



الرقم الدولي : ISSN: 2075-7220

الرقم الدولي العالمي : ISSN: 2313-0377

## مجلة الحقوق والعلوم القانونية والسياسية



مجلة علمية فصلية محكمة تصدر عن كلية القانون بجامعة بابل

السنة السابعة عشر

2025

العدد الأول

رقم الإيداع في دار الكتب والوثائق ببغداد 1291 لسنة 2009



Print ISSN : 2075-7220

Online ISSN : 2313-0377

## Al-Mouhaqiq Al-Hilly Journal For Legal and Political Science



Quarterly Refereed and Scientific Journal Issued By College of Law in Babylon University

First Issue

2025

Seventeenth year

No. Deposit in the Archives office – office 1291 for the national Baghdad in 2009

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مجلة علمية فصلية محكمة تصدر عن كلية القانون بجامعة بابل

العدد الأول

العدد السابع عشر

2025

البريد الإلكتروني

<https://iasj.rdd.edu.iq/journals/journal/view/153>

رقم الإيداع في دار الكتب والمكتبات: 1291 لسنة 2009

**The Moral Justifications for Providing Remedy for Human Rights Violations****Faris Kareem Mohammad****Law College - University of Babylon****f.alanaibi@gmail.com**

تاريخ النشر: 2025/3/9

تاريخ قبول النشر: 2025/1/19

تاريخ استلام البحث: 2024/12/2

**Abstract**

This paper examines whether Moral principles, particularly social contract theory place a duty on the state to have a domestic law capable of properly investigating, prosecuting and punishing human rights violations. Victims need to be provided with justice and the social equilibrium of the state, upset by these acts needs to be restored. It is argued that victims possess a moral entitlement to state intervention in investigating, prosecuting, and punishing individuals who infringe upon their right to life. Therefore, neglecting this responsibility undermines the very basis of the state's legitimate authority over its citizens. Further, unless a state acknowledges in practice that victims have a moral right to know the truth about what measures have been taken to prevent the targeting of their lives and allows them to participate effectively in bringing to justice those who actually targeted their lives, it will have breached the morally binding principles of the social contract and the moral law.

**Keywords:** The Right to Justice, Social Contract Theory, State Responsibility, Human Rights.

**المبررات الأخلاقية لتوفير سبل الانتصاف لانتهاكات حقوق الإنسان**

م.د. فارس كريم محمد  
جامعة بابل - كلية القانون

**الخلاصة**

تبحث هذه الورقة في ما إذا كانت المبادئ الأخلاقية، ولا سيما نظرية العقد الاجتماعي، تفرض واجباً على الدولة في أن يكون لديها قانون محلي قادر على التحقيق في انتهاكات حقوق الإنسان ومقاضاة مرتكبيها ومعاقبتهم بشكل صحيح. يجب توفير العدالة لضحايا العنف المرتكب من قبل الجهات الفاعلة غير الحكومية ويجب استعادة التوازن الاجتماعي في الدولة الذي اختل بسبب هذا العنف. يجادل هذا البحث بأن للضحايا حقاً أخلاقياً في جعل الدولة تحقق مع المسؤولين عن انتهاك حقهم في الحياة ومقاضاتهم ومعاقبتهم. إذا أهملت الدولة في دعم هذا الحق، فإن الشرعية الأخلاقية لسلطة الدولة على مواطنيها ستكون موضع شك. علاوة على ذلك، يجادل هذا البحث بأنه ما لم تعترف الدولة عملياً بأن للضحايا حقاً أخلاقياً في معرفة الحقيقة حول التدابير التي تم اتخاذها لمنع استهداف حياتهم وتسمح لهم بالمشاركة بفعالية في تقديم أولئك الذين استهدفوا حياتهم فعلياً إلى العدالة، ستكون قد انتهكت المبادئ الأخلاقية الملزمة للعقد الاجتماعي والقانون الأخلاقي.

**الكلمات المفتاحية:** الحق في العدالة، نظرية العقد الاجتماعي، مسؤولية الدولة، حقوق الإنسان



## 1. Introduction

### 1.1 Definition of the Research Topic

The right of victims of violence to seek reparation has necessitated the identification of diverse factors pertinent to effectively rectifying the inflicted harm (Doak, 2008). This right to reparation refers to “the range of measures that may be taken in response to an actual or threatened violation of human rights” (Shelton, 2005, p. 8). The measures which can be taken to provide a remedy for victims can be divided into two main categories. First, the state has a procedural obligation to respond vigorously to criminal acts, including preventing them from happening in the first place and to ensure that there is an effective criminal justice system in place to investigate, prosecute, and punish perpetrators. Second, the state has a substantive obligation to provide adequate compensation to victims for the harm they have suffered (Antkowiak, 2008). The procedural obligations to provide a remedy for the violation of human rights are stipulated in several international and regional human rights instruments. The latter guarantees the entitlement of victims to be provided with effective procedural investigation, prosecution, and punishment of the perpetrators, and also to have their substantive right to remedy observed (Doak, 2008; AL-Anaibi, 2018). However, it is important to note that while these instruments have expressed these rights in a formal manner, case law has significantly strengthened their application. Victims have the right to expect that the state will conduct thorough and effective investigations into deaths and injuries caused by criminal acts, and that the perpetrators will be prosecuted and punished. In the Report of the Independent Expert to Update the Set of Principles to Combat Impunity submitted to UN Commission on Human Rights’, the right to justice has been described in principle 19 as “states shall undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and take appropriate measures in respect of the perpetrators, particularly in the area of criminal justice, by ensuring that those responsible for serious crimes under international law are prosecuted, tried and duly punished” (UN Commission on Human Rights, 2005). Victims have the right to know why they were targeted, to find out the full truth about

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what happened to them, and to see the people who harmed them held accountable (Doak, 2008; Sorochinsky, 2009).

