

The guildford four and other miscarriages of justice law essay



**ASSIGN
BUSTER**

An overview in light of how the criminal justice system has changed in relation to miscarriages of justice. As defined in the book 'Miscarriages of Justice', a miscarriage means literally a failure to reach an intended destination or goal. A miscarriage of justice is therefore, *mutatis mutandis*, a failure to attain the desired end result of 'justice'.

The issue of miscarriages of justice has always been discussed, either as a legal, political or social issue. It has been such a vital issue that it provoked the appointment of the Royal Commission on Criminal Justice and many other changes in the English legal system, which shall be discussed in due course.

It maintains being a legal issue due to the several rights at risk that are potentially affected by the operation of the criminal justice system, including[2] humane treatment (Art 3), liberty (Art 5), privacy (Art 8), fair trials (Art 6) and even the very right to existence (Art 2) in those jurisdictions which operate capital punishment.

During the 1970s Great Britain had to face a wave of vicious attacks committed by the Provisional Irish Republican Army (IRA). In response to the public outrage against the bombers, the Government introduced the Prevention of Terrorism Act 1974 (PTA) which gave new powers to the police to arrest on suspicion of terrorism, and to detain suspects for up to five days without charge.[3] It was clear that the police were under enormous pressure to capture the IRA bombers who had brought the war to Britain.

Unfortunately, this led to numerous arrestings and convictions of innocent people.

CASE STUDIES:

The Guildford Four and the Maguire Seven were the first to be arrested and questioned under the new powers of PTA 1974. They were arrested for alleged involvement on behalf of the IRA, in the bombings of pubs in Guildford and Woolwich which killed five people and injure over a 100.

On 22 October 1975, the Guildford Four – Gerald Conlon, Paul Hill, Patrick Armstrong and Carole Richardson – were convicted of murder, before Justice Donaldson and a jury of conspiracy. They were all given life sentences. An appeal against conviction failed in 1977, despite the fact that other IRA defendants awaiting trial[4] had claimed responsibility. However, in 1987 fresh evidence came to light following enquiries carried out by the Avon and Somerset police, which prompted a reference by the Secretary of State for the Home Department[5] to have the Guildford Four case reviewed. It was discovered that typescripts and notes of interviews had been tampered with; confessions were obtained under duress and detention sheets falsified. These matters brought into question the whole foundation of the prosecution case which had relied on the confessional evidence of the four defendants. After 15 years of imprisonment, the convictions were successfully appealed and their innocence was proved in October 1989.

The outcome of the Guildford Four appeal immediately prompted the reconsideration of the case of Anne Maguire and the members of her family[6] – the Maguire Seven – who were convicted in 1976, of being the source of the explosives used in the bombings.[7] Their sentences were quashed in 1992, although by then all had served their time, apart from

Patrick Conlon who had already died in prison. The Court of Appeal reluctantly overturned the convictions because new evidence about the possibility of innocent contamination cast substantial doubt on the scientific evidence at trial that the defendants had been in contact with explosives.[8]

The next blow to the public's faith in the criminal justice system was by the Birmingham Six case.[9]The Court's judgment[10]is an official testament to one of the most notorious miscarriages of justice in British legal history. In 1974, six men – Hugh Callaghan, Gerard Hunter, William Power, Patrick Joseph Hill, Richard McKelvey and John Walker- were convicted of bombings in two Birmingham pubs. The bombing caused more deaths than any other IRA incident in Britain.[11]The prosecution evidence rested upon three factors: confessions, which the accused claimed had been coerced and beaten out of them; forensic tests, which the accused claimed were essentially unreliable and had been performed unsatisfactorily; and highly circumstantial evidence, such as their links to known Republicans. New evidence was referred back to the Court of Appeal in 1988; even then the Court was unpersuaded. However, further revelations about the police fabrication of statements and new uncertainties about the quality of the forensic tests ultimately resulted in their release in 1991. As mentioned earlier, that outcome provoked the establishment of the Royal Commission on Criminal Justice.

In “ The Conscience of the Jury” (1991), Lord Devlin wrote that together the miscarriages in the cases of the Guildford Four, the Maguire Seven and the Birmingham Six were “ the greatest disasters that have shaken British justice in my time”.

