The Wrongful Conviction Law Review

Volume 5, Issue 2

Editorial Board

Volume 5, Issue 2 **Cited as (2024) 5:2 Wrongful Conv L Rev**

Table of Contents

Articles

No Contest Pleas as a Response to False Guilty Pleas in Canada

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False guilty pleas are a major source of wrongful convictions. They are also probably inevitable; innocent accused have powerful reasons for resolving their cases short of trial. Given this, it might be wise to add the plea of no contest to the Canadian criminal justice system. A no contest plea could offer advantages for innocent accused, including the opportunity to obtain a reduced sentence without having to publicly (but falsely) admit guilt. It could also bring benefits to the system itself. It could come with some social costs, but those costs might not outweigh the benefits. This paper seeks to encourage discussion of the idea of a no contest plea by analyzing its pros and cons.

I Introduction

In recent years, increasing attention has been paid to the role of false guilty pleas in wrongful convictions. Numerous research articles have been published,[2] websites have been created,[3] and prosecutors have acknowledged their existence and significance.[4] Though not included in the traditional list of contributing factors,[5] some scholars now hypothesize that false

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[2] E.g., Kent Roach, "Canada's False Guilty Pleas: Lessons from the Canadian Registry of Wrongful Convictions" (2023) 4:1 Wrongful Conv L Rev 16, online: https://wclawr.org/index.php/wclr/article/view/92 [Roach, "False Guilty Pleas"]; Cheryl Webster, "Remanding Justice for the Innocent: Systemic Pressures in Pretrial Detention to Falsely Plead Guilty in Canada" (2022) 3:2 Wrongful Conv L Rev 128, online: https://wclawr.org/index.php/wclr/article/view/74; David Côté, "The Lost Art of the Plea Inquiry: Learning from the Past to Prevent Wrongful Convictions in the Future" (2023) 60 Alta L Rev 1017, online: https://albertalawreview.com/index.php/ALR/article/view/2745; Alison Redlich et al, "Commonalities in false guilty pleas cases" (2023) Psych, Crime & Law, online: https://www.tandfonline.com/doi/full/10.1080/1068316X.2023.2213381.

[3] E.g., "Why Do Innocent People Plead Guilty to Crimes They Didn't Commit?", online: https://www.guiltypleaproblem.org/.

[4] FPT Heads of Prosecution Committee, *Innocence at Stake: The Need for Continued Vigilance to Prevent Wrongful Convictions in Canada* (2018) 169, online: <https://www.ppsc-sppc.gc.ca/eng/pub/is-ip/is-ip-eng.pdf> [FPT Report].

[5] The list has generally included eyewitness misidentification, perjury or false accusation, false confession, false or misleading forensic evidence, official misconduct, and inadequate legal defense.

guilty pleas may be the largest source of wrongful convictions.[6] This suggestion has been driven in part by a slew of documented cases in which an innocent accused, fearful of being unsuccessful at trial, has pled guilty, usually motivated primarily by a desire to obtain the accompanying sentence discount (i.e., the reduction in sentence relative to what would be given on conviction after trial).[7]

For the most part, the study of false guilty pleas has focused on why they occur and how to prevent them.[8] It has, however, also led some to ask an intriguing question: are false guilty pleas inevitable? Kent Roach, for example, poses this question in his recent book on Canadian wrongful convictions.[9] In the book and in a related article, he opines that they are.[10]

Regretfully, I concur; as discussed further below, the incentives for false guilty pleas are too powerful and the prospects for eliminating them too remote.[11] This leads me to ask whether we need to face up to this reality and adjust the system to accommodate it – for the benefit of innocent accused and the system itself. One way to do that might to be expand the range of pleas available in criminal proceedings to include the plea of no contest.[12]

In this paper, I explore the idea of a no contest plea in Canada, explaining what it is and analyzing some of its potential benefits and costs. The analysis is deliberately tentative and less than exhaustive. This is a big subject and my objective is to stimulate discussion, not specifically to advocate for the addition of a no contest plea. I am inclined to think it would be beneficial, but until there is some real debate about the idea in and for Canada (and not just elsewhere) it is too early to be sure.

II No Contest Plea

No contest (a.k.a. *nolo contendere*) is a common law plea in which the accused does not admit guilt but also does not contest the case for the Crown, effectively consenting to a

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See Ryanne Berube et al, "Identifying Patterns Across the Six Canonical Factors Underlying Wrongful Convictions" (2022) 3:3 Wrongful Conv L Rev 166 at 167, online: https://wclawr.org/index.php/wclr/article/view/82.

[6] See, e.g., Marvin Zalman and Robert Norris, "Measuring Innocence: How to Think About the Rate of Wrongful Conviction" (2021) 24 New Crim L Rev 601 at 641-652, online: https://www.ssrn.com/abstract=3901974.

[7] More detail about this is included below.

[8] E.g., Roach, "False Guilty Pleas", *supra* note 1; Webster, *supra* note 2; Christopher Sherrin, "Guilty Pleas from the Innocent" (2011) 30 Wind Rev Leg Soc Issues 1 [Sherrin].

[9] Kent Roach, *Wrongfully Convicted: Guilty Pleas, Imagined Crimes, and What Canada Must Do to Safeguard Justice*, (Toronto: Simon & Schuster, 2023) ch 3 [Roach, "Wrongfully Convicted"].

[10] *Ibid* at 43 and 50; Roach, "False Guilty Pleas", *supra* note 2 at 19.

[11] The assertion that false guilty pleas are inevitable may seem surprising to some, but it is hardly radical. See, e.g., Albert Alschuler, "Straining at Gnats and Swallowing Camels: The Selective Morality of Professor Bibas" (2003) 88 Cornel L Rev 1412 at 1413-14, online: <https://scholarship.law.cornell.edu/clr/vol88/iss5/4> [Alschuler, "Straining at Gnats"]: "The plea bargaining system … is marvelously designed to secure conviction of the innocent."

[12] This idea was briefly discussed in the latest FPT Report, *supra* note 4 at 200-203.

finding of guilt. It is the functional equivalent of a guilty plea.[13] The accused is held to have admitted the allegations of the Crown – albeit, for purposes of the case only.[14] No assessment of the prosecution's evidence occurs beyond that which is required for a plea of guilty.[15] Practically speaking, after the plea is entered, all that is left to adjudicate is sentence.

The plea is an ancient common law one, dating back to the fifteenth century.[16] Although it has long fallen into disuse in the United Kingdom,[17] it is an available plea in most American jurisdictions.[18] It is not currently an available plea in Canada.[19]

Making the plea available could bring several benefits to innocent accused who for one reason or another are disinclined to go to trial. Perhaps most significantly, it could allow them to reap sentencing benefits of an early case resolution without having to suffer the agonizing experience of publicly (but falsely) admitting culpability. Innocent accused do not normally declare guilt eagerly.[20] They can resist until they lose faith in the system and feel defeated[21] or trapped;[22] making the choice to plead guilty can be an incredibly difficult decision.[23] Innocent people usually plead guilty in order to cut the losses they suffer or may suffer from the criminal accusation: imprisonment, extended and unpleasant pre-trial detention, separation from family, loss of children, immigration problems, etc. A no contest plea could allow them to cut their losses without having to lie to the world – and even while asserting their innocence everywhere but in the criminal courtroom. The plea should normally entitle the accused to a sentencing discount. A guilty plea is a mitigating factor on sentence when it spares witnesses from having

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[13] Stephanos Bibas, "Harmonizing Substantive-Criminal-Law Values and Criminal Procedure: The Case of Alford and Nolo Contendere Pleas" (2003) 88 Cornell L Rev 1361 at 1370, online: https://scholarship.law.cornell.edu/clr/vol88/iss5/3 [Bibas]; Wayne LaFave et al, *Criminal Procedure*, 4th ed (St Paul, Minn: Thomson West, 2004) at 1006.

[14] Bibas, *ibid* at 1371; Nathan Lenvin and Ernest Meyers, "Nolo Contendere: Its Nature and Implications" (1942) 51 Yale LJ 1255 at 1258, online: <http://hdl.handle.net/20.500.13051/13171> [Lenvin and Meyers].

[15] Pursuant to s 606(1.1)(c) of the *Criminal Code*, RSC 1985, c C-46, before a court may accept a guilty plea it must be satisfied that "the facts support the charge". In the context of a no contest plea, this would presumably be satisfied by the prosecution's summary of the alleged facts and the accused's (deemed) admission.

[16] Lenvin and Meyers, *supra* note 14 at 1255.

[17] Lenvin and Meyers, *supra* note 14 at 1256.

[18] Bibas, *supra* note 13 at 1375.

[19] *Criminal Code*, *supra* note 15 at s 606(1); *R v R.P.*, 2013 ONCA 53 at para 38.

[20] Some might, including those who are entering one false guilty plea along with other true guilty pleas where the former will not materially affect the sentence, and those who are seeking to take the blame in order to protect the actual perpetrator.

[21] Anthony Hanemaayer, falsely accused of breaking into a house and assaulting a 15-year old girl, twice rejected plea deals. He pled guilty only part way through trial, explaining he felt "defeat. Like I had no more fight left in me. There was no way they were going to believe me … I lost all faith in the justice system": Roach, "Wrongfully Convicted", *supra* note 9 at 46-48.

[22] In the words of O'Neill Blackett, wrongly charged with murder, "I felt trapped by my situation. I decided to plead guilty": Roach, "Wrongfully Convicted", *supra* note 9 at 35.

[23] For Richard Brant, wrongly accused of manslaughter, the "decision to plead guilty was the hardest decision of [his] life": Roach, "Wrongfully Convicted", *supra* note 9 at 30. See also *R v Kumar*, 2011 ONCA 120 at para 37.

to testify, saves the system time and resources, and/or demonstrates remorse by the accused.[24] The last reason would not apply to no contest pleas but the first two could. To the extent that they do, the accused should receive a lower sentence than would be imposed on conviction after trial (even if it might be higher than would be imposed on a guilty plea).[25]

A no contest plea could also come with other benefits for the innocent accused. It could lessen the shame and self-blame that the wrongly convicted often feel.[26] It could reduce the damage to relationships that can occur when someone admits to committing a crime, especially one against a family member or loved one.[27] Depending on how the public reacts to a no contest plea, it could lessen the social stigma suffered by the wrongly convicted.[28] If understood as it is at common law, where the accused is not estopped from denying in a subsequent non-penal proceeding the facts supporting the criminal charge,[29] it could allow the accused to maintain innocence in related civil and family proceedings. If new exculpatory evidence comes to light, it could improve the accused's chances on appeal or ministerial review, avoiding the skepticism of a claim of innocence that can follow a guilty plea.[30]

It is difficult to say whether innocent accused would actually prefer a no contest plea to a guilty plea. A no contest plea could result in a higher sentence due to the absence of contrition and consequent concerns about recidivism.[31] For the same reasons, it could also have an adverse effect on any post-conviction application for parole.[32] Whether any particular innocent accused would conclude that the benefits outweigh these costs would be a personal decision. Of course, not all innocent accused would need to prefer a no contest plea to a guilty plea; the new plea would probably be worthwhile if a significant number of innocent accused did. The plea might be especially attractive to innocent accused who had already suffered as much punishment as they would receive on a no contest plea; that could happen, for example, if an accused decided to resolve a renewed prosecution after successfully appealing an initial conviction at trial or if an accused was denied bail and would have to serve more time awaiting trial in pre-trial detention than would be merited on a plea. Concerns about parole might also be of little relevance to accused facing a reformatory sentence short enough that parole is not

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[24] *R v Fuller*, 2020 ONCA 115 at para 26.

[25] This is what generally happens now when an accused pleads guilty but the evidence of remorse is equivocal or absent. See, e.g., *R v MV*, 2023 ONCA 724 at para 70; *R v DM*, 2023 ONCA 599 at para 19.

[26] Samantha Brooks and Neil Greenberg, "Psychological impact of being wrongfully accused of criminal offences: A systemic literature review" (2021) 61:1 Med, Sci & L at 47, online: <https://journals.sagepub.com/doi/10.1177/0025802420949069> [Brooks and Greenberg].

[27] Studies have found that "[c]ommonly, social networks, friendships and relationships appeared to break down after individuals were wrongfully accused": *ibid* at 48. It stands to reason that the same or worse would occur when the accused admits to the crime.

[28] Brooks and Greenberg, *supra* note 26 at 47.

[29] Lenvin and Meyers, *supra* note 14 at 1263.

[30] Sydney Schneider, "When Innocent Defendants Falsely Confess: Analyzing the Ramifications of Entering Alford Pleas in the Context of the Burgeoning Innocence Movement" (2013) 103 J Crim L & Crim 279 at 301 [Schneider].

[31] Josh Bowers, "Punishing the Innocent" (2008) 156 U Penn L Rev 1117 at 1168, online: <https://scholarship.law.upenn.edu/penn_law_review/vol156/iss5/1> [Bowers].

[32] See Schneider, *supra* note 30 at 305.

a live issue[33] or in a jurisdiction where parole is not commonly granted.[34] The plea seems to be of some interest to innocent accused in the United States: over fifty individuals included in the National Registry of Exonerations opted to plead no contest.[35] In a sense, one innocent Canadian has already made the same choice: Sherry Sherret-Robinson accepted a deal in which the Crown would drop the murder charge she was facing in exchange for her agreeing not to contest a statement that the Crown would read out in court at trial in support of a charge of infanticide.[36]

The justice system itself could also benefit from a no contest plea. The plea could reduce the frequency with which accused persons lie and thereby mislead the court in pre-trial resolutions. It could enhance solicitor-client relationships to the extent that defense lawyers, spotting a formidable Crown case, no longer felt bound to convey doubt about the client's claim of innocence or, worse, to encourage the client to lie about guilt.[37] It would imbue the system as a whole with some humility and allow it to recognize its own imperfection.

Normally, one would respond to an imperfection, not just by acknowledging it, but by fixing it. Obviously, we must work diligently towards reducing the incidence of wrongful conviction. But my concern is that the problem of false guilty pleas seems so intractable. There is no realistic prospect that people will stop being wrongly accused; perfection in our very human investigatory process is not practically attainable. There is also no reason to believe that the wrongly accused will stop wanting to plead guilty. People who enter false guilty pleas are often acting entirely rationally.[38] Anthony Hanemaayer, for example, was told at trial that he would almost certainly be convicted and sentenced to at least six years' imprisonment, whereas

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[33] As noted by the Auditor General of Ontario, "the lengthy and onerous process in place for inmates to apply for a parole hearing" can make "it not worthwhile for most inmates because they receive short sentences": *Annual Report 2014* (Queen's Printer for Ontario, 2014) at 69, available online at https://www.auditor.on.ca/en/content/annualreports/arreports/en14/2014AR_en_web.pdf.

[34] In Ontario, for example, the parole approval rate by the provincial parole board as of 2014 was 32%: *ibid* at 69.

[35] See the case summaries of the following individuals online at: https://www.law.umich.edu/special/exoneration/Pages/about.aspx (last accessed January 22, 2024): Anthony Adams, Jesse Alvarez, Jorge Alvarez, Brian Banks, Larry Booker, Knolly Brown, Jr., Terrance Calhoun, John Cape, Derek Clark, Luis Davalos, Jermaine Dickerson, Dale Duke, Edward Easley, Carlos Flores, Adrian Garcia, Willie Gavin, Kathleen Gonzalez, Michael Googe, Anthony Hart, Reginald Hayes, Carlton Heard, Donald Heistand, Edward Johnson, Paul Kolhoff, Ronnie Marshall, Kevin Martin, Ernest Matthews, Andre Mazur, Raymond McCann II, Ceaser Menendez, Tony Moreno, Jr., Anthony Nguyen, Karen O'Dell, John Palmer, John Peel, Kevin Peterson, Christopher Prince, Guy Randolph, Shakara Robertson, Davonn Robinson, Stuart Rodrigues, Danielle Rodriguez, Mandel Rogers, Aubrey Shomo, Marcus Smith, John Sosnovske, Clyde Spencer, Ronald Stewart, Michael Trevino, Gilbert Valdez, Michael Washington, Johnny Lee Wilson, Thomas Winslow, and Louis Wright.

[36] The Ontario Court of Appeal later declared that she was "wrongfully convicted". See *R v Sherret-Robinson*, 2009 ONCA 886 at paras 3 and 9 [*Sherret-Robinson*]; Roach, "Wrongfully Convicted", *supra* note 9 at 21-22.

[37] Schneider, *supra* note 30 at 297-99; Alschuler, "Straining at Gnats", *supra* note 11 at 1423; Albert Alschuler, "The Defense Attorney's Role in Plea Bargaining" (1975) 84 Yale LJ 1179 at 1287-89 and 1297.

[38] See Roach, "Wrongfully Convicted", *supra* note 9 at 42 and 98.

he could avoid the penitentiary if he changed his plea.[39] Is it any wonder that he pled guilty? In some cases, it would almost be irrational *not* to enter a false guilty plea. Someone held in pre-trial detention who can, on a guilty plea, secure release before their trial date will in a very significant way only make their situation *worse* by waiting for trial, even if they are ultimately acquitted.[40]

The most commonly discussed option for addressing false pleas is limiting the sentence discount given to those who plead guilty.[41] The idea is to narrow the disparity between sentences that are given on guilty vs. not guilty pleas to the point where the former are no longer so attractive to the innocent. The problem (as I have explained elsewhere)[42] is that the limitation can be so easily avoided. The extent of a sentencing discount can only be controlled if in any given case there is a fixed baseline sentence from which the discount would be calculated. Presumably that baseline sentence would be based on the initial charges and factual allegations faced by the accused. But the charges and fact allegations faced by an accused are not immutable. A prosecutor has wide discretion to change them, and as a result to change the baseline (downward). This sort of charge and fact bargaining happens all the time.[43] A court could insist upon seeing the initial charge and allegations in order to supervise the plea bargaining process,[44] but a court could never know whether the prosecutorial decision was entirely appropriate. In some cases, the true facts will prove to be much less serious than initially thought and thus what on the surface might appear to be a substantial plea discount is actually not much of a discount at all. The most that a court could do, therefore, is ensure that an accused received a sentence no less than what is warranted on a guilty plea to the final version of the charges and facts accepted by the parties. Presumably, prosecutors would not often agree to facts that are complete distortions of reality, but prosecutors prior to trial will

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[39] See Roach, "Wrongfully Convicted", *supra* note 9 at 45-47.