However, an analysis of these interconnected obligations expressed in a variety of international instruments and decisions reveals that they are merely declaratory and thus ineffective unless combined with a mechanism to enforce them (Doak, 2008). Thus, enhancement of trust in the morality and legitimacy of the state's criminal justice system depends on implementing retributive justice and victims perceiving that they have been treated fairly throughout.

## **1.2 The Importance of the Research**

To address the victims' legitimate expectations that the state has a moral duty to investigate when someone's right to life has been violated, and to prosecute and punish the perpetrators, this paper investigates how ethical principles, particularly social contract theory, support the right of victims to justice and the state's duty to investigate and prosecute the deprivation of the human right to life, especially when committed by non-state actors.

## **1.3 The Objectives of the Research**

This paper examines the status of the rights of victims in the climate of widespread indiscriminate acts of violence against the right to life by non-state actors, and the lack of remedy. To do this, further important issues need to be examined, such as: how the duties of the state to provide justice have been addressed, in accordance with philosophical/ethical principles, particularly social contract theory.

Under social contract theory, the state has a moral obligation to take steps to prevent non-state actors from taking the life of its citizens. This theory has been proposed by the seventeenth century political philosophers including, inter alia, Hobbes, Locke and Rousseau. Their philosophy essentially states that individuals give up a specific part of their freedom to the state in exchange for the latter's duty to protect them from harm by others. While social contract theory has been criticized, it also has some advantages (AL-Anaibi,

2018). It provides a clear set of standards that can be used to decide what steps need to be taken to move from a society without the rule of law to one with an effective judicial system that upholds the rule of law and maintains stability and peace. (Hall et al., 2000). It also gives people a strong reason to follow moral rules that promote social peace and prosperity. The theory's greatest strength is that it provides both a logical and moral basis for arguing that the state must protect the right to life, and that it is justified to disobey the state if it fails to do so (Hall et al., 2000). Thus, if a government that is supposed to protect its citizens fails to do so, it has broken its promise to its citizens. This means that citizens are no longer obligated to obey the law, according to the principle of reciprocity. (Hall et al., 2000).

#### **1.4 Research Problem**

The increasing prevalence of indiscriminate violence against the right to life in modern times is a growing public concern. Although numerous domestic and international legal tools require the state to provide a remedy when this right is violated and to put victims at the centre of the state's criminal justice system, the state, it will be argued, continues to disregard or be unable to carry out these obligations. The problem this study addresses is: when acts against the right to life have been committed, do social contract principles place a moral procedural obligation on the state to actively investigate, prosecute and punish the perpetrators? And if so, is this a legal obligation to which the victims are entitled? It will, in fact, be argued that not only social contract theory but also basic moral law principles are to be applied in the formulation of an effective criminal justice policy. This paper questions whether the current approach of states' criminal justice with regard to the procedural obligations is valid according to both, the moral principles, and the mandate given or left to them by its citizens.

#### **1.5 Research Methodology**

This study aims to provide an in-depth analysis of moral procedural obligations, examining different perspectives on their nature and addressing the criticisms they have faced. It makes a valuable contribution by introducing a new and insightful way to analyse the state's moral

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obligations to victims of crime, and presenting the findings of this analysis. As revealed by analyses conducted by this work, the the justice policy of the state should not address such criminal acts of as a harm only done to society in general but also as an individual harm done to each victim for whom justice must be provided. Even if victims have not survived the attacks upon them, they and their dependants still have the right under social contract theory and moral law to receive individual justice.

## **1.6 Research Plan**

To support the argument sets in this paper, the following will be addressed in turn: (2) the ethical obligation and the right of the state to punish, (3) the debate about what rights victims of crime have and how those rights should be protected and (4) the right of victims of crime to be involved in the criminal justice process.

## **2. The Ethical Obligation and the Right of the State to Punish**

### **2.1. The State's Ethical Obligation**

One of the principal reasons for which individuals enter society is to preserve their right to life. They make a social contract by which they subject themselves to the governing body of the society and entrust some of their rights to it. They agree to obey the society's rules which aim to regulate human conduct in order to establish order and safeguard the lives of all members (Hall et al., 2000). Should any of the individuals breach these rules, they are to be held accountable and punished (Stickels, 2003). As it seems correct, according to social contract theory, to maintain that justice consists solely in the observance of the law of the state which the citizens have contracted to do. It follows from this that if citizens break the law, the state has the right and duty to punish them (Stickels, 2003). According to James Rachels, it is violation of the principles of reciprocity, underlying the contraction theory of punishment, which validates justification the punishment of criminals (Rachels, 1993). He asserts that "we recognize the rules of social living as limiting what we can do only on the condition that others accept the same restrictions on what they can do. Therefore, by violating the rules with respect to us, criminals release us from our obligation toward them

and leave themselves open to retaliation” (Rachels, 1993, p. 150). Accordingly, the state, in the case of violations of the right to life, has this right and duty to punish in order to bring justice to the victims and to deter others from endangering the society’s safety (Goh, 2013).

