



The Challenge of Ensuring Just Compensation for Wrongfully Convicted Former Prisoners

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Each year, American prisons release approximately 700,000 men and women who face many challenges as they reengage the routines of family, community, and work. But some of those released should never have been behind bars in the first place – because courts have determined that they were wrongfully convicted for crimes they did not commit.

The numbers of improperly convicted Americans are not trivial. According to the best estimates we have, at least two thousand people have been wrongfully convicted and exonerated since 1989 – including some who faced the most extreme punishments. The 300th exonerated inmate in 2012, for example, was a fifteen-year inmate of death row, Damon Thibodeaux, who walked out of Angola Prison in Louisiana on Friday, September 28, after the Innocence Project marshaled DNA evidence to reverse his conviction.

Most Americans probably assume that the wrongfully convicted receive compensation and extra help. But, curiously, at a time when the fifty states spend many millions of dollars per year to encourage the successful re-entry into society of legitimately convicted prisoners, the unjustly convicted must often wage protracted battles to get even a fraction of what society owes them for wrongly taking away their liberty. Dreams of compensation often turn into nightmares. The Innocence Project finds that even when DNA evidence has led to overturned convictions, two out of five remain without compensation.

The Case for Compensation

Wrongful conviction and imprisonment have recently become more visible in popular culture – as journalists, activists, and scholars have begun to highlight causes and consequences.

- Unjust convictions flow from mistakes by eye-witnesses, misconduct by prosecutors, improper or falsified forensic evidence, and coercion by cops.
- Beyond the loss of liberty itself, wrongfully convicted people lose work-time and earning power and miss chances for education. Some experience traumatic stress disorders that disrupt work and life after they leave prison.

No one can restore the months and years of freedom taken away from the wrongfully imprisoned, but financial and non-financial forms of compensation can help in several ways.

- Financial payments can help the wrongfully convicted person make up for economic losses.
- Both financial payments and other forms of compensation such as free tuition or job training can reduce economic vulnerability during the re-entry to society and increase the person's self-sufficiency for the future.
- Compensation carries a moral message, too. It allows government and citizens to make amends to the wrongly convicted person and, more generally, helps to repair damage to the state's public legitimacy and boost public faith in the good judgment and fairness of criminal justice institutions.

Slow and Incomplete Progress

For all these good reasons, reformers in the United States have argued for nearly a century that all state governments should automatically compensate the wrongly convicted and imprisoned. Some reforms have happened, especially as more prisoners have been visibly exonerated. Six states enacted compensation laws between 2000 and 2006, and another 17 have acted since then. But these laws vary greatly in quality and

generosity, and many are narrowly written to rule out compensation for most of those wrongfully convicted.

What is more, 23 U.S. states, nearly half, have not put in place any legislation to compensate those wrongly convicted by their courts. In those states, the only recourse is to file a civil suit against officials (if suits are allowed) or lobby legislators to enact compensation case by case.

The Need to Identify – and Surmount – Obstacles

Why is it so hard to secure compensation for wrongful convictions? After all, Americans value fairness and expect justice; they want wrongs set right, quickly and effectively.

Politics often gets in the way – especially when a very weak group seeks government action. The wrongly convicted are few in number, lacking in voting clout and resources to make big money contributions. Even unjust imprisonment carries a taint. Some of those exonerated lack rock-solid evidence, such as DNA, to definitively clear them of crimes. So they must worry about public skepticism about their actual innocence. All of these factors hamper their ability to form interest groups, press political claims, and get government to respond positively to their preferences and values. For politicians, consequently, the incentives to take up this issue or enact compensation are low. They fail to enact – and compound injustice.

Scholars and reformers know which states offer compensation, and how much. But more remains to be learned about how political forces block or undercut compensation. Public perceptions and beliefs also need to be probed. What factors influence public opinion on the issue? What amounts and kinds of compensation would match the public's sense of fairness?

As we learn more about the political challenges and possibilities, we must keep the moral challenge front and center. Society owes a civic debt when people are unjustly deprived of their liberty, and automatic compensation under the law is the only way to repair as much of the miscarriage of justice as possible. It should trouble the spirit of the American body politic that the wrongly convicted so often go uncompensated. All of us should be moved to seek justice for them.

Read more in Michael Leo Owens and Elizabeth Griffiths, “Uneven Reparations for Wrongful Convictions: Examining the State Politics of Statutory Compensation Legislation,” *Albany Law Review* 75 (2011/2012): 1283-1327.