Wrongful convictions and erroneous acquittals: Applying Packer's model to examine public perceptions of judicial errors in Australia

Abstract

The infallible nature of the criminal justice system continues to see judicial errors – that is, wrongful convictions and erroneous acquittals - undermine its integrity, efficacy, and legitimacy. Public perceptions of judicial errors are important contributors to criminal justice policy and reforms. The current study utilises the 2016 Australian Survey of Social Attitudes dataset to examine public attitudes towards judicial errors. It applies Herbert Packer's crime control and due process models to understand how concerns around procedural safeguards and public safety are associated with public perceptions towards judicial errors. Packer's model has been challenged by studies that theorise that the models are not mutually exclusive. Yet, they have not been empirically tested in this context, which is a gap this study seeks to fill. Findings show that due process *and* crime control concerns shape public attitudes towards wrongful convictions and challenge the notion that Packer's models be applied on a continuum.

Keywords: wrongful convictions; erroneous acquittals; crime control; due process; Herbert Packer; miscarriages of justice; attitudes to criminal justice

Introduction

The criminal justice system, by virtue of relying on human judgement to make decisions, is inherently fallible. Resultantly, two types of errors can emerge: convicting an innocent person (i.e., a wrongful conviction) or acquitting a guilty person (i.e., an erroneous acquittal).

Reducing or eliminating both errors is an arduous task, as diminishing the prevalence of one error often increases the rate of the other (Scurich, 2015; Xiong et al., 2017). However, a rise in exonerations in recent years has demonstrated how such goals may be achieved concurrently instead of being mutually exclusive (Findley, 2008). The extent to which the public views both errors as detrimental to how the criminal justice system functions is an avenue of inquiry with broad criminal justice implications. This is because the prevalence of these errors can damage the legitimacy of and confidence in criminal justice procedures (Forst, 2013), call into question issues of public safety (Norris et al., 2020), and stimulate concerns around individual justice (Ramsey & Frank, 2007).

Gauging public attitudes towards criminal justice issues is important because such inquiries can spotlight the degree to which the public accepts how the criminal justice system operates (Zalman et al., 2012). Moreover, public opinion research pertaining to criminal justice issues, such as judicial errors, can stimulate dialogue and, in some cases, may effect changes in penal policy (Norris et al., 2020). This in turn can impact how offenders are treated in the criminal justice system. Research has examined public perceptions of punitive crime control policies (Unnever & Cullen, 2010), counter-terrorism policies (Williamson, 2019), and the death penalty (Sato, 2014), to name a few. However, public attitudes towards judicial errors remain largely under-researched (but see de Keijser et al., 2014; Scurich, 2015; Xiong et al., 2017; Zalman et al., 2012; Zhuo, 2020).

This study hypothesises that public perceptions towards judicial errors are grounded in an individual's orientation towards due process or crime control –the two models of the

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criminal justice system developed by Herbert Packer (1964). The crime control model is predicated on suppressing the prevalence of crime and emphasises the criminal justice system's efficiency to detect, process and convict guilty persons. Packer (1964) suggests that an effective crime control model "must be an administrative, almost a managerial model...[akin to] an assembly line or a conveyor belt" (p. 11). Thus, this model diminishes the importance of procedural safeguards and individual rights (Feeley, 1973). Conversely, the due process model is concerned with upholding individual rights and ensuring transparency and impartiality through strict adherence to rules and laws at all stages of the criminal justice process (Packer, 1964). Packer's dichotomy suggests that perceptions of the criminal justice system's *efficacy* is determined by the model an individual subscribes to (Feeley, 1973). In a similar vein, the level of severity an individual places on judicial errors may also be shaped by their preference for crime control or due process.

Studies examining public perceptions of both judicial errors have found cross-national attitudinal differences. The most recent *International Social Survey Program* (ISSP) conducted in 2016 gauged public opinion towards both types of judicial errors across representative samples in 35 countries. Across each country there were significant differences between respondents who felt convicting an innocent person was the worst type of judicial error (i.e., Georgia; 88%) compared to those who did not view it as severely (i.e., Taiwan; 46%) (ISSP, 2016). In Australia, 69% of respondents perceived that convicting an innocent person was the worst type of judicial error, comprising one of the western nations sampled in the ISSP to harbour less concern for wrongful convictions (when compared to other countries sampled).¹ When compared against prior rounds of the ISSP, Australia constitutes one

¹ Respondents in three Western countries (United Kingdom (70%), Belgium (66%), and Hungary (62%)) were amongst the 14 remaining countries where <70% of the samples surveyed perceived that convicting an innocent person was the worse type of judicial error.

country which has seen a decline in public concern for wrongful convictions (ISSP, 2016; see also Xiong et al., 2017).

