8-2023

Differences in Due Process during Post-Conviction: Examining Jurisdictional Influence on Exoneration

Kimberly Hawkins
University of Arkansas, Fayetteville

Differences in Due Process during Post-Conviction: Examining Jurisdictional Influence on Exoneration

A thesis submitted in partial fulfillment
of the requirements for the degree of
Master of Arts in Sociology

by

Kimberly Hawkins
University of Oklahoma
Bachelor of Arts in Sociology: Criminology, 2020
University of Oklahoma
Bachelor of Arts in Psychology, 2020

August 2023
University of Arkansas

This thesis is approved for recommendation to the Graduate Council.

_____
Mindy Bradley, Ph.D.
Thesis Advisor

_____
Lauren Sabon, Ph.D.
Committee Member

_____
Casey Harris, Ph.D.
Committee Member

Abstract

Research on wrongful conviction has found several factors associated with an erroneous conviction. As of yet, research has not delved into the jurisdictional effects on exoneration. Using the American State's use of the death penalty for a proxy of punitiveness, this study will examine if there is a relationship between use of capital punishment and exoneration rates. The National Registry of Exonerations is the most comprehensive collection of exonerations to date and this secondary data source will be analyzed using logistic regression models to examine differences across policy environments. Result show that non-death penalty states have a much higher exoneration rate, with significant gender and race patterns showing greater exoneration of Blacks and female defendants in death penalty states.

Table of Contents

CHAPTER ONE

Introduction

Wrongful conviction is a highly controversial social justice issue that continues to receive substantial media and public attention (Dioso-Villa et al, 2016). Yet scholarly inquiry on this topic is hindered by several challenges to data collection, including sampling and validity concerns. Thus, although an important public concern, criminologists know very little about this topic, and empirical research on the causes and correlates of wrongful conviction is rare.

It is estimated that three to five percent of felony cases are wrongful convictions (Ramsey & Frank, 2007), and the National Registry of Exonerations (NRE) lists 3,250 exonerations in their database (as of Fall 2022) since 1989 (NRE, 2022). Other suggest that this estimate may be conservative given that such exonerations only represent cases that have been identified and rectified, which would exclude cases that have never been exposed (Gross & O'Brien, 2008). Unfortunately, clearly identifying all wrongfully convicted defendants seems an impossible task, and the exact number of wrongful convictions will likely never be known.

Nevertheless, studies of established cases have been able to identify some commonalities among wrongful conviction cases. Eyewitness misidentification, prosecutorial misconduct, coerced confessions, improper use of jailhouse informants, use of faulty forensic science and ineffective use of counsel have all been associated with wrongful conviction (Gould & Leo, 2010; Huff, 2004). Much of the wrongful conviction literature focuses on individual predictors associated with such risk factors. For example, many psychologists have investigated the role of memory and how it impacts one's recollection of a crime or person, finding that memory evidence is not reliable and is subject to contamination (Loftus & Ketcham, 1991). Studies on witness identification also support this assessment (Erickson et al., 2015) with critiques of the

existing wrongful conviction literature largely demonstrating the contributing sources rather than the origin of misidentification (Leo, 2005).

Yet some important works examine overarching and systemic issues underlying wrongful convictions (Leo, 2017; Poveda, 2001). Notably, research indicates that cases often involve multiple irregularities, including, for example, official misconduct, and mistaken eyewitness identification co-occur (are both present in the same cases) (Vicks et al, 2021; Doyle, 2010). In doing so, such studies argue for identifying "system variables," or factors that law enforcement and practitioners can change to improve practices and reduce errors (Wells, 1978). Thus, wrongful convictions are the result of a collection of individual errors and conditions at multiple stages of the criminal justice system and reflect organizational accidents, systemic government misconduct, or issues of systemic design and system failure (Bandes, 2008; Doyle, 2010; Luna, 2005; Seigel, 2005).

In contrast, criminologists often contrast perspectives of systemic error with those emphasizing culture and the tension between due process and crime control models of justice. One possibility is that jurisdictions employing the crime control approach emphasize punitiveness and the progression of cases as quickly as possible, fostering a lack of diligence that creates more opportunity and tacit allowance for justice actor misbehaviors/negligence and wrongful convictions. The support for harsher punishments and fear of victimization is what Garland (2012) refers to as a *culture of control*, characterized by government spending on police and law enforcement and how much of a threat people perceive crime to be (Williamson et al., 2021; Zalman et al., 2012). Similarly, a culture of control might be said to exist in states that implement the death penalty, with the assumption that these locations would have more control-

oriented justice systems (Leo & Gould, 2009), though the death penalty is highly clustered in small geographic locations (Dieter, 2013).

This paper argues that just the potential of the death penalty within the criminal justice system creates a different culture that increases the possibility of judicial errors. Support for this argument can be found in an article conducted by Vicks et al. This paper finds that court actors in states with the death penalty often use death as a punishment as leverage to ensure that the defendant will accept a plea deal and plead guilty (2021). This tactic has been linked to a number of wrongful pleas; defendants pled guilty to avoid death sentences yet were later found innocent of the homicides they were accused of (Vicks et al., 2021). Investigating possible patterns in prevalence and cooccurrence of system errors across measures of a jurisdiction's punitiveness could shed light on the extent to which justice systems emphasize due process versus crime control.

This study will investigate if death penalty states have higher rates of judicial and systematic errors as the source of wrongful convictions as compared to states that do not have the death penalty. Using the death penalty as a proxy for crime control orientation, I will examine if crime control states have higher rates of wrongful conviction, as well as the extent to which specific organizational irregularities (including false or misleading evidence, official misconduct) are present and co-occur across states. In doing so, I will uncover how some jurisdictions may be predisposed to judicial errors as poised by legal scholars, effectively making the prosecution and punishment of innocent people collateral damage of crime-control models of justice.

