences had to become public events. Mobilising the public around these issues was an imperative aim to secure change. This was achieved by giving a face to victims through real life personal examples and galvanising emotions around their experiences. As stated by Russell a few years later, 'things don't really happen in the system unless you personalize it, and demonstrate how much difference it makes in the lives of victims' [39].

It was only in 1975 that the purposes and goals of the victims' right movement were consolidated with the creation of the National Organization for Victim Assistance (NOVA). NOVA was a private non-profit organisation created by Marlene Young and John Dussich at the first national conference on victim assistance, sponsored by LEAA [40]. More specifically, it was formed by a group of the country's leading activists for victims' rights and quickly became the umbrella organisation for the movement. It was arguably the leading resource for training victim service providers, voicing victims' concerns, providing greater assistance for victims of crime and organising conferences [28] (p. 73).

Conferences played a significant role in the movement's growth by assembling individuals from all over the world to discuss research findings and advocate for policies based on the newly imagined field of victimology. For instance, the idea behind the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power was also conceived at a victimology conference [41]. As Rock points out, 'it is as if each conference confirmed the advancing maturity of the discipline. More important, perhaps, each conference affirms the viability of victimology, its sheer capacity for survival' [42] (p. 102). In parallel, each conference affirms the viability of the victims' movement and the desire of victim advocates to meet, regroup and discuss ways to advance the interests of victims.

At the end of the 1970s, after its rapid progression, the victim movement was marked by tensions and turbulence, in great part due to the 'waxing and waning of federal financial support' [28] (p. 197) for victim programmes. As national priorities shifted, Congress ended its funding to LEAA and, thus, stable funding for victim programmes became elusive. Victim organisations often competed over the limited available funds. Many conflicts arose between programmes/organisations for victims that were driven by grassroots energy and the ones that operated within criminal justice institutions [28] (p. 197). The goals and aims defended by these programmes were different, and some grassroots movements began doubting whether prosecutors and law enforcement agencies were really working in the interests of victims or merely advancing their own interests. As summarised by one of the leaders of the victims' movement:

'Many felt that there was an inherent conflict between the goals of prosecutors or law enforcement officers and the interests of victims. Some sought legal changes in the system, whereas others felt that change should take place through the formulation and revision of policies and procedures' [28] (pp. 194–195).

Opposition outside the movement was also present among critics that philosophically disagreed with the movement's advocacy for institutionalised victims' services. According to these critics, the establishment of professional victim service providers would create dependency, distance victims from their own social networks, create unmet expectations and frustrations among victims, enforce victim stereotypes, and interfere with the healing process [24] (p. 9).

The significant financial loss many programmes faced, coupled with the external and internal oppositions, served as a reminder of how tenuous the movement's gains had been. Several programmes closed, but despite internal conflicts, struggles and external opposition, the movement managed to survive and grow stronger in the 1980s, in great part due to victims' vocal grassroots groups, their emotional appeals, their vocation to the cause—often illustrated by long unpaid hours—as well as the public awareness and general public support they attracted. As previously mentioned, their depiction of crime victims vulnerable and their treatment by the justice system helped to gain general support from the public at large, as well as state and federal governments.

3. Growth and Influence of the Victims' Movement in the 1980s

In the 1980s, the victims' movement made significant progress on three fronts: Policy development, programme implementation and public awareness. In addition to the public support it obtained, the movement evolved well beyond its grassroots and became sufficiently vocal to influence governments, legislatures and members of the public.

NOVA also continued its meaningful campaign and the growing demand for victim participation within the criminal justice system was integrated into a new policy platform on victims' rights. The Federal Government endorsed the victims' movement when President Ronald Reagan proclaimed the first National Crime Victims' Rights Week in 1981 and, more importantly, when he established the President's Task Force on Victims of Crime in 1982. The Task Force was a turning point in the victims' rights movement and provided the contemporary framework for the development of policy, programmes and protocols as well as shaping issues that still influence and frame the debate today.

