The Crime Victim's Right to Justice

Steve Twist* and Vanessa A. Kubota**, ***

Since 1990, the Arizona Constitution has promised to "preserve and protect" a crime victim's rights to "justice and due process." Eleven states have followed Arizona's lead, amending their constitutions to include similar language. By starting with the verb "preserve," these amendments make clear that a victim's right to justice predates its constitutional recognition.

But what is the victim's right to justice? Does it have operative legal force? Can a victim assert the right to justice as a free-standing substantive right, untethered to the specific enumerated rights that were enacted in its name? No court has defined the crime victim's right to "justice" in the constitutional context, much less applied it. Until such jurisprudence is developed, the crime victim's right to justice, as a matter of state constitutional law, will remain an elusive promise.

This Article explores the origin and meaning of "justice" for crime victims in the context of state constitutional law and general policy, arguing for a return to fundamental principles. A comprehensive interpretation of justice—as the right of each person to receive his or her due under the law—applied fairly, equally, and without discrimination—keeps justice from straying into constricted, outcome-oriented domains, protects defendants' due process rights, and gives operative meaning to the right to justice for crime victims.

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* Steve Twist is an adjunct law professor at the Sandra Day O'Connor College of Law.

** Vanessa Kubota is an Assistant United States Attorney in the Criminal Division of the United States Attorney's Office and a Tibetan language translator. All views are her own and do not represent the positions of the Department of Justice.

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INTRODUCTION

> *If we are to keep our democracy, there must be one commandment: Thou shalt not ration justice.*
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> – Judge Learned Hand[1]

This Article is about "justice"—or more specifically—about the meaning and legal application of the word "justice" in the Victims' Bill of Rights ("VBR")[2] and other, similarly worded state constitutional amendments. Inevitably, such an inquiry opens the door to a bigger conversation. How we legally define "justice" in the criminal law context matters. And it matters to crime victims, too.

Since its founding, America has been home to recurring debates about the correct policies, procedures, and outcomes of our criminal justice system.[3] Such is the hallmark of a free society, where stakeholders from all sides can discuss matters of great consequence, and decisions can be reached and later amended based on experience and prudential judgment. The great American experiment has witnessed numerous movements and reforms that have shaped policy and legislation in the realm of criminal law and procedure. Among them, the crime victims' rights movement has been one of the most consequential.[4]

Scholars and practitioners continue to spar over what it means to give victims a seat at the criminal justice table, with some critics dismissing the victims' rights movement as overly punitive or vengeance driven,

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1. Amelia Craig Cramer, *Enhancing Access to Justice*, ARIZ. ATT'Y MAG., Oct. 2012, at 46, 48 (citing Irving Dilliard, *Introduction* to LEARNED HAND, THE SPIRIT OF LIBERTY XIX (Irving Dilliard ed., Alfred A. Knopf 1952)).; *see also* LEARNED HAND, THE SPIRIT OF LIBERTY: PAPERS AND ADDRESSES OF LEARNED HAND (Irving Dillard ed. 1952).

2. ARIZ. CONST. art. II, § 2.1.

3. Some legal theorists have rejected the use of the word "justice" in reference to the American "criminal justice system," opting instead for critical labels such as the "criminal legal system," "criminal punishment system," or "prison industrial complex." *See generally* Benjamin Levin, *After the Criminal Justice System*, 98 WASH. L. REV. 899 (2023) (exploring the impact and significance of removing "justice" from the phrase, "criminal justice system" in order to effectuate reform). But here, we follow the ways of law professor Paul Cassell and his co-author, Michael Morris, Jr. and will "use the term 'criminal justice' in its aspirational sense, acknowledging that justice may not have always been provided." Paul G. Cassell & Michael Ray Morris, Jr., *Defining 'Victim' Through Harm: Crime Victim Status in the Crime Victims' Rights Act and Other Victims' Rights Enactments*, 61 AM. CRIM. L. REV. 329, 332 n.6 (2024).

4. *See* DOUGLAS E. BELOOF ET AL., VICTIMS IN CRIMINAL PROCEDURE 22 (5th ed. 2025); Paul G. Cassell, *The Crime Victims' Rights Movement: Historical Foundations, Modern Ascendancy, and Future Aspirations*, 56 U. PAC. L. REV. 387, 390 (2025) ("The crime victims' rights movement is one of the most important social movements in modern American history.").

disparaging it as a "carceral rights movement."[5] They argue that empowering victims in the criminal justice process shifts the dynamic, and that, since victims are not parties to a criminal case, their participation may give undue weight to the prosecution, detracting from defendants' rights.[6]

But, as law professor and retired federal judge Paul Cassell asserts, the rights of victims and defendants are not mutually exclusive, and giving victims a voice in the criminal process does not necessitate harsher sentences or impinge on defendants' due process rights.[7] Meanwhile, victim advocates worry that victims have been villainized simply because of their efforts to be heard.[8] Their concerns are well-founded. The victims' rights movement has frequently been misconstrued as anti-defendant.[9] The academy abounds with

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5. *See* Cassell, *supra* note 4, at 387, 390–91, 391 n.6 (discussing this trend and citing Jessica Jackson, *Clemency, Pardons, and Reform: When People Released Return to Prison*, 16 U. ST. THOMAS L.J. 373, 381 (2020) (characterizing the victims' rights movement as the "carceral victims' rights movement")).

6. *See, e.g.*, Andrew J. Karmen, *Who's Against Victims' Rights? The Nature of the Opposition to Pro-Victim Initiatives in Criminal Justice*, 8 ST. JOHN'S J. LEGAL COMMENT. 157, 161 (1992) ("Granting new rights to crime victims necessitates a shake-up in the balance of power within the adversarial system. Since all the political territory has already been staked out, the situation becomes a zero-sum game. A gain by the victims' movement can only be at another's expense. Some demands for a greater role in the criminal justice process pit victims against their natural adversaries, namely the suspects accused of harming them or criminals already convicted."); Christopher Johns, *The Costs of Victims' Rights*, ARIZ. ATT'Y MAG., Oct. 1992, at 27, 27 ("The victims' participation in the sentencing process is another way to accomplish harsher punishment.").

7. *See* Cassell, *supra* note 4, at 387 ("Because these rights for victims are participatory rights rather an entitlement to substantive case outcomes, the victims' rights movement is not a 'carceral rights movement,' aimed solely at securing punitive sentences. Instead, the movement focuses on giving a voice to crime victims in their own criminal cases."); *cf.* Stephanos Bibas, *Victims Versus the State's Monopoly on Punishment?*, 130 YALE L.J.F. 857, 859 (2021) ("Too often, we oversimplify criminal justice into a zero-sum game of left versus right or victims versus defendants.").

8. *See* Paul Rock, *Victims' Rights*, *in* JUSTICE FOR VICTIMS: PERSPECTIVES ON RIGHTS, TRANSITION AND RECONCILIATION 11 (1st ed. 2014) ("The system served the judges, lawyers, and defendants, while ignoring, blaming, and mistreating the victims.") (citing Lois Herrington, former Assistant Attorney General of the United States and the chairwoman of the 1982 Presidential Task Force on Victims of Crime).

9. *See, e.g.*, Lynn N. Henderson, *The Wrongs of Victim's Rights*, 37 STAN. L. REV. 937, 949, 964–65 (1985) (debunking some "[c]ommon assumptions about crime victims—that they are all 'outraged,' and want revenge and tougher law enforcement—[which] underlie much of the current victim's rights rhetoric"). For a rebuttal to such assumptions, see Cassell, *supra* note 4, at 495 ("For example, the victim may seek a punitive sentence or a lenient one. But the point of the crime victims' rights movement is that the victim is heard, not that the victim achieves a punitive or merciful objective.").

scholarship on all sides of these issues, with commentators deftly unpacking these debates and offering various solutions.[10]

But one concept has curiously escaped scrutiny, even among victims' rights scholars: the meaning, scope, and legal significance of the crime victim's right to "justice." Despite the term's prominence in the VBR and other state constitutional amendments, the crime victim's right to justice remains an elusive ideal mentioned only in passing, with no definitive meaning or legal application.

This lacuna may be due in part to the fact that "justice," the most critical word in any criminal justice debate, is so broad and universal a concept that defining it seems almost elementary, if not impossible.[11] In practice, "justice" is a loaded term, morphing easily into a synonym for whatever outcome the justice-seeker desires.[12] Modernly, there has been a tendency to view "justice" as the sole province of the criminal defendant. Specifically, the term "justice" has come to be associated with models of penal leniency and decarceration, such that longer carceral outcomes are viewed as inversely proportional to justice, regardless of the nature of the crime or its effect on the victim.[13] If the goal is to weaken the justice system's disciplinary arm, the movement has undoubtedly succeeded. But this narrow sense of justice excludes crime victims from the Constitution's broad purposes of protection.

We invite courts and advocates to entertain a broader, more fundamental interpretation of justice—one that is accessible to all participants in the

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10. *See generally* Cassell, *supra* note 4 (surveying the history of victims' rights in America and discussing the diverse attitudes surrounding the assertion of these rights).

11. *See* Ryan Kellus Turner & Elizabeth Rozacky, *Hot Topics in Texas Criminal Justice 2020: A Pandemic Time Capsule*, 24 ST. MARY'S L. REV. RACE & SOC. JUST. 443, 452 (2022) ("It seems perplexing that the meaning of justice is remarkably absent from definitions of 'social justice' and the 'law.'"); Michael Gentithes, *Precedent, Humility, and Justice*, 18 TEX. WESLEYAN L. REV. 835, 856 (2012) (denying mounting "an attempt to wholly define justice, a project far beyond" the scope of the author's article).

12. Turner & Rozacky, *supra* note 11, at 454 ("Too often, 'justice' is shorthand for winning, achieving a desired result, or bolstering specific normative values, while ignoring others.").

13. This Article does not seek to undermine the defendant's absolute and inalienable right to full constitutional protections, nor does it mean to imply that justice for victims is exclusively or primarily about the duration of incarceration. For a look at current scholarship challenging existing notions of justice, see Benjamin Levin, *Disentangling Safety and Accountability in Criminal Justice Policy*, IOWA L. REV. (forthcoming 2026) (manuscript at 15), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5189433 [https://perma.cc/4AUE-ZRJB] ("It's worth noting that many of the academic arguments along these lines equate punishment and accountability, [where] '[d]oing justice' is meant here in its dictionary sense of giving an offender the punishment deserved."); *see also* HERNANDEZ D. STROUD & ROSEMARY NIDIRY, BRENNAN CTR. JUSTICE, FEDERAL AGENDA TO PROMOTE SAFETY AND JUSTICE (2025), https://www.brennancenter.org/media/13673/download/2025_01_a-federal-agenda-to-promote-safety-and-justice-report-final_0.pdf?inline=1 [https://perma.cc/NZP6-AEHS].

criminal justice system, including crime victims. In the context of the victims' rights amendments, "justice" embodies the fundamental right of the victim to expect laws to be enforced, and penal promises kept when crimes are committed. When applied as a neutral principle, a victim's right to justice embraces whatever penal outcome is right under the circumstances. Thus, contrary to some commentators' views, justice for victims is not vengeance-based, nor does it preclude penal leniency where leniency is due. "Justice" does not presume an outcome; it ensures the delivery of what is due.

As former Supreme Court Justice Benjamin Cardozo declared, "Justice, though due to the accused, is also due to the accuser. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true."[14] To resurrect the true balance of justice—as a universal right, we propose a return to fundamental principles in the interpretation and application of justice for victims, and a faithful adherence to the text of the Victims' Bill of Rights, which recognizes crime victims have preexisting rights to justice and due process. We propose a reading of the crime victim's right to justice that carries substantive legal force and precedes the enumerated rights set forth in the Victims' Bill of Rights, without infringing on the rights of the accused.

This Article aims to unpack the victim's right to justice in four parts. Part I sketches a brief history of the victims' rights movement, including its genesis and current trends. Part II explores the historical and etymological meaning of "justice," tracing its roots in classic Western philosophy and criminal procedure. Part III examines the language of state constitutional amendments that recognize the victim's right to justice and its corollary, due process. Through textual analysis and canons of construction, we show how state courts might give effect to the victim's right to justice, in keeping with the constitutional order. We also envision scenarios where the victim's right to justice can be applied concretely. Part IV concludes. For now.

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14. Snyder v. Massachusetts, 291 U.S. 97, 122 (1934) (Cardozo, J.).

I. THE CRIME VICTIM IN AMERICAN LAW

Including victims in the criminal justice system finally gives voice to a perspective that has for too long been ignored.

– Douglas E. Beloof[15]

Crime victims were America's first prosecutors.[16] Long before the days of government involvement, crime victims initiated and pursued private criminal actions against their offenders.[17] The victim's role as agent and arbiter of private prosecutions heralded from ancient times, with some scholars tracing it back to the Code of Hammurabi and the Book of Exodus, which contained provisions for offender-victim reparations.[18] The victim-driven criminal justice model eventually made its way to England, where it evolved from a largely unregulated model of vengeance-based reparations to "a system of resolving disputes between the victim and offender that maintained a central role for victims."[19]

With the thirteenth century came the institution of the "Justice of the Peace," which "evolved from King Richard I's authorizing a survey of knights to keep the peace within certain turbulent areas of the country."[20] That institution acknowledged that the offender inflicts a double harm—privately on the individual victim, and also publicly on the crown, for violations of "the king's peace."[21] The nascent justice system mitigated the overly punitive and biased effects of "the older, unregulated system of purely private vengeance," where the crime victim "acted as judge, jury, and executioner."[22]

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15. Douglas E. Beloof, *The Third Wave of Crime Victims' Rights: Standing, Remedy, and Review*, 2 BYU L. REV. 255, 261 (2005).

16. Jonathan Barth, *Criminal Prosecution in American History: Private or Public?*, 67 S.D. L. REV. 119, 121 (2022); *see* Paul G. Cassell, *On the Importance of Listening to Crime Victims . . . Merciful and Otherwise*, 102 TEX. L. REV. 1381, 1382–83 (2024); Douglas E. Beloof & Paul G. Cassell, *The Crime Victim's Right to Attend the Trial: The Reascendant National Consensus*, 9 LEWIS & CLARK L. REV. 481, 494–503 (2005); William F. McDonald, *Towards a Bicentennial Revolution in Criminal Justice: The Return of the Victim*, 13 AM. CRIM. L. REV. 649, 649 (1976); Juan Cardenas, *The Crime Victim in the Prosecutorial Process*, 9 HARV. J.L. & PUB. POL'Y 357, 361 (1986).

17. Cassell, *supra* note 4, at 398.

18. *Id.* at 397.

19. *Id.* at 398.

20. Barth, *supra* note 16, at 122.

21. Cassell, *supra* note 4, at 398. This concept is also elucidated in William Blackstone's Commentaries on English Law, which recognized that "crimes had a dual nature, as encompassing both a private wrong and harm to the community." *Id.* (citing WILLIAM BLACKSTONE, COMMENTARIES ON THE LAW OF ENGLAND 541 (1769)).