The latter part of the 20th century saw many western nations shift towards what Garland (2012) calls a *culture of control*, as concerns around crime and the desire for harsher punishments intensified. Recent studies show Australia is no exception to this punitive move towards crime control (see e.g., Williamson, 2019). Additionally, a rise in Australia's prison population in recent years, particularly since a conservative government was elected into Australia's parliament in 2013 (Walmsley, 2020), speaks to an increase in the punitiveness of Australia's criminal justice system. Whether a similar pattern exists regarding people's attitudes towards judicial errors in Australia remains to be seen. This study therefore utilises data from a representative sample of 1,267 respondents living in Australia to gauge whether Packer's framework can help explain public attitudes towards judicial errors. Prior to outlining the study's methodology and contribution, the following sections outline what is known about public perceptions towards judicial errors. They will further discuss how Packer's models may be useful for understanding public attitudes towards such errors.

Public Attitudes towards Judicial Errors: What We Know

Wrongful convictions can carry a range of harmful health (Grounds, 2004), social (Xiong et al., 2017), and economic (Zhuo, 2020) consequences on both an individual and systemic level. Stringent standards of proof seek to prevent judicial errors. To date, the most well-known ethos weighing up the two judicial errors is Blackstone's principle (Epps, 2014), in reference to British politician and legal scholar, William Blackstone, who stated, "Better that ten guilty persons escape, than that one innocent suffer" (Blackstone, 1966).

Studies have sought to examine public attitudes towards Blackstone's principle. For example, research drawing on attitudinal data such as the *General Social Survey* (GSS) and the ISSP (Givati, 2019), and the *British Social Attitudes Survey* (de Keijser et al., 2014) finds

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that respondents perceive wrongful convictions to be a graver error than erroneous acquittals (see e.g., Givati, 2019; Scurich, 2015). In a critique of these studies, Xiong et al. (2017) suggest that drawing on a binary measure of judicial errors omits potential nuances amongst those who select the option '*cannot choose*' which is a worse error.

Xiong et al. (2017) attempted to address this potential limitation by demonstrating, over time, the proportion of individuals who perceived wrongful convictions or erroneous acquittals were worse, and those who could not decide. The authors argued that including a *cannot choose* option elucidates those respondents who may consider both errors as equally problematic, or who may feel reluctant to select which is harmful without knowledge of other contextual mitigating and aggravating factors related to the defendant and the case (e.g., the seriousness of the crime committed; the defendant's criminal history) (Xiong et al., 2017). Drawing on data from the ISSP, findings showed that across each cross-sectional wave (between 1985 and 2006), respondents in the majority of countries became more concerned about erroneous acquittals than wrongful convictions, with those who could not choose fluctuating over time. Specifically, the proportion of people who selected *cannot choose* decreased as concerns for erroneous acquittals increased. Taken together, many respondents in each country surveyed through the ISSP continued to perceive wrongful convictions as a worse judicial error, which suggests that it is the *degree* of concern for wrongful convictions rather than the *direction* of concern that has changed.

Despite Xiong et al.'s (2017) findings, they did not provide context for why some respondents may be unable to select whether wrongful convictions or erroneous acquittals are worse. For example, the authors' suggestion that those who could not choose the worse judicial error may reflect respondents' beliefs that both types of errors "are equally problematic and constitute a miscarriage of justice" may not accurately reflect *why* respondents could not choose which judicial error is more severe (Xiong et al., 2017, p. 18).

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Arguably, it is a matter of principle that wrongful convictions are worse than erroneous acquittals and carry with them more substantial harms. Erroneous acquittals can give a true perpetrator the opportunity to commit further crimes, which constitutes a crime control harm. Yet, wrongful convictions can cause two types of harm, that of providing a true perpetrator the ability to re-offend, *and* that of wrongfully convicting an innocent person (i.e., a due process harm) (Norris et al., 2020). The gravity of the harms caused by wrongful convictions are also echoed in international human rights declarations, such as the United Nations' *International Covenant on Civil and Political Rights* (ICCPR), to which countries such as Australia are party. The ICCPR stipulates that arbitrary detention and deprivation of liberty are forbidden. Furthermore, international human rights treaties explicitly protect the right to compensation for wrongful convictions, including the ICCPR (Article 14(6))², the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (Article 3, Protocol No.7), and the *American Convention on Human Rights* (Article 10). Thus, in acknowledging that wrongful convictions are, by virtue of the harms they generate, a more serious judicial error, better understanding the factors that may influence public attitudes towards judicial errors can provide important insights into public perceptions of the criminal justice system.

Some studies have examined elements that may explain differences in public opinion towards both types of judicial errors. For example, de Keijser et al. (2014) used quasi-experimental data amongst a sample of Dutch respondents to examine attitudes towards Blackstone's principle across a range of crimes. Findings showed that respondents were more concerned about erroneous acquittals when the seriousness of the offence increased (see also Sommer et al., 1991 for similar findings). These results suggest that the severity of harm

² However, some parties, including Australia, have adopted different approaches to giving effect to their obligation under Article 14 (Hoel, 2008).

