

Wrongful Imprisonment and Coerced Moral Degradation

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Despite the ever-growing number of exonerations in the U.S.—and the corresponding surge in scholarly interest in wrongful convictions in recent years—research on the carceral experiences of wrongfully-convicted persons remains strikingly limited. In this essay, we draw on in-depth interviews with 15 exonerated men to explore the moral dimensions of the experience of wrongful imprisonment. We argue that imprisonment entails what we refer to as “coerced moral degradation,” whereby innocent men’s self-preservation efforts in prison require them to feign being—and at times actually become—morally worse people. We argue that these findings speak to the fundamental question of what the law is for, and, further, that the coerced moral degradation that the men experienced in prison provides a compelling basis for conservative and progressive scholars to find some common ground on the moral purpose of the law.

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INTRODUCTION

The United States is notorious for its harsh criminal justice system.¹ It incarcerates more people—both objectively and as a share of its population—than any other country in the world.² It also routinely and infamously subjects its incarcerated populations (and incarcerated men in particular) to severe prison conditions characterized by violence,³ medical neglect,⁴ sensory deprivation,⁵ and emotional trauma.⁶ Scholars have contended with these features of the system, as well as with the propensity of the system to convict innocent defendants.⁷ Indeed, the United States recently crossed an alarming threshold, accumulating its 3,000th documented exoneration of a wrongfully-convicted criminal defendant.⁸ Despite the extensive research on the experience of confinement,⁹ and on wrongful convictions more generally, there is a surprising

1. MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS*, 7–8, (2010); RANDALL G. SHELDEN & MORGHAN VÉLEZ YOUNG, *OUR PUNITIVE SOCIETY: RACE, CLASS, GENDER, AND PUNISHMENT IN AMERICA 2* (2nd ed., 2010). *See also, generally*, NATASHA A. FROST, *THE PUNITIVE STATE: CRIME, PUNISHMENT, AND IMPRISONMENT CASES ACROSS THE UNITED STATES 1* (2006) (documenting punishment trends in the United States).

2. John Gramlich, *America's Incarceration Rate Falls to Lowest Level Since 1995*, PEW RSCH CTR. (Aug. 16, 2021), <https://www.pewresearch.org/fact-tank/2021/08/16/americas-incarceration-rate-lowest-since-1995/> [<https://perma.cc/5KYF-389B>].

3. Janani Umamaheswar, “*Changing the Channel*”: *Hybrid Masculinity in a Men’s Prison*, 1 *INCARCERATION*, 1, 6–7, <https://journals.sagepub.com/doi/pdf/10.1177/2632666320957854> [<https://perma.cc/GM7S-K4EK>]; Craig Haney, *The Perversions of Prison: On the Origins of Hypermasculinity and Sexual Violence in Confinement*, 48 *AM. CRIM. L. REV.* 121, 121 (2011).

4. Meghan A. Novisky, *Avoiding the Runaround: The Link Between Cultural Health and Capital and Health Management Among Older Prisoners*, 56 *CRIMINOLOGY* 643, 645 (2018); Meghan A. Novisky et al., *Incarceration as a Fundamental Social Cause of Health Inequalities: Jails, Prisons, and Vulnerability to COVID-19*, 61 *BRIT. J. CRIMINOLOGY* 1630, 1632 (2021), <https://doi.org/10.1093/bjc/azab023> [<https://perma.cc/E8NL-WUSL>].

5. Craig Haney, *Restricting the Use of Solitary Confinement*, 1 *ANN. REV. CRIMINOLOGY*, 285, 289 (2018). *See also, generally*, Bruce A. Arrigo & Jennifer Leslie Bullock, *The Psychological Effects of Solitary Confinement on Prisoners in Supermax Units: Reviewing What We Know and Recommending What We Should Change*, 52 *INT. J. OFFENDER THERAPY & COMPAR. CRIMINOLOGY* 662 (2008) (exploring the psychological toll of solitary confinement).

6. Janani Umamaheswar, “*Suppression on Top of Oppression*”: *A Symbolic Interactionist Perspective on the Affective Experience of Incarceration*, 61 *BRIT. J. CRIMINOLOGY* 1107, 1114–15 (2021).

7. For a summary of the wrongful convictions scholarship, see generally Brandon L. Garrett, *Wrongful convictions*, 3 *ANN. REV. CRIMINOLOGY* 245 (2020). Scholars have also analyzed how the political landscape affects wrongful convictions. *See, e.g.*, William D. Hicks et al., *The Politics of Wrongful Conviction Legislation*, 3 *STATE POL. & POL’Y Q.* 306, 306–310 (2021).

8. Eric Ferkenhoff, “*I Feel Free*”: *Chicago Teen Framed for 1985 Murder Becomes 3,000th Person Exonerated in US*, USA TODAY (Mar. 9, 2022, 3:29 PM), <https://www.usatoday.com/story/news/nation/2022/03/09/national-registry-exonerations-chicago-case-reynaldo-munoz/9428361002/> [<https://perma.cc/6GKD-MAU5>].

