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*Wrongful Conviction Compensation in the United States*

An Honors Thesis submitted in partial fulfillment of the requirements for Honors in Criminal Justice and Criminology.

By  
Brenda Morel

Under the mentorship of Dr. Kristina Thompson

ABSTRACT

Although the United States has signed a United Nations Agreement that stipulates that all wrongfully convicted individuals have a right to compensation, not all states have compensation laws. In addition, it is not guaranteed that exonerees living in states with compensation statutes will be compensated. This thesis examines the scope of wrongful conviction compensation statutes across states. Furthermore, it examines whether exoneree characteristics, as identified by the National Exoneree Registry, map onto state-level differences in laws and effectiveness in compensating exonerees. I compile two sources of data to link individual exonerees with their state of conviction.

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## Introduction

In 1977, United States signed the United Nations' International Covenant on Civil and Political Rights, which stipulates that wrongfully convicted individuals have a right to compensation (Costa, 2005). The covenant emphasizes the obligation of the state to support exonerees who face significant barriers as a result of a miscarriage of justice. At the federal level, provisions allow for wrongful conviction relief, however, a majority of criminal cases adjudicated in the United States fall under state-level jurisdiction (Hemmens, Brody, and Spohn, 2020). Importantly, not all states have compensation statutes (Simms, 2016). Furthermore, exonerees do not truly have a right to compensation, only a means to appeal for it in certain states. By signing with the United Nations, the United States merely agreed to allow some exonerees the right to submit an appeal for compensation, but nothing is guaranteed to them.

While a majority of states have compensation statutes (33), this does not necessarily suggest that a majority of Americans are protected, nor does it mean that exonerated persons are distributed equally across states, or that intersectional identities (such as race and gender) are equally distributed (Simms, 2016). In a review of wrongful conviction research, for example, Garrett (2020) highlights how state-level policies around court procedures and evidence handling can contribute to varying levels of wrongful convictions across states. Similarly, Smith and Hattery (2011) note that African American men are disproportionately represented in exoneree populations. If such groups are more likely to be convicted in states without compensation, wrongful convictions may represent an important racially disparate outcome (protection from the state).

Understanding these dynamics is important to revise policies and create more equitable outcomes for all Americans.

Much of the literature in this area has taken shape as reviews of legal statutes. These writings all make the legal argument that compensation statutes are warranted (Brooks and Simpson, 2012; Heneage, 2019). Due to data availability, empirical examinations are more limited. We do know that race influences risk of wrongful conviction. Smith and Hattery (2011) find a relationship between race and wrongful conviction, especially for African American men, who are wrongfully convicted and exonerated at a higher rate than others. We also know that there are no significant differences across race and gender with regards to compensation awards (Gutman and Sun, 2019). The degree to which this is explained by the state of conviction remains unclear. It is important to explore how these two features of wrongful conviction compensation jointly, as these problems may contribute to cumulative disadvantage, particularly for defendants of color.

Compensation can be seen as a remedy for the miscarriage of justice, but unequal access to compensation across states may suggest that some states do not offer this remedy for the wrongfully convicted. Using an institutional inequalities framework, this thesis examines the relationships between state policies and the disproportionate outcomes that remain ingrained in American society. To examine the scope and consequences of state compensation laws in the United States, I drew from Gutman and Sun's (2019) comprehensive statute review of compensation, which provides state-level information on the presence of compensation laws and the year they were enacted. I merged state-level characteristics with individual-level data from the National Registry of

Exonerations (provided by the Innocence Project) to assess whether exoneree characteristics (race, gender, age) differ depending on the compensation statute status of their state of conviction. I found that cumulatively, less than half of exonerees were living in compensating states at the time of their conviction. Further, while main race and gender effects emerged only for Hispanic males (and such that they had an increased likelihood of conviction in a compensation granting state), interactions suggest the need to consider the ways wrongful convictions manifest among certain crime types (sexual assault and drugs). Taken together, the findings raise continued questions about inequalities in the criminal justice system and the policies that reproduce them.

### **Institutional Inequality: Theories and Expectations**

A large body of sociological literature suggests that differences in a variety of outcomes by race are contingent on structures of inequality. Within the criminological literature, scholars have argued that historical inequalities shape three main factors. First, historical inequalities shape the opportunities and resources available to Black and Brown communities, which in turn affect a host of outcomes from employment to violence to interactions with the criminal justice system (Peterson and Krivo, 2004; Vogel, Thompson, and Messner, 2019). Studies have found that “under the strain of job losses, community crime patterns are affected,” and minority communities are the ones most adversely affected by these trends (Crutchfield, 2014, pg. 21). When individuals do not have access to adequate resources and means (such as employment) to support themselves, they may turn to criminal activities to make a living, leading to higher crime rates in those areas (Crutchfield, 2014). These criminal activities can range from drug

dealing to organized crime, and they increase the chances of an individual encountering the criminal justice system (Crutchfield, 2014).

