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Framing DNA: Social Movement Theory And The Foundations Of The Innocence Movement

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Abstract

The “innocence movement” has often been mentioned, but rarely explored in depth. In particular, scholars have yet to study the beginning of the movement thoroughly. This article explores the early history of the innocence movement, referred to as the “foundations” of the movement, suggesting that the common focus solely on DNA as the source of the movement is an overly narrow historical focus. Based on archival research and interviews with key movement participants, this article draws on social movement theory to better understand the roots of the innocence movement, including its organizational foundation, early leadership, and the identification of the “problem” of wrongful conviction as a cause worthy of collective action. These three developments re-framed DNA as a tool to seek justice through post-conviction exonerations, thus creating the foundation on which the innocence movement was built.

Introduction

Over the past few decades, the American criminal justice system has been transformed by an old phenomenon, newly discovered. Wrongful convictions—the convictions of people who are factually innocent—have occurred in the United States for at least 200 years. It was not until recently, however, that such errors generated widespread concern and coalesced into an organized reform effort. This so-called “innocence

movement”—the focus of this edited volume—has emerged in recent years to free the innocent, assist them in reentry, and reform the criminal justice system to prevent future injustices.

The goal of this article is to examine the foundations of this modern phenomenon, analyzing innocence as a social movement. I conducted interviews with key members of the innocence community, as well as archival research, to further develop our understanding of the movement’s history.¹ I argue that coverage to this point has been limited, focusing on DNA as the sole cause of the innocence movement. Although DNA has been vital to the movement, I suggest that its framing as a tool to seek justice through exoneration is what allowed it to drive the innocence movement. That framing was due, in large part, to the foundations that were laid in the decade prior to the first DNA exonerations in the United States. In particular, I focus on three foundational building blocks—an organizational foundation, the early emergence of movement leaders, and the understanding of wrongful convictions as a systemic problem—that allowed DNA to be re-framed in such a way as to serve as the motivator behind the innocence movement.

I begin with a general description of the innocence movement. I then discuss the limitations in our current understanding of the movement’s history, provide a brief chronology of its beginnings, and use perspectives from social movement research to analyze the foundations of the movement.

The Innocence Revelation

Over the last 30 years, more than 1,800 people have been exonerated in the United States; National Registry of Exonerations (NRE) cases show that in recent years, exonerations have occurred at a rate of more than two per week.² There is now an organized reform effort, led by the Innocence Network, an affiliation of approximately 70 organizations in the United States and abroad that work to free innocents from prison, assist them in their return to society, and reform the criminal justice system. Exonerees are also involved in the movement, forming their own organizations and advocating for positive change in the justice system.

The innocence reform agenda has had some success at all levels. At the federal level, the 2004 *Innocence Protection Act* provided standards for DNA testing for potentially innocent prisoners, quality defense in capital cases, and increased federal compensation for the exonerated. In 2015, Congress approved the *Wrongful Convictions Tax Relief Act*, which stipulates that compensation awards and civil suits won by exonerees are exempt from taxes. In addition, more than 35 states have addressed at least one major contributing factor to wrongful convictions or established commissions to study errors and propose reforms (Norris, Bonventre, Redlich, & Acker, 2010/2011), and 30 now have compensation statutes to provide monetary and other assistance to exonerees after release (see Norris, 2012). Finally, at the local level, a number of police agencies now record interrogations and have altered their eyewitness practices to better conform to scientific best practices (e.g., Sullivan, 2016), and several District Attorneys’ offices have established Conviction Integrity Units to review potentially questionable convictions (e.g., Emily, 2010).

Innocence has also permeated mainstream culture through the news media, books, movies, television shows, documentaries, and podcasts, including the recent hits *Serial* and *Making a Murderer*. The public is now more aware of wrongful convictions than ever, and some scholars suggest that it is partially responsible for the decreased support for and use of capital punishment (e.g., Baumgartner, De Boef, & Boydston, 2008).

Together, the developments described above make up the innocence movement, which has become such a force that Findley (2014, p. 3) describes it as “the most dramatic development in the criminal justice world since the Warren Court’s due process revolution of the 1960s.” It has been dubbed the “civil rights movement of the twenty-first century” (Medwed, 2008, p. 1550) and the “innocence revolution” (Marshall, 2004).

Clearly, the meaning of this innocence movement goes beyond individual exonerations and policy changes. It is marked by a fundamental acknowledgment that the criminal justice system makes mistakes, and that we can learn from those mistakes. In other words, one major success of the movement is in driving this change in belief from unwavering confidence in the justice system toward the acceptance that it errs and needs improving. Therefore, the innocence movement is not so much a revolution, but a *revelation*; it is an understanding that errors happen and an ideal about how the system can and should function.

