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# Influence of the Federal Government on the Diffusion of Victims' Rights State Constitutional Amendments

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Influence of the Federal Government on the Diffusion of Victims' Rights

State Constitutional Amendments

by

Vicki Rose Jeffries-Bilton

A dissertation submitted in partial fulfillment of the  
requirements for the degree of

Doctor of Philosophy  
in  
Public Affairs and Policy

Dissertation Committee:  
Richard Clucas, Chair  
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2021

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## Abstract

This dissertation examines the factors associated with the diffusion of state constitutional victims' rights amendments across the United States in the twenty-year period of 1982 to 2001 to understand the impact of the federal government on state constitutional change. Because each branch of the federal government took prominent actions in the area of victims' rights on the national policy stage during this era, it is important to know whether these actions influenced policy change at the state level. This dissertation examines whether one form of prominent federal action, the president's use of rhetoric to acknowledge support for victims' rights, influenced the adoption of state constitutional victims' rights amendments. Using the theory of diffusion to suggest the transfer of policy ideas, from the president to the states, the study constructs a variable to represent the influence of presidential rhetoric in the states by indexing values derived from a content analysis of presidential documents with presidential election results by state. Utilizing this variable among other potential factors including policy innovation, crime rate, ideology, interest groups, and legislative structure, the study then conducts an event history analysis using the semi-parametric model Cox Regression. Results of this study enrich an understanding of presidential power, federalism, and state government by revealing the limitations of the president's influence and supporting the influence of factors such as innovation, crime rate, and legislative structure.

Dedication

Dedicated to my family.

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## Chapter 1 Introduction

### I. State Constitutions and Change

State constitutional history has had a long and important, yet often overlooked, career in America. Part of its historical significance lies in the salience of constitutionalism among the colonists. The new state constitutions represented a continuation of the colonists' heritage of constitutions that extended back into the history of British government (Kotkin and Kramer 2004, 40). In nascent America, jurisdictions looked to the adoption of constitutions in the movement toward independence from England. Three colonies adopted provisional constitutions in 1776, prior to the Declaration of Independence, which were intended to remain in effect until a resolution had been reached in the conflict with England.<sup>1</sup> Within this same period, the Colony of Virginia was the first to adopt a Declaration of Rights that was distinguished from the body of the constitution (Adams 2001). Following the adoption of the Declaration of Independence in 1776, six states adopted constitutions (Adams 2001, 3-4). These constitutions sought to provide the necessary governing structures that were eliminated with declaring independence from the Crown (Kotkin and Kramer 2004, 39). Two states, Rhode Island and Connecticut, did not adopt a new constitution for several decades to come because their charters were amenable to removing the remnants of monarchy without having to undergo full revision. That is, their charters already allowed state officers to be elected popularly (Kotkin and Kramer 2004, 40).

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<sup>1</sup> New Hampshire on January 6, 1776; South Carolina on March 26, 1776; and New Jersey on July 2, 1776. (Adams 2001, 3)

Although most of these constitutions have undergone significant revision since their adoption, the legacy of the state constitutions is clear. In addition to providing the structure of the early state governments, these constitutions also served as models for the federal constitution adopted in Philadelphia in 1787, rather than being modeled after the British constitution (Adams 2001). Adams describes that the brief term of the executive and the role of the senator was more closely related to state governors and senators rather than the British monarch and lords (2001, 2). Furthermore, Adams specifies that the tripartite separated powers in the U.S. Constitution did not resemble the British structure (2001, 2).

Despite the historical influence of state constitutions in the Founding era, scholarly attention on state constitutions has since been limited in comparison to that of their federal counterpart for several reasons (Tarr 1998). Critiques of state constitutions vis-à-vis their federal counterpart have focused on concerns including state constitutions' frequency of change and the nature of their content (Tarr 1998).

Tarr highlights the concern over this relatively frequent change, arguing that the comparatively frequent amendment process of state constitutions does little to promote the sense of "reverence" that is present in the relatively unchanged federal Constitution (1998, 3). His study of state constitutions further examines a number of explanations put forth to account for states' frequency to enact constitutional change; these include responsiveness to public opinion, ease of the process, and the inability to resolve political problems within the state (Tarr 1998, 29).

While state constitutional debates reveal that states also considered fundamental issues, like those which faced the Framers in the federal constitutions (Dinan 2009), the

comparatively commonplace issues addressed in state constitutions have resulted in less research focused on their study (Tarr 1998, 2). Tarr explains, “State constitutions juxtapose broad statements of principle with provisions on subjects as mundane as ski trails and highway routes, public holidays and motor vehicle revenues” (1998, 2).

Clearly, however, there are important differences in the state and federal constitutions. They differ in their consideration of the mechanisms of direct democracy, veto power of the executive and the judiciary, consideration of the system of bicameralism, and the concept of liberty as embodied by positive rights in addition to negative rights (Dinan 2009, 3). Positive rights are those that oblige another to provide the holder with a right, such as requiring a state to allow individuals to vote. These contrast with the concept of a negative right which restricts another from preventing a holder from an action, such as restricting the ability of Congress to make a law which abridges one’s right to exercise their religion. Dinan’s discussion of positive rights acknowledges efforts made at the federal level to secure positive rights were largely unsuccessful. These included workers’ rights during the Progressive Era, the most successful of which was the child-labor amendment which survived Congress but was not subsequently ratified by the state legislatures (Dinan 2009, 184). Dinan describes that legal thought in the 1960s argued that the U.S. Constitution could be regarded as protecting both economic and social rights (2009, 185), however, subsequent Supreme Court cases explicitly circumscribed the concept of positive rights in the Constitution.<sup>2</sup>

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<sup>2</sup> According to Dinan, despite earlier opinions in *Shapiro v. Thompson* (1969) and *Goldberg v. Kelly* (1970) which acknowledged the public assistance as promoting the “general Welfare,” the Supreme Court declared in *Dandridge v. Williams* (1970) that allocation of welfare funds was outside of its power. In *DeShaney v.*

Efforts to secure positive rights regarding a clean environment enjoyed activity in the late 1960s to early 1970s but did not receive very much support; more recent attempts at environmental amendments have also been unsuccessful (Dinan 2009, 185).

Compared to federal efforts, there has been much more success in securing positive rights in state constitutions. States have considered and adopted positive rights in the environment, economic, and social policy areas (Dinan 2009, 187). Positive rights secured in areas such as work hours, work conditions, minimum wage and injury compensation were successful in the late nineteenth and early twentieth centuries, whereas the latter twentieth century saw success in positive rights toward union organization, economic and social security, and the environment (Dinan 2009, 187).

Despite the lack of scholarly attention on state constitutions compared to the federal constitution, their study remains important for many reasons. State constitutions are indispensable to understanding state governments and their politics. Tarr outlines the important purposes they serve, including creating their individual governments, structuring their political conflict and the mechanism for their resolution, and representing the goals of its citizenry (1998, 3). In addition, state constitutions are important to an understanding of constitutionalism in America (Tarr 1998, 4), an assertion further underscored by Dinan's study of convention debates (2009). As such, a study of constitutional change over time is important to understand how changes have occurred in society and politics within a state (Tarr 1998, 4) as well as across the states.

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*Winnebago* (1989) the Court denied the idea that the Due Process Clause provided positive rights to citizens (Dinan 185-186).

Furthermore, the study of state constitutional change is important to an understanding of the conditions associated with enshrining positive constitutional rights.

To this end, this dissertation examines whether the federal government, through the influence of presidential rhetoric, has the ability to shape constitutional change in the states. Previous literature suggests the federal government has been influential in the adoption of state policies; however, it is unknown how, or to what extent, the federal government's influence extends to the alteration of state constitutions and whether this influence includes presidential rhetoric. This is a significant area of concern for several reasons. First, the adoption of amendments in state constitutions is commonly conceived of as a higher hurdle than enacting statutory legislation. For example, Lupia et al. highlights that constitutional amendments may be preferable policy choices because their legal status is more intractable than that of statutory legislation (2010, 1222). As such, factors associated with adoption of constitutional amendments may reflect a *greater degree* of influence. Furthermore, because state constitutions structure the government of the states, factors which affect state constitutional change may possess a *substantively different* form of influence. Hume calls attention to the notion that constitutional amendments carry not only "policy consequences" but they also carry "institutional consequences" as they restrict the actions of state political institutions (2011, 1098). As such, the extent to which the federal government or other factors enjoy such influence over state policies as well as state institutions, may be critical to our understanding of the autonomy of the states and/or the relationship between the federal and state governments in the U.S. system of federalism.



Furthermore, it is important to an understanding of American political institutions to recognize how, or to what extent, the federal government may seek influence in the states because of the relatively greater constraints it faces in enacting change in the federal Constitution. The ease in which constitutional change may occur in the states and its greater propensity to adopt positive rights may reflect the comparatively receptive environment of state constitutions for current passions whereas the more steadfastly unchanged negative rights of the federal Constitution create relatively infertile ground for these efforts. Therefore, rather than a distinct political jurisdiction, these state constitutions may function as another policy venue for interests and actors.

To examine the influence of the federal government in state constitutional change, this study will utilize the adoption of victims' rights in the United States which occurred in the late twentieth century. Victims' rights provide an effective case study for the consideration of federal influence in state constitutional change because, as this study will detail in the following chapter, the victims' rights era of the late twentieth century was marked by notable, and oftentimes high-profile, federal policy activity advancing victims' rights. Furthermore, this policy activity occurred in each branch of the tripartite government.

The study focuses on the actions of the president during this period because of the notable efforts of presidents to support, and even champion, victims' rights policies. Because the president is the most visible political actor in the United States, he or she possesses the potential to increase the salience of an issue and place it on the policy agenda. Furthermore, as media technology advances and ostensibly expands the president's ability to reach individuals throughout the U.S., presidents may extend their

influence into state policy domains. Thus, it is increasingly important to understand how this influence may manifest and whether it extends to state constitutional change.

Despite prominent presidential pronouncements and the high-profile federal activity in this area, only two-thirds of the states adopted a victims' rights amendment in the late twentieth century era associated with the victims' rights movement. Research is needed to understand how presidential rhetoric influenced adoption in these states. Thus, the main research question of this study is the extent to which presidential rhetoric influences the adoption of state constitutional victims' rights.

## II. Study Preview

Chapter Two will review the academic literature known as "diffusion of innovations." The theory of policy diffusion is used to analyze the influence of presidential rhetoric on the state policy adoption. Because policy diffusion examines the transfer of an innovation between governments, it is useful to a study of the transfer of policy ideas between the federal government and the states. The discussion will highlight the myriad foci of diffusion studies, including the targets of study, the factors that have been investigated, and the methods that have been employed. Attention will be focused on "vertical diffusion," which examines policy transfer from a "top-down" or "bottom-up" dimension which is especially relevant to the relationship of the federal government to the states. It will also include diffusion studies in criminal justice as well as the adoption of constitutional amendments. Finally, literature regarding the influence of presidential rhetoric will be reviewed.

Chapter Three describes relevant historical events, political actors, and policy activity to explain the context for victims' rights policies and constitutional amendment adoption. This discussion includes the social and political background of victims' rights that hallmarked the late twentieth century as the era of the "victims' right movement." It further details the efforts toward the development of policies championed at both the state and federal levels during this period. Consideration of the content of victims' rights constitutional amendments highlights the nature of their provisions as well as their variation.

Chapter Four details the development of a variable to be included in the study's diffusion analysis (see Chapter Five) to represent federal influence through presidential rhetoric. The variable is a measure of federal action constructed from a content analysis of thousands of documents of presidential rhetoric and indexed with presidential election results by state to represent state receptivity to presidential influence. Methods and results are discussed.

Chapter Five outlines the event history analysis used in assessing the influence of presidential rhetoric in the states. Presidential rhetoric and other covariates are analyzed in non-parametric and semi-parametric models. Methods and results of the statistical analyses are presented and discussed.

Chapter Six provides a concluding analysis of the present study, including limitations of the study. An examination of contextual factors in a case study highlights the evolution of factors that may be associated with the adoption of a victims' rights constitutional amendment. Finally, potential future directions of state constitutional change via policy diffusion and presidential rhetoric studies are considered.

## Chapter 2: Review of Literature

### I. Introduction

An examination of the factors associated with state constitutional change involves a broad range of academic inquiry. A primary method in which scholars have attempted to account for policy change has been the theory of policy diffusion, which suggests that governments influence other governments in the adoption of innovations. This approach is especially useful in an examination of federal influence of state policy adoption. The literature reviewed will include the theories underlying the mechanisms of influence, horizontal-vertical dimensions of diffusion, and external and internal factors associated with diffusion. It will then narrow its focus to discuss studies more specifically related to the diffusion of criminal justice policies and the diffusion of constitutional rights. Although policy diffusion and state constitutional rights have been investigated, the presently limited diffusion studies regarding constitutional amendments suggest the importance of public opinion and institutions. What is missing from constitutional amendment studies is the examination of the role of federal government actions in influencing the adoption of such policies. Diffusion literature suggests the federal government is influential in the increase in policy salience as well as in creating a financial context which makes policy adoption more-or-less likely; this research complements previous studies by asking whether federal government influence extends to a state's constitution. Furthermore, as the present study operationalizes presidential rhetoric as a representation of federal influence, the body of presidential rhetoric studies is also discussed. Numerous research studies have asked how, when, and why statements

made by the president affect other aspects of the political system. Missing from this literature is an investigation into the role of presidential influence in state constitutional change. The consequences of federal influence, through presidential rhetoric, in state constitutional change is critical to an understanding of federalism in the United States.

## II. Diffusion of Innovations

Diffusion of innovations represents a considerable line of scholarly research that attempts to explain how innovations occur across jurisdictions. As in the present study, diffusion research has commonly examined how policies have been adopted across jurisdictions. Its application in policy innovation inquiries has been vast and diverse along myriad domains, including, for example, health care, such as the diffusion of smoke free laws in Canada (Nykiforuk, Eyles and Campbell 2008); economic, such as regulatory reforms in Latin American countries (Meseguer 2005), and environmental, such as state hazardous waste policies (Daley and Garand 2005). Diffusion studies have also extended beyond an understanding of policy innovation to include, for example, the diffusion of types of government as well as institutions (Graham, Shipan and Volden 2013, 675; Kopstein and Reilly 2001; Dongwook 2013).

Although the dependent variable in diffusion studies has commonly involved the adoption of policies, some research has taken a more nuanced approach by defining the dependent variable through specific attributes of influence. For example, some studies have found support for influence in the early phases of legislation which were later mitigated in subsequent phases (Karch and Rosenthal 2016) or differentiated from subsequent changes in the law (Karch and Cravens 2014, 482). Of particular interest to

the present study are those literatures which investigate the mechanism of influence, the horizontal or vertical direction of influence, external or internal factors associated with the adoption of policies, and diffusion studies which have examined constitutional amendments and criminal justice policies.

### Mechanism of Influence

The idea that one jurisdiction is influenced by another jurisdiction assumes a causal mechanism, and this mechanism is often explicitly identified within diffusion studies. Diffusion scholars identify these causal mechanisms as including competition, coercion, learning and socialization. Their application and efficacies are discussed in the following sections.

*Competition.* Competition is thought to encourage diffusion by incentivizing action in one jurisdiction to capitalize on a competing action in another, often nearby, jurisdiction. Competition is described as entailing strategic behavior on the part of governments toward competing for revenues from tourism or tax bases but may also result in trade wars or a “race to the bottom” in the provision of services (Graham, Shipan and Volden 2013, 692). For example, Baybeck, Berry and Siegel found support for competition among governments influencing policy adoption in the quest for lottery dollars (2011).

*Coercion.* Coercion involves the imposition of policy preferences on a government. Coercion may be achieved by creating a contingency of behavior in one policy area on another, or by applying sanctions over weaker governments (Graham, Shipan and Volden 2013, 692). For example, Welch and Thompson’s study illustrates

that the speed of adoption of policies increased when federal incentives were provided (1980).

*Learning.* Learning may entail not only gaining an awareness of a policy's effectiveness but also its political feasibility, or utility toward achieving other political goals (Graham, Shipan and Volden 2013, 691). For example, Pacheco's study of anti-smoking legislation finds support for the social contagion model where learning occurs by voters witnessing policies in nearby states and, in turn, providing political pressure to enact policies they support (2012). Nicholson-Crotty and Carley's study added to the concept of learning by finding support for the notion that a state also consider how feasible policy implementation will be (2016). Volden's study found that abandoning a failed policy reflected learning between ideologically similar states and states with professionalized legislatures (2016). Research has further differentiated learning into types, such as Meseguer's study of rational learning and Weyland's application of the concept of bounded rationality (Meseguer 2005, 74-76).

*Socialization.* Socialization involves altering the preferences of others through an initiation into particular norms (Graham, Shipan and Volden 2013, 692). Some researchers have described the mechanism of socialization with a different term, such as emulation (Obinger, Schmitt and Starke 2013) or imitation (Shipan and Volden 2008). Obinger, Schmitt and Starke's 2013 study describes socialization as characterized by an actor who seeks to conform to community norms (114). For example, Greenhill's study of the influence of Intergovernmental Organizations (IGO) on human rights across countries provides support for a socializing effect (2010).

Scholars have considered the nature of the impact of these different mechanisms of diffusion. Graham, Shipan and Volden's study indicated that although socialization may take more time to achieve, it may produce more enduring effects than coercion (2013, 693). Shipan and Volden's 2008 study of anti-smoking policies across 675 U.S. cities found that the impact of imitation was less persistent than the other means over time and that these four mechanisms had different roles depending on the size of the city, where large cities had less likelihood of engaging in imitation, being deterred due to competition and greater likelihood to learn from others. Both small and large sized cities shared the same level of state government coercion (Shipan and Volden 2008, 853-854). Still other studies consider more than one causal mechanism. Boehmke and Witmer's 2004 study of Indian gaming policies, found that states learned from each other in adopting gaming policy, but economic competition was related to both adoption and expansion of these policies.

#### Horizontal-Vertical Dimensions

In addition to considering the various mechanisms of diffusion, scholars have also examined the directional orientation of diffusion processes. For example, diffusion may occur between countries (Obinger, Schmitt and Starke 2013), city to city (Martin 2001), county to county (Bouche and Volden 2011) in a horizontal orientation, and between levels of government, such as city to state, in vertical orientation.

*Horizontal Diffusion.* It is diffusion across the states, however, that has perhaps received the greatest amount of scholarly attention (Karch 2007, 54). State policy diffusion studies have commonly considered a variety of factors as possible policy



influences. These factors have been differentiated between those that occur outside of the state (“external determinants”) and those that occur within (“internal determinants”). For example, Daley and Garand’s 2005 study of state policies regarding hazardous waste, characterized external determinants such as regional effects (which involves the influence of geographically neighboring states) and “top-down” influence (which involves the influence of the federal government). Their study characterized internal determinants such as interest group pressure, severity of the problem, and socioeconomic variables (Daley and Garand 2005).

*Vertical Diffusion.* While the vast research area of state-to-state policy transfer represents horizontal diffusion, some scholarly research has also addressed the vertically oriented diffusion of policy, such as those which may occur from a local government to a state or from the states to the federal government (in a “bottom-up” direction) and federal to state or state to city (in a “top-down” direction). Much of this literature has examined the impact of the states as “laboratories of democracy;<sup>3</sup>” that is, whether the states have influenced policy adoption in the federal government. This “bottom-up” approach includes Ferraiolo’s 2008 study which suggested that state policies may be adopted to fill the void of federal policies in a policy area and to influence federal policy. In addition to filling a void, Riverstone-Newell’s 2013 study described states which adopted policy as a challenge to federal policy. Specifically, Riverstone-Newell’s research examined factors related to state adoption of resolutions opposing the PATRIOT Act (2013). Considering “bottom-up” vertical diffusion from a local to state government, Shipan and Volden

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<sup>3</sup> This metaphor is derived from Justice Brandeis’ dissent in the 1932 case, *New State Ice Co. v. Liebmann* (285 U.S. 262).

(2006) found support for the theory that local anti-smoking policies can influence state policy.

Many studies, however, such as Weissert and Scheller's study of national health policy, found little support for the idea that the federal government learns from the experience of the states (2008). Similarly, Baumgartner, Gray and Lowery's study found little support for the idea that state activities in a policy area are positively related with that policy making it onto the federal agenda (2011). However, Karch and Rosenthal's 2016 study found evidence for a more nuanced influence. Karch and Rosenthal tested learning through "bottom-up" diffusion by examining state efforts to compel Congressional action in sales taxation in electronic commerce (2016). The study findings suggested influence in the early phases of legislation; however, this effect was mitigated in subsequent phases (Karch and Rosenthal 2016).

Such "bottom-up" approaches to influencing government have been complemented by research that analyzes "top-down" influences on policy. Literature suggests that the federal government can be vertically influential in state policy adoption because it can influence the financial feasibility of policies (Karch 2006; Allen, Pettus and Haider-Markel 2004; Brown 2013). National intervention affects diffusion by altering the strength of the obstacles that prevent innovation or by providing resources to help overcome these obstacles (Karch 2006). For example, Brown's 2013 study examined the effect of federal stimulus money in 2009 on state policy adoption regarding alternatives to incarceration and found that states with lower percentages of support were more likely to adopt policy alternatives to incarceration. Welch and Thompson's study

examined 57 state policies and found that policies diffused at a faster rate when federal incentives were provided (1980).

Other national level actions appear to exert influence on direct legislation at the state level, according to Roh and Haider-Markel (2003). Roh and Haider-Markel's study found that pro-choice voting seemed to be motivated by abortion decisions at the Supreme Court level as well as higher national public opinion supporting the pro-choice position but that it was negatively associated with presidential elections and when spending by pro-life interest groups exceeded that of pro-choice interest groups (2003, 24-26).

Karch's 2012 study of stem-cell legislation found that presidential speeches influence the number of bills introduced at the state level. Focused specifically on President's Bush's televised address and subsequent debate over the legislation, Karch's event history analysis highlighted the federal government's ability to increase the salience of issues which influenced the introduction of state-level policies.

Clouser McCann, Shipan and Volden's study similarly considered the influence of the national government in stimulating policy ideas which led to policy adoption. The authors found that states with professionalized legislatures and policy lobbyists were more likely to follow the federal cues regarding antismoking restrictions (2015).

Allen, Pettus, and Haider-Markel examined the influence of the federal government in sending signals to the states concerning their preferences and the potential for future action (2004). Allen, Pettus and Haider-Markel's study considered state policies including truth-in-sentencing and hate crimes to find support for the notion that

the national government exerts influence on state policy adoption when it communicates to the states through “strong, clear signals” regarding its preferences (2004).

#### External-Internal Factors

Another dimension of diffusion research has examined factors regarded as both external to a jurisdiction, such as geographic proximity, and those regarded as internal to a jurisdiction, such as a state’s political ideology.

*External Factors.* The investigation into a state’s spatial relationship to other states was an early feature of diffusion studies, and also reflected horizontally oriented diffusion. This line of inquiry suggested that the state’s geographic proximity to another state might influence its adoption of a policy, such as by facilitating learning (Mooney 2001) or encouraging competition (Baybeck, Berry and Siegel 2011). For example, Rom, Peterson and Scheve found, in their study of Aid to Families with Dependent Children (AFDC) between 1976 and 1994, that when a state reduced available welfare benefits, a contiguous state was more likely to do so as well (1998). Their study found that this influence of geographic proximity was greater than the influence of the states’ party ideology, per capita income, ethnic makeup of recipients, or poverty rates (Rom, Peterson and Scheve 1998, 36).

While geographically proximate states have been considered in many diffusion studies, this research focus has been evolving, both in terms of how proximity is measured and in considerations of external validity. For example, regarding measurement, although the contiguity of states has often represented the concept of geographic proximity, some scholars have also measured proximity as the distance

between state capitals (Desmarais, Harden and Boehmke 2015). Regarding external validity, scholars have signaled concern with the use of the concept of proximity. Shipan and Volden cautioned that geographic proximity may be misleading, as it may instead reflect similar internal characteristics of proximate states, and that it is increasingly outdated, as governments have increasing communication abilities available (Shipan and Volden 2012, 2). While the investigation of spatial relationships has characterized many policy diffusion studies, more recent literature has called for an expansion into factors beyond geographic proximity.

In addition to proximity, another relational factor explored in diffusion research involves patterns of adoption between particular states. Walker's 1969 study identified certain states as leaders in policy adoption. Walker identified "pioneering states" by creating a score of state innovativeness based on an analysis of 88 programs. The states which received the higher score had, on average, been quicker to adopt a policy (Walker 1969, 883).<sup>4</sup> Walker also asked whether states may have "stable patterns of diffusion" with other states (Walker 1969, 888). Similarly, the concept of leading and following states is adapted by Hoefler to include state institutions as leaders and followers; specifically, Hoefler identifies courts which are "trend setting" (1994, 162). Further relational aspects which facilitate policy transfer include the research which has been recently explored through Desmarais, Harden and Boehme's 2015 study inferring a

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<sup>4</sup> Walker's scale has been updated by Boehmke and Skinner (2012) to include a "dynamic" measure of innovativeness.

“policy diffusion network.” Such a network involves “persistent patterns” by which policies have been adopted state-to-state (Desmarais, Harden and Boehmke 2015).

*Internal Factors.* Beyond the external factors, several internal characteristics of a state have also been considered as factors by which a state may adopt a policy innovation. The field of internal characteristics in policy diffusion research is wide-ranging and may include aspects of the individual states or aspects of the policy under consideration. One such inquiry involves the internal characteristic of a state’s political ideology. Such a study may hypothesize that politically conservative or liberal states would produce similar policies. A policy transfer between two conservative states, for example, may relate the internal factor of ideology with the horizontal diffusion of policy between the two states. For example, Grossback, Nicholson-Crotty, and Peterson’s study of state lotteries, bankruptcy laws, and sentencing guidelines found support for the idea that states learn from other states of similar ideology which have already adopted a policy (2004). Bergin’s meta-analysis of diffusion studies in criminal justice policies found little support for a relationship between political ideology with the adoption of criminal justice policy, however, Bergin cautioned that the operationalization of the concept of ideology in the studies considered may have frustrated an analysis of this variable (2011, 414).

On the other hand, Bergin’s meta-analysis suggested the influence of policy salience, another factor which has played a role in diffusion research inquiry. Bergin found an association between the effects of printed media attention on the diffusion of criminal justice policies (2011, 414). Similarly, Oakley’s study of fetal homicide laws found an increased likelihood for policy adoption with greater media attention (2009).