Second, historical inequalities shape what is determined to be “illegal” and for whom. According to *Quinney’s Social Reality of Crime*, the definitions of crime (what is considered illegal) are created by those in power (Quinney, 1970). Because they have all the power, individuals at the top assign criminal behavior to different groups, decide who is a criminal, and disseminate this information throughout society (Gabbidon, 2014). Because they do not have any power, minorities are relegated to play the parts that are ascribed to them, with no real means to change the policies that perpetuate systemic racism and inequality. In the same way that those in power define what is illegal, they also decide for whom things are illegal, and a perfect example of this is the studies on crack cocaine and powder. These studies found rich white individuals are more likely to face powder cocaine charges, while poor Black men are more likely to face crack cocaine charges, which are longer and harsher than powder cocaine sentences (Palamar et al, 2015). Studies have also found that crack cocaine is more closely correlated to higher incidences of arrest than powder cocaine, which is significant because Black individuals are less likely to use powder cocaine and more likely to use crack cocaine (Palamar et al, 2015).

Lastly, historical inequalities shape how criminal justice systems police and interact in neighborhoods. Specifically, police officers are more likely to heavily scrutinize an area where a Black majority resides and there are high crime rates (Gaston, 2018). These trends are, in part, a result of hot-spots policing, where police presence is focused in low-income areas with high crime rates, and these areas are predominantly

Black (Gaston, 2018). Because of this, “officers situated in such contexts are likely to engage in rigorous proactive and reactive policing practices that make Blacks more susceptible to police detection,” thus perpetuating racial inequalities in minority neighborhoods (Gaston, 2018, pg. 501).

These differences make their way into the criminal justice system and compound with additional inequalities including pre-trial detention, access to adequate representation in the courts and protection of civil rights, pre-trial detention, plea bargaining offers, final sentencing dispositions, and broader incarceration trends (Campbell, Vogel, Williams, 2016; Omori and Peterson, 2020).

Racial inequalities continue to be present as individuals are processed through the criminal justice system, and this trend is reinforced in pre-trial detention. Pre-trial detention has been a leading factor in the increase of the jail population as 63% of individuals housed in jail are being held pre-trial according to the Department of Justice, and minority individuals are grossly overrepresented within this population (Menefee, 2018). Pre-trial detention also creates new challenges to individuals in terms of future sentencing, as they are less able to have access to and meet with counsel and take part in their defense (Menefee, 2018). Because they are less likely to be able to pay for bail, minorities tend to be detained before trial (Menefee, 2018). Pre-trial detention has been linked to a higher probability to plead guilty, harsher, and longer prison sentences, which further exacerbate racial inequalities (Menefee, 2018).

Racial inequalities also impact minorities when it comes to plea bargaining offers. As it stands, “white defendants are twenty-five percent more likely than Black defendants to have their principal initial charge dropped or reduced to a lesser crime” and because of



this, they are less likely to be charged and convicted of felony than their Black counterparts (Berdejó, 2018, pg. 1191). Conversely, Black individuals are more likely to be convicted of the higher charge they initially face (Berdejó, 2018). At the misdemeanor and lower-felony level, without a previous record, white individuals are more likely to face lesser charges than Black individuals, who are more likely to face harsher and longer sentences (Berdejó, 2018).

Once in the system, it can be hard for minorities to have access to adequate counsel, and because most of them are indigent, they are assigned to public defenders. Studies have found that public defenders are more likely to persuade Black clients to accept harsher and longer sentences than their white clients (Edkins, 2010). These differential attitudes attorneys hold impact minorities disproportionately and perpetuate racial inequality and racial disparity in access to adequate representation in the courtroom (Edkins, 2010). White individuals are more likely to be able to afford their own representation, and because of this they have access to a better standard of representation than indigent minorities do.

All these processes ultimately culminate in racial disparities in sentencing outcomes. Laws and policies systematically perpetuate racial disparities, and these are prominent in the sentencing phase of the criminal justice system and result in an unequal enforcement of the law (Omori and Petersen, 2020). Racial inequality is, in turn, compounded by “racialized policies, such as mandatory minimums, bond schedules, or sentencing guidelines” (Omori and Petersen, 2020, pg. 683). These policies perpetuate inequality in sentencing and make minority populations even more vulnerable to racially disparate outcomes (Omori and Petersen, 2020). From a conviction standpoint, we know

that Black men are 7 times more likely to be wrongfully convicted than their white counterparts, and this highlights the varying inequalities of sentencing outcomes (Selby, 2021).

Lastly, this amalgamation of racial inequality leads to a more complex understanding of broader incarceration trends. In the last forty years, the incarceration rate in the United States has increased 450 percent, further establishing the nation with the highest incarcerated population (Campbell et al, 2015). Studies have identified the pervasiveness of racial inequalities as a determinant of higher incarceration rates, and although the offending patterns of Black individuals have decreased, their representation in the incarcerated population has increased (Campbell et al, 2015). Thus, as Alexander (2009) argues in *The New Jim Crow*, mass incarceration has become another mechanism through which Black and other minority populations are racially oppressed. (Alexander, 2009). This systematic oppression was made possible by the increase of tough-on crime legislation and the ensuing war on drugs, which mostly affected lower-class Black men and lead to a disproportionate increase in their incarceration (Pettit and Western, 2004). Furthermore, incarcerated persons contribute to legislature representation but are often barred from participating in civic activities (Pettit, 2012; Western, 2006).

