THE PATH TO JUSTICE: LESSONS FROM KENT ROACH'S "WRONGFULLY CONVICTED"

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ABSTRACT

Wrongful convictions are a significant violation of human rights and have far-reaching consequences for both the individuals wrongfully convicted and society as a whole. Kent Roach's book offers a poignant exploration of these injustices that adds to his contributions as a law professor at the University of Toronto and a key figure in establishing Canada's registry for documenting wrongful convictions. Addressing and analyzing part of the eighty-three cases in this registry, Roach delves into aspects of wrongful convictions, such as guilty pleas to imagined crimes.

Through gripping personal stories, Roach emphasizes that wrongful convictions can happen to anyone, compelling readers to confront these injustices. His book underscores the state's legal and moral responsibility to proactively prevent errors, acknowledge and rectify them, and provide restitution to those wronged by the justice system.

Roach's work is a critical step in improving the criminal justice system and building trust and respect for the law in society by addressing and rectifying its mistakes.

I. INTRODUCTION

It is sufficient to peruse the accounts of individuals among the ninety-one wrongful convictions documented in the National Registry of Exonerations when Kent Roach publicized his book titled *Wrongfully Convicted*[1] to grasp the magnitude of the injustice that the state inflicts upon the wrongfully convicted. In fact, it was Roach, a professor of law at the University of Toronto Law School, and his team who initiated the launch of the Canadian registry in 2018, aimed at documenting cases of wrongful convictions.[2]

The role of the criminal justice system is to discern the truth: to ensure the guilty are convicted and punished while the innocent are acquitted.[3] However, the obligation to prove the guilt of the defendant beyond a reasonable doubt as a condition for conviction pertains to the asymmetrical relationship of society to the error in the judgment, the result of which is acquittal rather than conviction.[4]

In the criminal process, the high burden of proof is based on a moral stance regarding the allocation of the risks of error in judgment between society and the individual.[5] This mechanism seeks to ensure that, when mistakes are made, they lean toward releasing a guilty person rather than wrongfully convicting an innocent one.[6] This asymmetry, favoring the defendant in bearing the potential for error, reflects a value-driven societal decision. It prioritizes the avoidance of wrongful convictions over society's interest in convicting criminals and upholding the rule of criminal law.[7]

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[1] KENT ROACH, WRONGFULLY CONVICTED, at xxvi (2023).

[2] *Id.* at xxvii.

[3] Jerome Hall, *Objectives of Federal Criminal Procedural Revision*, 51 YALE L.J. 723, 728 (1942); Thomas R. McCoy & Michael J. Mirra, *Plea Bargaining as Due Process in Determining Guilt*, 32 STAN. L. REV. 887, 915–16 (1980); Joseph D. Grano, *Implementing the Objectives of Procedural Reform: The Proposed Michigan Rules of Criminal Procedure—Part I,* 32 WAYNE L. REV. 1007, 1011 (1986); Issachar Rosen-Zvi & Talia Fisher, *Overcoming Procedural Boundaries*, 94 VA. L. REV. 79, 89 (2008); Herrera v. Collins, 506 U.S. 390, 398 (1993).

[4] Louis Kaplow, *Burden of Proof*, 121 YALE L.J. 738, 741–42 (2012); Daniel Epps, *The Consequences of Error in Criminal Justice*, 128 HARV. L. REV. 1065, 1067–68 (2015); Doron Menashe, *Can the Pursuit of Truth Reconcile with the Principle of Minimizing False Convictions?*, 21 CARDOZO J. CONFLICT RESOL. 381, 381–82 (2020).

[5] *See* Kaplow, *supra* note 4, at 741, 742–43 n. 7 (citing *Grogan v. Garner*, 498 U.S. 279 (1991)).

[6] Epps, *supra* note 4, at 1068–69.

[7] 4 WILLIAM BLACKSTONE, COMMENTARIES *352; *In re Winship*, 397 U.S. 358, 372 (1970); RONALD DWORKIN, TAKING RIGHTS SERIOUSLY 199–200 (1977); Alex Stein, *An Essay on Uncertainty and Fact-Finding in Civil Litigation, with Special Reference to Contract Cases*, 48 U. TORONTO L.J. 299, 299 (1998); Rinat Kitai, *Protecting the Guilty*, 6 BUFF. CRIM. L. REV. 1163, 1167–68 (2003); Rosen-Zvi & Fisher, *supra* note 3, at 89; Robert P. Mosteller,

Indeed, a wrongful conviction is one of the gravest harms the state can cause individuals.[8] Undoubtedly, wrongful conviction and prolonged wrongful imprisonment are clear and grave violations of fundamental human rights.[9] Wrongful convictions, even in misdemeanor cases, inflict profound and costly damage on individuals, as they involve overwhelming stress, immense financial burden, loss of reputation, relationships, employment opportunities, and societal marginalization.[10] When the state wrongfully convicts individuals and deprives them of their liberty, it inflicts moral harm that extends beyond the mere loss of freedom.[11] It turns individuals into instruments for achieving societal objectives.[12] Moreover, these convictions also constitute a breach of the social contract between the state and its citizens.[13] In addition, the families and acquaintances of the wrongly convicted individuals also suffer as a result

Protecting the Innocent: Part of the Solution for Inadequate Funding for Defenders, Not a Panacea for Targeting Justice, 75 MO. L. REV. 931, 932 n. 6 (2010); Mattias Kumm & Alec D. Walen, *Human Dignity and Proportionality: Deontic Pluralism in Balancing in* PROPORTIONALITY AND THE RULE OF LAW: RIGHTS, JUSTIFICATIONS, REASONING 67, 78–79 (Grant Huscroft et al. eds., 2014); Doron Teichman, *Convicting with Reasonable Doubt: An Evidentiary Theory of Criminal Law*, 93 NOTRE DAME L. REV. 757, 767 (2017); Keith A. Findley, *Reducing Error in the Criminal Justice System*, 48 SETON HALL L. REV. 1265, 1273 (2018) [hereinafter *Reducing Error*]; Marvin Zalman, *The Anti-Blackstonians*, 48 SETON HALL L. REV. 1319, 1322 (2018); Zhuhao Wang & Eric Zhi, *Lifting the Veil of Mona Lisa: A Multifaceted Investigation of the "Beyond a Reasonable Doubt" Standard*, 50 GA. J. INT'L & COMP. L. 119, 124 (2021). *But see* Larry Laudan, *The Rules of Trial, Political Morality, and the Costs of Error: Or, Is Proof Beyond a Reasonable Doubt Doing More Harm than Good?*, *in* 1 OXFORD STUDIES IN PHILOSOPHY OF LAW 195 (Leslie Green & Brian Leiter eds., 2011); Federico Picinali, *Can the Reasonable Doubt Standard Be Justified? A Reconstructed Dialogue*, 31 CAN. J.L. & JURIS. 365, 365 (2018) (representing the philosophical debate over the justifications of this standard).

[8] H. Archibald Kaiser, *Wrongful Conviction and Imprisonment: Towards an End to the Compensatory Obstacle Course*, 9 WINDSOR Y.B. ACCESS JUST. 96, 102 (1989); Alberto B. Lopez, *$10 and a Denim Jacket? A Model Statute for Compensating the Wrongly Convicted*, 36 GA. L. REV. 665, 674 (2002); Brandon Garrett, *Innocence, Harmless Error and Wrongful Conviction Law*, 2005 WIS. L. REV. 35, 36 (2005) [hereinafter *Innocence*]; Boaz Sangero, *Miranda Is Not Enough: A New Justification for Demanding Strong Corroboration to a Confession*, 28 CARDOZO L. REV. 101, 102 (2007); Jeffrey S. Gutman & Lingxiao Sun, *Why Is Mississippi the Best State in Which to Be Exonerated: An Empirical Evaluation of State Statutory and Civil Compensation for the Wrongfully Convicted*, 11 N.E. U. L.R. 694, 698 (2019); Rhanee Rego, *A Critical Analysis of Post-Conviction Review in New South Wales, Australia*, 2 WRONGFUL CONV. L. REV. 305, 306 (2021).

[9] Ava Pakosta, *The Human Rights Violation of Wrongful Convictions in the U.S.*, HUM. RTS. RSCH. CTR. (Nov. 14, 2024), https://www.humanrightsresearch.org/post/the-human-rights-violation-of-wrongful-convictions-in-the-u-s.

[10] Findley, *Reducing Error*, *supra* note 7, at 1293.

[11] RONALD M. DWORKIN, A MATTER OF PRINCIPLE 80 (1985); Alex Stein, *Constitutional Evidence Law*, 61 VAND. L. REV. 65, 83 (2008).

[12] Stein, *supra* note 11, at 83.

[13] Kitai, *supra* note 7, at 1172–73.

of these miscarriages of justice.[14] Furthermore, such injustices not only harm the individuals who are wrongly convicted but also have broader implications for society.[15] Thus, when innocent people are wrongfully convicted in cases involving real offenses, the true perpetrators remain unpunished, while innocent individuals are incarcerated, leaving the true culprits free to potentially commit further crimes.[16]

Moreover, wrongful convictions can deeply undermine the trust and respect for the legal system among individuals who have suffered injustices at the hands of the justice system.[17] Simultaneously, they can tarnish the perception of the justice system among those who believe that the convicted individuals were actually innocent.[18] Consequently, wrongful convictions erode trust in the legal system and can lead to a loss of faith in its ability to deliver justice.[19] Therefore, the imperative of addressing and preventing wrongful convictions remains a crucial objective in the pursuit of justice and the safeguarding of human rights.

The stringent burden of proof, which dictates that a defendant should not be convicted unless their guilt is established beyond a reasonable doubt, aims to deter the factfinders from taking a known and calculated risk of wrongful conviction.[20] It expresses the idea that the state has a responsibility to the innocent defendant to make every reasonable effort to minimize the risk of wrongful convictions.[21] However, the "beyond a reasonable doubt" standard is not foolproof in preventing the wrongful conviction of innocents.[22] Wrongful convictions happen globally, including

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[14] Sion Jenkins, *Secondary Victims and the Trauma of Wrongful Conviction: Families and Children's Perspectives on Imprisonment, Release and Adjustment*, 46 AUSTL. & N.Z. J. CRIMINOLOGY 119, 119–20 (2013).

[15] *Innocence Project*, NAT'L ASS'N CIVILIAN OVERSIGHT L. ENF'T, https://www.nacole.org/innocence_project (last visited Jan. 24, 2025).

[16] Rosen-Zvi & Fisher, *supra* note 3, at 89; Boaz Sangero, *Safe Convictions*, 30 CRIM. L.F. 375, 379 (2019); James R. Acker, *The Flipside Injustice of Wrongful Convictions: When the Guilty Go Free*, 76 ALB. L. REV. 1629, 1632 (2012); ROACH, *supra* note 1, at 152.

[17] Kristy Lee Morris, *How Wrongful Convictions Destroy Lives and Shatter Trust in the Judicial System*, MEDIUM (Nov. 28, 2023), https://kristyleemorris.medium.com/how-wrongful-convictions-destroy-lives-and-shatter-trust-in-the-judicial-system-8f1a0a55da1f.

[18] D. Michael Risinger, *Innocents Convicted: An Empirical Justified Factual Wrongful Conviction Rate*, 97 J. CRIM. L. & CRIMINOLOGY 761, 789 (2007).

[19] Aaron J. Lyttle, *Return of the Repressed: Coping with Post-Conviction Innocence Claims in Wyoming*, 14 WYO. L. REV. 555, 557 (2014).

[20] *See* Laurence H. Tribe, *An Ounce of Detention: Preventive Justice in the World of John Mitchell*, 56 VA. L. REV. 371, 388 (1970); Stein, *supra* note 11, at 83 (stating that "(a) procedure or a rule of decision that exposes a person to an excessive risk of error fails the test for constitutionality"); Alec Walen, *Proof Beyond a Reasonable Doubt: A Balanced Retributive Account*, 76 LA. L. REV. 355, 357 (2015).

[21] *See* Laurence H. Tribe, *Trial by Mathematics: Precision and Ritual in the Legal Process*, 84 HARV. L. REV. 1329, 1374 (1971); *see also* ALEX STEIN, FOUNDATIONS OF EVIDENCE LAW 172–78 (Oxford Univ. Press, 2005).

[22] Tribe, *supra* note 21, at 1375.

in Canada.[23] Such convictions occasionally come to light. While it is challenging to ascertain the exact rate of wrongful convictions due to the principle of hidden accidents,[24] it is evident that the wrongful convictions that come to light are merely the tip of the iceberg.[25] These wrongful convictions represent profound tragedies for the accused, who might endure imprisonment for years without any fault of their own, constantly tormented by a gnawing sense of injustice, and for their families, who bear witness to the suffering of their loved ones.