Another important factor in diffusion studies has been the role of various political actors. Mintrom's study of school choice policy found that the presence of a "policy entrepreneur" increased the likelihood of policy adoption (1997). A policy entrepreneur is described as an advocate for a policy proposal or for an idea (Kingdon 1995, 122). According to Kingdon, the defining characteristic of an entrepreneur is the motivation to make an investment toward a particular return, which may include personal interests or desire to shape policy (1995, 122-3). Interest group influence has also been considered in diffusion studies. Through a discussion of four policy areas, Bouchev illustrated how this influence is realized through organizational capacity, issue framing and venue shopping (2010, 141).

In addition to political actors, another internal characteristic includes the influence of institutional capacity. The concept of "professionalization" refers to the degree of capacity within an institution. As described by Hamm and Moncrief, professionalization refers to the legislature's ability "to act as an effective and independent institution" (2013, 163). Factors which have been considered indicators of professionalization have included compensation, length of session, and resources and facilities (Squire 2012, 267) as well as schedule and staff (Rosenthal 1996, 175). In diffusion research, Hume considered professionalization of both state courts and state legislatures in a study regarding same sex marriage prohibition and found support for the relationship between policy adoption and professionalized courts (Hume 2011). Similarly, McNeal, Tolbert, Mossberger and Dotterweich found that legislative professionalization was related to implementation of e-government (2003). Volden's study found that professionalization was related to states' learning about policy failures (2016).

Policy diffusion researchers have recognized the importance of considering policy attributes in an investigation of diffusion. Makse and Volden's 2011 study examined criminal justice policies throughout American states within the period of 1973 and 2002. Surveying experts in the field who categorized policies, according to Roger's typology, on complexity, observability, relative advantage, compatibility, and trialability, they found that three dimensions produced statistically significant results in terms of predicting policy adoption. The two dimensions of (higher) observability and relative advantage promoted diffusion whereas higher complexity was associated with a lower likelihood of diffusion (Makse and Volden 2011, 117). Bouchev's study considers policy type in terms of the rate of policy adoption, arguing that rapid diffusion across states characterizes both morality policy and governance policy due to their high salience, high participation by the masses, and low complexity. Conversely, the lower salience/higher complexity regulatory policy diffuses in a more incremental fashion (Bouchev 2010, 64). Nicholson-Crotty's 2009 study also underscores the relationship between a policy's complexity and salience with its speed of adoption. Mallinson's 2016 work contributes to this area of research by suggesting that clusters of policies may spread more rapidly than a policy standing alone. Furthermore, Mallinson supplements the methodological approach to examining the speed of policy adoption by replacing the use of dichotomous speed categories with a continuous variable (2016). Researchers investigating the rate of policy adoption also found that the adoption rates can be described as a growth curve resembling an S shape. At the outset, adoption is slow as ideas are considered, then quick as policies are adopted within a positive feedback loop, and then resuming a slow pace as saturation is approached (Baumgardner and Jones 2009, 17). However, some policies



exhibit variations from this behavior. For example, research in the field of environmental regulation indicates that the relationship of policy stringency and the rate of policy adoption resembles a U shape (Perino and Requate 2012, 456).

### Diffusion of Constitutional Amendments and Criminal Justice Policies

While the literature of policy diffusion studies is vast and involves investigation into numerous dimensions such as different mechanisms of diffusion, horizontal-vertical orientations of diffusion, and consideration of both internal and external factors to different governments, important gaps of knowledge still remain. A review of literature suggests relatively little is known about the diffusion of constitutional rights, including that of crime victims' rights. On an international level, Goderis and Versteeg (2014) examined the diffusion of constitutional rights between countries, finding that countries with similar legal, religious, and colonial origins as well as aid sources exhibited transnational diffusion of rights to constitutions. Although literature specific to the diffusion of rights in state constitutions is rare, a few studies have found support for the influence of such factors as institutional elements and public opinion. Hume's study of same sex marriage prohibitions found support for the association between court capacity and previous rulings as well as public attitudes in favor of the adoption of such policies (2011) while Lupia et al.'s study of same sex marriage prohibitions found that a combination of citizen attitudes coupled with the stringency of each state's legislative hurdles for amendments to be enacted determined whether constitutional amendments were passed (2010, 1223). Although Bouchey's 2010 study included crime victims' constitutional amendments as one of a number of "morality" policies expected to diffuse

rapidly, the diffusion of crime victims' constitutional rights has been relatively unexplored.

Numerous diffusion studies have considered policies within the criminal justice domain; however, these have generally not addressed state constitutional amendments. For example, internationally, diffusion has been used to understand the spread of criminal justice policies between countries such as police accountability policies between Brazil and the United States (Reames 2007) as well as the U.S. and the U.K. in areas such as mandatory sentencing, three strikes policies, and zero tolerance policies (Jones and Newburn 2006). Jones and Newburn's study highlighted that some of the policy transfer that occurred did so through ideas, rhetoric, and symbols (2006, 147).

Within U.S. policies, Schneider analyzed incarceration policies across states in the period of 1890 and 2008, finding a state's historical position was a strong predictor of its position in the future (2012, 193). Also at the state level, Tucker, Stoutenborough, and Beverlin considered the diffusion of concealed weapons permit laws, and found support for geographical contiguity in the adoption of "shall issue" policies (2012).

Policy diffusion research involves a vast array of inquiry, including examinations of the mechanisms of influence, directional orientations of influence and differentiating internal and external factors of influence. To answer the question of whether the nation's most powerful political actor is influential in the adoption of state constitutional change, policy diffusion studies with a focus on vertical diffusion, constitutional amendments, and criminal justice policy are especially relevant. Because the influence of the president's words is an important component of the present study, a review of the research in the area of presidential rhetoric is also warranted.

### III. Presidential Rhetoric

The present study focuses on presidential rhetoric as an influential factor in the state adoption of crime victims' constitutional amendments primarily because presidents in the victims' rights era of the late twentieth century (the study period) made public pronouncements acknowledging the plight of crime victims, raising the salience of the policy issue, and highlighting its importance. As the most visible political figure in the United States, it is reasonable to expect that the president's pronouncements could lead states to act in support of victims' rights policies. While presidential rhetoric may reflect the attitudes of the public, research suggests presidents are influential in shaping these attitudes as well. The president's message may reach the public directly, creating demand for a policy response; through media accounts, which can further highlight the president's message to the public and lead to demand; or to policymakers in the states who may provide a policy response. Although research to assess the influence of presidential rhetoric has been met with mixed findings, studies, such as Karch's 2012 analysis of stem-cell legislation, have supported the relationship between presidential rhetoric and policy activity in the states. It is sensible to suspect that if presidential speeches can affect the political agenda of a state, as in the Karch study, they may also influence adoption of policies. There remain many unanswered questions in assessing the influence of presidential rhetoric. This study contributes to this body of literature.

Research has considered multiple dimensions of presidential rhetoric, such as asking the questions of "why and when" presidents employ rhetoric. Eshbaugh-Soha and Collins' 2015 study complements a body of literature that considers questions of "why." This body has found support for the idea that presidential rhetoric is used to promote

policy goals, reelection prospects, and to highlight legacies. In addressing the question of “when” presidential rhetoric occurs, studies have considered factors associated with the frequency of speeches made by presidents. Results of these studies have been mixed with some suggesting a positive association between presidential addresses and approval ratings (Brace and Hinckley 1993; Eshbaugh-Soha 2010) while others did not support a relationship between presidential rhetoric and public opinion (Powell 1999; and Hager and Sullivan 1994). Eshbaugh-Soha’s 2010 study found that presidential speeches also increase during periods of legislative success and decrease during periods of economic hardship.

Research in presidential studies have also investigated the concept of presidential influence. Richard Neustadt’s seminal work *Presidential Power* (1960) argued that presidential power lies in the ability to persuade. Neustadt argued that the president, bound by the institutional limitations of the office, could achieve policy goals through bargaining with other political actors. Executive influence within policy matters is also recognized by John Kingdon’s assertion that the president and administration are powerful agenda-setters (2003). Kingdon’s work illustrates how political actors can call attention to issues during windows of opportunity. Samuel Kernell’s concept of “Going Public” focuses on the president’s ability to appeal directly to voters in an effort to create pressure on Congress to act. Zarefsky (2004) considers how presidents attempt to influence public opinion through defining issues. For example, one case study examined how Ronald Reagan redefined the concept of welfare through differentiating recipients by those who were needy and those who were undeserving (Zarefsky 2004, 617).

The efficacy of presidential rhetoric in influencing different institutions has also been a subject of investigation. For example, studies have considered the efficacy of presidential influence over Congress, where Rutledge and Larsen Price found empirical evidence that the president enjoys agenda-setting influence over Congress with an emphasis on international policy (2014), consistent with previous works which suggested an agenda-setting influence with Congress and the media (Edwards and Wood 1999). Eshbaugh-Soha and Peake found evidence that presidential rhetoric has a short-term influence on the media (2004). Olds' analysis found that the president may only be able to indirectly influence the public by influencing economic conditions but does not have this indirect influence on the media (2013). Karch's 2012 study involving the influence of presidential speechmaking in state level stem-cell legislation demonstrated that presidential rhetoric may influence the placement of policies onto state level political agendas. The influence of president rhetoric has been examined regarding policy outcomes, as well. Chapekis and Moore examined the effect of presidential rhetoric on the prosecution of "othered" individuals related to post-9/11 framing of terrorism, finding evidence that prosecution rates for othered individuals were significantly higher than for non-othered individuals during periods within the Bush and Obama administrations (2019).

The question of whether presidential rhetoric influences public opinion has been met with mixed findings. Cohen's 1995 study examined the influence of presidential rhetoric on the public agenda. Results of Cohen's time-series regression analysis of State of Union addresses indicated a positive relationship between increased presidential attention and public concern in the policy areas of civil rights, foreign policy, and

economic policy. Building from Cohen's study and methods, Hill (1998) finds a reciprocal influence between the president and the public in foreign policy and economic matters, and a one-way influence from president to the public in the area of civil rights. Peake and Eshbaugh-Soha (2008) found a short-term influence in presidential rhetoric on the media limited to roughly a third of presidential addresses in four policy areas and were conditioned by other factors. Tedin, Rottinghaus, and Rodgers similarly found evidence of a short-term effect in their study of three speeches made by President George W. Bush that the president's effort at "going public" could be effective (2011). Montgomery, Rogol and Kingsland (2019) found that presidential rhetoric is able to influence public assessments of the Supreme Court.

Juxtaposed with studies that supported the contention that presidential rhetoric could be influential are those that did not support a relationship. Lee's 2014 study considers influence between the president, the public and the news media, finding a relationship between the president and the media as well as the public and the media, but none between the president and the public. George C. Edwards' 2003 work, *On Deaf Ears*, asks whether presidents are successful in being able to mobilize the public. Ultimately, Edwards argues that the president is largely unable to move the public because the public is inattentive to presidential messages (242). Further studies found support for presidential influence when conditioned by other factors. For example, studies support the idea that presidential rhetoric may be influential when voters identify with the president (Thomas and Sigelman 1984).

Studies of presidential rhetoric have also considered the effectiveness of the mode of communication. Young and Perkins' examination of State of the Union (SOTU)

addresses between 1954 to 2002 found that the influence of presidential rhetoric decreased with the increase of cable television (1995). Tedin, Rottinghaus, and Rodgers' 2011 study considered different forms of presidential rhetoric in its evaluation of presidential influence on public opinion. The study found that presidential addresses were most effective at influencing policy and political opinions due to its focus and concision while the SOTU was found to be most influential in affecting the president's image.

#### IV. Study Contributions

Comprehensive research efforts in policy diffusion have established an extensive body of literature analyzing a number of dimensions to the theory, including how and why innovations diffuse, directional orientations of diffusion, and factors associated with diffusion. Despite the expansive nature of diffusion literature, important gaps remain, such as the relatively limited focus on state constitutions. The study of presidential rhetoric has examined the president's ability to influence others but has been generally met with mixed findings. While the primary concern of the present study is to improve our understanding of state constitutional change, the study also contributes to the research on policy diffusion, and the influence of presidential rhetoric. Beyond the theoretical and scholarly value of the present study, practical value may benefit policy practitioners and individuals affected by such policies.

The present study will improve our knowledge regarding state constitutional change. State constitutional research is relatively limited and yet remains an important focus of study as it may differ in important ways from the adoption of other policy. Missing from previous academic research in both diffusion studies and presidential

rhetoric studies is the examination of the influence of the president, as a representative of the federal government, on the adoption of state constitutional amendments – a question that has important implications for the nature of federalism in the United States.

In addition to contributing to the academic literature regarding state constitutional change, the present study will benefit the study of diffusion as it contributes to an understanding of vertical policy diffusion. Within the consideration of why policies spread, researchers have found support for both horizontal and vertical influence through various levels of government, but none has previously focused on the “top-down” influence of presidential rhetoric on state constitutions. Furthermore, although myriad policy issues and domains have been investigated through diffusion studies, significant questions remain regarding the factors which affect the spread of particular policies. This study will advance an understanding of influential factors associated with victims’ rights.

The present study further contributes to research assessing the influence of presidential rhetoric. While the influence of presidential rhetoric as a tool of political influence has been a topic of consideration in political science scholarship for quite some time, results of empirical analyses assessing the influence have been mixed. There have been few prominent efforts to apply an event history analysis to a study of presidential rhetoric influence. This study contributes to the body of presidential rhetoric literature by both assessing this influence in the realm of state constitutional change as well as through the application of a different analytical approach.

In addition to the theoretical and scholarly contributions, the present study will also provide insight and information to policy practitioners concerned with the passage of victims’ rights amendments as well as individuals who experience real-world



consequences from the adoption of victims' rights. Those who seek to promote or prevent the adoption of similar policies may benefit from the study's examination of the factors associated with state constitutional change. This research examines the adoption of policies which may have a significant effect on many individuals as well as on systems of justice. Although decades have passed since the concept of victims' rights rose to prominence as a political issue, comprehensive inquiry into victims' rights policy has not, to my knowledge, been conducted. Because the experience of crime victims may have an influence on their participation in the justice system, it is critical to understand how such participation may be attenuated or strengthened by public policy.

Ultimately, this study asks if the influence of the most powerful political actor in the United States – the president – extends to state constitutional change. In particular, the study is focused on whether presidential rhetoric influences the adoption of state victims' rights amendments.

## **Chapter 3: Victims' Rights**

### **I. Introduction: Why Victims' Rights?**

The policy area involving victims' rights provides a useful case study by which to examine the theoretical contention that the federal government influences state constitutional change because of the significant, and sometimes high-profile, acknowledgements of crime victims and their rights by the federal government. As this chapter demonstrates, each of the three branches of the federal government provided policy cues that may have influenced the states to adopt a victims' rights. Victims' rights also provide a valuable case study for an analysis of the influence of presidential rhetoric on state constitutional change because state justice systems ostensibly fall outside of the sphere of federal influence, except where constrained by Constitutional protections. Thus, an analysis of crime victims' rights at the state level provides the opportunity to examine how states may be influenced by prominent actions of the federal government in a policy area that largely resides within the sphere of state influence.

The topic of victims' rights is also well-suited to a study because, while all states have some form of statutory rights for victims, only some states adopted constitutional amendments for crime victims. Such policy variation among victims' rights constitutional amendments warrants investigation into the degree and nature of federal government influence as factors associated with greater federal influence into state governance matters implicate the concept of federalism in the United States.

This chapter will begin by examining the social and political context of the victims' rights era and will follow with a discussion of the development of victims' rights policies in each of the three branches of the federal government that occurred in

conjunction with the adoption of victims' rights amendments in the states. The goal of this comprehensive examination of the development of victims' rights is to outline the factors which have been implicated in the development of state victims' rights constitutional amendments. This discussion will also highlight the normative considerations surrounding victims' rights policies which continue to affect contemporary political discourse.

A brief review of the variation among state constitutional victims' rights amendments is included to illustrate the variation among policies. Because policy adoption and revision in the states continue as ongoing processes, the review should be regarded as only a snapshot in time of state constitutional victims' rights, subject to significant alteration, and is only presented as an illustration of potential policy variation across the states.

## II. Social and Political Context of the "Victims' Rights Era"

The social and political context of the victims' rights era – the latter part of the twentieth century – is a remarkable one. It is remarkable because it reflected a societal mood of fear as well as a confluence of partisan support for "pro-victim/anti-crime" policy. Additionally, the legacy of this era's policies has been recognized as exacerbating conditions in the criminal justice system, including promoting higher incarceration rates and harsher treatment of juveniles, as well as resulting in disparate impact on minority groups. As such, scholars have considered the development and characterization of this era as well as normative assessment of these policies and their larger societal effects.

The mood of fear that characterized the victims' rights era is represented in Gallup's longitudinal survey of whether residents feared walking outside within a mile of their home. According to Gallup, the percentage of respondents who replied "yes" was in the mid to lower 30 percent in the latter half of the 1960s. This percentage rose to its highest point of 48 percent in the early 1980s, then began to decline to 44 percent by the early 1990s. The decline continued into the late 1990s and by the early 2000s had dropped to the 30 percent, although the percentage has subsequently risen to 35 percent in the most current data (Gallup).

This mood was consistent with acknowledgement of support for victims' rights and crime control policies by both major parties. Republican administrations governed in the years 1980-1992 under the Reagan and Bush administrations and Democratic president Bill Clinton governed throughout the period from 1992 to 2000; their respective contributions to victims' rights policies will be discussed in the following section of this chapter; however, their support for crime control policies in this era is notable, as well.

Under the Reagan administration, the combating of street crime was a feature of the policy agenda (Hagan 2012). The concept of a "chronic offender" characterized contemporary scholarship within this era and provided the basis of Reagan's approach to crime control; chronic offender studies argued that a small number of offenders accounted for a large number of crimes and was put forth as an indicator of a broken criminal justice system; it furthermore gave rise to the notion of certain criminals as "superpredators" (see Hagan 2012, 76; 77). The age of criminology that began with the onset of the Reagan administration is regarded as a departure from earlier emphases on rehabilitation of offenders (see Hagan 2012, 79).

In analyzing crime policy during the Clinton administration, scholars identify the national mood toward crime policy as “frenzied;” rather than reflecting the downward trend of crime incidence, fear was promulgated by media attention of crime and distorted facts about who was committing crime, how much crime was occurring, and how tough (or lenient) the criminal justice system was in dealing with offenders (Krisberg 1994). Platt describes a “moral panic” created by the media and politicians, likening it to the focus on immigrants during the Progressive Era as well as other twentieth century targets (1994). According to Platt, the need to create a moral panic was due to “weakening political authority” that developed as a result of unemployment, decreased public spending, lower rates of electoral participation, and a neglected division between the races (1994). The associated emphasis on crime control was clear. Media characterization of criminals also fostered a sense of insecurity, as Barak’s 1994 study describes the “twentieth century version of the media criminal,”

Media criminals have become less human, less rational, and less Eurocentric; they have become more animalistic, vengeful, and ethnic/racial. At the same time, the crimes of these media criminals have become more violent senseless, and sensational. Their victims have also become more random, helpless, and innocent. The public comes to "see" or conclude that violence and predation between strangers is a normal way of life.

The cost of this construction was significant: the “predator” criminal concept supported status quo economic, political, and social conditions as those factors were largely excluded from considerations of ways to address crime; promoted the idea that “heroes” capture criminals and the criminal justice system can resolve crime (Barak 1994).

Juxtaposed with the social construction of criminal, the social construction of victim has also been acknowledged by scholars. An “ideal victim” has been conceptualized as one who reflects a particular gender, race, and class image and who is innocent from bringing the crime onto oneself (Spalek 2006, 22). Positive construction of victim groups has included females, children, and the elderly (Elias 1990, 243-244). Sally Engle Merry’s research regarding battered women identified a concept of a “good victim” as one who is herself innocent, has a “malicious” attacker, does not fight back, does not engage in her own questionable behavior, and is cooperative with the legal system (2003, 354). The upshot of this conceptualization is that constructions of predator or good victims can serve as the “mechanism” by which tough on crime programs may be adopted and that positive construction of victim groups can provide political reward (Tonry 2013, 7; Spalek 2006, 27; Elias 1990, 243-244).

The policies put forth as a panacea included providing for more officers, use of boot camps, adult penalties for juveniles, and “three-strikes” legislation, the cost of which included a \$30 billion piece of legislation passed at the federal level in addition to the opportunity cost of programs, such as education and healthcare, that went unfunded as resources were directed toward increased law enforcement and prison construction (Krisberg 1994). These actions ballooned the cost of the total criminal justice system to \$74 billion (Platt 1994). Additional costs associated with such policies included the one and a half million individuals incarcerated and nearly five million under correctional supervision in the early 1990s, with a disparate impact on families of color (Platt 1994; Krisberg 1994). The disparate effect of harsh drug and crime policies on black Americans throughout the Reagan and Bush administration, and similarly embraced by the Clinton

administration, has been argued as having more to do with politics than with crime patterns (Tonry 1994). Racial disparities were exacerbated by legislation, such as federal law which punishes crack cocaine offenses much more severely than powder cocaine but were nevertheless supported by presidential administrations across the era and beyond, from Reagan to George W. Bush (Tonry and Melewski 2008). Research recognizes that some policies, such as Megan's Law, rely on emotional support rather than on an evidence-based efficacy (Tonry 2013, 9).

Underscoring analyses of the Reagan and Clinton administrations, the bipartisan nature of support for crime control policy is further demonstrated in Platt's comparison of party platforms in 1992 which illustrated the extent to which crime was a salient policy issue for both parties (1994). An analysis of the Democrat and Republican party platforms detailing crime policy positions highlights that both platforms acknowledge support for additional law enforcement services, harsh or harsher penalties in some form, and the plight of victims (see Appendix A for excerpts).

Contemporary retrospective assessments can be contrasted with the general acceptance by both parties in the victims' rights era regarding crime control attitudes. In Hillary Clinton's presidential bid in 2016, Clinton had to distance herself from her husband's (former president Bill Clinton) previous policy support. According to the *New York Times*, "the most striking part of her speech was the unsaid but implicit rebuttal of her husband's 1994 crime bill, which flooded America's cities with more police officers, built dozens of new prisons and created tougher penalties for drug offenders" (Chozick 2015). Joe Biden's ultimately successful bid for the presidency in the 2020 election included his acknowledgement of arguably problematic aspects of the crime bill

outcomes. When pressed by ABC News Anchor George Stephanopoulos during an October 15, 2020 televised town hall in Philadelphia about whether the crime bill, which resulted in mass incarceration of low-level drug offenders, represented a mistake; Biden responded, “Yes, it was.”

### III. Development of Victims’ Rights

The effort to address victims’ rights issues emerged in the latter part of the twentieth century. Researchers place the origin of the victims’ movement in the 1960s (Mastrocinque 2010, 95). Researchers’ accounts of the factors associated with the development of the victims’ rights movement have offered differing perspectives. Young and Stein identify five activities, including 1) rising crime rates occurring with a lack of satisfaction with the criminal justice system; 2) the field of victimology developing in criminal justice; 3) victim compensation programs at the state level; 4) the women’s movement; and 5) rising victim activism (2004). Mastrocinque describes contributing factors such as growing crime rates, presidential initiatives in examining and addressing crime victims, federal and state legislation, and the emergence of victim organizations (2010). McCormack identifies growing crime rate as a cause as well, but he also points to the results of National Crime Surveys conducted by LEAA, the feminist movement, and provision of victim compensation by the states (1994, 209).

A commonly identified factor associated with the development of the victims’ rights movement is the impact of rising crime rates. Rates of violent crime grew from 200.2 per 100,000 in 1965 to 461.1 in 1974. By 1984, the rate had climbed even further



to 539.9 per 100,000. The violent crime rate peaked in 1992 at 758.2 where it then progressively fell to 463.2 in 2004 (Federal Bureau of Investigation).

In the context of rising crime rates, President Johnson formed the President's Commission on Law Enforcement and Administration of Justice in 1965 to address the causes and potential solutions of crime (Mastrocinque 2010, 96). The report of the Commission indicated a discrepancy between the incidence of victimization reported in Uniform Crime Reports and the victimization reported in a household survey conducted by the commission; that is, many victims failed to report their victimization to police. This lack of reporting led to the creation of the Law Enforcement Assistance Administration (Mastrocinque 2010, 96). Survey results which found that rates of victimization were higher than law enforcement statistics had indicated resulted in increased scholarly attention on crime victims and their lack of trust of the criminal justice system (Young and Stein 2004).

Juxtaposed with the rise in crime rates in this era, many due process rights of criminal defendants were recognized by the U.S. Supreme Court under Chief Justice Earl Warren. Protections, such as involving the admissibility of illegally obtained evidence (*Mapp v. Ohio* (1961)), counsel for indigent defendants (*Gideon v. Wainwright* (1963)), and the right to be informed of one's ability to remain silent and have a lawyer present while in custody and questioned by the police (*Miranda v. Arizona* (1966)), underscored the lack of protection and rights of victims in the criminal justice system (Mastrocinque 2010, 96).

In response to the President's Commission on Law Enforcement, states also began to adopt victim restitution and compensation programs, which were considered ways in

which victims could be encouraged to participate in the criminal justice system (Young and Stein 2004). California was the first U.S. state (in 1965) to implement a victim compensation program (McCormack 1994, 212). Young and Stein describe that early programs may be differentiated from later programs that emerged in the degree of advocacy of the program administrators as well as the orientation toward “welfare” in the early programs and the orientation toward “justice” in the later programs; Young and Stein indicate later programs recognized victims as “deserving” - independent of financial need (2004).

Also, in this era, grassroots efforts led to the emergence of victim organizations by the 1970s (Mastrocinque 2010, 96). Scholars recognize the influence of the women’s movement in the development of victim organizations. According to McCormack these efforts called attention to the vulnerability of women to particular victimization (1994, 209). Leaders within the women’s movement viewed the criminal justice system’s response to such crimes as domestic violence and sexual assault as reflecting the unequal status between men and women (Young and Stein 2004). According to McCormack, 1972 marked the “first grassroots effort” to help sexual assault victims (1994, 212).

In the latter part of the 1970s, the competition amongst victim organizations for funding led to “divisions,” including between grassroots programs and those that were part of the criminal justice system (Mastrocinque 2010, 97). Young and Stein describe the divisions, indicating, “Many felt there was an inherent conflict between the goals of a prosecutor or law enforcement agency and the interests of crime victims. Some sought legal changes in the system, while others felt change could take place through the adjustment of policies and procedures” (2004).

In the 1970s and 1980s, several victim organizations emerged through victim activism. For example, Victim Support Services (VSS) (formerly Families and Friends of Missing Persons) began in 1975 in Washington after the kidnapping and murder of Lola Linstad's daughter, while Mothers Against Drunk Driving (MADD) was organized by two mothers – each of which had daughters victimized by drunk drivers (VSS 2014; MADD 2015).

By the late 1970s, a number of states had victim assistance programs (Young and Stein 2004). The creation of the National Organization for Victim Assistance in 1975 was to “consolidate” the victims’ movement goals through networking and training (Young and Stein 2004). The LEAA emerged in the 1970s to help disseminate information and promote victim assistance through state block grants but was hampered with the defunding of LEAA by Congress at the close of the decade (Young and Stein 2004).

