


# Isegora Briefs

**September/October 2025**

**Prepared by the Isegora Briefs Team**



**“Promoting equal  
opportunity in  
debate through  
accessible resources  
for all”**

**September/October 2025**

**Resolved: In the United States criminal justice system, plea bargaining is just.**

# Notes

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**Goodluck debating!**

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# Topic Analysis

## **Topic Analysis – Teshy Jalf**



# 1: Intro

The resolution asks whether the widespread practice of **plea bargaining** in U.S. criminal courts is just, i.e., fair and morally defensible. This topic has a unique twist: the Affirmative side essentially defends the **status quo**, since 95% or more of U.S. criminal cases are resolved by plea deals rather than trials. In contrast, the Negative is arguing that this entrenched practice is unjust (implying it ought to be reformed or abolished). This dynamic affects how debaters generate offense: Affirmatives will likely emphasize the chaos and injustice that would result from eliminating plea bargaining, while Negatives will spotlight the coercion and inequities within the current system. Below, we'll clarify key terms and then examine background, pro and con arguments, frameworks, and even kritiks/counterplans relevant to this LD topic.

## 1.1, Topicality (Key Terms and Interpretation)

Find the official Isegora Sep/Oct 2025 Topicality starter [here](#).

**1.1.1, Plea Bargaining:** Plea bargaining is a negotiation in criminal cases where a defendant agrees to plead guilty in exchange for a concession from the prosecutor, usually a reduced charge or a lighter sentence. In practice, this means skipping the trial: the defendant forgoes their right to a full trial and **“guarantees a conviction”** (by pleading guilty) while the State guarantees some leniency. Plea bargaining can take forms such as charge bargaining (pleading to a lesser offense), sentence bargaining (pleading guilty for a promise of a lighter sentence), or count bargaining (pleading to fewer charges if multiple counts are charged). Importantly, any plea deal must be approved by a judge, and in theory defendants should only plead guilty if they actually committed the crime (judges ask defendants to confirm this in open court). Supporters say plea deals **speed up court proceedings and provide flexibility**, whereas critics say the practice can **undermine justice** by prioritizing efficiency over truth.

**1.1.2, “Just”:** The term “just” means **fair, morally right, or in accordance with justice**. A **just** policy or action is ethically sound and treats people equitably. Cambridge Dictionary defines **just** as “fair; morally correct”. In the context of this resolution, we’re

evaluating whether plea bargaining **as practiced in the U.S.** meets the standards of justice, does it produce fair outcomes and uphold moral/legal principles? Affirmative debaters will likely define justice in a **consequentialist** or social welfare sense (emphasizing overall fairness to society and all parties), or argue that voluntary agreements between prosecution and defense are intrinsically just. Negatives may define justice in **deontological** terms (focused on rights and duties), arguing that justice demands strict protection of defendants' rights and equal treatment, which plea deals violate. How one defines "just" could shape the debate's value framework, e.g. **utilitarian justice (maximizing societal well-being) vs. Kantian justice (respecting autonomy and rights).**

**1.1.3, U.S. Criminal Justice System:** The resolution explicitly situates the debate in **"the United States criminal justice system,"** meaning all analysis should focus on U.S. laws, courts, and practices. The U.S. criminal justice system is the network of laws, procedures, and institutions (police, prosecutors, courts, jails/prisons) that enforce criminal law, bound by the U.S. Constitution's due process protections (e.g. the right to trial by jury). This scope wording ("In the United States...") means debaters should generally **keep arguments focused on U.S. practices and impacts**. You can draw analogies from other countries or hypothetical systems (for example, noting that some countries have limited plea bargaining, or envisioning what would happen if the U.S. banned plea deals entirely), but the crux is whether plea bargaining is just **in the U.S. context**. The Affirmative isn't **advocating** a new policy; they're affirming that the current practice is just, so international comparisons must ultimately loop back to U.S. principles, laws, or outcomes. It might be interesting to see how international examples tie into the US.

**1.1.4, Burdens and "Status Quo" Affirmative:** Because the resolution is stated as a declarative value judgment ("plea bargaining is just"), the **Affirmative must defend plea bargaining as generally just**, whereas the Negative must prove it is unjust. This raises a question: does Affirmative have to defend **all aspects** of plea bargaining in America, or just the concept on-balance? Most debaters will treat it as an **on-balance evaluation**: if plea bargaining produces more justice than injustice (or if it's a necessary component of justice), then it can be considered "just" overall. Affirmatives will likely acknowledge that **individual plea deals can be abused or imperfect**, but argue that **systemically the practice is justified**. Negatives, on the

other hand, will highlight specific harms and principles to claim that **even if plea bargaining has benefits, its inherent flaws make it unjust**. Another unique facet is that Affirmative here is essentially defending the status quo (the current system heavily relies on plea deals), while Negative is critiquing it. This flips the usual aff strategy where Affirmative's "offense" might come in the form of disadvantages or chaotic outcomes in a Negative world where plea bargaining is abolished, whereas Negatives will generate offense by indicting the existing system. Affirmatives should be prepared to counter a purely moral condemnation by arguing **comparative worlds**: e.g., even if plea bargaining isn't perfect, eliminating it would create far worse injustices. Meanwhile, Negatives may contend that Affirmative must defend **all major consequences of plea bargaining** (including wrongful convictions or disparities), if they can prove the practice fundamentally unjust in principle or effect, they win. Clarifying this "burden of proof" in round (is it absolute or on-balance?) will be important. Most likely, judges will weigh which side presents the more compelling case of justice vs. injustice in the practice overall.

## 1.2, Background

**1.2.1, History of Plea Bargaining:** Interestingly, plea bargaining was not always the dominant method of resolving cases. For much of the 19th century, bargaining with defendants was viewed as shady or improper. In this time, trials were the norm. Early examples of plea deals did occur (even as far back as the [1692 Salem witch trials](#), accused witches were promised life if they confessed, effectively an early plea deal). But American courts were initially surprised and skeptical when defendants tried to plead guilty; judges sometimes pushed them to go to trial instead. It wasn't until the **20th century** that plea bargaining became commonplace. By the early 1900s, some big-city courts saw the majority of cases resolved by guilty pleas (e.g. [in 1920s Chicago, reportedly ~96% of felony cases were settled by pleas](#)). The practice "mushroomed" in the mid-20th century, and by the 1960s it was widespread even as some appellate courts still had misgivings. A landmark moment came in **1971** when the U.S. Supreme Court explicitly recognized plea bargaining's legitimacy: in [Santobello v. New York](#), the Court called plea bargaining "an essential component of the administration of justice", not an evil to be stamped out, but a necessary tool for handling cases. From that point on, plea bargains were formally enshrined as a normal part of the U.S. system (backed by rules to ensure pleas

are voluntary and on record). This historical shift from rarity to normality was largely driven by **practical pressures**, as society urbanized and caseloads grew, courts could not hold full trials for every charge. Plea bargaining evolved “out of a desire to efficiently dispose of cases” rather than to pursue abstract justice. Understanding this history helps frame the debate: plea bargaining rose as a **pragmatic response** to an overburdened system, and now the question is whether that pragmatic solution aligns with or contradicts our concept of justice.

**1.2.2, Prevalence and Dependence: Plea bargaining utterly dominates U.S. criminal justice today.** Numerous sources [confirm](#) that **around 90, 95% of criminal convictions come from guilty pleas**, not trials. For instance, [a Bureau of Justice Statistics](#) report found that in 2003, about **95% of federal cases** were resolved by a guilty plea. Scholars estimate **90, 95% of state and federal cases** are settled through plea deals, year in and year out. [In federal court](#), only about 2, 3% of cases go to trial. This means the **entire system** has adapted to rely on pleas. Judges, prosecutors, and public defenders all structure their workloads under the assumption that most cases will plead out. **What would happen if every case had to go to trial?** Simply put, the system would implode. Courts lack the resources, like judges, courtrooms, trial days, to try even a significant fraction of cases. [One judge said](#) that if they had to try every case, **“we would have a docket dating back to the 1800s”**. In other words, court clog. Teams could look towards last year’s Policy topic (IPR) for some general prep on court clog. [Another observed](#) that many counties would go **bankrupt** if forced to provide full trials for all defendants. **Plea deals save enormous time and expense:** they “produce prompt and usually final disposition of most criminal cases,” preventing lengthy pretrial detention or backlogged dockets. By shortening the time between charge and resolution, pleas can even improve prospects for **rehabilitation**, since defendants start serving sentences or probation sooner and can move on with their lives. This ubiquity is a double-edged sword in the debate. For Affirmative, it’s evidence that plea bargaining is a **practical necessity**, or a necessary condition for justice to be delivered at all. Simply put, it ties back to the saying justice delayed is justice denied. For Negative, it raises the alarm that **if** plea bargaining is unjust, then injustice is happening at massive scale “in the shadows” of a largely hidden process. Both sides agree on one thing: eliminating plea bargains would **radically reshape** the U.S. criminal justice system. It’s hard to even fathom how 100% trials could be managed without major changes. (We might see huge increases in dismissals, or minor offenses decriminalized, or a giant influx of funding to courts)

Debaters should be prepared to address this **alternative world**: Affirmatives will argue that a world without plea bargaining would be **chaotic and less just** (with overflowing courts, or dangerous offenders walking free due to case triage), while Negatives may argue that a no-plea world, though requiring adjustment, would be **morally purer and force beneficial reforms** (e.g. prosecutors would only bring strong cases, harsh laws would be reined in, etc.). Indeed, [some legal scholars speculate](#) that without plea deals, prosecutors would focus only on cases with strong evidence, potentially **reducing** the number of innocents coerced into pleas and ensuring serious criminals face trials. These points are hotly debated, which is exactly what makes this topic rich for analysis.

**1.2.3, Notable Attempts and Comparisons:** While the U.S. universally uses plea bargaining today, there have been occasional experiments to curb it. A famous example is **Alaska's ban on plea bargaining in 1975**, when the state's Attorney General prohibited prosecutors from making charge or sentence bargains. [Studies](#) of the Alaska experiment found that explicit plea bargaining was largely eliminated, but the system adapted in other ways (e.g. "implicit" bargains or more charging discretion). Alaska's justice system did **not** collapse, but case processing slowed and some discretion simply shifted from prosecutors to judges (who retained sentencing leeway). The ban was eventually relaxed. This shows that **alternatives to widespread plea deals are possible**, but they often trade one kind of discretion for another. Internationally, many **civil law countries** historically avoided plea bargains, insisting on at least a simplified trial for every case. However, even places like **Italy, France, Japan,** and others have in recent decades adopted limited forms of plea-like procedures to handle minor cases or to expedite justices. These comparisons can inform the debate: they illustrate that there **are** other models (like significantly limiting plea deals to minor offenses, or requiring a judge-led inquiry before accepting a plea). But ultimately, because the resolution centers on the U.S., debaters should use comparisons only to shed light on what is just or unjust **for America's system and values**. For instance, one might argue that if other democracies manage with far fewer plea bargains, perhaps the U.S. could too, or conversely, that the U.S.' unique scale of cases and punitive laws make plea bargaining especially necessary here.

With terms defined and context set, let's delve into the arguments **for affirming** (defending plea bargaining as just) and **for negating** (charging that plea bargaining is unjust).

## **2: Affirming (Pro), Why Plea Bargaining is Just**

If you're Affirmative, you are upholding that plea bargaining in the U.S. criminal justice system is a just practice. Broadly, expect Affirmatives to argue that **plea bargaining provides critical benefits to the justice system and to stakeholders**. Benefits that make outcomes **more just overall**. Affirmatives would usually defend that Plea Bargaining is generally just, instead of having a blanket statement. Many pro-plea arguments are pragmatic: without pleas the system would fail to deliver timely or fair justice. However, Affirmatives can also mount moral arguments (e.g. that plea bargaining can be ethical because it is voluntary and mutually beneficial, or that it embodies mercy and proportionality). Here are several likely Affirmative contentions:

**2.1, System Efficiency and Preventing Collapse:** The cornerstone of the pro side is that **plea bargaining is a practical necessity to keep the justice system functioning**, and this necessity itself serves justice. Given that **over 95% of cases end in plea deals**, it's clear courts would be overwhelmed if every case went to trial. Affirmatives will argue that **justice delayed is justice denied**. To put this into perspective, if we tried to litigate every charge, victims would wait years for closure, defendants (many of them in jail pre-trial) would languish without resolution, and countless cases might simply be dropped due to lack of resources. A plea-driven system avoids those outcomes. In the words of one [judge](#), if plea bargains vanished, **"the system would be overwhelmed"**. Courts might backlog so severely that dangerous offenders could not be tried in a timely manner (potentially leading to charges being dismissed on speedy trial grounds or defendants released pending distant court dates). Taxpayers would shoulder a huge burden to fund many more courts, judges, jurors, prosecutors, defense attorneys, etc. Affirmatives can point out that we currently barely fund public defenders and courts to handle the small fraction of trials we do have, to handle 20x more trials is fiscally impossible. One [National Judicial College survey](#) found that **90% of judges believe plea bargains advance justice**, largely **for practical reasons**. They cite that without plea deals, **many counties would go bankrupt trying every case** **Plea bargaining thus preserves the rule of law by keeping the system operational**. It ensures there is a consequence for the vast majority of offenses, whereas in a no-plea world prosecutors might have to be far more selective (many crimes going unpunished due to resource limits is arguably **unjust**, especially to victims or to law-abiding

society). Efficiency alone isn't the **moral** basis of justice, but Affirmatives will say it's a precondition: a system that collapses under its caseload cannot deliver justice at all. As [one commentary](#) puts it, plea bargaining provides the **"flexibility necessary to administer justice in an overburdened court system."** Prompt resolutions via pleas also reduce harmful pretrial **detention**. Defendants who can't make bail often sit in jail waiting for trial; with a plea, they can either get out sooner (if it's for "time served" or probation) or at least start serving a known, often shorter sentence. The U.S. Supreme Court noted this benefit, saying plea bargaining **"preclud[es] lengthy pretrial confinement"** by rapidly finalizing cases. In short, Affirmatives will frame plea bargaining as the **oil in the gears** of the justice machine, without it, the gears grind to a halt, causing greater injustice system-wide. Efficiency in this sense isn't about saving money; it's about **speedy justice**. A system that can resolve cases within months via pleas is more just than one that takes many years to give anyone their day in court. (This argument often ties into a **utilitarian framework**, justice is serving the greatest good for the greatest number, and here that means avoiding a scenario where the entire public and thousands of defendants/victims suffer from an overwhelmed system.)

**2.2, Benefits for Defendants (Autonomy and Leniency):** Affirmatives can also argue that plea bargaining **advances justice for defendants** by giving them **agency and mercy** in the process. A defendant who knows they committed a crime has the option to **take responsibility and guarantee a lesser punishment** through a plea, rather than roll the dice at trial and risk a draconian sentence. In many cases, this is a rational and even empowering choice. One judge [noted](#), **"The guilty know they're guilty and negotiate the best possible solution... It saves taxpayer money [and] brings speedy conclusions to cases, thereby reducing backlogs."** From the defendant's perspective, a plea deal often **is** the fairest outcome, they receive a punishment but usually a proportionate one, not an extreme penalty. For example, perhaps a first-time offender who made a mistake can plead to a lesser charge and avoid a felony record or prison time. This could be seen as **just outcome** balancing accountability with mercy. In a trial, that same person might technically face a harsh mandatory minimum that doesn't fit their circumstances; the plea bargain allows flexibility to reach a fairer result. Affirmatives might invoke **social contract theory** here: the justice system's purpose is not only to punish but to rehabilitate and reintegrate. By shortening sentences or charges in appropriate cases, plea bargaining can better serve justice than the one-size-fits-all statutes. The U.S.

Supreme Court in [Santobello](#) also argued that plea deals **“enhance the prospects of offender rehabilitation by shortening the time between charge and disposition.”** The sooner a case is resolved, the sooner a guilty person can begin whatever program or sentence will help them move forward. Another aspect is **certainty**, trials are unpredictable, and even innocent defendants might be found guilty and get max sentences, while guilty defendants might occasionally walk free. Plea bargaining ensures a **certain, agreed-upon outcome**, which could be seen as more just than a lottery. Additionally, pleas require defendants to **waive their trial rights knowingly**, Affirmatives will emphasize that plea colloquies (the judge’s questioning) are meant to ensure the defendant is voluntarily agreeing. Thus, one can argue **it’s an exercise of defendant autonomy**; they are choosing the known lesser punishment over the unknown. As long as that choice is made with counsel’s advice and not tortured out of them, isn’t respecting individuals’ choices a just approach? Some philosophical frameworks (like **contractualism**) could spin plea deals as a contract that both sides enter for mutual benefit, the defendant gets leniency, the state saves resources, and such contracts, if freely entered, are just. Empirically, **the fact that 90-95% of defendants choose to plead** suggests that they perceive it as beneficial; if it were uniformly against their interests, so many wouldn’t do it. Affirmatives can [quote](#) that **“pleading guilty can reduce one’s sentence by about two-thirds” on average**, that leniency is a huge incentive. Justice might be served by rewarding those who admit guilt early (saving victims from testifying and saving state costs) with lesser punishment. This is sometimes framed as **mercy** or **efficiency justice**. One prosecutor in a roundtable gave an [example](#) of offering a big plea reduction in a case where the mandatory trial sentence would’ve been 15-to-life for a gun possession, he felt **15-to-life was grossly disproportional**, so he pled it down to a few years to reach a just result. In such instances, plea bargaining **corrects** overly harsh laws and produces more just outcomes. All these points bolster the idea that for many defendants, plea bargaining **increases fairness** compared to the trial alternative.

**2.3, Benefits for Victims and Society:** Another niche affirmative angle is that plea bargaining can **better serve victims and public safety**, aligning with justice. Trials can be incredibly hard on victims of crimes, especially in violent or sensitive cases (e.g. sexual assault, child abuse). A plea deal spares victims and witnesses from reliving trauma on the stand. One judge [noted](#) that with guilty pleas, victims of sexual assault **“don’t have to appear in court and describe what happened to them.”** preventing **“revictimization.”** Justice is not only about defendants; it’s



also about honoring victims' rights and well-being. By securing a conviction through a plea, the victim sees the offender held accountable **without enduring a trial**. This can provide **swift closure**, the case is resolved, and they can move on, rather than awaiting a trial that might be months or years away and rife with uncertainty. Moreover, when defendants plead guilty, there's no chance of an acquittal that might set a possibly guilty person free. In that sense, plea bargaining **guarantees a conviction** [britannica.com](https://www.britannica.com) and punishment, which some argue **protects society** better than the risk of losing at trial (perhaps due to a technicality or evidentiary issue). From a utilitarian public safety perspective, it might be better to have **some** punishment for an offender via plea than to risk no punishment at all. Plea deals also often require cooperation from defendants to help law enforcement (e.g. testifying against co-conspirators, or revealing information) in exchange for leniency. This can help **dismantle larger criminal networks** or solve other cases, arguably increasing justice for society. For example, a low-level drug offender might plead and provide info that leads to catching a kingpin, a net win for justice. Additionally, by resolving cases faster, plea bargaining **reduces case backlog**, meaning **other** cases (including those of innocent people or serious crimes) can get attention sooner. If every case went to trial, some victims would never see justice because the queue would be too long; with pleas, the system can prioritize trials for the truly contested or heinous cases. Affirmatives can frame this as **triage that benefits everyone**: the court's finite trial capacity can be reserved for the most important or uncertain cases, while routine cases are handled by agreement. Overall, society's faith in the justice system might be higher if cases are resolved efficiently with clear outcomes, rather than tens of thousands of cases pending indefinitely. (Negatives will later argue the opposite, that backroom deals reduce public trust, but Affirmative can contend that **endless delays and dismissals** due to overload would be even worse for public confidence.)

**2.5, Frameworks for Affirmative:** In terms of philosophical frameworks, Affirmatives have a few options to justify why plea bargaining is just. A common one is **utilitarianism** or **consequentialism**, i.e., plea bargaining produces better overall outcomes (for society, defendants, victims, and the justice system's functioning) than the alternative. If justice is defined by maximizing social welfare or net benefits, pleas clearly prevent many harms (trials overload, long waits, higher costs, etc.) and thus are justified. Another possible framework is a **social contract** or **contractarian ethics**: one could argue that justice arises from mutual

agreement and cooperation. A plea deal **is** an agreement between the individual and the state, essentially a micro-social contract to resolve the case. Since both parties consent and benefit (each gets something they want), it can be seen as **morally just** on voluntarist grounds. Some Affirmatives might also appeal to **Rawlsian “justice as fairness”** by contending that, behind a veil of ignorance, rational people would accept plea bargaining as a necessary part of a fair criminal justice system, because no one would want to face an indefinitely delayed trial or an overburdened system that might collapse. If you didn’t know whether you’d be victim or accused, you might design a system that can handle cases efficiently and also offer mercy to those who admit guilt. (That said, Rawls might be double-edged here; Negatives could argue a person behind the veil would want robust protections, not shortcuts). Another angle: **mercy and rehabilitation as components of justice**, some philosophies (especially ethical theories influenced by Kant’s Kingdom of Ends or Aristotelian equity) might argue that strict justice (everyone gets exactly what law prescribes) should be tempered with mercy and practical wisdom. Plea bargaining institutionalizes a form of mercy (leniency) and practical accommodation to circumstance, which could be morally virtuous as long as core rights are respected. In sum, Affirmatives will likely combine pragmatic arguments with a value premise like “Justice means the effective and fair administration of law” and a criterion like “maximizing the overall fairness and functionality of the justice system.” Empirically, they’ll bolster it with evidence from judges, courts, and scholars who say plea bargaining is indispensable and even **advances** justice in many situations.

