In the last few years, the issue of ‘rights’ for victims of crime has become influential in shaping criminal law and procedure. In 1982 alone, California voters approved a ‘Victim’s Bill of Rights’ that made substantial changes in California law, and the President’s Task Force on Victims of Crime issued its final report, recommending numerous changes in the criminal justice system. The influence of the victim’s rights ‘movement’ appears to be creating a new era in American criminal law and procedure.

This article examines the impact that current victim’s rights proposals and programmes will likely have both on the criminal process and on victims, and explores the rationales offered in support of these proposals. The discussion focuses on whether changes in the criminal law and criminal process are desirable for those who have already been victimized. The article also makes some observations on whether these changes have any salutary effect on the goal of crime prevention. Part I examines the increasingly public structure of the criminal process and presents a brief history of the victim’s rights movement. Part II proposes a theory of victimization which emphasizes its highly individual and experiential nature. Part III outlines a composite victim’s rights proposal. Part IV looks at the proposed changes in the legal process bearing on the guilt stage of the trial and examines the usefulness of these changes to victims. Part V then explores whether victim participation at sentencing can be justified in terms of traditional rationales for the criminal sanction, on due process-like grounds, or on individually based, existential grounds. Finally, Part V discusses the problems created by the issue of restitution to crime victims.

The author gives special thanks to Paul Brest and Robert Weisberg for their friendship and assistance with this article. I would also like to thank Barbara Babcock, Donald Ehrman, Larry George, Robert Gordon, and Mark Kelman for their helpful comments on earlier drafts and their suggestions of resource materials and approaches. Any errors of course remain mine. Finally, thanks are due Jim Klindt, Florida State College of Law, Class of 1986, for his research help.
I. THE ORIGINS OF VICTIM'S RIGHTS

A. The historical role of the victim in criminal law

The available historical work in the field of the criminal law reveals a steady evolution away from the 'private', or individual, sphere to the 'public' or societal one. In Europe and England after the collapse of the Roman Empire, the victim and the criminal process were intimately linked. No formal government structure existed; thus, 'criminal justice' largely depended on self-help or the help of kin. The blood feud constituted the major enforcement mechanism, both in England and on the continent: the victim, or his or her kin, exacted vengeance against and repayment from the perpetrator or his kin. At the same time, however, a rudimentary public enforcement mechanism, 'outlawry', existed both on the continent and in England.

As English society became more organized, and feudal lords began to assert dominion over others, the law of the blood feud became more refined and subordinated to 'public' interests. It became unlawful to begin a blood feud unless an effort was made to extract a sum of money from the offender. At the same time that use of the blood feud was declining as the primary vehicle for enforcing criminal law, monetary compensation to victims or their kin ('bot' and 'wer'), and fines payable to the king ('wite'), developed into a complicated system of tariffs that carefully set out the value of every sort of injury imaginable. This system of compensation would appear to be solicitous of a victim's right to restoration from the wrongdoer, but in practice, victims seldom received compensation.

In England, as the kings gained and solidified authority, the concept of 'the king's peace' prevailed, and criminal acts were seen by the legal system as offences against the crown rather than against the individual. Outlawry was transformed from a punishment to a process for compelling the attendance of the accused at trial. Severe punishments, such as the taking of life and limb, were placed solely in the hands of the king and his representatives. Minor crimes were punished chiefly by monetary fines instead of the wite, and damages to victims or their families were determined and assessed by a tribunal rather than a system of tariffs.

As early as the thirteenth century in England, the law of felony appeared to serve the feudal system and the lords far more than it did the victims. The lords' consolidation of power, the greed of kings,