This is a remarkable shift. Despite the long history of wrongful convictions in the United States, which dates back nearly 200 years,³ such errors were generally written off as exceptionally rare, even nonexistent, and thus not worthy of concern. Just 30 years ago, U.S. attorney general Edwin Meese expressed doubt that *any* wrongful convictions occurred, stating that, “If a person is innocent of a crime, then he is not a suspect” (Knight-Ridder Newspapers, 1985).

How did this *revelation* happen, shifting us from a stout confidence in the justice system to an era of reform? The existing literature tells us relatively little about innocence as a movement. Baumgartner et al. (2008) describe innocence as a “social cascade” (p. 50), akin to fashion trends or epidemics, in which a number of events worked together and reinforced one another to shift attention to innocence. However, their focus is on innocence as a theme in the death penalty debate, rather than on explaining innocence as its own social movement. Zalman (2010/2011, p. 1467) explores the innocence movement from a social constructionist perspective, suggesting that a variety of factors shaped how we understand DNA exonerations and led to “innocence consciousness.”

Beyond these works by social scientists, most legal commentators have generally dated the innocence movement to 1989, when DNA was first used to secure exonerations in the United States. This story is somewhat true, but incomplete. Zalman (2010/2011) describes this as a “flattened” explanation in which “DNA happened, innocent prisoners were exonerated, and innocence projects sprung up” (p. 1467), saying that this explanation “unveil[s] the rabbit (innocence consciousness) from the magician’s hat (DNA exonerations), with an air of inevitability” (p. 1485). The real history, however, is not so clean, and the focus solely on DNA exonerations and the

perceived “inevitability” with which the movement spawned is problematic. At the very least, it fails to acknowledge the early history of DNA, which was primarily seen as a law enforcement tool for catching offenders, and the foundations that were shifting into place over the prior decade that allowed DNA to be utilized as a tool for seeking justice through post-conviction exonerations. These foundational pieces were important antecedents to DNA exonerations that helped bolster their importance and impact. Thus, the thesis that DNA exonerations sparked the movement is of limited value; the movement begs for a deeper, more nuanced understanding.

My aim is to build on the work of Baumgartner et al. (2008) and Zalman (2010/2011), further applying social scientific perspectives to the study of the innocence movement. I next provide a much-abridged narrative of the movement’s beginnings, followed by a discussion of how social movement theory can help us better understand why the innocence movement was able to get off the ground and evolve into its current state.

The Early Days of Innocence

The modern American innocence movement begins with an unlikely hero. Jim McCloskey—a Vietnam veteran, successful businessman, and lifelong conservative—decided in 1978, at age 37, to abandon his business life and enroll in Princeton Theological Seminary. While working as a student chaplain at Trenton State Prison in New Jersey, McCloskey met an inmate named Jorge de los Santos, or “Chiefie,” who claimed to be innocent. After reading his trial transcripts, McCloskey believed him. Working with attorney Paul Casteleiro, McCloskey tracked down the jailhouse informant who had testified against Chiefie, and he admitted to lying. Federal judge Frederick Lacey, in throwing out the conviction, said that the informant’s original testimony “reeked of perjury” (Alperin, 2009).

Centurion Ministries

De los Santos was released in 1983, by which time McCloskey believed in the innocence of two other inmates. He felt a calling and decided to found an organization dedicated to freeing the wrongly convicted. He called it Centurion Ministries, after the Roman Centurion who stood at Christ’s cross and said, “Surely, this one is innocent.” McCloskey did not have a model to follow: “There was no book on this,” he said, “There’s no college course on this. There was nothing, because it was really a pioneering effort.” Indeed, Centurion Ministries was the first innocence organization in the United States.

McCloskey began working on new cases and received his first full-time help in 1986, when Kate Germond joined. Together, they worked on several cases, two of which—Clarence Brandley and Joyce Ann Brown—received coverage on the popular television show *60 Minutes*. By 1990, Centurion had freed seven individuals, and McCloskey had founded the non-profit innocence industry.

Despite being the first non-profit to focus on wrongful conviction work, Centurion was not alone in paying attention to innocence in the 1980s.