CHAPTER TWO

Theoretical Orientation

Following the assumption that death penalty states will be more punitive in nature, this study will utilize Packer's theory on assembly line justice or also known as crime control or due process models (1964). This theory claims that there are two models that local level criminal justice systems will employ, either an assembly line or an obstacle course. The assembly line or conveyor belt model is made to churn out a high number of defendants at a quick pace with the assumption of the defendant's guilt. The obstacle course model begins with the presumption of innocence and believes it should be a challenge to convict a defendant to ensure that every outcome is considered (Packer, 1964). The two models also highlight the level of discretion that the courts are permitted, and how this discretion can result in selective treatment (Luna, 2005).

Conceptual Framework

Legal scholars have been considering the implications of a crime control model criminal justice system and how it could lead to multiple system failures across many stages. (Doyle, 2010; Bandes, 2008; Seigel, 2005; Luna, 2005). One scholar, Doyle (2010), proposed the concept of "organizational accidents" to explain how wrongful convictions are the result of multi-level mistakes that accrue in the criminal justice system (CJS). The labeling of the conceptual framework of organizational accidents may reveal insights on how the researcher may feel of the intentionality of the failures within the criminal justice system. By calling the issues that are presented at multiple stages of the legal and judicial system as "accidents" the author is not addressing the purposeful reason why the criminal system is designed the way it is, or of the disregard of those who are more directly impacted by the bad practices. Rather multiple

legal scholars and law professors have presented similar conceptual frameworks and have proposed advancing the law scholarship on wrongful conviction.

A conceptual framework presented by legal scholar Susan Bandes (2008), for example, may be more applicable to this research. The concept she utilizes to describe the institutional methods that bring out wrongful conviction is called *systemic government misconduct*. She highlights the importance of labels, bringing up that some have pushed to replace the term “wrongful” in wrongful convictions as it does not indicate the prevalence of official misconduct. As a counterpoint, it is also difficult to claim that the overall system is to blame and that there is no specific villain who is responsible for the misconduct. Rather, public storytelling would rather claim that it was a “bad apple” at fault. This framework states that poor judicial outcomes and wrongful convictions are the result of “complex causal chains", the involvement of multiple individuals, failure to act rather than doing poor actions and overall actions not done with overt malice (Bandes, 2008).

Similarly, *issues of systemic design* coined by Seigel (2005) is a concept that comes from a law review article that calls for a broader approach when considering the causes of wrongful convictions. The writer states that it is time for the innocence movement to begin the third generation of scholarship and advocacy. He posits that the first generation began with the Innocence Project and their revelations of multiple wrongful convictions that shocked the public and inspired reform. The second generation can be found in the literature as scholars have identified multiple factors that have a strong association with wrongful conviction (eyewitness testimony, forensic science etc). Siegal refers to these factors as evidence-related flaws in the criminal justice system and claims that the body of research in this area should be considered largely complete.

Siegal (2005) proposes that it is time that the innocence movement changes their focus from post-conviction and evidence-related mistakes to rather widening the approach to question the structure and the maintenance of the criminal justice system. He believes that moving forward, the innocence movement should make it clear that cases of erroneous conviction are "the consequence not of extraordinary events, but of the ordinary operation of a flawed system" (Siegal, 2005). The nature of the flaws can be attributed to human error, but it is not randomly dispersed which criminal justice actors may be overworked, overburdened or overzealous. These actors are all highly impressionable by the environments they operate in. The aforementioned issues are all influenced by rules, incentives, norms and directions that the criminal justice actors are subjected to. This article makes the claim that small injustices in individual cases will result in massive aggregate effects. Overburdened courts that are used and society's form of social control will only produce more internalized pressure that will lend to the use of bad practices in the courthouse. Issues of systemic design such as inadequate defense, bail practices and prosecutor discretion create a system where factual innocence is not the primary objective of the criminal justice system (Siegal, 2005).

General systems theory is a multidisciplinary approach to study complex, organized systems. It was originally proposed by a biologist and can be applied to all fields that wish to understand the structure and ordering of their system. Legal scholar, Erik Luna (2005), applied the general systems theory to the criminal justice system. Luna claims that the criminal justice system can be appropriately studied with this framework as the CJS is composed of interrelated departments that work to achieve their own function, that fundamentally work together as a whole. There is a hierarchical differentiation in regard to the courts and law enforcement. The

criminal justice system would be considered an open system, as it interacts with its environment and is susceptible to outside influence (Luna, 2005).

The claim that the criminal justice system can be studied with general systems theory is not to be confused that the CJS is a machine of any sort. It is still operated by humans, and it is subject to human fallibility. To account for this, Luna adds to the concept of discretion which he defines as essentially discrimination. Discrimination, in the general system theory, is that two different stimuli are responded to in a different manner. Discretion and vague instructions are built into the justice system, allowing space for discrimination. Therefore, both of the concepts are attributable to human error in the system (Luna, 2005).

All of these frameworks maintain the core elements of organizational accidents, that multiple levels of the criminal justice system are interconnected and involved in wrongful convictions (Doyle, 2010). These frameworks are all posed by legal scholars rather than sociologists, utilizing these concepts would still be considered a contribution to the literature. Support of this concept has already been seen in a law review examining the relationship between prosecutorial misconduct and wrongful convictions. The paper states that the reasons why prosecutors conduct malfeasance are due to systemic and institutional forces rather than individual action (Joy, 2006). Support will be further examined by testing if there are more systematic sources of wrongful convictions within the national registry of exonerations sample. Some of the papers brought up topics such as the prosecution culture emphasizing conviction rates, the process of plea bargaining and a critique of adversarial system, warranting further research to how these play a role.

CHAPTER THREE

Literature Review

The term *miscarriages of justice* was coined by Bedau and Radelet, authors of some of the seminal works in the wrongful conviction literature, back in 1987. They operationalized innocence as when unbiased observers, who have been provided with all the evidence of the case, would deem the defendant to be innocent. They further defined innocence for defendant who has been charged with committing a homicide or rape. Then further elaborated that someone can be wrongfully convicted for a crime they did not commit or for a crime that never occurred. (Badau & Radelet, 1987). In more contemporary research, wrongful convictions are identified post-exoneration and would usually require scientific testing or new evidence to overturn the conviction (Dioso-Villa et al., 2016). To have a criminal sentence overturned, the defendant will have to meet the legal standard that they have been found innocent beyond reasonable doubt (Huff et al.,1986).

