1

Introduction

1.1 Introduction

One of the most important developments in criminal justice in the last thirty years has been increased awareness of wrongful convictions. Volunteer innocence projects have helped to correct wrongful convictions and have contributed to systemic reforms to better prevent and remedy them (Garrett, 2011a; Norris, 2017; Scheck, Neufeld and Dwyer, 2000). Over $4.5 billion in compensation has been paid to the over 3,600 people from 1989 to 2024 who have had their wrongful convictions remedied in the United States (Gutman, 2025). Since 1997, the publicly funded and appointed Criminal Cases Review Commission (CCRC) in England has referred over 850 cases back to the courts out of over 32,000 applications for relief, with similar institutions subsequently being created in Scotland, Norway, North Carolina, New Zealand and Canada.

Inspired by this American experience, there have been calls for an international innocence movement and an international law post-conviction right to claim factual innocence (Garrett, 2017a; Garrett, Helfer and Huckerby, 2021; Godsey, 2017). Even China has recognized and taken steps to address some well-publicized wrongful convictions. The successes of what some have called an "innocence revolution" (Godsey and Pulley, 2003), even in highly punitive societies such as the United States and China, seem very promising.

Those who argue for an international right to claim and prove innocence rightly point to the manifest injustice of imprisoning the innocent and the inevitability of wrongful convictions. They also point to well-developed knowledge about the common immediate causes of wrongful convictions. These causes include the frailties of eyewitness identification, testimony from incentivized witnesses who lie, false confessions, forensic error, misconduct and tunnel vision by police and prosecutors and inadequate defence representation (Borchard, 1932; Garrett, 2011a; Hirschberg, 1941; Scheck, Neufeld and Dyer, 2000). At the same time, influential scholars

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have criticized the traditional focus on the immediate causes of wrongful convictions derived from studies of individual cases. They have called for a more sophisticated "criminology" of wrongful convictions (Leo, 2005, 2017b). Others have raised concerns that the focus on those who can be proven innocent too often ignores the dangers of mass imprisonment and systemic discrimination that result in overincarceration of marginalized groups (Reaven, 2023).

A focus on proven or obvious innocence can downplay broader concepts of miscarriages of justice, which can be extended to unwarranted pre-trial detention and other injustices (Roach, 2024a). At the same time, proven or factual innocence is a popular and influential "lay" concept of justice (Naughton, 2013). It has migrated from American compensation legislation (Borchard, 1912) to English compensation legislation (Quirk, 2023) and to American and some Australian post-conviction relief (Roach, 2024a). This book will deploy comparative law, legal process and historical methodologies to contribute to a richer criminology of miscarriages of justice, including wrongful convictions.

1.2 Different Countries, Different Terms?

The need for comparative analysis is immediately apparent when one starts researching this subject. The most important American texts are titled *Convicting the Innocent* (Borchard, 1932; Garrett, 2011a) and *Actual Innocence* (Scheck, Neufeld and Dwyer, 2000). In England, however, leading books include investigative reporter Bob Woffinden's 1987 book *Miscarriage of Justice*, and a collection called *Miscarriages of Justice: A Review of Justice in Error* edited by Clive Walker and Keir Starmer (now Prime Minister Sir Keir Starmer). In their book, *Understanding Miscarriages of Justice*, Professors Richard Nobles and David Schiff (2000: 259) have recognized "different communities have different conceptions of miscarriage of justice." American scholarship focuses on "wrongful convictions" and "innocence," while British scholarship focuses on "miscarriages of justice."

These differences in these terms are not simply an academic matter. In 2009, the United States Supreme Court granted Troy Davis, a Black man convicted in Georgia of killing a white police officer, an original writ of habeas corpus. It was the first time it had granted such a writ in over fifty years (*Re Davis*, 130 S.Ct. 1 (2009)). Davis, however, was executed after he could not prove his innocence by clear and convincing evidence. A Federal Court reached this conclusion, and the Supreme Court did not

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intervene, despite the fact that almost all of the witnesses who had testified against Davis recanted their testimony and the only available witness who did not was now under suspicion for the murder (*In Re Davis*, 2010 US Dist. Lexis 87340). It is very likely that English courts would have held that Davis' conviction was unsafe. Instead, Davis was executed because he could not prove his innocence.

In 2023, the Australian executive and courts quashed Kathleen Folbigg's conviction for murdering four of her children not on the basis of proven innocence but because new evidence raised a reasonable doubt about her guilt. A quarter of a century earlier, Lindy Chamberlain's conviction for murdering her baby after a jury had rejected her claims that a dingo had taken her baby was overturned on the same reasonable doubt basis. In 2024, Canada created a Miscarriage of Justice Review Commission with powers to investigate alleged wrongful convictions. Its enabling legislation specifies that a miscarriage of justice does not require proof of innocence (S.C. 2024 c.33 s.696.1(7)). The different meanings of miscarriages of justice in different countries matter to the wrongfully convicted as they seek justice.

The American focus on factual innocence, while associated with DNA exonerations (Garrett, 2011a; Scheck, Neufeld and Dwyer, 2000), has much deeper roots in Edwin Borchard's successful scholarly campaign to persuade American legislatures to enact laws to provide compensation for those who could prove their innocence (Borchard, 1914). Borchard was well aware of more generous European approaches, which provided compensation for a broader range of miscarriages of justice, including pretrial detention that ended in an acquittal (Borchard, 1912). Nevertheless, in comparative law scholar Maximo Langer's terms (Langer, 2004), Borchard "translated" these laws for an American audience to proven or obvious factual innocence (Roach, 2024a). In the United States, this restrictive approach has migrated from compensation law to criminal procedure laws that govern post-conviction relief.

In England, appeal courts overturn convictions on grounds of safety rather than innocence. In Australia, Canada, New Zealand and Scotland, appeal courts overturn convictions on the basis of miscarriage of justice. This was also the traditional focus of England's Court of Criminal Appeal, created in 1907 in response to high-profile wrongful convictions. But the broader focus on injustice is not guaranteed. Since 2014, English compensation laws have required proven innocence. As a result, it has become so difficult to obtain compensation that concerns have been raised that even infamous wrongful convictions, such as those of the Birmingham

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Six and Guildford Four for terrorist bombings, would not result in compensation (Quirk, 2020). Special legislation had to be passed in England both to exonerate and to compensate 700–900 sub-postmasters wrongfully convicted because of the Post Office's use of a faulty computer system for accounting purposes.

My main reason for writing this book is to warn that requiring people to prove their innocence is contrary to liberal criminal justice values that give people the benefit of the reasonable doubt. It will result in justice for less rather than more people. We should not assume that progress in preventing and remedying wrongful convictions is inevitable, especially as DNA exonerations diminish, as many countries use the technology in the small minority of cases where DNA evidence is available (Medwed, 2022; Scheck, Neufeld and Dwyer, 2000).

