

Rethinking Miscarriages of Justice
Michael Naughton
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I met Michael Naughton at an Innocent Symposium of the University of Bristol Innocence Project in summer 2005. There is no doubt of his complete devotion to the human rights of convicted persons.

‘The issue of miscarriages of justice has always been a constant pressing social concern, not least for the obvious harm caused to victim’,

Michael Naughton said.

Naughton uses the term ‘harm’ here in its ordinary English usage because the term ‘harm’ as used in the law pertains to behavior that a country deems to be a criminal offence when the result of the commission of such acts causes harm to a society. Therefore criminal offences denote a concept of prohibited behaviour for the good of an organised society. Such prevention of harm is a legitimate purpose of criminal law and the seriousness of the harms involved in certain acts is the standard reason for their criminalisation. When a proposed criminal law is debated in Parliament, what is largely considered is whether or not to prohibit a particular behaviour by considering the probability and magnitude of the harmful consequences of that behaviour and balancing these factors against the social value of the behaviour itself. If the risk and gravity of the harm sufficiently outweighs the positive aspects of the conduct at issue, there is prima facie reason to criminalise that conduct. Thus the State criminalizes harms to collective interests.

Miscarriage of justice is an emotive subject, ably enhanced by numerous books and journalistic docudramas but in this book Naughton attempts to contribute to new ways of thinking about and acting upon miscarriages of justice and he claims that his purpose is to disturb the dominant discourse on miscarriages of justice and replace it with a new regime of truth. He asserts that the term ‘miscarriage of justice’ refers to the internal workings of the criminal justice system whilst the term ‘wrongful conviction’ is wholly external to the criminal justice system. Miscarriages of justice, Naughton analyses, are caused by wrongful identification; false confessions perjury by a co-accused or /and other witnesses; police and prosecution misconduct; bad defence trial strategy; forensic expert witness evidence and defective summing-up by the trial judge.

Under the heading police and prosecution misconduct might be included prevention of access to documents by government bodies, which can disadvantage the preparation of a defence case (see *R (Corner House) v Director of SFO* [2008] EWHC 246).

The book includes some important analysis concerning the criminal justice system and narrations such as of the establishment of the Court of Criminal Appeal, for example. Chapter 5 is a novel analysis of campaigns, and Naughton is absolutely correct in stating that there is a dearth of literature on campaigns against miscarriage of justice and he asserts that the number of successful appeals is an indication of the current enormous scale of miscarriage of justice and also indicative of this judiciary's incompatibility with and unlawful violation of the Human Rights Act 1998, not to mention the huge costs of these appeals, the financial harm of miscarriages of justice. Then there is the huge financial cost of establishing and running the Criminal Cases Review Commission. Michael Naughton is correct. In essence, there are many miscarriages of justice in this country and the criminal justice system uses the management system of 'disjointed incrementalism', muddling through to the truth (The theory of incrementalism in political science was first expounded on by Charles Lindblom in 1959), and such criminal justice inefficiency and gross negligence is inexcusable.

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