In his book *Wrongfully Convicted*, Kent Roach shares heartbreaking stories of such injustices, delves into the reasons behind wrongful convictions, and suggests measures to prevent them in the future.[26] The book recounts a harrowing journey toward uncovering the truth and achieving justice. These personal stories serve as poignant reminders of the steep personal toll born by the wrongfully convicted and their families, while also honoring their heroic determination to uncover the truth.

Following a comprehensive introduction that also provides insight into Roach's enthusiasm and dedication to preventing wrongful convictions, the book is structured into four distinct chapters. The opening chapter, titled "False Guilty Pleas," delves into the prevalence of false confessions in the context of plea bargains while providing an in-depth exploration of the root causes contributing to this phenomenon.[27] In Part II, titled "Imagined Crimes," the book explores instances where individuals have been erroneously convicted of offenses that never actually took place, including situations where pathologists, police

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[23] ROACH, *supra* note 1, at 140; Bruce MacFarlane, *Convicting the Innocent: A Triple Failure of the Justice System*, 31 MANITOBA L.J. 403, 405 (2006); Bruce A. MacFarlane, *Wrongful Convictions: Drilling Down to Understand Distorted Decision-Making by Prosecutors*, 63 CRIM. L.Q. 439, 439 (2016). *See also* Jim Dwyer et al., ACTUAL INNOCENCE: FIVE DAYS TO EXECUTION AND OTHER DISPATCHES FROM THE WRONGFULLY CONVICTED 157 (2000); Garrett, *Innocence*, *supra* note 8, at 36–37; Risinger, *supra* note 18, at 762–63; Daniel S. Kahn, *Presumed Guilty until Proven Innocent: The Burden of Proof in Wrongful Conviction Claims under State Compensation Statutes*, 44 U. MICH. J.L. REFORM 123, 123 (2010); Keith A. Findley, *Adversarial Inquisitions: Rethinking the Search for the Truth*, 56 N.Y.L. SCH. L. REV. 911, 918 (2012); Kathryn M. Campbell, *Exoneration and Compensation for the Wrongly Convicted: Enhancing Procedural Justice*, 42 MANITOBA L.J. 249, 253 (2019); Boaz Sangero, *Safety in Forensic Science*, 82 OHIO. ST. L.J. ONLINE 221, 221 (2021); Caroline Erentzen, et al., *Advocacy and the Innocent Client: Defence Counsel Experiences with Wrongful Convictions and False Guilty Pleas*, 2 WRONGFUL CONV. L. REV. 1, 3 (2021).

[24] Boaz Sangero & Mordechai Halpert, *A Safety Doctrine for the Criminal Justice System*, 2011 MICH. ST. L. REV. 1293, 1314–16 (2011).

[25] ROACH, *supra* note 1, at xxv; Jessica A. Roth, *Informant Witnesses and the Risk of Wrongful Convictions*, 53 AM. CRIM. L. REV. 737, 738 (2016); Bruce A. Green, *Should Prosecutors Be Expected to Rectify Wrongful Convictions?*, 10 TEX. A&M L. REV. 167, 176 (2023).

[26] James Lockyer, *Foreword* to KENT ROACH, WRONGFULLY CONVICTED, at xiii, xv (2023).

[27] *See generally* ROACH, *supra* note 1, at 3.

officers, prosecutors, and factfinders mistakenly believed that an accidental death or suicide was a result of criminal activity. [28] The "star" responsible for numerous wrongful convictions was the "scientist" Charles Smith, whose conservative and biased views played a significant role in his erroneous testimonies.[29] However, other forensic pathologists also harbor prejudiced beliefs regarding the correlation between race and child abuse, resulting in the misclassification of accidents as crimes.[30] In Part III, titled "Who Done It," Roach examines the reasons behind wrongful convictions, which are numerous and complex.[31] One recurring issue is the tunnel vision displayed by law enforcement authorities, particularly the police, which frequently leads to wrongful convictions.[32] A negligent investigation can result in a narrow focus on one suspect, while overlooking incriminating evidence against alternative suspects.[33] While DNA evidence is often considered a compelling indicator of guilt or innocence, it is only involved in fewer than twenty percent of all cases.[34] Furthermore, even in cases involving DNA evidence, the interpretation of the results relies heavily on human judgment.[35] Therefore, DNA cannot rescue all innocent defendants. In the fourth part, titled "What Must Be Done," the author attempts to propose solutions for addressing and rectifying wrongful convictions. Additionally, he also depicts the arduous and lengthy journey wrongfully convicted individuals must traverse before achieving exoneration. In this chapter, Roach also addresses the right of wrongfully convicted individuals to receive compensation following their exoneration.[36]

At times, providing explicit recommendations could enhance the impact of Roach's critical insights. For example, regarding his assertion that "the minister [should] order a new appeal or a new trial only if a miscarriage of justice was probable, not simply possible,"[37] it would be beneficial to suggest that a genuine possibility of exoneration ought to be enough for granting a new trial. Moreover, rather than stating "we leave it to individual police services and each province to decide how long to retain evidence that may be vital to correcting wrongful convictions,"[38] it would be more effective to propose a defined timeframe for keeping such

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[28] *See generally id*. at 57–135.

[29] *Id.* at 18–37 (describing several cases where Smith provided expert testimony leading to erroneous guilty pleas).

[30] *See* Roth, *supra* note 25, at 738.

[31] *See generally* ROACH, *supra* note 1, at 136–96.

[32] *Id.* at 171.

[33] *See id.* at 145.

[34] *Id.* at 141.

[35] *Id.*

[36] *Id.* at 277.

[37] ROACH, *supra* note 1, at 234.

[38] *Id.* at 234.

evidence. This period should be extendable if the individuals convicted maintain their innocence, ensuring that essential evidence is preserved for future examination.

In addition, in Part IV, it would be more effective to compile the recommendations for preventing and addressing wrongful convictions while referencing the stories of wrongful convictions previously discussed in earlier chapters. However, in this chapter as well, the narratives of wrongful convictions are presented in a way that might require readers to make some effort to extract the suggestions for improvement.

Despite these criticisms, three central elements can be vividly gleaned from the book: the importance of establishing a safe criminal justice system; the necessity of creating mechanisms to detect errors in convictions, and the imperative need to provide compensation to exonerees.[39] Following these elements, the second part of the Article addresses the imperative of maintaining a safe criminal justice system, drawing upon the propositions of Kent Roach and contributions from other scholars. Building on Roach's work, it emphasizes the importance of establishing safe plea bargains that reduce the risk of false guilty pleas. In Parts III and IV, the Article delves into two critical mechanisms advocated in the book to rectify the damage caused by wrongful convictions: retrial and compensation provisions. Part V concludes.

II. ESTABLISHING A SAFE CRIMINAL JUSTICE SYSTEM

Certain factors heighten the risk of wrongful convictions and addressing these is crucial. Establishing a safe criminal justice system that enforces binding standards while considering the risk factors for wrongful convictions, is imperative for minimizing the likelihood of wrongful charges and convictions.[40]

A safe system should proactively prevent miscarriages of justice and safeguard accused individuals from wrongful convictions, such as those

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[39] *See id.* at 62, 259, 277.

[40] Sangero & Halpert, *supra* note 24, at 1295; Marvin Zalman & Matthew Larson, *Elephants in the Station House: Serial Crimes, Wrongful Convictions, and Expanding Wrongful Conviction Analysis to Include Police Investigation*, 79 ALB. L. REV. 941, 943 (2015) (focusing on police investigation); Acker, *supra* note 16, at 1631 (calling for promoting reliable justice); James M. Doyle, *Essay: A "Safety Model" Perspective Can Aid Diagnosis, Prevention, and Restoration after Criminal Justice Harms*, 59 SANTA CLARA L. REV. 107, 110 (2019); Boaz Sangero, *Applying the Stamp Safety Model to Prevent False Convictions Based on Eyewitness Misidentifications*, 83 ALB. L. REV. 931, 934 (2019); Sangero, *Safe Convictions*, *supra* note 16, at 376; Barry Friedman & Elizabeth G. Janszky, *Policing's Information Problem*, 99 TEX. L. REV. 1, 59 (2020); James Doyle, *Innocence and Prevention: Could We Build Justice Safety Centers?,* 1 WRONGFUL CONV. L. REV. 253, 259 (2020).

resulting from misleading expert witnesses[41] or 'pseudo-scientific' practices, like hair testing.[42]

In the fourth chapter, Roach concludes by addressing the primary factors contributing to wrongful convictions, such as the vulnerabilities associated with eyewitness identification. Roach proposes several recommendations aimed at enhancing the safety of the criminal justice system.

Thus, Roach suggests prohibiting witnesses from identifying the defendant in court as the perpetrator of the offense.[43] The legal framework should establish guidelines for organizing photo lineups,[44] with legislation mandating the adoption of double-blind, sequential, and video-recorded procedures for conducting these lineups.[45]

Roach also asserts that testimonies provided by jailhouse informants should be presumed as inadmissible.[46] Additionally, courts must unequivocally reject the use of unreliable scientific methods like hair comparisons.[47] This suggestion is undoubtedly crucial and warrants a more comprehensive treatment. Moreover, as Roach points out, it is imperative that forensic laboratories undergo thorough inspection and accreditation processes. Comprehensive regulations must be implemented to define minimum training requirements and to govern the meticulous execution of forensic tests.[48] The judicial system's approach to science should actively promote ongoing research into the dynamic field of scientific theories, especially those that uncover shortcomings and limitations in established paradigms.[49]

Furthermore, the defense should have the opportunity to summon university professors who have dedicated their careers to researching and publishing on subjects like false confessions or the unreliability of eyewitness identification, enabling them to provide expert testimony.[50]

In addition, the law must establish comprehensive regulations to guarantee the secure and systematic preservation of evidence, with the primary objective of facilitating convicted individuals in their pursuit of post-conviction evidence examination to establish their innocence.[51]

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[41] *See* ROACH, *supra* note 1, at 77, 80 (stating that "Charles Smith may have thought dirty, but the safeguards that were supposed to protect the accused failed.").

[42] *See, e.g.*, *id.* at 89–90.

[43] *Id.* at 203–205, 214.

[44] *Id.* at 207.

[45] *Id.* at 214.

[46] *Id.* at 214–15.

[47] ROACH, *supra* note 1, at 223.

[48] *See id.* at 224.

[49] *Id.* at 226–27.

[50] *Id.* at 225.

[51] *Id.* at 239.

In relation to interrogations, Roach emphasizes that interrogators often utilize the Reid interrogation technique, which is based on the presumption of guilt and encourages persistent police tactics, occasionally resorting to deceptive methods.[52] Roach advocates for several crucial reforms, including the mandatory recording of complete interrogation sessions, setting limits on the duration of interrogations, and permitting the presence of defense lawyers in the interrogation room.[53] In order to ensure a fair and unbiased investigation, there should be a process in place to prompt a more thorough examination of alternative suspects or a reinvestigation of a suspect's alibi or exculpatory statements. This process should involve police officers who are unconnected to the interrogation team, as their lack of prior involvement can help prevent any potential bias or tunnel vision that might occur when the same team investigates a suspect throughout the entire process.[54] While these recommendations are highly commendable, they should also encompass guidelines governing the conduct of interrogations. This should entail a prohibition on deceiving suspects about the incriminating evidence against them,[55] among other rules. Undoubtedly, Roach's recommendation to refrain from convicting solely based on the testimony of a single eyewitness,[56] is of utmost importance. As scholars suggest, to ensure the safety of the criminal justice system, the court should not be permitted to convict based solely on a single piece of evidence.[57]

The objective of these recommendations is to derive insights from wrongful conviction cases, identifying recurring patterns that contribute to such miscarriages of justice. Indeed, beyond addressing isolated concerns, the criminal justice system should actively and systematically implement significant measures to minimize wrongful convictions.[58] Actually, scholars strongly advocate for the establishment of a safety framework within the criminal justice system.[59] Ensuring safety within

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[52] *Id.* at 148.

[53] ROACH, *supra* note 1, at 219.

[54] *Id.* at 195.

[55] Rinat Kitai-Sangero, *Extending Miranda: Prohibition on Police Lies Regarding the Incriminating Evidence*, 54 SAN DIEGO L. REV. 611, 621–24 (2017).

[56] ROACH, *supra* note 1, at 48–49.

[57] Boaz Sangero & Mordechai Halpert, *Why a Conviction Should Not Be Based on a Single Piece of Evidence: A Proposal for Reform*, 48 JURIMETRICS J. 43, 44 (2007).

[58] Sangero, *Safe Convictions*, *supra* note 16, at 383–84. *See* Marvin Zalman & Ralph Grunewald, *Reinventing the Trial: The Innocence Revolution and Proposals to Modify the American Criminal Trial*, 3 TEX. A&M L. REV. 189, 190, 192 (2015) (comparing proposals of several scholars to prevent wrongful convictions).