Impact of Wrongful Conviction

Wrongful convictions have not been extensively researched, so it is unclear exactly how often this phenomenon occurs within the criminal justice system. The impact of wrongful conviction can disrupt the lives of those who are affected. One such example is how much time might be taken from the exoneree's life. In 2021, those who have been wrongfully convicted will on average spend eleven and a half years incarcerated (NRE, 2022), while those who have been incorrectly sentenced with the death penalty will on average spend seven years on death row before exoneration (Radalett, 1996). The conviction can have a lasting effect; those who have been incorrectly accused and sentenced to a crime have experienced psychological and social harm (Campbell & Denov, 2004).

Known Causes of Wrongful Conviction

Some of the more well-researched factors that are associated with wrongful convictions are procedural errors that occur within the criminal justice system (Gould & Leo, 2021). Extant research has found that individual-level characteristics such as age, race, and criminal history of the defendant are all associated with wrongful convictions (Gould et al., 2013). Factors such as eyewitness misidentification, prosecutorial misconduct, false or misleading use of forensic science, false or coerced confessions, ineffective use of counsel, and the use of jailhouse informants have been associated with wrongful conviction (Huff, 2004; Gross & Shaffer, 2012; Innocence Project, 2013b). This paper will expand on a few types of these errors.

Official Misconduct

Official misconduct, according to the NRE, includes malpractice from various government employees including prosecutors, police, child welfare workers, and forensic scientists. Forms of misconduct include purposefully lying, perjury, witness tampering, and concealing evidence (NRE, 2021; Gross et al., 2020). Of the various types of official misconduct, it has been found that police and prosecutorial misconduct is the most common, and that they are often co-dependent of each other (Drummond & Naito, 2018; Trivedi & Van Cleave, 2020). One of the most well-researched types of official misconduct is linked to prosecutors. A previous report has found that this type of misconduct has been found in 30% of reported exonerations (Gross et al., 2020). The most common form of prosecutorial misconduct occurs when the prosecution is found to deliberately not give the defense relevant exculpatory evidence. This hiding of information is known as a *Brady* violation (*Brady v. Maryland*, 1963; Schoenfel, 2005).

Inadequate Counsel

Looking further into court-level impacts, beyond prosecutorial misconduct, the defense can contribute to wrongful convictions by providing ineffective assistance of counsel (Huff, 2004). A contributing factor can be found in overburdened defense attorneys, specifically those that provide indigent defense. Around 80% of all defendants qualify for indigent defense leading to high workloads (Betz, 2019). Research in this area typically concludes that the public defender system at the local and state level is usually considered inadequate (Das, 2019). This is considered more of a structural problem that will be expanded upon later.

Eyewitness Misidentification

One source of error that can lead to an erroneous conviction is when a witness misidentifies the perpetrator. This issue is especially salient when involving interracial identification: a study of individuals exonerated due to DNA evidence found that 64% of cases with mistaken eyewitness identification were Black (Innocence Project, 2020). Eyewitness testimony is still considered a powerful tool in trials, especially when the eyewitness is confident in their observations (Loftus, 1984; NRE, 2022c). Memory and confidence are malleable and subject to change from outside sources, including police (Charman & Wells, 2012).

False Evidence/ Faulty Forensic Science

This type of error can also be referred to as forensic misconduct but oftentimes it can be the result of misapplied or methods that are not as accurate as they may presented in court (Findley, 2021). A study using the Innocence Project's (2022) data that keeps a record of DNA exonerations found that 52% had faulty science as a factor that led to conviction. These unreliable tests include hair samples, bitemarks analysis, field tests, and fingerprinting. This type

of evidence is susceptible to misinterpretation that could lead to false evidence of guilt (Findley, 2021; Phelps, 2019).

False Confessions/ False Guilty Pleas

One of the factors that could increase the likelihood of a wrongful conviction is false confessions and false guilty pleas. Of those who have been sentenced to death, 14.6% of those cases involved a false confession (Vick et.al., 2021). Admission of one's own guilt is a powerful tool to use within the courthouse; it would be difficult to prove that the confession was coerced (Leo & Ofshe, 1997). When a person confesses, generally that would be the end of the criminal investigation, and no more evidence would be sought out to create the charge (Leo & Davis, 2010). Overall, around 95% of all cases in federal and state courts are resolved by guilty pleas (Bureau of Justice Statistics, 2005), indicating the high pressure to move cases along the criminal justice system. States with the death penalty can use that leverage as a fear tactic to convince a person of interest to take responsibility to a crime and avoid the potential of capital punishment (Vick et. al., 2021).

Race and Wrongful Conviction

Similar to other realms of the criminal justice system, wrongful conviction disproportionately impacts racial minority groups (Mauer, 2011). Legal factors such as disproportionate minority contact can explain the high rates of minority groups within the criminal justice system and the increased rate of wrongful convictions among this group. A study conducted by Gross et al. (2017) found that 47% of those listed in the NRE are Black. A study published by the NRE (2020) on the relationship between wrongful convictions and race found that among those convicted of murder, Black people are 50% more likely to be innocent compared to White populations. The same report found that Black individuals are also twelve

times more likely to be incorrectly charged on drug crimes as compared to White people (NRE, 2020). Black exonerees have been found remain wrongfully convicted for a longer time before exoneration than non-Blacks, with Blacks spending 13.3 years between conviction to exoneration compared to 10.1 years for all other racial groups (Olney & Bonn, 2015).

Previous studies have found that punishments may be more punitive based on race (e.g., Free & Ruesink, 2012; Gould et al., 2009; Parker et al., 2003; Rainville & Smith, 2003). A study found that 90% of exonerees who were arrested under the age of eighteen were non-White. This study, using their own compiled dataset, found high rates of increased juvenile sentencing for minority groups (Gould et al., 2009). Another study looking into juvenile exoneration found that of those tried as adults, 69% were Black and 25% were White. These studies show that there is stricter sentencing based on race (Rainville & Smith, 2003). Race is also important when examining the race of the defendant and the victim. Black defendants accused of killing White women will face harsher sentencing and are more likely to be wrongfully convicted (Free & Ruesink, 2012). Race is also strongly associated with the death penalty, with Black defendants more likely to be sentenced to death, and to be sentenced to death for a wrongful conviction (Parker et al., 2003).