However, a moral justification for punishment needs to be considered if it is said that victims of violence have a legitimate right to seek justice from the state against the perpetrators. Despite the above reasoning, there have been debating for a long-time what punishment is and why the state has the right to punish people (Brettschneider, 2011; Yates, 2012).

## **2.2 Hobbes’ Perspective on the Justification for Punishment**

In his book *Leviathan*, Hobbes asks whether the state possesses the right to punish, “by what door the right or authority of punishing, in any case, came in”? (Hobbes, 1985). Hobbes answer is rather involved. On the one hand, he argues that the sovereign has a natural right to punish, but since punishment is an evil, subjects cannot consent to accept it (Hobbes, 1985; Yates, 2012; Norrie, 1984). From the assertions of Hobbes, subjects have the right to resist punishment, but legitimate states have no duty to respect that right if the subject has violated the social contract (Brettschneider, 2011). This means that even though people in a newly created state cannot consent to being punished for violating the social contract (because no one has the right to punish before the state exists), the state can still take on the right to punish (Yates, 2012). States acquire the right to punish on behalf of their citizens through the implied consent of the citizens.

## **2.3 Rousseau's Perspective on the Basis for Punishment**

Rousseau believed that punishment is morally justified, but he also considered what a legitimate right to prosecute and punish should be in real-world politics (Brettschneider, 2011). His argument is based on the social contract, which states that when people freely form a state and agree to a constitution, they are also implicitly consenting to the state's laws (Brettschneider, 2011). In the matters we are considering, while individuals’ right to life is better protected by their being members of a state, they must also reciprocally abide by the

laws of the state and refrain from infringing the rights of others (Brettschneider, 2011). Since individuals are part of the general will, then laws legitimately apply to them. Should an individual murder someone and be prosecuted and condemned to death, then he must accept or resign himself to execution, not resist it. This resignation to his death does not mean that he wants to die (self-preservation is, perhaps, the greatest instinct of man) but that he recognises that it is right for him to die and to submit to it (Brettschneider, 2011). Rousseau refers to this as 'consent'. 'Consent' is a correct description but, perhaps, it is not the best word because it has positive overtones. 'Submit' may be preferable as it is more negative in tone.

Rousseau argues that all citizens must agree that taking away the right to life violates the principles of the social contract, and, therefore, it must be punished. Rousseau then suggests that it may be necessary for a violator to receive the death penalty as a punishment and as a deterrent to others (Brettschneider, 2011). Subsequently, as citizens require their right to life to be protected, they also agree hypothetically to submit themselves to punishment should they violate the right to life of others (Rousseau J.-J. , 1968). This kind of punishment based on the requirements of social contract principles can be clearly found in many decisions of the US Courts, for example in (Vandiver v. state, 1985) case, the Court held that "It is not vengeance for society to require the same price to be paid by one who has intentionally taken a life under circumstances where he knows the cost. It is the fulfilment of the terms of our social contract. It is the essence of general deterrence that price must be paid". What about the actions of the state? It is punitive measures must be legitimate and proportionate; they must not be too lenient or too severe in relation to the nature of the crime. Punishment must fit the crime. In addition, as a citizen he has the right to a fair, unbiased and just trial in accordance with the legitimate requirements of the social contract (Rousseau J.-J. , 1968). For example, the Court held in (State v. Trexler, 1985) that "Implicit in our criminal justice system is the social contract notion that in exchange for our inability to discover the

‘absolute’ truth, we assure criminal defendants that we will provide them as fair a trial as humanly possible” (Allen, 1999, p. 31).

Rousseau believes that the general will of the members in a state is only valid if it both requires individuals to obey the lawful law and, also, prevents the state from unfairly taking away the rights of innocent individuals, even if the state claims to be doing so for the common good (Rousseau J.-J. , 1968).

#### **2.4 Modern Writers’ Viewpoint on the Justification for Punishment**

Drawing on the ideas of Rousseau, Brettschneider argues that the rights of individuals in criminal justice, which arise from the social contract, can be understood in two ways. First, the idea of “hypothetical consent” to punishment means that citizens freely give the government the right to punish them when they form a state. Second, the social contract’s guarantee of citizens’ fundamental rights precludes the state from abusing its authority to punish (Brettschneider, 2011). Thus, according to (Hall et al., 2000), the social contract is a pragmatic way to promote morality. By incorporating a moral code into the state’s criminal justice system, the social contract makes it much more likely that victims will receive justice than they would in a state of nature before society and social contracts existed. While the social contract offers a specific justification for state authority and punishment, its absence does not negate the existence of broader ethical considerations or invalidate the potential for justified sanctions. For example, murder must be recognised as a serious crime even in an unjust state without a valid social contract because it violates the natural rights of individuals (Brettschneider, 2011). Hence, even without a social contract, the state must punish criminals because moral law demands it. Moral law is universal and binds all people. Without it, no rational way to distinguish between right and wrong can be said to exist. (Hall et al., 2000; Brooks, 2003).