As will be explained in greater detail in Chapter 2, the term wrongful convictions will be used to describe convictions that were subsequently overturned, generally on the basis of new evidence. This is the term used by many registries of wrongful convictions, and it is broader than the term proven innocence (Leo, 2017b). The American registry uses the nonlegal term "exoneration" to refer to such wrongful convictions, but the term is slippery because it is often associated with innocence. In my view, exoneration is best seen as a process that generally happens outside courts. It often depends on media coverage of a particular wrongful conviction (Roach, 2008).

Wrongful convictions include, but are not limited to, the relatively rare cases of proven or obvious factual innocence. The term miscarriage of justice includes wrongful convictions and proven innocence but will also include other forms of injustice, most notably unjustified pre-trial detention, as well as trials and guilty pleas tainted by unfairness and/or discrimination.

1.3 Why a Comparative Approach?

This book is the first monograph to examine wrongful convictions comparatively in a broad range of jurisdictions, including China and India. Comparative law is concerned with the identification of functional similarities across jurisdictions as well as expressive differences (Tushnet, 2009). Existing collections of essays tend to focus on the common immediate causes of wrongful convictions, usually with an emphasis on western democracies (Huff and Killias, 2008; Huff and Killias, 2013; Robins, 2023a).

This book will examine both the causes of miscarriages of justice, which tend to the universal, and remedies, which tend to the particular. It will

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also relate the treatment and definition of miscarriages of justice to the broader penal culture of different countries studied and, in particular, their use of the criminal sanction (Garland, 2001). The United States and China have the world's largest prison populations. Given their use of mass imprisonment, it may make sense that they generally will only reconsider convictions in cases involving proven or obvious innocence. India is the world's largest democracy, but one that imprisons fewer people per capita than the United States and China. It, like England and other democracies, has accepted more generous definitions of miscarriages of justice and not required proven or obvious innocence.

Even with respect to common causes such as false confessions, there are important differences, including the continued and extensive use of police torture in China and India. To be sure, police torture has contributed to wrongful convictions in England and the United States, but it is no longer a common cause of remedied wrongful convictions. Forensic science can both cause and correct wrongful convictions. Forensic science suffers from some universal flaws, but the delivery of forensic science is different in India or China compared to England or the United States (Goswami and Gowsami, 2024; Jiang, 2014b). Although comparative analysis reveals much that is similar about wrongful convictions, it also reveals complex differences.

Mistaken eyewitness identification has long been recognized as a common immediate cause of wrongful convictions. In 1940, after examining both European and American cases, the German lawyer Max Hirschberg (1940: 33) warned: "to repeat: eye-witness testimony is the most fallible of proof." An exclusive focus on the universal can, however, miss complexities. Many American DNA exonerations involving sexual assaults were cases where white women wrongly identified a Black man as the person who sexually assaulted them (Garrett, 2011a: 72–74). Such findings point to particular features of American society with its history of slavery, lynching and apartheid, as well as the overrepresentation of Black men in American prisons. They also illustrate the need to contextualize wrongful convictions with respect to each country's history, politics, penal culture and inequalities.

Contextualization is also important with respect to remedies and the degree to which a particular jurisdiction focuses on more broadly defined miscarriages of justice or more narrowly on wrongful convictions or even more narrowly on those who, after a conviction, can prove their innocence. Article 14(6) of the International Covenant on Civil and Political Rights (ICCPR) only provides a right for compensation for a narrow

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subset of wrongful convictions in part because of objections raised by the United States and the United Kingdom to a broader and more generous approach. At the same time, an even more restrictive approach that tied compensation to proven innocence was rejected in 1959 during the drafting of the ICCPR, despite its similarities to existing American compensation legislation (Mujuzi, 2019; Roach, 2024a). Other distinctive remedial institutions for wrongful convictions, such as a court of criminal appeal and a CCRC, were first introduced in England and then migrated to other jurisdictions and have been influenced by their new legal and political contexts (Choudhry, 2005).

1.3.1 The Importance of the Choice of Jurisdictions to Be Studied

Following the author's other comparative work (Roach, 2011, 2015a, 2021), this book will attempt to go beyond what my colleague Ran Hirschl (2014) has criticized as the "World Series" approach to comparative law that exclusively focuses on western and English-speaking democracies. I am fortunately able to capitalize on a recent explosion of English-language scholarship on Chinese criminal justice and wrongful convictions (He, 2016; Jiang, 2016; McConville et al., 2011; Mou, 2020). The book will also include a chapter on India based in part on a previous article prepared with research assistance from students at the National Law School of India (Roach, 2023b). In this way, the book will engage with issues of miscarriages of justice and wrongful convictions in the world's two most populous countries but ones that differ in the use of the criminal sanction. Such engagement will assist in placing wrongful convictions in a broader penal context. In 2018, the Law Commission of India demonstrated sensitivity to local conditions when it rejected proven innocence and even the limits on compensation in Article 14(6) of the ICCPR as underinclusive because "there are many forms of miscarriage of justice that arise even though there is no conviction ultimately" (Law Commission of India, 2018: 5.8). This reflects local circumstances in India (also reflected in many other developing countries), where over 75 per cent of the prison population is held awaiting trial.

1.3.2 The Universal and the Particular

A focus on the universal causes of wrongful convictions can help counter a reluctance to recognize and remedy wrongful convictions in particular

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jurisdictions by identifying potentially unremedied or missing wrongful convictions. For example, India, as the world's most populous country, does not appear to have wrongful convictions remedied by developments in DNA or other forensic science, even though these are common in many more developed countries. China has recently encouraged guilty pleas (Li, Yuan and Zhang, 2024), but false guilty pleas are missing from its remedied wrongful convictions.

Many recent studies in comparative law have focused on differences between countries and have contested the idea that what works in one context can be transplanted to another context (LeGrand, 1997). John Bell has suggested that differences loom larger with respect to public than private law because of the way that public law is tied to the different histories of different countries (Bell, 2002). Indeed, the focus on difference in contemporary comparative law (Cotterrell, 2002; LeGrand, 2003) threatens to make studies that stress what is common among jurisdictions unfashionable. In this study, I will try to give common factors their due while also being interested in the differences between the jurisdictions studied, especially when it comes to how miscarriages of justice are defined and remedied.