9. A significant body of scholarship specifically explores how prisoners cope with the “pains of imprisonment”—the key deprivations that accompany prison life. *See generally, e.g.*, Ben Crewe, *Depth, Weight, Tightness: Revisiting the Pains of Imprisonment*, 13 *PUNISHMENT & SOC’Y* 509 (2011) (exploring changes in how prisoners experience penal power); Kevin D. Haggerty & Sandra Bucierius, *The Proliferating Pains of Imprisonment*, 1 *INCARCERATION* 1 (2020), <https://journals.sagepub.com/doi/pdf/10.1177/2632666320936432> [<https://perma.cc/8DEU-PN4S>].

dearth of research on the distinctive carceral experiences of the wrongfully convicted. Moreover, the limited research in this area fails to grapple seriously with the moral dimensions of these experiences,¹⁰ despite a growing body of scholarship on the moral lives of incarcerated persons more generally.¹¹

Drawing on in-depth interviews conducted by the second author with 15 wrongfully-convicted men who served sentences in U.S. prisons across the country, we begin to fill that gap.¹² We marshal the first-hand accounts of exonerees to illuminate how the oppressive environment in men's prisons prompted participants to adopt self-protective strategies that required masking their innocence, or even embracing aggressive identities that stood in stark contrast with their status as innocent men in prison. The vulnerability that stemmed from innocence in prison generated a distinctive form of psychological turmoil as the men were torn between adhering to their extant moral code, which placed value on their innocence, and enacting—or even adopting—prevailing prison norms built around violence and aggression. Many of the findings

(summarizing the evolution of research on the challenges posed by imprisonment); GRESHAM M. SYKES, *THE SOCIETY OF CAPTIVES: A STUDY OF A MAXIMUM SECURITY PRISON* (1958) (documenting how carceral deprivations shape prison culture); Philip Hancock & Yvonne Jewkes, *Architectures of Incarceration: The Spatial Pains of Imprisonment*, 13 *PUNISHMENT & SOC'Y* 611 (2011) (exploring how the physical environment of prisons shapes the experience of imprisonment).

10. Research on the carceral experiences of the wrongfully convicted focuses primarily on the social and psychological (rather than moral) challenges of coping in prison. See, e.g., Kathryn Campbell & Myriam Denov, *The Burden of Innocence: Coping with a Wrongful Imprisonment*, 46 *CAN. J. CRIMINOLOGY & CRIM. JUST.* 139, 144–56 (2004); Nicky Ali Jackson et al., *Prison & Post-Release Experiences of Innocent Inmates*, 30 *J. AGGRESSION, MALTREATMENT & TRAUMA* 1347, 1355–61 (2021). Researchers have also explored the long-term traumas the wrongfully-convicted carry with them even once they are released from prison. See, e.g., Leslie Scott, *It Never, Ever Ends: The Psychological Impact of Wrongful Conviction*, 5 *CRIM. L. BRIEF* 10, 10–16 (2010); Adrian Grounds, *Psychological Consequences of Wrongful Conviction and Imprisonment*, 46 *CAN. J. CRIMINOLOGY & CRIM. JUST.* 165, 168–78 (2004).

11. Some scholars have analyzed how men convicted of sex offenses find community in prison. See generally Alice Ievins & Ben Crewe: *'Nobody's Better Than You, Nobody's Worse Than You': Moral Community Among Prisoners Convicted of Sexual Offences*, 17 *PUNISHMENT & SOC'Y* 482 (2017). Others have explored how prisoners interpret the moral messaging of imprisonment. See generally Marguerite Schinkel, *Punishment as Moral Communication: The Experiences of Long-Term Prisoners*, 16 *PUNISHMENT & SOC'Y* 578, 578 (2011); Alison Liebling, *Moral Performance, Inhuman and Degrading Treatment and Prison Pain*, 13 *PUNISHMENT & SOC'Y* 530 (2011).

12. Data for this study were collected through in-depth, remote interviews with 15 wrongfully-convicted men over a period of four months. Each of these men was wrongfully convicted for a violent crime and served a period of incarceration that ranged from four to 30 years. Six of these men identified as white, six identified as Black, and three identified as Hispanic. 14 participants were formally included in the National Registry of Exonerations (“NRE”), and the one participant who was not listed in the NRE was listed as an “exonerated client” by the innocence organization that handled his case. Before beginning recruitment, the second author obtained IRB approval for this project from her home institution and from the Innocence Network Research Review Committee. Participants received a \$20 e-gift card as a small token of appreciation for their time and their willingness to share their stories. The interviews generally lasted approximately 1.5 hours (with some extending over 2.5 hours), and consisted mostly of open-ended questions related to three areas: Participants’ early life-course years; participants’ experiences being wrongfully convicted and thereafter wrongfully imprisoned; and participants’ release and reentry experiences.

presented in this essay likely extend beyond wrongfully-convicted men,¹³ but we use the stark contrasts between innocent men's narratives of their pre-prison and prison identities to reveal the extent to which the environment in men's prisons alters—and in many cases *corrupts*—prisoners' moral selves.

We argue that these findings are not merely novel and poignant; they also bear heavily on heated and broader debates about the purpose of punishment and even the role of the law itself. Whether through common good constitutionalism¹⁴ or virtue jurisprudence,¹⁵ legal scholars increasingly entertain the possibility that the law should encourage our moral development. This proposition remains controversial, however, and it lacks support among more progressive commentators.¹⁶ We argue that the experiences of exonerees highlight the importance of the moral role of the law. More specifically, we argue that the only way to account for the unique perversity of the experiences of the wrongfully-convicted men in this study is to accept that the law (whether through its commands or its enforcement) should make us morally better—or, at minimum, should not make us morally worse.

This essay comprises two Parts. In Part I, we explore how participants confronted the challenges that the carceral environment posed to their sense of morality, and we present findings on how the men responded to these challenges by pretending to transform—or actually transforming—their moral code. In Part II, we turn to the broader implications of these findings in the context of debates regarding the moral role of the law.

