9

China

The Dangers of Wrongful Conviction Washing

9.1 Introduction

Despite its increasing turn to authoritarianism and centralized power under Xi Jinping, China has had its own innocence revolution. An increasing number of cases, including three well-known "back from the dead cases" (He, 2016), led to a number of reforms. They include the resumption of mandatory review of death penalty cases by the People's Supreme Court, the introduction of an exclusionary rule for involuntary confessions, which are the main cause of China's remedied wrongful convictions, and various Party, court and prosecutorial guidelines to prevent and remedy wrongful convictions (Jiang, 2016: 168–169).

Despite these reforms, China still has a very close to 100 per cent conviction rate, with only 894 people being acquitted in 2021 out of 1.7 million people accused (Miao, 2024: 306 fn 52). Defence lawyers are still liable to detention and prosecution for attempting to assist the wrongfully convicted. The police and other justice system participants in China may have incentives to engage in innocence denial because they may, under China's punitive system, face more severe sanctions for participating in wrongful convictions than criminal justice system participants face in the United States or England. As in the United States, remedied wrongful convictions seem to have aligned with decreases in the use of the death penalty though China still deems the number of people it executes a state secret and is widely believed to be the world's leading executioner.

China's wrongful conviction reform has had its political uses (Nesossi, 2016). The father of Nie Shubin, who was posthumously exonerated in 2016 for a 1994 rape/murder after eleven years of campaigning, was quoted as stating, "Thank you, President Xi Jinping. Your ruling the country by law has brought me huge benefits. I give you a thumbs up" (New York Times, 2016). The exoneration was the result of "media reports, public opinion and political pressure" (Said et al., 2025: 152). A year later, the family received 2.68 million RMB from the state in compensation. Nie

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

Shubin made a false confession after being tortured by the police, and his court-appointed lawyer had only pled for mercy. No DNA was collected. An alternative suspect confessed in 2005 and was executed in 2021, but there are also doubts about that person's guilt (US-Asia Law Institute, Nie Shubin). This raises issues of whether the remedying of wrongful convictions and the payment of compensation helps legitimate an unjust criminal justice system, especially given that the 2016 exoneration came at a time when there was an increased crack down on lawyers and freedom of expression "stifling the type of advocacy that brought about the positive outcome in the Nie Shubin case" (New York Times, 2016). I have called this danger of legitimation one of "wrongful conviction washing" of unjust criminal justice systems (Roach, 2024a). In order to respond to Chinese claims of western hypocrisy (Roach, 2022a), these difficult questions should also be asked of the reforms undertaken by western democracies to prevent and remedy wrongful convictions.

As in other countries, it should not be assumed that progress on miscarriages of justice is linear. As discussed in Chapter 4.3, China has since 2018 encouraged guilty pleas for efficiency reasons. This development, especially combined with severe restrictions on defence lawyering and extensive use of pre-trial detention, may greatly increase the risk of false guilty pleas that will be difficult, if not impossible, to correct.

There are some striking similarities between wrongful convictions in the United States and China. The use of the death penalty in both countries has added urgency to wrongful convictions and exonerations of obviously innocent people have arguably assisted with declines in executions. In China, the wrongfully executed include Nie Shubin and Teng Xingshan (Jiang, 2013a: 147). In the United States, they include Carlos DeLuna and Cameron Todd Willingham (*Glossip v. Gross*, 576 US 863 per Justice Breyer in dissent). In both countries, multiple legal proceedings before different courts are common before wrongful convictions are corrected often after long delays. False confessions, police misconduct and inadequate defence representation have played a role in wrongful convictions in both countries. Compensation is available in both countries and has increased in recent years (Gutman, 2025; Zhong and Zhang, 2022). In both highly punitive societies, it is often necessary for the wrongfully convicted essentially to prove their innocence in order to receive a remedy. Remedied wrongful convictions in China resemble more the American proven innocence model than the broader English focus on miscarriages of justice.

The role of police torture in China's wrongful convictions has been widely noted and criticized, but the role of torture with respect to Jon

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

Burge's midnight crew in Chicago should not be forgotten even if, as discussed in Chapter 7.3, it has not played as prominent a role in American innocence discourse as perhaps it should. A criminal jury could not reach a verdict in 1989 when Burge was charged with torture, but he was fired in 1993 on the basis of the same act of torture. The American registry lists thirty-five exonerations, all involving Black men from Cook County, with reference to Burge and his infamous squad. In 2010, Burge was sentenced to 4.5 years for perjury with respect to his answers about the torture, but he was able to retire to Florida on a generous police pension. There were also other cases of torture by the Chicago police that did not involve Burge.

At the same time, there are important differences with the United States remedying over 3,600 wrongful convictions since 1989 and China remedying far fewer. Some publications report 141 remedied wrongful convictions (Zhong and Dai, 2019) with the highest number being reported in a 2024 study of 355 such cases (Li and Li, 2024).

Distinctive and troubling features include the "iron triangle" of the police, prosecutors and the courts in China, which deprives them of acting as checks and balances. There are no laws providing the accused with access to DNA evidence as exists in all American jurisdictions. Most reforms in China have been directed at prosecutors and courts, not the police. China also has not had mass exonerations tied to policing or drug lab scandals as seen in the United States. Defence lawyers are subject to prosecution in China for doing their jobs (Jiang, 2016). Although some defence lawyers bravely represent the wrongfully convicted, China does not have the innocence projects, free media or civil society advocacy that is present in the United States. It is widely thought that the use of the death penalty is declining, but the exact numbers remain a state secret.

Mainland China's approach to wrongful convictions will be compared and contrasted with Hong Kong and Taiwan. Hong Kong still maintains a broader focus on miscarriages of justice, while China is closer to the American model of proven innocence. An Innocence Project operates openly in Taiwan, and a broader range of wrongful convictions have been remedied in Taiwan compared to in China. In short, the export of the mainland criminal justice system to Hong Kong or Taiwan would have regressive effects in terms of preventing and correcting wrongful convictions.

Can China truly be part of the "global innocence movement?" (Garrett, 2017a; Godsey, 2017). In my view, China's restrictions on human rights and defence lawyers prevent it from being a credible part of any such movement even though there are lawyers and scholars in China who courageously work to remedy and understand wrongful convictions. The

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

correction of wrongful convictions especially in death penalty cases is an understandable priority but broader miscarriages of justice including the detention of people in Xinjiang and Tibet who have been convicted of no crime should not be ignored.

9.2 Remedied Wrongful Convictions

9.2.1 China's Long History of Wrongful Convictions

Song Ci in 1247 wrote a book called *Collected Cases of Justice Rectified*. It is regarded as the first book on forensic science. It cautioned that careful examination is required to avoid "any regrets" in the use of the death penalty (Ci, 1247: 10). It warned against tunnel vision or confirmation bias by stating, "the object of re-examination is not to verify against a previous verdict, but to guard against injustice" (1247: 14). Around the same time, Hanqin Guan wrote a play called the *Injustice to Dou E That Touched Heaven and Earth*. Dou E is wrongfully convicted by a corrupt official on the basis of false confessions obtained by torture and threats to torture her mother-in-law. Her innocence is confirmed after her death by three prophecies that she had predicted before her execution would confirm her innocence: blood raining from the sky; snow in June and a three-year drought. Those responsible for the wrongful conviction were eventually brought to justice. There was an early recognition in China of the dangers of wrongful convictions.

Another ancient story published in 1627 involved a man and a woman who were tortured into confessing to a murder that shocked the community. The local Governor did not take their protestations of innocence seriously. The wrongful conviction of the pair was revealed within a year after the real perpetrator confessed to the killing. This person was also executed. The Governor who presided over the wrongful conviction lost his position because he had not conducted an adequate investigation. Ming Hu and Bin Liang (2022) have argued that this fictional tale reveals factors such as the use of torture, influence from public opinion, lack of checks between police, prosecutors and courts and lack of defence rights that are still present in China. The ancient texts have contemporary reliance in illustrating the need to be cautious with both confessions and the death penalty. They also reflect desires not to convict those who are clearly innocent and to punish those responsible for convicting the innocent. These are deeply rooted and universal desires, but these ancient writings also reflected a sense of fatalism that wrongful convictions and wrongful executions will occur.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

As in Europe (Langbein, 1977), torture has deep roots in Chinese society. It was allowed but regulated from the Zhou dynasty (1066–256 BC) to the Qing dynasty (1644–1912). At the same time, China also used alternatives to immediate execution during this time. Between 1744 and 1840, China had a lower execution rate than England. In both countries, the majority of death sentences were not carried out because of executive clemency (Xiong, Liu and Liang, 2022).

There have been estimates of 20,000,000 executions during the Cultural Revolution between 1966 and 1976. Mass trials were held during this time, and the death penalty was often tempered by a two-year delay to allow for re-education. In 1980, the Supreme People's Court (SPC) estimated that between 17 and 39 per cent of the convictions during the Cultural Revolution may have been wrongful. After the Cultural Revolution, attempts were made to rectify over four million convictions (Zhong and Dai, 2019: 262). So many innocent people were released from prison camps that arrangements had to be made to allow some of them to stay and continue to work at the camps (Lin, 2022: 427). There are ugly predecessors to China's contemporary wrongful convictions (Muhlhahn, 2009: 193). As in the United States, however, connections between older and newer wrongful convictions are rarely made, and much wrongful conviction discourse is ahistorical.

9.2.2 Three Back from the Dead Cases

Three cases where murder victims were discovered alive are among China's best-known recent wrongful convictions. Such cases of obvious wrongful convictions have also occurred in the United States. Rob Warden (2013) has documented eleven such cases, including the 1819 wrongful convictions of the Boorn brothers for killing a relative who turned up alive to the 1973 wrongful conviction of Antonio Rivera and Merla Walpole for murdering their three-year-old daughter even though their daughter was found alive in 1975. Warden also identified two nineteenth-century cases where the wrongfully convicted man was hanged before the alleged victim of the murder was found alive (2013: 156–158). One of the men, William Marion, was granted a pardon by the Nebraska governor in 1987 based on innocence (2013: 156–158).

Back from the dead cases are the most obvious forms of wrongful convictions of the innocent. They were DNA exonerations before DNA exonerations. This is relevant to a central theme of this chapter: the highly punitive society of China, like the United States, rations justice

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

severely so that remedies are only provided in the most obvious cases of injustice.

9.2.2.1 She Xianglin

She Xianglin was convicted of murder in 1994 after falsely confessing to his wife's death. He came under suspicion in part because of a petition signed by fellow villagers alleging he was having an extramarital affair (He, 2016: 92–93, 104). He was interrogated for ten consecutive days and beaten by the police. He lost part of his finger before making four different confessions (US-Asia Institute, She Xianglin murder case). The indictment compiled by the prosecution "detailed Mr. She's affair with another woman. Similarly, it described his poor relationship with his wife, to such an extent that it caused her psychological distress. It ultimately stated that Mr. She intended to kill his wife, whom he believed to be mentally ill, so he would then be free to marry his mistress" (Li, 2016: 119). China uses an inquisitorial system with no restrictions on bad character evidence.

When She Xianglin's mother protested his innocence, she was jailed for nine months (2016: 105), even though she had sought and gained some support from the local Communist Party (Jiang, 2016: 43). The mother was deaf and blind when she was released from custody. She died shortly after at fifty-four years of age (2016: 43). The role of the mothers of the wrongfully convicted is often key in western exonerations (Roach, 2023a: ch 15), but they have not been subject to detention and torture, as was the case in the She Xianglin case.

Defence witnesses were also subject to torture in the She Xianglin case until they changed their testimony. The police ignored witnesses who said that the deceased was their family member and not She's wife (US-Asia Institute, She Xianglin murder case). The police in China are subject to confirmation bias or tunnel vision that leads them to ignore or discount evidence that is not consistent with guilt (He, 2016). Tunnel vision can occur in all cases but is aggravated in China by a sense that the police operate unchecked by an "iron triangle" that includes prosecutors and courts that all lack independence from the state and the Communist Party (Jiang, 2016).