22. Cassell, *supra* note 4, at 398 (citing Barth, *supra* note 16, at 119).

Under the state-regulated system, victims still played a central role.[23] They had the power to arrest the accused, but they also bore the burden to present their criminal case to a neutral arbiter, which began with a grand jury comprised of private citizens, and proceeded, upon the grand jury's finding of probable cause, to a court run by the state.[24] As Cassell explains, the powers of the Justices of the Peace increased over time, so that by the end of the fourteenth century, Justices of the Peace could arrest suspected criminals.[25] Victims and their families still retained the power of arrest at that time.[26]

By the sixteenth century, the attorney general had the right, "on behalf of the king, to intervene and put a stop to any private prosecution" by issuing a writ of nolle prosequi.[27] This method was "occasionally" used by the attorney general "to interrupt a frivolous or chimerical prosecution."[28]

In colonial America, the criminal justice system followed the model of private prosecution, as distinct from the Continental system of Europe, which "presupposed a public prosecutor."[29] In the seventeenth century, private prosecutions were the norm, and public ones the exception.[30] By the eighteenth century, public prosecutions coexisted with private ones, but public prosecution gradually increased, especially after 1776, when the colonies gained independence from Britain.[31] Still, victims retained the right to pursue private prosecutions, "and many victims did so."[32]

The hybridization of public and private prosecution—with victims at the fore—finds support in historical accounts surrounding the drafting of the United States Constitution. As Cassell concludes, historical analysis "shows that the Framers understood that victims would be allowed to proceed with private prosecutions, particularly in the states."[33] Indeed, "the history of the criminal law in early America is bound up with the then-prevailing practice of private prosecution."[34]

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23. *Id.*
24. *Id.*
25. *Id.*
26. *Id.*
27. Barth, *supra* note 16, at 123.
28. *Id.*
29. Cassell, *supra* note 4, at 399.
30. *Id.* (citing Barth, *supra* note 16, at 124).
31. *Id.* at 400.
32. *Id.*
33. *Id.* at 402.
34. *Id.* (citing JOHN D. BESSLER, PRIVATE PROSECUTION IN AMERICA: ITS ORIGINS, HISTORY, AND UNCONSTITUTIONALITY IN THE TWENTY-FIRST CENTURY 423 (2022)).

Disagreeing with the theory held by some scholars, that by the time of the drafting of the Constitution and the Bill of Rights, public prosecution had superseded private prosecution, Cassell suggests that the Drafters would have been aware of the prevalence of private prosecution and would have expected the practice to continue. The "Articles of Confederation, sent by the Second Continental Congress to the states in December 1777," were silent about law enforcement, leaving the newly developed states the freedom to formulate their own criminal justice enforcement mechanisms.[35] And so, while the Philadelphia Convention "created a stronger national government," it left the "day-to-day criminal justice" responsibilities to the states.[36] At that time, while a few states had "established an office of the public prosecutor," none of the state constitutions gave the public prosecutor the "*exclusive* right to prosecute in criminal court."[37] The absence of any explicit state preemption over criminal prosecution, Cassell writes, supports the inference that "the patterns of private prosecution would have been the dominant feature of state criminal justice—and, thus, of American criminal justice" at the time of the framing.[38]

Cassell finds further support for this theory in Blackstone's *Commentaries on English Law*, a source that the framers would have consulted.[39] There, Blackstone identifies the dual harm created by crime—privately to the victim, and publicly to the community.[40] Thus, the wrong to be remedied was twofold, as "every public offense is also a private wrong, . . . [which] affects the individual, and . . . likewise . . . the community."[41] Blackstone's *Commentaries* also make reference to the existence of private prosecutors.[42] Such early models for the Constitution, Cassell concludes, would have given the Framers insight into "the likelihood of victim-initiated prosecution."[43]

With the Constitutional Convention and its system of separated powers came the establishment of the Executive branch and its vested duty to "take care that the laws be faithfully executed."[44] Cassell disagrees with the position of some scholars, who have concluded "that the executive branch was assigned the exclusive power over criminal prosecutions—and that this

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35. *Id.* at 402–03.
36. *Id.* at 403.
37. *Id.* at 402. (citing Barth, *supra* note 16, at 146).
38. *Id.* at 403.
39. *Id.*
40. *Id.*
41. *See* BLACKSTONE, *supra* note 21, at 5 (as cited in Cassell, *supra* note 4, 398)
42. *See* Cassell, *supra* note 4, at 403 n.83 (citing BLACKSTONE, *supra* note 21, at 5).
43. *Id.* at 404.
44. U.S. CONST. art. II, § 3.

assignment meant a system of exclusively public prosecutions."[45] The Judiciary Act of 1789 established the federal judiciary and "assigned to the President the power to appoint the Attorney General."[46] Then came the Bill of Rights, which gave birth to the Fifth and Sixth Amendments.[47] Some scholars have theorized that the Drafters intended a strictly binary criminal justice system—where the government and defendant are the only adversaries.[48] Cassell, however, is more circumspect, asserting that the "assumption of exclusively public prosecution finds no basis in the Amendments' text."[49]

Cassell acknowledges the gradual occlusion of private prosecutions in the federal system of criminal justice, but he describes it as "happenstance"—the result of the jurisdictional limitations on federal courts, and not the product of any intentional exclusion of private prosecution.[50] Moreover, Cassell explains that the bulk of criminal prosecutions undertaken by victims took place in state courts, not federal ones.[51] Nevertheless, as the nation grew and the community of the village and small town was replaced by the anonymity of the large city, the office of the public prosecutor grew, and victims assumed less of a central role in the prosecution of their offenders.[52]

Still, the offices of the public prosecutor were sparse, with private prosecution continuing well into the nineteenth century.[53] It was only later,

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45. Cassell, *supra* note 4, at 404–05.
46. *Id.* at 405.
47. *Id.* at 406.
48. *Id.*
49. *Id.*
50. *Id.*
51. Paul G. Cassell & Steven Joffee, *The Crime Victim's Expanding Role in a System of Public Prosecution: A Response to the Critics of the Crime Victims' Rights Act*, 105 NW. U. L. REV. COLLOQUY 164, 180 (2011) ("The federal system has always been a small part of the American criminal justice apparatus, handling the small percentage of crimes in which there is a unique federal interest.").
52. *See* Barth, *supra* note 16, at 140.
53. *Id.* Observations of the sparsity of public prosecutors and the effectiveness of private prosecution during the 19th century are found in ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 92 (Henry Reeve trans., 1835) ("[T]he magistrates and public prosecutors are *not numerous*, and the examinations of prisoners are rapid and oral. Nevertheless, in no country does crime more rarely elude punishment. The reason is, that everyone conceives himself to be interested in furnishing evidence of the act committed, and in stopping the delinquent.") (emphasis added); Cassell & Joffee, *supra* note 51, at 178 ("[A]t the state level, private prosecution extended well into the nineteenth century. For example, the most thorough study of private prosecution in the United States—Professor Steinberg's historical review of nineteenth century prosecution in Philadelphia—reveals that direct victim prosecution of some types of crimes continued until at least 1875."); People v. Henson, 513 P.3d 947, 954 (Cal. 2022) ("But

after the middle of the nineteenth century, that the prosecution of criminal offenses had come primarily under the control of centralized governments.[54] The crime victim ultimately lost her authority to direct criminal prosecutions, becoming the "forgotten person" in the criminal justice process.[55] The loss of victims' agency in the criminal justice process also meant that victims lost their power, particularly those victims who were "already disadvantaged because of gender, or race, or class, or sexuality."[56]

Indeed, the erosion of the role of crime victims in the justice system has been thorough and inexorable during the history of the United States. The U.S. Supreme Court's decision of *Linda R. S. v. Richard D.* epitomized the victim's erasure from the criminal process when it conclusively affirmed that the government had fully assumed control of all prosecutorial decision-making and no third-party had sufficient standing to interfere with the criminal process.[57] "[I]n American jurisprudence at least," declared the Court, "a private citizen lacks a judicially cognizable interest in the prosecution or non-prosecution of another."[58] Such language only sanctioned the victim's marginalization.[59] After 200 years of American jurisprudence, victims had been relegated to the margins of the process, reduced to mere evidence to be used (or not) by the prosecution.[60]

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decisions from the 19th century and the first half of the 20th century make clear that, at one time, crime victims frequently sought recourse directly from a magistrate.").

54. *See* Emma Kaufmann, *The Past and Persistence of Private Prosecution*, 173 U. PENN. L. REV. 89, 107 (2024) ("As it shows, the state monopoly on criminal law enforcement came about in the late nineteenth century, when lawmakers connected the public law theory of criminal law to a new set of legal institutions: police, prosecutors, and prisons.").

55. *See* Randall T. Coyne, *Shooting the Wounded: First Degree Murder and Second Class Victims*, 28 OKLA. CITY U. L. REV. 93, 94 (2003) (quoting Proclamation No. 4831, 46 Fed. Reg. 21, 339 (Apr. 8, 1981)).

56. *See* Cassell, *supra* note 4, at 396 (citing I. Bennett Capers, *Against Prosecutors*, 105 CORNELL L. REV. 1561, 1571–72 (2020)).

57. *See id.* at 395 (citing Linda R. S. v. Richard D., 410 U.S. 614 (1973)).

58. *Linda R. S.*, 410 U.S. at 619.

59. *See* Cassell, *supra* note 4, at 396. This case stands in stark contrast to Cassell's theory that the drafters never foresaw victims losing the ability to bring private prosecutions. Some states continue to allow private citizens to initiate prosecutions. In West Virginia, a victim retains the constitutional right to commence a grand jury proceeding, so long as the complaint is reviewed by a prosecutor and approved by the circuit judge. State *ex rel.* Miller v. Smith, 285 S.E.2d 500, 505 (W. Va. 1981) ("[B]y application to the circuit judge, whose duty is to [e]nsure access to the grand jury, any person may go to the grand jury to present a complaint to it." (interpreting Article III, Section 17 of the West Virginia Constitution)).

60. *See* Cassell, *supra* note 16, at 1382–83; Barth, *supra* note 16, at 119 (citing William F. McDonald, *Towards a Bicentennial Revolution in Criminal Justice: The Return of the Victim,* 13 AM. CRIM. L. REV. 649, 650 (1976)).

But times were about to change. There was a growing sentiment that the criminal justice system had lost its balance.[61] Separate streams of social influences began to emerge as the nation experienced unprecedented growth in crime,[62] coupled with a growing awareness of the plight of rape victims, and the strength of the civil rights movement.[63] Voters watched as the victim's role in the criminal justice process waned to embers, but injustices flamed hot. Members of protected classes and advocates of law and order all sought to correct "a perceived imbalance in the criminal justice system" that had grown "preoccupied with defendants' rights to the exclusion of considering the legitimate interests of crime victims."[64]

Hailed as "the greatest revolution in criminal procedure [in the last twenty years],"[65] the victims' rights movement gained significant momentum in 1981, when President Ronald Reagan created the President's Task Force on Victims of Crime.[66] The Task Force held hearings throughout the country and, in December of 1982, issued its final report making recommendations for reforms designed to make the justice system more responsive to victims' needs.[67] The final reform proposed an addition to the Sixth Amendment to the U.S. Constitution: "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."[68] The Task Force reasoned that "[i]n applying and interpreting

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61. *See* Cassell, *supra* note 16, at 1383.

62. Between 1960 and 1973 the US Index Crime Rate increased 120% from 1,887 index crimes per 100,000 population to 4,154. *See Crime Rates*, DISASTER CTR., www.disastercenter.com/crime/uscrime.htm [https://perma.cc/M7L2-QM98].

63. *See* DOUGLAS E. BELOOF ET AL., VICTIMS IN CRIMINAL PROCEDURE 3–44 (4th ed. 2018). *See generally* Douglas E. Beloof, *The Third Model of Criminal Process: The Victim Participation Model*, 1999 UTAH L. REV. 289 (1999); Collene Campbell et al., *Statement from the Author*, 5 PHX. L. REV. 379 (2012); Paul G. Cassell, *Balancing the Scales of Justice: The Case for and Effects of Utah's Victims' Rights Amendment*, 1994 UTAH L. REV. 1375 (1994).

64. Paul G. Cassell, *Treating Crime Victims Fairly: Integrating Victims into the Federal Rules of Criminal Procedure*, 2007 UTAH L. REV. 861, 865 (2007).

65. BELOOF ET AL., *supra* note 63, at 3; Vanessa A. Kubota, *No-Impact Victim Impact Statements: How California's Parole Hearing System Fails to Protect Victims' Rights*, 58 CRIM. L. BULL. 593, 594 (2022).

66. *See* Cassell, *supra* note 64, at 865; ELIZABETH Q. WRIGHT, CRIME VICTIMS' RIGHTS. TODAY'S CRIME AND PUNISHMENT ISSUES: DEMOCRATS AND REPUBLICANS 46 (2024); Shirley S. Abrahamson, *Redefining Roles: The Victims' Rights Movement*, 1985 UTAH L. REV. 517, 530–31 (1985).

67. *See* Cassell, *supra* note 16, at 1383.

68. LOIS HAIGHT HERRINGTON ET AL., PRESIDENT'S TASK FORCE ON VICTIMS OF CRIME, FINAL REPORT 114 (1982), https://ovc.ojp.gov/sites/g/files/xyckuh226/files/media/document/87299.pdf [https://perma.cc/9CEZ-VW7X] (seeking redress for victims who are "burdened by a system designed to protect them"); *see* Kathryne M. Young, *Parole Hearings and Victims' Rights: Implementation, Ambiguity, and Reform*, 49 CONN. L. REV. 431, 435–36 (2016).

the vital guarantees that protect all citizens, the criminal justice system has lost an essential balance."[69] It urged that the "guiding principle that provides the focus for constitutional liberties is that [the] government must be restrained from trampling the rights of the individual citizen."[70] The task force continued, "victims of crime have been transformed into a group oppressively burdened by a system designed to protect them. This oppression must be redressed."[71] Recognizing "[t]he Constitution [a]s the foundation of national freedom, [and] the source of national spirit,"[72] the Task Force declared that "the fundamental rights of innocent citizens cannot adequately be preserved by any less decisive action."[73]

That constitutional recommendation remained unfulfilled until 1984, when an ad-hoc gathering of national victims' rights groups met to decide on a course of action.[74] This history is recounted in an official Report of the Judiciary Committee of the U. S. Senate:

> [P]roponents of crime victims' rights decided to seek constitutional protection in the states initially before undertaking an effort to obtain a federal constitutional amendment.[75]

As explained in testimony before the Committee,

> The 'states-first' approach drew the support of many victim advocates. Adopting state amendments for victim rights would make good use of the 'great laboratory of the states,' that is, it would test whether such constitutional provisions could truly reduce victims' alienation from their justice system while producing no negative, unintended consequences.[76]

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69. *See* HERRINGTON ET AL., *supra* note 68, at 114.

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.* at 115.