Systemic Sources of Wrongful Conviction

The individual chance events that occur during the investigative and legal process have been well established; research is now moving towards examining more systemic causes that contribute to this phenomenon (e.g., Doyle, 2010; Leo, 2017; Poveda, 2001). There are findings that link various factors with each other producing a higher likelihood of a wrongful conviction due to the combination of events. For example, the Supreme Court has accepted that improper

police conduct can be the source of eyewitness misidentification, suggesting that multiple of the known causes of erroneous convictions can compound (Levine & Tapp, 1972).

Looking at wrongful convictions as a result from a myriad of procedural errors rather than just one issue that frequently occurs would alter the framework utilized to investigate the systemic sources of error. As legal practitioners moved to address some of the factors associated with wrongful convictions, *system variables* became variables that could be altered to improve conditions, for example changing the eyewitness identification procedures (Wells, 1978). The focus on preventive measures, rather than retrospective blaming, shows a shift in moving beyond the belief that wrongful convictions are the result of isolated and individual mistakes and are rather an outcome of a systemic issue (Doyle, 2010; Wells, 1978). The resulting justice outcomes are created by a compounding collection of mistakes made at various stages and produced in the right conditions; this has been addressed legal scholars and can be known as issues of systemic design or system failure among other names (Bandes, 2008; Doyle, 2010; Luna, 2005; Seigel, 2005).

A critique of wrongful conviction literature is that it does not address the root causes of why individuals are erroneously convicted (Leo, 2005). Much of the scholarship has focused on various factors without taking a bigger-picture approach to how the criminal justice system may facilitate environments more likely to produce wrongful convictions. Another critique is that much of the work done in this field is done by legal scholars rather than sociologists, leaving this topic without guiding theoretical or conceptual frameworks (e.g., Leo, 2005; Norris & Bonventre, 2015).

Court-level factors also can impact the occurrence of wrongful conviction. Studies have found that within the courthouse there are differing levels of time that the attorneys can give to

each of their clients (Langton & Farole, 2010). The prosecution will typically have more financial and human resources as compared to the defense, leading to much higher caseloads among defense attorneys (Bakken, 2008; Huff, 2004). Public defense attorney offices have been found to exceed the recommended caseloads in 75% of offices (Langton & Farole, 2010). These issues would be the result of how the courts are set up financially, and how this could be a link that produces the conditions that are conducive to wrongful convictions.

Death Penalty and Culture

Recent studies have begun to examine the link of the community and the courts, by looking into investigating regional differences, to see if there is an effect in wrongful convictions in death penalty states (Gould et al., 2013; Vick et al., 2021). There have been some findings suggesting that individual-level factors such as false guilty pleas have occurred at a higher rate in death-eligible states compared to other states (Vick et al., 2021). These types of studies will examine if there are cultural differences within the courts due to death eligibility of some crimes, seeing if there is a cultural difference to increased punitiveness.

There is some literature that can back up the claim that death penalty jurisdictions may be more susceptible to organizational accidents compared to non-death penalty states. A study that compared groups, one group that was ultimately executed and another group of those who were released, finding that prosecutorial misconduct was equally prevalent in both groups (Harmon, 2001). A previous study with their own aggregated sample found that states with the death penalty are much more likely to produce wrongful convictions (Gould et al., 2013). This can be attributed to the idea that these states share a *death penalty culture* which is also referred to as state punitiveness. This has been operationalized as the number of executions per the number of murders (Kutateladze, 2009), in these more punitive jurisdictions there is more incentive for

legal actors and increased pressure from the community to convict (Gould et al, 2013). Another study has also used the death penalty as a measure for punitiveness (Unnever & Cullen, 2010). This study will use the death penalty as a proxy for more punitive courts (crime control), even though death penalty cases are rare and not all the counties within a state will have the resources to prosecute a death penalty case (Dieter, 2013). We will argue that there is a crime control orientation that can be seen in death penalty cases by using previous studies that have found jurisdictions in these locations to leverage the fear of capital punishment to induce false guilty pleas (e.g., Vicks et al., 2021).

CHAPTER FOUR

The Current Study

This study will investigate jurisdictional influences on wrongful conviction by using the largest and most comprehensive dataset collected on exonerations. The purpose of this study will provide insight on sources of exoneration and to examine if there are differing state-level trends in the data. The current study will contribute to the extant literature by testing if the results are consistent with findings from a previous study, that death penalty states are more likely to be represented among wrongful convictions (Gould et al., 2013). This study also examines a large dataset of exoneration to identify themes across race and gender. I also examine the frequency of specific forms of justice processing errors and misconduct across death penalty states.

Research Question 1:

To what extent are death penalty states and non-death penalty states represented in the dataset?

Research Question 2:

To what extent do types of exoneration-related errors and/or misconduct vary across death penalty versus non-death penalty states?

Research Question 3:

To what extent are there racial and gender differences in the distribution of identified exoneration cases, and are these demographic differences predicted by state death penalty status (controlling for state racial composition)?

CHAPTER FIVE

Data and Methods

To answer these research questions, this study will utilize a quantitative approach to analyze national exoneration data. This study will use data from the National Registry of Exonerations, which is maintained by Newkirk Center for Science & Society at University of California Irvine, the University of Michigan Law School, and Michigan State University College of Law. The Registry was created in 2012 and contains every known exoneration case since 1989 (NRE, 2022). The dataset was accessed in 2022 with the sample size of 3,250, this study excludes federal cases and cases in Gaum and Puerto Rico (n= 141) bringing the total sample to 3,109 exonerees. The NRE provides information of the defendant, the crime, their criminal sentence, factors associated with their incarceration, and the jurisdiction. The information from the Registry is readily available as an excel spreadsheet for request, the data was freely sent.