[59] MacFarlane, *supra* note 23, at 470 (suggesting the establishment of a nationwide jailhouse informant registry, that provides law enforcement, prosecutors, and defense counsel with access to the prior testimonies of these witnesses, allowing them to identify potential patterns in their historical or ongoing involvement in criminal cases); Mordechai

the criminal justice system requires a deep-seated commitment to protecting innocent individuals by continuously and meticulously identifying and managing risks.[60] This approach not only addresses wrongful convictions but also proactively seeks to prevent them.[61] It involves conducting a thorough analysis of the underlying causes of wrongful convictions, gleaning lessons from instances where errors were successfully averted by factfinders or prosecutors.[62] A crucial lesson for the criminal justice system is the importance of learning from near misses—cases that could have led to wrongful convictions but were prevented.[63] Establishing rules and procedures designed to minimize the risk of wrongful convictions is imperative within such a system.

The state, as the entity introducing the risk of wrongful convictions, bears a significant moral obligation to implement effective safety measures aimed at reducing this risk, drawing support from theories like the social contract theory, which posits that the state's fundamental purpose is to safeguard the rights and well-being of its citizens rather than causing them undue harm.[64] As Sangero proposes, the incorporation of safety measures within the criminal justice system necessitates the creation of a dedicated institution tasked with this responsibility, along with the allocation of essential resources to ensure the institute's effective operation.[65]

In the opening chapter of the book, Roach extensively examines the perilous implications of plea bargains on wrongful convictions, and this review will delve into this critical issue as well.[66] The statistics presented, revealing that a mere three percent of the defendants manage to secure acquittals in their trials, are undeniably unsettling.[67] This statistic underscores the immense authority wielded by the prosecution in shaping the destinies of individuals caught up in the criminal justice system. It is indisputable that plea bargains substantially augment the prosecution's

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Halpert & Boaz Sangero, *From a Plane Crash to the Conviction of an Innocent Person: Why Forensic Science Evidence Should Be Inadmissible Unless It Has Been Developed as a Safety-Critical System*, 32 HAMLINE L. REV. 65, 93 (2009); Findley, *Reducing Error*, *supra* note 7, at 1317; *see* Sangero, *Safe Convictions*, *supra* note 16, at 405–15 (suggesting the adoption of Nancy Leveson's safety model called STAMP—System-Theoretic Accident Model and Processes—to the criminal justice system).

[60] Sangero & Halpert, *supra* note 24, at 1301.

[61] *See* Elizabeth Webster, *The Prosecutor as a Final Safeguard Against False Convictions: How Prosecutors Assist with Exoneration*, 110 J. CRIM. L. & CRIMINOLOGY 245, 250 (2020).

[62] *See* Sangero, *Safe Convictions*, *supra* note 16, at 393.

[63] *See* ROACH, *supra* note 1, at 100.

[64] Boaz Sangero, *Safety from Plea-Bargains' Hazards*, 38 PACE L. REV. 301, 309 (2018).

[65] Sangero, *Safe Convictions*, *supra* note 16, at 386–87.

[66] ROACH, *supra* note 1, at 3.

[67] *Id.* at 140.

power, effectively affording them a prominent role in determining case outcomes.[68] This blurring of roles between prosecutors and factfinders is a significant concern in practice.[69]

Most defendants opt to admit their guilt as part of a plea bargain during trial.[70] The concern about wrongfully convicting the innocent serves as a recurring theme throughout the scholarly writing discussing plea bargains.[71] This phenomenon is far from insignificant, with nearly 20 percent of cases in Canada's registry of Wrongful Convictions originating from individuals who entered guilty pleas.[72] Roach points out that the phenomenon of false guilty pleas has become deeply entrenched within the Canadian criminal justice system over a significant period,[73] disproportionately impacting marginalized communities such as women, indigenous or racialized individuals, and those with mental health disorders.[74] Thus, Richard Catcheway, a member of a marginalized population, initially pleaded guilty to a break-in, with an agreement for a punishment that would encompass his period of detention.[75] However, it later came to light, thanks to the awareness of a prison administrator, that Catcheway could not have committed this offense as he was incarcerated at the time, far from the crime scene.[76] Many parents, whose infant child died of natural causes, pleaded guilty to manslaughter or infanticide to avoid prosecution for murder, as they were unable to

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[68] Andrew Manuel Crespo, *The Hidden Law of Plea Bargaining*, 118 COLUM. L. REV. 1303, 1310–11 (2018) (relating to the capacity to influence a defendant's potential sentencing outcome through charge manipulation).

[69] Erik Luna & Marianne Wade, *Prosecutors as Judges*, 67 WASH. & LEE L. REV. 1413, 1414–15 (2010); Ric Simmons, *Private Plea Bargains*, 89 N.C.L. REV. 1125, 1184–85 (2011).

[70] ROACH, *supra* note 1, at 3; Robert E. Scott & William J. Stuntz, *Plea Bargaining as Contract*, 101 YALE L.J. 1909, 1912 (1992); Nicholas Babaian, *The Clock Stops Here: A Call for Resolution of the Circuit Split on Plea Bargain Exclusions within the Speedy Trial Act*, 54 NEW ENG. L. REV. 239, 246 (2020).

[71] Luna & Wade, *supra* note 69, at 1414–15; Simmons, *supra* note 69, at 1184–85; Robert Schehr, *Standard of Proof, Presumption of Innocence, and Plea Bargaining: How Wrongful Conviction Data Exposes Inadequate Pre-Trial Criminal Procedure*, 54 CAL. W.L. REV. 51, 65 (2017).

[72] ROACH, *supra* note 1, at 39; *see* Marvin Zalman & Robert J. Norris, *Measuring Innocence: How to Think about the Rate of Wrongful Conviction*, 24 NEW CRIM. L. REV. 601, 641–48 (2021).

[73] ROACH, *supra* note 1, at 5.

[74] *See* Stephen Jones, *Under Pressure: Women Who Plead Guilty to Crimes They Have Not Committed*, 11 CRIMINOLOGY & CRIM. JUST. 77, 79 (2011) (regarding women); Emily Haney-Caron & Erika Fountain, *Young, Black, and Wrongfully Charged: A Cumulative Disadvantage Framework*, 125 DICK. L. REV. 653, 696–97 (2021) (regarding young individuals of color); Walter I. Goncalves Jr., *Crushing the Soul of Federal Public Defenders: The Plea Bargaining Machine's Operation and What to Do About It*, 49 FORDHAM URB. L.J. 699, 734–39 (2022) (regarding minority defendants).

[75] ROACH, *supra* note 1, at 9–10.

[76] *Id.*

contend with the erroneous pseudo-expert opinion of Charles Smith.[77] This phenomenon of false guilty pleas is not exclusive to Canada.[78] In many cases, innocent defendants in the United States whose innocence was confirmed through DNA evidence have entered guilty pleas.[79] Thus, in Tulia, Texas, during the years 1999–2000, thirty-five individuals were brought to trial and convicted, falsely accused of drug trafficking based on the testimony of an undercover informant.[80] They were exonerated in 2003 after the informant's deception was exposed.[81] Eight of the accused went to trial, while the remaining twenty-seven confessed as part of plea bargains.[82] Nevertheless, it is important to note that the danger of false guilty pleas is not confined solely to disadvantaged populations, as numerous scholars have cautioned against its broad implications.[83] Thus, the title of Albert Alschuler's article, "A Nearly Perfect System for Convicting the Innocent," speaks for itself about the author's stance concerning the coercive mechanism created by plea bargains against innocent defendants.[84] Langbein notably compared plea bargaining to torture, highlighting that both serve as coercive measures employed by the legal system to the failure of the criminal procedure to meet the needs of law enforcement.[85] The coercion is manifested in the gap between the punishment offered to the defendant as part of the plea bargain and the harsher punishment likely upon conviction.[86] According to estimates, approximately one-third of the defendants who confess as part of a plea bargain would have been acquitted if they had gone to trial.[87]

Defendants may falsely plead guilty under the influence of pressure exerted on them by judges and their attorneys to secure a plea deal,[88]

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[77] *See generally id.* at 17–37.

[78] *See id.* at xxvi.

[79] Jenny Roberts, *Ignorance is Effectively Bliss: Collateral Consequences, Silence, and Misinformation in the Guilty-Plea Process*, 95 IOWA L. REV. 119, 186–87 (2009).

[80] Russell Covey, *Police Misconduct as a Cause of Wrongful Convictions*, 90 WASH. U.L. REV. 1133, 1141 (2013).

[81] *Id.*

[82] Samuel R. Gross, *Pretrial Incentives, Post-Conviction Review, and Sorting Criminal Prosecutions by Guilt or Innocence*, 56 N.Y.L. SCH. L. REV. 1009, 1015–16 (2011).

[83] *See id.* at 1016; *see also* Albert W. Alschuler, *A Nearly Perfect System for Convicting the Innocent*, 79 ALB. L. REV. 919 (2015) [hereinafter *A Nearly Perfect System*].

[84] Alschuler, *A Nearly Perfect System*, *supra* note 83, at 919–20, 922.

[85] John H. Langbein, *Torture and Plea Bargaining*, 46 U. CHI. L. REV. 3, 12–14 (1978).

[86] John H. Langbein, *Land Without Plea-Bargaining: How the Germans Do It*, 78 MICH L. REV. 204, 213 (1979) (contrasting the coercion present in American plea bargains with that in the German penal order procedure).

[87] Donald G. Gifford, *Meaningful Reform of Plea Bargaining: The Control of Prosecutorial Discretion*, 1983 U. ILL. L. REV. 37, 59 (1983); Scott & Stuntz, *supra* note 70, at 1939 (citing MICHAEL O. FINKELSTEIN, QUANTITATIVE METHODS IN LAW 280 (1978)).

[88] ROACH, *supra* note 1, at 4.

which can further erode their trust in the legal system.[89] Indeed, there is significant evidence of attorneys exerting undue pressure on defendants to admit guilt,[90] creating an agency problem, arising from both attorneys needing to regularly collaborate with judges and prosecutors and the financial incentive to settle through plea bargaining rather than opting for trials. [91]

Some innocent defendants have lost confidence in their chances of being acquitted and are open to considering any proposals for relief.[92] A legal system that employs plea bargains creates distinct incentives for innocent defendants to enter guilty pleas.[93] The disparity between the anticipated punishment in case of a conviction and the proposed sentence as part of a plea bargain exerts pressure on innocent defendants to confess to guilt.[94] Sometimes, the offered plea bargain is so lenient that the defendant may feel it is too risky to proceed with a trial.[95]

Innocent individuals may find themselves even more tempted than the guilty to confess as part of a plea bargain.[96] This is often because, given the weakness of the incriminating evidence against them, the

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[89] Andrew D. Leipold, *How the Pretrial Process Contributes to Wrongful Convictions*, 42 AM. CRIM. L. REV. 1123, 1154 (2005).

[90] Albert W. Alschuler, *The Defense Attorney's Role in Plea Bargaining*, 84 YALE L.J. 1179, 1191–92 (1975) [hereinafter *The Defense Attorney's Role*]; Gifford, *supra* note 87, at 49–50.

[91] ROACH, *supra* note 1, at 40; Richard Birke, *Reconciling Loss Aversion and Guilty Pleas*, 1999 UTAH L. REV. 205, 238–41; Jeff Palmer, Note, *Abolishing Plea Bargaining: An End to the Same Old Song and Dance*, 26 AM. J. CRIM. L. 505 520–21 (1999); Andrew Hessick III & Reshma M. Saujani, *Plea Bargaining and Convicting the Innocent: The Role of the Prosecutor, the Defense Counsel, and the Judge*, 16 BYU J. PUB. L. 189, 219 (2002); Julian A. Cook, III, *All Aboard! The Supreme Court, Guilty Pleas, and the Railroading of Criminal Defendants*, 75 U. COLO. L. REV. 863, 901 (2004); Stephanos Bibas, *Plea Bargaining Outside the Shadow of Trial*, 117 HARV. L. REV. 2464, 2476 (2004); Stephanos Bibas, *Transparency and Participation in Criminal Procedure*, 81 N.Y.U.L. REV. 911, 922 (2006); Sangero, *Safety from Plea-Bargains' Hazards*, *supra* note 64, at 315–16.

[92] Leipold, *supra* note 89; Sangero, *Safety from Plea-Bargains' Hazards*, *supra* note 64, at 317; ROACH, *supra* note 1, at 5 (regarding indigenous defendants holding the belief that they are unlikely to receive a fair trial due to the pervasive racist attitudes that exist within the justice system).

[93] Gifford, *supra* note 87, at 60.

[94] ROACH, *supra* note 1, at 42; Gerard A. Ferguson & Darrell W. Roberts, *Plea Bargaining: Directions for Canadian Reform*, 52 CAN. B. REV. 497, 544 (1974); Sangero, *Safety from Plea-Bargains' Hazards*, *supra* note 64, at 302; Findley, *Reducing Error*, *supra* note 7, at 1287–88.

[95] Leipold, *supra* note 89.

