

## SEMINAR



# Problems of Wrongful Convictions



**David Hamer**

*Associate Professor, Faculty of Law, Sydney University*

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**Academic Conference Room**

**11/F Cheng Yu Tung Tower**

**The University of Hong Kong**

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It is universally recognised that a wrongful conviction is a terrible injustice. However, there is far less agreement about what the State should do about wrongful convictions. Where they do emerge, obviously, they should be corrected. And where recurrent causes of wrongful convictions can be identified, whether at the investigation or the trial stage, these should be addressed. But to what extent should the State allow and facilitate the challenging of convictions? Underlying this question are several difficult conceptual and political problems. First, what is a 'wrongful conviction'? Is it the conviction of someone who is factually innocent, or is it a conviction flowing from a flawed process? While the two definitions overlap, they are not identical. Convictions that may be factually wrong despite a proper investigation, trial and appeal are in many ways most problematic. Second, there is the difficulty of determining the frequency of wrongful convictions. Appeal statistics may provide some measure of convictions resulting from an undue process. However, measuring the rate of factually incorrect convictions is far more difficult. The yardstick – the true facts – is generally inaccessible. Are the relatively few factually erroneous convictions that emerge, for example through advances in DNA profiling, merely the tip of the iceberg? Third, assuming that a lurking mass of factually incorrect convictions may exist, how can the imperative to address them be squared with other values and considerations? Perhaps the most important competing consideration is the need for finality in litigation – at some point convictions must be considered unassailable. Other questions also arise. If some degree of error is inevitable, what error rate is acceptable? If wrongful convictions call for new mechanisms and institutions how should these be designed so as to balance the various competing interests, and address the problem cost-effectively? These questions will be considered against the background of the Australian criminal justice system, which has done little yet to address them, and that of the UK, where Criminal Case Review Commissions have now been running for more than a decade.

**David Hamer's** primary research interest is in the law of evidence. He takes an interdisciplinary approach, interrogating the law - and the proof process more broadly - using tools drawn from probability theory, narrative theory and psychology. His interest in evidence law often flows over into areas of substantive law and broader issues, in particular criminal justice, the causes of and solutions to wrongful convictions, and the law's continuing struggle with the notion of causation.

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