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1

Introduction

Michael Naughton

The Criminal Cases Review Commission (CCRC) is a recent development in a long line of attempted remedies against miscarriages of justice. It was established by the Criminal Appeal Act 1995, replacing the Criminal Case Unit of the C3 Division of the Home Office where the Home Secretary (C3) had the power to order reinvestigations of alleged miscarriages of justice and send them back to the Court of Appeal (Criminal Division) (CACD) under s. 17 of the Criminal Appeal Act 1968. The CCRC followed a recommendation by the Royal Commission on Criminal Justice (RCCJ) in 1993 (see RCCJ, 1993) that was prompted by the public crisis of confidence in the entire criminal justice system (Colvin, 1994) that was caused by the cases of the Guildford Four (Conlon, 1990)¹ and the Birmingham Six (Hill and Hunt, 1995),² and a string of other notable cases in which Irish people were wrongly convicted upon suspicion of being connected with terrorist crimes that were committed by the Irish Republican Army (IRA).³

In particular, it was found that successive Home Secretaries were failing to refer potential miscarriages of justice back to the CACD for political, as opposed to legal, reasons. To remedy this apparent constitutional problem, the CCRC was established formally on 1 January 1997 as an independent public body that would receive applications from alleged victims of miscarriages of justice in England, Wales and Northern Ireland who have previously failed in their appeals against criminal conviction but continue to question the validity of those convictions (see CCRC, 2008b).

The CCRC assumed the responsibilities for reviewing alleged or suspected miscarriages of criminal justice – previously exercised by the Home Office and the Northern Ireland Office – on 1 April 1997, although it received 279 outstanding case files from C3 on the day before in readiness. Since that time, it has received 11,287 applications,⁴ approximately a thousand each year. It has referred an average of around 4 per cent of its applications, or 409 cases, to the relevant appeal courts, out of which around 382 appeals against conviction have been heard and 271 have been quashed.⁵ This equates to a ‘success’ rate of around 70 per cent, or an annual average of approximately

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20 convictions a year that have been overturned following a referral by the CCRC, which certainly appears as an increase on the previous system under C3 which contributed to an annual average of five cases being quashed upon referral between 1980 and 1992, for instance (Pattenden, 1996: 363).⁶

Such a crude statistical comparison of the CCRC's supposed success rate over its failed predecessor, however, needs to be treated with caution as it includes convictions that are quashed by the CACD but sent for retrial and which are, subsequently, reconvicted (see Naughton, 2003). It includes cases that the CCRC refers back to the CACD on technicalities that are not deemed eligible 'claims of innocence' by Innocence Network UK (INUK) to be referred to one of its member innocence projects for further investigation.⁷ And it includes cases such as Dino the German shepherd dog which the CCRC helped to reprieve from 'Death Row' in September 2004 after he was put under a destruction order, imposed under the Dangerous Dogs Act 1991, three years earlier by Northampton Magistrates' Court in July 2001.⁸

Moreover, notwithstanding the recent news that staff are already 'dispirited' and the proposed budget reductions will mean that staff numbers will have to continue to fall, the CCRC still has over four times the staff (including Commissioners) working on alleged miscarriages of justice than was the case at C3,⁹ and the budget of the CCRC is almost ninefold that of C3 Division (CCRC, 2008a), so more referrals than C3 might well be expected (see Chapter 11).

Perhaps most crucially, though, and as will be demonstrated in great detail in the pages that follow, unlike C3 – which was petitioned by human rights organizations such as JUSTICE, following its own investigations that led it to believe that the people it represented were *factually innocent* victims of wrongful conviction and imprisonment and who should have their cases sent back to the CACD by the Home Secretary – the CCRC does not seek to refer cases of applicants that it finds or believes to be factually innocent. On the contrary, it reviews alleged miscarriages of justice in a legal sense, which is not to be confused with the wrongful conviction of the innocent as miscarriages of justice are popularly understood (as discussed in Chapter 2; see, also, Naughton, 2007b: 14–26), to determine if there is a 'real possibility that the conviction, verdict, finding or sentence would not be upheld were the reference to be made' (s. 13(1)(a) Criminal Appeal Act 1995): the CCRC is about the correctness or otherwise of convictions according to the legal process.

