

Title: Miscarriages of justice : exception to the rule?

Author: Naughton, Michael

Awarded: 2003

Abstract:

This thesis explores the ways in which miscarriages of England and Wales' criminal justice system (CJS) are currently defined, quantified, constructed and deployed. Presented in two parts, the first identifies and argues against the pervasive but problematical tendency to conceive miscarriages of justice as exceptional occurrences, that are small in number, and that result from post-appeal procedures once existing appeal opportunities have been exhausted. In fact, the evidence is that a successful appeal against criminal conviction forms a routine and mundane procedure of criminal justice in England and Wales. This indicates a need both to re-orientate definitions and understandings of miscarriages of justice and to re-calculate the likely scale of the phenomenon, an attempt at which is then offered. The second part of the thesis involves a broader plane of analysis, examining a range of discourses which articulate challenges to, or reforms of, the CJS, with respect to miscarriages. In so doing, a critique is developed to show that counter-discourses against miscarriages of justice are hindered by their problematic definition and the consequential calculation of miscarriages as a small-scale statistical phenomenon. They also labour under a misconception of the relations of power in the sphere of criminal justice. This severely diminishes the potential force of critical counter-discourse in the existing terrain. As a possible way out of this malaise, a Foucauldian-inspired understanding of the inter-relations of power, knowledge and 'governmentality' is brought into dialogue with the emerging zemiological perspective, which seeks a more holistic appraisal of the harmful consequences of social and political decisions in the interests of social justice. The critical and reconstructive moves that I recommend enable miscarriages of justice to be thought about in new ways and to help assess what is to count as effective counter-discourse. The thesis, then, represents a determined effort to re-orientate our understanding of miscarriages of justice by moving away from 'exceptionalism'. This encourages new ways of defining and quantifying miscarriages of justice and new ways of developing theoretical resources. The ultimate point of the thesis is to contribute towards the production of more effective counter discourses that might achieve lasting practical change in this area of social regulation.