

Manifesting Justice: Wrongly Convicted Women Reclaim Their Rights

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We live in a true “Age of Innocence.”¹ The emergence of deoxyribonucleic acid (DNA) testing in the 1980s offered a way to prove something to a degree of scientific certainty that commentators had long suspected—that a significant number of prisoners are actually innocent. Since 1989, DNA testing has exonerated 375 people,² and almost 3,000 others have proven their innocence without the benefit of that technology.³

Scholars who conduct research in the field often explore “what went wrong” in these cases to identify the weakest links in the criminal justice chain and craft reforms to strengthen them. Eyewitness misidentifications, false confessions, police and prosecutorial misconduct, and poor defense lawyering are among the major factors that lead to wrongful convictions.⁴ Those of us who work in this area have also studied the demographic characteristics of the wrongfully convicted, emphasizing how Black and Latino men are overrepresented in the dataset.⁵ What we have not done is pay sufficient attention to other marginalized populations affected by the scourge of wrongful convictions, that is, until the publication of Professor Valena Beety’s terrific book, *Manifesting Justice: Wrongly Convicted Women Reclaim Their Rights*.

¹ This is not my first reference to this term. See Daniel S Medwed, “Up the River without a Procedure: Innocent Prisoners and Newly Discovered Non-DNA Evidence in State Courts” (2005) 47 Ariz L Rev 655 at 656.

² *Exonerate the Innocent*, Innocence Project, online: <https://innocenceproject.org/exonerate/> (last visited 20 Jul 2022).

³ National Registry of Exonerations: Homepage, online: <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=6332> (last visited 20 Jul 2022).

⁴ See Brandon L Garrett, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong* (Cambridge, MA: Harvard U Press, 2012).

⁵ See Daniele Selby, *How Racial Bias Contributes to Wrongful Conviction*, Innocence Project, 17 Jun 2021, online: <https://innocenceproject.org/how-racial-bias-contributes-to-wrongful-conviction/>.

Beety trains her keen scholarly eye on the conviction of not only innocent women and members of the LGBTQ+ community, but also factually guilty defendants injured by a system dominated by overcharging and excessive sentencing. As she notes,

It is not just the factually innocent who are wrongly in prison. Forensic fraud, “testilying” police officers, prosecutors withholding exculpatory evidence, mistaken eyewitness identification, and false confessions lock away factually innocent people. But these systemic breakdowns also unjustly lock away far more people who are wrongfully convicted and sentenced, even if their factual innocence cannot be conclusively proven or their guilt is not in dispute (4).

By offering a broad vision of what constitutes a miscarriage of justice and the characteristics of those involved in them, Beety challenges many long-held assumptions in the Innocence Movement and reimagines wrongful convictions in a more inclusive way. And she does all of this with flair, interspersing the haunting saga of one of her former clients in Mississippi, Leigh Stubbs, throughout her narrative to illustrate the complexities of the criminal justice system. The result is a compelling and important addition to the literature in our field.

I Injustice Refashioned

For years, progressives have disparaged innocence advocates for creating a hierarchy of injustice that elevates “factual” or “actual” innocence above other concerns. Waxing poetic about the innocent, some argue, takes the oxygen out of the room—and makes it virtually impossible to raise winning arguments about the more pervasive problems of racial bias and constitutional deprivations that affect people who committed the crimes for which they were convicted.⁶ Although I have defended the strategic emphasis on actual innocence, which I label “innocentrism,”⁷ the criticisms persist and rightfully so. Beety navigates this debate with skill. She achieves this not by portraying innocence advocates and due process warriors as rivals grasping for scarce resources and limited attention spans in the public sphere. Instead, she highlights the commonalities in the injustices experienced by so many people ensnared in the criminal justice system, guilty and innocent alike, and underscores how we have reached a moment in the history of the Innocence Movement where it is high time, perhaps past time, to think more expansively. In Beety’s words, “[i]nnocence work challenges our current system and ultimately encourages reforming our system for everyone—not only innocent people. Manifesting justice, advocating against unjust convictions even without concrete proof of factual innocence, is in my opinion the next step” (215).

⁶ See Abbe Smith, “In Praise of the Guilty Project: A Criminal Defense Lawyer’s Growing Anxiety About Innocence Projects” (2010) 13 U Pa JL & Soc Change 315.

⁷ Daniel S Medwed, “Innocentrism” (2008) U Ill L Rev 1549.

II Innocence and Intersectionality

The insidious effects of racial bias in the criminal justice system cannot be overstated. The topic of race currently dominates the criminal justice discourse—and for good reason. Racism taints every corner of the system, including the field of wrongful convictions. Data about homicide cases, for example, suggest that innocent Black defendants are seven times more likely to be convicted than their white counterparts.⁸ The demographic features of the exonerated population reflect this disturbing reality. As of June 2021, two-thirds of the people cleared by the largest innocence organization in the country, the Innocence Project in New York City, were people of color and 58% were Black.⁹

Yet the picture is more nuanced than it might seem at first glance. With some notable exceptions,¹⁰ scholars of wrongful convictions have largely ignored recent conversations about “intersectionality” that stem from the work of Kimberlé Crenshaw.¹¹ At the risk of oversimplification, intersectionality refers to the complicated, multilayered identities that we all have, identities that cannot be reduced to a single label based on, say, one’s race or gender. Rather, this concept posits that it is essential to recognize and value intragroup differences as well as the unique attributes of each person.