Early Popular Attention

Despite the earliest wrongful convictions receiving coverage in the news, such stories were still novelties in the 1980s and played an important role in the early development of innocence as a reform issue. Much of the media attention at this time came from Chicago, where journalist Rob Warden founded a publication called *Chicago Lawyer* and began covering wrongful convictions consistently. At that time, such errors were seen as anomalies, but Warden told me he tried to highlight problems that “affected thousands, maybe as many as 100,000 people in America who are imprisoned at any given time for crimes that they didn’t commit. No one had ever approached it in that manner before.” Although the media environment at that time was “hostile” toward those writing about this issue, he and others pressed on, bringing popular attention to errors in the justice system and encouraging people to view them as widespread, systemic problems. Furthermore, in 1988, filmmaker Errol Morris released *The Thin Blue Line*, a documentary exploring the case of Randall Dale Adams, who was convicted of murdering a police officer in Dallas, Texas. The film garnered critical praise, eventually aiding in Adams’s exoneration, and gave the public another glimpse into flaws in the justice system.

In addition to journalistic coverage, the mid-1980s saw the birth of modern innocence scholarship. A PhD student at Ohio State University, Arye Rattner, conducted a dissertation on wrongful convictions under the guidance of professors C. Ronald Huff and Ed Sagarin; they published their first article in 1986 (Huff, Rattner, Sagarin, & MacNamara, 1986). Samuel Gross, who is now a leader in innocence scholarship, also published his first article on the topic in 1987, focusing on eyewitness identification errors (Gross, 1987).

The largest splash, however, was made when Hugo Bedau and Michael Radelet published a study in the prestigious *Stanford Law Review* in 1987. In it, they collected 350 cases of what they believed to be wrongful convictions in capital and potentially capital cases, including 23 in which executions were actually carried out (Bedau & Radelet, 1987). Such a number was astounding, the largest of its kind to that point, and the research was criticized by a number of death penalty supporters. Most prominently, Stephen Markman and Paul Cassell (1988), two Justice Department attorneys under Attorney General Edwin Meese III, published a critique the next year. The duos exchanged fire (see Bedau & Radelet, 1988), and as Zalman (2010/2011) has noted, such an exchange, between well-known scholars and attorneys and in such a prestigious and widely read outlet, was most certainly noticed within the legal community, bringing the issue of wrongful conviction to a wide scholarly audience.

There were now two important pieces in place: Centurion Ministries had established wrongful convictions as a viable field for non-profit work, and journalists and scholars were exposing the potential scope of flaws in the justice system. At the same time, a scientific revolution was occurring that would serve as an important part of the innocence movement.

Scheck, Neufeld, and the DNA Revolution

While Centurion was working out of Princeton, New Jersey, and American scholars and journalists were covering wrongful conviction cases, a research team at the

University of Leicester in England had a “eureka moment” (Jeffreys, quoted in, University of Leicester, n.d.). Led by Sir Alec Jeffreys, in September 1984, the team discovered the first genetic fingerprint. Initially used for paternity and immigration cases, DNA quickly found its way into the English legal system and, soon thereafter, to the United States. Aggressively marketed to law enforcement professionals and covered positively in the press, DNA test results had been admitted as evidence in more than 100 trials by 1989 without substantial challenge by defense attorneys (Aronson, 2007; Lewin, 1989). That changed when two New York lawyers became involved.

Barry Scheck and Peter Neufeld met while working as public defenders for the Bronx Legal Aid Society. By the mid-1980s, both had moved on, but became involved in the case of Marion Coakley, in which they both learned about DNA typing technology. Although they could not test the evidence in that case—they secured Coakley’s exoneration through other evidence, which was the first exoneration case they worked together—Neufeld said it was their “first window into the power of DNA technology” (Neufeld, interview by H. Kreisler, 2001), and Scheck told me that they recognized early on “that there were some classic problems [in transferring DNA] technology from medical and research purposes” to the forensic arena.

After their involvement in the Coakley case, Scheck and Neufeld became heavily interested in DNA science, holding a forum on the subject at Cardozo Law School and being named to the New York State panel on forensic DNA analysis. It was only logical, then, that when a string of cases involved defense challenges to the use of DNA evidence, Scheck and Neufeld took center stage. Their involvement in the cases of Joseph Castro and Steven Wayne Yee—part of what Aronson (2007) calls the “DNA wars”—established them as talented defense attorneys with an expertise in DNA evidence.

Around this same time, in 1989, DNA was first used to secure a post-conviction exoneration; DNA testing indirectly led to the exoneration of David Vasquez in January and directly to the release of Gary Dotson in August. By this time, Scheck says they recognized the potential of DNA evidence: “[W]e knew from the very beginning the power of this technology,” he said, “not just to exonerate the innocent but to identify those who had committed crimes, and that would really begin to expose all these other causes of wrongful convictions.” Aware of this potential and of what Jim McCloskey had been doing with Centurion Ministries, Scheck and Neufeld had been taking cases on an ad hoc basis, but as the letters from inmates piled up, they decided they needed a systematic way to investigate cases. They founded the Innocence Project in 1992 as a clinical program at Cardozo Law School, where Scheck was a professor.