It can be argued that even if a social contract conceives that justice is imposed merely because individuals have broken the terms of the contract, this does not debar victims from

appealing for justice for themselves by resorting to moral law. The right to justice is a fundamental moral right that is not created by the social contract, but rather is superior to it. The social contract must be consistent with the moral law to be legitimate. (Hall et al., 2000). This position is, also, adopted by supporters of the theory of Natural Rights whose opinions concerning fundamental issues of justice may be summarised as follows: "Justice and injustice do not ultimately derive from positive Law, Justice provides a criterion for the goodness of law, Justice is based on natural right and consists in rendering to each his due....." (Bird, 1976, pp. 29-32). Moreover, when a state guarantees the victims' rights to justice in its system, it must practically implement this right. If not doing so, it should be considered to have failed to honour its contract with them, thereby, voiding the social contract. Such voiding not only releases citizens from the social contract and subjection to the rules of the state, but also may lead to rebellion and revolution. This is because the social contract explicitly allows for civil disobedience when a state fails to provide justice for its citizens (Hall et al., 2000). According to (Jones, 2013), individuals have moral rights that do not depend on whether or not society or the government recognizes them. This means that victims have the moral right to demand justice, even in societies with unjust laws. This is because a legitimate social contract must respect the moral rights of individuals. Accordingly, it can be argued that the pursuit of justice for victims by holding perpetrators accountable is not merely a legal obligation, but a fundamental principle embedded in both moral law and social contract theory. This stems from the inherent value placed on human life and dignity, which transcends codified laws and necessitates a response to violations. Recognizing this moral imperative underscores the importance of ensuring victims' right to justice, regardless of specific legal frameworks. All criminal justice systems must respect this right. However, in certain instances, existing state laws may present conflicting directives, raising questions about balancing competing values and priorities. This is because states often have other aims when designing and implementing their criminal justice systems, such as deterrence and rehabilitation (Hall et al., 2000). The impact of such conflict on the of victims' rights to justice will now be addressed in the next part.



### 3. The Debate regarding Victims' Rights to Justice

This debate will be examined in relation to the following points.

#### 3.1 Punishing Criminals for the Benefit of Society as a Whole

Building upon Rousseau's social contract theory, Cesare Beccaria in his seminal work "On Crimes and Punishments" argues that a functioning criminal justice system is essential to uphold the societal pact. By ensuring consequences for those who breach this agreement, the system safeguards the collective well-being and protects the rights of law-abiding citizens (Beccaria, 1764). Redressing victims of crime is considered one of the key purposes of criminal justice systems. While prioritizing societal well-being through deterrence was central to Beccaria's perspective, it is crucial to contextualize this within his historical and philosophical framework. His arguments emerged during a time of harsh punishments and limited understanding of individual rights (Beccaria, 1764). Beccaria distinguishes criminal justice from civil justice. He considers that because crime damages society, it requires to be addressed by the criminal justice system. Decisions concerning prosecution and punishment should be under the control of the state not of victims (Beccaria, 1764). Punishment should primarily concern the repayment by the criminal of his debt to society and, also to serve as a deterrent by discouraging both the individual wrongdoer and others from repeating similar transgressions in the future. The only reason to punish criminals is to benefit society, not to compensate individual victims (Beccaria, 1764). Additionally, the punishment must be proportionate to the crime (Beccaria, 1764; Binder, 2002). If the punishment is too harsh, it is unfair, and if it is too lenient, it will not deter crime. (Beccaria, 1764; Hoggard, 2013).

Consequently, Beccaria's theory of punishment is forward-looking because it seeks to deter future crimes. On the other hand, the retributive theory of punishment is backward-looking since it focuses on proportionate punishment of an individual for a crime already committed (Hoggard, 2013). Similarly, Jeremy Bentham believed that punishment should be used to benefit society and should be proportionate to the crime committed (Bentham, 1894, p. 326).

He also argues that since “punishment itself is an evil and should be used as sparingly as possible” and that a form of punishment should not be used if “the same end may be obtained by means more mild”. Punishment can only be justified if it benefits society more than it harms the criminal (Ashworth, 1986, p. 92). The moral concept of “just deserts” cannot be deemed to be justification for punishment as, according to utilitarian principles, punishment can only be given for consequential reasons, such as deterrence (Bentham, 1894; Honderich, 1989). This point of view raises concerns about the potential impact on victims’ rights to access justice. Victims have a natural right to justice. Before societies existed, victims had the right to defend themselves and punish their attackers (Whitman, 2004). Before societies had laws and police, victims of violence could seek justice for themselves or with the help of their family (Stickels, 2003). When individuals formed societies, they agreed by social contract to give the state the power to administer justice on their behalf. (Whitman, 2004). In exchange for giving the state the power to administer justice, the state has a moral obligation to protect its citizens from violence and to bring perpetrators to justice, even after violence has already occurred. Violence should be seen as harming the individual victim, not just the state (McDonald, 1976), The state has the right to punish criminals because they have not shown self-restraint in respecting the rights of others that are protected by criminal law. It is not fair to allow criminals to benefit from their crimes (Ashworth, 1986).