### **3: Negating (Con), Why Plea Bargaining is Unjust**

Negative teams will come at the resolution by asserting that **plea bargaining, as practiced in the U.S., violates principles of justice and produces unjust outcomes**. There is a rich literature criticizing plea deals, from legal scholars decrying the **“trial penalty”** coercion to civil rights advocates highlighting racial disparities to philosophers questioning the morality of exchanging rights for speed. Below are several major arguments the Negative is likely to advance:

**3.1, Coercion & The Trial Penalty (Waiving Rights Under Duress):** The most prominent argument against plea bargaining is that it **coerces defendants**, even innocent ones, to surrender their fundamental rights, due to the severe **“trial penalty.”** The **trial penalty** refers to the much harsher sentence a defendant faces if convicted at trial compared to the sentence they are offered if they plead guilty. [In federal cases](#), for example, the average sentence after a trial is roughly **3 times longer** than the sentence for a similar offense after a plea; in some cases it can be 8, 10 times longer. This enormous disparity is effectively a **punishment for exercising the right to trial**. Negatives will contend that such a system is **inherently unjust**: it presents a defendant with a terrifying choice, **accept guilt (even if you might be innocent) and get a light sentence, or insist on your constitutional right to trial and risk being slammed with a far greater sentence**. This is often analogized to a **“your money or your life”** scenario, hardly a free choice. Even if no one is holding a literal gun to the defendant’s head, the **prosecutor** is holding a metaphorical one: an indictment stacked with charges carrying decades in prison if fully pursued. Prosecutors often **overcharge** defendants (piling on more/higher charges than necessary) precisely to gain leverage for a plea deal. This imbalance of power, the state can afford to threaten the max, while defendants fear gambling with their lives, leads to what critics call **“coerced” guilty pleas** rather than true voluntary confessions. It undermines the idea that pleas are **consensual**; as [one judge remarked](#), you sometimes get an **“uneasy feeling that an innocent person sees the [plea] offer as their only choice while facing substantial prison time if convicted [at trial].”** The data bear out that many will plead guilty solely out of fear. In fact, due to the trial penalty, only ~2, 5% of cases go to trial at all,

suggesting that the **right to trial by jury (6th Amendment)** is becoming extinct. Negatives will frame this as a moral travesty: a right so fundamental that the Constitution protects it is effectively unavailable because the system penalizes you for using it. **Waiving a right is not unjust per se**, but waiving because you're **afraid** of what will happen if you don't is not a free choice. It's worth noting that **innocent people do plead guilty** under these pressures. [A report](#) from the National Registry of Exonerations found that about **18% of exonerees** (people later proven innocent) had pleaded guilty to crimes they didn't commit. In DNA exoneration cases, nearly 1 in 10 involved a false guilty plea. These are shocking statistics, they mean potentially thousands of innocent Americans have felony convictions because of plea deals. Nothing could be more **unjust** than convicting the innocent, and plea bargaining's coercive environment directly contributes to that. Negatives will emphasize stories of people taking pleas to avoid the risk of worse: e.g., teens pleading to manslaughter when threatened with a life sentence for a murder they insist they didn't do, simply because they couldn't take the chance of a wrongful conviction at trial. This **"plead guilty or else"** dynamic is often likened to a **prisoner's dilemma**: each defendant is pushed to confess for a lighter penalty rather than assert innocence, which may be rational individually but can lead to systemic injustice. **Justice** should mean that guilt is determined by evidence and fair trial, not by who's most risk-averse or fearful. The trial penalty essentially **punishes people for asserting their rights**, which from a deontological perspective (Kantian or rights-based theories) is abhorrent, exercising a right should not incur a punishment. The presence of coercion also means pleas fail the standard of **voluntariness** that justice demands. An ethical transaction requires free consent; Negatives argue plea bargaining offers **coercive bargains** that no truly free person would accept if not under dire threat. Thus, the entire edifice is built on squeezing defendants, often the poor and marginalized, to give up their day in court. This argument often serves as the **core Negative contention**, and they'll back it with evidence from organizations like the [NACDL](#): **"trial sentences are roughly 3× higher than plea sentences... This sentencing differential is extremely coercive... the trial penalty is so coercive that it causes some innocent people to plead guilty."**

**3.2, Disparities & Unfairness (Unequal Justice):** Negatives will also argue that plea bargaining exacerbates **inequalities** in the justice system, meaning it's unjust by failing the test of equal treatment under law. One major concern is **racial and socioeconomic disparities** in

plea outcomes. Studies show that **Black and other minority defendants often get worse plea deals than white defendants**. [For example, a comprehensive study in Wisconsin](#) found that white defendants were **25% more likely than Black defendants to have their top charge dropped or reduced in a plea deal**; Black defendants more often had to plead to the highest charge and thus ended up with harsher outcomes. [In misdemeanor cases](#), the disparity was even more stark: white defendants were nearly **75% more likely** than Black defendants to have all charges that carried possible jail time dropped or reduced, whereas Black defendants were more likely to be convicted and even incarcerated for similar charges. These statistics indicate that **prosecutors (consciously or not) may be giving better bargains to whites while penalizing people of color**. Implicit bias can lead prosecutors to see minority defendants as riskier or “criminal,” so they offer fewer leniencies. Similarly, **socioeconomic status** plays a role: defendants with money can afford private attorneys who might negotiate better deals or get bail (so they’re not in jail awaiting trial), whereas poor defendants rely on overworked public defenders and often sit in pretrial detention. A detained defendant is more likely to feel pressure to plead just to get out of jail sooner ([one study cited](#) found **detained defendants are 25% more likely to plead guilty** than similarly situated released defendants). That’s a disparity based on wealth (ability to post bail). Likewise, those who can’t afford top legal counsel may not get favorable plea terms. All of this undermines **justice as fairness**. Two people accused of the same crime could end up with very different bargains because of their race, income, or jurisdiction. Justice should be blind to those factors. If plea bargaining produces a **“two-tiered” justice, lenient deals for some, harsh for others, it is unjust**. [Moreover](#), prosecutors hold **immense discretion** in the plea process, often unchecked. This can lead to inconsistent outcomes: the deal you get might depend on which prosecutor or judge you draw, not purely on the merits of the case. [One judge observed](#) that oftentimes **“plea bargains are given to defense attorneys that the prosecutor likes or is afraid to face in court”**, implying a kind of old-boys network or personal bias can skew results. Such arbitrary differences violate formal justice (treat similar cases alike). Negatives can also mention **gender or location disparities**, for instance, some counties may have plea practices that are more punitive than others, meaning justice by geography. All these inequities are **hidden** behind closed doors, so they’re less likely to be corrected than, say, a jury verdict disparity. In sum, plea bargaining fails the Rawlsian or egalitarian conception of justice. If one’s outcomes depend on skin color or bank account more than actual culpability, the system is unjust. This contention pairs well with a

**critical race or class critique:** plea bargaining becomes a tool that perpetuates systemic racism and oppression of the poor (more on that in the kritik section). Negatives will use evidence to show measurable disparities, for example, that **Black defendants receive less favorable plea terms than whites in similar situations**. When “equal justice under law” is a bedrock principle, any practice that consistently produces unequal results along racial or economic lines is deeply unjust.

**3.3, Kritiks and Alternative Strategies:** Given the progressive nature of High School LD, some Negatives will go beyond pragmatic harms and indict the **underlying system or assumptions** that make plea bargaining possible. One potential **kritik** is a “**Capitalism K**” or **efficiency kritik**: The Negative could argue that plea bargaining reflects a capitalist/commercial logic invading justice, it commodifies and trades liberty for the sake of efficiency and cost-saving. Instead of treating defendants as individuals with rights and intrinsic dignity (ends in themselves, per Kant), the system treats them as cogs to be processed cheaply. Thus, Affirmative’s defense of plea deals is complicit in a broader neoliberal logic that prioritizes efficiency over human value. This K would claim that **true justice cannot be achieved in a system that operates like a factory or market**, negotiating human freedom as if it’s a bargain sale. Evidence for this might include critiques that say “**the main justification for plea bargaining is efficiency**”, and many believe that’s a “necessary evil”, the K would question why we accept such an evil and whether the Affirmative’s mindset reinforces a harmful system. Another powerful kritik could be a **Critical Legal Studies or Abolitionist K**: This would assert that plea bargaining is a linchpin of the **mass incarceration** regime and a tool of oppressive state power. By making convictions easy and obscuring them from scrutiny, plea deals enable the U.S. to maintain the world’s highest incarceration rate, disproportionately locking up Black and brown people. The Kritik would argue that merely reforming or keeping plea bargaining (Aff’s stance) perpetuates structural racism and injustice; instead, we must radically rethink or abolish the punitive system (“abolish ICE/prisons” logic). An abolitionist perspective might say that the **entire U.S. criminal justice system is unjust** (built on white supremacy, class domination, etc.), so debating tweaks like plea bargaining misses the forest for the trees. They might encourage rejecting the Affirmative as it legitimizes a fundamentally rotten system. Negatives could also run a **rights-based kritik**: e.g., using Kantian ethics to claim that plea bargains treat defendants as a means to an end (disposing of cases) rather than respecting

their intrinsic right to a fair trial, thus violating the categorical imperative. Under Kant's framework, even if plea bargaining has good outcomes, **using coercion to force a choice violates moral law**. The Affirmative position might be portrayed as consequentialist reasoning that a Kantian or Rawlsian would reject because it sacrifices individuals' rights for aggregate benefits. In terms of **counterplans or alternative solutions**, a Negative might propose **reforms that mitigate the injustices of plea bargaining without complete abolition**. For example, a **Counterplan** could be: "Implement strict trial penalty limits and require transparency for plea offers." This could involve laws that say a post-trial sentence cannot exceed, say, 20% more than the last plea offer, reducing the coercive gap. Or require prosecutors to put plea offers on the record (as some have suggested), so disparities can be tracked and addressed. Another CP might be to **increase funding for courts and public defenders** drastically, so that more trials can happen and bargaining is less coercive, basically removing the necessity argument of the Aff by solving the resource issue. Yet another could be adopting the **Alaska model**: ban or sharply curtail plea bargaining (perhaps only allow pleas to the original charge with no concessions), forcing more trials or outright dismissals of weaker cases. The CP strategy would be to capture some Aff impacts (like reducing case backlog by also reducing the number of prosecutions, or by speeding up trials with more resources) while curing the injustices Aff ignores. While traditional LD doesn't always include plans/CPs, in modern progressive LD it can, and here it serves to highlight that the Negative doesn't have to defend chaos, they can say **"Yes, ending plea bargaining as is would be disruptive, but here's an alternative path to justice that avoids that."** For instance, they might argue for **shrinking the criminal justice net**: prosecute fewer victimless crimes, use diversion programs, etc., so that trials for truly serious cases **are** feasible without relying on pleas. This flips the script: maybe the **status quo over-criminalization** is the real problem, and plea bargaining just papers it over. Eliminating plea deals could force the system to confront mass incarceration and scale back, an outcome the Negative might frame as **more just in the long run**. In short, Negatives have the opportunity to widen the lens and argue that Affirmative's defense is myopic, focusing on short-term practicality while ignoring deeper injustices in values, structures, and alternatives. This can make for high-level debate about what **justice** really demands: convenience or principle? Rights or results?

## **4: Closing Thoughts**

This topic (“**Plea Bargaining is Just**”) invites a pretty good and interesting debate on the Criminal Justice System. Affirmatives will largely be saying, “It may not be perfect, but it’s necessary and beneficial on the whole,” whereas Negatives will be saying, “Necessary doesn’t equal just, here’s why this practice violates core principles.” Debates will likely center on what definition of justice we prioritize. Expect a lot of **utilitarian vs. deontological framework contrast**. Many rounds might come down to **“efficiency and overall outcomes” vs “individual rights and fairness.”** As an Affirmative, be ready to defend against emotionally powerful stories of coercion and innocence, you’ll need to mitigate those by either downplaying their frequency, arguing they’re fixable within the system, or claiming the alternative (no pleas) would cause even worse injustices (like many more innocents jailed awaiting trial or convicted due to rushed trials). As a Negative, be prepared to answer “OK, but what’s the alternative?” If the only vision you offer is a flooded, chaotic court system, some judges may side with Aff out of fear of that chaos. So Negatives should articulate either a **transitional strategy** (fewer prosecutions, more funding, etc.) or a moral stance that even if the transition is tough, it’s the ethically correct path. High-level philosophical debate is also likely: e.g., can something be called “just” if it’s essentially a compromise with injustice to keep things running? Affirmative might say yes, in the real world justice requires compromise and choosing the lesser evil; Negative will say that mindset is exactly why injustices persist. In terms of strategy, Affirmatives may want to **pre-empt kritiks** by acknowledging issues like racism or classism but arguing those are problems of the broader system, not plea bargaining per se (or that plea deals could be reformed to address them). Negatives, meanwhile, should leverage the fact that Affirmative has to defend the **current system** which is ripe for attack on multiple fronts, from wrongful convictions to racial bias, making a wide-ranging case that **“just” is a label the status quo simply doesn’t deserve.** Ultimately, this topic will force debaters to wrestle with a harsh reality: **roughly 19 out of 20 convictions in the U.S. never see a trial**. Is that a pragmatic form of justice, or a betrayal of it? The answer will depend on how well each side argues their vision of what justice truly means in a criminal system. Good luck, and remember to support your points with credible evidence, there’s plenty out there on both sides of this issue to deepen your analysis and make the debate enlightening for all.



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- OJP/Connecticut Law Review, Supreme Court in **Santobello** calling plea bargaining **"essential to the administration of justice"**, enabling prompt case resolution and rehabilitation [ojp.gov](https://ojp.gov).
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- Equal Justice Initiative, study findings that white defendants receive more charge reductions in plea deals than Black defendants, e.g. 25% higher likelihood of charge drop [eji.org](https://eji.org) and 75% higher for avoiding jail on misdemeanor [eji.org](https://eji.org).

# Topicality

# **Criminal Justice System**

## Generic

**The “Criminal Justice System” is responsible for fair trials and reducing crime.**

**Cocklin 77** [Cocklin, K R. “NCJRS Virtual Library.” FUNCTIONS OF CRIMINAL JUSTICE - PROCEDURES, TASKS AND PERSONNEL (FROM FUNDAMENTALS OF CRIMINAL JUSTICE - A SYLLABUS AND WORKBOOK, 1977, 2D ED., BY DAE H CHANG - SEE NCJ-44045) | Office of Justice Programs, 1977, [www.ojp.gov/ncjrs/virtual-library/abstracts/functions-criminal-justice-procedures-tasks-and-personnel](http://www.ojp.gov/ncjrs/virtual-library/abstracts/functions-criminal-justice-procedures-tasks-and-personnel).] //Isegora

**THE CRIMINAL JUSTICE SYSTEM CONSISTS OF THE POLICE, THE COURTS, AND CORRECTIONS.** THE MAJOR TASKS OF THE POLICE INCLUDE SELECTIVELY ENFORCING THE LAW, PROTECTING THE PUBLIC, ARRESTING SUSPECTED LAW VIOLATORS, AND PREVENTING CRIME. **THE COURTS ARE RESPONSIBLE FOR ASSURING THAT SUSPECTED CRIMINALS RECEIVE FAIR TRIALS AND FOR DETERMINING THE GUILT OR INNOCENCE OF THE ACCUSED.** THE GOAL OF THE CORRECTIONAL SUBSYSTEM IS TO REHABILITATE OFFENDERS OR TO ALTER THEIR BEHAVIOR SO THAT THEY ARE SOCIALLY ACCEPTABLE AND LAW ABIDING. **THE GOAL OF ALL THREE SUBSYSTEMS IS THE REDUCTION OF CRIME IN THE COMMUNITY.** ALTHOUGH THERE EXISTS A SERIES OF STEPS FOLLOWED BY PERSONS WHO ENTER THE CRIMINAL JUSTICE PROCESS, THE ISSUE OF WHETHER THAT PROCESS REFLECTS THE UNITY OF PURPOSE IMPLIED BY THE TERM 'SYSTEM' REMAINS CONTROVERSIAL. THE ROLES AND RESPONSIBILITIES OF PERSONNEL WITHIN THE POLICE, COURTS, AND CORRECTIONS SUBSYSTEMS ARE REVIEWED. INCLUDED ARE DISCUSSIONS OF POLICE ORGANIZATIONS, CRIME SCENE RESPONSIBILITIES OF THE POLICE, POLICE CHAIN OF COMMAND AND AGENCY DIVISIONS, COURT STRUCTURE, SELECTION OF JUDGES, AND THE FUNCTIONS OF PROSECUTORS, DEFENSE ATTORNEYS, OTHER COURT PERSONNEL, JURIES, CORRECTIONAL OFFICERS, PROBATION OFFICERS, AND PAROLE OFFICERS. CHARTS DEPICTING THE ORGANIZATION OF A MUNICIPAL POLICE DEPARTMENT AND THE MOVEMENT OF CASES THROUGH THE CRIMINAL JUSTICE SYSTEM ARE PROVIDED. A BIBLIOGRAPHY AND A CHAPTER TEST ARE INCLUDED.

# **Plea Bargaining**

## Generic

**“Plea Bargaining” is the act of agreeing to plead guilty for reduced punishment.**

**LII** [“Plea Bargain.” Legal Information Institute, Legal Information Institute, [www.law.cornell.edu/wex/plea\\_bargain](http://www.law.cornell.edu/wex/plea_bargain). Accessed 1 Aug. 2025.] //Isegora

Many successful criminal prosecutions in the United States end not with jury trials, but with plea bargains. Plea bargains are agreements between defendants and prosecutors in which defendants agree to plead guilty to some or all of the charges against them in exchange for concessions from the prosecutors. These agreements allow prosecutors to focus their time and resources on other cases, and reduce the number of trials that judges need to oversee.

## Unconstitutional

### **“Plea Bargaining” is inherently unconstitutional.**

**LII** [“Plea Bargain.” Legal Information Institute, Legal Information Institute, [www.law.cornell.edu/wex/plea\\_bargain](http://www.law.cornell.edu/wex/plea_bargain). Accessed 1 Aug. 2025.] //Isegora

Although plea bargaining allows the criminal justice system to conserve resources, the plea bargains are controversial. Some commentators oppose plea bargains, as they feel that plea bargains allow defendants to shirk responsibility for the crimes they have committed. Others argue that plea bargains are too coercive and undermine important constitutional rights. Plea bargaining does require defendants to waive three rights protected by the Fifth and Sixth Amendments: the right to a jury trial, the right against self-incrimination, and the right to confront witnesses. The Supreme Court, however, in numerous cases (such as *Brady v. United States*, 397 U.S. 742 (1970) has held that plea bargaining is constitutional). The Supreme Court, however, has held that defendants’ guilty pleas must be voluntary, and that defendants may only plead guilty if they know the consequences of doing so. *McCarthy v. United States* 394 U.S. 459 (1969).

**Just**



## Moral

Being “just” is being morally good.

**Merriam-Webster** [“Just Definition & Meaning.” *Merriam-Webster*, Merriam-Webster, [www.merriam-webster.com/dictionary/just](http://www.merriam-webster.com/dictionary/just). Accessed 1 Aug. 2025.] //Isegora

acting or being in conformity with what is morally upright or good

## Fair

“Just” is fairness

**Cambridge Dictionary** [“Just | Definition in the Cambridge English Dictionary.” Cambridge Dictionary, Cambridge Dictionary, [dictionary.cambridge.org/us/dictionary/english/just](https://dictionary.cambridge.org/us/dictionary/english/just). Accessed 1 Aug. 2025.] //Isegora

fair; morally correct:

# In

**“In” shows inclusion.**

**Merriam-Webster** [“In Definition & Meaning.” Merriam-Webster, Merriam-Webster, [www.merriam-webster.com/dictionary/in](http://www.merriam-webster.com/dictionary/in). Accessed 9 Aug. 2025.] //Isegora

used as a function word to indicate inclusion, location, or position within limits

# Is

**“Is” is the present tense of be.**

**Collins Dictionary**["Is Definition in American English | Collins English Dictionary." Collins Dictionary, Collins Dictionary, [www.collinsdictionary.com/us/dictionary/english/is](http://www.collinsdictionary.com/us/dictionary/english/is). Accessed 6 Aug. 2025.] //Isegora  
[Is is the third person singular of the present tense of be](#)1 and be2. Is is often added to other words and shortened to -'s.

## **Affirmative Evidence**

## **Court Clog**

## New technology integration has significantly reduced court backlog from pandemic-era highs.

**Reuters 24** [Thomson Reuters; March 7; News and information services company, citing the second annual State of the Courts report, which included a survey of over 200 judges; Thomson Reuters, “State of the Courts Report 2024: Worries over caseloads and backlogs recede as GenAI enters the chat,” <https://legal.thomsonreuters.com/blog/state-of-the-courts-report-2024-worries-over-caseloads-and-backlogs-recede-as-genai-enters-the-chat/>, accessed 8-12-2025]

Embracing tech: Courts overcome challenges and look ahead Yet, while these concerns were still reflected in our latest survey, many of these challenges have receded somewhat, making room in many respondents’ minds for a clearer path toward more positive outcomes. For example, while increasing caseloads continue to be the biggest change that respondents said they had experienced in the past two years, with 40% of respondents citing this change, that was down from 45% in our previous survey. Indeed, all other aspects of work are also less likely to have increased since our previous survey, **with increased case delays being cited by 27% of respondents, compared to 45% in 2022;** and increased courts backlogs cited by 25%, compared to 44% previously. And even though more than half of respondents (56%) said they expect to experience staffing shortages in the coming 12 months, that **was down from the past 12 months** when almost two-thirds (64%) reported staffing shortages. Further, it seems that courts and their workers are enjoying broader engagement with technology solutions, especially around such critical areas as evidence collection and digital storage, and certain case-material sharing and management tools are seeing more acceptance across the board. In fact, more than one-third (35%) of respondents say they now use digital evidence management systems — up from 27% in the last survey. More interestingly, nearly three-fifths (58%) of those who say they are not using a digital evidence management system think that having one would be at least somewhat beneficial for their operations. It’s as if both the easing of the pandemic-induced stasis in the courts and the slow, albeit steady movement toward new technology solutions to improve court operations have melded with the great expectations of GenAI to make today’s judges and court professionals more conscious of their opportunities amid the frenetic pace of work. Indeed, they may even be daring enough to envision a future in which worries about overwork, delays, and staffing shortages are finally moved to the backburner. All this has coalesced to give our survey respondents something akin to breathing room, or at least, a chance to take steps to better manage the challenges they continue to face — more often now, through the use of new technology solutions. As judges and court professionals look to 2024 and beyond, they seem to be doing so without one eye steadily held in the pandemic-era rearview mirror, and instead are looking forward, moving to take advantage of whatever benefits and efficiencies today’s new tech technologies can offer.

## **Over 90% of case volumes are resolved through plea bargaining.**

**Hessick 23** [Carissa Byrne Hessick, Professor of Law at University of North Carolina Chapel Hill, 2023, "Plea Bargains: Efficient or Unjust?", Judicature | The Scholarly Journal About the Judiciary, <https://judicature.duke.edu/articles/plea-bargains-efficient-or-unjust/>, accessed 8-13-2025]

**The vast majority of state and federal cases end in plea bargains.** The practice has eased backlogs and may benefit some defendants — but the trade-offs, some say, are too steep. Is there a better way? Scholars estimate that at least 90 percent of state and federal cases are resolved by plea bargain.<sup>1</sup> The vast and persistent use of pleas to decide huge case volumes has made the practice an engine of efficiency in the courts — as well as fodder for constitutional critique. Even a former U.S. president has opined that “[i]n many courts, plea bargaining serves the convenience of the judge and lawyers, not the ends of justice, because the courts lack the time to give everyone a fair trial.



## Lack of plea bargaining pushes case backlog up to pandemic levels.

**Hessick 23** [Carissa Byrne Hessick, professor of law at UNC Chapel Hill, 2023, "Plea Bargains: Efficient or Unjust?", *Judicature* | The Scholarly Journal About the Judiciary, <https://judicature.duke.edu/articles/plea-bargains-efficient-or-unjust/>, accessed 8-13-2025]

FLYNN: Due to COVID, plea bargaining has evolved from an “efficiency,” as Anjelica said, into a “necessity.” Given the backlog that we were seeing across the country in criminal cases, if we did not have plea bargaining, the system would literally shut down. That’s how bad it’s gotten. I hate to blame everything on COVID. I think it’s intellectually lazy to do that. But when it comes to plea bargaining in this country — especially what I’m seeing here in my district attorney’s office in Buffalo, N.Y. — it’s a necessity right now. Once we come out of the backlog and get back to pre-COVID, then I would call it an **efficiency**. HESSICK: When I talk about plea bargaining, the thing that I emphasize is the way that it has overwhelmed the system. It is the default. But while plea bargaining is the default in practice, it is not the default in doctrine. That is something that our system has really failed to grapple with. Plea bargaining is how we resolve almost all cases: The percentage of cases resolved by plea bargaining keeps getting larger and larger and larger — we’re down to zero trials in some areas in a given year. But the legal rules that we have regarding how cases get disposed of don’t address plea bargaining at all. So not only does plea bargaining overwhelm the system, but it does so in a lawless or a near-lawless fashion. FOGEL: Plea bargaining defines the system and, in that immensity, also distorts the system as we envision it and as our legal standards consider it. The reality is that almost all cases resolve short of trial, but the court procedures and pretrial procedures and practices still often treat each case as if it’s going to eventually be tested at trial. That mismatch creates justice problems.

## **Court clog causes a ton of rapid, unqualified decisions - destroying the ability of the court to function and exacerbating inequality.**

**Chiang 15** [Tun-Jen Chiang, Associate Professor of Law at the George Mason University School of Law, "Forcing Patent Claims", Michigan Law Review, 113 Mich. L. Rev. 513, February 2015, accessed: 8-12-2025]

If we take my argument in Part II as a given--that is, if we assume for present purposes that claims provide valuable but imperfect information about the invention--then what should a court do with them as a policy matter? A common intuition holds that a court's job is to reach the most accurate outcome possible. That is, a court should try to discern the real invention and the optimal patent scope. Of course, even in an individual case, a court is constrained in its pursuit of accuracy by finite adjudication resources. Courts cannot realistically hold multiyear trials, nor can they summon thousands of experts. Thus, our initial focus on accuracy must be qualified: courts should attempt to achieve the most accurate outcome given their available resources. Notwithstanding such resource constraints, however, the intuition is that no artificial limits should be imposed. Within this paradigm, a court should allocate its budget to maximize its ability to pursue the truth: the court should collect as much evidence as feasible and then consider all that evidence on an equal basis. By equal weight, I do not mean that a court would say the following: "Witness A, the upstanding citizen, says the defendant stabbed the victim, while Witness B, the known habitual liar, says the defendant did not, and because all evidence is given equal weight, the result is a toss-up." Rather, I mean that a court will consider all the evidence in light of its credibility and in the totality of the circumstances, to get to the result that is most likely to reflect the underlying factual truth on the question at issue. The contradistinction is to a regime where courts are required by a preset rule to favor or disfavor certain types of evidence. For example, a court that excludes a bloody knife that the police obtained through an illegal search thereby gives this evidence zero weight. The court does so not because it thinks that the knife is unreliable evidence or that the underlying factual truth is that the defendant is innocent. It does so because the preset exclusionary rule mandates that courts accord zero weight to evidence obtained through illegal searches. By definition, therefore, a court that is seeking to maximize accuracy in an individual case would consider equally all the available evidence. But this formulation is not just a rhetorical trick. The substantive point is that, if the goal is simply to maximize accuracy, the law should rarely have categorical rules that exclude or disfavor broad swaths of evidence. It should instead [\*547] use a totality-of-the-circumstances inquiry that considers both the claim text and all reasonably collectible extrinsic evidence. And such totality-of-the-circumstances inquiries are what Corbin and his fellow travelers in patent law generally propose.