<https://assignbuster.com/the-guildford-four-and-other-miscarriages-of-justice-law-essay/>

Another unfortunate case of miscarriage of justice which involved the IRA occurred in 1974, when Judith Ward was convicted for handling bombs which resulted in twelve deaths.[12]Her conviction was quashed by the Court of Appeal in 1992 because of the prosecution's failure to disclose material to the defence, which was supported at the time of the appeal by fresh psychiatric evidence and cast substantial doubt on the reliability of her confessions.[13]

Another case arising from Irish terrorist activities concerned the Armagh Four – Neil Latimer, Alfred Allen, Noel Bell and James Hegan-[14]who were members of the UDR, who were convicted of the murder in Armagh. After referral back to the Court of Appeal in 1992, Allen, Bell and Hegan were all freed because it was clear that the police had tampered with the evidence.

It is evident that quite a few of miscarriages of justice have concerned Irish 'terrorist' cases. The Irish terrorism trials stand out as having involved some of the most intense flaws in the English criminal justice system and as being the most vulnerable to error. There are probably two reasons for their prominence.[15]Firstly, special powers in the Prevention of Terrorism Act 1974 made abuses easier to commit, and more difficult to detect. Secondly, miscarriages are more likely because of the nature of these cases. In such prosecutions, the criminal justice system is under pressure by the desire to be seen to be taking effective action against terrorists.[16]This is probably why miscarriages seem so hard to remedy – an acquittal becomes particularly costly to the State in terms of damage to its reputation.

Various recognised cases of miscarriages of justice from the 1970s were not just confined to Irish terrorism. In 1976, Stefan Kiszko was convicted of murdering an eleven-year-old girl.[17]His conviction was quashed in 1992. Other infamous cases include those of the Tottenham Three[18]and the convictions in 1990 of the Cardiff Three,[19]for murder, which were overturned in December 1992 on referral to the Court of Appeal.

Each of the abovementioned cases was a stain on the national stability of the United Kingdom, and a shocking reminder to the public that the English criminal justice system is imperfect. Such cases also raised many questions about police procedure and put doubts in many minds of the public as to the honesty of the police service. There were accusations that the police used beatings, intimidation, duress and threats against family and friends to derive illicit confessions from the accused.

Numerous miscarriages of justice have come to light in the last few years, a few notorious ones having been mentioned above. But there are still many people in prison who proclaim their innocence to this day. Having overviewed a few cases of miscarriages of justice, the rest of this project will consider why such injustice occurs, what changes have been made to the law to prevent it, and whether these changes have rendered such tragedies impossible or whether there is a need for a more radical reform of the English criminal justice system.

WHY DO CASES OF MISCARRIAGES OF JUSTICE OCCUR?

As seen in previous cases, some of which have been discussed above,

miscarriages of justice may result from a variety of causes. Problems begin <https://assignbuster.com/the-guildford-four-and-other-miscarriages-of-justice-law-essay/>

arising from the very first meeting with the police ' to the very end of entanglement with the State, when machinery to reopen problematical judgments has been shown to be unfair and inappropriate.' [20]

There are a few common features which have been found to be present in most cases of miscarriages of justice, which led to the case being a miscarriage. However, it must be kept in mind that these features may not be the only reasons as to why miscarriage of justice occurs. The most obvious danger of a case being one of miscarriage of justice is the fabrication of evidence which was found to be an issue in the cases of the Birmingham Six, [21] Tottenham Three, [22] Armagh Four, [23] Darvell Brothers [24] and several West Midlands cases. Also, both the police and lay witnesses may prove to be an unreliable source when attempting to identify an offender as found to be the in cases of Luke Dougherty and Laslo Virag. [25] The evidential value of expert testimony has also been overestimated in a number of instances such as in the cases of the Maguire Seven, [26] Birmingham Six, [27] Judith Ward [28] and Stefan Kiszko [29] – where it later emerged that the tests being used were unreliable, that the scientists conducting them were inefficient or both. Another common factor has been unreliable or false confessions as a result of being coerced by police pressure, duress, psychological or mental instability or a combination of all. Examples of these may be found in the cases of the Guildford Four, [30] Birmingham Six, [31] Judith Ward, [32] Tottenham Three [33] and Cardiff Three [34] cases.