3.1. *The Federal Government's Task Force on Victims of Crime and its Powerful Contribution to the Victims' Rights Narrative*

3.1.1. Rationales and Aims

In 1980, America witnessed a rising record of violent crimes, which triggered a powerful law and order response along with increased interest in victims by the federal government. Following an earlier study under the Reagan Administration by the Violent Crime Task Force of 1981, it recommended a follow-up study specifically to focus on victims' needs, concerns and rights. Accordingly, catalysts of the task force, Frank Carrington [43], a leading victim advocate, who became one of the members on of the Task Force and Presidential Counsellor, and Edwin Meese, convinced Ronald Reagan of the need for an in-depth look at crime victims' experiences. Consequently, the Presidential Task Force for Victims of Crime was established in 1982 and comprised various professionals.

The broad range of perspectives and professional backgrounds that formed the Task Force contributed to an analysis and recommendations that not only affected the legal system but also other organisations; namely, hospitals, schools and the mental health community. Hence, the aims of the Task Force were diverse. Interviews conducted with individuals that had a determinant role on the Task Force suggested that they started working on the Task Force with a *presumption* that victims were badly treated by the system [44], while others had a more nuanced view and considered the Task Force's aims to be exploratory. For instance, Lois Haight, the Task Force's chair, and a prosecutor at the time, suggested that '[i]t wasn't a total understanding that they were treated badly, we just had to find out. It was very exploratory. How were they being treated and then what would we recommend given our findings?'

Larger contextual aims, similar to the ones discussed above, were also present. At a period when violent crimes reached a peak, the Task Force was in great part created to advance prosecutorial interests that included the facilitation of prosecutions and convictions by increasing collaboration with victims. Thus, Miller, one of the Task Force members, suggested that 'it was a practical exercise I think because from a prosecutorial advantage point it became evident that many cases were being lost due to reticence of participation of witnesses and victims, and the exercises we went through established why that they were treated impersonally, that they were given less rights than the defendant and they felt disenfranchised from the system. So I think that the review enabled us to ascertain (1) where the problems were and (2) how to correct them [45].'

Others seemed to suggest that the Task Force had a more victim-centric approach which aimed to propose recommendations directed at repairing the harm done and preventing secondary victimisation by the system [39].

The results obtained by the Task Force members influenced and helped to shape discourses and rationales that are found in victim-related policies. These can be classified as follows: (1) A narrative around victims' mistreatment and secondary victimisation by the criminal justice; (2) a discourse around defendants' greater rights and the need to rebalance the system; and (3) a need for constitutional protection against the state.

3.1.2. Victims' Mistreatment and Secondary Victimisation

Victims' mistreatment by the criminal justice system became the leading narrative referred to by the Task Force to promote victims' rights. It suggested that victims were discouraged from participating in the criminal process and felt revictimised by the system [46]. It was suggested that this was due to the fact that as mere witnesses, they were treated 'impersonally' and as 'inanimate objects to be present to say their piece and to then be removed from the process' [45]. The information they relied upon to reach these conclusions came directly from victims and direct quotes were used in the report. Testimony also came from NOVA as well as other groups that worked with victims. As stated by Meese, 'Usually recommendations can get kind of legalistic in what's being suggested but by having the statements in many cases of victims it gave a lot of punch to the report and that's why I think this report was so well received' [47].

Many of the members suggested that the poor treatment suffered by victims was more widespread than imagined. One of the interviewees of the Task Force explained that 'the stark reality of secondary victimization shocked every member of the Task Force: the fact that victims were badly treated by the system, their lack of rights, the system's poor understanding of the impact of crime, and the absence of victim services' [48] were indeed all elements used to mobilise the movement and argue that 'they had to be treated with respect, involvement and certainly with tremendous input for the system to be effective as well as basically just to give them the rights that they should be in an hour able to obtain' [49].

3.1.3. Rebalancing the System between Victims and Defendants and Constitutional Protection against the State

Another significant conclusion that arose from the Task Force was framing the criminal justice system as needing to be rebalanced in favour of the victim. This language and understanding substantially influenced the victims' *rights* discussion as well as the victims' movement for years to come.