In 1995, She's conviction was sent for a retrial by a High Court because of "unclear facts and insufficient evidence." The courts sent the case back to the procuratorate or prosecutorial service several times for re-investigation. There were two trials, but She's lawyers did not call evidence or even ask questions at the two perfunctory trials in which he was found guilty (He, 2016: 105). Ineffective assistance of counsel is also a cause of

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

western wrongful convictions, but as will be seen later in this chapter, Chinese defence lawyers have an especially marginal and precarious status.

In 1997, a Political and Legal Committee after consulting with the court and the prosecutor decided "that, given the unclear evidence, the sentence should be revised from the death penalty to a fixed-term imprisonment. According to these instructions, in June 1998, the Jingshan County Basic People's Court sentenced Mr. She to fifteen years in prison" (Li, 2016: 119). It is difficult to compare such a political and bureaucratic approach to decision-making to judicial decision-making in either North America or Europe. At the same time, it reflected long Chinese traditions of tempering the death penalty with mercy including in cases of residual doubt.

The alleged murder victim, She's wife, came back from the dead and reappeared in her village on March 28, 2005. By April 1, 2005, She Xianglin was freed, and by April 13, 2005, he was exonerated by the courts and subsequently received RMB700,000 from the state in compensation. One of the police officers involved in the wrongful conviction was charged with torturing She and committed suicide before his trial (US-Asia Institute, She Xianglin murder case). The Chinese state responded quickly and efficiently to this from the dead case. The case was very well publicized with the name She Xianglin appearing in over 172,000 articles published in China. As in other countries, "the revision of criminal wrongful convictions commands a high social profile" (Said et al., 2025: 133). The Chinese state was able to quickly respond to the crisis created by discordant legal and media discourses (Schiff and Nobles, 2000).

9.2.2.2 Teng Xingshan

In 1988, Teng Xingshan was convicted of rape and murder and executed by a firing squad despite alibi evidence and some doubts about the identity of the alleged victim. He was convicted in part because he was a butcher and a dismembered body had been found. He falsely confessed when tortured. In 1993, the person he was supposed to have murdered returned to her home and told authorities that she did not know Teng Xingshan. It was not until 2005 that the deceased's children had enough funds to launch an appeal and the conviction was overturned in 2006 (Jiang, 2016: 45–46). As in other countries, there are access to justice challenges in correcting wrongful convictions.

Professor He Jiahong has related this 1988 wrongful conviction and execution to the pressures and time limits set by Strike Hard campaign as well as China's "stubborn love of confession" even when obtained through torture (He, 2016: 5–26). He Jiahong reported that of fifty murder wrongful

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

convictions that he examined, forty-seven had false confessions extracted by torture. In only four of these cases did the court or prosecutors formally conclude that torture was probable with convictions of the officers being secured in three of those cases (2016: 46). He explained, "influenced by a one-sided emphasis on the public interest, Chinese criminal law has long stressed the needs of fighting crime while neglecting the rights of criminal suspects and defendants" (2016: 48).

9.2.2.3 Zhao Zuohai

Zhao Zuohai was convicted in 2002 of murdering a villager who had disappeared in 1997. He was given a sentence of death with a two-year reprieve that was affirmed by a brief judgment on appeal. He initially protested his innocence but falsely confessed under torture after his 1999 arrest. The accused's wife was also tortured and forced to identify a decomposed body as the victim (Jiang, 2016: 159).

Zhao Zuohai was detained even after DNA revealed that the decomposed body was not the alleged victim. The procuratorate declined three times to prosecute Zhao Zuohai as a murderer because there was no evidence to identify the body. The prosecution was eventually brought at the urging of the Political and Legal Committee of Shangqiu City (Li, 2016: 124). The murder victim, however, "came back from the dead" on April 30, 2010.

By May 9, 2010, the Henan Provincial Court declared Zhao innocent and started proceedings to secure his compensation and possible discipline of the officials who played a role in the wrongful conviction. Three days later, Zhao was compensated with 600,000 Yuan. This was again an extremely quick and efficient response designed to resolve any crisis (Nesossi, 2016; Nobles and Schiff, 2000). Three police officers involved in his case were arrested and three of the judges who had convicted him were suspended two days later. Chin-fu Hung has related this rapid response to the wide media and social media coverage of the case, which caused the Henan People's Court to hold thirteen different news conferences about the case (Hung, 2012: 374). The case also resulted in significant media coverage both in China and the West.

9.2.3 Other Well-Known Cases

Two truckers named Zhang were convicted of murdering a girl they gave a ride to in 2003 even though their DNA did not match that of DNA found under the victim's fingernails and video showed them leaving the town

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

where they dropped the victim before the time she was killed. The Zhangs were interrogated and tortured for seven days. They were beaten by fellow inmates at the instructions of the police before they signed false confessions. They were exonerated in 2010 after one of them provided police with the name of a serial killer and rapist whose DNA matched those found under the victim's fingertips. That person had already been executed for a similar crime (Jiang, 2016: 46–48).

DNA exonerations and confessions from the true perpetrator are found in many of China's remedied wrongful convictions. This makes them obvious cases but also underlines that wrong perpetrator wrongful convictions can, as in the United States, be portrayed as a failure of crime control (Petro and Petro, 2010). It will be suggested in section 9.4 that, China, unlike the United States, has not remedied wrongful convictions for crimes that did not happen.

In November 2001, Chen Keyun and Wu Changlong were convicted of detonating a bomb at a Communist Party office. Both confessed, but claimed they were subject to prolonged torture including fifty-three days of interrogations that resulted in three failed suicide attempts. The prosecutor's office twice sent the case back to the police because of concerns about insufficient evidence. Although an appeal court found that the facts were not clear and the evidence was insufficient, it also found that the accused were not tortured. They were convicted again at a new trial in 2006. Chen told western reporters that "they treated me as less than a dog. I was an old Communist Party Cadre who had been about to retire, I never thought that something like this could happen" (Associated Press, 2013). On further appeal, they were acquitted in May 2013 (Jiang, 2016: 53–55). The case attracted media attention because of the rarity of terrorism charges and the men's continued claims of innocence. Some of the families of the accused were temporarily detained as a result of their petitioning. After the eventual acquittal, the Propaganda Bureau restricted media coverage, but there was eventual compensation to the two men (US-Asia Law Institute).

The more powerful are not immune from wrongful convictions in China. A police officer, Du Piew, was convicted of murdering his wife, who was also a police officer and another police officer in 1999 and was sentenced to death. Later that year, his convictions were affirmed, but because of doubt about his guilt, his sentence was reduced to a death with a two-year reprieve. He was released the next year after twenty-six months in prison when the real perpetrator confessed to the crime and ballistics evidence linked that person's gun with the two murders (Li, 2016: 121).

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

In 1998, Yu Yingsheng was convicted of killing his wife on the basis of a fifty-page confession obtained through torture. He made forty-one different and often conflicting statements while in police custody. The police disregarded semen and fingerprints found at the crime scene that did not belong to him. He was only declared to be innocent on a retrial in 2013 after five law professors reviewed the evidence and declared it to be insufficient, prompting the Supreme People's Procuratorate to reopen proceedings, which led to an acquittal after which the true perpetrator was identified through the DNA evidence (He, 2014: 492–493; Jiang, 2016: 55–56).

Huugjilt (as known as Huge Jiletu), an eighteen-year-old Mongolian person, was executed in 1996 for a rape/murder after he found a woman murdered in a public washroom and summoned the police. He confessed to the crime after police interrogation and torture. He was executed sixty days after his conviction (He, 2016: 184). A serial rapist confessed in 2005 to the crime. From 2006 to 2014, Huugjilt's parents campaigned for his innocence, and his case received much media attention. Only in 2014 and after some official recognition of the reality of wrongful convictions in China did the High People's Court of Inner Mongolia "declare his innocence" (2016: 189) with his parents being given less than $5,000 in compensation. Two years after the conviction was finally overturned, twenty-six officials involved in his case were given demerits or sanctions. The officials included eleven former police officers, seven former employees of the prosecutors' office and eight former employees of the courts. He Weifang, a law professor in China, explained that "the people punished are not the real decision-makers, so the authorities can only give them light punishments" (New York Times, 2016). At the same time, the Chinese state reported in 2022 that the punishment of twenty-six officials in this case represented one of the "largest punishments for those involved in wrongful convictions" adding that over 500 prosecutors had been held accountable for their role in wrongful convictions (Sixth Tone, 2022). The punishment of those involved in wrongful convictions could be defended as an attempt at accountability, but it may also deter the recognition and remedying of wrongful convictions except in the most obvious cases.

More recently revealed wrongful convictions include the case of Wu Chunhong who was first convicted of murdering his children in 2005 and was convicted three more times on retrials before he was acquitted after a fifth retrial. As in the United States, multiple legal proceedings are often necessary before wrongful convictions are corrected. Although he confessed after being tortured outside of a detention centre, he maintained

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

his innocence and mailed more than 600 petition letters. The charges were laid during a campaign to clear murder charges and the police did not investigate alternative suspects. He was eventually compensated 3.14 million RMB for the 5,612 days he served in prison (US-Asia Law Institute).

Chen Xiaying and two others were convicted of the kidnapping and killing of an eleven-year-old boy. They were first convicted in 1998 after the police had detained and tortured not only Chen but also his alibi witnesses. They were convicted on two more retrials that were ordered because of unclear facts and insufficient evidence. Chen was only acquitted in 2015 after his lawyer found a new alibi witness. He received 5.37 million RMB in compensation (US-Asia Law Institute).

Zhang Yuhan was interrogated and tortured for six days before making a false confession to the murder of young children in his village. The police had investigated all sixty-one households in his village and found scratches on Zhang. The police believed that Zhang had acted out of revenge for a prank the young victims had played on him and did not investigate four other alternative suspects. After extensive pre-trial detention and torture, Zhang confessed and was convicted and sentenced to death with a two-year reprieve. He won a retrial on appeal but was convicted again on a second trial in 2001. After volunteer lawyers found new evidence, an appeal court ordered a third trial in 2018, and he was finally acquitted and released in 2020 after twenty-six years in prison. He claimed over 20 million RMB and received 5 million RMB (US Asia Law Institute). His wrongful conviction was reported in the western media including the *New York Times*, which noted that in 2019, China had a 99.9 per cent conviction rate (Mozur, 2020). The British Broadcasting Company also reported his wrongful conviction and described him as China's longest-serving wrongfully convicted inmate who has served 9,778 days in prison. The High Court judge who acquitted Zhang Yuhan explained, "After we reviewed the materials, we found there is no direct evidence that can prove Zhang's conviction. So, we accepted the prosecutors' suggestion and have declared Zhang innocent" (British Broadcasting Company, 2020). As in the United States (Roach, 2013b), remedied wrongful convictions in China typically involve several rounds of litigation before the wrongful conviction is remedied. There are some similarities between Chinese rule by law and American extralegalism.

The vast majority of remedied wrongful convictions have involved male accused. One seventeen-year-old female, Qian Renfeng, was wrongfully convicted in 2002 of murdering a child who died from contaminated food at the school. She was harshly interrogated for twelve hours and made a false confession. The police did not pursue two suspects that the

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

owner of the child care centre told them about. Qian Renfeng was acquitted on a retrial in 2015 that was only held after her lawyer publicized the case online. She received 1.72 million RMB in compensation and an apology from the court for the over 5,000 days she was imprisoned (US Asia Institute, Qian Renfeng).

9.2.4 Studies of Wrongful Convictions

The government-sponsored Chinese press has reported that between 2014 and 2019, China had sentenced 7.1 million accused while remedying forty-three wrongful convictions involving sixty-three different accused. The story stressed that all sixty-three wrongfully convicted people had received compensation. Zhou Qiang, president of China's highest court, was quoted as declaring that Chinese courts are "learning a lesson from wrongful convictions" (Yin, 2019a). As will be seen later, the state-controlled media in China has taken a special interest in portraying China's record and response to wrongful convictions in a favourable light.