I.

THE MORAL WEIGHT OF INNOCENCE IN PRISON

In this Part, we describe how participants navigated prison as innocent men, highlighting their deliberate efforts to conform to the norms of their carceral environment by hiding their innocence and carrying themselves as if they were no different from the many men who they believed were guilty and therefore

13. In fact, penologists have repeatedly documented how incarcerated men (regardless of their innocence or guilt) adopt hypermasculine and aggressive behaviors to cope with the prison environment. See, for instance, Tony Evans & Patti Wallace, *A prison within a prison? The masculinity narratives of male prisoners*, 10 MEN & MASCULINITIES 493-95 (2008); Yvonne Jewkes, *Men Behind Bars: "Doing" Masculinity as an Adaptation to Imprisonment*, MEN & MASCULINITIES 8, 51-53 (2005); Rosemary Ricciardelli, *Establishing and asserting masculinity in Canadian penitentiaries*, 24 J. GENDER STUDIES 179-183 (2015).

14. See *infra* note 63.

15. See *infra* notes 67-68.

16. Scholars have expressed skepticism that legal moralism (which is often understood to focus on the criminalization of immorality) can produce liberal outcomes, noting that many who endorse it willingly accept its "illiberal implications for legislation." Jens Damgaard Thaysen, *Infidelity and the Possibility of Liberal Legal Moralism*, 11 CRIM. L. & PHIL. 273, 293 (2017). More generally, the criminal prohibition of morally bad behavior is the most ham-handed method for using the law to guide the populace toward morally better lives, and it is arguably counterproductive when such prohibitions are enforced by an inequitable criminal justice system.

“belonged” in prison. Tony (45, Hispanic) was wrongfully imprisoned for 25 years, beginning when he was only 18 years old.¹⁷ Despite being an innocent man among “real murderers,” Tony learned to “suppress” his fear when he realized that any display of fear will prompt other prisoners to “take advantage of you.”¹⁸ Explaining how he adapted to the prison environment as a young, innocent man, Tony described how he quickly realized that his survival in prison was contingent on submerging himself in the violent prison culture.

You got to do what everybody else is doing. You have to participate. There’s going to be a riot or something, you’d better be there. So I was little nervous. You got to just do it. And then I’m on a level high security yard with real murderers. They killed people and they don’t care. So you got to go with the program. I just had to do what I had to do.¹⁹

Alfred explicitly discussed how he masked his innocence by becoming like “The Pretender”—a fictional television character who could morph into any identity he desired.²⁰ Not only did Alfred feel unable to disclose his innocence; he actively pretended that he had served several prior prison sentences and that he was capable of extreme violence if challenged. The gap between the man that Alfred felt he was and the man he pretended to be to survive in prison generated a great deal of psychological distress for him, and he emphatically stated: “You don’t wish that on nobody.”²¹ Trapped in a “never-ending maze where there’s always a predator after you,” Alfred explained that survival in prison required behaving like “you’re supposed to be there so that you won’t get devoured.”²² Above all, navigating prison meant “not going around talking about you’re innocent.”²³

The Pretender was this guy who could be anything wherever he goes. Doctor, lawyer, judge, airplane flyer, all of these things. He could be whatever. He was that smart, right? He could do whatever. That’s what I tell people. You have to be The Pretender. I had to pretend like I had been in the penitentiary a couple of different times. I had to pretend I wasn’t scared. I had to pretend I could beat you up. I had to pretend like I can fight. I can do better than you. I had to walk around with this exterior on. This look being on me that wasn’t me.²⁴

Simon (49, Black) went as far as pretending that he had in fact committed the violent offense for which he was wrongfully convicted. Facing a life sentence in prison for a crime he did not commit, Simon explained that “no one was out of

17. To protect participant anonymity, and in keeping with prevailing ethical norms that guide qualitative field research, we have replaced participants’ names with pseudonyms and redacted specific details that could be used to identify participants. All other participant details are accurate.

18. Telephone interview with Tony (Mar. 9, 2021).

19. *Id.*

20. Telephone interview with Alfred (Mar. 12, 2021).

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

the realm of my anger or my wrath.”²⁵ Simon quickly garnered a reputation for being violent, and he wore this reputation with pride both because it reflected the anger he felt toward the state that wrongfully convicted him, and because of the protective function it served:

So I looked at that, that was going through in my mind, I was in the battle. I was in the ongoing fight with [the state that incarcerated me]. And so that meant the staff, the inmates who was from [the state that incarcerated me], anything. And it’s sad to say, but it’s true. My anger and my aggression actually ended up earning me much respect because I was known as the inmate who didn’t take no mess. . . .²⁶

Whereas some men focused primarily on the façade they created to mask their vulnerability as innocent men in prison, Vincent (64, white) described how his transformation in prison went beyond superficial pretenses. Vincent was wrongfully convicted of a violent sexual offense when he was 24 years old, and he stated that—despite some minor crimes he had committed—he did not “feel myself as a criminal at the time, really.”²⁷ When he was sentenced to 35 years in prison, he recognized that he needed to think carefully about how “to survive this experience” as an innocent man.²⁸ Vincent explained that his early adjustment to his imprisonment was centered on consciously and deliberately re-envisioning himself as someone who could kill another man if he were forced to do so. For Vincent, survival in prison meant transforming from a “non-criminal personality” to “one that’s conscience-free” and “prepared to commit the act of murder.”²⁹ In a particularly poignant narrative, Vincent described the moment he felt that he was finally morally “flexible enough to become what I needed to become, and survive.”:

[T]here was a moment where I had hit this guy with a cane; I had a cane. And I heard it break, and I heard something roll down the hallway, so I thought it was the end of the stick. And in just a flash of a moment, I knew I had a sharp stick, and I drew it back to stab this guy. That was my next move to try. But it turned out that was the rubber end of my cane that went down the hallway, and I had a broken stick; it was useless. In the meantime, the guy hit me again. But just through that experience, I knew that I was ready to kill that guy. And had there been a sharp stick, that may have happened at that moment. But I have that knowledge that I will do what I have to do.³⁰

Daniel (69, white) explained how he earned the respect and goodwill of other prisoners by engaging in violence that did not come naturally to him as someone

25. Telephone interview with Simon (May 17, 2021).

26. *Id.*

27. Telephone interview with Vincent (Mar. 25, 2021).

28. *Id.*

29. *Id.*

30. *Id.*

who had “never been in trouble with the law.”³¹ Daniel learned the value of violence in prison as soon as he began his sentence, when he was urged to retaliate against a Black prisoner who stole his radio:

And [another prisoner] asked if he could borrow my radio and I’m like, okay. That was a foolish mistake because it was just a ploy to steal the radio. So I was faced sort of with the choice after my radio was stolen. What do I do? I can’t go to security because then I’m a rat. If I do nothing, I’m weak. Do I want to kill him? Nah, not over a radio, but you have to do something. So, at first I didn’t do anything. And then I’ve got some of the white inmates telling me since he was Black, “Daniel, you got to do something.” A couple of people offered me a shank to stab him with and I’m telling them I’m not going to do that. So finally one guy just told me, he said, “Man, look,” he said, “just when we come out to take a shower,” because we’re all in the cells. He said, “just swing at his nose as hard as you can—try to break his nose. The security will break it up before it gets bad.” So, that’s what I did. I hit him once as hard as I could. And probably within seconds security broke the fight up. They locked me up for 10 days in . . . administrative segregation, the dungeon, the hole, whatever you want to call it for fighting. But I returned to that cell block. It made me some friends. It made me some enemies for what I did. The guy’s close friends, I now had them as potential enemies. Other people it’s like, okay, well you wearing some respect by taking some action.³²

Beyond the hypermasculinity that participants felt compelled to embody despite their innocence, the prison environment also cultivated and intensified feelings of hatred and anger. Importantly, although participants recognized the extent to which these feelings damaged their psychological wellbeing (both in the short and long term), hatred was crucial for their survival in prison. For instance, Vincent realized that “doing good time” as a white man meant that he had to internalize a deep racism toward Black prisoners.³³ As Vincent acclimated to prison life over time, this hatred radiated outward to encapsulate his entire world in prison:

The moment you walk on the yard, I mean, you see white on one side and Black on the other. And you’re brand new, you’re scared, you’re trying to figure out how to survive this experience. And as you reach out to other people, one of the first messages you get is, don’t mess with the Blacks. Don’t become friends with them. Hate them. I mean, it’s pretty shocking. Hate them. If you want to go do good time, do not mess with those Black folks. And of course, those are nice terms. And that’s where it starts. And it’s now a few days later, it’s how you feel the same way about those guards. And you feel the same way about that administration. And then you feel same way about the courts. And as

31. Telephone interview with Daniel (Mar. 30, 2021).

32. *Id.*

33. Vincent, *supra* note 27.

soon as you learn how to hate thoroughly, you start doing good time with all the rest of us.³⁴

Billy (61, white) freely admitted that he had been involved in some non-violent lawbreaking before he was wrongfully convicted for a violent crime, and his early period of adjustment in prison was defined by what he now recognized as a “self-loathing” because of his pre-prison lifestyle.³⁵ Billy forcefully stated that “being that way and hating myself like that made it a lot easier for me to be the person that I had to be despite that environment.”³⁶ Billy leveraged his hatred for himself to adapt to an environment that valorized violence and anger. In his words, “If I was the person that I am right now and I went to prison, I’d be in trouble if it was the way that it was back then, because I’d have been a victim. But it was all of that self-loathing and all that made me be able to be who I needed to be at that point.”³⁷ Samuel (38, Black) similarly stated, “my bitter side actually saved me in certain situations, where I had to protect myself, defend myself and things like that.”³⁸ Samuel summarized the views of many participants when he described the prison environment’s suppression of positive moral traits, noting, “you can’t be in prison, ‘Oh, I want to help everybody do good, do this and do that, and have that bubbly personality,’ because that’ll lead to you getting robbed, that’ll lead to people targeting you, and all that type of stuff. You can’t do that.”³⁹ As Steve (45, Black) more succinctly stated, regardless of innocence or guilt, “the rule is you fight, fuck, or you lock up.”⁴⁰

Perhaps most disturbingly, participants described the fear and conflict they felt when they tried to embrace those traits that resonated with their sincere moral appraisals of themselves. Billy (61, white), for example, explained that the “early days” when he was immersed in violence were not the hardest.⁴¹ Instead, the most challenging period of wrongful imprisonment arose when he embraced his religious beliefs and committed to living a life centered on virtues such as respect, humility, and kindness:

As crazy as it is, it wasn’t those early days. That wasn’t the hardest part. The hardest part was after I accepted the Lord as my savior. [When that happened,] I started trying to live right and started trying to treat everybody with respect no matter how they acted. And it completely changed the way that I see everything. And that was the hardest part. It was way harder to live that way than it was to live like, “Oh yeah. You ain’t disrespecting me, you got something coming.” It was a lot easier