Unlike Centurion, which was focused on getting the next innocent person out of jail, the Innocence Project focused only on DNA cases with the hope of establishing a “dataset” of irrefutable wrongful convictions, according to Neufeld, which would be important for their goal of changing public policy. The DNA-innocence data set grew in the next few years, but perhaps the most important one was the case of Kirk Bloodsworth, who was convicted and sentenced to death in Maryland for the rape and murder of 9-year-old Dawn Hamilton in 1985. When he walked out of prison in 1992,

Bloodsworth was the first American who was sentenced to death to be exonerated through DNA evidence.

According to Richard Dieter, the former executive director of the Death Penalty Information Center (DPIC), Bloodsworth's exoneration was a major story and "triggered . . . a whole other way of looking at [innocence] through science." The case also made a strong addition to his organization's report on wrongful capital convictions. Released in 1993, *Innocence and the Death Penalty: Assessing the Danger of Mistaken Executions* compiled 48 cases of wrongful capital convictions, and DPIC began systematically tracking and compiling information on errors in a way that had never before been done.

DNA in the National Spotlight

Despite the exonerations of Bloodsworth and about a dozen others through DNA in the early 1990s, the technology was not yet widely known among the public. It was not until the infamous O. J. Simpson murder trial—in which Scheck and Neufeld served as members of Simpson's defense "dream team"—that the masses became aware of DNA. The result of the trial aside, several things emerged from the Simpson case that are relevant for the innocence movement.

First, those involved, including Scheck and Neufeld, reaffirmed both their belief in the power of DNA technology and the caution needed when utilizing it; Scheck suggested that the case influenced crime labs to be more diligent. Second, the Simpson case planted DNA firmly in the public consciousness, as it was mentioned more than 10,000 times throughout the trial (Aronson, 2007), which was covered incessantly by the media. Finally, the case provided a new level of publicity for Scheck and Neufeld, cementing their reputations as all-star advocates and legal experts.

DNA was now part of the American legal zeitgeist, and by mid-1995, there were nearly 30 DNA exonerations. The new phenomenon was gaining momentum and caught the attention of U.S. Attorney General Janet Reno, a progressive legal thinker who had been involved in an exoneration as a state's attorney in Florida (see Chin & Grant, 1989). She talked to National Institute of Justice (NIJ) director Jeremy Travis, who compiled a research team for a report on DNA exonerations. In 1996, NIJ released its report, "Convicted by Juries, Exonerated by Science" (Connors, Lundregan, Miller, & McEwen, 1996), which described 28 convictions overturned with DNA evidence. It also included a section on policy implications, highlighting Reno's desire to understand what could be learned from the mistakes that were made. Finally, NIJ asked a number of experts and legal professionals to comment, including Scheck and Neufeld.

The NIJ report received relatively little press, but was widely read within criminal justice circles, according to Travis. Furthermore, it represented an agency of the federal government recognizing wrongful convictions as a problem worthy of national attention, and Scheck and Neufeld's commentary was "perhaps the first clarion call of an innocence paradigm manifesto" (Zalman, 2010/2011, p. 1488).

Thus, although innocence was still not a social movement as it might be considered today—how that happened is beyond the scope of this article—wrongful convictions

were a known problem, and DNA was understood as a way to uncover and understand the problem, and, thus, drive policy reform. The foundation was laid on which the modern innocence movement could be built.

Social Movement Theory and the Foundations of a Movement

As the abridged narrative above suggests, attributing the rise of the innocence movement solely to DNA exonerations is an incomplete story. The roots run deeper than that, with characters, organizations, and events—some of which preceded the first DNA exonerations—that are often overlooked. Such a limited story also ignores the broader context in which the foundations of the innocence movement were laid. Indeed, throughout the 1980s and 1990s, the American justice system was in the midst of the “punitive turn” (Garland, 2000, p. 350), during which law and order rhetoric dominated politics, fear of crime consumed the public, and innocence seemed to be the last thing on the minds of most legal reformers.

How, then, was innocence able to begin to break through?

DNA is a major part of this, as it is powerful enough to establish innocence with a near-certainty that was impossible with traditional evidence. But it was not just DNA in general; more specifically, it was the DNA exoneration.