As such, the CCRC is, in practice, subordinate to the criteria of the appeal courts in a way that was not envisaged by the RCCJ, in its recommendations for a new post-appeal body to investigate claims of miscarriages of justice, nor by the subsequent Report by JUSTICE (1994), the all-party human rights organization, which is widely held to have provided the blueprint for the CCRC (discussed in detail in Chapter 2). The CCRC strives to second-guess how referrals may be viewed, referring only those cases that are deemed to meet the strict terms of s. 23 of the Criminal Appeals Act 1968, for example,

which governs the requirements for appeals at the CACD. In this sense, the CCRC can be said to act as a filter for the CACD and sanction the successful appeals of guilty offenders if their convictions satisfy the requirements of the appeal courts, whilst, at the same time, if it turns up evidence that indicates an applicant's factual innocence that was available at the original trial it may not constitute grounds for a referral (Nobles and Schiff, 2001: 280–99). This derives from the CCRC working under narrower referral powers than those held by the Home Secretary under the C3 system, which, despite its apparent shortcomings, operated in the interests of justice that was more in line with public notions of miscarriages of justice, that is, it was concerned with alleged wrongful convictions of the innocent, as opposed to the CCRC which works entirely in the realm of legal technicalities (explicated further in Chapter 2).

The CCRC, then, contrary to popular belief, was not designed to rectify the errors of the criminal justice system and cannot ensure that innocent victims of wrongful conviction will obtain a referral back to the appeal courts, let alone overturn their wrongful convictions. It operates entirely within the parameters of the criminal appeals process in the role of a 'legal watchdog' to ensure that its decisions meet with its rules and procedures in the global interests of upholding its integrity – it seeks to determine whether convictions are lawful. Crucially, it does not question the possibility that the rules and procedures of the criminal justice system can cause miscarriages of justice and/or the wrongful conviction of the innocent and/or act against them being corrected (Naughton, 2005b, 2006).

This is not to advocate the return of C3, which presented a constitutional problem that had to be resolved with the separation of post-appeal investigations of alleged wrongful conviction from politics. Rather, it is to make clear that comparing the work of the CCRC and that of C3 is comparing apples and oranges: they each have (had) different premises on what actually constitutes a miscarriage of justice, which determined that they deal (dealt) with alleged miscarriages of justice in different ways – they work (worked) with different levels of resources and with different referral powers at their disposal. To be sure, the aim here in the introduction of this book is to outline some of the key characteristics of the CCRC and introduce the idea that the replacement of C3 with the CCRC is not the final solution to the problem of the wrongful conviction of the innocent: it appears that we have shifted from a problem with the political sphere – failing to refer the cases of potentially innocent people if those cases were thought to conflict with political interests – to a problem with the legal sphere failing to refer cases of the potentially innocent if they are believed to conflict with the interests of the legal system.

Despite this, as the first statutory independent post-appeal body of its kind, the CCRC has been hailed as 'that rare thing – a public body of which the UK can be proud, indeed which is envied in many countries around the world' (McCartney *et al.*, 2008) and has been the subject of much interest from other jurisdictions that see it as a possible solution to their own miscarriages

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of justice problem. For instance, the Scottish Criminal Cases Review Commission (SCCRC) started its work in April 1999 under the terms of s. 194A of the Criminal Procedure (Scotland) Act 1995 (see SCCRC, 2008b)¹⁰ and the Norwegian Criminal Cases Review Commission (NCCRC) came into force on 1 January 2004 (see NCCRC, 2008). Moreover, there is an on-going debate for a CCRC-type body in the US (see Chapter 15; also see Scheck and Neufeld, 2002; Schehr and Weathered, 2004), in Australia (for example, see Weathered, 2007), in Canada (see Chapter 14; also see Campbell, 2008: 130–3;) and in New Zealand (for example, see Ellis, 2007) in the hope that it might resolve the perennial problem of the wrongful conviction of the innocent in those jurisdictions.

However, the implementation of CCRC-style bodies in other jurisdictions, and the debate for more of the same in the US, Australia and Canada, apparently fails to take account of the critical literature on the deficiencies of the CCRC from the standpoint of the wrongful conviction of the innocent. It seems blind to the establishment of almost 25 innocence projects in universities in the UK over the last five years, where students work on cases of alleged wrongful convictions in response to the failings of the CCRC to guarantee that it will refer the cases of applicants found to be innocent back to the CACD (discussed in detail in Chapter 2). Indeed, it seems that the desperation for a solution to the problem of the wrongful conviction and imprisonment and, in the US, the execution of the innocent, has created something of a rosy view of the CCRC, tending to see it as a *prima facie* progressive development in the law on criminal appeals, that their own criminal justice systems and, therefore, from which their own innocent victims of wrongful convictions would benefit.