The non disclosure of significant evidence by the police or prosecution to the defence may be a further issue. The investigation of a case is by reliance on <https://assignbuster.com/the-guildford-four-and-other-miscarriages-of-justice-law-essay/>

the police. Yet several cases, in particular the Guildford Four,[35]Maguire Seven,[36]Darvell Brothers[37]and the case of Judith Ward[38]illustrate that the police, forensic scientists and prosecution cannot be relied upon fairly to pass on evidence which might be helpful to the accused.

Sometimes, as it has been alleged in the case of the Birmingham Six,[39]the conduct of the trial may produce miscarriages. For example judges may sometimes favour the prosecution evidence rather than acting as impartial umpires. Lastly but not the least, the presentation of defendants in a prejudicial manner- such as labeling a person as a 'terrorist'- is also a problem in some scenarios.[40]As mentioned earlier, these are only a few of the common reasons as to why miscarriages of justice occur.

Now that we have seen what is likely to cause miscarriages of justice and a few examples of it, this project shall now provide an overview of the changes that have been made in the criminal justice system in order to prevent such misfortunes from happening again.

REFORMS:

Successive governments have put into practice a number of important measures to prevent further miscarriages of justice. Most prominent, perhaps, is the Police and Criminal Evidence Act 1984, and the Codes of Practice that accompany it. The creation of an independent, national prosecuting authority – the Crown Prosecution Service –[41]in 1986 has also been of fundamental significance to reducing the risk of miscarriages of justice. Another major reform was the establishment of the Royal

Commission on Criminal Justice in 1993 and the Criminal Cases Review
<https://assignbuster.com/the-guildford-four-and-other-miscarriages-of-justice-law-essay/>

Commission that it recommended. The Criminal Procedure and Investigations Act 1996 has also assisted in the prevention of miscarriages of justice.

Although reforms have been made by the government to prevent miscarriages from happening, some people such as Paddy Hill of the Birmingham Six, are unconvinced that such legislation is enough. He told BBC News Online: “ Justice is something that is not on this government’s curriculum.” Therefore, apart from legislative changes and reforms in the criminal justice system, there has also been the formation of independent organisations, such as JUSTICE, Miscarriages of Justice Organisation (MOJO) and innocent projects by the name of Innocence Network UK (INUK) which have helped bring to the light many cases of miscarriages of justice. Investigative television programmes have also been of help to victims of miscarriages of justice in the past.

How the abovementioned legislation and organisations work, and whether these methods have been effective or not to prevent cases of miscarriages of justice shall now be discussed in more detail.

Police and Criminal Evidence Act (PACE) 1984

Many miscarriages of justice cases arose before the PACE Act 1984 came into effect in 1986. This is because in the pre-PACE era, it was easy for the police to commit offences while investigating a case and get away with it, due to the absence of a statute such as PACE. The aim of the 1984 Act was to create a balance between the powers of the police and members of the public.

PACE provides safeguards during police questioning, supported by strict Codes of Practice, made under s. 60 and 66. It also gives detectives strict rules on the handling of evidence and on how long the police can question suspects for and insists that interviews be taped to ensure there was no mistreatment or any other form of intimidation. Safeguards such as these are in no doubt, assisting in the prevention of injustice.

Crown Prosecution Service

The separation of investigative and prosecution functions through the creation in 1986 of an independent, national prosecuting authority -the Crown Prosecution Service-[42]has also been of fundamental significance to reducing the risk of miscarriages of justice. The CPS was established under the Prosecution of Offences Act 1985, to prosecute criminal cases investigated by the police in England and Wales. Previously the police forces were responsible for the prosecution of such cases. However, in 1981, the Royal Commission recommended to the government that an independent prosecution authority should be introduced which would prevent police forces setting up independent prosecution departments so as to avoid having the same officers investigate and prosecute cases. Due to the separation of investigative and procedures it is less likely for miscarriages of justice to occur.