## **Clogged courts diverts attention away from important litigation - i.e. climate change.**

**Cinnamon 21** [Piñon Carlarne (Carlarne is a leading international expert in environmental and climate change law policy with a deep commitment to environmental equity and social justice, attending Albany Law School," The Essential Role of Climate Litigation and the Courts in Averting Climate Crisis " Ohio State Legal Studies Research Paper, No. 592 DEBATING CLIMATE LAW, Benoit Mayer & Alexander Zahar, eds., Cambridge University Press, 2021 Forthcoming January 7, 2021 [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3761850](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3761850), accessed: 8-12-2025]

Failure to act on the climate crisis is the most severe threat over the next decade, according to the World Economic Forum's Global Risks Report 2023. Climate activists are increasingly using legal action to enforce climate action, a new report shows. Here are some of the notable breakthroughs climate litigation has already achieved. Lawyers may seem unlikely allies in the fight against the climate emergency but, according to a new survey, they are playing an increasingly important role in holding corporations and governments accountable for failures to tackle the climate crisis. Research by the Columbia Law School, commissioned by the United Nations Environment Programme (UNEP), reveals that the number of climate-related court cases has more than doubled since 2017 and is steadily rising around the world. Graphs illustrating the growth of climate change litigation. The number of climate-related court cases has more than doubled since 2017. Image: UNEP Their report confirms a trend highlighted in the World Economic Forum's Global Risks Report 2023, which noted that individuals and environmental groups were turning to the law as it became clear that the pace of transition to net-zero emissions was too slow. "Climate litigation is increasing and concerns about emissions under-reporting and greenwashing have triggered calls for new regulatory oversight for the transition to net zero," the Forum report said. Failure to mitigate climate change is the single biggest risk to the world over the next decade, according to the Global Risks Report, with failure to adapt to climate change ranked as the second most severe long-term threat. The Intergovernmental Panel on Climate Change (IPCC) says global temperatures are already 1C higher than pre-industrial levels and warns that greenhouse gas emissions must be cut to zero if the rise in global temperatures is to be contained at 1.5C. The UNEP report catalogues a number of high-profile court cases which have succeeded in enforcing climate action. In 2017, when climate case numbers were last counted, 884 legal actions had been brought. Today the total stands at 2,180. A majority of climate cases to date – 1,522 – have been brought in the United States, followed by Australia (127), the UK (79) and the EU (62). The report notes that the number of legal actions in developing countries is growing, now accounting for 17% of the total. View of people at a climate change protest. Can legal action help limit global heating to 1.5C? Image: Unsplash/Mika Baumeister "Climate policies are far behind what is needed to keep global temperatures below the 1.5C threshold, with extreme weather events and searing heat already baking our planet," said Inger Andersen, Executive Director of UNEP. "People are increasingly turning to courts to combat the climate crisis, holding governments and the private sector accountable and making litigation a key mechanism for securing climate action and promoting climate justice." Climate litigation is also giving a voice to vulnerable groups who are being hard hit by climate change. The report says that, globally, 34 cases have been brought by children and young people, including two by girls aged seven and nine in Pakistan and India. Here are five of the climate breakthroughs achieved by legal action so far. 1. Torres Strait

Islanders vs Australia In September 2022, indigenous people living on islands in the Torres Strait between northern Queensland and Papua New Guinea won a landmark ruling that their human rights were being violated by the failure of the Australian government to take effective climate action. The ruling by the UN Human Rights Committee established the principle that a country could be in breach of international human rights law over climate inaction by ruling that Australia's poor climate record was a violation of the islanders' right to family life and culture.

2. Paris agreement is a human rights treaty In July 2022, Brazil's Supreme Court ruled that the Paris climate agreement is legally a human rights treaty which, it said, meant that it automatically overruled any domestic laws which conflicted with the country's climate obligations. The court ordered the Brazilian government to reopen its national climate mitigation fund which was established under the Paris Agreement, ruling that it had a constitutional duty to honour its obligations.

3. Climate inaction is a breach of human rights Upholding an earlier court ruling that greenhouse emissions must be cut by **25% by 2020**, the Netherlands Supreme Court ruled that failure to curb emissions was a breach of the European Convention on Human Rights. The December 2019 ruling stated that, although it was up to politicians to decide how to make the emission cuts, failure to do so would be a breach of Articles 2 and 8 of the Convention which affirm the right to life and respect for private and family life.

DISCOVER How is the World Economic Forum fighting the climate crisis? 4. Companies are bound by the Paris accord The principle that corporations and not just governments must abide by the emissions reductions agreed in the Paris climate treaty was established by a 2021 court ruling in the Netherlands brought by environmentalists against energy group Royal Dutch Shell. The court ordered Shell to cut its CO2 emissions by 45% by 2030 bringing them in line with Paris climate targets. The judge was reported as saying there was "worldwide agreement" that a 45% reduction was needed, adding: "This applies to the entire world, so also to Shell". 5. Courts overturn state climate plans To date, three European governments have been defeated in the courts over their climate plans. In March 2021, Germany's highest court struck down **a climate law requiring 55% emissions by 2030 cuts**, ruling it did not do enough to protect citizens' rights to life and health. In the same year, the French government was ordered to take "immediate and concrete action" to comply with its climate commitments. And in 2022, the UK's climate strategy was ruled unlawful for failing to spell out how emissions cuts would be made.

## **Court Clog destroys the judiciary - prevents trials and leads to wrongful incarceration. Wrecks democracy.**

**The Economist 11** [The Economist, 2011, The judicial system The feeblest branch An underfunded court system weakens the economy as well as access to justice <http://www.economist.com/node/21530985>, accessed: 8-12-2025]

How does a court go over the cliff? In unphotogenic slow motion, which makes the dire consequences harder to see. Since the budget cuts started in 2009, says Ms Feinstein, the court has been muddling through. Service has got slower, waiting times longer. An uncontested divorce now takes about half a year, she says. Without the loan, she would have had to lay off so many people that such a divorce would have taken three times as long. With the loan, it will take merely twice as long. That means lives (not just those of the spouses, but also those of children in custodial limbo) are put on hold. A typical lawsuit now goes to trial within a couple of years, says Ms Feinstein, but that could soon stretch to five years. The backlog of traffic infractions is already so daunting that it compromises enforcement (and the deterrence of bad driving). And so on. The Californian constitution guarantees criminal defendants a right to speedy trial, but it does not technically require courts to administer civil law at all, Ms Feinstein says. So, in theory, civil adjudication could stop altogether, as it already has on one judicial circuit in Georgia. That, she says would bring about the “unravelling of society”. Courts are in similar straits all over the country. A report by the American Bar Association found that in the last three years, most states have cut court funding by around 10-15%. In the past two years, 26 have stopped filling judicial vacancies, 34 have stopped replacing clerks, 31 have frozen or cut the salaries of judges or staff, 16 have furloughed clerical staff, and nine have furloughed judges. Courts in 14 states have reduced their opening hours, and are closed on some work days. Even the buildings are not immune; around the country 3,200 courthouses are “physically eroded” and “functionally deficient”, says the National Centre for State Courts. This affects courts' functioning in many ways. One municipal court in Ohio stopped accepting new cases because it could not afford to buy paper. New York judges' pay has been frozen for a dozen years, even as their caseload has increased by 30%. The state's 1,300 judges have sued the legislative and executive branches. Trial court judges make \$136,700, less than the \$160,000 (before bonuses) a stammering associate in a top-shelf New York City law firm expects in his first year on the job. Some clerks who have received automatic annual pay rises make more than the judges they serve. The rate of attrition among New York judges has spiked. This means that the courts are limiting access just when Americans need more adjudication. The recession left a vast legacy of foreclosures, personal and business bankruptcies, debt-collection and credit-card disputes. In Florida in 2009, according to the Washington Economics Group, the backlog in civil courts is costing the state some \$9.8 billion in GDP a year, a staggering achievement for a court system that costs just \$1.2 billion in its entirety. To make up the funding shortfall, courts are imposing higher filing fees on litigants. This threatens the idea of the equal right to justice, says Rebecca Love Kourlis of the Institute for the Advancement of the American Legal System. Even criminal cases are not immune. Some crimes, like domestic violence, have increased with the rotten economy. In Georgia, where court funds have fallen by 25% in the last two years, criminal cases now routinely take more than a year to come to trial.

This means that jails are full of the innocent alongside the guilty. Their incarceration adds costs far greater than the alleged savings in the court system. Above all, it causes gross injustice. At the federal level, things are better—but only a bit. Politics, more than funding, has kept judgeships empty. Filibustering of judicial nominations increased under George Bush, and even more sharply under Barack Obama, causing federal cases to pile up. But here too, pay is an issue. Even as the caseload has grown, federal judges' salaries have risen by only 39% since 1991 while the cost of living has gone up 50%. Many good judges have simply returned to private practice. To many judges, as the American Bar Association puts it, “the underfunding of our judicial system threatens the fundamental nature of our tripartite system of government.” In San Francisco, Ms Feinstein thinks that the judicial branch must start explaining itself more forcefully to legislators. And if that doesn't work, she thinks it may be time to ask voters directly for money. As one revered judge, Learned Hand, said in 1951, “If we are to keep our democracy, there must be one commandment: thou shalt not ration justice.”

# Inequality

## **Implicit bias leads to racial disparities of outcomes in jury trials, plea bargains avoid these trials and the implicit bias that is embedded within.**

**Yetter et al. 21** [Kathryn Yetter et al., 2021, has served as the academic director of The National Judicial College (NJC) since 2012 and joined the NJC faculty in 2013. Before joining the NJC, Ms. Yetter was senior attorney for the National Council of Juvenile and Family Court Judges, where she authored several bench tools and other publications that improve court processes and functions, "Judging the Book by More Than Its Cover: A Symposium on Juries, Implicit Bias, and the Justice System's Response", The National Judicial college, [https://www.judges.org/wp-content/uploads/2021/04/NJC\\_WHITE-paper\\_web\\_singlepages-1.pdf](https://www.judges.org/wp-content/uploads/2021/04/NJC_WHITE-paper_web_singlepages-1.pdf) accessed 8/6/2025]

Implicit bias has been studied primarily in the criminal trial context, and several researchers have discovered that implicit bias may lead to a disproportionate outcome. There are several critical junctures where implicit bias may play a role in a criminal case, from the police investigation, to arrest, to bail or pretrial decisions, plea bargains, jury decisions about guilt, or sentencing. However, specific to jury trials: Both explicit and implicit racial attitudes of legal actors (e. g., jurors, judges) can account for these disproportionate outcomes. Specifically, jurors tend to show bias in verdicts and sentencing against defendants of another race. For example, people's attitudes toward Black people are associated with ratings of guilt and death penalty recommendations for Black defendants. Furthermore, there is an interaction between defendant and victim race such that Black defendants receive even longer sentences when the victim is white. Although explicit racial attitudes can account for some verdict and sentencing decisions, implicit attitudes can further explain these disproportionate outcomes. People tend to hold an implicit stereotype between Black and guilty. Even a subtle manipulation of a defendant's skin color can affect how jurors evaluate evidence and the degree to which they believed the defendant was guilty. However, it should be noted that some studies have found no effect of defendant race on sentencing. Verdict and sentencing disparities are not just the result of juror bias—**judges are also not immune to implicit bias.** Mustard found that Black and Hispanic defendants received longer judicial sentences than White defendants (after controlling for crime seriousness) and that most of this effect occurred when judges deviated from the federal guidelines. When judges followed the guidelines, there was less of a discrepancy between minority and White defendant sentences. Similarly, one study found that judges who held more implicit bias against Black people—as measured by the Implicit Association Test (IAT), a tool that measures implicit bias—were harsher on defendants when they were primed with Black words. Judges who held implicit biases in favor of Black people were less harsh on defendants when they were primed with Black words.



**The U.S CJS is designed to deter, not to rehabilitate. Longer exposure to the CJS increases recidivism. Plea bargains avoid harmful mandatory minimums, limit exposure, and increase rehabilitation.**

**Turner 23**[Nicholas Turner, President and Director of the Vera Institute of Justice. Nick joined Vera as its fifth president and director in August 2013. Under his leadership, Vera is pursuing core priorities of ending the misuse of jails, transforming conditions of confinement, and ensuring that justice systems more effectively serve America's growing minority communities. Nick previously served at Vera from 1998 to 2007. During his first tenure, he developed ideas for demonstration projects aimed at keeping troubled youth out of the justice system and easing reentry for adult prisoners. Prior to re-joining Vera, Nick was a managing director at The Rockefeller Foundation, where he was a member of the foundation's senior leadership team and a co-leader of its global urban efforts. He provided leadership and strategic direction on key initiatives, including transportation policy reform in the U.S. to promote social, economic, and environmental interests, and redevelopment in New Orleans to advance racial and socioeconomic integration. Earlier in his legal career, Nick was an associate in the litigation department of Paul, Weiss, Rifkind, Wharton & Garrison in New York from 1997 to 1998. He was a judicial clerk for the Honorable Jack. B. Weinstein, Senior United States District Judge in Brooklyn from 1996 to 1997. Before attending Yale Law School, he worked with court involved, homeless, and troubled young people at Sasha Bruce Youthwork, a Washington, DC youth services organization, from 1989 to 1993, 2-13-2023, "Research Shows That Long Prison Sentences Don't Actually Improve...", Vera Institute of Justice, <https://www.vera.org/news/research-shows-that-long-prison-sentences-dont-actually-improve-safety> accessed 8/8/2025]

**The United States incarcerates nearly 2 million people. But the problem of mass incarceration in this country is not just a function of the number of people in prison—or the much larger number of people who cycle in and out of jails every year. Our system also incarcerates people for far too long, doling out excessively long sentences.**

**As of 2019, 57 percent of the prison population was serving sentences of 10 or more years. And as of 2020, one in seven people in U.S. prisons was serving a life sentence—more than the country's entire incarcerated population in 1970.**

Vera's report, A New Paradigm for Sentencing in the United States, shows how we arrived at these dismal statistics and charts a path forward. We explain why our system can, **and must**, shift away from its current overreliance on incarceration and toward community-based sentences.

**Concepts that have been central to sentencing theory, policy, and practice to date**—such as retribution, deterrence, **and excessive incapacitation**—have been backed by paltry evidence of success, demonstrating, instead, more evidence of harm. **States and the federal government have leaned on these principles to justify as much prison time as possible.** But doing so has not been effective in delivering accountability and building public safety. Instead, this system has caused harm that has disproportionately impacted Black and Latinx communities.

**From 1996 to 1997, I clerked for Federal Judge Jack Weinstein, who strongly, and publicly, opposed mandatory minimums and the then-rigid federal sentencing guidelines. But there was little he could do to deviate from those directives.** I saw many people cycle through his courtroom. A large percentage of them were people who, out of desperation, **had agreed to carry cocaine into the country in exchange for a couple hundred dollars and were arrested at JFK Airport.**

**Judge Weinstein didn't sit at the bench. We would all sit around a table in the well of the courtroom—the judge, the Assistant United States Attorney, the convicted person, their family, their attorney, and me. He tried to apply a modicum of human decency to a process that is utterly dehumanizing.** It was sometimes all he could do. In most cases, **he had no option but to sentence them to mandatory minimums or make a “downward departure” from the guidelines, which would be subject to reversal if the prosecutors chose to appeal.** As a general matter, **those convicted would have to serve excessively and pointlessly long sentences.**

Their lives and their families' lives were devastated, and millions more continue to be today, as states and the federal government continue to use mandatory minimums, three-strikes laws, and other sentencing enhancements. And yet, evidence to support our retributive, punitive approach is limited. In fact, we know this approach doesn't make our communities safer in the way proponents claim and the public assumes. A 2021 meta-analysis of 116 studies found, for example, that custodial sentences do not prevent reoffending—and can actually increase it.

That's because incarceration destabilizes people's lives. The brutality of U.S. prisons, the difficulties securing employment and housing with a conviction history, and the overall lack of financial security all negatively impact people—and their ability to succeed—after prison. Our criminal legal apparatus defaults to putting most people convicted of crimes behind bars, but lengthy sentences do not deter crime. Instead, there are solutions that can deliver real public safety and justice, while repairing harm—ideals our current system fails to achieve.

**Incarceration is a public health hazard, Covid proves. In system where people of color are disproportionately impacted, plea bargains shorten sentences and lessen exposure.**

**Smith 25**[Smith, Riley, Riley Smith, MPH, is a public health professional and community advocate with extensive experience in housing justice, harm reduction, and youth services. They currently serve as the TLP/SOP Program Director at Youth Shelters and Family Services and previously managed the Hands On Defense Program at Justice 4 Housing, where they coordinated community advocacy, housing navigation, and legislative campaigns. With a Master of Public Health from Boston University and a background spanning nonprofit leadership, direct client services, and policy work, Smith is dedicated to advancing abolitionist, trauma-informed, and harm-reduction frameworks to support marginalized communities, 2025. "Plea Bargains as Drivers of Incarceration-Related Health Outcomes." *Journal of Law, Medicine & Ethics* 53(1): 188–96. doi: 10.1017/jme.2025.58. accessed 8/9/2025]

Public health research and principles have evolved an ever-broadening understanding of the forces affecting health. Public health experts have adopted the Social Determinants of Health framework to identify the multifaceted and interconnected ways that our systems, institutions, communities, **and selves affect health at every level**. From this perspective, **the discipline of public health has begun to recognize the structural inequities of the carceral system as drivers of poor individual and population health**, which upstream and downstream interventions can target.

In the US, 2 million people (565 per 100,000 residents) are in some way confined by the State, **either through imprisonment, probation/parole, home confinement, or pre-trial detention**. The Eighth Amendment to the Constitution requires that incarcerated people receive some minimum standard of necessary care during periods of State confinement. However, **currently and formerly incarcerated people and their allies**, as well as many healthcare providers and health experts, frequently highlight the ways in which jails and prisons cause and exacerbate physical and mental illness and disease.

Prisons and jails are prime sites for rapid and unmanageable disease transmission both within the walls and out in the communities that prison staff return to when their shift ends. These facilities are overpopulated and poorly ventilated, and part of the punitive process includes extremely restricted and regimented movement. Prisoners do not have the autonomy to isolate themselves from others, nor do they have access to personal protective equipment (PPE) or other preventative measures to minimize transmission risk of infectious diseases. Staff bring in any contagions they may have which can then rapidly spread within the facilities. Similarly, staff who become infected with communicable diseases bring these diseases back to their communities. During the COVID-19 pandemic, prisons were a primary site of mass infection, and many advocates argued for depopulating the prisons, especially of those who were particularly vulnerable to COVID infection, as a means of slowing the spread of the disease. The COVID-19 pandemic also highlighted the ways in which prison procedures fail to provide adequate sanitary conditions within their facilities. Prisoners often must purchase sanitizers, cleaning supplies, soaps, body washes, and menstrual products through the commissary. These items must be purchased by money either earned through work — where wages can be pennies an hour in parts of the country — or money donated by family and friends in the free world. This shifting of sanitary responsibility onto prisoners, of whom most are unable to afford necessary products to meet minimum sanitation standards, fosters an environment of poor personal hygiene and environmental sanitation.

**Despite being constitutionally entitled to medical care**, prisoners and many medical staff report inadequate or wholly absent care for everything ranging from small injuries to chronic

illnesses. Prisoners report misdiagnoses, unnecessary invasive procedures, poor maternal healthcare, **and more**. Many are inhibited from seeking care in the first place, as they are only allowed to receive medical treatment if a correctional officer brings them to the medical wing. Necessary care can be delayed indefinitely with little recourse as reports of medical neglect are largely ignored.

**Incarceration is a traumatic experience.** Incarcerated individuals are caged, dehumanized, violated, punished, **and otherwise mistreated, and this is justified by the societal agreement that these individuals deserve whatever happens by virtue of being a criminal.** Additionally, many individuals who enter these facilities — including 90% of women — have experienced traumatic events prior to interacting with the carceral system, and the conditions of their confinement prevent them from recovering and healing while further traumatizing them.

**These effects and others are felt long after a person is released from prison as well.** Though in theory a person's punishment ends when their sentence does, the effects of the punishment often continue indefinitely. For example, criminal records often disqualify people from employment and housing with minimal recourse. Further, the stigma associated with incarceration can be incredibly isolating, preventing formerly incarcerated people from getting basic needs met. Additionally, incarceration impacts the families and communities of those incarcerated because of the emotional, financial, and social challenges caused by their absence. It is estimated that 80 million individuals in the United States have a criminal record and nearly half of all adults in the United States have immediate family members who are currently or formerly incarcerated.

The burden of these poor health and community outcomes is disproportionately borne by people of color, **especially Black people**. Black people are overrepresented in prison populations due to policies that increase police presence in predominantly Black communities, laws targeting behaviors associated with communities of color, and discriminatory actions taken at all levels of the legal process, **from arrest to conviction to release**. These practices were introduced to reinforce white power as slavery was being abolished, systematizing racial disparities as fundamental to the operation of the modern carceral system. Black and brown communities experience higher rates of disease prevalence, **especially infectious diseases and those that affect the immune system, which are exacerbated by periods of incarceration**. They are more likely to be arrested, **more likely to receive a conviction**, and more likely to receive longer sentences for the same crimes as their white counterparts, **increasing the likelihood and duration of exposure to the health consequences of incarceration. These compound other disease burdens**, leading to more significant detrimental effects.

## Judges believe that plea bargains lead to justice in the U.S criminal justice system

**Prager et al. 2025** [Nathan W. Prager, I am a doctoral graduate in social psychology at the University of Nevada, Reno, with a focus on the intersections of psychology and law. My research examines critical issues such as plea bargaining, mental health courts, false confessions, and sentencing disparities. While I value academic research, I'm equally interested in applying my skills outside of academia. I'm especially drawn to roles in public policy, criminal justice reform, consulting, research and evaluation, and behavioral insights—anywhere I can contribute to data-driven, human-centered decision-making. M.A. in Criminal Justice, University of Nevada, Reno, B.S. in Psychology, Iowa State University, B.A. in Criminal Justice, Iowa State University, Do Plea Bargains Advance Justice? A Content Analysis of Judges' Perceptions of Plea Bargaining, 58 UIC L. Rev. 899 (2025) <https://repository.law.uic.edu/lawreview/vol58/iss4/4> accessed 8/9/2025]

The overarching theme, shadow of the trial, supported this hypothesis. For the code, expectation, eight comments referenced a comparison between the outcomes of a plea bargain and trial. For example, one judge illustrated this comparison by saying, “Some court users choose to accept [the plea] in fear of the alternative consequence/sentencing in the event they go through the full judicial process and the outcome is not in their favor.” More specifically, one judge stated that defendants might “end up taking a plea bargain simply because they didn’t want to take a risk of going to trial,” “or the risk of conviction is too great.” For the second code, correct sentence, thirty-five comments referenced how plea bargains result in just or accurate sentences. One judge commented that plea bargains “give the opportunities to [all] parties to find the best sentence for the conviction.” Similarly, another judge stated that plea bargains can be “an appropriate vehicle to achieve a just or appropriate resolution.” Furthermore, a few judges mentioned how the state and prosecution know the facts of the case, so a plea bargain would reflect the charges more accurately. For example, one judge said, “A fair plea bargain is often more just than the initial charging document and may better reflect the reality of a defendant and victim’s circumstances.” Similarly, another judge commented, “I think that once all discovery is reviewed by defense and discussions with the prosecutor, the strengths and weaknesses are revealed and the parties have a better understanding of what the actual charges should have been, allowing for amendment of the charges indicted.” Therefore, prosecutors are more knowledgeable of the facts of the case, so they can provide an accurate sentence to the charges.

**Black defendants are disproportionately harmed by pretrial detention; plea bargains reduce detention time.**

**Hinton et al. 18** [Elizabeth Hinton et al., Assistant Professor, Department of History and Department of African and African American Studies, Harvard University, Vera Institute, May 2018, <https://vera-institute.files.svdcn.com/production/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf?dm=1568656329> accessed 8/9/2025]

Bias by system actors can lead to disproportionate criminal justice involvement for black people  
Beyond laws and policies that disparately impact black people, the bias of individual actors in  
the criminal justice system—police, prosecutors, judges, and juries—can further  
disproportionately involve black people, leading to more frequent stops, searches, and arrests,  
as well as higher rates of pretrial detention, harsher plea bargaining outcomes, and more  
severe sentences than similarly situated white people. Some of this bias may be the result of overt racism but, more often, it manifests as implicit bias. Implicit bias is the “automatic positive or negative preference for a group, based on one’s subconscious thoughts,” which can produce discriminatory behavior even if individuals are unaware that such biases form the bases of their decisions.<sup>50</sup> Implicit bias affects everyone, but is of particular import when it results in unequal treatment by criminal justice actors.<sup>51</sup> Such biases impact individual stages of the process, like policing, and also accumulate over multiple stages, through case processing, prosecution, and disposition.<sup>52</sup> The cumulative effect of such individual biases contributes to disproportionately negative outcomes for black Americans.

# Organized Crime

**U.S. organized crime is under control now because national resilience is high and the legal framework and cooperation architecture are robust.**

**Global Initiative 23** [Global Initiative Against Transnational Organized Crime (GI-TOC), "Global Organized Crime Index 2023 – United States (country profile)," 26 September 2023. Accessed 14 August 2025.