#### IV. Federal Actions Supporting Victims’ Rights

##### Executive and Legislative Actions

Within this era, notable support for victims’ rights were made by both the president and the Congress. Like Johnson’s initiative to examine crime victims in 1966, President Reagan also initiated progress toward the victims’ movement. Reagan established National Crime Victims’ Rights Week in 1981 and commissioned the President’s Task Force on Victims of Crime in 1982. The Task Force’s Final Report included 68 recommendations which involved police, courts, prosecutors, hospitals, mental health providers, and schools; It furthermore recommended an amendment to the Sixth Amendment that victims be granted equal status as a criminal defendant in stages of

the court proceedings (Hook and Seymour 2004). The Final Report stimulated developments in state and federal programs (Mastrocinque 2010, 97). At the federal level, this included the Victims of Crime Act of 1984 (VOCA). The Victims of Crime Act created the Crime Victims Fund which was funded through fines, assessments, and forfeitures, etc., and provided grants to states for victim assistance and compensation programs.

*Victims of Crime Act.* The Victims of Crime Act was signed into law in 1984. The Act provided federal aid to state victims' compensation and assistance programs, assistance to federal victims, and established a Crime Victims Fund which represents revenue collected through criminal fines, forfeited bonds, forfeitures of profits from crimes, and fee assessments for crimes.

The legislative history of the VOCA began following the submission of President Reagan's Task Force on Crime Victim's Final Report when the U.S. Congress considered legislation to meet the needs of crime victims. Both the U.S. House of Representatives and the Senate devised legislation to respond to the Task Force recommendations. These efforts eventually culminated in House Joint Resolution 648-335. Within the House, Representative Hodino (D-NJ) introduced HR 3498 on June 30, 1983, "a bill to help innocent victims of crime" (Congressional Record 1985, 163). The legislation provided federal funding for crime victim compensation programs, victim assistance, and a crime victims' fund that was funded from criminal fines, forfeitures, and assessments. A similar bill was introduced by Republican Representative Hamilton Fish introduced HR 5124, on March 14, 1984 (Congressional Record 1985, 179). A compromise bill was introduced in the House, October 2, 1984 (Congressional Record 1985, 181).

In the Senate, Senator Strom Thurmond (R-SC) introduced Bill 2423 on March 13, 1984. Thurmond described that the federal government legislation could provide a model to the state governments and assist the states in their efforts on the “the war against violent crime” (Congressional Record, 1985, 13). Thurmond described five main features of the Act, as introduced, to include: 1) funding assistance to state victim compensation programs, 2) funding assistance for state victim assistance programs, 3) improved federal victim assistance, 4) federal court authority to order “Son of Sam” forfeitures of profits resulting from crimes, and 5) ensuring victim impact statements may be made at parole hearings. The Act would create a fund that was funded by criminal fines paid to the United States and profits that were made through commission of federal crimes.

Senate Bill 2423 was reported by the Senate Judiciary Committee on May 25, 1984. With 12 changes to the bill, the Committee on the Judiciary reported favorably a “pass” recommendation. Senate Debate on August 10, 1984 reflected support for S2423 however Senator Heinz, a co-sponsor of the bill, expressed concern about the constitutionality of the “Son of Sam” provision. In addition, Senator Specter offered an amendment to the bill which called for priority funding for sexual assault, spousal assault, and child abuse victims. A conference bill was introduced October 10, 1984. After passage in the House and Senate, the legislation was signed by President Reagan and subsequently codified at 42 U.S.C.A. § 10601.

Since the adoption of the VOCA in 1984, it has undergone some revising. For example, it was amended in 1988 to establish the Office of Victims of Crime in the Office of Justice Programs, Department of Justice. In addition, Section 10606 of the Act was repealed by the Crime Victim’s Rights Act in 2004. Under the presidency of George

W. Bush, the Crime Victims' Rights Act (CVRA) was passed in 2004 providing similar provisions to Section 10606 of VOCA but securing an increased role in the justice process for victims and affording qualitatively different interactions with victims and the Department of Justice (Crime Victims' Rights Act).

The Victims of Crime Act has had a significant impact in certain aspects of criminal victimization. Davis and Henley detail the growth in victim services program over a two-decade period, crediting VOCA, in part, for the funding of programs (1990, 157). To be sure, VOCA annual deposits and expenditures represent hundreds of millions of dollars.

*Additional Federal Legislation.* During this era, other victim-related legislative acts were adopted. For example, the 1982 Victim and Witness Protection Act provided restitution to victims and victim impact statements at the sentencing phase. The 1994 Violence Against Women Act provided funding for victim assistance and prevention programs for violence against women and children. In 1996, the Mandatory Victims Restitution Act mandated restitution for specific crimes, and in 1997, the Victim Rights Clarification Act resolved an issue which emerged from the trial of the Oklahoma City bombing case, where the court held that victims who may testify in the case may not observe other parts of the trial.

*Crime Victims' Rights Act (2004).* Beyond the historical era of victims' rights development outlined in the present study, the federal government continued to provide protection for crime victims at the federal level. The Justice for All Act passed in the House of Representatives as H.R. 5107 in 2004. Four sections comprise the Act: Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nile Lynn (termed the

Crime Victims' Rights Act) which provided for victim participation in federal court proceedings (Crime Victims' Rights Act); the Debbie Smith Act of 2004, which provides state and local governments financial assistance to increase capacity to utilize DNA; the DNA Sexual Assault Act of 2004 which furthers training for DNA investigations; and the Innocence Protection Act of 2004, which provides legal and DNA assistance for those claiming to be innocent (Mastrocinque 2010).

The Senate passed a Crime Victims' Rights Act in April of 2004 as a compromise legislation between pro and anti-constitutional amendment forces (H.R. 5107: The Justice for All Act of 2004). Senate Bill 2329 was introduced by Senator Feinstein (D-CA). Senator Feinstein described the provisions in Senate Congressional Record April 22, 2004 S4261-4262, including directions to the courts and the Attorney General to ensure crime victims understand their rights and may exercise them and that they will have the writ of mandamus to make a timely appeal if their rights are denied.

Senate Bill 2329 was later joined to the DNA and Innocence Protection Acts to be a component of the Justice for All Act. The American Civil Liberties Union raised concerns with the Senate version before the House Judiciary Committee - a number of which were subsequently addressed by the House of Representatives' version. Among these, the American Civil Liberties Union expressed concerns that victims who were also witnesses in the case would have their testimony potentially jeopardized if they were allowed to attend the entire trial and hear other witness testimony, that victims have the right to reopen plea agreements, bail, and sentencing hearings if their rights are infringed, and that victims may have a right to counsel (ACLU). Other concerns expressed by the American Civil Liberties Union included the expansion of DNA provisions to include

records of people who had not been convicted of crimes and eliminating federal statutes of limitations for some crimes (ACLU).

In the House, the Justice for All Act of 2004 was introduced by Representative James Sensenbrenner Jr. (R-WI) September 21, 2004 as H. R. 5107 and favorably reported by the House Judiciary Committee on September 22, 2004. Following adoption of a simple resolution regarding debate, H. Res 824, agreed to on October 6, 2004, it passed the House, 393 affirmative votes to 14, on the same day. Three days later, on the 9<sup>th</sup>, it passed the Senate by unanimous vote and was signed into law on October 30, 2004, by President Bush. It became Pub.L. 108-405.

*Federal Constitutional Amendment.* Attempts to include a victims' rights amendment in the federal constitution involved adding a clause to the Sixth Amendment, reading, "Likewise, the victim, in every criminal prosecution shall have the right to be present and to be heard at all critical stages of judicial proceedings" (President's Task Force 1982, 114), although this effort was unsuccessful. In the mid-1990s, interest in passing an amendment was renewed as several states passed their own constitutional amendments. Rather than add to the Sixth Amendment, the National Organization of Victim Assistance (NOVA) recommended an entirely new amendment (Mastrocinque 2010, 102). Senator Dianne Feinstein (D-CA) and Senator Jon Kyl (R-AZ) worked for eight years to create and pass a constitutional amendment but after efforts proved unsuccessful, reworked the provisions into the federal statutory provisions that resulted in the 2004 Justice for All Act (Senate Congressional Record). A current Victim's Rights Amendment was proposed in 2013 (National Victims Constitutional Amendment Passage).



## Judicial Actions

In addition to the efforts made by the president and Congress to support victims' rights, the Supreme Court provided notable support for crime victims in this era. This evolving recognition of victims' rights is apparent in decisions of the Burger and Rehnquist Courts. One of the ways in which the Burger Court reflected this recognition was through the growth in grants of certiorari in criminal cases which involved prosecutor requests to have state judicial decisions reversed (O'Neill 1984, 373). Justice Stevens acknowledged this growing trend in a dissenting opinion in *Michigan v. Long*, describing the phenomenon as a recent occurrence yet acknowledging the growth toward receiving petitions and hearing arguments for these cases (O'Neill 1984, 373).

In the *Long* case, the Court's holding asserted that it had jurisdiction in cases which appeared to rely on federal law unless the state court explicitly indicated it was relying on independent grounds (O'Neill 1984, 363). Justice Stevens' dissent in *Long* argued that the Court's involvement in the case was not warranted because a lower court had not violated the defendant's constitutional rights (O'Neill 1984, 364). To scholars such as O'Neill, the implications of this decision are clear: the decision's effect involves increasing the number of appeals made by prosecutors to reverse state criminal decisions (O'Neill 1984, 373). The concern, according to O'Neill, is that such an approach deviates from the Court's traditional model of appellate review (O'Neill 1984, 365). In the traditional model, the Court's review of criminal cases has involved both a determination of whether there was a violation of a defendants' constitutional rights as well as selection of cases which contribute toward the larger body of case law involving the relationship between citizens and government. The new model put forth in *Long*, however, is no

longer about citizens versus government but one in which the Court recognizes two sets of citizens (O'Neill 1984, 364). O'Neill indicates, "[T]he Court seems to have viewed the criminal case as an opportunity to adjudicate the respective constitutional rights of the law-abiding ("good citizens") and the criminals ("bad citizens")" (O'Neill 1984, 364). According to O'Neill, the Court's representation is one in which the interest of criminal defendants and of crime victims involve a "zero-sum game" where a win for one is a loss for the other (1984, 364).

In addition to the Court's signal in *Long* toward adopting a new approach to appellate review, cases in the 1982 term explicitly illustrated the recognition of victims' interests. For example, in *United States v. Hasting*, 461 U.S. 499 (1983) the Court reversed the Seventh Circuit's decision to grant a new trial to a defendant on the grounds that there was prosecutorial misconduct; in the majority opinion, Chief Justice Burger indicated the Seventh Circuit Court failed to consider the traumatic impact a new trial would have on the victims (O'Neill 1984, 380).

The Rehnquist Court's consideration of victims' interests also provides an important understanding for the change in policy toward victims. Cases which involve crime victims' ability to submit victim impact statements at trial emerged early in Rehnquist's tenure as Chief Justice. The Supreme Court considered victim impact statements in *Booth v. Maryland*, 482 US 496 (1987). The *Booth* case involved a Maryland statute which allowed family members of the victims to submit victim impact statements in the pre-sentencing report. In this case, John Booth was convicted for murdering and robbing Irvin and Rose Bronstein and was sentenced to death by a jury. The victim impact statement made by the family included a description of the victims and

the impact of the murders on surviving family members as well as characterizations of the defendant and the crimes of which he was convicted. The trial court denied a motion to suppress the statement. The Court of Appeals for the State of Maryland found that a victim impact statement was an important component of information useful to sentencing. The question before the Supreme Court was whether a victim impact statement, considered by a jury in the sentencing phase of a capital case, violates the Eighth Amendment guarantee from cruel and unusual punishment. A 5 to 4 majority found that it did. The Court held that, except where such evidence related to the circumstances of the crime, sentencing information should focus on defendant's crime rather than the attributes of the victims or emotional suffering of the family. According to the majority opinion, consideration of such emotional testimony is inflammatory and thwarts the efforts of the jury to arrive at "reasoned decisionmaking" (at 482 U.S. 508-509).

The Court took up a related issue two years later in *South Carolina v. Gathers*, 490 U.S. 805 (1989). In the *Gathers* case, respondent Gathers was convicted of murder and first degree criminal sexual conduct after he attacked Richard Haynes in a park. Gathers was subsequently sentenced to death. At the sentencing phase of trial, the prosecutor's closing arguments involved a lengthy description of Haynes' religiousness and dedication to community, as indicated by the presence and content of items among his belongings. The Supreme Court of South Carolina relied on the opinion in *Booth v. Maryland* that indicated that the sentence for a capital crime must focus on the defendant's responsibility in its reversal of the death sentence that had been previously imposed. The U.S. Supreme Court affirmed that decision, dismissing the State's argument that the personal belongings were related to the circumstances of the crime, and

finding that the items were irrelevant to the defendant's responsibility (490 U.S. 812).

Although Justice Kennedy joined the Court to replace the outgoing Justice Powell, author of the majority opinion in *Booth*, the *Gathers* case involved another 5 to 4 majority where Justice White, a dissenter in *Booth*, voted with the majority in *Gathers* (O'Brien 2008, 1177).

A notable development that occurred following the *Booth* and *Gathers* case involved changing personnel on the Court, as Justice Brennan, an Eisenhower nominee, who voted in the majority in *Booth*, retired in 1990, and was replaced by Justice Souter (a Bush nominee, who joined the majority in the *Payne* case to overturn *Booth*).

In 1991, the U.S. Supreme Court again considered a case involving a victim impact statements in the sentencing phase of capital trials. Pervis Payne was convicted of the murder of 28-year-old Charisse Christopher and her 2-year-old daughter Lacie. Charisse's mother provided a victim impact statement that described the effect of the victim's death on her surviving 3-year-old son which was also referenced by the prosecutor in closing arguments. Payne was sentenced to death and subsequently and unsuccessfully argued that the statements were impermissible in a capital case. However, in *Payne v. Tennessee*, 501 U.S. 808 (1991), the Supreme Court reversed its earlier ruling in *Booth v. Maryland* and *South Carolina v. Gathers* and held that the Eighth Amendment does not prohibit a jury from considering evidence of victim impact in the sentencing phase of a capital trial. The majority in the *Payne* case was six to three, with Chief Justice Rehnquist delivering the opinion of the Court. The Court dismissed the reasoning made in *Booth* and *Gathers*; that is, that evidence of victim harm or victim attributes are not relevant to the "blameworthiness" of a defendant; rather, the Court's

opinion highlights the fact that the testimony presented by the defense involved numerous statements regarding the character of the defendant which should be similarly considered irrelevant to the circumstances of Payne's crime. Chief Justice Rehnquist underscores this point, quoting the Tennessee Supreme Court,

[i]t is an affront to the civilized members of the human race to say that at sentencing in a capital case, a parade of witnesses may praise the background, character and good deed of Defendant (as was done in this case), without limitation as to relevancy, but nothing may be said that bears upon the character of, or the harm imposed, upon the victims.

The Rehnquist Court also considered victims' interests as they implicated the Confrontation Clause of the Sixth Amendment in the 1990 case, *Maryland v. Craig*, 497 U.S. 836. In this case, a six-year-old victim of sexual abuse had been allowed to testify against a pre-school operator, the alleged perpetrator, via a one-way closed-circuit television. The defendant, the defense attorney, and jury could view the child's testimony and the defense could make objections. The defendant was convicted in the trial court. However, the state Court of Appeals reversed the conviction, holding that the state had not met the necessary threshold in determining the child would suffer emotional distress if participating in two-way testimony. In a 5-4 opinion, however, the U.S. Supreme Court reversed. Justice O'Connor delivered the opinion of the Court, indicating,

Maryland's interest in protecting child witnesses from the trauma of testifying in a child abuse case is sufficiently important to justify the use of its special procedure, provided that the State makes an adequate showing of necessity in an individual case.

## V. State Actions Supporting Victims' Rights

In addition to federal responses to victims' rights, states also responded to Reagan's Task Force Final Report with policy adoptions. Such responses included adopting provisions for victim impact statements during the sentencing phase of the trial as well as passing bills of rights for crime victims in state statutes (Mastrocinque 2010, 98).

Furthermore, some states provided victim rights as amendments to their constitution, with the earliest adoption in 1982 by the State of California. The Victim's Constitutional Amendment Network formed in 1987 to coordinate this effort (Mastrocinque 2010, 98) but Mastrocinque also credits responses made by victim organizations within the states to the Task Force recommendations (2010, 101).

Although two-thirds of the states adopted a constitutional amendment within this historical era referred to as the victims' rights movement, several other states have more recently adopted a victims' rights amendment and still others are currently considering adoption. Furthermore, some states which had already adopted a victims' rights constitutional amendment have undergone, or are considering, revision of the original amendments. For example, although the states of California and Florida passed constitutional victims' rights in 1982 and 1988, each has also adopted a subsequent revision of constitutional crime victims' rights. In 2008, California was the first state to pass "Marsy's Law," a comprehensive set of victims' rights which subsequently became model policy for several other states. Florida passed Marsy's Law ten years later in 2018. Marsy's Law was created by Dr. Henry T. Nicholas III following his family's experience with the justice system after the murder of his sister, Marsalee Ann Nicholas (Marsy's

Law). Since California's passage of Marsy's Law, the legislation has been passed by several other states, including, Florida (2018), Georgia (2018), Illinois (2014), Kentucky (2020), Nevada (2018), North Carolina (2018), North Dakota (2016), Ohio (2017), Oklahoma (2018), Pennsylvania (2019), South Dakota (2016), and Wisconsin (2020) and adoption of the legislation is being currently pursued in states such as Idaho, Maine, Mississippi, New Hampshire, and Tennessee (Marsy's Law). Montana and Kentucky passed a Marsy's Law in 2016 and 2018, respectively, but the legislation was subsequently overturned. Kentucky succeeded in passing the legislation again in November 2020. In Pennsylvania, the recently passed legislation is undergoing review by the courts to determine constitutionality.

## VI. Victims' Rights Amendments Provisions

Within the constitutional amendments adopted by states, victims' rights vary in regard to the rights afforded to the victim. A cursory exploration of the Victim Law database, provided by the Office of Victims of Crime, illustrates differences in the provisions adopted by each state. An examination of these provisions may contribute to a greater understanding of victims' rights constitutional amendments and their adoption.

The Victim Law database, available at <https://www.victimlaw.org/>, categorizes victims' rights under the topics of 1) the right to attend, 2) the right to be heard; 3) the right to be informed; 4) the right to protection; 5) the right to privacy; 6) the right to request compensation; 7) the right to restitution; 8) the right to return of property; 9) the right to speedy trial; and 10) the right to enforcement.

Within each of these rights, the Victim Law database further sub-categorizes each provision. For example, the right to be informed is further differentiated into the subcategories of “notice of information” (such as in regard to the criminal justice process, the status of the defendant, as well as rights and benefits available to the victim); “review or obtain information” (such as in regard to requesting contact or additional information); and “victim notification systems” (such as referencing the mechanism by which victims receive information). (See Table 3.1 for Categories and Sub-categories of Select Victims’ Rights).

Table 3.1 Categories and Sub-categories of Select Victims’ Rights  
(Source: Victim Law database)

| <b>Right to Attend</b>               | <b>Right to be Informed</b>  | <b>Right to be Heard</b>        |
|--------------------------------------|------------------------------|---------------------------------|
| Proceedings                          | Notice of information        | Confer with prosecutor          |
| Victim cannot be excluded as witness | Review or obtain information | Communicate with court or other |
| Presence of support                  | Victim notification systems  | Communicate with defendant      |
| Employment protections               |                              |                                 |

An examination of provisions in the database illustrate policy variations in the states. For example, some states adopted weaker policy provisions than others. For the right to attend, a state such as Rhode Island represented the weaker end of the spectrum and a state such as Michigan represented the stronger end while most states fell in between. In general, the Rhode Island provision was also shorter than that of Michigan and did not explicitly include certain provisions, such as the right to a timely disposition of the case and the right to confer with a prosecutor (See Appendix B for Rhode Island and Michigan provisions). The weak-strong differences between states varied, to some



extent, by right, in that a state, such as New Jersey, which reflected a stronger right to attend, reflected weak provisions for the right to be informed. The New Jersey provision represented a weak right to be informed while the state of Arizona represented a strong one (See Appendix B for New Jersey and Arizona provisions).

## VII. Conclusion

Growing dissatisfaction with the justice system and crime rates, the development of the women's movement and victim activism, and additional factors present in the latter part of the twentieth century, culminated in a response by both the federal government and state governments to increase victims' rights protections. These have included both financial assistance for federal and state victims as well as efforts to expand the role of victims in the justice process. Acknowledgement and advancement of victims' rights occurred within each of the three branches of the federal government – including presidential pronouncements, Congressional legislation, and Supreme Court rulings. States responded to the call for victims' rights by adopting statutory provisions for victims' rights as well as the adoption of constitutional victims' rights in the majority of states. Of those states that adopted constitutional protections for victims, provisions vary. Although the importance of victims' rights has been widely accepted by the states as well as having received bipartisan support at the federal level, the social construction of victims and criminals as a justification for justice system policies has been met with criticism and concern for its effect on incarceration rates and disparate impact on racial minorities.

## **Chapter 4: Presidential Rhetoric as a Federal Variable**

### **I. Introduction**

To assess the influence of presidential rhetoric in the states, I construct a variable which includes the degree to which states are more (or less) inclined to be influenced by the presidential words. This variable is an indexed value of a measure of presidential rhetoric, derived from a content analysis of presidential documents, and a measure of state receptivity to presidential rhetoric, derived from state presidential election results. This chapter details the construction of this variable.

### **II. Study Design**

The first component of the study involved a content analysis of presidential documents to assess presidential rhetoric concerning crime victims. Previous studies assessing the influence of presidential rhetoric have taken varying approaches but a common component to many is assessing the frequency of the president's words. For example, Cohen (1995) and Hill (1998) used the frequency of references to particular policies occurring in presidential State of the Union addresses across the study period. These were then counted and expressed in percentages of the total number of sentences in the State of the Union. The present analysis takes a similar approach by identifying pronouncements made by the president in acknowledgement or support of domestic crime victims which are reasoned to support to promote victims' rights policies. However, unlike Cohen's study which expresses references in percentages, the present study considers total number of individual references. I reasoned that because references to victimization may reflect emotional sentiment, a greater number of references may

suggest a greater emotional response and heightened likelihood to support a particular policy adoption. Thus, I reasoned using the total number of references would represent a more precise measurement of the significance of the policy issue.

Previous scholarship in assessing the influence of presidential rhetoric on dependent variables, such as the adoption of policy, has been conducted through different types of analyses, such as time series regression, but few have involved event history analyses. However, Karch's 2012 study evaluating the influence of presidential speechmaking on embryonic stem cell policies advancing to state political agendas takes this approach. Karch's analysis used dichotomous variables to represent the years in which President Bush's speech occurred and subsequent debate ensued. The present study takes a similar approach as Karch's representation in coding for occurrences by year, but rather than dichotomous variables, the present study sought to represent varying degrees of presidential rhetoric by coding for a range of values.

The analysis involved the review of thousands of presidential documents, including verbatim transcripts of news conferences, interviews, weekly and State of the Union addresses, statements, and proclamations between the period of 1981 and 2001. These documents were selected as they were reasoned to have a greater likelihood of reaching the public. I excluded documents from the analysis that were reasoned to be less likely to reach the public, such as comments made at eulogies, state dinners, correspondent dinners, and miscellaneous remarks. The study focused on the manifest content of presidential documents and the explicit use of the word victim. This was done to maximize reliability of the coding. Furthermore, coding of the documents was conducted by a single rater to reduce concerns about inter-rater reliability. The review of

documents involved both an investigation into the depth and breadth of the use of the word “victim.” Values were coded for each year of the study period. After coding, executive orders were subsequently removed from the study as there were no references to the word victim during the study period. These presidential documents were accessed at the American Presidency Project, a database maintained by the University of California at Santa Barbara.

The second component of the study involved the coding of state presidential election results subsequent to those years in the study. Presidential election results were used as a measurement of sensitivity of the states to represent states which are reasoned to be more (or less) attuned to presidential rhetoric. This approach was reasoned to reflect retrospective approval for the president’s term in office.

### III. Methods and Results

To conduct a content analysis, the study identified those presidential documents which referred to crime victims. This was achieved by performing a keyword search through word processing software. Initially, both the keywords “victim” and “crime” were included in the study as separate searches. Although the keyword victim was the central focus of the content analysis, the keyword crime was included for initial analysis to gain a sense of how it may have been used in conjunction with the word victim. After a cursory analysis suggested the two words were not used interchangeably, results from the keyword search for crime were excluded. (See Keyword Crime Coding Methods in Appendix C).

Keyword searches were initially performed on the titles of the documents. Documents such as presidential proclamations and presidential statements were found to offer sufficiently specific titles to make searching by title a reasonable approach. Because the titles of news conferences, interviews, and addresses often did not reflect the substantive content of the document, however, the keyword searches of those documents were expanded to include the full content of the document. Keyword searches of presidential documents were reviewed to determine whether the keywords located were related to the subject of domestic crime victims or victimization. For example, a keyword search of the word victim found that the term was used by President Reagan in a January 9, 1985, news conference to refer to victims of domestic crime in the United States.

Reagan indicated,

I don't blame the police so much for what we've seen over the years as a kind of an attitude in the whole structure of judicial and everywhere else in crime in which it seemed that we got overzealous in protecting the criminals' rights and forgot about the victim. And I think if we have stricter enforcement and stricter punishment, we'll continue to see decline in crime.

Keyword searches that returned results but did not reference domestic crime victims were excluded from the study's further consideration by indicating an exclusion on the original data coding sheets. For example, a search of the word victim returned results which included a reference to victims on June 18 of the same year. However, in this case, President Reagan referred to victims of the Trans World Airlines hijacking, rather than victims of domestic crime. Thus, while the former positive search return was coded 1, as a relevant reference to this study because it referenced domestic crime

victims, the latter positive search return was coded 0, as an irrelevant reference to this study because it did not reference domestic crime victims. There were several situations in which exclusions applied. As indicated in the above example, references to the word victim were excluded when referencing disease or disaster victims, or victims of violence that occurred outside of the United States. Even when American citizens were victimized by crime occurring outside of the United States, the keyword search return was excluded because it did not appear to represent a domestic crime situation which implicated domestic crime policy and which, in turn, could implicate the possible adoption of a state crime victims' constitutional amendment. References to the word victim were excluded if they were made by any person other than the president, for example, when made by a reporter or another political figure (such as a foreign prime minister). Referring to a person or persons as a "victim" of objectionable treatment (such as a victim of the media or of politics) was coded 0 as non-relevant and subsequently excluded from consideration.