Yet, as already indicated, the CCRC has structural failings that significantly impact on the scope of its investigations, meaning that it can even be conceptualized as a step backwards from its forerunner, C3, in its inability to refer potentially meritorious cases back to the appeal courts. This derives from its statutory straightjacket that is placed on it by the 'Real Possibility Test': the CCRC undertakes *reviews* of applications in its pursuit of legal grounds of appeal, as opposed to forms of *investigation* that operate in the interests of justice, as commonly held, and which seek to get to the bottom of claims of innocence, to determine their credibility, and to right apparent wrongs. Perhaps most disconcertingly, then, despite the fact that the CCRC was set up in the wake of a public crisis of confidence, induced by notorious cases such as the Birmingham Six amid a widespread concern for victims believed to be innocent, it is unlikely that such cases would be referred back to the appeal courts by the CCRC today. This is because the evidence of police misconduct and incorrect forensic expert testimony that led to the quashing of their convictions in the third appeal was available at the time of the original trial and appeal, so does not constitute the kind of 'fresh evidence' normally required by the CCRC to encourage a referral (see Naughton, 2008b).¹¹

This highlights the incompatibility between the operational remit of the CCRC and the public belief that it exists to help potentially innocent victims to overturn their wrongful convictions, which, as will be shown, also relates to prominent criminal appeal practitioners who are frustrated by the CCRC's unwillingness to refer the cases of their clients back to the CACD who they believe to be innocent (see Chapters 7 and 8). It is significant that representatives from the CCRC have openly conceded that it is often unable to assist innocent victims of wrongful conviction if they do not fulfil the Real Possibility Test in the eyes of the Case Review Managers (CRMs) and/or the Commissioners reviewing the application.¹² And, yet, senior figures at the CCRC continue publicly to defend it on the grounds that to refer such cases would be a waste of time as, whether the applicant is innocent or not, the case is unlikely to be overturned (see Chapter 12).¹³ Against this, I argue that this overlooks the conditions for the establishment of the CCRC and undermines other possible impacts that sending such cases back to the appeal courts might have, even if they were not to be overturned under the existing arrangements. Such cases could, for instance, raise public awareness of the inability or unwillingness of the CACD to overturn cases of appellants thought (even by the CCRC after its impartial investigations) to be innocent. Historically, such public awareness of the failings of the criminal justice system in the face of cases that give evidence to those deficiencies have led to changes to protect us against wrongful convictions or the introduction of new remedies, such as the CCRC, to assist in overturning them when they occur (Naughton, 2001, 2007b: 79–94; Chapter 2).

Aim

Against this background, the primary aim of this book is to alert the reader to the fact that the CCRC is not doing what it is widely believed to have been set up to do – help alleged innocent victims of wrongful conviction, who may be innocent, overturn their convictions in the interests of justice. It is the product of the papers given at the Inaugural Innocence Network UK Symposium on the tenth anniversary of the CCRC, 31 March 2007 (for details, see INUK, 2008a).¹⁴ The Symposium brought together a range of different critical voices: victims of miscarriages of justice, campaigners and victim support organizations, practising lawyers and academics.

The challenges set out in the symposium are brought together in this book. Rather than an analysis of how the CCRC should interpret its role in the appeals process,¹⁵ the analyses offered here focus on different aspects of the CCRC's tasks: the limitations placed on it by its governing statute in terms of the kind of cases that it may refer; its ability to investigate cases thoroughly; its arrangements for the support of those claiming innocence that would allow them to present their cases; its apparent unwillingness to act proactively; its evident difficulty in responding to claims of defence deficiencies;

its overly deferential attitude to the appeal courts; and so on. In reference to the ongoing discussion about its suitability for other jurisdictions, there are also wider chapters that compare the CCRC with the existing systems in Canada and the US for dealing with alleged wrongful convictions, giving the analyses that make up the book an important significance for these jurisdictions, too.

Overall, it becomes increasingly evident that the critical challenges to the CCRC are now reaching a climax as, after more than ten years, its ability 'to restore public confidence in the criminal justice system', on the basis that it is the necessary safeguard to assist in overturning the wrongful convictions given to innocent people, is no longer sustainable.

