INNOCENCE PROJECTS: LOSING THEIR APPEAL?

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Introduction

Are innocence projects losing their appeal? This question is central to our current clinical legal education environment and merits extensive discussion.

"Innocence projects" are most commonly student clinics based in universities, whereby students carry out investigations into potential miscarriage of justice cases.

Over the last 23 years, innocence projects have taken root in countries as widespread as the US, Canada, New Zealand, Australia, the Netherlands, Italy and the UK.[1] The international development of innocence project clinics has been referred to as representing an "innocence movement."[2]

The movement originated in the USA with the establishment of The Innocence Project at Benjamin Cardozo Law School in Yeshiva University, New York in 1992 by co-founders Barry Scheck and Peter Neufield. The official website for the project states its aim as to: "assist prisoners who could be proved innocent through DNA testing."[3] This project led to the establishment of the Innocence Network in the USA which currently has sixty member innocence project organisations.[4] Medwed considered it would not be far-fetched to see the rise of innocence projects in the United States as rendering the effort to free the innocent "the civil rights movement of the twenty-first century."[5] Innocence projects across the US have overturned numerous convictions, with The Innocence Project website stating that 325 prisoners have been exonerated of their convictions following DNA testing.[6]

So, when Michael Naughton established the University of Bristol innocence project and the Innocence Network UK (INUK), there seemed a potential for similar success in the UK. INUK was established in September 2004 and operated for ten active years as a membership organisation for projects until September 2014. During this time it aided the establishment of 36 innocence projects, 35 based at universities and one in a law firm.[7] There were also two innocence projects set up independently at Leeds University and Westminster University, making there 38 innocence projects established from 2004-2014. It seems fair to describe this period as representing an "innocence movement" in the UK where gradually an increasing number of universities became involved in miscarriage of justice work.

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[1] This is not intended to be an exclusive list.
[2] Brown, G. *"Deconstructing Innocence: Reflections from a public defender: Can student attorneys accept the paradigm of guilt and continue zealous representation?"* [2008] 13 International Journal of Clinical Legal Education 33 p.34
[3] Innocence Project Website, Mission Statement, http://www.innocenceproject.org/about/Mission-Statement.php (accessed 30/10/2012)
[4] http://www.innocencenetwork.org/members (accessed 26/02/15)
[5] Medwed, D. "Innocentrism." [2008] University of Illinois Law Review 1549 p.1550
[6] http://www.innocenceproject.org/ (accessed 26/02/15)
[7] http://www.innocencenetwork.org.uk/ (accessed 18/02/15)

Despite this, a decade into the movement, innocence projects in the UK have collectively been responsible for three cases to reach the Court of Appeal with only one of these resulting in the overturning of a conviction: and these came from just two universities. Alongside a lack of tangible success in casework, the movement was shaken considerably by the decision of the Innocence Network UK to fold as a membership organisation. There is now considerable uncertainty surrounding the future of the movement and how many projects are still operating across the UK.

The question posed here is, are innocence projects losing their appeal? It is intended to explore this by drawing on the results of original empirical research which has investigated the experiences of a number of innocence project leaders (both past and present) across the UK.[8] The research itself demonstrated that the movement has been in a state of instability: problems, challenges and views to the future were explored with participants. It brings empirical insight to bear on the question of whether, and if so, to what extent "innocence projects" may be losing their appeal.

The discussion will firstly look at the current climate in the UK and consider why the "innocence movement" may be under threat.

The innocence project model will then be critically examined. It will be argued that the innocence movement was originally underpinned by a unique ideology; and that, in this respect, the conception of being "an innocence project" has lost its appeal.

Thirdly, the potential future for the innocence movement will be discussed: this will draw on both the challenges and benefits of running an innocence project type clinic. It will then move on to consider what the future landscape for this clinical work may look like in the coming years.

The research

This chapter is drawing on original empirical research into innocence projects carried out at Cardiff University and funded by the Economic and Social Research Council.

Figures provided by INUK demonstrated that there were a significant number of innocence projects in operation across the UK; however scholarship on the activities of such projects was limited. The main contributors to discussion of innocence project work were Michael Naughton and Gabe Tan (Bristol University); there were also contributions from Julie Price and Dennis Eady (Cardiff University), Carole McCartney (former director at Leeds University) and Stephanie Roberts (Westminster University).[9] It was unclear whether innocence projects across the UK were adopting the same approach as those featured in the literature. The research aimed to explore this. It involved semi-structured interviews with past and present leaders of innocence projects based at

[8] Greenwood, H. *"The "innocence movement" in the UK: a rise and fall?"* PhD candidate

[9] See for example: articles by Naughton. M http://www.innocencenetwork.org.uk/publications (accessed 10/09/15); Price, J. Eady, D. *"Innocence projects, the CCRC and the Court of Appeal: breaching the barriers?"* [2010] Archbold Review 6; Naughton, M. McCartney, C. *"Innocence Projects in the UK – the story so far"* [2006] 40(1) The Law Teacher 74 ; Roberts, S. Weathered, L. *"Assisting the factually innocent: the contradictions and compatibility of innocence projects and the Criminal Cases Review Commission."* [2009] Oxford Journal of Legal Studies 43

universities. It also involved interviews with leaders of other clinics (not termed innocence projects) as a comparator point to the "innocence project" model. There were twenty interviews carried out: sixteen of the sample were past or present innocence project leaders from across thirteen innocence projects; twelve of these projects had been members of INUK at some point. There were three interviews with people who ran other clinics looking at miscarriages of justice, and one interview with a practitioner from the Centre for Criminal Appeals (CCA).[10] This chapter will primarily draw upon data from the sixteen participants who had, or still did, run innocence projects, but the interview with the practitioner from the CCA will also be discussed.