34. *Id.*

35. Telephone interview with Billy (May 12, 2021).

36. *Id.*

37. *Id.*

38. Telephone interview with Samuel (Apr. 15, 2021).

39. Telephone interview with Simon (May 17, 2021).

40. Telephone interview with Steve (Apr. 24, 2021).

41. Billy, *supra* note 35.

to live that way than it was to live humble.⁴²

Similarly, Simon (49, Black) experienced a transformation when he embraced Islam in prison, and he became committed to leaving behind his previous identity as a violent and volatile prisoner. This period proved to be the most challenging for Simon, who struggled to articulate the tightrope he was forced to walk as an innocent man who had once immersed himself in prison violence, but who was now trying to recapture—and positively develop—his pre-prison self:

Now that was in itself [] a Jihad⁴³ for me, a battle for me. . . . When I returned back to the institutions [where I had been] for so many years and was such a troublemaker, . . . now here I am more submissive. When I say, ‘Submissive,’ I’m meaning submissive to that which is right. . . . So I always had to juggle that, me not going back to my old self, but also not allowing no one to hurt me.⁴⁴

Years after his release from prison, Alfred acknowledged the long-term trauma he still carries from his period of wrongful imprisonment when he said, “I guess I can’t stop fighting. I’m stuck. Feels stuck. I feel stuck in fight mode. . . . I don’t know, I’m just in this stuck mode. You got the fight, flight, or freeze, and I’m stuck in fight.”⁴⁵ For Alfred, the very traits that facilitated survival in prison harmed his efforts to reintegrate when he was released from prison:

When I first got out, I was . . . for the first six months or so, I broke several times. I broke down crying. I always, whenever I went someplace where there were people, I always had to have my back against a wall. I couldn’t have anybody behind me. Every time somebody would enter a room, I’d look at their hands, make sure they ain’t got no weapons.⁴⁶

Alexander (45, Black) similarly recounted the struggles he faced during reentry when he was unable to leave behind the harmful adaptive strategies he had cultivated to survive his wrongful imprisonment term:

You’re so used to living in that type of world in prison and having to be a certain way and having to keep your guards up all the time, and just not trusting people you’re around and then you come home you’re still kind of be in that type of mind frame. It takes you a long . . . that takes you a long . . . like even now to this day, I’m going to therapy right now just trying to make my marriage a little better because I’m still feeling the effects of being in prison, being locked up for them years for something I didn’t do.⁴⁷

42. *Id.*

43. Simon used the word “Jihad” here to refer to his own personal struggle for self-improvement. See Brian Handwerk, *What Does “Jihad” Really Mean to Muslims*, NAT’L GEOGRAPHIC, Oct. 24, 2003, <https://www.nationalgeographic.com/culture/article/what-does-jihad-really-mean-to-muslims?loggedin=true> [https://perma.cc/DP2R-GAAQ].

44. Simon, *supra* note 39.

45. Alfred, *supra* note 20.

46. Billy, *supra* note 35.

47. Telephone interview with Alexander (May 14, 2021).

II.

WRONGFUL IMPRISONMENT AND THE MORAL POWER OF THE LAW

The foregoing findings carry direct implications for broader debates on the aims of punishment and the purpose of the law itself. Punishment can be justified as a form of expressive justice,⁴⁸ as well as a means to incapacitate those who engage in crime,⁴⁹ deter future crime,⁵⁰ identify and remedy the causes of law-breaking behavior,⁵¹ or restore the wellbeing of those harmed by crime.⁵² Scholars have engaged with these various justifications for punishment,⁵³ and they have exhaustively documented the damaging consequences of America's excessive focus on punitive sentiment and retribution.⁵⁴ Yet researchers are only now beginning to contend specifically with the *moral* dimensions of the experiences of coerced confinement, and what little research there is does not explicitly address the experiences of the wrongfully convicted.⁵⁵

The data we present in this essay underscore the moral harms that the penal system perpetuates on wrongfully-convicted men, many of whom were guilty of no offenses whatsoever. Of course, there is no serious question that wrongful conviction is intrinsically unjust. It exacts a heavy price from its subject, a price that is unfair by definition.⁵⁶ But these data take us further. The narratives discussed in Part I reveal how the carceral environment degrades wrongfully-convicted men's sense of morality by compelling them to adopt a moral code that masks—and that in fact often starkly contrasts with—their innocence. There is no canonical list of virtues and vices, but it is beyond reasonable dispute that the embrace of violence, fear that one's innocence will render one vulnerable to victimhood, racial animus, deep suspicion, and other such qualities hammered into the men in this study are morally negative rather than positive—despite their

48. Joel Feinberg, *The Expressive Function of Punishment*, 49 *MONIST* 397, 400 (1968).

49. ROB CANTON, *WHY PUNISH? AN INTRODUCTION TO THE PHILOSOPHY OF PUNISHMENT* 125–28 (2017).

50. *Id.* at 84–88.

51. *Id.* at 102.

52. *Id.* at 152–53.

53. For a summary of the goals of punishment, see Richard S. Frase, *Punishment Purposes*, 58 *STAN. L. REV.* 67, 70–74 (2005).