74. *Crime Victims' Rights in America*, NAT'L CTR. FOR VICTIMS OF CRIME, https://ovc.ojp.gov/sites/g/files/xyckuh226/files/pubs/OVC_Archives/ncvrw/1997/histry.htm [https://perma.cc/V6Q6-9FFE] ("The ad-hoc committee on the [victims' rights] constitutional amendment formalizes its plans to secure passage of amendments at the state level.").

75. S. REP. NO. 108-191, at 3 (2003) (statement of Robert E. Preston).

76. *A Proposed Constitutional Amendment to Establish a Bill of Rights for Crime Victims: Hearing Before the Comm. on the Judiciary*, 104th Cong. 40 (1996) (statement of Robert E. Preston, Co-Chairman of the Nat'l Victim Const. Amend. Network).

The movement in Arizona for a state constitutional amendment for victims' rights followed this course. And it began after a child molester's conviction was reversed by the Arizona Supreme Court in June of 1986.[77]

Michael Ault, a six-time convicted rapist living in Arizona while on parole in California, entered the bedroom of a six-year-old girl and sexually molested her while her one-year-old brother slept nearby.[78] Her parents awoke to the little girl's screams.[79]

Ault escaped but was later arrested after the girl's description matched that of a man who lived nearby.[80] She also picked him out of a photo lineup.[81] Ault was tried and convicted by a jury and sentenced to life imprisonment.[82] But the conviction was overturned in 1986, after the Arizona Supreme Court decided that his state constitutional right to privacy was violated.[83] Although police had a warrant to search his clothing, they did not get a warrant to search for a pair of his tennis shoes, which were admitted into evidence at trial, along with other evidence.[84] Because the jury had seen the pair of shoes, the Court reasoned that Ault's conviction could not stand.[85] It made that determination despite the existence of other, admissible evidence of Ault's guilt, and despite the Court's ability to affirm on the inevitable discovery doctrine, under which "evidence obtained as a result of an unlawful search need not be suppressed where, in the normal course of the police investigation and absent illicit conduct, the evidence would have been discovered anyway."[86]

That case marked the first time since statehood that the Court overturned a jury conviction by deciding that the state Constitution carried with it more rights for criminal defendants than the United States Constitution.[87] It meant overturning more than 75 years of court precedent.[88] And nowhere in the Court's opinion did it ever mention whether Ault's young victim had a right to privacy . . . or justice.[89]

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77. State v. Ault, 724 P.2d 545, 554 (Ariz. 1986).
78. *Id* at 548.
79. *Id.*
80. *Id.*
81. *Id.*
82. *Id.* at 547.
83. *Id.* at 552.
84. *Id.*
85. *Id.*
86. *Id.* at 551 (quoting State v. Lamb, 568 P.2d 1032, 1036 (Ariz. 1977)).
87. STEVEN J. TWIST, CITIZEN'S GUIDE TO THE VICTIMS' BILL OF RIGHTS 4 (1988).
88. *Id.* Such a decision arguably conflicted with the spirit of Article 6, § 27 of the Arizona Constitution, which provides that "[n]o cause shall be reversed for technical error in pleadings or proceedings when upon the whole case it shall appear that substantial justice has been done." ARIZ. CONST. art. 6, § 27. *See infra* note 290.
89. TWIST, *supra* note 87, at 4.

After the opinion was issued, in 1986, author Twist made a presentation to a meeting of prosecutors held by the Arizona Prosecuting Attorneys Advisory Counsel, calling for a state constitutional amendment to protect the rights of crime victims and "restore justice."[90] The presentation was published in a 1987 column for the Arizona Republic.[91] While victims' rights to justice and due process were already implied in the state and federal constitutions, Twist concluded they needed to be made explicit in Arizona's Constitution because

> no court expressly has recognized what should have been obvious: that a crime victim should have a right to "justice and due process." The language here is designed to correct that failure. While both the United States and Arizona constitutions protect every person's rights to due process of law it has become necessary to clearly and affirmatively extend these rights to crime victims.[92]

After a failed attempt to have the legislature refer the Victims Bill of Rights to the ballot, it was placed before the voters as an Initiative, in the form drafted by Twist, and passed in November of 1990. Arizona was the fifth state to adopt its victim's rights amendment.[93] At the time it was by far the most expansive.[94] That amendment was the first in the country to begin with a fundamental promise: "To preserve and protect the victims' rights to justice and due process."[95]

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90. *Id.* at 70–72.

91. *Id.*

92. *Id.*

93. *State Victim Rights Amendments*, NAT'L VICTIMS' CONST. AMEND. PASSAGE https://www.nvcap.org/states/stvras.html [https://perma.cc/NJP9-GU8C].

94. *Compare* ARIZ. CONST. art. II, § 2.1, *with* R.I. CONST. art. I, § 23, FLA. CONST. art. I, § 16, MICH. CONST. art. I, § 24, *and* WASH. CONST. art. I, § 35. Some lists include California as having adopted a victim's rights amendment in 1982, but it was more of a crime control amendment with only restitution as an express right for victims. *See* Miguel A. Mendez, *The Victims' Bill of Rights—Thirty Years Under Proposition 8*, 25 STAN. L. & POL'Y REV. 379, 380 (2014).

95. ARIZ. CONST. art. II, §2.1(A). *But see* State v. Nichols, 233 P.3d 1148, 1150 (Ariz. Ct. App. 2010) (recognizing the VBR's acknowledgement of a victim's rights to justice and noting that "[e]ven before the constitutional amendment that added the VBR, [the Arizona Supreme Court] had adopted Rule 39, Ariz. R. Crim. P., 'to preserve and protect a victim's right to justice and due process.' Ariz. R. Crim. P. 39(b), effective Aug. 1, 1989"). The term "justice" carried its ordinary meaning and use at the time, as defined by Webster: justice is "the administration of what is just (as by assigning merited rewards or punishments)." *Justice*, WEBSTER'S DICTIONARY (1990).

Since Arizona's adoption of the amendments in 1990, eleven additional states have recognized crime victims' rights to "justice" in their constitutions.[96] These amendments have formed the basis of and spirit behind further subsets of enumerated rights—including, among other things, the victim's right to be heard, to be reasonably protected from harassment, and to promptness and finality.[97] Overall, thirty-six states have now included victims' rights amendments in their state constitutions.[98] State appellate courts have defined and applied some of the enumerated rights, but few have directly affirmed that the victim of a crime has a fundamental right to Justice writ large—not merely the right to procedural justice vis-à-vis participation

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96. *See* ARIZ. CONST. art. II, § 2.1(A); CAL. CONST. art. I, § 28(b) ("In order to preserve and protect a victim's rights to justice and due process, a victim shall be entitled to the following rights . . . ."); FLA. CONST. art. I, § 16(b) ("To preserve and protect the right of crime victims to achieve justice, ensure a meaningful role throughout the criminal and juvenile justice systems for crime victims, and ensure that crime victims' rights and interests are respected and protected by law in a manner no less vigorous than protections afforded to criminal defendants and juvenile delinquents, every victim is entitled to the following rights, beginning at the time of his or her victimization . . . ."); KY. CONST. § 26A ("To secure for victims of criminal acts or public offenses justice and due process and to ensure crime victims a meaningful role throughout the criminal and juvenile justice systems, a victim, as defined by law which takes effect upon the enactment of this section and which may be expanded by the General Assembly, shall have the following rights . . . ."); N.D. CONST. art. I, § 25 ("To preserve and protect the right of crime victims to justice, to ensure crime victims a meaningful role throughout the criminal and juvenile justice systems, and to ensure that crime victims' rights and interests are respected and protected by law in a manner no less vigorous than the protections afforded to criminal defendants and delinquent children, all victims shall be entitled to the following rights, beginning at the time of their victimization . . . ."); OKLA. CONST. art. II, § 34(A) ("To secure justice and due process for victims throughout the criminal and juvenile justice systems, a victim of a crime shall have the following rights . . . ."); OHIO CONST. art. I, § 10(A) ("To secure for victims justice and due process throughout the criminal and juvenile justice systems, a victim shall have the following rights, which shall be protected in a manner no less vigorous than the rights afforded to the accused . . . ."); OR. CONST. art. I, § 42 ("To preserve and protect the right of crime victims to justice . . . ."); S.C. CONST. art. I, § 24(A) ("To preserve and protect victims' rights to justice and due process regardless of race, sex, age, religion, or economic status, victims of crime have the right to . . . ."); TENN. CONST. art. I, § 35 ("To preserve and protect the rights of victims of crime to justice and due process, victims shall be entitled to the following basic rights . . . ."); UTAH CONST. art. I, § 28 ("To preserve and protect victims' rights to justice and due process, victims of crimes have these rights, as defined by law . . . ."); WIS. CONST. art. I, § 9(2) ("In order to preserve and protect victims' rights to justice and due process, victims shall be entitled to all of the following rights, which shall vest at the time of victimization and be protected by law in a manner no less vigorous than the protections afforded to the accused . . . .").

97. *See* Steven Twist, *The Crime Victims' Rights Amendment and Two Good and Perfect Things*, 1999 UTAH L. REV. 369, 378 (1999).

98. *See State Victim Rights Amendments*, *supra* note 93 (noting thirty-six states have victims' rights amendments in their state constitutions).

in the criminal process, but the right to avail themselves of a more primordial, substantive justice, whatever that might mean.[99]

II. JUSTICE

> *Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit.*
>
> – James Madison, *Federalist No. 51*[100]

In a 2020 lecture on the post-pandemic fate of criminal justice procedure, Texas Judge Ryan Kellus Turner and staff attorney Elizabeth Rozacky mused over the "mutability" of the word "justice" in the criminal law and procedure context.[101] "[R]emarkably absent from definitions of 'criminal justice[,]' [the criminal justice system,] and the 'law,'" they admitted, is "the meaning of 'justice' [itself.]"[102]

As the lecturers acknowledged, some scholars explain their refusal to grapple with this issue on the premise that "there is no singular legal definition of 'justice,'"[103] even though "justice for all" is central to our nation's founding and self-identity.[104] Rather than evincing a singular definition, the concept of "justice" has evolved to reflect a kaleidoscope of meaning.[105] But to quote from the movie based on novelist Tom Wolfe's

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99. *See infra*, notes 293 and 295. Two appellate decisions in Arizona have semantically recognized victims' rights to "justice and due process" as independent rights onto themselves, separate and distinct from the enumerated rights that were enacted to preserve and protect them. *See* Z.W. v. Foster, 422 P.3d 582, 583 (Ariz. Ct. App. 2018) (declaring that "Arizona's Victims' Bill of Rights secures crime victims' rights to justice and due process" and characterizing this duo as "important rights [that] attach when a defendant is arrested or formally charged, and continue during trial and through the final disposition of charges"); State v. Stauffer, 58 P.3d 33, 37 (Ariz. Ct. App. 2002) (reciting "the victim's right "to justice and due process" along with the enumerated right to "a speedy trial or disposition and prompt and final conclusion of the case").

100. THE FEDERALIST NO. 51 (James Madison).

101. Hon. Ryan Kellus Turner & Elizabeth Rozacky, Five Hot Topics in Criminal Justice: Pandemic Edition, Address at the State Bar of Texas 32nd Annual Advanced Government Law (July 30–31, 2020), https://acrobat.adobe.com/link/review?uri=urn%3Aaaid%3Ascds%3AUS%3A5a9f2f46-1fe2-4088-a95d-5fa0fa0eb33b [https://perma.cc/N6ZY-447C], *in* Turner & Rozacky, supra note 11, at 447.

102. Turner & Rozacky, *supra* note 11, at 452.

103. *Id.* at 454.

104. *See id.* at 452 ("[Justice] transcends our nation's wide spectrum of beliefs and seemingly insurmountable differences."); 4 U.S.C. § 4.

105. For a historical comparison of criminal justice systems and concepts throughout the world, see generally JOHN H. WIGMORE, A KALEIDOSCOPE OF JUSTICE (1941).

Bonfire of the Vanities, at its root, "[j]ustice is the law, and the law is man's feeble attempt to set down principles of decency."[106]

Yet, despite (or maybe because of) its centrality to the criminal justice system and the administration of law, the word "justice" has not been applied or defined in state constitutional jurisprudence on crime victims' rights.[107] More often, the victim's right to "justice" is cited only as background, or as a preamble to other enumerated rights.[108] Its meaning is treated as self-evident or axiomatic.[109] But without a unified understanding of the word's core meaning, "justice" becomes a floating signifier.[110] Indeed, lawyers and policy advocates relativize "justice" in the context of criminal law and procedure, choosing to identify it by its desired *effects*, rather than by any sort of essential meaning.[111] If "justice" is merely synonymous with favorable litigation outcomes, it becomes purely subjective.[112] In some circles, "justice" is defined as the process by which historical inequities are rectified through non-penal outcomes, diversion programs, or lessened sentences.[113] But where in this consideration is this victim's right to redress?[114] The victim may also suffer from the same "structural" inequalities, and his or her right to justice is no less compelling.[115]

For that reason, we return to the history and epistemology of justice, which evolved alongside Western common law as a fundamental principle of fairness, equality, and the administration of the legal consequences of a person's actions.[116] The Arizona Constitution, among others, directs such an inquiry, heralding "[a] frequent recurrence to fundamental principles" as

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106. THE BONFIRE OF THE VANITIES (Warner Bros. 1990).

107. *See infra* Part III.

108. *See infra* Part III.

109. *See* Turner & Rozacky, *supra* note 11, at 452.

110. *Id.*

111. *Id.* at 447.

112. *Id.* at 447–48.

113. *See* STROUD & NIDIRY , *supra* note 13; Miriam Krinsky & Taylor Phares, *Accountability and Repair: The Prosecutor's Case for Restorative Justice*, 64 N.Y.L. SCH. L. REV. 31, 32 (2020).

114. Turner & Rozacky, *supra* note 11, at 447–48.

115. *See* LENORE ANDERSON, IN THEIR NAMES: THE UNTOLD STORY OF VICTIMS' RIGHTS, MASS INCARCERATION, AND THE FUTURE OF PUBLIC SAFETY 82 (2002) [hereinafter ANDERSON, IN THEIR NAMES]; *see also* Lenore Anderson, *The People Most Ignored by the Criminal-Justice System*, ATLANTIC (Oct. 31, 2023), https://www.theatlantic.com/ideas/archive/2023/10/violent-crime-victims-criminal-justice-reform/675673/ [https://perma.cc/YX9B-EZ6X] ("Victims face discrimination along racial and socioeconomic lines at every stage . . . .").

116. *See generally* THOMAS AQUINAS, ON LAW, MORALITY, AND POLITICS (William P. Baumgarth & Richard J. Regan, S.J. eds., 1988).

"essential to the security of individual rights and the perpetuity of free government."[117]

We begin, therefore, at the beginning, with a look at the fundamental underpinnings of justice in criminal law and procedure.