[40] This is not a fanciful scenario. Consider the case of Clayton Boucher. He was charged with possession for the purpose of trafficking of what was suspected to be cocaine but was actually not an illegal drug. He was denied bail and detained in the unpleasant and sometimes violent Edmonton Remand Centre. After spending four months in jail, and with his trial date still months away, he elected to plead guilty in order to secure his immediate release: Roach, "Wrongfully Convicted", *supra* note 9 at 96-98. See also the case of Richard Catcheway online at https://www.wrongfulconvictions.ca/cases/richard-catcheway, discussed in Roach, "Wrongfully Convicted", *supra* note 9 at 9-10.

[41] See, e.g., Oren Bar-Gill and Oren Gazal Ayal, "Plea Bargains Only For The Guilty" (2006) 49 J. L. & Econ. 353; Roach, "False Guilty Pleas", *supra* note 2 at 36, online: http://www.ssrn.com/abstract=560401.

[42] Sherrin, *supra* note 8 at 16-18. See also Russell Covey, "Fixed Justice: Reforming Plea Bargaining with Plea-Based Ceilings" (2008) 82:4 Tulane L Rev 1237 at 1258-1268 [Covey].

[43] See Canadian Sentencing Commission, *Sentencing Reform: A Canadian Approach* (Ottawa: Ministry of Supply and Services, 1987) at 404-405, online: https://johnhoward.ca/wp-content/uploads/2016/12/1987-KE-9355-A73-C33-1987-J.R.-Omer-Archambault.pdf; Peter Solomon, *Criminal Justice Policy: From Research to Reform* (Toronto: Butterworths, 1983) at ch.3.

[44] Judges may not be anxious to do this. See Covey, *supra* note 42 at 1267 (footnotes omitted): "With crowded dockets and little personal or institutional investment in the resolution of particular cases, judges lack incentives to probe the recesses of plea agreements. If an agreement is good enough for the parties, it will almost always be good enough for the judge. As a result, the requirement that judges approve plea bargains before they take effect imposes little actual constraint on the plea-bargaining process."

not always know what the ground truth of an allegation is. Sometimes the true facts are ambiguous or open to doubt. Given that it is in those sorts of cases that innocent accused are probably most likely to be ensnared, the innocent are probably most likely to be able to successfully engage in fact bargaining. As a result, it would be especially hard to enforce limited plea discounts to an extent that they would effectively discourage false guilty pleas.

If we cannot prevent innocent people from being charged and incentivized to falsely plead guilty, the only hope for preventing such pleas seems to lie in scrutinizing pleas for truthfulness (and accuracy) when they are entered. This, however, seems unlikely to succeed. The *Criminal Code* currently stipulates that a judge can accept a guilty plea only if it is satisfied that "the facts support the charge".[45] Kent Roach recently observed that "[r]eported cases on this … provision do not so far reveal that judges are engaging in substantial inquiries into the factual basis of a plea."[46] This is not surprising. A guilty plea is meant offer a truncated process for resolving a criminal accusation that relies fundamentally on the accused waiving procedural protections. It would be curious to turn this process into an extended inquiry into the accused's acknowledgment of factual guilt. Judges could probe more deeply than they do now into the reasons and basis for a plea, but it is doubtful that they would be anxious to do so in the face of today's crowded criminal court dockets.[47] Even if they were willing (or, by statutory amendment, required), an accused bent on receiving the benefits of a guilty plea could simply provide the answers necessary to ensure acceptance of the plea. More substantial plea inquiries would probably catch some false pleas, but it is unlikely that they would catch many and virtually certain that they would not catch them all.[48]

Even if we could devise a way to catch all attempts to enter a false guilty plea, I am not certain that we should. Innocent accused would suffer greatly if they did not have the chance to resolve charges short of trial. Anthony Hanemaayer would probably have lost four years of his life to the horrors of the penitentiary.[49] Clayton Boucher would definitely have spent three

[45] *Supra* note 15 at 606(1.1)(c). Section 606(1.2), however, stipulates that the failure to fully inquire whether this and other conditions in subsection (1.1) are met does not affect the validity of the plea.

[46] Roach, "False Guilty Pleas", *supra* note 2 at 37.

[47] See Bowers, *supra* note 31 at 1147-48, arguing that, especially in minor cases, judges prioritize expeditious case processing, usually by plea.

[48] David Côté, who is in favour of enhancing the inquiries, acknowledges this: *supra* note 2 at 1047. Interestingly, more substantial plea inquiries might be more successful if the alternative of a no contest plea was available. If advised that such a plea would likely come with a sentencing discount, even if it was a smaller discount, the accused who entered a false guilty plea might be less inclined to maintain the pretense of guilt.

[49] Hanemaayer pled guilty part-way through trial. He thought the Crown's identification witness was convincing, his only alibi witness was uncooperative, and his lawyer's advice was that he would almost certainly be convicted. His lawyer also told him he would get a sentence of at least six years upon conviction after trial, versus two years less a day on a plea. The Ontario Court of Appeal stated that the "estimate of six years was not unrealistic given the seriousness of the offence." It also declared that "fresh evidence proves beyond doubt that the appellant did not commit the offences to which he pleaded guilty." See *R v Hanemaayer*, 2008 ONCA 580; Roach, "Wrongfully Convicted", *supra* note 9 at 46-47.

to four more months in a miserable pre-trial detention centre.[50] C.M. faced the realistic prospect of life imprisonment rather than no further jail time.[51] Sherry Sherret-Robinson, who had already lost two children, might never have been able to be a mother again.[52] Richard Brant, who had already lost a child, could have missed the chance to be part of his next child's life.[53] Dinesh Kumar could have lost custody of his child, been taken away from his wife who had no income and was recovering from brain surgery, sentenced to years in prison, and deported from Canada upon release.[54] These are just a few examples. Across Canada, the United States, and the United Kingdon, almost a thousand false guilty pleas have been documented[55] – even

[50] The details of Boucher's case are outlined, *supra,* in note 40. He pled guilty and was released on May 30, 2017. His trial date was scheduled for September 2017: Roach, "Wrongfully Convicted", *supra* note 9 at 98.

[51] The accused's name is the subject of a publication ban. She was charged with second degree murder and ultimately pled guilty to manslaughter for a sentence of probation and community service. The charge stemmed from the death of her new-born baby. The Crown's case relied on the expert opinion of forensic pathologist Charles Smith. At the time, "Dr. Smith had an outstanding reputation. He was considered the leading authority in Canada in the field of paediatric forensic pathology. The experts that the defence eventually retained had less impressive credentials, and the appellant's counsel strongly believed their opinions could not convincingly challenge that of Dr. Smith, given his preeminent position." C.M.'s conviction was later set aside as a miscarriage of justice. See *R v CM*, 2010 ONCA 690; Roach, "Wrongfully Convicted", *supra* note 9 at 19-20.

[52]Sherret-Robinson was facing trial for the second degree murder of her infant second son. Child protection officials had taken custody of her older son. The Crown's case was based on the seemingly powerful evidence of Charles Smith. She agreed to a procedure that would result in her being convicted of infanticide. She was ultimately sentenced to imprisonment for one year. She explained: "I was scared that I would never be allowed to be a mother again. I was scared of being convicted of murder and receiving a life sentence." Evidence later established that her child likely died accidentally. See Roach, "Wrongfully Convicted", *supra* note 9 at 20-22; *Sherret-Robinson*, *supra* note 36.

[53] Brant was charged with manslaughter of his infant son based on the evidence of Charles Smith. He ultimately pled guilty to aggravated assault and was sentenced to six months in prison. He had a criminal record and his lawyer told him that a guilty plea was in his best interests. His partner was expecting a baby "and having just lost his first child, he couldn't bear the thought of not being a part of his second baby's life." Based on fresh evidence, his conviction was ultimately held to be unreasonable. See Roach, "Wrongfully Convicted", *supra* note 9 at 28-29; *R v Brant*, 2011 ONCA 362.

[54] Kumar was charged with the second degree murder of his one-month old son. The terms of his bail prevented him from being alone with his older son, who had been apprehended by the Children's Aid Society. He faced a minimum of ten years' imprisonment on conviction. Because he was not a citizen, he was liable to deportation. The Crown's main witness was Charles Smith. The expert witness retained by Kumar's lawyer agreed with Smith. The Crown offered to withdraw the murder charge in exchange for a plea to criminal negligence causing death and a joint submission for a 90-day intermittent sentence plus probation. Based on fresh evidence, his conviction was ultimately held to be unreasonable. See *Kumar*, *supra* note 23; Roach, "Wrongfully Convicted", *supra* note 9 at 30-32.

[55] As of January 19, 2024, there were 16 false guilty plea cases included in the Canadian Registry of Wrongful Convictions, 85 in the U.K. Miscarriages of Justice Registry, and 838 in the U.S. National Registry of Exonerations, online: https://www.wrongfulconvictions.ca/data/all-case-data (filtered by guilty plea);
https://evidencebasedjustice.exeter.ac.uk/miscarriages-of-justice-registry/the-cases/overview-graph/ (filtered by guilty plea);

though guilty plea wrongful convictions are probably the least likely to be uncovered.[56] Criminological research suggests that, in Canada alone, hundreds of people every year plead guilty to offences they did not commit.[57] Presumably, the large majority of them would suffer some loss if they had no choice but to go to trial. The scale of the combined prospective losses by going to trial is incalculable but almost certainly monumental. In these circumstances, I have to wonder whether our focus should be on minimizing the pain suffered by innocents, not on ensuring that it is felt by as many of them as possible.

Perhaps I am being overly pessimistic. Proposals for addressing the problem of false guilty pleas are being offered all the time.[58] A solution *that stops putting innocent accused in a position where they can improve their situation by not going to trial* may present itself eventually.[59] But the unfortunate reality is that we do not have that solution now, and until we do I think we need to consider the idea of a no contest plea. The plea can always be scrapped when a better response becomes available.

III Objections

Several objections can be levelled against the idea of a no contest plea. Perhaps the most fundamental is a normative one. More than 30 years ago, the Supreme Court of Canada said that "[t]he precept that the innocent must not be convicted is basic to our concept of justice … [N]o just society can tolerate the conviction and punishment of the innocent."[60] While said in a very different context,[61] the words suggest that it is simply wrong to endorse a process by

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https://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=Group&FilterValue1=P. These numbers do not include false guilty pleas included solely in the Groups Registry maintained by the National Registry of Exonerations (a collection of wrongful convictions resulting from police misconduct for which the Registry does not always have enough individualized information to include in the main database): see Samuel Gross et al, *Race and Wrongful Conviction in the United States* (National Registry of Wrongful Convictions, 2022) at 40-42, online: <https://www.law.umich.edu/special/exoneration/Documents/Race%20Report%20Preview.pdf.>.

[56] See Samuel Gross, "What We Think, What We Know and What We Think We Know about False Convictions" (2017) 14 Ohio St L J 753 at 777: "An innocent defendant who pleads guilty is far less likely to be exonerated than one who goes to trial. It's much harder to convince anybody that you're innocent when you told a court that you're guilty; you have fewer avenues for review; and, most important, if you take a plea bargain you will get a shorter sentence, usually a much shorter sentence—that's why defendants accept plea bargains—and the scarce resources it takes to reopen a case and achieve an exoneration are usually reserved for defendants with more severe punishments."

[57] This research is outlined in Sherrin, *supra* note 8 at 5-6.

[58] See, e.g., Roach, "False Guilty Pleas", *supra* note 2 at 36-46.

[59] I have offered what I believe is a partial solution: mandating the release of (almost all) accused who are detained pending trial after they had served the equivalent of the sentence merited on an early guilty plea: see Sherrin, *supra* note 8.

[60] *R v Seaboyer; R v Gayme*, 1991 CanLII 76 (SCC) at 606-07.

[61] The Court was explaining why a statutory provision that limited an accused's use of a certain kind of potentially exculpatory evidence was unconstitutional.

which penal consequences – up to and including the deprivation of basic liberty – can be inflicted on those who have done nothing to deserve them.[62]

As an ideal, this is indisputable, but the whole point about false guilty pleas is that they force us to confront and contend with the messiness of our system as it actually operates. We run a system that currently does and for the foreseeable future will punish innocent people, sometimes quite substantially, for not resolving their charges short of full trial – not officially, but effectively.[63] Knowing this, are we entitled to take an absolutist moral stance on convicting the innocent? I am not sure we have the luxury of being so pristine *when and to the extent* that some flexibility might assist the very people the principle seeks to protect. The moral purist might resort to the notion that, normatively, knowingly facilitating an injustice is different than inadvertently allowing it to happen.[64] I suspect this would be of small comfort to the innocent accused forced to rot in jail or lose their family while awaiting the uncertain outcome of trial. It is also a difficult claim on which to rest in a system that permits an accused to enter the functional equivalent of a no contest plea. Currently, an accused is entitled to plead not guilty, not contest the factual allegations of the Crown, and invite the presiding judge to make a finding of guilt and proceed to sentencing.[65] Effectively, are we not already knowingly facilitating the so-called injustice of a no contest plea?

Some claim that a no contest plea unacceptably undermine the moral force and legitimacy of the criminal law. In the words of Stephanos Bibas, no contest pleas (what he terms "guilty-but-not-guilty pleas"),[66]

> … send mixed messages, breeding public doubt, uncertainty, and lack of respect for the criminal justice system … The perception of [adjudicative] accuracy is needed 'to command the respect and confidence of the community' … Public confidence and faith in the justice system are essential to the law's democratic legitimacy, moral force, and popular obedience.[67]

Bibas claims that this social cost outweighs any benefits that a no contest plea brings.[68] Other commentators have expressed similar sentiments.[69]

Bibas and others are right to be concerned about protecting the moral force and legitimacy of the criminal law, but presumably the exact same concern arises with false guilty

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[62] See Bibas, *supra* note 13 at 1382 and 1384.

[63] Whether any particular innocent accused will suffer by going to trial is usually impossible to discern, since we cannot know what will happen at trial. However, it is fair to say innocent accused as a group will (and not just might) suffer since it is unrealistic to expect that all or even almost all of them will be acquitted.

[64] See Bibas, *supra* note 13 at 1384: "There is something profoundly troubling about knowingly facilitating injustice, more so than inadvertently allowing it to happen. No promise of good consequences can erase the repugnance of promoting an evil in the hope of averting a worse evil."

[65] *R v R.P.*, *supra* note 19.

[66] Bibas, *supra* note 13 at 1363-64.

[67] Bibas, *supra* note 13 at 1386-87, quoting in part *In re Winship*, 397 US 358 at 364.

[68] Bibas, *supra* note 13 at 1382-88.

[69] See, e.g., Stephen Schulhofer, "Plea Bargaining as Disaster" (1992) 101 Yale LJ 1979 at 1985-86 and 1996, online: https://openyls.law.yale.edu/handle/20.500.13051/8708.

pleas, premised as they are on a misleading public fabrication. Indeed, if anything, such pleas must be even more damaging to the moral force and legitimacy of the criminal law: they represent instances of outright mendacity rather than just equivocation, definite cases of adjudicative inaccuracy and not just possible ones. Given the apparent inevitability of false guilty pleas, one would think that no contest pleas are an attractive way to reduce the social costs that we are already incurring.[70]

The availability of a no contest plea could come with a different kind of social cost: an increase in the incidence of wrongful conviction. Some innocent accused who otherwise would go to trial might opt instead to plead no contest, given its potential benefits. To the extent that those accused would have been acquitted at trial, more innocents will be convicted. Systemically, this would be a very unfortunate result of no contest pleas, but it might not be an unacceptable one. One would have to weigh the costs and benefits. In opposition to no contest pleas, we would take into account the number and nature of wrongful convictions avoided plus the costs avoided by the innocent who are acquitted. In favour of no contest pleas, we would consider the costs incurred by the innocent who are convicted at trial and/or who suffer simply by going to trial (due to bail conditions, process costs, because time spent in pre-trial detention exceeds the sentence warranted on conviction after trial, etc.). It is difficult to imagine how to weigh those factors, not in the least because avoiding wrongful convictions is an intangible social good and we cannot know in advance which and how many innocent accused would be acquitted rather than convicted at trial. In these circumstances, maybe it makes sense to maximize the options for, and give greater control to, the innocent accused, who are being victimized by the criminal justice process and who are best positioned to assess and weigh the personal risks and benefits of trial. At the same time, we can work to improve fact finding at trial so as to make it more accurate and thus more attractive to the innocent.

This conclusion might not follow if the availability of a no contest plea would compromise public safety. One way in which it might is through the increase in the incidence of wrongful conviction discussed in the preceding paragraph. By convicting an innocent person, we could be allowing the actual perpetrator to go unpunished and free to commit further crimes. There is a growing literature analyzing the crimes committed by actual perpetrators in wrongful conviction cases in the United States;[71] the number and seriousness of offences committed is saddening.[72] But there are reasons to doubt that many crimes would be attributable to the existence of a no contest plea – which would affect only how a case is resolved, not who is prosecuted. Given that about one-third of documented wrongful convictions in Canada and the United States involve crimes that never happened,[73] it stands to reason that a no contest plea could not possibly leave the actual perpetrator free to commit crimes about 33% of the time (because there is no actual perpetrator). In the other two-thirds

[70] Pretending that all guilty pleas are truthful, of course, would rest the integrity of the system on wilful blindness.

[71] See, e.g., Robert Norris et al, "The Criminal Costs of Wrongful Convictions: Can We Reduce Crime by Protecting the Innocent?" (2020) 19 Crimin & Pub Pol 367, online: <https://doi.org/10.1111/1745-9133.12463>; Frank Baumgartner et al, "The Mayhem of Wrongful Liberty: Documenting the Crimes of True Perpetrators in Cases of Wrongful Incarceration" (2017) 81 Alb L Rev 1263, online: https://fbaum.unc.edu/papers/WrongfulLiberty2014.pdf.

[72] In the Norris et al study, for example, more than 60% of the offenses were felonies and/or crimes of violence against other persons: *ibid* at 373.