54. A robust body of scholarship focuses explicitly on the collateral consequences of incarceration on families and communities, highlighting the breadth of penal harm. See Sarah Wakefield & Christopher Wildeman, *How Parental Incarceration Harms Children and What to Do About It*, 3 *NAT. COUNCIL ON FAM. RELS. POL'Y BRIEF* 1, 1–6 (2018); Christopher Wildeman & Sarah Wakefield, *The Long Arm of the Law: The Concentration of Incarceration in Families in the Era of Mass Incarceration*, 17 *J. GENDER RACE & JUST.* 367, 371–76 (2014); Jillian J. Turanovic et al., *The Collateral Consequences of Incarceration Revisited: A Qualitative Analysis of the Effects on Caregivers of Children of Incarcerated Parents*, 50 *CRIMINOLOGY* 913, 928–46 (2012). See also, generally, John Hagan & Ronit Dinovitzer, *Collateral Consequences of Imprisonment for Children, Communities, and Prisoners*, 26 *CRIME & JUST.* 121 (1999) (reviewing relevant literature).

55. See Ievins & Crewe, *supra* note 11; Schinkel, *supra* note 11; and Liebling, *supra* note 11.

56. Even an “appropriate” conviction can carry undeserved costs in an excessively punitive system, but wrongful convictions highlight these costs in a distinctive way.

practical value in prison.⁵⁷ Put simply, harsh conditions of confinement in men's prisons compel men to pretend to become—or actually become—morally worse people. And, as we noted above, some of the men struggled to jettison the vices they acquired in incarceration for months or even years after being exonerated and released.

Even men who have been incarcerated for criminal offenses they did commit struggle to conform to the hypermasculine norms that characterize men's prisons in the United States; exonerates are not the only ones who report the need to adopt aggression or racism to survive incarceration.⁵⁸ Wrongful imprisonment is therefore not a necessary condition for experiencing incarceration as morally degrading. This conclusion is especially difficult to avoid for those who share our view that violations of the criminal law are not necessarily or *per se* immoral, but it stands either way. Nevertheless, the data for this study derive from the narratives of exonerated men, whose distinctive position vis-à-vis their incarceration—and whose possession of a specific and relevant form of innocence—highlights the power of moral degradation in an especially sharp way.

The conclusion that incarceration makes people morally worse is deeply troubling, but it is difficult to explain precisely why. We suggest the following explanation: above and beyond the injustice of wrongful conviction, effecting the coerced moral degradation of the populace through the enforcement of the law *is itself perverse*. Plausible as that suggestion may be, however, it eludes most traditional accounts of what the law *is for*. Many scholars accept that the law should promote rights or equality or welfare,⁵⁹ but those accounts lack the resources to explain what is distinctive about wrongfully-convicted men's experiences. At best, such accounts could gesture loosely toward an explanation: perhaps coerced moral degradation is bad in the same way that any harmful impingement on one's welfare is bad, or perhaps grinding people down morally against their will violates some generic liberty interest. We argue that these explanations are incomplete. To capture what is special about the coerced moral degradation experienced by the men in this study, we must acknowledge an explicitly moral purpose to the law. More specifically, we must accept that the law operates in a deeply inappropriate way when its enforcement is morally degenerative.

The notion that the law should play a direct role in shaping our character is heavily contested. Notably, it lacks support among the liberal or progressive circles⁶⁰ most likely to care about the conditions faced by those convicted

57. See G. Alex Sinha, *Virtuous Law-Breaking*, 13 WASH. U. JURIS. REV. 199, 213 (2021) [hereinafter Sinha, *Virtuous Law-Breaking*].

58. See Evans & Wallace, *supra* note 13; Jewkes, *supra* note 13; and Ricciardelli, *supra* note 13.

59. See COLIN FARRELLY & LAWRENCE B. SOLUM, *An Introduction to Aretaic Theories of the Law* in VIRTUE JURISPRUDENCE 2–3 (Colin Farrelly & Lawrence B. Solum eds., 2008).

60. See Thaysen, *supra* note 16 at 293.

(whether appropriately or not) of criminal offenses.⁶¹ Indeed, prominent advocates of the view that the law should function to shape us morally are not typically progressive. For instance, Adrian Vermeule has recently argued for the embrace of “common good constitutionalism,” a form of constitutional adjudication that promotes a specific conception of “the flourishing of the political community.”⁶² Common good constitutionalism encompasses the view that the law invariably does—and should—teach us morality.⁶³ But Vermeule seems to envision a state that instills traditional Christian values,⁶⁴ and certainly not progressive ones.⁶⁵

Other well-known conservative scholars have also embraced the notion that the law should influence us morally, such as Robert George,⁶⁶ who has broadly defended morals legislation.⁶⁷ Key scholars of virtue jurisprudence likewise defend views popular among conservatives. In its strongest form, virtue

61. See, e.g., *The Conditions of Confinement*, VERA, <https://www.vera.org/spotlights/election-2020/conditions-of-confinement> [<https://perma.cc/MHF5-KPKK>] (last visited Mar. 26, 2022). The mission of the Vera Institute of Justice is to “end the overcriminalization and mass incarceration of people of color, immigrants, and people experiencing poverty,” which involves developing “just, antiracist solutions so that money doesn’t determine freedom; fewer people are in jails, prisons, and immigration detention; and everyone in the system is treated with dignity.” *About*, VERA, <https://www.vera.org/about> [<https://perma.cc/CRN9-4LHR>] (last visited Mar. 26, 2022). Similarly, the ACLU maintains a National Prison Project, committed to objectives such as “[e]nding cruel, inhuman, and degrading conditions of confinement.” *ACLU National Prison Project*, ACLU <https://www.aclu.org/other/aclu-national-prison-project> [<https://perma.cc/8DK2-5H98>] (last visited Mar. 26, 2022). The ACLU increasingly finds itself described as “progressive.” See Michael Powell, *Once a Bastion of Free Speech, A.C.L.U. Faces an Identity Crisis*, N.Y. TIMES (Sept. 28, 2021), <https://www.nytimes.com/2021/06/06/us/aclu-free-speech.html> [<https://perma.cc/6FWX-3UVH>].