1.3.3 Adversarial and Inquisitorial Systems

This book will also engage with a perennial question in comparative law: the relative benefits and weaknesses of party-driven adversarial systems and more state-driven inquisitorial systems (Damaska, 1986). In 1940, the German lawyer and scholar of wrongful convictions, Max Hirschberg favourably compared the use of cross-examination in the United States with the judge-led examinations in continental Europe (Hirschberg, 1940: 43–44). There is a long and continuing tradition of lawyers and reformers in adversarial systems looking to inquisitorial systems and a state-driven search for truth as a remedy for wrongful convictions (Bakken, 2022; Frank and Frank, 1957; Grunewald, 2023; MacCallum, 2008; Pizzi, 1999; Runciman, 1993; Thomas, 2008). On the other side, however, some scholars and reformers from inquisitorial systems have looked in the opposite direction and argue that the openness of adversarial systems could better prevent and remedy wrongful convictions (Brants, 2012; Cousino, 1998; Momsen, 2023). This "grass is greener" debate reflects ideal systems, while many scholars have documented increasing convergence between adversarial and inquisitorial systems (Garrett, 2017a; Hodgson, 2020; Langer, 2007).

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Many countries in South America, as well as Italy, have deliberately moved towards more adversarial systems, often without much explicit attention to the dangers of wrongful convictions in adversarial systems. At the same time, many civilian codes of criminal procedure have long recognized the possibility of wrongful convictions by codifying grounds for reopening convictions when adversarial systems still maintained, as the American judge Learned Hand said in 1922, that "the ghost of the innocent man convicted" was "an unreal dream" (*US v. Garsson* 291 F. Supp. 646, 649).

Emerging studies on remedied wrongful convictions in inquisitorial systems (Duce, 2015; Gillieron, 2012), as well as the recent creation of a European Registry of Exonerations, allow for comparisons to be made with research into wrongful convictions in adversarial systems. The development of international criminal courts will also be examined to determine to what extent they combine features of both systems that may better prevent and remedy wrongful convictions (Roach, 2010a).

1.3.4 Universal Remedies?

A traditional use of comparative law is to identify a consensus of common practices that can be used to inform the development of supranational laws or guidelines. The leading American scholar of wrongful convictions, Brandon Garrett, has used comparative law in this sense to find a common consensus of practice across a wide range of jurisdictions (Garrett 2017a) in order to argue for an international right to claim innocence as a parallel to Article 14(6) of the ICCPR, providing for compensation when a "new or newly discovered fact shows conclusively that there has been a miscarriage of justice" after a "final decision" that convicts a person (Garrett, Helfer and Huckerby, 2021).

A central argument in this book is that, by discounting what is particular in local jurisdictions, Professor Garrett's approach risks producing a model that does not fit well the conditions of many countries and, if implemented, would have regressive effects in many countries. A focus on a post-conviction right to claim innocence does not fit the circumstances of many countries in the Global South, including India, where most prisoners are detained awaiting the first trial and do not have access to post-conviction remedies (Law Commission, 2018; Roach, 2023a). In England, Australia, Canada, France, New Zealand and Scotland, the focus on a right to claim innocence would have regressive effects to the extent that those justice systems are prepared to correct injustices based on concerns about the safety of convictions, reasonable doubts about guilt and

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broader concepts of miscarriages of justice that include, but are not limited to, proven innocence.

Although a universal focus on the common causes of wrongful convictions can provide some sense of what wrongful convictions are and are not being remedied in a particular jurisdiction, such a perspective may be less useful in shaping effective remedies. Professor Garrett's arguments (2017a; Garrett, Helfer and Huckerby, 2021) for recognition of an international post-conviction right to claim innocence can be seen as advocating a transplantation of American-based reforms throughout the globe. Such a move engages with important debates in comparative law about the transplantation (LeGrand, 1997), translation (Langer, 2004) and migration (Choudhry, 2005) of legal concepts and reforms. It also engages with questions about the extent to which international law discounts concerns about countries in the global South, where post-conviction relief is not that relevant to the many prisoners who are being held in pre-trial detention awaiting trial. Finally, it raises concerns about the appropriate rationing of justice (Calabresi and Bobbitt, 1978; Nobles and Schiff, 2000; Roach, 2024a) in countries such as the United States and China that have massive prison populations and many other countries that imprison substantially smaller percentages of their populations.

1.4 Why a Legal Process Approach?

At first glance, the use of a legal process methodology may not seem to be encouraging as a means to contribute to a more sophisticated criminology of wrongful convictions (Leo, 2005, 2017b). Legal process approaches are often dismissed as limited to a 1950's consensus about institutional roles (Roach, 1997). That said, the study of wrongful convictions raises fundamental questions about the roles and interactions between legislative, executive and judicial regulation. Such institutional issues are, with some notable exceptions (Norris, Bonventre and Acker, 2021), surprisingly often neglected in much of the existing literature on wrongful convictions. They will be a central focus of this book.

1.4.1 The Need to Examine a New Criminal Justice Institution

The first CCRC has only been in operation since 1997. This is an opportune time to study how such an institution interacts with governments, courts and civil society groups. We now have research (Hodgson, 2020; Hoyle and Sato, 2019) that provides a fuller appreciation of the strengths

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and weaknesses of the new commission and complicates optimistic claims that the CCRC is "independent," "investigative" and "inquisitorial" (MacCallum, 2008; Runciman, 1993). There are concerns that the English CCRC has suffered from underfunding (LaForme and Westmoreland-Traore, 2021; Westminster Commission, 2021) and that it is too dependent on the Court of Appeal's willingness to admit new evidence and quash convictions (Law Commission, 2025: ch 11; Naughton, 2010). It has been affected by legal aid cuts because it has more applicants but less who are legally represented (Hodgson, 2020). Its work is reviewed under deferential administrative law standards of judicial review (Hoyle and Sato, 2019). The English CCRC has made a series of well-publicized "mistakes" where the overturning of wrongful convictions was delayed by its failure to order DNA tests that led to its Chair resigning in early 2025. Learning lessons from the work of the English CCRC is important, as its model has spread to Scotland, Norway, North Carolina, New Zealand and Canada (Roach, 2019a). There is a need for both comparative law and legal process analysis of these important new criminal justice institutions.

1.4.2 The Relevance of the Entire Criminal Process to Miscarriages of Justice

More generally, understanding miscarriages of justice requires an understanding of the interaction of complex institutions, including the police, forensic science providers, trial and appeal courts, CCRCs, the elected executive, innocence organizations and legislatures. This requires an interest and expertise in the entire legal process. The study of wrongful convictions provides an excellent view into the complexities of the criminal process in action. It requires understanding how the police collect and do not collect evidence, and how prosecutors make decisions, including about what material they will disclose. It requires an understanding of how both defence lawyers and expert witnesses operate, are paid and are regulated. The roles of both lay and professional judges are important.

The legal process methodology is supple enough to include study of internal processes of reform within the police, forensic service providers and other criminal justice institutions. It can also examine the role of non-state actors, including advocacy groups (Norris, 2017) and the media (Schiff and Nobles, 2000), in wrongful conviction reforms. The role of innocence organisations will be examined throughout this book. The legal process approach also allows legal academics to draw on cognate disciplines, including criminology, history, media studies and politics.