Accordingly, since defendants had several rights to ensure protection against the state, it was important for victims to also be afforded equal rights. Indeed, Eikenberry, Attorney General and member of the Task Force at the time, clearly stated that 'my personal motivation was that we needed to upgrade the legal status of victims and rebalance the whole system so that there was a similar focus for victims as was already granted to defendants' [44]. He added: 'Likewise, the victim in every criminal prosecution, shall have the right to be present and heard at all critical stages of judicial

proceedings' [44]. The 'likewise' referred to due process safeguards that protected the accused under the sixth amendment of the US Constitution. Thus, according to the Task Force's members, if due process protections were afforded to the defendant, victims also had to be provided with similar rights as a means to protect them from the state. 'I personally believe that the Task Force mission was learning about how out of balance the system was and what could be done' [50].

Additionally, based on this equal rights rationale and in order to ensure that judges are presented with all relevant elements at sentencing, the Task Force also recommended the re-integration of victims into the sentencing process. Thus, in its final Report, the Task Force recommended the introduction of victim impact statements (VIS) to be taken from victims and provided to judges prior to sentencing. The Report stated:

'Victims, no less than defendants, are entitled to their day in court. Victims, no less than defendants, are entitled to have their views considered. A judge cannot evaluate seriousness of a defendant's conduct without knowing how the crime has burdened the victim. A judge cannot reach an informed determination of the danger posed by a defendant without hearing from the person he has victimized' [51] (p. 76).

This recommendation was influential and was rapidly integrated into American law. The opportunity to present VIS continues to be a meaningful procedural right that is fully recognised and legally enforceable under the federal *Crime Victims' Rights Act* and all other American states' legislative schemes [52,53].

3.1.4. Constitutional Protection against the State

Additionally, this Task Force was among the first bodies to suggest that victims' rights should be constitutionally recognised within the American Constitution. Heavily based on the civil rights discourse, as a reference to defendants' rights, victims were also portrayed as individual citizens that needed protection from governmental abuses. Thus, it was argued by the Task Force that 'government must be restrained from trampling on the rights of individual citizens. Victims of crime have been transformed into a group oppressively burdened by a system designed to protect them' [51].

According to Eikenberry, judges, professors and legally trained professionals testified before the Task Force in favour of the constitutional amendment and its effectiveness. More specifically, it was argued that such an amendment would have a positive impact on all areas that required change for victims, and its symbolic significance would ensure effective implementation. Within the Task Force, however, there were diverging views on the Victims' Rights Amendment's (VRA) necessity. Lois Haight Harrington was originally against it since she believed that state and local governments should have the opportunity to put the Final Report recommendations into action before any federal imposition [49]. However, several years later, she became a strong supporter of the VRA, since states and local governments have not respected many of the Task Force's recommendations. In an interview, she stated that 'continuances are granted and victims are *not* informed. Cases go forward and victims have no input into sentencing. Many judges are not sensitive to victim issues, and law schools do not teach victims' rights. Nor do doctors, nurses or members of the other allied professions learn about victims' [49]. These recommendations that focused on criminal proceedings were very influential and contributed to the shaping of information and procedural rights in current federal and state legislation in America.

3.1.5. Task Force Recommendations, Strategies and Collaborations

Following its hearings, the Task Force issued 68 recommendations in its Final Report for action by the Federal Government in five different areas, namely: (1) Executive and legislative action at the federal and state levels; (2) proposed federal action; (3) proposed action for criminal justice agencies (police, prosecutors, judiciary, parole); (4) proposed action for other organisations, including hospitals, ministry, the Bar, schools, mental health community as well as the private sector; (5) proposed amendment to the Federal Constitution.

Similar to the strategies that were used by victim grassroots organisations, Haight highlighted the importance of attracting media attention around the Task Force to publicly expose the system's imbalances towards victims.

As a result of the Task Force's recommendations and public awareness strategy, significant changes were made to policies, programmes and practices at the federal, state and local levels. Notably, the Office for Victims of Crime (OVC) was created in 1983 to represent the interests of victims within the US Department of Justice. Lois Haight Harrington, who directed the Task Force, became assistant Attorney General of the United States in charge of establishing the OVC, which attracted substantial grants [39]. Her office worked closely with outside groups, particularly with NOVA, to implement the Task Force's recommendations. For instance, the passage of the Victims of Crime Act (VOCA) in 1984 was a collective effort and substantive means for the government to fund victim services through fines and fees levied against federal criminal offenders. VOCA funds in 1985 contributed to state funding, training programmes for justice professionals and the creation of standards for victim programmes across the nation.