[96] Craig M. Bradley, *The Convergence of the Continental and the Common Law Model of Criminal Procedure*, 7 CRIM. L.F. 471, 474 (1996); *see* John H. Blume & Rebecca K. Helm, *The Unexonerated: Factually Innocent Defendants Who Plead Guilty*, 100 CORNELL L. REV. 157, 169–70 (2014).

prosecution may extend exceptionally favorable plea deals.[97] The possibility of reaching a plea bargain can incentivize the prosecution to file a weak case, knowing that such cases can potentially be resolved through a plea bargain arrangement with no personal cost to the prosecutor.[98] When the evidence in a case is weak, the prosecution may be motivated to offer the defendant lenient terms that would be difficult for them to refuse.[99] A well-known example, recounted by Albert Alschuler and originally shared by defense attorney Benjamin M. Davis of San Francisco, illustrates this point. Davis had a client facing charges of kidnapping and rape, whom he believed to be innocent, as did the prosecutor.[100] The prosecutor proposed that the client plead guilty to the lesser charge of simple battery as part of a plea bargain, which carried a maximum sentence of thirty days in prison, with a high likelihood of no prison time at all.[101] When the defense attorney presented this plea agreement to his client, he assured him that the chances of being convicted at trial were slim.[102] However, the defendant's response was straightforward: "I can't take the chance."[103] The prosecution can, then, always offer substantial leniency to a defendant in a way that, at some point, a rational defendant will agree to plead guilty.[104]

It should be noted, however, that innocent defendants may still be convicted if they choose to go to trial.[105] Thus, the defendants in Tulia who did not admit guilt as part of a plea bargain but opted for a trial were convicted and received more severe penalties compared to those who

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[97] Bradley, *supra* note 96, at 474; James Vorenberg, *Decent Restraint of Prosecutorial Power*, 94 HARV. L. REV. 1521, 1535 (1981); Maximo Langer, *Rethinking Plea Bargaining: The Practice and Reform of Prosecutorial Adjudication in American Criminal Procedure*, 33. AM. J. CRIM. L. 223, 238 (2006); Bibas, *Plea Bargaining Outside the Shadow of Trial, supra* note 91, at 2537; Blume & Helm, *supra* note 96, at 169; *see also* Simmons, *supra* note 69, at 1172.

[98] Oren Gazal-Ayal, *Partial Ban on Plea Bargains*, 27 CARDOZO L. REV. 2295, 2299 (2006); Blume & Helm, *supra* note 96, at 169; *see also* Gregory M. Gilchrist, *Plea Bargains, Convictions and Legitimacy*, 48 AM. CRIM. L. REV. 143, 161 (2011).

[99] Gifford, *supra* note 87, at 60; Gazal-Ayal, *supra* note 98, at 2298–99.

[100] Albert W. Alschuler, *The Prosecutor's Role in Plea Bargaining*, 36 U. CHI. L. REV. 50, 61 (1968) [hereinafter *The Prosecutor's Role*].

[101] *Id.*

[102] *Id.*

[103] *Id.*

[104] Kevin C. McMunigal, *Disclosure and Accuracy in the Guilty Plea Process*, 40 HASTINGS L.J. 957, 986 (1989); Russell D. Covey, *Fixed Justice: Reforming Plea Bargaining with Plea-Based Ceilings*, 82 TUL. L. REV. 1237, 1248 (2008) [hereinafter *Fixed Justice*].

[105] HAROLD J. ROTHWAX, GUILTY: THE COLLAPSE OF CRIMINAL JUSTICE 161–62 (1996); Ferguson & Roberts, *supra* note 94, at 544; Thomas W. Church, Jr., *In Defense of Bargain Justice*, 13 L. & SOC'Y REV. 509, 516 (1978-1979); John G. Douglass, *Fatal Attraction? The Uneasy Courtship of Brady and Plea Bargaining*, 50 Emory L.J. 437, 490 (2001); Scott W. Howe, *The Value of Plea Bargaining*, 58 OKLA. L. REV. 599, 633 (2005); Rodney Uphoff, *Convicting the Innocent: Aberration or System Problem*, 2006 WIS. L. REV. 739, 799 (2006).

accepted plea bargains.[106] Some argue that the key question is whether more innocent people are convicted through plea bargains than in trials, and specifically, whether innocent defendants who could have been acquitted at trial are motivated to admit guilt as part of a plea bargain.[107] Unfortunately, this question cannot be empirically examined.[108]

Scholars argue that banning plea bargains could harm the innocent, as they might end up being convicted and facing harsher punishments at the end of the trial process.[109] It is contended that prohibiting plea bargains is a paternalistic approach, assuming that innocent individuals did not properly consider their options before entering into a plea bargain.[110] Some argue that having two suboptimal choices is better than having no choice at all.[111] Even when the evidence is weak, defense attorneys can make mistakes in assessing the defendant's chances of acquittal.[112] They cannot ethically push an innocent defendant to go through a trial that could potentially ruin their life.[113] Innocent individuals may rationally choose to admit guilt in cases where the prosecutor's threat is credible, meaning they genuinely intend to charge the defendant with a specific offense if they do not plead guilty.[114] Therefore, the innocent may rationally admit guilt in some circumstances.[115]

In the third chapter of Part I, titled "Are False Guilty Pleas Inevitable," Roach maintains a pessimistic perspective, suggesting that the occurrence of false guilty pleas will persist as long as the system continues to offer reduced sentences in exchange for admitting guilt.[116] This pessimistic view is not necessary. Indeed, certain proposals aimed at mitigating the risk of wrongful convictions within the context of plea bargains appear to lack effectiveness.[117] Thus, scholars argue that courts should routinely conduct more thorough investigations into the factual

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[106] Gross, *supra* note 82, at 1015–16; ROACH, *supra* note 1, at 95–96.

[107] *See* Ferguson & Roberts, *supra* note 94; McCoy & Mirra, *supra* note 3, at 922.

[108] McCoy & Mirra, *supra* note 3, at 922–23.

[109] Gazal-Ayal, *supra* note 98, at 2295, 2298; Gross, *supra* note 82, at 1015–16; Howe, *supra* note 105, at 614.

[110] Howe, *supra* note 105, at 612.

[111] Douglass, *supra* note 105; Josh Bowers, *Punishing the Innocent*, 156 U. PA. L. REV. 1117, 1164–65 (2008).

[112] Alschuler, *The Prosecutor's Role*, *supra* note 100.

[113] *Id.*

[114] Oren Bar-Gill & Omri Ben-Shahar, *Credible Coercion*, 83 TEX. L. REV. 717, 763–64 (2005).

[115] Darryl K. Brown, *The Decline of Defense Counsel and the Rise of Accuracy in Criminal Adjudication*, 93 CAL. L. REV. 1585, 1612 (2005).

[116] ROACH, *supra* note 1, at 50.

[117] *See* Palmer, *supra* note 91, at 533–34.

basis for pleas to ensure the accuracy and fairness of plea agreements.[118] However, although the requirement for a guilty plea to have an independent factual basis[119] is desirable, it rarely serves as a significant barrier in preventing the conviction of an innocent defendant who has been persuaded to admit guilt by an attractive plea bargain.[120] Besides, typically, prosecutors charge defendants based on some incriminating evidence.[121]

Nevertheless, the plea bargain system can persist without unduly tempting innocent individuals to plead guilty. Scholars have recommended strategies to maintain the institution of plea bargains while avoiding the use of excessive indirect pressure on innocent defendants to confess guilt. Thus, according to Langer, prosecutors ought to be barred from offering plea deals in cases where a conviction would be deemed unjustifiable by any reasonable factfinder, regardless of the defendant's awareness of the case's weaknesses.[122]

Some suggest prohibiting the prosecution from offering a significantly reduced sentence in exchange for a plea bargain and disallowing plea bargains that provide such high levels of leniency.[123] Such reductions, typically in the range of ten to twenty percent, could serve as a filter between defendants with a high likelihood of conviction who may be inclined to accept a plea deal and those with a significant chance of being acquitted.[124] If the prosecution loses the ability to offer overly lenient plea bargains, it could result in the filtering of weak cases by the prosecution, which may not be able to handle all cases without resorting to plea bargains.[125] Filtering out weak cases would primarily serve to protect innocent individuals.[126]

However, it may not be realistic to expect judges to take on the role of rejecting plea bargains on this basis, as they cannot know what evidence

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[118] Ben A. McJunkin & J.J. Prescott, *Collusive Prosecution*, 108 IOWA L. REV. 1653, 1710–12 (2023).

[119] Indeed, Rule 11 of the Federal Rules of Criminal Procedure in the United States mandates that "the court must determine that there is a factual basis for the plea." FED. R. CRIM. P. 11(b)(3). However, plea bargains often consist merely of standardized legal acknowledgments of the crime's components. Brandon L. Garrett, *Why Plea Bargains Are Not Confessions*, 57 WM. & MARY L. REV. 1415, 1422 (2016).

[120] Alschuler, *A Nearly Perfect System*, *supra* note 83, at 934.

[121] Alschuler, *The Defense Attorney's Role*, *supra* note 90, at 1293.

[122] Langer, *supra* note 97, at 238–39.

[123] Gazal-Ayal, *supra* note 98, at 2337.

[124] Gifford, *supra* note 87, at 80–81.

[125] Jenia I. Turner, *Prosecutors and Bargaining in Weak Cases: A Comparative View*, *in* THE PROSECUTOR IN TRANSNATIONAL PERSPECTIVE 3 (Erik Luna & Marianne Wade eds. 2012).

[126] *See* Gifford, *supra* note 87, at 60.

may have been omitted from the charges that were dropped.[127] Additionally, many judges have an incentive to encourage plea bargains.[128]

Covey proposes, in light of these assumptions about the necessity to narrow the disparity between anticipated punishment and the sentence proposed in plea negotiations, a rule that forbids sentencing a defendant to a term that surpasses a specified percentage increase over the sentence offered during plea bargain discussions.[129] Covey correctly explains that when a defendant is faced with the choice of whether to accept a particular plea offer, it ultimately boils down to a strategic calculation: Will accepting the plea offer on the provided terms result in the least severe expected punishment? Classic economic theory in the realm of legal bargaining highlights several key factors that come into play when working towards a plea-bargain agreement. These factors encompass the expected trial sentence, which takes into account the likelihood of a conviction, as well as the anticipated sentence that would be imposed in the event of a conviction after a trial.[130] Such an arrangement should also address the omission of charges in a way that prevents imposing a sentence on the defendant that exceeds a certain additional percentage over the sentence they would have received if convicted based on the charges presented as part of the plea bargain proposal.[131] This way, the prosecution would be prevented from offering the defendant an overly lenient plea bargain as such an offer would safeguard the defendant from a harsh punishment in the event of rejection of the offer.[132] Indeed, innocent defendants appear to go to trial more frequently than guilty ones.[133] In many cases, innocent defendants often decline plea offers that would typically be accepted by others facing similar charges and who are actually guilty.[134] If Covey's suggestion is implemented, it has the

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[127] Covey, *Fixed Justice*, *supra* note 104, at 1268.

[128] Ed Cohen, *Judges Overwhelmingly Approve of Plea Bargaining, Largely for Practical Reasons*, NAT'L JUD. COLL. (June 14, 2021), https://www.judges.org/news-and-info/judges-overwhelmingly-approve-of-plea-bargaining-largely-for-practical-reasons.
Beyond reducing strain on judicial resources due to reducing the number of cases proceeding to trial, plea bargaining allows judges to better anticipate resolutions and manage court schedules with more certainty. *Id.*

[129] Covey, *Fixed Justice*, *supra* note 104, at 1269.

[130] Russell D. Covey, *Plea Bargaining and Price Theory*, 84 GEO. WASH. L. REV. 920, 926 (2016).

[131] *See* Covey, *Fixed Justice*, *supra* note 104, at 1248.

[132] *Id.* at 1277.

[133] Jeffrey Bellin, *The Evidence Rules that Convict the Innocent*, 106 CORNELL L. REV. 305, 322 (2021).

[134] Oren Gazal-Ayal & Avishalom Tor, *The Innocence Effect*, 62 DUKE L.J. 339, 345 (2012).

potential to significantly decrease the risk of innocent defendants pleading guilty as part of plea bargains.[135]

However, Covey's solution cannot be applied to offenses that carry a mandatory life imprisonment sentence. This is the case in Canada for convictions of murder.[136] Undoubtedly, such a formidable sentence places considerable strain on innocent defendants, potentially pushing them to confess to manslaughter in exchange for the dismissal of murder charges.[137] This strain can make it difficult for them to withstand the allure of pleading guilty to a lesser offense, even when they are innocent or possess a valid defense, all in an effort to mitigate the severity of potential punishment.[138] *De lege feranda*, judges and juries should have the discretion to consider exceptions to mandatory life imprisonment.[139] Granting discretion to the court to determine the appropriate punishment without the obligation to impose a mandatory sentence would alleviate the dilemma faced by innocent defendants in murder cases, where they must choose between risking wrongful conviction, which carries a mandatory life imprisonment sentence, and making a false confession to a lesser offense.[140] Of course, this dilemma exists for any offense carrying a mandatory penalty and for an offense carrying a possible death penalty.

