

TOPIC 1:

Innocence Projects: History and Context

1992:

- The Innocence Project, New York was established by Peter Neufeld and Barry Scheck.

2004:

- The Innocence Network established in the US
- The Innocence Network has 67 member projects (55 US & 12 international)
- In the US, 367 post-conviction DNA exonerations have now been achieved (including 21 people on death row).
- At least 35 states have introduced reforms to address at least one major contributing factor to wrongful conviction.
- Described as “the civil rights movement of the twenty-first century” (Medwed, 2008) or an “innocence revolution” (Findley, 2014).
- IPs have since spread internationally to Australia, Canada, Ireland, the UK, the Netherlands, New Zealand, Taiwan, Argentina, South Africa, Italy, and France.)

Innocence projects: The UK

2004 – Dr Michael Naughton set up the Innocence Network UK and established the University of Bristol innocence project.

INUK aimed “to improve the criminal justice system by overturning convictions given to factually innocent people and to effect reforms of the system to prevent such wrongful convictions from occurring in the future” (Innocence Network UK).

INUK also:

- Acted as membership organisation for IPs across the UK.
- Carried out case screening.
- Held annual conferences and student/staff training.

Naughton thought IPs were necessary due to problems with the current legal framework:

- The CACD's emphasis on fresh evidence/new legal argument (s.23 Criminal Appeal Act 1968)
- Criticised for presenting "insurmountable barriers" to overturning wrongful convictions where evidence supporting innocence exists but cannot be reheard (Naughton, 2012).
- The CCRC's statutory 'real possibility' test (s.13 CAA 1995)
- Described the 'real possibility test' as a "statutory straitjacket," which "fatally compromises" the CCRC's independence (Naughton & Tan, 2010).
- Criticised the CCRC for reviewing applications "in pursuit of legal grounds of appeal" as opposed to conducting investigations which seek "to get to the truth, or otherwise, of claims of innocence" (Naughton & Tan, 2010).

AIMS OF INNOCENCE PROJECTS

- 1) Educate students about wrongful conviction of the innocent;
- 2) Work on individual cases of prisoners maintaining innocence; and
- 3) To conduct research on the causes of wrongful conviction of the innocent to effect legal reform.

- Focus on 'factual innocence' as opposed to legal safety
- Factual innocence represents a "lay" understanding of a miscarriage of justice as wrongful conviction of an innocent person.
- Distinguished from legal definition applied by the CCRC and CACD including legal and procedural issues pertaining to safety (i.e. an error in the judge's summing up/breach of PACE codes of practice).
- IPs would not confine their investigation to identifying formally legally admissible grounds but examine all available evidence
- Undertake full investigations of all of the evidence that led to the conviction to determine its reliability and/or applicability to the conviction.
- IPs would carry out truth-finding investigations akin to public inquiries into wrongful conviction of the factually innocent

An overview of IPs in the UK

- INUK assisted in establishing 36 IPs across the UK between 2004 and 2014.

- 2014 – INUK was folded as a membership organisation due to financial constraints/difficulty policing member projects/lack of eligible cases.
- This left the remaining 25 member projects to operate independently.
- INUK & University of Bristol IP ceased operation in 2015.
- 2019 - Current situation
- No record of universities still involved in MOJ work (estimated 5-20).
- Only 3 universities still run an 'innocence project' (Cardiff, USW and Greenwich).

Systemic challenges for projects

- Third parties and legal standing in the CACD (R v Conaghan [2017] EWCA Crim 597).

[33] “As indebted as we are to law students in various institutions around the country conducting investigations of this kind and taking on cases of this kind, this court operates on the basis of clear and established principles of which timeliness is one. Institutions that take on cases must understand the consequences of inexcusable delay.” (per Hallett LJ)

- Difficulties with disclosure of materials from public authorities (Nunn v Suffolk Constabulary).
- No legal privilege.
- Other challenges
- ‘Last resort’ cases
 - Student clinics are a last resort for applicants and therefore will often get difficult cases
- Difficulties with the university model of IPs
 - Cases span several years / long periods of student inactivity
 - Lack of resource
 - Limited financial resources / lack of staff resourcing
- Systemic problems
 - Post-conviction disclosure rules / restrictive approach of CCRC to referrals

Academic criticisms of IPs: Quirk, 2007

1) Focusing on innocence fails to recognise the importance of balancing truth-finding with fairness and due process.

2) The need for innocence projects in the UK has not been clearly established.

3) Innocence projects risk contaminating evidence or delaying and compromising the appeal process.

Other Criticisms of Ips

(i) Lack of casework success

- Only 3 cases referred to the CA by the CCRC following work by an IP – two upheld, only one quashed (Dwaine George, Cardiff University).
- Only 1 case worked on by an IP successful at first appeal (Gareth Jones, Cardiff University).
- But, should we measure success on basis of successful appeals against conviction?
- Also, must consider context - the criminal appeal system is extremely restrictive – very low referral rates from the CCRC (under 1%) and CA resistant to quashing convictions (finality).

(ii) Casework progress

- IPs can take 3-4 years to investigate a case (3-4 years).
- 2013 – CCRC raised concerns about the number of applications they had received from IPs.
- 2015 – CCRC estimated they had received submissions from 10 IPs in 25 cases.

(iii) University model of Ips

- Long periods of inactivity/lack of resource.
- Difficulty balancing educational role with client service.
- Lack of practitioner involvement/academic supervision.

(iv) Ethical issues

- Potential to give vulnerable individuals false hope?

(v) Education

- Teaching students to be judge and jury, rather than an advocate?
- Undermining the importance of due process?
- “Zealous representation should never be married to the importance of innocence” (Brown, 2008).
- Developing an effective model
- Full time staff member
- Continuing work over the summer in writing CCRC applications/other reports and recruiting students for assistance
- Liaising with practitioners

- Record keeping system (action records/reports)
- Intensive student training

TOPIC 2: Miscarriages of Justice: definitions and causes

Module 1: Miscarriages of justice and the legal system

Defining a Miscarriage of Justice

- First, what do you think constitutes a miscarriage of justice?
- Please follow the link below....
- To what extent do you agree or disagree that the issues presented are a 'miscarriage of justice'?

<https://www.menti.com/f3brbt61qk>

Defining a miscarriage of justice

- **Lay definition:** where a person is factually innocent and has been wrongly convicted for a crime they did not commit / where a factually guilty person has been acquitted for a crime that they did commit
- **Legal definition:** where a conviction is 'unsafe' (this includes errors in law and/or procedure in the police investigation/prosecution/trial)
- However, an MOJ can be understood in much broader terms...
- **Walker (1999)**

A 'miscarriage' means literally a failure to reach an intended destination or goal. A MOJ is therefore a failure to attain the desired end result of 'justice'

Defining a miscarriage of justice

- **Walker & McCartney (2008)** – rights based definition/due process perspective
- Whenever suspects/defendants/convicts are treated in breach of their rights by the state:
 - Deficient processes
 - The laws which are applied to them
 - There is no factual justification for the applied treatment or punishment
 - Whenever suspects or defendants or convicts are treated adversely by the state to a disproportionate extent in comparison with the needs to protect the rights of others
 - Whenever the rights of others are not effectively or proportionately protected or vindicated by state action against wrongdoers
 - ... and/or by state law itself
 - Indirect miscarriage which affects the community as a whole.