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resulting from wrongful convictions, which in the context of Keijser et al.'s (2014) study, pertain to the fear of victimisation and the perceived risk of released perpetrators, played a role in respondents' evaluations of the acceptability of judicial errors.

More recently, Zhuo (2020) examined the extent to which instrumental, conflict and symbolic perspectives (three of the dominant theoretical approaches employed to examine attitudes to criminal justice issues primarily in western contexts) explained public preferences for wrongful convictions versus erroneous acquittals amongst a sample of respondents in China. Drawing on data from the *China General Social Survey*, findings showed that factors operationalising symbolic and conflict theories most strongly predicted respondents' acceptance of judicial errors. Zhuo's (2020) study provides the first scholarly application of criminological theories to explain public attitudes towards judicial errors.

Taken together, these studies demonstrate public concern for judicial errors. However, except for Zhuo's (2020) study, research seeking to understand the factors that may be associated with such concerns remain absent from this scholarship. Determining the correlates of public attitudes towards judicial errors can provide important context for understanding the evolution of penal policies and practices. As such, we apply Herbert Packer's crime control and due process models, one of the most influential frameworks for understanding "the competing forces that shape our criminal justice system" and the value preferences underpinning them (Findley, 2008, p. 7).

Understanding Public Attitudes to the Criminal Justice System: The Due Process and Crime Control Models

Herbert Packer's models describe the value preferences ascribed to addressing crime problems. The crime control model prioritises the efficient suppression of crime to ensure safety and public order (Duff, 1998). It emphasises the role of law enforcement agencies to effectively investigate, arrest and interrogate suspects using informal procedures with

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minimal oversight (Packer, 1964). A great deal of faith and confidence is attributed to the ability of police officers and prosecutors to accurately assess an accused person's guilt, which creates the logic that the accused should be presumed guilty because such judicial procedures are deemed highly reliable and effective (Packer, 1964).

In contrast, the due process model is premised on the presumption of innocence and ensures that criminal justice agents adhere to rules and procedures to uphold principles of fairness and consistency (Packer, 1964). As such, this model is concerned with regulating and restricting the powers given to agents of crime control to protect suspects, the investigation process, and court proceedings (Roach, 1999). Unlike the conveyor belt approach of the crime control model, the due process model has been described as an obstacle course, comprising procedural safeguards that serve to protect the innocent and convict the guilty (Packer, 1964). In essence, the due process model seeks to ensure that accused persons are found guilty not solely because of the facts present in a case, but because law enforcement agencies have gathered and drawn on such facts in a legal and procedurally fair manner.

Packer's models constitute a useful framework for understanding public attitudes towards the two judicial errors because they provide a rationale for why some members of the public may be more accepting of wrongful convictions, while others may not. On the one hand, the crime control model provides the backdrop by which *tough on crime* policies are promoted. Individuals with a stronger crime control orientation tend to be more accepting of how the government tackles crime, and thus more supportive of expenditure on and enactment of crime control policies that can lack procedural safeguards (Unnever & Cullen, 2010; Williamson, 2019; Zhuo, 2020). In this sense, the concern amongst those who align more with the crime control model centres around ensuring policies exist to address crime problems, regardless of whether such policies are enacted in a just way. It follows that

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individuals who are more supportive of the crime control model will be more concerned about acquitting guilty persons and thus more accepting of wrongful convictions.

In a similar vein, the extent to which an individual fears crime may influence their evaluations of judicial errors. The link between fear of crime and attitudes to harsh punishment preferences has been tested extensively, yielding inconsistent results (see e.g., Armbrorst, 2017). While some argue that public punitiveness is not driven by one's fear of crime and victimisation (Tyler & Boeckmann, 1997), others suggest that crime control policies emerge from the public's fear and anger towards crime problems (see Karstedt et al., 2011). In the context of attitudes towards judicial errors, Findley (2008, p. 2) argues that "the fear of crime may be so much more palpable than the fear of a wrongful conviction that virtually any loss of valid convictions is too great a price to pay." As such, the way in which individuals perceive crime may help to explain their attitudes towards judicial errors.

On the other hand, due process elements emphasise that criminal justice processes are conducted in an equal and impartial manner, with the rights of the individual in mind. Judicial errors often emerge when they involve a constitutional or due process error (Ramsey & Frank, 2007). Due process errors, such as police and judicial misconduct, could result in convicting factually innocent parties. Moreover, these errors can stimulate public outcry and demands for reform, particularly when they cost an innocent person their freedoms. These errors have gained attention in news media and popular culture, serving to educate the general public about the harm of convicting innocent persons and the consequential damage to public trust in the criminal justice process (Zalman et al., 2012). As such, it is likely that individuals who are more acute to due process safeguards will express greater concerns for wrongful convictions.