Taken together, the inequality literature suggests that much of this is examined through this institutional inequality lens, yet there are additional facets of wrongful conviction that require further theorization, particularly in the realm of compensation. More specifically, a critical race theory framework provides a holistic understanding for why wrongful convictions persist disproportionately despite the implications it has for the state's legitimacy in doling out justice.

## **The Critical Race Theory Framework**

The Critical Race Theory was introduced to more fully describe how race neutral laws can have racially different impacts. Emerging in 1990, it argues the following four key tenets. The first key tenet of critical race theory is that race is a manmade construct that is not objective truth (George, 2021). Science has not found any significant biological difference between races, so CRT holds that while race does not biologically exist, it still holds social importance and is real in its consequences (George, 2021). The main concern here is that majority groups racialize minority groups and treat them accordingly (Gabbidon, 2010).

The second key tenet is that racism is normal and part of our systems and institutions, which perpetuate racial inequality (George, 2021). As such, any racial issue is merely a demonstration of systemic racism (George, 2021). According to Critical Race Theory, racism is a part of everyday life in American society and is always inescapably present (Gabbidon, 2014). Racism is “embedded within systems and institutions, like the legal system, that replicate racial inequality,” thus creating a self-perpetuating cycle of racial disparity in society (George, 2021).

The third key tenet is that law is not colorblind and generates racial inequality (George, 2021). Racism is not the fault of “a few bad apples,” but a part of our criminal justice system and our legal code (George, 2021). Because white majorities are benefited by racism, they have little to no motivation to change a system that works for them, and since they are the ones with all the power, fomenting change can be difficult for minority groups (Gabbidon, 2014).

Finally, the fourth key tenet is that racism affects everyone differently (George, 2021). People of color do not all experience race equally, yet it still affects their day to day lives in some significant way (George, 2021). Each minority individual has a “unique voice of color,” and they should be allowed to share their input with society (Gabbidon, 2014, pg. 152). Additionally, folks viewed as white experience laws neutrally, yet they do not realize the privilege they hold due to the color of their skin (McIntosh, 1989). For example, in recognizing her own white privilege, McIntosh reflects on how easily she will be accepted in social situations, and how be it where she lives, in the media, or in history, she can see and be accepted by others of her own race (McIntosh, 1989). These four key points set up Critical Race Theory to reject our current flawed system and denounce white privilege, especially at the expense of people of color (George, 2021). While this theory is central to many discussions of law, it could also yield important insight for the persistence and maintenance of disparities in the criminal justice system.

### **Compensation, Wrongful Conviction, and Race**

In 1977, the United States signed a covenant with the United Nations agreeing that wrongfully convicted individuals have a right to compensation (Costa, 2005). However, the International Covenant on Civil and Political Rights (or ICCPR) has not been wholly implemented in the United States, as not all states have compensation statutes. Signing with the United Nations was merely a formality, and the United States does not recognize wrongful conviction compensation as a right afforded to victims of wrongful convictions. Instead, they hold that individuals have a right to seek compensation in states that allow them to do so (Costa, 2005). While these laws serve to protect all wrongfully convicted, institutional inequalities described above may ensure

that those most at risk for victimization from the state are also those least likely to have that remedied.

### **Literature Review**

Criminological, sociological, and legal literatures have long discussed the idea that race impacts criminal justice outcomes and leads to conviction and sentencing disparities. Some work focuses on the extent of disproportionality in the context of mass incarceration. For example, Pettit and Western (2004) find that mass incarceration and the war on drugs contribute to African American overrepresentation in the criminal justice system (Pettit and Western, 2004). Specifically, they find that prison has become a life course stage for young and uneducated Black men, as “a Black male dropout, born 1965-69, had nearly a 60 percent chance of serving time in prison by the end of the 1990s” (Pettit and Western, 2004, pg. 161). More recent work explores the mechanisms that translate “race neutral” statutes to racially disparate outcomes. For example, Omori and Petersen (2020) discuss sentencing outcomes based on race and argue that sentencing laws are enforced in ways that lead to sentencing disparities based on race, and that these disparities are a systematic issue, not just an individual one (Omori and Petersen, 2020). Perhaps most troubling, however, is that beyond differences in enforcement and conviction outcomes, Smith and Hattery (2011) find that African American men are overrepresented not only in the prison population, but in the exonerated population, as African American men make up 40-50% of the imprisoned population yet make up 70% of exonerated individuals (Smith and Hattery, 2011, pg. 79).

Further work, often emerging from law reviews, explores the correlates and sources of wrongful. Kahn (2010) explains that before DNA testing, wrongful convictions

were not considered possible (Kahn, 2010). Because not all wrongful convictions can be discovered via DNA testing, it is hard to know a real and accurate estimate of how often wrongful convictions occur (Kahn, 2010). Kahn names “eyewitness misidentifications, unreliability of testimony by jailhouse informants, false confessions, inadequate representation by defense attorneys, and improper practices by prosecuting attorneys” as the main causes of wrongful convictions (Kahn, 2010, pg. 128-129). However, due to the racial inequalities perpetuated by our criminal justice system, these things might play out different for a Black defendant versus a White defendant.

