BARGAINED JUSTICE:
A COMPARATIVE ANALYSIS OF PLEA BARGAINING

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Plea Bargaining’s Triumph

Early Court Decisions
Regarding Bargained Justice

* Rex v. Warwickshall (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."
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.”

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.”

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.”
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 punishment."

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.

Plea Bargaining’s Shadowy Rise
The Supreme Court’s Great Compromise in 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.”

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

Plea Bargaining and Innocence

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<tr>
<th></th>
<th>Guilty (n=37)</th>
<th>Innocent (n=39)</th>
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<tbody>
<tr>
<td>Rejected Plea Offer</td>
<td>18.6%</td>
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<tr>
<td>Accepted Plea Offer</td>
<td>81.4%</td>
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Comparative Study of Plea Bargaining

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<th>United States</th>
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<td>“Guilty” Pleading</td>
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<td>“Innocent” Pleading</td>
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Comparative Study of Plea Bargaining

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<th>Rate of Innocents</th>
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<td>Other Student</td>
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