### 3.2 Justice is the Right Thing to do

Immanuel Kant, one of the first modern philosophers to develop a theory of punishment as a moral imperative, supports this view of punishment of ‘just desert’. In some of his writings, the philosopher Immanuel Kant criticized the use of punishment to achieve other goals, such as deterrence or rehabilitation (Honderich, 1989; Giannini, 2010). According to Kant, punishment by the state is only justified if it is imposed solely on the criminal for their crime, and not to achieve other goals, such as deterring crime or rehabilitating the criminal (Brooks, 2003). Thus, administration of punishment by the state is only to be based on criminal guilt and not on utilitarian, social reasons. In addition, punishments should be

proportional to the severity of the crime committed. Kant believed that without retributive justice, human life would be worthless (Kant, 1996, pp. 105, para 6:332). Moreover, punishment is a physical harm which is justified by the inner wickedness demonstrated by the criminal in his act of killing (Brooks, 2003). Kant believes that criminals must be punished for breaking moral laws, and that this is a categorical imperative, which means it is an unconditional moral obligation (Kant, 1996). However, recognizing the limitations of the state in achieving perfect justice, Kant argued that its focus should be on practical matters like public safety. This necessitates punishment not only as a form of retribution, but also as a deterrent to discourage potential criminals (Brooks, 2003; Schield, 1983). He was well-aware that this creates a dichotomy which he called a “quandary” (Kant, 1996).

Few commentators who write about Kant's theory of punishment acknowledge this distinction. Most writers believe that Kant only supported retributive justice and would not have supported making laws for utilitarian purposes. (Brooks, 2003). F. H. Bradley, like Kant, also holds that to criminally take away the life of another inherently contradicts fundamental ethical principles and necessitates retributive punishment in alternative forms. Punishment should only be given to those who deserve it, and for no other reason. Doing otherwise is wrong and immoral (Bradley, 1972). Some have criticized the idea of punishing criminals only because they deserve it, because it means that punishment cannot be used to benefit society in other ways (Malamud-Goti, 1990; Christopher, 2002). Retributive justice in causing pain to a criminal may demonstrate that justice has been done but it fails to acknowledge the political theory that the basic duty of a state and its positive law is to act for the benefit of society as a whole (Hart, 1968). However, H. J. McClosky emphasizes the danger of employing positive law unjustly to bring greater benefit to a state. Moral law demands punishment to be strictly in proportion to the gravity of a crime. As McClosky neatly puts it, it is possible to say that “punishment was useful but undeserved, and deserved but not useful. It is not possible to say that punishment was just although undeserved” (McClosky, 1972, p. 121). He asserts that the best way to assess the net utilitarian benefits

of punishment and the gravity of offences which require retributive punishment is not to look at which punishment produces the greatest good or, what, in practice, are the active retributive punishments imposed, but rather to examine in detail the exact nature of the offence itself (McClosky, 1972).

### 3.2.1 The Difficulties of Seeking Retributive Justice

Prioritizing retributive punishment is not always possible or the best way to address the many atrocities that societies face (Huneeus, 2013). In this context, transitional justice is a field of study that was developed to help countries that have experienced conflict or human rights abuses respond to these atrocities in a way that promotes justice, peace, and stability. (Szoke-Burke, 2015). It is a set of ways that societies can deal with the past after they have experienced violence or human rights abuses.

It encompasses a wide range of legal and non-legal measures designed to address past human rights violations and promote future peace and stability. This includes holding perpetrators accountable, strengthening the rule of law, and supporting the healing of victims (Andeieu, 2010). By examining the past and looking to the future, transitional justice upholds that “successive governments must build institutions that will bring justice to the past, while showing their commitment to good governance in the future” (Andeieu, 2010, pp. 2-4). Bridging the gap between the aspirations of justice and the pragmatic constraints of politics might unlock avenues for transformative societal change, potentially altering its very core principles (Rivera, 2014). This transformation will pave the way for the state to fully embrace the rule of law, fostering stability and rebuilding public trust in the political system and its institutions. This, in turn, will provide a solid foundation for crafting a new social contract (Rivera, 2014).

Pablo de Greiff, a renowned expert on transitional justice, argues that this process can serve as a crucial tool for forging a new social contract between the government and its citizens.

It can do this by serving to achieve two intermediate goals: recognition and civic trust. It can also help to achieve two ultimate goals: reconciliation and democracy (Orford, Hoffmann, & Clark, 2016, p. 786). Transitional justice can help societies to renegotiate their social contract (often through constitutional drafting) by condemning past abuses of power, recognizing past injustices and addressing the harm inflicted on victims through reparations (Orford, Hoffmann, & Clark, 2016). Drawing on the principles of social contract theory, transitional justice can offer a path towards healing by transcending past atrocities and breaking cycles of grievance and vengeance. By facilitating societal unity across divisions, it lays the groundwork for a renewed social contract that fosters inclusion and shared values (Orford, Hoffmann, & Clark, 2016, pp. 786-787).