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Much of the literature on wrongful convictions, including some of my own (Roach, 2006; Roach, 2007b), has proceeded on unrealistic assumptions that once the main causes of wrongful convictions have been identified and remedies proposed, the remedies will and should be adopted. Scholars such as Brian Forst (2004), Larry Laudan (2006), Paul Cassell (2018) and Moulin Xiong (2022) have argued that the costs of wrongful acquittals must be considered when considering wrongful convictions. Regardless of whether one agrees with their normative arguments, much scholarship has failed to examine larger political and legal constraints that may help explain why some remedies are adopted but many are not.

The book will examine how bipartisan reforms were enacted in the United States both at the federal and state level and question whether such models are viable given increased political polarization (Norris, Hicks and Mullinix, 2023). State jurisdiction over criminal law in the United States and Australia has produced a variety of reforms, while Canada has lagged behind in part because criminal law is a matter reserved for the federal jurisdiction, whereas the causes of wrongful convictions are matters of the administration of justice subject to provincial and territorial jurisdiction (Roach, 2023a). A legal process approach is also important in understanding how wrongful conviction reforms in China have been influenced by the "iron triangle" of police, prosecutors and courts subject to the overarching supervision of the Communist Party and its Political and Legal Committees (Jiang, 2016). Similarly, the role played by appellate courts in India is related to traditions of judicial activism in that country and the absence of trial by jury (Roach, 2023b).

In a "new legal process" approach (Roach, 1997), it should not be assumed that any one branch of government is better than another in preventing or remedying miscarriages of justice. As American wrongful conviction scholar and litigator Keith Findley (2016) has recognized, the most effective reforms may require contributions from multiple branches of governments. Legal process analysis is well suited to documenting the complex interaction of different institutions that combine to produce and remedy miscarriages of justice.

1.4.3 The Legal Process and Compensation for Miscarriages of Justice

A broad legal process approach is also required to do justice to the issue of compensating the wrongfully convicted. Both civil and

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administrative processes are used to determine who receives compensation. Constitutional litigation is also possible. The exceptional costs structure of litigation in the United States helps explain why over $3.5 billion had been awarded by courts to the wrongfully convicted or achieved through settlements of civil lawsuits in the United States (Gutman, 2025). The abolition of ex gratia compensation in England resulted in less generous and flexible compensation (Spencer, 2010), as did subsequent legislation that requires proven innocence (Quirk, 2023).

1.5 Why a Historical Approach?

There is a rich but often neglected history of miscarriages of justice and wrongful convictions. History can be part of an enriched "criminological" (Leo, 2005) approach, and it can also help provide critical distance when its methods are applied to even contemporary events (Garland, 2001). Historical analysis can also counter a tendency in some of the scholarship to focus more on the trees than the forest.

1.5.1 The Dangers of an Ahistorical Approach

With only a few exceptions (Nash, 2008), there is a tendency in much of the literature to start with the first DNA exoneration in 1989. Such an ahistorical approach ignores extensive and often sophisticated debates about miscarriages of justice in cases such as Jean Calas, Alfred Dreyfus, George Edalji, Oscar Slater, Florence Maybrick, Ed Johnson, Rubin "Hurricane" Carter, Lindy Chamberlain and Donald Marshall Jr., all of whom will be discussed at various points in this book. Campaigning to correct wrongful convictions in these cases often centred on issues of prejudice, which tended to be neglected in the post-DNA focus on the immediate causes of wrongful convictions, such as mistaken eyewitness identification.

China's understanding of wrongful convictions, including the dangers of false confessions obtained through torture, dates back to at least 1247 in Song Ci's book *Collected Cases of Justice Rectified*. Torture also has a long and regrettable history in Europe as a way around evidential rules in Roman-Canon law requiring two eyewitnesses to convict (Langbein, 1977). It undoubtedly led to many wrongful convictions that may never have been recognized or rectified because the accused confessed, including to imagined crimes such as witchcraft (1977: 9). The best known critic of this approach was Voltaire, but even before him, French writers

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pointed to cases "in which an innocent person confesses and is executed, after which the real culprit is discovered" (1977: 9). Lest anyone think that the lessons of the past are not relevant, consider John Langbein's, 1978 argument that both torture and plea bargaining involve threats to induce the accused to plead guilty. He compared the statement of a German in the seventeenth century that "they never cease to torture until one says something" to the statement made by Henry Alford, a Black man in the American South, who said, "I just pleaded guilty because they said if I didn't they would gas me … I'm not guilty but I pleaded guilty" (1977: 15; *North Carolina v. Alford* 400 U.S. 25 (1970).

European writers in France and Germany examined wrongful convictions before Edwin Borchard's important book *Convicting the Innocent* was written in 1932. The German scholar Max Hirschberg who fled the Nazis after fighting wrongful convictions both as an advocate and a scholar built on his work to tell Americans in 1940 that "the reasons for wrongful convictions are, despite the differences in procedure, almost the same in all counties" (Hirschberg, 1940: 20). With reference to the wrongful conviction of Alfred Dreyfus in France he warned of "pseudo experts." He wisely warned: "a real student of science is too well aware of the fallibility of scientific knowledge to presume infallibility, while a charlatan tries to force his infallibility on his public" (1940: 34; Morris, 2005).

1.5.2 The Need for Historical and Critical Perspectives

To oppose miscarriages of justice and especially the conviction of the innocent is to be on the side of angels. But an exclusive focus on wrongful convictions obscures how remedies for wrongful convictions also serve political and social purposes that are particular to each society and its times and that may not be as progressive as might be imagined. In other words, the lessons of those who concluded that due process legitimated crime control (McBarnet, 1981; Stuntz, 2011) are also relevant to the study of wrongful convictions.

This book will frequently use history as a means to help situate wrongful conviction reforms in a larger historical and penal context (Garland, 2001) For example, wrongful conviction reforms in both the United States and China will be related to the highly punitive penal culture of both societies and their common focus on providing justice only for proven or obvious innocence. The American innocence movement achieved remarkable success in a hostile environment of mass imprisonment, but

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at the cost of focusing only on factual innocence and downplaying the pervasive role of anti-Black racism that its exonerations revealed (Norris, 2017). The major American federal law reform, the *Justice for All Act*, 2004, succeeded in part because it was twined with measures to respond to crime victims and investments in DNA collection and testing to facilitate crime control. Indeed, it included provisions for the increased punishment of those who tried to use DNA but were not exonerated as factually innocent.