[https://ocindex.net/assets/downloads/2023/english/ocindex\\_profile\\_united\\_states\\_2023.pdf](https://ocindex.net/assets/downloads/2023/english/ocindex_profile_united_states_2023.pdf)]

Recent challenges, including the COVID-19 pandemic, exposed structural problems in the federal government and emphasized the differences in strength of local and state governing bodies. Along with domestic issues, the US faces external conflicts, nuclear tensions with North Korea and Iran, trade- and Taiwan-related tensions with China, and foreign influence campaigns from Russia and China. The political scene is polarized, making it difficult for any government to implement its agenda, and posing a risk to the local and global economy due to the politicization of the debt ceiling. Against this backdrop, however, the US has proven to be capable of addressing the organized crime situation in the country, with evidence indicating that the state is sufficiently robust to meet the challenge. Nevertheless, organized crime continues to be a significant problem, with ongoing challenges to governance due to deep political divisions over anti-corruption strategies. Although the current government has launched initiatives to address transparency and accountability issues, several legislative reforms remain pending. The US is a signatory to several international treaties and conventions related to organized crime and generally complies with international anti-organized crime regulations. The current administration has increased international cooperation efforts in comparison to the previous one. It rejoined the Paris Climate Agreement and is focusing on extradition treaties, especially given the rise in cybercrime. US–Mexico relations have provided for relatively smooth extradition processes in the past, but tensions have risen due to various incidents involving drug-related charges. However, US authorities have relied heavily on Mexican support to combat irregular immigration along the US–Mexico border. Since the outbreak of the Russia–Ukraine war, the US has collaborated with NATO allies to provide both military and humanitarian aid to Ukraine. The US has a robust legal framework against organized crime, criminalizing various forms and outlining investigation, arrest, prosecution, adjudication and punishment procedures. The current administration has implemented several legal reforms and initiatives to strengthen the country's legal framework to respond to major organized crime issues. There have been increasing efforts made to support crime victims and witnesses in recent years, and numerous victim and witness support programmes exist across the country. However, the most common ones are still operated by non-profit and faith-based organizations, followed by governmental organizations. The US federal Witness Security Program provides 24-hour protection to all witnesses, and there have been no reports of witnesses who follow programme guidelines ever being harmed or killed while under its protection. National media efforts have also increased the effectiveness of US-based victim and witness support services.

**Limiting plea bargains would destroy complex organized-crime cases because cooperation is central to bringing major offenders to justice.**

**Roth et al. 23** [Jessica A. Roth (Professor of Law, Cardozo School of Law), Anna D. Vaynman (Postdoctoral Fellow, Institute for Trustworthy AI in Law & Society / George Washington University; Ph.D. in Psychology & Law, CUNY), and Steven D. Penrod (Distinguished Professor of Psychology, John Jay College of Criminal Justice), "Why Criminal Defendants Cooperate: The Defense Attorney's Perspective," Northwestern University Law Review, Vol. 117, Issue 5, 12 March 2023. Accessed 14 August 2025. <https://scholarlycommons.law.northwestern.edu/nulr/vol117/iss5/3/>]

**Cooperation is at the heart of most complex federal criminal cases, with profound ramifications for who can be brought to justice and for the fate of those who decide to cooperate.**



## **Flipping insiders through plea-linked leniency is indispensable to dismantling criminal organizations; restricting plea bargains would wreck complex prosecutions.**

**Risinger & Storino 20** [Katy Risinger (Assistant United States Attorney, Middle District of Tennessee) and Tim Storino (Assistant United States Attorney, Northern District of Illinois), "A Guide to Using Cooperators in Criminal Cases," Department of Justice Journal of Federal Law and Practice (Gangs & Organized Crime issue), November 2020, pp. 84–85, 93. Accessed 14 August 2025. <https://www.justice.gov/usao/page/file/1343441/dl?inline=1>]

Cooperators are vital to law enforcement's ability to successfully dismantle criminal organizations, and the criminal justice system has long recognized that "the informer is a vital part of society's defensive arsenal." After all, who better to provide information on the hierarchy and inner-workings of an organization than a criminal's associate or partner in crime. Indeed, "many offenses are of such a character that the only persons capable of giving useful testimony are those implicated in the crime." While, however, the use of a cooperator can be a highly effective tool during an investigation, it can also be a prosecutor's most perilous tool. The careless use of a cooperator to further an investigation or help secure a guilty verdict can backfire—potentially causing irreparable harm to the case or an agent and a prosecutor's reputation. Today, law enforcement officers, attorneys, and courts often use the terms confidential informant and confidential source interchangeably with the terms cooperating witness and cooperating defendant. The terms, however, have very different meanings. On the one hand, the terms confidential informant and confidential source generally refer to an individual who provides assistance to law enforcement and whose identity generally warrants protecting. In other words, a confidential informant often provides information to an investigative agency with the expectation that the agency will take the steps necessary to protect the informant's identity from disclosure to the public. On the other hand, the terms cooperating witness and cooperating defendant generally refer to individuals who provide useful and credible information to an investigative agency and the government, often in exchange for a benefit of some sort, such as leniency, and who may be called to testify at a future criminal proceeding or trial, if needed. The power of a cooperator's testimony at trial, especially in a gang case, cannot be overstated. Some prosecutors would argue the quintessential gang or racketeering case cannot be brought without that insider's perspective to testify about, for example, what the defendant said before he pulled the trigger or where the gang went afterwards to lay low. The cooperator in a gang case provides that insider perspective that a time-place-matter witness, the girlfriend, or the low-level accomplice simply cannot.

**Plea bargaining preserves resources and creates incentives to cooperate, enabling prosecutors to prioritize complex cases; curbing pleas would undermine those cooperation gains.**

**ABA Plea Bargain Task Force 23** [American Bar Association, Criminal Justice Section, Plea Bargain Task Force, "2023 Plea Bargain Task Force Report," 2 February 2023, pp. 5–6, 11. Accessed 14 August 2025. <https://northerndistrictpracticeprogram.org/wp-content/uploads/2024/05/2023PleaBargainTaskForceReport.pdf>]

There are many purported benefits of plea bargaining in the current criminal justice system. Nearly all jurisdictions have limited resources and plea bargaining provides a mechanism to efficiently resolve cases. By preserving resources this way, jurisdictions are able to direct greater resources to investigations and cases that proceed to trial. Additionally, plea bargaining provides a mechanism to incentivize defendants to cooperate with the government or to accept responsibility for their criminal conduct. A plea also provides a clear and certain resolution to a case, which offers finality for the defendant, the victim, the courts, and the community. Furthermore, defendants use the plea process to avoid some of the most severe aspects of the criminal system. Although plea practices vary among jurisdictions, one common thread in every criminal courtroom across the country is the deep entrenchment of plea bargaining in the daily administration of criminal justice. Plea bargaining touches every element of criminal practice, including discovery, sentencing, collateral consequences, and procedural rights. This Report identifies general problems with the plea system and provides recommendations for reform and guidance to criminal justice stakeholders seeking to improve their plea-bargaining systems and practices. However, because plea bargaining has become so engrained in the fabric of the criminal system, any attempt to reform plea bargaining will create ripple effects throughout the system. Guilty pleas are not always the product of plea bargains, but the exact terms of a guilty plea are typically negotiated through plea bargaining. The federal government has estimated that approximately seventy-five percent of guilty pleas in the federal system are induced by some negotiation between the parties. It is critical to note, however, that a defendant always has the option to plead guilty without negotiating a plea beforehand. Depending on the jurisdiction, defendants may plead to the entire indictment or to the top charge they are facing, leaving determination of sentence to the judge's discretion.

**International best practice is to incentivize insiders to cooperate—through leniency, immunity, and protection—because those inducements are critical to investigating and prosecuting organized crime.**

**UNODC 20** [United Nations Office on Drugs and Crime, “UNODC SE4U Toolkit (Interactive): Introduction to the Organized Crime Convention,” 2020, esp. Art. 26 and related sections. Accessed 14 August 2025. <https://globalinitiative.net/wp-content/uploads/2020/09/UNODC-SE4U-Toolkit-Interactive-WEB-1.pdf>]

Article 26 provides for measures to encourage persons who have participated in an organized criminal group to cooperate with the authorities in investigations or prosecutions. Such persons may be called “collaborators of justice” or “informants.” The measures include forms of leniency or immunity from prosecution and protection. The ability to provide effective protection to persons who are or have been members of an organized criminal group and who wish to cooperate with law enforcement authorities is critical and can be enabled through witness protection programmes. Importantly, this article also envisages that States Parties consider arrangements with one another to apply inducements to informants located in one State who can assist an investigation of organized criminal activity in another State (art. 26(5)). [Global Initiative](#) The collection and exchange of information are essential to developing a sound, evidence-based policy on preventing and responding to transnational organized crime. Consolidated information on emerging trends in organized crime is indispensable for setting goals, allocating resources and evaluating results. Article 28 of the Organized Crime Convention recommends that States Parties, in consultation with their scientific and academic communities, collect data and examine the characteristics and trends in organized crime. Special investigative techniques are especially useful when dealing with sophisticated organized criminal groups because of the dangers and difficulties inherent in gaining access to their operations and gathering information and evidence for use in prosecutions. Since these techniques frequently require the cooperation and collaboration of multiple law enforcement agencies in different countries, international cooperation is essential to facilitate such operations.

## **Turning insiders and protecting them is a cornerstone of dismantling criminal organizations and securing convictions against their most culpable leaders.**

**Dozier & O'Hearn 20** [Susan K. Dozier (Deputy Director, Federal Witness Security Program; Chief, Special Operations Unit, Office of Enforcement Operations, U.S. Department of Justice) and Donald O'Hearn (Associate Director, Witness Security Division, U.S. Marshals Service), "The Federal Witness Security Program: A Retrospective Look," Department of Justice Journal of Federal Law and Practice, November 2020. Accessed 14 August 2025. <https://www.justice.gov/usao/page/file/1343441/dl?inline=>]

With the passage of the Omnibus Crime Control and Safe Streets Act of 1968 and the Organized Crime Control Act of 1970, Congress armed federal law enforcement and prosecutors with three invaluable tools in the fight against organized crime: the Racketeer Influenced and Corrupt Practices Act (RICO), the Wiretap Act (Title III), and the Federal Witness Security Program (Program). Equipped with these tools, the federal law enforcement community could more effectively prosecute an organization's most culpable yet elusive leaders, legally eavesdrop on mobsters' private criminal conversations, and perhaps most importantly, expend government funds to better protect those testifying against the organization. It is imperative that, similar to becoming involved early in an investigation, you begin preparing the cooperating witness early, preferably months before trial. Scheduling the prep sessions for an in-custody cooperating defendant can be difficult. You must coordinate the schedules of the defense attorney and the United States Marshals Service, who may only allow prep sessions on certain days or for certain periods of time. Additionally, while your cooperating witness should be separated in custody from the other defendants, you also need to be mindful of dates when other defendants in the case appear in court, so as to avoid run-ins in the courthouse lock-up that can have negative (and oftentimes devastating) effects on the cooperator. Fronting the bad stuff also allows your cooperator to frame the bad conduct in a way that he or she wants. This is not spinning the bad information but providing context to what may have been a complicated situation. In this way, the jury has heard your cooperator's side of the story first, and the cross-examination of the cooperator on that same topic will face an uphill battle to turn around the jury's view, the foundation for which you laid.

## **Organized crime corrodes rule of law through violence and corruption and destabilizes societies and economies.**

**Europol 25** [European Union Agency for Law Enforcement Cooperation (Europol), *EU Serious and Organised Crime Threat Assessment (EU-SOCTA) 2025: The changing DNA of serious and organised crime*, March 2025, "Serious and organised crime is Destabilising society." Accessed 14 August 2025. [https://fiaumalta.org/app/uploads/2025/03/Mar-2025-Serious-and-Organised-Crime-Threat-Assessment-SOCTA-2025\\_Part1.pdf](https://fiaumalta.org/app/uploads/2025/03/Mar-2025-Serious-and-Organised-Crime-Threat-Assessment-SOCTA-2025_Part1.pdf)]

Serious and organised crime is not just a threat to public safety; it impacts the very foundations of the EU and its society. Criminal networks fuel their operations through corruption and money laundering, creating a hidden financial system that weakens economies and erodes trust in governance structures. But the threat does not stop there: increasingly, criminal networks serve as proxies for hybrid threat actors, exploiting vulnerabilities to destabilise the EU and its Member States from within. The destabilising properties and effects of serious and organised crime have a double dimension. It is destabilising because it is significantly undermining our economy and society. Furthermore, it is destabilising because it is increasingly directed externally. The findings of the EU-SOCTA 2025 make clear that serious and organised crime undermines the very foundations of political, economic and social cohesion and stability through illicit proceeds, the perpetuation of violence and the extension of corruption.

**Serious and organized crime is evolving at an unprecedented pace, supercharged by technology and geopolitics—making networks more dangerous and entrenched.**

**Europol 25** [European Union Agency for Law Enforcement Cooperation (Europol), *EU Serious and Organised Crime Threat Assessment (EU-SOCTA) 2025: The changing DNA of serious and organised crime*, March 2025, Foreword. Accessed 14 August 2025.

[https://fiaumalta.org/app/uploads/2025/03/Mar-2025-Serious-and-Organised-Crime-Threat-Assessment-SOCTA-2025\\_Part1.pdf](https://fiaumalta.org/app/uploads/2025/03/Mar-2025-Serious-and-Organised-Crime-Threat-Assessment-SOCTA-2025_Part1.pdf)

Serious and organised crime is one of the greatest security threats facing the European Union today. It is a powerful, corrosive force that is evolving at an unprecedented pace, exploiting new technologies, digital platforms, and geopolitical instability to expand its reach and deepen its impact. The very DNA of organised crime is changing rapidly, adapting to a world in flux. The 2025 EU Serious and Organised Crime Threat Assessment (EU-SOCTA) provides the most comprehensive, intelligence-driven analysis of these threats to date, serving as both a stark warning and a call to action. Crime has a twofold destabilising effect on our society. The findings of the EU-SOCTA 2025 make clear that serious and organised crime undermines the very foundations of political, economic and social cohesion and stability through illicit proceeds, the perpetuation of violence and the extension of corruption. Criminal networks are increasingly intertwined with hybrid threats originating externally, encompassing a wide range of criminal activities and tactics, often executed through criminal proxies. While the financial gains remain the primary motivation for these networks, their actions also serve – directly or indirectly – the geopolitical interests of those orchestrating hybrid threats.

Serious and organised crime is increasingly nurtured online. The online domain has become an essential, omnipresent aspect of daily life, and its role in facilitating organised crime will continue to grow. It serves as a powerful tool for enabling, amplifying and concealing various forms of criminal activity, while also becoming a prime target for criminal infiltration and data theft. Meanwhile, the online space is increasingly becoming the main ecosystem for committing certain crimes, with minimal involvement in the offline world, thus transforming the digital environment into the primary theatre for criminal operations. Emerging technologies, such as artificial intelligence, accelerate crime and provide criminal networks with entirely new capabilities. These innovations expand the speed, scale, and sophistication of organised crime, creating an even more complex and rapidly evolving threat landscape for law enforcement.

## **Reform AC**

**Plea bargaining is good and necessary – limited resources, relief for victims, and encourages cooperation.**

**American Bar Association 23**

[American Bar Association, 2-2-2023, "2023 Plea Bargain Task Force Report," <https://northerndistrictpracticeprogram.org/wp-content/uploads/2024/05/2023PleaBargainTaskForceReport.pdf>; the report summarizes findings of the American Bar Association Criminal Justice Section, written by Thea Johnson, Associate Professor of Law, Rutgers Law School.]

There are many purported benefits of plea bargaining in the current criminal justice system.

Nearly all jurisdictions have limited resources and plea bargaining provides a mechanism to efficiently resolve cases. By preserving resources this way, jurisdictions are able to direct greater resources to investigations and cases that proceed to trial. Additionally, plea bargaining provides a mechanism to incentivize defendants to cooperate with the government or to accept responsibility for their criminal conduct. A plea also provides a clear and certain resolution to a case, which offers finality for the defendant, the victim, the courts, and the community.

Furthermore, defendants use the plea process to avoid some of the most severe aspects of the criminal system. In moderation, many of these benefits make sense.



## **BUT unchecked prosecutorial power allows for coercion.**

**Cato Institute 24** [Cato Institute, 1-25-2024, "Plea Bargaining," <https://www.cato.org/cato-courses/criminal-justice/plea-bargaining#proliferation-plea-bargains>; the Cato Institute is a nonpartisan and independent public policy think tank which promotes libertarian ideas in policy debates.]

We call this process "plea bargaining," but that is really a misnomer—what we really have is a system of coerced confessions that has almost completely supplanted the criminal jury trial.

Cover of the US Constitution (transparent) Article III of the U.S. Constitution provides that the trial of all crimes shall be by jury. So central was the jury trial to the Founders' vision of just government that it is the only right mentioned in both the original Constitution and the Bill of Rights. The Bill of Rights devotes more words to the subject of juries than any other, because the one thing that virtually every leading thinker of the American Founding appears to have agreed on was this: The critical role of juries in limiting the power of government. Blurred illustration of four Founding Fathers, with Hamilton in focus. "If [the Federalists and the Anti-Federalists] agree in nothing else, concur at least in the value they set upon the trial by jury; or if there is any difference between them it consists in this: the former regard it as a valuable safeguard to liberty; the latter represent it as the very palladium of free government." —

ALEXANDER HAMILTON Illustration of four Founding Fathers, blurred, with Jefferson in focus.

"Trial by jury [is] the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution." —THOMAS JEFFERSON Arrested man signing papers -

transparent BG The Proliferation of Plea Bargains Notwithstanding the clear command of the Constitution, the jury trial is now practically extinct in America. As noted, more than 95 percent (and more than 97 percent in the federal system!) of criminal convictions today are obtained through plea bargains, using a process that would certainly have alarmed and astonished the Founders. The story of how a practice that was unknown at the Founding and viewed with great suspicion and even disdain by 19th-century American and English jurists came to supplant the constitutionally prescribed method for adjudicating criminal charges is a fascinating one. One of the most important questions in criminal law and criminal justice reform is why so few people are interested in exercising their right to force the government to prove their guilt beyond a reasonable doubt to the satisfaction of a unanimous jury. There appear to be two main reasons: First, the plea-bargaining process can be — and often is — extraordinarily coercive. Second, the criminal jury trial itself has been fundamentally transformed over time so that it is much less valuable to criminal defendants now than it was earlier in our nation's history. Levers of Coercive Plea Bargaining Pretrial Detention One of the most powerful "options" prosecutors have is pretrial detention. Simply put, those who are locked up awaiting trial are cut off from family, friends, and other sources of support. They will have a much more difficult time securing and working with counsel to prepare their defense. And given the dirty, dangerous, and generally miserable conditions of so many of the nation's jails, defendants will likely entertain just about any offer that promises either an immediate release or a transfer to a more sanitary and professionally run prison, which is where people who have been convicted of crimes typically serve their sentences. Stacking Charges Prosecutors' ability to stack charges against a defendant—including charges that carry a mandatory minimum prison sentence—and then offer to drop some of those charges or recommend leniency to the judge at sentencing. Other countries, such as England, impose strict limits on the differential between the length of sentence prosecutors may threaten defendants with if they go to trial and lose versus the discounted sentence prosecutors may offer if defendants confess. However, American

prosecutors have unfettered discretion to make draconian threats while offering a comparatively trivial punishment if the defendant will simply agree to plead guilty.

## **AND coercion leads to countless false convictions.**

**Nelly 21** [Clark Neily, 4-23-2021, "Coercive Plea Bargaining: An American Export the World Can Do Without," Cato Institute, <https://www.cato.org/commentary/coercive-plea-bargaining-american-export-world-can-do-without>; Clark Neily, senior vice president for legal studies at the Cato Institute, specializes in constitutional law, overcriminalization, plea bargaining, police accountability. He has taught constitutional litigation at the University of Texas and George Mason University, and holds both a BA and JD from the University of Texas.]

And while torture is no longer a permissible method of inducing guilty pleas in America's criminal justice system, just about everything else is. This includes pretrial detention designed to enervate and immiserate the accused while making it more difficult to participate in their own defense; threatening to indict a defendant's family members in order to exert plea leverage (a practice that is widespread and has been specifically authorized by American courts); and profligate use of the so-called "trial penalty"—that is, the differential between the comparatively light sentence offered if the defendant pleads guilty and the vastly more punitive sentence threatened should the defendant exercise her constitutional right to a jury trial and lose. To take just one example, federal prosecutors in the ongoing "Varsity Blues" college admissions scandal that netted a number of Hollywood celebrities have been threatening defendants with a 20-year prison sentence while offering two months to those who plead guilty—a 12,000 percent markup for exercising their right to trial. Not surprisingly, the virtually unbridled use of coercion in plea bargaining regularly produces false convictions. For obvious reasons, it is impossible to quantify the rate of false guilty pleas in America's plea-driven criminal justice system, but there are plenty of suggestive data points. Thus, of the more than 300 people cleared by the Innocence Project, a New York City-based nonprofit that uses DNA to exonerate people charged with serious crimes like rape and murder, more than 10 percent pleaded guilty to crimes they did not commit.

**Thus, we affirm: The United States federal government should enact binding guidelines that prohibit coercive plea bargaining practices, including mandatory minimum leverage.**

**Trivedi 20** [Somil Trivedi, 1-13-2020, "Coercive Plea Bargaining Has Poisoned the Criminal Justice System. It's Time to Suck the Venom Out.," American Civil Liberties Union, <https://www.aclu.org/news/criminal-law-reform/coercive-plea-bargaining-has-poisoned-the-criminal-justice-system-its-time-to-suck-the-venom-out>; Somil Trivedi (BA, JD) was a Senior Staff Attorney in the Criminal Law Reform Project, working closely with the ACLU's Campaign for Smart Justice. Trivedi focused on prosecutorial and criminal law reform litigation, policy, and advocacy to change incentives for law enforcement and reduce mass incarceration and racial disparities in the criminal justice system. He currently serves on the Board of the Innocence Project of Texas.]

Plea bargaining would be an acceptable way to resolve criminal cases if it were a fair fight between prosecution and defense. But it's not. Since roughly the 1970s and the accompanying War on Drugs, prosecutors have been handed — and in many cases lobbied for — increasingly punitive tools to pressure defendants to take bad deals. These tools include: Pretrial detention to separate defendants from family, jobs, and community Mandatory minimums and sentence enhancements that ratchet up the trial penalty Lax discovery rules that allow prosecutors to hide favorable evidence during negotiations, as in George Alvarez's case Virtually zero transparency requirements, which robs defendants, defense lawyers, and voters of the ability to scrutinize how the deals get done Supreme Court precedent that allows judges to rubber stamp the deals without asking the prosecutor a single question about how they used these tools. Instead, at a typical plea acceptance hearing, the judge asks the defendant whether they felt coerced, which is bit like asking the hostage if the kidnapper played fair while the hostage still has a gun to their head. In other words, plea bargaining as practiced today has turned our criminal legal system into a cheap backroom shakedown. There is virtually no process, much less due process. Defendants' lives are determined primarily by power dynamics and leverage, not facts and law. And it all occurs almost entirely behind closed doors, rather than in front of a judge, a jury, and the American public, as the Founders intended. To be fair, jury decisions aren't perfect. Juries are made of people, and people are flawed, biased, and often vindictive. They often get the verdict and/or the sentence wrong. But they're drawn from a reflective pool of the community; in all states but one, they have to return a unanimous verdict; they get to review all the evidence; and when they get it wrong, defendants can appeal. None of that is true of the typical plea bargain in America today. We don't need to eliminate all plea bargains or punish all prosecutors and judges to fix the problem. Indeed, if negotiated fairly, plea deals can be beneficial to all sides and promote justice and public safety. But we need to establish commonsense guidelines around the process, such that defendants who want to negotiate can do so on a level playing field.

## The plan keeps efficiency without coercion.

### Fair and Just Prosecution 22

[Fair and Just Prosecution, February 2022, "Plea Bargaining," <https://fairandjustprosecution.org/wp-content/uploads/2022/02/Plea-Bargaining-Issue-Brief.pdf>; FJP is a group of elected local prosecutors focusing on promoting reforms that recognize that prior "tough on crime" and incarceration-driven practices have not resulted in safer or healthier communities.]

Policymakers and justice system leaders – including prosecutors – are increasingly paying attention to the need to reform, and constrain, plea practices in order to ensure that the criminal legal system functions equitably, judiciously, and transparently. While plea bargaining is still largely viewed as essential to managing caseloads, research has questioned the assumption that reducing reliance on guilty pleas and taking more cases to trial would cripple the criminal legal system. 28 Importantly, broader criminal justice reform efforts – including sentencing reform, increased funding to indigent defense, improved discovery practices, increased use of diversion, ending unnecessary pre-trial detention, and understanding and addressing racial disparities – will also play a role in making the plea negotiation process more just. The incentives that drive overreliance on plea bargaining are also closely tied to efforts to rethink how prosecutor's offices, which have traditionally tied evaluations and promotions to metrics such as conviction rates, can operate instead to reward the pursuit of justice. Ultimately, these structural and systemic reforms will help reduce the reliance on guilty pleas and also make the plea process, when used, more fair.

## Ending prosecutorial coercion is key to institutional credibility.

**Henderson et al. 23**

[Howard Henderson, Kiana Henley, and Tri Keah Henry, 6-29-2023, "Reforming our prosecutorial system is no longer just a proposition—it is an urgent imperative," Brookings, <https://www.brookings.edu/articles/reforming-our-prosecutorial-system-is-no-longer-just-a-proposition-it-is-an-urgent-imperative/>; Howard Henderson: Senior Fellow - Governance Studies, Race, Prosperity, and Inclusion Initiative (RPPI) at Brookings and founding director of the Center for Justice Research; Henley: HBCU Criminal Justice Research Hub Project Manager at the Center for Justice Research; Tri Keah Henry - Assistant Professor in the Department of Criminology and Criminal Justice at Indiana University – Bloomington.]

