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## MISCARRIAGE OF JUSTICE, WRONGFUL CONVICTION AND VICTIMS

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'Miscarriage of justice' and 'wrongful conviction' are terms that are synonymously used in the literature and in public discourse to refer to innocent victims of wrongful convictions. Yet, they refer to very different legal and moral standards that impact on the crucial issue of how victims are conceived and quantified (see Naughton, 2007).

As this relates to the criminal justice system in England and Wales, the essential distinction between a miscarriage of justice and a wrongful conviction is that a miscarriage of justice relates to a criminal conviction that is overturned on appeal and does not indicate that the successful appellant is innocent. For instance, police not abiding by the strict rules of the Police and Criminal Evidence Act 1984, governing how evidence is to be treated, which has led to convictions being overturned for murder and other serious offences, would be a miscarriage of justice even though the successful appellant were guilty. Another common cause of miscarriages of justice is when prosecutors fail to disclose evidence to the defence under the terms of the Code for Crown Prosecutors, again notwithstanding the reality that successful appellants in such cases can be guilty (see Naughton, 2013a).

Alternatively, a wrongful conviction relates entirely to the wrongful conviction and/or imprisonment of an innocent individual who did not commit the alleged crime that they were convicted of and who may or may not overturn their

conviction depending on whether they have the required legal grounds. An example of a wrongful conviction that is also a miscarriage of justice is the case of Sean Hodgson who had his conviction for the rape and murder of Teresa De Simone overturned when developments in DNA testing were utilised to totally exonerate him.

Thus, miscarriages of justice are best understood as miscarriages of the criminal justice process, which may or may not include innocent victims of wrongful convictions who are able to overturn their convictions on appeal by showing breaches of procedure or that they are not guilty through new evidence that was not available at the time of the original trial. In this context, the data on successful appeals against criminal conviction are a reflection of what the legal system sees as a miscarriage of justice. It reflects the criminal justice system's notion of a fair process rather than a lay notion of fairness in terms of the outcome of criminal trials and appeals and the conviction of the guilty and the acquittal or successful appeal of the innocent. Moreover, this official legal view of miscarriages of justice will change, as will the official statistics, as the rules and procedures of the criminal justice system change, for instance, reforms to the guidelines on how the police are required to treat suspects when the Judges Rules of 1912 were replaced with the Police and Criminal Evidence Act 1984 (see Naughton, 2013b).

It is also important to note that in public discourse, a miscarriage of justice can also refer to a guilty offender who escapes justice. This creates a fundamental tension with a legal system that overturns the convictions of guilty offenders on points of law while innocent victims languish in prison unable to overturn their convictions, which also has relevance to debates about 'deserving' and 'undeserving' victims of miscarriages of justice.

Indeed, the victimology on miscarriages of justice and wrongful conviction is not straightforward (see Tan, 2011; Naughton, 2013c). It is only on rare occasions that it can be known for sure whether successful appellants, legal miscarriages of justice, are, in fact, innocent or guilty. For the most part, victims of miscarriages of justice fall into a grey area in which it is not or cannot be known whether they are actually innocent or guilty as the criminal appeal system overturns convictions on the basis that they are 'unsafe' in law as opposed to morally wrongful. At the same time, alleged victims of wrongful convictions who are unable to overturn their convictions will never be acknowledged as victims of miscarriages of justice by the legal system, with the subsequent consequence that they will not be eligible to apply for compensation or aftercare services post-successful appeal.

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*See also: Appeals Against Wrongful Conviction*

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## MUSIC, CONFLICT AND TORTURE

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'Music as torture' is a term that covers a range of harms associated with the systematic use of music as a weapon. There are two main aspects to consider: 'acoustic bombardment', mostly used on the battlefield/zones of conflict; and music as a technique of psychological torture undertaken for the purpose of breaking the victim's will.

The use of music in battle has two main purposes, one of which is to communicate with fellow soldiers, and the other is as a psychological weapon against the enemy. Music has been used within the 'theatre of war' throughout history (Pieslak, 2007). For example, the long-established use of drums and horns and the employment of music in the armed services reflects a notion that music can inspire courage and patriotism and can also form the boundaries between 'us and them'.

During the Nazi period, official orchestras were a feature of many concentration and death camps (Johnson and Cloonin, 2009), and prisoners with musical talent were usually treated better than other camp prisoners. Although the orchestras would put on shows for SS officers, music was also used for more nefarious purposes, for example, music was used, via loudspeakers, to drown out sounds of gunfire that might have led to panic or rebellion within the camps. Music was also utilised as a 'welcome' to greet new arrivals at the train station in Treblinka as it had the purpose of deceiving the new arrivals about the true nature of the camp.

Recent interest in music as torture arose with reports from Guantanamo Bay about the use of a range of so-called 'torture-lite' techniques that were designed to inflict psychological torment but not leave physical signs of harm (Cusick,