In addition, alongside Covey's proposal, it should be emphasized that the court should not participate in plea bargaining, as it is not a party to the negotiations, cannot initiate offers independently, and its involvement in this process is inappropriate.[141] Such involvement erodes the principle of judicial neutrality, may be seen as premature judgment regarding the defendant's guilt, and presents the court as having a vested interest in the

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[135] Covey, *Fixed Justice*, *supra* note 104, at 1245–46, 1269–70.

[136] ROACH, *supra* note 1, at 227.

[137] *Id.* at xxix.

[138] *Id.* at 229.

[139] *Id.* at 228; *see also* Janet C. Hoeffel, *Risking the Eighth Amendment: Arbitrariness, Juries, and Discretion in Capital Cases*, 46 B.C.L. REV. 771, 809 (2005) (noting that in capital cases, juries have historically used their power of nullification to avoid a mandatory death penalty).

[140] ROACH, *supra* note 1, at 43.

[141] This is also the situation in the federal courts in the United States. FED. R. CRIM. P. 11(c)(1); Nancy Pridgen, Note, *Avoiding the Appearance of Judicial Bias: Allowing a Federal Criminal Defendant to Appeal the Denial of a Recusal Motion Even After Entering an Unconditional Guilty Plea*, 53 VAND. L. REV. 983, 1003 (2000); Hessick III & Saujani, *supra* note 91, at 224; Richard Klein, *Due Process Denied: Judicial Coercion in the Plea Bargaining Process*, 32 HOFSTRA L. REV. 1349, 1419 (2004). In contrast, in various states in the United States, judges are involved in making offers to structure plea agreements and even exert pressure on the defendant to confess by clarifying that the punishment in the case of a conviction will be much harsher than that offered within the plea agreement, and that the defendant has a specific timeframe to decide whether to accept the offer. Klein, *supra*, at 1394.

trial's outcome.[142] The court should remain impartial and should not have a stake in the defendant's admission of guilt. This kind of involvement exerts undue pressure on the defendant to confess to avoid potential repercussions.[143] The court's application of pressure is detrimental to the voluntariness of the confession, akin to impermissible coercion during an interrogation.[144] Such pressure may result in a substantial gap between the punishment proposed within the plea agreement and the expected punishment in the case of a conviction,[145] effectively bypassing Covey's desired prohibition on prosecutors not seeking a significantly harsher punishment than that proposed to the defendant within the plea bargain's negotiations.

Roach's choice to focus on plea bargains as a key factor of wrongful convictions highlights the overwhelming pressures placed on defendants to admit guilt and the numerous obstacles that stand in the way of innocent individuals seeking acquittal, many of whom have already given up hope for this result. In fact, plea bargains stand as a pivotal mechanism that significantly contributes to wrongful convictions.[146]Nevertheless, there is no room for a pessimistic view that considers wrongful convictions within the plea bargaining system as inevitable. We can and must fight the danger of false confessions during trial. Additionally, effective and fruitful negotiation of a plea deal, incorporating the defendant as a crucial element of this process, could persuade the prosecutor, under suitable circumstances, to acknowledge the defendant's innocence and to dismiss the charges.[147]

As Sangero proposes, there is a need to establish an institution that would gain the authority to propose measures aimed at preventing wrongful convictions, and potentially even obtain formal regulatory authority in the realm of criminal justice or related areas.[148] This development could occur as such an institution gains experience and credibility in dealing with issues related to wrongful convictions and justice system reform.[149] Such an institution should strive to establish a safer criminal justice system and, among other objectives, explore ways to reduce the incidence of false guilty pleas in plea bargains during trials.

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[142] Klein, *supra* note 141, at 1400–04.

[143] *Id.* at 1401–02.

[144] *Id.* at 1419–20.

[145] *Id.*

[146] Sangero, *Safe Convictions*, *supra* note 16, at 410, 414.

[147] Rinat Kitai-Sangero, *Plea Bargaining as Dialogue*, 49 AKRON L. REV. 63, 87 (2016).

[148] *See* Sangero, *Safe Convictions*, *supra* note 16, at 386–92; *see also* Brandon L. Garrett, *Judging Innocence*, 108 COLUM. L. REV. 55, 127 (2008).

[149] Garrett, *Judging Innocence*, *supra* note 148.

III. RECTIFYING THE WRONGFUL CONVICTION: THE RETRIAL AS A MECHANISM FOR RATIFICATION OF ERRORS

Despite the need to establish a safe justice system, no justice system can completely eliminate the risk of wrongful convictions. It is evident that every criminal justice system is vulnerable to human error.[150] The justice system will always have to deal with lies and mistakes on the part of witnesses as well as biased and unqualified expert witnesses, like Charles Smith, whose flawed expert testimony led to the wrongful convictions of many unfortunate defendants.[151] Not all wrongful convictions can be prevented, as factfinders may inadvertently trust false witnesses.[152] Consequently, the criminal justice system should possess the capacity to rectify miscarriages of justice.

In *The Maurizius Case* by Jakob Wassermann, a novel that delves into the wrongful conviction of an innocent man, Etzel von Andergast, who is the son of the chief prosecutor responsible for the conviction, seeks justice.[153] He confronts his father with a poignant question: "Just answer me this one thing. A man has been many years in the penitentiary. It is possible that he was unjustly condemned. It is possible that one can [manage to prove this]. . . . Dare one hesitate or consider? Could there be any other duty in such a case?"[154]

However, correcting an error after a conviction is an exceedingly challenging process.[155] The courts prioritize the utmost significance of the finality of verdicts.[156] The principle of finality in adjudicative proceedings, which ensures that litigations have a defined endpoint, often prevents the reopening of trials.[157] Without such finality, the deterrent and educative

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[150] Adele Bernhard, *When Justice Fails: Indemnification for Unjust Conviction*, 6 U. CHI. L. SCH. ROUNDTABLE 73, 74 (1999).

[151] On Charles Smith's flawed evidence and its contribution to wrongful conviction, see ROACH, *supra* note 1, at 59–64.

[152] On conviction of the innocent based on false testimony, see, e.g., James R. Acker & Catherine L. Bonventre, *Protecting the Innocent in New York: Moving Beyond Changing Only Their Names*, 73 ALB. L. REV. 1245, 1318 (2010).

[153] JAKOB WASSERMANN, THE MAURIZIUS CASE 540–541 (Carroll Newton trans., Carrol & Graf 1985) (1929).

[154] *Id.* at 111.

[155] Boaz Sangero, *Safety in Post-Conviction Proceedings*, 51 J. MARSHALL L. REV. 773, 774 (2019) [hereinafter *Safety in Post-Conviction Proceedings*].

[156] ROACH, *supra* note 1, at 8; David Hamer, *Wrongful Convictions, Appeals, and the Finality Principle: The Need for a Criminal Cases Review Commission*, 37 U.N.S.W.L.J. 270, 270–71 (2014) (advocating for a cautious approach when applying the finality principle).

[157] Elaine A. Carlson & Karlene S. Dunn, *Navigating Procedural Minefields: Nuances in Determining Finality of Judgments, Plenary Power, and Appealability*, 41 S. TEX. L. REV. 953, 957 (2000). On the finality principle, see generally Paul M. Bator, *Finality in Criminal Law and Federal Habeas Corpus for State Prisoners*, 76 HARV. L. REV. 441 (1963); Daniel S. Medwed, *Up the River Without a Procedure: Innocent Prisoners and Newly Discovered Non-*

value inherent in convictions might be diminished.[158] Clearly, this principle underscores faith in the criminal justice system's capacity to ascertain the factual truth.[159]

Nevertheless, as Kent Roach's book illustrates, wrongful convictions occur all too often, leading to the imprisonment of innocent individuals for extended periods. Even if we assume an exceptionally high level of accuracy in convictions, when we factor in the system's percentage of errors across the prisoner population, we arrive at disturbingly high numbers of individuals who are wrongfully imprisoned for crimes they did not commit.[160]

A retrial serves as an exception to the principle of finality.[161] It offers a means to rectify wrongful convictions, acknowledging the profound injustice committed by the state when innocent individuals are convicted and punished.[162] This process underscores that the court is not immune to error and that miscarriages of justice should not continue unchecked. It aligns with the overarching duty to ensure justice and maintain public trust in the judiciary's capacity to admit its fallibility.[163] Thus, the retrial emphasizes that the principle of finality is a tool for achieving justice, not an ultimate objective.[164]

However, justice systems are often reluctant to admit their mistakes.[165] In *The Maurizius Case*, the prosecutor-father dismisses his son's plea for a retrial:

DNA Evidence in State Courts, 47 ARIZ. L. REV. 655, 688–89 (2005); Michael Admirand & G. Ben Cohen, *The Fallibility of Finality*, 10 HARV. L. & POL'Y REV. ONLINE S53 (2016).

[158] Kuhlmann v. Wilson, 477 U.S. 436, 452–53 (1986); Teague v. Lane, 489 U.S. 288, 309 (1989).

[159] Bator, *supra* note 157, at 451–52; *see, e.g.*, Herrera v. Collins, 506 U.S. 390, 420 (1993) (O'Connor, J., concurring) ("Our society has a high degree of confidence in its criminal trials, in no small part because the Constitution offers unparalleled protections against convicting the innocent."); Sangero, *Safe Convictions*, *supra* note 16, at 379 ("It is most convenient for us to hold our criminal law enforcement system in high regard, to the point of calling it the 'criminal justice system.'").

[160] ROACH, *supra* note 1, at xxvii.

[161] Hamer, *supra* note 156, at 291–92.

[162] Andrew Chongseh Kim, *Beyond Finality: How Making Criminal Judgments Less Final Can Further the Interests of Finality*, 2013 UTAH L. REV. 561, 566 (2013). *See generally* David Horan, *The Innocence Commission: An Independent Review Board for Wrongful Convictions*, 20 N. ILL. U.L. REV. 91 (2000) (discussing the importance of increasing accessibility to posttrial review of convictions).

[163] Kim, *supra* note 162, at 589–90.

[164] Sangero, *Safety in Post-Conviction Proceedings*, *supra* note 155, at 784; *see also* Rachel E. Barkow & Mark Osler, *Designed to Fail: The President's Deference to the Department of Justice in Advancing Criminal Justice Reform*, 59 WM. & MARY L. REV. 387, 397–400 (2017) (discussing the resistance of prosecutors to implications of prior error, further demonstrating the importance of retrials).

[165] *See* Sangero, *Safety in Post-Conviction Proceedings*, *supra* note 155, at 774; Irene Oritseweyinmi Joe, *Learning from Mistakes*, 80 WASH. & LEE L. REV. 297, 328–29 (2023)

> We must be careful. We who bear the responsibility may not treat law and legal administration lightly. A procedure for reopening a case! Silly boy, you have no idea what that means. . . . Moreover, there are . . . things to be considered, deserving serious consideration; existences are at stake; the treasury would be put to enormous expense; the reputation of the court in question would be injured; the institution as such would be subjected to a destructive criticism which is sufficiently undermining the structure of society as it is. . . . Drop the idea that justice and the law are one and the same and must be so. They cannot be. That is beyond human and earthly possibility.[166]

The judicial system might decline a valid request for a retrial, fearing that vindicating a convicted individual could undermine its own legitimacy, as well as that of the prosecutor and judge responsible for the wrongful conviction.[167] Admitting a mistake is always challenging, especially when that error involves the conviction and imprisonment of an innocent person.[168]

Often, a retrial is granted only due to the introduction of new evidence or the uncovering of significant legal errors in the original trial proceedings.[169] In Canada, individuals who have been wrongfully convicted are typically exonerated based on the introduction of new evidence.[170]

In the United States, every state permits individuals who believe they have been wrongly convicted to seek a retrial based on newly discovered evidence.[171] Although many states previously set stringent time limits for filing such requests,[172] all now permit certain categories of

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(explaining the psychological barriers to admitting mistakes); *see, e.g.*, Myles Frederick McLellan, *Innocence Compensation: The Private, Public and Prerogative Remedies*, 45 OTTAWA L. REV. 59, 61 (2013); Luca Luparia Donati & Marco Pittiruti, *Post-Conviction Remedies in the Italian Criminal Justice System*, 13 ERASMUS L. REV. 63, 63 (2020).

[166] WASSERMANN, *supra* note 153, at 540–41.

[167] Daniel S. Medwed, *The Zeal Deal: Prosecutorial Resistance to Post-Conviction Claims of Innocence*, 84 B.U.L. REV. 125, 136 (2004).

[168] *Id.* at 138–139.

[169] *See* Mary Ellen Brennan, Note, *Interpreting the Phrase "Newly Discovered Evidence": May Previously Unavailable Exculpatory Testimony Serve as the Basis for a Motion for a New Trial Under Rule 33?*, 77 FORDHAM L. REV. 1095, 1104–06 (2008) (explaining standards for awarding retrials based on new evidence); Fed. R. Crim. P. 33(a) (noting that courts can "vacate any judgment and grant a new trial if the interest of justice so requires.").