A. The Principles of Justice

1. Justice and Natural Law

Enlightenment philosopher Immanuel Kant once bemoaned that "[t]he greatest problem for the human species, the solution of which nature compels him to seek, is that of attaining a civil society which can administer justice universally."[118] The notion that justice must be universal reaches back before the Common Law, beginning with the earliest biblical texts of the Old Testament[119] and evolving with the insights of Socrates.[120] The meaning of "justice" continued to be explored by Plato, a disciple of Socrates, who chronicled Socrates's "spirited dialogues with his fellow Athenians to explore the meaning of word-concepts such as 'justice.'"[121]

For Socrates, justice was based on doing what is right, and punishment was core to rebalancing the wrongs wrought by crime.[122] A person who commits violence upon the innocent acts unjustly, and "a man who is unjust, is thoroughly miserable, the more so if he doesn't get his due punishment."[123] The idea that justice involves due rewards and punishment was carried forward by Aristotle, forming the basis of our positive laws.[124]

The Aristotelean notion of justice is further contextualized in the moral theories of deontology and consequentialism.[125] As Boston College Law Professor Michael Cassidy explains, the deontological approach concerns right principles, where "the right is prior to the good; [and] good outcomes

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117. ARIZ. CONST. art. II, § 1.

118. Immanuel Kant, *Idea of a Universal History with a Cosmopolitan Purpose*, *in* THE COSMOPOLITANISM READER 17, 20 (Garrett Wallace Brown & David Held eds., 2010).

119. *Proverbs* 21:15–18 (New International Version) ("When justice is done, it brings joy to the righteous but terror to evildoers.").

120. *See* PLATO, REPUBLIC, *reprinted in* THE COLLECTED DIALOGUES OF PLATO 575, 580 (Edith Hamilton & Huntington Cairns eds., Paul Shorey trans., Princeton Univ. Press 1961).

121. Michael S. McGinniss, *Virtue and Advice: Socratic Perspectives on Lawyer Independence and Moral Counseling of Clients*, 1 TEX. A&M L. REV. 1, 4–6 (2013).

122. PLATO, GORGIAS 37 (Donald J. Zeyl trans., Hackett Publ'g Co. 1987).

123. *Id.*

124. R. Michael Cassidy, *Character and Context: What Virtue Theory Can Teach Us About a Prosecutor's Ethical Duty to Seek Justice*, 82 NOTRE DAME L. REV. 635, 640–41 (2006).

125. *Id.*

will be achieved if everyone behaves according to their rights and responsibilities."[126]

By contrast, under a consequentialist moral theory, any "course of action is morally proper if it increases human happiness (pleasure) and improper if it increases human suffering (pain)."[127] This view assesses the common good under a theory of utilitarianism—the goal of increasing the maximum sum of collective happiness.[128] But, as Cassidy observes, deontology and consequentialism speak not only to the formalization of laws and the administration of justice, but also to a way of achieving a just and enlightened society.[129] And "moral judgment is not just about arriving at appropriate answers"; it is about cultivating good "character" or being a good person.[130]

The question is whether our criminal laws track the role of being a good person in an otherwise peaceful society. Cassidy seems to say yes, inviting lawyers to examine "virtue ethics," a goal-based, "teleological philosophy rooted in the classical humanism of Aristotle."[131] Theorizing that the ultimate goal of human success is *eudaimonia*, or "flourishing," Aristotle believed that virtue is created through virtuous actions and that good people become good because they prioritize virtue in their daily acts.[132]

As evidenced above, "justice" plays more than a peripheral role in the formalization of virtue and basic human goodness.[133] It forms the pinnacle of

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126. *Id.* ("Deontologists such as Immanuel Kant posit that we must look to prior principles in order to decide upon a moral course of action. One can deduce these prior principles (or moral truths) by asking whether one would be happy living in a world where everyone behaved as proposed. If the answer is no, then one has a duty not to behave that way. The categorical imperative—"the moral law according to which one should act only on principles that one can accept everyone's acting upon"—provides the source of the duty to determine right action. In a deontological ethical system, the right is prior to the good; good outcomes will be achieved if everyone behaves according to their rights and responsibilities.").

127. *Id.*

128. Utilitarianism posits that actions are morally good if they result in benefit to the majority and produce happiness. *See* JOHN STUART MILL, UTILITARIANISM 24 (1861) ("A sacrifice which does not increase, or tend to increase, the sum of total happiness, it considers as wasted."). This Article uses the word "utilitarianism" in reference to "rule utilitarianism," as distinguished from "act utilitarianism." The former principle posits that adherence to a system of rules, while harmful to some people in the short term, brings the greatest benefit over time. *Id.* The latter is the principle that a moral agent should make decisions and take actions that maximize social benefits balanced against social costs.

129. *See* Cassidy, *supra* note 124, at 640–41.

130. *Id.* at 642.

131. *Id.* at 643–44 ("Whereas deontological theories are concerned with universal principles or rules (what is 'right'), virtue ethics is concerned with the goal of becoming a good person.").

132. *Id.* at 643.

133. *Id.*

Aristotle's most prized moral virtues.[134] In fact, Aristotle referred to justice as a "complete virtue" and "spent all of Book V of *Nicomachean Ethics* discussing what it means to be a just person."[135] He distinguished between "universal justice—which is the complete or perfect virtue," and "particular justice, which is a moral virtue on par with courage, temperance, etc."[136] As Cassidy writes, "[u]niversal justice is concerned with law abidingness and compliance with rules"; whereas "[p]articular justice . . . is concerned with right relations towards others."[137]

For Aristotle, particular justice meant living "in right relation [to one's] neighbor" and honoring one's reciprocal coexistence with others.[138] As Cassidy explained, "[j]ustice occurs where there is reciprocity, that is, where 'every person renders to one another those concerns which each has for the self.'"[139] Aristotle equated justice with equality and universality, reasoning, "[i]f, then, the unjust is unequal, the just is equal, as all men suppose it to be, . . . [t]his, then, is what the just is—the proportional; the unjust is what violates the proportion."[140]

This concept of justice as proportionality is developed by moral philosopher Bernard Williams, who compared the Aristotelian notion of particular justice to "fairness."[141] Williams posited that "[t]he vice of injustice is 'settled indifference' to others."[142] In other words, failure to concern oneself with the plight and safety of others (the public, victims, strangers) is itself a form of injustice.[143] Injustice, according to Aristotle, impedes the attainment of flourishing and success.[144] Aristotle declared that virtues are "qualities the possession of which will enable an individual to achieve *eudaimonia* and the lack of which will frustrate his movement toward that *telos*."[145]

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134. *Id.* at 643, 647; *see also* McGinniss, *supra* note 121, at 52 ("Socrates regards justice as the highest of the virtues . . . .").

135. *See* Cassidy, *supra* note 124, at 647.

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. ARISTOTLE, NICOMACHEAN ETHICS bk. V, at 106, 112 (Sir David Ross trans., Oxford Univ. Press 1925) (c. 350 B.C.E.).

141. *See* Cassidy, *supra* note 124, at 647 (citing Bernard Williams, *Justice as a Virtue*, *in* MORAL LUCK 83, 90 (1981)).

142. *Id.*

143. *See id.*

144. *See* ARISTOTLE, *supra* note 140, at 114–15.

145. ALASDAIR MACINTYRE, AFTER VIRTUE: A STUDY IN MORAL THEORY 148 (3rd ed. 2007).

Thomas Aquinas, who attributed his understanding of justice to the philosophy of Aristotle, defined justice as "a habit whereby a man renders to each one his due by a constant and perpetual will."[146] A human being, Aristotle envisioned in the first book of the Politics, "when perfected, is the best of animals, but, when separated from law and justice, . . . is the worst of all; . . . . the administration of justice, which is the determination of what is just, is the principle of order in political society."[147]

This grounding of justice in the sense of unity with natural laws of decency and respect for the interconnectedness of all humankind informed the concept of justice as "that which is due," an early and recurring theme in the development of the Common Law.[148] The first reference to "justice" in England appears in 1137 in the Anglo-Saxon Chronicle, written by a monk of Peterborough.[149] He recounts how the King of England arrested three nobles for treason but later released them.[150] That act was decried as the refusal to "enforce[] justice."[151] The author lamented that the king's refusal to punish lawbreakers failed to achieve general deterrence and thus encouraged other crimes.[152]

There, justice meant restriction where restriction was due.[153] "In this way, the first recorded use of the word *justice* in English retains the original, precise meaning of *jus*: restrictive or corrective action, the absence of which promoted behavior that would have required more restriction or correction."[154] The notion of punishment as an expression of "to each his due" was explored in Dante's *The Divine Comedy*, which "declared that its theme was precisely the equity of divine retribution: 'the subject is man, as by good or ill deserts, in the exercise of the freedom of his choice, he becomes liable to rewarding or punishing justice.'"[155]

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146. Thomas Aquinas, *Summa Theologica*, II-II, at 58, a. 1.

147. ARISTOTLE, POLITICS bk. I, at 5 (Benjamin Jowett trans., Oxford Clarendon Press 1855) (c. 350 B.C.E.).

148. Aquinas, *supra* note 146, at 56, a. 2.

149. Jason Boatright, *The History, Meaning, and Use of the Words Justice and Judge*, 49 ST. MARY'S L.J. 727, 737 (2018).

150. *Id.*

151. *Id.* at 738 (quoting ENGLISH PROSE AND POETRY 1 (John Matthews Manly ed., 1916).

152. *See id.*

153. *Id.*

154. *Id.*

155. MYRA STOKES, JUSTICE AND MERCY IN PIERS PLOWMAN: A READING OF THE B TEXT VISIO 2 (Routledge 2020) (quoting DANTE ALIGHIERI, LATIN WORKS OF DANTE ALIGHIERI TRANSLATED INTO ENGLISH 348 (Alan George Ferrers Howell & Philip Henry Wicksteed trans., J.M. Dent. ed. 1904)).

Literary scholar Myra Stokes explores this theme of justice as "what is due" in her analysis of William Langland's *Piers Plowman*, a Middle English allegorical poem.[156] Piers Plowman represents a link between the philosophers of antiquity and the development of the Common Law from which our basic jurisprudential ideas derive.[157]

Stokes' insights into the text of this classic poem shed light on the common meaning of "justice" during the Middle Ages:

> Justice, whose emblem was the scales, was thought to operate on a first principle of equal balance, exactly measured equivalence between desert and reward: equity, in fact. Underlying all law, written, unwritten, and divine, it was claimed, lay the principle of 'do as you would be done by', for as you have sown so shall you reap. This was "the golden rule" of justice, available even to pagans, not specific to particular cultures or theologies, but known innately . . . .[158]

Thus we see how "justice," in this broader context, meant "no ill-doing without penalty, or good without guerdon [reward] . . . ."[159] It formed the bedrock understanding of justice underlying the Common Law, where the law does justice by "met[ing] out reward to virtue and punishment to vice with a just and equal balance."[160] Justice, therefore, was recognized as a duty of the natural law. As Stokes relates:

> However repentant a proven criminal may be, however sorry the judge may feel for him, he cannot pardon him without

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156. *Id.* at 5.

157. For a comparison between the general Medieval literature and the development of legal concepts, see Jill Horwitz, *Nonprofits and Narrative: Piers Plowman, Anthony Trollope, and Charities Law*, 2009 MICH. ST. L. REV. 989 (2009). Professor Stokes writes,

> It was therefore described as "the law of nature," the basis of that justice it is connatural to man to observe. God being the author of nature, it had, therefore, divine sanction, and even law-givers were obliged to obey it; it is, consequently, announced by an angel in the Prologue to Langland's poem, as a principle of justice binding on the king himself and prior to the specific laws promulgated by him in his own particular kingdom: *'Qualia vis metere, talia grana sere'* (sow such grain as you hope to reap).

STOKES, *supra* note 155, at 1. The notion that justice existed "prior" to the enumerated laws promulgated by the King finds semantic parallels with the language of Article II, Section 2.1 of the Arizona Constitution where the right to justice must be "preserve[d] and protect[ed]." ARIZ. CONST. art. II, § 2.1(A).

158. STOKES, *supra* note 155, at 1.

159. *Id.* at 2.

160. *Id.*

> sanctioning insult to the law and betraying the sacred principle of "equite" that it is the essence of his function to uphold: the judge cannot be satisfied until the wrong has been satisfied, by restitution or by punishment, until "eyther have equite, as holy writ telleth: *Numquam dimittitur peccatum, etc*."[161]

Stokes explores this requirement—that the law mirror the natural law—bringing reward for kindness and retribution for harm: "For punishment, the payment of debts, is essential to the equity of justice, the informing principle of the divine law, and of all lesser laws which derive from it."[162]

C.S. Lewis crystallized this concept of justice as the receipt of what is due in *The Abolition of Man* in 1947.[163] Quoting Thomas Traherne's *Centuries of Meditations*, Lewis muses, "'Can you be righteous,' asks Traherne, 'unless you be just in rendering to things their due esteem? All things were made to be yours and you were made to prize them according to their value.'"[164]

The allegories of medieval literature expressed the philosophies and preoccupations of their day and informed those principles which undergird the development of our Common Law notions of justice.[165] In essence, justice was the essential verdict of what was "earned"—whether by way of detriment or benefit.[166]

2. The Moral Essence of Justice

Adam Smith, the 18th century father of modern economics, explored themes of justice in his writings on human morality and social interactions.[167] Smith's *Theory of Moral Sentiments* supports the universal and intrinsic right to justice.[168] Smith introduced the idea of the "impartial spectator," a fictional, objective observer who assesses the morality of actions and judgments.[169] This concept would serve as a tool for individuals to gauge the fairness and

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161. *Id.* at 22–23 ("This sin is not forgiven until what has been taken is restored.").

162. *Id.* at 42 ("Sin is an evil, but punishment is in itself a good, not an evil, since it is an aspect of justice, and, in the words of St. Thomas Aquinas, 'by punishment, the equilibrium of justice is restored.'").

163. C.S. LEWIS, THE ABOLITION OF MAN 43–44 (1947) (describing THOMAS TRAHERNE, CENTURIES OF MEDITATIONS 8–9 (Bertram Dobell ed., 1908) (c. 1636–74)).

164. *Id.* at 10.

165. *See generally* STOKES, *supra* note 155.

166. *See id.* at 1.

167. *See generally* ADAM SMITH, THE THEORY OF MORAL SENTIMENTS (5th ed. 1759).

168. *See generally id.*

169. *Id.* at 194.

justice of their own actions and the actions of others.[170] When applied to victims of crime or injustice, the impartial spectator can guide society in recognizing the equal rights of victims.[171]

Smith also emphasized the social contract of humans and their inclination to live in societies characterized by cooperation and mutual support.[172] In this context, justice becomes a crucial component in preserving harmony and stability in society.[173] Smith writes,

> As society cannot subsist unless the laws of justice are tolerably observed, as no social intercourse can take place among men who do not generally abstain from injuring one another; the consideration of this necessity, it has been thought, was the ground upon which we approved of the enforcement of the laws of justice by the punishment of those who violated them. [174]

B. Sources in American Law

Akin to Smith's theory that humans have a natural instinct for sympathy, compassion, and justice, courts and legal theorists have often described justice less in clinical, scientific terms, and more as an intuitive feeling or "sense" of what is fair.[175] This idea of justice as a visceral "sense" of what is right comes from the fundamental belief that humans are, at their core, endowed with the ability of discerning right from wrong.[176] Abraham Lincoln once advised a young lawyer to "strip[] yourself of all prejudice, if any you

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170. *Id.*

171. *Cf. id.*

172. *Id.* at 150.