Yu Mou has examined a number of studies of remedied wrongful convictions in China. One 2014 study of forty wrongful convictions included four cases where the deceased victim was actually found alive, and twenty-five other cases involved confessions by the real perpetrator. In another 2015 study of thirty-four remedied wrongful convictions, twenty-one cases involved the real perpetrator's confession (Mou, 2020: 3–5). These studies illustrate how definitive evidence of innocence is often required in China to remedy a wrongful conviction.

In a 2021 study of forty-five wrongful convictions in capital cases, sixteen involved a confession by the real perpetrator, and in three cases, the victim came back from the dead. Only two cases involved prosecutors withdrawing charges after an appellate court ordered a re-trial. The author of the study, Professor He Jiahong of Renmin University, concluded that all forty-five wrongful convictions revealed a "shortage of evidence" in terms of its quantity and quality with most involving false confessions. As will be seen in Chapter 10.2, a similar pattern is seen in India, where remedied wrongful convictions often feature false confessions and an absence of other physical or forensic evidence linking the accused to the crime.

Zhong and Dai (2019: 267) reported on 141 wrongful convictions involving 206 accused. Consistent with an emphasis in China and the United States on proven innocence, these researchers only included wrongful convictions where "factual innocence" was established (2019: 265). In 115 of these cases, the victim died and the "rest of the cases concerned rape,

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

robbery, assault, and setting a bomb causing grave injuries to victims." In 33 per cent of the cases, the wrongly convicted accused was sentenced to immediate death, and in 28.6 per cent, they received a suspended death sentence. The death penalty has dominated remedied wrongful convictions in China. Both guilty pleas and less serious cases are generally absent from China's remedied wrongful convictions.

Torture by the police was a factor in 122 or 86.5 per cent of the 141 remedied cases. The prevalence of police torture as revealed in remedied wrongful convictions in China and India suggests that police reforms should be a priority in those jurisdictions. At the same time, over 80 per cent of the wrongful convictions occurred between 1991 and 2005. Delays in providing remedies make it difficult to make confident determinations whether reforms enacted in response to well-publicized wrongful convictions between 2010 and 2013, including an exclusionary rule for involuntary confessions, have been effective.

Only 14 of the 141 remedied cases involved mistaken eyewitness identification, and 19 involved "inconsistent witness testimony" (Zhong and Dai, 2019: 270), thus suggesting that many of the remedies discussed in Chapter 3 targeting immediate causes of wrongful convictions other than those for false confessions may not be a priority in China. In addition, only 6 of the 141 wrongful convictions involved DNA, underlining the relatively "low tech" nature of Chinese wrongful convictions, something that is also the case in India. Inadequate defence representation was not even recorded as a cause even though defence lawyers were present in about two-thirds of the cases (2019: 274). It is difficult to overstate the marginal and precarious role of defence lawyers in China.

Another striking finding of this study is that in the majority of cases, the accused faced three trials or more, underlining the complex and arduous process of correcting wrongful convictions and the initial reluctance of Chinese courts to recognize and remedy wrongful convictions (2019: 267–268). This underlines yet another similarity with the American approach, which, as discussed in Chapter 6.5, often involves multiple post-conviction proceedings in both states and Federal courts. The extensive use of multiple re-trials in remedied wrongful convictions can be seen as a legalistic display of rule by law with courts being reluctant to recognize wrongful convictions without clear signals from those in charge. That said, Zhong and Dai (2019: 272) record that the Communist Party's Political Legal Action Committee only intervened in 9 of the 141 cases though this may underreport such interventions given their reliance on media sources. They were only able to discover court decisions in

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

11 of the 141 cases, underlining a lack of transparency in the Chinese judiciary. Multiple post-conviction proceedings in both the United States and China demonstrate less trust in courts than in the English system, where the accused often only has one level of appeal from a conviction (Roach, 2013a).

A 2022 study of 103 remedied wrongful convictions in death penalty cases found that most of the wrongly convicted were of low economic status and from a rural area. Ninety per cent of the cases involved murder in the course of a rape or a robbery. Although there was only one exoneration between 1983 and 1995, there were 3.67 cases per year between 1996 and 2011 and 7.83 cases per year between 2012 and 2018 (Lu et al., 2022: 541). The researchers found that 94 per cent of the cases involved torture by the police and only one case involving a false confession without police torture (2022: 543). The interrogations producing the interrogations lasted on average eleven days. After 2012, all of the confessions were recorded, but sometimes the recordings were edited (2022: 544). This underlines that the recording of confessions alone will not prevent false confessions. In 20 per cent of the cases, the police were sanctioned for their conduct (2022: 548). A 2020 study in the United States similarly found 19 per cent of American police involved with wrongful convictions had been disciplined, though often for a pattern of misconduct and not for involvement in wrongful convictions. In the United States, thirty police officers but only two prosecutors involved in exonerations were convicted of crimes (Gross et al., 2020: 115–122). Perversely, the willingness to sanction even a minority of those involved in remedied wrongful convictions may deter recognition of wrongful convictions.

A 2024 study examined 355 remedied wrongful convictions between 1990 and 2010. It found that in 81 per cent of those cases, the wrongful convictions were not remedied until the chair of the relevant provincial political legal committee had exited office. This measures correlation and not causation and may also reflect normal turnover among governing elites. Yet the same researchers found that the chances of wrongful convictions being corrected were lower if the chair of the political legal action committee was the direct subordinate of the former chair (Li and Li, 2024). This underlines the role that local politics may play in the correction of wrongful convictions in China. One American parallel may be the close to 800 exonerations by the end of 2024 that involved conviction integrity units, which are often established as a reform mechanism by a newly elected prosecutor. Na Jiang had earlier and bravely argued that political legal committees "are just a branch of CCP bodies rather than judicial institutions"

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

and noted that they are often instrumental in remedying wrongful convictions (Jiang, 2018a: 23), Professor Na Jiang notes that "convicted people who insist on their innocence often seek" assistance from local Political Legal Committees and other "unprofessional political-legal institutions" (Jiang, 2016: 225). This suggests that remedied wrongful convictions in China may often have, below the surface of appeals and multiple retrials, a populist and political dimension that in western democracies is generally associated with executive clemency.

9.3 Proven or Obvious Innocence

In a 2016 book published in English, Na Jiang of the Beijing Normal University drew some parallels between Chinese and American approaches, which focus on factual innocence while noting that English and Canadian approaches are based on the broader category of miscarriages of justice. The latter focuses on "new evidence that raises doubt" and "may better protect human rights and due process" than the American and Chinese model of proven innocence. She concludes that China "may wish to follow the British model to ensure that the accused has the benefit of a reasonable doubt" in part because "America's growing concern with actual innocence, demands a burden of proof hard to satisfy in cases where DNA evidence is unavailable" (Jiang, 2016: 28–29, 34). A focus on proven innocence, whether in the United States or China, is contrary to liberal criminal justice values that are designed to give the accused the benefit of a reasonable doubt and to require the state to satisfy a uniquely high standard of proof.

In a book published in English in 2018 called *Methodology of Judicial Proof and Presumption*, Professor He Jiahong of Renmin University perceptively argued that while the American legal system in theory gives the accused the benefit of a reasonable doubt at a trial, the practical requirements of overturning a wrongful conviction in the United States require something closer to proof by the convicted person on a balance of probabilities (He, 2018: 266–267). China's standard of "definite error" can also be interpreted to require full and reliable evidence of innocence. Professor He argued that "this interpretation is mistaken, or at least inappropriate" (2018: 276) and that administrative or civil standards for compensation should not be used in the criminal law (2018: 189). In the end, He Jiahong calls for the use of three standards in Chinese law patterned after English law: the real possibility of reversal standard used by the Criminal Cases Review Commission, the standard applied by the Court of Appeal

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

in deciding whether to quash the conviction as safe and higher standards of proven innocence for compensation.

Professor He Jiahong offered another subtle justification for requiring a higher standard for compensation than for correcting wrongful convictions in the criminal process. He argued that the "application of a higher standard of proof for providing state compensation may prevent such compensation from becoming an obstacle to rectification" (He, 2016: 189). When this statement is unpacked, it may refer to the possibility that Chinese officials may be reluctant to remedy wrongful convictions if it will expose them to claims under China's law on state compensation, which requires responsible criminal justice agencies to bear the price of compensation in a way often not done in western democracies (Levinson, 2000). Another factor, noted by Professor Na Jiang, is that Chinese officials may face discipline including criminal prosecutions for their role in wrongful convictions (Jiang, 2013b: 153). Compensation and accountability for wrongful convictions are generally praised on rule of law grounds. Nevertheless, fear that officials will suffer adverse consequences may inspire denials that a wrongful conviction has occurred.

The important work of both Na Jiang and He Jiahong, who are the two leading scholars in China about wrongful convictions who write in English, supports the idea that remedied wrongful convictions in China may be closer to the American proven innocence model rather than the broader English model based on miscarriages of justice as applied within the criminal but not compensation systems.

China's proven or obvious innocence approach also appears to have the flip side of allowing prosecutors to re-open cases if new evidence of factual guilt emerges. As discussed in Chapter 5.6, this is also possible in England after the 2003 abrogation of double jeopardy protections so that prosecutors can re-open acquittals if there is fresh and compelling evidence of guilt. Australian incursions on double jeopardy have inspired giving the accused rights in most Australian states to second and subsequent appeals on a similar basis. China University Law professor Liling Yue (2021: 167–185) has pointed out that Article 253(1–5) of China' 2018 Criminal Procedure Law provides wide grounds, including those relating to inconsistent verdicts, convictions of criminal justice participants and new evidence, to re-open both acquittals and convictions. She argued that there should be more willingness to re-open convictions than acquittals given concerns about double jeopardy. The parity of treatment in Chinese, English and Australian law between re-opening acquittals and convictions is related to a common concern with factual guilt.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

A younger scholar in China, Moulin Xiong, has demonstrated less concern for the presumption of innocence or liberal criminal law values than Professors He Jiahong, Na Jiang or Liling Yue. In a 2022 article, he has argued that global public opinion justifies rethinking the Blackstonian ratio that it is better that ten people be wrongfully acquitted than one person wrongfully convicted. He correctly related the ratio to "the needs of liberalism concerning the emphasis on individual rights" (Xiong, 2022: 3). Taking inspiration from American critics of the ratio (Allen and Laudan, 2008; Cassell, 2018; Epps, 2015) and public opinion polls showing concerns about wrongful acquittals, Professor Xiong argued that "times have changed." He asserts that it is now "time to shift theoretical directions from Blackstonian to anti-Blackstonian theory, and then from the due process model to a crime control model" (Xiong, 2022: 49).

China like many other countries may be inspired by western backsliding on liberal rights including the presumption of innocence. If Professor Xiong represents the future in China, then China may more eagerly embrace the American model of proven innocence and the increasing hostility of its more conservative judiciary to due process. Professor Xiong's approach also conflates criminal law and compensation standards contrary to the careful work of Professor He Jiahong. Xiong's approach, however, is more difficult to criticize given the European Court of Human Rights recent ruling that a proven innocence standard for compensation is consistent with the presumption of innocence (*Nealon v. The United Kingdom*, 2024 ECHR 514). Western backsliding on rights is not confined to the United States. China's government is quick to point out the hypocrisy of western criticisms of its human rights record (Roach, 2022a). In any event, a severe rationing of post-conviction relief to those who can prove their innocence may suit high-imprisonment societies such as China and the United States.

9.4 Missing Wrongful Convictions

Almost all of the remedied and well-known wrongful convictions in the above-mentioned academic studies are dominated by false confessions to homicide, often involving sexual assault (He, 2021; Lu et al., 2022; Zhong and Dai, 2019: 274) (US-Asia Law Institute). This mirrors the American experience with DNA exonerations.