[73] Roach, "Wrongfully Convicted", *supra* note 9 at 96; Jessica Henry, *Smoke But No Fire* (Oakland: University of California Press, 2020) at 4.

of the cases, a no contest plea could risk public safety only to the extent that: 1) the innocent accused would have been acquitted at trial or had their charges dismissed before trial (after the date of the no contest plea), 2) the authorities would have responded to this by reviving the investigation to search for the true perpetrator, 3) the true perpetrator would have been identified and charged, and 4) the true perpetrator would have been prevented or inhibited from committing crimes by pre-trial bail conditions, the sentence imposed on conviction, or both. The extent to which the innocent accused would have been absolved of responsibility is impossible to know, but it is unlikely to be anything close to 100%; Canada has a history of convicting innocent accused at trial as well before it. Furthermore, a no contest plea would at least sometimes occur far enough into the prosecution process that the pre-trial case review, defense investigation, and potentially exonerating police investigation would have already been completed, making pre-trial dismissal unlikely. The authorities very rarely respond to a dismissal or acquittal by reviving their investigation.[74] The reason is simple: they conclude that the accused got away with it, not that someone else must have done it.[75] Even when the authorities are open to the idea of an alternative perpetrator, one will not always be identified; in less than 45% the first 375 DNA exoneration cases in the U.S. was the true perpetrator identified.[76] Even when one is, he or she will not always be prosecuted; "[a]ccording to data provided by the Innocence Project, only half of identified true perpetrators in DNA exoneration cases have been charged with the wrongful conviction crime."[77] When charged and prosecuted, the true perpetrators will not always be prevented from committing further crimes. They could be released on bail terms that are permissive or ignored, acquitted at trial, or sentenced leniently.[78] It is certainly possible that some crimes committed by true perpetrators could be attributed to an increase in wrongful convictions from no contest pleas, but the question will once again come down to this: does that incalculable cost outweigh the cost to the innocent who would prefer to plead no contest than guilty or not guilty?

It has been claimed that a no contest plea could adversely affect public safety for another reason. Bibas argues that, unlike a guilty plea, a no contest plea allows a guilty accused to deny guilt (internally and outside the criminal courtroom), interfering with their contrition, treatment and reform, and thereby increasing the chances of reoffending.[79] I am not sure how many guilty accused would prefer to plead no contest rather than guilty, given that the former would probably come with a higher sentence. Some would, of course, and those would probably be the offenders most in denial, psychologically unable to accept responsibility. But with such offenders any admission of guilt and vocalization of remorse is likely to be feigned and meaningless.[80] Bibas suggests that confession in court may begin to breach an offender's

[74] Bowers, *supra* note 31 at 1161.

[75] Bowers, *supra* note 31 at 1161.

[76] Innocence Project, "DNA Exonerations in the United States (1989 – 2020)", online: <https://innocenceproject.org/dna-exonerations-in-the-united-states/>.

[77] Jennifer Weintraub and Kimberley Bernstein, "Identifying and charging true perpetrators in cases of wrongful convictions" (2020) 1 Wrongful Conv L Rev 181 at 183, online: https://wclawr.org/index.php/wclr/article/view/22.

[78] The true perpetrator in Donald Marshall, Jr.'s murder case, for example, received but one year in prison on a conviction for manslaughter (after three trials): *R. v. Ebsary*, 1986 CanLII 4648 (NS CA) at 490 and 508.

[79] Bibas *supra* note 13 at 1389, 1394-97.

[80] Bibas acknowledges that most guilty pleas are not the fruit of genuine repentance: Bibas *supra* note 13 at 1399.

denial,[81] but that seems like wishful thinking. The punishment imposed on an offender may begin to break down denial, but as much or even more punishment would be imposed on a no contest plea as on a guilty plea. Victim impact statements could break down denial, but they would be admissible on a no contest plea. The bottom line is that the system would treat obstinate offenders who plead no contest much the way it currently treats offenders who do not indicate remorse after guilty plea or conviction at trial: with less emphasis on rehabilitation and more emphasis on specific deterrence and possibly incapacitation.[82]

Some crime victims might not like the idea of a no contest plea, at least when entered by a guilty accused. Unlike a guilty plea, it would deprive the victim of any acknowledgment of wrongdoing and the vindication and possibly closure that comes with it.[83] But victims do not have a right to an acknowledgement of wrongdoing now. A no contest plea would just mimic the situation a victim currently experiences when an accused does not admit guilt following conviction after trial. Some victims may bristle at the sentencing discount granted on a no contest plea without any *mea culpa* by the accused, but the discount would not be attributable to any assumed remorse or admission of liability and it would presumably be smaller than that given on a guilty plea accompanied by a possibly fake expression of remorse; indeed, to the extent that the sentence on a no contest plea would be higher than on a guilty plea, some victims might prefer the former. Bibas expresses concern that victims could be frustrated at sentencing if the accused and his or her supporters deny guilt and, at least implicitly, blame the victim,[84] but this seems to overlook the fact that sentencing will proceed on the basis that the accused committed the offence and that the victim is in the right, not in the wrong. Given that the plea could not serve as proof in a subsequent civil action that the accused committed the offence, victims would sometimes be impeded in their efforts to obtain compensation for the criminal wrong. But not many victims seek redress through the civil courts,[85] and victims would presumably still be able to benefit from restitution orders in criminal proceedings[86] and compensation orders through the provincial criminal injuries compensation schemes.[87]

IV Conclusion

In this paper, I have discussed arguments for and against a no contest plea in Canada. On the one hand, it might provide an appealing alternative to a guilty plea, enabling an innocent accused to obtain benefits of early case resolution without having to admit culpability or suffer some of the consequences that can follow therefrom. On the other hand, it might not be

[81] Bibas *supra* note 13 at 1397-1400.

[82] See, e.g., *R. v Shah*, 2017 ONCA 872 at para 8.

[83] See Bibas, *supra* note 13 at 1392-93, 1402-03 and 1406-07.

[84] Bibas, *supra* note 13 at 1398.

[85] Richard Murphy, "Compensation for Victims of Crime: Trends and Outlooks" (1984) 8 Dalhousie LJ 530 at 541; Craig Brown & Melanie Randall, "Compensating the Harms of Sexual and Domestic Violence: Tort Law, Insurance and the Role of the State" (2004) 30 Queen's LJ 311 at 313.

[86] See *Criminal Code*, *supra* note 15 at ss 738-739.

[87] Since the controlling statutes do not make compensation contingent on an offender having been convicted or even prosecuted, it is reasonable to assume that compensation would not be denied if a prosecution ended with a no contest plea. See, e.g., *Compensation for Victims of Crime Act*, RSO 1990, c C.24, s 16(1); *Criminal Injury Compensation Act*, RSBC 1996, c 85, s 8(1).

attractive to enough innocent accused and could come with unacceptable social costs. I am inclined to think that the prospective benefits outweigh the prospective costs, but I cannot be definitive about this. Additional perspectives are needed from those with knowledge of or experience in the Canadian criminal justice system. I raise the idea of a no contest plea to provoke discussion in Canada, not to come to a final conclusion.

I am reluctant to advocate forcefully for a no contest plea. It feels uncomfortable to propose anything that might facilitate wrongful convictions; indeed, I have previously taken a different position on some of the issues discussed above.[88] But I have been worn down by the sheer number of documented false guilty pleas and the powerfully sympathetic reasons for them.

An alternative (or supplement) to a no contest plea could be a Canadian version of the *Alford* plea in the United States, in which an accused pleads guilty while explicitly maintaining their innocence.[89] I have not discussed the idea here because a plea of 'guilty-even-though-I-am-innocent' has been rejected by Canadian courts[90] and could alter the overall cost-benefit analysis discussed in this paper; crime victims, for example, might have greater concerns about a plea in which the accused can not only decline to admit guilt but openly repudiate the complainant's victimhood without giving the complainant the chance to be vindicated through trial.[91] Nonetheless, the idea is probably worth considering. The bottom line is that we need to come up with new ways to help the innocent accused. Maybe a new plea, be it no contest and/or something else, could offer some relief.

[88] Sherrin, *supra* note 8 at 14-16 and 25-34.

[89] *North Carolina v Alford*, 400 US 25 (1970).

[90] See, e.g., *R. v. S.K.*, 1995 CanLII 8926 (ONCA); *R. v. M.(G.O.)*, 1989 CanLII 7201 (SK CA)

[91] An *Alford* plea does not necessarily entail a repudiation of a complainant's claim – the accused could simply assert that the police charged the wrong person – but it sometimes would.

Wrongful Convictions and Prosecutions in Latin America: A Systematic Literature Review (2010-2023)

Mauricio Duce[1] & Víctor Beltrán[2]

Drawing on a systematic literature review, this paper examines the scholarly discourse surrounding wrongful convictions and prosecutions in Latin America, spanning from 2010 to July 2023, across the WoS, Scopus, and SciELO databases, identifying a set of 50 publications. From a quantitative perspective, the paper inquiries into aspects, such as publication year, countries covered, characteristics of the scientific community involved, and the topics addressed. Then, the paper briefly delves into a qualitative analysis of the publications' content, distinguishing among those that address general aspects, factors contributing to wrongful convictions and prosecutions, correction mechanisms, and compensation mechanisms for wrongful convictions and prosecutions. Although with limitations, the findings provide an overview of research in this area in Latin America, showing that, although scholarship is still scarce compared with other latitudes, the topic has begun to attract interest in recent years in the region.

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I Introduction

The study of errors within the criminal justice system has a long history. Literature from the late 19th and early 20th centuries has addressed this concern in Europe and the United States.[3] However, it has only been since the 1990s that this subject evolved into a significant interest in academic research, explored from various perspectives and disciplines.

Recent research has delved into publications up to 2021 in the Scopus database using the term "wrongful conviction," identifying 693 studies on the subject. While most of these studies originated from the United States (398), publications were also identified in countries from other continents, such as the United Kingdom (74), Australia (46), and China (25) (Le et al., 2023). Research has also noted the existence of 36 papers published in English in Asian countries between 2010 and 2021. Beyond this database, a quick review of internationally available literature reveals recent national reports on the issue of wrongful convictions in 14 countries across four continents.[4] This exemplary account shows that a robust body of evidence has been forming internationally in this field.[5]

In this scenario of growing academic concern from various perspectives and disciplines, questions that naturally arise are: Has something similar occurred in research produced in Latin America as seen at the international level? What is being investigated and published about Latin American criminal justice errors? To address these questions, we conducted a systematic review to identify publications concerning the 19 countries comprising Latin America[6] in three databases: Web of Science (WoS), Scopus, and SciELO between 2010-2023 (July). Our article aims to present the results of applying this method to questions about available research in the region on errors in criminal justice from different perspectives and disciplines.

We provide a conceptual clarification. Errors in criminal justice encompass a diverse range of problems, ranging from cases where an innocent person is convicted (false positives) to cases where a guilty person is acquitted (false negatives), including a wide range of intermediate situations. For this work, we focus on identifying research on two types of errors: wrongful convictions and wrongful criminal prosecutions. Wrongful convictions will be understood broadly, including cases that end with the conviction of a factually innocent person and those where convictions were obtained under conditions of injustice that seriously call into question the guilt of the convicted individual. Wrongful criminal prosecutions include cases of factually innocent individuals who have been subject to criminal prosecution (usually involving pre-trial detention) but are dismissed before trial or acquitted during the process due

[3] For Italy, the classic text by Giuriati (1893) is a key reference. In the United States, often considered the pioneer in the field, scholars frequently cite Borchard's work (1932).

[4] As an illustrative example, Robins' book (2023) compiles national reports on the issue of wrongful convictions. The book covers 14 countries and four continents: Germany, Argentina, Australia, Canada, Spain, the United States, France, England and Wales, Italy, Norway, New Zealand, the Netherlands, Sweden, and Taiwan.

[5] The volume of references grows exponentially when examining specific topics, such as factors increasing the probability of systemic errors. For instance, the Wilson Center for Science and Justice's report (2022) on eyewitness identifications found 1,246 scientific publications up to 2020, with 265 published between 2014 and 2020.

[6] These countries include Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, the Dominican Republic, Uruguay, and Venezuela.

to an error or malfunction in the system that could have been detected earlier if the various state agencies involved had acted more diligently.

Our research included publications analyzing the general aspects of both types of errors and those addressing factors that increase the likelihood of their occurrence and studies of existing mechanisms to correct and remedy them.

The paper consists of three chapters. The first provides details on the systematic review methodology and, specifically, its application to the research question of this work. The second presents the main quantitative results obtained, including identifying aspects such as the publication years of the identified texts, the nationality of their authors, the areas they cover, and the disciplines to which they belong, among others. The third chapter develops a brief qualitative analysis of the contents of the identified research to provide an overview of the topics and approaches used to address the issue in Latin America. We hope to contribute this way with information that will facilitate comparisons with the evidence available in other regions. Finally, we present some brief concluding remarks.

II Methodology: Systematic Literature Review

We conducted a systematic literature review (SLR). This method allows for making sense of large amounts of information by synthesizing available evidence on a particular topic by reviewing quantitative and qualitative aspects of primary studies (Pittway, 2008; Manterola et al., 2013). The method involves the development of a detailed and exhaustive work plan with a predefined search strategy, aiming to reduce biases by identifying, assessing, and synthesizing all relevant studies on a topic (Uman, 2011; Letelier et al., 2005).

Following the fundamental principles of SLRs to ensure detailed, transparent, reliable, and comprehensive communication of the process and findings (Page, 2021; Pittway, 2008), we describe the workflow below, detailing the review protocol and specifying the stages of the process we followed.

The research question was: What has been researched and published on wrongful convictions and prosecutions in Latin American countries?

To access relevant studies, we searched in three academic indexes: Web of Science (WoS), Scopus, and SciELO. We accessed such indexes through the remote access service provided by the University Diego Portales Library. These databases offer broad coverage of high-quality scientific publications in various disciplines, encompassing papers, books, and book chapters, thus enabling the inclusion of a significant range of research related to the topic. However, we acknowledge that this methodological decision might exclude articles addressing the topic but published in non-indexed journals, a situation more common in law than in other disciplines[7]. Nevertheless, we have restricted the databases to work with a manageable set of publications. Also, because this research represents a first effort to systematize the available

[7] For instance, in Brazil and Chile, countries that significantly contribute to regional academic production on the subject, there are traditional journals in the field of criminal law that are not indexed in the selected databases and, therefore, fall outside the scope of this review. In the case of Brazil, the Revista Brasileira de Ciências Criminais; and in the case of Chile, the Revista de Ciencias Penales.

literature in the region. Consequently, we believe that, following this initial endeavour, new research could complement the findings by covering texts not included in this study.

We designed a search strategy to identify relevant studies by combining various English and Spanish keywords, progressing from general to specific terms to approach the problem comprehensively. The following terms were employed: "wrongful conviction," "miscarriages of justice," "error judicial," "condena de inocentes," and "condenas erróneas." Specific searches for each country were then conducted using factors contributing to wrongful convictions and charges considered by specialized literature as part of the canonical or traditional list[8]. We also applied Boolean operators and truncations in all cases according to the specificities of each database.

Similarly, through "other sources," we included studies (n = 4) known to us, published in journals indexed in the selected records, and that met inclusion criteria. However, they were not yielded as results in the searches for unknown reasons.

We established three initial inclusion criteria: publication date, language, and the country the publication refers to. Firstly, the review includes studies published from 2010 until July 2023. Secondly, the review encompasses articles written in Spanish, English, and Portuguese, the predominant languages of academic work in Latin America. Lastly, the review considers studies addressing the phenomenon concerning Latin America, regardless of whether they were published outside the region.

To focus the literature review on scientific works published under high scientific production and publication standards, so-called "gray" sources such as NGO reports, reports from governmental bodies, legislative reports, or others have been excluded[9]. While acknowledging that this decision may exclude some relevant documents, it allowed us to access a manageable universe for the proposed investigation.

The process began with identifying records from the selected indexes (n = 777). After each search, a file with the results was exported and manually entered into a Microsoft Excel spreadsheet, where a comparison and subsequent results cleansing occurred. We removed duplicate records (n = 274).

The screening process was conducted on the refined sample (n = 503), evaluating each identified record based on inclusion and exclusion criteria. This evaluation relied on reviewing the title, abstract, and general publication data.

Records that passed the initial screening (n = 57) were retrieved for an eligibility assessment based on a content analysis. From the total recovered documents, with a minor decrease (n = 55), a content analysis was conducted involving a full-text reading from which documents not truly addressing wrongful convictions or prosecutions were excluded (n = 6),

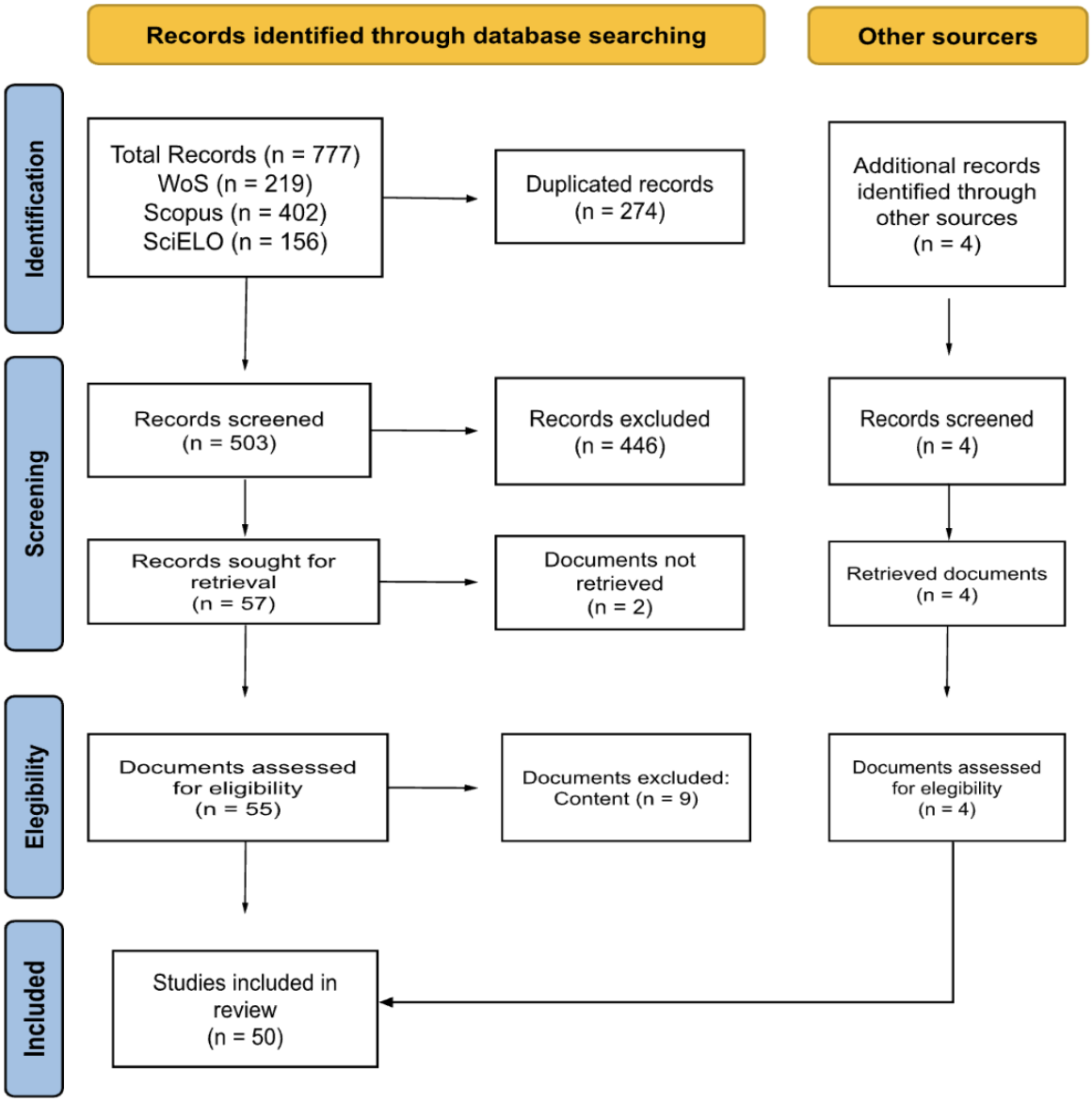
[8] The review encompasses eyewitness identification, false confessions, unreliable expert evidence, unreliable testimonies, misconduct by state agents, and defective legal representation. Additionally, we have included tunnel vision. *See*: Duce & Findley (2022). For an overview of the research on the first five factors, *see* Garrett (2020).

