## Contents

1 **Introduction** ............................................. 1  
1.1 Preliminary Observations ............................... 3  
1.2 The Prevention of Wrongful Convictions ............... 3  
1.3 Remedies for Wrongful Convictions .................. 5  
1.3.1 Latest Responses to Wrongful Convictions .......... 7  
1.4 Research Methods Used in This Book ................. 9  

2 **The Scope of Wrongful Convictions** ................. 13  
2.1 The General Definition of Wrongful Convictions .... 13  
2.2 Potential Definitions on Wrongful Convictions in China .... 16  
2.3 The Western Understanding of Wrongful Convictions ... 25  
2.4 An Appraisal of the Value of Criminal Justice Systems ... 31  
2.5 Conclusion ........................................... 38  

3 **The Similar Causes of Wrongful Convictions** ....... 41  
3.1 Introduction ........................................ 41  
3.2 Wrongful Convictions in China: A Case Study Approach .... 42  
3.2.1 The Study of Three Recent Wrongful Conviction Cases .... 42  
3.2.2 A Study of Five New Wrongful Conviction Cases .... 49  
3.3 Primary Causes for Identified Wrongful Convictions in China’s Practice .............................. 57  
3.3.1 Police Misconduct ................................ 58  
3.3.2 Prosecutorial Misconduct .......................... 62  
3.3.3 Ineffective Defence ................................. 64  
3.3.4 Forensic Misconduct ............................... 66  
3.3.5 False Witness Testimony .......................... 67  
3.3.6 Trial Misconduct .................................. 68  
3.4 The Similarity of Causes for Wrongful Convictions in China and in the West ............................ 74  
3.4.1 Investigative Misconduct .......................... 74  
3.4.2 Prosecutorial Misconduct .......................... 78
3.4.3 Ineffective Defence Representation .................................. 81
3.4.4 Improper Use of Evidence ............................................. 83
3.5 Conclusion ................................................................. 87

4 The Different Roots of Wrongful Convictions ............................... 89
4.1 Introduction ................................................................. 89
4.2 Root One: Institutional Restraints That Cause Wrongful Convictions in China ....................................................... 90
  4.2.1 Institutional Restraints Prescribed by Law ................. 90
  4.2.2 Institutional Restraints in Practice ......................... 92
  4.2.3 Ineffective Checks ................................................... 93
  4.2.4 Why Do Institutional Restraints Often Lead to Wrongful Convictions in China? ........................................... 106
4.3 Different Root Two: Cultural Collectivism Causing Wrongful Convictions in China ...................................................... 108
  4.3.1 Cultural Collectivism in History .......................... 108
  4.3.2 Cultural Collectivism in Law .................................. 111
  4.3.3 Cultural Collectivism in Practice ......................... 113
  4.3.4 Why and How Did Cultural Collectivism Cause Wrongful Convictions in China? ........................................ 119
4.4 Different Root Three: Attitudinal Biases Causing Wrongful Convictions in China ...................................................... 123
  4.4.1 Attitudinal Biases in Law .................................. 123
  4.4.2 Attitudinal Biases in Practice ......................... 127
  4.4.3 Why Do Biases Contribute to Wrongful Convictions in China? ........................................ 139
4.5 Conclusion ................................................................. 142

5 The Movement for the Prevention of Wrongful Convictions: How Far Has It Progressed? .................................................... 145
5.1 Introduction ................................................................. 145
5.2 The Beginning of the Movement for the Prevention of Wrongful Convictions: 2005–2009 .................................................. 146
  5.2.1 The Wrongful Conviction of SHE Xianglin .......... 146
  5.2.2 Policy Recommendations Based on the Conviction: What Was Learned? ........................................ 149
  5.2.3 Evaluation of the Post-SHE Reforms: What Was Done? ........................................ 152
  5.2.4 The Use of Recording Interrogations: From 2005 .... 152
  5.2.5 The SPC Resumes Its Review Power: From 2006 .... 153
  5.2.6 The HPCs’ Open Trial in the Second Instance of Death Sentences ........................................ 155
  5.2.7 The New Criminal Justice Policy ......................... 156
  5.2.8 Reforms to the Law on Lawyers in 2007 ............. 156
5.3 The Movement Expands: 2010–2015 ........................................................................................................ 157
5.3.1 The Wrongful Conviction of ZHAO Zuohai ............................................................. 157
5.3.2 The Significance of the ZHAO Case: Further Policy Recommendations ...................... 160
5.3.3 Going Further: What Was Achieved? .............................................................................. 162
5.3.4 The 2010 Regulations: Excluding Illegally Obtained Evidence .................................... 162
5.3.5 The 2011 Amendment to the 1997 CL: Death Penalty Reforms ...................................... 163
5.3.6 The 2012 CPL: More Adversarial Process and Less Injustice? ................................. 164
5.3.8 The 2014 Reform on the Justice System ...................................................................... 170
5.3.9 Further Reforms of the System in 2015 ....................................................................... 171
5.4 Conclusions: How Far Has the Movement Progressed in China? ..................................... 172