B. Contrasting the Early Development of Victims' Movements England and Wales with the United States (1970s–1980s)

4. Contrasting Victims' Interest Groups

As seen above, in the United States, the victims' movement emerged in part from a spontaneous mobilisation of victims themselves—often of violent crimes—that shaped into local grassroots organisations to provide help and support for victims of crime. The movement was also shaped by the pressure of victim lobbies towards governments, coupled with the politics around the 'war on crime' that enticed the federal government to focus on victims in order to win their collaboration with the criminal justice system. State-funded programmes and legislation were therefore adopted to improve prosecutions, and a rights-based discourse became prominent.

By comparison, the movement in England and Wales emerged as a response to the socioeconomic needs of victims. As a result, England was one of the first countries to introduce state compensation for victims in 1964 after pressures by individuals like Margery Fry [54]. Despite this early state-funded development, no other significant victims' movement in England and Wales managed to attract public funds by the Home Office until the movement gained credibility in the mid-1980s. The movement was formed by voluntary organisations that were completely independent from the criminal justice system. The NAVSS (National Association of Victims Support Schemes) became the leading victim charity and remains influential today. Its ethos was very different from the US organisations described above. NAVSS was solely concerned with defending what it regarded as the interests and integrity of all victims—without emphasising victims of violence—and had a much more reactive than proactive agenda.

The following section suggests that the movement in England and Wales took much longer to develop than its American counterpart and evolved differently due to variations in composition, approaches and aims. Contrasting the evolution of the English victims' movement's with the American one is an essential aspect of analysis that contributes to an understanding of why rights as a concept were not officially accepted in England and Wales until fairly recently, as well as why the nature of recognised rights differs between England and Wales and the United States. The following section is divided into a series of themes which can be contrasted to help explain differences in the movements' composition, aims and approaches. Table 1 (below) provides a summary of these differences which are discussed and evidenced to a greater degree in this section.

Table 1. Contrasting victims' interest groups in both jurisdictions.

Victims' Interest Groups	United States (Federal Context)	England and Wales
Composition	<ul style="list-style-type: none"> - Spontaneous mobilisation - Victims of violent crimes in criminal proceedings - Grassroots, lay persons 	<ul style="list-style-type: none"> - Professionals (probation officers, penal reformists) - All victims (including less serious crimes) and not just in criminal proceedings
Ethos	<ul style="list-style-type: none"> - Law and order context and discourse to be taken seriously by government - Missionaries/vocation - Focus on victim participation in criminal proceedings - Zero-sum game with defendant and 'rebalancing' criminal proceedings - Blame/protection from the system and criminal justice agencies for secondary victimisation 	<ul style="list-style-type: none"> - Victims' service interests, independent of government interests and criminal justice politics - Profession instead of mission - Conciliatory with defendants (restorative justice; probation experience) - Collaborative with criminal justice agencies for acceptance
Means	<ul style="list-style-type: none"> - Public engagement and media - Vocal and personalisation of experiences; anecdotal evidence 	<ul style="list-style-type: none"> - Shy away from media and public participation to avoid the arousal of emotions and fear - Discrete, professionalism and collaboration

4.1. Composition

As highlighted in Table 1, in England and Wales, all initiatives, starting from the ones initiated in the fifties, originated from the penal reform movement. Thus, most of the early pioneers were probation officers that had gained professional experience within the penal system. For instance, in the fifties and sixties, penal reformers drove policy behind criminal injury compensation. Similarly, in the early seventies, victim policies around compensation orders, community service and reparative justice were driven by members of the penal reform community (often from probation services) that had an interest in facilitating mediation between offenders and victims. Finally, even NAVSS, the movement's main organisation, was shaped by Helen Reeves, appointed as full-time employee organiser, whose prior professional experiences as a probation officer influenced her views and approach towards the victims' movement [55].