Bjerk and Helland (2020) explain that DNA testing can only be used as an exoneration mechanism when there is evidence to test, leaving many innocent convicted persons unable to prove their innocence (Bjerk and Helland, 2020). They find that Black individuals are more likely to be wrongfully convicted for rape than their white counterparts, which is supported by Smith and Hattery’s (2011) study, which is consequential given the challenges in collecting forensic evidence for such crimes. However, because many states have different standards of evidence to prove innocence, it is very hard to generalize the study’s findings across all exonerees (Bjerk and Helland, 2020).

Exoneration is seen as the end of a wrongfully convicted individual’s entanglement with the justice system, yet many exonerees go on to apply for compensation and find it as tough a battle as exoneration. Brooks and Simpson (2012) find that the burden of proof of innocence is different across states with compensation statutes; in states like California, there is preponderance of evidence (or greater than 50%), while states like Florida require a “clear and convincing evidence standard”

(Brooks and Simpson, 2012, pg. 642). In contrast, other states – Ohio and Alabama, for instance – only require documentation of the reversal of a conviction, while states like Maine and North Carolina “require the inmate to have secured either a pardon or a finding of actual innocence before becoming eligible for compensation” (Brooks and Simpson, 2012, pg. 643). These different standards of evidence make it increasingly hard for inmates to have equal access to compensation across the United States.

In one of the few studies to date on the variation in compensation payouts, Gutman and Sun (2019) frame their inquiry around which state provides the best opportunity for compensation (Gutman and Sun, 2019). They find that time and resources are often burdensome factors in compensation claims, and 58 percent of those exonerated receive no compensation at all (Gutman and Sun, 2019). Such findings are echoed in Simms (2016) work, which emphasizes the challenge of navigating legislation while also navigating traditional reentry issues. Simms (2016) notes, “because of the extreme difficulty in obtaining compensation by litigation and special legislation, exonerees are most likely to be compensated if their states have applicable statutes,” but because only 30 states have compensation statutes available to exonerees, many exonerees are left with no other recourse (Simms, 2012, pg. 157). Furthermore, exonerees commonly do not have any income or resources when released, and obtaining compensation can be a long and expensive process. These intersecting influences make it nearly impossible for indigent exonerees to be able to pay for an attorney and apply for compensation (Simms, 2012). As Kahn (2010) explains, “many [exonerees] pay tens, if not hundreds, of thousands of dollars funding their appeal, leaving them in substantial debt,” and this debt is exacerbated by having no resources upon reentry and having to hire a costly attorney to

help them file for compensation (Kahn, 2010, pg. 129). The limited accommodations for wrongfully convicted persons will fall disproportionately on exonerees of color, particularly if they are more likely to reside in states that lack statutory protections.

This study differs from past literature in that as opposed to being looked at separately, the relationship between wrongful conviction, compensation, and race will be examined jointly. This is important because these factors interact with each other and create the outcomes we see in the criminal justice system, so they must be looked at together instead of separately. This study also seeks to fill an important gap in the literature regarding the race neutral policies contribute to institutional inequalities and the ultimate efficacy of wrongful conviction compensation to resolve inequalities.

### **Data and Methods**

To construct state-level profiles of the presence and use of compensation statutes, I drew from Gutman and Sun's (2019) comprehensive state-statute compensation review, which provides state-level information on the presence of compensation laws, the year they were enacted, the total number of exonerees, claims filed, and the percentage of claims paid out by the state. Thus, this comprehensive review provides the extent of compensation throughout the United States – both in terms of the presence of statutes and in terms of their effective implementation. As of 2019, 33 states currently have statutes, however, a bulk of these statutes (18 statutes) were not enacted until the 2000s. Furthermore, I merged these data using Federal Information Processing Standards (FIPS) codes to individual-level wrongful conviction data from the National Registry of Exonerations (provided by the Innocence Project). The National Registry of Exonerations, a collaboration between the University of California Irvine's Newkirk



Center for Science and Society, the University of Michigan Law School, and Michigan State University College of Law, and it documents wrongful conviction case characteristics from 1956 to the present. Regularly updated, the National Registry of Exonerations has consistently been the main source of information about case-level exonerations in the United States (Carson & Sabol, 2016; Webster, 2017). While the registry captures cases across state, federal, and territory jurisdiction, federal and territory instances are removed from the sample, as the key focus of this study is to examine state-level variation. Altogether, the sample included 2,566 exonerees.

## **Measures**

### **Dependent Variables**

Compensation was measured as a dichotomous variable based on whether a state has a compensation statute at the time of an exoneree's conviction (=1). Importantly, as noted in the theoretical framework, the presence of compensation statutes is the suggested mechanism by which wrongful convictions occur. To best examine the hypothesis, this measure necessitated a temporally-specific indicator of statutes, that is: "When the conviction occurred, did the state have the compensation disincentive codified into law?"

### **Independent Variables**

Age was operationalized as the age of the exoneree at conviction. On average, exonerees were 28 years old at the time of conviction, which broadly – and particularly for earlier years – overlaps with evidence from the estimated 29-year-old age at admission in 1993, according to BJS National Prisoner Statistics Program estimates (Carson and Sabol, 2016). Gender was a dichotomous variable measured according to the

listed exoneree characteristics (Female=1). Males comprised 91.2% of exonerees. The underrepresentation of females in exoneree data may suggest that females have lower rates of wrongful conviction, however, prior work does suggest that part of the difference may be attributed to differences in available exonerating evidence, as gender differences exist regarding the nature of criminal cases (Smith and Hattery, 2011).