[9] This could be a limitation in our review, given that some authors have recommended incorporating grey literature into systematic reviews. *See*: Manterola et al. (2013).

as well as documents that despite addressing the phenomenon, did not refer to the selected countries (n = 3).

Finally, we extracted general data from the studies obtained through other sources (n = 4) and obtained through indexes (n = 46), followed by content analyses presented in the following chapters. The following figure illustrates and summarizes the systematic review process.

Figure 1. Systematic Literature Review Process Flow



Source: Prepared by the authors based on PRISMA Diagram

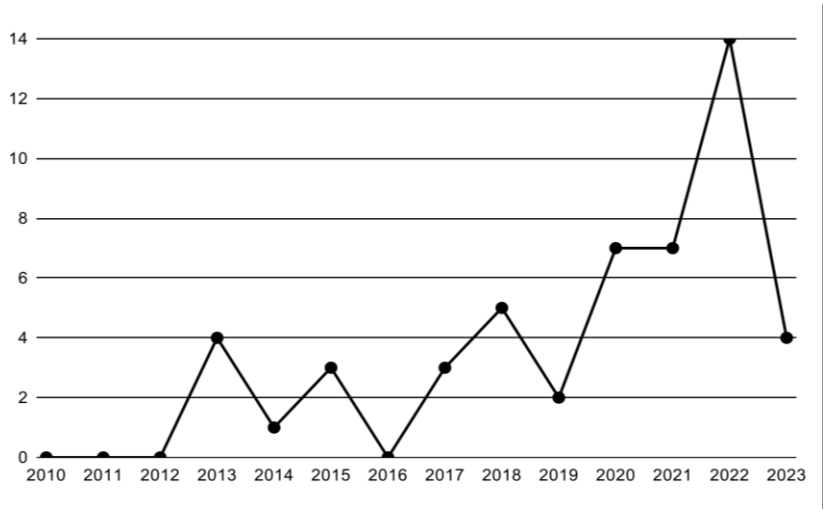
III Quantitative Findings

This chapter will highlight key quantitative findings from our systematic review, offering insights into basic trends in Latin American academic output on wrongful convictions and prosecutions.

A. Temporal and Geographic Distribution of Publications

Our analysis of publications from 2010 to 2023 reveals a concentrated surge, notably post-2020. Thus, 32 (64%) of the 50 publications identified emerged between 2020-2023, indicating a recent academic interest in Latin America. Surprisingly, we have yet to find publications for 2010-2012. Considering 2010-2016, there were only eight publications (16%). This underscores a lag in Latin American scholarly attention compared to the 1990s surge observed in comparative contexts. Figure 2 summarizes the results:

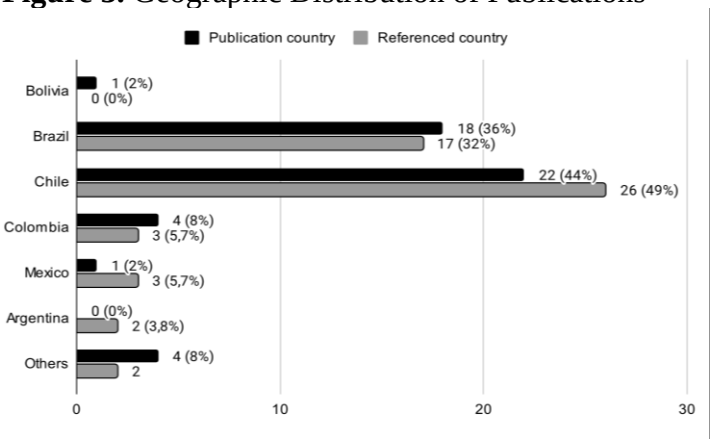
Figure 2. Temporal Distribution of Publications



Source: Prepared by the authors

We also explored publication locations and referenced countries. For the first aspect, we identified the nationality of the journal or published text, with a total of 50 items in this category. For the second aspect, in our content analysis, we determined the country or countries that were predominantly addressed in the publication. Thus, the overall scope expanded to 53, as some works analysed more than one country as a primary focus. It is essential to clarify that, for these purposes, we did not include texts that merely exemplified or referenced evidence or situations from other countries in the region. To be classified as a "referenced country," the publication needed to exhibit a predominant analytical orientation towards it. Figure 3 summarizes the results of both aspects.

Figure 3. Geographic Distribution of Publications



Source: Prepared by the authors

As seen, we found works in five regional countries and some outside (e.g., Spain and England). The concentration is intense in Chile and Brazil, making up 80% of publications, with Chile at 44% and Brazil at 36%. Colombia and others are considerably lower at 8% each.

The scenario slightly changes when examining the countries studied, expanding to 53. The count remains at five countries, but Argentina replaces Bolivia with two publications (3.8%). The concentration persists, with 43 (81.1%) works focused on Chile (49%) and Brazil (32%). Colombia and Mexico follow at a distance with three works each (5.7% each). "Others" include a Bolivian publication, primarily addressing international human rights law within the inter-American system. Another from Brazil provides a panoramic view of issues related to wrongful conviction, including examples from various countries within and outside the region.

The concentration in Chile and Brazil, both as publication and studied countries, may reflect more developed academic communities and publications indexed in the three studied indexes.[10] These proportions might shift if the study incorporates non-indexed academic publications. Another factor could be the existence of prolific authors in both countries, explaining a significant portion of the publications related to them, as we will analyse in the next section.

B. Authorship insights

We aimed to understand the community engaging in research and publishing in this field in the region by extracting key authorship data. Of 50 documents, 28 (56%) had individual authors, and 22 (44%) had co-authors.

The total author count reached 84, accounting for some repetition across publications. Among these, 58 (69%) were male authors, and 26 (31%) were female authors. Adjusting for repeated authorship, the total count was reduced to 62. Within this, 40 (64.5%) were male authors, and 22 (35.5%) were female authors.

Considering both criteria, women contributed to nearly a third of the total. However, this presence significantly varied between individual and collaborative publications. In individual authorship works, women contributed to five, constituting 17.9%, while men rose to 23, making up 81.2%. Conversely, in collaborative publications, women contributed to 19 out of 22 works, accounting for 86.4%, with three works exclusively authored by men. Notably, no collaborative works were exclusively authored by female authors, resulting in 100% of these works featuring at least one male author.

As anticipated, within the set of 50 documents, five authors participated in more than one publication. The most prolific was Duce (Chile), with 13 (26%) publications, followed by

[10] For instance, in the 2023 QS international ranking, Brazil and Chile lead the list with 26 and 16 institutions, respectively, among the top 100 universities in Latin America (Mexico has 14, Colombia 12, Argentina 11, Peru 4, and Costa Rica 3). *See*: topuniversities.com/university-rankings/latin-american-university-rankings/2023 (last accessed on September 1, 2023). Regarding publications, a 2011 study determined that regarding the percentage of SciELO journals in Latin America and the Caribbean, Brazil had 253 (35.2%), and Chile had 93 (12.9%). In Scopus journals, once again, Brazil led with 234 (44.7%), and Chile ranked third with 69 (13.2%), closely following Mexico in the second position with 70 publications (13.4%). *See*: Miguel, 2011, p. 192.

Cecconello and Stein (Brazil), with five (10%) and four (8%) publications, respectively. Beltrán (Chile) contributed to three (6%) publications, and Carbonell (Chile) to two (4%).

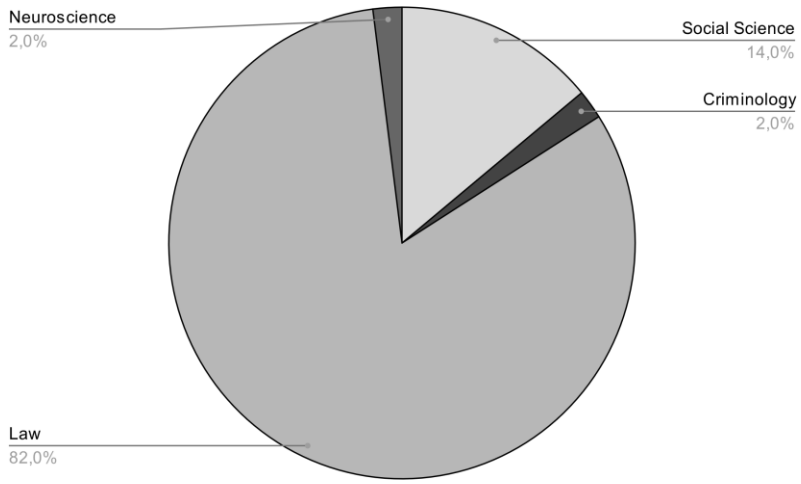
We also identified the authors' nationalities, spanning five regional countries and three from outside the region (Canada, the United States, and England), each representing 1.6% or a combined 4.8% of the total. Among regional countries, Brazil had the highest number of authorships at 43.5%, followed by Chile at 25.8%, Mexico at 14.5%, Argentina at 6.5%, and Colombia at 4.8%.

We noted significant dispersion across 29 reported institutions when examining institutional affiliations.[11] Most authors (87.1%) were affiliated with the region's universities, higher education institutions, or research institutes. Additionally, three authors were associated with non-regional universities (4.8%), two identified as independent researchers (3.2%), and three belonged to an organization focused on wrongful convictions (Argentina Innocence Project) (4.8%).

C. Disciplines and Research Topics

This section delves into the disciplinary affiliations and subjects covered by the 50 identified publications. Figure 4 provides an overview of the disciplines, revealing a concentrated presence in Law (82% of the total). Other Social Sciences account for 14%, including Psychology (6%), Police Sciences (4%), and Public Policy (4%). Criminology and Neuroscience each contribute 2%.

Figure 4. Publications by Discipline



Source: Prepared by the authors

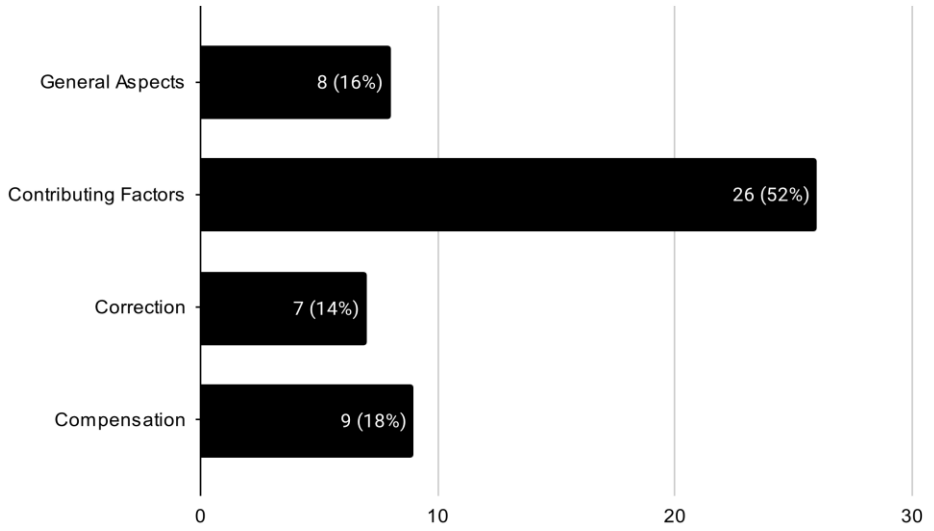
The intense focus on Law is partly due to topics closely linked to legal issues associated with regulating mechanisms for correcting and redressing wrongful convictions. However, many topics do not necessarily require legal analysis, suggesting the focus on Law reflects broader interests generated by the subject in Latin American disciplines beyond law.[12]

[11] We use "at least" because several authors report affiliation with more than one institution. For these purposes, we have considered only the first institution mentioned.

[12] When contrasting our findings with the study on Asia by Le et al. (2023, p. 7), a significantly more significant presence of publications in scientific disciplines such as medicine (14.9%) is evident on that

We further explored specific topics addressed predominantly in the research. Four categories were considered: "General Aspects," covering general issues related to wrongful convictions and prosecutions; "Contributing Factors," analyzing elements associated with increased error probabilities; "Correction," focusing on available mechanisms to rectify wrongful convictions; and "Compensation," examining mechanisms to compensate victims. Figure 5 summarizes this categorization.

Figure 5. Publications by Topic



Source: Prepared by the authors

52% of publications analyse factors associated with wrongful convictions and prosecutions, 18% address correction mechanisms, 16% fall under "General Aspects," and 14% focus on compensation mechanisms. Works categorized under correction and compensation could initially be associated more with the field of Law, representing 32% of the total, whereas publications in that area, as seen earlier, constitute 82%.

In summary, this chapter indicates a significant increase in publications, particularly in the later study years, with a concentrated presence in both the publication location and the country under study (Chile and Brazil). The data also reveal a higher presence of male authors, particularly in individually authored works. Prolific authors explain a significant percentage of the region's academic production. Most of the authors are affiliated with regional universities or research institutes. Finally, most publications are in Law, focusing on analyzing factors associated with wrongful convictions and prosecutions.

IV Qualitative Findings

The purpose of this chapter is to provide a comprehensive overview of the contents of the reviewed studies. To achieve this, we will delve into the four fundamental thematic areas that distinctly emerge in regional research.

continent. There is also a higher prevalence of studies in psychology (10.6%) and, notably, in social sciences (59.6%), without a specific identification of the field of law. For insights into the disciplinary diversity of studies on this subject in the United States. *See*: Garrett (2020, p. 246).

A. General aspects of wrongful convictions and prosecutions

These works constitute 16% of the total publications. The first group of them generally examines errors from the perspective of evidentiary law. One discusses a model of evidentiary law based on standards and another based on rules; in doing so, rules regulating the standard of proof in Argentina, Colombia, and Chile are reviewed (Larsen, 2020). Another proposes a theoretical model that would allow categorizing defective judicial decisions based on procedural rules related to the content of the judgment, reasoning, and avenues of challenge, including the revision appeal (Carbonell, 2020).

A second group of papers addresses general aspects of wrongful convictions, their quantification, and contributing factors. In the case of Chile, these are generally works that leverage empirical information and literature from comparative experiences (Castillo, 2013; Duce, 2013). Similarly, one publication discusses known error cases and identifies factors contributing to wrongful convictions in Argentina (Garrido et al., 2023). Lastly, taking a more global perspective, a publication highlights the challenges in quantifying cases of wrongful convictions, examines contributing factors, and discusses problematic aspects related to correction and redress mechanisms (Duce & Findley, 2022).

Another work emphasizes the importance of DNA technologies, highlighting their use in preventing and correcting wrongful convictions. It is also recognized as a valuable tool for identifying authentic perpetrators and conducting complex investigations into missing person cases (Trindade et al., 2022).

In line with the proliferation of the so-called Innocence Projects worldwide, one study outlines how to organize such a project in Brazil (Simões & de Araújo, 2021). Another describes the role of the Argentina Innocence Project (Garrido et al., 2023), while in Chile, there is commentary on the database maintained by the Innocents Project of the Public Defender's Office (Duce, 2013, pp. 244-246).

Finally, a study addresses the consequences and impact of the wrongful incarceration of an innocent individual (Escaff et al., 2013). This collection of works provides general insights into issues related to wrongful convictions, many of which touch upon aspects that have been subjects of debate in comparative contexts.

B. Contributing factors to wrongful convictions and prosecutions

Articles primarily focusing on studying and analyzing factors associated with an increased probability of wrongful convictions and prosecutions comprise 26 publications, representing 52% of the analysed universe. This area has the highest number of identified publications.

A notable aspect is the thematic distribution. While all works primarily address factors described in the available literature (Duce & Findley, 2022; Garrett, 2020), their distribution is uneven. The majority, 14 (54% of publications in this category and 28% of the total universe), are dedicated to analyzing various dimensions and issues related to eyewitness identifications. Following at a considerable distance are works that review aspects of the impact of expert evidence on error production within the system and others related to the use of confessions, both with four publications each (15.4% of this group and 8% of the total universe each). Additionally, three works focus on studying factors associated with the misconduct of state

agents making relevant decisions for criminal prosecution (11.5% of these works and 6% of the total universe). Finally, one work includes analyses of various factors mentioned above.

The section will be organized into five subheadings. The first four are dedicated to each of the traditional factors in which we classified the analysed publications. The last one is reserved for presenting other factors, such as those mentioned secondarily in the works and others that go beyond traditional categories, seemingly reflecting the peculiarities of the countries in the region.

a) Eyewitness identification

Mistaken eyewitness identifications often emerge in various record systems globally as one of the main factors favoring wrongful convictions and prosecutions[13]. As mentioned in the introduction, it is also one of the subjects that has generated a high level of scientific research in the last 30 years[14].

Consistent with these developments, research on eyewitness identifications constitutes the topic with the most identified works in our study (14 or 28%). Three additional publications classified as related to general aspects (Castillo, 2013; Duce, 2013; Duce & Findley, 2022) and one categorized as related to general factors (Duce, 2015) should be added to them, as they, although not centrally, address eyewitness identifications in their development.

Content analysis reveals that this is an area with a fascinating disciplinary diversity. While most publications on eyewitness identifications are found in legal journals, this percentage is much lower than the overall result (57% vs. 82%). There is a greater diversity in the disciplines of the publications, especially from a broader and more varied analytical perspective than in other topics.