The English creation of the Court of Criminal Appeal in 1907 and of the CCRC in 1995 responded to notorious wrongful convictions and media criticisms that were undermining public confidence in the criminal justice system (Nobles and Schiff, 2000). China's limited wrongful conviction reforms also came in the wake of well-publicized wrongful convictions and at a time that the Communist Party was responding to increased use of social media (He, 2014; Nesossi, 2016)

Understanding wrongful convictions reforms in their historical context raises difficult issues about whether they have been used to help legitimate unjust systems (McBarnet, 1981; Roach, 1999a). Recent developments in China and India underline that it is a mistake to take a Whiggish view of history as one of inevitable progress over miscarriages of justice. Trump's 2024 re-election poses challenges, especially given his continued denial of the innocence of the Exonerated (Central Park) Five. England's use of remedial legislation to exonerate and compensate sub-postmasters in 2024 had much to do with public outrage after the airing of the popular television series *Mr. Bates v. The Post Office* but it reveals the inadequacies of existing systems for correcting and compensating wrongful convictions. These developments, combined with the diminishing window of DNA exonerations (Scheck, Neufeld and Dwyer, 2000), raise the disturbing prospect that the future may be bleaker not better. One of the aims of this book is to counter the ahistorical approach of much wrongful conviction scholarship and by doing so to provide a more critical and broader perspective on wrongful conviction reforms and to dispel any notion that progress on these issues is inevitable.

1.6 Fair Trials and the Presumption of Innocence

A common concern about comparative, legal process and historical approaches is that they tend to be descriptive without explicit normative analysis. Although this book is not a book of theory, it is hopefully not devoid of normative content.

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1.6.1 *The Importance of the Presumption of Innocence*

My approach to wrongful convictions is tied to an acceptance of the restrained use of the criminal sanction, which respects guarantees of fair trials reflected in most post-World War II instruments of rights protection, most notably the presumption of innocence and the related principle of giving people the benefit of reasonable doubts about their guilt. It is also based on a view that the state should be more concerned about wrongful convictions than wrongful acquittals if only because the state generally bears more responsibility for the former as compared to the latter. My approach, while quite traditional, comes at a time where public opinion polls throughout the world suggest that people are increasingly as concerned about wrongful acquittals as wrongful convictions (Garrett and Mitchell, 2023; Xiong, Greenleaf and Goldschmidt, 2017).

It is not only the presumption of innocence that is at risk from popular opinion. Given the political unpopularity of the accused and moves in many countries towards increased authoritarianism, all fair trial rights are at risk. Fair trial rights are also at risk from those concerned about wrongful convictions because of the failure of such rights to prevent wrongful convictions (Bakken, 2022; Naughton, 2013; Thomas, 2008).

Fair trial rights are under siege and particularly vulnerable to populist pushback. The Tony Blair government in 2006 tried to limit successful appeals from criminal convictions to those who were innocent. The underlying theory was based on Blair's populist arguments that the real miscarriage of justice is when a factually guilty person goes free (Blair, 2002). The entire legal establishment in England, including the CCRC in a very rare act of policy engagement (Roach, 2010b), opposed this proposal, and the Blair government to its credit did not implement it. The CCRC has continued to refer convictions back to the courts on what some call technical and what others would call due process or fair trial grounds that are not connected to factual innocence (Naughton, 2013). Limiting appeals to factual innocence would have regressive implications and devalue a rich liberal heritage of fair trial rights, including the presumption of innocence that gives people the benefit of reasonable doubts about their guilt.

1.7 The "Balance" between Wrongful Convictions and Wrongful Acquittals

In his 1963 Storrs Lecture, the legal theorist Lon Fuller observed that while there is a natural tendency to think of wrongful convictions in

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terms of rights absolutism, the underlying issues were more complex and polycentric. Fuller (1969: 179–180) observed:

> if the question be asked, "How much effort should be expended to make certain that no innocent man is ever convicted of crime?," the answer is apt to run toward the absolute, and the suggestion may even be made that where fundamental human rights are at stake a question so indecently calculative should not even be raised. Yet when we reflect that in order to make sure that a decision is right we must consume the scarce commodity of time, and that a right decision too long delayed may do more damage to the accused himself than a mistaken decision promptly rendered, the matter assumes a different aspect. We then perceive that even in this case we are compelled make a calculation that is in the broad sense "economic" even though money costs are completely left out of account.

Fuller was aware that reforms to prevent wrongful convictions were polycentric in that they had unintended effects, including on the ability of the system to convict the guilty. Political scientist Brian Forst (2004: 212) has argued that wrongful convictions can undermine "due process legitimacy" while warning that wrongful acquittals undermine "crime control legitimacy."

Theorist Larry Laudan (2006: 59–60), while regretting that the death penalty skews the debate, seemed to accept that a 4 per cent error rate in capital cases may be acceptable because "holding out the hope that the errors could be reduced without limit is a fool's game." He argued that he would not want to live in a society that preferred 1,000 wrongful acquittals to one wrongful conviction because there would be little deterrence of crime and "precious few convictions" (2006: 144–145). The American law professor and victims' rights advocate Paul Cassell (2018) argues that the rate of wrongful convictions of the truly innocent has frequently been inflated in the United States and that wrongful convictions reforms may harm crime victims by leading to wrongful acquittals of the guilty.

All of these commentators make a basic and valid point that a society could eliminate all wrongful convictions simply by having no criminal convictions. Although there are respectable arguments for the abolition of police and prisons, I do not go that far (Roach, 2022b). I have also written about how an exclusive focus on due process ignores legitimate claims by crime victims (Roach, 1999b).

At the same time, I do not accept the equivalence of victims of miscarriages of justice and crime victims. The former suffer harms directly imposed by the state, while the latter suffer harms imposed by private actors. Most crime victims do not report the crimes they suffer to the police,

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and most reported crimes do not result in prosecutions. Given this, the idea that criminal justice systems control crime is unrealistic. Moreover, the American registry of wrongful convictions as of the end of 2024 classifies 40 per cent of all remedied wrongful convictions as involving crimes that never happened. Many of the arguments made by Professors Laudan and Cassell seem based on a premise of direct conflict between preventing and remedying wrongful convictions and avoiding wrongful acquittals that may not be present, especially with respect to wrongful convictions for imagined crimes. Moreover, their implicit assumption that all crime could be reduced to zero is even more unrealistic than the idea that all wrongful convictions could be reduced to zero.

Although he did not develop these thoughts, Fuller might have disciplined his insight about the unintended and polycentric effects of wrongful convictions through proportionality reasoning (Roach, 2006; Roach, 2016b). The accused has a right not to be wrongfully convicted. To be sure, the interests and perhaps even the rights of crime victims and potential victims of crime should not be ignored, but the state bears more direct responsibility for wrongfully imprisoning a person than for failing to prevent a person from suffering a crime or in not having the person who committed a crime punished. Most of us have been victims of crime. Fewer of us have been victims of wrongful convictions. The idea that the state can prevent all crime is false. It is too often used to justify the interests of police and prosecutors in justice systems that often marginalize and harm crime victims (Roach, 1999a). The state needs to justify that it has done as much as reasonably possible to prevent wrongful convictions (Roach, 2006).