Beety makes intersectionality a key theme in her book, tackling issues like homophobia, drug addiction, and ableism head-on and calling them out as causes of wrongful convictions. At one point, she observes that “[o]ur multiple identities can be used against us in the criminal legal system. Our autism flags us as erratic and dangerous to police who respond with violence; our deafness is interpreted as noncompliance and justification to make us comply; our disabilities heighten our own danger from law enforcement particularly when we are already stereotyped as dangerous because of our race (53).” Beety showcases her formidable analytical firepower in covering these topics, especially in her discussion of sexual orientation and gender.

Chapter 10 homes in on the history of what Beety labels “Criminalizing Queerness.” She mentions a range of disturbing laws, among them, “sumptuary laws” that date back to the 1840s and banned cross-dressing or “disguising” in an effort to promote gender-specific attire. She also gives moving examples of wrongful convictions involving LGBTQ+ people, such as the notorious “San Antonio Four” case in which “Latina lesbians” were “wrongfully convicted of fantasized sexual crimes against children” (96).

Chapters 12, 16 and 17 grapple with issues principally related to women. Statistics compiled by the National Registry of Exonerations indicate that women represent 9% of those

⁸ See Daniel S Medwed, *Barred: Why the Innocent Can't Get Out of Prison* (New York: Basic Books, 2022).

⁹ See Selby *supra* note 5 and accompanying text.

¹⁰ See Elizabeth Webster & Jody Miller, “Gendering and Racing Wrongful Conviction: Intersectionality, ‘Normal Crimes,’ and Women’s Experiences of Miscarriage of Justice” (2105) 78 Albany L Rev 973.

¹¹ See Kimberlé Crenshaw, “Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color” (1991) 43 Stanford L Rev 1241.

exonerated either through DNA or non-DNA evidence,¹² and these cases tend to differ from those involving male defendants in several respects. In particular, about 40% of exonerated women were wrongfully convicted of crimes related to children or other loved ones in their care, suggesting that dated, sexist visions of women as “caretakers” factor into these outcomes.¹³ Importantly, 63% of women exonerees were convicted in “no crime” wrongful convictions, where no criminal act ever occurred. This is three times the rate of “no crime” cases found in the pool of exonerated men.¹⁴

As is her wont, Beety draws on intersectionality in analyzing the experiences of women embroiled in the criminal justice system. She explains how “[p]olice, prosecutors, and judges misperceive Black girls as less ‘innocent’ and more adult than white girls, even of the same age. Their adultification means that Black girls are labeled in the courtroom as willing participants in sex trades, rather than as victims” (177). I was also thrilled to see Beety pay tribute to many women who played pioneering roles in the Innocence Movement’s early days: Shawn Armbrust, Aliza Kaplan, Jackie McMurtrie, Nina Morrison, Theresa Newman, Vanessa Potkin, Cookie Ridolfi, and Linda Starr (212-213). These largely unsung super(litigator)heroes of the battle to correct wrongful convictions were my contemporaries during this era but did not always get the same level of recognition that their male comrades received. Beety has sought to rectify the historical record.

Beety’s magnificent decision to focus on the unjust conviction of women could not come at a better moment. The Supreme Court’s recent opinion in *Dobbs* dismantled a half century of federal constitutional protections for the right to choose whether to terminate a pregnancy¹⁵ In the wake of *Dobbs*, many states have criminalized aspects of abortion, ranging from enacting laws that propose to go after women who cross state lines to procure one to the medical professionals who administer them.¹⁶ The risk of unjust prosecutions and convictions of women in the abortion space is acute—and Beety’s work should provide a theoretical roadmap for attacking those cases.

In sum, *Manifesting Justice* is a fascinating, meaningful contribution that features Beety’s unique combination of intellectual breadth and depth when thinking about wrongful convictions.

¹² See Daniele Selby, *Eight Facts about Incarcerated and Wrongfully Convicted Women You Should Know*, Innocence Project, 22 Mar 2022, online: <https://innocenceproject.org/women-wrongful-conviction-incarceration-facts-iwd2020/> (citing data compiled by the National Registry of Exonerations).

¹³ Medwed, *supra* note 8, at 120.

¹⁴ See National Registry of Exonerations, *Female Exonerees: Trends and Patterns*, online: <https://www.law.umich.edu/special/exoneration/Pages/Features.Female.Exonerees.aspx> (last visited 25 Jul 2022).

¹⁵ *Dobbs v Jackson Women's Health Organization*, (2022) 597 US ___ No 19-1392.

¹⁶ See Caroline Kichener & Devlin Barrett, *Anti-Abortion Lawmakers Seek to Block Patients from Crossing State Lines*, Washington Post, 29 Jun 2022.