The National Registry of Exonerees provides racial identity of exonerees when available. Ideally, the consideration of racial identities would permit a thorough investigation of the race-wrongful conviction relationship, however, small sample sizes prohibited detailed disaggregation and analysis of race effects beyond White (35.4%), Black (51.4%), and Hispanic (11.4%) exonerees<sup>1</sup>. I present the range of available racial categories in the descriptive analyses, although further distinctions may be excluded from detailed analyses. In bivariate and multivariate analyses, the sample was restricted to the three key categories, with White exonerees serving as the referent category. Consistent with case processing research and work on wrongful convictions, Black defendants make up a disproportionate share of the sample (Smith and Hattery, 2011). In the multivariate analyses, I used an intersectional approach whereby gender and race are combined, with White males serving as the referent category.

### **Offense type**

The scope of offenses included in the exoneree data are broad, and over 39 different offenses are identified as the most serious offense charged to the exoneree sample. I aligned these charges with crime types noted in the National Incidence Based Reporting System (NIBRS). After recoding, offenses were classified across six broad

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<sup>1</sup> Of the full sample, Native American exonerees comprised .67% of the cases, Asian exonerees make up .70%, and .51% of exonerees were listed as “other” or “missing.”

groups: Homicide/Homicide related, sexual assault, other violent offense, drug, property, and other nonviolent offense. Homicide/Homicide related offenses accounted for 45.1% of offenses, followed by sexual assault offenses, which accounted for 24.4% of offenses. Overall, most cases fell neatly into NIBRS categorizations however, a small number of offenses, such as sex offender registration status and traffic convictions were excluded from the sample (n=43).<sup>2</sup>

### **Conviction Time Period**

It is important to consider the time period that exonerees were convicted in, as this can account not only for compensation laws available at the time but also historical effects. Given the temporal importance of these laws, I constructed a 3-category measure of the era of conviction. This helps capture other historical sources of spuriousness.

### **Analytic Strategy**

The analyses began with a univariate analysis to examine the scope of compensation statutes in the United State. Using bivariate analyses, I assessed whether exoneree characteristics (race, gender, age) differ depending on the compensation statute status of their state of conviction. Finally, I employed a binary logistic regression predicting the likelihood of an individual living in a compensating state at the time of conviction when account for a range of covariates. Further, I assessed if gender and race distinctions predict compensation statute presence when combined with insight from

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<sup>2</sup> The largest excluded category was convictions for the failure to maintain sexual offense registration stipulations (n=31). While wrongful convictions of this nature warrant further study, their unique status in criminal justice surveillance, the timing of registration policies following the Adam Walsh Act in 1994, the technical violation nature of their wrongful conviction, and the overall small number of individuals in this category relative to others suggests that such convictions need future focused empirical inquiry.

charge type. Robust standard errors were used to account for the clustering nature of cases by state.

## Results

As displayed in Figure 1, 64% of states have adopted compensation statutes as of 2020. However, only 47% of exonerees have been convicted in states with compensation statutes. Although both trends are positive and seem to be increasing over time, the cumulative number of exonerees convicted in states that have adopted compensation statutes remains below half of the exonerated population, meaning that less than half of exonerees were subject to compensation protections at the time of their conviction.

Table 1

Table 1 contains a breakdown of the descriptive statistics of the sample. The overall sample included 2,566 exonerees and 51.4% of exonerees are Black. In addition, 55.3% of exonerees convicted in states that did not have compensation statutes were Black. In comparison, 35.4% of overall exonerees were white, and 36.4% of exonerees who were convicted in a state with no compensation statute were white. Interestingly, although Hispanic exonerees only make up 11.4% of the sample, only 6.8% of those convicted in states without compensation statutes were Hispanic, while 16.6% of those convicted in states that had compensation statutes were Hispanic. Overall, there was less variation with regards to gender. From the full sample, 91.2% of exonerees were male. In the bivariate analyses, males were slightly more likely to be convicted in non-compensating states ( $\chi^2(1, N=2556) 10.23; df=1, p.<.005$ ).

The majority of exoneree offenses (45.1%) fell into the homicide/homicide related category. Notably, 53.0% of exonerees convicted in a state without a

compensation statute were convicted of a homicide/homicide related offense. The second biggest category was sexual assault offenses, and these make up 24.4% of offenses. Furthermore, 25.5% of exonerees convicted in a state without a compensation statute were convicted of a sexual assault offense. Lastly, drug offenses made up 13.8% of offenses. However, unlike with homicide/homicide related and sexual assault offenses, 18.9% of those convicted in a state with a compensation statute were convicted of a drug offense.

An exoneree's decade of conviction is very important, as it dictates whether an exoneree was convicted in a state with or without a compensation statute. As depicted by Table 1, over 60% of exonerees convicted in a state without a compensation statute were convicted between the 1980s and 1990s. At that time, less than 20% of states had compensation statutes, meaning that a vast majority of exonerees had no chance of applying for compensation at the time they were convicted.