1.8 Equality

Legal process methodologies are not necessarily atheoretical. John Hart Ely (1980) recognized that unelected and independent courts have a distinct ability to protect the rights of discrete and insular minorities. He also recognized that the Warren Court's activism both with respect to opposing racial segregation and criminal justice rights was intimately connected. Those suspected and accused of crimes are unpopular and too often members of minorities vulnerable to discrimination.

Ronald Dworkin, the most pre-eminent legal philosopher of the twentieth century, was concerned about equality or what he called the right to equal concern and respect. He addressed wrongful convictions in an essay examining the relation between procedure and principle. Like Fuller

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before him, Dworkin conceded that there was no right to the most accurate criminal procedure possible because there were simply too many valid competing interests in play. At the same time, Dworkin (1985: 92) concluded that there were "two other genuine rights" that were in play in debates about any balance between wrongful convictions and wrongful acquittals. They were: "[t]he right to procedures that put a proper valuation on moral harm in the calculation of the risk of injustice that they will run: and the related and practically more important right to equal treatment with respect to that evaluation" (Dworkin, 1985: 92). Dworkin recognized that the right to equality could serve as "a lever for reform" (1985: 91) but not as a "right to as much protection as the community could provide were it willing to sacrifice the general welfare altogether" (1985: 90). Like Fuller, he recognized that criminal procedure and evidence involved a complex and polycentric "systems of rules" (1985: 91).

Dworkin's principled equality-based exception, however, threatens to swallow his overall conclusion that there is no right to the most accurate criminal justice system possible. Dworkin was writing in 1985 before the first DNA exoneration. Both DNA exonerations and the National Registry of Exonerations have subsequently affirmed that Black people are dramatically overrepresented among the wrongfully convicted both with respect to the percentage of the population and with respect to their overrepresentation in the prison population (Gross et al. 2022). The same may be true of Indigenous people in many countries. (Roach, 2015a). It may also be true with respect to other groups, including those who live with mental disabilities or illnesses and various other vulnerable minorities. One of the central themes of this book will be the need for those concerned about miscarriages of justice to be more concerned about how inequalities affect the distribution of injustice.

Another important finding supported by the growth of registries of remedied wrongful convictions is that many remedied wrongful convictions involve crimes that were never committed but "imagined" first by the police, by prosecutors and sometimes also by defence lawyers who entered guilty pleas and judges and juries who convicted persons. These imagined wrongful convictions beg the question about the role of discriminatory stereotypes in wrongful convictions (Henry, 2020; Roach, 2023a). They suggest that wrongful conviction reform is not only about balancing the state's legitimate interests in convicting the guilty against the sometimes competing interest in ensuring that only the guilty are convicted. To the extent that prejudice and stereotypes lie behind wrongful convictions for imagined crimes that never happened, it suggests that

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a less discriminatory approach to criminal justice could reduce wrongful convictions without necessarily sacrificing legitimate state interests in convicting the guilty. This is not a book of theory, but my analysis is affected by my continuing commitments to both equality and fair trials.

1.9 Outline of Chapters

Despite the growth of scholarship about wrongful convictions and miscarriages of justice, there is a lack of consensus and contestation about the basic terms about what merits study and remedy (Naughton, 2007, 2013; Roach and Trotter, 2005; Walker, 1999). This has caused confusion with people sometimes talking past each other. Chapter 2 will seek to clarify the important but often neglected definitional debate. It will make analytical distinctions between miscarriages of justice as the broadest form of injustice that includes wrongful detention that does not result in criminal convictions; wrongful convictions, which by definition, require a conviction and proven or obvious innocence, a category that defines injustice in the most narrow and demanding way of all three categories. It will also introduce the idea that these terms, including a frequent lack of clarity about their meaning, are used as a means to ration justice and relate this to each country's own penal culture (Garland, 2001). The tragic choices analysis of Guido Calabresi and Philip Bobbitt will be applied to understand the different uses of these different terms in different countries and at different times as a means to ration justice against competing concerns such as the finality of convictions (Nobles and Schiff, 2000; Roach, 2024a). This chapter will also examine the tensions between proven innocence requirements and the presumption of innocence and other fair trial rights.

Chapter 3 will examine four common immediate causes of wrongful convictions (mistaken eyewitness identification, false confessions, lying witnesses and false forensics), with an emphasis on the different ways that different countries have responded to these immediate causes. Virtual libraries have been written on these subjects. My comparative and legal process methodologies will hopefully add something by focusing on the strengths and weaknesses of legislative, executive, judicial and self-regulation. The arguments of scholars who argue that the costs of wrongful acquittals should be balanced against the costs of wrongful convictions (Cassell 2018; Forst, 2004; Laudan, 2006) are, even if not normatively compelling, helpful in explaining why most jurisdictions have failed to adopt the optimal forms of regulation proposed by scholars and reform

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bodies. This means that wrongful convictions are inevitable, and there is a need for better remedies to correct them after they have occurred.

Chapter 4 will examine how both those operating within party-driven adversarial systems and those operating in more investigative-driven inquisitorial systems have engaged in a "grass is greener on the other side of the fence" debate about which system is better able to prevent wrongful convictions. There is a danger in overemphasizing the differences between inquisitorial and adversarial systems, especially as they both become preoccupied with efficiency (Hodgson, 2020) and engage in borrowing from each other (Langer, 2007). It is also a mistake and a simplification to assume that all inquisitorial systems are alike. Some differences between the inquisitorial systems in Sweden and Norway, as well as between China and Taiwan, will be examined in this chapter. This chapter will devote particular attention to whether there is an inquisitorial advantage with respect to the acceptance of false guilty pleas.

Chapter 5 will examine the important role played by England in creating the Court of Criminal Appeal in 1907 and then the CCRC in 1995 as remedial institutions for miscarriages of justice. The genesis of these institutions will be explored, and their migration to other jurisdictions, mostly former British colonies, will also be examined. An emerging research literature on the operation of the CCRC (Hodgson, 2020; Hoyle and Sato, 2019), as well as controversies over its operation and some recent and well-publicized failures, provides a good opportunity to assess both the strengths and weaknesses of this new criminal justice institution. Although the traditional focus in England has been on a broad form of miscarriage of justice (Law Commission, 2025), 2014 legislation now requires proof of innocence as a precondition to receiving compensation, and a 2022 Court of Appeal decision requires essentially the same to overturn an otherwise valid guilty plea (*Tredget v. R.* [2022] EWCA Crim 108). This illustrates the importance and dynamism of the different definitions of miscarriages of justice examined in Chapter 2. Finally, England's response to the Post Office scandal of mass false guilty pleas will be examined with attention to what special exoneration and compensation legislation tells us about the ordinary legislation and whether this ad hoc politicalized approach may, like other English responses, be influential in other jurisdictions.