In what could be a sign of increasing access to justice, some of the more recent remedied wrongful convictions do not involve false confessions and involve less serious crimes. For example, Fang Junjin was wrongfully convicted of a burglary of a judge's home in 2013 and a retrial was ordered

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

and the Procuratorate dropped charges in 2014 on the basis of insufficient evidence. A cigarette pack with his fingerprint was found at the scene, but he had an alibi that he was 800 kilometres away when the burglary was committed. A university professor had his corruption charge overturned on the basis of insufficient evidence. He was detained starting in 2015 and was convicted in January 2017. A retrial was ordered by the Guangdong High People's Court in December 2017. He was released on bail in January 2018, and prosecutors dropped the charges in June 2018 (China Daily, 2019). Such a case represents an improvement in terms of a quicker correction of wrongful convictions through prosecutorial action. China also had provided compensation when people who are detained in pre-trial detention are acquitted at their first trial. This reflects the breadth of their state compensation law, which, like in some European states including Germany and Italy, provides for compensation for wrongful detention even if it does not result in a wrongful conviction (Roach, 2024a).

At the same time, there are many types of remedied wrongful convictions in democracies that do not appear to be present among the remedied Chinese cases. There are few cases involving forensic error and none involving Shaken Baby Syndrome (Findley et al., 2022). There are a few remedied Chinese wrongful convictions that involve mistaken eyewitness identification, prosecutorial misconduct or ineffective assistance of defence counsel. There are very few no-crime wrongful convictions even though these constitute about 40 per cent of cases in the American registry. In addition, I am aware of no remedied case in China in which the accused originally pled guilty even though such false guilty pleas accounted for just fewer than 25 per cent of the remedied cases in the American registry as of the end of 2024.

There are also very few remedied wrongful convictions involving women or ethnic minorities. One of the latter involved an eighteen-year old from Inner Mongolia called Huugjilt (also known as Huge Jiletu) who was executed in 2006, sixty-one days after being convicted of a rape/murder. He was part of the Mongol ethnic and linguistic minority in China's northern Inner Mongolia Autonomous Region.

Huugjilt had reported finding the victim to the police. No DNA analysis was conducted, and instead, there was reliance on less reliable blood typing evidence (Jiang, 2016: 276). Huugjilt was posthumously exonerated in 2014 after a serial rapist and murderer confessed to the crime. His case was a high-profile wrongful conviction frequently cited in reforms where police officers, prosecutors and judges "were punished by the Chinese Communist Party's internal disciplines from severe disciplinary

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

admonition to major demerit recording" (US-Asia Law Institute: Huge Jiletu). It is difficult to draw conclusions from this one case about the extent to which discrimination against racial, ethnic and religious minorities plays a role in Chinese wrongful convictions. As will be discussed later, a Chinese "innocence movement" would be unlikely to have the freedom to oppose repressive measures taken against racial and religious minorities, some centred in Xinjiang and Tibet.

9.5 Responses to Wrongful Convictions

The three back-from-the-dead cases, where She Xianglin's and Teng Xingshan's wrongful conviction was overturned in 2005; and Zhao Zuohai wrongful conviction was overturned in 2010 spurred a series of wrongful conviction reforms in China between 2006 and 2013 (Jiang, 2016: 146–152). It was impossible for the Chinese state to keep these cases a secret even though in 2010 it blocked from the internet a list of twenty-six wrongful murder convictions compiled by a Chinese scholar (Li, 2016: 118; Said et al., 2025).

9.5.1 False Confessions, Recording and the Exclusionary Rule

In 2010, five judicial and prosecutorial authorities promulgated regulations providing for the exclusion of involuntary confessions. The regulations empowered not only courts but prosecutors to exclude such confessions including those obtained by torture. An exclusionary rule for involuntary confessions was included in Article 54 of the 2012 Criminal Procedure Law. The amendments were complex and affected nine articles of the new criminal procedure code (Kielsgard, 2020: 388). These reforms were influenced by research on the use of the exclusionary rule in the United States and elsewhere (Guo, 2019).

The Chinese exclusionary rule was a top-down reform that was done without police or defence lawyering reforms. Many of the measures taken in China to prevent wrongful convictions have been directed at prosecutors and courts, not the police. Margaret Lewis (2010: 636) has suggested that the Communist Party introduced the exclusionary rule mainly to preserve the integrity and stability of the government. This also ties in with arguments made below that China's wrongful conviction reforms may have been more about legitimating the system in the wake of obvious and high-profile wrongful convictions than actually preventing them from happening.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

Writing in 2014, professor Na Jiang expressed some optimism that the 2012 reforms by requiring the recording of statements and allowing for defence lawyers to challenge confession evidence, could "cast doubt on the conclusions of the police and prosecutors" (Jiang, 2014a: 416). Renmin University professor He Jiahong (2014) also saw the rule as progress but warned about the gap between the law in the books and the law in action, especially given that torture had been illegal in China since at least 1979 and that the new law allowed for the admission of physical evidence derived from involuntary statements. By 2018, however, Na Jiang concluded that the exclusionary reforms had not been successful, with low rates of exclusion and convictions still occurring in cases where evidence is excluded (Jiang, 2018b: 6–7). Even if torture was eliminated in detention centres, there were concerns that suspects would be tortured when held in temporary custody in police stations (Yin, 2017). As will be seen in Chapter 10.2, there are similar concerns in India, and a 2023 law makes it easier for suspects to be transferred in and out of police custody.

Most studies suggest that Chinese courts have been reluctant to exclude statements, and even when they do exclude statements, the accused is still convicted (Lin, Chen and Wang, 2019). One study has, however, found only one successful exclusion claim from 2009 to 2012 but thirty-five between 2016 and 2018. At the same time, few cases of exclusion result in complete acquittals with partial reversals and reductions of sentences being a much more frequent remedy (Kielsgard, 2020: 400–402).

The transplant of exclusion of improperly obtained evidence from western democracies to China was fraught because the police in China were part of the military. They often lacked investigative skills and capacity and so had to rely on confessions (Lin, Chen and Wang, 2019). The absence of an independent defence bar in China was also a factor (Jiang, 2016: 163; Lewis, 2010). Gao Yong (2024: 222) has found that, while according to inquisitorial approaches both prosecutors and judges can exclude involuntary confessions on their own initiative, practically there must, as in adversarial systems, be an application by a defence lawyer. Another factor limiting the exclusionary rule's effectiveness was that the Criminal Procedure Law was contradictory in providing a right against self-incrimination alongside an obligation to answer questions truthfully (Jiang, 2016: 112). Finally, even when applied, the Chinese exclusionary rule was not absolute. It continued to allow for the introduction of any physical evidence discovered as a result of an involuntary confession. The Chinese exclusionary rule, like the American one, is subject to many exceptions, and it emerges more as a symbol than a guarantee of

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

due process. The American exclusionary rule has not prevented false confessions (Leo, 2008: 280), and the same is likely true of the Chinese exclusionary rule.

9.5.2 Death Penalty Reforms

As in the United States, much wrongful conviction reform has centred around the death penalty. In 2006, the Standing Committee of the National People's Congress restored mandatory review of death penalty cases by the Supreme Peoples' Court (SPC). This was only a year after the first two famous back from the dead wrongful convictions were revealed. In any event, the SPC had inadequate resources to conduct such reviews. It rarely held oral hearings despite regulations requiring such hearings (Jiang, 2016: 153–155). As with the underfunding of the English CCRC discussed in Chapter 5.5, paper reviews reflected a lack of resources and undoubtedly missed some wrongful convictions (2016: 165).

In 2013, the Chinese government announced a 50 per cent decline in executions from 2008 with an increased use of suspended death sentences (Miao, 2024: 329). The exact number of executions, however, remained a state secret. There was a danger that even in cases of suspected wrongful convictions, the court would simply suspend the immediate execution of the death penalty while still upholding the conviction in order to avoid triggering possible accountability measures for the lower courts who may have participated in a wrongful conviction. This underlined the importance of not only examining the law in the books but also the law in action. Professor Yu Mou (2020, 7) of the School of Oriental and African Studies in London has described the fact that both She Xianglin and Zhao Zuohai were not executed because of suspensions of their death sentences as "an application of the implicit criminal law policy 'extenuation for reasonable doubt' (zuiyicongqin)."

The 2012 Criminal Procedure Law increased the role of lawyers in death penalty reviews at least on paper. This resembled in some respect provisions in the American 2004 *Innocence Protection Act*, which provided for increased funding for defence lawyers and prosecutors in capital cases. There is a danger in both countries that wrongful conviction reforms will help legitimate the use of the death penalty by trying to avoid the embarrassing spectacle of executions of those who have been proven innocent through inconvertible evidence.

Moulin Xiong and Michelle Miao published an analysis of "122 death-sentenced innocents, of which 109 have been exonerated and five have

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

been wrongly executed" (Xiong and Miao, 2018). The authors compared this record with American cases including the wrongful execution of Cameron Todd Willingham for killing his children on the basis of flawed fire expert evidence. They also cited the English wrongful executions of Timothy Evans, Derek Bentley and Mahmood Matten examined in Chapter 5.3. They were adamant that their research was empirical only and should not be "used for evidence for criticizing the criminal justice system" (2018: 290). Their data set taken from an examination of Chinese decisions and media mirrors the many death row exonerations in the United States. In both countries, there are plausible claims that death row exonerations may have had a role in reducing the number of executions, though caution is warranted given the lack of official data in China about such numbers.

As in the United States, death row exonerations in China often required "repetitive appeals," years of incarceration and "cycles of hope and despair" (2018: 312). Those who received death row exonerations in China were convicted on average 3.68 times in suspended death penalty cases and 4.40 times in immediate death penalty cases before their exoneration. They served 6 or 13.6 years respectively in prison (2018: 313–315). Multiple proceedings within different court systems are a common feature of both American and Chinese legal systems and can be contrasted with other systems, including England, that often allow only one level of appeal within the court system (Roach, 2013a).

There are some differences in the common and extensive death penalty litigation in both China and the United States. The Chinese system retains the willingness of inquisitorial systems to allow re-trials. This explains why death row exonerees were convicted about four different times before being exonerated. In the United States, the multiple legal proceedings are mainly explained by successive post-conviction litigation in both state and Federal courts and the frequent holding of errors to be harmless. Re-trials are rarer in the United States and not always successful with fifteen of the first 250 DNA exonerates being convicted on a retrial before their eventual exoneration (Garrett, 2011a: 197).

Suspended death penalty cases doubled in the post-2007 era. This prevented wrongful executions but likely allowed wrongful imprisonment. Moulin Xiong and Michelle Miao (2018) concluded that "instead of the presumption of innocence, the sentencing reduction" was being used to remedy wrongful convictions (297, 305). They related this to an unwillingness of the courts to admit error and a traditional principle of "lighter sentences for unclear convictions" (2018: 311). In this way, Chinese

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

courts were more lenient than American Federal courts, which as discussed in Chapter 6.5 have prohibited accused from arguing residual doubt at the penalty stage of their capital cases (*Oregon v. Guzek*, 546 U.S. 517, 523 2006).

There are some troubling signs from the available evidence that the SPC may be more frequently approving death sentences as Xi asserted power and China was becoming more authoritarian. One study of 650 published death sentence review transcripts from 2013 to 2016 found only ten cases where the death sentence was disapproved compared to 381 offenders whose murder convictions were approved and 206 offenders whose death sentences for non-murder offences such as robbery and drugs were approved (Xiong, Liu and Liang, 2022). As will be examined in chapter 10.4, Indian courts have much more frequently overturned death sentences.

A legal process approach demands consideration of institutional alternatives. Professor Moulin Xiong (2021) of China's Southwestern University has bravely called for China to allow executive clemency from death sentences as is required under Article 6(4) of the International Covenant on Civil and Political Rights. He noted that executive clemency was used in China before the Communist Party. Similar to the United States experience with executive clemency as discussed in Chapter 6.4, amnesty laws in Communist China have been driven by political concerns as opposed to concerns about possible wrongful convictions and innocence. Professor Xiong notes that these laws and the idea of more executive clemency have not been popular in modern China in part because of a saying that "to show mercy to the enemy is to show cruelty to the masses" (Xiong, 2021: 177). He concluded, "As a result, hundreds of thousands of murderers have been executed without exception in modern China" (2021: 181).