62. ADRIAN VERMEULE, *COMMON GOOD CONSTITUTIONALISM* 36 (2022).

63. Adrian Vermeule, *Supreme Court Justices Have Forgotten What the Law Is For*, N.Y. TIMES (Feb. 3, 2022), <https://www.nytimes.com/2022/02/03/opinion/us-supreme-court-nomination.html> [<https://perma.cc/LQ6E-ZCJS>]. See also VERMEULE, *supra* note 62 at 37.

64. At multiple points, Vermeule’s project bears the imprints of the religious views he leaves unstated in his book. For instance, he purports to describe common good constitutionalism in terms of its “secondary ends,” which are “natural” and “temporal,” rather than the primary ends, which appear to be supernatural and eternal. See VERMEULE, *supra* note 62 at 29. Other work by or about Vermeule provides some missing context. Jason Blakely describes Vermeule as a convert to Catholicism who is the United States’ “foremost defender” of integralism, a philosophy that “seeks to subordinate temporal power to spiritual power—or, more specifically, the modern state to the Catholic Church.” Jason Blakely, *The Integralism of Adrian Vermeule*, COMMONWEAL MAG. (Oct. 5, 2020), <https://www.commonwealmagazine.org/not-catholic-enough> [<https://perma.cc/27QA-GZZ9>]. Indeed, Vermeule has argued that “American immigration policy [should] give lexical priority to confirmed Catholics, all of whom will jump immediately to the head of the queue.” Adrian Vermeule, *A Principle of Immigration Priority*, MIRROR OF JUST. (July 20, 2019) <https://mirrorofjustice.blogspot.com/mirrorofjustice/2019/07/a-principle-of-immigration-priority-.html> [<https://perma.cc/C97A-AQHS>].

65. See VERMEULE, *supra* note 62 at 117–33.

66. The New York Times once described George as “this country’s most influential conservative Christian thinker.” David D. Kirkpatrick, *The Conservative-Christian Big Thinker*, N.Y. TIMES MAG. (Dec. 16, 1999) <https://www.nytimes.com/2009/12/20/magazine/20george-t.html> [<https://perma.cc/4F5R-XZ28>].

67. See ROBERT P. GEORGE, *MAKING MEN MORAL: CIVIL LIBERTIES AND PUBLIC MORALITY* (1993).

jurisprudence holds that the fundamental purpose of the law should be to promote our virtue-centered flourishing—a broad measure of well-being that encompasses not just physical health and happiness, but moral rectitude as well. Theorists who accept that view, such as Lawrence Solum and Lee Strang, have appealed to a specific account of the law’s moral function to justify originalist constitutional interpretation.⁶⁸

The conservative tilt of these contributions is undeniable but also primarily an accident of history. Many scholars trace an interest in the moral role of the law back to Thomas Aquinas—who largely inherited his views on the subject from Aristotle, before adding a theological twist.⁶⁹ Aquinas’ influence among Christian and conservative commentators remains powerful,⁷⁰ but there is nothing inherently conservative or Christian about the view that the law should play some nontrivial role in shaping our character. Progressives should not run from that conclusion, which is compatible with a variety of other substantive views. It entails a commitment neither to common good constitutionalism, nor to any specific account of morality itself. Even strong versions of the view do not “require the law to declare all vices illegal [or] use the law to enforce all possible virtues.”⁷¹

Moreover, progressivism carries its own moral commitments. Some would characterize those commitments as “concerned with freedom, equality, and solidarity,”⁷² the pursuit of a catholic rather than a Catholic society.⁷³ These values derive from empathy toward society’s most vulnerable, as well as concerns about the consequences of concentrating power in too few hands.⁷⁴ Progressive views tend to count in favor of flattening power differentials within government to better realize the equality of persons, both as a substantive and a

68. See Lawrence B. Solum, *The Aretaic Turn in Constitutional Theory*, 70 BROOK. L. REV. 475, 521–22 (2005); Lee J. Strang, *Originalism and the Aristotelian Tradition: Virtue’s Home in Originalism*, 80 FORDHAM L. REV. 1997, 2023 (2012). We do not impute any views on conditions of confinement to Vermeule, George, Solum, Strang, or any other specific scholar. Rather, we note the striking overlap between those who argue the law should guide our moral development and those who are more conservative politically.

69. For some general background, see Sinha, *Virtuous Law-Breaking*, *supra* note 57 at 219–24.

70. *Id.* at 210.

71. Conor Casey & Adrian Vermeule, *Myths of Common Good Constitutionalism*, 45 HARV. J. L. & PUB. POL’Y 103, 116 (2022).

72. Blake Emerson, *Progressive Democracy and Legislative Form*, LPE PROJECT (Apr. 15, 2020) <https://lpeproject.org/blog/progressive-democracy-and-legislative-form/> [https://perma.cc/4RDY-NRED].

73. Although this is not the venue for a complete reply to Vermeule, his contention that “the real goal” of progressivism as “the never-ending celebration of the overcoming of unchosen restraints” presents a jaundiced view that progressives need not accept. VERMEULE, *supra* note 62 at 117.