#### Breadth and Depth of the Word Victim

The second step was to tabulate the data. Two approaches were taken – one which sought to reflect the breadth of the use of the word victim by tallying the number of different presidential documents that used the word victim, and the other which sought to reflect the depth of the use of the word victim by tallying the number of times the word victim was used across reviewed presidential documents in a given period. Each approach was reasoned to be a meaningful representation of prioritizing a concept in rhetorical communication. The breadth of the message is important because the greater

number of avenues where a president communicates may increase the likelihood that the message is received. Presidential news conferences, interviews, weekly addresses, proclamations, statements, and the State of the Union address may, to some degree, reach somewhat different audiences thus expanding the reach of the president's message. Additionally, utilizing a larger number of forms of communication might increase the likelihood that a message that fails to reach an audience through one avenue might be received through another.

The depth of the use of the word victim is also important because the greater use of the word may communicate a greater significance to a concept. Thus, a president's rhetoric utilizing a repeated word, such as victim, may communicate the importance of a concept to the president's values and priorities. Because both the breadth and depth of the use of the word victim are valuable considerations, the study method utilized an amalgam of both measures.

*Breadth of the Use of the Word Victim.* Assessing the breadth of the use of the word victim involved tallying the number of documents that included the reference. Figure 4.1 displays the frequency distributions of documents containing the word victim for each year between 1982 and 2001. As indicated in the table, the year 2000 had the greatest number of presidential documents which referenced victims in relation to domestic crime. The years 1996 and 1997 had the second and third greatest numbers, respectively. Years 1986 and 1992 each contained zero presidential documents referencing crime victims.

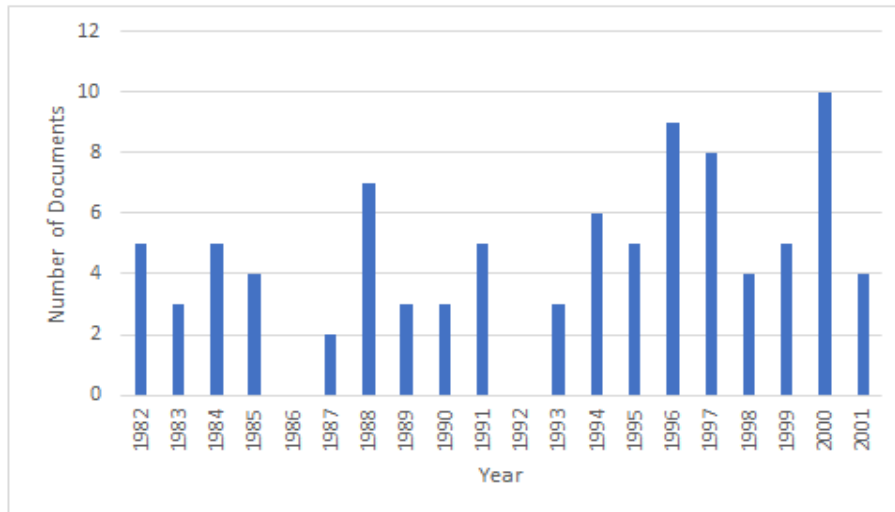


Figure 4.1 Frequency of Document Containing Word Victim

An ordering in of the values represented in Figure 4.1 further illustrates the frequency. The range of scores was 0 to 10. Measures of central tendency included a mean value of 4.55, a median of 4.5 and a mode of 5.

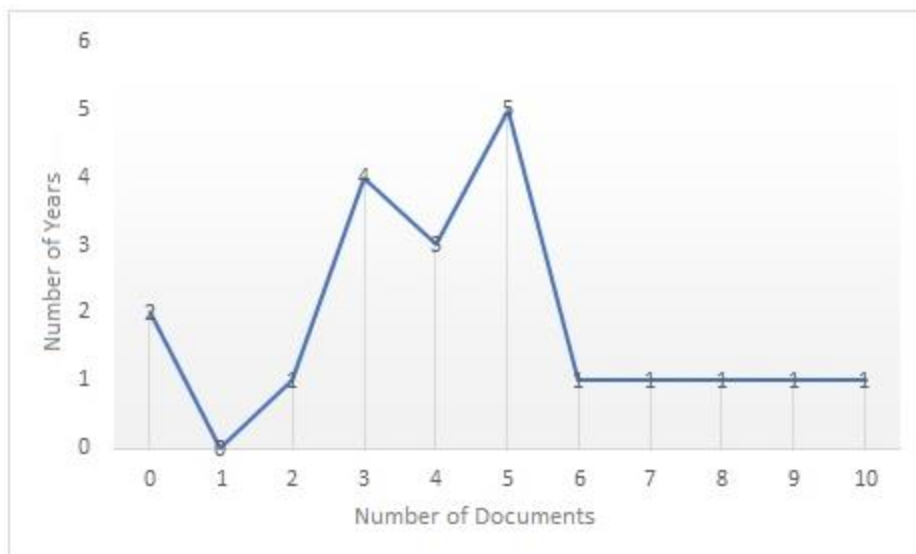


Figure 4.2 Ordered Values of Frequency of Document Containing Word Victim



Once the frequency distribution of documents containing the word victim was tabulated, the scores were ranked by intensity from Low to High. Years that had 0 to 2 references were considered Low and coded as 0, years with 3 to 6 references were considered Moderate and coded as 1, and years that had 7 to 10 references were considered High and coded 2. The cutoff points for each category were established by considering the distribution of the values. (See Table 4.1 for intensity of documents by year.)

Table 4.1 Documents Containing Word Victim Intensity Score by Year

| Intensity Score | Low (0-2)              | Moderate (3-6)   | High (7-10)            |
|-----------------|------------------------|--|------------------------|
| Coding          | 0                      | 1  | 2                      |
| Years           | 1981, 1986, 1987, 1992 | 1982, 1983, 1984, 1985, 1989, 1990, 1991, 1993, 1994, 1995, 1998, 1999, 2001 | 1988, 1996, 1997, 2000 |

In addition to the total number of documents containing the word victim, data also included the totals of documents by type of document. This information is useful in the consideration of the nature of different types of presidential rhetorical communication. For example, modes of communication such as weekly addresses, proclamations and statements occur with a greater frequency than a presidential State of the Union address, which only regularly occurs on an annual basis. Figure 4.3 illustrates that in several years across the study, presidential addresses accounted for the type of document which most frequently included the word victim. For example, in year 1988, which had a total of seven references to the word victim, six of those were found in presidential addresses while one occurred in a presidential proclamation. In year 2000, which represented the

year which had the most references to the word victim, (a total of 10), presidential statements accounted for half of those references, with a total of five. Weekly addresses had a total of three. News conferences and presidential addresses each had one reference.

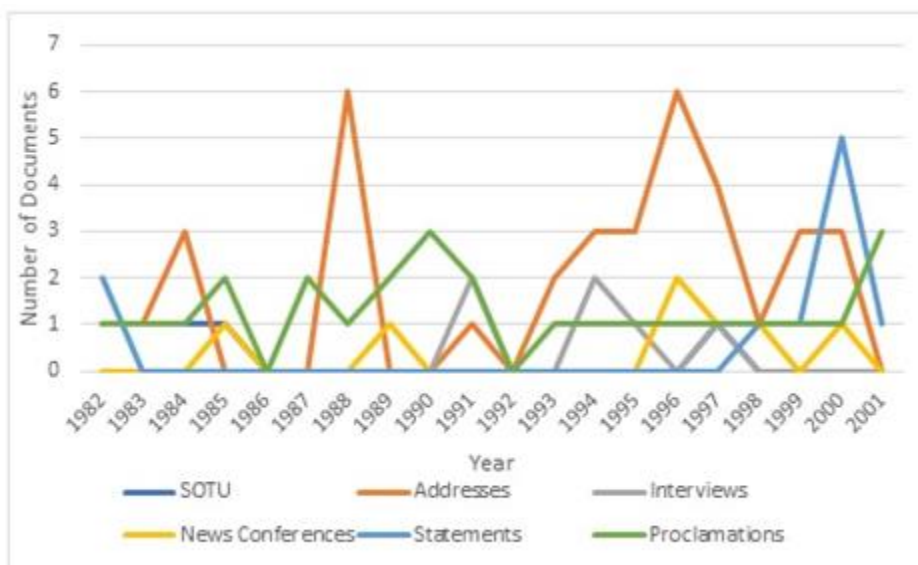


Figure 4.3 Frequency of Document Containing Word Victim by Type of Document

*Depth of the Use of the Word Victim.* Assessing the depth of the use of the word victim involved tallying the total number of references to the word victim across all documents reviewed in the study per year. That is, if the president referred to victims twice in (a) presidential address(es), once in a statement, three times in (a) news conference(s), and zero times in the remaining formats (State of the Union, interviews, and proclamations) in a particular year, the tallied number for that year would be six. Figure 4.4 displays the frequency distributions of references to the word victim for each year between 1982 and 2001. As indicated in the table, the year 1996 had the greatest number of references to the word victim in relation to domestic crime, with a total of 55. The years 2000 and 1997 had the second and third greatest numbers, respectively. Year

1992 had zero references to the word victim.

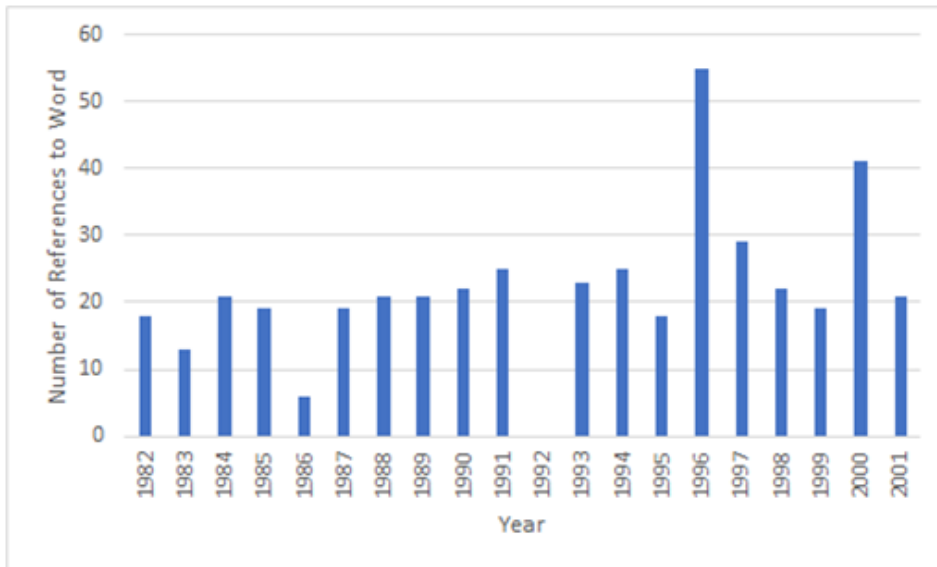


Figure 4.4 Frequency of Word Victim

An ordering in of values in Figure 4.5 further illustrates the frequency. The range of scores was 0 to 55. Measures of central tendency include a mean value of 21.9, a median of 21, and a mode of 21.

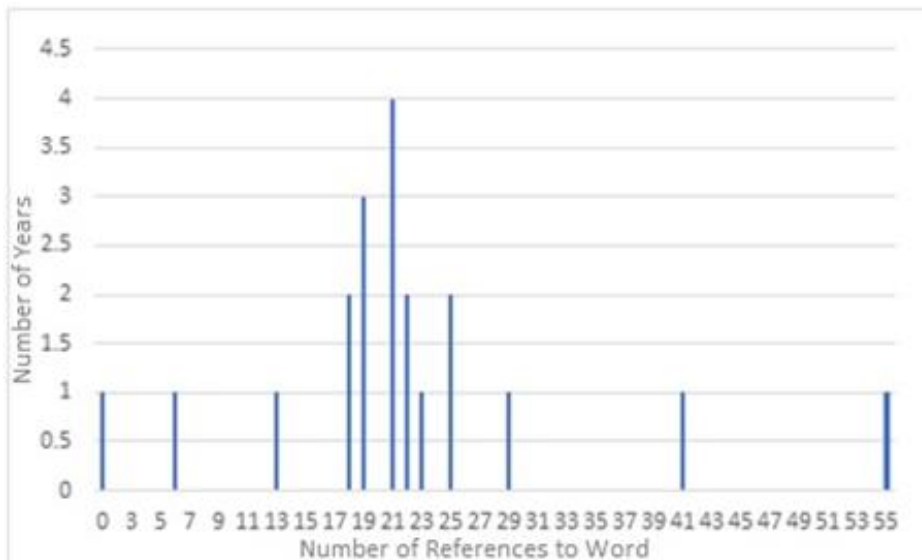


Figure 4.5 Ordered Values of Frequency of Word Victim

Once the scores for the frequency of the word victim were tabulated, they were ranked by intensity from Low to High. Years that had 0 to 14 references were considered Low and coded as 0, years with 15 to 24 references were considered Moderate and coded as 1, and years that had 25 to 55 references were considered High and coded 2. The cutoff points for each category were established by considering the distribution of the values. (See Table 4.2 for Use of Word Victim Intensity Scores by Year.)

Table 4.2 Use of Word Victim Intensity Scores by Year

| Score  | Low (0-14)          | Moderate (15-24)  | High (25-55)                       |
|--------|---------------------|---|------------------------------------|
| Coding | 0                   | 1   | 2                                  |
| Years  | 1983, 1986,<br>1992 | 1982, 1984, 1985, 1987, 1988, 1989,<br>1990, 1993, 1995, 1998, 1999, 2001 | 1991, 1994,<br>1996, 1997,<br>2000 |

In addition to the total number of references to the word victim, data also included these totals by type of document. Figure 4.6 demonstrates that in several years across the study, presidential proclamations contained the most references to the word victim compared to the other types of documents in the study. The year with the greatest number of references to the word victim was 1996 which had 55 references – 36 of which occurred in presidential addresses and 17 of which occurred in presidential proclamations. Only one year, 1992, had no references to the word victim.

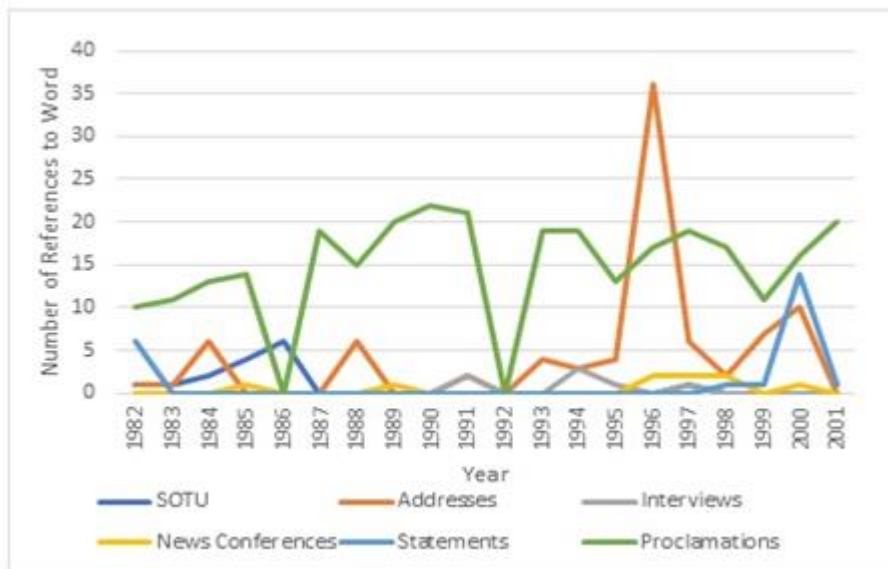


Figure 4.6 Frequency of Word Victim by Type of Document

Once the data on the breadth and depth of the use of the victim were tallied and scored, the values were summed. For example, a year which received a score of Moderate (1) in Frequency of a Document Containing the Word Victim and High (2) in Frequency of the Word Victim received a score of 3. Sums were obtained for each of the twenty years in the study.

#### State Receptivity to Presidential Rhetoric

Because presidential rhetoric is generally experienced by all of the states to the same degree, the study sought to capture a measurement of sensitivity of the states to recognize those states which are reasoned to be more (or less) inclined to pay attention to the president's statements. For example, a traditionally "red" state might be reasoned to be more inclined to pay attention to the rhetoric of a Republican president than a "blue" state. To capture this sensitivity, the study initially considered utilizing presidential

approval rates by the states; however, data was unavailable as organizations such as Gallup did not record this data by state during the time period of this study. Instead, subsequent election results were used to represent state support of a president. Because elections have been commonly found to represent assessments of a president's performance, electoral support at the end of the term reflects a measure of presidential approval.

Using the Atlas of U.S. Presidential Elections database, available at [www.uselectionatlas.org](http://www.uselectionatlas.org), the results of each election between the years 1984 and 2004 were recorded. Presidential support was represented by the percentage of voters who voted for the winning candidate (or candidate's party, if power had since changed). For example, results from the 1984 election, which reelected Ronald Reagan, were retroactively applied to Years 1981, 1982, 1983, and 1984 to represent that state's level of support. Thus, in 1984, because 60.54 percent of Alabama voters voted for Reagan, the value of 60.54 was marked for Alabama for each of those years. For election years where a member of a president's party wins, such as in 1988 when George H. W. Bush succeeded Ronald Reagan, the percentage of support Bush received from voters in the 1988 election, was used to represent the support for Reagan's last term (years 1985, 1986, 1987 and 1988). This was justified as it was reasoned that party candidates were likelier than not to approach crime victim's policy with a similar position.

The support for presidents in this time period ranged from 30 to 70 percent. Values were scored on intensity of presidential support from Low (up to 43 percent), Moderate (43 to 56 percent) and High (56 percent and higher). See Table 4.3 State Receptivity to Presidential Rhetoric for results.

Table 4.3 State Receptivity to Presidential Rhetoric

|                | 1981-84 | 1985-88 | 1989-92 | 1993-96 | 1997-00 | 2001-02 |
|----------------|---------|---------|---------|---------|---------|---------|
| Alabama        | High    | High    | Mod     | Mod     | Low     | High    |
| Alaska         | High    | High    | Low     | Low     | Low     | High    |
| Arizona        | High    | High    | Low     | Mod     | Mod     | Mod     |
| Arkansas       | High    | Mod     | Low     | Mod     | Mod     | Mod     |
| California     | Mod     | Mod     | Low     | Mod     | Mod     | Mod     |
| Colorado       | High    | Mod     | Low     | Mod     | Low     | Mod     |
| Connecticut    | High    | Mod     | Low     | Mod     | Mod     | Low     |
| Delaware       | Mod     | Mod     | Low     | Mod     | Mod     | Mod     |
| Florida        | High    | High    | Low     | Mod     | Mod     | Mod     |
| Georgia        | High    | High    | Low     | Mod     | Low     | Mod     |
| Hawaii         | Mod     | Mod     | Low     | Mod     | Mod     | Low     |
| Idaho          | High    | High    | Low     | Low     | Low     | High    |
| Illinois       | Mod     | Mod     | Low     | Mod     | Mod     | Mod     |
| Indiana        | High    | High    | Low     | Low     | Low     | High    |
| Iowa           | Mod     | Mod     | Low     | Mod     | Mod     | Mod     |
| Kansas         | High    | Mod     | Low     | Low     | Low     | High    |
| Kentucky       | High    | Mod     | Low     | Mod     | Low     | High    |
| Louisiana      | High    | Mod     | Low     | Mod     | Mod     | Mod     |
| Maine          | High    | Mod     | Low     | Mod     | Mod     | Mod     |
| Maryland       | Mod     | Mod     | Low     | Mod     | Mod     | Low     |
| Massachusetts  | Mod     | Mod     | Low     | High    | High    | Low     |
| Michigan       | High    | Mod     | Low     | Mod     | Mod     | Mod     |
| Minnesota      | Mod     | Mod     | Low     | Mod     | Mod     | Mod     |
| Mississippi    | High    | Mod     | Mod     | Mod     | Low     | High    |
| Missouri       | High    | Mod     | Low     | Mod     | Mod     | Mod     |
| Montana        | High    | Mod     | Low     | Low     | Low     | High    |
| Nebraska       | High    | High    | Mod     | Low     | Low     | High    |
| Nevada         | High    | Mod     | Low     | Mod     | Mod     | Mod     |
| New Hampshire  | High    | High    | Low     | Mod     | Mod     | Mod     |
| New Jersey     | High    | Mod     | Low     | Mod     | Mod     | Mod     |
| New Mexico     | High    | Mod     | Low     | Mod     | Mod     | Mod     |
| New York       | Mod     | Mod     | Low     | High    | High    | Low     |
| North Carolina | High    | Mod     | Mod     | Mod     | Mod     | Mod     |
| North Dakota   | High    | Mod     | Mod     | Low     | Low     | Mod     |
| Ohio           | Mod     | Mod     | Low     | Mod     | Mod     | Mod     |
| Oklahoma       | High    | Mod     | Low     | Low     | Low     | High    |
| Oregon         | Mod     | Mod     | Low     | Mod     | Mod     | Mod     |
| Pennsylvania   | Mod     | Mod     | Low     | Mod     | Mod     | Mod     |
| Rhode Island   | Mod     | Mod     | Low     | High    | High    | Mod     |
| South Carolina | High    | High    | Mod     | Mod     | Low     | High    |

|               |      |      |     |     |     |      |
|---------------|------|------|-----|-----|-----|------|
| South Dakota  | High | Mod  | Low | Mod | Low | High |
| Tennessee     | Mod  | Mod  | Low | Mod | Mod | High |
| Texas         | High | Mod  | Low | Mod | Low | High |
| Utah          | High | High | Mod | Low | Low | High |
| Vermont       | Mod  | Mod  | Low | Mod | Mod | Low  |
| Virginia      | High | High | Mod | Mod | Mod | Mod  |
| Washington    | Mod  | Mod  | Low | Mod | Mod | Mod  |
| West Virginia | Mod  | Mod  | Low | Mod | Mod | Mod  |
| Wisconsin     | Mod  | Mod  | Low | Mod | Mod | Mod  |
| Wyoming       | High | High | Low | Low | Low | High |

Notably, the candidacy of Ross Perot in 1992 and, to a similar but lesser degree in 1996, created a condition where the values of support for the ultimate election victor were often in the Low category of 30 percent. Despite this, the values for this period were not adjusted for the influence of Ross Perot as it was reasoned that the values were accurate representations of the support for the president. Another approach would have been to remove the Perot influence of the numbers to create numbers more similar to a typical election involving the two major party candidates.

After intensity scores were assigned to each state for each of the years considered within the study, the values were multiplied with the summed value of the breadth and depth of the word victim in presidential rhetoric to achieve a final value representing the presidential rhetoric federal variable for each state for each of the years in the study. This variable tells us that the influence of presidential rhetoric in the states is a factor of the degree to which particular language is used (in this case, the word victim) and the degree to which a state expresses presidential approval. Figure 4.7 illustrates the expression of the presidential rhetoric variable.



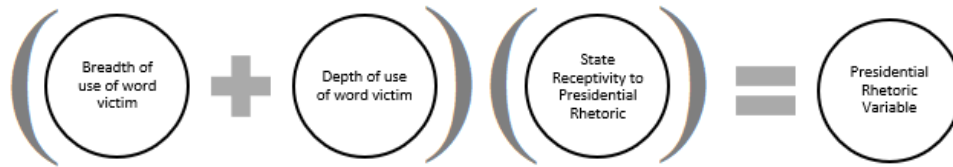


Figure 4.7 Presidential Rhetoric Variable

#### IV. Conclusion

This content analysis sought to develop a variable representing action on the part of the federal government through the use of presidential rhetoric using the results of a content analysis of thousands of presidential documents throughout the study timeframe. Both the breadth of the use of the word victim as well as the depth of the use victim were measured. These values were then indexed with a measure of retroactively applied election results for the victor in presidential elections throughout the period of the study as a representation of a state's "receptivity" to presidential rhetoric. The event history analysis described in Chapter 5 employed each state's value that occurred in the year the state either adopted the policy or in the final year of the study if a state did not adopt during the study time period.

## **Chapter 5: Event History Analysis of State Victims' Rights Amendments Adoption**

### **I. Research Questions and Hypotheses**

In this chapter, I conduct an event history analysis to discern causal inferences in the adoption of state-level victims' rights constitutional amendments. I examine the influence of presidential rhetoric on the adoption of these amendments, questioning whether presidential rhetoric focused on crime victims, among other covariates, influenced the adoption of state constitutional crime victims' rights amendments. In the sections to follow, I outline and justify the study hypotheses, detail coding methods, and analyze data through a preliminary non-parametric process as well as through semi-parametric regression models. I have utilized a series of data analysis approaches to improve the reliability of the results.

#### **Federal Influence**

It makes sense to investigate the influence of the federal government on state policymaking. The constrained nature of federal power limits the federal government from acting directly in some policy domains. As such, states may be regarded as more inviting arenas to pursue policy change. For example, scholars have identified that states may enact policies because passing federal law is a difficult process due to partisanship and multiple veto points (Dinan and Krane 2006). In a constitutional sense, this may be due to the "reverence" that makes federal constitutional change anathema to policymakers, or due to the "negative" rights embodied in the due process protections of the Bill of Rights and the positive nature of victims' rights. In addition to the positive

quality of victims' rights, arguments within the Supreme Court cases illustrate that victims' rights can be seen as implicating the rights of defendants which are preserved in the due process amendments of the Bill of Rights. For these reasons, it may be especially difficult to pass such a law at the federal level. Krane (2007) similarly describes the motivation of states to adopt policies that can fill the void created when the federal government does not act or when federal policy is deemed unsatisfactory. With these considerations, this study will examine the influence of federal actions in support of crime victims' rights on the adoption of state constitutional victims' rights amendments.

Each of the three branches of the federal government have provided signals to the states in regard to victims' rights. President Reagan's Task Force Report is credited with promoting state adoption of provisions for victim impact statements during the sentencing phase of the trial, as well as passage of bills of rights for crime victims in state statutes (Mastrocinque 2010, 98). In addition to executive influence, there is evidence suggesting Congress has sought to influence state crime victims' policy. The 2004 Crime Victims Right Act illustrates an attempt to influence the states. Senator Feinstein indicated at Senate Bill 2329's introduction,

This act, of course, binds only the federal system, but is designed to affect the states also. First it is hoped that states will look to this law as a model and incorporate it into their own systems (Senate Congressional Record, April 22, 2004, S4262).

It is feasible, also, to suggest that the federal judiciary's actions in regard to crime victims provide important cues to the states at its simplest because the determination of the constitutionality of laws by the highest court provides legal guidelines to the states.