4.1.1. Professionals

Further, as summarised in Table 1, unlike the American experience, the English movement's early development did not emerge from a spontaneous mobilisation of mainly victims of violence but by professionals and experts in the field of criminal justice that worked for years as probation officers and were close to offenders. They became part of the voluntary sector as members of the main victim organisation in England and Wales and perceived their role as a profession rather than a mission. Their background as probation officers explained in part their refusal to frame the narrative of victims' interests as a zero-sum game or recalibration that needed to take place between the rights of victims and offenders. Their strategy for achieving changes was also very different, since they believed in the importance of maintaining their professional and political independence to ensure victims were not used as instruments of a governmental agenda.

4.1.2. Maintaining Independence

To maintain its independence from governmental agencies, NAVSS avoided any affiliations with any criminal justice agencies. For instance, NAVSS did not exist to increase the reporting of crime for systemic purposes and thus did not focus on the collaboration between victims, courts and prosecutors.

It was fundamental that victim services and organisations remained independent from criminal justice agencies and strictly focused on victims' wider needs. This is quite contrary to many organisations in America, where members often left the voluntary sector to work within criminal justice agencies in the hope of achieving recognition and change. As suggested by Kolanda, a political law and order discourse would often be adopted to facilitate collaboration between victims' organisations and criminal justice agencies.

Additionally, because of NAVSS's position—which seemed to reconcile victims and offenders' interests—the organisation struggled at first to sustain its main goal as the defence of victims' interests and not victim–offender mediation initiatives.

4.2. Approaches and Aims

4.2.1. Imagining the Victim

Contrary to the American approach inspired by the feminist movement, where the archetypal victim was a raped and battered woman victimised by patriarchal violence, the archetypal victim in England and Wales was the more common gender-neutral victim of burglary or robbery. Feminist organisations in England were not influential in the victims' policy-making process and were distrustful of leadership and politics. Conversely, because feminist groups were perceived as radical, governments rarely engaged with them groups regarding policy reforms. The approach of English feminism avoided the terminology of victims and victim-blaming but often promoted a 'radical separatism that made transactions with men difficult' [55] (p. 58). Men were excluded from participating in many organisations, and policy-makers worked independently from the women's movement. Because of this approach, which was considered radical by leading victim organisations in Britain, 'feminism has been unseen, unheard and impotent in the bureaucratic circles where victims have been discussed' [55] (p. 83).

As a result, many changes to rape and battering policies were driven in England and Wales by men and women who did not identify themselves as feminists. The treatment of rape was brought to the attention of both public and policy makers after the scandal caused by Roger Graef's television programme on the Thames Valley police force's treatment of rape victims, which brought about significant changes to the policing of rape across England and Wales. Furthermore, some of the misogynist utterances of judges on contributory negligence by complainants and the need to protect otherwise praiseworthy men also were elements that put the treatment of rape victims onto the political agenda [56].

NAVSS's approach to helping victims rejected the 'misery of the vulnerable' [55] (p. 85) and instead was based on a philosophy that explored the ways that one can cope with crime [57] and achieve resilience [58]. The English approach was less about offering care and compassion and primarily focused on healing and reparation. The aim was to ease victims away from their victimisation to avoid it becoming a part of their permanent identity—a view espoused within the American context [59] (p. 86).

4.2.2. Strategic Approaches

Unlike the American approach, the movement in England and Wales avoided media attention and the personalisation of particular victim experiences that raised public emotions [60] and political militancy. As summarised by a report of the 1989 NAVSS conference:

'We are faced with the fundamental problem that, as an organization, we are committed to reducing the effects of crime, and yet have a great anxiety that, by involving the press and media, we may be increasing public fear and alarm' [61].

In England and Wales, victims were mute, invisible and unorganised for a significant period of time. They were not approached by government personnel and never engaged in policy. 'They were to

become a working projection of the politics of penal reform, a figment of the reforming imagination, shaped by the concerns and purposes of their creators' [54] (p. 88).