173. *Id.*

174. *Id.* at 151("Upon every account, therefore, he has an abhorrence at whatever can tend to destroy society, and is willing to make use of every means, which can hinder so hated and so dreadful an event. Injustice necessarily tends to destroy it. Every appearance of injustice, therefore, alarms him, and he runs, if I may say so, to stop the progress of what, if allowed to go on, would quickly put an end to every thing that is dear to him. If he cannot restrain it by gentle and fair means, he must bear it down by force and violence, and at any rate must put a stop to its further progress. Hence it is, they say, that he often approves of the enforcement of the laws of justice even by the capital punishment of those who violate them.").

175. *See* Jerome E. Bickenbach, *Law and Morality*, 8 LAW & PHIL. 291, 292 (1989) ("We cannot but be aware of the evident analogies between morality and the criminal law, for example, or notice that legal discourse depends upon, indeed seems committed to, moral categories like responsibility, fault, compensation, justice, and rights."); Jurgen Habermas, *Law and Morality*, *in* 8 THE TANNER LECTURES ON HUMAN VALUES 219, 230 (Kenneth Baynes trans., 1986) ("The moral principles of natural law have become positive law in modern constitutional states.").

176. *See, e.g.*, Rochin v. California, 342 U.S. 165, 173 (1952).

have, and throw[] away, if you can, all technical law knowledge . . . then stop one moment and ask yourself: what is justice in this case, and let that sense of justice be your decision."[177]

Yet, when interpreting the word "justice" as a codified state constitutional right, courts must look first to that word's plain language and its ordinary meaning at the time of drafting.[178] Former Associate Supreme Court Justice Antonin Scalia recognized a word's plain language meaning as "that which an ordinary speaker of the English language—twin sibling to the common law's reasonable person—would draw from the statutory text."[179] This reading is consistent with the understanding that state constitutions should be interpreted in light of their original meaning.[180] It also comports with the Arizona Supreme Court's recognition of the proper role of the Court: "to determine the meaning of the words the legislature chose to use, [] . . . according to their original public meaning and broader statutory context."[181]

> Our oath as judges does not send us on a cosmic search for legislative intent. It requires us to support the [] Constitution and laws of the State of Arizona. . . . We exceed our limited constitutional authority when we displace plain meaning with legislative intent.[182]

Courts and legal scholars rely on numerous methods to test their understanding of the meaning of a word.[183] Etymologies inform the court's understanding of a word's history and application.[184] As Texas Appellate Court Judge Jason Boatright observed, "etymology can help reveal details in the meaning" of words, especially the word "justice."[185] We turn there now.

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177. ALLEN C. GUELZO, *Lincoln and Justice for All*, *in* A SECOND LOOK AT FIRST THINGS: A CASE FOR CONSERVATIVE POLITICS 47 (2013).

178. *See, e.g.*, Jeremy Christiansen, *Originalism: The Primary Canon of State Constitutional Interpretation*, 15 GEO. J.L. & PUB. POL'Y 341, 365 (2017) (collecting arguments and articles).

179. Maxine D. Goodman, *Reconstructing the Plain Language Rule of Statutory Construction: How and Why*, 65 MONT. L. REV. 229, 234 (2004) (citing William N. Eskridge, Jr., *Textualism: The Unknown Ideal?*, 96 MICH. L. REV. 1509, 1511 (1998) (reviewing ANTONIN SCALIA, A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW (1997))).

180. Justice Clint Bolick, Interpretative Methods in State Constitutional Law, Remarks at the New York University School of Law Symposium: The Promise and Limits of State Constitutions (Feb. 8, 2024) (transcript available at https://statecourtreport.org/our-work/analysis-opinion/interpretive-methods-state-constitutional-law [https://perma.cc/T4RF-6TCR]).

181. State *ex rel.* Ariz. Dep't of Revenue v. Tunkey, 524 P.3d 812, 817 (Ariz. 2023) (Bolick, J., concurring) (citations and internal quotation marks omitted).

182. *Id.*

183. Boatright, *supra* note 149, at 730.

184. *Id.*

185. *Id.*

The root of the word "justice" is *jūstus*, or *iustus*, which also means "upright," "proper," and "correct."[186] And *jūstus* derives from *jus*, which has been "used in a number of different senses," but principally "applied to that which is under all circumstances fair and right, as in the case of natural law[,]" and also signifying "that which is available for the benefit of all or most persons in any particular state."[187] The stem *jus* has been traced to Latin, Greek, and even Sanskrit.[188] "Justice," from an etymological standpoint, refers to what is due, as in getting what is fair and deserved.[189]

Beyond the word's etymology, Black's Law Dictionary defines "justice" as "[t]he fair treatment of people," and "the system used to punish people who have committed crimes."[190] This two-part definition portrays justice as both a desired modality (fair treatment) and a mechanism to achieve a fair outcome (system of punishment).[191] It is no surprise, then, that justice has come to encompass the idea of an end to right a wrong.

Both the Oxford English Dictionary and the Cambridge English Dictionary agree, listing "equity" and "fairness" as synonyms of justice.[192] Justice as fairness supports an interpretation of justice akin to the Indo-Tibetan notion of *karma*.[193] This understanding comes through in a description from Merriam-Webster's Dictionary, which defines "justice" as "the administration of what is just (*as by assigning merited rewards or punishments*," and also "fairness" and "righteousness."[194] When a person acts in accordance with the law and practices nonviolence, he should reap, without bias or impartiality, the reward for his good conduct and live freely, but when a person violates the law and inflicts harm on another, he should reap the

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186. *Justice*, *in* THE CONCISE OXFORD DICTIONARY OF ENGLISH ETYMOLOGY (T.F. Hoad ed., 1996).

187. DIG. 1.1.11 (Paulus, Ad Sabinum 14), *translated in* THE DIGEST OF JUSTINIAN 5 (Charles Monro Trans., Cambridge Univ. Press 1904) (alteration in original) (as cited in Robert S. Walker, *The Stoic Ethos of Law & Equity: Good Faith, Legal Benefaction and Judicial Temperament*, 22 RUTGERS J.L. & RELIGION 346, 349 (2022)).

188. Boatright, *supra* note 149, at 730–35 (discussing competing etymological roots of *jus*).

189. *See* POCKET OXFORD AMERICAN DICTIONARY AND THESAURUS 442 (3rd ed. 2010).

190. *Justice*, BLACK'S LAW DICTIONARY (11th ed. 2019).

191. *See* Boatright, *supra* note 149, at 730.

192. *See* JUDITH L. HERMAN, TRUTH AND REPAIR: HOW TRAUMA SURVIVORS ENVISION JUSTICE 4 (2023) (citing the two dictionary definitions).

193. For a more in-depth analysis of the intersection between Eastern notions of "karma" and western concepts of justice, see generally Shiv Narayan Persaud, *Eternal Law: The Underpinnings of Dharma and Karma in the Justice System*, 13 RICH. PUB. INT. L. REV. 49 (2009).

194. WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY (1990) (emphasis added). This definition remains the same in later versions.

punishment for his criminal conduct and face detention or other penalties.[195] As Cicero worded it centuries ago, justice means "giv[ing] every [hu]man his due."[196]

Formal definitions are not the only—or even the best—arbiters of meaning. Analytic philosopher Ludwig Wittgenstein was not the first person to theorize that meaning lies in a word's popular use.[197] It was William Blackstone who originally declared, "Words are generally to be understood in their usual and most known signification; not so much regarding the propriety of grammar, as their general and popular use."[198] And, as Justice Scalia reiterated, the "meaning of a word cannot be determined in isolation but must be drawn from the context in which it is used."[199] What, then, is the context of justice for crime victims?

III. THE VICTIM'S INTRINSIC RIGHT TO JUSTICE

> *In this period when we see interest in "victim's rights" coming to the fore, certainly having one's tormentor brought to justice should be near the top of any victim's rights program, second only to the right not to be a victim in the first place.*
>
> – Justice Day[200]

We propose that the right to justice is inherent in personhood, and thus, the victim's right to justice is rooted in fundamental principles that predate the founding of this nation, principles enshrined in the Preamble to the U.S. Constitution, the Bill of Rights, and the Declaration of Independence.[201] The

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195. *See Convict*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("Someone who has been found guilty of a crime and is serving a sentence of confinement for that crime; a prison inmate.").

196. *See* Gary Galles, *Cicero on Justice, Law and* Liberty, MISES INST. (Jan. 4, 2005), https://mises.org/mises-wire/cicero-justice-law-and-liberty [https://perma.cc/YYR8-2C93]; *see also* Jeremy N. Sheff, *Jefferson's Taper*, 73 SMU L. REV. 299, 333 (2020) ("There is a twofold giving. [O]ne belongs to justice, and occurs when we give a man his due [Latin: debitum].") (quoting Thomas Aquinas) (alterations in original).

197. *See* LUDWIG WITTGENSTEIN, PHILOSOPHICAL INVESTIGATIONS 116e (G.E.M. Anscombe et al. trans., rev. 4th ed. 2009).

198. Maxine D. Goodman, *Reconstructing the Plain Language Rule of Statutory Construction: How and Why*, 65 MONT. L. REV. 229, 232 (2004).

199. *Id.* at 234.

200. State v. Unnamed Def., 441 N.W.2d. 696, 707 (Wis. 1989) (Day, J., concurring).

201. *See generally* Sue Anna Moss Cellini, *The Proposed Victims' Rights Amendment to the Constitution of the United States: Opening the Door of the Criminal Justice System to the Victim*, 14 ARIZ. J. INT'L & COMPAR. L. 839 (1997) (noting that a victim's right to justice was recognized in colonial America tradition, predating the drafting of the Constitution and Bill of Rights).

victim is possessed of the same general rights afforded to all. In addition to the enumerated rights held against the state, the victim has the aspirational rights to life, liberty, and the pursuit of happiness.[202] We maintain that the roots of justice lie in natural law and predate and precede even those foundational expressions of rights. All persons possess this primordial right to "justice," but for victims in the modern criminal justice system, that right remains unfulfilled, dormant, and unrecognized.[203] Even now, when the victim's right to justice is reaffirmed in state constitutions across the country, it remains largely ignored in our jurisprudence.[204]

A. Meaning

The inclusion of the word "justice" in state constitutional amendments has operative force. First, our state and federal criminal justice systems are founded on codified principles of liberty and justice, which are central to the promise of the United States Constitution, the supreme law of the land.[205] We look to that Constitution to preserve our freedoms and ensure that justice prevails for all citizens equally.[206]

The word "justice" occurs three times in the United States Constitution.[207] It appears in the Preamble as the second of six animating purposes in drafting the Constitution: to "establish Justice."[208] The second reference is merely to identify the head of the Supreme Court: the Chief Justice.[209] The third reference in Article IV, Section 2 establishes the extradition obligation of each state to deliver and return any person charged with a crime "who shall flee from Justice."[210]

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202. *See id.* at 849.

203. *See* Cassell, *supra* note 4, at 426.

204. *Id.* at 509.

205. *See* U.S. CONST. pmbl; *id.* amends. V, XIV; *id.* art. VI, cl. 2 ("The Constitution . . . shall be the supreme law of the land."). For the proposition that every word in a statute is intended by the drafters to serve a purpose, see Duncan v. Walker, 533 U.S. 167, 174 (2001) (It is a "cardinal principle of statutory construction" that "a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.") (citations omitted).

206. *See* Calder v. Bull, 3 U.S. 386, 388 (1798).

207. U.S. CONST. pmbl.; *id.* art. I, § 3, cl. 6; *id.* art. IV, § 2, cl. 2; *see also Calder*, 3 U.S. at 388 ("The people of the United States erected their Constitutions, or forms of government, to establish justice, to promote the general welfare, to secure the blessings of liberty; and to protect their persons and property from violence.").

208. U.S. CONST. pmbl.; *see also Calder*, 3 U.S. at 388.

209. U.S. CONST. art. I, § 3, cl. 6.

210. U.S. CONST. art. IV, § 2, cl. 2.

Here, because "justice" in the original constitutional context meant the receipt of what was "due," it also meant the duty of the State to ensure such receipt, by punishing offenders who violate the law and protecting the due process rights of those who might try to "flee" from its enforcement.[211] Yet, despite historical and semantic justification for reading the United States Constitution as amenable to and encompassing the crime victim's right to justice, the absence of explicit federal jurisprudence gave rise to a movement among the states to recognize victims' rights to justice in state constitutions.[212]

States have sought to acknowledge and re-embrace the central role of the victim as one who has suffered an injustice and whose rights are to be vindicated and restored.[213] This movement for state constitutional reform guaranteed victims' rights would become the "supreme law" of those states, "second only to the [C]onstitution of the United States."[214] Additionally, once a specified right is explicitly written into a constitution or statute, courts must honor it, striving to "give effect, if possible, to every clause and word of a statute."[215] This is not a mere guideline, but a "cardinal principle of statutory construction."[216] Without being given legal effect, a victim's right to justice is "rendered mere surplusage—something that the Supreme Court has repeatedly cautioned against."[217]

Crime victims have a preexisting right to "justice" in addition to and independent of the other enumerated rights in the state constitutional amendments. The textual rights are those enumerated in those state constitutions, and in an aspirational sense in both the Declaration of Independence and the Preamble to the Constitution. Those textual rights do not fully exhaust the concept of justice—we believe there to be an essential common law right to justice that is more foundational and that is "retained by victims," even if not expressed.[218]

First, of the twelve states whose constitutions explicitly preserve and protect victims' rights to justice, all affirm the cardinal principle of statutory

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211. *See id.*

212. *See* Cassell, *supra* note 4, at 402–08.

213. *Id.*

214. State v. Patel, 486 P.3d 188, 194 (Ariz. 2021).

215. Advoc. Health Care Network v. Stapleton, 581 U.S. 468, 478 (2017).

216. *See* Cassell, *supra* note 64, at 874 (citing Duncan v. Walker, 533 U.S. 167, 174 (2001)).

217. *Id.* at 875 (arguing that victims have a substantive right to "fairness," as articulated in the CVRA, and failure to give legal effect to that provision violates that cardinal principle of statutory construction).