The Supreme Court has, indeed, ruled on the constitutionality of victims' rights provisions such as victim impact statements. In *Payne v. Tennessee*, 501 U.S. 808 (1991), the Supreme Court reversed its earlier ruling in *Booth v. Maryland* (1987) and *South Carolina v. Gathers* (1989) and held that the Eighth Amendment does not prohibit a jury from considering evidence of victim impact in the sentencing phase of a capital trial.

The support for crime victims' rights signaled by the three branches of the federal government drives the theory of the present study. However, because a study of federal influence of the three branches may require different approaches to study design, only one branch will be considered in this study. The influence of the federal government through the rhetoric of the president representing the executive branch will be the focus of the present study. Presidential rhetoric is the focus of the study because the president, as the single-most visible political actor in the United States, is reasoned to possess the ability to make issues salient and place them on the political agenda. Although a federal actor, high-profile presidential pronouncements may influence the states as the president provides cues to which policy issues should be considered important.

## Hypotheses

The present study will be testing seven hypotheses. While the main theoretical question of the study involves the influence of presidential rhetoric on the adoption of state constitutional amendments, alternative factors are included to provide a comprehensive analysis. The factors considered are those which have been theorized, in other contexts, to affect policy adoption and may be relevant in the case of the adoption of victims' rights constitutional amendments. These include party control of the state

government as well as the alternative condition of an electorally competitive state government; state crime incidence, the strength of interest groups within a state, the level of innovation of a state, and the legislative structure of a state that makes it more (or less) easy to pass an amendment.

Objective #1 will be to examine the study's main theoretical concern, that of the relationship between presidential rhetoric and the adoption of state crime victims' constitutional amendments. Specifically, Hypothesis #1 states:

***H1: If, through rhetoric, the president acknowledges domestic crime victims, then it is more likely a state will adopt a state crime victims' constitutional amendment.***

*Republican Party Control.* To create a comprehensive analysis, additional factors, such as political ideology, are also considered. Thus, Objective #2 examines the influence of political party control on the adoption of constitutional amendments by states. Although crime victims' policies have often enjoyed bipartisan support as well as sizeable citizen support, it is reasonable to suggest a relationship between the ideological basis for victims' rights as grounded with the Republican party. To be sure, Republican president Ronald Reagan is recognized as a champion for crime victims. According to a 2005 Office for Victims of Crime report, "President Reagan literally put crime victims' rights, needs and concerns on the American agenda of public safety and public health concerns. He established clearly and convincingly that *victims' rights are human rights* that affect us all" (Office of Victims of Crime, 2005). McCormack recognizes the significance of the contributions of Republicans at the federal level as well, indicating,

Since the mid-1960s the United States Congress has considered and rejected numerous bills to compensate victims of crime. Progress was not made at the national level until the Republican administrations of the 1980s embraced the victims' movement as a natural extension of their conservative philosophy opposing criminal offenders (McCormack 1994, 214).

Thus, it is reasonable to anticipate a relationship between Republican control of state governments and policies which may be regarded as consistent with those of federal Republican administrations.

Hypothesis #2 indicates,

***H2: If the Republican Party is in control of the state government, then a state is more likely to produce crime victims' constitutional amendments.***

*Electoral Competition.* An alternative, converse hypothesis to the hypothesis that Republican controlled state governments are more likely to produce victims' rights constitutional amendments, is the idea that electorally competitive state governments are more likely to produce victims' rights constitutional amendments. Such a hypothesis may call into question the assumption of whether victims' rights should be regarded as more aligned with conservative, or Republican, values. Toward this assessment, Objective #3 examines the relationship between electoral competition and the adoption of crime victims' constitutional amendments. The association between electoral competition rests on the assumption of the need of state government to respond to electoral demand. This assumption is articulated by Holbrook and Van Dunk, who indicate, "[E]lected officials in competitive areas will be highly responsive to constituency needs, due to the risk of

electoral defeat” (Holbrook and Van Dunk 1993, 955). During periods of increased competition, parties should have greater incentive to respond to proposals that are favored by high percentages of the public. As indicated, an examination of constitutional amendments that have passed indicate that they have frequently been adopted with high percentages of support. Thus, consideration of the influence of electoral competition in the adoption of constitutional rights amendments is warranted.

Specifically, Hypothesis #3 predicts:

***H3: If electoral competition within a state is high, then a legislature is more likely to pass a crime victims’ constitutional amendments.***

*Crime.* Objective #4 will examine the relationship between state crime rate peaks and the adoption of crime victims’ constitutional rights. The development of victims’ rights policies occurred during a notable increase in crime rates in the latter decades of the twentieth century. Increases in crime are reasoned to be attended with concern over growing crime victimization and policies associated with victimization. States which are experiencing high levels of crime may experience heightened levels of citizen and governmental concern over victimization and, thus, would be more likely to produce crime victims’ rights policies.

Hypothesis #4 predicts:

***H4: If a state is experiencing a peak in its crime rate, then that state is more likely to pass a crime victims’ constitutional amendment.***

*Interest Groups.* Objective #5 considers the relationship between the strength of interest groups within a state and the passage of state crime victims' constitutional amendments. As scholars attributed the growth of victim groups in the development of victims' rights, it is reasoned that the strength of groups in the states may be related to the adoption of amendments to state constitutions (Mastrocinque 2010, 101). It is reasoned that a state with a history of strong interest group influence would be more at-risk of adopting a policy pursued by victim organizations. Although reasonable, this concept is also somewhat problematic because it is possible that "strong" interest groups could either promote the adoption of crime victims' policies or thwart the adoption of crime victims' policies. For example, even though the development of victims' rights organizations suggests a possible role in producing policy change, it is also possible that opposing interest groups, such as those representing the interests of defendants, may be concerned about the effect crime victims' rights have on their members and work to thwart the efforts of victims' groups. While the *strength of victim interest groups* in each state would provide a more ideal measurement than the strength of interest groups in general, to my knowledge, this data is unavailable.

The strength of interest groups will utilize coding scores from the Thomas-Hrebenar categories where Thomas and Hrebenar classified the strength of interest groups relative to other policymaking aspects within a state. These categorizations range from 1) dominant, 2) dominant/complementary; 3) complementary; 4) complementary/subordinate; 5) subordinate, where dominant represents the greatest magnitude of influence and subordinate represents the least.



Thus, Hypothesis #5 indicates:

***H5: If interest groups within a state are strong, then a state is more likely to pass a crime victims' constitutional amendment.***

*Innovation.* Objective #6 will examine the relationship between a state's degree of innovation and the adoption of crime victims' constitutional amendments. Walker (1969) studied state adoption of policies and scored states along the degree to which it was a leader in policy adoption. Such states are said to be innovative. A state which is likely to lead other states in policy adoption is reasoned to also lead other states in the adoption of crime victims' state constitutional amendments. Specifically, Hypothesis #6 predicts:

***H6: If a state is considered a policy innovator, then the state is more likely to pass a crime victims' constitutional amendment.***

*Legislative Structure.* State constitutions can be amended in a number of ways, which vary from state to state, but which generally involve a legislatively initiated amendment that is approved by a certain threshold of voters, an initiative brought by and approved by the voters, or through the calling of a constitutional convention.<sup>5</sup> As state amendment procedures vary, so does the degree of difficulty in passing amendments. Objective #7 examines the influence of the differences in state institutions that may

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<sup>5</sup> Delaware allows the legislature to adopt a constitutional amendment without input from the voters. Florida uses a state commission to consider amending the constitution.

mediate policy adoption. This analysis follows Lupia et al's 2010 study of same sex marriage amendments which utilized this approach and found an increased likelihood of state adoption of amendments prohibiting same sex marriage when legislative hurdles, such as the complexity of the requirements for approval, are low. The Lupia et al. study found that higher hurdles were inversely related to passage of same sex constitutional amendments. It is feasible to suggest, that in the case of state constitutional amendments for victims' rights, these institutional legislative hurdles (whether legislative amendment procedures are simple or complex), will also factor into the likelihood for adoption. Objective #7 considers the legislature's structure in relation to the adoption of crime victims' policies. Specifically, Hypothesis #7 predicts:

***H7: If a state utilizes a legislatively initiated amendment process, then those states with less stringent amendment hurdles are more likely to pass a crime victims' amendment.***

## II. Methods and Results

To discern the influence of presidential rhetoric on the adoption of state constitutional amendments, the present study utilizes event history analysis. Sometimes termed hazard modeling or survival analysis, event history analyses involve pooled cross-sectional time series and allow for the examination of dynamic occurrences (Berry and Berry 1990, 395; Broström 2012, 1). Event history analyses represent a useful analytical approach to studying the adoption of policies and has been used in the policy diffusion

literature, having been pioneered in Berry and Berry (1990)'s seminal event history analysis of the adoption of lottery programs.

Event history analysis is at times referred to as “hazard modeling” and “survival analysis” as the approach is concerned with the likelihood that a specific event will occur among a population studied. The “hazard” at issue involves whether an event may occur in a particular period, assuming it has not already occurred. Hazard is estimated by dividing the number of events by the number of cases which are at risk. A related concept is survival, which involves the idea that a case will “survive” the period without an event occurrence.

The concept of “failure” involves the idea that a case will experience an event occurrence. In biomedical studies, such an event may involve the death of a subject. In policy studies, such an event may entail the adoption of a policy. In the present study, the hazard represents the adoption of a crime victims’ constitutional amendment by a state within the study timeframe; states which are said to “survive” are those which do not adopt an amendment and those states that do adopt an amendment are then considered to “fail.”

Prior to outlining the specific study details, a few considerations inherent within event history analysis should be explained. The first consideration involves the concept of “censoring” data. In an event history analysis, data may be “left censored” or “right censored.” Left censored data represent cases which have experienced event occurrences prior to the start of the study period; for example, in the present study, this would entail a state adopting a constitutional amendment prior to the period of the study. Because the first state to adopt a victims’ rights constitutional amendment occurred in 1982 and the

study's timeframe begins in 1982, left censoring is not a concern of the present study. Right-censored data is defined as those cases where the event in question does not occur prior to the end of the study, thus indicating that the time to the event occurrence is unknown. In the present study, 17 states did not adopt a constitutional amendment within the study's timeframe and, thus, is considered right-censored data.

### Study Design

The study's timeframe is selected as 1982 to 2001 which encompasses the historical wave of initial adoptions of victims' rights constitutional amendments in the United States. This period is described herein as "historical" to differentiate it from the currently ongoing "contemporary" wave of adoptions that have occurred recently (such as those involving the model policy, Marsy's Law) and those that are at risk of continuing to occur. The historical era is the focus of the present study as it represents the initial development of victims' rights as a policy issue, whereas the more contemporary wave of adoptions has occurred against the backdrop where these rights have already been established. The adoption is described in the study represent initial ones, as some states, such as California, have since adopted subsequent victims' rights constitutional amendments in more recent history.

### Coding

In the present study, "events" will be defined as the adoption of a victims' rights constitutional amendment. In survival analysis terminology, a state will "fail" when it adopts a victims' rights constitutional amendment and will "survive" for the duration it

does not adopt a victims' rights constitutional amendment. In a longitudinal data set, events are coded as 1 in the year in which they occur. The years in which events do not occur are coded with a dummy variable 0. The dataset in the study provided a snapshot in time of the context in which those states which adopted amendments did so. For states that adopted, the "Status" variable was coded 1 and the additional variables reflected conditions that were present in the year of adoption. States which do not adopt constitutional amendments within the study's timeframe were coded 0 and additional variables reflected conditions that were present in the year the state was "right-censored."

The main research inquiry of the present study involves the influence of presidential rhetoric on the adoption of state constitutional amendments. The study analyzes the effect of presidential rhetoric on policy adoption via a proxy variable which measures the strength of the use of the word victim indexed with a measure of state receptivity. For the study, presidential rhetoric was measured through a content analysis of thousands presidential documents accessed online at the American Presidency Project (see Chapter 4). The depth and breadth of the use of the term victim was recorded and results were further indexed with a proxy variable representing presidential approval through retroactively applied state presidential election results. These values were titled PresRhet and were coded from 0 to 6 where 0 represented the lowest value of presidential rhetoric on a state and 6 represented the highest value.

The models also included additional variables to test the hypotheses described above. Additional variables considered in the study include conditions internal to states, such as whether the Republican party controlled the state legislature, whether electoral competition was high in the state legislature, whether a state was considered innovative,

whether the state was experiencing a peak in crime, and the legislative structure which affected the ease with which policies are adopted.

To code for Republican control of the state legislature, Ranney Index values from political scientist Carl Klarner's dataset was accessed from Harvard University's Dataverse. The index, created by political scientist Austin Ranney, is a measure of electoral competition which considers such indicators as percentage of seats held by each party in the state legislature, the percentage of the popular vote each party received for their gubernatorial candidates, and a measure of the time each party held the majority in the legislature as well as the governorship (Holbrook and La Raja 2013, 87). In the Ranney Index, states are scored along a continuum where values closest to 0 indicate Republican control, values closest to 1 indicate Democratic control and values closest to .5 indicate the condition of electoral competition where party control of the government is split (Holbrook and LaRaja 2013, 88). Dataset values were obtained (Klarner 2013), and for the present study, states were recoded 1 for years when under Republican control and 0 for years when under Democratic control or in periods of electoral competition.

The same Klarner (2013) dataset of Ranney Index values that was used to code for Republican control was also used to code for electoral competition. For years which were scored in the Klarner (2013) dataset as competitive, the present study recoded as 1. All other years, such as those which were indicated as within Democratic control or which were interpreted to be under Republican control were scored 0.

To assess the effect of crime, crime rate tables were derived from Uniform Crime Report/FBI Crime Rates for each state for each year throughout the time period of the study. After assessing both the 20-year period in the study as well as a larger 40-year

period, a crime peak year was identified for each state. For 40 of the 50 states, the crime peak occurred within the study's 20-year timeframe. After identifying the peak crime rate year, the study established a five-year peak crime range which was defined as the peak year in addition to the two years previous to and following the peak year. For example, Alabama's peak crime year was in 1992 with a rate of 871.7. Therefore, the peak crime range was defined as 1990 through 1994. The peak crime period range was included because it was reasoned a state might feel increasing pressure to pass a victims' rights amendment during a peak period of exposure to criminal activity. Each of the years in the peak crime period range was coded 2. A period of two years considered to be within close proximity to the peak crime period, both before and after the peak crime period, was also identified. For example, Arizona experienced its peak crime year in 1993 with a rate of 715. Thus, its peak crime period range was established as 1991 to 1995 and its close temporal proximity periods as 1989-1990 and 1996-1997. Because Arizona adopted its amendment in 1989, it received a code of 1. All years outside of the five-year period peak crime period and two-year close proximity period were coded 0 for each state.

To assess interest group system strength, the 2003 Thomas and Hrebenar study was used. The Thomas and Hrebenar study developed a typology of interest group system which ranked state interest group systems according to how powerful groups were relative to the rest of the political system. These categorizations range from 1) dominant, 2) dominant/complementary; 3) complementary; 4) complementary/subordinate; 5) subordinate, where dominant represents the greatest magnitude of influence and subordinate represents the least. The present study coded the data in a range from 3 to 0,

with states having the strongest interest groups scoring 3 and states with the weakest interest groups scoring 0.

To assess innovation, the study utilized the rankings from the 2015 Desmarais, Harden and Boehme study which inferred a “policy diffusion network.” Such a network involves “persistent patterns” by which policies have been adopted state-to-state (Desmarais, Harden and Boehmke 2015). The study identified the top 15 states in terms of innovation defined by how many other states adopt their policies. The rankings were done in 5-year groupings (such as 80-84). For those time periods occurring within the present study’s timeframe, states that were ranked as one of the 15 innovators during that period were coded 1 and those that were not were coded 0.

Assessing the ease with which policies are adopted follows the concept within Lupia et al 2010 study of same sex marriage, which suggested a relationship between the method of passing a constitutional amendment and the adoption of a constitutional amendment. The present study employed the categorizations provided within the Lupia et al study to discern between ballot measure states and non-ballot measure states. The study coded 2 for systems allowing citizen initiatives, 1 for simple systems, and 0 for complex systems, with the reasoning that a system that provided for citizen initiatives represented the lowest hurdle in policy adoption, a complex system represented the highest of the three hurdles, and a simple system represented a level of difficulty in between the two.



## Data Analysis

The program SAS was used to conduct the statistical analyses. Two approaches evaluated the study data. The non-parametric procedure of plotting survival curves was used as preliminary data evaluation via Kaplan-Meier estimation, which is also known as product-life survival estimates. The estimation of survival functions is useful to describe the course of survival; in the present study, these estimates illustrate graphically the duration in years that states lasted prior to adopting a crime victims' constitutional amendment. The LIFETEST function in SAS is useful to test the null hypothesis that the values in each survival curve represent different curves.

Following the plotting of survival curves, the popular Cox Regression will be used. The semi-parametric Cox regression was chosen over a parametric model because the data did not involve cases of left censorship (states that adopted a victims' rights constitutional amendment prior to the study timeframe), in which a parametric model would be especially effective. Among other useful features, the Cox method also does not require the researcher to select a probability distribution for the procedure (Allison 2010).

The Cox Regression utilizes a proportional hazards model and a partial likelihood estimation. Proportional hazards are those in which an individual's hazard is proportional to that of other individuals. The partial likelihood estimation retains aspects of maximum likelihood estimates and offer robustness without having to indicate a baseline hazard function (Allison 2010). To evaluate the data for the assumption of proportional hazards, two analyses of residuals were conducted (discussed further in a subsequent section).

In an event history analysis, a "tie" occurs when more than one case has an event occurrence at the same time. Because of the aggregated time periods represented in

discrete models (such as months or years), ties are more likely than in continuous models (Allison 2010). Thus, a mechanism is required to provide an approximation. Although the Breslow method is a commonly employed method, the Efron method has been touted as providing a better estimation for tied data (Allison 2010, 142). Because the present study design involves policy adoptions by year increments, reflecting several ties, the Efron method was selected for use.

The non-parametric analyses of product-limit survival analyses suggested another avenue to consider the survival rates of the each of the covariates. Differences among product-limit survival curves provided insight into the relationship between the coded aspects of each variable and their respective survival rates in regard to adopting a state constitutional victims' rights amendment.

#### Product-Limit Survival Estimates (Non-Parametric)

To conduct a preliminary evaluation of the data, the Kaplan-Meier estimation was performed in SAS with the "LIFETEST" command. This procedure provided a characterization of the survival data. The first column *Years* denotes how many years have occurred since the onset of the study. For example, according to the data in the Figure 5.1 for Year 1, one state "failed" (adopted a constitutional amendment); consequently, 49 states remain in the column *Number Left*, representing those cases which continue to remain at risk of failure. At the half-way point of 10 years in the study, eight states had adopted a victims' rights constitutional amendment, with 42 remaining at risk to adopt. The data also illustrates that 33 of the 50 cases "failed" (adopted a victims' rights constitutional amendment) within the study's time period and 17 states were right-

censored due to non-adoption within the study's timeframe. See Figure 5.1 for a graphic representation of survival.

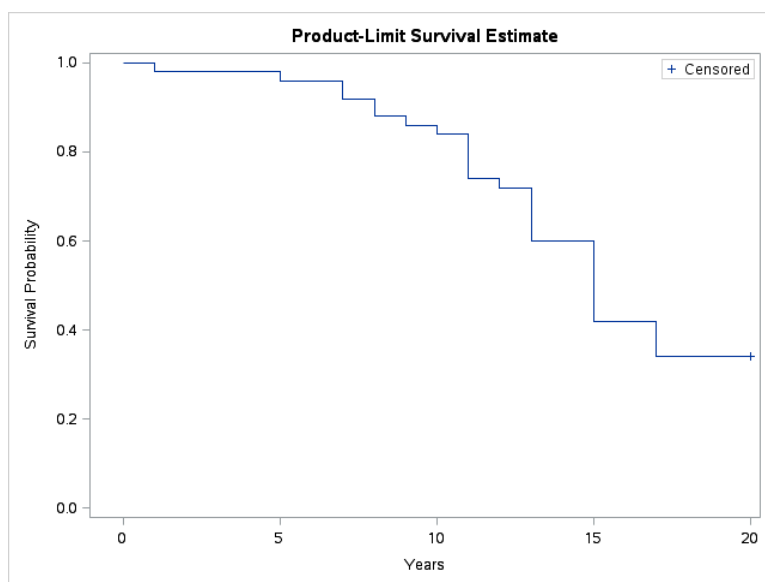


Figure 5.1 Product-Limit Survival Estimate

The Product-Limit survival data indicate that approximately one quarter of the states that adopted did so within the first half of the study timeframe while three quarters of the states that adopted did so within the second half of the study timeframe.

In addition to the Product-Limit survival data which characterizes states which have adopted a constitutional amendment over the study's timeframe, the study also evaluated survival curves by covariate. This preliminary data analysis was done in SAS through the "STRATA" command.

Results of the STRATA analyses reflected variation in the survival curves for covariates, suggesting varying degrees of influence of the study variables. Log-rank tests for each covariate help to compare survival distributions between the data values. The Product-Limit survival estimates of Innovation (Innovation), Crime Peak (CrimePk),

Legislative Structure (MechEase), Competition (Competition), Interest Group Systems (Igsystems) and Republican Control (RepControl) will be reviewed in general order of those variables which suggest the most distinct survival curves. Following these results, results for the Presidential Rhetoric variable (PresRhet) will be analyzed. Although Presidential Rhetoric is the main theoretical focus of the study, it is discussed last because of the complexity of the survival curves.

*Innovation.* For Innovation, the data are divided between binary values with states with lower innovation scores=0 and states with high innovation scores=1. See Figure 5.2 for Product-Limit Survival Estimate for Innovation values. Results indicate that, of the 34 states with lower innovation scores, 19 adopted constitutional amendments, whereas, of the 16 states with higher innovation scores, 14 adopted constitutional amendments. Results of the log-rank test were significant at  $p=.0053$ , thus rejecting the null hypothesis that the two groups have the same survivor functions.

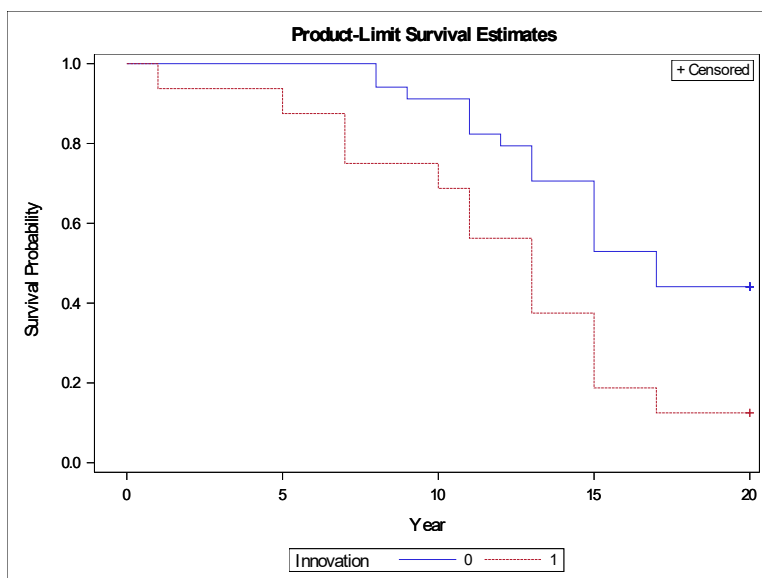


Figure 5.2 Product-Limit Survival Estimate for Innovation

Innovation demonstrated a clear difference in survival functions between the two values, indicating that those states with a higher innovation score adopted a crime victims' rights amendment at a faster rate than states with a lower score. The survival curves suggest the hypothesized relationship.

*Crime Peak.* Data for the covariate Crime Peak (Crimepk) are divided into values 0, 1, 2 with 0 representing years where states were neither experiencing a crime peak nor were in the temporal proximity of a crime peak, 1 representing states within the temporal proximity of a crime peak; and 2 representing states that were experiencing a crime peak. Figure 5.3 illustrates the survival curves for Crime Peak values. The graph suggests a difference between the lowest value of 0 and higher values of 1 and 2 although the curves for values 1 and 2 demonstrate points of intersection of the values. Results indicate that five states adopted during a time when they were not experiencing a crime peak; nine states adopted when they were in close temporal proximity to a crime peak; and 19 adopted when they were experiencing a crime peak. Results of the log-rank test were significant at  $p=.0002$ , thus rejecting the null hypothesis that the groups have the same survivor functions.

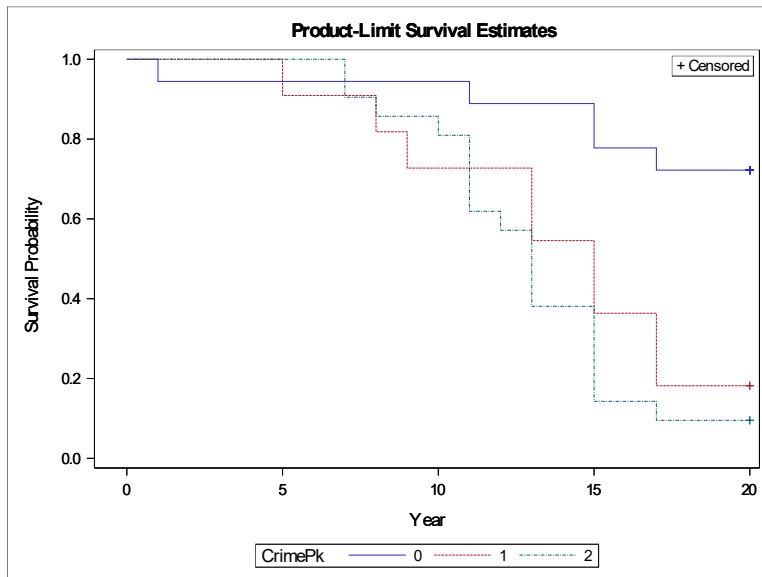


Figure 5.3 Product-Limit Survival Estimate for Crime Peak

The product-limit survival analyses for states in the temporal proximity of a crime peak (CrimePk) also demonstrates a difference between its three values with the clearest distinction between the value of 0 and those of 1 and 2. Those states with the greatest temporal distance from a crime peak (those with a score of 0) were clearly differentiated from those that were closer to a crime peak (those with scores of 1 and 2). Differentiation between the temporal proximity between the values of 1 and 2 was a bit problematic in that the values exhibited points of intersection. The survival curves demonstrated that, in earlier years, those with the lower score of 1 adopted sooner than those with the higher score of 2 which is inconsistent with the hypothesized relationship. At about year 11, the curves begin to approximate the hypothesized relationship where states that score the highest score of 2 fail at a rate higher than those with the middle score of 1, and both scores 2 and 1 fail sooner than those states which scored the lowest value of 0.