Criminal Procedure and Investigations Act (CPI) 1996

During a criminal investigation, a large amount of evidence is gathered by the police including witness statements, forensic results, and confession statements etc. Not all of this evidence is shown at the time of the actual
<https://assignbuster.com/the-guildford-four-and-other-miscarriages-of-justice-law-essay/>

trial; much of it is not even admissible. However, some of the evidence gathered may undermine the prosecution case, and therefore be of interest to the defence. There have been a few cases such as the Guildford Four, Maguire Seven, Darvell Brothers and Judith Ward, where the prosecution deliberately failed to disclose evidence that was vital to the defence. In order to regulate the disclosure procedure, the Criminal Procedure and Investigations Act (CPI) 1996 was brought into effect. The CPI Act puts the burden on the police to disclose all evidence to the defence that they think might weaken their case. This process is overseen by the Crown Prosecution Service.

Royal Commission on Criminal Justice

Since 1907, when the Court of Criminal Appeal was created, the Home Secretary had a statutory power^[43] to refer to the Court of Appeal, “if he thinks fit,” any case in which a person had been convicted on indictment and had exhausted all other methods of an appeal.

The Royal Commission on Criminal Justice (RCCJ) was established the day the Birmingham Six convictions were quashed in 1991 by the then Home Secretary, to inspect the efficiency of the criminal justice system in England and Wales.^[44] The Commission was set as a continuation of Sir John May’s inquiry into the false convictions of the Guildford Four and Maguire Seven.

In 1993 the Royal Commission reported and recommended to the Parliament that the Court of Appeal must be more ready to examine possible miscarriages of justice. It also recommended the transfer over responsibility for the review of alleged miscarriages, from the Home Office to an

<https://assignbuster.com/the-guildford-four-and-other-miscarriages-of-justice-law-essay/>

independent non-departmental public body.[45]As a result of this recommendation, the Criminal Cases Review Commission was established.

Criminal Cases Review Commission

From the recommendation of the Royal Commission and through the enactment of the Criminal Appeal Act (CAA) 1995, the Criminal Cases Review Commission (CCRC), became fully operational on 31 March 1997.[46]The jurisdiction of the Commission extends to England, Wales, and Northern Ireland.[47]The CCRC is completely independent and impartial and does not represent the prosecution or the defence.

The CCRC's statutory role and responsibilities are set out in the Criminal Appeal Act 1995 which involves reviewing suspected miscarriages of justice and referring a conviction, verdict or finding or sentence to an appellate court.

The CCRC has wide-ranging investigative powers and can obtain and preserve documentation held by any public body. It can also appoint an Investigating Officer from another public body to carry out inquiries on its behalf.

Applicants to the CCRC must focus their case on new evidence or argument that was not raised in the initial proceedings and as a result may cast doubt on the safety of an original decision. They can also challenge their sentence if they can show a new point of law or information relating to the sentence was not raised during the trial.[48]The CCRC refers a case to the appellate

court if it considers there to be a “ real possibility” that the conviction would not be upheld.

There is no appeal against a decision of the CCRC, however a judicial review claim can be made to the high court to examine whether the CCRC’s decision was unlawful.[49]

The Commission has been the under considerable scrutiny for the way in which it deals with its applications. Criticisms of the Commission relate to the failure to interview more than a small proportion of applicants; to the insufficiency of communication with applicants and their representatives; and to alleged deficiencies of investigation, among other matters.[50]

Although the CCRC is much better, than having no such body at all, to deal with issues of miscarriages of justice (as was the case before), it is still inadequate.

JUSTICE

JUSTICE is an independent legal human rights organisation which was founded in 1957. It works to improve the legal system and the quality of justice, in particular by promoting human rights, improving the legal system, criminal justice system and the access to justice. Ever since it was founded, JUSTICE has received requests for help by, and on behalf of, prisoners alleging miscarriages of justice in their cases.