From the victims' perspective, the justification for judicial punishment in life-violating crimes centres not only on holding perpetrators accountable but also on ensuring their own safety and a sense of justice being served. However, victims have been neglected and denied effective participation in both retributive and utilitarian criminal justice procedures in states. Because of these victims have sought to gain participation in states' criminal proceedings in order for them to see not only that retributive justice has been done but also that they themselves have been treated fairly throughout the judicial process. Unless this happens the trust of citizens, particularly victims, in the authority of their state's criminal justice system will be undermined (Wemmers & Manirabona, 2013). Based on this and because the recent developments in the utilitarian and retributive theories of justice, it is important to carefully study the need for victims to participate in the criminal justice process.

#### **4. The Participation of Victims in the Criminal Justice System**

##### **4.1 Crime Control and Due Process**

Until the late 20th century, the two models of "Crime Control and Due Process" have limited the participation rights of victims in criminal justice proceedings (Giannini, 2010). Professor Herbert L. Packer believes that these models are a way to work together to achieve the goals of the social contract (Packer, 1964). For Professor Packer, the Crime Control Model is



“based on the proposition that the repression of criminal conduct is by far the most important function to be performed by the criminal process” (Packer, 1964, p. 9). The primary goal of the Crime Control model is to efficiently control crime and prosecute offenders in a way that benefits society as a whole, rather than individual victims (Packer, 1964). According to this model, the essential features of criminal justice systems can be described as follows. First, that an act of violence against an individual rather than being a private wrong is mainly an offence against the security and public order of the state (Hudson, 1984). These violations of the social contract require that perpetrators receive punishment with the purpose of deterring further breaches of the contract (Packer, 1964). Second, the individuals should leave the control of crime and the execution of justice to trained state professionals (McDonald, 1976; Giannini, 2010). Third, since this would impair a state’s ability to operate in the public interest, it is inappropriate for a state to be held responsible for any errors, carelessness, or inefficiencies in the way it administers the criminal justice system (Hudson, 1984). Fourth, victims should be limited to being a source of information. Their rights to see perpetrators punished should be left to criminal justice procedures (Giannini, 2010). Finally, such a model would succeed in maintaining the confidence of citizens that the state is fulfilling its duty to hold violators of the social contract accountable (Roach, 1999). It also assures citizens that the state means it when it proclaims “We acknowledge your harm and seek to eliminate any further harm” (Giannini, 2010, p. 77). This form of criminal justice is grounded in the utilitarian concept.

The Due Process model focuses on preventing the government from abusing its power in the criminal justice system. It does this by placing limits on “the Crime Control model” (Packer, 1964). This process seeks to protect the rights of people accused of violence to prevent them from being wrongly convicted (Hudson, 1984). Also, the process seeks to protect its innocent citizens by convicting the guilty (Packer, 1964). This model is more in line with the retributive theory of justice than the utilitarian theory of justice (Giannini, 2010). Some Commentators have criticized the Packer models of criminal process because

they do not give enough consideration to the right of crime victims to engage with the criminal system of justice (Roach, 1999). Nile Christie in his “Conflicts as Property” holds that citizens, particularly victims, are heavy losers under modern criminal control models which, in many cases, have lost opportunities to involve victims in procedures important to them (Christie, 1977). Victims have not only been left to suffer, lose material possessions, or sustain physical injuries, but they have also been denied the right to participate in the legal proceedings related to their cases “stolen” by the state and lawyers (Christie, 1977). Denying victims the right to witness the cross-examination of their attackers in court has humiliated and angered them (Christie, 1977). Christie asks, “when the victims are small and the offenders big—in size or power—how blameworthy then is the crime?” They have no alternative but to rely for understanding of their cases on knowledge of general classic definitions of what constitute criminality (Christie, 1977, p. 8). Society as a whole is deprived of the opportunity to know the truth about the violations that have occurred. Additionally, offenders are denied the opportunity to communicate with their victims, thus, they lose the important possibility to receive forgiveness. Christie demands that criminal justice systems should recognize and restore the rights of victims to participate in cases to which they are a party (Christie, 1977; Zender, 1994).

#### 4.2 Modern Developments

It seems fair to suggest that public prosecution systems, whether based on retributive or utilitarian principles, have until recent times largely ignored the interests of victims in criminal prosecutions (Al-Ani & Almuhaqqi, 2022, pp. 183-184). Victims have not had a right to have offenders brought to justice (Giannini, 2010). However, the protests of victims against this as an injustice has led, in recent times, to criminal justice systems permitting victims to actively take part in criminal proceedings (Giannini, 2010). Even though victims of violent crime may feel powerless, isolated, and afraid, (Wellikoff, 2003) research shows that they are more affected by the criminal justice system’s limited involvement of victims in the prosecution process than by the crime itself (Erez & Tontodonato, 1992). Because of this, currently, it is recognized that a third model of criminal justice is needed, one that

focuses on Victims' Participation (Al-Robary & Al-Ani, 2023). This new approach is called the Victims Participation Model (Beloof, 1999).