*Legislative Structure.* For the covariate Legislative Structure, representing the ease with which legislation may be passed, (MechEase), the data are divided into values 0, 1, 2 where 0 represents complex systems, 1 represents simple systems, and 2 represents systems which allow citizen initiatives. Figure 5.4 illustrates the survival curves for these values. Results indicate that states with the complex system (or most difficult method to adopt an amendment) (n=16), six states adopted, while 10 were right-censored. Of states with simple systems (n=19), 15 states adopted, while four were right-censored. Of states with citizen-initiatives (n=15), 12 states adopted, while three were right-censored. Results of the log-rank test were significant at  $p=.0128$ , thus rejecting the null hypothesis that the groups have the same survivor functions.

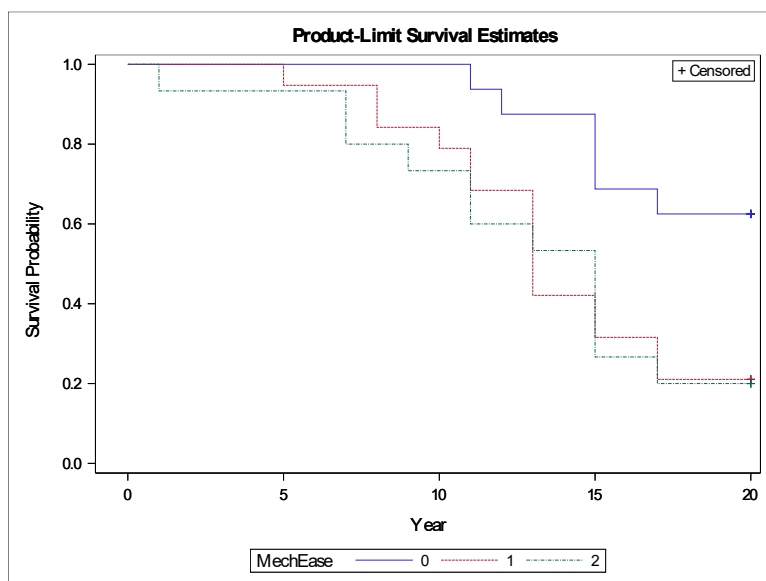


Figure 5.4 Product-Limit Survival Estimate for Legislative Structure

The product-limit survival analyses for states with different legislative structures (MechEase) demonstrates a difference between its three values with the clearest

distinction between the value of 0 and those of 1 and 2. Those states with the most complex systems of passing legislation (those with a score of 0) were differentiated from those with simpler systems (those with scores of 1 and 2). The survival curves demonstrated that, in the first half of the study, those states with a score of 2 (reasoned to be the “least difficult”) failed sooner than states with a score of 1. Additionally, states with a score of 1 failed sooner than states with a score of 0. These curves suggest consistency with the hypothesized relationship. Differentiation of the curves in the second half of the study period was a bit more problematic, as the values of 1 and 2 exhibited points of intersection. The second half of the study furthermore exhibited times at which states with the value of 1 failed faster than the states with the value of 2. This relationship is inconsistent with the hypothesis.

*Competition.* Data for the covariate representing electoral competition in state legislatures (Competition) are divided between binary values with states with lower electoral competition in the legislature receiving scores=0 and states whose legislatures are characterized by electoral competition as receiving scores=1. See Figure 5.5 for Product-Limit Survival Estimate for Electoral Competition values. Results indicate that, of the states which scored 0 (n=14), seven adopted and seven were right-censored. Of the states that were characterized with having an electorally competitive state legislature (n=35), 25 adopted a victims’ right constitutional amendment while 10 did not. Because the state of Nebraska has a unicameral legislature, data from the Ranney Index are not available; the case is excluded from the product-limit survival estimate for this covariate.



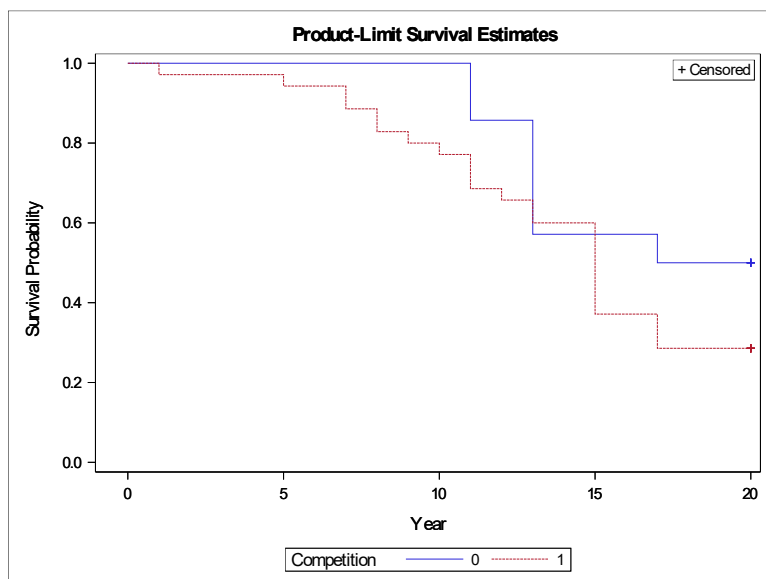


Figure 5.5 Product-Limit Survival Estimate for Electoral Competition

Results of the log-rank test were not significant at  $p=.1827$ , thus the null hypothesis that the groups have the same survivor functions cannot be rejected. Competition demonstrated differences in the survival functions between the two values 0 and 1 except at a point of intersection occurring in the second half of the study period. In the first half, the survival curves suggested that more electorally competitive state governments adopted faster than those that were dominated by a political party; this is consistent with the hypothesis. In the second half of the study period, points demonstrated periods where non-competitive governments adopted faster; this is inconsistent with the hypothesis.

*Interest Group Systems.* Data for the covariate representing the strength of interest groups in each state (Igsystem) are divided between four values. States with progressively stronger interest group systems are scored with a range of values from 0 to 3 with a score of 3 representing the strongest interest group system. See Figure 5.6 for

Product-Limit Survival Estimate for Interest Group System values. Results indicate that, of the states which scored 0 (n=3), one adopted while two others were right-censored. Of those which scored 1 (n=19), ten adopted while 9 did not. Of those which scored 2 (n=21), 16 adopted a constitutional amendment for victims' rights while five states were right-censored, and of those which scored 3 (n=6), five states adopted the policy, and one did not. Because the Thomas-Hrebenar data, from which interest group strength data was derived, did not include the year 1982, one case (California) was excluded from this product-limit survival estimate for this covariate. Results of the log-rank test were not significant at  $p=.5291$ , thus the null hypothesis that the groups have the same survivor functions cannot be rejected.

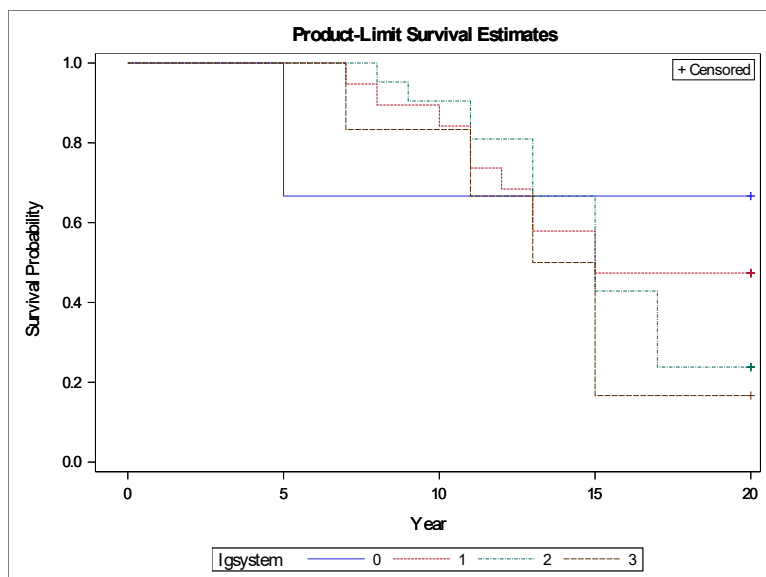


Figure 5.6 Product-Limit Survival Estimate for Interest Group System

The product-limit survival estimates of the Interest Group System covariate suggest limitations with conceptualizing the influence of interest group strength in relation to policy adoption. The study hypothesized that states with stronger interest

group systems would be more likely to adopt a constitutional victims' rights amendment. However, the results of the survival estimate indicate that states that scored the lowest were the first to adopt such policies, with each of the other values (scores 1-3) sharing the survival curve until values 1 and 3 adopt. Among values 1 through 3, states scored with 3 adopted policies sooner than those with 1 and 2, which is consistent with the hypothesis, yet states scored with 1 generally adopted sooner than those scored as 2, which is inconsistent with the hypothesis.

*Republican Control.* Data for the covariate representing Republican party control of a state legislature (RepControl) are divided between binary values with states with legislatures characterized by either Democratic control or high electoral competition receiving scores=0 and states whose legislatures are characterized by Republican control as receiving scores=1. See Figure 5.7 for Product-Limit Survival Estimate for Republican Control values. Results indicate that 28 states adopted a victims' rights amendment when the state legislature was either Democrat dominated or characterized by competition. Only four states adopted a victims' rights amendment when the state legislature was Republican dominated. Because the state of Nebraska has a unicameral legislature, no data are available on Republican control; the case is excluded from the product-limit survival estimate for this covariate. Results of the log-rank test were not significant at  $p=.2721$ , thus the null hypothesis that the groups have the same survivor functions cannot be rejected.

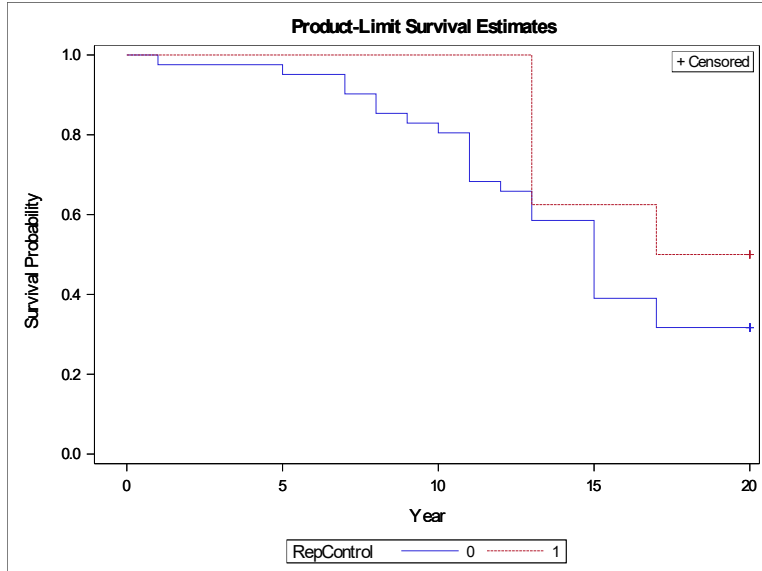


Figure 5.7 Product-Limit Survival Estimate for Republican Control

The product-limit survival estimates of the Republican control covariate (RepControl) produced survival curves that suggested state governments that were not controlled by the Republican party were quicker to adopt than those which were not, which is inconsistent with the hypothesized results. Rather than hypothesizing a positive relationship between Republican control of state constitutional victims' rights, it is possible that Republican governments are less amenable to passing particular types of policies than Democratic or electorally competitive legislatures. Thus, a more nuanced variable of Republican influence in state policy adoption may benefit a future study.

*Presidential Rhetoric.* Data for the covariate Presidential Rhetoric (PresRhet) range between 0 to 6 representing an index of values associated with the incidence of presidential rhetoric mentioning the word victim and with state election results as a measure of a state's receptivity to a president. Higher values represented greater levels of rhetoric and election support. Results indicate that the single state with the highest score

of six adopted a victims' rights constitutional amendment. Of states with scores of 3 or 4 (there were no states with a score of 5), 11 states adopted and three states were right-censored. Of those states with scores of 0 and 2 (there were no states with a score of 1), 21 adopted while 14 were right-censored. See Figure 5.8 for Product-Limit Survival Estimate values for Presidential Rhetoric. Results of the log-rank test were significant at  $p < .0001$ , thus rejecting the null hypothesis that the groups have the same survivor functions.

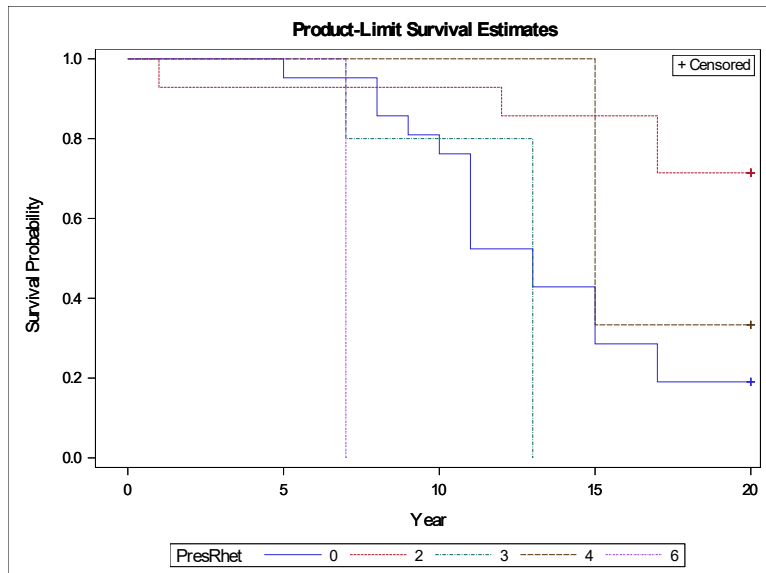


Figure 5.8 Product-Limit Survival Estimate for Presidential Rhetoric

The product-limit survival analysis for the covariate Presidential Rhetoric (PresRhet) highlights concerns with the use of this covariate. Divided into five separate values ranging from 0 to 6, with the values of 1 and 5 not represented by any cases, the graphic representation of the survival curves shows that the single state that was scored with a 6 did not fail earliest in the study. Rather, a state with the score of 2 ( $n=14$ )

demonstrated the earliest adoption. Also, instead of failing early in the study, states with a relatively higher score of 4 survived sometime beyond many of the lowest, 0-scoring, states (n=21).

The product-limit survival estimates of the Presidential Rhetoric variable suggest important limitations of the coding of the variable derived from the content analysis in Chapter 4. Observing that states scored 2 survived longer than those scored 0, states that scored 4 survived longer than those scored 3, and the numerous points of intersection between the data demonstrate inconsistency with the hypothesized relationship.

*Summary.* Non-parametric product-limit survival estimates allow for a preliminary investigation of the survival curves for each of the variables considered. The results of the STRATA function in SAS provided survival information for the different codes of each variable. For example, survival curves are demonstrated for each of the three codes, 0, 1, and 2, of the variable Legislative Structure. Results of the analyses indicate that the significance levels of four variables: Presidential Rhetoric, Innovation, Crime Peak and Legislative Structure met the threshold to reject the null hypothesis. These preliminary results indicate the values of the individual variables each represent distinct survival curves from the overall adoption survival curve, suggesting their differentiation. These observations are consistent with expectations. The variables Competition, Interest Group Systems, and Republican Control did not indicate sufficient significance levels to reject the null hypothesis. These results are summarized in Table 5.1 Log-Rank Test Significance.

Table 5.1 Log-Rank Test Significance

| Variable               | Significance Level | Reject Null Hypothesis? |
|------------------------|--------------------|-------------------------|
| Presidential Rhetoric  | 0.0001             | Yes                     |
| Innovation             | 0.0053             | Yes                     |
| Crime Peak             | 0.0002             | Yes                     |
| Legislative Structure  | 0.0128             | Yes                     |
| Competition            | 0.1827             | No                      |
| Interest Group Systems | 0.5291             | No                      |
| Republican Control     | 0.2721             | No                      |

### Proportional Hazards and Cox Regression

Following the preliminary data evaluation through product-limit survival analyses, the data were considered for Cox Regression by conducting tests of the proportional hazard assumption. Two tests were completed, including an evaluation of both Schoenfeld residuals and martingale residuals. The theoretical basis of the Schoenfeld approach is that for the values to represent proportional hazards, they must not be correlated with time (Allison 2010, 176). Schoenfeld residuals were conducted in SAS and results were evaluated. Because the Pearson coefficients for covariates approximate the number zero, the analysis was interpreted to reflect that the data have met the proportional hazards assumption.

An analysis of martingale residuals was also performed in SAS. Analysis of martingale residuals involves determining if the observed empirical score process, indicated by a solid line, falls within a number of random simulations, indicated by dashed lines, that represent proportional hazards (Allison 2010, 173). This test was conducted using the ASSESS function. Because the lines tended to fall within the lines of

the simulations, the analysis was interpreted to reflect that the data have met the proportional hazards assumption.

Because results from the Schoenfeld and martingale residuals indicate that the proportional hazards assumption in the study data was met, the semi-parametric Cox Regression was used to model the data.

*Stepwise Cox Regression.* The Cox Regression was first performed as a stepwise procedure using PHREG function in SAS. Notably, although presidential rhetoric is the main theoretical focus of the study, the stepwise regression ultimately eliminated the covariate PresRhet as an explanatory variable. The chronology of the stepwise process involved the first model's selection of the covariate Crimepk for entry with the largest chi-square (19.9215) and significance  $p < .0001$  at the SLENTY=0.25 level. Because Wald chi-square statistic ( $p < .0001$ ) is significant at the SLSTAY=0.15 level, Crimepk was selected to remain within the model. The remaining variables were then analyzed in a test adjusted for Crimepk. In the second model, the variable Innovation possessed the largest chi-square (14.0346) and significance  $p = .0002$  at the SLENTY=.25 level and, thus, was entered into the model. Because its Wald chi-square statistic ( $p < .0001$ ) is significant at the at the SLSTAY=0.15 level, Innovation remained in the model. In the third model, the variable MechEase had the largest chi-square value of the remaining variables (4.8538) and had significance of  $p = .0276$  at the SLENTY=.25 level; thus, MechEase entered the model. Because its Wald chi-square statistic ( $p < .0001$ ) is significant at the SLSTAY=0.15 level, MechEase remained in the model. In the fourth model, the variable Competition had the largest chi-square value of remaining variables



(1.4009) and significance  $p=.2366$ . Because its Wald chi-square statistic was not significant ( $p=.2409$ ) at the  $SLSTAY=.15$  level, it was removed from the model.

At this step, because the Competition variable was removed in the previous model, yet possesses the largest chi-square value of remaining variables, the model building terminates and covariates Igsystem, RepControl and PresRhet are excluded from further consideration. Thus, the stepwise regression concludes with selection of explanatory variables of Crimepk, Innovation, and MechEase. As indicated, the variable of particular interest to the present study, PresRhet, was excluded as an explanatory variable by the stepwise regression procedure.

*Cox Regression.* Following the stepwise procedure, a Cox Regression was also performed without the stepwise function. Analysis of Maximum Likelihood Estimates indicate the hazard ratios for each of the variables. A hazard ratio is the ratio between cases exposed to the risk covariate and those not exposed. Hazard ratios over the value of 1 represent a relationship between the variable and policy adoption. Ratios under the value of 1 represent an inverse relationship between the variable and policy adoption. Hazard ratios approximating the value of 1 suggest no effect. Results are shown in Figure 5.9.

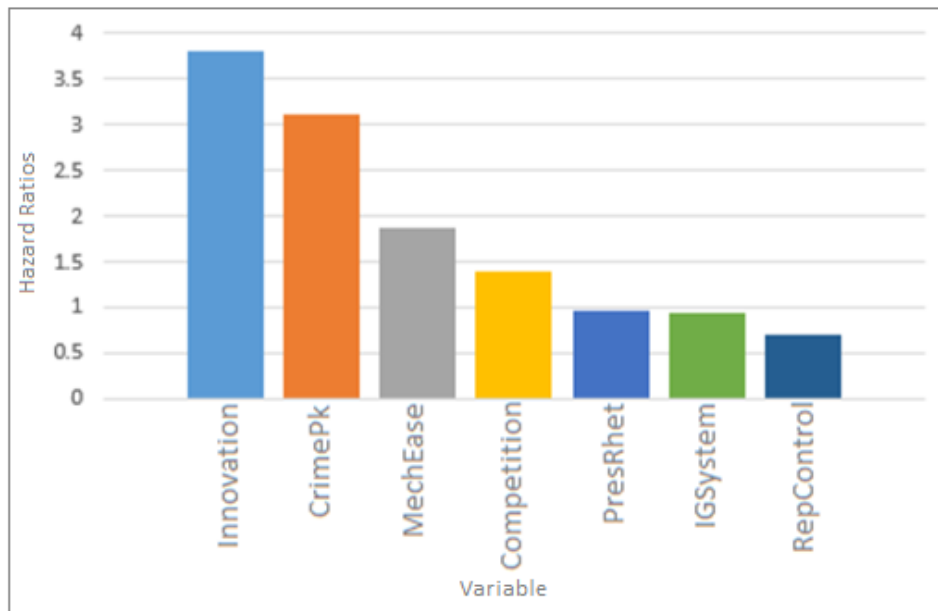


Figure 5.9 Hazard Ratios for Covariates

As indicated in Figure 5.9, the hazard ratio of PresRhet, the main theoretical focus of the study, closely approximates the value of 1 (.964), thus suggesting no effect on the adoption of state victims' rights constitutional amendments. Innovation scored the highest hazard ratio, with a score of 3.809. This value reflects the idea that highly innovative states were almost four times as likely to adopt a state-level victims' rights constitutional amendment. States that were in the temporal proximity of a peak in crime rates also appeared to be associated with adoption of a victims' rights constitutional amendment. With a hazard ratio of 3.106, these states were approximately three times as likely as other states to adopt such a policy. As Figure 5.9 indicates, the structure of a state's legislature was also related to the adoption of a state level crime victims' rights constitutional amendment. The variable MechEase had a hazard ratio of 1.869, indicating that a state with less formidable hurdles to passing legislation had almost twice the

likelihood to adopt a state-level victims' rights constitutional amendment. The variable Competition had a hazard ratio of 1.390 which suggests that states with higher electoral competition in their legislatures have a somewhat greater likelihood than those who do not of adopting a victims' rights constitutional amendment. Like PresRhet, Igsystem closely approximated the value of 1 (with a hazard ratio of .948), suggesting it also did not have an effect on the adoption of a victims' rights constitutional amendment. Lastly, states that were controlled by the Republican party appeared to have a slightly lesser likelihood of adopting state victims' rights amendments, as the variable RepControl had a hazard ratio of .709.

### III. Conclusion

Results of both the stepwise Cox Regression and Cox Regression suggest that the main focus of study, Presidential Rhetoric did not represent an explanatory variable in the adoption of a state victims' rights constitutional amendment. Rather, it was excluded from the final model in the stepwise regression and its hazard ratio in the Cox Regression closely indicated no effect with a hazard ratio approximating the value of 1. One other covariate, Igsystems, demonstrated no effect, having been both eliminated from the stepwise regression and having a hazard ratio of 1 from the Cox Regression. While the covariate Competition was eliminated from the stepwise regression, its hazard ratio was just above the value of 1, suggesting little effect, if any. The covariate RepControl was also excluded from the final model of the stepwise regression however, converse to the covariate Competition, its hazard ratio was less than 1, suggesting little inverse effect, if any. Three covariates demonstrated a positive relationship to the adoption of state

constitutional victims' rights amendments by being included in the final model of the stepwise regression and having hazard ratios from the Cox Regression notably higher than the value of 1. These variables included Innovation, Crime Peak and Legislature Structure.

## Chapter 6 Discussion

### I. Introduction

Although the results of the event history analysis in Chapter 5 found a positive association between three of the covariates considered in the study and the dependent variable of adoption of a state crime victims' constitutional amendment, the study's main theoretical focus, the influence of presidential rhetoric on policy adoption, was not supported by the analysis. In this chapter, I will discuss the findings from the event history analysis as well as the content analysis from Chapter 4 which constructed the Presidential Rhetoric variable. Following this discussion, a case study is presented to highlight apparent influential factors in the adoption of its victims' rights constitutional amendment. Results from the event history analysis suggest the utility of examining the experience of the State of California for further qualitative analysis.

### II. Discussion

The present study sought to examine the relationship between federal influence, in the form of presidential rhetoric regarding domestic crime victims, and the adoption of state victims' rights constitutional amendments. The results of an event history analysis fail to indicate a positive relationship between increased presidential rhetoric regarding crime victims and the adoption of these victims' rights constitutional amendments within the states. Examination of other covariates, such as Republican control of state government, the strength of interest groups within a state, and electoral competition in state government, also failed to demonstrate a positive relationship with the adoption of such policies. Covariates such as Innovation (Innovation), Crime Peak (CrimePk) and

Legislative Structure (MechEase), however, suggested a positive relationship. The positive association between these covariates and the dependent variable are not surprising as they support the explanatory efficacy of these factors addressed in other research efforts. The associations make intuitive sense, as well, as states facing high crime rates, for example, may experience more demand for relief in the form of victims' rights. Both the stepwise Cox Regression model and hazard ratios from the Cox Regression produced similar results in identifying the variables associated with influencing the adoption of a policy and those that were not.

It is reasonable to expect that when the president puts an issue on the political agenda, states will respond with policy adoption, especially those states which are more inclined to be receptive to presidential rhetoric. The question remains as to why this association was not reflected in the study's findings. An effort to answer this question could entail a reevaluation of the construction of the Presidential Rhetoric variable in the Chapter 4 content analysis. Specifically, the variable could be reconsidered for how precisely it measures the concept of federal influence by presidential rhetoric in the states. As highlighted in Chapter 4, the values for presidential support are derived from retroactively applied election results. These may not be the most accurate representation of how receptive states and their residents are to presidential rhetoric. The retroactive quality of the election results are arguably less precise measurements because rhetorical communication and presidential actions are made throughout the president's term while presidential elections only occur every four years. Therefore, a president's popularity as indicated by election results may not reflect the variation in popularity that may have occurred previously within the president's term. Including a yearly average of

presidential approval rates in addition to state election results in the indexed values may produce a more accurate measurement. However, measurement accuracy continues to be an issue as each of the components to the indexed values are measured in different time periods: presidential approval has generally been measured every few days, presidential rhetoric is recorded on a daily basis, presidential elections as a representation of popular support is measured every four years, and policy adoption as represented in the present study has been measured in discrete increments of a year.

Although the president represents the most powerful political actor in the United States, it is possible that presidential rhetoric is simply insufficient to influence state adoption of constitutional amendments. It may be such that citizens are largely unaware of presidential rhetoric or less influenced by presidential rhetoric than by other more “local” factors, such as those characterizing the individual states, such as crime rate and legislative structure. Presidential rhetoric may be influential in ways that are not examined in the present study, such as in the adoption of state statutes. Conversely, it is possible that presidential rhetoric functions as less of an influence on the states and more of a response or acknowledgment to what is occurring in the states. This consideration would implicate a “bottom-up” diffusion, rather than the “top-down” orientation considered in the present study.