1. The UK innocence movement: the current climate

As explained, Michael Naughton is considered the founder of the UK innocence movement in establishing Bristol University innocence project and the Innocence Network UK in 2004. INUK acted as an umbrella organisation providing membership to numerous innocence projects at universities across the UK.[11] The network offered training for prospective students, held academic conferences on miscarriages of justice and also provided a standard set of protocols for member universities to follow to ensure standardized practice in running their projects. INUK was also the contact point for prisoners who were requesting a review of their case and managed a database which logged the requests that were received. It would then assess the eligibility of the cases for review and refer them to member universities for investigation.

INUK represented a nationwide basis for an innocence movement in the UK. But, in the summer of 2014, Michael Naughton announced that from September 2014, INUK would cease its role as a membership organisation for universities. This meant that the remaining 25 member innocence projects still listed on the website would have to operate independently.

Naughton cited a number of reasons for this decision:

Firstly, the funding constraints of INUK meant it was unable to continue operating as a support service for member projects, which involved case screening, organising national conferences, and a number of other roles beyond this.[12]

Secondly, Naughton explained that a disproportionate amount of time was being consumed by supporting innocence projects that were failing to act in accordance with the protocols set down, or were inactive in casework. Naughton said he was having to deal with complaints from prisoners who were dissatisfied with the work of member projects, explaining that INUK had never had the capacity to "police" member projects and nor should it have had to adopt this role.[13]

[10] The Centre for Criminal Appeals is a not for profit law firm established to work on miscarriage of justice cases: read more at http://www.criminalappeals.org.uk/ (accessed 10/09/15)
[11] Innocence Network UK Website http://www.innocencenetwork.org.uk/membership/inuk-members-2011-2012 (accessed 31/10/2012)
[12] Ibid.
[13] Ibid. (n.11)

Thirdly, he was concerned that a number of students were using innocence project work as a CV booster whilst knowing little or nothing about INUK and failing to attend conferences.[14]

Lastly, Naughton explained that the number of eligible cases being received had dried up and there were only a few in two hundred applications that met the criteria.[15]

Therefore, it is clear that the network was experiencing difficulties in its current remit and it was suggested there were problems with some established innocence projects. Naughton's decision to fold INUK represented a significant loss to the UK innocence movement and demonstrated it was in a state of fragility. INUK had provided a promising basis for the UK innocence movement, which envisioned a foundation for collaboration and support for those universities involved in such work.

The disbanding of the network directly impacted upon the existence of "innocence projects" in the UK. The international Innocence Network has a trademark over the innocence project name, and therefore clinics calling themselves "innocence projects" should be members of the international Innocence Network. Member projects of INUK could use the name because INUK was a member of the international network and would monitor member projects, and provided protocols for universities to comply with. Therefore, when INUK folded, clinics would be required to join the international network to continue using the "innocence project" name. To qualify for membership, university projects must demonstrate that:

> "the host institution has committed at least twenty hours per week of at least one faculty member's time to supervise students on clinical work and oversee the program."[16]

Historically, innocence projects in the UK rarely satisfied this criterion as they were often run by lecturers in their spare time, or by a staff member responsible for overseeing all of the university's clinical schemes. Consequently, the majority of former innocence projects have changed their name to avoid copyright implications with the Innocence Network.

So, by name, "innocence projects" in the UK have significantly declined in number. However, there are still a number of active clinics which investigate miscarriages of justice. So does this distinction matter?

2. Defining and distinguishing an "innocence project"

What does it mean to be an "innocence project"? The question, "what is in a name?" has been brought into sharp focus by the disbanding of INUK and the rebranding of many university clinics involved in miscarriage of justice work.[17] To examine the "innocence movement" in the UK, it is necessary to consider what the movement represented. It is argued that the original innocence project concept and ideology has lost some of its significance;

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[14] Ibid. (n.11)
[15] Ibid. (n.11)
[16] http://www.innocencenetwork.org/resources/membership-materials/membership-guidelines (accessed 21/02/15)
[17] Robins, J. *"The End of Innocence?"* [November 2014] Justice Gap http://thejusticegap.com/2014/11/end-innocence/ Price, J. *"Is innocence work really over in the UK?"* [September 2014] Justice Gap http://thejusticegap.com/2014/09/innocence-work-uk/ Eady, D. *"Innocence projects: the importance of grasping the essence."* [September 2014] Justice Gap http://thejusticegap.com/2014/09/innocence-projects-importance-grasping-essence/

and that in this sense, innocence projects have lost their appeal. This section will discuss the defining features of innocence projects from the literature, before going on to examine the continuing prevalence of this by drawing on data from the research.

2.1 Defining innocence projects: the literature

A literature review on innocence projects suggests that there were significant defining features to their model. Innocence projects were not just educational clinics helping prisoners who sought to appeal their conviction, but they were underpinned by an ideology driven by reforming the criminal appeal system. This becomes clear when you examine the context within which INUK developed.