Recent high-profile indictments have thrown the spotlight onto an obscure yet profoundly influential aspect of America's criminal justice system: prosecutorial discretion. This power, held by prosecutors and cloaked behind the veil of constitutional authority, plays a pivotal role in shaping the landscape of justice across the country. Each year, more than 2.3 million felonies and 10 million misdemeanors are handled by over 2,300 individual prosecutor's offices, but these crucial decisions are largely made outside the watchful eye of the public's scrutiny. Prosecutors control secret grand jury proceedings, determine who will face prosecution, and decide the specifics of charges. They operate within a labyrinthine legal framework, armed with the threat of lengthy mandatory minimum sentences. This creates strong incentives for defendants to agree to lesser charges, even for crimes they did not commit. More than 90% of both federal and state court cases are resolved through plea bargaining, sidestepping the courtroom entirely. This confluence of autonomy, secrecy, complex laws, and powerful sentencing tools endow prosecutors with enormous leverage, leading critics to question whether this power is wielded too selectively and relentlessly, undermining the right to a fair trial, fostering mass incarceration, and eroding what's left of the public's faith in equal justice. Without thorough insights into prosecutorial decision-making, can we truly foster a justice system that embodies fairness and equity? As we grapple with these concerns, we must understand that scrutiny of this largely unseen force is not just about holding power to account; it is a necessary step toward ensuring a truly just and fair system. While we contend with these figures, the intricacies of a prosecutor's decision-making process remain largely unexplored, leaving a significant knowledge gap. In an era when calls for justice transparency have reached the highest level, we can no longer overlook an element that silently sways the justice landscape, shaping case outcomes and sacrificing members of low-income, Black, and brown communities. Black defendants in particular disproportionately bear trial penalties (the risk of receiving a harsher sentence for exercising one's right to trial), overcharging, and over-prosecution. A sobering study found that Black individuals received sentences nearly 10% longer than their similarly situated white counterparts, a disparity directly linked to prosecutor charging decisions. The initial charging process, often overlooked in previous examinations, has a significant influence on individual case outcomes. Recognizing this pressing issue, we undertook a study that aimed to highlight the implications of this decision-making process and the interaction effects of the charging process with other factors, such as a defendant's racial classification. Unveiling startling findings, our study showed that defendants who were formerly charged without grand jury involvement were more likely to be convicted than those who were indicted by grand juries. This trend became even more pronounced in the case of Black and Latinx defendants. Our research confirmed that prosecutorial decision-making considers multiple factors during the charging process, including offense type and severity. Alarming, the study also highlighted persistent disparities in the criminal legal system that disproportionately impact Black and Latinx defendants. When swayed by stereotypes, such as perceived criminality, prosecutorial decisions become the crucible in which the fates of Black and Latinx defendants are sealed. A surprising finding of our study is that Black defendants who

were formerly charged without a grand jury, despite being more likely to be convicted, were also more likely to be granted deferred adjudication. This practice allows a judge to provide the defendant with an opportunity to avoid formal conviction by meeting certain requirements, such as completing community service or a rehabilitation program. In stark contrast, this was not the case for Latinx defendants, despite the increased likelihood of case dismissal for this group when charged without a grand jury indictment. These findings underscore not only the significant influence of case processing decisions on case outcomes but also the disparate ripple effects of these decisions across different groups. An increasingly troubling facet of prosecutorial decision-making and a major concern for advocates of social justice is the potential for misconduct. Official misconduct by both police and prosecutors contributed to nearly 60% of exoneration cases since 1989. Such misconduct can adopt many faces: a prosecutor might hide evidence that could absolve the defendant, a practice known as “Brady violations”; they might unduly influence witnesses, pushing them to exaggerate or fabricate testimonies; or they might cross boundaries during the trial by making misleading statements to the jury. Such actions have become commonplace, leading to wrongful convictions and playing a part in approximately 30% of wrongful conviction cases that have led to exoneration. Despite these unsettling figures, only 4% of prosecutors face repercussions for their actions, painting a grim portrait of a system in which misconduct often remains unaddressed. As we traverse this complex landscape of prosecutorial discretion, it is crucial to scrutinize various facets of prosecutor decision-making to pinpoint biases and identify where disparate effects are most acutely felt. Our recent study underscores the importance of decision-making in the charging process and the profound role prosecutors play in shaping case outcomes. We must persistently scrutinize how these decisions are made to identify and implement measures that can reduce disparities within the criminal legal system resulting from prosecutorial discretion. To this end, we propose the following imperative actions: For minor offenses and individuals who are likely to receive deferred adjudication, diversion at the preliminary hearing should be the default course of action. This would not only reduce the unnecessary burden on the individual and court systems, but also foster a more proportionate response to minor offenses, shifting away from formal charges toward more rehabilitative solutions. Legal representation should be made available from the onset of early case processing, including during charging decisions. This would ensure that defendants are equipped with the necessary support and guidance to navigate the complex legal process, thus safeguarding their rights and promoting fair outcomes. Transparency in the early-case processing outcomes, including the charging phase, should be significantly increased. This bolsters public trust and confidence in the criminal justice system. Moreover, making information about early case-processing outcomes and charging decisions readily available to the public would foster accountability and enable better scrutiny of potential biases and disparities. Thorough research should be conducted to understand the extent to which charging decisions are influenced by police behavior. Such an examination would not only shed light on potential biases and practices that need rectification but also inform evidence-based policies that promote equitable outcomes. Reforming our prosecutorial system is no longer just a proposition—it is an urgent imperative, a rallying cry that reverberates across the arc of justice, demanding immediate, transformative action. This is not about making incremental adjustments or tweaking the system; it is a clarion call for a seismic shift in our prosecutorial decision-making framework. The broader societal impact of

this reform cannot be overstated. The credibility of our justice system, the public's faith in our institutions, and the stability of marginalized communities are directly tied to prosecutorial discretion. We must galvanize our collective will and engineer a prosecutorial system that embodies unassailable justice—a justice unaffected by the variables of race, ethnicity, or economic status. Inaction or complacency is a luxury we cannot afford. Let us seize this moment, embrace the challenge, and forever transform the landscape of justice in our nation.



## Trust in the justice system is key to rule of law.

**Colorado Judicial Institute n.d.** [Colorado Judicial Institute, n.d., "Explainer: Why is public trust in the judicial system important?,"

<https://coloradojudicialinstitute.org/what-we-do/public-education/explainer-why-is-public-trust-in-the-judicial-system-important.html>; CJI is an independent, nonpartisan, statewide community organization and 501(c)(3) nonprofit which focuses on promoting excellence, equity, impartiality, and public trust in Colorado's courts through outreach, education, and engagement.]

Q: Why does public trust in the judicial system matter? A: Public trust in the judicial system is an important foundation for social order. Courts are there to uphold laws, settle disagreements, and make sure justice is served. For courts to work well, they need the public to trust them. When people trust the system, they are more likely to accept court authority, cooperate with legal processes, and respect court decisions. They are also more likely to take part in civic duties like voting and serving on a jury. Q: What are the consequences of a lack of public trust in the judicial system? A: When people don't trust the judicial system, they may refuse to accept the authority and decisions of the courts. This can lead to ignoring laws, court orders, and social rules. People may also avoid taking part in legal processes, like reporting crimes or serving on juries. Some people may try to solve problems on their own, which could be dangerous and cause risks to public safety.

## Trust in the justice system is key to prevent populism.

**da Cruz 24**

[Tatiana Paula da Cruz, November 2024, "Trusting the Courts: Exploring the Link Between Populism, Trust in Courts, and Democracy in Brazil," *Journal of Politics in Latin America*, <https://doi.org/10.1177/1866802X241295784>; Tatiana Cruz (J.D., LL.M., Ph.D., MIPA) is with the Department of Political Science at the University of Wisconsin-Madison, specializing in Comparative Politics. Her current research interest focuses on exploring citizen's trust in political institutions under authoritarian populist leadership.]

It is well-established that trust in public institutions plays a crucial role in functioning democratic societies (Dahl, 1957; Easton, 1975; Hetherington, 1998). Increased trust is advantageous for elected officials and political institutions, as it leads to improved public perception, granting leaders greater flexibility in governance and institutions a stronger base of support, irrespective of the government's performance (Hetherington, 1998). It seems intuitive to think that in a democratic regime, especially in newer democracies, it is important for citizens to trust institutions central to the regime's functioning, such as the Judiciary, to use their services and commit themselves to their protection. However, research shows that even when detesting institutions in some Latin American contexts, people are willing to turn to them (Hilbink et al., 2022). Therefore, what role does trust in institutions play in these regimes, and when are people more likely to mistrust? Courts are pivotal in establishing and preserving constitutional democracies, with their effectiveness hinging on legitimacy (Epstein et al., 2001). They confer normative legitimacy on behavioural patterns essential for democratic functioning (Dahl, 1957). In certain countries, such as Brazil, the Constitution's institutional design for the Supreme Court provides an especially advantageous venue for political actors to block policies, thanks to the possibility of abstract constitutionality control by multiple legitimate entities (Taylor, 2006).

## The plan spills over – American legal standards shape international norms through soft power.

### Brake and Katzenstein 10

[Benjamin Brake and Peter J. Katzenstein, June 2010, "The Transnational Spread of American Law: Legalization as Soft Power," Hauser Globalization Colloquium Fall 2010, <https://www.iijl.org/wp-content/uploads/2016/11/Katzenstein-The-Transnational-Spread-of-American-Law-2010.pdf>; Dr. Peter Joachim Katzenstein is a Professor of International Studies at Cornell University, studying comparative politics, international relations, and international political economy. Katzenstein served as President of the American Political Science Association (2008-09). He was elected to the American Academy of Arts and Science in 1987, the American Philosophical Society in 2009 and the British Academy in 2015.]

In the current era of legalization on a global scale, American law is a powerful source of innovation in many countries. The influence of American law on the legal systems of other states affects diverse areas: general approaches to law (theories of legal realism, pragmatism, law and economics), specific areas of legal practice (constitutional law, tax law, securities law, antitrust law), legal education (credit system for coursework, post-graduate studies such as the LLM degree, law student clinics), the structure of the legal profession (mega-law firms, private practice), procedural reform (constitutional exclusionary rules, class actions, plea bargaining) and constitutional arrangements (the separation of powers, judicial review). In the words of Daniel Kelemen, "the American legal system has become the most influential nation in the world and many U.S. legal norms have spread to other jurisdictions through a variety of diffusion processes."

**In fact, plea bargaining is a prime example.**

**Economist 17** [The Economist, 11-9-2017, "The troubling spread of plea-bargaining from America to the world," <https://www.economist.com/international/2017/11/09/the-troubling-spread-of-plea-bargaining-from-america-to-the-world>, available at <https://archive.is/20250720150935/https://www.economist.com/international/2017/11/09/the-troubling-spread-of-plea-bargaining-from-america-to-the-world>.]

The central role of plea-bargaining in America goes some way to explaining its spread elsewhere. America's criminal-justice system has a big influence globally, of its foreign-aid efforts. The Office of Overseas Prosecutorial Development Assistance and Training (OPDAT), part of the Department of Justice, was established in 1991, after the break-up of the Soviet Union and as the war on drugs in Latin America intensified. Among the countries where America helped new governments with legal reforms are Bolivia, Colombia, Poland and Russia. Plea-bargaining was often among the suggested reforms. OPDAT is now helping to write guidance on criminal procedures, including plea-bargaining, in Croatia and the western Balkans. In Ukraine it trains justice officials in the system. Last year it started work with Guatemala on introducing plea-bargaining to clear a backlog of cases.

# **Philosophy**

## Plea bargaining enables individuals to best set and pursue their own ends

**Howe 06** [(Scott W Howe. - Associate Dean for Academic Affairs and Frank L. Williams, Jr. Professor of Criminal Law, Chapman University School of Law. A.B. 1977, University of Missouri; J.D. 1981, University of Michigan.), "The Value of Plea Bargaining", OKLA. L. REV. 599, 2006, accessed — 7-30-2025, <https://digitalcommons.law.ou.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1240&context=olr>, JBR]

Trading concessions for guilty pleas also does not mistreat defendants, regardless of whether the bargains reflect accurate discounting. As for those defendants who are convicted after trial, their higher sentences are best understood not as carrying a trial penalty but as deserved punishment for crime. As for defendants who accept bargains, their plea offers are not coercive or unconscionable according to classical contract law. The vast majority also do not receive undeserved punishment. The exceptions are the innocent defendants who accept bargains. They do not deserve their punishment. However, notions of autonomy support allowing even innocents to accept deals as does the recognition that denying them the bargaining option neither improves their position nor significantly serves the public interest. Plea bargaining adds a valuable option to our system for adjudicating criminal cases. Bargaining does not produce the same amount of punishment as would a system without bargaining and does not accurately discount trial outcomes. We cannot expect government plea offers to replicate post-trial punishments, and we should not care whether they accurately discount them. We prefer to trade some punishment to avoid the high costs associated with a bargainless system, and we do not believe that trial outcomes provide the only or even the best measure of social value or of fairness in criminal adjudication. For these same reasons, we can conclude that a system with bargaining, rather than one without bargaining, serves the public interest and the interests of defendants. Bargaining has value even if it often ends outside the shadow of trial.

**Plea bargaining makes conviction a choice by the defendant and better respects them.**

**Helm et al. 21** [Helm, Rebecca K., Roxanna Dehaghani, and Daniel Newman. "Guilty Plea Decisions: Moving beyond the Autonomy Myth." *The Modern Law Review* 85.1 (2021): 133–163. Web.]

As detailed in the introduction, autonomy can provide a potential justification for convicting defendants in the criminal justice system on the basis of a guilty plea. Essentially, while a conviction at trial is a conviction based on evidence against a defendant, a conviction via plea can be seen as a conviction based on the autonomous choice of the defendant. Since the defendant is the person affected by the conviction, it is arguably right that their choice to be convicted without a full trial be respected.<sup>37</sup> To force a trial on a defendant who does not want one can be seen as disrespectful and paternalistic in an adversarial system, particularly where the defendant clearly claims they are guilty. However, it should be noted that even autonomous guilty pleas can be harmful when entered by innocent defendants, particularly where true offenders avoid justice as a result.

## **Negative Evidence**



# Inequality



## The racial wealth gap is expanding

**Addo et al. 24** [Addo, Fenaba R., William A. Darity Jr., and Samuel L. Myers Jr. 2024. "Setting the Record Straight on Racial Wealth Inequality." AEA Papers and Proceedings, 114: 169-73. DOI: <https://doi.org/10.1257/pandp.20241102> accessed 8/4/2025]

However, a new paper from three collaborators at the Samuel DuBois Cook Center for Social Equity at Duke University provides an important correction: **The modern racial wealth gap is in fact growing**, in large part because of the cumulative impact of the country's racial history, and intergenerational transfers of wealth from older generations to younger ones. **"When it comes to wealth inequality**, a rising tide lifted all boats ... inequitably," said lead author Fenaba R. Addo, associate professor of public policy at the University of North Carolina-Chapel Hill and a Cook Center faculty affiliate. **"Black-white wealth inequality persists, and it has expanded with the onset of the pandemic."** **The study**, "Setting the Record Straight on Racial Wealth Inequality," appeared in the May 2024 edition of AEA Papers and Proceedings and is available online. Also co-authoring the paper were William A. Darity Jr., the Cook Center's founding director and a professor of public policy, African and African American Studies and economics at Duke, and Samuel L. Myers Jr., a Cook Center distinguished fellow and the director of the Roy Wilkins Center for Human Relations and Social Justice, Hubert H. Humphrey School of Public Affairs at the University of Minnesota. **From 2019 to 2022, the most recent years in which the Federal Reserve's Survey of Consumer Finances collected household wealth data, the mean gap in net worth between Black and white households grew from \$841,900 to \$1.15 million — a 38 percent increase that far outpaced inflation during the same period.**

**Plea bargaining gives too much power to prosecutors and coerces defendants to assume guilty, undermining fairness and justice.**

**Chen 24** [Ava Chen, columnist for Princeton Law Journal, Fall 2024, "The Unconstitutionality of Modern Plea Bargaining: Curbing Prosecutorial Vindictiveness", Princeton Legal Journal, <https://legaljournal.princeton.edu/the-unconstitutionality-of-modern-plea-bargaining-curbing-prosecutorial-vindictiveness/>, accessed 8-13-2025]

Plea bargaining is a central fixture of the American justice system—an estimated **98% of criminal cases** are resolved through guilty pleas, with only **5%** of defendants exercising their right to a jury trial.<sup>1</sup> According to a headnote for *Bordenkircher v. Hayes*, plea bargaining regards the negotiation between a prosecutor and defendant whereby the prosecutor encourages a guilty plea by offering a reduced charge in exchange.<sup>2</sup> By encouraging defendants to waive their right to an often time-consuming and expensive jury trial, plea bargaining helps cases move through the justice system in an efficient, cost-friendly, and purportedly humane manner. Yet the constitutionality of plea bargaining relies upon prosecutorial fairness and the uncoerced freedom of defendants to choose their plea—two assumptions that often do not hold true in practice. This article will argue that the prevalence of prosecutorial vindictiveness in plea bargaining renders its current iteration unconstitutional, especially regarding the disproportionate sentencing of minority defendants. Then, I propose possibilities for legal reforms that can help curb such prosecutorial misconduct.

## **Plea bargaining exploits racial disparities and uneven power dynamics between the prosecutor and defendant.**

**Khan 24** [Zara Khan, PhD in Political Science from University of New York, 11-10-2024, "The Impact of Plea Bargaining on Existing Disparities in the American Legal System By Zara Khan", Adelphi University, <https://criticaldebateshsgj.scholasticahq.com/post/2811-the-impact-of-plea-bargaining-on-existing-disparities-in-the-american-legal-system-by-zara-khan>, accessed 8-13-2025]

Although plea bargains have been deemed constitutional, scholars have noted the racial disparities that result from this practice. A notable example of this disparity is the difference in charges as White defendants experience a reduction in their charge almost 6% more frequently than Black males (Bradshaw). Ultimately, this blog examines how plea bargains facilitate and perpetuate discrimination in the criminal justice system, in respect to minority overrepresentation in prisons. It also examines the interplay between legal representation and plea bargain results. In studying the methods through which plea bargaining amplifies existing disparities, this paper identifies potential avenues for reform, including abolishing the use of mandatory minimums, pretrial detention, and expanding the number of public defense attorneys. In moderation, plea deals are not a threat to the integrity of the justice system. However, opponents of plea deals argue that not only are there serious ethical concerns with the practice, but also that it has been used as a means for prosecutors to evade their responsibilities (Bell). The method gives prosecutors too much discretion over cases, which comes with some underlying benefits that act in their favor. Prosecutors are known for having excessive caseloads and, depending on the severity of each case, have to expend exorbitant amounts of energy investigating each offense that piles onto their desk (Winshall pg. 4). Therefore, the desire to streamline the process is not completely unreasonable—nor difficult to understand—as it removes the complexities that come with these cases. This tempting simplicity, in turn, adds a layer of coercion behind the acceptance of a plea deal for the defendant. It is well known that having to go to court is an incredibly demanding and costly process. Therefore, in an attempt to avoid going to trial, prosecutors try to convince defendants to accept plea deals, evoking scenarios of harsher sentences or lengthy pretrial detention periods. The effects of this procedure are already evident as Trial rates in the United States are beginning to dwindle. States, such as Texas and Pennsylvania, have trial rates lower than about 3% (Johnson). Pretrial detention can be especially intimidating because of the lack of resources offered to the defendant. While in pretrial detention, the amount of time a person is detained is unclear as it depends on the date of their pending trial. This means that people can be held anywhere from months to years, without being formally convicted of a crime (Digard). Thus, prosecutorial self interest can inhibit the pursuit of justice and fair sentencing for the defendant, incentivizing a swift—rather than fair—conclusion to the case. In fact, to prevent any potential legal backlash, many federal prosecutors around the nation require their defendants to waive the right to appeal if they feel as if they received ineffective counsel (Bell). Defendants often face the daunting prospect of an unpredictable trial. The risk of a harsher sentence can eclipse the desire to seek justice for themselves, leading most defendants to accept plea deal offers, some even falsely admitting guilt in doing so. In fact, studies have found that 11% of exonerated individuals pleaded guilty when offered the deal. However, their fears of receiving a longer sentence for being convicted at trial aren't completely unwarranted. The majority of those who reject the plea deal and exercise their right to go to trial receive much harsher sentences, highlighting the coercive undertone of plea bargaining (Berdejo). A study by the National Association of Criminal Defense Lawyers highlights this disparity, stating that there is on average a seven year difference in sentencing between those who exercise their right to go to trial and those who accept the bargain (Dervan pg. 17). A huge factor behind this difference is due to mandatory minimum sentencing policies in the judicial system. A mandatory minimum sentence imposes a statutory set minimum term that can be delivered for a certain crime that can't be reduced or suspended (Nellis). The method undermines the nuances and subjectivity of each case, which poses a threat to the execution of justice. The primary issue with mandatory minimum sentencing is that the prosecutor holds all of the power, which can further perpetuate coercion and discrimination in relation to plea bargaining (Nellis). For example, if the prosecutor decides to charge the defendant with a minimum sentence of 20 years, the judge is legally bound to that sentence, regardless of confounding variables (Siegler). This power can be misused to coerce compliance in plea bargaining (Siegler).

## **Plea Bargaining reinforces racial bias. Empirical study of over 30K cases proves.**

**Admin 17** [Madeo Admin, Writer for Equal Justice Initiative, 10-26-2017, "Research Finds Evidence of Racial Bias in Plea Deals", Equal Justice Initiative, <https://ejl.org/news/research-finds-racial-disparities-in-plea-deals/>, accessed 8-13-2025]

Analyzing more than **30,000 Wisconsin cases over a seven-year period**, the study found significant racial disparities in the plea-bargaining process. White defendants were **25 percent more likely** than Black defendants to have their most serious initial charge dropped or reduced to a less severe charge; Black defendants were more likely than whites to be convicted of their highest initial charge. As a result, white defendants who faced initial felony charges were approximately 15 percent more likely than similar Black defendants to be convicted of a misdemeanor instead. White defendants with no prior convictions were over 25 percent more likely than Black defendants with no prior convictions to receive a charge reduction. The disparities were even greater in misdemeanor cases. White people facing misdemeanor charges were nearly **75 percent more likely** than Black people to have all charges carrying potential imprisonment **dropped**, dismissed, or reduced to lesser charges. White defendants charged with misdemeanors who had no prior criminal history were **46 percent more likely** than similar Black defendants to have all charges carrying a potential sentence dropped or reduced to charges that carry no potential imprisonment. The study **concluded** that disparities in plea bargaining outcomes appear to be driven by cases in which defendants have no prior conviction, which "suggests that in the absence of evidence of a defendant's recidivism risk (e.g., when there is no criminal history), prosecutors may be using race as a proxy for the defendant's likelihood to recidivate."

## **Prosecutors use plea bargains as a weapon against people in poverty.**

**Stauffer 21** [Stauffer, Emily (2021) "Plea Bargains: Justice for the Wealthy and Fear for the Innocent," Brigham Young University Prelaw Review: Vol. 35 , Article 14. <https://scholarsarchive.byu.edu/byuplr/vol35/iss1/14> accessed 8/5/2025]

Unlike trials, where constitutional law and case law strictly outline the process, the plea bargaining process is much more flexible. The structure of plea bargaining gives prosecutors wide discretion over the outcome of a case. One of the most effective techniques prosecutors use is pretrial detention. More than half a million people incarcerated in the United States, like Kalief Browder, have never been convicted of a crime. About 65 percent of people in jail and 24 percent of people incarcerated at the state and local levels are in pretrial detention and have not yet been convicted. Many of these people are in pretrial detention simply because they cannot afford bail. When defendants are in pretrial detention, they cannot go to work, go home, or see their family. Therefore, people in pretrial detention get more pressure to plead guilty, so that they can get out of jail. Another tactic that prosecutors can use to convince defendants to accept plea deals is using the trial penalty to their advantage. The trial penalty is the idea that those who accept plea bargains get less severe sentences than those who go to trial. As in the case of George Alvarez, defendants may plead guilty in fear of getting a more severe sentence at trial. America's criminal justice system cannot exist without plea deals, but the plea-bargaining process protects the prosecutors' discretion rather than individuals' rights. Because of this, courts convict defendants because they are too poor to assert their constitutional right to go to trial. Although the direct costs of a trial can be covered by the state, many indirect costs keep people from going to trial and instead force them to take plea deals. These indirect costs include pretrial detention, the trial penalty, and the costs of a trial. Additionally, people who live in poverty are disadvantaged in the plea-bargaining process because of poor representation and psychological factors.

