

REASONS TO DOUBT: WRONGFUL CONVICTIONS
AND THE CRIMINAL CASES REVIEW COMMISSION

by Carolyn Hoyle, and Mai Sato (Oxford University Press), 2019, 383pp,
£75.00 (hardback), ISBN: 978-0-19-879457-8

Paul Dargue Lecturer in Law, Northumbria University, UK¹

In this book the authors explore their extensive, multi-year, empirical analysis of the Criminal Cases Review Commission (CCRC). The authors obtained unrivalled access to the CCRC in the course of their study; the result is a complex and rich analysis of the inner-workings of the organisation. The CCRC, a non-governmental organisation funded by the Ministry of Justice, has the power to investigate alleged miscarriages of justice (following an application by the convicted person) and to refer cases to the Court of Appeal (Criminal Division) for an appeal hearing. This book, by far the most detailed examination of the CCRC, will be valuable for those engaged in the field of miscarriages of justice or the criminal justice system more broadly.

The book's theoretical framework draws heavily upon Keith Hawkins's naturalistic approach, adopted in his book *Law as a Last Resort* (2002). It also draws upon, though to a much lesser degree, Chun Wei Choo's concept of a 'knowing organisation' (p. 47). Hawkins suggested that discretionary decision-making is a product of the connection between the 'surround', decision 'field', and the decision 'frame' of the organisation.

¹ Dr Paul Dargue is a Lecturer in the School of Law, Northumbria University

The surround refers to the social, economic, and political environment in which the organisation operates (p. 39). The surround is not static, but shifts according to wider social and political changes (p. 316). The decision field (which is inevitably influenced by the surround) means the setting in which decisions are made – this is principally the law, policies, and guidance notes issued by the CCRC to its staff, as well as informal ‘working rules’ and assumptions (p. 40). The decision frame means the structures of knowledge and values that staff members at the CCRC use under the influence of the surround and field (p. 41). *Reasons to Doubt* accesses CCRC staff’s decision frames by unique access to case files and case records, which show what information was considered and rejected during the investigation. The book is consistent in applying this framework to the analysis of the CCRC’s decision-making, and this is to good effect to develop a deep sociological understanding of the CCRC.

The book is divided into 14 chapters. It is quite a long read, and has the benefit of a full bibliography at the end. The first three chapters contextualise the study by explaining the perceived problems with the CCRC and the concern with miscarriages of justice. The book’s methodology and theoretical framework are discussed in chapters 2 and 3. The reader is not aided by the book’s structure being somewhat confused, and at times a little repetitive (I found most of chapter 5 was scattered elsewhere throughout the book, for example). A clearer explanation of the law governing criminal appeals would have assisted. There is little sustained explanation of the unsafety test until chapter nine, and then only a few pages (see pp. 175 – 9). The

authors state expressly this was not a study of the Court of Appeal, but anyone new to the field will be left wondering what the test means; and the book's index does not point to any definition of the test.

Chapters 4 through 6 describe the stages of decision-making from receipt of an application to the decision of whether to refer to the Court of Appeal or not. There is a wealth of observational data here. These are valuable chapters; it is crucial that those working with, or making applications to, the CCRC understand its processes. Commissioners and staff at the CCRC exercise considerable discretion (p. 62). The presence of discretion should not be at all surprising for a body tasked with complex decision-making, but it is important that applications to the CCRC are drafted with this in mind. Any application must convince a living and breathing individual (or individuals) of its merits given the unique facts and circumstances of the case. 'I am innocent' will rarely suffice in this regard.

Chapters 7 through 10 consider the CCRC's decision-making in particular kinds of applications. Chapter 7 deals with applications which turn on forensic science and expert evidence. Changes in how forensic evidence is understood have influenced the CCRC's surround, field, and frame. New (understandings of) forensic evidence or expert testimony will only rarely obliterate the foundations of the conviction. It may undermine it to a greater or lesser degree, but the application will also need to provide a 'plausible alternative account for other incuplatory non-forensic evidence' (p. 131). The CCRC will rarely refer, and the Court of Appeal rarely quash, just because of some

change to forensic evidence; a good CCRC application will need to demonstrate how all the core planks of the prosecution case are undermined.

Chapters 8, 9, and 10 consider in turn appeals concerning sexual offences; allegations of police misconduct; and claims of inadequate defence. There was a change in CCRC policy in 2017 in relation to routine complainant 'credibility checks' (such as checking social services records) which were conducted between 2006 and 2017 in sexual offence cases. The CCRC became keenly aware that they were somewhat 'swimming against the tide', being an organisation concerned with convicted people rather than complainants, when the surround adopted a more victim-focussed approach. The change in policy made credibility checks a possible avenue of investigation rather than a routine one (p. 173). The authors are right to caution the CCRC against a restrictive application of credibility checks. It may close off another potential avenue for correcting / investigating wrongful convictions. Those submitting applications to the CCRC will need to be careful to ensure that valid reasons are provided for complainant credibility checks.

Chapters 11, 12, and 13 turn to the work of the CCRC within the broader criminal justice system context. The authors note that the CCRC's work is heavily dependent on other bodies, in particular the police and the Court of Appeal (p. 231). Chapter 12 considers one of the organisational aims of the CCRC: 'to investigate cases as quickly as possible with thoroughness and care'. While this is a noble enough aim, it is easy to see its flaws. Can the two components of that aim: efficiency and thoroughness, co-

exist? A more managerial structure within the CCRC sought to emphasise the efficiently component of the aim and facilitated a move away from a 'meandering' investigation. Perhaps the most successful CCRC applications will, in the future, be those which guide the CCRC in the most efficient way through an investigation.

The book concludes with chapter 14. They refer to the CCRC as being the 'last chance for justice', but note a number of crises in the current criminal justice system (cuts to legal aid, the issue of police non-disclosure, declining trust in forensic science, and so on). The book shows us that believing that the jury made the wrong decision does not get the CCRC, or indeed the applicant or their advisors, very far. The CCRC can only refer if they think there is a realistic prospect that the Court of Appeal will quash the conviction. The Court of Appeal will only usually quash if it thinks the jury might not have convicted due to some new information or evidence. It is a guessing game, constrained by the CCRC's and the Court of Appeal's organisational priorities.

This is an important book in a number of respects. In terms of thoroughness of analysis of the subject, it is hard to find a rival. The authors remain reasonably objective throughout in their analysis. This book is recommended reading for those primarily concerned with criminal appeals and miscarriages of justice. It is important to understand what appears to be the core message of the book. The CCRC does not claim to be the perfect solution to the problem of miscarriages of justice. It is, after all, staffed by people who have to reach decisions. If, after reading this book, those who make applications to the CCRC are able to make better applications, to facilitate that

Book Review

efficient yet thorough review of the case, and then hopefully correct more miscarriages of justice, then the book must be considered a resounding success.