Noteworthy in this increased interdisciplinary approach are the works of Cecconello et al. (2018, 2022, and 2023), Cecconello & Stein (2020), and Ronzon-González et al. (2017). The first, published in a public policy journal, reviews scientific evidence regarding the risks posed to memory by the repeatability of activities such as eyewitness identifications and

[13] According to the Innocence Project in the United States in early October 2023, over 60% of the cases of wrongful convictions they registered had an eyewitness identification that incriminated an innocent person, making it the primary factor in these cases (https://innocenceproject.org/eyewitness-misidentification/) (last visited on October 11, 2023). Around the same time, the National Registry of Exonerations in the United States identified this procedure as a factor in 27% of the cases (https://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx) (last visited on October 11, 2023). The Canadian Register of Wrongful Convictions also identified it in 29% of the cases (25 out of 86) (https://www.wrongfulconvictions.ca/data) (last visited on October 11, 2023). Systematic research on Asia shows that it is also a significant factor in many wrongful convictions on that continent (Le, 2023, p. 11). In the context of continental Europe, a study in Germany identified it as a factor in 45.8% of wrongful conviction cases between 1990 and 2016 (Leuschner et al., 2020, p. 698). Finally, research on near misses in the United States shows that this procedure was similar to the sample of wrongful conviction cases they used for comparison, constituting 75% of the cases in the sample (Gould et al., 2014).

[14] The Wilson Center for Science and Justice (2022) identified 1,246 scientific publications up to 2020. In a previous work, Epstein (2014) mentioned that over 2,000 peer-reviewed articles would be published on eyewitness memory and its performance in the 30 years leading up to 2014.

provides policy recommendations to mitigate these risks (Cecconello et al., 2018). The second, published in a psychology journal, reports the results of an experiment measuring the impact of lineup filler similarity on suspect identifications. It concludes that the similarity of fillers to the suspect does not significantly impact the probability of suspect identifications, whether guilty or not (Cecconello et al., 2022). The third, published in a journal of police science, evaluates the impact of a training program for Brazilian police officers aimed at improving the development and execution of eyewitness identification procedures, finding a positive impact in various areas, such as lineup construction and instructions provided (Cecconello et al., 2023).

Furthermore, the work of Cecconello and Stein (2020), published in a psychology journal, reviews evidence from eyewitness testimony studies to recommend how to conduct eyewitness identification procedures. Lastly, the work of Ronzon-González et al. (2017), from the field of neuroscience, reports the results of a study observing the behavior of neural circuits in individuals evaluating their memory and confidence response when viewing photographs, all through the use of brain scans (fMRI), providing information on the biological foundations of eyewitness identification processes.

In an intermediate zone between a scientific and legal perspective, Cani & Alcántara (2022) preferentially analyse critically the impact that the introduction of facial recognition algorithms would have as a technique to overcome problems detected in eyewitness identification procedures, concluding that they also present significant risks of false positives. At this same intersection, it seems that the work of Navas, published in a public policy journal, is located. The study reviews and analyses scientific evidence highlighting the fallibility of human memory, emphasizing the problem of false memories. It then uses this information to analyse legal design issues related to using testimonial evidence and eyewitness identifications in the criminal process in Brazil (Navas, 2018). A last work in this group, published in a legal journal, reviews available evidence in experimental and cognitive psychology to argue in favour of using photographic identifications to ensure the execution of proper and fair procedures, challenging legal regulations and the predominant conception among system actors in Brazil that consider such procedures less reliable (Matida & Cecconello, 2021).

Another group of four works, all published in legal journals, are characterized by using, with varying levels of importance and depth, some empirical methodology aimed at describing or understanding reality, usually accompanied by a review of legal texts and more traditional legal analysis. A fundamentally empirical work sought to identify practices in Chile associated with the conduct of eyewitness identification procedures and their use in criminal justice. The research concludes with recommendations to overcome identified problems, including aspects of public policy, training, and legal reform (Duce, 2017).

The other three works analysed in this group come from Brazil and include an empirical component in the form of a review of relevant cases, allowing them to describe how eyewitness identification procedures unfold in practice. One of them reviews the jurisprudence of the Superior Court of Justice over ten years (2012-2022) regarding habeas corpus and revision appeals to identify whether stereotypes and epistemic injustices are reproduced in the practice of eyewitness identifications in Brazil, affirmatively concluding to such a question (Leite & Bahia, 2023). Another work investigates eyewitness identification practices based on images collected from surveillance cameras. Empirical findings reveal a need for uniformity in procedures and a judicial assessment of them as if the images captured in the videos were faithful representations of reality (Guedes et al., 2022). Finally, the work with the minor empirical component and, consequently, more analysis and text review examines the impact of

eyewitness identification procedures in the United States and Brazil in reinforcing the criminal justice system's selectivity and labelling approach phenomena (Magalhaes, 2020).

Additionally, a work categorized as dealing with factors causing errors could be added to this group. The work examines four cases of wrongful convictions in Chile, identifying that eyewitness identifications played a crucial role in two. Some lessons about the poor quality of procedures conducted in Chile are identified (Duce, 2015).

The last group in this section consists of two works addressing eyewitness identification problems with an approach based on more traditional legal analysis. The first argues the possibility of excluding eyewitness identification evidence from trial when these procedures are conducted without meeting basic standards to ensure their reliability (Alcaíno, 2014). The second analyses recent developments in the jurisprudence of the Superior Court of Justice of Brazil regarding issues associated with police investigative work, including the administration of eyewitness identification procedures. This jurisprudence is said to have changed the paradigm for conducting such procedures, raising the previously existing standards (Schietti, 2022).

From this brief overview, research on eyewitness identifications exhibits a trend similar to that identified in comparative experiences: a concern reflected in a significant number of publications, a diversity of disciplinary approaches to the problem, and a fairly critical view of how these procedures are conducted in the countries under study and how they are subsequently used and evaluated by criminal justice systems.

b) Use of expert evidence

Four works address the impact of expert testimony on wrongful convictions and prosecutions, complemented by references provided by publications related to general aspects. This factor is also identified as one of the most relevant in comparative evidence but has less presence in the literature of Latin America[15].

Drawing from the debate on the use of expert evidence and its relationship with the production of wrongful convictions in the United States, one work reflects on the current situation in Brazil, highlighting some reforms aimed at reducing errors in the production of expert reports. These reforms include the implementation of quality management systems, standardization of procedures for each type of expert examination, improvements in the chain of custody, and the imposition of strict rules of administrative, civil, and criminal responsibility for professionals responsible to produce expert examinations, among others (Simões & de Araújo, 2021).

In Colombia, a study discusses the difficulties in assessing expert testimony, particularly psychological expertise. In response to the "probative assessment crisis of expert

[15] For instance, the *National Registry of Exonerations* identified this evidence as a factor present in 24% of cases as of October 2023, online: (https://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx) (last visited on October 11, 2023). Systematic research on Asia also reveals it to be a significant factor in wrongful convictions in countries such as China and Taiwan (Le, 2023, pp. 11-12). Research in Germany found it to be present in 35.7% of wrongful conviction cases between 1990 and 2016 (Leuschner et al., 2020, p. 700).

evidence," the work proposes the applicability of the Daubert criteria developed by the U.S. Supreme Court and expressly incorporated in Article 422 of the Criminal Procedural Code of Colombia. These criteria are proposed as elements to discuss the admissibility of expert testimony and as guidelines for probative assessment (Calderón & Cueto, 2022). Similarly, in Brazil, there has been a discussion about whether the Daubert criteria are recognized in legislation and their potential use as guidelines for probative assessment (Simões & de Araújo, 2021).

In Chile, various difficulties related to the use of expert evidence have been identified. This exploration stems from studying paradigmatic error cases and evidence accumulated in comparative experience (Duce 2013; Duce 2018a). Subsequently, an empirical study was conducted to delve into the use and practice of expert evidence (Duce, 2018a; Duce, 2018b). Findings highlight the routine use of expert evidence with questionable reliability, the need for more specialization of experts in some areas, problems in the preparation and delay in the production of expert reports, and the lack of certification of laboratories, among other issues. Virtually no control over the admissibility of this type of evidence is also noted. During the trial, findings reveal problems in presenting this type of evidence, difficulties in its confrontation, and limited control over the information provided by the experts. Finally, professional judges encounter challenges when assessing this evidence (Duce, 2018b).

In Argentina, problems have been reported in the legal regulation of expert evidence. On one hand, there is extensive freedom for litigants to offer and use any evidence as expert testimony. On the other hand, no regulation or guidelines address what can be considered expert testimony. This, along with the lack of technical and scientific knowledge by judges and juries, increases the risk that expert testimony may be overvalued or overestimated by the decision-making body (Garrido et al., 2023).

As observed, the presented landscape tends to emphasize various problems and challenges in using expert evidence in the region; therefore, it could be a significant factor that increases the likelihood of errors.

c) Use of false confessions

To analyse research addressing the use of false confessions, we distinguish between two groups. On the one hand, some studies deal with issues related to police interrogations and confessions in their more traditional sense (Beltrán, 2022; Moscatelli, 2020; Navarro & de Lucena, 2023). On the other hand, one study delves into the phenomenon known more broadly as admissions of criminal responsibility within the context of negotiated criminal proceedings (Duce, 2015; Duce, 2019).

Studies on false confessions in Brazil have emphasized the historical importance rooted in the inquisitive tradition of valuing confessions as the primary form of evidence (Moscatelli, 2020; Navarro & de Lucena, 2023). The problem with confessions arises at two moments: during the preliminary investigation, and in the assessment of evidence. In the preliminary investigation, Moscatelli (2020) reports on a previous empirical study that examined police investigations in five Brazilian state capitals, showing that the suspect's confession was the method used in approximately 80% of the investigations with external investigations and technical-scientific expertise being rare. Research has also shown that those who confess in police stations tend to be individuals from lower socioeconomic classes, predominantly young people living in precarious socioeconomic conditions, those with low levels of education, and those belonging to Afro-descendant or mestizo ethnic groups (Moscatelli, 2020, pp. 367-368).

Regarding the role of confessions in evidence assessment, exploring the problem from the perspective of agential epistemic injustice, Navarro & de Lucena (2023) observe that court decisions have tended to consider confessions given at the moment of most minor agency of the subject as more credible.

In Chile, through a dogmatic and jurisprudential study, efforts were made to identify some potentially problematic aspects in the treatment of confessions to the police. Findings highlight certain police practices that take advantage of discretionary spaces in the initial stages of investigations to obtain confessions outside the norms and judicial control and significant deference from the Supreme Court toward police conduct during interrogations, among other issues (Beltrán, 2022).

On the other hand, some studies emphasize the analysis of admissions or "confessions" produced in the context of the development of developing negotiated proceedings in most regional procedural systems. In the Chilean case, this would be the main source of production of convictions (Duce, 2015; Duce, 2019). An investigation analyzing four cases of exonerations refers to the environment of fear and pressure exerted on defendants during the hearings discussing these types of proceedings. Indeed, these are usually proceedings related to minor offenses, in brief and rapid hearings, with little information, including considerable technical language, where defendants have had virtually no contact with their lawyers, and where there are significant incentives for accepting responsibility (Duce, 2015). Another empirical study found that in Chile, factors and dynamics are similar to those identified in comparative experience that increase the risk of wrongful convictions through negotiated proceedings. These include a significant space for offering reduced sentences by prosecutors, the presence of public defenders with little interaction with their clients, and judges exercising minimal control, especially regarding the voluntariness of acceptance (Duce, 2019).

The body of research we have grouped in this area shows that the existence of false confessions, that is, by innocent individuals, could be a relevant factor in Latin America. This could occur through police interrogation practices or the use of false confessions in negotiated procedures, which overwhelmingly result in criminal convictions.

d) State agents' misconduct

This is the thematic area with the fewest identified works, although it is often considered one of the most prevalent in international databases.[16] In this context, a primary line of studies relates to decision-making during investigations. In Brazil, based on interviews with experienced homicide detectives, it was found that factors influencing the success or failure of an investigation, as well as the decision to press charges, include the existence of evidence, the ability and structure to identify this evidence, and the individual skills and competencies of investigators along with gaps in their training (Lino & Roazzi, 2022). In homicide investigations, guilt is noted to be constructed based on the suspect's confession, guiding the selection of which other pieces of information should be collected. This may result in

[16] For instance, the National Registry of Exonerations identified this evidence as a factor present in 60% of cases as of October 2023, online: (https://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx) (last visited on October 11, 2023). According to the Canadian Registry of Wrongful Convictions, prosecutor misconduct is present in 22.5% of cases, while police misconduct is present in 23.6% of registered cases, online: (https://www.wrongfulconvictions.ca/data) (last visited on October 11, 2023).

discarding hypotheses or other suspects, not preserving the chain of custody, and failing to request forensic evidence, among other shortcomings. The goal seems to justify a single hypothesis at all costs, based on extracted statements supporting the preconceived conclusion about the suspect (Moscatelli, 2020).

In Chile, studies have focused on tunnel vision, addressing its general aspects (Beltrán, 2021a; Beltrán, 2021b; Castillo, 2013; Duce, 2013). Two publications seek to identify its impact on a high-profile case's investigation and trial. Findings indicate that the phenomenon led the Public Prosecutor's Office and the police to refrain from conducting and omitting investigative activities that could benefit the accused or clarify contradictory points. Additionally, certain diligences were carried out sloppily, and the information obtained was misinterpreted. During one of the trials, uncooperative statements were observed from the police, showing a reluctance to respond to points favorable to the accused (Beltrán, 2021a; Beltrán, 2021b). Similarly, another publication reports that the phenomenon would impact the rigor of the police and the Public Prosecutor's Office's working processes (Duce, 2013).

Another line of studies relates more to the deliberate misconduct of agents. In Argentina, authors highlight "fabricated cases" where evidence is manipulated or planted to incriminate a person. Additionally, the manipulation of witnesses has been documented, either in exchange for favours or under threats, to falsely testify against a person (Garrido et al., 2023). Explanations suggest that the fabrication of cases aims to build statistics, responding to institutional or political pressures. Complicating the situation are issues related to the training of police forces, the use of underdeveloped investigative techniques, and the deployment of tactics that allow the police to evade judicial oversight (Garrido et al., 2023, p. 158).

The studies emphasize the importance of decision-making during criminal investigations and point to factors influencing investigative work. Moreover, based on cases of deliberate misconduct, the need to enhance the training of professionals in criminal investigation has been underscored. Ultimately, aspects related to the misconduct of state agents could be a relevant factor in the region.

e) Other factors and peculiarities in Latin America

Finally, in this section, we group findings into two diverse directions. First, some factors, while not central in the reviewed studies, are mentioned and stand out for their consistency with those detected in the literature from other jurisdictions. Among these, practices such as using unreliable witnesses or informants - generally, individuals providing false testimony against another innocent person - have been highlighted (Hadaad & Pinto, 2022; Garrido et al., 2023). We have also identified more structural factors, such as weaknesses in criminal defences that lead to inadequate legal counsel (Duce, 2015; Garrido et al., 2023).

Second, we have identified some factors that do not have a clear correlation in comparative literature or in traditionally addressed topics. Therefore, these would be more related to the local realities of the various countries in the region and would be particular or specific factors in the Latin American criminal justice systems[17]. It is worth noting that these

[17] Recent research into factors outside the Anglo-Saxon world is also beginning to reveal specificities. For instance, in Asia, a systematic literature review highlights the use of torture as a significant variable in obtaining false confessions, along with the political factor or the prevailing punitive and authoritarian ideology in criminal justice and practice in various countries such as China and Singapore (Le et al.,

are not isolated occurrences in a single country, but rather, they have been detected in two or more countries through their mention in various works.

In this second group of factors, identity theft cases stand out in Chile and Brazil (Duce, 2015; Hadaad & Pinto, 2022). These are situations where an individual who provided a false name or identity at the time of arrest is convicted. Not detected in time by authorities, this situation allows an official conviction to be achieved and recorded concerning the impersonated person, who is later detained and proves that they had never participated in the crime. However, the issue arose because someone usurped their identity in the original process (Duce, 2015). Even in Chile and Brazil, victim or witness recantation is identified in the literature as another contributing factor to errors. These are primarily cases where the crime victim or the key witness has recanted their statement against the wrongly convicted innocent person (Hadaad & Pinto, 2022; Duce, 2015; Fernández & Olavarría, 2018).

Surprisingly, some findings reveal issues that could be even more basic. One such example are matters that are related to the lack of coordination within the judicial system and the institutions involved during the process preventing access to public information that could exonerate a wrongly convicted person (Duce, 2015; Hadaad & Pinto, 2022).

Another distinct problem in some countries is the need for adequate education and training for state agents, contributing to or increasing the risk of errors due to inappropriate investigative techniques and procedures (Garrido et al., 2023; Duce, 2017). However, this is not only linked to the training of police officers and prosecutors, but it also extends to judges. For example, in Minas Gerais, the main contributor to the error is more related to judges' mistakes when determining the sentence's severity (Hadaad & Pinto, 2022).

In conclusion, the available literature indicates some factors that align with findings from jurisdictions outside the region. This suggests that, in Latin America, as in other parts of the world, justice systems face similar challenges likely resulting from common structural issues in criminal justice beyond the specific design elements that each country or region may have. However, the reviewed literature also shows the presence of specific factors that require further exploration.

C. Correcting wrongful convictions

We have detected that this is the thematic area with the lowest number of publications in Latin America during the reviewed period. The studies account for 14% of those included in the review and address cases in Chile (n = 6) and Brazil (n = 1). These works focus on the study of the mechanism for overturning a wrongful conviction: the review process.

Some aim to better understand the practical functioning of the review mechanism (Duce, 2015; Fernández & Olavarría, 2018; Hadaad & Pinto, 2022), while others deal with more theoretical aspects related to certain features or operational issues (Mañalich, 2020; Carbonell & Valenzuela, 2021). There are also works with a prospective approach, emphasizing the need for a better correction mechanism (Duce, 2022a; Duce, 2022b).

The methodological approach varies significantly. Firstly, some studies are based on empirical analysis and examine the functioning of the correction mechanism based on

2023, pp. 8-9, 12-13). In the German context, evidence indicates that cases of exonerating individuals not criminally responsible due to mental insanity are relevant factors (Leuschner et al., 2020, p. 698).

submitted review requests. For example, in the state of Minas Gerais (Brazil), a study analysed a database of 4,561 review requests from 2012-2020 (Hadaad & Pinto, 2022). In Chile, a study analysed 470 review cases, delving into 44 cases where the appeal was ultimately granted (Duce, 2015). Another study, although somewhat doctrinal, provides data on the admissibility of appeals and supplements its study with a review of Supreme Court jurisprudence when resolving them (Fernández & Olavarría, 2018).