Chapter 6 will be devoted to the American experience with wrongful convictions with its longstanding focus on clear cases of proven innocence (Borchard, 1912, 1914, 1932). This approach has expanded from compensation legislation to post-conviction habeas corpus relief in Federal

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Courts. It also applies to the work of the North Carolina Innocence Inquiry Commission, the only CCRC-like body in the United States (Roach 2019a). The populist focus on factual innocence has led to bipartisan wrongful convictions reforms in legislatures, including those of North Carolina and Texas, as well as decreased support for and use of the death penalty (Baumgartner et al., 2008). It also helps explain a particularly generous approach to compensation that has seen over $4.5 billion paid to those who have been exonerated since 1989 (Gutman, 2025). At the same time, the United States Supreme Court has still not clearly recognized a free-standing right to claim and prove innocence that American reformers wish to see recognized in supranational law (Garrett, Helfer and Huckerby 2021). The difficulties of proving innocence to the satisfaction of American courts will be examined. The American experience with mass exonerations will be compared to England's legislative response to the Post Office Scandal. American mass exonerations reveal much about the often suppressed role of racism, a topic that will be the focus of Chapter 7. The Trump executions after he lost the 2020 election will be examined. Future directions for the American innocence movement will be assessed in light of the implications of Trump's 2024 re-election and other signs that the era of bipartisan wrongful conviction reforms may be coming to a close (Norris, Hicks and Mullenix, 2023).

Chapter 7 will examine the role of racism and prejudice in wrongful convictions. Black people constitute 13 per cent of the American population but 53 per cent of the exonerated on the American registry and 62 per cent of the first 330 DNA exonerations. At the same time, the innocence movement from 1989 to the murder of George Floyd in 2020 often discounted the role of racism and prejudice in wrongful convictions. Racism was prominent in the case of the Exonerated (Central Park) Five in part because of Donald Trump's calls for the Black and Hispanic teenagers wrongfully convicted of the rape of a white woman to be executed, but it was discounted in many other similar DNA exonerations. This chapter will also examine wrongful convictions of Indigenous people in a number of countries, including Australia, Canada, New Zealand and the United States. Remedied wrongful convictions in these countries reflect Indigenous overrepresentation in prison but also beg questions about barriers to access to justice that Indigenous people face (Roach, 2015a; Thorp, 2005). A 1989 Canadian inquiry into Donald Marshall Jr.'s wrongful conviction will be examined as an example of how wrongful convictions can productively lead to examination of the broader effects of anti-Indigenous and anti-Black racism. Reparation for the wrongful

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convictions of Indigenous people should have a collective dimension tied to the recognition of Indigenous justice systems (MacMillan, 2018).

Chapter 8 will examine the role of gender and stereotypes in wrongful convictions. The vulnerability of women to being convicted for imagined crimes that did not happen will be traced to their frequent victimization in witch trials, the ritual Satanic child sexual abuse scandals of the 1980s and 1990s, and the use of shaken baby syndrome (SBS). The role of intersecting forms of discrimination based on race, class and sexual orientation will also be examined. Women often made rational decisions to plead guilty to limit harms to their families and because they receive lenient or even "lop-sided" plea deals that were too good to refuse (Roach, 2023a, chs 1–3; Tuerkheimer, 2014). Case studies of the wrongful convictions of Florence Maybrick, Lindy Chamberlain and Kathleen Folbigg (Cunliffe, 2011) will be included with an emphasis on how perceived departures from ideals of being a "good" wife or mother may have made it easier for juries to convict and be persuaded by unreliable forensic science. Finally, this chapter will examine whether stereotypes associating males, and especially racialized men, with sexual violence have played a role in wrongful convictions. DNA exonerations are mostly available for stranger sexual assaults, and much sexual assault law reform designed to protect the privacy of the complainant and encourage the reporting of this under-reported crime has made it more difficult to correct wrongful convictions when the complainant and the accused know each other and consent is claimed. As David Hamer (2023) has argued, the difficulties of correcting wrongful convictions in such cases can produce policy "blind spots." An examination of the registries suggests that such blind spots may be more pronounced in North America than in Europe and the United Kingdom.

Chapter 9 examines wrongful convictions in China, the world's second most populous country. In response to a number of well-publicized wrongful convictions, including at least three cases where a murder victim was discovered alive (He, 2016; Jiang, 2016), China introduced a variety of responses between 2006 and 2013. They included a rule designed to exclude confessions obtained by torture, increased review of death penalty cases and new guidelines for prosecutors and judges to avoid wrongful convictions. Although some have seen these moves as evidence that China is joining an international innocence movement (Godsey, 2017), there are reasons for scepticism. Scholars in China have been candid and brave in pointing out that Chinese judges "never hear the case" (He, 2016: 126); that conviction rates remain close to 100 per cent (Hu and Liang, 2022);

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that there is "over close co-operation" between the police, prosecutors and judges as coordinated by the Communist Party's Political-Legal Committees and that defence lawyers remain both marginalized and vulnerable to criminal prosecution (Jiang, 2016). This raises the issue of whether China's response is an example of "wrongful conviction washing" (Roach, 2024a) in which law reforms that benefit a few do little more than attempt to legitimate an unjust criminal justice system for the many. It will be suggested that China has embraced something similar to the American proven innocence approach and has, since 2018, encouraged guilty pleas (Li, Yuan and Zhang, 2024) in a way that will increase wrongful convictions. Some comparisons will be made with Hong Kong and Taiwan, with the former being more concerned with miscarriages of justice and lurking doubts about guilt and the latter resisting the guilty pleas that in China are being encouraged for efficiency reasons and may lead to many false guilty pleas that will never be corrected given China's restrictions on the press and defence lawyers.

Chapter 10 examines miscarriages of justice in India, the world's most populous country. The Indian appellate courts have remedied a few wrongful convictions, most prominently in terrorism cases. They appear in these cases to be more willing to re-evaluate the evidence than other common law appellate courts, which often defer to the jury, an institution not used in India. As the use of the death penalty in India has increased in recent years, so too has the willingness of High Courts and the Supreme Court to overturn death penalty convictions. Indian courts, unlike Chinese courts, enjoy considerable independence in overturning possible wrongful convictions. At the same time, it would be a mistake to conclude that the performance of the Indian courts in death penalty cases is duplicated in other cases. Moreover, the Indian Supreme Court has not invalidated the death penalty despite calls for it to do so on the basis of both inequality in its application and wrongful convictions (Law Commission of India, 2015). New laws enacted by the Modi government at the end of 2023 have increased the risk of wrongful convictions caused, as in China, by false confessions obtained by the police. The 2023 laws also introduce another potential source of error by mandating forensic investigations in serious cases in order to improve India's low conviction rates (Roach, 2023a). These new laws also did not implement the Law Commission's calls to provide compensation for both wrongful detention and wrongful convictions (Law Commission of India, 2018). This is unfortunate because these reforms were carefully tailored to respond to the high rate of pre-trial detention in India. These recent developments, like those in

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China, underline that it is a mistake to assume that progress with respect to wrongful convictions is inevitable.