Structure

The book is presented in five parts. Part I (Setting the Scene) gets the book underway properly with Chapter 2 where I, first, outline the fundamental importance of the discourse of innocence for the criminal justice system, charting milestone changes that have occurred in response to widespread public crises of confidence in its workings that were prompted by the belief that innocent people have been wrongfully convicted and imprisoned. Then, in a critical assessment of how the CCRC compares with the body that was recommended by the RCCJ and JUSTICE, the CCRC is shown to be at variance in terms of how it *defines* a miscarriage of justice, its lack of *independence* and its inability to *investigate* cases in the way that the RCCJ and JUSTICE envisaged. It is argued that despite its serious deficiencies, however, a consequence of the CCRC has been that, as alleged miscarriages of justice are now dealt with behind closed doors and away from the public eye, there has been a diminishment of public interest in the problem of wrongful convictions. In particular, the vital channels which played the imperative role of informing the public debate about the failings of the criminal justice process have suffered detrimentally: the press have scaled down their reportage and assistance, that was offered by human rights and law reform organizations, has been terminated due to a mistaken widespread belief that the machinery of the CCRC is capable of resolving the wrongful conviction of the innocent. In noting the need to revive the concept of innocence and reconnect the conduit between public discourse and progressive changes to the criminal justice system, the chapter charts the recent formation of INUK and a growing network of innocence projects in universities around the UK in direct response to the apparent limitations of the appeals system and the CCRC to guarantee that alleged innocent victims of wrongful conviction will have their cases referred back to the appeal courts. The chapter concludes with a critical summary of the inappropriateness of the CCRC for dealing with claims of innocence, raising the question of the urgent need for a new body that places overturning the wrongful conviction of the innocent at the heart of its operations.

Part II (Voluntary Sector Perspectives) contains four contributions by individuals who are at the forefront of the voluntary sector's contribution against the wrongful convictions and imprisonment of alleged victims believed to be innocent. They have each personally helped to overturn wrongful convictions through their investigative and campaigning efforts and continue to strive for justice for alleged victims of wrongful conviction who they believe to be innocent. The shared theme of Part II is the failure of the CCRC to investigate adequately the cases of applicants who may be innocent, due to its limiting its reviews to finding possible legal grounds for appeal and compliance with the Real Possibility Test, as opposed to getting to the truth of whether applicants are, in fact, innocent as they claim. This resurrects a form of analysis regularly employed by JUSTICE, for instance, that was given up when the CCRC was set up on the basis that it was believed to be the long-awaited solution to the problem that it had fought so long and so hard for (discussed further in Chapter 1): to present publicly the findings of investigations to show the shortcomings of C3's ability to investigate claims of wrongful conviction, which played a major part in its replacement by the CCRC. The importance of the contributions that together form Part II, then, is that they lay bare some of the key failings of the CCRC's reviews from the perspectives of investigations that seek the truth of claims of innocence, as opposed to the CCRC's refusal to refer the cases of potential innocent victims who may not fulfil the required legalities.

Chapter 3 is culled from an interview with Hazel Keirle, Director of Miscarriages of Justice Organisation (MOJO) (England and Wales). Its significance is that it presents a critical evaluation of the CCRC from the perspective of the organization that was set up by Paddy Joe Hill, one of the Birmingham Six, one of the key miscarriages of justice that prompted the RCCJ and the subsequent setting up of the CCRC. In particular, Keirle notes how the CCRC is not concerned with whether applicants are innocent but, rather, with whether the conviction or sentence is sustainable in law. She concludes that the CCRC's poor performance can be improved in lots of different ways to ameliorate the overall quality of its work.

In Chapter 4, Andrew Green begins by offering some hope for overcoming the practice of the CCRC of interpreting deficiencies by defence lawyers, in particular their failure to adduce matters of significance at court, as indicative of a case being inappropriate for investigation and referral. In a detailed analysis of the case of Andrew Adams – a leading successful appeal case that was recently overturned, in part because of poor defence – and by Green's own theoretical approach to the production of forms of knowledge that lead to criminal convictions, he shows how the CCRC, perhaps inadvertently, used the method of knowledge production in its review, which, ultimately, broke the prosecution narrative and, thus, was able to present the case to the CACD in a way that rendered the conviction unsafe. On the downside, however, Green sees such cases as the exception rather than the rule, with the

CCRC generally reluctant to investigate unused evidence that might correct wrongful convictions that stem from poor defence representation due to its narrow interpretation of its role. In this light, he sees little hope of the case of Andrew Pountley being referred by the CCRC and, therefore, overturned by the CACD, despite evidence unearthed by Green to cast serious doubts on the conviction.