This is an important distinction, and was far from an inevitability. When DNA first entered the American legal system, it was viewed as a tool to help police catch and prosecutors convict criminals. The companies conducting DNA tests, Cellmark and Lifecodes, made their connections through law enforcement journals and professional meetings and advertised their tests as a way to definitively link offenders to crime scenes; one ad suggested that the test was “the difference between conviction and acquittal” (Aronson, 2007, p. 19). It is clear, then, that DNA came to be understood as a way to seek justice through exoneration of the innocent, providing support for Zalman’s (2010/2011) social constructionist notion that the way we have come to understand DNA was shaped by a variety of factors. Three classic strands of social movement theory can help us understand those factors: political opportunities, mobilizing structures, and framing.

A political opportunities perspective suggests that to understand a social movement, we must focus on the changes that occur which make the target system—that which activists seek to change—more vulnerable or receptive to reform efforts (McAdam, 1996). Mobilization research examines the ways in which people engage in collective behavior. Even if there is discontent, action will only occur with organization. Thus, mobilization scholars examine such elements as movement organizations, leadership, networks, tactics, and more (McCarthy & Zald, 1977).

Opportunities and mobilization provide the potential for action, but still do not guarantee it. Framing, or issue-construction, emphasizes the shared meanings and understandings that ultimately make collective action worthwhile and legitimate (Snow, Rochford, Worden, & Benford, 1986). All three of these theoretical perspectives can help us understand the foundations of the innocence movement.

DNA as Opportunity

I noted above that DNA was an important part of the innocence movement's beginning but was not the sole cause. Instead, DNA is best understood as an opportunity. In the 1980s, when the technology was developing, most people inside and outside the justice system saw wrongful convictions as extremely rare and not worthy of focused concern. In part, this was due to the fact that "actual innocence" was often questionable; after all, how can we know if someone is truly innocent?

DNA provided an opportunity to demonstrate that the justice system erred in a way that was "scientifically irrefutable," according to Neufeld. Paul Casteleiro, Centurion's legal director who worked with McCloskey on his first exoneration, said that "DNA put the meat on the bones" by "creat[ing] some good, objective evidence." Innocence Project executive director Maddy deLone described DNA as an "absolute identity-prover . . . that could not be disputed." However, before DNA could "capture people" as a way to prove innocence post-conviction, as deLone suggested it did, it had to be understood as a tool for such. This was possible due to the mobilizing structures that were falling into place at that time.

Mobilizing Structures

DNA provided the opportunity to expose flaws in the criminal justice system, making it vulnerable to reform efforts. However, organization, leaders, and an understanding of a problem are all required for a movement to take shape.

Organizational foundation. Jim McCloskey did not found Centurion Ministries with broad, reform-minded goals, but he certainly deserves credit for helping to establish an organizational foundation for the innocence movement. Centurion was founded nearly a decade before anyone else was doing wrongful conviction work in an organized fashion; as I noted earlier, McCloskey founded the non-profit innocence industry, and for doing so, one of his employees referred to him as the "godfather" of innocence work. This was a risky move given the skepticism of people at the time, but he and Germond showed that a non-profit organization dedicated to wrongful conviction work was not only possible, but sustainable.

Later, when Scheck and Neufeld were working in this area, they were "totally aware" of what Centurion was doing, according to Neufeld. And while they founded their organization with different ambitions—a reform-oriented model that could be mimicked at other law schools across the United States—Centurion's existence must certainly have been helpful. Scheck had, in fact, reached out to them, and Germond told me she worked with them when they were starting the Innocence Project. Together, these two organizations laid the organizational foundation for what would eventually become the innocence movement.

Cause lawyers as movement leaders. A movement can only be as strong as its leadership, and early on, two emerged in Scheck and Neufeld, who recognized the opportunity that

DNA presented and were willing to take advantage of it. In retrospect, this is not surprising. Scheck and Neufeld are quintessential cause lawyers, who seek to use law and litigation to “achieve greater social justice . . . to do ‘lawyering for the good’” (Menkel-Meadow, 1998, p. 37).

As the Civil Rights Movement gained momentum in the 1950s and 1960s, prominent lawyers, such as Thurgood Marshall, used law to advocate for equality and motivate students to follow suit. This culture of activism spawned legal reform organizations and public interest firms and ultimately helped create a generation of youth, including law students, who felt a duty to be actively involved in fighting for progressive change. Scheck and Neufeld were of this generation, viewing law not just from a courtroom standpoint, but seeing the big picture, or as Neufeld once put it, “as a vehicle for social change” (Neufeld, interview by, H. Kreisler, 2001).