Secondly, legal-practical studies can be identified. These works primarily focus on legal aspects but have a practical component to some extent in their development. In this line, one study identifies problems that highlight the need to find a new balance between legal certainty and justice to have a mechanism that better covers victims of wrongful convictions (Duce, 2022b). Another text develops a conceptual framework to clarify the evidentiary standard the Chilean Supreme Court should use when reviewing a case. Based on its conceptual development and reviewing some cases, the study analyses how the Court has behaved when reviewing appeals (Carbonell & Valenzuela, 2021).

Thirdly, a study uses a comparative approach to analyse the review process in Spain and the Criminal Case Review Commission in England, Wales, and Northern Ireland, then reflects on the situation in Chile, emphasizing the need to improve the mechanism (Duce, 2022a).

Finally, a purely theoretical-doctrinal study focuses on systematizing and reconstructing the scope of the grounds for review provided by the Chilean Criminal Procedural Code (Mañalich, 2020).

Most of the studies adopt a critical perspective toward the correction mechanism, either from the configuration, scope, and meaning of the appeal grounds (Duce, 2015; 2022b; Fernández & Olavarría, 2018; Mañalich, 2020) or from aspects related to the mechanism's operation and the jurisprudential practice that has developed (Carbonell & Valenzuela, 2021; Duce, 2015, 2022a, 2022b; Fernández & Olavarría, 2018). In contrast, Hadaad & Pinto (2022) take a more descriptive approach.

We will briefly delve into studies that empirically analyse the functioning of the review process. One striking aspect is the contrast regarding the grounds that have allowed review requests to be accepted. While in Chile, the most common ground for review cases is the letter d) of art. 473 of the Criminal Procedural Code, which involves the discovery of unknown facts or documents during the process that suffice to establish the innocence of the convicted person; in Minas Gerais, it has been the ground in the first part of letter a) of art. 621 of the Criminal Procedural Code (when the convicting sentence is contrary to the express text of the criminal law). Another exciting aspect is that their findings provide insight into the factors or contributors to wrongful convictions based on the in-depth study of each case. Thus, the findings align with some factors identified in comparative literature, but non-traditional factors also respond to the region's peculiarities, as we have seen.

To conclude this section, some of these studies include recommendations or proposals in response to the identified problems. Hadaad & Pinto (2022) emphasize promoting and strengthening judges' decision-making training. In Chile, there have been suggestions to advance a doctrinal reconstruction of the review process that allows for broader coverage, for example, through a broader understanding of the grounds, and abandoning restrictive jurisprudential interpretations, among others (Duce, 2022b; Carbonell & Valenzuela, 2021; Mañalich, 2020; Fernández & Olavarría, 2018). Proposals have also been made to advance a

legal reform that expands the scope of some review process grounds, specific rules regarding the procedure, and other aspects aimed at facilitating victims' access to the mechanism for wrongful convictions (Duce, 2022a; Duce, 2022b).

D. Repairing or compensating wrongful convictions and prosecutions

This topic has yet to be a primary object of study in comparative literature that examines the problem from the perspective of system errors despite evidence showing the enormous impact and severe harm they cause (Duce & Findley, 2022, p. 550). However, there is a growing interest in comparative law on this matter[18]. Our research reveals that it is the second area accumulating the highest number of publications during the period in Latin America, comprising 18% of the total (nine works)[19], although still far from the main topic related to factors.

The high presence of texts on this topic could be a natural consequence of various compensation mechanisms often regulated at the constitutional or legal level, attracting attention from the legal sphere. We estimate that six out of the nine works come from this legal perspective (Ballivian, 2013; Rangel, 2015; Islas & Cornelio, 2017; Martínez, 2020; Fernández, 2021; and Pacheco, 2022), while only three focus on examining its connection with system errors (Duce & Villarroel, 2019; Duce, 2020; and Duce 2021).

A distinction is necessary to comprehend the scope of the contents covered in these works. Compensation mechanisms regulated in national and international legislations distinguish two types of reparations: those arising from wrongful convictions and those resulting from criminal prosecutions that have caused harm, whether wrongful or not[20]. Considering this perspective, four works emphasize the former mechanisms (Rangel, 2015; Islas & Cornelio, 2017; Fernández, 2021; and Duce, 2022), and an equal number focus on the latter (Ballivian, 2013; Martínez, 2020; Duce, 2020; and Pacheco, 2022). One addresses a mechanism that regulates both hypotheses (Duce & Villarroel, 2019).

Most works predominantly analyse the constitutional or legal regulation of one or two specific countries. Thus, Chile has three works (Ballivian, 2013; Duce & Villarroel, 2019; and Martínez, 2020) and Mexico one (Rangel, 2015). Additionally, one comparatively analyses the situation in Mexico and Chile (Fernández, 2021), and another compares Colombia and Spain (Pacheco, 2022). Two works take a more globally comparative view (Duce, 2020 and Duce, 2021), while one analyses the problem from the perspective of international human rights law (Islas & Cornelio, 2017)[21].

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[18] For example, a book that includes national reports on the issue of compensation for wrongful convictions (England and Wales, Germany, Italy, Spain, the Netherlands, Norway, Lithuania, Poland, and the United States), along with a chapter on the development of European standards and another proposing an optimal model to address the problem (Jasinski & Kremens, 2023).

[19] In addition, one of the works we considered under "General Aspects" included a section dedicated to the topic (Duce & Findley, 2022, pp. 550-555).

[20] The main topic concerning compensation for criminal prosecutions concerns indemnification for pretrial detention in cases that do not result in convictions. Three of the four works emphasize this aspect without necessarily referring to cases where an error is proven in ordering this precautionary measure (Martínez, 2020; Duce, 2020; and Pacheco, 2022).

[21] Several texts analyse international statutes, but not as the central focus of the work, for example, Rangel (2015) and Fernández (2021).

The preferred methodological approach of the works is doctrinal, meaning a systematic analysis of the meaning and scope of the rules under study based on text review, opinions from legal scholars, and, in some cases, referencing jurisprudence. The primary exception is a work (Duce & Villarroel, 2019) that strongly emphasizes reviewing historical data on the use of the mechanism in Chile and then presents an analysis of 12 years of decisions by the country's Supreme Court (2006-2017).

The more globally comparative works (Duce, 2020; Duce, 2021) have a fundamentally descriptive perspective of different legislations. However, both include some empirical background on the operation of the mechanisms studied in their respective countries.

From an intellectual perspective, the works predominantly exhibit a descriptive but critical view of the institutions under analysis, especially those related to specific countries in the region. Indeed, there is a shared view that the available mechanisms have problems or limitations that excessively restrict their use. For example, discussing the jurisprudential line adopted in Colombia to grant compensation in cases with preventive detentions that do not end in conviction, Pacheco (2022) asserts that it has narrowed the scope of compensation with the potential impact of leaving manifestly unjust cases without remedy. Analyzing Mexico's constitution and its 2008 reform, Rangel (2015) concludes that the country needs to comply with the commitments made in international treaties. In this line, Fernández (2021) criticizes the lack of explicit constitutional regulation and a mechanism to enforce this right in the same country. In the case of Chile, Manríquez (2021) reveals the inconsistencies in constitutional regulation concerning compensation for cases of erroneously imposed preventive detentions, and Duce & Villarroel (2019) especially highlight that, based on regulatory regulation and especially the Supreme Court's interpretation, the existing mechanism falls far short of meeting the reparative needs arising from wrongful convictions and prosecutions.

V Concluding Remarks

Based on the review of articles published in WoS, SciELO, and Scopus from 2010 to 2023, this paper highlights the nascent nature of academic production on wrongful convictions and prosecutions in Latin America, with a notable surge in recent years.[22] Furthermore, we have observed that it is concentrated in a few countries (Brazil and Chile) and within a specific type of publication and analytical perspective (Law). Nevertheless, the qualitative analysis reveals that, despite these limitations, the studies provide valuable information that helps understand the dynamics of various factors influencing the production, correction, and redress of wrongful convictions and prosecutions in the region.

The reviewed evidence indicates alignment with factors contributing to wrongful convictions in comparative literature. Unfortunately, there is consensus that correction mechanisms are inadequate and need to be improved. Also, reparation mechanisms must adequately address the problem's scale. Unique aspects not found in comparative evidence were also identified, warranting regional reflection.

[22] We remark that the exclusion of articles published in non-indexed journals in these three databases, as well as those contained in other grey literature sources, should introduce caution in the scope of our conclusions and, at the same time, may serve as an incentive for future publications that can complement this work.

Further regional research is crucial to deepen our understanding, not just in quantity but by diversifying analytical perspectives and countries under study. This text aims to provide a comprehensive overview, inspiring researchers across countries to conduct studies complementing existing ones for a complete understanding of the phenomenon.

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What's in a Name? The Impact of Labels on Attitudes Toward Exonerees

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This research was supported by the Social Sciences and Humanities Research Council of Canada (Insight Grant #435-2018-0875) held by the last author. Correspondence concerning this article should be addressed to Karli Hamilton, Faculty of Social Science and Humanities, University of Ontario Institute of Technology, 2000 Simcoe Street North, Oshawa, L1G 0C5. Email: karli.hamilton@ontariotechu.net

As exonerations have increased, so too has research into post-release challenges for wrongfully convicted individuals, including stigma, discrimination, mental illness, and inadequate support. In so doing, researchers and advocates have described this population in varied ways, which may elicit differing attitudes. To explore that possibility, 188 citizens read a tweet in which we varied the label ascribed to a newly released male prisoner (i.e., wrongly convicted, exonerated, innocent, or released/control), then reported their attitudes toward him. Contrary to expectations from the stereotype activation and labelling literature, different labels did not produce different judgements of the man's character, criminality, or deservingness of support. Instead, perceptions were consistently more favourable for wrongfully convicted individuals (regardless of label) than other formerly incarcerated people (control). Troublingly however, the labels wrongly convicted, exonerated, and innocent still elicited some belief that the man was somehow involved in—or had committed—the crime for which he was erroneously convicted, that he may have committed other crimes in the past, and that he might commit crimes in the future. Implications are discussed in terms of stigma theory, growing media attention to wrongful convictions, and the disconnect between public and government support for post-exoneration services.

I Introduction

The National Registry of Exonerations (2024) has catalogued more than 3,600 exonerations (i.e., cases in which a person was wrongly convicted of a criminal offense and later acquitted, pardoned, and/or deemed factually innocent) in the United States since 1989. These individuals collectively spent over 32,000 years imprisoned for crimes that they did not commit. Wrongful convictions are costly to taxpayers, who shoulder the financial costs associated with these miscarriages of justice (Legislative Analyst's Office, 2022), and to public safety, insofar as the actual perpetrators remain free to victimize others (Baumgartner et al., 2018; Norris et al., 2020; Pozzulo et al., 2017). To illustrate, the Innocence Project (2022) found that while their first 239 innocent clients were wrongfully imprisoned, the true perpetrators of those crimes committed an additional 99 violent crimes (that we know of), including 54 sexual assaults and 22 murders—crimes that may have been prevented if these wrongful convictions had not occurred.

But above all, wrongful convictions are devastating to the individuals personally affected, who bear the burden of incarceration-related stress coupled with the frustrating self-awareness of their innocence. For that reason, it is perhaps unsurprising that wrongful incarceration is devastating to mental health (Kukucka et al., 2022), with exonerees reporting rates of trauma exposure and symptoms of mental illness comparable to those of torture victims and combat veterans (Campbell & Denov, 2004; Grounds, 2004; Weigand, 2009). Wrongful convictions also carry myriad social, financial, and other consequences, such as broken relationships and missing milestone life events (Boudin, 2011; Siennick et al., 2014), poor physical health (Brooks & Greenberg, 2021), and loss of income leading to poverty and homelessness (Canterbury Law Group, 2022; Christian et al., 2006), among others (for reviews, see Brooks & Greenberg, 2021; Kirshenbaum et al., 2020).

On top of these struggles, exonerees also face stigma and discrimination after leaving prison (e.g., Clow, 2017; Kukucka et al., 2020; 2021; Zannella et al., 2020), such that the public tends to perceive and treat exonerees similarly to other formerly incarcerated people despite their innocence. While the public generally believes that their government should provide financial support and other services aimed at restituting wrongly incarcerated individuals and facilitating their post-release transition (Angus Reid, 1995; Blandisi et al., 2015; Clow, Blandisi, et al., 2012), people appear less willing to personally support exonerees, as evidenced by studies of hiring (Clow, 2017; Kukucka et al., 2020) and housing (Kukucka et al., 2021; Hamovitch et al., 2022; Zannella et al., 2020) discrimination. For instance, a field experiment by Zannella et al. (2020) found that landlords were less likely to respond to inquiries about apartment rentals from people who they believed had previously been incarcerated, even if the inquirer explained that they had been wrongfully convicted and exonerated by DNA evidence. Further, when landlords did respond to their inquiries, they were more likely to say that the unit was no longer available (Zannella et al., 2020). Similarly, Kukucka et al. (2020) found that hiring professionals tended to rate an exoneree job applicant less favorably, and offered them a lower wage, compared to a non-exoneree applicant with identical credentials. Possibly these findings are due to some small percentage of the population believing that exonerees are guilty rather than innocent (Howard, 2019), concerns that time in prison has negatively impacted exonerees in some way (Clow, Ricciardelli, & Cain, 2012), or intersecting biases impacting certain exonerees more than others (Clow, Ricciardelli, & Cain, 2012; Howard, 2019; Scherr, Normile, & Sarmiento, 2018).

Over the past decade, research on exoneree stigma and discrimination has proliferated and shed light on the many challenges that characterize re-entry and beyond. However, this growing body of research has varied in terms of the language used to describe exonerees: Prior studies have described members of this population as "wrongfully convicted" (e.g., Clow & Leach, 2015a; 2015b; Steinback, 2007), "wrongly convicted" (e.g., Norris, 2012; Ricciardelli & Clow, 2012; Westervelt & Humphrey, 2001), "exonerated" (e.g., Kukucka et al., 2020; Kukucka & Evelo, 2019), or "innocent" (Norris & Mullinix, 2020), or they have used more than one of these terms (e.g., Howard, 2019; Karaffa et al., 2017; Scherr, Normile, & Putney, 2018; Scherr, Normile, & Sarmiento, 2018; Zalman et al., 2012). Innocence organizations and popular media have likewise used mixed language: The mission statement for the National Registry of Exonerations focuses on "innocent criminal defendants," while trailers for popular *Netflix* series such as *The Innocence Files* and *When They See Us* describe their subjects as "wrongly convicted" and "exonerated" respectively, and the Innocence Project's website has used all of these terms to refer to their clients.

Although advocates and academics tend to use these terms interchangeably, one could argue (see Hamer, 2023; Leo, 2016) that these concepts—while often overlapping—hold slightly different connotations. For instance, "wrongful conviction" is often equated with factual innocence, implying that someone was convicted for a crime they did not commit or indeed a crime that never occurred (Kennedy, 2004; Weintraub, 2022), whereas the label "exoneree" arguably goes one step further by implying an official acknowledgement and/or legal reversal of this error (Baduria, 2022). In contrast, one could be "innocent" without any formal acknowledgement of that fact. It is unclear whether non-experts view these terms as synonymous or ascribe different meanings to them, which might in turn predict differences in stigmatization.

Consistent with *labeling theory* (Blumer, 1986), research on other stigmatized populations has shown that different verbal labels can evoke differing attitudes toward the same

group. For example, studies have found that describing individuals as "fat" versus "overweight" (Brochu & Esses, 2011), "Native" versus "Aboriginal" (Donakowski & Esses, 1996), "sex offenders" versus "people who have committed crimes of a sexual nature" (Harris & Socia, 2016; Lowe & Willis, 2019), "migrants" versus "refugees" (Graf et al., 2023), and "depressed" versus "mentally ill" (Szeto et al., 2013) affects people's attitudes toward, as well as their willingness to support, those individuals. Because group labels are sufficient for eliciting stereotypes (Donakowski & Esses, 1996; Kocsor et al., 2022), different labels can cue different stereotypes, and in turn, elicit different emotional reactions and expectations (Donakowski & Esses, 1996; Graf et al., 2023; Kocsor et al., 2022) and negatively impact behaviour (Frasca et al., 2022; Lowe & Willis, 2020). For instance, Frasca et al. (2022) found that simply calling a woman (versus a man) "emotional" during a disagreement was enough to activate negative gender stereotypes and significantly decrease the perceived legitimacy of her (but not his) arguments.

Returning to wrongful convictions, in October 2016, the Association in Defence of the Wrongly Convicted (AIDWYC)—a Canadian non-profit organization that works to prevent and overturn wrongful convictions—rebranded itself as Innocence Canada (Andrew-Gee, 2016). This may reflect a belief that this new label (i.e., using the term 'innocence' rather than 'wrongly convicted') would be more obvious to the public, viewed more positively, and/or better connected to other organizations that people may already be familiar with, to perhaps increase public support for their cause.

To date, only one study to our knowledge has tested the potential effect of varying how wrongly incarcerated people are described: In an audit study of housing discrimination, Kukucka et al. (2021) sent e-mail inquiries about apartment listings, some of which ostensibly came from an exoneree who self-described as either "wrongly convicted," "exonerated," or "innocent." Compared to inquiries from a person who had never been incarcerated, inquiries from wrongly incarcerated people were more often ignored regardless of how they self-described. These findings might indicate that the public views these labels as synonymous—or that the different labels evoked qualitatively different but similarly negative reactions across conditions. As audit studies are typically limited to measuring behaviour rather than understanding its causes (i.e., the attitudes or other factors driving that behaviour), and the Kukucka et al. (2021) study is no exception, it remains unclear whether and how different ways of characterizing exonerees might affect public attitudes toward exonerees, including willingness to support them.

To address this gap, we aimed to design a simple and ecologically plausible experiment to test how different labels might influence public perceptions of wrongfully convicted individuals. According to a recent survey, 55% of Americans get their news from social media websites either "often" or "sometimes," and 22% of American adults use Twitter (now formally rebranded as "X;" Pew Research Center, 2019). With this in mind, we created four realistic but fake "tweets" from a local television station that previewed a news story about a man's release from prison, which were identical apart from how they described the man (i.e., a "wrongly convicted" man released from prison, an "exonerated" man released from prison, an "innocent" man released from prison, or simply a "man" released from prison [control]). Then, we showed one of these tweets to each participant and asked them to report their impressions of the man described therein, including their beliefs about his character, criminality (past, present, and future), and deservingness of government support.