9.5.3 2013 Guidelines

In 2013, a variety of guidelines and directives were issued responding to the remedied wrongful convictions and laying out policies in an attempt to prevent similar ones in the future. In July, the Central Committee of the Communist Party issued a "milestone guideline" (Jiang, 2016: 168) on preventing wrongful convictions on the heels of recently revealed wrongful convictions and statements of the Party's then new General Secretary Xi Jinping about the need to prevent wrongful convictions. It contained fifteen specific provisions accompanied by the following preamble:

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

> In order to give thorough implementation to the spirit of the important written instructions given by General Secretary Xi Jinping and Comrades Meng Jianzhu and Guo Shengkun, fully realize the spirit of the Fourth Plenary Session of the Central Politico-Legal Commission, punish crime in accordance with the law, respect and safeguard human rights, increase the credibility of the judicial system, and uphold social fairness and justice, we hereby enact the following provisions on the subject of strict adherence to legal procedure and holding firm to the bottom line on prevention of miscarriages of justice. (Central Political-Legal Committee, 2013)

The first directive responded to the prime role of false confessions by requiring interrogations to be recorded and only conducted in detention centres. This was backed up by the fourth and fifth directive emphasizing the role of prosecutors in supervising police arrests and investigations and the third directive stressing that "confessions obtained through torture or other illegal means, or witness testimony or victim statements obtained through violence, threats, or other illegal means may not be used as the basis for conviction." This message against the use of torture to obtain false confessions was re-enforced in the thirteenth directive providing: "Acts such as coercion of confession through torture, use of violence to obtain evidence, and withholding or fabricating evidence shall be severely punished in accordance with the law." China's punitive penal culture was turned inwards towards those responsible for wrongful convictions. This ignored, however, that torture had been a crime in China since at least 1979 (He, 2014). The criminal law itself was not applied to state actors who used torture as an investigative method until the Central Political-Legal Committee so instructed.

Other parts of the Central Committee's directive told courts not to convict based on evidence that was not "presented, examined, and cross-examined in court and verified through these court investigation procedures" and not to convict on the basis of uncorroborated confessions. The directive recognized the use of suspended death sentences in cases of doubt and instructed prosecutors and courts to respect the presumption of innocence and stated, "standards cannot be lowered to issue a verdict with a 'margin of error.'" On its face, this respected the reasonable doubt standard but raised questions about the differences between the law as articulated in the directive and the law in action.

The eighth directive warned both prosecutors and courts not to act illegally "due to pressure caused by public-opinion hype, disruptive petitioning by a party to the case or their relatives, 'case-solving deadlines,' or local 'stability preservation.' This constructed public pressure

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

as a cause of wrongful conviction even though public criticism, especially in high-profile cases, could also be a factor in remedying wrongful convictions.

Only the ninth directive addressed defence lawyers. It instructed prosecutors and courts to hear defence counsel "according to law" and explain why they either reject or accept defence arguments. The 2012 Criminal Procedure Law provided more robust rights for defence lawyers with Article 35 providing that their duties "are to present materials and opinions regarding the innocence of a criminal suspect or defendant…." Article 35 is consistent with the idea that China and the United States shared a focus on proven innocence. At the same time, Article 42 of the 2012 law criminalized the concealing, destruction or forging of evidence by defence lawyers as well as any other interference "with the procedures of judicial authorities." This combined with the retention of the infamous Article 306 of the Penal Code with respect to obstruction of justice allowed for "retaliatory prosecution" of defence lawyers and meant that their "actual status is still vulnerable in China's practice" (Jiang, 2016: 166–167). As always, there is a need to be attentive to differences between law in the books and law in action.

The final directive recognized the centrality of the Political Legal Committees by instructing them not to coordinate authorities in cases where "the facts are unclear or the evidence is insufficient" and "generally refrain from making specific opinions regarding the determination or substantive handling of a case." This directive has been re-enforced by subsequent directives. It was, however, a double-edged sword because intervention by such committees in individual cases could both cause and remedy wrongful convictions.

In 2013, the Supreme People's Court issued an opinion or general directive "for preventing unjust, false and wrongly decided cases" (Jiang, 2016; SPC, 2013). The first directive stressed the importance of not convicting the innocent. The second directive echoed the Central Committee's directive in instructing courts not to respond to "to stirred-up public opinion, parties petitioning and causing a commotion, local 'stability maintenance' or other such pressures." Both directives were partly a response to public outrage at well-publicized convictions of the clearly innocent, but also condemnation of public outrage at crimes that may have played a role in the wrongful conviction. This ambivalent response to public opinion – something that Susan Trevaskes (2014) has aptly called "fear and loathing (Party fears of the masses' loathing)" – underlines how the directive itself was an instrument to assert the state's control of the public.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

Article 6 repudiated the oft-acknowledged practice of using doubts about guilt to mitigate a punishment by stating, "a judgment that 'leaves room for error' must not be handed down." At the same time, the increased use of suspended death penalty sentences and declines in immediate death sentences provided some support for the idea that this practice continued and helped reduce the use of the death penalty even while condoning and partially legitimating wrongful convictions. The fourth and eleventh directives were also denials of the reality of the law in action by stating that the Supreme People's Court should "adhere to the principle of open trials" and "courtroom hearings shall be the centre of the trial." The idea of open hearing was used to legitimate what often remained a closed inquisitorial process where even judges who did not hear the evidence might still have a role in the judicial decision (Jiang, 2016).

Other articles in the SPS guidelines responded to the facts of the remedied wrongful convictions. Article 8 stressed the need to exclude not only confessions obtained by torture but also those that were not recorded or conducted in designated detention centres.

Article 9 stressed the importance of using DNA and fingerprints and not just witness accounts to verify the truth including the identity of the deceased. In an allusion to the back-from-the-dead cases, it underlined the need to confirm the victim's identity, if possible, by fingerprints or DNA. Yu Mou's (2020: 117) empirical study of the processing of cases in China revealed a very limited use of forensic evidence with one prosecutor stating, "Our forensic techniques are really weak. Ordinary evidence such as fingerprinting is rarely used in the court. We rely too heavily on the suspect's statements" and another prosecutor stated that even in murder cases, "we rarely use DNA evidence" (2020: 142). As will be seen in Chapter 10.5, India enacted a law in 2023 that in an attempt to improve both the efficiency and accuracy of prosecutions requires forensic investigations in serious cases. At the same time, American innocence projects have recognized from the start that the idea of scientific certainty was an illusion (Scheck, Neufeld and Dwyer, 2000). China has attempted to improve the regulation of forensic science, but many such services are located with the police and suffer some of the same oversight and validity challenges as forensic science in western democracies (Jiang, 2014b).

Finally, the 2013 directive contained its own version of the 1996 American law that tried to speed up death penalty cases by restricting successive uses of the federal habeas corpus claim. Article 18 urged the SPC not to send cases back for retrial "where the facts of an initial judgment are unclear and the evidence insufficient." If followed, this could result

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

in speedier exonerations with less use of repetitive litigation. At the same time, such litigation may have been necessary to provide time for political legal committees to decide if they were prepared to remedy wrongful convictions.

Some of the background to the 2013 directive was provided by an article by Shen Deyong, the Executive Vice-President of the SPC. He quoted General Secretary Xi Jinping's concerns about wrongful convictions and argued "that reliance should be placed on the leadership of the party in efforts to prevent unjust, false and wrongly decided cases….the Party's leadership is an important political guarantee that judicial trial work will be done well" (Deyong, 2013). He warned that "a single unjust, false or wrongfully decided case" could "greatly shake the public's faith in the rule of law" (2013). In his view, wrongful convictions "tend to be the consequence of following orders, abandoning principles or sloppy work and dereliction of duty" (2013). He then seemed to concede that the Chinese judiciary fared poorly in comparative perspective by stating, "In the west, judges are synonymous with fairness, and we also feel that judges are the embodiment of fairness, are the guardians of fairness and justice, and if the guardian become the assailant, the professional stigma cannot be washed off in a lifetime" (2013). He called DNA testing "truly a blessing and a curse" because of its ability to convict the guilty but also reveal wrongful convictions.

Shen Deyong praised defence lawyers as "an important member of a joint corps of legal professionals, are allies of the people's courts, are an irreplaceable and important force in bringing about fair trials and effectively preventing unjust, false and wrongly decided cases." This statement, however, ignored the marginal role of defence lawyers and their vulnerability to prosecution. He also seemed to absolve prosecutors of their responsibility by stating, "they will instinctively pay more attention to evidence of guilt and aggravating sentences, and this is understandable" (2013).

After the various changes between 2006 and 2013, wrongful conviction reforms in China seem to have lost momentum. Shen Deyong's (2013) speech was greeted by a speech by a deputy chief prosecutor Zhu Xiaoqing, who disagreed with "comrades" who suggested that preventing wrongful convictions may justify allowing "some cases to slip through the cracks." He also defined wrongful convictions narrowly as cases of factual innocence where authorities "got the wrong guy" and seemed to equate the prosecutorial standard of "the facts are clear and the evidence is credible and sufficient" with proof of guilt beyond a reasonable doubt (Zhu, 2013).

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

In 2018, the SPC stressed "three rules" involving pre-trial conferences, investigations and exclusion of illegally obtained evidence. It mentioned the need for both prosecutors and defence lawyers to disclose evidence that could prove the accused's innocence. It also re-enforced the idea that political-legal committees should not intervene in individual cases, but as suggested earlier, this could also inhibit remedies for wrongful convictions.

The only follow-up directives by Chinese officials on wrongful convictions that I have discovered was one issued in August 2021 by the Communist Party's Central Committee. Others have detected less activism in China with respect to wrongful conviction reforms (Said et al., 2025: 135). The 2021 directive repeated the calls in the 2013 directive "to promptly detect and correct illegal acts during investigations," such as extracting confessions through torture and illegally obtaining evidence, to prevent wrongful convictions (Zekun, 2021). It was accompanied by a story in the English language *China Daily*, noting that the annual report of the Supreme People's Court reported 656 acquittals in the last year in public prosecution cases and 384 acquittals in private prosecutions including the reversal of the wrongful conviction of Zhang Yuhuan after twenty-seven years in jail. It also reported that the man had "received about 4.96 million yuan ($764,000) in compensation from the State" (2021). This report conflated acquittals at trial with the correction of wrongful convictions. Reporting acquittals as remedied wrongful convictions may demonstrate sensitivity to China's conviction rate remaining very close to 100 per cent, with one recent study reporting a 0.005 per cent acquittal rate (Miao, 2024: 306 fn 52). In any event, some important recent developments in China, namely the encouragement of guilty pleas, have increased the risk of wrongful convictions in the name of increasing the efficiency of its criminal justice system.

9.6 Plea Bargaining: A New Cause of Wrongful Convictions?

As discussed in Chapter 4.3.4, China amended its Criminal Procedure Code in 2018 to encourage leniency in cases where the accused admitted guilt. As with the exclusionary rule, this reform was inspired by western democracies. It departed from the inquisitorial origins of the modern Chinese criminal justice system. Inquisitorial systems have traditionally been more resistant to encouraging guilty pleas and plea bargaining than adversarial systems though this inquisitorial advantage is diminishing largely because of concerns about efficiency (Hodgson, 2020).

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

What is striking is how quickly China has moved close to American rates of guilty pleas. In both highly punitive societies, guilty pleas seem to be absolutely necessary.