This study also utilizes some data from the National Incident Based Reporting System (NIBRS), maintained by the FBI. NIBRS is the updated national crime collecting system that is now implemented instead of the UCR. The information in the study concerning the state-level violent crime rate was derived from this data source. Finally, this study also uses data from the Census. This data is collected by the United States Census Bureau every ten years to produce data on the United States population and economy. This study utilized the 2020 data set, the most recent production from the governmental agency, for their state-level population statistics.

Dependent Variables

The dependent variable is rates on exonerations and examining how many factors are associated with the wrongful conviction. The current study will compare exoneration rates

between death penalty states and non-death penalty states to explore if there are jurisdictional influences. The first set of dependent variables are error type. These are the established common sources of wrongful conviction, also many of these are errors made within the criminal justice system. These errors are important to note as they could indicate if there is a jurisdictional influence on what type of procedural mistakes are made. The first one is *official misconduct (0= no official misconduct, 1= official misconduct in the case).* This variable includes all types of misconduct including misconduct conducted by prosecutors, police, child welfare workers, and forensic scientists. It also includes acts such as, withholding evidence, knowingly committing perjury, interrogation misconduct, witness tampering, and if the prosecutor lies. This variable is important theoretically (Bandes, 2008) for multi-level systematic failures. The next specifies a specific type of misconduct, *prosecutorial misconduct (0= no prosecutorial misconduct, 1= prosecutorial misconduct present in the case). Mistaken Witness Identification (0= no mistaken witness identification, 1=mistaken witness identification)* refers to the misidentification of the perpetrator by a witness. *False Evidence (0= no false evidence, 1= false evidence)* is the presentation of faulty forensic science or planted evidence. *Inadequate Legal Defense (0= no inadequate legal defense, 1= inadequate legal defense)* is when the defendant appeals their conviction on the grounds that their counsel was insufficient, and it results in the wrongful conviction.

The next set of variables begin with the presence of *Innocence Organizations (0= no innocence organizations, 1= innocence organization*) as assistance to help exonerate the defendant. Second, *Guilty Pleas (0=no guilty plea, 1= guilty plea)* is when the defendant pleads guilty rather than trying to prove their innocence. Lastly, *Did Not Commit a Crime (0=there was a crime, 1=there was no crime).*

Finally, included are mean findings regarding the crime rate and population of the states. The *Violent Crime Rate* data was found on NIBRS and is per 100,000 people. Next, is the *Black Exoneration Rate divided by the Black Population* of the state, the exoneration rate was derived from the NRE, while the Black population is from the Census. The resulting number was multiplied by 10, 000. The next variable is simple the *Exoneration Rate* provided from the NRE. The last variable is *Number of Errors* associated with each case (e.g., official misconduct, mistaken witness identification, etc.)

Table 1: Descriptive Statistics of Dependent Variables

	N	**%/Mean**
Error Type		
Official Misconduct	1783	57.3%
Prosecutorial Misconduct	915	29.4%
Mistaken Witness Identification	844	27%
False Evidence	731	23.5%
Inadequate Legal Defense Other	828	26.6%
Innocence Organizations	875	28%
Guilty Plea	830	26.7%
Did Not Commit a Crime	1275	41%
Mean		
*Violent Crime Rate**	3109	41.1
*Black Exoneration/ Black Population***	3109	0.51
Exoneration Rate	3109	1.5
Number of Errors	3109	1.47

*per 100,000 **per 10,000

Demographic Variables

While looking at the variable *Defendant Race, (0= White, 1= non-White)* the reference category is White. All other racial groups are in the non-White category with Black individuals making up the majority of this group. Consistent with prior literature, minority groups make up a disproportionate amount of the exoneration sample, similar to disparities found in the criminal

justice system as a whole (Mauer, 2011). For the variable *Defendant Gender (0= male, 1= female),* the sample is almost overwhelmingly male. The NRE only maintains gender data in the gender binary.

Table 2: Descriptive Statistics of Demographic Variables

	n	**%/Mean**
Defendant Race		
White	2119	68.2%
Non-White	990	31.8%
Defendant Gender		
Male	2845	91.5%
Female	264	8.5%

Independent Variable

The independent variables will include comparing differing rates of systemic error from *death penalty states* to *non-death penalty states (0= non-death penalty state, 1= death penalty state)*, meaning that the state level government and the death penalty culture of the location is theorized to impact the sources of exonerations. The study will focus on the death penalty culture, which has been previously operationalized as the number of executions per the number of murders by Gould et al. (2013).

Analytical Strategy

The statistical software, SPSS, will be used to analyze the data. The NRE provides information on the jurisdiction the individuals were incarcerated and exonerated from. Federal courts were removed from this sample and the U.S. territories of Gaum and Puerto Rico were also removed. The states California, Pennsylvania and Oregon were included in the death penalty states (these states are currently under governor issued moratorium).

First, the variables were converted into dichotomous variables. Then, a bivariate analysis was conducted to see which of the predictor variables are associated with either death penalty or non-death penalty states. Chi-square was utilized to establish statistical significance. To understand what variables were more likely to occur in a death penalty or non-death penalty state a logistic analysis was utilized.

CHAPTER SIX

Results

Results of the bivariate analysis and binary logistic regressions are presented here. Statistical significance and relationships between the dependent, demographic, and independent variable *(0= non-death penalty state, 1= death penalty state)* are shown. The first analysis, bivariate analysis, will display the differences in descriptive statistics between the two conditions and will provide the chi-square statistical findings to provide association between the variables.