Naughton considered innocence projects were needed in the UK because of:

> "significant gaps" in "the legal provisions available to innocent victims who require help and hope in overturning their wrongful convictions."[18]

Naughton established INUK with its overall aim as:

> "to improve the criminal justice system by overturning convictions given to factually innocent people and effecting reforms of the criminal justice system to prevent such wrongful convictions from occurring in the future."[19]

Naughton was concerned that the current legal framework for criminal appeals did not adequately address wrongful conviction of the innocent. He considered the appeal system to be too technical in its approach. The Court of Appeal is essentially concerned with the legal safety of convictions. In s.2 (1)(a) of the Criminal Appeal Act 1995 (CAA 1995), it states: the court shall allow an appeal against conviction where they think the conviction is unsafe. However, this is qualified under s.23 of the Criminal Appeal Act 1968[20] where it states the court can receive evidence that it considers necessary or expedient "in the interests of justice," but which was *not adduced in the proceedings from which the appeal lies.* The effect of this is that the Court will usually not hear evidence which was used at trial, and can be reluctant to hear evidence that was *available* at trial even if not used. Naughton was concerned that this put barriers to overturning wrongful convictions where evidence supporting innocence may exist but where the evidence cannot be re-heard.[21]

Furthermore, Naughton was critical of how the Criminal Cases Review Commission (CCRC) was operating. The CCRC was set up following recommendations from the Royal Commission on Criminal Justice (RCCJ) which was tasked with examining the UK criminal justice system following high profile miscarriages of justice.[22] They suggested the establishment of an independent body to investigate claims of miscarriages of justice and refer cases to the Court of Appeal for consideration. The CCRC began operation in 1997 but was established by the CAA 1995. S.13 (1)(a) states that the CCRC may refer a case to the Court of Appeal, where they consider

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[18] Naughton, M. *"Wrongful Convictions and Innocence Projects in the UK: Help, Hope and Education"* [2006] 3 Web JCLI http://webjcli.ncl.ac.uk/2006/issue3/naughton3.html (accessed 31/10/2012)
[19] Innocence Network UK Website http://www.innocencenetwork.org.uk/about-us (accessed 31/10/2012)
[20] (amended by s.4 CAA 1995)
[21] Naughton, M. *'The Criminal Cases Review Commission – Innocence versus safety and the integrity of the criminal justice system'* [2012] 58 Criminal Law Quarterly 207 p.214
[22] The Royal Commission on Criminal Justice Report Cm 2263 1993 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/271971/2263.pdf (accessed 13/05/15)

there is a "real possibility" that the conviction, verdict, finding or sentence would not be upheld by the Court of Appeal if referred.

Naughton saw the "real possibility" test as a

> "statutory straitjacket," which "fatally compromises their [the CCRC] independence"

requiring them to second-guess the Court of Appeal. [23]

He was concerned that the CCRC could refer cases for appeal based on a procedural error, even if there was significant supporting evidence of guilt, but were "helpless" to refer cases of factually innocent victims of wrongful conviction if the case did not meet the real possibility test and satisfy the Court of Appeal requirements.[24] Thus, that even where the CCRC has evidence of factual innocence the hurdles in place mean they may not refer it.[25]

He criticised the CCRC's role in reviewing applications:

> "in pursuit of legal grounds of appeal"

as opposed to conducting investigations which seek:

> "to get to the truth, or otherwise, of claims of innocence."[26]

Naughton described the CCRC as a "legal watchdog," which was concerned with upholding the "integrity" of the criminal justice system, rather than being concerned with the guilt or innocence of applicants, it examines miscarriages of justice entirely within the parameters of the legal system.[27]

Naughton called for the development of innocence projects in the wake of this. He explained that a key defining feature of innocence projects would be that they were:

> "concerned with allegations of factual innocence as opposed to allegations of technical miscarriages of justice."[28]

This focus on factual innocence is defined as where the person has no criminal responsibility for the crime.[29]

Roberts and Weathered who both run innocence projects (although neither project belonged to INUK)[30] explained this in further detail. Innocence projects were concerned with cases where the individual is claiming

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[23] Naughton, M. Tan, G. *'The right to access DNA testing by alleged innocent victim of wrongful convictions in the United Kingdom.'* [2010] International Journal of Evidence and Proof 326 p.342
[24] Naughton, M. McCartney, C. *"Innocence Projects in the UK – the story so far"* [2006] 40(1) The Law Teacher 74 p.74
[25] Ibid.
[26] Naughton, M. Tan, G. *'The right to access DNA testing by alleged innocent victim of wrongful convictions in the United Kingdom.'* [2010] International Journal of Evidence and Proof 326 p.342
[27] Naughton, M. '*The Importance of Innocence for the Criminal Justice System,'* Chapter 2, p.22 in Naughton, M. (ed.) 'The Criminal Cases Review Commission – Hope for the Innocent?' [2009] Palgrave Macmillan
[28] Naughton, M. [2006] *'Innocence Projects: Information Sheet from Inside Time'* Inside Time, the National Newspaper for Prisoners and Detainees
[29] Naughton, M. Tan, G. *"Claims of Innocence: An introduction to wrongful convictions and how they might be challenged."* [2010] University of Bristol p.60
[30] Stephanie Roberts runs an innocence project at Westminster University: Lynne Weathered runs an innocence project at Griffith University in Australia

to be actually factually innocent of the crime, rather than claiming wrongful conviction based on a legal or procedural error.[31] At the crux of this is a distinction between a lay and legal understanding of a miscarriage of justice. A legal understanding is based on the conviction's "safety" as per the Court of Appeal's statutory test.[32] Weathered and Roberts explain that in legal terms the Court's supervisory role means it may overturn a conviction for a procedural error even though there is factual support for guilt.[33] Whilst a lay understanding would conceptualise a miscarriage of justice as occurring where the person convicted did not commit the crime. Thus, a focus on cases of "factual innocence" based on the lay understanding of wrongful conviction was a defining feature of innocence projects.

The literature also suggested that innocence projects case investigation model was unique. Naughton stated that:

> "in contrast to the current appeal process, INUK's innocence projects are not restricted to the search for fresh evidence that shows that criminal convictions may not be 'safe in law."[34]

Rather innocence projects:

> "are not hindered by the requirements of the legal system" and "seek to get to the truth of innocence claims."[35]

Naughton explained as a sociologist working in a law school:

> "I ask my law student caseworkers to suspend the pursuit of legal grounds and focus their investigations on finding out if the alleged innocent victim of wrongful conviction is telling the truth."[36]

This suggests that Naughton envisioned innocence project investigations as truth-finding and removed from the legal system's constructs.