As of 2022, around 90 per cent of criminal cases nationwide were resolved in China through guilty pleas (Li, Yuan and Zhang, 2024: 13; New York Times, 2025). Targets placed on Chinese prosecutors to dispose of 85 per cent of their cases by guilty pleas have "generated more pressure on procurators to persuade defendants into pleading guilty, which turns Plea Leniency into a one-sided process wherein procurators get to push the plea process with defendants having little power to say no" (2024: 27). Xin He, a law professor at the University of Hong Kong, has argued persuasively that this change has placed prosecutors at the centre of China's criminal process and continues the marginalization of the courts. Less persuasively given the many false guilty pleas being revealed in the United States and the UK, Professor Xin He argued that the greater prosecutorial role in the Chinese plea bargaining system means that "wrongful convictions under plea leniency ought to be rare. After all, the defendants have themselves voluntarily admitted guilt and accepted their punishment" (He, 2024: 46). As discussed in Chapter 4.3.4, there are some safeguards in China's 2018 guilty plea law, but without effective defence lawyering they may not be used. Even if the accused exercises the right to appeal a guilty plea, the appeal court can reject the appeal and increase the sentence (Li, Yuan and Zhang, 2024: 22).

In contrast to Xin He, Yu Mou (2020: 139–141) has persuasively argued that China's new law to encourage guilty pleas will increase the number of wrongful convictions that are never remedied. She stresses that those who plead guilty may only receive perfunctory legal advice from duty counsel, an import from England and Canada (Mou, 2024: 192). Given that in many cases, the accused may already have confessed to the police, this legal advice is often, "too little, too late" (2024: 193). One widely reported case involved Son Jun-ho, a South Korean professional footballer, who signed a document in Mandarin that he thought only acknowledged that he received money from a third party but actually admitted to match fixing. He had been arrested and subject to almost a year's long pre-trial detention as part of a Chinese crackdown on corruption. When confronted with press reports that Son may have been wrongfully convicted, officials in China's foreign ministry responded that Son had "admitted guilt and accepted punishment" (New York Times, 2025).

China's almost 100 per cent conviction rates, its high rates of pre-trial detention and the cultural value attached to confession all make it likely

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

and even rational for an accused who may be innocent or have a valid defence to plead guilty. On paper, China's 2018 law has some safeguards against false guilty pleas, but in action, guilty pleas may well be accepted without regard to guilt.

9.7 The Marginal and Precarious Role of Defence Lawyers

One of the few bright judicial spots in the American response to false guilty pleas has been a recognition by the United States Supreme Court that accused need a right to effective assistance of defence counsel not only at trial but also when they plead guilty. In a 2012 case, the Court quoted Stephanos Bibas that an "expected post-trial sentence is imposed in only a few per cent of cases. It is like the sticker price for cars: only an ignorant, ill-advised consumer would view full price as the norm and anything less a bargain" (*Lafler v. Cooper*, 566 U.S. 156 (2012)). Unfortunately, it is very unlikely that the accused in China will receive competent legal assistance before pleading guilty or that the sentence will be a bargain (Mou, 2024: 192).

Defence lawyers in China have rights under the Criminal Procedure Law "to present materials and opinions regarding the innocence of a criminal suspect" but they can also be prosecuted for obstruction of justice, concealing evidence or obstructing judicial authorities. Fu Hualing, the Dean of the University of Hong Kong's Faculty of Law, has commented that defence lawyers in China have been "silenced in court, thrown out of court by judges; handcuffed immediately after making their closing argument, tortured by police and prosecutors; or tied up and paraded in the street while prosecutors cheer" (Hualing, 2007: 112). More recently in commenting on a 2015 crackdown and arrest of human rights lawyers, he has pointed towards wrongful convictions that are producing "die hard" lawyers in China (Hualing, 2018; Hualing and Zhu, 2018). Defence lawyers can make a difference in some cases, but they will pay a much heavier price in China than in democracies for doing so.

Professor He Jiahong has examined the case of a defence lawyer, Li Zhuang, who was convicted of giving false testimony under Article 306 of the Penal Code and sentenced to thirty months' imprisonment. His account of this case makes clear how the threat of such prosecutions have a chilling effect on Chinese defence lawyers (He, 2016: 174–175) even though lawyers effectively mobilized around the case in defence of their colleague (Liu and Halliday, 2016). Na Jiang has noted that "in

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

practice, Article 306 has been frequently abused by law enforcement authorities to intimidate defence counsel from challenging coerced confessions in capital cases" (Jiang, 2013a: 149). She added that because of the fear of Article 306 defence lawyers "often give up their right to investigate their clients' cases or collect evidence relevant to their defence. They are also reluctant to assert that their clients are innocent during trial" (Jiang, 2016: 286). Yuwen Li (2016: 229) similarly notes that "big stick 306" is "often referred to as the 'sword of Damocles' hanging over the head of criminal defence lawyers." Even if defence lawyers are eventually acquitted, they are often subject to long periods of pre-trial detention (2016: 230). Police, prosecutors and judges tend to have served in the Chinese military and often believe they represent the state. This makes them "feel distinctly more privileged than defence lawyers, who represent ordinary people. China steadfastly remains a society centred upon officials" (2016: 234).

In 2017, the Supreme People's Court promulgated new rules for defence lawyers. Although meant to promote more defence representation, legal aid and defence access to court records, they also warned that defence lawyers

> shall obey laws, regulations, practice specifications, and courtroom discipline; they must not incite, instigate or organize defendants' guardians, immediate family members, and so forth to express their demands in unlawful ways; they must not maliciously sensationalize cases, distort cases or give misleading publicity or commentary; they must not violate provisions by disclosing or disseminating information or materials from cases that are not open to the public, or important information and evidence that they learn of through handling the case; they must not violate rules in meeting with defendants, by instigating the defendants to recant confessions; and they must not assist their client in concealing, destroying, fabricating, or colluding evidence; and must not threaten or entice witnesses to give false testimony; and must also not exhibit any other conduct that disrupts judicial proceedings and activities. (Supreme People's Court, 2017)

This provision seems to go beyond even warnings about obstruction of justice to make warnings about campaigning. Even if defence lawyers are not detained or prosecuted, they are liable to professional regulation including disbarment and informal directions from Party officials to change their behaviour (Hualing and Zhu, 2018).

Given the marginal and precarious role of defence lawyers, whether privately retained or paid by the public, it is not surprising that their

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

presence has no impact on sentencing outcomes (Miao, 2024). This also supports the idea that defence lawyers are likely to be powerless to prevent false guilty pleas under China's post-2018 laws that have successfully increased guilty pleas.

9.8 Increasing Compensation

China's *Law on State Compensation* was first enacted in 1995 and presented as a general commitment to the rule of law. It makes compensation available for a wide range of harms caused by the state including both wrongful detentions and wrongful convictions (Roach, 2024a). In 2010, it was expanded to include awards for mental suffering, but the basic rate of compensation remains tied to average wages. State media regularly reports on the compensation of the wrongfully convicted.

Although not approaching American levels, state payments to the wrongfully convicted have increased. From 1994 to 2010, exonerees received on average 1.3 million yuan; from 2010 to 2015, they received 4.4 million yuan, and from 2016 to 2021, they received on average 14 million yuan (Zhong and Zhang, 2022: S 126–129). She Xianglin's 2005 exoneration resulted in only compensation worth $56,700 (US), while Zhao Zuohai's 2010 resulted in compensation of $96,000 (US) (Jiang, 2013a: 155). In 2019, *China Daily* reported the award of 4.68 million yuan ($654, 444) to Jin Zhehong who spent twenty-three years in prison for a wrongful murder conviction stressing that this was "the highest amounts paid by a Chinese court in compensation for an overturned wrongful conviction since the 18th National Congress of the Communist Party of China in late 2012" (Yin, 2019b).

China's compensation law features a form of cost internalization generally missing when other states pay compensation (Levinson, 2000). Specific reference is made in Article 19 of the State Compensation Law to holding both prosecutors and courts responsible for damages that have to be paid under the law. One study reported that Chinese prosecutors were concerned about suffering adverse consequences should pre-trial detainees obtain compensation for pre-trial detention. A prosecutor accurately commented that in other countries, there would be no consequences for prosecutors if a person in pre-trial detention was subsequently acquitted. He questioned the fairness of the Chinese approach stating: "there can be many reasons for no prosecution or no conviction, which does not mean that I have made a wrong decision on detention back then. I have conducted

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

reviews in accordance with the law. Then what wrong have I made?" (Lin and Shen, 2018: 569). Another prosecutor similarly complained that treating acquittals as "a miscarriage of justice case" could lead to a prosecutor or judge being "transfer[ed] away from your current position or even getting fired. Who can stomach this?" (2018: 569). This also confirms a tendency to count all acquittals as remedied miscarriages of justice.

Increased payment of compensation is difficult to criticize and costs internalization has been defended as an effective manner of deterrence (Schuck, 1983). Nevertheless, the Chinese emphasis on increased compensation raises questions that will be examined in greater detail in Chapter 11.6 about whether China, like the United States, is treating the human rights violated by wrongful convictions as liability rules that can be violated by the payment of damages as opposed to rules that should be respected so that wrongful convictions are minimized (Calabresi and Melamed, 1972; Roach, 2024a).

The availability of compensation does not appear to have reduced China's high rates of pre-trial detention. One study conducted by two researchers in China, one who had served as a prosecutor, found a pre-trial detention rate of 74 per cent between 2004 and 2013 (Lin and Shen, 2018). Powers of pre-trial detention are almost always used in cases dealing with national security (Chen and Cohen, 2022). That said, China is ahead of most states, except a few in continental Europe, in providing compensation for pre-trial detention that does not result in a conviction.

9.9 Wrongful Conviction Reforms: Necessary or Legitimating?

The willingness of China, an authoritarian country which imprisons and executes large but unknown numbers of people, to adopt wrongful conviction reforms and to increase compensation for exonerees raises the question of whether such reforms were mainly an attempt to legitimate an unjust criminal system for domestic and international audiences.

In 2016, Elisa Nesossi, a specialist in Chinese law at the School of Oriental and African Studies, observed: "errors of justice hit a very sensitive nerve of the Chinese party-state, as they bring to the spotlight the weakness of the political-legal system that have perversely caused them and the doubtful ability of the authorities to rule according to law" (Nesossi, 2016: 167). She wrote that General Secretary Xi Jinping was able to transform "wrongful convictions from being a potentially troublesome issue, into an important component of his political agenda" (2016: 180).

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

Renmin law professor He Jiahong (2014: 490) hinted at this legitimation thesis when in a 2014 article about the introduction of the exclusionary rule, he wrote that a wrongful conviction is a "crime" that harms not only the individual but "also damages the public good, destroys the justice of the legal system and the social order. This crime could go so far as to cause the public to lose its faith in the law, or even its faith in the government!" Professor He then subtly indicated the superficiality of wrongful conviction reforms such as the introduction of an exclusionary rule and the restoration of the SPC's death penalty reviews. He argued that the following ten more fundamental changes were necessary for genuine reform:

> replace the one-sided value determination with that based on balanced and diversified values; place the law-enforcement mentality based on power with that based on rights; replace the law-enforcement mentality of respecting superior officials with the mentality of respects for the law; replace the law-enforcement mentality derived from the military with that derived from social justice; replace the law enforcement that operates in secrecy to one that is open and transparent; replace the mentality of over-emphasis on substantive justice with equal and balanced emphasis on both substantive and procedural justice; replace the mentality based on the presumption of guilt with that based on the presumption of innocence; replace the mentality of investigation-centeredness criminal proceedings with that of trial-centeredness procedure; replace the emphasis on finding the facts in a case with the emphasis on proving those facts; replace the priority given to testimonial evidence with the priority given to physical or scientific evidence. (He, 2014: 504)

In 2013 (140) Professor Na Jiang similarly concluded that Chinese reforms would not prevent wrongful convictions so long as there were no checks and balances in the system and "laws penalizing defence lawyers who zealously defend their clients have not been abolished." Both law professors who live and work in Beijing have articulated important rule of law reform agendas. Nevertheless, they are ones that are difficult to imagine being implemented in the foreseeable future. One perceptive reviewer of He Jiahong's (2016) *Back from the Dead* book about wrongful convictions in China has concluded that its "implicit tragic message" is that "genuine criminal justice reform is not possible under the current political regime" (Sommer, 2018: 224).