While Packer's models may go some way in determining differences in public attitudes towards the two judicial errors, they may also provide a collective explanation.

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Packer's original models described public preferences for crime control and due process on a continuum, arguing that "no one person has ever identified himself as holding all of the values that underlie these two models" (Packer, 1968, p. 154). However, critiques of Packer's models point to the notion that due process and crime control concerns may be nurtured simultaneously, rather than being mutually exclusive (see e.g., Aviram, 2011; Findley, 2008; Norris et al., 2020). In applying this interpretation of Packer's models to judicial errors, studies hypothesise that individuals may be more concerned about wrongful convictions compared to erroneous acquittals, with such concerns underpinned by preferences for both due process factors (e.g., fair procedures) *and* crime control factors (e.g., ascertaining the truth and convicting the perpetrator) (e.g., Findley, 2008). However, no empirical studies have applied Packer's models to explore public attitudes to judicial errors, which is a gap the current study seeks to fill.

The Current Study

The current study utilises Packer's (1964) crime control and due process models to examine the factors associated with public perceptions of judicial errors. Studies to date have shown that public opinion towards judicial errors varies (see e.g., de Keijser et al., 2014; Xiong et al., 2017; Zhuo, 2020). Yet, research seeking to understand what influences public opinion towards judicial errors is scant (but see Zhuo, 2020). This study expands on the work of Zhuo (2020) by drawing on a theoretical framework that will provide new insights into the correlates of attitudes towards wrongful convictions. Additionally, this study seeks to extend knowledge of attitudes towards wrongful convictions in the Australian context, which has not been properly examined to date. This is because existing research on wrongful convictions is largely dominated by studies from the US and Europe. As such, this study seeks to understand the extent to which crime control orientations or due process concerns are associated with public perceptions towards wrongful convictions and erroneous acquittals

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amongst a sample of respondents living in Australia. Based on the tenets of Packer's models and the research cited in the previous section, we seek to answer the following research questions:

- RQ1 Are measures of due process associated with respondents' perceptions that wrongful convictions are the worse type of error?
- RQ2 Are measures of crime control associated with respondents' perceptions that erroneous acquittals are the worse type of error?

Methods

Data Source

This study utilises data from the 2016 round of the Australian Survey of Social Attitudes (AuSSA)³, which comprises a representative sample of respondents listed on the Australian Electoral Roll (Blunsdon et al., 2018). The survey is conducted annually and collects attitudinal data on a range of issues, as well as sociodemographic characteristics of all respondents. The 2016 round of the AuSSA focused on *the role of government*, a special topic that has previously been the theme of the AuSSA survey in 2006, 1996, 1990 and 1985. The survey included a series of questions asking respondents their attitudes towards the role of government entities, including the criminal justice system.

In 2016, 5,000 individuals were randomly selected to participate in the survey. An explanatory letter, a questionnaire and a reply-paid envelope was sent to each respondent to complete. Up to three reminders were mailed to respondents who had not returned their completed survey. A final sample of 1,267 respondents was achieved after removing ineligible respondents and data cleaning, which represents a response rate of 25.3%. While the response rate appears low, it is normal in the context of the AuSSA data being utilised herein (Schofield & Butterworth, 2015).

³ The AuSSA comprises the Australian component of the ISSP dataset.

Dependent Variable

The dependent variable used in this study comprises a binary measure that asked respondents which is worse, to convict an innocent person (1) or to let a guilty person go free (0). The original item in the questionnaire also captured responses from respondents who could not choose. However, these respondents were omitted from the analysis as no further detail was given to contextualise why respondents could not choose which was a worse error (n=160). Moreover, a binary measure has been consistently used in prior research examining public attitudes towards judicial errors (except see Xiong et al., 2017). The majority of respondents reported that convicting an innocent person (i.e., ‘wrongful convictions’) was a worse type of error (67.0%; n=730), with the remaining 33.0% (n=360) reporting that letting a guilty person go free (i.e., ‘erroneous acquittals’) was worse.

Independent Variables

Due process factors.

A two-item scale was created to measure respondents’ attitudes towards the criminal justice system based on the due process model. Respondents were asked how much they felt the government should have a right to: *keep people under video surveillance in public areas;* or *monitor emails or other information exchanged on the Internet* (M=2.91; SD=0.81). This scale gauged the extent to which respondents trust authorities to use information in appropriate and just ways. The items included in this scale were subject to a reliability analysis prior to its creation ($\alpha=0.64$). In addition, a single-item measure was included to gauge the extent to which respondents felt that *Aboriginal people are now treated equally to other Australians* (M=2.64; SD=1.11). This item was included as a proxy measure of due process in the Australian context. Historically discriminatory treatment against Australian Aboriginal people, in addition to disproportionately higher arrest and imprisonment rates affecting this population (Hutchings, 2021), suggests that Australian Aboriginal people are

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treated unfairly compared to other Australians (Dioso-Villa, 2015; Stratton & Sigamoney, 2020). As such, stronger beliefs that Aboriginal people are treated equally to other Australians may reflect respondents' preferences for fair and just treatment, particularly amongst a population that has been subject to unjust judicial procedures (see Table 1).