Some miscarriages of justice cases brought to light by JUSTICE have provided investigations into the criminal justice system which resulted in reports

urging reform. For example the Criminal Appeals (1964), Home Office
<https://assignbuster.com/the-guildford-four-and-other-miscarriages-of-justice-law-essay/>

Reviews of Criminal Convictions (1968), The Prosecution Process in England and Wales (1970), Evidence of Identity (1974) and Compensation for Wrongful Imprisonment (1982).[51]Several reforms have also taken place due to the influence of JUSTICE reports – including reforms of police powers under the PACE Act 1984, and the forming of the CPS.

Innocence projects

Innocence projects[52]are a conjunction between university students, solicitors and barristers who investigate cases of alleged wrongful convictions, on a pro bono basis. The project seeks to uncover cases that are evident of the failings with the criminal justice system. Innocence Network UK (INUK) is the organisation for innocence projects based in UK universities, which was set up in 2004, to give help and hope to potentially innocent victims of wrongful conviction or imprisonment who have exhausted the appeals system and legal aid services.

There are 23 member projects at universities across England, Wales and Scotland, with others being formed. Most of the cases they look into involve prisoners serving life or long-term sentences for serious offences, in particular murder, rape and GBH.

According to the INUK, the CCRC is not doing a good job of referring cases of alleged or suspected miscarriage of justice back to the appeal courts. This is because; the public was under the impression that the CCRC referred cases in the interests of justice; however due to the way its rules have been set out, that was not the case. Some innocent victims of wrongful conviction

were not referred back to the appeal court simply because they did not meet the required criteria, as happened in the recent case of Neil Hurley.[53]

Television programmes

The emergence of investigative television programmes such as ‘ Rough Justice’[54]and ‘ Trial and Error’[55]have previously helped to overturn a number of miscarriages of justice cases. These shows filmed enthusiastic journalists who pursued cases in detail in order to uncover such cases. Due to the impact of these shows, politicians and members of the public campaigned to pressurise the Home Secretary to refer cases back to the appeal courts. With the creation of the CCRC, however, such cases are no longer given as much importance and are no longer a major political issue. Such cases are now dealt with behind closed doors. If such media attention and support from politicians is once again provided, it will help a great deal in cutting down the number of cases of wrongful imprisonment.

It may be concluded from this project, that miscarriage of justice indeed does exist in our criminal legal system. It is affecting the lives of many innocent people. Even when miscarriages of justice are corrected, they remain terrible personal tragedies which come back to haunt the innocent victims who have been through the whole ordeal. Gerry Conlon of the Guildford Four has had two breakdowns, an attempted suicide and a struggle with addiction after 15 years of imprisonment. Others have equally miserable stories to tell. Any amount of compensation may not be enough for those who have been wrongfully convicted and whose lives have been destroyed.

[56]

The ever-present dangers of mistakes in the criminal justice system are reflected in the often repeated sentiment that ' It is better that ten guilty persons escape than that one innocent suffer.'[57]One must keep in mind that reforms have been made by the government and help has been provided by the members of the public to avoid or reduce such unjust incidents from recurring. Although the truth is bitter, it is of no use to anticipate that such miscarriages will altogether be eliminated in any way, [58]no matter how robust our criminal legal system is. This is because it is not just the English criminal justice system which is under this constant state of crisis, but this is the case in all other countries which operate legal systems.

In order to prevent the numbers of cases of miscarriages of justice from increasing, the legal system must accept this reality and should take interest in identifying mechanisms which can reduce these cases. Further improvements to reforms or legislation must be considered as an ongoing struggle, to ensure that such misfortunes do not increase. Cases that are evident of the failings in the criminal justice system must be uncovered and lessons must be learnt from them in order to protect other such innocents from going through this injustice. Also, the victims of miscarriages of justice and members of the public must be reassured by the criminal legal system that that the possibility of such crisis occurring is less, rather than more, likely. One must not only hope that such injustice is reduced rather than increased, but also help campaign to take strict actions against such misfortunes. Who knows who the next innocent victim of miscarriage of justice might be? It could be you.

Miscarriages of justice corrode respect for legal institutions. As a society we are finally learning that it is less damaging to admit mistakes than to pretend that they never happened. ' Nothing enhances justice more than the rigorous pursuit of error.'[59]