[170] ROACH, *supra* note 1, at 233.

[171] Medwed, *supra* note 157, at 658–60.

[172] Herrera v. Collins, 506 U.S. 390, 409–11 (1993); Lissa Griffin, *The Correction of Wrongful Convictions: A Comparative Perspective*, 16 AM. U. INT'L L. REV. 1241, 1293–94 (2001); Brandon L. Garrett, *Claiming Innocence*, 92 MINN. L. REV. 1629, 1671–72 (2008).

convicted individuals (excepting, in some cases, those who pled guilty) to request a retrial based on DNA evidence without time constraints.[173] Additionally, several states have established Innocence Commissions to review claims of actual innocence and, when justified, recommend a retrial.[174] In the United Kingdom, The Criminal Cases Review Commission (CCRC) was created by the Criminal Appeal Act, 1995, and began its operations on April 1, 1997, to independently review alleged miscarriages of justice in criminal cases.[175]

In Canada, individuals seeking recourse for wrongful convictions must submit their applications to the federal Minister of Justice.[176] The minister holds the power to order a new trial or a new appeal in cases where it is deemed appropriate.[177] Unfortunately, under the current arrangement for the conviction review process in Canada, the Minister of Justice's review process typically spans several years.[178]

In Israel, historically, the presentation of new evidence was necessary to justify a retrial in favor of a convicted individual.[179] However, a 1996 amendment added a provision stipulating that a retrial could be ordered if there is a substantial fear that the conviction resulted in a miscarriage of justice.[180] The Supreme Court of Israel interpreted this provision as allowing the Court to assess the entirety of the criminal process.[181] Given the Basic Law: Human Dignity and Liberty and the commitment to safeguarding the rights of the accused, the Court determined that even a severe procedural error could be deemed a

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[173] Brandon L. Garrett, *Towards an International Right to Claim Innocence*, 105 CALIF. L. REV. 1173, 1182–83 (2017) [hereinafter *Towards an International Right*]. However, it is crucial to remember that many cases do not involve biological evidence. *See* Medwed, *supra* note 157, at 656.

[174] Garrett, *Judging Innocence*, *supra* note 148, at 127; *see also* David Wolitz, *Innocence Commissions and the Future of Post-Conviction Review*, 52 ARIZ. L. REV. 1027 (2010); Mary Kelly Tate, *Commissioning Innocence and Restoring Confidence: The North Carolina Innocence Inquiry Commission and the Missing Deliberative Citizen*, 64 ME. L. REV. 531 (2012).

[175] Patricia Braiden & Joan Brockman, *Remedying Wrongful Convictions Through Applications to the Minister of Justice Under Section 690 of the Criminal Code*, 17 WINDSOR Y.B. ACCESS JUST. 3, 30–31 (1999).

[176] ROACH, *supra* note 1, at 251.

[177] *Id.*

[178] Braiden & Brockman, *supra* note 175, at 31.

[179] *See*, *e.g.*, Retrial 6/80, Moshe v. State of Israel, 35(2) PD 166, Nevo Legal Database (Dec. 31, 1980) (Isr.); Retrial 2/81, Alkoby v. State of Israel, 35(3) PD 251, Nevo Legal Database (May 18, 1981) (Isr.).

[180] § 31(a)(4), Courts Law (consolidated version), 5744–1984 (Isr.), https://www.wipo.int/wipolex/en/legislation/details/15289.

[181] Retrial 8483/00, Der'i v. State of Israel, 57(4) PD 253, 264, Nevo Legal Database (May 25, 2003) (Isr.).

miscarriage of justice, justifying a retrial.[182] Thus, Israeli law now offers recourse for cases marred by significant procedural missteps, enabling the annulment of the verdict and a return to the initial phase, ensuring appropriate conduct of the proceedings.

As we have seen, in certain legal systems, the standard for ordering a retrial typically requires the demonstration of new evidence that was not available during the original trial, and which has the potential to significantly affect the outcome. However, the considerable harm inflicted by a wrongful conviction underscores the importance of maintaining flexible criteria in evaluating requests for ordering a retrial.

Moreover, Roach's book underscores the importance of allowing convicted individuals unrestricted access to post-conviction relief.[183]

Take, for instance, the Israeli case of Amos Baranes. Baranes was convicted in 1976 for the murder of Rachel Heller, and his appeal was later denied by the Israeli Supreme Court.[184] Baranes sought a retrial on four occasions.[185] He submitted his first motion approximately two years after his first conviction[186] and the second in 1984, after being released from prison in 1983 due to a presidential pardon. Responding to his second request, Justice Ben Porat not only noted the absence of new evidence that might alter the original trial's outcome but also asserted the certainty of Baranes's guilt.[187] She remarked:

> Regarding Baranes, it's vital to highlight that, despite his reduced sentence, he spent several years in actual imprisonment. It's hoped he can reintegrate into society without the conviction impeding him. He surely endured anguish and likely still grapples with remorse. I surmise the weight of his actions challenges him, to the extent that he has convinced himself it never transpired. The path forward might be seeking guidance from a specialist, and it would be regrettable if he didn't consider this option.[188]

Baranes's third request for a retrial was submitted in 1996, following an amendment to the Courts Law that allowed for retrials even without

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[182] Retrial 7929/96, Koozli v. State of Israel, 53(1) PD 529, 564, Nevo Legal Database (Feb. 16, 1999) (Isr.).

[183] ROACH, *supra* note 1, at xxxvi–xxxix.

[184] CrimA 127/76, Baranes v. State of Israel, 30(3) PD 507, Nevo Legal Database (July 6, 1976) (Isr.).

[185] Retrial 3032/99, Baranes v. State of Israel, 51(3) PD 354, Nevo Legal Database (Mar. 14, 2002) (Isr.).

[186] *Id.* at 361 (referencing the unpublished decision on the motion).

[187] Retrial 8/84, Baranes v. State of Israel, 39(1) PD 589, 603–04, Nevo Legal Database (Mar. 18, 1985) (Isr.).

[188] *Id.* at 604.

new evidence.[189] Despite this change, his request was denied.[190] However, in 2002, Justice Dalia Dorner reversed Baranes's conviction. She granted his fourth motion for a retrial, citing severe procedural errors in his investigation and trial, including false testimony by police officers.[191] The prosecution opted not to file a new indictment. While Baranes received compensation, the court emphasized that the presumption of innocence remained intact in his case after the reversal of his conviction.[192] Sadly, Baranes passed away a year after receiving the compensation.[193]

Justice Dalia Dorner, instrumental in Baranes's exoneration, recalled an incident after his retrial was ordered. She spoke about a call she received from Israeli Supreme Court Justice Haim Cohen.[194] Cohen initially dismissed Baranes's appeal but subsequently acknowledged his mistake, even visiting Baranes in prison to encourage him to apply for a presidential pardon.[195] Justice Dorner stated:

> On March 14, 2002, after ordering Baranes's retrial, I returned home to learn that Justice Cohen wanted to speak with me. When I called him, his voice was shaky, and he sounded frail. Yet, I vividly recall his words. He thanked me for rectifying his mistake, wishing me a long life. I was deeply moved. I later found out that this call was the last action he took before passing away.[196]

A case like Baranes underscores the principle that justice should be timeless, with Alfred Dreyfus serving as a symbol of this enduring concept. Dreyfus, though convicted twice, eventually had his honor and rank restored in a full military ceremony in 1906.[197] Had there been

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[189] Retrial 3032/99, Baranes v. State of Israel, 51(3) PD 354, Nevo Legal Database (Mar. 14, 2002) (Isr.).

[190] Retrial 6731/96, Baranes v. State of Israel, 51(4) PD 241, 258, Nevo Legal Database (Aug. 12, 1997) (Isr.).

[191] Retrial 3032/99, Baranes v. State of Israel, 51(3) PD 354, 354–55, Nevo Legal Database (Mar. 14, 2002) (Isr.).

[192] CrimC (DC Nz) 212/02, Baranes v. State of Israel, 98, Nevo Legal Database (June 16, 2003) (Isr.); *see* CivC (DC TA) 2001-04, Baranes v. Marcus, 86, 89–90, Nevo Legal Database (Aug. 4, 2010) (Isr.).

[193] Josh Breiner, *Mentally Ill Man Jailed After Confessing to Female Soldier's 1974 Murder*, HAARETZ (May 14, 2019), https://www.haaretz.com/israel-news/2019-05-14/ty-article/.premium/mentally-ill-man-jailed-after-confessing-to-female-soldiers-1974-murder/0000017f-f066-d223-a97f-fdff78650000.

[194] Chen Ma'anit, *Dorner Vechehen Hatzilu et Kvod Hama'arkat* [*Dorner and Cohen Saved the System's Honor*], GLOBES (Aug. 9, 2010), https://www.globes.co.il/news/article.aspx?did=1000580360 (Isr.).

[195] *Id.*

[196] *Id.*

[197] Steven Lubet, *Why the Dreyfus Affair Does and Doesn't Matter*, 13 GREEN BAG 2D 329, 329–35 (2010).

restrictions against multiple retrial requests, it is troubling to consider the extended injustice Dreyfus would have faced. It is no surprise that scholars advocate for an individual's global right to assert their innocence and have their case reviewed.[198]

However, this global right faces significant obstacles. Thus, in both Canada and the United States, appellate court judges often dismiss identified legal errors as inconsequential, assuming the defendant would have been convicted regardless.[199] The DNA exoneration cases expose significant shortcomings in the appellate system's ability to detect and protect the innocence of individuals, raising concerns about its effectiveness as a fail-safe mechanism in the pursuit of justice and emphasizing the necessity of investigating and implementing potential improvements.[200] The primary purpose of the appeal process is to correct legal or judicial errors rather than addressing factual inaccuracies.[201] Appellate court judges hold the belief that their role is constrained when it comes to factual determinations concerning guilt and innocence, opting to defer to the jury or the trial courts, which witnessed and heard the testimonies.[202] They often prioritize considerations such as judicial economy and the preservation of the finality of judgments, leading them to focus primarily on procedural errors in their reviews.[203] However, the experience of wrongful convictions underscores the importance of a more critical examination of these assumptions.[204] Many appeals address factual issues.[205] Many convictions arise from the belief in the wrong person, as opposed to procedural errors.[206] Factual reviews conducted during direct appeals can be instrumental therefore in rectifying miscarriages of justice.[207] However, the appellate process often falls short in efficiently securing the exoneration of individuals wrongfully convicted.[208]

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[198] *See, e.g.*, Garrett, *Towards an International Right*, *supra* note 173, at 1217–18.

[199] ROACH, *supra* note 1, at 66–67; *see also* Garrett, *Innocence*, *supra* note 8, at 59–62.

[200] Keith A. Findley, *Innocence Protection in the Appellate Process*, 93 MARQ. L. REV. 591, 601 (2009) [hereinafter *Innocence Protection*].

[201] Sangero, *Safety in Post-Conviction Proceedings*, *supra* note 155, at 785.

[202] ROACH, *supra* note 1, at 70–71, 120, 122, 130 (noting that the Canadian appellate courts remain firmly tethered to the precedent set by the Supreme Court's landmark ruling in Yebes v. Canada from 1987. This pivotal decision has served as a cornerstone of legal jurisprudence, despite Yebes's personal exoneration in late 2020); Findley, *Innocence Protection*, *supra* note 200, at 601–02.

[203] Horan, *supra* note 162, at 118.

[204] ROACH, *supra* note 1, at 67.

[205] Michelle Biddulph & William Lane, *The Judgments of the Court of Appeal for Saskatchewan, 2021 and 2022*, 86 SASK. L. REV. 145, 155 (2023); Garrett, *Judging Innocence*, *supra* note 148, at 61.

[206] Tony G. Poveda, *Estimating Wrongful Convictions*, 18 JUST. Q. 689, 690–92 (2001).

[207] Garrett, *Judging Innocence*, *supra* note 148, at 126–27.

[208] Sangero, *Safety in Post-Conviction Proceedings*, *supra* note 155, at 785–86.

De lege feranda, appellate courts are expected to carefully review convictions and be more willing to overturn them if they find errors or injustices.[209] If the appeals courts were effective in correcting factual errors, a great deal of mental anguish would have been spared for the wrongfully convicted, who, after the rejection of their appeals, need to continue a lengthy journey and submit a request to the Minister of Justice for a new trial or a new appeal.[210] Due to the significant burden placed on applicants, often individuals who are incarcerated, it is unsurprising that the Minister of Justice receives a limited number of applications.[211] The main obstacle to applying is the arduous ministerial review process, which demands an exceptional amount of effort from the applicant.[212] Some applicants had to endure an almost six-year waiting period for a decision from the Minister of Justice.[213]

Roach concludes that "[i]t is much more difficult to correct a wrongful conviction than to cause one. Correcting a wrongful conviction is like climbing a very high mountain."[214] Unfortunately, many defendants lack the resources needed to obtain post-conviction assistance.[215] Wrongfully convicted individuals often find themselves in dire financial straits, primarily because of the exorbitant expenditures incurred during their legal proceedings and appeals, all the time being devoid of any means of financial support while incarcerated.[216]To ensure that wrongfully convicted individuals can ultimately achieve exoneration, the criminal justice system should recognize the right to free legal representation during post-conviction proceedings. This right aims to rectify the imbalance between the prosecution and those who have been wrongly convicted.[217]

Roach justifiably suggests that an independent commission completely detached from the criminal justice system should be established to thoroughly investigate all instances of miscarriages of justice.[218] This commission should possess the authority to mandate a new trial or a new appeal.[219] It should have the power to refer cases back to

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[209] ROACH, *supra* note 1, at 269–70.