6 The Similarity of Remedies for Wrongful Convictions ........................................................ .. 175
6.1 Introduction ............................................................................................................................... 175
6.2 Remedies for Causes of Wrongful Convictions ................................................................. 175
6.2.1 Investigative Misconduct ............................................................................................... 176
6.2.2 Prosecutorial Misconduct .............................................................................................. 179
6.2.3 Ineffective Defence Representation .............................................................................. 182
6.2.4 Improper Use of Evidence ............................................................................................. 184
6.3 Appellate Correction of Wrongful Convictions ................................................................. 188
6.3.1 China .............................................................................................................................. 188
6.3.2 The US .......................................................................................................................... 189
6.3.3 England and Wales ........................................................................................................ 193
6.3.4 Canada ......................................................................................................................... 194
6.4 Post-appellate Correction of Wrongful Convictions .......................................................... 195
6.4.1 China .............................................................................................................................. 195
6.4.2 The US .......................................................................................................................... 197
6.4.3 England and Wales ........................................................................................................ 199
6.4.4 Canada ......................................................................................................................... 201
6.5 Lessons to Be Learned for These Jurisdictions ................................................................. 202
6.5.1 Broadening Access to Remedies in China .................................................................. 202
6.5.2 Improving Effectiveness of Preventive Mechanisms .................................................... 204
6.5.3 Improving Procedures for Proving Innocence ............................................................... 205
6.6 Conclusion ............................................................................................................................. 206

7 Different Mechanisms for Wrongful Convictions ................................................................. 209
7.1 Introduction ............................................................................................................................ 209
7.2 The Supreme People’s Court Review and Trial Supervision in China .............................. 209
7.2.1 Final Review by the SPC ............................................................................................. 210
7.2.2 Trial Supervision ......................................................................................................... 212
7.3 The Criminal Cases Review Committees in the United Kingdom (UK) ........................................ 216
7.4 Innocence Projects in the US ........................................ 219
7.5 The Ministerial Review of Criminal Cases in Canada ............... 221
7.6 Critiquing These Mechanisms: Lessons to Be Learned ............... 224
  7.6.1 Broadening Access to Remedies in China ..................... 224
  7.6.2 Broadening the Scope for Review in the US .................. 227
  7.6.3 Creation of a New Independent Commission .................. 228
7.7 Conclusion ...................................................... 232

8 Problems and Prospects: China’s Response to Wrongful Convictions ........................................ 233
  8.1 Introduction ..................................................... 233
  8.2 Implementation Difficulties: Before and After the 2012 CPL ......... 235
    8.2.1 Torture and False Confession ............................... 237
    8.2.2 False Witness Testimony ................................... 238
    8.2.3 Problems Related to Expert Testimony ....................... 238
    8.2.4 Police Misconduct ........................................ 240
    8.2.5 Prosecutorial Misconduct .................................. 241
    8.2.6 Passive Judges ........................................... 241
  8.3 Deep Flaws in the Justice System: Institutional Problems ........... 242
    8.3.1 Institutional Problems Versus Legislative or Cultural Ones .... 243
    8.3.2 Deep Flaws in the Justice System ........................... 246
  8.4 To Fill in the Justice Gap: The Need for Institutional Solutions .......... 248
    8.4.1 Why Close the Justice Gap? ................................. 249
    8.4.2 How to Fill in the Justice Gap? ............................. 252
  8.5 Conclusion: Prospects for the Better Prevention and Remedy of Wrongful Convictions ............... 257

9 New Strategies for the Better Prevention of Wrongful Convictions in China .................................. 259
  9.1 Introduction ..................................................... 259
  9.2 New Strategies: Responding to Newly Discovered Wrongful Convictions ................................ 260
    9.2.1 The Wrongful Conviction of Huugjilt ....................... 260
    9.2.2 The Wrongful Conviction of NIAN Bin ...................... 264
    9.2.3 Summary .................................................. 267
  9.3 Policy Recommendations on the Strategies: From Investigation to Trial .................................. 268
    9.3.1 Policy Recommendations Based on the Huugjilt Case .................. 268
    9.3.2 Policy Recommendations Based on the NIAN Bin Case .................. 277
9.4 End in Sight? Expectations and Problems for the Future Prevention 279
  9.4.1 More Expectations for the Future 280
  9.4.2 Potential Problems for the Future 283
9.5 Conclusion 288

10 Conclusion 291
  10.1 A Critical Analysis of the Official Prevention of Wrongful Convictions 292
  10.2 Challenges for Further Justice Reforms in Contemporary China 297
    10.2.1 The Actual Implementation of the Relevant Laws and Reform Measures 297
    10.2.2 China’s Misunderstandings of Injustices with International Community 300
    10.2.3 Institutional Obstacles in China’s Long March Towards the Rule of Law 302

Appendix 305
Bibliography 317
Wrongful Convictions in China
Comparative and Empirical Perspectives
Jiang, N.
2016, XIII, 356 p., Hardcover
ISBN: 978-3-662-46083-2