Price and Eady of Cardiff Law School innocence project also suggested that innocence projects would approach investigation differently by looking:

> "holistically at a case to try and establish a view about the likelihood of innocence, regardless of the likelihood of a successful appeal."[37]

Therefore, the innocence project model appeared to be based on the notion that projects would investigate cases to examine the claim of innocence rather than purely only looking for appeal grounds.

The literature also suggested innocence projects were intended to be a reforming force in the system by challenging the current legal framework. Naughton considered that lawyers working with INUK were too confined to the legal framework:

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[31] Roberts, S. Weathered, L. *"Assisting the factually innocent: the contradictions and compatibility of innocence projects and the Criminal Cases Review Commission."* [2009] Oxford Journal of Legal Studies 43 p.44
[32] S.2 Criminal Appeal Act 1995
[33] N.31 p.51
[34] Naughton, M. *"Can lawyers put people before the law?"* [2010] Socialist Lawyer p.32
[35] Naughton, M. [2009] *'The Importance of Innocence for the Criminal Justice System'* Chapter 2, p.32 in Naughton, M. (ed.) [2009] *'The Criminal Cases Review Commission – Hope for the Innocent?'* Palgrave Macmillan
[36] Naughton, M. *"Can lawyers put people before the law?"* [2010] Socialist Lawyer p.32
[37] Price, J. Eady, D. *'Innocence projects, the CCRC and the Court of Appeal: breaching the barriers?'* [2010] Archbold Review 6 p.6

> "by advising students to ignore the question of factual innocence or guilt and seek out legal grounds for appeal, attempting to close cases if no obvious grounds for appeal can be found."[38]

He criticised this because:

> "such activities take place entirely within the legal framework INUK exists to challenge. They assume the very point at issue, namely the justness of the rules of criminal appeal."[39]

Similarly, Price and Eady who run the project at Cardiff University, also iterated that we need to critically examine the current approach to criminal appeals stating:

> "we must work together to interpret and challenge restrictive practices in a way that protects innocent victims of the system, rather than feeling bound to submit to an entrenched approach that closes doors on the right to truth and justice."[40]

Whilst Naughton[41] and Price and Eady[42] recognised the need to work towards legal grounds of appeal to further the case, this suggests that innocence projects were also intended to challenge these restrictions.

Therefore, the literature suggested the "innocence movement" in the UK was underpinned by a unique ideology. Innocence projects were distinct in their focus on factual innocence and their approach to investigation; and were intended to present a challenge to the current legal framework.

However, as the literature on innocence projects only came from a few individuals, it was unclear how far this approach translated into practice across the country. Member projects of INUK would be working on cases where there was a claim of factual innocence as this was how INUK determined eligibility. But how far did leaders of innocence projects identify with the ideology suggested in the literature?

2.2 Defining an "innocence project" in practice: the research

This will be discussed based on data from 16 participants in the study who ran innocence projects.[43]

All the participants who were former or current member projects of INUK recognised that INUK filtered its cases through an eligibility criterion which focused on claims of factual innocence. There were varying opinions on the importance of this. Participant 13 explained they would only take on cases where the individual claimed to be completely innocent, rather than those claiming they should have been convicted of manslaughter rather than murder, because resources would be best directed helping those claiming total innocence; this view was echoed by another participant. Participant 4 suggested also that the factual innocence criterion was important partly because of "reputational risks" for the university,[44] as did participant 5 who considered it was an "ethical

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[38] Naughton, M. *"Can lawyers put people before the law?"* [2010] Socialist Lawyer p.32
[39] Naughton M. [2010] 'Can *lawyers put people before the law?'* Socialist Lawyer p.32
[40] Price, J. Eady, D. *'Innocence projects, the CCRC and the Court of Appeal: breaching the barriers?'* [2010] Archbold Review 6 p.9
[41] Naughton, M. '*The Importance of Innocence for the Criminal Justice System*,' Chapter 2, p.32 in Naughton, M. (ed.) 'The Criminal Cases Review Commission – Hope for the Innocent?' [2009] Palgrave Macmillan
[42] Price, J. Eady, D. '*Innocence projects, the CCRC and the Court of Appeal: breaching the barriers?*' [2010] Archbold Review 6 p.6
[43] The other four of the sample ran criminal appeal units as opposed to "innocence projects."
[44] Participant 4

division." Within the sample there were participants whose projects had voluntarily left INUK, or which were independent following its close, who expressed that they were unsure if the factual innocence focus would continue. One example is participant 11 who had recently left INUK and said:

> "I'm still in this mind set obviously, still within sort of the INUK model it's factual innocence, I think that as we evolve into a criminal appeals clinic etcetera I think we will be looking more at the technical sort of issues potentially." [45]

Similarly participant 14, who had recently left INUK, said:

> "I also think that now we're not in the straitjacket of the actual factual innocence, we're just going to have to take every case on its merits and see where we are."

Thus some participants indicated that their project's independence may result in broadening the factual innocence focus.

Another participant explained that she did not think the clinic should necessarily only focus on factual innocence claims:

> "I would think that we should be able to look at both for me…this is a law school and everybody here is in some way training to be a lawyer or interested in the law, and therefore, it would be useful and beneficial to us here."[46]

There were two other participants who no longer ran an innocence project or clinic, but both considered they would not now limit the casework to only looking at factual innocence cases.[47]

Some participants considered that the concept itself was flawed and problematic in practical terms. Participant 2 said that perhaps the name "innocence project" and the concept:

> "causes more problems than it actually resolves."