[210] *Id.* at 257.

[211] *Id.* at 254.

[212] *Id.*

[213] *Id.* at 255.

[214] ROACH, *supra* note 1, at 257; *see also* Findley, *Reducing Error*, *supra* note 7, at 1277.

[215] Jon B. Gould & Richard A. Leo, *The Path to Exoneration*, 79 ALB. L. REV. 325, 359 (2016).

[216] Sangero, *Safety in Post-Conviction Proceedings*, *supra* note 155, at 774.

[217] Ken Strutin, *Litigating from the Prison of the Mind: A Cognitive Right to Post-Conviction Counsel*, 14 CARDOZO PUB. L. POL'Y & ETHICS J. 343, 419 (2016).

[218] ROACH, *supra* note 1, at 267–69; s*ee also* Horan, *supra* note 162, at 160; Hamer, *supra* note 156, at 271.

[219] ROACH, *supra* note 1, at 270.

the courts if it determines that there is a possibility of a miscarriage of justice, a threshold that is less stringent than the current requirement for the Minister of Justice to ascertain a likely miscarriage of justice.[220]

Within the context of creating a safe criminal justice system, such a commission should also conduct a comprehensive systemic review to reduce the likelihood of future wrongful convictions.[221]

No legal system should ignore or take no action when faced with a wrongful conviction.[222] The concept of finality of verdicts in criminal law has been overly emphasized and should be reconsidered to enable a more thorough examination of claims of actual innocence.[223] In most cases, individuals who have been wrongfully convicted tend to prefer exoneration rather than seeking pardons, as pardons may carry an implication of guilt or wrongdoing on their part.[224] While a granting pardon is a matter of grace,[225] justice requires rectifying the miscarriage of justice. A wrongfully convicted individual has a right to claim innocence, alongside a moral obligation imposed on the state to eliminate the error.[226] The right to claim innocence is a constitutional right that stems from the principle of human dignity.

IV. PROVIDING COMPENSATION FOR WRONGFUL CONVICTIONS

The wrongfully convicted and incarcerated face during and after their release psychological and social challenges, including changes in personality, the prevalence of post-traumatic stress disorder and depressive disorders, and difficulties in psychological and social adjustment, especially in close relationships.[227] Prisoners who are aware that they are wrongfully incarcerated for a crime they did not commit can

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[220] *Id.* at 269.

[221] *See id.* at 272.

[222] Vivian Berger, *Herrera v. Collins: The Gateway of Innocence for Death-Sentenced Prisoners Leads Nowhere*, 35 WM. & MARY L. REV. 943, 953–55 (1994); Chouleng Soun, *The Rising Tide in Wrongful Convictions: The Shortcomings of Brady and the Need for Additional Safeguards*, 56 NEW ENG. L. REV. 221, 250 (2022).

[223] Sangero, *Safety in Post-Conviction Proceedings*, *supra* note 155, at 790.

[224] ROACH, *supra* note 1, at 245.

[225] *See* Samuel T. Morison, *The Politics of Grace: On the Moral Justification of Executive Clemency*, 9 BUFF. CRIM. L. REV. 1, 135 (2005).

[226] Garrett, *Towards an International Right*, *supra* note 173, at 1217–18 (discussing the entitlement to relief for the wrongfully convicted); Sangero, *Safe Convictions*, *supra* note 16, at 383 (imposing an obligation on the state to correct error).

[227] Adrian T. Grounds, *Understanding the Effects of Wrongful Imprisonment*, 32 CRIME & JUST. 1, 1–2 (2005). For a collection of poems, art, and other first-hand retellings of the injustices wrongfully convicted defendants experience, see also *Expressions of the Wrongfully Convicted*, 2 FREEDOM CTR. J. 56 (2010).

experience a trauma similar to what combat veterans and individuals in high-impact, high-stress life events may go through.[228]

In the 16th century, Rabbi Isaac Adarbi of Salonica encountered a case involving a man named Reuven.[229] Accused of theft in Ioannina, Reuven spent thirty-five days in chains, and his assets were seized.[230] Despite compelling evidence, Reuven's innocence later came to light. When Reuven sought the return of his seized property, the sages of Ioannina sought guidance from Rabbi Isaac Adarbi.[231] The Rabbi firmly asserted that not only should Reuven's belongings be promptly returned, but he should also be justly compensated for all the losses he had endured.[232] The Rabbi's clear reply is also in alignment with the public sentiment, as evidenced by a poll indicating that 90 percent of Canadians believe that individuals wrongfully convicted should receive compensation.[233]

Certainly, the damage to one's freedom is irreversible, and no amount of compensation can fully restore the prior state of affairs. Nevertheless, the inherent difficulty of fully compensating for the loss of freedom should not exempt the state from its duty to rectify the injustices experienced by exonerees.[234]

Yet, in numerous countries, including Canada, the entitlement of wrongfully convicted individuals to compensation is not a given.[235] Regardless of the significant financial and personal hardships endured due to unjust incarceration, the prospects for exonerees to secure

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[228] Vania M. Smith, *Wrongful Incarceration Causes Substantial Bodily Harm: Why Lawyers Should Be Allowed to Breach Confidentiality to Help Exonerate the Innocent*, 69 CATH. U.L. REV. 769, 781 (2020).

[229] Shoshana-Rose Marzel & Rinat Kitai-Sangero, *Justice and Prejudice in Émile Zola's* Truth, L., CULTURE, & HUMANS. 20 (July 27, 2024), https://doi.org/10.1177/17438721241260872.

[230] *Id.*

[231] *Id.*

[232] *Id.*

[233] ROACH, *supra* note 1, at 277.

[234] *See* Meggan Smith, *Have We Abandoned the Innocent? Society's Debt to the Wrongly Convicted*, AM. U. CRIM. L. BRIEF, Spring 2007, at 3, 12.

[235] Campbell, *supra* note 23, at 268–70.

compensation remain limited.[236] Furthermore, in many cases the compensation granted does not truly account for the harm caused.[237]

Despite the harms of imprisonment, there is no presumption that mere incarceration entitles one to compensation or that the state inherently owes restitution for depriving an innocent person of their freedom.[238] Some even view the deprivation of liberty of innocent people as an inevitable outcome of the operation of the criminal justice system itself.[239]

Moreover, exoneration alone is not sufficient to secure compensation. Thus, in both Canada[240] and the United States,[241] exonerees are required to substantiate their factual innocence to be eligible for compensation. In

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[236] *See* Lauren C. Boucher, *Advancing the Argument in Favor of State Compensation for the Erroneously Convicted and Wrongfully Incarcerated*, 56 CATH. U. L. REV. 1069, 1082–88 (2007); Crim. Just. Section, Am. Bar Ass'n, *Achieving Justice: Freeing the Innocent, Convicting the Guilty - Report of the ABA Criminal Justice Section's Ad Hoc Innocence Committee to Ensure the Integrity of the Criminal Process*, 37 SW. U. L. REV. 763, 893–97 (2008); Adam I. Kaplan, *The Case for Comparative Fault in Compensating the Wrongfully Convicted*, 56 UCLA L. REV. 227, 232–36 (2008); Christopher Sherrin, *Declarations of Innocence*, QUEEN'S L.J. 437, 442–48, 463, 465–67 (2010); Jeffrey S. Gutman, *Are Federal Exonerees Paid?: Lessons for the Drafting and Interpretation of Wrongful Conviction Compensation Statutes*, 69 CLEV. ST. L. REV. 219, 281 (2021); Mackenzie Philbrick, Note, *Budgeting for Exoneree Compensation: Indemnifying Exonerees Not Officials to Deter Future Wrongful Convictions*, 50 FORDHAM URB. L. J. 797, 826 (2023).

[237] Nick Taylor, *Compensating the Wrongfully Convicted*, 67 J. CRIM. L. 220, 232 (2003); Jason Costa, *Alone in the World: The United States' Failure to Observe the International Human Right to Compensation for Wrongful Conviction*, 19 EMORY INT'L L. REV. 1615, 1639–40 (2005); Howard S. Master, Note, *Revisiting the Takings-Based Argument for Compensating the Wrongfully Convicted*, 60 N.Y.U. ANN. SURV. AM. L. 97, 98, 104 (2004); *see also* Shawn Armbrust, Note, *When Money Isn't Enough: The Case for Holistic Compensation of the Wrongfully Convicted*, 41 AM. CRIM. L. REV. 157, 158 (2004) (explaining that the fifty dollars exoneree, Ray Milton Krone, received upon being released from prison is not sufficient to compensate him for the time he spent in prison, the psychological effects accompanying imprisonment, and the property he lost due to his imprisonment); Philbrick, *supra* note 236, at 826–27 (asserting that despite facing the same struggles upon re-entry to society, exonerees are often not entitled to the re-entry services provided to actual offenders released on parole or probation).

[238] Rachel Dioso-Villa, *Without Legal Obligation: Compensating the Wrongfully Convicted in Australia*, 75 ALB. L. REV. 1329, 1362 (2012) (regarding Australia); Myles Frederick McLellan, *Innocence Compensation: A Comparative Look at the American and Canadian Approaches*, 49 CRIM. L. BULL. 218, 219 (2013).

[239] Uphoff, *supra* note 105, at 826; McLellan, *supra* note 238, at 219.

[240] ROACH, *supra* note 1, at 278; Kent Roach, *Wrongful Convictions: Adversarial and Inquisitorial Themes*, 35 N.C.J. INT'L L. & COM. REG. 387, 343 (2010); Kent Roach, *Wrongful Convictions in Canada*, 80 U. CIN. L. REV. 1465, 1470 (2012); Campbell, *supra* note 23, at 270–71.

[241] McLellan, *supra* note 238, at 349, 353; Deborah Mostaghel, *Wrongfully Incarcerated, Randomly Compensated—How to Fund Wrongful-Conviction Compensation Statutes*, 44 IND. L. REV. 503, 518 (2011); Zina Makar, *Unnecessary Incarceration*, 98 OR. L. REV. 607, 640 (2020); Gutman, *supra* note 238, at 283.

many U.S. states, exonerees must establish their innocence by a preponderance of the evidence or by clear and convincing evidence. [242] In the United Kingdom, exonerees are required to prove that the fresh evidence presented demonstrates beyond reasonable doubt that a miscarriage of justice occurred in their case to qualify for compensation.[243] This can be a challenging standard to meet. Recently, In the case of *Nealon and Hallam v. The United Kingdom*, the majority of the European Court of Human Rights ruled that the presumption of innocence does not guarantee a right to compensation for a miscarriage of justice following the quashing of a criminal conviction.[244] The Court held that it is within the respondent state's discretion to define "miscarriage of justice" and establish eligibility criteria for compensation, as long as the refusal of compensation does not impute criminal guilt to the unsuccessful applicant.[245] The decision emphasized that the refusal of compensation in the applicants' cases did not imply their guilt, thus maintaining their presumption of innocence.[246]

However, the dissenting judges argued that Section 133(1ZA) of the Criminal Justice Act 1988, which requires that new or newly discovered facts must show beyond reasonable doubt that the applicant did not commit the offense to receive compensation, infringes upon the presumption of innocence.[247] They contended that this requirement effectively forces applicants to prove their innocence, thereby undermining the acquittal and casting doubt on their innocence.[248]

Indeed, compensation eligibility for acquitted or exonerated individuals should not depend on the type of acquittal, as lingering suspicions may still exist even after an acquittal based on reasonable doubt.[249] Undoubtedly, an acquittal should not be misconstrued as a factual innocence. However, the core principle is that every person is presumed innocent until proven guilty.[250] The onus is on the state to prove guilt; the accused is not burdened with establishing innocence.[251] Hence,

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[242] Keith A. Findley, *Defining Innocence*, 74 ALB. L. REV. 1157, 1199–1200 (2011); Kahn, *supra* note 23, at 125; Philbrick, *supra* note 236, at 825.

[243] Hallam v. Sec'y of State for Just. [2019] UKSC 2 [17] (appeal taken from Eng.).

[244] Nealon v. United Kingdom, App. Nos. 32483/19 & 35049/19, ¶ 172 (June 11, 2024), https://hudoc.echr.coe.int/eng?i=001-234468.