Crime control factors.

Three items were also included to measure respondents' preferences for crime control. Firstly, a single-item measure of government spending on police and law enforcement was included, which asked respondents whether they would like to see *more or less government spending on police and law enforcement* ($M=3.71$; $SD=0.83$). A higher score indicated that respondents were more supportive of spending on police and law enforcement. Secondly, a single item was included to measure respondents' perceptions that crime poses a threat to society ($M=3.71$; $SD=0.95$). This measure served as a proxy for respondents' fear of crime, whereby a higher score was associated with greater perceived threat. Finally, a single item was included to measure respondents' perceptions that the government is successful in dealing with threats to Australia's security ($M=3.85$; $SD=0.86$). This item served as a proxy for perceived success of the government in controlling crime.

Control Variables

A series of variables to gauge respondents' sociodemographic characteristics were also included in the analyses. Respondents' age ($M=47.91$; $SD=18.08$), sex (0 = male; 1 = female), marital status (0 = married; 1 = not married); Aboriginal and/or Torres Strait Islander status (no = 0; yes = 1), educational attainment ($M=4.57$; $SD=1.35$), employment status (0 = unemployed; 1 = employed); and country of birth (0 = Australian born; 1 = overseas born) were entered into the model. In addition, a measure of respondents' political affiliation ($M=1.85$; $SD=0.84$) and their self-reported social class ($M=5.83$; $SD=1.89$) were included, as

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these variables have been associated with attitudes towards criminal justice issues in prior research. Table 1 outlines the descriptive statistics for the key scales and socio-demographic variables, as well as the bivariate relationships between measures.

[Table 1 here]

Results

The dependent variable used in this study is binary. As such, to explore the association between the key independent variables of interest and the dependent variable, a series of t-tests and a logistic regression analysis were conducted. Prior to conducting analyses, the data were weighted by age, sex and working status.

T-tests

Turning first to the t-tests, these analyses sought to examine whether statistically significant differences existed amongst the two categories of respondents: those who perceived that wrongful convictions were a worse judicial error, and those who perceived that erroneous acquittals were worse. Significant mean differences were found across several variables, which suggests that those who perceive that wrongful convictions are worse are dissimilar in some respects when compared to those who perceive that erroneous acquittals are worse.

Interestingly, of the independent variables of interest, significant differences were found amongst the variables that represented crime control preferences. Specifically, those who perceived that the government is successful in controlling crime were less likely to view wrongful convictions as a more severe judicial error ($t(1042) = -5.13, p < 0.001$). However, those who perceived that crime posed a higher threat to society ($t(1055) = 3.72; p < 0.05$) were more likely to view wrongful convictions as the worse error, contrary to theoretical expectations. In terms of the due process variables, those who trusted authorities to use surveillance information appropriately were more likely to view wrongful convictions as the

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worse error ($t(1062) = 4.49$; $p < 0.01$). Of the remaining variables of interest, marital status ($t(1050) = 2.43$; $p < 0.001$), employment status ($t(1039) = -2.66$; $p < 0.001$), and country of birth ($t(1058) = 1.00$; $p < 0.05$) were statistically significant. These findings suggest that married respondents and Australian-born respondents were more likely to view wrongful convictions as the worse error, while those who reported being employed were less likely to view wrongful convictions as the worse error.

Taken together, findings from these t-tests suggest that there are differing demographic and attitudinal factors that may explain individual perceptions of judicial errors. Surprisingly, due process factors did not individually explain attitudinal differences in judicial errors. However, these findings suggest that crime control factors may play more of a role in explaining public perceptions of judicial errors, although not in the expected way.

[Table 2 here]

Logistic Regression Analysis

From here, a logistic regression analysis was conducted to collectively examine the crime control and due process factors associated with respondents' perceptions of the severity of judicial errors (see Table 3). Variables were entered in blocks to demonstrate the differential effect of socio-demographic, due process, and crime control variables on public perceptions of judicial errors. Block 1 presents the intercept with no additional variables entered. The exponentiated coefficient (in other words, the odds ratio) demonstrates a significant variation in public perceptions of judicial errors in Australia ($OR = 0.46$, $p < 0.001$). Block 2 includes the socio-demographic variables entered into the model, which explained 5.2% of the variance in the model. Of the socio-demographic variables entered, only social class ($OR = 0.86$; $p < 0.001$) was significant. These findings suggest that of those with a self-reported higher social class, the odds of perceiving wrongful convictions to be the worse judicial error decreased by 0.86.