**Plea bargains are forced upon black men, causing to inability to get or keep a job or housing, reinforcing racial lines, and preventing participation in the democratic process.**

**Sobrevinas 25** [Jess Sobrevinas, graphic and multimedia designer with a degree in Multimedia Arts, specializing in Graphic Design, from National University – Laguna (Class of 2023). She has held roles as a multimedia designer and virtual assistant at Creative Online (2021), Exceed Digital Solutions (2022), and Rolling Out (2022–2024), 5-2-2025, "How plea deals often harm Black men", Rolling Out, <https://rollingout.com/2025/05/02/how-plea-deals-often-harm-black-men/> accessed 8/5/2025]

The plea bargaining system operates largely outside public view, conducted in prosecutors' offices rather than open courtrooms. This opacity creates fertile ground for unconscious bias and systemic discrimination to flourish unchecked. For many Black men, particularly those from economically disadvantaged backgrounds, the consequences extend far beyond incarceration, creating lifetime barriers to employment, housing, education, and civic participation. Black defendants frequently face insurmountable pressure to accept plea deals regardless of actual guilt. Prosecutors routinely practice charge stacking – filing numerous serious charges for a single incident, sometimes carrying mandatory minimum sentences measured in decades. When confronted with the possibility of spending most of their lives in prison, even innocent defendants may rationally accept a plea bargain carrying a shorter sentence. Pre-trial detention compounds these pressures. Unable to afford bail, many Black defendants remain incarcerated while awaiting trial, losing jobs, housing, and sometimes custody of their children. This economic devastation creates additional incentive to accept plea deals simply to return home, even when the consequence is a permanent criminal record. Public defenders, while dedicated, often struggle with overwhelming caseloads. This systemic under-resourcing of defense services means many Black defendants receive minimal consultation before making life-altering decisions. Many report spending mere minutes with their attorney before deciding whether to accept a plea, with little explanation of collateral consequences or potential defenses. Racial disparities persist throughout the plea bargaining process. Black male defendants frequently receive longer sentences than similarly situated white male defendants for equivalent crimes, even when controlling for factors like criminal history and offense severity. Evidence shows that prosecutors offer white defendants better plea deals than Black defendants for equivalent crimes. White defendants more frequently receive offers that include charge reductions, resulting in both shorter sentences and fewer collateral consequences like employment restrictions or loss of voting rights. Pre-trial risk assessment tools, ostensibly designed to increase objectivity, often reinforce rather than mitigate these disparities. These systems frequently incorporate factors strongly correlated with race, such as neighborhood characteristics and family arrest history, perpetuating historical patterns of over-policing in Black communities. Even successful plea bargains that avoid incarceration can devastate Black men's economic and social prospects. Criminal records create formidable barriers to employment, with employers more likely to call back white applicants with criminal records than equally qualified Black applicants with identical records. This compounds existing racial employment disparities. Housing insecurity follows similar patterns, with many landlords excluding applicants with criminal histories. Given that Black men are more likely to acquire criminal records through plea bargains, this practice disproportionately affects Black communities, contributing to residential segregation and concentrated poverty. Educational opportunities narrow dramatically after criminal convictions. Federal law restricts financial aid



eligibility for certain drug convictions, and many colleges require criminal history disclosure during the application process. This systematically limits social mobility precisely when higher education has become essential for economic advancement. **Perhaps most fundamentally,** plea bargains contribute to disenfranchisement of Black communities. In many states, felony convictions result in temporary or permanent loss of voting rights. Millions of Americans remain disenfranchised due to felony convictions, with Black Americans disenfranchised at rates significantly higher than non-Black Americans. This systematic removal of political power creates a troubling democratic deficit, leaving the communities most affected by criminal justice policies with diminished ability to influence those policies through electoral participation. When combined with practices like prison gerrymandering – counting incarcerated individuals as residents of their prison locations rather than home communities – these disparities further dilute Black political representation.

## Plea bargains lead to unequal outcomes in the U.S CJS by creating a criminal class

**Canon 23** [Dan Canon, civil rights lawyer, educator, writer, and activist based in the Midwest. He is Director of Externships and Professor of Law at the Louis D. Brandeis School of Law, where he teaches courses on civil rights and civil procedure. His research is focused primarily on collective action, the criminal legal system, and the role of the courts in preventing election violence, 1-29-2023, "Plea Bargains Are a Tool of Racist Mass Incarceration", Truthout, <https://truthout.org/articles/plea-bargains-are-a-tool-of-racist-mass-incarceration/> accessed 8/3/2025]

The only true explanation for this anomaly is that the mechanisms of the U.S. state have artificially created an abundance of so-called criminals. In my book, *Pleading Out: How Plea Bargaining Creates a Permanent Criminal Class*, I argue that the state's chief criminal-creating mechanism is the plea bargain. The U.S. is unique in that more than 95 percent of all criminal cases end in a plea bargain. No other country comes anywhere close. Our uniqueness in plea bargaining has led us to uniquely bad outcomes. We couldn't have gotten these astronomical numbers of system-involved people without a method of getting lots of convictions quickly, and that's what the plea bargain is. Shameka Parrish-Wright, a bail reform activist and the director of VOCAL-KY, an organization that provides support to low-income people in the criminal legal system, explained: "While doing bail reform work ... I ran into so many people right before they were about to decide on taking a plea deal.... I remember working with public defenders and other defense attorneys to pay bails and get people out before accepting terrible plea deals. Plea deals build prisons and keep people incarcerated. Plea deals also feed the probation and parole system, which needs a complete overhaul." But why should plea bargaining lead to racist outcomes? This answer requires a little more parsing. Because of the prevalence of plea bargaining, police know that virtually any arrest they make will end in a conviction. This alone can lead to racially unequal outcomes if you've got a racist cop who is only interested in arresting people of color. Since nearly every arrest is justified by its inevitable conclusion, i.e. a plea bargain and conviction, an officer's motives are almost never meaningfully questioned in court or anywhere else. The problem is more complicated than that, though. Because their performance is often measured in number of arrests, there is little incentive for any officer to exercise much on-the-job caution. If a cop is told to arrest as many people as possible every day, they will likely start looking in the poorest part of town. That's not to say that poor people commit more crime than their suburban counterparts — they don't. But the arrestees harvested from the poorest communities are the easiest prey for officers who need to meet quotas because once they are sucked into the system, they often must plead guilty to something or face even worse consequences than the conviction itself. Think of it this way: A cop would more likely arrest someone who is likely to take a deal and get convicted quickly, rather than someone with the means to post bail, prolong the process and hire private lawyers to put the officer's behavior under a microscope. Many of the poorer communities in the U.S., especially in urban centers, are populated by people of color. This is thanks in large part to "redlining" practices which relegated Black people and other people of color into the places that white people didn't want to live. "Often, people of color who reside in under-resourced communities do not have the means to hire a private attorney that will fight for a better outcome," explained Melba Pearson, a former prosecutor and civil rights attorney who specializes in policy. "Often, private attorneys have more investigators at their disposal, will provide broader mitigation for a judge to consider and can provide a more robust defense than a public defender who has 2 – 3 times the number of cases.... A public defender may encourage their client to plea for fear of a harsher sentence at trial, or a lack of resources to be able to investigate the case with a fine-tooth comb despite the possibility of an acquittal." Thus, while

anyone of any race can be arrested at any time for anything (or for nothing at all), the target on your back becomes bigger if you're poor, and bigger still if you're poor and Black. An officer need not be a member of the Aryan Brotherhood to arrest a disproportionate number of people of color; they need only follow a simple order to maximize the number of arrests they make. Calvin John Smiley, professor of sociology at Hunter College-City University of New York, explained how plea bargaining racializes crime in plain sight, immediately affecting incarcerated youth. "The expectation is that many of these young men who are racialized as Black and Latinx will eventually succumb to a plea agreement, which typically occurs after spending a year, if not more, within the juvenile facility. During that time, they are exposed to various forms of violence and if/when they turn 18 and 'catch a case' in the facility, often, will be transferred to [an adult jail], which in turn places them at higher risk for exposure to violence." Here's where the serpent swallows its tail: After generations of unequal arrests of Black people for everything under the sun, with most of those arrests ending in quick convictions, many of the players in the criminal legal system — including cops, judges, prosecutors and even defense attorneys — have come to equate "Blackness" with "criminality." Legal scholar Carlos Berdejó described the practice of "using a defendant's race [an observable attribute] as a proxy for the defendant's inherent criminality [an unobservable attribute]." In other words, the law has gotten so used to rapidly affixing the label of "criminal" to Black people that it assumes the Venn diagram between "Black" and "criminal" is a perfect circle.

## **The results of plea bargaining are empirically worse for African American defendants**

**Equal Justice Initiative 17** [Equal Justice initiative, 10-26-2017, "Research Finds Evidence of Racial Bias in Plea Deals", Equal Justice Initiative, <https://eji.org/news/research-finds-racial-disparities-in-plea-deals/> accessed 8/3/2025]

Equal Justice initiative 17: A new study from Carlos Berdejó of Loyola Law School finds significant racial disparities in plea deals that suggest that prosecutors may be using race as a proxy for criminality. Recent studies on racial disparities in the criminal justice system have focused on arrests, initial charging, and sentencing, and they generally find that African Americans are more likely to be arrested and charged – and they receive harsher sentences – than white people. Fewer researchers have examined the plea-bargaining process, even though the overwhelming majority of criminal cases in the United States are resolved through plea deals. Those deals determine what crime the defendant is convicted for, which in turn sets the applicable sentencing guidelines range and statutory minimum and maximum sentences. Because prosecutors set the starting point for plea negotiations by deciding which initial charges to file, and they are empowered to reduce serious charges to less serious ones, drop concurrent charges involving less serious crimes, reduce felony charges to misdemeanors, and drop or reduce all charges carrying a possible incarceration sentence so that the defendant serves no jail or prison time, prosecutors often have more power over sentences than judges do. But just like sentencing judges, prosecutors may be subject to implicit biases when exercising their discretion. With limited information, time, and resources, prosecutors may consciously or subconsciously rely on race in evaluating which defendants are likely to commit crimes in the future, and those determinations are reflected in their plea offers. Analyzing more than 30,000 Wisconsin cases over a seven-year period, the study found significant racial disparities in the plea-bargaining process. White defendants were 25 percent more likely than Black defendants to have their most serious initial charge dropped or reduced to a less severe charge; Black defendants were more likely than whites to be convicted of their highest initial charge. As a result, white defendants who faced initial felony charges were approximately 15 percent more likely than similar Black defendants to be convicted of a misdemeanor instead. White defendants with no prior convictions were over 25 percent more likely than Black defendants with no prior convictions to receive a charge reduction. The disparities were even greater in misdemeanor cases. White people facing misdemeanor charges were nearly 75 percent more likely than Black people to have all charges carrying potential imprisonment dropped, dismissed, or reduced to lesser charges. White defendants charged with misdemeanors who had no prior criminal history were 46 percent more likely than similar Black defendants to have all charges carrying a potential sentence dropped or reduced to charges that carry no potential imprisonment. The study concluded that disparities in plea bargaining outcomes appear to be driven by [in] cases in which defendants have no prior conviction, which “suggests that in the absence of evidence of a defendant’s recidivism risk (e.g., when there is no criminal history), prosecutors may be using race as a proxy for the defendant’s likelihood to recidivate.” Second, racial disparities in plea bargaining outcomes are greater in cases involving misdemeanors and low-level felonies, which suggests that when the seriousness of the offense tells them little or nothing about the defendant’s propensity to commit a severe offense in the future, prosecutors may be relying on the presumption of dangerousness that has long burdened African Americans.

## **Plea bargaining creates a vicious cycle of inequality that disproportionately affects minorities**

**Chen 24** [Chen, Ava. "The Unconstitutionality of Modern Plea Bargaining: Curbing Prosecutorial Vindictiveness - Princeton Legal Journal." Princeton University, The Trustees of Princeton University, 2024, accessed 8/12/25, [legaljournal.princeton.edu/the-unconstitutionality-of-modern-plea-bargaining-curbing-prosecutorial-vindictiveness/](https://legaljournal.princeton.edu/the-unconstitutionality-of-modern-plea-bargaining-curbing-prosecutorial-vindictiveness/).]

The prevalence of prosecutorial vindictiveness in plea bargaining has profound social implications, particularly regarding racial and socioeconomic disparities. Research has shown that minority defendants, especially Black and Latino individuals, are disproportionately harmed by the coercive nature of plea bargaining—receiving harsher charges, being forcibly separated from families, being held in pretrial detention, and more. Because of these unfavorable circumstances, many defendants of color accept guilty pleas even when they may be innocent or facing excessive charges.<sup>19</sup> A 2018 study showed that white defendants are 46% more likely than Black defendants to have their top misdemeanor charges dropped or amended to lesser charges. Black individuals are also 32% more likely to be incarcerated than white detainees; Latino individuals are 42% more likely.<sup>20</sup> While there are systematic factors at play beyond explicit prosecutorial bias, the wide berth of prosecutorial freedom allows entrenched racial biases to exacerbate and perpetuate these inequalities. Specifically, implicit racial bias motivates prosecutors to give harsher sentencing to defendants of color—another contributing factor to prosecutorial vindictiveness. <sup>21</sup> Minority defendants are also often less likely to have access to competent legal representation and have to rely on underfunded public defenders, which leaves them vulnerable to prosecutors' leverage during plea negotiations. In many state courts, public defenders are overworked and underpaid; for instance, most public defenders in Missouri are expected to handle up to 100 cases a week,<sup>22</sup> and the average public defender in Louisiana only has 7 minutes to work on an individual case.<sup>23</sup> The starting salary for a public defender in Florida is approximately \$40K—if they support a family of four, their income would qualify public defenders to be eligible for a public defender themselves.<sup>24</sup> As such, they often take on multiple cases simultaneously for a fixed salary and thus have a personal incentive for quick resolution by coercing defendants into pleading guilty. Private lawyers, on the other hand, have generous hourly rates that incentivize longer and more meticulous trials. The over-policing of communities of color increases the likelihood of charges being brought against these individuals in the first place, compounding risks they face when engaging in plea bargaining. Prosecutorial vindictiveness in plea bargaining disproportionately affects defendants of lower income, which statistically correlates with racial minorities. This is because defendants who cannot afford the time and resources to mount an adequate defense are often forced to accept plea deals simply to avoid the risk of a longer, more expensive trial. The economic burdens of prolonged legal battles make it nearly impossible for many such defendants to reject plea offers, even when unjust. In these cases, defendants' Fifth Amendment rights become severely challenged if not violated, and they are forced to plead guilty by a system that punishes the already disadvantaged.<sup>25</sup> This creates a vicious cycle where socioeconomic status—inseparable from race—becomes a determining factor in whether a defendant can assert their constitutional rights against a prosecutor's vindictive whims. Plea bargaining, in its current iteration, disproportionately punishes individuals of color and lower income, which, in principle, violates the Equal Protection Clause of the Fourteenth Amendment.<sup>26</sup> And again, prosecutorial vindictiveness in itself violates the Due Process Clause of the Fourteenth Amendment, not to

mention how the whole system of plea bargaining eschews defendants' right to a "speedy and public trial" guaranteed in the Sixth Amendment.<sup>27</sup> Especially considering these social corollaries, it becomes even more apparent that plea bargaining—inseparable from its prosecutorial vindictiveness—should be held unconstitutional.

## **Institutional racism erupts into confrontation and bifurcates society across racial and political lines culminating in World War III and the termination of humanity.**

**Marable 84** [Manning Marable 84, Director of the Institute for Research in African American Studies, Professor of History at Columbia University, "Speaking Truth to Power: Essays on Race, Resistance and Radicalism"; p. 198-199.]

Black Americans also comprehend that peace is not the absence of conflict. As long as institutional racism, apartheid, and social class inequality exist, social tensions will erupt into confrontations. Most blacks recognize that peace is the realization of social justice and human dignity for all nations and historically oppressed peoples. Peace more than anything else is the recognition of the oneness of humanity. As Paul Robeson, the great black artist and activist, observed in his autobiographical work Here I Stand, "I learned that the essential character of a nation is determined not by the tipper classes, but by the common people, and that the Common people of all nations are truly brothers in the great family of mankind." Any people who experience generations of oppression gain an awareness of the innate commonalty of all human beings, despite their religions, ethnic, and political differences. In order to reverse the logic of the Cold War, white Americans must begin to view themselves as a distinct minority in a world dominated by people of color. Peace between the superpowers is directly linked to the evolution of democratic rights, economic development, and social justice in the third world periphery. Black intellectuals, from W.E.B. DuBois to the present, have also comprehended their unique role in the struggle for peace and social justice. Cultural and intellectual activity for it is inseparable from politics. All art and aesthetics, scientific inquiry, and social studies are directly or indirectly linked to the material conditions of human beings, and the existing set of power relationships which dictates the policies of the modern state. When intellectual artists fail to combat racial or gender inequality, or the virus of anti-Semitism, their creative energies may indirectly contribute to the ideological justification for prejudice and social oppression. This is equally the case for the problem of war and peace. Through the bifurcation of our moral and social consciences against the cold abstractions of research and "value-free" social science, we may console ourselves by suggesting that we play a role in the escalation of the Cold War political culture. By hesitating to dedicate ourselves and our work to the pursuit of peace and social justice, we inevitably contribute to the dynamics of national chauvinism, Militarism, and perhaps set the ideological basis necessary for World War III. Paul Robeson, during the Spanish Civil War, expressed the perspective of the black Peace tradition as a passionate belief in humanity: "Every artist, every scientist must decide, now, where he stands, life has no alternative. There are no impartial observers. The commitment to contest public dogmas, the recognition that we share with the Soviet people a Community of social, economic, and cultural interests, force the intellectual into the terrain of ideological debate. If we fail to do so, and if the peace consensus of black America remains isolated from the electoral mainstream, the results may be the termination of humanity itself.

## **Cartels**



## **Plea bargains harms deterrence which causes increased cartel violence.**

**Connor 08** [John M. Connor – PhD University Wisconsin, Professor Emeritus Purdue University (received this title after writing the paper). “A Critique of Partial Leniency for Cartels by the U.S. Department of Justice.” Draft May 26, 2008. Available at SSRN: <https://ssrn.com/abstract=977772>.]

This study has implications for cartel deterrence. It is likely that the overall level of U.S. fines contributes to under-deterrence and that partial leniency policies further contribute to underdeterrence by building in expectations by would-be cartelists for excessive cooperation discounts and by reducing the monetary value of early cooperation.

**Prefer our study – it understands both perspectives of the cartels debate and empirical analysis concludes plea bargaining is net worse in dealing with cartels.**

**Connor 08** [John M. Connor – PhD University Wisconsin, Professor Emeritus Purdue University (received this title after writing the paper). “A Critique of Partial Leniency for Cartels by the U.S. Department of Justice.” Draft May 26, 2008. Available at SSRN: <https://ssrn.com/abstract=977772>.]

A much debated but unresolved issue in cartel enforcement is the nature of the trade-off between the conservation of constrained prosecutorial resources and the size of corporate cartel fines. On the one hand, more rapid acceptance of guilty pleas can be induced by offering relatively large discounts from recommended cartel fines (OECD 2008: 9-10). Large discounts will permit an antitrust authority to pursue more cases that involve difficult proof of guilt. Deterrence is improved. On the other hand, a deep discounting policy will lead to fewer amnesty applications and a greater number of cartel formations. Deterrence is hobbled. It is precisely in the presence of such trade-offs that an empirical study will be of assistance in assessing in choosing the right balance.

## Social Contract NC

**Plea bargaining is unjust because it coerces defendants—often including the innocent—to waive core trial rights, violating the social contract’s requirement to protect equal basic liberties.**

**ABA Plea Bargain Task Force 23** [American Bar Association, Criminal Justice Section, Plea Bargain Task Force, “2023 Plea Bargain Task Force Report,” 2 February 2023, Introduction & Principles, pp. 5–11; “Principle Three” analysis, p. 16. Accessed 14 August 2025. <https://northerndistrictpracticeprogram.org/wp-content/uploads/2024/05/2023PleaBargainTaskForceReport.pdf>]

Moreover, the Task Force reviewed substantial evidence that defendants—including innocent defendants—are sometimes coerced into taking pleas and surrendering their right to trial. This happens for a number of reasons. For instance, mandatory sentencing laws often make the risks of taking a case to trial intolerable, and in some cases, prosecutors understand and exploit these fears to induce defendants to plead guilty in cases where they otherwise would prefer to exercise their constitutional right to have the case decided by a jury. Similarly, mandatory collateral consequences, including the threat of deportation, push defendants to accept pleas in cases they might otherwise fight at trial. While the plea bargaining process in the United States is broad and varied, the Task Force determined that it was vitally important to craft a single set of principles to guide plea practices generally. Those principles, which guide the Report’s more specific observations and recommendations, are listed below. These principles should be shared widely with members of the criminal justice community so that they might influence behavior and decision-making moving forward. These principles represent our conclusions about how plea bargaining should operate within our larger criminal justice system, a system based on the fundamental Constitutional right to trial. Principle 2 Guilty pleas should not result from the use of impermissibly coercive incentives or incentives that overbear the will of the defendant. Principle 3 In general, while some difference between the sentence offered prior to trial and the sentence received after trial is permissible, a substantial difference undermines the integrity of the criminal system and reflects a penalty for exercising one’s right to trial. This differential, often referred to as the trial penalty, should be eliminated. Principle 10 Although guilty pleas necessarily involve the waiver of certain trial rights, there are rights that defendants should never be required to waive in a plea agreement. Principle Three (detailed analysis): The trial penalty is the large differential between the pretrial plea offer and the sentence a defendant faces or receives after trial. A recent comprehensive report on the trial penalty by the National Association of Criminal Defense Lawyers (NACDL) reveals the scope of the problem. As the NACDL Trial Penalty report documents, in federal felony cases there is on average a seven-year difference between the sentence after trial and the sentence after a plea, meaning a defendant’s sentence after a plea is on average seven years shorter than the sentence resulting from trial. In drug trafficking cases, the average difference between the trial sentence and the plea sentence is nine

years. Evidence gathered by the Task Force points to this difference in sentencing as having a powerfully coercive impact on the defendant's decision to plead guilty or proceed to trial because going to trial involves the risk of a drastically longer sentence. Even innocent defendants may make the rational choice to avoid the risk of a large post-trial sentence when a much lower sentence is on the table.

**The court must adopt a justice-as-fairness standard: the social contract binds government to secure and prioritize equal basic liberties and the rule of law.**

**Rawls 99** [John Rawls (Ph.D.; Professor of Philosophy, Harvard University), *A Theory of Justice: Revised Edition*, Harvard University Press, 1999, Preface (pp. xii–xv) and ch. IV (“Equal Liberty”), §46 (“Further Cases of Priority”) (p. 288). Accessed 14 August 2025. <https://giuseppecapograssi.files.wordpress.com/2014/08/rawls99.pdf>]

The force of justice as fairness would appear to arise from two things: the requirement that all inequalities be justified to the least advantaged, and the priority of liberty. This pair of constraints distinguishes it from intuitionism and teleological theories. Taking the preceding discussion into account, we can reformulate the first principle of justice and conjoin to it the appropriate priority rule. The changes and additions are, I believe, self-explanatory. The principle now reads as follows. **FIRST PRINCIPLE** Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all. **PRIORITY RULE** The principles of justice are to be ranked in lexical order and therefore liberty can be restricted only for the sake of liberty. There are two cases: (a) a less extensive liberty must strengthen the total system of liberty shared by all, and (b) a less than equal liberty must be acceptable to those citizens with the lesser liberty. It perhaps bears repeating that I have yet to give a systematic argument for the priority rule, although I have checked it out in a number of important cases. It appears to fit our considered convictions fairly well. But an argument from the standpoint of the original position I postpone until Part Three when the full force of the contract doctrine can be brought into play,

## **Ban Death Penalty CP**

## **Counter Plan: The United States should abolish the death penalty. It increases racial inequality and doesn't solve crime problems.**

**Webb 25** [Webb, Lewis. "The Time to Repeal the Death Penalty Is Now." American Friends Service Committee. 9 Mar. 2025. Web. 14 Aug. 2025.]

As with anything that is a consequence of an individual's interaction with a criminal legal system rooted in white supremacy, race plays a major role in determining who receives the death penalty and who does not. In short, those who kill white people are more likely to get a death sentence than those who kill people of color. And of those who are convicted of murder, people of color are more likely to get death sentences than white people. In a 2024 report, the Death Penalty Information Center noted that in federal cases, "73% of capital defendants authorized for death penalty prosecutions from 1989 to June 2024 were non-white. Of all people federally sentenced to death, 60% (48 out of 80) have been people of color. The over-representation of non-white defendants persists despite the Department of Justice's commitment to a "race blind" approach to review-ing and approving capital prosecutions. "73% of capital defendants authorized for death penalty prosecutions from 1989 to June 2024 were non-white. Of all people federally sentenced to death, 60% (48 out of 80) have been people of color. The over-representation of non-white defendants persists despite the Department of Justice's commitment to a "race blind" approach to review-ing and approving capital prosecutions. In the three districts (Virginia, Texas, and eastern Missouri) that accounted for the bulk of the federal death sentences at the time, most of the people on death row were people of color. The death penalty is arbitrarily sought by prosecutors who are often white themselves. They have the sole discretion to seek the death sentence for an accused individual.