Both Scheck and Neufeld have acknowledged the impact of the era on their perspectives. “The ‘60s, obviously,” Neufeld said, “played a large part of that because there was a sense that you personally, by taking action, could make a difference” (Neufeld, interview by H. Kreisler, 2001). Similarly, Scheck said that he “grew up in an era where one saw that in the civil rights movement, law was an instrument of social change,” and at the time of his legal education, “there was a whole generation of us that kind of felt like, ‘Oh, we’ll be able to do that, we’re people’s lawyers’” (Scheck, interview by H. Kreisler, 2003).

The activist spirit stayed with Scheck, Neufeld, and others as they entered the legal profession. Given this perspective, along with their interests, expertise, and the serendipitous timing of their careers in relation to the development of DNA testing, it is not surprising that they emerged as potential leaders of the innocence movement. Importantly, everyone I interviewed acknowledged that Scheck and Neufeld, with their broad vision and willingness to take a leadership position, were largely responsible for the development of the movement.

Identifying the innocence “problem.” Even with an organizational foundation and leaders, a movement needs a cause, or a *problem*, around which participants can rally, which early innocence advocates lacked. From the time of Borchard’s (1932) writing through the 1980s, wrongful convictions were still viewed with skepticism or outright disbelief. The criminal justice system was largely viewed as a well-functioning machine that rarely, if ever, made mistakes.

This confidence in the process was present in journalism and academia. Rob Warden said that his early stories about wrongful convictions were met with doubt and criticism. “Nobody believed it . . . And if [a wrongful conviction occurred] on occasion, it was such a rare anomaly that we certainly didn’t need to make any changes in the system” (Warden, interview by K. Sloan, 2013). Similarly, Ron Huff said that people questioned his scholarly interest in wrongful convictions: “People thought, ‘Why am I wasting my time with this?’”

Even those working in the system, who were potentially aware of wrongful convictions, were unaware of the scope of the problem. Maddy deLone, who worked in prisons at the time, said she “really didn’t think about it.” Kate Germond, even after

working with Centurion, said that while she was skeptical of the justice system, “the surprise was *how* broken it is.” Paul Casteleiro said that while he thought wrongful convictions happened, he never really thought about an error rate. Even Peter Neufeld said that for years while practicing law, he thought that “98%, 99% of the people convicted by juries and judges must be guilty” (Neufeld, interview by Frontline, 1997).

If defense attorneys working on innocence cases did not grasp the scope of the problem, it is understandable that others, both inside and outside the legal system, would struggle to as well. According to Warden, this is partially a matter of perspective: “I think it’s like, lawyers only saw their one case, they didn’t see the bigger picture. You’d find lawyers who knew about what had happened to a client but they felt it was isolated.” The journalists who covered early cases of wrongful conviction—not just Warden, but Jim Dwyer in New York and Steve Mills in Chicago, among others—helped spread the word that this may be a more systemic problem than previously realized. As Warden said, “If it hadn’t been for great investigative journalists . . . the innocence movement wouldn’t have gotten off the ground” (Warden, interview by K. Sloan, 2013).

Academic research also played a role in exposing the potential scope of wrongful convictions in the early years. Previous scholarship had described cases of wrongful conviction, and by the 1980s, psychologists had developed a fairly in-depth understanding of problems associated with eyewitness identification (e.g., Wells & Loftus, 1984), but this work focused on one particular issue that happens to be related to wrongful convictions in a significant way, rather than the broad scope of the matter.

The research conducted in the mid- to late-1980s took a different approach and was on a different scale. Huff and colleagues collected legal actors’ estimates of the prevalence of wrongful conviction—the first survey of its kind—which ranged from “never” to as high as 10%. The authors’ conservative assumption for an error rate was 0.5%, which they point out would translate to thousands of wrongful convictions each year, a startling proposition (Huff et al., 1986).

Perhaps more importantly, Bedau and Radelet (1987) compiled more than 350 cases of possible wrongful convictions in capital and non-capital cases, by far the largest collection of its kind. These were shocking numbers, and together, they provided a sense of the potential scope of wrongful convictions in a way previous scholarship had not. And importantly, the Bedau–Radelet study in particular received widespread attention in legal circles.

The journalistic exposés of wrongful conviction cases in popular news outlets and the broader examinations of errors in academic research helped shift the nature of the conversation about wrongful convictions. Whereas early cases were sometimes seen as horrible injustices, they were individualized, isolated occurrences rather than manifestations of a systemic problem.