She considers:

> "it could be perhaps called a 'Justice Project' or straightforward 'miscarriages of justice unit' within a university, it's that word innocence, because it is impossible to prove innocence in 99.9% of cases."

This was prior to the collapse of INUK, but as explained a number of former innocence projects have now renamed their clinics and no longer have any reference to "innocence" within their title.[48]

Participant 9 who ran an INUK member project at the time said:

> "Firstly I'm not very comfortable with the old factual innocence term but let's face it none of us are really are we?"

They continued:

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[45] Participant 11
[46] Participant 20
[47] Participant 10: *"I must admit my view has changed…I wouldn't call it an innocence project…because I don't think somebody has to be factually innocent, to me if there's been a miscarriage of justice, there's a miscarriage of justice whatever it is."* Participant 16: *"I understand why they restricted it to factual innocence, but I've got to say as a lawyer I'm not sure that my interest is as narrow as factual innocence, I'm quite interested in people who've been convicted on technicalities."*
[48] Sheffield University: Miscarriages of Justice Review Centre; Sheffield Hallam: Criminal Appeals Clinic; London Holborn BPP: Criminal Appeals Project are some examples.

> "it's often very difficult to distinguish between what you mean by innocence and what you mean by technically not guilty, because in law we don't have a concept of innocence, we just have a guilty or not guilty."

Similarly, participant 5, who used to run a journalism innocence project but now worked as a criminal barrister explained:

> "Well I mean, as a barrister there's no such thing as technical or factual, you're either found innocent or you're found guilty, I don't separate them…as a lawyer it's a completely bizarre concept, as a project."

Thus, the research revealed that a significant majority of participants who ran/or had run innocence projects did not necessarily consider factual innocence should be a defining feature of the project. Therefore, it is certainly arguable that this aspect of the innocence movement may be phased out.

In terms of case investigation, the majority of participants did not describe their casework aim as to investigate the truth behind the innocence claim. There were only three projects in the sample who suggested the focus on factual innocence was significant to their investigation approach.

Participant 4 stated:

> "I think the reality is that factual innocence really requires us to form an opinion, based upon the investigations or the best investigations we can do as to the guilt or innocence of our client," and "so long as we've investigated thoroughly and we believe that there's grounds to perhaps establish factual innocence, then that's how we can justify sending it forward to the CCRC."

He also considered that this was important in distinguishing an innocence project from other university clinics looking at criminal appeals:

> "if you've got a criminal appeals type clinic, you're really from an education point of view teaching the students how criminal appeals work, and you're looking to get a person off, and that can be on technicalities, that can be on factual innocence, or whatever, but the standards that you're playing with aren't the same."[49]

This clearly illustrates an approach which aligns with the literature model. Participant 13 also described the approach as investigating the claim of innocence: he said it was a different relationship to that of lawyer-client as you would investigate the claim with the view that you might find evidence supporting innocence, or guilt. This suggests a truth-finding inquiry into the factual innocence claim. Participant 1 and 2, who were from the same project also suggested innocence projects would look for evidence of innocence, and participant 1 explained that this would be by looking:

> "at the case as a whole."

Interestingly, participant 2 explained that her understanding of innocence projects was that they were intended to:

> "look at wrongful convictions in a different way," in that "they wouldn't be constrained by what the law says," but would "look more widely, they would look for new evidence but as well as that they'd look at the existing evidence, and the existing arguments."

[49] Participant 4

However, she explained that this was all very well but the problem became:

> "you're not going to get past the CCRC if you're coming up with a beautiful argument of how the jury got it wrong, because the evidence was there all along, it's not going to cut any ice, so you have to play the game to get past the CCRC."

She explained that their project would still examine all the evidence in the case to consider potential innocence, but they would do so with a view to meeting the grounds of appeal.

The remaining participants described the investigation only in terms of identifying possible grounds of appeal. One participant explained:

> "Yeah, I suppose ideally with all our cases we would hope to uncover new evidence that could justify a CCRC application, to justify a referral to the Court of Appeal."[50]

They went on to explain:

> "We're really conscious of the test the CCRC apply because I'm a lawyer and I've got to look at it like a practice lawyer, so we try and approach it as lawyers and think well this is the test the CCRC applies so let's try and give them what they want."[51]

Similarly, another participant said:

> "and we're very conscious of the CCRC threshold, so we really used that to structure our work."[52]

Another participant talked about looking for fresh evidence but considered:

> "I think fresh evidence is so difficult though half the time to uncover, so I think my mind set is anything that we think could be a ground, and we can work it into an application, we will put forward."[53]

Therefore, the majority of participants did not identify with a casework model which prioritised truth-finding and the validity of the claim of factual innocence over potential grounds of appeal. Thus this aspect of the innocence movement ideology appears to have either never been adopted by some, or to have become diluted by others.

The literature also suggested the innocence project model would challenge the legal framework in order to encourage reform. There were five participants who emphasised the importance of working within the system in casework, but two of these did suggest there could be a reform agenda outside of this. One example was participant 11 who said:

> "I think there's a whole issue there about reform and etcetera that we can all get together and argue for but essentially when we're dealing with the casework we have to deal with the system that we've got."

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[50] Participant 8
[51] Participant 8
[52] Participant 16
[53] Participant 11

Similarly, participant 14 referred to comments from Mark George who was a lawyer who frequented INUK conferences:

> "he says this over and over again, we have to work with the law as it stands; you can also have the campaigning bit to you as well if you want to do that, and the consultation thing but you have to work within the law as it stands."

This potentially implies that the original innocence project aims were tempered by recognition of the difficulty of such an approach within casework. Above it was discussed how participant 2 spoke about the importance of working within the system to succeed in casework, but she explained she hoped innocence projects would have been influential in reform:

> "I thought that innocence projects would be able to persuade the general public, whatever that may mean, that the system is wrong, and so, by showing people that, this is the new evidence, or this is how narrow we have to address our arguments to go to play the game, the game really is wrong, the rules have got to be changed, because we've got all this other evidence."