2. Individuals have been wrongfully sentenced to death. Since the 1970s, at least 160 individuals who were initially sentenced to death were exonerated. That is, they were found to be innocent and released. And others have been executed despite compelling evidence that they may have been wrongfully convicted. Death penalty sentences are not exempt from the grave mistakes that plague our criminal legal system. Wrongful convictions occur for a multitude of reasons, including racial bias, false and/or coerced confessions, police or prosecutorial misconduct, and faulty forensic evidence. The release of people on death row over the decades—based on evidence that they did not commit the acts for which they were sentenced—is yet another example of the deep and deadly flaws in the criminal legal system.

3. There is no evidence that death sentences or executions do anything to protect public safety. For years, criminologists have studied whether the death penalty deters crime. Their research has demonstrated that we need to look elsewhere to reduce the level of homicide. As a society, we cannot continue to allow state-sanctioned murder. We must stop responding to harms committed with punishment and retribution—and instead center restorative justice and healing. That means focusing on the needs of victims of violence and their loved ones as they rebuild their lives. It also means fostering reparations and reconciliatory processes within the community at large.

## **Abolish CJS CP**



## **The Criminal Justice System disproportionately incarnates people who are in poverty or in minorities, creating a cycle of inequality.**

**IRP 24** [IRP. "Connections among Poverty, Incarceration, and Inequality." INSTITUTE FOR RESEARCH ON POVERTY, 27 Feb. 2024, accessed 8/12/25, [www.irlp.wisc.edu/resource/connections-among-poverty-incarceration-and-inequality/](http://www.irlp.wisc.edu/resource/connections-among-poverty-incarceration-and-inequality/).]

Inequality In Incarceration By Race, Ethnicity, And Education Level Is Extensive. The U.S. incarceration rate is not only high, but it's also highly unequal. Prison populations disproportionately comprise African American and Hispanic men, especially men who dropped out of high school. Most of them are poor.[4] Some researchers find links between high incarceration rates among men of color and policy changes that criminalized social problems experienced by many people living in poverty (who are disproportionately people of color). These challenges include homelessness, mental illness, and drug or alcohol problems. The result, these researchers suggest, perpetuates poverty and racial inequality both within and across generations.[5] Figure 4 compares the risk of incarceration for black and white men in 1979 and 2009 by education level. While the risk increased for all groups between 1979 and 2009, the rise is particularly stark for black men who dropped out of high school. Almost 70% of the black high school dropouts in 2009 had been imprisoned at some point by age 30, which was four-and-a-half times the rate of white high school dropouts.[6] Black men with low education levels are at high risk for incarceration, much higher than white men with similar education levels. Figure 4. Black men with low education levels are at high risk for incarceration, much higher than white men with similar education levels. Note: Figure shows the cumulative probability of male incarceration by age 30 to 34. Source: B. Pettit, B. Sykes, and B. Western, "Technical Report on Revised Population Estimates and NLSY79 Analysis Tables for the Pew Public Safety and Mobility Project" (Harvard University, 2009). It follows that just as unequal shares of black vs. white men are imprisoned, an unequal share of black vs. white children have a parent behind bars. About 1 in every 9 black children vs. 1 in every 57 white children have an incarcerated parent. Hispanic children are also more likely to have a parent in jail or prison (1 in 28) than white children.[7] Incarceration Is Associated With Poorer Outcomes For Children And Families. High levels of incarceration are associated with many negative consequences for individuals, families, communities, and society.[8] Because people of color are overrepresented in the prison population, families and communities of color have been disproportionately affected by the rise in incarceration. Families of incarcerated men often experience economic hardship. Studies suggest that families with a father in prison are more prone to homelessness, difficulty meeting basic needs, and greater use of social assistance.[9] Financial adversity associated with incarceration can continue after the father's release as ex-offenders struggle to get hired because of their prison record.[10] Children with a father in prison are more likely to struggle with poor social, psychological, and academic outcomes than other children. These poor outcomes include depression, anxiety, and behavior problems such as aggression and delinquency.[11] These challenges are more common among boys and among children whose fathers were positively involved in their lives before going to prison.[12] Less is known about whether maternal incarceration, which has grown rapidly in recent decades, affects their children. Studies to date have been based on small sample sizes. Therefore, more rigorous research is needed to draw strong conclusions about the possible negative effects of having a mother in prison. Re-Entering Society After A Prison Sentence Presents Challenges. The U.S. Department of Justice reports that over 10,000 ex-prisoners are

released from state and federal prisons every week, and more than 650,000 are released every year. Studies estimate that approximately two-thirds of these former inmates will likely be rearrested within 3 years of release.[13] Researchers are looking for what works to improve the transition back into society and prevent the return to prison. For example, the Boston Reentry Study, which examined life after incarceration from the perspective of people living it, provides insights into the challenges faced by those returning to society. The Boston study researchers interviewed a group of formerly incarcerated people over their first year of reentering society.[14] The following major findings emerged from the interviews: Interviewers found many Boston Reentry Study participants revealed long histories of exposure to trauma in early childhood (Figure 5). Interviewers found high rates of poor physical and mental health including very high rates of substance abuse, mental illness, and chronic pain or disease (Figure 6). The interviews suggested that many of these challenges were linked to experiences of childhood trauma and exposure to violence. Participants experienced a deep level of material hardship in the first year after prison. Their median income in that first year was \$6,000—enough to cover only two-and-a-half months’ rent for an average one-bedroom apartment.[15] Many Boston Reentry Study participants who were interviewed during their first year after release from prison revealed long histories of exposure to trauma in early childhood. Figure 5. Many Boston Reentry Study participants who were interviewed during their first year after release from prison revealed long histories of exposure to trauma in early childhood. Source: B. Western, *Homeward: Life in the Year After Prison*, New York, NY: Russell Sage Foundation, 2018. Poor physical and mental health—especially substance use, mental illness, and chronic pain or disease—were common among those leaving prison. Figure 6. Poor physical and mental health—especially substance use, mental illness, and chronic pain or disease—were common among those leaving prison. Source: B. Western, *Homeward: Life in the Year After Prison*, New York, NY: Russell Sage Foundation, 2018. Participants who reported multiple physical or health problems were most likely to experience material hardship after leaving prison. Although joblessness declined over the course of the year for most participants, those with the most serious health issues were the least likely to become employed.

## Counter Plan: The US should abolish the Criminal Justice System in favor of a tort system.

**Craig 05** [Craig, Lori. "Abolish the Criminal Law." USC Gould School of Law, 5 Dec. 2005, accessed 8/13/25, [gould.usc.edu/news/abolish-the-criminal-law/](http://gould.usc.edu/news/abolish-the-criminal-law/).]

America needs to ditch the criminal justice system, says David D. Friedman, physicist, economist and professor of law at Santa Clara University. "One of the odd features of the modern legal systems is that they're redundant," Friedman said, offering as an example O.J. Simpson's acquittal in criminal court and conviction in civil court. "Is there any good reason to have both?" David Friedman Prof. David D. Friedman, Ph.D. Speaking at the invitation of the Federalist Law Society, Friedman told USC Law students that both the criminal and civil sides of the legal system are set up to achieve the goals of punishment and deterrence. "I do something bad to you; the legal system intervenes," said Friedman, author of Future Imperfect: Technology and Freedom in an Uncertain World (Cambridge University Press 2008). "That's a reason not to do bad things to you." Yet the American criminal system falls short when it comes to recouping a victim's losses. When a violent crime is perpetrated, the victim isn't considered the victim in criminal court; the state is. Cases tried in criminal court result in punishment for the criminal but rarely in restitution for the victim. The answer, Friedman says, is a pure tort system. He argued that such a system is not only attainable in the U.S. today, but would be superior. He also provided examples of tort systems that have functioned in the past – most notably in Iceland from 930 to about 1263. Under such a system, when someone commits a crime against you, you now have a claim against them and may seek compensation. Because the criminal may be difficult to catch or victims may not be competent to collect their claim, the pure tort system would call for private firms in the business of purchasing claims from victims and collecting from criminals. Friedman described a world in which friends and family would help a victim collect, and share in the takings of the claim; lawyers would buy claims rather than set contingency fees; and the threat of private prison would make it much more likely that victims get paid. Criminals would be deterred by loss of money or freedom, or by friends and family who helped them pay their fines. "The present system of the criminal law is one in which the state has enormous power," Friedman said. "In criminal law, the plaintiff and the court are paid by the same people." Worse still is that many defendants are indigent and must hire a public defender, also paid by the government, Friedman said. "If you have a system where you have a king [or president] and murder is a crime, then the king's friends will be getting away with murder," he said.

## Counter Plan: The United States should abolish the Criminal Justice System in favor of restorative justice programs.

**Bagaric et al. 21** [Bagaric, Mirko, Dan Hunter, et al. "Prison Abolition: From Naïve Idealism to Technological ..." Northwestern Law, Northwestern Law, spring 2021, accessed 8/13/25, [scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7697&context=jclc](https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7697&context=jclc).]

a. Objectives of Abolitionism Abolitionists are interested in "how we resolve inequalities and get people the resources they need long before . . . they 'mess up.'"<sup>108</sup> Abolitionists generally have two objectives. The first objective is to delegate public safety responsibility to local communities, an effort also known as "civilianizing safety."<sup>109</sup> The other objective is to redistribute government spending and invest it in community needs like housing and education instead of prisons.<sup>110</sup> According to Ruth Wilson Gilmore, "[a]bolition means not just the closing of prisons but the presence, instead, of vital systems of support that many communities lack."<sup>111</sup> The abolitionist movement has also expanded beyond just scholars and activists and has taken up residence in the very criminal justice systems it hopes to change, as judges and prosecutors have started to question whether some crimes can be handled via out-of-court remedies.<sup>112</sup> Even as the movement has progressed, abolitionists realize that change will not occur overnight.<sup>113</sup> According to DeAnna Hoskins, president of JustLeadershipUSA, specifically regarding the movement to close Rikers Island in New York: "When we talk about abolishing prisons and abolishing law enforcement, it's actually reducing the power and the reach of those entities."<sup>114</sup> Abolitionists do not focus only on jails and prisons; they also focus on the parole and probation systems because at least 4.5 million people—twice as many as are confined—are impacted by these systems.<sup>115</sup> Regardless of their objectives, abolitionists can agree that prison actually has little to do with a decrease in crime or an increase in public safety.<sup>116</sup> Abolition, as imagined by the Prison Research Education Action Project in 1976, has three pillars: moratorium, decarceration, and excarceration.<sup>117</sup> The first pillar, moratorium, is perhaps best summarized by Critical Resistance co-founder Rachel Herzing: "stop building cages."<sup>118</sup> The construction of new prisons is not as expansive as it once was, but according to data from the Congressional Research Services, the state prison population has increased by around 700% since the 1970s.<sup>119</sup> The principle of supply and demand underlies moratorium—where fewer spaces for prisoners are provided, there will be fewer prisoners.<sup>120</sup> Decarceration, on the other hand, is about getting people out of prison.<sup>121</sup> The process is geared toward determining why people are in prison, whether they in fact should be in prison, and for how long.<sup>122</sup> For instance, abolitionists favor reviewing the convictions of those punished for marijuana possession in states that have since legalized marijuana possession—and not keeping them in prison for years on end—because not all of these individuals pose a threat to society, particularly when the criminalization of marijuana possession has relaxed nationally.<sup>123</sup> Abolitionists also turn their eyes toward states that enforce a three-strikes rule, as this rule often results in even longer stays for individuals who have violated the rule.<sup>124</sup> Excarceration gets to the heart of what abolitionists hope to improve: keeping individuals from ending up in prison in the first place.<sup>125</sup> In his article explaining the goals of abolitionism, John Washington highlights key methods that could help with this, such as "[d]ecriminalizing mental-health episodes, fighting homelessness, or decriminalizing drug use."<sup>126</sup> This is where the abolitionist movement goes even further than other reform movements because it is geared towards correcting the source of the pain, and for this reason, abolitionists support adequate funding for mental health, providing housing to the homeless, and offering rehabilitation for

individuals who have substance abuse issues.<sup>127</sup> c. Other Parts of Abolitionism One thing that could radically change the criminal justice system and help achieve abolitionists' goals is to change the way we view crime. For instance, Justin Piché, Director of Carceral Studies Research Collective, claims that "[w]hen we no longer call something a crime, we can define the phenomena differently, and we can respond to [it] differently."<sup>128</sup> Piché's theory suggests that if we reframe how we view crimes, we may find that we can handle many issues without turning to the criminal justice system and that our desire as a society to cage or punish someone will also lessen.<sup>129</sup> Even with these views, abolitionists understand that this process is about a lot more than just closing down prisons. After all, there must still be a way to deal with particularly dangerous individuals, such as rapists and murderers. Many abolitionists approach this issue with restorative justice, which allows people to be held accountable for their transgressions.<sup>130</sup> The goal is to "restore the victim, the community, and the offender, to how they were before the transgression occurred."<sup>131</sup> This is normally sought to be achieved through "the offenders and victims (sometimes together with their respective families) meeting and reaching an agreement for the offender to repair the damage to the victim caused by the crime."<sup>132</sup> Restorative justice is not new, and its roots can be traced to those indigenous and religious practices that focus not only on justice for the offenders, but also on reparations for victims and communities impacted by certain acts.<sup>133</sup> Beyond restorative justice is transformative justice, which focuses on determining what causes a person to commit an act and what can be done to change the conditions that led to the act.<sup>134</sup>

## **Counter Plan: The United States should abolish the Criminal Justice System by using the five pronged model from PREAP.**

**Davis 25** [Davis, Kristen, "A World Without Prison: The role of policy in prison abolition" (2025). Honors Theses. 3320. Accessed 8/13/25, [https://egrove.olemiss.edu/hon\\_thesis/3320](https://egrove.olemiss.edu/hon_thesis/3320)]

The prison abolition movement has continued to work and expand for decades. The attrition model from PREAP's Instead of Prisons provides a powerful roadmap for envisioning abolition which modern scholars and policymakers can draw from. The steps of decarceration, excarceration, and building a caring community offer particularly tangible proposals. A comparison between the frameworks that currently guide the United States' justice system and abolitionists' vision of justice reveal that abolition has the potential to contest specific flaws in today's justice system. This orientation aims to move away from the individualism, disrespect for persons, and inconsistency inherent to retributivist and consequentialist approaches to justice. In doing so, we can begin to envision a new system that is better equipped to secure safety and justice. Identifying existing policy that aligns with these recommendations demonstrates that prison abolition is an actionable theory, not merely an abstract philosophy. The analysis reveals a range of outcomes that leave room for expansion, revision, and further research. The broad categories of decarceration, excarceration, and building a caring community provide a way to contextualize many existing policies. For example, the community well-being policies exist over a wide range of policy spaces. Collectively assessing them through the lens of abolition creates a broader picture of a world that challenges the need for prisons. New policies like Illinois' Pretrial Fairness Act show early indications of success, and continued research is important to determine its impact. Similarly, there are a variety of presumptive parole and 73 sentence review policies currently in action. This diversity allows different iterations of these strategies to be attempted and studied. Prison abolition is far from a perfect theory. Decriminalization in Oregon and federal parole abolition serve as reminders for how policy can fail. The expertise of policymakers can be useful here to decipher how to make substantive improvements on these policies while adhering to an abolitionist ethic. There are also endless policy solutions yet to be imagined. This includes proposals from PREAP like decriminalizing sex work or moratoriums on jails and prisons that have yet to be implemented. It also includes those that lie in the "unfinished" future of abolition. Prison abolition is intentionally malleable to motivate policy innovation over stagnation. Prison abolition is a framework that encourages innovative policy making. However, the goal is not to place the entire abolition movement in the policy world. Instead, the goal is to push policymakers with power and resources to consider how they may engage in abolitionist action. As mass incarceration persists, prison abolition can reinvigorate thinkers to challenge the theoretical and real-world understanding of safety and justice. It offers a new way to think about the society we want to create and the policies we can use to get there. Approaching policymaking with an intentional, concerted effort can help realize prison abolition.

## **Abolishing the Criminal Justice System undoes the wrongs previously committed, and would be focused on an equitable society.**

**Kakimoto 21** [Kakimoto, Noelle. "A Rehashing of My Prison Abolition Essay." This Is Noelle. 28 July 2021. Web. 13 Aug. 2025.]

The United States is more reliant on incarceration than any other Westernized nation in the world. Despite only representing 5% of the world's population, America houses 25% of the world's incarcerated people. Law and order has been a backbone of the United States, proving beneficial in election years and keeping citizens afraid of the crime that exists around them. Abolition is a scary word when it comes to discussing the prison system, but based on its roots and the purely detrimental effects of incarceration, reforming the criminal justice system and prisons is not enough to ensure true justice is served. Abolishing all prisons is a process that will take time in America, but will ultimately right the wrongs of crime and create a society that prioritizes rehabilitation, repair, and restoration. Baylor University Criminology professor Carson Mencken addresses the current prison system's process, saying, "We set up a criminal justice system with prisons and the promise was rehabilitation but in reality, it's become more about retribution." The abolition of the prison system would undue the wrongs committed in justice's name, while focusing on a society that works to prevent offenses and heal both the perpetrators and victims after crimes have occurred. In order to arrive at a place where abolition has widespread support, we as a society have to recognize the course that offenders go through from childhood to the moment they inflict harm upon others. Most times, they suffer through abuse, sexual violence, and neglect, which leads to escalating violence and crimes before prison. Angela Davis discusses the alternatives to prison in *Are Prisons Obsolete?* writing, "Positing decarceration as our overachieving strategy, we would try to envision a continuum of alternatives to imprisonment—demilitarization of schools, revitalization of education at all levels, a health system that provides free physical and mental care to all, and a justice system based on reparation and reconciliation rather than retribution and violence" (107). Without the deescalation of violence across all parts of communities such as over policed neighborhoods and the school to prison pipeline with armed security guards in majority minority schools, abolition isn't possible. Davis expands on her breakdown of the prison system when she says, "Alternatives that fail to address racism, male dominance, homophobia, class bias, and other structures of dominance will not, in the final analysis, lead to decarceration and will not advance the goal of abolition" (108). Abolishing prisons then, would revolve around so much more than just tearing down all cages and setting incarcerated people free. True abolition requires a fundamental restructure of American society where the focus should be on restorative practices and rehabilitative processes that repair harm rather than simply caging people for their actions. Creating a more just, equitable, antiracist, and anti-misogynistic society is the means to a world without prisons where punishment isn't the only option for solving problems. The process would also require healthy and safe living conditions for all without relying on heavy policing and employ conflict resolution strategies based on African and Indigenous problem-solving techniques based on respect, love, and peace.

## **Abolition K**



## **Welcome to the Prison Industrial Complex, where mass incarceration fuels racial capitalism and environmental destruction through exploited labor, polluted communities, and expanding prison infrastructure.**

**Mericle 25** (Mandy Mericle - Office of the Public Defender, Orange and Chatham County), "Feeding the Fire: The Feedback Loop Created by Mass Incarceration and Climate Change and Why Abolition is the Only Way to a Stable Climate", Carolina Law Scholarship Repository, 2025, accessed — 8-1-2025, <https://scholarship.law.unc.edu/nccvrlts/vol5/iss1/6/>, JBR

I. THE PRISON SYSTEM'S CONTRIBUTION TO CLIMATE CHANGE Abolitionist thought asks "who gains from and who pays for, who benefits from and who suffers from" the systems we create.<sup>20</sup> Similarly to other systems of oppression such as slavery, policing, and natural resource overextraction, prisons create profit for a wealthy white elite, while racialized minorities, poor communities, indigenous cultures, and the surrounding environment all suffer.<sup>21</sup> A central tenant of prison abolition is that the current carceral system "can be traced back to slavery and the racial capitalist regime it relied on and sustained."<sup>22</sup> Similarly, environmental injustice<sup>23</sup> can be traced back to exploitation of land and people. From the colonial seizure of native lands and genocide of indigenous people, to plantation wealth built on the labor of enslaved peoples, to the extraction of oil and coal by workforces of poor Black and white laborers, racial capitalism has simultaneously exploited both natural resources and people.<sup>24</sup> The operation of prison systems perpetuates this exploitation of land and people by contributing to global emissions and furthers climate disaster through (A) the construction and maintenance of prison facilities, (B) the consumption of goods within prison populations, and (C) the use of incarcerated workers as low-cost labor. The effect U.S. prison systems have on the climate crisis is the first step in the feedback loop whereby the operation of prison systems furthers climate disaster. A. Fossil Fuel Emissions and other Pollutants Created in Building and Maintaining Prison Facilities The high rate of incarceration in the U.S. makes the issue of fossil fuel emissions especially significant. Only three countries in the world have a higher incarceration rate than the U.S.<sup>25</sup> Every U.S. state has incarceration rates that outpace most nations—even more democratic- leaning states such as New York and Massachusetts.<sup>26</sup> Furthermore, rollbacks of criminal legal reform and the end of slowdowns in court proceedings caused by the 2020 COVID-19 pandemic have led to a recent rise in prison populations.<sup>27</sup> At least 19 states and the Federal Bureau of Prisons are expected to continue to incarcerate more people in the coming years.<sup>28</sup> As incarcerated populations grow, so does demand for construction and maintenance of prisons. Commercial and residential emissions, including fossil fuels burned for heating and cooling buildings, accounted for 13% of U.S. greenhouse gas emissions in 2021.<sup>29</sup> When emissions from electricity use are included, commercial and residential emissions accounted for 31% of greenhouse gas emissions.<sup>30</sup> Prisons in particular consume more energy and natural resources than other commercial businesses including schools, hospitals, and shopping malls.<sup>31</sup> Unlike other commercial buildings, prisons are typically built with materials that are not easily insulated in the name of safety and security constraints.<sup>32</sup> Prisons also have a continuous need for heat, ventilation, air conditioning, and security systems, as well as self- sustaining operations including laundry, cooking, and administrative systems—all of which require large amounts of electricity.<sup>33</sup> Even in hospitals, the closest energy consumers to prisons, only parts of the facility remain in 24/7 usage. Prisons, on the other hand, have increased energy needs throughout the day, all days of the year. The maintenance of prison buildings alone presents challenges to energy efficiency. As facilities age, building materials degrade, leading to energy inefficiency.<sup>34</sup> Older buildings are unlikely to be

climate- resilient.<sup>35</sup> Increases to humidity caused by climate change can accelerate degradation of building materials such as stone, fabric materials, and limestone.<sup>36</sup> These conditions can lead to building collapse, especially in coastal areas.<sup>37</sup> In North Carolina, at least eight correctional facilities are on the coast and thus face risk of degradation and collapse.<sup>38</sup> However, newer buildings also have unique problems. Newer prison construction, adopted during the rise of mass incarceration in the 1970s and 80s, used more metal construction which creates higher heat indices and more rapid heating in these facilities when compared with concrete-based facilities.<sup>39</sup> Aside from the building itself, activities within a prison facility often produce large amounts of water and air pollution. Environmental concerns arise when prisons are built on, or themselves become, sources of toxic waste.<sup>40</sup> The maintenance of these facilities presents environmental concerns and potential hazards in “heating and cooling, wastewater treatment, hazardous waste and trash disposal, asbestos management, drinking water supply, pesticide use, vehicle maintenance and power production.”<sup>41</sup> Journalists at Truthout and Earth Island Journal collected data from the EPA that showed state and federal agencies brought 1,149 informal enforcement actions and 78 formal actions against prisons, jails, and detention centers under the Safe Drinking Water Act over a five-year period.<sup>42</sup> There are multiple examples of prisons creating water pollution by discharging contaminated water into nearby rivers and wetlands and air pollution from on-site prison labor industrial activity, power generation, and prison-related traffic.<sup>43</sup> For example, **wastewater from the California Men’s Colony state prison (CMC) has been polluting a state- designated marine protected estuary for over two decades.**<sup>44</sup> Despite facing penalties due to water quality violations as early as 2004, the facility has a long history of documented sewage spills and clean water violations.<sup>45</sup> **In fact, a 2023 Administrative Order has required the facility to undergo assessments followed by policy and infrastructure changes to address over 6,000 gallons of sewer overflows and violations of permit effluent limits for multiple toxic pollutants.**<sup>46</sup> As well as producing waste, prisons are often built on or near toxic waste sites. According to a 2010 dataset, over five hundred facilities in the United States were located within three miles of a Superfund cleanup site.<sup>47</sup> At one of these facilities, SCI Fayette in Pennsylvania, more than 80% of inmates suffered from exposure to coal ash causing respiratory, throat, sinus, gastrointestinal, and skin conditions.<sup>48</sup> Therefore, when more waste is created, it is often the residents of the prison who suffer most. These concerns will only increase as prisons continue to grow and resources become more scarce. The large, 24/7 living spaces within prisons create financial and energy strains for heating and cooling.<sup>49</sup> The energy required to adequately heat and cool these spaces will become increasingly more difficult to meet as the world’s oil supply decreases.<sup>50</sup> Decommissioning prisons would force the U.S. to incarcerate less people and would use fewer resources in the construction and maintenance of prison buildings.<sup>51</sup>