In Chapter 5, Dennis Eady asks to what extent the CCRC can live up to its stated values, such as independence, impartiality, thoroughness, transparency and accountability, in its reviews of alleged wrongful convictions. This is illustrated by the case of Michael Attwooll and John Roden – the longest case to date at the CCRC, which took ten years from application to a referral to the CACD – through Eady’s own lens as a key campaigner for the case. In particular, Eady highlights areas of continuing concern in the case that he claims were not adequately investigated by the CCRC for what was, ultimately, an unsuccessful referral. He reaches the unequivocal conclusion that the CCRC will never be able to live up to its ideals, no matter how genuinely intended they may be, so long as it is statutorily tied to the apron strings of the criteria of the appeal courts.

Continuing the critique of the CCRC’s failures in its case reviews, in Chapter 6 Satish Sekar presents a critical analysis of the CCRC’s review of the possible miscarriages of justice that may have been caused by the discredited forensic pathologist Michael Heath. As a background, Sekar lists a trail of poor practice by Heath and a plethora of overturned convictions almost from the day that he became accredited by the Home Office in 1991. Through an examination of the case of Neil Sayers and other cases where Heath was involved and which were not referred by the CCRC, Sekar argues that the CCRC’s review of Heath’s cases was insufficient to capture all of the potential wrongful convictions that he may have been responsible for. He concludes that justice requires that such reviews must be carried out by the appropriate experts, rather than unqualified CCRC Commissioners who lack understanding of the consequences of Heath’s conduct and knowledge of forensic pathology-related issues.

In Part III (Practitioner Perspectives), the dominant theme that emerges is an apparent shared frustration by leading criminal appeal lawyers about the statutory limitations placed on the CCRC which thwart the referral of cases of potentially innocent clients back to the CACD. This situation is exacerbated by the routine practice of the CACD to overturn cases at first appeal which would be unlikely to be referred by the CCRC. It is further hampered by the insufficiency of funding applications to the CCRC at the post-appeal stage, which is needed to represent clients in an appropriate manner.

More specifically, in Chapter 7, Mark Newby looks at the particular difficulties caused by the Real Possibility Test for his bulging caseload of clients who have been convicted of historical abuse. Using the successful appeal of Anver Sheikh as a gauge to assess the likelihood, or otherwise, of a CCRC referral for

alleged innocent victims that are convicted of historical abuse offences, he argues that there is a significant divergence between how the CACD received and, ultimately, overturned the case as compared with the chances of such cases being referred by the CCRC. He shows how this stems from the way that the CCRC operationalize the Real Possibility Test as opposed to a more common-sense approach taken by the CACD that works in the interests of justice as popularly understood. To be sure, Newby illustrates that the CACD applies a much wider ‘miscarriage of justice’ test that can deal with cases that the CCRC will often decide against referring. As a way forward, Newby proposes a realignment between the tests employed by the CACD and the CCRC; only then, he contends, will possible innocent victims of historical abuse convictions, who are unable to generate forms of fresh physical evidence, have a realistic chance of having their convictions overturned.

Campbell Malone continues in a similar vein to Newby in Chapter 8 in a discussion of the CCRC’s problematic interpretation of its statutory role by evaluating its inconsistency with the CACD as to what, precisely, constitutes ‘fresh’ evidence, particularly in the area of competing opinions by forensic-science expert witnesses. Citing failed appeals that routinely appear in the CCRC’s Statements of Reasons for why it has decided not to refer a case back to appeal, he cites other successful appeals that the CCRC could just as easily rely on, which could lead to more potentially meritorious cases being referred and, possibly, overturned. Overall, for Malone, the CCRC frequently takes an overly cautious approach as it tends to overlook the discretion exercised by the CACD in the overriding interests of justice to receive evidence, even though all the criteria set out in s. 23 of the Criminal Appeal Act 1968 may not have been met, i.e. it may not actually be ‘fresh’ evidence that was not available at the time of trial. He illustrates his position through an analysis of the cases of Graham Huckerby, Jong Rhee and Alan Cherry, the latter two of whom continue to maintain innocence in prison due to an apparent reluctance by the CCRC to refer the cases, despite strong expert witness evidence that indicates serious flaws in the convictions.