#### Table 2

Before analyzing the data, I hypothesized that there would be statistically significant bivariate disparities by race, especially between Black and White exonerees when it comes to being convicted in states with and without compensation statutes. However, as depicted by Table 2, these differences were not stark in the bivariate models. According to Table 2, 54.9% of White exonerees and 57.4% of Black exonerees were convicted in states with no compensation statute, while 45.2% of White exonerees and 42.6% of Black exonerees were convicted in states with compensation statutes. While not equal, the disparities between the two are less stark than I hypothesized. However, there was a pronounced statistically significant difference in Hispanic exonerees, as 68.2% of

Hispanic exonerees were convicted in states with compensation statutes ( $\chi^2$  (4, N=2,553) =70.56,  $p < .001$ ). While this may certainly be attributed to demographic migration trends, it is worthy of note.

Table 3 presents the results of the multivariate analyses using binary logistic regression. Two models are displayed. First, I examined the main effects of gender and race when accounting for other covariates. Overall, few factors predicted the likelihood of living in a compensation state, however, the findings did reveal that Hispanic males were 2.75 greater odds of living in a compensation state relative to their White male counterparts (95% CI: .932, .97). Although the findings were significant for Hispanic males, this was not the case for White females, Black males, Black females, and Hispanic females, as there were no stark differences between them when compared to White males. These results – which provide some accounting for spurious explanations – do not support the overall hypothesis that Black individuals – male or female – were less likely to be convicted in a state with legal wrongful compensation protections.

I also examined the main effects of offense types compared to homicide. The findings suggest that exonerees convicted of other violent offense and other nonviolent offenses had greater odds of being convicted in a state with compensation statutes. However, there were no differences for sexual assault, drug, and property offenses when compared to homicide. This suggests that such offenses might be processed and adjudicated similarly to homicide as they might be more likely to have similar pressures on prosecutors to charge such offense types, given they are seen as more serious in nature (Stevens, 2008).

The second model assesses these effects and considers the potential for crime types to interact with race and gender, and more specifically, for Black males. Here, the direct effect of race on compensation statute presence remains confined to the Hispanic population (OR=2.85). Importantly, crime-type moderates the differences between Black and White males. Holding all other variables constant, sexual assault is associated with an estimated 80 percent increase in the likelihood of state protections relative to homicide. However, there is a significant reduction in this effect for Black Males. Similarly, the effect of drug offenses on convictions in a protected state is reduced for Black males relative to white males. This is important given that prior work suggests Black men are especially prone to wrongful convictions for these types of offenses (Free and Ruesink, 2012).

Finally, I examined the main and interactive effects of race and gender when also taking into consideration offense type. The findings suggest that a Black male convicted of a sexual assault offense has an estimated 48% odds reduced of living in a state with compensation statutes. They also reveal that a Black male convicted of a drug offense is 75% less likely to live in a state with compensation statutes. Previous research on institutional inequality has found that these two offense types are ripe for wrongful convictions, especially for Black men. Therefore, it is alarming that Black men wrongfully convicted of these offenses are less likely to reside in states with compensation statutes.

### **Discussion**

The purpose of this study was to explore the scope of wrongful conviction compensation statutes in the United States. Wrongfully convicted individuals are

innocent of the crime they are convicted of, yet they suffer a myriad of unfair and traumatic experiences at the hands of our criminal justice system. Once exonerated, not all of them have equal access to compensation avenues, and this lack of support and resources is yet another way that these individuals are victimized by the system. This study differs from prior studies of racial differences in that it delves into what these differences look like for the exonerated population and their compensation outcomes. This study also examines the interaction between race and gender in the exonerated population and how these two variables combined affect an exoneree's chances for compensation.

Drawing from institutional inequalities literatures, and the central tenants of Critical Race Theory, I hypothesized that Black exonerees were more likely to be convicted in states without compensation statutes, however, the findings did not support this hypothesis. The bivariate findings reveal that while these two groups are not equal, the differences between them are not as stark as I hypothesized. Multivariate findings reveal significant differences between Black and White male exonerees convicted of sexual assault and drug offenses, as Black males specifically were less likely than their White counterparts to reside in compensating states. These findings are in line with Gabbidon's (2014) work on racial disparities in criminal justice responses to drug offenses and Smith & Hattery's (2011) work on racial disparities in criminal justice responses to crimes where the offender is Black and the victim is White, especially if the crime is homicide or rape (Gabbidon, 2014; Smith & Hattery, 2011). This research finds that these individuals are at a greater risk of being wrongfully convicted, especially in



terms of these crimes, yet they lack access to necessary protections and compensation once they are exonerated.