218. *See* ARIZ. CONST. art II, § 2.1(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.").

construction: that a court may not ignore terms from the plain language of the text.[219] Courts interpret a constitution the same way they interpret any other written law.[220] And as a specified right—indeed, a right so important that it is mentioned first in these constitutional amendments—a victim's right to "justice" must be given legal effect. As the Arizona Supreme Court opined 75 years ago, "It is the court's duty to protect constitutional rights."[221]

This inclusion of the right to justice has a well-established pedigree in the history of the states. The Maryland Constitution of 1776 was the first to pay homage to a victim's right to justice: "That every freeman, for any injury done him in his person or property, ought to have remedy, by the course of the law of the land, and ought to have justice and right freely without sale fully

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219. For Arizona, see *Deer Valley Unified Sch. Dist. No. 97 v. Super. Ct.*, 760 P.2d 537, 540 (Ariz. 1988) ("We have no right to delete terms from the plain language of its text."). For California, see *Copley Press, Inc. v. Super. Ct.*, 141 P.3d 288, 295 (Cal. 2006) ("In interpreting that language, we strive to give effect and significance to every word and phrase."). For Florida, see *Hechtman v. Nations Title Ins.*, 840 So. 2d 993, 996 (Fla. 2003) ("It is an elementary principle of statutory construction that significance and effect must be given to every word, phrase, sentence, and part of the statute if possible, and words in a statute should not be construed as mere surplusage."). For Kentucky, see *Travelers Indem. Co. v. Armstrong*, 565 S.W.3d 550, 563 (Ky. 2018) ("'One of the most basic interpretative canons' of statutory interpretation is that '[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant[.]'") (citations omitted). For North Dakota, see *State v. Gaddie*, 2022 ND 44, 971 N.W.2d 811, 819 ("We interpret statutes to give meaning and effect to every word, phrase, and sentence, and do not adopt a construction which would render part of the statute mere surplusage.") (citation omitted). For Ohio, see *D.A.B.E., Inc. v. Toledo-Lucas Cnty. Bd. of Health*, 96 Ohio St. 3d 250, 2002-Ohio-4172, 773 N.E.2d 536, at ¶ 26 ("'No part [of the text] should be treated as superfluous unless that is manifestly required, and the court should avoid that construction which renders a provision meaningless or inoperative.'") (citation omitted). For Oklahoma, see *Hill v. Bd. of Educ.*, 1997 OK 111, ¶ 12, 944 P.2d 930, 933 ("This court will not assume that the Legislature has done a vain and useless act. Rather it must interpret legislation so as to give effect to every word and sentence."). For Oregon, see *State* ex rel. *Adams v. Powell*, 15 P.3d 54, 62 (Or. Ct. App. 2000) ("[W]e must give effect 'to every part and every word of a Constitution and that unless there is some clear reason to the contrary, no portion of the fundamental law shall be treated as superfluous.'") (citation omitted). For South Carolina, see *Hinton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 592 S.E.2d 335, 343 (S.C. Ct. App. 2004) ("[Courts] seek a construction that gives effect to every word of a statute rather than adopting an interpretation that renders a portion meaningless."). For Tennessee, see *Harrison v. Harrison*, 643 S.W.3d 376, 381 (Tenn. Ct. App. 2021) ("We must presume that every word in a statute has meaning and purpose and should be given full effect so long as the obvious intention of the General Assembly is not violated by doing so."). For Utah, see *Monarrez v. Utah Dep't of Transp.*, 2016 UT 10, ¶ 11, 368 P.3d 846, 852 ("[W]e avoid '[a]ny interpretation which renders parts or words in a statute inoperative or superfluous' in order to 'give effect to every word of a statute.'"). For Wisconsin, see *State* ex rel. *Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58. ¶ 46, 271 Wis. 2d 633, 681 N.W.2d 110, 124 ("Statutory language is read where possible to give reasonable effect to every word, in order to avoid surplusage.").

220. *See* NORMAN SINGER & SHAMBIE SINGER, SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION § 45:11 (7th ed. 2025).

221. Bristor v. Cheatham, 255 P.2d 173, 177 (Ariz. 1953).

without any denial, and speedily without delay, according to the law of the land."[222]

Massachusetts became the second state to recognize the victim's right to justice:

> Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.[223]

New Hampshire offered the same guarantee in its "Bill of Rights" in 1784, so that by the eve of the Constitutional Convention in 1787, three state constitutions explicitly acknowledged the right of victims "to obtain right and justice freely . . . completely, and without any denial."[224] These early notions of justice implied that justice was the birthright of every human being and that its deprivation would invite swift and conclusive legal recourse.[225]

1. "Justice" as Remedial

When engaging canons of construction, courts generally construe a remedial provision broadly to correct the "mischief" for which the provision was enacted.[226] Here, the victims' rights amendments were enacted to remedy the deprivation of justice for victims. Courts reject narrow constructions that undermine the public policy sought to be served, especially where, as here, the state statutes ordain that victims' rights provisions be interpreted liberally in favor of that right.[227] This principle is especially true where a narrow construction would discourage, rather than encourage, the specific remedial action the legislature seeks to take.[228] From that perspective, the pronouncement of a victim's right to justice is intended to have legal effect.

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222. MD. CONST. of 1776, cl. 17.

223. MASS. CONST. art. XI.

224. N.H. CONST. pt. 1, art. 14.

225. *See supra* notes 186–188.

226. *See* J. Clark Kelso & Charles D. Kelso, *Statutory Interpretation: Four Theories in Disarray*, 53 SMU L. REV. 81, 88 (2000).

227. ARIZ. REV. STAT. § 13-4418 (1992) ("This chapter shall be liberally construed to preserve and protect the rights to which victims are entitled.").

228. *See* SINGER, *supra* note 220, at §§ 56:4, 60:1 ("Courts liberally, or broadly, construe remedial statutes in order to help remedy the defects in the law that prompted their enactment.").

2. Legislative History and Ballot Materials

Ballot materials are important resources when examining state constitutional meanings and the public policy behind proposed constitutional and statutory provisions.[229] For example, Arizona's ballot materials shed light on the meaning and purpose of the victims' rights' amendments to the Arizona Constitution, as they explain the scope of what the voters enacted.

The "Arizona Publicity Pamphlet" for the General Election of November 6, 1990 (the "Pamphlet") proposed "an amendment to the Constitution of Arizona relating to victims' rights; recognizing victims' rights to justice and due process; providing that victims shall have the right to be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse."[230] The proposal began by "[r]ecognizing victims' rights to justice and due process."[231] California, as another example, advertised its intent in circulating the amendment to "[p]rovide victims with rights to justice and due process."[232]

B. Recurrence to Fundamental Principles

Over a decade ago, Professor Steven Calabresi and his fellow researchers identified at least 31 states whose constitutions "contain Lockean Natural Rights Guarantees."[233] As early as 1791, seven out of the thirteen original colonies had "clauses that encouraged a frequent recurrence to fundamental principles in their state constitutions."[234] Seven states continued to have such clauses in 1868, and by 2010, the states of Arizona, Illinois, Massachusetts, New Hampshire, North Carolina, South Dakota, Utah, Vermont, and Virginia had such clauses.[235]

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229. *Id.* at § 48:19.

230. JIM SHUMWAY, ARIZONA PUBLICITY PAMPHLET 33 (1990).

231. *Id.*

232. CAL. SEC'Y OF STATE'S OFF., CALIFORNIA GENERAL ELECTION TUESDAY, NOVEMBER 4, 2008: OFFICIAL VOTER INFORMATION GUIDE 129 (2008), https://vig.cdn.sos.ca.gov/2008/general/pdf-guide/vig-nov-2008-principal.pdf [https://perma.cc/BG2Z-F2KB].

233. Steven G. Calabresi et al., *The U.S. and the State Constitutions: An Unnoticed Dialogue*, 9 N.Y.U. J.L. & LIBERTY 685, 697 (2015).

234. *Id.* at 702.

235. *See* Calabresi et al., *supra* note 233, at 702; Brian Snure, Comment, *A Frequent Recurrence to Fundamental Principles: Individual Rights, Free Government, and the Washington State Constitution*, 67 WASH. L. REV. 669, 676 (1992).

1. Recurrence to Fundamental Principles in the Declaration of Independence

The Framers of our country's Constitution and the Bill of Rights understood the importance of returning to fundamental principles when engaging in constitutional interpretation.[236] The Florida Supreme Court recognized as much when it noted, in *Gibson v. Florida Legislative Investigation Committee*, that "the admonition of Section 15, Declaration of Rights of Virginia, which antedated our Declaration of Independence," that "'the blessings of liberty can be preserved to any people but by a firm adherence to justice, moderation, temperance, frugality and virtue, and by frequent recurrence to fundamental principles.'"[237] The Florida Supreme Court cited the Declaration of Rights of Massachusetts in Article 18, which emphasized the importance of "[a] frequent recurrence to the fundamental principles of the constitution, and a constant adherence to those of piety, justice, moderation, temperance, industry, and frugality," as "absolutely necessary to preserve the advantages of liberty, and to maintain a free government."[238] Quoting that document, the Florida Supreme Court reiterated:

> In recurring to certain fundamental principles, . . . we deem basic . . . that under the Bill of Rights incorporated in the Constitution of the United States, an individual citizen, regardless of race or creed, is entitled to enjoy certain inalienable rights which cannot be denied to him except in a proper case by due and orderly process of law.[239]

The Arizona Supreme Court also has affirmed the centrality of the fundamental principles enshrined in the Declaration of Independence. For example, in *Beck v. Neville*, the Court pointed to values "predat[ing] the founding of this country," quoting from the preamble to the Declaration of Independence.[240] Although the Court in that case was discussing property ownership and not crime victims' rights, it paid homage to broad, venerable principles of natural law, returning to the spirit of the Constitution.[241] That

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236. *See* W. West Allen, *Constitutional Reflections: A Recurrence to Fundamental Principles and Forming a More Perfect Union*, NEV. LAW. 20, 22 (2021) (reflecting on the "fundamental principles" on which the U.S. Constitution is founded, and declaring, that "[i]t is by a recurrence to fundamental principles and their proper application that we are made free").

237. Gibson v. Fla. Legis. Investigation Comm., 108 So. 2d 729, 733 (Fla. 1958).

238. *Id.*

239. *Id.*

240. Beck v. Neville, 540 P.3d 906, 913–14 (Ariz. 2024).

241. *Id.*

principle applies here too, encouraging the recognition and eventual enforcement of a crime victim's right to justice.

2. Recurrence to Fundamental Principles in State Constitutions

a. Arizona

We begin with Arizona because it was the first state to amend its constitution explicitly to recognize a victim's right to justice, and it formed the model for states that followed.[242] When codifying these rights, the drafters of these amendments explained that victims' rights to justice and due process were already implied in the state and federal constitutions but needed to be made explicit in Arizona's constitution.

Indeed, Arizona's Constitution places value on fundamental principles.[243] Its preamble begins with an expression of homage to God: "We, the people of the state of Arizona, grateful to Almighty God for our liberties, do ordain this Constitution."[244] Thereafter, Article 1, Section 1 provides for "[a] frequent recurrence to fundamental principles," which it deems "essential to the security of individual rights and the perpetuity of free government."[245] Section 2 provides that "[a]ll political power is inherent in the people," and that governments "are established to protect and maintain [those] individual rights."[246]

The victims' rights to justice and due process immediately follow Sections 1 and 2, demonstrating the prominence Arizonans assigned to victims' fundamental rights.[247] The Victims' Bill of Rights promises "[t]o preserve and protect" these basic rights.[248] As relevant here, this language establishes two important premises: (1) that a right to justice exists for crime victims, and (2) that such right predates the enactment by which it is recited.

Besides codifying the crime victim's preexisting right to justice, the Arizona Constitution makes that right "mandatory" and enforceable, as

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242. *See* ARIZ. CONST. art. II, § 2.1; *State Victim Rights Amendments*, *supra* note 93.

243. *See id.* art. II, § 1.

244. ARIZ. CONST. pmbl; *see also* Giovanni Cucci, SJ, *Thomas Aquinas on Justice*, LA CIVILTÀ CATOLICA (Oct. 6, 2021), www.laciviltacattolica.com/thomas-aquinas-on-justice [https://perma.cc/RW6N-G6KV] ("Justice, [for Aquinas, is] above all the characteristic proper to God, who is its foundation, an aspect that constantly returns in the classical and biblical tradition [and is] a habit whereby a man renders to each one his due by constant and perpetual will.").

245. ARIZ. CONST. art. I, § 1.

246. ARIZ. CONST. art. II, § 2.

247. *See* Cassell, *supra* note 4, at 455–56; *see also* State v. Patel, 486 P.3d 188, 191 (Ariz. 2021).

248. ARIZ. CONST. art. II, § 2.1.

affirmed in Article 2, Section 32.[249] Arizona's Constitution also "shares key provisions" with the Virginia Declaration of Rights, which predated the founding of this nation.[250] As Arizona Supreme Court Justice William Montgomery points out, "the similarity in language is unsurprising," as "Thomas Jefferson relied on the Virginia Declaration to draft the Declaration of Independence."[251]

Arizona's Enabling Act, which authorized the convention to draft its state constitution, required that "[t]he constitution shall be republican in form and make no distinction in civil or political rights on account of race or color, and *shall not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence*."[252]

Still, where a fundamental principle is not defined in the Arizona Constitution, the Arizona Supreme Court has applied its "well-established" meaning.[253] For example, in *State ex rel. Hance v. Arizona Board of Pardons and Paroles*, which was decided less than three years after the Victims' Bill of Rights took effect, the Court applied the generally established meaning of due process even though it was "not explained by the constitution or the implementing legislation."[254] In other words, the Court recognized even then that some principles are so venerable that they do not require explicit definitions in the constitutional text.[255] The Court in *Hance* reversed the grant of parole to a defendant who had raped and mutilated a young woman in an attack so vicious that police called it a "failed murder."[256] The Court held that failure to give notice to the crime victim rendered the parole proceeding defective.[257] Later, once the victim was given the opportunity to be heard at the defendant's parole hearing, parole was denied.[258]

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249. ARIZ. CONST. art. II, § 32.

250. Beck v. Neville, 540 P.3d 906, 913 & n.7 (Ariz. 2024).

251. *Id.* at 914 n.8.

252. ARIZ. REV. STAT., Enabling Act, § 20; *see also Beck*, 540 P.3d at 914.

253. *See* State *ex rel.* Hance v. Ariz. Bd. of Pardons & Paroles, 875 P.2d 824, 831 (Ariz. 1993).

254. *Id.*

255. *See id.*

256. *See* Tom Fitzpatrick, *Eric Mageary Isn't Going Anywhere*, PHX. NEW TIMES (Aug. 25, 1993), www.phoenixnewtimes.com/news/eric-mageary-isnt-going-anywhere [https://perma.cc/9M9Q-AG34] (describing the brutal rape and mutilation, including shattering the victim's jaw, biting off her ear, nearly slicing off her breast, and leaving her in critical condition, and recounting the harrowing prison of trauma inflicted on the victim, who "never recovered from the terror of that night").

257. *Hance*, 875 P.2d at 830.