Results of the present event history analysis have suggested a relationship between the adoption of crime victims’ state constitutional amendments and three of the covariates included in the study, while the influence of others, including that of presidential rhetoric, was not supported. Important questions remain regarding the factors that influence the adoption of such policies as well as the potential for the dynamic

interaction between these variables. Finally, as the evolution of crime victim policy continues, the influence of one covariate may ebb while another develops. A better understanding of how these factors fit together is needed. To this end, a case study is useful in providing a more holistic exploration of factors present in the adoption of crime victims' state constitutional amendments. A case study, furthermore, provides insight into some of the limitations of the present study.

### III. Case Study: California

The state of California emerges as a natural selection for case study analysis in the adoption of state constitutional crime victims' amendments. California was the first state to adopt a constitutional victims' rights amendment in both the historical era as well as the more contemporary era. California led the other states by a minimum of six years in *both* the adoption of a victims' rights amendment in the historical wave (1982) as well as the more contemporary period of Marsy's Law (2008), demonstrating its innovative nature – a factor which was supported by the present analysis as related to the adoption of a victims' rights constitutional amendment. California is a compelling candidate for case study for other factors not supported in the quantitative study, as well. Most central to the main theoretical argument, however, is the fact that California was the first state to adopt a constitutional victims' rights amendment in 1982 while Ronald Reagan was president. As discussed more fully in Chapter 3, Ronald Reagan championed for victims' rights through high-profile pronouncements and actions. Because Reagan had previously served two terms as the governor of California and was a Hollywood actor before that, he may have enjoyed heightened popularity among Californians, accentuating his potential



influence in the adoption of policy he supported. As the California case study unfolds, however, insights that are somewhat at odds with the results of the present quantitative study are revealed and further underscore the importance of reevaluating measurement of key concepts as well as methodological approach.

An examination of social and political contextual factors of the study illustrates the backdrop of the adoption of the California policies, highlighting potential influences that led to the adoption of the policy and suggesting avenues for future analysis. These influences underscore two critical observations – 1) that the apparent influences involved in the passage of the 1982 amendment are not reflected in the results of the event history analysis, and 2) that the apparent influences involved in the passage of the 2008 amendment appear to vary from those present in 1982. The results of this case analysis highlight the complex nature of influential factors associated with the adoption of crime victims' rights constitutional amendments in the states.

### 1982 Crime and Ideological Backdrop

California passed its first victims' rights constitutional amendment in the June 8, 1982, election as a combined constitutional amendment and state statute. The first of any of the state victims' constitutional rights, California's Proposition 8 was approved with 56.4 percent of the vote.

California's state government ideological backdrop at the time of passage of the first amendment, reflected a mixture of Democrat and Republican influences. While the governor at the time of the policy's passage was Democrat Jerry Brown, Brown was succeeded in 1983 by Republican George Deukmejian. On the national stage, the current

president was Ronald Reagan, previous governor of California from 1967 to 1975, who had won the State of California in the 1980 election. Reagan garnered 52.69 percent of California's popular vote in the contest against incumbent president Jimmy Carter. Republican Pete Wilson, mayor of San Diego, won a seat in the U.S. Senate in 1982 left available by outgoing Republican Samuel Hayakawa, joining Democrat Senator Alan Cranston in his third Senate term. In 1982, Democrats dominated both the California State Assembly and the California State Senate. Likewise, California's delegation of U.S. Representatives was dominated by Democrats.

As was the case with many other states, the violent crime rate in California had been rising in the decade between 1972 and 1982, the year of California's adoption. For California, the rates reported by the FBI National Incident-Based Reporting System (NIBRS) were 540.7 per 100,000 people in 1972, 669.3 in 1976, and 893.6 in 1980. In 1981, the year prior to adoption, the rate dropped to 863, then 814.7 in 1982, and continued to maintain a modest downward trend or decreased rate in the subsequent three years. By 1986, however, the rate had exceeded previous levels when it climbed to 920.5 per 100,000. From there, the violent crime rate started to trend upwards and would continue to do so until it reached its maximum crime rate of the period between 1972 and 2011, that of 1119.7 per 100,000 people. While California did not adopt its initial crime victims' constitutional amendment during a period of its peak crime rate, it did adopt following a period of violent crime trending upward (See Figure 6.1 for California Violent Crime Rate 1972-2010).

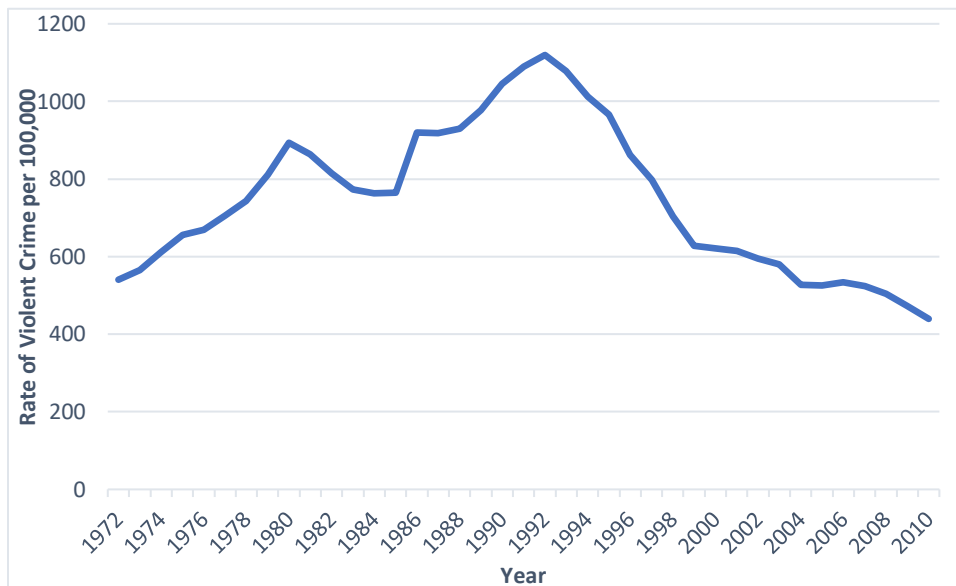


Figure 6.1 California Violent Crime Rate 1972-2010

### 2008 Crime and Ideological Background

Twenty-six years later, in 2008 when California replaced its original policy with another constitutional amendment, Proposition 9 passed as a combined constitutional amendment and state statute also. It passed with 53.9 percent of the popular vote.

At the time of California's second iteration of crime victims' constitutional rights in 2008, the state was already governed by Republican Arnold Schwarzenegger who had taken office in 2003. However, other significant elected positions were largely dominated by Democrats. In the national election, California gave strong support (approximately 61 percent) to the Obama/Biden Democrat presidential candidacy. Both U.S. Senate and House of Representatives delegations, as well as delegations to the State Assembly and State Senate, were dominated by Democrats in this era.

The crime rate in this era was also markedly different than that during the passage of the first victims' rights constitutional amendment. Rather than following an upward

trend, as was the situation in 1982, the violent crime rate in 2008 was 504.2 per 100,000, the lowest rate California had seen in over three decades and was generally experiencing a downward trend.

### Groups in 1982 and 2008

Group influence may also have varied between the eras of policy adoption in California. An historical analysis of the passage of each amendment illustrates the differing influences.

The 1982 California voter guide included arguments in favor by the lieutenant governor, the attorney general, and by political activist Paul Gann. Gann's statement refers to recent previous initiative efforts that he led; those included an initiative to reduce property taxes and to limit government spending; Furthermore, he emphasizes the "crime control" aspects of the proposition (Voter Information Guide for 1982, Primary). A populist inclination may be indicated by his comments, "Why is that the Legislature doesn't start getting serious about a problem until we, the people, go out and qualify an initiative?" and, "Again, it is up to the people to bring about reasonable and meaningful reform." The *LA Times*, also writing about Gann's death, quoted Republican Assemblyman Ross Johnson describing Gann as "the will of the common man, ignored by politicians, that rose up to challenge and defeat the inaction of the Legislature" (Folkart 1989). Other sources indicated that Gann had formed the Gann Taxpayer Organization as well as a conservative group entitled "People's Advocate" in 1974; he was a Republican challenger to a U.S. Senate seat in 1980 and was involved in a "series" of initiative campaigns (McQuiston 1989, Paul Gann Archive).

An oral history account of Gann's activities which was produced through a series of interviews conducted in 1987 and 1988 by the California State Government Oral History Program demonstrates Gann's role in the Victims' Rights Amendment. In it, Gann credits his motivation in pursuing the passage of the proposition to his growing frustration over rape victims' plights and victims' treatment within the court system (74).

Furthermore, Gann described the role of groups in the proposition efforts. When asked whether women's movement organizations had supported him on the Victims' Rights proposition, Gann indicated that he had worked with women, but not as representing women organizations, and suggested, rather, that the rise of organizational support came after Proposition 8.

Whereas the role of Paul Gann in the passage of the 1982 amendment might be characterized as a policy entrepreneur due to his experience in organizing ballot initiatives as well as because Gann does not seem to personally align himself with the plight of victims, research suggests that the groups supporting the second iteration of California's victims' rights amendment represent issue stakeholders. This difference is clear with a comparative analysis of the proponents in the voters' guide for the 1982 and 2008 amendments. In 2008, arguments either made in favor of Proposition 9 or as a rebuttal to an argument against Proposition 9 were made by stakeholder individuals or those affiliated with groups. The sole individual proponent listed in the voter guide included the creator of "Jessica's Law: Sexual Predator Punishment and Control Act of 2006." Groups represented in the voter guide included Justice for Homicide Victims, Justice for Murdered Children, the National Organization of Parents of Murdered Children, and Crime Victims United of California.

Justice for Homicide Victims was founded by Ellen Griffin Dunne following the 1983 murder of Dominique Dunne in Los Angeles. Co-founder, Marcella Leach, mother of murder victim Marsy Nicholas, was described at her recent death as “the face behind...the Crime Victims' Bill of Rights Act of 2008.” Leach’s daughter, Marsy, became the namesake to the Act, which is also referred to as “Marsy’s Law.” Marsy’s Law has gone on to become model legislation, first passed in California’s 2008 election, and then subsequently passed in other states, including Illinois in 2014 and most recently in North Dakota, South Dakota, and Montana in 2016. Efforts to pass Marsy’s Law continue to be active in a number of other states.

Behind Marsy’s Law efforts is Dr. Henry Nicholas, whose biographical information on the organization website indicates he is “co-founder, and former co-chairman of the board, president and chief executive officer of Broadcom Corporation, a Fortune 500 company. He is also a philanthropist and leader of the victim’s rights movement” (Marsy’s Law). Nicholas’ role in the amendment’s passage is clarified in the same biographical excerpt which indicates Nicholas founded the campaign for Marsy’s Law in California and then formed the national effort in 2009 to improve victims’ rights (Marsy’s Law). A billionaire, Nicholas is credited for funding the Marsy’s Law efforts. A 2008 *Vanity Fair* article listed Nicholas’ net worth, as determined by Forbes, at \$1.8 billion (McClean 2008). Currently, Forbes estimates Nicholas’ “real time net worth” at \$3.1 billion, ranking him 654<sup>th</sup> in the world (Forbes). A 2008 *Los Angeles Times* article reported that Nicholas had provided \$4.8 million of the campaign’s \$5 million in funds (Rothfeld). More recently, a South Dakota newspaper article indicated that Nicholas had funded \$800,000 to the South Dakota Marsy’s Law effort at the time of the story’s

publishing and was also currently bankrolling efforts in states such as North Dakota, North Carolina, Hawaii, Kentucky, Montana, and Nevada (Ferguson 2016).

Justice for Murdered Children was also represented in the effort to pass California's 2008 amendment. Justice for Murdered Children was formed in 1996 by LaWanda Hawkins, a mother of a murder victim, with the mission of reducing unsolved homicides and helping homicide victims' families (Justice for Murdered Children). The National Organization for Parents of Murdered Children also participated in advocating for the 2008 amendment. Parents of Murdered Children was formed in 1978 in Cincinnati, Ohio, by parents of a 19-year-old murder victim, the national organization first began to meet in a single basement room of the Archdiocese in Cincinnati in 1980. Crime Victims United of California was founded in 1990 by Harriet Salarno, whose 18-year-old daughter was murdered in 1979.

Rebuttals to arguments in favor or arguments against were also presented by individuals and groups. Individuals included the former warden of San Quentin State Prison and the former director of the California Department of Corrections. Groups included California Church IMPACT and the Justice Policy Institute. California Church IMPACT is a faith-based public policy advocacy group that emphasizes "justice, equity, and fairness in the treatment of all people, particularly those who have been abandoned or harmed by our society" (California Church IMPACT). Justice Policy Institute is a national nonprofit "dedicated to reducing the use of incarceration and the justice system by promoting fair and effective policies" (Justice Policy Institute).

#### IV. Case Study Conclusion

The California case study provides important insight into factors involved in the adoption of its state constitutional victims' rights amendment. In so doing, it helps to illustrate shortcomings of the present quantitative analysis. While the quantitative analysis assists in the identification of explanatory aspects of the adoption of the first of California's constitutional amendments, the present qualitative analysis highlights the complexity of the factors surrounding the adoption of victims' rights constitutional amendments in California.

The case study illustrated variation in the factors present at the time of the adoption of the historical amendment and the more contemporary one. These variations support the contention that the historical crime victims' movement can be studied separately from the contemporary one, as different forces may be at play in each era. For example, as this case study has illustrated, while the crime rate was generally on the rise in California at the time of the first adoption, it was at a relatively low rate for California at the time of the second adoption. In both eras of adoption, there were Republicans in significant elected political roles, but the more contemporary era was characterized by comparatively greater support for Democrat candidates. Groups also appear to vary between these eras, where the historical era seems to have been largely influenced by conservative activist Paul Gann's policy entrepreneurship while issue groups came to the forefront in the 2008 effort. Groups that appear to have been prominent in the 2008 proposition were not yet even formed at the time of the 1982 proposition. These include Justice for Homicide Victims which was not formed until 1983, and Justice for Murdered Children which was not formed until 1996.



The California case study complements the findings of the event history analysis, providing further insight into factors associated with the adoption of state constitutional victims' rights amendments. Results from each study provide important information and research avenues for future study of state constitutional change.

#### Future Avenues

Although the influence of Presidential Rhetoric was not supported in the present quantitative study, refining the measurement of the concept may improve its validity. Rather than utilizing a more comprehensive assessment of presidential documents, a future study might take a more circumscribed approach to which documents are most relevant. For example, some presidential documents may have greater ability to reach those responsible for policymaking. An alternative measurement of state receptivity to presidential rhetoric might also contribute to refinement of the PresRhet variable.

Although the concept of Presidential Rhetoric was operationalized to represent federal influence in the present study, it is also possible that efforts of Congress or of the Supreme Court would influence the adoption of state constitutional victims' rights amendments in the states. As outlined in Chapter 3, each of the branches took notable actions furthering the development of victims' rights. Thus, future studies may benefit from a consideration of these avenues of inquiry.

The variations demonstrated in crime rate, group participation and, to some extent, ideological influence in the California case study across the two adoptions of constitutional rights further suggest important avenues for future studies. Although California reflected a rising crime rate at the passage of its first constitutional

amendment, its second one occurred at a time with a relatively low crime rate. While the results of the event history analysis support the idea that crime rates were influential to the adoption of victims' rights constitutional amendments in the study period, the California experience in 2008 does not appear to be consistent with such a hypothesis. Longitudinal analyses could offer insight into future study of the adoption of these policies by considering the extent to which a former era may set the stage for establishing the legitimacy of a policy for victims' rights and subsequent policy adoptions rely on the premise that victims' rights are accepted – a premise that was established in an era which relied on a high crime rate to bring the issue to the attention of individuals and political actors.

Although group influence was neither significant in the results of the event history analysis nor did it suggest a positive relationship between group strength in the individual states and the adoption of a crime victims' constitutional amendment, further examination of the potential influence of groups might better be understood with a qualitative analysis that constructs a measurement of victims' group strength. Group influence might also best be examined with a longitudinal dimension as well, as California suggests a rise in group organization and participation over time.

## V. Conclusion

While the event history analysis did not find evidence of the influence of presidential rhetoric on the adoption of state constitutional victims' rights amendments in the study period, this finding is an important one. The influence of presidential rhetoric does not appear to extend into state constitutional amendment adoption. These findings

are important for scholars of presidential power as well as federalism and state government. Furthermore, the study findings which associate crime rates, legislative structure, and state innovation with amendment adoption are important to scholars and policy practitioners.

At the same time, there are important limitations of the study to consider. Many of the variables could offer more precise measurement of the concepts. Presidential rhetoric, the primary focus of the study, relied on independently gathered data from a content analysis of presidential documents. It is possible that documents selected for analysis could be further refined to include only ones with the highest likelihood of reaching the public, such as the State of the Union address, which is commonly televised to the public. The content analysis coded for manifest content only, rather than latent, underlying messages, which could have also produced important references to consider. While coding for manifest content maximized the coding reliability for references to victim, excluding latent content may be missing effective influences on the president's audiences.

The variable for Interest Group Systems would be improved with a more focused measurement on the strength of victims' rights groups, rather than on the strength of interest group systems in each state. The results of the qualitative analysis suggest that victim groups may have been developing during the early years of the historic victims' rights movement. Thus, a state could have a strong interest group system with weak representation from victim interest groups. Additionally, a state may also have groups that oppose victims' rights which may mitigate the influence a victims' rights group may have.

Although the variable for Crime Peak produced positive results in the study, using other measures may have demonstrated a more defined relationship between crime and the adoption of victims' rights amendments. For example, public perception of crime may be a more accurate measure; it is possible a state's crime rate may be largely unknown to its citizens, and thus result in less demand for relief in the form of victims' rights, whereas perception of crime would more directly consider the awareness of the citizenry to victimization. A related concept could include the media reporting of violent crime, where increased attention to the most shocking of crimes, may produce fear in the public that is not necessarily related to the actual incidence of crime. The occurrence of a notorious crime in a particular state and the media attention that follows may also raise the level of cognizance of the public to criminal victimization that is not reflected in crime rates. It is useful to also mention that using Uniform Crime Reports violent crime rates contains some degree of imprecision, as some crimes may have occurred, yet failed to have been reported.

There were other potential factors that could also be included in the study that were not, due to the lack of readily available state-level data. For example, state-level public approval of the president would likely have improved the sensitivity of the "state receptivity" component of the presidential rhetoric variable. It would have offered a more precise year-by-year evaluation of approval ratings, rather than an evaluation of the president's performance in four-year increments, retroactively applied, because a president may be more or less popular at specific times and as particular events occur during their term in office.

The present study also highlights challenges associated with a comprehensive analysis of state constitutional change across all 50 states. To conduct the analysis, the study utilized a significant amount of aggregated data in discrete format that entails losing a bit of precision. A study of unique states and their citizens, however, may benefit from a more focused examination. Qualitative studies that are focused on the individual social and political contexts in which these policies appear may reveal important nuances regarding the adoption of victims' rights. For example, evaluating the effect of presidential rhetoric on the adoption of policy may benefit from an individual consideration of the timeline of events that led to the adoption of the amendment in each of the states. This is because the process of adoption in one state may lead to a longer period of time before adoption is finalized. Thus, it is possible that two different states could be influenced by the same factor (such as presidential rhetoric) to adopt, but the time to adoption vary. Furthermore, the outcome of the influence may vary, as states may opt to adopt other victim-related policies. Although this study was concerned with the influence of presidential rhetoric on the adoption of state constitutional rights, a future study could consider whether any states adopted strong statutes in addition to, or in lieu of, constitutional rights.

The study's emphasis on the influence of the presidential rhetoric helps inform an understanding of federal influence on state constitutional change. Many avenues for future research remain. Federal influence can be operationalized by actions of each of the tripartite branches, such as, for example, Congressional legislation, Supreme Court jurisprudence, and actions taken by the executive administration. Each of these implicates federalism in the United States and the autonomy of state government.

Although the study did not find evidence of a relationship between presidential rhetoric and the adoption of state constitutional victims' rights, results of the event history analysis indicate a relationship between factors such as innovation, crime rate, and legislative structure. These findings underscore the explanatory ability of these variables from previous research efforts as well as make intuitive sense. It is a reasonable expectation that states which are characterized as "leaders" in the adoption of policies would tend to lead the way in the adoption of state constitutional victims' rights and that those which have an easier method of changing their constitution would experience amendment adoption more than those with more difficult methods. Lastly, it is not surprising that states which experience a period of higher crime levels are more likely to adopt victims' rights constitutional amendments.

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## Appendix A

Excerpt from the 1988 Democrat Party Platform

**WE BELIEVE** that the federal government should provide increased assistance to local criminal justice agencies, enforce a ban on "cop killer" bullets that have no purpose other than the killing and maiming of law enforcement officers, reinforce our commitment to help crime victims, and assume a leadership role in securing the safety of our neighborhoods and homes. We further believe that the repeated toleration in Washington of unethical and unlawful greed among too many of those who have been governing our nation, procuring our weapons and polluting our environment has made far more difficult the daily work of the local policemen, teachers and parents who must convey to our children respect for justice and authority.



## Excerpt from the 1988 Republican Party Platform

### Crime

Republicans want a free and open society for every American. That means more than economic advancement alone. It requires the safety and security of persons and their property. It demands an end to crime.

Republicans stand with the men and women who put their lives on the line every day, in State and local police forces and in federal law enforcement agencies. We are determined to reestablish safety in the streets of those Communities where the poor, the hard-working, and the elderly now live in fear. Despite opposition from liberal Democrats, we've made a start:

- The rate of violent crime has fallen 20 percent since 1981. Personal thefts fell 21 percent, robberies fell 31 percent, assaults fell 17 percent, and household burglaries fell 30 percent.
- In 1986, crimes against individuals reached their lowest level in 14 years.
- The Reagan-Bush Administration has crusaded for victims' rights in trials and sentencing procedures and has advocated restitution by felons to their victims.
- We have been tough on white-collar crime, too. We have filed more criminal anti-trust cases than the previous Administration.
- We pushed a historic reform of toughened sentencing procedures for federal courts to make the punishment fit the crime.
- We appointed to the courts judges who have been sensitive to the rights of victims and law abiding citizens.

We will forge ahead with the Republican anti-crime agenda:

- We must never allow the presidency and the Department of Justice to fall into the hands of those who coddle hardened criminals. Republicans oppose furloughs for those criminals convicted of first degree murder and others who are serving a life sentence without possibility of parole. We believe that victims' rights should not be accorded less importance than those of convicted felons.
- We will reestablish the federal death penalty.
- We will reform the exclusionary rule, to prevent the release of guilty felons on technicalities.
- We will reform cumbersome habeas corpus procedures, used to delay cases and prevent punishment of the guilty.
- We support State laws implementing preventive detention to allow courts to deny bail to those considered dangerous and likely to commit additional crimes.

The election of 1988 will determine which way our country deals with crime. A Republican President and a Republican Congress can lay the foundation for a safer future.

## Excerpt from the 1992 Democrat Party Platform

### Combatting Crime and Drugs

Crime is a relentless danger to our communities. Over the last decade, crime has swept through our country at an alarming rate. During the 1980s, more than 200,000 Americans were murdered, four times the number who died in Vietnam. Violent crimes rose by more than 16 percent since 1988 and nearly doubled since 1975. In our country today, a murder is committed every 25 minutes, a rape every six minutes, a burglary every 10 seconds. The pervasive fear of crime disfigures our public life and diminishes our freedom.

None suffer more than the poor: an explosive mixture of blighted prospects, drugs and exotic weaponry has turned many of our inner city communities into combat zones. As a result, crime is not only a symptom but also a major cause of the worsening poverty and demoralization that afflicts inner city communities.

To empower America's communities, Democrats pledge to restore government as the upholder of basic law and order for crime-ravaged communities. The simplest and most direct way to restore order in our cities is to put more police on the streets. America's police are locked in an unequal struggle with crime: since 1951 the ratio of police officers to reported crimes has reversed, from three-to-one to one-to-three. We will create a Police Corps, in which participants would receive college aid in return for several years of service after graduation in a state or local police department. As we shift people and resources from defense to the civilian economy, we will create new jobs in law enforcement for those leaving the military.

We will expand drug counselling and treatment for those who need it, intensify efforts to educate our children at the earliest ages to the dangers of drug and alcohol abuse, and curb demand from the street corner to the penthouse suite, so that the U.S., with five percent of the world's population, no longer consumes 50 percent of the world's illegal drugs.

### Community Policing.

Neighborhoods and police should be partners in the war on crime. Democrats support more community policing, which uses foot patrols and storefront offices to make police officers visible fixtures in urban neighborhoods. We will combat street violence and emphasize building trust and solving the problems that breed crime.

### Firearms.

It is time to shut down the weapons bazaars in our cities. We support a reasonable waiting period to permit background checks for purchases of handguns, as well as assault weapons controls to ban the possession, sale, importation and manufacture of the most deadly assault weapons. We do not support efforts to restrict weapons used for legitimate hunting and sporting purposes. We will work for swift and certain punishment of all people who violate the country's gun laws and for stronger sentences for criminals who use guns. We will also

Excerpt from the 1992 Democrat Party Platform (cont.)

seek to shut down the black market for guns and impose severe penalties on people who sell guns to children.

Pursuing All Crime Aggressively.

In contrast to the Republican policy of leniency toward white collar crime—which breeds cynicism in poor communities about the impartiality of our justice system—Democrats will redouble efforts to ferret out and punish those who betray the public trust, rig financial markets, misuse their depositors' money or swindle their customers.

Further Initiatives.

Democrats also favor innovative sentencing and punishment options, including community service and boot camps for first time offenders; tougher penalties for rapists; victim-impact statements and restitution to ensure that crime victims will not be lost in the complexities of the criminal justice system; and initiatives to make our schools safe, including alternative schools for disruptive children.

Excerpt from the 1992 Republican Party Platform

**Safe Homes and Streets.** One of the first duties of government is to protect the public security—to maintain law and order so that citizens are free to pursue the fruits of life and liberty. The Democrats have forsaken this solemn pledge. Instead of protecting society from hardened criminals, they blame society and refuse to hold accountable for their actions individuals who have chosen to engage in violent and criminal conduct. This has led to the state of affairs in which we find ourselves today.

Violent crime is the gravest domestic threat to our way of life. It has turned our communities into battlegrounds, playgrounds into grave yards. It threatens everyone, but especially the very young, the elderly, the weak. It destroys business and suffocates economic opportunity in struggling communities. It is a travesty that some American children have to sleep in bathtubs for protection from stray bullets. The poverty of values that justifies drive-by shootings and random violence holds us hostage and insecure, even in our own homes. We must work to develop community-help projects designed to instill a sense of responsibility and pride.