[245] *Id.*

[246] *Id.* ¶ 180.

[247] *Id.* ¶ 5 (dissenting opinion).

[248] *Id.*

[249] Keith S. Rosenn, *Compensating the Innocent Accused*, 37 OHIO ST. L.J. 705, 716–17 (1976); Roach, *Wrongful Convictions*, *supra* note 240, at 1470–71.

[250] *See, e.g.*, Kenneth Pennington, *Innocent Until Proven Guilty: The Origins of a Legal Maxim*, 63 JURIST 106, 106 (2003).

[251] Hannah Quirk, *Identifying Miscarriages of Justice: Why Innocence in the UK is Not the Answer*, 70 MOD. L. REV. 759, 767 (2007).

equating a reasonable doubt-based acquittal with potential guilt undermines this presumption.

Indeed, an acquittal based on reasonable doubt should be considered a full exoneration. The court's primary role should be to assess whether the prosecution has met its burden of proof, rather than issuing declarations of absolute innocence. Often, actual innocence remains unknowable.[252] Therefore, it is no wonder that courts consistently refrain from making declarations of factual innocence.[253]

Furthermore, Roach recommends that a statutory scheme should establish a fundamental framework for prompt compensation without requiring proof of fault by law enforcement authorities.[254] His recommendation is commendable. Indeed, the wrongfully convicted were harmed due to the exercise of the state's enforcement powers against them.[255] The damage caused to the individual is not dependent on the fault of the law enforcement authorities. The state holds a moral duty to compensate the wrongfully convicted, given that its actions were leading to miscarriages of justice and harm.[256] Exonerees are individuals who have triumphed over the injustices inflicted upon them by the state or, as Philbrick puts it, they are "survivors of state harm."[257] The state has deeper pockets than the individual and a much greater ability to bear the cost of the damage caused to the wrongfully convicted.[258] Moreover, the state is in a better position to prevent wrongful convictions.[259] Providing compensation would significantly aid wrongfully convicted individuals in reintegrating into society after their release from prison, as many of them face hardships when rejoining society, having suffered the loss of homes,

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[252] Mosteller, *supra* note 7, at 933.

[253] *See* ROACH, *supra* note 1, at 278; Sherrin, *supra* note 236, at 438–39 (criticizing the refusal of Canadian courts to declare the factual innocence of certain defendants and proposing that declaring innocence is not only a commendable objective but also entirely achievable); Omri Rozen, *Wrongly Imprisoned, Released as a Pauper: Canada's Ineffective Approach to Innocence Compensation and Avenues for Reform*, W.J. LEGAL STUDS., July 2023, at 1, 12–13; *see also* Russell L. Christopher, *Rights Should Not Vary Based on Offense Severity*, 55 WAKE FOREST L. REV. 985, 1024 (2020) (stating that the percentage of acquittals resulting from complete exoneration or when the factfinder determines that the defendant was factually innocent may be exceedingly low).

[254] ROACH, *supra* note 1, at 288.

[255] Stuart Beresford, *Redressing the Wrongs of the International Justice System: Compensation for Persons Erroneously Detained, Prosecuted, or Convicted by the Ad Hoc Tribunals*, 96 AM. J. INT'L L. 628, 633 (2002).

[256] Bernhard, *supra* note 150, at 93; Armbrust, *supra* note 237, at 160; Elina Tetelbaum, *Remedying a Lose-Lose Situation: How "No Win, No Fee" Can Incentivize Post-Conviction Relief for the Wrongly Convicted*, 9 CONN. PUB. INT. L.J. 301, 327–29 (2010); *see* Mostaghel, *supra* note 241, at 531–32.

[257] Philbrick, *supra* note 236, at 827.

[258] Mostaghel, *supra* note 241, at 531.

[259] Boucher, *supra* note 236, at 1087-88.

employment, savings, and even their families during their time behind bars.[260]

If the state cannot seize property without compensation,[261] the graver act of infringing on one's liberty certainly demands restitution. The state cannot offer more extensive protection against the confiscation of private property than it does for the infringement upon individual liberties.[262]

Moreover, awarding compensation can also help diminish the societal stigma faced by exonerees and separate the individual from the incarceration stigma,[263] as unjust imprisonment can still negatively impact one's reputation.[264] Paying compensation by the state for the harm caused by the wrongful conviction is necessary for taking responsibility for the miscarriage of justice and reducing the stigma associated with conviction and incarceration.[265] Ultimately, compensation acknowledges the injustice inflicted upon the wrongfully convicted. Additionally, admitting error and assuming responsibility through compensation can contribute to the restoration or enhancement of public respect for the system.[266]

Therefore, it is appropriate that the cost of the mistake should be borne by the public as a whole, rather than the individual, and that the state should provide compensation to exonerees. Moreover, as Armbrust suggests, the state bears a legal and moral duty to adopt a holistic approach to compensation that encompasses financial compensation, job training, education resources, and medical and psychological care to help exonerees reintegrate into society and address the physiological, psychological, and financial challenges they encounter upon release.[267]

Frequently, however, indemnification statutes bar the possibility of recovery if the defendant's actions significantly contributed to their conviction, such as through false confessions, perjury, or neglecting to present exonerating evidence.[268] Exonerees who entered guilty pleas will not usually be eligible for compensation because their guilty pleas played

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[260] Ashley H. Wisneski, *'That's Just Not Right': Monetary Compensation for the Wrongly Convicted in Massachusetts*, 88 MASS. L. REV. 138, 149 (2004); Lily Goldberg et al., *Obstacles and Barriers After Exoneration*, 83 ALB. L. REV. 829, 845 (2020).

[261] U.S. CONST. amend. V; *see* Maureen E. Brady, *The Damagings Clauses*, 104 VA. L. REV. 341, 344 (2018).

[262] Kaplan, *supra* note 236, at 246.

[263] Kaiser, *supra* note 8, at 102; Beresford, *supra* note 255, at 634–35.

[264] Kahn, *supra* note 23, at 130; Makar, *supra* note 241, at 642 (stating that "[i]n our society, the stigma of an arrest often overshadows the presumption of innocence.").

[265] Alanna Trivelli, *Compensating the Wrongfully Convicted: A Proposal to Make Victims of Wrongful Incarceration Whole Again*, 19 RICH. J.L. & PUB. INT. 257, 269 (2016).

[266] Kaiser, *supra* note 8, at 102.

[267] Armbrust, *supra* note 237, at 160.

[268] Crim. Just. Section, Am. Bar Ass'n, *supra* note 236, at 898; Sherrin, *supra* note 236, at 472; Philbrick, *supra* note 236, at 800–01.

a role in their wrongful convictions.[269] Roach extensively discussed, as remembered, the peril associated with plea bargains leading to the conviction of innocent individuals.[270] Those who are wrongfully convicted within the context of plea bargains suffer doubly—first from their wrongful conviction and then from the obstacles they face in receiving compensation following exoneration.

However, as a matter of policy, no recognition should be attributed to a confession obtained under conditions of detention or in response to investigative tactics, considering it as a contribution by the defendant to their own conviction. Similarly, no acknowledgment should be granted to a plea within the plea-bargaining framework as such a contribution, given the imperative to opt for the lesser of two evils: the risk of a wrongful conviction along with a severe penalty, or an unquestionable wrongful conviction coupled with a significantly lesser penalty.[271]

In Canada, less than half of those on the Canadian wrongful conviction registry receive compensation, in a very slow process that imposes unjust and formidable hardships on the wrongfully convicted seeking the compensation they deserve.[272] Moreover, the wrongfully convicted who sue the government for compensation not only may fail to receive compensation but may face the potential burden of covering the government's legal expenses if their lawsuit is unsuccessful.[273] Jamie Nelson stands as a regrettable example of an exoneree who did not receive any compensation for his wrongful conviction.[274] Nelson endured a distressing three years behind bars because of false testimony in a sexual assault case and initiated a lawsuit to seek redress for the injustice he had endured.[275] However, the weight of accumulating legal fees, totaling $50,000, eventually forced him to reluctantly withdraw from the legal fight.[276] Undoubtedly, compensation claims should be affordable because exonerees often lack financial resources upon release. If an innocent person cannot pursue compensation due to financial constraints, it defeats the purpose of the statute.[277]

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[269] ROACH, *supra* note 1, at 49; Philbrick, *supra* note 236, at 803–04.
[270] ROACH, *supra* note 1, at 3.
[271] *See* Philbrick, *supra* note 236, at 830–31.
[272] ROACH, *supra* note 1, at 289.
[273] *Id.* at 285.
[274] *Id.* at 112–13.
[275] *Id.*
[276] *Id.* at 113.
[277] Trivelli, *supra* note 265, at 273–74.

V. CONCLUSION

We often find it convenient to idealize and trust the criminal justice system, even when doubts arise, as we tend to suppress such uncertainties and maintain our faith in its proper functioning.[278] Roach, among other scholars, fight to shake this faith and shed light on the miscarriage of justice that the state causes by wrongful convictions.

Indeed, wrongful conviction is a significant problem afflicting Canada and other countries. An exoneree can never reclaim the time lost to wrongful imprisonment, which is marked by immeasurable suffering. Nevertheless, this should not deter us from making efforts to alleviate the aftermath of their wrongful incarceration. While complete restoration may remain unattainable, it is crucial to actively pursue their release from prison and offer financial compensation and other vital services as significant, albeit incomplete, steps towards helping them reintegrate into society and redressing the injustices they have suffered.

The pathways to exoneration and compensation are riddled with intricate legal and procedural hurdles. David Milgaard, wrongfully convicted in 1969 for the assault and death of Saskatoon nursing student Gail Miller, endured 23 years in prison before being exonerated.[279] Following his release, he dedicated his life to assisting individuals in their arduous journeys to correct the injustices they had suffered.[280] His story serves as an inspiration to all who advocate for justice on behalf of the wrongfully convicted, urging them to persevere in their fight. As previously detailed, Amos Baranes, a renowned Israeli exoneree similar to David Milgaard in Canada, fought an enduring battle to clear his name following a wrongful murder conviction. The monument erected by the municipality of Acre in Israel in 2013, commemorating Amos Baranes, a resident of the town, bearing the poignant inscription "Justice for all," serves as a symbol of the state's responsibility for rectifying the injustices it has inflicted.[281]

Regrettably, Roach's book recounts many heart-wrenching stories of the ordeals faced by those who have been wrongfully convicted on their lengthy path to exoneration, with many unable to reach that ultimate resolution.

A significant portion of the population tends to perceive suspects, defendants, and especially those who have been convicted as "outsiders" and potential threats, often displaying a lack of concern for their rights, seemingly unrelated to their own lives. Wrongful convictions indeed

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[278] Sangero, *Safe Convictions*, *supra* note 16, at 379.
[279] ROACH, *supra* note 1, at 298–302.
[280] *Id.*
[281] Marzel & Kitai-Sangero, *supra* note 229, at 22.

disproportionately impact indigenous and marginalized individuals.[282] Kent Roach's book serves as a catalyst for readers to break free from their indifference in the face of the profound injustices suffered by innocent individuals who have been wrongfully convicted. In addition to embracing the stories of the wrongfully convicted, Roach's book illustrates that wrongful convictions can happen to anyone who finds themselves in the wrong place at the wrong time.[283]

Thus, Ron Dalton, a highly accomplished bank manager, found himself entangled in a tragic twist of fate when he was wrongfully convicted of his wife's murder following her untimely death due to a choking incident involving a piece of cereal. For eight grueling years, Ron endured the harsh confines of prison until the truth emerged, leading to his eventual exoneration.[284] He currently holds the position of co-president at Innocence Canada.[285] Even if such an ordeal has not personally affected us or our loved ones, Roach's book illustrates that nobody is immune from wrongful conviction.

Kent Roach's book underscores the crucial notion that the state is entrusted with both a legal and moral responsibility: first, to proactively avert errors; second, to acknowledge and rectify any errors that inevitably arise; and third, to provide compensation to those wrongfully convicted individuals who have endured the injustices resulting from such miscarriages of justice.[286] His pessimistic stance on the ability of the legal system to achieve these goals stems from his many years of experience as an academic researcher and as an attorney. However, one should not adopt this pessimistic view. As the legal system has improved since the witch trials, ongoing improvements can be hoped for. Despite the author's pessimistic stance, his book, which emotionally depicts the suffering of the wrongfully convicted and offers solutions to reduce the phenomenon of wrongful convictions, is an important milestone in creating a safer and more open criminal justice system that is willing to acknowledge its mistakes and correct them.

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[282] ROACH, *supra* note 1, at 152; *see also* Kyle McCleery, *"Resort to the Easy Answer":* Gladue *and the Treatment of Indigenous NCRMD Accused by the British Colombia Review Board*, 54 U.B.C.L. REV. 151, 151–52 (2021).

[283] *See* ROACH, *supra* note 1, at 67–72.

[284] *Id*. at 248.

[285] *Id*. at 249.

[286] *Id*. at xxxvi–xxxix.