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The variables representing support for due process elements were entered in Block 3 and contributed 11.7% variance to the model. In addition to the socio-demographic variables that were significant in Block 2, both measures of due process concerns resulted in a greater likelihood of perceiving wrongful convictions as the worse type of judicial error. Specifically, respondents who were more trusting of authorities to use surveillance information appropriately were 1.67 times more likely to perceive wrongful convictions as the worse error ($OR=1.67$; $p<0.001$). Similarly, those who perceived that Indigenous people are treated equally in the criminal justice system were 1.4 times more likely to perceive wrongful convictions as the worst error ($OR=1.40$; $p<0.001$).

The final Block included measures of crime control concerns and accounted for 22.1% variance in the model. With the addition of these variables the model is complete. Only two of the measures operationalising crime control concerns were significant. Respondents who were supportive of more spending on police and law enforcement were 1.89 times more likely to perceive wrongful convictions as the worse error ($OR=1.89$; $p<0.001$). Contrastingly, for every one-point increase in respondents' perceptions that the government is successful in controlling crime, the odds of perceiving wrongful convictions to be the worse judicial error decreased by 0.62 ($OR=0.62$; $p<0.001$).

Discussion

This study tested the applicability of Packer's crime control and due process models in understanding public attitudes towards judicial errors. Findings from our study highlight that both crime control and due process elements play a role in explaining public attitudes towards judicial errors, although some not in the way theoretically expected. Those who were more supportive of due process measures viewed wrongful convictions as the worst type of error. This finding aligns with the tenets of due process, which suggests that concern for due process safeguards are correlated with the harms associated with convicting innocent people

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(Zalman et al., 2012). However, crime control measures painted a less consistent picture. Specifically, perceptions that the government was more successful in controlling crime was associated with a lower likelihood of viewing wrongful convictions as a more severe judicial error. Yet, fear of crime (which was operationalised as the feeling that crime poses a significant threat to society), and support for crime control spending were associated with respondents' perceptions that wrongful convictions are the worst type of error, contrary to theoretical expectations.

The finding that the perceived threat that crime poses to society was associated with the perception that wrongful convictions were the worse type of error when compared to erroneous acquittals emerged in the t-test results. The relationship between perceived threat of crime and attitudes toward judicial errors was non-significant in the regression analysis, which suggests that other variables in the analysis better explained how the Australian public comes to view such errors. However, the direct association observed in the t-test contrasted theoretical expectations. The measure included in the analyses acted as a proxy for fear of crime, whereby it was expected that those who perceived a greater threat from crime would deem wrongful convictions as a less severe judicial error (see Findley, 2008). This hypothesis derives from prior research, which suggests that more fearful individuals are likely to support harsher crime control policies that may neglect procedural safeguards or the rights of the individual (see e.g., Armbrorst, 2017). However, as discussed in the literature review, prior studies have identified an inconsistent relationship between fear of crime and public attitudes towards criminal justice issues (see Karstedt et al., 2011; Tyler & Boeckmann, 1997). Findings from this study therefore suggest that respondents' perceptions of wrongful convictions seem to be contingent on their fear of crime.

Similarly, the relationship between support for spending on police and law enforcement and attitudes towards judicial errors did not play out as expected. Support for

crime control spending was included as a measure of respondents' crime control orientation. Prior research suggests that public support for how the government addresses crime, and the resources they expend on measures of crime control, is associated with greater approval of crime control policies that may lack procedural safeguards and resultantly, do not account for due process concerns (Unnever & Cullen, 2010; Williamson, 2019; Zhuo, 2020). However, our findings call into question the types of police and law enforcement issues respondents are supportive of the government spending public funds on. The rise in popularity of media coverage of wrongful convictions has contributed to an expansion in the public's knowledge of wrongful convictions and the factors that can lead to them (Golob, 2018). As such, it is possible that respondents who were supportive of government spending on police and law enforcement may have endorsed expenditure on practices to enhance the procedural efficacy and fairness of police and law enforcement procedures. Zalman et al. (2012) argue that better understanding where respondents retrieve information about wrongful convictions from (e.g., the media; personal or vicarious experience) can more thoroughly contextualise public attitudes towards criminal justice issues. Future research that measures respondents' knowledge is required to further tease out the implications of this finding.

Implications

Taken together, the findings of our study suggest that wrongful convictions are viewed by the public as *both* a due process and crime control concern (Norris et al., 2020). This takeaway message has several implications. The first pertains to the utility of Packer's models in the context of the innocence movement, which we argue should not be interpreted as a polarising measure of value preferences, particularly in the context of judicial errors (see also Findley, 2008). Instead, it offers a theoretical framework for understanding how both crime control and due process concerns can work in parallel to expand our understanding of and bolster the appeal to reduce the prevalence of judicial errors (see also Norris et al., 2020).