This is an important shift in the innocence conversation. To have people recognize individual cases as tragedies is one thing, but if they are seen as anomalies, it is hardly a cause for widespread concern and activism. However, if people could be convinced that such errors are not isolated, but are systemic—in short, that there is a *problem* of wrongful convictions—then the case for innocence as a major reform issue is strengthened, and the cause for a movement is created.

Framing DNA

The 1996 National Institute of Justice report begins with a message from Attorney General Reno: “The development of DNA technology furthers the search for truth by helping police and prosecutors in the fight against violent crime. Through the use of DNA evidence, prosecutors are often able to conclusively establish the guilt of a defendant.”

Reno could have stopped there; as noted earlier, DNA testing was initially seen as a law enforcement tool, marketed as a front-end truth-finder rather than a post-conviction justice-seeker. By the mid-1990s, however, the framing of DNA was changing. It was not just a tool for police, and Reno did not stop at saying the technology was a powerful way to determine guilt. “At the same time,” she wrote, “DNA aids the search for truth by exonerating the innocent. The criminal justice system is not infallible, and this report documents cases in which the search for truth took a tortuous path.” This is an important change in the conversation and challenges the “air of inevitability” that accompanies the assertion that DNA alone explains the innocence movement’s emergence. It was due to a confluence of factors—the organizational foundation laid by Centurion Ministries and the Innocence Project, the work of movement leaders Barry Scheck and Peter Neufeld, and the coverage of wrongful convictions by journalists and academics—that all had profound effects on reframing DNA as a tool to not only capture the guilty but also to exonerate the innocent. This understanding of DNA—in social movement terms, this *framing* of DNA as a tool for seeking justice through post-conviction exonerations—is at the core of the innocence movement. The final piece to explore is the broader context in which this all occurred.

Innocence in the Punitive Turn

That innocence first began to take root from the 1980s through the mid-1990s may seem like something of a paradox when considering the environment at the time. Many of these developments occurred in the midst of the punitive turn when the United States was on a historic swing toward crime control. Virtually all emphasis in criminal justice—socially, culturally, politically, and legally—was on punishment in the name of public safety (e.g., Garland, 2001). Indeed, Baumgartner et al. (2008) note that this was a time when “social and political trends [were] not particularly favorable to the innocence movement” (p. 8).

A high crime rate was one obstacle, according to Neufeld, who said that achieving criminal justice reform during the punitive era was difficult “because there was such a huge concern with the crime rate.” This was a major hurdle for reformers; Scheck suggested that even when those working in the system knew that changes were necessary, they were unable to accomplish them “because politically, [increasing punishment is] popular, particularly in an era when crime is rising.”

Yet, innocence advocates managed to find some room in the conversation. And, although this may at first seem counter-intuitive, it is possible that the punitive turn actually played a role in the emergence of innocence for several reasons.

The first is market demand. Increasingly severe sentences increased the potential harm of wrongful convictions and gave prisoners more reason to search for a way out. “As sentences got more severe . . . you had more people who were looking to seek help,” Maurice Possley said. “If you look at the [NRE list], it’s skewed towards people with longer sentences because those are the cases that get attention.” In short, longer sentences give advocates more incentive and time to reinvestigate cases.

The massive growth in the inmate population during this period also strengthened one aspect of the innocence argument and provided a defense against a major critique. Estimates of a wrongful conviction rate have generally been under 5%; this relatively low error rate has sometimes been used by critics who believe that the possibility of a wrongful conviction is too remote to warrant major changes in policy and practice. However, as the number of inmates increases, that error rate translates into large numbers. By 1995, there were more than 1.5 million inmates in the United States; thus, a 1% error rate would mean more than 15,000 innocent people in prisons and jails by the mid-1990s.

This point was made by several interviewees.⁴ DeLone said that as the inmate population approached one million, many on the inside thought that the growth would surely abate. “But instead, no,” she said,

As we approach a million, we enact more and more three-strikes laws, more and more mandatory, more and more life without possibility [of parole. It] goes on and on . . . The whole thing was a formula for the expansion of the system.

And all of a sudden, even if the error rate is only 2% to 3%, “that’s a lot of people.”

The emphasis on punishment throughout the 1980s and 1990s may also have affected the innocence message on a larger psychological level. James Q. Wilson (1975, p. 128) famously wrote that “wicked people exist. Nothing avails except to set them apart from innocent people,” a sentiment that became popular among conservative thinkers on crime and punishment. The stronger the belief in this notion, however, the more important accuracy becomes, a point brought up by former Innocence Project Policy Director Stephen Saloom: “Arguably, the reason that states like Texas, for example, have been so good on wrongful conviction reform is because those who want to be tough on crime also want to seem like they’re being fair at the same time.” It is possible, he said, that “the harsher the punishments, the more you want to keep the innocent out, because really you’re trying to scapegoat [offenders].”

