
The sweeping, eight-year Quality Control Project of the Centre for International Law Research and Policy has published its latest and final installment: *Quality Control of Criminal Investigation.*\(^1\) Shifting the gaze towards criminal investigation processes,\(^2\) this 23-chapter anthology, focused on addressing a number of ‘bottlenecks’ in core international crimes cases,\(^3\) is especially timely.

1 The volume is available online at https://www.toaep.org/ps-pdf/38-qcci. As a disclaimer, in light of the scale of the project itself and for reasons of readability and word limits, I restrain myself to mentioning just some contributions of the many that left an impression. No intention to deliberately exclude any contributions should be inferred from this.


effectively carry out the investigations in general. This fundamental structural question of whether organizational set-up allows for historical or forensic truth to be uncovered is premised upon the authors’ findings related to often simplistic prosecution arguments, evidently biased towards incrimination.

The call for independence of thought in order to improve decision-making in criminal investigations continues with Moa Lidén pointing towards the one denominator that these processes have in common: ‘[T]hey are all fundamentally dependent on the decision-making processes of humans operating inside of them.’  

Ultimately, the quality of decisions depends not only on the structural framework, but on the individuals making up the organizations: their backgrounds, training, personal preferences and prejudices, as recognized by the editors in the preface: ‘[T]he abilities of staff are at the centre of all seven bottlenecks.’  Cognitive biases and limitations make surprisingly frequent appearances throughout the anthology, from macro- (Carsten Stahn, Thijs Bouwknegt), to micro-level biases in decision-making (Simon de Smet, Xabier Agirre Aranburu, Moa Lidén, amongst others). Many other contributions touch upon biases indirectly, highlighting areas where outcomes could be improved with the use of explicit argumentation tools (as explained, for example, by Olympia Bekou), or pointing out how subjectivity could be harnessed and accepted (Cale Davis), and how organizational structures could improve analytical independence (Christian Axboe Nielsen, amongst others). This unprecedented attention to human cognition, albeit limited in terms of its empirical foundation, is refreshing. In the context of increasing awareness of the limitations inherent in all human decision-making, these contributions may serve as a strong starting point to ask further questions on how systematic biases in criminal investigations could be assessed and, hopefully, addressed.

In addition to Lidén, several other contributions demonstrate the importance of empirical methods to understanding (and improving) prosecutorial decision-making. Matthias Neuner, by way of analysing public ICC pre-trial records, finds that the OTP struggles to maintain consistency in advancing modes of liability, and thus to realistically assess the results of its investigation. Cale Davis, combining multiple methods, including numerical analysis and practitioners’ interviews, explores the rationales for cumulative charging, and provides added explanatory layers to Neuner’s assessments. Davis discusses multiple reasons for and against cumulative charging, as

8 Agirre and Bergsmo, supra note 3, at 6. The authors identify seven ‘bottlenecks’ to ‘effective and fair investigation and preparation of fact-rich cases’.

explained by the individuals issuing those charging documents. Rather than searching for prescriptive solutions, he acknowledges the diversity in the discretion of international criminal law practitioners, and argues for an approach to quality control different from normative benchmarks: the extent to which prosecutors are willing to have a meaningful debate and accept critique of their decisions, as well as amending their choices. In other words, transparency and openness-mindedness may suffice where subjectivity in prosecutorial choices is perhaps inevitable.

Beyond the direct lessons to be learnt from the contributions, the volume highlights several strands for further inquiry. Alf Butenschøn Skre makes an important observation, suggesting the need for ‘more empirical research on which policies and practices of criminal investigations may help maximize efficiency and reliability’.

He also offers several reasons for the lack of empirical examination to date, such as the limitations stemming from confidentiality and non-disclosure in law enforcement authorities, as well as a possible lack of interest among some communities of practitioners in criminal investigations to engage with the scientific community (and vice versa). The importance of independent and scientific examination discussed by the authors in relation to most of the topics covered in the anthology cannot be overestimated. While the editors identify two quality control mechanisms inherent to criminal justice settings (the work of the judges and the defence), major advances in the practices of criminal investigations have been made based on scientific findings. Neglecting this major (and available) source of quality control and support for the improvement of criminal investigations would be unwise. Institutions concerned with fact-rich cases could, and should, make use of the expertise available outside of their domains in order to address both the lack of manpower to examine their own quality control, as well as confirmation (or other) biases that might interfere with an objective examination of their own procedures and processes, as acknowledged in this anthology.

Overall, the Quality Control project has certainly brought to the fore many voices in the fact-finding and investigations domain that might otherwise have not been heard or been openly available to the public. While improving diversity of contributions in terms of gender, geographical spread and professional backgrounds would have been very much desirable, the editors


11 Agirre and Bergsmo, supra note 3, at 4.

have demonstrated remarkable transparency and open-mindedness. Even though a majority of the contributors have practised at one of the international criminal courts and tribunals, their experiences are contrasted with domestic ones, including Italian, Norwegian, French, Indian, British, American and Israeli. The comparative potential of the anthology is its major strength, and an important lesson for future projects concerning the assessment of the mechanisms to ensure quality control in fact-rich cases: there are lessons to be learnt, both from national jurisdictions and international ones, from the academia and from practice. The editors should be commended for creating a space which made this exchange possible. Now, with the project coming to the end, it might be time to consider a synthesis of the cross-cutting, pragmatic proposals to inform future research, set the agenda for upcoming projects and support practitioner–academia collaborations on this important matter.

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