4.3. Approaches towards Criminal Justice Professionals

The organisation used a collaborative technique towards criminal justice agencies by which it avoided criticising the police, probation services and courts in order to maintain diplomatic relations to secure resources, victim referrals and support from the system. This approach can be understood, in part, by the organisation's desire to distance itself from the law and order approach defended by the American victims' movement, as well as the antagonist view towards the offender. Moreover, the uneasiness felt by the police about being monitored was also a reason the organisation chose to maintain a collaborative approach instead of a confrontational one. New policing initiatives also contributed to this collaborative approach, as community policing developed and became closer to members of the community, including victims of crime. As previously highlighted, the victims' movement in the United States adopted a different approach towards criminal justice agencies. Most organisations, including NOVA and SAMM, as well as political bodies such as the members of the President's Task Force, denounced the secondary victimisation suffered by victims at the hands of indifferent criminal justice agencies.

Professionalism by victim groups was seen as a positive trait by criminal justice agencies in England and Wales, which facilitated collaboration with the Home Office. During that period in England and Wales, a small and intimate circle of trusted professionals with multiple affiliations was making criminal justice policies [55] (p. 89). Having demonstrated professionalism and good relations, NAVSS became trusted and eventually became part of that intimate circle, maintaining ties with members of parole services and participating in policy meetings between these organisations. The same people, whether in probation circles or victim groups, were seen in different settings that could seem functionally and ideologically incompatible with one another. These individuals would shape the system and eventually integrate victims into other parts of the criminal justice system.

This approach was very different to the one adopted in the United States where, once victim/assistance programmes demonstrated their efficacy, prosecutors' offices and police usually sought non-professionals as part of their victim assistance programmes because of their different, law and order and less bureaucratic approach and their facility to agitate for change and attract funds from politicians.

4.4. Approaches towards Offenders

NAVSS also avoided commenting on the politics and policies regarding criminal justice to distance itself from the politics of punishment towards offenders. As Maguire and Corbett put it, 'unlike many of the victim initiatives in the United State Victims Support Schemes ... had no political aims or "hidden agendas". They took little interest in the offender, the court process, or the sentences passed. Their primary objective was very simple: to act as a "good neighbour", or perhaps a "good Samaritan", to people who had suffered at the hands of a thief or an assailant' [62] (p. 2). Their approach with defendants and offenders was therefore neutral and in great part influenced by their previous work with offenders.

This is not to say that there was not a minority fringe that espoused different views. For instance, the representatives of rape crisis centres were considered disreputable by NACRO. They showed a marked animosity to the police and followed a private separatist politics of feminism. Some were also portrayed as incarnating the latent vigilantism feared by professionals [55] (pp. 88–89) and, unlike the American experience, were seen as elements to avoid.

5. Contrasting State Responses

Victim grassroots organisations in America mainly developed and evolved in a context where the Federal Government was interested in the politics of crime and the collaboration of victims within

the process. Thus, the victim movement in America emerged in great part from a governmental response to high levels of crime followed by a political law and order agenda. From its very early days, the State financially supported victim programmes that shared similar aims with the system in order to facilitate the reporting of crime and convictions. Compensation, for instance, was seen as a way to get victims to collaborate with the crime control system by reporting crime in order to receive financial help. From a political standpoint, victims and criminal justice were interesting topics that rallied both political parties.

Until about 1986, the politics of victims in England and Wales had no distinct identity and was slow to form in part because the state took much longer to respond, create and fund new victim programmes, policies and initiatives.

Various factors can account for the slow progression. First, as already explained, NAVSS was discrete in its early stages, and its aims and composition were different from those of American organisations. NAVSS was not critical of criminal justice agencies and did not stir a popular uprising towards state actors. Other factors, explained below, include the differences in government aims, differences in decision-making participation and the fear for untested change.

5.1. Differences in Government Aims

During the 1970s and early 1980s—at a time of economic austerity—the government had different priorities; namely, working towards attaining cuts in public expenditure and reforms towards a less costly penal system. Thus, any victim-based initiative had to be connected to these aims. This can explain why initiatives like victim/offender reconciliation that would facilitate the diversion of offenders instead of imprisonment attracted state attention. Organisations like NAVSS that aimed to provide help and support for victims, however, struggled for some time to be invited into the criminal justice arena since they did not fit into the traditional state penal reform agenda.

