



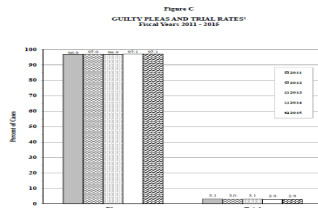
BARGAINED JUSTICE: A COMPARATIVE ANALYSIS OF PLEA BARGAINING

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Plea Bargaining's Triumph



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Early Court Decisions Regarding Bargained Justice

Rex v. Warickshall (1783):
“[A] confession forced from the mind by the
flattery of hope, or by the torture of fear, comes
in so questionable a shape... that no credit
ought to be given to it.”

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Early Court Decisions Regarding Bargained Justice

Bram v. United States (1897):

The “true test of admissibility is that the confession is made freely, voluntarily and without compulsion or inducement of any sort.”

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Post-Civil War Appellate Court Decisions Regarding Bargained Justice

“No sort of pressure can be permitted to bring the party to forego any right or advantage however slight. The law will not suffer the least weight to be put in the scale against him.”


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Post-Civil War Appellate Court Decisions Regarding Bargained Justice

“[Plea bargaining is] hardly, if at all, distinguishable in principle from a direct sale of justice.”


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 **Overcriminalization and Plea Bargaining Unite**
Wickersham Commission

“[T]he only practicable way of meeting this situation with the existing machinery of federal courts . . . is for the United States Attorneys to make bargains with defendants or their counsel whereby defendants plead guilty to minor offenses and escape with light




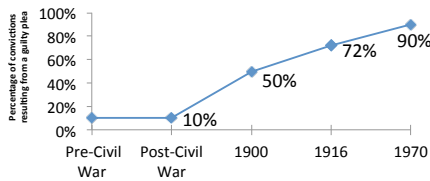
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 **Overcriminalization and Plea Bargaining Unite**
1967 ABA Report

[A] high proportion of pleas of guilty and *nolo contendere* does benefit the system. Such pleas tend to limit the trial process to deciding real disputes and, consequently, to reduce the need for funds and personnel... Moreover, the limited use of the trial process for those cases in which the defendant has grounds for contesting the matter of guilt aids in preserving the meaningfulness of the presumption of innocence.

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 **Plea Bargaining's Shadowy Rise**



Year	Percentage of convictions resulting from a guilty plea
Pre-Civil War	0%
Post-Civil War	10%
1900	50%
1916	72%
1970	90%

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The Supreme Court's Great Compromise in 1970

Brady v. United States (1970):
"We would have serious doubts about this case if the encouragement increased the likelihood that defendants, advised by competent counsel, would falsely condemn themselves."

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The Innocent Defendant's Dilemma: An Innovative Empirical Study of Plea Bargaining's Innocence Problem 103 JOURNAL OF CRIMINAL LAW & CRIMINOLOGY 1 (2013)

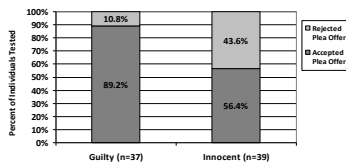


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Plea Bargaining and Innocence

Percentage of Participants by Condition (Guilty or Innocent)
Accepting the Plea Offer



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Comparative Study of Plea Bargaining

	<u>United States</u>	<u>South Korea</u>	<u>Japan</u>
"Guilty" Pleading	66.7%	65.7%	61.5%
"Innocent" Pleading	42.3%	28.5%	35.7%

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Comparative Study of Plea Bargaining

	<u>United States</u>	<u>South Korea</u>
<i>Rate of Innocents Falsely Accusing Other Student</i>	56%	40%

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