

## EDITOR'S INTRODUCTION: THE ROLE OF LEGAL ACTORS AND INSTITUTIONS IN CRIMINAL ADJUDICATION

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This issue is dedicated to an exploration of the role that legal actors and institutions play in criminal adjudication. Its contributors look at the role of defense lawyers, prosecutors, and other legal professionals in promoting client autonomy, prosecutorial independence, the correction of wrongful convictions, and the primacy of international criminal law, as well as the role that the law reform processes play in enhancing or eroding the rule of law and democracy.

### DEFENSE LAWYERS

What role do defense lawyers play in the criminal justice system when they disagree with their clients' significant decisions during their representation? In "Allocating Authority between Lawyers and Their Clients after *McCoy v. Louisiana*," Nina Varsava, Judith Foo, Elizabeth Villareal, and David Walchak critique the American Bar Association's *Model Rules of Professional Conduct* in light of the Supreme Court's recent decision in *McCoy v. Louisiana*, recognizing defendants' constitutional right to maintain their innocence at trial. They argue that the *Model Rules'* withdrawal remedy for attorney-client disagreements is inadequate in light of the fiduciary duties of lawyers to their clients and the significant administrative costs of

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*New Criminal Law Review*, Vol. 23, Number 2, pps 167–169. ISSN 1933-4192, electronic ISSN 1933-4206. © 2020 by The Regents of the University of California. All rights reserved. Please direct all requests for permission to photocopy or reproduce article content through the University of California Press's Reprints and Permissions web page, <https://www.ucpress.edu/journals/reprints-permissions>. DOI: <https://doi.org/10.1525/nclr.2020.23.2.167>.

withdrawal, and they propose amendments to the *Model Rules* to address the substance of their critique.

## PROSECUTORS

What role can prosecutors play in preventing wrongful convictions? In “Transforming the Culture of Chinese Prosecutors through Guiding Cases,” Colin Hawes answers that question in the Chinese context. Hawes begins by tracing the history of China’s public prosecutors, who have been known to collude with local governments, police, and courts to overlook human rights abuses and miscarriages of justice. He then discusses the fifteen sets of Guiding Cases issued by the national public prosecution service since 2010, which sought to move Chinese prosecutorial culture away from an adversarial focus to an emphasis on its broader public duties, including protecting suspects’ rights and excluding evidence tainted by rights violations. Hawes concludes that this movement is an important step toward public justice in China, particularly given that rights lawyers and civil society groups remain suppressed by the government from taking legal action.

## INSTITUTIONS & PROCESSES

What role do discretionary actors play in the correction of wrongful convictions when they exercise their decision-making discretion? Lissa Griffin reviews *Reasons to Doubt: Wrongful Convictions and the Criminal Cases Review Commission* by Carolyn Hoyle and Mai Sato, a study of the internal decision making of the United Kingdom Criminal Cases Review Commission (CCRC), an extra-judicial institution established in 1997 to investigate postconviction claims of miscarriages of justice in England, Wales, and Northern Ireland. She argues that the book demonstrates the necessity and workability of examining the extra-legal influences on institutional and individual decision makers and their interactions, and reveals much of the ordinarily hidden exercise of discretion in the criminal-justice system, noting that American prosecutors exercise similar decision-making discretion without external scrutiny. She also explores the larger societal and moral role of the CCRC, beyond its individual decisions, to identify the causes of miscarriages of justice. Griffin argues that additional research

is warranted into how the CCRC decides when it leaves issues to its individual case-review procedure and when it takes a more active role in correcting systemic failures, particularly in light of the budgetary and administrative costs associated with that demarcation.

What role did professionals play in post-communist reforms in the former Soviet Union and the primacy of international law over politics? In "The Perestroika of International Criminal Law: Soviet Reforms and the Promise of Legal Primacy in International Governance," Mikkel Christensen explores the influence of legal professionals on the new legal thinking of the perestroika era. He argues that, by promoting the primacy of international law in lieu of domestic politics, they helped to create a geopolitical window for international criminal law reform, including the creation of the International Criminal Court.

What role do law reform processes play in strengthening or weakening democracy and the rule of law? In "Law Reform as a Response to Terrorist Threats," Hadassa Noorda argues that the processes of law reform as a response to terrorist threats may weaken democracy and the rule of law, if there is inadequate time for legislative debate over the proposed reform measures or if the debate is animated by fear and hate toward the perpetrators of terrorist acts. Noorda argues that reforms under these circumstances can curtail autonomy and proposes alternative processes of law reform consistent with self-moderation.