In Chapter 9, Glyn Maddocks and Gabe Tan take a wider perspective on the role of the solicitor in the CCRC processes in an evaluation of the findings from an innovative focus group meeting with various personnel at the CCRC that explored its often thorny relationship with solicitors acting for applicants in the case review process. Maddocks and Tan’s research validates many of the hunches that practising solicitors report from their experiences with the CCRC, revealing, for instance, a lack of specific and systematic training for Commissioners and CRMs who carry out the reviews on alleged miscarriage of justice, who are, instead, left to devise their own caseworking methods. This renders the case review process something of a lottery, with the best hopes for alleged victims of wrongful conviction resting on the allocation of a proactive and committed CRM. It also highlights a gulf between CCRC staff and applicant solicitors and a general failure on both sides to understand

and/or appreciate the role of the other, which can contribute to 'communication breakdowns' with CRMs who are, apparently, reluctant to inform solicitors of the progress of case reviews to their satisfaction, who they often view as a hindrance rather than a potential help. Overall, it is argued that, as the final gateway to the CACD for applicants who may be innocent, the CCRC is in need of urgent reform to ensure that its case reviews are of the highest quality and are consistent, which cannot and must not be a matter of chance or luck.

Concluding Part III, Chapter 10 by Steven Bird, a specialist in making applications to the CCRC, considers in detail the limitations of the 'legal aid' funding available for solicitors to provide advice and assistance to their clients who maintain that they are innocent victims of wrongful conviction. He highlights the monetary disincentives for undertaking criminal appeal work, noting the closure of firms that cannot make ends meet and the knock-on impacts for those seeking a quality criminal appeal service. He makes a clear case for the need for a raft of changes, not only in terms of more appropriate and adequate overall rates of pay, but, equally, in the way in which the Legal Services Commission (LSC) determines what is claimable and who should claim it. Bird's conclusion is stark: wrongful convictions are likely to go uncorrected due to the severe lack of funds available for criminal appeal lawyers to investigate properly claims of innocence in pursuit of grounds of appeal that fit with the remit of the CCRC.

Part IV (Academic Perspectives) presents five chapters from academic colleagues which are vital for explaining the reasons for the apparent frustrations that were presented in the foregoing chapters, by practitioners and those working in the voluntary sector, to assist alleged innocent victims of wrongful conviction and the intransigence of the CCRC to responding to such forms of critique.

In Chapter 11, Richard Nobles and David Schiff offer three perspectives by which the CCRC might be measured after its first decade in operation. First, they argue that without a definitive idea of the total number of miscarriages of justice that occur it is difficult to say if the CCRC has been successful in correcting all of the possible miscarriages of justice that occur. However, with an annual contribution of just 0.058 per cent of all of the successful appeals at the CACD, it seems that the CCRC makes such a minute difference to the total problem of miscarriages of justice that any claims to success are difficult to sustain. Moreover, if the CCRC is judged against the Scottish Criminal Case Review Commission (SCCRC), albeit that they each have differently worded tests for referring cases, it is shown to refer about half as many cases back to the relevant appeal court with a similar rate of overturned convictions, again rendering the CCRC as, apparently, less adequate than its Scottish counterpart at overturning miscarriages of justice. Second, Nobles and Schiff consider the CCRC's relationship to the CACD, seeing the CCRC as 'successful' in these terms, as it is constrained, by statute and its working

practice, to a cautious approach to only refer cases with a strong possibility of being overturned, hence its high level of quashed convictions following a referral. Third, Nobles and Schiff discuss the likelihood of innocent victims of wrongful conviction who cannot point to any significant error in the trial proceedings or find fresh evidence or new arguments for having their cases referred. By this criteria, the CCRC can be conceptualized as failing: whilst the CACD will overturn first appeals on a 'lurking doubt', there is little, or no, real possibility that such cases will be returned back to the CACD by the CCRC, simply because it may have doubts as to the accuracy of the jury's verdict. Instead, it requires an identifiable legal argument or piece of fresh evidence that was not put to the jury, which, effectively, closes the only door of hope to innocent victims that their cases will be overturned.

In Chapter 12, Kevin Kerrigan also analyses the Real Possibility Test, focusing on the way that it is defended by the CCRC on the grounds of its compatibility with the test of the CACD. In accepting the current failings of the appeals regime as they relate to the problems that potentially innocent victims face, he argues that the CCRC currently performs a predictive, not a normative, role, meaning that it has very limited capacity to challenge those failings. To support his contention, he examines three alternative tests for referral, maintaining that lowering the threshold of the Real Possibility Test might increase the number of referrals but will not increase the number of quashed convictions, as the CACD will assess the safety of convictions from a legal perspective. He concludes that much of the criticism of the CCRC's Real Possibility Test is misplaced and may serve to mask the real obstacles of overturning miscarriages of justice that are posed by the CACD.