74. See Sidney A. Shapiro & Richard Levy, *Heightened Scrutiny of the Fourth Branch: Separation of Powers and the Requirement of Adequate Reasons for Agency Decisions*, 1987 DUKE L.J. 387, 392 (1987).

formal matter.⁷⁵ At least historically, progressives also incorporated a reliance on scientific expertise to address a variety of social problems.⁷⁶

Nothing about that project preempts an interest in the character of the populace itself. Broadminded, benevolent and generous civilians are essential to building any progressive vision of community. And a clear-eyed view of the law's inequitable history—and, accordingly, the longstanding propensity of the law to instill servility in disadvantaged groups and cultivate perceptions of supremacy in advantaged groups—only further justifies a progressive interpretation of the law's moral role.⁷⁷ A legal system that provides the resources for the acquisition of favorable character traits, gently guiding civilians toward morally better lives while allowing them significant freedom of choice about how precisely to proceed, is a reasonable progressive objective that candidly confronts the inescapable moral function of the law.

For those who remain skeptical, however, there is a principled distinction between deploying the law to make us morally better (an affirmative aim) and demanding that the law not make us morally worse (a negative aim). A rationale that justifies the former would likely reach the latter too, but the reverse is not necessarily true. There are several conceivable bases—some grounded in history itself⁷⁸—for insisting that the law should not degrade us morally while rejecting the paternalism necessary to justify using the law to mold our positive moral development. Further, even if we accept both objectives for the law, protecting against moral corrosion caused by the law is plausibly more urgent—and more straightforward—than using the law to improve the populace morally.⁷⁹ Coerced moral degradation presents a more severe version of the problem that positive moral instruction through the law aims to solve; a commitment to the moral progress of the populace must begin from opposition to its moral regression. Additionally, forcefully corroding the moral code of subjects of the law violates a special form of liberty: the freedom to cultivate one's own character, especially in the avoidance of vice.

This is perhaps the most underappreciated form of liberty taken from the wrongfully-convicted men in this study, whose moral struggles have long evaded scholarly and advocative attention.⁸⁰ We have argued that the moral turmoil of these men bears not just on the purpose of imprisonment but also on the purpose

75. See Emerson, *supra* note 72.

76. Shapiro & Levy, *supra* note 74 at 393-94.

77. For more on the law's power to cultivate servility, see Sinha, *Virtuous Law-Breaking*, *supra* note 57 at 234–37; G. Alex Sinha, *The Thin Blue Line Between Virtue and Vice: Confronting the Moral Harms of Policing*, 84 U. PITT. L. REV. ___ at Sections II(C), III(C) (forthcoming 2022) [hereinafter Sinha, *Thin Blue Line*].

78. See *supra* note 77 and accompanying text.

79. For an example of an analysis relying on this distinction, see Sinha, *Thin Blue Line*, *supra* note 77 at Section II(A).

80. Although this piece is not the proper venue to explore it, the notion that we might possess a distinctive liberty interest in molding elements of our character could extend well beyond prison walls to the limitations imposed on “free” persons by poverty or other forms of structural disadvantage.

of the law itself. Indeed, these two objectives are interrelated. It is difficult to “rehabilitate” incarcerated populations while subjecting them to conditions that encourage them to abandon virtue and adopt vice. Although prison norms may reflect a complex amalgam of input from the guards,⁸¹ the incarcerated,⁸² and the physical features of the space they inhabit together,⁸³ the men in this study experienced their conditions of confinement as an especially resonant dimension of the enforcement of criminal law. It is impossible to separate the instructive value (or disvalue) of the law from how the system treats one for violating it.

The implications of these conclusions are quite sweeping. Focusing on exonerees reveals the sharpest contrast between our system and a properly-calibrated one because innocence and resistance to violence are unequivocally positive qualities, remarkable properties to turn into liabilities via the law’s enforcement. But the hypermasculine norms that dominate American prisons likely yield the coerced moral degradation of men who did in fact commit the offenses of which they were convicted, conditioning them toward violence and aggression regardless of their preferences.⁸⁴ In at least some respects, our criminal justice system is therefore not punitive so much as it is degrading, and that plausibly undermines the proper aims of the law itself.

CONCLUSION

The narratives of the exonerees in this study highlight an important convergence of the practical concerns of progressive advocates and the theoretical interests of conservative scholars. The data presented above have the potential to nudge these two camps toward a limited common ground. Indeed, a major lesson the men in this study can teach us is that progressive scholars should not run from the moral power of the law. The law causes a distinctive form of harm when its enforcement degrades the character of the populace. Rather than hiding from that conclusion, progressives should embrace it, shifting the debate toward the question of which values the law should instill—or, at minimum, which values it should not coercively strip away. The study presented here provides one Archimedean point to build from: our criminal justice system ought not to degrade the moral value of innocence.

81. John Wooldredge, *Prison Culture, Management, and In-Prison Violence*, 3 ANN. REV. CRIMINOLOGY 165, 165–67 (2020).

82. For a discussion of the impact of prison architecture on the experience of confinement, see Hancock and Jewkes, *supra* note 9 at 616–27.

83. Researchers have devoted significant attention to how incarcerated persons actively construct and adapt to subcultures in men’s prisons. See Derek A. Kreager, *Where “Old Heads” Preval: Inmate Hierarchy in a Men’s Prison Unit*, 82 AM. SOCIO. REV. 685, 687–90 (2017).

84. See Umamaheswar, *supra* note 3 at 12–13.