Table 3: Bivariate Analysis on Predictor Variables

	Death Penalty States		**Non-Death Penalty States**		
	n	%/Mean	n	%/Mean	Chi-Square (p-value)
Total	1393	44.8%	1716	55.2%	
Defendant Race					<.001
White	844	60.6%	1275	74.3%	
Non-White	549	39.4%	441	25.7%	
Defendant Gender					<.001
Male	1231	88.37%	1614	94.06%	
Female	162	11.6%	102	5.9%	
Error Type					
Official Misconduct	689	49.46%	1094	63.75%	<.001
Prosecutorial Misconduct	423	30.37%	492	28.67%	.3
Mistaken Witness Identification	362	23.98%	482	28.09%	.19
False Evidence	432	31.01%	299	17.42%	<.001
Inadequate Legal Defense	365	26.2%	463	26.98%	.63
Other					
Innocence Organizations	278	19.96%	597	34.79%	<.001
Guilty Plea	440	31.59%	390	22.72%	<.001
Did Not Commit a Crime	627	45.01%	648	37.76%	<.001
Mean					

*Violent Crime Rate**	42.59	39.6	
*Black Exoneration/ Black Population***	0.67	0.34	
Exoneration Rate	0.92	2.08	
Number of Errors	1.41	1.52	.14

*per 100,000
**per 10,000

Table 3 shows the differences in case make-up between death penalty and non-death penalty states. Those who have been exonerated from non-death penalty states make up a larger portion of the data set (n=1716) as compared to death penalty states (n=1393). This table shows support for Research Question 1- that there are differences in death penalty and non-death penalty states. The differences found would indicate that non-death penalty states have a higher exoneration rate with more procedural/ systemic errors. Non-death penalty states take up a larger amount of the sample (55.2% compared to 44.8) and have a higher exoneration rate (2.08 compared to .92). Research Question 2 was also explored as there are noted differences in which errors are more common in the two geographic groups. Non-death penalty states also have a statistically significant association with official misconduct, which was an important variable to indicate systemic errors. Non-death penalty states also have more errors found in a single case compared to death penalty states (average 1.5 per case errors compared to 1.4 in death states).

Finally, Research Question 3 was addressed in Table 3, death penalty states exonerees are more likely to be non-White (39.4% of the sample compared to 25.7%) and less likely to be male (88.4% compared to 94.1%), showing different trends in demographic groups rate of exoneration. Official misconduct and mistaken witness identification are errors that are more prevalent in non-death penalty states, while prosecutorial misconduct and false evidence are common errors that occur more in death penalty states.

Those in death penalty states are less likely to have access to an innocent organization (19.9% compared to 34.9% in non-death penalty states). This association is significant between innocence organizations and non-death penalty states at the .001 level. Death penalty states have exonerees who are more likely to have entered a false guilty plea (31.6% compared to 22.7% in non-death states), this association is significant at the .001 level. Finally, defendants in death penalty states had a greater proportion of those who did not commit any crime when wrongfully convicted (45% compared to 37.8%), this association is also significant at the .001 level.

Death penalty states on average have higher violent crime rates (42.6 out of 100,000 compared to 39.6 in non-death states) and a smaller exoneration rate (.92% compared to 2.1% in non-death states). The violent crime rate is crucial to note as it is usually used as a measure for conviction rates, indicating that death penalty states should have a higher conviction rate compared to non-death penalty states. Death states also have a higher Black exoneration rate per the state's Black population (.67 compared to .34 in non-death states).

Table 4: Logistic Regression of Race on Predictor Variables

	B	S.E.	Sig.	Exp(B)
One Error	-.39	.08	***	.69
Violent Crime Rate	-.02	.00	***	.99
Black Proportion of the Pop.	-4.9	.67	***	.01
Death Penalty State	.59	.08	***	1.81
Female	.87	.13	***	2.38
Constant	.43	.19	**	1.54

p<.05*, p<.01**, p<.001**
Cox and Snell R-.07

Table 4 depicts a logistic regression showing the relationship that various predictor variables have on race. All the predictor variables are significant at the .001 level. Only one identified error in the case decreases the odds of being non-White by a factor of 69%. A higher violent crime rate decreases the odds of being non-White by a factor of 99%. A higher Black

proportion of the state decreases the odds of being non-White by a factor of .1%. Being in a death penalty state increasing odds of being a non-White exoneree by 181% and being female increases the odds of being non-White by a factor of 238%. Having more than one error in the case, being female, and being in a death penalty state are all significant predictors for increasing the chance of the exoneree being non-White.

Table 5: Logistic Regression of Gender on Predictor Variables

	B	S.E.	Sig.	Exp(B)
One Error	.39	.13	**	1.47
Violent Crime Rate	.000	.001		1.00
Black Proportion of the Pop.	-.42	.99		.66
Death Penalty State	.59	.14	***	1.81
Non-White	.87	.13	***	2.38
Constant	-3.19	.31	***	.04

p<.05*, p<.01**, p<.001***

Cox and Snell R- .03

Table 5 shows the relationship between gender and the predictor variables. The association with death penalty states and race are both significant at the .001 level, while the number of errors is significant at the .01 level. Not having multiple errors increases the odds of being female by a factor of 147%, being in a death penalty state increases the odds of being female by a factor of 181% and being non-White increases the odds of being female by a factor of 238%. Having one error in the case, being an exoneree in a death penalty state and being nonWhite all have a significant association with increasing the likelihood of being female.

Table 6: Logistic Regression of Death Penalty State on Predictor Variables

	B	S.E.	Sig.	Exp(b)
One Error	.10	.08		1.11 1.75
Non-White	.56	.08	***	
Female	0.58	.14	***	1.79
Black Proportion of the Pop.	-6.83	.64	***	.001
Violent Crime Rate	.05	.00	***	1.01
Constant	-1.58	.17	***	.21

p<.05*, p<.01**, p<.001***
Cox and Snell R Square- .09

Table 6 is a logistic regression of death penalty states and predictor variables. Race, gender, Black proportion of the population and violent crime rate are all significant at the .001 level. A higher Black proportion of the population decreases the odds of an exoneree being in a death penalty state by a factor of .01%. Being non-White increases the odds of being an exoneree in a death penalty state by 175%, being female increases the odds of being in a death penalty state by 179% and a higher violent crime rate increases the odds of being in a death penalty state by 101%. Being a non-White exoneree, female, and being a higher violent crime rate state are all significant for increasing the likelihood of being in a death penalty state.