This is the legacy of a liberalism that elevates criminals' fights above victims' rights, that justifies soft-on-crime judges' approving early-release prison programs, and that leaves law enforcement officers powerless to deter crime with the threat of certain punishment.

For twelve years, two Republican Presidents have fought to reverse this trend, along with Republican officials in the States. They have named tough law-and-order judges, pushed for minimum mandatory sentences, expanded federal assistance to States and localities, sought to help States redress court orders on prison overcrowding, and devoted record resources that are turning the tide against drugs. They have repeatedly proposed legislation, consistently rejected by congressional Democrats, to restore the severest penalties for the most heinous crimes, to ensure swift and certain punishment, and to end the legal loopholes that let criminals go free.

Congressional Democrats reject Republican reform of the exclusionary rule that prohibits use of relevant evidence obtained in good faith and allows criminals, even murderers, to go free on a technicality. They reject our reform of habeas corpus law to prevent the appellate process from becoming a lawyers' game to thwart justice through endless appeals and procedural delays. They refuse to enact effective procedures to reinstate the death penalty for the most heinous crimes. They reject tougher, mandatory sentences for career criminals. Instead, Congressional Democrats actually voted to create more loopholes for vicious thugs and fewer protections for victims of crime and have opposed mandatory restitution for victims. Their crime legislation, which we emphatically reject, cripples law enforcement by overturning over twenty United States Supreme Court cases that have helped to reduce crime and keep violent criminal offenders off the streets.

Excerpt from the 1992 Republican Party Platform (cont.)

For too long our criminal justice system has carefully protected the rights of criminals and neglected the suffering of the innocent victims of crime and their families. We support the rights of crime victims to be present, heard, and informed throughout the criminal justice process and to be provided with restitution and services to aid their recovery.

We believe in giving police the resources to do their job. Law enforcement must remain primarily a State and local responsibility. With 95 percent of all violent crimes within the jurisdiction of the States, we have led efforts to increase the number of police protecting our citizens. We also support incentives to encourage personnel leaving the Armed Forces to continue to defend their country—against the enemy within—by entering the law enforcement profession.

Narcotics traffic drives street crime. President Bush has, for the first time, used the resources of our Armed Forces against the international drug trade. By our insistence, multilateral control of precursor chemicals and money laundering is now an international priority. We decry efforts by congressional Democrats to slash international anti-narcotics funding and inhibit the most vital control efforts in Peru. We support efforts to work with South and Central American leaders to eradicate crops used to produce illegal narcotics.

The Republican Party is committed to a drug-free America. During the last twelve years, we have radically reversed the Democrats' attitude of tolerance toward narcotics, vastly increased federal operations against drugs, cleaned up the military, and launched mandatory testing for employees in various fields, including White House personnel. As a result, overall drug abuse is falling. We urge that States and communities emphasize anti-drug education by police officers and others in schools to educate young children to the dangers of the chug culture. Dope is no longer trendy.

We oppose legalizing or decriminalizing drugs. That is a morally abhorrent idea, the last vestige of an ill-conceived philosophy that counseled the legitimacy of permissiveness. Today, a similarly dysfunctional morality explains away drug-dealing as an escape, and drive-by shootings as an act of political violence. There is no excuse for the wanton destruction of human life. We therefore support the stiffest penalties, including the death penalty, for major chug traffickers.

Drug users must face punishment, including fines and imprisonment, for contributing to the demand that makes the drug trade profitable. Among possible sanctions should be the loss of government assistance and suspension of drivers' licenses. Residents of public housing should be able to protect their families against drugs by screening out abusers and dealers. We support grassroots action to drive dealers and crack-houses out of operation.

Safe streets also mean highways that are free of drunken drivers and drivers under the influence of illegal drugs. Republicans support the toughest possible State laws to deal with drunken drivers and users of illegal drugs, who deserve no sympathy from our courts or State legislatures. We also oppose the illicit abuse of legal chugs.

Excerpt from the 1992 Republican Party Platform (cont.)

White-collar crime threatens homes and families in a different way. It steals secretly, forcing up prices, rigging contracts, swindling consumers, and harming the overwhelming majority of business people, who play fair and obey the law. We support imprisonment for those who steal from the American people. We pledge an all out fight against it, especially within the political machines that control many of our major cities. We will continue to bring to justice corrupt politicians and those who collude with them to plunder savings and loans.

Excerpt from the 1996 Democrat Party Platform

**Fighting crime.** Today's Democratic Party believes the first responsibility of government is law and order. Four years ago, crime in America seemed intractable. The violent crime rate and the murder rate had climbed for seven straight years. Drugs seemed to flow freely across our borders and into our neighborhoods. Convicted felons could walk into any gun shop and buy a handgun. Military-style assault weapons were sold freely. Our people didn't feel safe in their homes, walking their streets, or even sending their children to school. Under the thumb of special interests like the gun lobby, Republicans talked tough about crime but did nothing to fight it.

Bill Clinton promised to turn things around, and that is exactly what he did. After a long hard fight, President Clinton beat back fierce Republican opposition, led by Senator Dole and Speaker Gingrich, to answer the call of America's police officers and pass the toughest Crime Bill in history. The Democratic Party under President Clinton is putting more police on the streets and tougher penalties on the books; we are taking guns off the streets and working to steer young people away from crime and gangs and drugs in the first place. And it is making a difference. In city after city and town after town, crime rates are finally coming down.

Community policing. Nothing is more effective in the fight against crime than police officers on the beat, engaged in community policing. The Crime Bill is putting 100,000 new police officers on the street. We deplore cynical Republican attempts to undermine our promise to America to put 100,000 new police officers on the street. We pledge to stand up for our communities and stand with our police officers by opposing any attempt to repeal or weaken this effort. But we know that community policing only works when the community works with the police. We echo the President's challenge to Americans: If 50 citizens joined each of America's 20,000 neighborhood watch groups, we would have a citizen force of one million strong to give our police forces the backup they need.

Protecting our children, our neighborhoods, and our police from criminals with guns. Bob Dole, Newt Gingrich, and George Bush were able to hold the Brady Bill hostage for the gun lobby until Bill Clinton became President. With his leadership, we made the Brady Bill the law of the land. And because we did, more than 60,000 felons, fugitives, and stalkers have been stopped from buying guns. President Clinton led the fight to ban 19 deadly assault weapons, designed for one purpose only -- to kill human beings. We oppose efforts to restrict weapons used for legitimate sporting purposes, and we are proud that not one hunter or sportsman was forced to change guns because of the assault weapons ban. But we know that the military-style guns we banned have no place on America's streets, and we are proud of the courageous Democrats who defied the gun lobby and sacrificed their seats in Congress to make America safer.

Today's Democratic Party stands with America's police officers. We are proud to tell them that as long as Bill Clinton and Al Gore are in the White House, any attempt to repeal the Brady Bill or assault weapons ban will be met with a veto. We must do everything we can to stand behind our police officers, and the first thing we should do is pass a ban on cop-killer

Excerpt from the 1996 Democrat Party Platform (cont.)

bullets. Any bullet that can rip through a bulletproof vest should be against the law; that is the least we can do to protect the brave police officers who risk their lives to protect us.

Tough punishment. We believe that people who break the law should be punished, and people who commit violent crimes should be punished severely. President Clinton made three-strikes-you're-out the law of the land, to ensure that the most dangerous criminals go to jail for life, with no chance of parole. We established the death penalty for nearly 60 violent crimes, including murder of a law enforcement officer, and we signed a law to limit appeals. The Democratic Party is a party of inclusion, and we respect the conscience of all Americans on this issue.

We provided almost \$8 billion in new funding to help states build new prison cells so violent offenders serve their full sentences. We call on the states to meet the President's challenge and guarantee that serious violent criminals serve at least 85 percent of their sentence. The American people deserve a criminal justice system in which criminals are caught, the guilty are convicted, and the convicted serve their time.

Fighting youth violence and preventing youth crime. Nothing we do to fight crime is more important than fighting the crime and violence that threatens our children. We have to protect them from criminals who prey on them -- and we have to teach them good values and give them something to say yes to, so they stay away from crime and trouble in the first place.

The Democratic Party understands what the police have been saying for years: The best way to fight crime is to prevent it. That is why we fought for drug-education and gang-prevention programs in our schools. We support well thought out, well organized, highly supervised youth programs to provide young people with a safe and healthy alternative to hanging out on the streets. We made it a federal crime for any person under the age of 18 to possess a handgun except when supervised by an adult. Democrats fought to pass, and President Clinton ordered states to impose, zero tolerance for guns in school, requiring schools to expel for one year any student who brings a gun to school.

At the same time, when young people cross the line, they must be punished. When young people commit serious violent crimes, they should be prosecuted like adults. We established boot camps for young non-violent offenders. If Senator Dole and the Republicans are serious about fighting juvenile crime, they should listen to America's police officers and support the steps Democrats have taken, because they are making a difference, and then they should join us as we work to do more.

We want parents to bring order to their children's lives and teach them right from wrong, and we want to make it easier for them to take that responsibility. We support schools that adopt school uniform policies, to promote discipline and respect. We support community-based curfews to keep kids off the street after a certain time, so they're safe from harm and away from trouble. We urge schools and communities to enforce truancy laws: Young people belong in school, not on the street.



Excerpt from the 1996 Democrat Party Platform (cont.)

We also know that we must do everything we can to help families protect their children, especially from dangerous criminals who have made a dark habit of preying on young people. Study after study shows that sex offenders are likely to repeat their crimes again and again. Under President Clinton, we have taken strong steps to help keep children safe. We required every state in the country to compile a registry of sex offenders. The President signed Megan's Law to require that states tell a community whenever a dangerous sexual predator enters its midst. We support the President's directive to the Attorney General, calling on her to work with the states and Congress to develop a national sex offender registry. This will ensure that police officers in every state can get the information they need from any state to track sex offenders down and bring them to justice when they commit new crimes.

Battling illegal drugs. We must keep drugs off our streets and out of our schools. President Clinton and the Democratic Party have waged an aggressive war on drugs. The Crime Bill established the death penalty for drug kingpins. The President signed a directive requiring drug testing of anyone arrested for a federal crime, and he challenged states to do the same for state offenders. We established innovative drug courts which force drug users to get treatment or go to jail. We stood firm against Republican efforts to gut the Safe and Drug Free Schools effort that supports successful drug-education programs like D.A.R.E. The Clinton Administration went to the Supreme Court to support the right of schools to test athletes for drugs. The President launched Operation Safe Home to protect the law-abiding residents of public housing from violent criminals and drug dealers who use their homes as a base for illegal activities. We support the President's decision to tell those who commit crimes and peddle drugs in public housing: You will get no second chance to threaten your neighbors; it is one strike and you're out. We are making progress. Overall drug use in America is dropping; the number of Americans who use cocaine has dropped 30 percent since 1992. Unfortunately casual drug use by young people continues to climb. We must redouble our efforts against drug abuse everywhere, especially among our children.

Earlier this year, the President appointed General Barry McCaffrey to lead the nation's war on drugs. General McCaffrey is implementing an aggressive four part strategy to reach young children and prevent drug use in the first place; to catch and punish drug users and dealers; to provide treatment to those who need help; and to cut drugs off at the source before they cross the border and pollute our neighborhoods. But every adult in America must take responsibility to set a good example, and to teach children that drugs are wrong, they are illegal, and they are deadly.

Ending domestic violence. When it strikes, nothing is a more dangerous threat to the safety of our families than domestic violence, because it is a threat from within. Unfortunately, violence against women is no stranger to America, but a dangerous intruder we must work together to drive from our homes. We know that domestic violence is not a "family problem" or a "women's problem." It is America's problem, and we must all fight it. The Violence Against Women Act in the 1994 Crime Bill helps police officers, prosecutors, and judges to understand domestic violence, recognize it when they see it, and know how to deal with it. In February, the President launched a 24 hour, seven-day, toll-free hotline so women in trouble

Excerpt from the 1996 Democrat Party Platform (cont.)

can find out how to get emergency help, find shelter, and report abuse to the authorities. The number is 1 800 799-SAFE. Everyone who knows it should pass it on to anyone who might need it. Every American must take the responsibility to stop this terrible scourge. As we fight it, we must remember that the victims are not to blame. This is a crime to be punished, not a secret to be concealed.

We must do everything we can to make sure that the victims of violent crime are treated with the respect and the dignity they deserve. We support the President's call for a constitutional amendment to protect the rights of victims. We believe that when a plea bargain is entered in public, a criminal is sentenced, or a defendant is let out on bail, the victims ought to know about it, and have a say. A constitutional amendment is the only way to protect those rights in every courtroom in America.

Excerpt from the 1996 Republican Party Platform

### Getting Tough on Crime

"Women in America know better than anyone about the randomness and ruthlessness of crime. It is a shameful, national disgrace that nightfall has become synonymous with fear for so many of America's women." Bob Dole, May 28, 1996 in Aurora, Colorado

During Bill Clinton's tenure, America has become a more fearful place, especially for the elderly and for women and children. Violent crime has turned our homes into prisons, our streets and schoolyards into battlegrounds. It devours half a trillion dollars every year. Unfortunately, far worse could be coming in the near future. While we acknowledge the extraordinary efforts of single parents, we recognize that a generation of fatherless boys raises the prospect of soaring juvenile crime.

This is, in part the legacy of liberalism - in the old Democrat Congress, in the Clinton Department of Justice, and in the courts, where judges appointed by Democrat presidents continue their assault against the rights of law-abiding Americans. For too long government policy has been controlled by criminals and their defense lawyers. Democrat Congresses cared more about rights of criminals than safety for Americans. Bill Clinton arbitrarily closed off Pennsylvania Avenue, the nation's Main Street, for his protection, while his policies left the public unprotected against vicious criminals. As a symbol of our determination to restore the rule of law - in the White House as well as in our streets - we will reopen Pennsylvania Avenue.

After the elections of 1994, the new Republican majorities in the House and Senate fought back with legislation that ends frivolous, costly, and unnecessarily lengthy death-row appeals, requires criminals to pay restitution to their victims, speeds the removal of criminal aliens, and steps up the fight against terrorism. Congressional Republicans put into law a truth-in-sentencing prison grant program to provide incentives to states which enact laws requiring violent felons to serve at least 85% of their sentences and replaced a myriad of Democrat "Washington knows best" prevention programs with bloc grants to cities and counties to use to fight crime as they see fit. They put an end to federal court early-release orders for prison overcrowding and made it much harder for prisoners to file frivolous lawsuits about prison conditions.

There's more to do, once Bill Clinton's veto threats no longer block the way. We will establish no-frills prisons where prisoners are required to work productively and make the threat of jail a real deterrent to crime. Prisons should not be places of rest and relaxation. We will reform the Supreme Court's fanciful exclusionary rule, which has allowed a generation of criminals to get off on technicalities.

Juvenile crime is one of the most difficult challenges facing our nation. The juvenile justice system is broken. It fails to punish the minor crimes that lead to larger offenses, and lacks early intervention to keep delinquency from turning into violent crime. Truancy laws are not enforced, positive role models are lacking, and parental responsibility is overlooked. We will

Excerpt from the 1996 Republican Party Platform (cont.)

stress accountability at every step in the system and require adult trials for juveniles who commit adult crimes.

In addition, not only is juvenile crime on the rise, but unsupervised juveniles (especially at night) are most often the victims of abuse in our society. Recognizing that local jurisdictions have a clear and concise understanding of their problems, we encourage them to develop and enact innovative programs to address juvenile crime. We also encourage them to consider juvenile nocturnal curfews as an effective law enforcement tool in helping reduce juvenile crime and juvenile victimization.

Juvenile criminal proceedings should be open to victims and the public. Juvenile conviction records should not be sealed but made available to law enforcement agencies, the courts, and those who hire for sensitive work in schools and day-care centers.

Because liberal jurists keep expanding the rights of the accused, Republicans propose a Constitutional amendment to protect victims' rights: audio and visual testimony of victims kept on file for future hearings, full restitution, protection from intimidation or violence by the offender, notification of court proceedings, a chance to be heard in plea bargains, the right to remain in court during trials and hearings concerning the crimes committed against them, a voice in the sentencing proceedings, notice of the release or escape of offenders. Bill Clinton hypocritically endorsed our Victim's Rights Amendment while naming judges who opposed capital punishment, turned felons loose, and even excused murder as a form of social protest. Bob Dole, the next Republican president will end that nonsense and make our courts once again an instrument of justice.

While the federal government's role is essential, most law enforcement must remain in the hands of local communities, directed by State and local officials who are closely answerable to the people whose lives are affected by crime. In that regard, we support community policing; nothing inhibits local crime like an officer in the neighborhood. Bill Clinton promised 100,000 more police officers on the beat but, according to his own Attorney General, delivered no more than 17,000. He ignored local law enforcers by tying the program in knots of red tape and high costs. Now he is diverting millions of its dollars, appropriated by congressional Republicans to fight street crime, to state parks and environmental projects. It's time to return those anti-crime resources to communities and let them decide what works best to keep their homes, schools, and workplaces safe. This would result in far more new police officers than Bill Clinton's program and give communities additional crime fighting resources they need.

We will work with local authorities to prevent prison inmates from receiving disability or other government entitlements while incarcerated. We support efforts to allow peace officers, including qualified retirees, to assist their colleagues and protect their communities even when they are out of their home jurisdictions to the extent this is consistent with applicable state and local law. We will amend the Fair Labor Standards Act so that corrections officers can volunteer to assist local law enforcement.

Excerpt from the 1996 Republican Party Platform (cont.)

Crimes against women and children demand an emphatic response. Under Bob Dole and Dick Zimmer's leadership, Republicans in Congress pushed through Megan's Law - the requirement that local communities be notified when sex offenders and kidnappers are released - in response to the growing number of violent sexual assaults and murders like the brutal murder of a little girl in New Jersey. We call for special penalties against thugs who assault or batter pregnant women and harm them or their unborn children. We endorse Bob Dole's call to bring federal penalties for child pornography in line with far tougher State penalties: ten years for a first offense, fifteen for the second, and life for a third. We believe it is time to revisit the Supreme Court's arbitrary decision of 1977 that protects even the most vicious rapists from the death penalty. Bob Dole authored a tough federal statute which provides for the admissibility of prior similar criminal acts of defendants in sexual assault cases. This important law enforcement tool should serve as a model for the states. We continue our strong support of capital punishment for those who commit heinous federal crimes; including the kingpins of the narcotics trade.

We wish to express our support and sympathy for all victims of terrorism and their families. Acts of terrorism against Americans and American interests must be stopped and those who commit them must be brought to justice. We recommend a Presidentially appointed "blue ribbon" commission to study more effective methods of prosecuting terrorists.

Only Republican resolve can prepare our nation to deal with the four deadly threats facing us in the early years of the 21st Century: violent crime, drugs, terrorism, and international organized crime. Those perils are interlocked - and all are escalating. This is no time for excuses. It's time for a change.

## Appendix B

## Rhode Island and Illinois Provisions

RHODE ISLAND  
CONSTITUTIONARTICLE I. DECLARATION OF CERTAIN CONSTITUTIONAL RIGHTS AND  
PRINCIPLES

## § 23. Rights of victims of crime

A victim of crime shall, as a matter of right, be treated by agents of the state with dignity, respect and sensitivity during all phases of the criminal justice process. Such person shall be entitled to receive, from the perpetrator of the crime, financial compensation for any injury or loss caused by the perpetrator of the crime, and shall receive such other compensation as the state may provide. Before sentencing, a victim shall have the right to address the court regarding the impact which the perpetrator's conduct has had upon the victim.

## MICHIGAN

## CONSTITUTION

## CHAPTER 1. CONSTITUTION OF THE STATE

## ARTICLE I. DECLARATION OF RIGHTS

## § 24. Rights of crime victims; enforcement; assessment against convicted defendants

- (1) Crime victims, as defined by law, shall have the following rights, as provided by law:
- The right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process.
  - The right to timely disposition of the case following arrest of the accused.
  - The right to be reasonably protected from the accused throughout the criminal justice process.
  - The right to notification of court proceedings.
  - The right to attend trial and all other court proceedings the accused has the right to attend.
  - The right to confer with the prosecution.
  - The right to make a statement to the court at sentencing.
  - The right to restitution.
  - The right to information about the conviction, sentence, imprisonment, and release of the accused.
- (2) The legislature may provide by law for the enforcement of the section.
- (3) The legislature may provide for an assessment against convicted defendants to pay for crime victims rights.

VictimLaw. Office of Justice Programs.

<https://www.victimlaw.org/victimlaw/#:~:text=VictimLaw%20is%20a%20searchable%20database%20of%20victims%27%20rights,of%20related%20court%20decisions%20and%20attorney%20general%20opinions.>

## New Jersey and Arizona Provisions

### NEW JERSEY CONSTITUTION ARTICLE I. RIGHTS AND PRIVILEGES

#### Section 22. Rights of crime victims

A victim of a crime shall be treated with fairness, compassion and respect by the criminal justice system. A victim of a crime shall not be denied the right to be present at public judicial proceedings except when, prior to completing testimony as a witness, the victim is properly sequestered in accordance with law or the Rules Governing the Courts of the State of New Jersey. A victim of a crime shall be entitled to those rights and remedies as may be provided by the Legislature. For the purposes of this paragraph, "victim of a crime" means: a) a person who has suffered physical or psychological injury or has incurred loss of or damage to personal or real property as a result of a crime or an incident involving another person operating a motor vehicle while under the influence of drugs or alcohol, and b) the spouse, parent, legal guardian, grandparent, child or sibling of the decedent in the case of a criminal homicide.

### ARIZONA CONSTITUTION ARTICLE 2. DECLARATION OF RIGHTS

#### § 2.1. Victims' Bill of Rights

Section 2.1. (A) To preserve and protect victims' rights to justice and due process, a victim of crime has a right:

1. To be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process.
2. To be informed, upon request, when the accused or convicted person is released from custody or has escaped.
3. To be present at and, upon request, to be informed of all criminal proceedings where the defendant has the right to be present.
4. To be heard at any proceeding involving a post-arrest release decision, a negotiated plea, and sentencing.
5. To refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or other person acting on behalf of the defendant.
6. To confer with the prosecution, after the crime against the victim has been charged, before trial or before any disposition of the case and to be informed of the disposition.

7. To read pre-sentence reports relating to the crime against the victim when they are available to the defendant.
  8. To receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury.
  9. To be heard at any proceeding when any post-conviction release from confinement is being considered.
  10. To a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence.
  11. To have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights and to have these rules be subject to amendment or repeal by the Legislature to ensure the protection of these rights.
  12. To be informed of victims' constitutional rights.
- (B) A victim's exercise of any right granted by this section shall not be grounds for dismissing any criminal proceeding or setting aside any conviction or sentence.
- (C) "Victim" means a person against whom the criminal offense has been committed or, if the person is killed or incapacitated, the person's spouse, parent, child or other lawful representative, except if the person is in custody for an offense or is the accused.
- (D) The Legislature, or the people by initiative or referendum, have the authority to enact substantive and procedural laws to define, implement, preserve and protect the rights guaranteed to victims by this section, including the authority to extend any of these rights to juvenile proceedings.
- (E) The enumeration in the Constitution of certain rights for victims shall not be construed to deny or disparage others granted by the Legislature or retained by victims.

VictimLaw. Office of Justice Programs.

<https://www.victimlaw.org/victimlaw/#:~:text=VictimLaw%20is%20a%20searchable%20database%20of%20victims%27%20rights,of%20related%20court%20decisions%20and%20attorney%20general%20opinions.>



## Appendix C

### Keyword Crime Coding Methods

Keyword searches of all documents were conducted, and returns were reviewed to determine whether the keywords were related to the subject of crime. References to the word crime were excluded if they were made by any person other than the president, for example, when made by a reporter or another individual, such as a foreign prime minister or president. In addition, search returns which located the word crime were excluded when referencing crime that occurred in another country and when lacking reference to a joint crime-fighting effort between the U.S. and another country. References to transnational crime-fighting efforts were coded as relevant to the study because of the potential to affect domestic criminal victimization. For example, references to drug trafficking crime fighting efforts with other countries were reasoned to be relevant as they may affect the domestic crime rate and, thus, be of interest to those concerned of domestic criminal victimization. Search returns which referenced domestic crimes, crime rates, fighting crime, a party's policy response to crime, concern over crime, crime as an important issue in society, causes of crime, etc. were recorded as relevant to the study. Additionally, organized crime, gun crimes, hate crimes, crimes related to terrorism after 9/11/2001, were coded as relevant. Search returns that were coded as irrelevant were crimes that occurred within a country that did not involve the U.S., or where involvement of U.S. policy was not anticipated. Use of the word crime to reference non-criminal actions were coded as non-relevant.

## Appendix D

## PHREG Results

| Model Fit Statistics |                    |                 |
|----------------------|--------------------|-----------------|
| Criterion            | Without Covariates | With Covariates |
| <b>-2 LOG L</b>      | 214.338            | 176.866         |
| <b>AIC</b>           | 214.338            | 190.866         |
| <b>SBC</b>           | 214.338            | 200.904         |

| Testing Global Null Hypothesis: BETA=0 |            |    |            |
|--|------------|----|------------|
| Test                                   | Chi-Square | DF | Pr > ChiSq |
| <b>Likelihood Ratio</b>                | 37.4716    | 7  | <.0001     |
| <b>Score</b>                           | 36.1585    | 7  | <.0001     |
| <b>Wald</b>                            | 31.1543    | 7  | <.0001     |

| Analysis of Maximum Likelihood Estimates |    |                    |                |            |            |              |
|--|----|--------------------|----------------|------------|------------|--------------|
| Parameter                                | DF | Parameter Estimate | Standard Error | Chi-Square | Pr > ChiSq | Hazard Ratio |
| <b>MechEase</b>                          | 1  | 0.62556            | 0.25423        | 6.0545     | 0.0139     | 1.869        |
| <b>Innovation</b>                        | 1  | 1.33735            | 0.42702        | 9.8084     | 0.0017     | 3.809        |
| <b>Igssystem</b>                         | 1  | -0.05342           | 0.27736        | 0.0371     | 0.8473     | 0.948        |
| <b>CrimePk</b>                           | 1  | 1.13334            | 0.28237        | 16.1099    | <.0001     | 3.106        |
| <b>Competition</b>                       | 1  | 0.32942            | 0.65525        | 0.2527     | 0.6151     | 1.390        |
| <b>RepControl</b>                        | 1  | -0.34412           | 0.82317        | 0.1748     | 0.6759     | 0.709        |
| <b>PresRhet</b>                          | 1  | -0.03715           | 0.12675        | 0.0859     | 0.7695     | 0.964        |