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In the US, studies examining the innocence movement have shown that Packer's models are not mutually exclusive. For example, in their discussion of criminal justice reform in the context of the innocence movement, Findley (2008) suggested that crime control *and* due process elements seek to find common ground in protecting the innocent, convicting the guilty, and emphasising a 'best practice' criminal justice model. Our study thus expands Findley's discussion to empirically demonstrate how crime control and due process concerns are important for understanding public perceptions of judicial errors.

Relatedly, Packer's models provide a framework by which wrongful convictions can be discussed within public spheres. Wrongful convictions are characterised by two harms: a due process harm of convicting an innocent person, and a crime control harm by virtue of allowing a perpetrator to remain free (Findley, 2008). As such, ensuring discussions and debates around wrongful convictions are balanced by the implications this error has on both crime control and due process concerns can strengthen public buy-in to better understand the nature and extent of judicial errors (Pickett, 2019). In general, public attitudes towards criminal justice issues play an important role in effecting change (Norris et al., 2020; Zalman et al., 2012). Moreover, prior research has noted how public perceptions of wrongful convictions can bring attention to connected problems, such as the severity of punishment and appropriate procedures to minimise errors of due process, and policy changes to address these problems (Norris et al., 2020). Thus, uncovering how the public responds to wrongful convictions may be useful for evaluating these changes and understanding future criminal justice policy reform.

Finally, this study represents the first empirical examination of Packer's models to understand the factors associated with public attitudes towards judicial errors in Australia. Over time, Australians' perceptions that wrongful convictions are the worst judicial error have changed, with increasing support for the notion that erroneous acquittals are worse - in

line with international trends (see ISSP, 2016; Xiong et al., 2017). Against the backdrop of increasing support for crime control-oriented policies, this trend may also reflect the changing security landscape, with terrorism threats catalysing public support for criminal justice policy changes, some of which neglect due process concerns (Killias & Huff, 2013).

Despite this attitudinal trend, our findings suggest that overall, the Australian public is concerned with wrongful convictions, which may be attributable to context-specific events. For example, while scant research exists that examines the prevalence of wrongful convictions in Australia (see e.g., Dioso-Villa, 2015; Stratton & Sigamoney, 2020; Weathered, 2007), several high-profile cases of wrongful convictions in Australia (e.g., the Lindy Chamberlain case; the Andrew Mallard case) may have penetrated public consciousness regarding the prevalence and implications of judicial errors. In a similar way, the Black Lives Movement in the US, which has implications for ethnic and racial minority groups in Australia, particularly Aboriginal and Torres Strait Islander populations, has spotlighted systemic racism and inequality in the criminal justice system. Events such as these serve to illuminate how crime control and due process elements operate within the criminal justice system to both prevent and enable the occurrence of judicial errors.

Limitations

While the current study outlined the applicability of Packer's (1964) models to understand public attitudes towards judicial errors, there are limitations that should be considered when interpreting the findings. First, we utilised secondary data from a cross-sectional attitudinal survey conducted by the Australian Consortium for Social and Political Research Incorporated (ACSPRI). As such, the study was restricted to analysing pre-defined measures available in the dataset and did not thoroughly operationalise the constructs of interest, which is a common limitation with using secondary data (Schofield & Butterworth, 2015). Despite this limitation, there are numerous ways in which crime control and due

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process concerns can be conceptualised and operationalised. As such, while our study is restricted to analysing the items included in the dataset, it still operationalises components of both due process and crime control. Secondly, the survey yielded a relatively low response rate. However, the use of sample weights and the national representativeness of the sample overall assuages this limitation.

Conclusion

This study provides empirical evidence of Findley's (2008) assertion that in the context of the innocence movement, "due process and crime control models are compatible with one another" (p. 40). In doing so, this study's findings suggest that due process *and* crime control concerns shape the Australian public's perceptions of wrongful convictions. Wrongful convictions represent, as Acker (2012) suggests, the "tip of a much larger iceberg" (p. 1711), because they embody a visible minority amidst a sea of innocent individuals who continue to be wrongfully imprisoned and perpetrators who continue to go undetected. As such, acknowledging the duality of harms generated by this judicial error is critical for stimulating debate and promoting change; the ultimate aim of which is to enhance judicial accuracy and alleviate the occurrence of such errors (Acker, 2012; Norris et al., 2020).