CHAPTER SEVEN

Discussion

The purpose of this study is to explore under-researched areas within the wrongful conviction literature by examining system wide causes and how they play a role in erroneous convictions. This study uses states that employ the use of the death penalty as a proxy for jurisdictions that emphasize the crime control model as a measure of state punitiveness. A previous study (Vicks et al., 2021) found that death-eligible states would leverage the fear of capital punishment to get more defendants to plead guilty even for crimes that would not be eligible for a death sentence. This study is why death penalty states would be more likely to face accusations of misconduct and systemic errors, even though not even county in a state has the resources to hold a death penalty trail. Due to prior research (Gould et al., 2013; Harmon, 2001; Vicks et al., 2021) it was hypothesized that death penalty states would have higher rates of exoneration and more sources of error. Research question 1 aimed to explore if there are differences between capital punishment states and non-capital punishment states, and if there is, to what extent. The results showed that non-death penalty states have higher rates of exoneration, which did not support the prior theoretical findings (Gould et al., 2013; Harmon, 2001; Packer, 1964; Vicks et al., 2021). A major finding of this study is that wrongful convictions and exonerations cannot be considered synonymous. By separating the concepts out, the results would still support Packer's Models (1964) because death penalty states would apply a more crime control model while non-death penalty states will utilize a more due process model that allows these locations to find more mistakes and exonerate a larger rate. The theory and prior literature would still indicate that death penalty states have a higher rate of wrongful convictions, while non-death penalty states are better at catching the mistakes post-conviction.

Non-death penalty states take up more of the sample of exonerees despite there are more death penalty states which also have some of the highest state populations. Data from this study has also found that death penalty states have a higher violent crime rate which can be used as a proxy for higher conviction rate. Due to this, this would lead researchers to believe that there would be more exonerations in death penalty states even if there were no associations. The number of exonerees in non-death penalty states compared to death penalty states would support Packer's due process model. Non-death penalty states have a more rigorous post-conviction system that allows these states to find more wrongful conviction cases which leads to more exonerations. The cases in non-death penalty states had higher rates of official misconduct and number of errors, which would indicate a more thorough investigation in what contributed to the wrongful conviction.

This study also examined the role of demographic variables, race and gender, on the dependent variables to tease out any racial or gender effects. Death penalty states have rates high rates of minority racial group and female exonerations. The analyses show (Table 4) when there is a larger Black population, the Black exoneration rate is smaller. This was found in both death penalty states and non-death penalty states, but the effect was much stronger in states that utilize capital punishment. This could lead researchers to believe that death penalty states are more racially discriminatory and punitive, as women usually have much smaller conviction rates compared to men.

Limitations and Future Work

A limitation of this study is the use of exoneration data, which does not include all wrongful conviction cases, only the cases that were proven on appeal of the incorrect incarceration. This study hypothesized that wrongful conviction and exonerations rates would be

comparable, yet this study found that using exoneration data will not explain the full scope of wrongful convictions. The NRE and exoneration data in general will only inform what cases benefited from post-conviction review. Another limitation is the use of the death penalty as a measure for increased punitiveness, while this has been done before (e.g., Unnever & Cullen, 2010), it does not capture county-level difference in punitiveness.

This study examined and found jurisdictional influences on exoneration rate using logistic regression as the statistical analysis. Future work on this topic would include multi-level analyses to account for the nested model. This current study clumps states together based on use of capital punishment without further examination other elements of the criminal justice system and the variation of laws within these groups.

It was also beyond the scope of this study to examine the role of jurisdictional influence on sentence length. Another strong contributor to study if death penalty states are more punitiveness in nature would be found in sentence length, of those exonerated and not. Also, another time-related factor that future research can examine to see if there are differences in how long it takes to overturn a conviction in death penalty compared to non-death penalty states.

Conclusion

Wrongful conviction is a topic difficult to measure and research, so far exoneration data has provided the most insight on this phenomenon. The results of this study show that exoneration data may not reflect the true frequency and dispersion of wrongful conviction cases in the nation. Instead, this study reveals the significance of jurisdictional influence on individual level likelihood of exoneration. There is an inherent difference in how death penalty and nondeath penalty state's criminal justice systems investigate post-conviction claims of innocence.

References

Bakken, T. (2008). Truth and Innocence Procedures to Free Innocent Persons: Beyond the Adversarial System. *University of Michigan Journal of Law Reform*, *41*(3), 547-583.

Bandes, S. A. (2008). FRAMING WRONGFUL CONVICTIONS. *Utah Law Review*, *2008*(1).

Brady v. Maryland, 373 U.S. 83, 87-88 (1963).

Bedau, H. A., & Radelet, M. L. (1987). Miscarriages of justice in potentially capital cases. *Stanford law review*, 21-179.

Betz, B. (2019). Innocent but Incarcerated: Reforming Oklahoma's Criminal Pretrial Procedures to Combat Discrimination against Indigent Defendants. *Okla. L. Rev.*, *72*, 923.

Campbell, K., & Denov, M. (2004). The burden of innocence: Coping with a wrongful imprisonment. *Canadian journal of criminology and criminal justice*, *46*(2), 139-164.

Charman, S. D., & Wells, G. L. (2012). The moderating effect of ecphoric experience on post-identification feedback: A critical test of the cues-based inference conceptualization. *Applied Cognitive Psychology*, *26*(2), 243-250.

Das, M. (2019). Impediments to Independence: How the Workplace Culture of Public Defender Offices Negatively Affects the Representation of Indigent Defendants. *Geo. J. Legal Ethics*, *32*, 469.

Dieter, R. C. (2013). The 2% death penalty: How a minority of counties produce most death cases at enormous costs to all. *Washington, DC: The Death Penalty Information Center. Retrieved on December*, *13*, 2013.

Dioso-Villa, R., Julian, R., Kebbell, M., Weathered, L., & Westera, N. (2016). Investigation to exoneration: A systemic review of wrongful conviction in Australia. *Current Issues in Criminal Justice*, *28*(2), 157-172.

Doyle, J. M. (2010). Learning from error in American criminal justice. *J. Crim. L. & Criminology*, *100*, 109.

Findley, K. A. (2021). The Absence or Misuse of Statistics in Forensic Science as a Contributor to Wrongful Convictions: From Pattern Matching to Medical Opinions About Child Abuse.

Free, M. D., & Ruesink, M. (2012). *Race and justice: Wrongful convictions of African American men*. Boulder, CO: Lynne Rienner Publishers.