What Saloom described is a larger process that accompanies a firm belief in harsh punishments. It is entirely possible that this had some influence on innocence advocates. As Possley pointed out, although the desire is to get everyone who is innocent out, “The sense of urgency is different” when the sentences become more severe. Richard Dieter suggested that the threat of execution can have a particularly strong effect. In the late 1980s and early 1990s, “Executions were no longer theoretical, they were real,” he said, and as executions become more common and dates are set, “It really focuses everyone’s attention.”

There is a neat logic to this line of thinking; if one is concerned about high levels of crime and believes that the way to combat crime is through harsh punishment, it is vital to ensure that those being punished are truly guilty, as conflating the guilty and the innocent accomplishes little. At the very least, the public and potential offenders must *perceive* that the system is capturing and punishing the guilty, and in an era when DNA added near-certainty to the notion of actual innocence and the cases reached public ears and eyes, it became more important to achieve correct outcomes, thus strengthening innocence advocates' core message.

Conclusion and Further Discussion

The foundations of the modern innocence movement were laid during the historic “punitive turn” in American criminal justice. These developments, however, have not generally been examined by scholars. In this article, I sought to provide a more nuanced analysis of the early days that goes beyond the assertion that DNA led to the innocence movement.

To reiterate, this should not be interpreted as downplaying the importance of DNA, but rather to further our understanding of how DNA served to ultimately spark the innocence movement. DNA exonerations played an important role, but they did not occur in a vacuum, and utilizing social movement theory helps to better understand the larger picture.

A movement may be set in motion by some type of innovation that makes the target system—in this case, the criminal justice system—vulnerable to change. DNA was that opportunity. An opportunity, however, is not guaranteed to be seized and turned into something larger; what is important is not just that the change that occurs, but that it is interpreted in such a way that challenges the legitimacy of the system. Considering DNA from this perspective, and examining the mobilizing structures that were in place, helps us understand how the innocence movement happened.

DNA entered the legal system at a time when an organizational foundation for innocence work was already being laid by Centurion Ministries. Around the same time, two cause lawyers happened to become involved in courtroom battles over DNA, quickly recognized the opportunity for reform, and were willing to step up as leaders in a new area of law and justice. With this recognition, they developed an organizational model in the Innocence Project that could be replicated. This was also a time when journalists and academics were beginning to identify the problem of wrongful convictions, thinking and writing about the potential scope of errors. These factors combined to ensure that DNA was framed not only as a tool for law enforcement to solve and prosecute crimes but also as a post-conviction tool to identify errors and uncover problems in the criminal justice system. These developments coalesced during the punitive era, which despite being seemingly counter-intuitive, may actually have bolstered the innocence message.

This understanding of the innocence movement's foundations is vital if we are to have a true sense of its history, but it is far from the complete story. The foundations were laid, but there was not a real movement until several years later. It is also worth

noting that I drew on several strands of social movement research, but that field is much larger, and other fields may have theoretical perspectives that can contribute to our understanding of the innocence movement. Scholars should continue to explore both the pre-movement foundations and the development and growth of innocence as a true movement, utilizing further data sources and analyzing them from other perspectives. As the innocence movement continues to develop and lead to fundamental changes in criminal justice practices, it is imperative that scholars document the movement more thoroughly and develop rich, nuanced understandings of its emergence, growth, strengths, and weaknesses.

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Notes

1. Unless otherwise noted, specific information, anecdotes, and direct quotations from key actors are from personal interviews conducted by the author.
2. As of September 29, 2016, the National Registry of Exonerations (NRE) includes 1,886 cases. In 2014 and 2015, there were 140 and 153 exonerations, for an average of 2.7 and 2.9 per week, respectively. In 2016, thus far, there have been 107 exonerations, or 2.7 per week.
3. The “first” wrongful conviction is usually thought to be those of Stephen and Jesse Boorn, who were convicted of killing Russell Colvin in 1819. Colvin showed up alive later that year, and the Boorns were exonerated (see Yant, 2014).
4. Kate Germond and Ron Huff both mentioned this to me specifically during our interviews, and similar points were made by others, including Maddy deLone, Stephen Saloom, and more. It is also worth mentioning that Huff, Rattner, Sagarin, and MacNamara (1986) pointed this out in their 1986 article, when they said that even if the system were accurate 99.5% of the time, it “could still generate nearly 6,000 erroneous convictions (for index crimes alone) each year” (p. 523).

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