Although the analyses account for a number of spurious relationships, this study is not without limitations. First, the sample includes only those exonerees identified by the National Registry of Exonerations, meaning that those who have not yet been exonerated, those who are waiting to be exonerated, and those who do not have enough evidence to be exonerated, are not considered in this study. Second, procedural factors that contribute to convictions, such as policing evidence practices and guilty plea procedures, may explain some of the differences we see. For example, we know that there are disparities in plea procedures for Black and White defendants, and that White defendants are less likely to be charged and convicted of a felony than Black defendants, while the latter are more likely to be charged with and convicted of a (often via a plea deal) felony (Berdejó, 2018; Johnson & Richardson, 2019). These disparities may account for the differences we see between exonerees and may also partly account for why Black exonerees are overrepresented in the exoneree population, although it remains to be seen if such policies systematically overlap with state-level accessibility factors which allow for compensation in the first place. Finally, while this study explores an exoneree's chances of living in a compensating state, it does not delve into how likely exonerees are to be compensated in states with compensation statutes. Living in a compensating state does not mean that exonerees will be compensated, so it is important to understand how likely it is for exonerees that do live in compensating states to be exonerated and if there are any disparities in who gets compensation. There is evidence that there are few differences in compensation amounts across race (Gutman and Sun,

2019), yet future work might address limitations more comprehensively by considering how offense types and likelihood of living in a compensating state, when combined with successes in compensation and the practical considerations of payouts (i.e. how long it takes for them to be compensated and differences in amounts they are awarded translate to eventual outcomes for exonerees. Regardless, this study fills an important empirical gap on this topic. While the topic of wrongful convictions is gaining more recognition due to the efforts of organizations such as the Innocence Project, there is still not a lot of empirical information available, and my work is one of the first to study race and gender of exonerees, as well as the policy context in which they experience their wrongful conviction, in terms of their possible compensation outcomes. Moreover, it considers the broader racial disparities existing in our criminal justice system and contextualizes the responses by states when they exacerbate such disparities through wrongful conviction. Overall, differences in ability to be compensated suggest a need for equal protection and compensation for all exonerees, regardless of their state of conviction.

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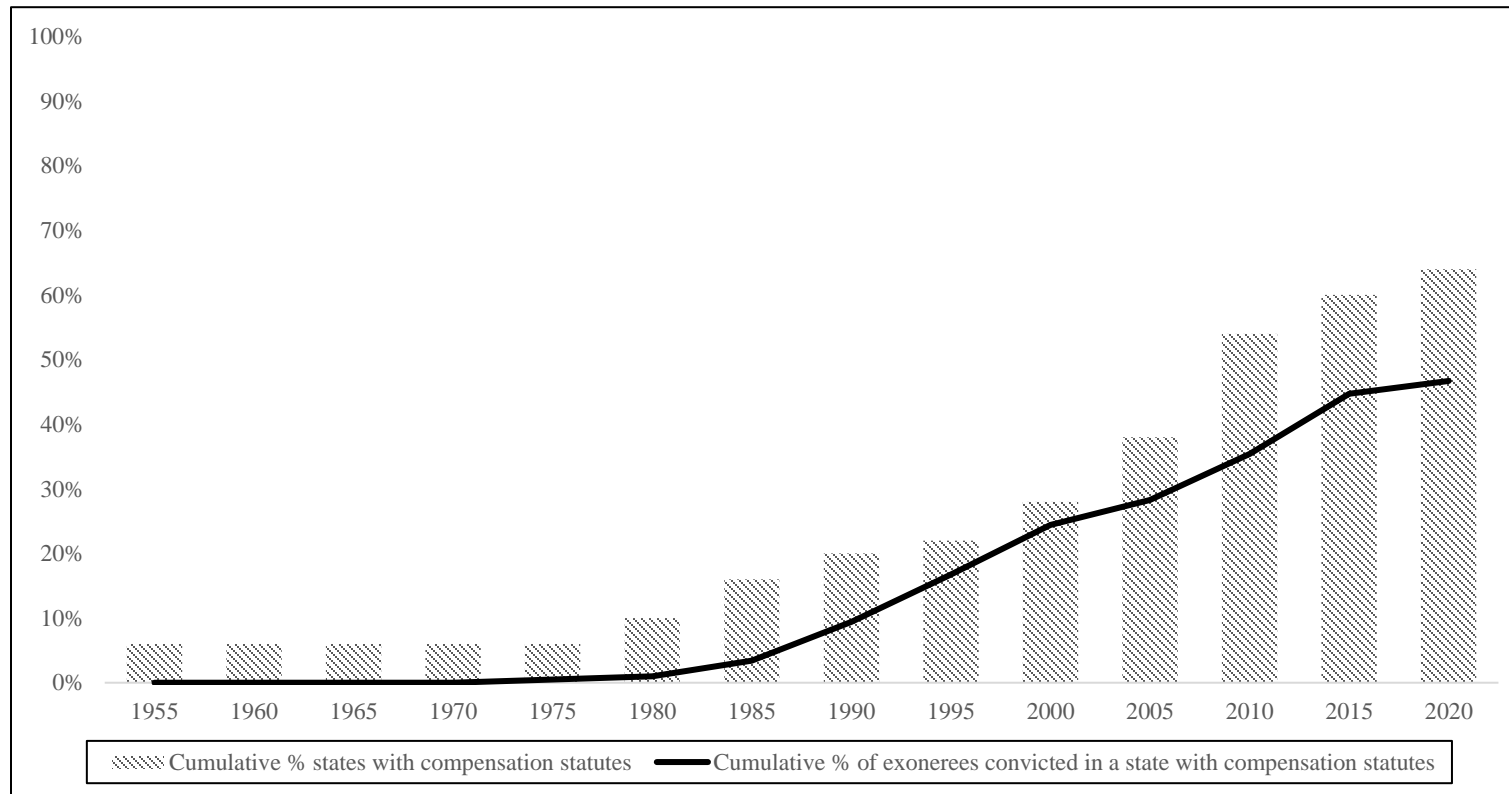
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## Appendix