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Table 1

Descriptive statistics and bivariate correlation for all variables and scales

[illegible]

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7. Country of birth

(0=overseas born) 1 N/A 72.8 -.14*** .03 -.06* .08** -.01 .05 1

8. Party affiliation

1.9

1 (0.8) - .14*** -.01 .07* -.07* .02 .05 .01 1

9. Social class

5.8

1 (1.9) - -.07* .07* .09** -.11*** .18*** .14*** .01 .13*** 1

10. Trust in

authorities to use

surveillance

information

2.9

appropriately

2 (0.8) - .18*** -0.04 .08** .04 -.18*** -.02 .02 .12*** .05 1

11. Fear of crime

3.7

1 (1.0) - .16*** -.09** .08** .06* -.21*** -.07* .05 .08* -.12*** .13*** 1

12. Success of the

government in

3.9

controlling crime

1 (0.9) - .06 .06* .04 .02 -.03 .04 -.08** .18*** .06 .16*** -.04 1

13. Support for

government

3.7

spending on crime

1 (0.8) - .21*** -.12*** .15*** .00 -.21*** -.12*** -.03 .07* -.14*** .28*** .33*** .04 1

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14. Perceptions that

Indigenous

individuals are

treated equally in

the criminal justice

system	1	(1.1)	-	.18***	.04	.08**	.01	.14***	-.10***	-.06*	.13***	-.08**	.08**	.09**	-.01	.17***	1
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15. Attitudes

towards judicial

errors (0=let a

guilty person go

free)	1	N/A	67.0	.04	-.04	.08*	.03	-.11***	-.08**	.03	-.04	-.12***	.14***	.11***	-.16***	.32***	.16***	1
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Table 2

T-tests

	Public Perceptions of Which is the Worst Judicial error		
	<i>Mean</i>		<i>t (df)</i>
	Wrongful	Erroneous	
	convictions	acquittals	
Age	47.72	49.35	1.35 (1018)
Sex (0=female)	1.53	1.48	-1.41 (1041)
Marital status (0=not married)	1.52	1.60	2.43*** (1050)
Indigenous Australian status (0=no)	1.03	1.04	0.87 (1054)
Educational attainment	4.67	4.34	-3.59 (1025)
Employment status (0=unemployed)	1.61	1.53	-2.66*** (1039)
Country of birth (0=overseas born)	1.72	1.75	1.00* (1058)
Party affiliation	2.07	2.24	3.14 (1005)
Social class	6.01	5.50	-3.99 (1012)
Trust in authorities to use surveillance information appropriately	2.83	3.07	4.49** (1062)
Perceptions that Indigenous Australian people are treated equally in the criminal justice system	2.51	2.89	5.43 (1066)
Fear of crime	3.62	3.86	3.72* (1055)
Success of the government in controlling crime	3.95	3.66	-5.13*** (1042)
Support for government spending on crime	3.53	4.12	11.17 (1066)

Table 3

Logistic Regression Measuring Public Perceptions of Judicial errors

	1	2	3	4
	OR (SE)	OR (CI)	OR (CI)	OR (CI)
Fixed effects intercepts ^a	0.456*** (0.077)	1.108 (0.513)	0.086*** (0.685)	0.027*** (0.970)
Socio-demographic variables				
Age		1.004 (0.993, 1.014)	1.002 (0.992, 1.013)	0.999 (0.989, 1.011)
Gender (0=female)		1.164 (0.851, 1.592)	1.192 (0.864, 1.643)	1.446* (1.028, 2.034)
Marital status (0=not married)		1.183 (0.843, 1.659)	1.044 (0.738, 1.478)	0.985 (0.682, 1.422)
Indigenous Australian status (0=no)		1.634 (0.713, 3.741)	1.473 (0.63, 3.446)	1.683 (0.695, 4.074)
Educational attainment		0.974 (0.862, 1.101)	1.049 (0.923, 1.193)	1.080 (0.941, 1.24)
Employment status (0=unemployed)		0.735 (0.524, 1.03)	0.772 (0.546, 1.093)	0.859 (0.595, 1.239)
Country of birth (0=overseas born)		1.100 (0.76, 1.592)	1.013 (0.691, 1.486)	0.914 (0.61, 1.369)
Party affiliation (ref: no party affiliation)				
Left-wing party affiliation		0.696 (0.475, 1.021)	0.761 (0.513, 1.128)	0.849 (0.56, 1.287)
Right-wing party affiliation		0.967 (0.666, 1.404)	0.741 (0.501, 1.095)	0.816 (0.542, 1.229)

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Social class	0.857*** (0.783, 0.939)	0.856*** (0.78, 0.939)	0.875** (0.791, 0.968)
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Due process model factors

Trust in authorities to use surveillance

information appropriately		1.672*** (1.334, 2.096)	1.541*** (1.212, 1.959)
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Perceptions that Indigenous Australian people

are treated equally in the criminal justice system		1.397*** (1.200, 1.625)	1.347*** (1.149, 1.578)
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Crime control model factors

Fear of crime			1.201 (0.986, 1.462)
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Success of the government in controlling crime			0.616*** (0.501, 0.757)
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Support for government spending on crime			1.886*** (1.497, 2.376)
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Hosmer and Lemeshow test	13.390 (8)	18.368* (8)	6.243 (8)
χ^2	29.659***	39.220***	135.637***
R^2	0.052	0.117	0.221

OR=odds ratio; CI=confidence interval; * p<0.05; ** p<0.01; *** p<0.001

^aOdds ratio and standard error presented only in this row