#### 4.2.1 The Victims Participation Model

At the heart of the Victims Participation Model is the recognition that victims of crime are the most important individuals in the criminal justice system and that they deserve to be treated with dignity, respect, and fairness (Beloof, 1999).

Experts claim that to ensure that victims can participate effectively in the criminal justice system and to speed up the process of retributive and utilitarian justice in public prosecution systems, the adoption of the theory of procedural justice should be guaranteed (Giannini, 2010). Victims have a right to procedural justice, which means that they should be satisfied with both the outcome of their case and the way in which it was handled (Giannini, 2010). The development of the theory of procedural justice has not only led to increased attention to the fairness of the decision-making process, but also to further consideration of fair treatment throughout the judicial process for those affected by the final decision (Giannini, 2010). It has been asserted that fair process strengthens the participant's trust in those making the decisions and may subsequently lead, through the satisfaction of the participant, in future to be more earnest in complying with the law and cooperating with the authorities (Tyler T. R., 2007). Even if victims are not satisfied with the outcome they want, they are more likely to obey the law in the long run if they feel that the process was fair. (Tyler T. R., 1992). However, can fair procedures be said to benefit the victims of criminal acts, as it seems that the tendency in procedural justice is to mainly act fairly towards offenders in order to promote the utilitarian goals of social good, stability and general deterrence? (Paternoster et al, 1997). The rights of victims of criminal acts may well benefit if fair procedure is granted to them as well as to offenders and will also lead victims to feel that they have received satisfaction and encourage them to have confidence in the law and its procedures (Giannini, 2010).

Consequently, criminal justice systems that listen to and respect the concerns of victims, and work to bring perpetrators to justice, will maintain the public's trust (Wemmers & Manirabona, 2013). Otherwise, as Professor Packer states “the failure of law enforcement to bring criminal conduct under tight control is viewed as leading to the breakdown of public order and thence to the disappearance of an important condition of human freedom” (Packer, 1964, p. 9). From a basic utilitarian perspective, when criminals are prosecuted effectively, it benefits society and encourages citizens (including victims) to continue to support and obey the laws of their country (Giannini, 2010). However, it should be noted that it is important for the participatory parties not only to see that the outcome of the judicial process is fair but also to see the fairness of the whole process itself as it unfolds (Giannini, 2010). This means that the process has great value in itself for the participants and, thus, fair treatment throughout the criminal justice process is not just a way to achieve a just outcome; it is also important for its own sake (Lamparello, 2006).

#### 4.2.2 Group Value Theory

Procedural justice according to the above approach has been described as “group value theory” (Heuer et al, 1999, p. 1280). This stresses that “people care whether their treatment .... is fair because fair treatment indicates something critically important to them—their status within their social group” (Miller, 2001, p. 529). Accordingly, when individuals are treated with respect and dignity by the criminal justice system, given the opportunity to tell their story and have their concerns heard, and feel that they are valued members of society, they are more likely to trust that the system is fair and legitimate (Epstein, 2002). The legitimacy of any given criminal justice system may thus be enhanced if the state acknowledges that the victims deserve to know the truth about the exact nature of state’s respond to prevent the violation of their right to life and reveals the facts about their targeting. This is also as important in that it may serve as a “psychological premise”, for providing justice and reconciliation for individual victims, as well as to prevent future violations. However, for truth to effectively achieve the goals mentioned above, it must be

itself as complete as possible, made public and should give reasons for why violence has occurred. As Van Boven puts it “only the complete and public revelation of the truth will make it possible to satisfy the basic requirements of the principles of justice” (Doak, 2008, pp. 180-182).

A criminal justice system that follows the group value theory of procedural justice should aim to restore the victim's dignity and sense of belonging in society, which were taken away by the crime. Prosecution and punishment of the perpetrator will ensure this (Eisenstat, 2004). A legal system that respects victims and gives them a meaningful role in the prosecution of perpetrators shows that it cares about the harm that was done to them, and also helps to repair the damage that crime does to society as a whole (Goti, 2002). When society recognizes the harm done to victims of crime, it builds trust in the legal system and helps victims feel safer and more supported as they begin to heal (Heuer, 2005).

The group value theory of procedural justice can be incorporated not only into the utilitarian approach to criminal prosecution, but also into the retributive theory (Giannini, 2010). Driven to a large extent by concern that the criminal justice system process may be influenced by victims intend on revenge, the tendency of retributivists is not to recognize the interests of victims (Christopher, 2002). However, while traditional retributive theories primarily focus on the offender's culpability, investigating deeper into the fundamental justification for punishment inevitably brings the victim's perspective into the equation (Christopher, 2002; Fletcher G. P., 1999). Although upholding collective norms through social contracts empowers the state to punish (Hampton, 1992), it is essential to acknowledge the distinct, personal impact of these violations on individual victims, who experience unique and specific harm (Giannini, 2010). A truly legitimate criminal justice system cannot turn a blind eye to the specific pain and suffering endured by individual victims. Their experiences must be acknowledged and incorporated into the systems's approach to justice (Christopher, 2002).