Figure 1



**Table 1**

Table 1: Descriptive Statistics						
	Full Sample (n=2,566)		No Comp Statute (n=1,367)		Comp Statute (n=1,199)	
<b>Race</b>						
Black	51.4%		55.3%		46.9%	
White	35.4%		36.4%		34.2%	
Hispanic	11.4%		6.8%		16.6%	
Asian	0.7%		0.3%		1.2%	
Native American	0.7%		0.7%		0.7%	
Other/Missing	0.6%		0.5%		0.5%	
<b>Sex</b>						
Female	8.8%		7.1%		10.7%	
Male	91.2%		92.9%		89.3%	
<b>Offense</b>						
Homicide/ Homicide related	45.1%		53.0%		36.0%	
Sexual assault	24.4%		25.5%		23.1%	
Other violent offense	12.5%		9.0%		16.6%	
Drug	13.8%		9.3%		18.9%	
Property	3.1%		2.8%		3.4%	
Other non-violent offense	1.2%		0.4%		2.0%	
<b>Decade of Conviction</b>						
1950s or 1960s	0.6%		1.0%		0.0%	
1970s	3.3%		4.7%		1.8%	
1980s	22.1%		28.7%		14.6%	
1990s	33.2%		32.9%		33.5%	
2000s	24.6%		26.0%		22.9%	
2010s	16.3%		6.7%		27.2%	
	Mean	SD	Mean	SD	Mean	SD
Age at conviction (years)	28	9.9	27.4	9.6	28.7	10.2



**Table 2****Table 2: Bivariate Results – Age, Gender, and Race****Analysis 1: T-test Age by Statute Presence (n=2,559)**

	<b>n</b>	<b>Mean(SD)</b>
No Compensation Statute	1,364	27.4(0.26)
Compensation Statute	1,195	28.7(0.29)

*Note: T-cal= -3.56; df=2,557, p<.001; analysis includes all exonerees with age information available (age is missing on 7 observations)*

**Analysis 2: Chi-square Test of Gender by Statute Presence (n=2,566)**

	<b>Male</b>	<b>Female</b>
No Compensation Statute	1,270 (54.3%)	97 (43.1%)
Compensation Statute	1,071 (45.8%)	128 (56.9%)

*Note:  $\chi^2 = 10.23$ ; df=1, p.<.005; parentheses denote column percentages*

**Analysis 3: Chi-square Test of Presence of Race by Statutes by Race (n=2,553)**

	<b>White</b>	<b>Black</b>	<b>Hispanic</b>	<b>Asian</b>	<b>Native American</b>
No Compensation Statute					
Statute	498 (54.9%)	756 (57.4)	93 (31.9%)	4(22.2%)	9 (52.9%)
Compensation Statute	410 (45.2%)	562 (42.6%)	199 (68.2%)	14 (77.8%)	8 (47.1%)

*Note:  $\chi^2 = 70.56$ ; df=4, p.<.001; parentheses denote column percentages*

**Table 3: Logistic Regression Predicting the Likelihood of Conviction in a State with Compensation Statutes (n=2,512)**

	Base Model		Interaction Model		
	OR	SE	OR	SE	
Race and gender <sup>a.</sup>					
White female	1.27	0.34	1.23	0.34	
Black male	0.91	0.26	1.21	0.34	
Black female	1.36	0.40	1.15	0.42	
Hispanic male	2.75	0.97	**	2.86	1.11 **
Hispanic female	1.89	0.74		1.58	0.72
Age	1.01	0.01		1.01	0.01
Era of conviction <sup>b.</sup>					
1980s – 1990s	2.26	1.82		2.42	1.92
2000s – 2010s	3.38	2.79		3.64	2.95
Offense Type <sup>c.</sup>					
Sexual Assault	1.33	0.31		1.79	0.48 *
Other violent offense	2.41	0.46	***	1.99	0.49 **
Drug	2.14	1.90		5.08	3.76 *
Property	1.52	0.42		1.44	0.42
Other non-violent	4.75	2.19	**	5.69	3.37 **
Race and gender X offense type					
Black Male x sexual assault				0.52	0.16 **
Black Male x other violent offense				1.38	0.50
Black Male x drug				0.25	0.14 *
Black Male x property				1.83	1.02
Black Male x other non-violent				0.65	0.78
Constant	0.19	0.15 *		0.15	0.11 *
Log-likelihood		-1620.7			-1601.9

NOTES: OR=Odds Ratio; SE=Standard Error; Cluster Robust standard errors used to account for state clustering; \*= $p < .05$ ; \*\*= $p < .01$ ; \*\*\*= $p < .001$ ; a. White male serves as reference category; b. 1950s -1970s serves as reference category; c. Homicide and Homicide related offense type serves as reference category