In his 2013 speech defending China's wrongful convictions reforms of that year, the Vice President of the SPC, Shen Deyong, stressed that while China had wrongful convictions, so too did the United States. He pointed to an estimated 5 per cent wrongful conviction rate in American capital cases including the wrongful convictions of the Exonerated (Central

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

Park) Five discussed in Chapter 7.5. He argued, "In contemporary China with its shining governance, great capacity and advanced technologies, the number of unjust, false or wrongfully decided cases brought on by the above-mentioned causes are increasingly small" (Deyong, 2013). This conclusion about China's small number of remedied wrongful convictions was accurate, but raised the difficult question about how many wrongful convictions remained unremedied. As suggested earlier, China's rising guilty plea rates, its high use of imprisonment and the marginal and precarious role of its defence lawyers suggest that the number of unremedied wrongful convictions may be very large indeed.

A 2019 report in state media stated that 7.1 million people had been sentenced between 2014 and June 2019, and during that time, "there were 42 high-profile wrongful convictions involving 63 defendants" with all the remedied cases receiving compensation from the state. It also quoted the President of the SPC that Chinese courts were "learning a lesson from wrongful convictions" and that "capital punishment must be more carefully applied" (Yin, 2019a). As in the United States, an awareness of wrongful convictions seems to have correlated with declining use of executions in China. At the same time, the exact numbers remain a state secret. In an article arguing that China needs an executive clemency law, law professor Moulin Xiong recounted how on December 16, 2017, "12 people convicted of murder, robbery and drug-related crimes were paraded at a 'sentencing rally' at a sports stadium in the city of Lufeng, Guangdong province. Immediately afterwards, ten of these criminals were publicly executed, seven of them having been charged with drug offence" (Xiong, 2021: 183). Professor Xiong, who adds he is not opposed to the death penalty and has argued elsewhere for placing more stress on avoiding wrongful acquittals compared to wrongful convictions (Xiong, 2022), nevertheless states that "Lufeng's experience is just the tip of the iceberg in terms of recent drug executions in China" (2022: 183). Moreover, he warned "of the urgent necessity of reviving executive clemency to avoid instances of wrongful execution" (2022: 185).

A recent study that measured not guilty verdicts from 2001 to 2020 that were published on official websites has found declining numbers despite the various reforms discussed earlier in this chapter. In 2001, 8.8 per cent of accused were acquitted, but in 2018, only 0.57 per cent of accused were acquitted, and in 2020, only 0.68 per cent were acquitted. The researchers noted that the trend was "worrisome" and that "China's near 100 per cent conviction rate is not normal or necessary" but was unlikely to change without structural change to the strong interrelationships between police, prosecutor and judiciary (Liang et al., 2023).

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

In order to respond to frequent claims of western hypocrisy made by the Chinese government against its human rights critics (Roach, 2022a), the legitimation or "wrongful conviction washing" (Roach, 2024a) critique should also be considered with respect to reforms and compensation made in the United States and other western democracies. It can be argued that it is not only China, but also western democracies that are a long way from replacing "the law-enforcement mentality derived from the military with that derived from social justice" or replacing a "mentality based on the presumption of guilt" with a true commitment to the presumption of innocence and "trial centeredeness" that requires proof of facts in court (He, 2014: 504). He Jiahong's ambitious reform agenda suggests that western innocence movements may have unwittingly sold themselves short by focusing on the limited reforms discussed in Chapter 3 that address only the immediate causes of wrongful convictions and not their deeper causes including the dominance of the power of law enforcement officials such as police and prosecutors over the role of courts and rights (He, 2014; Packer, 1968).

American wrongful conviction scholar Marvin Zalman (2017) in his review of *Back from the Dead* has concluded that the Chinese system may not be as unique as He Jiahong suggests. He noted that police torture has, as discussed in Chapter 6.8.3, been used in Chicago to obtain false confessions that also led to wrongful convictions. The United States may not have a formal "iron triangle" of the police, prosecutor and judiciary, but in some states, all face common electoral pressures to respond to crime. The American public seems as concerned about wrongful acquittals as wrongful convictions(Garrett and Mitchell, 2023). The analogies drawn by Professor Zalman between Chinese and American wrongful convictions are thought provoking. They may be strained in discounting the total absence of judicial independence and an effective defence bar in China compared to the United States. That said, both China and the United States as highly punitive societies restrictively ration justice to those who can be proven innocent.

The Chinese approach is different from the English response because most of the Chinese reforms have been embodied in directives proclaimed by various state organs including prosecutors, the courts and the Communist Party's central committee rather than in legislation. This demonstrates the centrality of the Party, which asserts its leadership over "rule of law" reform including combatting wrongful convictions while also stating that the Party should not interfere in individual cases (Lin, 2022). China's courts are "embedded" in broader political and social structures in a manner that challenges western understandings of the separation of powers (Ng and He, 2017). Judicial correction of wrongful

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

convictions in China has elements similar to executive clemency in the United States. This helps explain why both correction and compensation occurred in a matter of days in the back-from-the-dead cases examined earlier in this chapter.

The multiple retrials that often proceed the correction of less obvious wrongful convictions than the back from the dead cases resembles American extralegalism in its ability to promote litigation and law but not often justice. This fits into what many commentators have identified as China's "rule by law culture." At the same time, the Chinese system also features the unadorned extralegal in the form of mass detentions of religious minorities like the Uighurs, as well as the ability to detain and charge defence lawyers and human rights defenders with obstruction of justice (Clarke, 2022). As Dean Hualing Fu and Han Zhu (2018: 1159) have written: "the regime's commitment to law is partial and limited and law's full potential as an autonomous force is something the Party is deeply concerned with." They warn, "the Party promotes rights and implements law but only to the degree it sees fit, and once the boundary is crossed, it can mobilize its repressive apparatus to crash the challenge."

China's response to a few well-publicized wrongful convictions has resulted in reforms designed more to respond to public anger and legitimate a system that continues to have a very close to 100 per cent conviction rate. The encouragement of plea bargaining and crackdowns on defence lawyers after the 2013 reforms illustrate the superficiality of those reforms. The increased compensation paid to those who can prove their innocence does not absolve the Chinese state from complicity in a broad range of miscarriages of justice. Some critical criminologists have argued that the western emphasis on due process has been for crime control by creating an illusion that most cases are resolved in court after accused have asserted their rights, whereas most cases are plea bargained and many laws give the state formidable powers (McBarnet, 1981). Due process remains very weak in China. The wrongful conviction reforms of 2006–2013 were for crime control, social stability and increasing the hold of the Communist Party over the legal system and society.

9.10 China and an International Innocence Movement?

In his forward to He Jiahong's book *Back from the Dead*, American law professor and innocence project director Mark Godsey celebrated the publication of the book as evidence that "countries in every continent have embraced" a "global innocence movement"(Godsey, 2016; Godsey, 2017).

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

In my view, it is premature to think of China genuinely being part of such a movement in the foreseeable future.

In her 2016 book on wrongful convictions in China, Professor Na Jiang did not focus exclusively on the immediate cause of wrongful convictions from the western template, but also examined "deep" and "systemic" flaws in the justice system (2016: 118) such as the "iron triangle" of prosecutors and judges co-operating with the police. She noted how mobilized public and media opinion could appeal to the Political and Legal Committees to correct wrongful convictions. Such committees were not judicial institutions but "just a branch of the Communist Party" (2016: 111, 123). Chinese wrongful conviction reforms were "symbolic" and remedied wrongful convictions depended on "chance" most dramatically in the back-from-the-dead cases (2016: 248, 250). There was a need for "holistic" reform that included the need for "the ruling party-state" to "loosen its grip" (2016: 126) on the justice system including "a free media, public transparency and supervision by civil society" (2016: 128). Without such changes, it is difficult to imagine innocence organizations being able to work freely in China without the threat of imprisonment hanging over them.

Mike McConville (2011: 396) has argued that it is a mistake to examine the Chinese criminal process without attention to the overarching and dominant role of the Communist Party. Defence lawyers told him that the trial "is just a formality" and that judges presume that the accused is guilty and do not listen to or respect them (2011: 418). Professor McConville concluded that law reform will not work in China "unless there are massive structural, social and political changes to Chinese society" including "freedom of expression" and holding trials that are open to the public and domestic and foreign media (2011: 449).

McConville's conclusions are also confirmed in a subsequent empirical study in China conducted by Yu Mou. She concluded that the iron triangle of police, prosecutors and judges worked together in case construction that almost always ended in a guilty plea. Defence lawyers are outside this triangle of power. They have a formal right to participate but "exercising this right in practice may cost them their career, liberty and safety" (Mou, 2020: 218). Because the Chinese system "is built on the ideology of control – control through case construction, control through prosecution scrutiny, control of the adjudication process and control of defence lawyers," it will be "structurally weak in preventing miscarriages of justice" (2020: 223).

Genuine innocence projects may not be possible in China. Advocacy groups associated with a variety of universities, including the Beijing University Law School, were shut down in 2010. At that time, there was

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

criticism of the move in the Chinese media. The shutdown of a similar centre by the Wuhan University Law School in 2016 was met by "a deafening silence" (Hualing and Zhu, 2018: 1140). As Hualing Fu and Han Zhu (2018: 1141) write: "Since Xi came to power, media has been under increasingly tight control, NGOs are diminishing, and foreign funders and supporters are placed under tight control and leaving; the crucial support structure for human right lawyering is collapsing." They examined the effect of 2015 arrests and prosecutions of human rights lawyers and stressed that repression continued even after many of the lawyers were released. Some were disbarred and others have their actions closely monitored with state officials inviting "lawyers to tea who made comments that were regarded as offensive, signed open letters or otherwise participated in petitions, demanding deletion, retraction or other undertakings" (2018: 1145).

Those who proclaim the existence of a global innocence movement should not assume the existence of freedoms that they may take for granted. Correcting wrongful convictions and compensating the "lucky" few who can prove their innocence should not blind us to the many who receive no remedies for a broad range of miscarriages of justice.

9.11 Different Approaches to Wrongful Convictions in Taiwan and Hong Kong

9.11.1 Taiwan

Some remedied wrongful convictions in Taiwan are similar to those remedied in China. Five of thirteen involved false confessions but three of these were obtained before Taiwan adopted, as part of its transition to democracy, *Miranda*-style protections of the right to counsel and recordings of interrogations (Chin and Lin, 2023). That said, police in Taiwan avoid recording and *Miranda* warnings by conducting pre-interrogation interviews or Fantan which supposedly do not involve custodial interrogation. This follows American studies demonstrating that *Miranda* has been circumvented and does not provide significant guarantees against false confessions (Leo, 2008). Despite this, one recent commentator has concluded that the reforms "have successfully suppressed the use of physical coercion during police interrogation … the movement from coercion to deception represents a triumph of the rule of law since police in Taiwan have become oriented to the legal norms of due process and human right protections. Police generally no longer resort to physical violence or other highly coercive interrogation tactics" (Chien, 2022: 35, 43).

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

Some of Taiwan's remedied wrongful convictions have not been nearly as obvious or clear-cut as those remedied in China. In Lu Chieh-Min's case, a wrongful conviction was overturned because of concerns about the accuracy of teeth marks found on the victim (Chin and Lin, 2023: 219). Wrongful convictions have also been reversed because of concerns about mixed DNA samples, drug tests, the use of polygraphs and errors in cell phone tracking (2023: 220–222). This is much closer to the full array of remedied wrongful convictions in democracies than China's remedied wrongful convictions based almost entirely on false confessions obtained by police torture.

At the same time, concerns have been expressed that ten of sixty-two capital convictions in Taiwan were "seriously flawed." In almost half of the cases, the court made reference to the accused's prior convictions and courts did not fully explore the accused's claims of self-defence, mental disorder or police coercion(Chang and Hoyle, 2019: 14). Taiwan executed its first person in 2025 since 2020 despite concerns that it was not clear that his conviction had been unanimously affirmed in all courts as required by a 2024 decision of its Constitutional Court that stopped short of prohibiting the death penalty while prohibiting the execution of those with mental health conditions (Lehrfreund and Hoyle, 2025).