The question thus arises as to how the rights of victims are capable of being acknowledged in a retributive justice system. Professors George P. Fletcher and Jean Hampton, although they present distinct arguments, claim that this can be achieved by acknowledging the moral harm done to victims and seeking to correct the moral imbalance which has occurred (Giannini, 2010). According to Fletcher, a perpetrator's power extends beyond the act of the crime itself, creating a lasting "dominance" over the victim that continues to impact their lives even after the crime has seemingly ended (Fletcher G. P., 1999, p. 57). Therefore, the reason for the state to arrest, try and punish perpetrators "is to overcome this dominance and re-establish the equality of the victim and offender" (Fletcher G. P., 1999, p. 58). Should a state fail to do this it would be guilty of "abandoning victims in their suffering and isolation". A public prosecution system of criminal justice must embody the solidarity of the whole community in supporting the victim (Fletcher G. P., 1994).

If a state fails to bring charges against and penalise those who commit violent crimes, it will not be able to eradicate its dominance over victims (Fletcher G. P., 1994). The dominance theory in a justice system seems to dovetail nicely with the group value approach by standing in solidarity with the victims, affording them dignity and respect throughout the legal process and reaffirming the truth that all human beings are equal (Heuer, 2005). Professor Hampton also asserts that the criminal acts of offenders send a message to both the victim and the rest of society that victims are of diminished value (Hampton, 1992). To hold perpetrators accountable for their acts by a process, such as a judicial trial, vindicates the value of victims denied by the perpetrators and upholds the victims' equal value with their fellow-men which is based on their shared humanity (Hampton, 1992). According to Hampton, when reacting to crime, "we are morally required to respond by trying to remake the world in a way that denies what the wrongdoer's events have attempted to establish, thereby lowering the wrongdoer, elevating the victim, and annulling the act of diminishment" (Hampton, 1992, pp. 1686-1687). Hence, even if retributivism only requires offenders to receive their just desert, the expressive retributivism advocated by Hampton

acknowledges that a criminal justice system must take into account in the punishment of perpetrators the individual and collective outrage created by crime (Hampton, 1992). If criminal behaviour expressively sends out a message of humiliation towards victims to the whole community, 'the state's behavior in the face of an act of attempted degradation against a victim is itself something that will either annul or contribute further to the diminishment of the victim' (Hampton, 1992, pp. 1686-1687).

The approaches of Hampton and Fletcher map well unto the Victim Participation Model proposed by Beloof (Giannini, 2010). When victims are treated with dignity and respect, are allowed to express themselves in the judicial proceedings and are aware that the judicial makers are unbiased and trustworthy, the suffering caused to victims is capable of being erased (Giannini, 2010). A positive message would, also, be sent to victims, perpetrators and society regarding the value of victims (Giannini, 2010). In most contemporary states, the response to crime is governed by the well-established public prosecution system (Cardenas, 1986). This system, which may be said to have its origins within social contract theory, attempts to find the correct balance between various elements, such as the due prosecution of perpetrators of criminal acts (while at the same time observing their basic human rights), control of crime and avoidance of vengeance on the part of victims (Giannini, 2010). Unfortunately, this system has gradually strayed from curbing vengeance by victims to ignoring them altogether. This can be avoided if criminal justice proceedings adequately conform with the basic principles of both retributive and utilitarian justice of integrating victims in the prosecution process (Giannini, 2010).

## 5. Conclusion

Drawing from the analysis conducted for this study, it is reasonable to conclude that:

1. Social contract theory in honouring both the retributive and utilitarian criminal justice systems, implies that the state is morally obliged to punish those who have

violated the right to life of others. This is to restore to society confidence that justice is guaranteed and that public safety is ensured.

2. The theory prioritizes the collective good, viewing violations of the right to life as breaches harming society as a whole. This, however, clashes with recognizing individual victim rights, including demands for retribution and full participation in legal proceedings. Nevertheless, it can be argued that universally binding moral principles guarantee victims the fundamental right to demand justice, knowledge of the truth, and active participation in the legal proceedings. Only by acknowledging and addressing these rights can a criminal justice system truly claim legitimacy and effectiveness.
3. Failure to acknowledge and address victim rights creates a significant gap between the system's ideals and its actual practices. This lack of recognition breeds distrust among citizens, particularly victims, and raises doubts about the system's moral and legitimate foundation.
4. The state's criminal justice system must recognise victims' rights in both theory and practice. The deceased's surviving family members must be included in criminal proceedings and treated fairly and with respect to protect their rightful demands to know the truth about what happened to their relative(s) and to make sure that the police, investigators, public prosecutors, and judges have properly addressed all pertinent procedures.
5. Current concepts of criminal justice that exclude victim participation are demonstrably less effective in achieving justice and controlling crime. Recognizing the importance of victim involvement, as expressed in the statement "justice cannot be done without taking the victim's interest into account", is crucial for building a more legitimate and functional system (Hudson, 1984, p. 34).

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