5.2. The State's Decision-Making and External Participation

During the 1970s–1980s, the Home Office was known for not engaging with the public or with any outsider group regarding policy decisions. Instead, it occasionally consulted experts for any reform that was about to take place and, as Rock highlighted, ‘The Home Office engages in proportionately fewer formal deliberations. It incorporates the wishes of its constituencies at a distance, surmising their probable responses in its assessment of the “political environment”’ [55] (p. 71). By contrast, in the United States, public participation and consultations, especially on victims’ issues, was important, and the framing of policy became predominantly political, heavily influenced by public opinion.

Policy reforms were decided by the highest ranks in government, namely senior administrators and politicians. Outsider influence was limited. In the mid-1980s, most knowledge and decision-making remained behind closed doors. Thus, it is not surprising that during that period, the Home Office did not include victims in the decision-making process. Additionally, it is worth remembering the initial perception of victims as vigilantes and reactionaries that would obstruct the decision-making process. Victims were considered a group that had to be appeased, and thus, government reformers refrained from asking them about their needs to avoid awakening their emotions. For instance, the movement for criminal injuries compensation was a creature of lawyers, penologists and criminologists, not of victims. Victims were not consulted; it was assumed that all they wanted was financial compensation for the harm done to them.

This is in stark contrast to the context in America where some decisions were made after consulting with victims who were perceived as sympathetic figures. For instance, the Task Force for Victims of Crime discussed above listened to victims’ stories about their experiences with the system and took evidence from various victim organisations that were not primarily composed of professionals. In the United States, criminological research projects were welcomed and funded by the various Task Forces. In addition, members of the Task Force considered outsider views, including those of victims who chose to mobilise themselves—mostly victims of violent crimes. This undoubtedly had a different

impact and impression on decision-makers such as the members of the Task Force. The general public was also informed of the results and invited to play a role in the framing of certain problems and suggestions for change. Elias notes that in the United States, many victim programmes have emerged without having asked victims their own preferences and needs [63] (p. 188); however, governmental engagement with some victims was more frequent at that time in America than it was in England and Wales.

5.2.1. The State's Reluctance for Untested Change

Ministers and civil servants in England and Wales were hesitant to embark on any untested reform and preferred approving change that had already been tested. Providing victim support was a new untested measure seen as a strange initiative for the Home Office, which was accustomed to more traditional elements of penal reform, namely reforms regarding police powers, prison conditions and sentencing. Additionally, conservative critics feared that providing victim services and support would distract agencies from the traditional business of the criminal justice system.

Further, the state in England and Wales did not include the voluntary victims sector within governmental agencies. Thus, it did not want to interfere with the voluntary sector's spontaneity and avoided the bureaucratisation of the local voluntary sector occupied by victims. Conversely, in the United States, there emerged a strong inclination to include the voluntary victims sector within governmental agencies to modify the treatment of victims within the system and advance state interests in the prosecution of crime. The victims' movement and support evolved under the careful management of officials in the United States, which was not the case during its development in England and Wales.

5.2.2. Towards Progressive Trust between Victim Organisations and the Government

Government agencies and victim organisations evolved independently from one another and were not necessarily aware of each other's work and aims. This explains the fact that meetings and communication among government, victim organisation members and the public were rare. As described by Rock, 'There has been much talk about poor communication and about lack of consultation. Invitations have not been issued to attend conferences when people thought they should have gone. Much has developed in fog, bodies and movements being barely discernible to different participants, understated and difficult to decipher' [55] (p. 79). Thus, since the Home Office's approach was reactive rather than proactive, for many years, it did not see fit to fund or initiate a framework of conferences, meetings, working parties and task forces, characteristic of the American government during the early days of the movement.

In time, however, NAVSS's presence, approach and professionalism justified its involvement within the criminal justice system. This trust among participants provided this organisation with a more determinant role and establishment as an independent actor within the criminal justice process. Having built trust and credibility, a wider and stronger collaboration emerged with the Home Office. This was reflected by the preparation of Home Office funded research projects and their participation in conferences, where members of various esteemed bodies, such as the Association of Chief Police Officers and the Association of Chiefs of Probation, were to meet and exchange. This meaningful collaboration with these various agencies slowly eased senior officials' fears of vigilantism, and 1986 was a crucial moment that marked the collaboration between Victim Support and the Home Office for the years to come.