Inspired by labeling theory (Blumer, 1986) and the aforementioned stereotype literature (Graf et al., 2023; Frasca et al., 2022; Kocsor et al., 2022), we expected that the label "wrongly convicted" would evoke less favorable perceptions than the presumably less equivocal (but yet untested) label of "innocent." As for the "wrongful conviction" label, Clow (2017) argued that the negative term 'conviction' might overshadow the exculpatory term 'wrongful' insofar as negative information tends to have a stronger impact on judgments than positive information (i.e., *negativity bias*; Baumeister et al., 2001; Cialdini et al., 2006). Moreover, research has found that many incarcerated individuals consider the term "wrongful conviction" to include miscarriages of justice unrelated to factual innocence, such as not receiving a fair trial or perceived injustice in sentencing (Clow & Ricciardelli, 2022; Loeffler et al., 2018). Members of the public may likewise assume that "wrongful conviction" encompasses both guilty and innocent individuals and thus judge that label less favorably than the label "innocent" alone. We therefore hypothesized that participants would rate a releasee described as "wrongly convicted" less positively (in terms of character, criminality, and deservingness of support) than a releasee described as "innocent."

Our other two conditions (exonerated and control) were more exploratory. If participants interpret the label "exonerated" as requiring a legal reversal or some other formal acknowledgement that the original conviction was unsound (Baduira, 2022; NRE, n.d.), then a person labeled as "exonerated" might be viewed more positively than one described as "wrongly convicted." Alternatively, given that many academics appear to use these terms interchangeably (for a critique, see Leo, 2016), if participants likewise interpret "exonerated" as synonymous with "wrongly convicted," then the conditions should not differ.

In our control condition, participants read about a man released from prison without any mention (i.e., label) of the conviction being in error, such that his conviction was implied (but not explicitly stated) to be rightful. Some prior research has found that participants react to wrongfully and rightfully convicted individuals in similar ways (Clow & Leach, 2015a; Kukucka et al., 2021), whereas other research has found more positive reactions to wrongfully than rightfully convicted individuals (Thompson et al., 2012; Tudor-Owen et al., 2019). Given these mixed findings, we had no *a priori* hypotheses for our control condition but rather sought to explore whether participants would respond differently to individuals who were wrongfully versus (ostensibly) rightfully convicted.

II Method

A. Participants and Design

An *a priori* power analysis using G*Power (Faul et al., 2009) indicated that $N = 180$ would yield 80% power to detect medium effects ($f = 0.25$) at the standard alpha cut-off (.05) in a one-way four-group design. To achieve this sample size, we recruited 278 participants from Amazon Mechanical Turk (mTurk) in August 2019, anticipating that some data would need to be discarded due to failed comprehension checks and/or multiple submissions from the same individuals. Each participant was randomly assigned to one of four conditions in a one-way design and completed the study online in exchange for a $1.00 credit to their mTurk account. We later identified eight individuals (2.9%) who completed the study twice (as evidenced by identical IP addresses and demographic information) and we excluded these

individuals' second responses (per an electronic timestamp). We also excluded data from 82 individuals (29.5%) who failed a comprehension test (see Materials section)[1].

After these exclusions, our final sample included 188 U.S.-based mTurk users who ranged in age from 21 to 68 (M = 35.92, SD = 10.42) and were primarily male (60.6%) and college-educated (52.2%). In terms of race, our sample was predominantly White (76.6%), with fewer participants self-identifying as Black (8.0%), Asian (6.9%), Hispanic (4.8%), or multiracial (3.7%). Most participants (93.1%) self-reported being eligible to serve on a jury in the United States, and about a third (33.5%) had previously been called for jury duty. Most participants self-identified as Democrats (51.6%), with fewer identifying as Independents (28.7%), Republicans (14.9%), other (2.7%), or unaffiliated (2.1%). The distributions of these participant demographics did not significantly differ across conditions, ps > .05, and the sample included at least one resident from 37 of the 50 U.S. states. The Research Ethics Board at the last author's university approved this study (REB # 15394).

B. Materials

Each participant saw one of four ostensibly authentic tweets (see Figure 1), each of which included a preview of a news article about a man who was just released from prison. No actual news article was provided, and the tweet did not specify the crime for which the man was incarcerated. In designing the tweets, we used data from the National Registry of Exonerations (2023) to ensure that the subject of the news article—a man named Michael Williams—was representative of a typical exoneree. First, the names "Michael" and "Williams" are among the most common first and last names of exonerees in the Registry, and the names appear among multiple races. Second, Michael was said to have been incarcerated in Illinois, which has the most exonerations per capita of any U.S. state, and so the tweet seemingly came from the Twitter account of a local Illinois news station. Third, Michael was said to have served nine years in prison, which was the mean length of incarceration among exonerees at the time we designed the study. Fourth, Michael was described as 38 years-old, which we calculated by adding exonerees' mean length of incarceration (nine years) to their mean age at conviction (29). Finally, each tweet included a greyscale (i.e., black and white) photo of a bald man in poor lighting looking away from the camera through prison bars. We included this same photo in all four conditions to make the tweet appear authentic while also keeping Michael's race and individualized features ambiguous.

1. Label Manipulation

The four tweets were identical apart from the label (or lack thereof) used to describe Michael. By random assignment, some participants saw a tweet that described Michael as either *wrongly convicted*, *exonerated*, or *innocent*. In these conditions, the relevant label appeared twice (i.e., in the text of the tweet above the photo, and in the headline of the article below the photo), and in both places it appeared immediately before the word "Illinois." Other participants saw a *control* tweet, which was otherwise identical but did not include any of these labels; it simply described Michael as an "Illinois man released" from prison.

[1] Excluding these individuals did not change the findings but ensured that included participants had paid sufficient attention to our stimuli.

C. Measures

1. Perceived Character and Feelings

Below the tweet, participants answered 24 items that gauged their opinions of Michael Williams. The first eight items assessed perceptions of Michael's character: Using a 1 (*not at all*) to 5 (*extremely*) scale, participants rated the degree to which they expected Michael to be aggressive, competent, conscientious, emotionally stable, friendly, intelligent, trustworthy, and violent. Then, informed by the Stereotype Content Model (Fiske et al., 2002) and prior work on perceptions of exonerees (Clow & Leach, 2015b), we reduced these eight items to three dimensions: Competence (i.e., competent, conscientious, and intelligent; $\alpha = .84$), Warmth (i.e., emotionally stable, friendly, and trustworthy; $\alpha = .85$), and Aggression (i.e., aggressive and violent; $\alpha = .84$). We then reverse-scored the Aggression dimension, to create a Nonaggressive variable, so that higher scores reflected more favorable perceptions of Michael's character for all three dimensions (Competence, Warmth, Nonaggressive).

The next five items assessed participants' feelings toward Michael. Using the same five-point scale, participants reported the degree to which they felt anger, fear, happiness, liking, and pity toward Michael. Similar to above, we then reverse-scored the anger and fear items so that higher scores on these items consistently indicated more favorable perceptions.

2. Perceived Criminality

Five items gauged participants' beliefs about Michael's past, present, and future criminality. Using a scale from 0% (*definitely no*) to 100% (*definitely yes*), these items asked participants to estimate the likelihood that Michael: "being in prison was his own fault," "was somehow involved in this crime," "actually committed this crime," "committed other crimes in the past (i.e., before he went to prison for this crime)," and "will commit a crime in the future (i.e., now that he is out of prison)."

3. Deservingness of Support

Six items asked participants about Michael's deservingness of post-release support. Using a scale from 1 (*strongly disagree*) to 7 (*strongly agree*), participants separately rated their belief that Michael should receive free housing, job training, health care, public college education, and financial compensation. Participants also reported how much financial compensation they felt Michael should receive via one item with 11 response options (see Greene et al., 2016): 0 = *$0*; 1 = *less than $12,000*; 2 = *$12,000 – $25,000*; 3 = *$25,000 – $50,000*; 4 = *$50,000 – $100,000*; 5 = *$100,000 – $250,000*; 6 = *$250,000 – $500,000*; 7 = *$500,000 – $1 million*; 8 = *$1 million – $2 million*; 9 = *$2 million – $4 million*; 10 = *more than $4 million*.

4. Exploratory Measures

After providing the aforementioned ratings of Michael specifically, each participant (regardless of condition) answered four parallel items in which they separately estimated the likelihood (0-100%) that people (in general) who are described as "exonerated," "wrongly convicted," "innocent," and "released from prison" actually committed the crime for which they were convicted. Each participant also answered two multiple-choice questions which asked them to guess Michael's race (White, Black, Hispanic, or Asian) and the crime for which

he was incarcerated (assault, murder, child sex abuse, robbery, drug possession or sale, or sexual assault), neither of which was actually mentioned in our materials.

5. Data Checks

Participants answered three multiple-choice items to ensure that they had read, understood, and remembered the tweet. Two of the items were attention checks: Participants were asked how long Michael was incarcerated (nine years) and where he was incarcerated (Illinois). The third item was a manipulation check that asked which label (with options of wrongly convicted, exonerated, innocent, vindicated [distractor item], or none of these) was used to describe him. We later excluded data from 82 participants (29.5%) who answered any one or more of these three items incorrectly; the exclusion rate did not differ between conditions, $\chi^2(3) = 7.30$, $p = .063$.

We also asked participants to provide an open-ended definition of whichever label they had read, as we were concerned that certain labels (e.g., exonerated) might be less familiar than others (e.g., innocent). We did not expect laypersons to provide the various pathways to exoneration (Schuller et al., 2021), comprehensive definitions (e.g., that someone can be erroneously convicted when a crime has not even occurred), or nuanced understandings that even some scholars appear to lack (Leo, 2016). Instead, for the three experimental conditions, definitions were coded as accurate if they indicated that the person was innocent (e.g., "not guilty", "innocent") and/or did not commit the crime for which they were convicted (e.g., "he didn't do it"). For the control condition, definitions were coded as accurate if they indicated that such a person had been in prison but wasn't anymore (e.g., "let out of prison", "they served their time"). Under this coding scheme, most participants (84.04%) produced an accurate definition of their label, and the rate of correct definitions did not differ across conditions, $\chi^2(3) = 2.39$, $p = .496$. Thus, most participants appeared to understand the essential element or gist of the various terms, and no one label caused participants greater confusion or difficulty than the others. Across the conditions, inter-rater reliability between the two coders was 96.28%. For any definitions not agreed upon by the two coders, the last author was brought in to make the final decision.

D. Procedure

After indicating consent, each participant saw an ostensibly authentic tweet (see Figure 1) from a news outlet about a man named Michael Williams. By random assignment, the tweet described Michael as either a "wrongly convicted Illinois man," "exonerated Illinois man," "innocent Illinois man," or simply an "Illinois man" who had just been released after nine years in prison. Participants then reported their beliefs about Michael's character, criminality, and deservingness of re-entry support. Then, on a new screen, participants separately estimated the likelihood of guilt associated with all four of the labels included in the study (i.e., wrongly convicted, exonerated, innocent, and released), and they guessed Michael's race and the crime for which he was incarcerated (neither of which were actually mentioned). Finally, participants completed the data check items and provided demographic information.

III Results

Descriptive statistics for all dependent variables by condition are provided in Table 1.

A. Perceived Character

Overall, participants rated Michael as moderately competent (M = 3.31, SD = 0.83), moderately warm (M = 3.24, SD = 0.86), and moderately nonaggressive (M = 3.94, SD = 0.94). A 4 (Label: Wrongly Convicted, Exonerated, Innocent, or Control) X 3 (Dimension: Competence, Warmth, and Nonaggressive) mixed ANOVA revealed a main effect of Label, $F(3,184) = 6.04$, $p = .001$, $f = 0.31$. Post hoc Tukey comparisons indicated that participants in the control condition reported less favorable impressions of Michael compared to all three experimental conditions, all ps < .015, none of which differed from each other, ps > .97. Thus, the hypothesized difference between the "wrongly convicted" and "innocent" conditions was not found. A main effect of Dimension also emerged, $F(2,368) = 74.40$, $p < .001$, $f = 0.64$, such that participants generally rated Michael as more nonaggressive than as competent or warm (across conditions). No Label X Dimension interaction was found, $F(6,368) = 0.57$, $p = .756$, $f = 0.10$.

Similarly, a 4 (Label: Wrongly Convicted, Exonerated, Innocent, or Control) X 5 (Feeling: Not Angry, Not Fearful, Happiness, Liking, and Pity) mixed ANOVA on self-reported feelings toward Michael revealed a main effect of Label, $F(3,184) = 9.65$, $p < .001$, $f = 0.40$. Again, our hypothesis was not supported. Instead, participants in the control condition reported less positive feelings toward Michael compared to all three experimental conditions, all ps < .001, none of which differed from each other, ps > .99. A main effect of Feeling also emerged, $F(4,736) = 121.84$, $p < .001$, $f = 0.81$, which was qualified by a significant Label X Feeling interaction, $F(12,736) = 3.28$, $p < .001$, $f = 0.23$. As shown in Table 1, simple effects tests indicated that participants felt greater happiness, liking, and pity toward Michael when he was wrongfully convicted (i.e., in any of the three experimental conditions compared to the control condition), but Label did not affect feelings of not angry or not fearful, which were universally high across all conditions (including control).

B. Perceived Criminality

A 4 (Label: Wrongly Convicted, Exonerated, Innocent, or Control) X 5 (Item: Past, Present Guilt, Present Involvement, Present Blame, and Future Crime) mixed ANOVA revealed a main effect of Label, $F(3,184) = 30.91$, $p < .001$, $f = 0.71$, such that participants in the control condition rated criminality as more likely compared to all three experimental conditions, ps < .001, none of which differed from each other, ps > .90. A main effect of Item also emerged, $F(4,736) = 13.68$, $p < .001$, $f = 0.27$, as well as a significant Label X Item interaction, $F(12,736) = 8.91$, $p < .001$, $f = 0.38$. In probing this interaction, the only significant differences were captured by the main effect of Label. Although not significantly different, the lowest means in the control condition were perceptions of future crimes (which was also the only mean under 50%) and prior crimes. In the experimental conditions, however, prior crimes were the highest means (ranging from 24.62-26.33), which is likely responsible for the interaction (see Table 1).

Critically, however, Michael was not perceived as entirely innocent even if he was labeled as such. Collapsed across the three experimental conditions (i.e., the three wrongful conviction labels), participants estimated a 19.14% chance (SD = 24.52) that Michael was

somehow involved in the crime for which he was incarcerated and a 14.41% chance (*SD* = 21.78) that he actually committed that crime. Moreover, these participants estimated a 25.14% chance (*SD* = 23.79) that Michael had committed other crimes in the past and a 17.95% chance (*SD* = 21.39) that he would commit a crime in the future. To quantify participants' doubt over Michael's innocence, we performed one sample *t*-tests comparing the means for each condition and criminality item against zero (i.e., complete certainty in Michael's innocence). Every one of these comparisons was significant, all *t*s > 4.00, *p*s < .001, and most showed large effect sizes (see Table 2), suggesting that participants on the whole were noticeably skeptical of Michael's innocence even when he was described as wrongly convicted, exonerated, or innocent.

C. Deservingness of Support

As for post-release support, a 4 (Label: Wrongly Convicted, Exonerated, Innocent, or Control) X 5 (Support Type: Housing, Job Training, Healthcare, College Tuition, Financial Compensation) mixed ANOVA revealed a main effect of Label, $F(3,184) = 16.99$, $p < .001$, $f = 0.53$. Participants in the control condition rated Michael as less deserving of support compared to all three experimental conditions, *p*s < .001, none of which differed from each other, *p*s > .94. A main effect of Support Type also emerged, $F(4,736) = 25.47$, $p < .001$, $f = 0.37$, which was qualified by a significant Label X Support Type interaction, $F(12,736) = 4.01$, $p < .001$, $f = 0.26$. Similar to the observed interaction for criminality, the relative support for different post-release services varied across conditions, but the only significant differences were captured by the main effect of Label where participants in all three experimental conditions saw Michael as equally deserving of support, and significantly more so, than in the control condition (see Table 1). Although not significantly different, the highest endorsed support in the control condition—and the only mean above the midpoint of the scale—was free job training. Among the experimental conditions, the means for all supports were above the midpoint of the scale, with compensation (which was the lowest rating for control) the most strongly endorsed. Again, these somewhat different patterns of support are presumably responsible for the significant interaction.

Finally, a one-way ANOVA revealed a significant effect of Label on how much financial compensation participants felt Michael should receive, $F(3,184) = 18.89$, $p < .001$, $f = 0.55$. Control participants recommended less compensation ($M = 2.56$, or approximately $25,000; $SD = 3.47$) compared to all three experimental conditions, *p*s < .001, none of which differed from each other, *p*s > .93. Collapsed across the three experimental conditions, participants' mean recommended compensation amount was 6.43 ($SD = 2.80$), which translates to approximately $550,000 total or about $60,000 per year of wrongful incarceration.

D. Exploratory Measures

Echoing our between-group comparisons of perceived criminality, a repeated-measures ANOVA revealed that Label affected within-person guilt judgments, $F(3,561) = 148.72$, $p < .001$, $f = 0.89$, such that participants rated a person who was "released from prison" as more likely to have committed a crime ($M = 49.36$, $SD = 31.69$) than any of the other labels—i.e., wrongly convicted ($M = 12.57$, $SD = 19.64$), exonerated ($M = 17.50$, $SD = 21.86$), and innocent ($M = 10.17$, $SD = 19.09$). However, participants also rated a person described as "exonerated" as more likely to have committed a crime than those described as "wrongly convicted" or "innocent," which did not differ from each other. Notably, all three experimental conditions

again produced mean ratings that were significantly greater than zero, all *t*s > 7.30, *p*s < .001, *d*s > 0.53.

Finally, participants most often guessed that Michael was White (52.7%) or Black (45.7%), and these rates did not differ between conditions, $\chi^2(3) = 6.04$, $p = .110$, which suggests that our materials were racially ambiguous, as intended. For crime, participants most often guessed that Michael was incarcerated for murder (44.7%), robbery (20.2%), or a drug crime (18.1%), and crime guesses differed between conditions, $\chi^2(15) = 34.25$, $p = .003$, such that participants in the experimental conditions more often guessed that Michael was convicted of murder (49.1% – 52.8%) and less often guessed that he was convicted of a drug crime (9.4% – 13.2%) compared to the control condition (23.3% and 39.5%, respectively).