Taiwan has amended its Criminal Procedure Law to expand new evidence that can be considered in challenging a conviction and to require a new trial to be granted if there was a "reasonable probability" of a different result. This is more similar to the standards used by the Scottish and Canadian commissions examined in Chapter 5.6 than a standard of proven innocence often used in both China and the United States. In 2016, the Taiwan Innocence Project also had provisions for new DNA testing added to the Code. In 2020, the law was broadened to allow a person petitioning for a new trial to point to areas where the court can investigate in an attempt to find new evidence (Code of Crim. Proc. art. 429–433). These are signs of bottom-up democratic law reform not found in mainland China.

In 2016, a group of senior prosecutors at the request of the Ministry of Justice was formed to review death penalty cases in part to prevent wrongful convictions. Like similar prosecutorial committees that vet the use of jailhouse informants in Canada, there is no avenue for defence participation in such reviews. A year later, however, forensic experts, scholars, lawyers and retired judges were added to the Review Committee with provisions for receiving opinions including from human rights and bar organizations. The decisions made by the Committee are submitted to

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

prosecutors and are final with no appeal (Rong Gong-Li, 2019). This stops short of a Criminal Cases Review Commission but may be a step in the right direction that is not found on the mainland.

As discussed in Chapter 4.3, plea bargaining has largely been rejected in Taiwan since it was introduced in 1997 in large part because of an inquisitorial-based resistance (Lin, 2024: 172). This should limit false guilty pleas as a type of wrongful conviction. As seen earlier, the mainland has no such professional loyalty to inquisitorial ideals raising concerns that 2018 efficiency-based reforms have produced American-like high guilty plea rates and false guilty pleas, that in the absence of democratic freedoms that have led to mass exonerations in the United States and England, will never be corrected.

9.11.2 Hong Kong

Hong Kong has so far kept much of the colonial system inherited from Britain. The most serious cases are tried by juries. They typically consist of only seven people, and a five-person majority can convict the accused. A 2015 study found that Hong Kong residents placed the lowest value on testimonial evidence such as confessions and concluded that there was no evidence of the Hong Kong system moving towards reliance on confession evidence as on the Mainland. As Professor Simon Young (2012) has pointed out the Hong Kong courts inherited a generous common law approach to the voluntariness of confessions as applied by the Judicial Committee of the Privy Council (*Lam Chi-ming v. R.* [1991] A.C. 212). Moreover, they have decided that, unlike in England where there has been statutory abrogation of the right to silence, that no adverse inferences should be drawn from pre-trial silence (*Lee Fuk Hing v. HKSAR* [2004] 7 HKCFA 600). In 1984, a Hong Kong court noted in reviewing testimony by a witness with an incentive to lie that "the courts have always been jealous in protecting the innocent against wrongful conviction and as such put in place measures to minimise wrongful conviction."(*Queen v LukYiuKwong* [1984] HKEC 85, 85). The Hong Kong Bill of Rights is based on the International Covenant on Civil and Political Rights, and courts can award remedies for the breach of rights including against unlawful arrest or detention or various fair trial rights.

Hong Kong courts have also expressed concerns about mistaken eyewitness identifications and the danger of convicting simply because the accused raised a false alibi (*R. v. Hui Kwok Hung* [1991] HKLY 175). In 2010, the Court of Final Appeal explained that many evidentiary exclusionary

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

rules are "designed to avoid wrongful convictions" (*Kissel v. HKSAR* [2000] 2 HKLRD 435 at para 200, 2000; Mujuzi, 2021). As in England, the accused can appeal on the grounds that the conviction is unsafe or unsatisfactory. In a leading 2021 case, the Hong Kong Court of Appeal held that "there is no limitation or restriction on the type of matter that might cause the Court of Appeal to conclude that the conviction is unsafe." It elaborated that a conviction may not be safe both if the evidence is not sufficient or the trial has been unfair (*HKSAR v. Lam Hing Chit* 2021 HKCA 1297). In other words, Hong Kong law maintains a broad approach to miscarriages of justice that does not require proven innocence. There has even been a recent application by the Hong Kong Court of Appeal of a lurking doubt standard for overturning appeals that as discussed in Chapter 5.2 still exists in England but is rarely applied (*HKSAR v. Ma Ka Kin* [2021] HKCA 1188 [54]).

There are also statutory provisions allowing the Chief Executive to refer convictions back to the court for a second or subsequent appeal "if he thinks fit" (Criminal Procedure Ordinance s.83P) In 2016 the Hong Kong Court of Appeal held that while this provision granted the executive "unfettered discretion" (*HKSAR v. Chang Wai Hang Alab*[2016] HKCA 45 at para 48), it would not rule out the possibility that in a compelling and exceptional case, the court could review the Chief Executive's exercise of discretion. Moreover, the court could ask the Chief Executive to refer a conviction for a second or subsequent appeal in cases where an applicant "put forward cogent and forceful important points to convince the court that his conviction is clearly so unsafe and unsatisfactory that disallowing him to appeal is clearly unfair to him" (*HKSAR v. Chang Wai Hang Alab* at para 64). This still compares favourably to the absence of executive clemency on the mainland (Xiong, 2021).

Plea bargaining both with respect to sentences and charges is encouraged in Hong Kong by customary sentencing discounts of a third of a sentence that would have been given if the accused was convicted after trial. Concerns have been raised about false guilty pleas in Hong Kong with one defence lawyer telling researchers "a pressure to plead guilty just to save years of your life is wrong" (Cheng and Chui, 2015: 408). In 2018, the Hong Kong Court of Final Appeal stressed that no court should accept an "equivocal" plea of "guilty but" (*HKSAR v. Chan Chi Ho Lincoln* [2018] HKCFA 64). In a 2021 case, the Court of Appeal quashed a drug conviction of a twenty-year old who had no criminal record and had been sentenced to twenty-one years' imprisonment for importing cocaine. The Court expressed concern that the prosecution had brought lesser charges

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

against a co-accused and that the young accused's lawyers may have had preferred the older accused's interest to that of their younger client. The Court of Appeal also applied a lurking doubt standard in quashing the conviction (*HKSAR v. Ma Ka Kin* [2021] HKCA 1188).

He and Liu (2024) have argued that both Hong Kong and China are increasingly encouraging guilty pleas for efficiency reasons despite their distinct legal systems. There is truth to this, but the above-mentioned cases suggest that Hong Kong courts have been alive to the dangers of false guilty pleas. Enshin Li (2024) has stressed that on the mainland, plea bargaining reflects a long-standing policy of "leniency to those who confess, severity to those who resist" and allows prosecutors to continue to dominate the system (2024: 255, 270). In contrast, plea bargaining emerges more from negotiation between prosecutors and a Hong Kong defence bar that is more empowered than on the mainland (2024: 261). Different penal cultures also make a difference. As He and Liu note, the mainland is becoming increasingly punitive with cases that result in sentences of three years or more rising from 53.9 per cent in 2000 to 77.4 per cent in 2020 with a conviction rate that exceeds 99.9 per cent (He and Liu, 2024: 201,205, 210).

The Hong Kong Bill of Rights based on the International Covenant on Civil and Political Rights provides for compensation for some wrongful convictions. As will be examined more fully in Chapter 11.5, Article 14(6) is quite restrictive and only requires compensation for those acquitted on the basis of new exonerating evidence after their ordinary appeals have been exhausted. It is thus not surprising that Hong Kong courts have rejected claims of compensation by a person who spent thirty-three months in pretrial detention but was acquitted on his first appeal because of a lack of disclosure (*A v. Secretary for Justice* [2020] HKCFI 427 [31]). This is a rare example of the mainland system being more generous because Article 15 of China's *Law on State Compensation* allows claims for "wrong detention of a person without incriminating facts or proof substantiating a strong suspicion of a crime." As will be suggested in Chapter 11.6, however, after-the-fact compensation is not a substitute for the prevention of miscarriages of justice.

Unlike in England, the Hong Kong executive has maintained the alternative of granting ex gratia compensation. In the above-mentioned case, the courts also upheld the executive's decision not to grant compensation on the basis of its concerns that the applicant might not be innocent (*A v. Secretary for Justice* [2020] HKCFI 427: para 42). As in England, compensation in Hong Kong often requires something close to proven innocence despite arguments that will be examined more fully in Chapter 11.5

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

that a more generous approach is possible and desirable (Mujuzi, 2021). Nevertheless, this standard is not applied to criminal appeals where Hong Kong courts are concerned about the safety of convictions and even lingering doubts about guilt, much less restrictive standards than used on the mainland.

9.12 Conclusions

China has recently remedied and compensated some wrongful convictions, including three well-publicized back-from-the-dead cases (He, 2016). At one level, this suggests that China is joining an international innocence movement based on the American model of proven innocence (Garrett, 2017a; Godsey, 2017, 2016). At the same time, allowance must made for distinctive features of the Chinese state and its legal system including the dominant role played by the Communist Party including political legal co-ordinating committees, the "iron triangle" of police, prosecutors and courts and the marginalized and precarious role of defence lawyers in China (He, 2014; Jiang, 2014a, 2016, 2018a; McConville, 2011; Mou, 2020). In short, comparative law counsels that the differences in China may well outweigh what is universal about wrongful convictions. Police torture has been the immediate cause of most remedied wrongful convictions, and the process of correcting wrongful convictions has elements of executive clemency embedded in it even if, as in the United States (Roach, 2013b), it also involves multiple rounds of post-conviction litigation.

China has some important similarities with the United States (Jiang, 2013a). Both highly punitive societies have adopted a restrictive proven innocence model to remedy wrongful convictions that is in tension with the presumption of innocence and reasonable doubt standards. Both countries rely on an exclusionary rule to respond to some of the immediate causes of wrongful convictions such as false confessions without reforming police forces that many perceive as militaristic. Both countries rely heavily on guilty pleas to keep their high-volume criminal justice systems running efficiently. Both countries generally employ successive rounds of litigation before providing remedies for wrongful convictions. The risk of executing the innocent has played an important role in both countries and concerns about wrongful convictions have likely led in both countries to decreased executions.

That said, the provocative analogy between China and the United States can be pushed too far. Defence lawyers and innocence projects, even

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009

under Trump, can operate in the United States without fear of criminal prosecution. Police torture has occurred in both countries, but the robust civil society response to Jon Burge and his midnight squad of the Chicago Police Department would not have been possible in China. Executions in both countries are declining, but in China, the numbers of executions remain a state secret. Both countries encourage guilty pleas that are vulnerable to false but rational guilty pleas, but the American state is capable of revealing police and forensic lab corruption in a manner that has caused over forty mass exonerations involving almost 36,000 people in a way that seems very unlikely in China (National Registry, Groups).

Similarities have been identified between remedied wrongful convictions in China and Vietnam (Le et al., 2022). Police use of torture has played a role in both countries. In both countries, the police, prosecutors and courts work together under the supervision of the Communist Party and have efficiency targets resulting in conviction rates close to 100 per cent. Defence lawyers play a marginal role in both countries, and wrongful convictions are sometimes denied so that agencies need not pay compensation. The understanding of the presumption of innocence in both countries is rudimentary (Le and Bedi, 2022). Remedied wrongful convictions tend to be obvious and easily satisfy a proven innocence model.

The Chinese experience suggests that democratic freedoms may be a precondition for China truly joining any international innocence movement. It also suggests that those who campaign against wrongful convictions in Hong Kong and Taiwan are vulnerable to the expansion of China's authoritarian state. The Chinese experience raises the danger that recognition and compensation of a few obvious wrongful convictions of the clearly innocent may distract attention from more fundamental injustices of the justice system. Moreover, it could help legitimate what remains a fundamentally repressive and unjust system. In Chapter 10, we will examine whether the world's largest democracy, India, is doing better than China in responding to wrongful convictions.

Downloaded from https://www.cambridge.org/core. UNIVERSIDAD AUTONOMA METROPOLITANA, on 17 Nov 2026 at 22:23:41, subject to the Cambridge Core terms of use, available at https://www.cambridge.org/core/terms. https://doi.org/10.1017/9781009608282.009