Chapter 11 will discuss international law and wrongful convictions. International criminal courts are not immune from miscarriages of justice. Despite initial predictions that they would follow inquisitorial traditions and not accept guilty pleas, the Rwanda and former Yugoslavia tribunals allowed plea bargaining and guilty pleas for efficiency reasons. This produced a risk of both false guilty pleas from those subject to pre-trial detention and inaccurate convictions that reflected both charge and sentence bargaining. The International Criminal Court (ICC) has responded to some of these dangers and allows the judge to require the prosecutor to call evidence to support a guilty plea. The ability of international criminal justice to both prevent and remedy wrongful convictions will be adversely influenced by the high stakes of international crimes.

Proposals to create an international right to claim innocence (Garrett, Helfer and Huckerby, 2021) will be critically examined. The right to appeal under Article 14(5) of the ICCPR will also be examined with a focus on how it has helped expand appeal rights in Australia (Sangha and Moles, 2015), but it has not been used to challenge restrictive appeal rights in South Africa. It will be argued that a focus on a more robust right to appeal would have less regressive effects than a right to claim and prove innocence.

Article 14(6) of the ICCPR provides a restrictive right to compensation for only some wrongful convictions. This provision, drafted in the 1950s, needs updating in light of the growing knowledge about wrongful convictions, especially false guilty pleas. Following the Law Commission of India, a strong case can also be made for a more unified approach to compensating both unlawful detention and wrongful convictions. In any event, compensation for miscarriages of justice has been unduly focused on monetary compensation without sufficient attention to the needs for rehabilitation (Bazelon, 2018a) and non-repetition including by respecting other fair trial rights (Roach, 2021). Compensation alone is inadequate in responding to the irreparable harm of miscarriages of justice. If not accompanied by prevention, even generous monetary compensation can be criticized as a legitimating and ultimately unsuccessful attempt at "wrongful conviction washing" (Roach, 2024a).

Chapter 12 will return to a number of themes that run throughout the book. Definitional issues loom large and should not be glossed over or ascribed to customs or semantics. The proven innocence model has had remarkable success in the United States and some success in China. It has

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influenced some developments in England with respect to compensation and false guilty pleas and in Australia with respect to rights to second and subsequent appeals. It is popular with "lay" audiences (Naughton, 2013). At the same time, it is in tension with the presumption of innocence and other due process rights. At the extreme, it can be used to justify crime control approaches that focus on the reliability of evidence, ignoring whether it has been fairly obtained (Packer, 1968). Moreover, it can create moral and legal equivalences between innocent victims of wrongful convictions and innocent crime victims (Roach, 1999a) even though the state is much more directly implicated in the creation of the former than the latter.

Proven or obvious innocence represents a severe rationing of justice. This may be the best that can be achieved in highly punitive societies (Garland, 2001), but its introduction would have regressive effects in most other parts of the world. The 2014 introduction of a proven innocence model for compensation in England and Wales has greatly reduced compensation paid and has even generated American-style innocence denials in cases such as Victor Nealon's, who was denied compensation despite a DNA exoneration (Quirk, 2023). The European Court of Human Rights' decision that the denial of compensation to Nealon did not violate the presumption of innocence is unfortunate (*Nealon v. The United Kingdom*, 2024 ECHR 514) but sets the stage for populist retrenchment throughout Europe with respect to compensation of miscarriages of justice. At the same time, the demands of proven innocence were avoided by the enactment of special legislation with respect to the Post Office scandal, but it is doubtful whether other cases will attract the same political empathy.

Inquisitorial systems retain some diminishing advantages with respect to false guilty pleas, and countries from South America to China should be cautious about encouraging guilty pleas that experience in the United States and the UK tells us may often be false.

Although I am critical of the proven innocence model and the neglect in the early American innocence movement of racism as a cause of wrongful convictions, I do not want to diminish or underestimate the extraordinary achievements of the American innocence movement in a hostile environment (Roach, 2024b). That said, innocence movements in each country should pursue the paths that make the most practical sense given the particular conditions that they face. An Indian innocence movement could justifiably focus on issues of pre-trial detention that have been ignored in innocence movements in western democracies. The Indian Supreme Court could revisit its decision that the death penalty is constitutional in light of the frequent reversal of death penalty cases by appellate

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courts. Innocence movements may be impossible in authoritarian states such as China, and this should be borne in mind when evaluating how they respond to wrongful convictions. The payment of increased compensation to the wrongfully convicted in China, despite its merits in individual cases, may be a form of "wrongful conviction washing" that obscures the reality of routine and perhaps increasing wrongful convictions. Even more troubling, the payment of over $4.5 billion in the United States to those who have been exonerated since 1989 (Gutman, 2025) may also be wrongful conviction washing, given the routine and uneven distribution of the risk of error in the American criminal justice system and the fact that less than half of the exonerated in the United States receive any compensation at all (Gutman, 2025).

My hope for the American innocence movement is that it will expand its formidable energies and passions into broader campaigns against injustice, while still continuing its necessary work on behalf of the wrongfully convicted, even those not lucky enough to have evidence to prove their innocence (Scheck, Neufeld, and Dwyer, 2000). There are encouraging signs that it is heading in this broader direction (Beety, 2022; Brown and Neufeld, 2021). In any event, the re-election of Trump and the authoritarian turn in the United States suggest that the American innocence movement may have less to lose by shifting to broader concerns about miscarriages of justice, including racial justice, and by placing less emphasis on attempting to find a bipartisan consensus for reform (Norris, Hicks and Mullenix, 2023). In this vein, more attention is being paid to equality in recent wrongful conviction scholarship (Hattery and Smith, 2023; Jochnowitz and Kendall, 2021), and hopefully, this will continue, despite the Trump administration's assault on anything that can be associated with "dei" or diversity, equity and inclusion. At the same time, contemporary scholars should be humble enough to admit that those who wrote about miscarriages of justice in centuries past were acutely aware of how discriminatory prejudice contributed to miscarriages of justice (Hirschberg, 1940; Voltaire, 1763). This past hopefully points a way to a brighter future. Justice for all may be unattainable. But hopefully, there can be more equal justice that extends justice to more people.

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