However, she felt that this was not happening, and considered it was due to the breakdown in the university network. Significantly, this was prior to the INUK fold, but she viewed the network to be on the decline due to a number of projects leaving to operate independently. Participant 11 explained that their project had not yet been concerned with reform issues, but he considered this could be important in the future. None of the projects identified reform as one of their key aims, and it was only participants 1 and 2 from the same project who directly raised reform as an aspect of their role. Therefore, it appears this potential innocence project role may not have transferred to a number of projects in practice.

Thus it is argued we should view the innocence movement in the UK as underpinned by a unique ideology: it represented more than a clinical legal education movement with a focus on miscarriages of justice: it appeared to have a unique ideology. However, the empirical research suggested that this aspect of the movement had either lost its significance, or perhaps was never adopted in the first place. Furthermore, following the folding of INUK, it is possible that former innocence projects may move further away from these ideas, such as in the potential broadening of the factual innocence criteria.

3. Is innocence project clinical work losing its appeal?

It is also necessary to also consider whether current or former innocence projects are losing their appeal in substantive terms. There have been closures of a number of innocence project clinics over the last decade, although it is difficult to identify how many. INUK used to keep a list of member projects but this would not include any projects which were not INUK members, and is no longer updated. It is known that since the disbanding of INUK there have been further closures of innocence projects such as at Cambridge University, Gloucester University and Southampton University (although the closing of these projects may not be a direct result of INUK folding).

This section will discuss how participants viewed the future for the innocence movement in the UK: there were 10 participants' spoken to prior to the INUK fold and 6 who were spoken to following it. This will involve a consideration of the problems and challenges involved in running an innocence project which participants raised. The discussion will then consider data from participants spoken to following the INUK fold, to consider how

they viewed its impact. To conclude, it will reflect on the potential future landscape for miscarriage of justice clinical work in the UK.

There were five participants who considered that the innocence movement in the UK was fragile even prior to INUK folding; they referred to the difficulties with running such a project. Participant 2 stated:

> "there are a lot of fundamental problems and they all come together, to me to indicate that the model, the movement, is doomed to fail. I think it'll bottom out at a small number of projects, some will come, some will go, but it'll be about perhaps 8-10 core universities who are sticking at it."[54]

Similarly participant 6 considered the movement was on the decline due to the lack of university funding to run clinical schemes:

> "I did think the future was rosy, because there was so much interest in doing pro bono work. But I think now that universities have changed in that there's not enough time for staff to do things; there's not any money around to do things…so I think we'll struggle really."

Participant 3 considered that universities would potentially move away from miscarriage of justice clinics to civil clinics where there would be a quicker turnaround:

> "I think that that's a huge vacuum that could be filled by legal clinics… these cases would turn around very quickly, so there would be a sense of achievement with those…so I think that's probably what will happen, you can see it now, one by one the innocence projects around the country are dropping, or going silent, so I think ten years' time there'll be very few left I think, that's my very very pessimistic view on that one, unless it changes dramatically."

He also made reference to the lack of casework success of innocence projects over the last decade and said they certainly needed to evolve if they would survive:

> "so I think as a model, it's probably a busted flush, it doesn't work…it needs to be changed."[55]

This was echoed by participant 11 who had left the network prior to the interview, and he explained his reasoning as:

> "the INUK model does not work at all, it's not sustainable and we have to evolve if you want to carry on doing the work, it's about trying to find the best way forward."[56]

He explained this had led him to look to other institutions for partnership, such as the Centre for Criminal Appeals. Thus, even prior to the folding of INUK, there was a perception that there were underlying problems with the innocence movement: this was attributed to issues with the model of innocence projects.

3.1 Problems and challenges

[54] Participant 2
[55] Participant 11
[56] Participant 10

The closure of several projects over the last few years is potentially evidence that there are problems and challenges in running such clinics.[57] Participants identified a number of difficulties with carrying out casework. Some of these problems can be attributed to a problem raised by participant 2, that innocence project casework is unsuited to the university clinical scheme model:

> "cases take too long and don't fit within the usual clinical education model, so every single innocence project that I know has got similar problems so there's a fundamental problem. The model doesn't work in my opinion."[58]

She explained the short student term times were problematic and leant towards:

> "quick turnaround stuff like the general legal clinic stuff, but not to innocence it doesn't, the burden on the staff to carry that through the exam period and then over the summer, into November, is problematic." [59]

The short student terms were considered problematic by 8 participants in the research in terms of casework progression. Participant 10, who has now left the role, explained this was a difficulty for her. She ran the project as a module, so that when it finished the students left:

> "So those non term times were difficult in that I still would then have to manage the cases… and working on them and that was challenging."

Another participant said that their project only operated for 6 months of the year and ceased activity over the summer; she considered this to be a condition of its operation as otherwise it would require too much resource from the institution. In the sample, there were two projects where they did engage student caseworkers over the summer months under staff supervision, but it is not known how many other clinics have the capacity to do this. The research revealed that this issue was considered significantly problematic and there were concerns raised over the ethical issues this inactive period has for clients.

Linked to this, participants raised the lack of resource as a significant problem, especially in relation to staff allowance. The majority of projects were either ran by lecturers in their spare time, or by a staff member responsible for overseeing all clinical work and participants explained it was difficult for staff to dedicate sufficient time to running the project.

Participant 14 is an example, she had been responsible for overseeing all the clinics at the university:

> "I went through a period of thinking god we're not going to get anywhere with this because I just I can't, we need a full time person…so when [co-director] got involved it became much easier."[60]

Participant 2 was also in the same position as participant 14 and explained the innocence project would have closed if participant 1 had not been employed to oversee the project.