6. Conclusions

In conclusion, a comparative contextual analysis of the emergence of the victims' rights movements in the federal American system and England and Wales enables a foundational understanding of why the more recent victims' rights initiatives have espoused different rationales and philosophies and have taken different paths. More specifically, this analysis can partly clarify why recent victims' rights

initiatives in the American federal model are more aligned with a rights-based approach in criminal proceedings that recognises mainly procedural rights, while in England and Wales' a predominant service rights approach is retained, which minimises the victim's role as part of criminal proceedings.

In effect, the victims' movements in the two jurisdictions emerged in very different contexts and thus evolved and adopted different aims and approaches. In the United States, the larger social context was driven by a law and order initiative, following the significant increase in crime. Research and surveys suggested that many crimes were left unreported, and convictions were lost due to a low victim involvement. Hence, policies, task forces, funds and research were focused on finding ways to encourage victim collaboration with the criminal process and facilitate crime control and convictions. The first victims' organisations arose out of spontaneous local efforts of volunteers—mainly comprising violent victims of crime—that wanted to provide help and support for victims. They were quickly submersed into the politics of crime and received substantial funds from the state when working towards crime control aims. Indeed, many members of these organisations were not criminal justice professionals but were offered financial support to work within criminal justice agencies. This contributed to the fact that victim support and participation became contingent upon collaboration with criminal justice agencies and engagement within criminal proceedings. In addition, these groups were vocal and attracted media and public attention by focusing on emotional pleas. They created a dichotomous image between victims, criminal justice agencies and defendants by portraying victims as vulnerable and mistreated by the system. Indeed, these organisations along with the President's Task Force compared the victim's status and rights in the criminal process with the defendant's to suggest that they were excluded, suffered inequalities, and thus needed similar protection and recognition. They became a strong lobby that primarily focused on a discourse of 'recalibration' that contributed to the notion that victim participation and the recognition of procedural rights in criminal proceedings was the way to address this injustice.

By contrast, in England and Wales, the larger social context was driven by penal reform, and the government was not interested in diverting attention to topics that did not fit in the bigger priorities of the moment. At a time of financial austerity, it was crucial to devote attention to this by obtaining cuts in public expenditure. Contrary to the American federal government, the Home Office operated more insularly and was generally not interested in outsider input, especially not from non-professionals. Additionally, the fear of the victim vigilante was an important factor that contributed to the slower reaction and trust offered by the English government. For these reasons, victim organisations in England and Wales failed to find a partner early on during their emergence. The leading victim organisations were also composed very differently and had different approaches and aims from their American counterparts. Indeed, the victims' movement in England and Wales did not arise from spontaneous local grassroots groups mainly formed by victims but primarily by professionals who worked with offenders in probation services. Thus, their approach towards offenders and their comments on the work of criminal justice agencies were very different and less adversarial and divisive than those of their American counterparts. They were discrete and did not engage in the politics of the 'vulnerable' to describe victims of crime but rather focused on offering services to cope with crime and develop the possibility of resilience, healing and reparation. With time, the main victims' organisations through their philosophy and approach were able to establish their credibility and independence and develop good relations with criminal justice agencies and eventually attract significant funding from government. Further, this approach in the English context had long-lasting consequences—generally aligning more closely with the recognition of service rights than procedural ones within criminal proceedings.

The different victims' movements have changed and developed throughout the years, but their initial developmental phase, examined above, remains an important foundational aspect that is crucial to the understanding of some of the more recent initiatives and policies regarding victims' rights. A contextual comparative analysis of subsequent developments undertaken by England and Wales and the United States would remain an important additional contribution that can provide a comprehensive

understanding of the differences within these two jurisdictions. Moreover, the comparative endeavour of distancing can also be expanded to include jurisdictions from different legal traditions. This, in turn, would contribute to advancing our understanding of the rationales behind the different forms of victims' rights and participation across legal traditions.

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