IV Discussion

Researchers and innocence advocates have used varying language to describe the wrongfully convicted population (e.g., wrongly convicted, exonerated, innocent), even sometimes treating the terms as interchangeable. Although overlapping, these labels do convey somewhat different meanings. For instance, 'exonerated' suggests that someone in an official capacity has recognized that the conviction was erroneous, whereas someone could be 'innocent' whether their innocence is acknowledged by others or not (Baduria, 2022; Leo, 2016). Some researchers use "wrongful conviction" to include both legal and factual innocents, and some acknowledge that both guilty and innocent individuals can be "exonerated" on grounds of procedural errors (Baduria, 2022; Leo, 2016). As Leo (2016) put it: "An individual may be factually innocent but never exonerated… just as an individual may be exonerated (e.g., declared blameless by the criminal justice system) but be factually guilty" (p.3). In other words, these labels may not be as clear cut or interchangeable as many might assume. For those reasons, we designed the current study to test whether different wrongful conviction labels (i.e., wrongly convicted, exonerated, or innocent) elicit different attitudes from laypeople toward a wrongfully convicted individual.

Our original hypothesis that some labels (i.e., wrongly convicted) would lead to more negative impressions than others (i.e., innocent), as has been found in past stereotype research in different domains (e.g., Brochu & Esses, 2011; Lowe & Willis, 2019), was not supported. To our surprise, we generally found no differences between these three experimental conditions. Participants did not judge an individual (Michael Williams) described by these labels significantly differently in terms of character, guilt (past, present, or future), or deservingness of post-release support, and they consistently judged Michael more favorably when he was described with any of these three labels than when we was simply released from prison (i.e., our control condition). That said, when participants rated how likely it was for people who were wrongly convicted, exonerated, innocent, and released from prison to commit crimes, participants did think that exonerated individuals were significantly more likely than wrongly convicted or innocent people to commit crimes (although the larger finding was that participants expected people released from prison to commit crimes significantly more than any of the experimental labels). Although our control condition did not explicitly state that Michael was guilty of the crime for which he was incarcerated, only six participants mentioned the possibility of innocence in their definitions of the condition. Moreover, we consistently found that participants rated our control condition significantly more negatively than all of our experimental conditions, which does suggest that control participants assumed Michael's guilt. In addition, participants felt significantly more happiness, liking, and pity toward Michael in

the three experimental conditions than in the control condition. As such, our findings differ from original research showing that exonerees are generally stigmatized similarly to actual offenders (e.g., Clow & Leach, 2015a), and even the audit housing study that examined the impact of wrongful conviction labels on landlords' willingness to rent to individuals (Kukucka et al., 2021). Instead, our findings appear more in line with recent research suggesting that exonerees—while stigmatized—are perceived differently, and more positively, than other ex-prisoners (Tudor-Owen et al., 2019).

One possible explanation for these seemingly more positive responses may be that the public has become more cognizant of wrongful convictions over the past few years—perhaps due to the increased availability and popularity of serials and documentaries on the subject (e.g., *Making a Murderer*, *When They See Us)*. Wrongful conviction media may have familiarized the public with words like wrongly convicted and exonerated and perhaps associated these words with factual innocence in people's minds (Leo, 2016). This is reflected in our findings, as most participants correctly defined their assigned label, and the rate of correct definitions did not differ between labels. Consistent with this idea, numerous experiments have found that educating people about wrongful convictions, whether through exoneree narratives or facts and statistics, leads to more positive views of wrongfully convicted individuals (Ricciardelli & Clow, 2012; Zannella et al., 2022) and less support for the death penalty (Norris & Mullinix, 2020). That said, it could be that people described wrongfully convicted individuals more positively than other ex-prisoners in this research, but if those same individuals were actually in the position to hire or rent, that then they might discriminate, as has been found in other research (Clow, 2017; Kukucka et al., 2020; Zannella et al., 2020).

As the labels ascribed to exonerees have not historically been used in a derogatory fashion, this may explain why our findings differ from similar studies of other stigmatized groups (e.g., Brochu & Esses, 2011; Lowe & Willis, 2019; Szeto et al., 2013). That said, emotions may run deeper among members of the public who have been exposed to pre- or post-trial publicity of an exoneree's case (see Steblay et al., 1999). For instance, Rodriguez et al. (2019) found that residents of Wisconsin (the state where Steven Avery was wrongfully convicted and later convicted of a different crime) were more likely to believe that Avery was guilty compared to non-Wisconsin residents, which the authors attributed to the fact that Wisconsin residents were more likely to have been exposed to negatively biasing media coverage of Avery than others. Along these same lines, Sabrina Butler—the first woman to be exonerated from death row—was filling out paperwork to be hired as a cashier in a grocery store in her hometown when an assistant manager recognized her and terminated her employment (Westervelt & Cook, 2010). Consistent with decades of research on *confirmation bias* (see Nickerson, 1998), media coverage of wrongful convictions may simply amplify viewers' pre-existing attitudes toward a particular case or the justice system in general. Thus, media exposure may be a double-edged sword for exonerees, insofar as it may improve public attitudes in general, but perhaps perpetuate stigma and discrimination for individuals trying to reintegrate back into the communities where they were wrongfully convicted.

It is important to note that while our participants' opinions of exonerees were favorable *relative* to our implied-guilty control, it is debatable whether their opinions of exonerees were *objectively* favorable. No matter how exonerees were described—and even if they were unequivocally labeled as 'innocent'—participants were not entirely convinced that Michael was not guilty. Across experimental conditions, participants estimated an average likelihood of 17.91%-20.91% (depending upon the exact label) that Michael was involved in—and an 11.49%-18.74% probability that he actually committed—the crime for which he was

incarcerated. They believed even more strongly (24.62%-26.33%) that Michael had committed other crimes prior to his wrongful conviction, and that he would commit future crimes (16.85%-20.05%). Although these numbers were smaller than the 40.91%-61.60% reported in our control condition (depending upon the question), they were still considerably and statistically larger than zero. In addition, as the numbers for our presumed guilt control group were more toward the middle of the scale (50%) than absolute certainty of guilt (100%), our experimental labels did not lead to as much change as you might expect. While this study is not the first to show that people do not necessarily equate exoneration with innocence (e.g., Howard, 2019; Scherr, Normile, & Sarmeinto, 2018), it is the first study, to our knowledge, to demonstrate that mentioning a prior erroneous conviction prompted stigmatizing inferences about the exoneree's prior, present, and future behaviour. Howard (2019) found that participants rated a Black individual who falsely confessed as significantly more likely to commit future crimes than a White individual who falsely confessed. We have found that past, present, and future criminality transcends labels, does not appear limited by race or false confessions, and is less than the presumed criminality of other individuals released from prison but not as dramatically as expected. Future research may wish to examine the factors that exacerbate and constrain these guilt perceptions.

Assumptions that wrongfully convicted individuals have committed past crimes, or will commit crimes in the future, may be part of victim-blaming and reflect participants' inherent belief in a just world (Hafer & Bègue, 2005; Lerner & Miller, 1978). Belief in a just world—what Lerner (1980) originally described as "a fundamental delusion"—posits that people often blame victims of injustice for their own misfortune, or denigrate them, as a means of preserving their beliefs that the world is ultimately fair (Callan et al., 2006; Hafer & Gosse, 2010). As the wrongful conviction of an innocent person is a serious violation of justice, people may feel motivated to rationalize the event in a way that seems less cruel (e.g., he has, or will, commit crimes and thus deserve to be in prison anyway). Not only do these just world beliefs lower one's anxiety with the unpredictability of life, they lower one's concern about being wrongfully convicted personally as well, as if only "bad people" who deserve some sort of injustice to befall them are wrongfully convicted, then the general, law-abiding public need not fear this horrible situation occurring to them. Consistent with this idea, our participants estimated a 15-20% probability that Michael's wrongful conviction was his own fault. In turn, research has shown that people are less willing to help others (e.g., Weiner, 1993; Weiner et al., 1988)—including exonerees (Kukucka & Evelo, 2019; Savage et al., 2018; Scherr, Normile, & Putney, 2018)—when they are viewed as responsible for their own plight.

The assumption that exonerees will commit future crimes may also reflect a phenomenon called *courtesy stigma* (Goffman, 1963) or *stigma-by-association* (Pryor et al., 2012), whereby non-stigmatized individuals who affiliate with members of stigmatized groups come to be stigmatized in the same manner. In various studies, for example, people have judged psychiatric nurses as less logical than other nurses (Halter, 2008), judged non-disabled individuals with disabled romantic partners as less athletic than other non-disabled individuals (Goldstein & Johnson, 1997), and judged friends of obese individuals as less socially adept than friends of non-obese individuals (Hebl & Mannix, 2003). In this context, people may believe that cohabiting with criminal offenders while in prison has morally corrupted exonerees (Clow, Ricciardelli, & Cain, 2012) and/or "taught" exonerees how to commit crimes (Damm & Gorinas, 2020), such that they become more likely to commit crimes after their release than (presumably) before. No matter the reason, these inferences about exonerees' criminality stand to create stigma and discrimination that hamper their re-entry and prolong their suffering.

Looking at support, our participants generally believed that exonerees should receive various forms of post-release support. In the current study, participants consistently endorsed exonerees' receipt of financial compensation for their time spent wrongly incarcerated, as well as access to vital (but generally unavailable) services such as housing assistance, health care, job training, and college tuition. However, current post-exoneration support varies dramatically between U.S. states (Gutman & Sun, 2019; Madrigal & Norris, 2022), which is consistent with research showing that support for exoneree compensation varies along demographic and ideological lines (Hicks et al., 2021). As it stands, 11 U.S. states (and Canada) have *no* compensation statute, and thus guarantee no post-release support to wrongfully convicted people, and the other 39 states have extremely heterogeneous statutes (see Madrigal & Norris, 2022). With respect to financial compensation, most states offer a set amount per year of wrongful incarceration, with the modal amount being around $50,000-$75,000, which is in line with our participants' average recommendation of about $60,000 per year. Shifton (2021) likewise found that the financial compensation exonerees *actually* receive did not differ from public opinion as to how much they *should* receive—although the sufficiency of this amount is a separate question. For instance, Wisconsin's $5,000 per year of wrongful incarceration and other state's cap on the total amount—not to mention the states without compensation statutes that instead require exonerees to seek financial damages via civil litigation—fall significantly short of this reasonable sounding modal amount.

With respect to services, our data reveal a much starker disconnect between existing policy and public opinion. Per Madrigal and Norris (2022), few states currently grant exonerees any form of employment assistance (16 states), mental health care (15 states), physical health care (14 states), or educational assistance (16 states), despite our data—and others' (e.g., Kieckhaefer & Luna, 2022; Scherr , Normile, & Putney, 2018; Scherr, Normile, & Sarmiento, 2018)—revealing clear public support for these forms of assistance. However, given the complex link between attitudes and behavior (e.g., Ajzen & Fishbein, 2005)—and the possibility that our participants simply responded in a socially desirable way—one might wonder if these favorable attitudes translate into real-world support.

E. Limitations & Future Research

This was a single study, using racially ambiguous stimuli, brief materials, and an mTurk sample. Our sample was predominantly male, college-educated, politically liberal, and White. Although 93.1% of our sample claimed to be eligible for jury duty, only 33.5% reported previously being called for jury duty. As some demographic variables have been shown to correlate with criminal justice attitudes (e.g., Maggard et al., 2012; Malcom et al., 2023), including but not limited to those measured in the current study, future research could examine such variables as potential moderators of attitudes toward wrongly convicted people. Of course, in hiring, renting, and court room settings, potential attitudinal biases may be present.

It is also important to acknowledge that because we used an American sample, there may be something unique about the American criminal justice climate that may not translate to other jurisdictions. In fact, research by Henrich and colleagues (2010) found evidence that American samples are among the most WEIRD (Western, Educated, Industrialized, Rich, and Democratic) of the WEIRD countries. Future research using samples from other countries, both Western (e.g., Australia, Britain, France) and non-Western (e.g., Brazil, China, South Africa) would indicate the generalizability of these findings.

Additional comparison groups may lend further insight as well, as the control condition in the current work (i.e., "released") merely implied guilt. Although few participants in this condition defined being released from prison as potentially involving innocent individuals as well as guilty, it is possible that other people considered wrongfully convicted individuals but did not write it down. Thus, future research may wish to use different language to make guilt apparent, or differing comparison groups (e.g., parolees, citizens without prior criminal records). Moreover, an important future direction, given the overrepresentation of African Americans in the criminal justice system (Cooper et al., 2021), is to explore if these labels evoke differing meanings or reactions when associated with different races.

Finally, attitudes may not predict behavior. Even if participants are reporting positive attitudes, recent audit studies suggest that exonerees still face discrimination in various arenas (jobs, housing, mental health care). For example, Kukucka et al. (2021) likewise found that labels did not matter in terms of reactions to housing inquiries. That said, landlords discriminated against all three of the wrongful conviction labels equally, and comparable to the discrimination faced by parolees (in comparison to a no criminal background control). Future research targeting actual supportive behavior (e.g., donating time or money) in addition to attitudes seems warranted, to test if people are willing to "put their money where their mouth is," so to speak.

V Conclusion

Contrary to what one might expect from labelling theory (Blumer, 1986) and stereotype research in other domains (Brochu & Esses, 2011; Graf et al., 2023; Lowe & Willis, 2019), the citizens in our sample responded to "wrongly convicted," "exonerated," and "innocent" as if the terms were interchangeable—much like many academics and innocence advocates do (see Leo, 2016). Perhaps we need to take a moment and ask ourselves some questions: Do these words all mean the same thing, and would we even want them to?

Moreover, participants' support for reintegrative supports, including compensation, was considerably higher than what is generally provided to exonerees, as has been found by other research (Angus Reid, 1995; Karaffa et al., 2017). Ironically, inadequate compensation statutes can lead exonerees to instead seek financial compensation via civil rights lawsuits, which often result in damage awards that are ultimately costlier to taxpayers than an improved (and appropriate) statute would be. In Maryland, for example, taxpayers have paid a collective $24 million to cover litigation costs and damage awards for 11 exonerees, which is well above the mean response of around $50,000 suggested by our participants. Releasing wrongfully convicted individuals to survive on their own, without supports, in the community where they are stigmatized and discriminated against—perhaps it is the government's negligence and indifference in meeting exonerees' reintegration needs that is truly criminal.

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Control Tweet Using the Term "Released"

VIII Table 1

Effects of Label on Perceptions of, and Feelings Toward, Michael Williams

	Control (*n* = 43)	**Wrongly Convicted (*n* = 53)**	**Exonerated (*n* = 53)**	**Innocent (*n* = 39)**
Character (1-5)				
Competence	2.96 (0.85)	3.41 (0.81)	3.47 (0.76)	3.32 (0.87)
Warmth	2.81 (0.89)	3.34 (0.82)	3.39 (0.77)	3.38 (0.85)
Nonaggressive	3.54 (1.02)	4.16 (0.89)	4.00 (0.87)	4.01 (0.91)
Feelings (1-5)				
Not Angry	4.65 (0.72)	4.85 (0.41)	4.70 (0.70)	4.79 (0.70)
Not Fearful	4.44 (0.93)	4.72 (0.72)	4.45 (1.01)	4.87 (0.34)
Happiness	2.67_{a} (1.43)	3.34_{ab} (1.53)	3.74_{b} (1.30)	3.49_{b} (1.34)
Liking	2.16_{a} (1.23)	3.26_{b} (1.38)	3.38_{b} (1.24)	3.31_{b} (1.26)
Pity	2.58_{a} (1.37)	3.66_{b} (1.47)	3.60_{b} (1.29)	3.44_{b} (1.37)
Criminality (0-100%)				
Conviction was his fault	59.98_{a} (28.78)	15.15_{b} (20.01)	20.06_{b} (25.37)	15.38_{b} (23.71)
Involved in this crime	61.60_{a} (31.40)	17.91_{b} (22.91)	20.91_{b} (23.34)	18.41_{b} (28.43)
Committed this crime	60.91_{a} (31.26)	11.49_{b} (19.21)	18.74_{b} (24.53)	12.51_{b} (20.66)
Committed prior crimes	53.74_{a} (28.91)	24.62_{b} (21.66)	24.79_{b} (25.91)	26.33_{b} (24.13)
Will commit future crime	40.91_{a} (25.01)	17.51_{b} (20.45)	16.85_{b} (23.04)	20.05_{b} (20.71)
Support (1-7)				
Free housing	$3.35\ (2.02)_{a}$	$5.28\ (1.81)_{b}$	$5.08\ (2.00)_{b}$	$5.31\ (1.59)_{b}$
Free job training	$5.07\ (1.90)_{a}$	$6.19\ (1.09)_{b}$	$6.11\ (1.31)_{b}$	$5.95\ (1.54)_{b}$
Free health care	$3.86\ (2.05)_{a}$	$5.32\ (1.83)_{b}$	$5.43\ (1.84)_{b}$	$5.62\ (1.74)_{b}$
Free college tuition	$3.70\ (2.16)_{a}$	$5.55\ (1.59)_{b}$	$5.42\ (1.93)_{b}$	$5.21\ (1.67)_{b}$
Financial compensation	$3.33\ (2.21)_{a}$	$6.19\ (1.29)_{b}$	$5.74\ (1.82)_{b}$	$6.23\ (1.35)_{b}$
Compensation (0-10)	$2.56\ (3.47)_{a}$	$6.62\ (2.59)_{b}$	$6.38\ (2.98)_{b}$	$6.26\ (2.88)_{b}$

Note. Aggressiveness, anger, and fear were reverse-scored. Means in the same row not sharing a common subscript differ at $p < .05$.

IX Table 2

Effect Sizes (Cohen's ds) Comparing the Perceived Likelihood of Criminality against Zero as a Function of Label

	Wrongly Convicted	**Exonerated**	**Innocent**
Conviction was his fault	0.76 [0.45, 1.06]	0.79 [0.48, 1.10]	0.65 [0.30, 0.99]
Involved in this crime	0.78 [0.47, 1.09]	0.90 [0.57, 1.21]	0.65 [0.30, 0.99]
Committed this crime	0.60 [0.30, 0.89]	0.76 [0.45, 1.07]	0.61 [0.26, 0.94]
Committed prior crimes	1.14 [0.79, 1.48]	0.96 [0.63, 1.28]	1.09 [0.69, 1.48]
Will commit future crime	0.86 [0.54, 1.17]	0.73 [0.42, 1.03]	0.97 [0.58, 1.35]

Note. All *p*s < .001. Values in brackets represent 95% confidence intervals for Cohen's *d*.