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[57] The exact number is not known but it is known the following have closed: University of Gloucester, University of Southampton, University of Cambridge, University of Bristol, University of Bedfordshire, University of Bournemouth, Cardiff University (Journalism),

[58] Participant 2

[59] Participant 2

[60] Participant 14

Participant 16 had recently closed the project and considered the lack of resource was problematic:

> "I wasn't getting paid for doing this work, I had no allowance in terms of stints and other teaching responsibilities, so it was done purely because I was interested in this work and I believed in it. And that gets you so far, but when you're running meetings on Wednesday nights between 6 and 8 o'clock and you haven't had dinner, and you've been teaching all day, and you're teaching all the next day, it's quite exhausting, and frustrating, because I knew that there were ways to develop it that weren't within my reach because there's only one of me."[61]

Similarly, participant 6 had left her role running the project and explained that she had found it difficult because of this:

> "because all the other members of staff were like well what workload allowance do you get for it, and of course I didn't really."

She also explained that when she left, the university had difficulties trying to fill her position:

> "they put in a job spec to run an innocence project and nobody wanted to, not one of the applicants said that they would do that, so it's not like there's people around who have the skills and experience…and if you're expecting someone to just turn up with the enthusiasm you've got to make sure they've got the time and the money to do that, new lecturers don't, I mean no one really does."

This project is still in operation, but it does illustrate the potential challenges faced by universities in running a project.

Participants also explained that innocence project cases were "last resort" cases and therefore inherently difficult because the client had exhausted all other options. One stated:

> "is it strange that innocence projects don't get many cases to the Court of Appeal? Well no, because these cases are the most difficult cases in the system…it's debatable whether innocence projects as a system, as an idea are actually possible, I don't know if they are or not, it's possibly unlikely that they could ever succeed."[62]

Another also pointed out the difficulties:

> "Well I suppose the problem is in general these cases are just really big difficult cases, if they were obviously good cases they would have been cherry picked by a criminal appeals firm ages ago."[63]

Participants who raised this said it was difficult to identify new avenues to explore as the majority of issues had already been considered. Participant 16 said:

> "us being successful in this work, it's really enormously difficult, because not only has it been through multiple layers of appeal…lots of people who have far greater expertise than I do have seen this and done their best."

[61] Participant 16
[62] Participant 3
[63] Participant 8

Furthermore, participants raised the problem of post-conviction disclosure rules: the Supreme Court affirmed in the case of Nunn there is no general duty of disclosure to aid the process of appeal.[64] This makes casework challenging for innocence projects. For example, Participant 10 explained that:

> "a lot of the time, we were in every single case, blocked by the police, not releasing certain items of evidence that were really crucial for us to test, or do something with."

Similarly participant 4 said:

> "My big problem is there's evidence which I know is there and in the possession of different criminal justice agencies and they won't give it to us."

Therefore, it was evident that participants had found progressing in casework was difficult.

These are just some of the difficulties which were raised by innocence project leaders in the sample; they would not be unique necessarily to running an "innocence project" but would be problematic for any university clinic ran in a similar structure.

Despite the participants raising numerous problems, the majority of the sample intended to continue running the project. The exceptions to this were participant 5, who had closed the project several years earlier; and participant 16 who had decided to close the project just prior to the interview. Participant 3 also suggested he may close it once he concluded the two cases which they were currently working on. There were two participants interviewed who had left their role running the project because they had secured a job at a different university, but both of their former projects were still in existence. The research also interviewed two individuals who had recently set up new clinics investigating miscarriages of justice. Therefore, from the sample, there is no clear demonstration that innocence projects or other such clinics had lost their appeal.

So what makes this type of project appeal to universities? It is important to balance these problems raised with the benefits of such clinical work.

3.2 Impact and benefit of projects

Participants all considered there were significant educational benefits to engaging students in innocence project work. Many spoke of the transferable skills it gives students, such as learning how to handle large volumes of material; client interviewing skills; analysing evidence; and management and team-working skills were some examples. Participant 4 explained that his students from the innocence projects were the most successful in gaining training contracts. Some participants also emphasised the value of miscarriage of justice work. Participant 6 explained:

> "my big thing was that every year we had 10 or 15 students…that became completely convinced that there were innocent people in prison."

[64] R (Nunn) v. Chief Constable of Suffolk Constabulary, 2014, UKSC 37, par. 32.

Participant 1, expressing the same sentiment said that:

> "to see fantastic students…creating passion for this subject is immensely pleasing and important I think, and I don't know how you measure the impact of that in future years."

Participant 9 considered it was important in encouraging students' development as lawyers:

> "you don't do it other than to recognise that it's an important part of educating the lawyers of the future...unless people understand that justice is a difficult issue before they go out into the world of lawyering, they're not, I don't think going to make very good lawyers, either ethically or pragmatically in terms of getting results for their clients."

Thus some participants emphasised the importance of miscarriage of justice work in particular to student development.

Although there were ethical concerns for the client raised by participants, particularly in relation to slow casework progression due to periods of clinic inactivity, none of the projects said their clients were dissatisfied with the work. Many spoke of clients being extremely grateful and impressed by the students' work on their case. One said:

> "almost universally I think they've come back to us and said you've done better than anybody else in fact along the line…you discover stuff that nobody's mentioned before and you're the first people to really look into this, those sort of comments do suggest that we are doing a reasonable job even if it doesn't actually meet with actual success."[65]

Furthermore, a number of participants considered there was a need for university clinics to look at miscarriages of justice in the current climate. Participant 3 said:

> "I think the innocence projects do, if they are working properly do a good job for the clients, because nobody else would do this, especially in the legal aid situation now."[66]

Similarly, participant 13 who had a wealth of experience working on miscarriages of justice considered students provide a resource that is absent elsewhere in the criminal justice system:

> "the work they do, some of that can be very detailed and quite complex at times and they can spend a lot of hours on it… only students would find the time to do that."