258. *See* Fitzpatrick, *supra* note 256.

b. California

Like Arizona, California's Constitution begins with homage to God, implying that the source of individual freedom predates its constitutional enactment:

> We, the People of the State of California, grateful to Almighty God for our freedom, in order to secure and perpetuate its blessings, do establish this Constitution.[259]

Article 1, Section 26 of the California Constitution makes its provisions both "mandatory and prohibitory," unless declared otherwise.[260] Perhaps most significant, Article 1, Section 28 establishes the "victim's rights to justice and due process," requiring the enforcement of crime victims' rights as "a matter of high public importance."[261] As the amendment makes clear, "California's victims of crime are largely dependent upon the proper functioning of government, upon the criminal justice system and upon the expeditious enforcement of the rights of victims of crime described herein, in order to protect the public safety and to secure justice when the public safety has been compromised by criminal activity."[262] Thus, California recognizes that a victim's right to justice includes the right to depend on the "proper functioning" of the government and its victims' rights laws.[263]

In league with that understanding is the necessity of punishment. Article 1, Section 28(a)(5) declares,

> Victims of crime have a collectively shared right to expect that persons convicted of committing criminal acts are sufficiently punished in both the manner and the length of the sentences imposed by the courts of the State of California. This right includes the right to expect that the punitive and deterrent effect of custodial sentences imposed by the courts will not be undercut or diminished by the granting of rights and privileges to prisoners that are not required by any provision of the United States Constitution or by the laws of this State to be granted to any person incarcerated in a penal or other custodial

259. CAL. CONST. pmbl.
260. CAL. CONST. art I, § 26.
261. CAL. CONST. art I, § 28(a)(2)–(b).
262. CAL. CONST. art I, § 28(a).
263. CAL. CONST. art I, § 28(a)(2).

> facility in this State as a punishment or correction for the commission of a crime.[264]

c. Other States

Eleven more states seek to "preserve and protect" victims' rights to justice. They too encourage a frequent recurrence to fundamental principles.[265] For example, the Kentucky Constitution enumerates these fundamental principles, including "the right of seeking and pursuing their safety and happiness."[266] Utah contains a similar provision: Article I, Section 27 declares, "Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government."[267] But, like the crime victim's constitutional right to justice, the frequent recurrence

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264. CAL. CONST. art I, § 28(a)(5).

265. *See, e.g.*, CAL. CONST. art. I, § 1 ("All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."); FLA. CONST. art. I, § 2 ("All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property. No person shall be deprived of any right because of race, religion, national origin, or physical disability."); KY. CONST. § 1 ("All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned: First: The right of enjoying and defending their lives and liberties. Second: The right of worshipping Almighty God according to the dictates of their consciences. Third: The right of seeking and pursuing their safety and happiness. Fourth: The right of freely communicating their thoughts and opinions. Fifth: The right of acquiring and protecting property. Sixth: The right of assembling together in a peaceable manner for their common good, and of applying to those invested with the power of government for redress of grievances or other proper purposes, by petition, address or remonstrance. Seventh: The right to bear arms in defense of themselves and of the State, subject to the power of the General Assembly to enact laws to prevent persons from carrying concealed weapons."); OHIO CONST. art. I, § 1 ("All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety."); OKLA. CONST. art. I, § 2 ("All persons have the inherent right to life, liberty, the pursuit of happiness, and the enjoyment of the gains of their own industry."); UTAH CONST. art. I, § 1 ("All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right."); WIS. CONST. art. I, § 1 ("All people are born equally free and independent, and have certain inherent rights; among those are life, liberty and the pursuit of happiness; to secure these rights, governments are instituted, deriving their just powers from the consent of the governed.").

266. KY. CONST. § 1.

267. UTAH CONST. art. I, § 27.

to fundamental principles remains largely unexplored by state constitutional scholars.[268] As professor Paul Wake observed,

> No other provision in the [Utah] Constitution claims to show an essential key to freedom. Yet strangely, virtually no jurist or scholar has commented on Section 27.[269]

The drafters of these state constitutional amendments arguably intended for all citizens—including crime victims—to have the right to pursue their safety and to count on the law to deliver on its promise to hold offenders accountable.[270] The ubiquitous emphasis, in our federal and state constitutional documents, on the need for a recurrence to fundamental principles underscores the importance of recognizing and giving legal effect to "justice" as a fundamental and inalienable right of victims.

C. Canons of Construction and Verb Choice

What does it mean to "preserve and protect" a victim's right to justice? Merriam-Webster's Dictionary and Thesaurus defines "preserve" as "to keep safe: guard, protect"; "to keep from decaying," and "to keep alive, intact."[271] The word originated from the Latin *prae-"*before," and *servāre*-"to watch or keep." It was first used in 1392 to mean "to keep from harm," and "to keep alive."[272]

As in the case of the state amendments, victims have always been entitled to these fundamental rights to justice and due process, which are implied in the United States Constitution, although not specifically enumerated.[273] To demonstrate that the amendments were not *creating* or *establishing* these fundamental rights in the first instance, but simply drawing courts' attention to an existing entitlement and reminding courts of their duty to honor it, these amended constitutional provisions employ the phrase, "to preserve and protect," signifying that the victims' rights to justice and due process predated the express affirmation of those rights.

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268. *See* Paul Wake, *Fundamental Principles, Individual Rights, and Free Government: Do Utahns Remember How to Be Free?*, 1996 UTAH L. REV. 661, 661.

269. *Id.*

270. *See* Robert A. Schapiro, *Identity & Interpretation in State Constitutional Law*, 84 VA. L. REV. 389, 457 (1998).

271. *Preserve*, MERRIAM-WEBSTER'S DICTIONARY AND THESAURUS (2014).

272. *Preserve*, THE CHAMBERS DICTIONARY OF ETYMOLOGY (2018).

273. *See* Cassell, *supra* note 4, at 486.

That the word "preserve" implies a preexisting right was confirmed by Division 1 of the Arizona Court of Appeals in *State ex rel. Romley v. Dairman*.[274] There, the Court "note[d] that"

> the Victims' Bill of Rights also provides that its purpose is "[t]o *preserve* and protect victims' rights to justice and due process." Ariz. Const. art. 2.1(A) (emphasis added). In addition to this constitutional mandate, the legislature also provided by statute that "[t]his chapter [which includes § 13–4403(C)] shall be liberally construed *to preserve* and protect the rights to which victims are entitled." A.R.S. § 13–4418 (2001) (emphasis added). Thus, the direct constitutional and statutory mandate is "to preserve" the rights that minor victims had *prior* to the passage of that constitutional provision and the subsequent legislation. We accordingly reject the proposition that A.R.S. § 13–4403(C) precludes victims' rights which existed prior to enactment of the statute.[275]

As the Arizona Appellate Court observed in *Romley*, the use of the verb "preserve" confirmed that the right exists.[276] Indeed, the need to preserve implies a preexistence, however fragile.[277] Nevertheless, codification does not equal enforcement. As Judge Learned Hand warned, "[l]iberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can even do much to help it. While it lies there it needs no constitution, no law, no court to save it."[278] To preserve a right requires an active effort to maintain the right.[279]

If courts do not recognize the victims' preexisting right to justice, which includes the right to expect that the law will deliver on its promise that consequences are due to a wrongdoer in order to dignify and reaffirm the worth and humanity of the victim, a jurisprudence of silence results in dehumanization and devaluation, or in other words, injustice.[280] One frequently repeated aphorism of advocacy is that silence—perceived indifference—equals complicity.[281] It is a failure to acknowledge that the

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274. State *ex rel.* Romley v. Dairman, 95 P.3d 548, 553 (Ariz. Ct. App. 2004).
275. *Id.*
276. *Id.*
277. *See id.*
278. HAND, *supra* note 1, at 189–90.
279. *Id.* at 103–10.
280. *See generally* Cassell, *supra* note 16.
281. ELIE WIESEL, A JEW TODAY 187–208 (Vintage Books ed., 1979).

injury suffered by the victim was an undeserved wrong.[282] To quote the Nobel prize-winning survivor of the Holocaust, Elie Wiesel:

> [T]he victim suffered more and more profoundly from the indifference of the onlookers than from the brutality of the executioner. The cruelty of the enemy would have been incapable of breaking the prisoner; it was the silence of those he believed to be his friends—cruelty more cowardly, more subtle, which broke his heart.[283]

As lawyer Lenore Anderson observes, "Despite all the rhetoric, law changes, new investments, and political attention, the justice system that was bolstered to advance victims' rights continually fails to *see* most crime victims."[284]

It might be argued that justice is too open-ended to create an enforceable right, or too broad to constrain.[285] But "justice" has already been defined, both in the dictionaries contemporaneous with the constitutional amendment,[286] and throughout the jurisprudence of the Common Law.[287] All that remains is for advocates and courts to define justice broadly enough to encompass victims of crime.

D. State and Federal Courts' Treatment of Victims' Right to Justice

The authors have surveyed the 50 states and the federal courts to determine how many courts have acknowledged, defined, or applied the crime victim's right to justice as a basis for affirming a prison sentence within the range prescribed by the law. So far, only one has drawn a connection between a victim's right to justice and the length of a defendant's prison sentence, and interestingly, it is a state that does not have a victim's right to justice enshrined in its constitution. In 2022, the Louisiana Court of Appeals affirmed the imposition of a harsher sentence on a defendant who had raped

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282. *Id.*

283. *Id.*

284. *See* ANDERSON, IN THEIR NAMES, *supra* note 115, at 9, 13 ("Data show that those who are most vulnerable to becoming victims are our nation's youth; Americans of color; people from low-income backgrounds; lesbian, gay, or transgender people; and those with disabilities.").

285. *See* Turner & Rozacky, *supra* note 11, at 454.

286. *See* Steven G. Calabresi, *Originalism in Constitutional Interpretation*, NAT'L CONST. CTR., https://constitutioncenter.org/the-constitution/white-papers/on-originalism-in-constitutional-interpretation [https://perma.cc/JKL4-7E3H].

287. *Id.*

a young child.[288] Agreeing with the State, the Court reasoned "that a lesser disposition would deprecate the seriousness of the offense and infringe upon the victim's right to justice."[289] That decision recognized a victim's right to justice even without express constitutional recognition. And that decision got it right. No other case appears to directly tie the length of an aggressor's sentence of imprisonment to a victim's right to justice.[290]

As for the 12 states whose constitutions contain the exact language of "preserv[ing] and protect[ing]" victims' rights to justice, we surveyed caselaw to ascertain how many times the victims' right to "justice" is considered, defined, or invoked as a basis for relief. Out of these twelve states, Arizona courts cited the victim's right to justice no more than 40 times, in concert with the victim's concomitant right to due process.[291] Only twice, though—since the constitution was amended to preserve and protect a victim's right to justice—have Arizona courts identified the victim's entitlement to justice independently of the specific enumerated rights designed to preserve and protect it, and only indirectly.[292] In the 2018 case of *Z.W. v. Foster*, for example, the Arizona Court of Appeals acknowledged that the VBR "secures crime victims' rights to justice and due process," describing them as "important rights [that] attach when a defendant is arrested or formally charged, and continue during trial and through the final disposition of charges."[293] The Court there did not unpack or apply the victim's right to justice in that case, nor was justice achieved in the majority's result, which found no abuse of discretion in allowing the victim to be referred to as the "alleged victim."[294] Another case in which a victim's right to justice is mentioned in a way that implies it exists independently and in addition to the specific enumerated rights is *State v. Stauffer*.[295] *State v. Stauffer* is a 2002 Arizona Court of Appeals case where the Court cautioned against an overbroad reading of Chapter 40 of the Victims' Bill of Rights, warning that such a result could "potentially jeopardize the rights of the actual victim of the criminal offense for which the defendant is prosecuted,

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288. *In re* State *ex rel.* H.B., 350 So. 3d 214, 231 (La. App. 2022).

289. *Id.*

290. *Id.*

291. Based on a Westlaw search last updated July 13, 2025.

292. First, insofar as we are characterizing crime victims' rights to justice and due process as state constitutional rights, they must yield if they "conflict with a defendant's federal constitutional rights to due process and [other rights, such as the right to cross-examination]." State v. Riggs, 942 P.2d 1159, 1162–63 (1997) (citing State *ex rel.* Romley v. Superior Ct., 836 P.2d 445, 449 (Ariz. Ct. App. 1992)).

293. Z.W. v. Foster, 422 P.3d 582, 583 (Ariz. Ct. App. 2018).

294. *Id.* at 584.

295. 58 P.3d. 33 (Ariz. Ct. App. 2002)

including the victim's right 'to justice and due process,' [] and to 'a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence.'"[296] And, to the authors' knowledge, no Arizona court has defined it.[297] For that matter, among the twelve jurisdictions in whose state constitutions the victims' right to justice is found, not one court has defined "justice" in the victims' rights context at all.

296. *Id.* at 37.

297. The definitions for "victim" and "due process," however, have been reiterated multiple times in several opinions.

Table 1. Victims' Right to Justice in States

State Name	Cited Victim's Right to Justice	Cited the Victim's Right to Justice as an Independent Legal Right	Defined "Justice" for Victims	Invoked Victim's Right to Justice as a Basis for Its Decision
Arizona	40	2	0	0
California	19	1	0	0
Florida	1	0	0	0
Kentucky	0	0	0	0
North Dakota	0	0	0	0
Ohio	0	1	0	0
Oklahoma	0	0	0	0
Oregon	4	0	0	0
South Carolina	4	0	0	0
Tennessee	1	0	0	0
Utah	4	0	0	0
Wisconsin	3	0	0	0
Total:	76	3	0	0

IV. APPLYING THE CRIME VICTIM'S RIGHT TO JUSTICE

Having "rights" does not benefit the victim without some means of effectively enforcing these rights.[298]

When the right of crime victims to "justice" was deemed worthy of enforcement by the voters of Arizona in November of 1990, the common understanding of the word "justice" was the receipt of what was due.[299] The 1990 edition of the Merriam-Webster Dictionary reflected this understanding, defining justice as "the administration of merited rewards or

298. Susan E. Gegan & Nicholas Ernesto Rodriguez, *Victims' Roles in the Criminal Justice System: A Fallacy of Victim Empowerment?*, 8 ST. JOHN'S J. LEGAL COMMENT. 225, 248 (1992).

299. *See supra* text accompanying note 189. We have focused primarily on Arizona because it was the first state to include a specific reference to the right to justice. Every other state's enactment was derived from Arizona so the interpretive analysis provided herein should inform how the jurisprudence develops in every other state.

punishment."[300] That definition embodied the jurisprudential and historical understanding reaching back into antiquity.[301] This definition of "justice" as "the administration of merited rewards or punishment" was developed in the Middle Ages and became the bedrock of the Common Law understanding of justice and its roots.[302] And this understanding was central to the original public meaning when the Arizona Constitution was amended: the right to justice as the right of each person to receive his or her due.[303] What is "merited" then is what is due: the fulfillment of a promise to both victim and perpetrator and, indeed, the rest of us as well.[304]

But what is every human's due? The criminal law makes a set of promises to three distinct groups: victims, offenders, and the community.[305] In each case, the law promises that if certain conduct occurs, a set of consequences will follow.[306] These are the promises made to all. These promises define "what is due."