In Chapter 13, Paul Mason looks at the newspaper reportage of the CCRC between January 1996 and December 2006, applying a 'crime and the media' perspective. In support of the argument in Chapter 1 about the loss of the media voice with the establishment of the CCRC, his discussion shows how coverage that is critical of the CCRC has waned since its creation and is, instead, mainly restricted to reports of cases that it refers to the CACD. Applying Steve Chibnall's (1977: 23) analysis, Mason suggests that 'celebrity', 'novelty', 'simplification', 'sex' and 'death' all sell newspapers, and so are key considerations in how a crime story is written, who is quoted and what perspective the story is told from, which accounts for the amount of reporting when cases have a 'celebrity' (Barry George, for example) or are 'notorious' (cases such as Ruth Ellis, James Hanratty and Derek Bentley, for instance). These are the underpinning values or 'professional imperatives which act as implicit guides to the construction of news stories', to explain how and why certain stories about the CCRC reach the press and others do not, and, therefore, why forms of critique about the failures of the CCRC to investigate claims of innocence adequately, or the ways in which its procedures may act as a barrier to referring cases of alleged victims of wrongful conviction who may be innocent, are unlikely to be published. The overall implication of this

chapter is that miscarriages of justice are no longer the cause of great public concern that they once were: if the CCRC refers cases that are overturned at appeal they are presented as indicative of the success of the CCRC; if CCRC referrals fail at appeal they are depicted by the press as guilty offenders on whom the CCRC should not have wasted taxpayers money.

In Chapter 14, Clive Walker and Kathryn Campbell turn attention from the CCRC in a domestic context to a comparative analysis with the system of alleged wrongful conviction review in Canada under the Criminal Conviction Review Group (CCRG). Seeing the CCRC as a step forward from the CCRG, they point to the existing executive-based review system in Canada under which applications are made to the Minister of Justice who is also the Attorney General of Canada and the Chief Prosecutor arguing that the CCRG suffers from the apparent constitutional problems that were the reason for why the CCRC replaced C3 Division. Noting the need to account for the limits of the CCRC under clauses such as the 'real possibility test' and the need to comply with the criteria of the appeal courts, it calls for a new body for Canada that mirrors the independence from government that is enjoyed by the CCRC but which can improve on its shortcomings, too. This, it is contended, would entail more resources, reform of the CACD, and a more holistic approach that seeks to learn lessons from the whole gamut of miscarriages of justice that are routinely overturned through the normal appeal process, as well as exceptional cases that are overturned through post-appeal routes, which the CCRC has yet to engage in. However, in recognising the public confidence and policy gains obtained by the Canadian custom of commissions of inquiry into the circumstances that cause wrongful convictions, Walker and Campbell caution that the move to a CCRC-type body may well deflect against such inquiries and render systemic failings with the criminal justice system less visible.

In the final chapter of Part IV, Robert Schehr discusses the approach to wrongful convictions in the United States, which makes clear the focus on the concept of factual innocence. Although he claims that the US has a tendency of looking inwards and is generally unaware of developments in criminal law outside of its own boundaries, Schehr notes the roots of the conversation on the suitability of a CCRC-type body for the US at the turn of the century by the creators of the first innocence project, Barry Scheck and Peter Neufeld. However, the notion of a CCRC for the US was decided against by these two, who favoured, instead, 'innocence commissions' – with full subpoena authority, access to investigative resources and political independence – for conducting inquiries into the apparent wrongful convictions that are overturned by innocence projects, in the way that there are investigations of aeroplane and other major transportation accidents in the US, and for making policy recommendations to eliminate the identified cause of the wrongful conviction. Utilizing the concept of 'parrhesia', as outlined by Michel Foucault, he argues the importance of innocence commissions as

examples of truth-seeking that privileges the voices of exonerees and a commitment to institutional change to improve the criminal justice systems in the US. Schehr concludes by building on an analysis of the existing innocence commissions in the US to put forward his idea of a schematic for a tripartite system of innocence projects and innocence commissions that overlap on a state and federal level.

The Conclusion, Part V, draws from the foregoing chapters to provide a summary of the key findings and conclusions of the book. It shows that the CCRC is not at all what the RCCJ and JUSTICE called for: there is nothing wrong *per se* with the CCRC as a 'legal watchdog' to ensure that the criminal justice system is operating in line with its own rules and procedures and, therefore, that criminal convictions are correct in law; however, the CCRC is not to be confused with the urgent need – almost two decades since the public crisis of confidence in the apparent inability of the criminal justice system to protect the innocent and guarantee that, when discovered, they would have their cases referred back to the appeal courts – for a specific body to deal with claims of innocence.