## The Prison Industrial Complex renders prisoners as disposable and cheap to cover up for companies that increase climate change

**Mericle 25** (Mandy Mericle - Office of the Public Defender, Orange and Chatham County), "Feeding the Fire: The Feedback Loop Created by Mass Incarceration and Climate Change and Why Abolition is the Only Way to a Stable Climate", Carolina Law Scholarship Repository, 2025, accessed — 8-1-2025, <https://scholarship.law.unc.edu/nccvrlts/vol5/iss1/6/>, JBR

Use of Incarcerated Workers as Low-Cost Labor When Ruthie Wilson Gilmore and I sat down for a conversation, we spoke about how the PIC [(Prison Industrial Complex)] not only exploits the labor of imprisoned folx (mainly via reproductive labor of the prison), but also extracts value from us. I came to this conclusion because I knew that our labor wasn't the only or even major source of value the PIC was after. The PIC extracts our lives, our life time. Ruthie helped me to see each person as a territory that the PIC extracts value from via a time-space hole that imprisonment creates. Incarceration creates a mechanism through which money/capital can flow through a person and into the pockets of the PIC. This all sounds abstract. I know. But since coming to SCI Dallas, I clearly and concretely see how extraction, not exploitation, is the big game the PIC is using. And we need to get hip. - Letter from Stevie Wilson while incarcerated in The State Correctional Institution—Dallas in Pennsylvania The use of incarcerated workers as low-cost labor contributes to climate change by reducing the cost of labor for highly exploitative industrial activities. First, incarcerated workers in state facilities do not have the same rights to safety as non-incarcerated workers. Therefore, incarcerated labor can be used to continue resource extraction in environments where ordinarily the dangers would be too high to continue to employ workers—at least at the same cost. Second, incarcerated labor has been used to clean up environmental disasters, such as oil spills and wildfires, thus sheltering the companies responsible for this damage from the true cost of their mistakes. Finally, lowering the cost of labor generally allows companies to devote more money and labor to mining natural resources. Incarcerated workers produce billions of dollars of goods and services, but are paid, on average, between \$0.13 and \$0.52 an hour.<sup>81</sup> Exploitative labor practices shelter manufacturers from paying the true cost of producing the goods they profit from, therefore allowing these companies to produce more goods and use more natural resources. The use of incarcerated labor to prepare for and respond to natural disasters presents a great irony. **Prison populations are being used for low to no-cost labor to respond to and protect the greater public from dangers to which the inmates themselves are most vulnerable.** For example, in Florida and Texas, unpaid incarcerated labor has been used to prepare for and clean up after hurricanes.<sup>82</sup> In at least thirteen states, including North Carolina, incarcerated firefighters fight wildfires, often for little or no pay.<sup>83</sup> Furthermore, incarcerated workers are rarely protected from dangerous or hazardous conditions. The Occupational Health and Safety Administration ("OSHA"), as well as many state-level health and safety workplace statutes, does not cover incarcerated labor in state facilities.<sup>84</sup> Research in California has shown that incarcerated firefighters are more likely to be injured than professional firefighters.<sup>85</sup> Incarcerated labor also risks exposing workers to heat-related injury and death when working outside or inside buildings without air conditioning. In fact, incarcerated firefighters in California have fallen ill and died from heat exposure during routine training.<sup>86</sup> This is yet another way in which rising temperatures increase the risk to prison populations. Furthermore, incarcerated labor is often obtained by force or coercion, such as by the need to pay for basic necessities, the threat of disciplinary action, being the only alternative to being confined in cells, or the promise of a reduced sentence.<sup>87</sup> The result of this system is that

incarcerated workers are used to fight natural disasters but rarely benefit from the public safety that they ensure. Using incarcerated labor to respond to climate disaster also insulates highly polluting industries from the cost of their mistakes. One example is the use of incarcerated labor to clean up BP's oil spill in the Gulf of Mexico in 2010.<sup>88</sup> BP saved money by using inmate labor because the company did not have to pay inmates minimum wage, was not required to provide inmates with proper protective equipment, and secured government-funded compensation for hiring "local labor."<sup>89</sup> Furthermore, while there were non-incarcerated workers that were willing to work, they did not get jobs on the clean-up because incarcerated workers were used instead at a lower wage.<sup>90</sup> Use of incarcerated workers exacerbates conditions of poverty in the communities where these workforces are used, as it prevents local workers from being hired at a full wage. Incarcerated labor is also used to sustain highly polluting industries such as oil and gas. Incarcerated workers in the Gulf Coast and Deep South have been used to operate offshore drilling rigs.<sup>91</sup> Thus incarcerated labor is used to perpetuate pollution that contributes to climate change in the areas most vulnerable to climate disaster.<sup>92</sup> In addition, in some of these facilities, prisoner wages are withheld to pay for room and board, thus allowing the facility to retain much of the cost of the labor.<sup>93</sup> Another highly polluting industry that benefits from incarcerated labor is industrial farming.<sup>94</sup> Workers on industrial farms also face risks such as extreme heat and exposure to toxic pesticides.<sup>95</sup> By facilitating industrial growth through cheap labor and industrial activity within prisons, the carceral labor system increases fossil fuel use and emissions, thus accelerating climate disaster.<sup>96</sup>

**The alternative is an abolitionist praxis of creative destruction that refuses existing systems of oppression and actively imagines radical new forms of collective power.**

**Rodríguez 19** [Dylan Rodríguez, Professor of Ethnic Studies and Chair of the Academic Senate at the University of California-Riverside, holds a Ph.D. in Ethnic Studies from the University of California-Berkeley, 2019 ("Abolition as Praxis of Human Being: A Foreword," *Harvard Law Review*, Volume 132, April 10<sup>th</sup>, Available Online at [https://harvardlawreview.org/wp-content/uploads/2019/04/1575-1612\\_Online.pdf](https://harvardlawreview.org/wp-content/uploads/2019/04/1575-1612_Online.pdf), Accessed 03-23-2020, p. 1610-1612)]

Consider abolition as an art form, the kind of creative truth that mixes the stuff of history into memory, survival, breath, and stubborn, vexed, and often-nourishing community that constantly escapes the guarantees of any organizing plan. In some ways, this is not the time to insist on the renewed urgency of a radical abolitionist struggle, because such a time preceded all of this, and its messengers have already presented themselves to us in the poetry, letters, manifestos, collect phone calls, and never-quite-private conspiratorial conversations we share with each other sometimes, but really, all the damn time. More than just a synonym or rhetorical cipher for revolutionary change or radical social transformation, abolition is an artful disruption of the presumed [end page 1610] futurity. Certainly, it is as Professor Ruth Wilson Gilmore says: "Abolition is a theory of change, it's a theory of social life. It's about making things."<sup>116</sup> Abolition, in such terms, is a fundamentally creative force, even and especially in those rare historical moments when a definitive destruction of oppressive structures and power relations appears possible, practical, and capable of catalyzing a (potentially) radically different social form. Within the last sesquicentennial, such periods of creative destruction and creativity from destruction have flourished through multiple genealogies of radical confrontation with the global Civilization form, resulting in the downfall of multiple apartheid orders, expulsion of colonial occupations, redistribution of life-sustaining wealth and resources, and periodic liberation of chattel-captive populations. It is imperative to apprehend such moments of victory as **contradictory, imperfect, and flawed**; put another way, the signature historical moments of "successful" abolitionist struggle produce utterly human historical outcomes in the most antihumanist, counter-Civilizational sense of "human" (contradictory, imperfect, flawed). Yet, it is equally imperative to critically study, teach, theorize, and narrate such historical moments as **revelations of radical possibility** that obliterate the cultural tendency to reify (which is to say, presume permanency and ahistorical existence of) existing systems of state violence, geographic displacement and capture, economic evisceration, and institutionalized dehumanization.<sup>117</sup> Such a **creative destruction**, and creativity of thought-in-destruction, is a primary pedagogical purpose of abolitionist praxis.<sup>118</sup> This historicized redefinition of incarceration exceeds conventional criminological notions of spatially and temporally discrete/compartmentalized, juridically sanctioned state captivity and conceptualizes steel and concrete places of containment for the "duly convicted" as centers of institutional gravity that materially reproduce, experiment with, and culturally signify a paradigm of social power that permeates social relations generally. A genealogy of twentieth- and twenty-first-century radical thought among incarcerated and formerly incarcerated people in and beyond the United States has constructed a durable, rigorous, and dynamic critical theorization of the carceral state and social form. From George Jackson [end page 1611] and Assata Shakur to Raúl Salinas, Angela Y. Davis, Leonard Peltier, and Marilyn Buck,<sup>119</sup> these thinkers articulate a complex urgency imperative to abolitionist praxis that pivots on its creative, collective, and transformative challenge to historical conditions of gendered, racial-colonial dominance that fundamentally relies on criminalization and systemic human immobilization to produce and reproduce a

Civilizational order. Following this body of thought, abolition is a **generative, imaginative, and productive** concept precisely because it entails **a radical reconfiguration of relations of power, community, collective identity, and sociality** that does not rely on carcerality and its constitutive, oppressive forms of state and cultural violence. Abolitionist praxis addresses carcerality as a logic of power that generates multiple, overlapping, and differently scaled carceral regimes (reservations, plantations, segregated cities/towns, prisons, military bases, and so forth). Thus, eliminating carceral-state violence via prisons, jails, police, detention centers, and military bases is **but one aspect of a broader rethinking — and remaking — of collective, insurgent “power”** that simultaneously asserts a liberated autonomy from and posits a radical challenge to long historical relations of gendered, racial-colonial dominance. This recognition of carcerality as **an institutional logic and methodology** informs abolition as a praxis of creativity — abolitionism articulates a **fundamental critique of existing systems of oppression** while attempting to **actively imagine** as it practices forms of collective power that are liberated from hegemonic paradigms, including but not limited to forms of power constituted by the logic of **carcerality, patriarchy, coloniality, racial chattel, racial capitalism**,<sup>120</sup> and **heteronormativity**.

**The alternative is shifting our relationships The prison is not confined to walls, bars, and locks but is instead a “set of relationships” – abolition is a framework for thought and politics that refuses the notion of there being a single alternative or replacement**

**Davis 3** [Davis; American political activist, philosopher, academic, Marxist feminist, and author. She is a professor emerita at the University of California, Santa Cruz [Angela, Are Prisons Obsolete?, 2003, pg. 106-108,]]

It is true that if we focus myopically on the existing system-and perhaps this is the problem that leads to the assumption that imprisonment is the only alternative to death-it is very hard to imagine a structurally similar system capable of handling such a vast population of lawbreakers. **If, however, we shift our attention from the prison,** perceived as an isolated institution, **to the set of relationships that comprise the prison industrial complex, it may be easier to think about alternatives.** In other words, a more complicated framework may yield more options than if we simply attempt to discover a single substitute for the prison system. **The first step,** then, **would be to let go of the desire to discover one single alternative system** of punishment that would occupy the same footprint as the prison system. Since the 1980s, the prison system has become increasingly ensconced in the economic, political and ideological life of the United States and the transnational trafficking in U.S. commodities, culture, and ideas. Thus, the prison industrial complex is much more than the sum of all the jails and prisons in this country. It is a set of symbiotic relationships among correctional communities, transnational corporations, media conglomerates, guards' unions, and legislative and court agendas. If it is true that the contemporary meaning of punishment is fashioned through these relationships, then **the most effective abolitionist strategies will contest these relationships and propose alternatives that pull them apart.** What, then, would it mean to imagine a system in which punishment is not allowed to become the source of corporate profit? How can we imagine a society in which race and class are not primary determinants of punishment? Or one in which punishment itself is no longer the central concern in the making of justice? **An abolitionist approach** that seeks to answer questions such as these would **require us to imagine a constellation of alternative strategies and institutions, with the** ultimate **aim of removing the prison from the social and ideological landscapes of our society.** In other words, **we would not be looking for prisonlike substitutes** for the prison, such as house arrest safeguarded by electronic surveillance bracelets. Rather, positing decarceration as our overarching strategy, we would try to envision **a continuum of alternatives to imprisonment-demilitarization of schools, revitalization of education at all levels, a health system that provides free physical and mental care to all, and a justice system based on reparation and reconciliation rather than retribution and vengeance.** The creation of new institutions that lay claim to the space now occupied by the prison can eventually start to crowd out the prison so that it would inhabit increasingly smaller areas of our social and psychic landscape. Schools can therefore be seen as the most powerful alternative to jails and prisons. Unless the current structures of violence are eliminated from schools in impoverished communities of color-including the presence of armed security guards and police-and unless schools become places that encourage the joy of learning, these schools will remain the major conduits to prisons. The alternative would be to transform schools into vehicles for decarceration. Within the health care system, it is important to emphasize the current scarcity of institutions available to poor people who suffer severe mental and emotional illnesses. There are currently more people with mental and emotional disorders in jails and prisons than in mental institutions. This call for new facilities designed to assist poor people

should not be taken as an appeal to reinstitute the old system of mental institutions, which were and in many cases still are-as repressive as the prisons. It is simply to suggest that the racial and class disparities in care available to the affluent and the deprived need to be eradicated, thus creating another vehicle for decarceration. To reiterate, rather than try to imagine one single alternative to the existing system of incarceration, we might envision an array of alternatives that will require radical transformations of many aspects of our society. Alternatives that fail to address racism, male dominance, homophobia, class bias, and other structures of domination will not, in the final analysis, lead to decarceration and will not advance the goal of abolition.



## Abolitionism solves white collar crime

### Gerson 23

(Pedro Gerson - Pedro Gerson spent more than a decade teaching and practicing law in the United States and Mexico before joining the Chicago-Kent College of Law faculty), "Less is More?: Accountability for White-Collar Offenses Through an Abolitionist Framework", CWSL Scholarly Commons, Spring 2023, accessed — 8-1-2025, <https://scholarlycommons.law.cwsl.edu/fs/421/>, JBR

#### IV. ABOLITIONIST ACCOUNTABILITY

The normalization of carceral punitivism impairs our ability to imagine accountability as anything other than incarceration. However, abolitionists have pushed us to reimagine what accountability can look like. There is, evidently, no single abolitionist model of accountability.<sup>188</sup> Restorative justice processes, for example, focus on ways to examine who is harmed, what are their needs, and whose obligation is it to fill those needs.<sup>189</sup> Closely related, are transformative justice practices which in addition to focusing on harm seek to remediate the conditions that lead to it.<sup>190</sup> At a larger scale than these are transitional justice frameworks which aim to establish accountability for mass (frequently state-sponsored) harm. <sup>191</sup> These frameworks are then translated into many different practices. Some of these are fairly similar like healing circles,<sup>192</sup> circles of support and accountability, peacemaking circles, victim-offender dialogues, and, probably the most common one in the criminal legal space, restorative community conferences, which "involve an organized, facilitated dialogue in which young people, with the support of family, community, and law enforcement, meet with their crime victims to create a plan to repair the harm done."<sup>193</sup> Others, the more large-scale harm frameworks, will be reflected in truth and memory commissions,<sup>194</sup> the drafting of new laws, and reparations.<sup>195</sup> These practices are sometimes carried out by state-actors,<sup>196</sup> but more frequently by third-sector organizations under the auspices<sup>197</sup> or even outside of the state. At bottom, the many diverse abolitionist frameworks and practices center on the recognition of the harm caused, on asking for forgiveness, and on proactively taking steps to ensure that the harm is not repeated. Another key characteristic is that these processes are painful and difficult, although in very different ways than incarceration, for both parties involved.<sup>198</sup> It is possible to take these principles to develop a model for what abolitionist white-collar criminal accountability could look like. In instances where wrongdoing and responsibility is clear, one could imagine creating a forum, akin to a community circle or a truth-commission depending on the scale of the crime, where white-collar offenders would admit the harm they caused, hear from people who suffered as a result of their actions, and establish ways to remediate the harm.<sup>199</sup> This last part can be crucial. First, by working directly with, not against, offenders, many of the collection issues addressed earlier could be sidestepped, thus ensuring reparations. Furthermore, in so far as guaranteeing the non-repetition of the harm is crucial to a process of accountability, white-collar offenders are in very good positions to work with other actors to design systems that prevent the very harm they caused.<sup>200</sup> One potential objection about applying any of these models, or similar ones, to white-collar crime is that often the victim in those cases is invisible. When the social harm is diffuse, who sits in the seat of the victim in a non-adversarial proceeding for accountability? After all, alternative models of justice depend on victims voicing the harm they suffer with the people they hurt.<sup>201</sup> Is this possible when we cannot pinpoint a particular victim? For example, who would speak up in cases of tax evasion? However, if a prosecutor is supposed to speak for the community in an adversarial setting, there is no reason why there could not be a similar community representative in different accountability processes when the victim is not evident. Even when we can identify victims, however, there are issues. One salient one is that victims may be too numerous to

effectively engage in the types of accountability processes that are grounded in communities.<sup>202</sup> White-collar crimes often have victims that span across many jurisdictions and often include non-human animals and living organisms. Without a unified community it is difficult to build a consensus approach as to what counts as accountability for these harms. However, transitional justice shows us that this is not an unsurmountable obstacle. Of course, when the harm is so diffuse accountability for all wrongdoing is difficult, but it is not clear that that is any different when the punishment is carceral. Another potential objection is that transitional justice itself is contested.<sup>203</sup> If it is not clear that transitional justice can redress the harms that it was designed to, why try to apply a similar model in a different context? However, most critiques (and defenses) of transitional justice have more to do with expectations about what can be achieved through transitional justice, more than whether these processes are useful at all. Critics for example have pointed out that transitional justice is internally inconsistent<sup>204</sup> and incapable of achieving full social cohesion<sup>205</sup> in the wake of mass harms. This may well be true; however, in this context we are not demanding a system of justice to re-weave all of society's threads. Rather, applying these frameworks to white-collar crime is a way to provide more accountability for these harms than our current carceral framework. In cases where there is a dispute about wrongdoing, both in the sense of whether there was harm and who is responsible for it,<sup>206</sup> we can imagine a greater role for civil and administrative accountability mechanisms than we currently do for white-collar crime. One important advantage of doing this is that, as explained above, white-collar crime is difficult to prosecute. A non-carceral model will lower procedural protections and requirements to find liability, whether it is civil or administrative.<sup>207</sup> While civil or administrative accountability is not of the transformational kind imagined by abolitionists, it is a step in the direction of ensuring harms are recognized and remediated. Once liability is imposed, then the wrongdoers would enter an alternative accountability process in the vein of restorative or transitional justice. This step is crucial because it is paramount to not equate monetary damages or professional repercussions with accountability. These types of penalties may be desirable, as seen in the previous section, however even assuming that fines are appropriate to the level of wrongdoing,<sup>208</sup> and that they are collected,<sup>209</sup> the monetization of justice is anathema to abolitionist objectives. This is not only because, many scholars tie ending prisons to ending capitalism, but also because paying a fine is a way to easily evade actual justice. Non-carceral accountability may sound insufficient or fanciful. However, by all accounts, current efforts to curtail white-collar crime are failing.<sup>210</sup> If the current system of punishment is failing, why not try to envision a different one. I do not mean to suggest that the models outlined here are definitive, but to propose that models built in the same spirit can deliver true and long lasting accountability.

## (For Court Clog) Exercising our rights enables abolition to succeed

**Alexander 12** [(Michelle Alexander - civil rights lawyer and advocate, a legal scholar and the author of the New York Times best seller "The New Jim Crow: Mass Incarceration in the Age of Colorblindness. ), "Go to Trial: Crash the Justice System ", No Publication, 3-10-2012, accessed — 8-2-2025, <https://www.nytimes.com/2012/03/11/opinion/sunday/go-to-trial-crash-the-justice-system.html>, JBR]

Columbus, Ohio AFTER years as a civil rights lawyer, I rarely find myself speechless. But some questions a woman I know posed during a phone conversation one recent evening gave me pause: "What would happen if we organized thousands, even hundreds of thousands, of people charged with crimes to refuse to play the game, to refuse to plea out? What if they all insisted on their Sixth Amendment right to trial? Couldn't we bring the whole system to a halt just like that?" The woman was Susan Burton, who knows a lot about being processed through the criminal justice system. Her odyssey began when a Los Angeles police cruiser ran over and killed her 5-year-old son. Consumed with grief and without access to therapy or antidepressant medications, Susan became addicted to crack cocaine. She lived in an impoverished black community under siege in the "war on drugs," and it was but a matter of time before she was arrested and offered the first of many plea deals that left her behind bars for a series of drug-related offenses. Every time she was released, she found herself trapped in an under-caste, subject to legal discrimination in employment and housing. Fifteen years after her first arrest, Susan was finally admitted to a private drug treatment facility and given a job. After she was clean she dedicated her life to making sure no other woman would suffer what she had been through. Susan now runs five safe homes for formerly incarcerated women in Los Angeles. Her organization, A New Way of Life, supplies a lifeline for women released from prison. But it does much more: it is also helping to start a movement. With groups like All of Us or None, it is organizing formerly incarcerated people and encouraging them to demand restoration of their basic civil and human rights. I was stunned by Susan's question about plea bargains because she — of all people — knows the risks involved in forcing prosecutors to make cases against people who have been charged with crimes. Could she be serious about organizing people, on a large scale, to refuse to plea-bargain when charged with a crime? "Yes, I'm serious," she flatly replied. I launched, predictably, into a lecture about what prosecutors would do to people if they actually tried to stand up for their rights. The Bill of Rights guarantees the accused basic safeguards, including the right to be informed of charges against them, to an impartial, fair and speedy jury trial, to cross-examine witnesses and to the assistance of counsel. But in this era of mass incarceration — when our nation's prison population has quintupled in a few decades partly as a result of the war on drugs and the "get tough" movement — these rights are, for the overwhelming majority of people hauled into courtrooms across America, theoretical. More than 90 percent of criminal cases are never tried before a jury. Most people charged with crimes forfeit their constitutional rights and plead guilty. "The truth is that government officials have deliberately engineered the system to assure that the jury trial system established by the Constitution is seldom used," said Timothy Lynch, director of the criminal justice project at the libertarian Cato Institute. In other words: the system is rigged. In the race to incarcerate, politicians champion stiff sentences for nearly all crimes, including harsh mandatory minimum sentences and three-strikes laws; the result is a dramatic power shift, from judges to prosecutors. The Supreme Court ruled in 1978 that threatening someone with life imprisonment for a minor crime in an effort to induce him to forfeit a jury trial did not violate his Sixth Amendment right to trial. Thirteen years later, in Harmelin v. Michigan, the court ruled that life imprisonment for a first-time drug offense did not violate the Eighth Amendment's ban on cruel and unusual punishment. No wonder, then, that most people waive their rights. Take the case of Erma Faye Stewart, a single African-American mother of two who was arrested at age 30 in a drug sweep in Hearne, Tex., in 2000. In jail, with no one to care for her two young children, she began to panic. Though she maintained her innocence, her court-appointed lawyer told her to plead guilty, since the prosecutor offered probation. Ms. Stewart spent a month in jail, and then relented to a plea. She was sentenced to 10 years' probation and ordered to pay a \$1,000 fine. Then her real punishment began: upon her release, Ms. Stewart was saddled with a felony record; she was destitute, barred from food stamps and evicted from public housing. Once they were homeless, Ms. Stewart's children were taken away and placed in foster care. In the end, she lost everything even though she took the deal. On the phone, Susan said she knew exactly what was involved in asking people who have been charged with crimes to reject plea bargains, and press for trial. "Believe me, I know. I'm asking what we can do. Can we crash the system just by exercising our rights?" The answer is yes. The system of mass incarceration depends almost entirely on the cooperation of those it seeks to control. If everyone charged with crimes

suddenly exercised his constitutional rights, there would not be enough judges, lawyers or prison cells to deal with the ensuing tsunami of litigation. Not everyone would have to join for the revolt to have an impact; as the legal scholar Angela J. Davis noted, “if the number of people exercising their trial rights suddenly doubled or tripled in some jurisdictions, it would create chaos.” Such chaos would force mass incarceration to the top of the agenda for politicians and policy makers, leaving them only two viable options: sharply scale back the number of criminal cases filed (for drug possession, for example) or amend the Constitution (or eviscerate it by judicial “emergency” fiat). Either action would create a crisis and the system would crash — it could no longer function as it had before. Mass protest would force a public conversation that, to date, we have been content to avoid. In telling Susan that she was right, I found myself uneasy. “As a mother myself, I don’t think there’s anything I wouldn’t plead guilty to if a prosecutor told me that accepting a plea was the only way to get home to my children,” I said. “I truly can’t imagine risking life imprisonment, so how can I urge others to take that risk — even if it would send shock waves through a fundamentally immoral and unjust system?” Susan, silent for a while, replied: “I’m not saying we should do it. I’m saying we ought to know that it’s an option. People should understand that simply exercising their rights would shake the foundations of our justice system which works only so long as we accept its terms. As you know, another brutal system of racial and social control once prevailed in this country, and it never would have ended if some people weren’t willing to risk their lives. It would be nice if reasoned argument would do, but as we’ve seen that’s just not the case. So maybe, just maybe, if we truly want to end this system, some of us will have to risk our lives.”