Most obviously, the Bill of Rights promises the accused certain due process rights in the course of search, arrest, and trial.[307] A failure to abide by those promises may cause the reversal of conviction, the exclusion of evidence, or even civil remedies under 42 U.S.C. § 1983 or its state analogues.

To the community at large, the criminal law promises to create and restore the conditions for the orderly functioning of society, the investigation and prosecution of wrongs, the maintenance of peace and security through the punishment of wrongdoers, and the respect for rights of personal property and bodily autonomy borne by all people equally.[308] Victims are promised justice—in a personal and immediate way by acknowledging a wrong committed against them, rectifying those wrongs by trying the person who stands credibly accused of causing the harm, and affording the victim the right to be heard at all stages of the process. Those promises include the remedy of having specified consequences for the offender imposed in a way

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300. *See supra* text accompanying note 194.

301. *See supra* Part II.

302. *See* STOKES, *supra* note 155, at 3.

303. *See id.*

304. *Cf. id.* at 1.

305. *See* Mark S. Umbreit*, Restorative Justice Through Victim-Offender Mediation: A Multi-Site Assessment*, W. CRIMINOLOGY REV., June 1998, https://www.westerncriminology.org/documents/WCR/v01n1/Umbreit/Umbreit.html [https://perma.cc/45TR-5JDL].

306. *See* Blackstone, *supra* note 21, at 3–4 (as cited in Cassell, *supra* note 4, at 403) (discussing the dual harm caused by crime).

307. *See* Cassell, *supra* note 4, at 406.

308. *See id.* at 393–94.

that befits the gravity of the offense. And a just society makes good on its promises.

So, for example, in Arizona, when the law and jury mandate that a death sentence be imposed for first-degree murder with aggravating circumstances, and when a warrant of execution is issued by the state Supreme Court, the failure to carry out that execution, the failure to fulfill the promise of what is due, violates the victim's right to justice.[309]

The delayed execution of defendant Aaron Gunches was perhaps the latest example of the tension between a defendant's desire to accept his punishment for the sake of rebalancing the scales of justice, and the state's position, only recently abandoned, that a death row inmate who is not fighting his own execution is not acting in his own best interest.[310] Gunches was convicted of first-degree murder for the execution-style shooting of his girlfriend's ex-husband.[311] At the capital phase of his trial, Gunches did not challenge the state's request for the death penalty.[312] Despite Gunches' earnest request to accept his punishment as justice for his victim, judges and public defenders questioned Gunches' competence, with one lawyer saying condescendingly, "The man is not right in his head."[313] In fact, Gunches was fully competent when he opted to accept what was due for his crime, rather than prolong the appellate process.[314]

Despite a valid execution warrant and an order from the Arizona Supreme Court, Governor Katie Hobbs halted Gunches' execution for over a year

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309. *See id.* at 455–56.

310. On March 18, 2025, a day before Gunches scheduled execution, Amy Fettig, the Acting Co-executive Director of Fair and Just Prosecution (FJP) condemned the anticipated execution of Gunches, claiming that "Mr. Gunches' decision to volunteer for execution does not lessen Arizona's obligation to follow the Eighth Amendment, yet Arizona is continuing to proceed in this case despite its disturbing recent history. Our thoughts are with the loved ones of both Aaron Gunches and his victim, Ted Price." *FJP Statement on Tomorrow's Scheduled Execution of Aaron Gunches,* FAIR & JUST PROSECUTION (Mar. 18, 2025), https://fairandjustprosecution.org/press-releases/fjp-statement-on-tomorrows-scheduled-execution-of-aaron-gunches/ [https://perma.cc/QD25-WEDZ]. There, too, the victim was mentioned last. *See id.*

311. *See* Press Release, Ariz. Dep't of Corr., Rehab., & Reentry, Scheduled Execution of Inmate Aaron Gunches, ADCRR #145371 Completed (Mar. 19, 2025), https://corrections.az.gov/news/scheduled-execution-inmate-aaron-gunches-adcrr-145371-completed [https://perma.cc/T7GF-5UU5]; *see also* Michael Kiefer, *A Killer Wrote His Own Death Warrant and Arizona Finally Signed it: How Aaron Gunches Turned Capital Punishment into State-Assisted Suicide After "Suicide by Jury"*, AZMIRROR (Mar. 19, 2025), https://azmirror.com/2025/03/19/aaron-gunches-exeuction-wrote-his-own-death-warrant-and-arizona-finally-signed-it/ [https://perma.cc/9RGM-JWHT].

312. *See* Kiefer, *supra* note 311.

313. *Id.*

314. *Id.*

pursuant to an ad hoc review of the state's death penalty procedures.[315] The victim's sister objected to Governor Hobbs' decision to the AP, lamenting, "Not only has our family been victimized by inmate Gunches and the emotional aftermath of [the victim]'s murder, we are now being victimized by the governor's failure to recognize and uphold our constitutional rights to justice and finality."[316]

After the Supreme Court issued the death warrant and set an execution date, the victim's family announced: "Our family has waited patiently for over 22 years for justice and finality—both of which are guaranteed to us by Arizona's Victim's Bill of Rights."[317] Indeed, Arizona's constitutional protections for victims promise to preserve and protect crime victims' rights to justice.[318] That Gunches recognized the spirit of this mandate is unusual in cases of this nature, but despite the defendant's desire to accept the consequences of his crime, activists continued to protest the death penalty in the name of "justice."[319]

Similarly, in California, failure to carry out a sentence as directed by the penal codes violates the victim's right to justice.[320] California Appellate Court Judge Kenneth Yegan admonished the majority for its decision denying relief to the victim in *People v. Superior Court of San Luis Obispo*.[321] The victim had expressed her objections to the offer of a probationary plea agreement for the man who had brutally attacked her, beating her to "within an inch of death" before smearing human feces in her face.[322] The attack left her permanently injured and unable to ever work again as a peace officer.[323] Recognizing the majority's decision (and the trial court's dismissal of the

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315. *Maricopa County Attorney Backs Victim's Family in Push for Killer's Execution*, KTAR (Mar. 17, 2023), https://ktar.com/arizona-news/maricopa-county-attorney-backs-victims-family-in-push-for-killers-execution/5472947/ [https://perma.cc/EFR8-RPYB].

316. *Id.*

317. *AZ Supreme Court Issues Warrant for Execution of Aaron Brian Gunches*, ABC15 ARIZ. (Feb. 11, 2025), https://www.abc15.com/news/state/az-supreme-court-issues-warrant-for-execution-of-aaron-brian-gunches [https://perma.cc/6NN2-26GE].

318. *See* ARIZ. CONST. art. II, § 2.1(A).

319. *See A Death Row Inmate Wants to Be Executed Early for 'Justice'*, WASH. POST (Jan. 7, 2025), https://www.washingtonpost.com/nation/2025/01/07/arizona-execution-request-aaron-gunches/; *see also* Kenneth Wong, *Aaron Gunches: Here's What to Know About the Arizona Man Who Was Executed for Murder*, FOX 10 PHX. (Mar. 19, 2025), https://www.fox10phoenix.com/news/aaron-gunches-heres-what-know-about-man-who-is-set-be-executed-murder [https://perma.cc/CY8P-8VFN].

320. CAL. CONST. art. I, § 28(a)(5).

321. People v. Super. Ct. San Luis Obispo, No. B341162, slip op. at 3–4 (Cal. Ct. App. Oct. 17, 2024) (Yegan, J., dissenting) (citing CAL. CONST. art. I, § 28, subd. (b)(8) and Marsy's Law).

322. *Id.*

323. *Id.*

victim's request) as a "miscarriage of justice," Judge Yegan cited the California Constitution as he lamented, "Victims have rights [that] should not be ignored or forgotten."[324] In that case, the victim was a police officer who had been brutally attacked while on the job.[325] "For every wrong there is a remedy," Judge Yegan insisted, and the superior court's indifference to the victim's objections represented a violation of California state constitutional rights and a "myopic view of the law."[326]

But state constitutional provisions and penal laws provide the answers to the question of what is due. What is "due" is the carrying out of the promises made by the law, the fulfillment of which accomplishes the Constitution's solemn and sworn duty to "establish Justice."[327] When criminal conduct is ignored or the consequences avoided, these promises are broken, and the result is unconstitutional and unjust.

Consider, for example, Arizona's promises to crime victims:

1. When there is probable cause to conclude that a crime against a victim has been committed, as a matter of justice, the victim is due the right to have the case prosecuted.[328]
2. If the government fails to proceed with a prosecution, the victim should have the right to a private prosecution.[329]
3. When a motion to suppress evidence is being considered by the court, absent a superior federal right of exclusion, a crime victim has a right to have all rules governing the admissibility of evidence in all criminal proceedings protect his or her right to justice.[330]
4. When a motion to continue is being considered, the court must consider the crime victim's right to a speedy trial or disposition. The criminal defendant may have a Sixth Amendment right to a

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324. *Id.*

325. *Id.*

326. *Id.*

327. Calder v. Bull, 3 U.S. 386, 388 (1798). ("The people of the United States erected their Constitutions, or forms of government, to establish justice, to promote the general welfare, to secure the blessings of liberty; and to protect their persons and property from violence.").

328. *See* ARIZ. REV. STAT. § 13-4438 (2025) ("[Crime victims] have rights to justice and due process under Arizona law that, among others, include the right to . . . a speedy trial and a prompt and final conclusion of the case . . . .").

329. The right to private prosecution is rooted in our justice system, as expressed *supra* Part I. Although not specifically discussed in this Article, it might be noted that private prosecution is already implied by Rule 2.4 of the Arizona Rules of Criminal Procedure, which provides that any person with reasonable grounds for believing another person has committed a crime may make a complaint against their offender. *See* Erdman v. Superior Ct., 433 P.2d 972, 977 (Ariz. 1967).

330. ARIZ. CONST. art. II, § 2.1(A)(11) ("[Crime victims have a right] [t]o have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights . . . .").

speedy trial, but it is unjust to the victim for the vindication of a wrong to take years. After conviction, it is unjust and therefore unconstitutional to delay the filing of post-conviction petitions beyond time limits set by the Legislature.[331]

5. After a conviction for a crime against a victim, the victim is entitled to have a punishment imposed by the court that is within the prescribed range set by the Legislature. It is among the fundamental purposes of the Arizona Criminal Code "to impose *just and deserved* punishment on those whose conduct threatens the public peace."[332] The consequences set forth in Arizona Revised Statute Title 13 (or any other state's criminal code) are solemn promises made to victims and defendants alike, along with society at large. The failure to impose them is unjust and therefore unconstitutional.[333] And any release programs administered by corrections or probation authorities must be administered so as to not undermine these promises.[334]
6. In Arizona, as a matter of justice, the victim has a right to have her offender's conviction and sentence upheld, even if there is a "technical error in pleadings or proceedings when upon the whole case it shall appear that substantial justice has been done."[335] Similarly, in Arizona, the victim has the right "[t]o be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process."[336] The victim also has the right "[t]o refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or other person acting on behalf of the defendant."[337] In upholding this right as constitutionally protected, the Court of Appeals for the Ninth Circuit reiterated the crime victim's

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331. *See* ARIZ. REV. STAT. § 13-4438 (2025) ("[Crime victims] have rights to justice and due process under Arizona law that, among others, include the right to . . . a speedy trial and a prompt and final conclusion of the case . . . ."); ARIZ. CONST. art. II § 2.1(A)(10). *But see* State *ex rel.* Napolitano v. Brown, 982 P.2d 815, 816 (Ariz. 1999) (concluding that the legislature cannot set time limits for post-conviction relief that conflict with the time limits set by rules adopted by the Arizona Supreme Court). As a topic for a future article, the authors maintain that *Napolitano* was wrongly decided and runs contrary to the victim's rights under § 2.1(D) of the VBR.

332. ARIZ. REV. STAT. § 13-101(6) (2025).

333. *See* ARIZ. REV. STAT. § 13-101 (2025).

334. *Id.*

335. ARIZ. CONST. art. VI, § 27; Turley v. State, 59 P.2d 312, 322 (Ariz. 1936).

336. ARIZ. CONST. art. II § 2.1(A)(1).

337. *Id.* art. II, § 2.1(A)(5).

"guaranteed" right to "justice and due process" as enshrined in the Arizona Constitution.[338]

7. Restitution is a promise made to victims.[339] It is an unconstitutional denial of the right to justice for the state not to take reasonable steps to ensure the payment of restitution before the convicted criminal is released from any legal supervision or disability.[340]
8. Finally, the victim has a right to be notified and heard when his attacker is set for release, the denial of which renders parole grants an unconstitutional denial of the right to justice.[341] The law's promises are mandatory duties for state officials, including judges.[342] As a matter of justice, the victim is due the right "to enforce any right or to challenge an order denying any right guaranteed to victims."[343]

Other states have similar promises, and these promises are rooted in the same fundamental principle: that victims have a preexisting right to justice, a right that is worthy of preservation and protection.[344] Justice for the victim and the community is the animating purpose of the criminal justice system.

V. CONCLUSION

"Justice" is the oxygen of human rights. It is the spirit of the United States Constitution. It is the guarantor of fairness and equality. And it belongs to everyone. In its original meaning, "justice" is the right to count on the government to keep its promises, which include the lawful and faithful administration of the law. The right to "justice" makes the victim more than a mere bystander with an occasional right to speak. It is the *raison d'etre* of the entire criminal process. Decisions that deprive crime victims of their rights to justice do not withstand state constitutional scrutiny.[345] The

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338. Ariz. Att'ys for Crim. Just. v. Mayes, 127 F.4th 105, 107 (9th Cir. 2025).

339. *See* ARIZ. CONST. art. II § 2.1(A)(8).

340. *See id.; see also* ARIZ. REV. STAT. § 13-804(E) (2025); Gilpin v. Harris, 553 P.3d 169, 172 (Ariz. 2024) ("[U]nder the VBR, a crime victim has a right to receive restitution from the person held responsible for the crime causing his or her loss.").

341. *See* State *ex rel.* Hance v. Ariz. Bd. of Pardons & Paroles, 875 P.2d 824, 830–31 (Ariz. Ct. App. 1993).

342. *See* ARIZ. CONST. art. VI, § 26.

343. ARIZ. REV. STAT. § 13-4437(A) (2025).

344. *See, e.g.*, Cassell, *supra* note 4, at 451–57.

345. *See* State v. Agundez-Martinez, 540 P.3d 1205, 1212 (Ariz. 2024) (reversing Court of Appeals' decision to vacate the conviction and sentence of a defendant who sexually abused three young children because "the court of appeals' interpretation could deprive victims of their rights to justice and due process as contemplated in the Victims' Bill of Rights").

applications proposed here are only starting points and food for thought. They are not exhaustive. If nothing else, the authors hope that this article begins a new conversation, prompting lawyers and judges to expand the horizons of justice and revive a concept that forms the basis of our laws and freedoms.