Finally, with the reader in mind, it must be acknowledged that the chapters that together make up this book derive from a diverse group of the wrongful-conviction and miscarriage-of-justice community. As such, the chapters display differences of style, ranging from recognizable academic chapters that are rich with references that point to sources of information and/or other points of reference, to chapters from practitioners that cite key cases in detailed discussions of points of law for giving insights into the workings of the CCRC and the CACD, to chapters from investigative journalists and victim support workers that are largely devoid of references, instead standing as their own authority on the matters upon which they speak by the very nature of the engagement of the author(s) with the criminal appeals process in attempts to overturn alleged wrongful convictions. Despite this difference in the presentational style, however, taken together the chapters do share a coherent perspective that identifies the key deficiencies of the CCRC from the perspective of the delivery of justice for innocent victims of wrongful convictions and imprisonment. It is hoped that these forms of critique can form a forceful body of counter-discourse on the existing arrangements that can feed into the debate about the continuing need to introduce further changes to the criminal justice system, so that it contains the necessary mechanisms to overturn the convictions of the innocent, as and when they occur, thus truly acting as it should and as we want it to.

Notes

1. In essence, the RCCJ was an extension of the inquiry by Sir John May into the events surrounding the conviction of the 11 people, mostly family members, who

were convicted in the cases of the Guildford Four and the Maguire Seven (see May, 1990, 1992, 1994).

2. The RCCJ was announced on the day that the Birmingham Six overturned their convictions in the CACD: 14 March 1991.
3. See, for example, Woffinden, 1987; Mullin, 1986; Kee, 1986; JUSTICE, 1989; Ward, 1993; Maguire, 1994; Callaghan and Mulready, 1995; Rose *et al.*, 1997; Walker and Starmer, 1999b; Kennedy, 2002.
4. Including the cases transferred from the Home Office when the CCRC was set up.
5. This figure includes referrals for appeals against sentence as well as against conviction for appeal. It is also interesting to note that the number of referrals is on the decline with only 27 referrals in 2007–08, as compared with 38 in 2006–07, representing only 2.5 per cent of completed cases (see CCRC, 2008a: 6).
6. Although the CCRC's jurisdiction is not confined to the CACD, as it also encompasses alleged miscarriages of justice from magistrates' courts that can be returned to the Crown Court sitting as an appeal court, this book is directed to its operations in the Higher Court of Appeal (see Kerrigan, 2006).
7. INUK is the umbrella organization for member innocence projects in universities in the United Kingdom. Innocence projects see students work on cases of alleged innocent victims of wrongful conviction with pro bono lawyers (see INUK, 2008b; discussed further in Chapter 2). For information on INUK 'typology of claims of innocence' and its eligibility criteria, see Naughton (2007a, 2008a). For reasons of data protection and confidentiality I am not permitted to name the actual cases that the CCRC has referred but which were rejected by INUK.
8. Dino had bitten Elizabeth Coull who tried to intervene in a fight between him and her pet terrier, Ralph. The legal battle over Dino's case passed from Northampton Magistrates' Court to Northampton Crown Court to the High Court to the House of Lords to the European Court of Human Rights and, finally, to the CCRC which looked into the case and referred it back to Northampton Crown Court, whereupon the destruction order was rescinded (see Rozenberg, 2004).
9. In 1994, C3 had 12 case workers and two and a half senior staff working full-time on miscarriages of justice and related issues (Pattenden, 1996: 349) compared with a current cohort of 43 CRMs and 11 Commissioners (including those working part-time) at the CCRC (CCRC, 2008a).
10. As amended by s. 25 of the Crime and Punishment (Scotland) Act 1997.
11. This was acknowledged by John Weedon, Commissioner, CCRC, speaking in a personal capacity at the 2006 Annual Socio-Legal Studies Association Conference, held at the University of Stirling during 28–30 March.
12. Inaugural Innocence Projects Colloquium, held at the University of Bristol on 3 September 2004, which was attended by the Principal Legal Advisor, the Public Relations Officer and four CRMs from the CCRC.
13. As presented by John Wagstaff, Principal Legal Advisor, CCRC, speaking in a personal capacity at the UAI 3rd Annual Miscarriage of Justice Day Conference, held at Conway Hall, Holborn, London, on 9 October 2004.
14. All royalties from the sale of this book will go to INUK.
15. For such an analysis, see Elks, 2008.

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