Garland, D. (2012). *The culture of control: Crime and social order in contemporary society*. University of Chicago Press.

Gould, J., Carrano, J., Leo, R. A., & Hail-Jares, K. (2013). Predicting erroneous convictions. *Iowa L. Rev.*, *99*, 471.

Gould, J. B., & Leo, R. A. (2010). One hundred years later: Wrongful convictions after a century of research. *The Journal of Criminal Law and Criminology*, 825-868.

Gross, S. R., & O'brien, B. (2008). Frequency and predictors of false conviction: Why we know so little, and new data on capital cases. *Journal of Empirical Legal Studies*, *5*(4), 927962.

Gross, S. R., Possley, M., Roll, K., & Stephens, K. (2020). Government misconduct and convicting the innocent, the role of prosecutors, police and other law enforcement. *U of Michigan Public Law Research Paper*, (21-003), 21-003.

Gross, S. R., Possley, M., & Stephens, K. (2017). Race and wrongful convictions in the United States.

Harmon, T. R. (2001). Predictors of miscarriages of justice in capital cases. *Justice Quarterly*, *18*(4), 949-968.

Huff, C. (2004). Wrongful convictions: The American experience. *Canadian Journal of Criminology and Criminal Justice*, *46*(2), 107-120.

Huff, C. R., Rattner, A., Sagarin, E., & MacNamara, D. E. (1986). Guilty until proved innocent: Wrongful conviction and public policy. *Crime & Delinquency*, *32*(4), 518-544.

Innocence Project. (2022). Overturning wrongful convictions involving misapplied forensics.

Innocence Project. (2020). *All cases*. Retrieved from https://www.innocenceproject.org/all-. cases/.

Joy, P. A. (2006). Relationship between prosecutorial misconduct and wrongful convictions: Shaping remedies for a broken system. *Wis. L. Rev.*, 399.

Kutateladze, B. (2009). Is America really so punitive? *Exploring a Continuum of US State Criminal Justice Policies. El Paso: LFB Scholarly Pub*.

Langton, L., & Farole, D. J. (2010). *State public defender programs, 2007*. US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

Leo, R. A., & Gould, J. (2009). Studying wrongful convictions: Learning from social science. *Ohio St. J. Crim. L.*, *7*, 7.

Leo, R. A., & Ofshe, R. J. (1997). Consequences of false confessions: Deprivations of liberty and miscarriages of justice in the age of psychological interrogation. *J. Crim. L. & Criminology*, *88*, 429.

Levine, F. J., & Tapp, J. L. (1972). Psychology of criminal identification: The gap from Wade to Kirby. *U. Pa. L. Rev.*, *121*, 1079.

Loftus, E., & Ketcham, K. (1991). *Witness for the defense: The accused, the eyewitness, and the expert who puts memory on trial*. Macmillan.

Luna, E. (2005). System Failure. *The American Criminal Law Review, 42*(4), 1201-1218.

Mauer, M. (2011). Addressing racial disparities in incarceration. *The Prison Journal*, *91*(3_suppl), 87S-101S.

National Registry of Exonerations. (2021). Date accessed October 11th, 2021

Norris, R. J., & Bonventre, C. L. (2015). Advancing wrongful conviction scholarship: Toward new conceptual frameworks. *Justice Quarterly*, *32*(6), 929-949.

Olney, M., & Bonn, S. (2015). An exploratory study of the legal and non-legal factors associated with exoneration for wrongful conviction: The power of DNA evidence. *Criminal Justice Policy Review*, *26*(4), 400-420.

Packer, H. L. (1964). Two models of the criminal process. *U. Pa. L. Rev.*, *113*, 1.

Parker, K. F., DeWees, M. A., & Radelet, M. L. (2003). Race, the death penalty, and wrongful convictions. *Crim. Just.*, *18*, 49.

Perry, S. W., & Banks, D. (2011). Prosecutors in state courts, 2007—Statistical tables. *Bureau of Justice Statistics*.

Phelps, K. (2019). Pleading Guilty to Innocence: How Faulty Field Tests Provide False Evidence of Guilt. *Roger Williams UL Rev.*, *24*, 143.

Poveda, T. G. (2001). Estimating wrongful convictions. *Justice Quarterly*, *18*(3), 689-708.

Rainville, G., & Smith, S. (2003). Juvenile felony defendants in criminal courts: Survey of 40 counties, 1998. *Washington, DC: US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics*.

Ramsey, R. J., & Frank, J. (2007). Wrongful conviction: Perceptions of criminal justice professionals regarding the frequency of wrongful conviction and the extent of system errors. *Crime & Delinquency*, *53*(3), 436-470.

Siegel, A. M. (2005). Moving Down the Wedge of Injustice: A Proposal for a Third Generation of Wrongful Convictions Scholarship and Advocacy. *American Criminal Law Review*, *42*, 1219.

Trivedi, S., & Van Cleve, N. G. (2020). To serve and protect each other: How police-prosecutor codependence enables police misconduct. *BUL Rev.*, *100*, 895.

Unnever, J. D., & Cullen, F. T. (2010). THE SOCIAL SOURCES OF AMERICANS PUNITIVENESS: A TEST OF THREE COMPETING MODELS. *Criminology*, *48*(1), 99-129.

Vick, K., Cook, K. J., & Rogers, M. (2021). Lethal leverage: false confessions, false pleas, and wrongful homicide convictions in death-eligible cases. *Contemporary Justice Review*, *24*(1), 24-42.

Wells, G. L. (1978). Applied eyewitness-testimony research: System variables and estimator variables. *Journal of Personality and Social Psychology*, *36*(12), 1546.

Williamson, H., Sato, M., & Dioso-Villa, R. (2021). Wrongful Convictions and Erroneous Acquittals: Applying Packer's Model to Examine Public Perceptions of Judicial Errors in Australia. *International journal of offender therapy and comparative criminology*, 0306624X211066826.

Zalman, M., Larson, M. J., & Smith, B. (2012). Citizens' attitudes toward wrongful convictions. *Criminal Justice Review*, *37*(1), 51-69.