Participant 20 was a criminal defence solicitor by background and she explained her colleagues were all struggling under new legal aid provisions and thus considered university clinics were needed:

> "I think they are more crucial now than probably ever."

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[65] Participant 1

[66] Participant 3

Therefore, the majority of participants felt that university clinics focusing on this area could make an important contribution and were beneficial.

3.3 The collapse of INUK

The collapse of INUK has certainly had an impact on the landscape of this work. There were five participants spoken to following this and their views varied on the future following INUK folding. Participant 16 felt that it could be detrimental to innocence work:

> "I think now that the network has disbanded, I think it's going to be really difficult for people, we lost something in the network being disbanded...there's a strength in a network, that's going to be lost."

She had recently closed her project which was partly due to the network folding; she did intend to set up a new clinical program for students, but was unsure if it would be in the same area. Participant 18 explained their project was unsure on how to move forward, and felt they could struggle without external guidance and support:

> "as someone who's really new to it, I would feel happy to be part of a network where there were protocols and you were working to certain kind of standard approaches because otherwise, one you're reinventing the wheel so it takes longer, but also you know it's safer if there's a clear set of protocols and everybody kind of knows this is how you should approach things."

This project had ceased operation that academic year because of the network collapse, largely because they did not have a case to work on, but there was an intention to continue once they found their way forward. She explained the student appetite for the clinic was still running high and they did consider it worthwhile. Whilst participant 14, from a different project was positive about the future and felt they would be more successful independently. Therefore, there were varied opinions concerning the future for the movement following the network collapse. It is worth noting that there were at least five innocence projects that had left the network prior to its folding, and thus there had already been a demise in the central network which inevitably demonstrated there were problems within the movement.

4. Looking to the future:

As is apparent, the current climate is in a state of flux and therefore the future for university clinic work in this area is uncertain. However, a number of participants expressed positive views of the future in light of a potential university collaboration with the Centre for Criminal Appeals (CCA).[67] The CCA is a not for profit law firm which focuses on helping individuals with their appeal and is comprised of a number of specialist lawyers. The CCA began a pilot with a small group of universities in October 2015. The centre will provide the students with a case to work on during term time which will be handed back at the end of term.

A practitioner, who works at the Centre, explained:

[67] http://www.criminalappeals.org.uk/

> "the main thing that we can bring to universities is specialist legal knowledge and the main thing that universities can bring to us is manpower."

There appears to be advantages in adopting this model whereby it will give the Centre extra capacity to take on cases but will also ensure that there is some expert supervision and guidance for the projects. They further explained:

> "one of the things that I worry about with innocence projects is I think that cases tend to get mired and they get stuck in the terms and the holidays and the students, and some university professors not having perhaps the requisite knowledge,"

which reflects some of the concerns discussed above, and she considers the collaboration can help overcome some of these issues.

Furthermore, she emphasised the importance of university clinics in working on such cases explaining:

> "so there are never going to be enough solicitors to do this work, and the big advantage that students have over practitioners is that they're able to spend time in the field with huge numbers of documents, that sort of work is very well suited to the student environment."

Therefore, it appears that this collaboration between universities and the CCA could lead to new networking between universities in this field; and if successful, it could lead to a more efficient model of casework to improve upon the timescale problems clients' face with innocence project work. Therefore, it does seem that a number of former innocence projects will be continuing, but it remains to be seen in what form.

It is also worth noting that outside of the innocence project movement there have been other clinics focusing on criminal appeals for several years that look set to continue. One example is The Student Law Office at Northumbria University which has been in operation since 1991 and is the largest University law clinic in the UK.[68] The Criminal firm in the SLO helps individuals seeking to appeal their convictions. In 2001 the Law Office successfully argued for the quashing of the conviction of Alex Allan for robbery, making them the first university clinic in the UK to overturn a conviction, and they also obtained compensation for Allan.[69] A key difference between the SLO and the majority of innocence projects is that it is operated by qualified practitioners, and is integrated into a four year degree which enables students to qualify at trainee solicitor level.[70] Thus the model is substantially different to how innocence projects in the UK have been ran so far and has potentially circumvented a number of the problems innocence projects have faced.

Conclusion

So can we say "innocence projects" are losing their appeal? This question has been considered in both conceptual and substantive terms. It is argued that, in terms of its original ideology, the innocence movement in the UK has been diluted due to the rapid expansion of the movement and growth of involvement; but also due to innocence projects evolving in the wake of experience. This is likely to only continue with the closure of INUK and the

[68] https://www.northumbria.ac.uk/about-us/academic-departments/northumbria-law-school/study/student-law-office/contact-us/ (accessed 15/09/15)
[69] https://www.northumbria.ac.uk/static/5007/lawpdf/slo.pdf (accessed 15/09/15)
[70] https://www.northumbria.ac.uk/study-at-northumbria/courses/llb-hons-m-law-exempting-ft-uufmle1/

resulting extrication of former innocence projects. Furthermore, in terms of a nationwide movement, the loss of INUK has certainly had impact. However, in the second sense of the question, whilst there has been a decline in number of innocence projects, it is not tantamount to saying the clinical work has lost its appeal. There are still a significant number of former innocence projects in operation albeit under a different guise; and there were also new ventures set up in the summer of last year which are focusing on miscarriages of justice. Whilst it cannot be said with any certainty how the future landscape of this work will look, we can conclude that it is likely to look significantly different in the coming years.